

Prince George's County, Maryland  
Office of Audits and Investigations

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**Office of Finance**

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**Hotel and Motel Tax Collections**

**September 2016**



**David H. Van Dyke**  
**County Auditor**

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# THE PRINCE GEORGE'S COUNTY GOVERNMENT

## Office of Audits and Investigations

September 2016

The County Council and County Executive  
of Prince George's County, Maryland

We have conducted a compliance audit of the

### OFFICE OF FINANCE'S COLLECTION OF HOTEL AND MOTEL TAX

in accordance with the requirements of Article III, Section 313, of the Charter for Prince George's County, Maryland. Our Report is submitted herewith.

We have discussed the contents of this Report with appropriate personnel of the Office of Finance, and wish to express our sincere gratitude to them for the cooperation and assistance extended to us during the course of this engagement.

A handwritten signature in blue ink, appearing to read "D. H. Van Dyke".

David H. Van Dyke, CPA  
County Auditor

A handwritten signature in black ink, appearing to read "Larry Whitehurst".

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## Results In Brief

The Prince George's County (County) Office of Finance, Treasury Division is responsible for the collection of hotel/motel taxes from hotel/motel establishments located within the County boundaries. The collection of these taxes is facilitated through the submission of monthly hotel/motel tax returns. Our audit revealed 74 operational hotel/motel establishments located within the County.

The Office of Audits and Investigations audited the financial records and reports submitted by hotels and motels in Prince George's County (on a test basis) to determine compliance with Hotel and Motel Tax remittance and reporting requirements as stipulated in the County Code. This audit covered the period of calendar years 2012 and 2013.

The following findings are addressed in our report:

- Several hotels/motels failed to (1) collect and submit hotel/motel tax to the County, and/or (2) obtain Use and Occupancy (U&O) permits as required by County Code regulations.
- Several hotel/motels submitted inaccurate/erroneous completed hotel/motel tax returns which once corrected produced a recommended tax repayment totaling \$10,509. **(Repeat finding from prior audit report dated September 2012).**
- Several hotel/motels failed to retain adequate documentation to support information reported on their hotel/motel tax returns.
- Inconsistent interpretation and application of the County Code by hotel/motel establishments with respect to the assessment and possible refund of hotel/motel tax to room renters once they have reached ninety (90) consecutive days of room rental.
- Conflicting definitions between State and County regulations pertaining to whether the definition of a hotel includes a bed and breakfast inn establishment led to a recommendation that this matter be referred to the County's Office of Law for a legal interpretation.

Internal control activities are an important part of an agency's ongoing planning, implementation, and review of programs and services. They are essential for effective and efficient operations and proper accountability of County resources. For this reason, several recommendations for improving internal controls are made throughout this report.

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## Background

Prince George's County levies a seven percent (7%) hotel/motel tax on most hotel/motel establishments located within its boundaries. (NOTE: The hotel/motel tax was increased from five percent (5%) to seven percent (7%) effective July 1, 2015 with the enactment of CB-39-2015. However, the applicable rate during our audit period was five percent (5%)) There is an additional five percent (5%) special tax levied on hotels located within the special taxing district of the National Harbor. Both the hotel/motel and special taxes are imposed on all gross amounts of money paid to the owners or operators of hotels and motels in the County by transient guests or tenants renting, using, or occupying a room or rooms, if such rental, usage, or occupancy for less than ninety (90) consecutive days. The hotel and motel tax regulations are stipulated in the County Code, Prince George's County, Maryland, Subtitle 10: Finance and Taxation, Subdivision 3: Hotel and Motel Tax, Sections 10-218 through 10-225.

According to the County Code hotel/motel tax collections made within the boundaries of a municipal corporation in the County are to be split 50/50 between the County and the municipal corporation within which the tax was generated. Below is a table displaying actual County hotel/motel tax collections, net of 50/50 split with municipal corporations, for FY2012-2014:

Fiscal Year	Hotel/Motel Tax Collections*
2012	\$ 5,373,688
2013	4,960,813
2014	5,544,149

\* The reported numbers do not include any hotel/motel or special tax collections from hotels located within the boundaries of the National Harbor. National Harbor is designated as a "Special Taxing District" by the County, and with this designation hotels in this area assess a five percent (5%) special tax in addition to the five percent (5%) mandated hotel/motel tax. The special tax was designated to help cover various obligations predominantly attributed to bond debt related to National Harbor development. The hotel/motel tax for this area also was designated, by County Resolution (CR-26-2004), to help cover bond debt obligations related to the National Harbor. The County's Office of Finance/Treasury Division reports hotel/motel tax collections from hotels in National Harbor for the periods of FY2012, FY2013 and FY2014 to be \$6,614,442, \$6,602,408 and \$6,600,972 respectively. These collections are net of a 1% fee provided to the County for collecting and remitting these funds to the bond debt administrator.

Remittances made to municipal corporations within the County based upon 50/50 split for FY2012-14 were made as follows:

Municipality	FY2012	FY2013	FY2014
College Park	\$ 446,559	\$ 460,159	\$ 469,993
Laurel	486,687	196,247	191,723
Greenbelt	703,591	751,613	681,307
Bowie	236,262	229,609	219,672
New Carrollton	62,399	73,471	70,265
Cheverly	66,490	69,949	77,621
Hyattsville	171	333	379
<b>Total</b>	<b>\$1,702,160</b>	<b>\$1,781,381</b>	<b>\$1,710,959</b>

Hotel and motel owners and operators are responsible for the collection and remittance of the hotel and motel taxes to the County. For a period of two (2) years, hotel and motel owners or operators are required to maintain all necessary records to document and determine the amount of hotel and motel taxes due and payable to the County. The County's Director of Finance has the right to inspect such records at all reasonable times.

According to the County's Hotel and Motel Tax Code, Sections 10-218 through 10-225, the only allowable exemptions from the tax are:

- Any lodging business in which seventy percent (70%) or more of its rental income is paid by tenants who reside on the premise at least ninety (90) days.
- A room rental paid to any hospital, medical clinic, convalescent home, or home for aged persons.
- Room rental paid for any such transient who is a foreign government officer or employee exempted from taxation by reason of an international treaty or an Act of Congress.
- All Federal and Maryland State civilian and military personnel, traveling on official government business, that pay with government funds.

The following individuals/organizations do not qualify for an exemption from the tax:

- Religious organizations;
- Individuals with a State Sales Tax Exemption;
- Non-Profit organizations;
- Federal and Maryland State civilian and military personnel paying with personal funds, awaiting government reimbursement;
- County employees.

Hotel and motel owners or operators are normally required to submit their hotel/motel tax returns and related remittances on a monthly basis; however, with the consent of the County's Director of Finance, the owners are permitted to make quarterly submissions. For those entities reporting on a monthly basis, their hotel/motel tax returns are due on or before the last day of each month covering the amount of tax collected during the preceding month. For those entities reporting on a quarterly basis, their hotel/motel tax returns are due on or before the last day of April, July, October, and January of each year, covering the amounts collected during the three (3) months immediately preceding the months in which the returns and remittances are required.

Failure by any hotel or motel owner or operator to remit to the Director of Finance the tax required to be collected and paid, within the established time and in the full amount due, will result in an imposition of two-thirds (2/3) of one percent (1%) per month interest charge and an additional penalty at the rate of one percent (1%) per month on the amount of the tax for each month from the date the tax is due. The total one and two-thirds percent (1 2/3%) interest and penalty will accrue on the first of each month that the tax remains unpaid. Over a twelve-month period, the interest and penalty payment is equivalent to twenty percent (20%) of the unpaid tax. Failure or refusal by hotel or motel owners or operators to collect, report, or remit the required taxes shall result in the Director of Finance taking additional reasonable steps to procure such facts and information deemed necessary to calculate an assessment base and the required tax payment to the County. Failure to remit such imposed taxes shall cause a tax lien to be placed on any real or personal property in the County of the person who has failed to collect or remit the taxes.

Once hotel/motel tax returns and accompanying payments are received by the County's Finance department they are batched weekly and a cash receipts journal entry is prepared to enter the receipts into the accounting system. The actual checks received are grouped and submitted for bank deposit via armored vehicle pick-up at the end of each week. The hotel/motel collections are deposited into a bank account that includes transactions from other County related activity.

Previously the County Code and collection procedures did not address a loophole in the County Code that allowed room remarketers the ability to forgo paying hotel taxes on the difference between rooms that were purchased from hotel

establishments within the County and the subsequent resale of these rooms at a higher rates to individual online customers. A room remarketer is a person or organization other than the owner or operator of a hotel/motel, who has the right, access, ability, or authority, through internet transactions or other means, to offer, reserve, book, arrange for, remarket, distribute, broker, or resell rooms for which use or occupancy is subject to the tax levied under the County Code. However, with the passing of CB-04-2015, this loophole was addressed and the County now requires remarketers to pay taxes on the difference between the purchase rate of rooms that they receive from hotel establishments within the County and the subsequent higher resale rate of these rooms to individual online customers. With this new requirement, the County's Office of Finance may have to revise hotel/motel tax returns to accommodate the reporting of this tax for both remarketers and hotel/motels that sell rooms to these remarketers.

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## **Objective, Scope, & Methodology**

The purpose of this audit was to: (1) ensure that all County hotels/motels are submitting hotel/motel tax as required by the County Code; (2) determine, on a test basis, that hotels/motels are accurately reporting hotel/motel tax amounts and any applicable exemptions to the County via their monthly hotel/motel tax returns; and (3) determine, if the amount for hotel/motel tax return receipts are properly accounted for and accurately reported.

To conduct this audit we reviewed applicable State and County Code regulations and Office of Finance operating procedures. We interviewed staff members from the Office of Finance's Treasury Division and respective hotel/motel personnel. We then obtained copies of all submitted hotel/motel tax returns for calendar years 2012 and 2013, and utilized these returns to facilitate the selection of a group of hotels/motels to be included in our sample analysis. (**Note:** Hotels located at the National Harbor were excluded from sample selection because they will be included in a subsequent audit) The submitted hotel/motel tax returns from each selected establishment were compared to supporting documentation to verify their accuracy. We also verified, on a test basis, the reporting and accounting accuracy of hotel/motel tax financial transactions within the County's accounting system.

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## Management's Responsibility for Internal Control

Internal control is a process, effected by people at every level of the organization, designed to provide reasonable assurance that the following objectives are being achieved<sup>1</sup>:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting; and
- Compliance with applicable laws and regulations.

Management is responsible for establishing and maintaining an environment that sets a positive and supportive attitude towards internal control. When the importance of internal control is communicated to employees, particularly through management's own actions and beliefs, the process is more likely to function effectively.

A strong internal control environment is essential in minimizing operational risks and improving accountability which further helps an agency to achieve its mission.

We noted the following strengths in relation to the internal controls surrounding the hotel/motel tax collections that we reviewed within the Office of Finance:

- The Office of Finance has detailed written instructions/policies governing the administration of hotel/motel taxes.
- The financial reporting of hotel/motel transactions appear to be accurately reflected.

We also observed internal control weaknesses surrounding the administration of hotel/motel tax collections that require management's attention. The following sections detail the items noted during our review.

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<sup>1</sup> Internal Control – Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission, Copyright 1994

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## Non-compliant Hotel/Motel Establishments

There were several instances where hotel/motel establishments were not adhering to County Code requirements. These instances of non-compliance were identified as follows:

- Failure to collect and submit hotel/motel tax amounts;
- Failure to obtain required County use and occupancy (U&O) permits;
- Inaccurate/Erroneous completed hotel/motel tax returns; and
- Failure to retain adequate documentation to support information reported on hotel/motel tax returns.

These instances are detailed as follows:

### **Failure to collect/remit hotel/motel tax amounts**

To ensure that all hotels/motels within the County were collecting and submitting hotel/motel taxes as required, we obtained a listing of all hotel/motels within the County from two sources, the Department of Permitting, Inspections and Enforcement (DPIE) and the Conference and Visitor's Bureau (CVB). The hotels/motels included on these listings were compared to the hotels/motels that were currently submitting the required hotel/motel tax (as provided by the Office of Finance). The comparison revealed the following information:

- Two (2) hotel establishments were not collecting and submitting hotel/motel taxes to the County's Office of Finance Treasury Division (OFTD), as required by the County Code. According to representatives within the OFTD, there was no record of either establishment ever submitting any hotel/motel tax returns and corresponding tax receipts to their office. Upon learning of the non-compliance of these establishments, the OFTD mailed letters to both establishments informing them of their requirement to collect and remit hotel/motel taxes to the County. One of the establishments has since started to collect and submit the required tax. However, the other establishment requested that the County waive the right to collect on past hotel/motel taxes before they would start collecting and remitting current tax amounts. The County did not agree with this request and as a result the hotel establishment has refused to collect and submit its hotel/motel taxes. The County is currently awaiting direction from the Office of Law as to its legal remedies with respect to collection of past and/or present hotel/motel taxes from both of these establishments.

### **Failure to obtain required County use and occupancy (U&O) permits**

- Seven (7) hotel/motel establishments are operating without a valid U&O permit, as required by the County Code. Six (6) of the seven (7) establishments had valid U&O permits prior to their most recent change of ownership. One (1) establishment had no record of ever applying for or obtaining a valid U&O permit.

During the audit, the Office of Finance alerted us to a hotel establishment that recently discontinued remitting tax payments to their office. Although these payments were outside of our audit period, we did attempt to investigate the reason for their non-compliance. It was later learned that the hotel establishment was in bankruptcy and a tax lien for back hotel/motel taxes was placed on the property. The hotel was later sold and the delinquent taxes have since been paid. However, the new ownership change should be communicated to the DPIE to initiate the new U&O application process.

**Note:** While conducting the comparison of hotel/motel lists received from DPIE and CVB, it was assumed that the hotel/motels on DPIE's listing were granted valid U&O permits at some point in time. However, these establishments could have changed ownership without the knowledge of DPIE's staff, thus requiring the issuance of a new U&O permit. As a result of this potential occurrence, there could be additional hotel/motel establishments (other than those identified in these findings) that could be operating without a valid U&O permit.

### **Inaccurate/Erroneous Hotel/Motel Tax Returns**

There were four (4) hotel/motel establishments that submitted hotel/motel tax returns that were incorrect due to one or more of the following errors/mistakes made when accumulating and reporting total room rental and exempt room rental income amounts:

- Reporting total room rental income net of total exempt room rental income. This error did not allow for the actual amount of total exempt room rental income to be identified on the hotel/motel tax return.
- Exemptions given to non-exempt entities such as religious and non-profit organizations, and individuals with state sales tax exemption certificates.
- Mistakes made when retrieving and accumulating total room rental income amounts from various internal reports.

The above mentioned errors resulted in adjustments to each hotel/motel's completed tax returns. The result of these adjustments is displayed in the following table:

<b>Hotel/Motel</b>	<b>Total Net Additional Taxable Room Rental Income based upon Adjustments</b>	<b>Tax Amount Due/(Refund) after application of Applicable Tax Rate (5%)</b>
Hotel B	\$ 36,832	\$ 1,842
Hotel D*	190,044	9,502
Hotel I**	(32,361)	(1,618)
Hotel J	15,659	783
<b>TOTAL</b>	<b>\$ 210,174</b>	<b>\$ 10,509</b>

\* Amounts include adjustments made for the period of Jan-Aug 2014

\*\* Amounts include adjustments made for refunds given to occupants for their first 89 days of occupancy. Refer to hotel/motel tax exemption finding for more details. If these refund amounts were not factored into the calculations the total net adjustment to reported room rental income and corresponding tax amount due would be \$40,395 and \$2,020, respectively.

#### **Failure to Retain Adequate Supporting Documentation**

Our audit covered the period of CY 2012-2013, and the County Code states that hotels/motels must keep records to support a two (2) year period. Given the timing of our audit, the hotel/motel establishments were only required to retain records to support the period of CY 2013-2014. Most of the hotel/motel establishments did retain documentation to support the entire audit period even though they were not required to maintain documentation for the beginning portion of the period (CY 2012). However, there were two (2) hotels that did not retain adequate documentation to support information reported on their CY 2013 hotel/motel tax returns as required. The specific information that was deficient was as follows:

- One (1) hotel establishment did not retain information to support exempt room rental income reported on their CY 2013 hotel/motel tax returns as required. In an effort to become comfortable with the adequacy of the hotel's room rental exemption records, we reviewed documents supporting exempt room rental income claimed on their CY 2014 returns. The results of the review revealed instances where exemptions were given in violation of the County Code similar to the reasons mentioned earlier (in the inaccurate/erroneous hotel/motel return section).
- One (1) hotel establishment maintained summary reports which supported room rental income reported on their hotel/motel tax returns for the audit period. However, the hotel did not retain adequate supporting documentation (i.e. guest registration cards) to support room rental income included on the summary reports.

The County Code-Prince George's County, Maryland, Subtitle 10 Finance and Taxation, Subdivision 3.-Hotel and Motel Tax, section 10-219.-Imposition of Tax levies and imposes a tax on all gross amounts of money paid to the owners or operators of hotels and motels located within the County by transient guests or tenants renting, using, or occupying a room or rooms, if such rental, usage, or occupancy is for less than ninety (90) consecutive days. Section 10-224 requires operators of hotels and motels to retain records to support submitted tax amounts for a period of two (2) years.

According to the County's Hotel and Motel Tax Code, Sections 10-218 through 10-225, the only allowable exemptions from the tax are:

- Any lodging business in which seventy percent (70%) or more of its rental income is paid by tenants who reside on the premise at least ninety (90) days;
- A room rental paid to any hospital, medical clinic, convalescent home, or home for aged persons;
- Room rental paid for any such transient who is a foreign government officer or employee exempted from taxation by reason of an international treaty or an Act of Congress;
- All Federal and Maryland State civilian and military personnel, traveling on official government business, that pay with government funds.

The following individuals/organizations **do not** qualify for an exemption from the tax:

- Religious organizations;
- Individuals with a State Sales Tax Exemption;
- Non-Profit organizations;
- Federal and Maryland State civilian and military personnel paying with personal funds, awaiting government reimbursement;
- County employees.

Section 10-222 states the following:

“(a) If any person fails or refuses to collect the tax and to make, within the time provided in this Subdivision, any report and remittance required by this Subdivision, the Director of Finance shall proceed in such a manner as he may deem best to obtain facts and information on which to base an estimate of the tax due. As soon as the Director of Finance procures such facts and information upon which to base the assessment of any tax payable by any person who has failed or refused to collect the tax and to make the report and remittance, he shall proceed to determine and assess against such person the tax and interest and penalty provided for in this Subdivision.

(b) He shall notify such person by mail sent to his last known place of address of the total amount of such tax and interest and penalty. The total amount thereof shall be payable within ten (10) days from the date of the notice.

(c) Failure to remit the requisite taxes shall cause a tax lien to be placed on any real and personal property of the person who has failed to collect or remit the taxes that can be located within the County and such lien shall be collected and enforced in the same manner as other County real estate taxes."

Furthermore, section 10-220 states that "If any person fails or refuses to remit to the Director of Finance the tax required to be collected and paid under this Subdivision, within the time and in the amount specified herein, there shall be added to such tax by the Director of Finance interest at the rate of two-thirds (2/3) of one percent (1%) per month and penalty at the rate of one percent (1%) per month, for a total of one and two-thirds percent (1 2/3%) per month (equivalent to twenty percent (20%) per year), on the amount of the tax for each month from the date the tax is due, on the first of each month that the tax remains unpaid."

The County Code-Prince George's County, Maryland, Subtitle 27.-Zoning, section 27-253.-Use and occupancy permits requires a use and occupancy permit to be issued by a building inspector for the use of a building, structure, or land. Furthermore, it also requires a new use and occupancy permit to be issued when a building changes possession regardless of whether the actual usage has changed.

When a new hotel/motel is newly established in the County, either from initial inception or through a change in ownership, the new owner(s) must apply for a use and occupancy permit with the County's Department of Permitting, Inspections and Enforcement (DPIE). Some hotel/motel owners are not aware of this requirement, especially in situations where ownership interest is changing through a sale. This lack of knowledge causes hotel establishments to be in operation without a valid U&O permit. Absent of a new owner actively seeking a new U&O permit on their own or through its enforcement efforts, there is no way for the DPIE to know when ownership interest has changed hands.

In situations where the new owners are aware of this requirement and a new U&O permit is awarded by the DPIE, the establishment of new ownership is never communicated to the Office of Finance. Without this information, the Office of Finance is unable to inform the new ownership of their hotel/motel tax responsibilities. According to representatives in the Office of Finance, the only way their office is made aware of the existence of the new hotel/motel establishment within the County is if a representative from the new establishment contacts their office through the request or submission of a hotel/motel tax return. As a result, absent of contact made by a new hotel/motel establishment, the Office of Finance would not be aware of a newly established hotel/motel within the County.

Several factors led to some hotel/motel establishments submitting inaccurate and/or erroneous hotel/motel tax returns. These factors are as follows:

- Failure of these hotel/motel establishments to properly enforce and adequately train staff with respect to County hotel/motel exemption guidelines;
- Confusion amongst various hotel/motel establishments concerning eligibility requirements pertaining to County hotel/motel exemptions; and
- Errors made by hotel/motel financial staff members when accumulating total reported amounts.

Based upon information gathered during the audit, the failure of some hotel/motels to retain adequate documentation to support tax exemption information claimed on submitted hotel/motel tax returns was due to archiving limitations apparent within their accounting systems, coupled with the lack of understanding of what constitutes adequate exemption supporting documentation.

The lack of an established proactive procedure within the Office of Finance or Dpie to readily identify newly created hotels/motels in the County to inform them of their hotel/motel tax responsibilities could lead to hotels/motels operating without collecting and remitting applicable hotel/motel taxes. Consequently, the failure to collect hotel/motel taxes from all applicable hotel/motel establishments could lead to uncollected hotel/motel tax collections. This lack of collection could adversely affect the funding of County related programs or initiatives that depend on these and other County collections.

Furthermore, the failure of hotel/motels to have updated U&O permits could potentially lead to these establishments operating in an unsafe manner and/or in violation of their intended purpose.

The failure to retain adequate documentation to support room rental exemptions claimed could mean that non-exemption entities were not assessed the required hotel/motel tax. This lack of assessment would allow overall total taxable room rental income and corresponding taxes collected to be understated creating a negative effect on County related programs or initiatives that were to be supported by these proceeds.

The submission of incorrect hotel/motel tax returns could also cause overall total taxable room rental income and corresponding taxes collected to be underreported. The reduction in these funds would also have a negative effect on any County related programs or initiatives that were to be supported by these proceeds.

We recommend the following actions:

**1(a)** Office of Finance maintain a comprehensive listing of hotel/motel establishments within the County that are submitting the required hotel/motel tax. This listing should be updated accordingly to ensure that compliant hotels/motels remain compliant, and that newly established hotel/motels are made aware of applicable tax regulations to facilitate conformity. The identification of newly created hotels/motels should be facilitated by establishing a communication channel with the Dpie to identify recently issued U&Os given to hotel/motel businesses. Once identified, the appropriate information should be forwarded to these establishments to facilitate the collection of applicable hotel/motel taxes. Furthermore, in situations where Office of Finance officials notice hotel/motel establishments that have changed ownership, by reviewing and comparing contact information submitted on hotel/motel tax returns, notifications should be made to the Dpie to ensure that a new U&O was issued to the new ownership.

**1(b)** For the identified hotel/motel establishments that currently do not have a valid U&O license, we recommend that the Dpie require these establishment to apply for updated licenses. With respect to the hotel/motel establishments that were not collecting and remitting the hotel/motel tax, we recommend that the Office of Finance immediately require them to start collecting and remitting their applicable hotel/motel taxes. Furthermore, the Office of Finance should attempt to collect hotel/motel taxes for the period of non-compliance in accordance with hotel/motel tax Code regulations.

**1(c)** Although the Office of Finance has modified hotel/motel return instructions to include information about the proper way to complete a return and the allowable exemption activities, there should be random inspections conducted to ensure that submitted information is accurate. These inspections should also require selected hotels/motels to submit adequate documentation to support all information reported on the submitted hotel/motel tax returns. Adequate documentation would include summary reports for a given period of time that detail the total monetary amount of exemption given and the reason why the exemption was granted along with copies of actual exemption materials such as military and/or government work orders to further support the exemption granted.

**Note:** These inspections were to be implemented as a result of recommendations made in a prior audit report issued by the Office of Audits and Investigations dated September 2012. The Office of Finance response to these recommendations stated that on an annual basis, five (5) hotels/motels will be selected for inspection to submit the underlying records to support their hotel/motel tax filings. However, these random inspection requests were never conducted.

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## **Hotel/Motel Tax Law Application/Interpretation**

While conducting the hotel/motel tax audit there were two concerns that surfaced that we feel require a legal interpretation of State and/or County hotel/motel law from the County's Office of Law. The details of these concerns are as follows:

### **Hotel/Motel Legal Definition**

While attempting to identify all of the hotel/motel establishments within the County, we identified a bed and breakfast inn establishment that is operating in the County. To determine whether this establishment should be collecting and remitting taxes on their room rentals income we referred to County and State law. According to the County Zoning Ordinance the definition of a hotel and motel includes a building or group of buildings containing six (6) or more guest rooms in each building. It also excludes bed and breakfast inn establishments.

However, according to the Annotated Code of Maryland a hotel is defined as establishment that offers sleeping accommodations for compensation. The Code also states that a hotel includes establishments, among others mentioned, that are considered "an inn". While it is unclear as to the amount of rooms this establishment has available for room rental it is clear that on one hand it meets the definition of a hotel using State guidelines, but doesn't when compared to County guidelines. While it is assumed that State laws prevail over County laws, and that County laws can only supplement not supplant State laws, we would recommend that this matter be referred to the County's Office of Law for an official legal interpretation on whether this type of establishment should be collecting and remitting taxes with respect to its room rental sales.

### **Hotel/Motel Tax Exemption**

During the audit we identified some hotels/motels that were issuing refunds to individuals for taxes paid during their first 89 days of room rental once they reached the 90<sup>th</sup> consecutive day of room rental. However, according to dialogue with other hotel establishments, this practice of refunding individuals for taxes paid during their first 89 days of room rental once they have reached their 90<sup>th</sup> consecutive day of room rental isn't being consistently followed. Section 10-219 of the County Code specifically states that a tax can be imposed on rental rooms where occupancy is less than ninety (90) consecutive days. The County Code is more restrictive, with respect to application of tax on the number of consecutive occupancy days, when compared the State of Maryland Code. The State's Code imposes a tax on sleeping accommodations for a period not exceeding four (4) consecutive months.

The County's Treasury Office presented an inter-office memorandum from the County's Office of Law dated May 18, 1995, that provided legal clarification of

this and other hotel/motel tax concerns. In this memo, the Office of Law's interpretation of this section of the County Code is as follows:

"If a person rents or uses a room for 90 days or more, then no tax is imposed. If taxes have been collected for the first 89 days, then the taxes must be refunded."

In an effort to provide clarity and consistency between the application, interpretation, and the language within the County Code we strongly suggest that the County's intention, with respect to this section of the County Code, is communicated to all hotels/motels located in the County.

Annotated Code of Maryland subtitle 4, part 1, section 20-401(b) defines a "Hotel" as an establishment that offers sleeping accommodations for compensation. Furthermore it includes the following as a hotel; an apartment, a cottage, a hostelry, an inn, a motel, a rooming house, or a tourist home.

County Zoning Ordinance Subtitle 27, Section 107.1 defines both a hotel and a motel as buildings or a group of buildings containing six (6) or more guest rooms in each building. Furthermore, both hotel and motel exclude bed and breakfast inns from their definitions.

Annotated Code of Maryland subtitle 4, part 1, section 20-401(c) defines a "Hotel Rental Tax" as a tax on a transient charge. Section (d) (1) defines a "Transient charge" for Counties other than Carroll, Frederick, and Garrett as "a hotel charge for sleeping accommodations for a period not exceeding 4 consecutive months."

The County Code-Prince George's County, Maryland, Subtitle 10 Finance and Taxation, Subdivision 3-Hotel and Motel Tax, section 10-219.-Imposition of Tax levies and imposes a tax on all gross amounts of money paid to the owners or operators of hotels and motels located within the County by transient guests or tenants renting, using, or occupying a room or rooms, if such rental, usage, or occupancy is for less than ninety (90) consecutive days.

We believe clarification is needed due to vagueness in the County Hotel/Motel Code with respect to the application of exemptions for consecutive days of occupancy, and the conflicting State and County definition of what constitutes "hotel".

Due to the lack of clarification, with respect to what is considered a "hotel", and the treatment of hotel/motel tax exemption for consecutive days of occupancy, misinterpretations and inconsistencies in the application of the Hotel/Motel County Code regulations are occurring.

We recommend the following actions:

**2(a)** Office of Law provide specific legal interpretations regarding whether the County's legal definition of a hotel should include or exclude a bed and breakfast inn establishment.

**2(b)** The Office of Finance should effectively communicate to all hotel/motels located in the County their responsibility to refund hotel/motel tax collections for rental rooms where occupancy has reached ninety (90) consecutive days. This communication should also address the procedures each hotel/motel should follow when completing hotel/motel tax returns that include periods when refunds were made for room rentals that reached the ninety (90) consecutive day mark.



## THE PRINCE GEORGE'S COUNTY GOVERNMENT OFFICE OF THE COUNTY EXECUTIVE

Rushern L. Baker, III  
County Executive

### MEMORANDUM

August 31, 2016

TO: David H. Van Dyke  
County Auditor

FROM: *Nicholas A. Major*  
Nicholas A. Major  
Chief Administrative Officer

RE: Internal Audit Report – Hotel/Motel Tax Collections

Attached is the Office of Finance's response to the Office of Audits and Investigation's internal audit of the Hotel/Motel Tax Collections. If you have any questions relating to the responses or require additional information, please feel free to contact Linda V. Allen, Chief of Treasury, Office of Finance, at 301-952-3396.

Thank you.

Attachment

cc: Thomas Himler, Deputy Chief Administrative Officer  
Gail D. Francis, Director, Office of Finance  
Stephen J. McGibbon, Deputy Director, Office of Finance  
Linda V. Allen, Chief of Treasury, Office of Finance

PRINCE GEORGE'S COUNTY  
Office of Finance's Response to Office of Audits and Investigations  
Internal Audit  
Hotel/Motel Tax  
August 24, 2016

The Office of Finance, Treasury Division has reviewed the Office of Audits and Investigations' (A&I) *Hotel and Motel Tax Collections, June 2016* audit report and have provided our responses herein. The following points of clarification relate to the *Background* section of the audit report:

- 50% of the hotel/motel taxes collected from hotels located within a municipality are remitted, rather than refunded, to the municipality within which the tax was generated. No hotel/motel tax refunds are made to municipalities by the County.
- Since the passing of CB-04-2015, the Office of Finance has already revised the Hotel/Motel Tax Return form to accommodate the reporting of the additional rent collected by room remarketers for hotel rooms booked through their platforms.

In addition to the above, we submit the following responses to A&I's findings and recommendations:

**1. Non-compliant Hotel/Motel Establishments**

*Management concurs with the finding(s) and partially concurs with the recommendation(s)*

**Comments:**

**1a. Failure to collect/remit hotel/motel tax amounts or obtain County Use and Occupancy (U&O) permits**

A&I identified two (2) hotel establishments not collecting and remitting hotel/motel taxes to the County, as required by the County Code.

Further, A&I identified seven (7) hotel/motel establishments that were operating without a valid U&O permit, primarily due to a change in ownership of the establishment, and failure of the new owners to obtain a U&O permit under their name. A&I recommends that a communication channel between the Department of Permitting, Inspections, and Enforcement (DPIE) and the Office of Finance be established to identify recently issued U&O permits. A&I recommends that the Office of Finance notify DPIE when the ownership of a hotel changes to ensure a U&O has been issued to the new hotel/motel owner(s). Additionally, A&I recommends that DPIE require hotels/motels that are operating without a U&O permit to apply for updated licenses. Lastly, A&I recommends that the Office of Finance should attempt to collect hotel/motel taxes for the period of non-compliance.

**Office of Finance's Response:**

Both hotel establishments that were not collecting and submitting hotel/motel taxes are now in compliance with the County Code and are remitting hotel/motel taxes.

As it pertains to the issue of hotel/motel taxes for the period of non-compliance (i.e., back-taxes owed), the Office of Finance has collaborated with the Office of Law in reviewing

available options and their likelihood of success. These options can be discussed in confidence.

The Office of Finance contacted the Office of Information Technology (OIT) to identify hotels/motels that have transferred ownership. In February 2016, the Office of Finance and Dpie began receiving a monthly report generated by OIT that provides information on new hotels and motels added to the County's tax rolls and information pertaining to ownership transfers of hotels and motels for the prior month. The report allows Dpie to identify hotels that have not obtained the required U&O permits and allows the Office of Finance to identify hotels and motels that have not remitted the County's hotel/motel tax.

**1b. Inaccurate/Erroneous Hotel/Motel Tax Returns and Inadequate Documentation Retention:**

A&I determined that four (4) hotels submitted inaccurate total room rental and exempt room rental income amounts on their hotel/motel tax returns. Additionally, two (2) hotels did not retain adequate documentation to support information reported on their CY 2013 hotel/motel tax returns, as required. A&I recommends that the Office of Finance conduct random inspections of hotels/motels to ensure submitted information is accurate. The inspections should also require hotels/motels to submit adequate documentation to support all information reported to the Office of Finance.

**Office of Finance's Response:**

To clarify room rental income and exempt rental income submitted on the Hotel/Motel Tax Return form by hotel and motel establishments, the Office of Finance updated the form to include definitions of these terms.

Although staffing limitations prevent on-site inspections, the Office of Finance randomly selects five (5) hotels/motels annually to submit documentation supporting monthly hotel/motel tax return filings. The initial random examination of hotel documentation was completed in January 2016 and no reporting exceptions were identified.

**2. Hotel/Motel Tax Law Application/Interpretation**

*Management concurs with the finding(s) and partially concurs with the recommendation(s)*

**Comments:**

**2a. Hotel/Motel Legal Definition**

A&I identified a bed and breakfast inn that is operating within the County and is not remitting hotel/motel taxes. The County Zoning Ordinance excludes "Bed-and-Breakfast Inn" establishments from the definition of hotel or motel. However, the Annotated Code of Maryland more broadly defines a hotel as an establishment that offers sleeping accommodations for compensation, and includes establishments that are considered an "inn." A&I recommends that this matter be referred to the Office of Law for official legal interpretation.

**Office of Finance's Response:**

Finance supports A&I's recommendation.

**2b. Hotel/Motel Tax Exemption**

Hotels and motels inconsistently refund taxes paid by individuals for taxes paid during their first 89 days of room rental once they reached the 90<sup>th</sup> consecutive day of room rental. On May 18, 1995, the Office of Law issued a memorandum that clearly states, "*If a person rents or uses a room for 90 days or more, then no tax is imposed. If taxes have been collected for the first 89 days, then the taxes must be refunded.*" A&I believes that additional clarification is needed due to vagueness in the County Hotel/Motel Code as it pertains to exemptions for consecutive days of occupancy.

**Office of Finance's Response:**

The primary issue is that the County Code is not clear. If the Code is revised to include, "If taxes have been collected for the first 89 days, then those taxes must be refunded", this language would remove any confusion concerning the taxation of non-transient hotel stays.

