

County of San Mateo
Transient Occupancy Tax
General Guidelines, Policies & Procedures & FAQ's
 (To be used in conjunction with San Mateo County Ordinance 5.136)

Initial Process:

Once an establishment responsible for collecting Transient Occupancy Tax (TOT) has been recognized as being within the jurisdiction known as the unincorporated areas of San Mateo County, an information packet is immediately mailed from the office of the Tax Collector containing the following: cover letter, Ordinance 5.136, an application for Transient Occupancy Tax, Transient Occupancy Tax Return form, Occupancy by Permanent Residents Applies After 30 Days of Occupancy form, Government Transient Occupancy Tax Exemption form, General Guidelines, Policies and Procedures and FAQ's (Frequently Asked Questions).

1. Upon receipt of a TOT packet, it is imperative that an application be submitted to the San Mateo County Tax Collector-Treasurer within 30 days. Upon receipt and processing, a certificate validating the business will be provided which should be posted in a conspicuous place on the premises.

2. Transients are subject to and shall pay 10% of the rent charged by the TOT operator. The operator shall, on or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which may be established by the Tax Collector, make a return to the Tax Collector, on forms provided, of the total rents charged and receivable and the amounts of tax collectible for transient occupancies. A tax return form must be filed quarterly even if no tax is due. Operators shall report Gross Rent for Occupancy of Rooms, report and include an Occupancy by Permanent Residents form (individuals shall be deemed to be a transient until a period of thirty (30) days has expired **unless** there is an **agreement in writing** providing for a longer period of occupancy), and report and include rent covered by exemptions specific to the County of San Mateo Ordinance Code. A receipt number is required to identify **each** transaction. All taxes collected by operators shall be held in trust for the account of the County until payment is made to the Tax Collector pursuant to 5.136.060. Remit payment of tax collected to the Tax Collector within 30 days after each calendar quarter-end as follows:

Period	Final Due Date	Delinquent Date
January, February, March	April 30 th	May 1 st
April, May June	July 31 st	August 1 st
July, August, September	October 31 st	November 1 st
October, November, December	January 31 st	February 1 st

Please pay special attention to the due dates above. Penalties under 5.136.070 are strictly enforced on late filings of Transient Occupancy Taxes. Payments postmarked by the final due dates above will be accepted.

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1. It is the responsibility of the business operator to submit tax return forms in a timely manner to avoid associated penalties for delinquent submissions. Reporting forms are available on our website at: tax.smcgov.org. If you do not have internet access, it is your responsibility to contact this office at (650) 599-7256 and request them, well in advance of the due date in order to avoid filing a delinquent report.

EFFECTIVE 6/1/08: Any operator who is behind in filing TOT tax returns will be subject to an immediate audit, placed on a monthly reporting schedule and may be subject to a Lien for Delinquent Transient Occupancy Tax Due.

2. **The TOT Ordinance requires you to retain your records for a period of three years.** These records have to provide a sufficient audit trail from booking/registration to quarterly income figures reported to the County, and can include registration records, revenue/deposit summaries, general ledger and similar records. Other documents may be required during the audit including financial statements and income tax returns. Audits are conducted every three to four years or at shorter intervals due to delays in submission of TOT returns and remittances.

Information obtained, as part of the audit, shall be used only for purposes related to the administration of the San Mateo County Transient Occupancy Tax.

3. **Returns and payments are due immediately to the County upon cessation of business for any reason (sale, bankruptcy, renovation, etc.).** It is your obligation to obtain the reporting forms from this office before the cessation of business. New buyers should take a "Buyer Beware" stance when purchasing property from a seller responsible for TOT. When a change of ownership is to take place, the seller has liability for disclosure that all taxes have been paid, however, the new owner is responsible for confirming this information and withholding from the purchase price amounts owed pursuant to 5.136.120(f). Otherwise, outstanding TOT owed on property that takes on new ownership becomes the liability of the new owner. A new application for TOT must be submitted by the new owner when there is a change of ownership within 30 days of commencing business.

Clarifications

1. "Rent" includes but is not limited to all of the following:
 - a) the fair market value of complimentary rooms provided for guests, employees, travel agents, travel writers, or any third party;
 - b) the fair market value of rooms donated to tax-exempt non-profit organizations for charitable purposes;
 - c) charges for roll-away beds;
 - d) the fair market value for lodging provided as part of a package that includes other goods or services (e.g. a room and golf package);

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- e) consideration received for rooms for resale sold to tour operators, meeting planners, or any other party that resells rooms;
- f) gift certificates for the purchase of lodging (TOT must be added to the total purchase price); or
- g) rent retained for canceling a reservation for lodging.

Notwithstanding the foregoing, "Rent" does not include consideration or charges received by an operator for any of the following:

- a) use of banquet or meeting rooms;
- b) occupancy of space in a lodging by a pet owned by a transient;
- c) childcare services;
- d) use of safes or other secure storage areas;
- e) food or meals on which sales tax has been paid (see #2 of FAQ's);
- f) gift certificates purchased for credit towards services on the property (e.g. spa, golf, gift shop); or
- g) in-room services, pay-per-view movies, video games, telephones, and the like.

2. "Tax Collector" means the San Mateo County Tax Collector.

Frequently Asked Questions (FAQ's)

1) Is TOT imposed on camping facilities?

Patrons who provide their own tents and/or RV's are not subject to TOT if the Operator is not providing those patrons with any form of "structure" as specified in the Ordinance. On the other hand, if the Operator provides the dwelling, e.g. tents, RV's or a poured cement foundation or other similar type structure for it patrons to pitch a tent or park an RV, then the TOT applies.

2) Is TOT charged on the full value of lodging when food is included as part of the rate?

Per the State Board of Equalization Regulation 1603, if the average retail value of complimentary food and beverage exceeds 10% of the average room rate (average daily rate), sales tax must be charged and paid to the State on the amount paid for food. When the value of food and beverage is less than 10% of the average room rate, TOT is charged. Sales tax is not charged when the value is less than 10% of the average room rate. (e.g. \$110 average room rate with \$11 of that charge for food and beverage which is 10% or less of the average room rate - TOT is charged on \$110.00 and paid to the County Tax Collector. \$110 room rate with \$11.50 of that charge for food and beverage which is over 10% of the average room rate - TOT is not charged on the food. Sales tax is charged and paid to the State for the food.

State Board of Equalization Regulation 1603 (attached) provides a formula for

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computing the average retail value of complimentary food and beverage and the average daily rate. Where sales tax is charged, amounts used in the computation and the back-up documentation may be reviewed during audits.

3) What happens if I'm late in filing my report?

The Tax Collector may impose shorter reporting periods for any Operator not adhering to the reporting schedule. Effective 6/1/08, Any operator who is behind in filing TOT tax returns will be subject to an immediate audit, placed on a monthly reporting schedule and may be subject to a Lien for Delinquent Transient Occupancy Tax Due. Said delinquencies shall be collected in the same manner as any unsecured tax collection procedure as provided by the California Revenue and Taxation Code.

4) What is the process following a hearing and filing an appeal on taxes owed?

An operator may appeal to the Tax Collector. At any appeal, the operator has the burden of proving that the Tax Collector's determination is incorrect and producing sufficient evidence to establish the correct tax liability.

The amount determined to be due shall be payable after 15 days. Any operator aggrieved by any decision of the Tax Collector with respect to the amount of the tax imposed by this article, and interest and penalties, if any, may appeal to the Board of Supervisors by filing a notice of appeal with the County Clerk within 15 days of the serving or mailing of the determination by the Tax Collector of the amount of tax due. The Tax Collector shall present the matter to the Board and include evidence submitted by the operator. The Tax Collector shall also include proposed findings and a resolution of the appeal. The findings of the Board of Supervisors shall be final and conclusive and shall be served upon the appellant. Any amount found to be due shall be immediately due and payable upon the service of notice.

Outstanding taxes that remain unpaid may lead to the Tax Collector embarking on a process beginning with filing an "Intention to file Lien" up to and including closure of the establishment.

5) What happens when a tax lien is filed?

The Tax Collector is authorized to record a Certificate of Delinquency of Transient Occupancy Tax Lien with the San Mateo County Recorder against any operator who fails to remit taxes, penalties or interest due within stipulated timeframes.

At any time within three (3) years after any operator is delinquent in the payment of any amount herein required to be paid off within (3) years after the last recording of a Certificate of Delinquency of Transient Occupancy Tax Lien pursuant to 5.136.120(b), the Tax Collector may issue a warrant directed to any sheriff, marshal or constable, for the enforcement of the liens and the collection of any tax and penalties required to be

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paid to the County under this ordinance. The warrant shall have the same effect as a writ of execution, and be executed in the same manner and with the same effect as a levy and sale pursuant to a writ of execution.

In lieu of issuing a warrant, at any time within the three years after a Certificate of Delinquency of Transient Occupancy Tax Lien is recorded, the Tax Collector may collect the delinquent amount by seizing, or causing to be seized, any property, real or personal, of the operator and selling any non-cash or non-negotiable property, or a sufficient part of it, at public auction to pay the amount of tax due, together with any penalties, interest, and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall only be to property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

6) *When can I expect to receive my reporting form?*

Reporting forms are available 24/7 on our website at: <https://tax.smcgov.org>. If you do not have internet access, it is your responsibility to contact this office at (866) 220-0308 and request them, well in advance of the due date in order to avoid filing a delinquent report.

7) *Are there any consequences for failing or refusing to register as required? Failing or refusing to furnish a return or other required data? Rendering false or fraudulent returns?*

Any operator or other person who fails or refuses to register as required, or to furnish any return required to be made, or who fails or refuses to furnish a supplemental return or other data required by the Tax Collector, or renders a false or fraudulent return or claim, is guilty of a misdemeanor, and is punishable as otherwise provided pursuant to 5.136.130 of the Ordinance Code.