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Audit Report

**HOTEL OCCUPANCY TAX:
COLLECTION AND REMITTANCE AUDIT**

February 28, 2006

**Office of the City Auditor
Austin, Texas**

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City of Austin

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Date: February 28, 2006
To: Mayor and Council
From: Stephen L. Morgan, City Auditor
Subject: Hotel Occupancy Tax Collection and Remittance Audit

I am pleased to present this second audit report on our hotel occupancy tax audit. For this audit, we examined 28 hotels to determine whether they were properly collecting and remitting City hotel occupancy taxes.

Of the 28 hotels selected, 13 hotels were found to have compliance issues and/or additional tax liability totaling over \$500,000. Of the remaining hotels, nine demonstrated compliance and six audits have yet to be completed. Liability issues primarily arose from improper application of exclusions and exemptions to the tax and failure to maintain adequate documentation of non-taxable revenue reported.

We issued two recommendations to improve collection and remittance of the hotel occupancy tax (HOT). The first recommendation addresses rewriting the HOT ordinance for increased clarification. The second recommendation addresses a need for the City to have increased oversight of the collection and remittance of the HOT.

We appreciate the cooperation and assistance we received from staff in the Financial and Administrative Services Department and the Law Department during this audit.

Stephen L. Morgan, CIA, CGAP, CFE, CGFM
City Auditor

COUNCIL SUMMARY

This report presents the results of the Hotel Occupancy Tax Collection and Remittance Audit. This audit examined 28 hotels to determine whether they were properly collecting and remitting City hotel occupancy taxes.

Of the 28 hotels selected, nine demonstrated compliance and were assessed no additional tax liability. Of the remaining 19 hotels, six audits have yet to be completed. The other 13 hotels were found to have compliance issues and/or additional tax liability. Our audits indicated that eleven of these 13 hotels owed additional taxes ranging from around \$300 to \$298,000. Total deficiencies were approximately \$508,000.

The scope of this audit centered on claimed exemptions and exclusions. The understanding and application of rules related to exempt guests varied across hotels. Guests qualifying as permanent residents are entitled to a hotel occupancy tax exclusion. However, some hotels incorrectly apply the exclusions for such guests. Guests who are employees of certain agencies and organizations are also exempt from the tax. We found multiple instances in which hotels were offering exemption for ineligible guests.

In addition to misapplication of exemptions and exclusions, we also encountered several other issues with hotel owners including:

- Lack of reliable documentation for the entire four-year audit scope period;
- Potential fraud in questionable records; and
- Failure to ensure that a prior owner did not owe taxes at the time of purchase.

Austin hotels operate in an environment of lenient enforcement and insufficient communication with regard to the HOT, which may contribute to the level and types of compliance problems identified.

As a result of our work, we made recommendations to strengthen the City legislation guiding the hotel occupancy tax and to enhance monitoring of the tax.



**ACTION SUMMARY
HOTEL OCCUPANCY TAX:
COLLECTION AND REMITTANCE AUDIT**



Recommendation Text	Management Concurrence	Proposed Implementation Date
<p>01. In order to ensure that hotel owners and operators clearly comprehend the City's requirements for the Hotel Occupancy Tax, the City Controller should work with the Law Department to review best practices for formulating a HOT ordinance and revise the current City ordinance accordingly. More specifically, the revised ordinance should include:</p> <ul style="list-style-type: none">• A requirement for registration of lodging providers• A clear explanation of who is exempt from the tax and what documentation must be collected and maintained related to exemptions <p>The current City ordinance is compared to best practices in Appendix C.</p>	<p>Agree</p>	<p>To be determined</p>
<p>02. To ensure the complete, timely, and accurate collection of hotel occupancy tax revenues, the City's Chief Financial Officer should consider staffing a full time hotel auditor to monitor collection and remittance of hotel occupancy taxes</p>	<p>Under Consideration</p>	<p>To be determined</p>

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BACKGROUND

The City levies a hotel occupancy tax on hotel room night rents, and subsequently earmarks these revenues for tourism and Convention Center-related programs.

Municipal hotel occupancy tax collection and uses are authorized by State statute and City ordinance. Effective management of the tax program requires coordination across various City functions, and the cooperation of hotel management who collect this tax from guests.

The City collects taxes on qualified hotel room stays. The hotel occupancy tax (HOT) is a nine percent charge on the cost of hotel accommodation. This tax can only be imposed on hotel rooms located within the full purpose jurisdiction.

Under State and local regulations:

- Businesses required to pay the hotel tax include hotels, motels, tourist homes, tourist courts, lodging houses, inns, rooming houses, or bed and breakfasts.
- The tax is imposed on any “person”, which includes corporations and other legal entities, who pays for the use of a room in a lodging facility for the purpose of sleeping, where the charge is greater than \$2 per day. The hotel’s taxable room price does not include the cost of meals served by the hotel or of other personal services.
- Persons contracting to use a hotel room for over 30 consecutive days are exempt from paying the hotel occupancy tax, as are federal employees. Employees of state agencies traveling on official business are entitled to refunds of the amount of tax paid. City employees are not exempt or entitled to a refund.

The hotel occupancy tax is originally paid by the hotel customer to the hotel, and is then rendered to the City on a quarterly basis. Hotels also collect and remit the State hotel occupancy tax.

All rules and regulations that govern the collection and allocation of Austin’s hotel occupancy tax are located in Chapter 351 of the Texas Tax Code, Chapter 334 of the Texas Local Government Code, and Chapter 11-2 of the Austin City Code of Ordinances.

Four participating funds benefit from collection of hotel occupancy taxes. Revenues are initially deposited in the City’s Hotel-Motel Occupancy Tax fund, and then transferred to four participating funds. City ordinance specifies the tax rate for each of these funds in terms of a percent of funds collected. The HOT is in fact a combination of an original seven percent tax, plus a two percent venue project tax approved by voters in a 1998 bond election. Exhibit 1 describes the funds and required tax allocation.

The City Controller’s Office, a division of the Financial and Administrative Services Department, currently administers the tax. Hotels remit taxes directly to the Controller’s Office, where three staff in the Asset Accounting program spend a portion of their time managing most aspects of HOT administration. This includes day-to-day accounting responsibilities, as well as collection activities needed to address delinquent accounts. The Law Department has roles in preparing payment plans for delinquent hotels, in advice and opinions, and filing City claims against bankrupt hotels. We audited these functions in our previous audit, the Hotel Occupancy Tax Administration audit (audit number AU05105A).

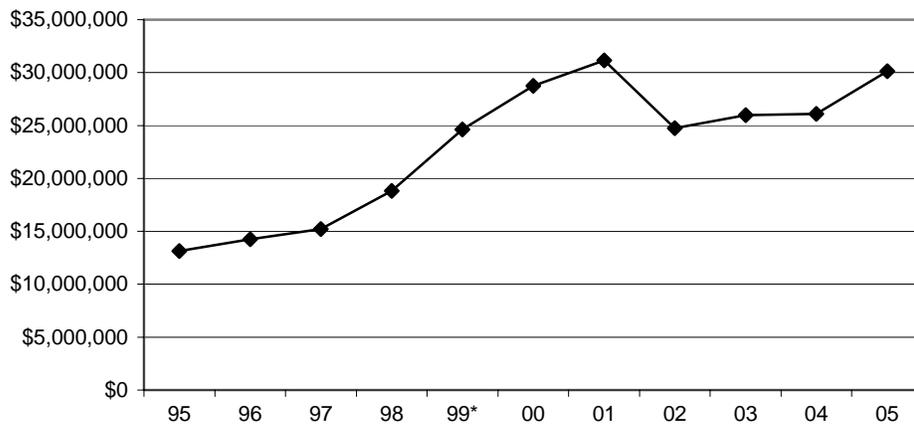
**EXHIBIT 1
Participating Funds of the Hotel-Motel
Occupancy Tax Fund**

Participating Fund	Description	Percent of HOT collections	Proportion of HOT collections
Convention Center	Benefits the Convention Center	50.0 percent	4.50 cents
Venue Project	Funds the Hotel Tax Revenue Bond Redemption Fund, which is used to pay for the Convention Center expansion and Waller Creek project	22.2 percent	2.00 cents
Tourism and Promotion	Funds tourism and promotion activities performed by the Austin Convention and Visitors Bureau (ACVB) through a contract with the City	16.1 percent	1.45 cents
Cultural Arts	Funds the Cultural Arts Program, whose objective is to nurture, preserve, and promote Austin’s arts and creative industries	11.7 percent	1.05 cents
		100.0 percent	9.00 cents

SOURCE: Auditor analysis of Chapter 11-2 of the Austin City Code.

Hotel occupancy taxes are a significant revenue source that is sensitive to trends in the hotel industry and to the effectiveness of City collection programs. The events of September 11, 2001 had a marked impact on the hotel occupancy city wide. Fiscal year 2005 saw a near-return to pre-9/11 revenues. As shown in Exhibit 2, the last four years have yielded over \$106 million for the City.

EXHIBIT 2
Total Hotel Occupancy Tax Fund Revenues, FYs 95-05



* Tax rate increased from 7 to 9 percent

SOURCE: Budget documents, and AFS2. Figures include penalties and interest collected.

OBJECTIVES, SCOPE AND METHODOLOGY

In a previous audit we reviewed activities of the City’s Financial and Administrative Services Department and the Law Department related to hotel occupancy tax administration, and made management recommendations to improve internal processes. We examined the completeness of the tax roll, and tested the City’s internal controls. At the time, several Austin hotels owed \$695,000 in uncollected, delinquent taxes to the City. Our recommendations addressed coordination processes between Law and FASD, and policies and procedures for improving collection of delinquent accounts.

In this audit we wanted to verify hotel management’s understanding of and compliance with the City hotel occupancy tax ordinance and related State statutes. This audit had two objectives:

1. Determine whether selected hotels properly collect and remit the municipal hotel occupancy tax.
 - a) Assess whether hotel management and relevant staff of selected hotels understand requirements for collecting and remitting the municipal hotel occupancy tax under the State statute and City Ordinance.
 - b) Verify compliance with the taxing requirements for transient and resident guests and determine tax liability where hotels cannot support claims of 30-day exclusions made on quarterly City tax reports.
 - c) Verify compliance with the requirements for treating tax-exempt guests such as federal and state employees and determine tax liability where hotels cannot support claims of tax exemptions made on City tax reports.
2. Inform and discuss with hotels key compliance issues, with a view to future compliance. Our approach to the audits included an emphasis on both detection (objective 1) and prevention. We discussed findings with hotel managers, and discussed ways to ensure future compliance.

Scope:

We limited our scope to the following dimensions:

1. We selected a sample of 58 hotels based on risk factors explained in the methodology section below. We then chose 28 properties for audit, due to resource availability considerations.
2. We limited testing to tax exemptions and exclusions.
3. Where “red-flags” arose in the course of these tests, we expanded our scope to determine if a fraud investigation or referral to other authorities was warranted.
4. The time period under review was 3rd quarter of 2001 (3Q01) through 2nd quarter of 2005 (2Q05).
5. Our geographical scope was the City of Austin’s full-purpose jurisdiction.

Outside the scope of the audit was any detailed verification of reported gross revenues.

Methodology:

To conduct this audit, the Office of the City Auditor contracted with MBIA Municipal Services, of Fresno, CA to train auditors on hotel occupancy tax audit techniques. Consultants led the sample selection process, and conducted on-site field training for auditors on interviewing and testing techniques.

We conducted risk assessment on all 180 hotels on the tax roll. Selection criteria for the judgmental sample included:

- History of delinquency or missed/late reporting
- Variance from industry norms for gross revenues, for size and type of hotel
- Variance from industry norms for earnings per room, for size and type of hotel
- Exemptions and/or exclusions appearing too high for business type
- Gross revenues, exclusions, and or exemptions reported as round numbers, and
- Unexplained discrepancies between exemptions claimed on State returns and City returns

To initiate audit work, auditors sent entrance memos and held entrance meetings with on-site hotel staff generally within two weeks of the entrance memo. Some hotels needed and were given additional time to obtain records. If we conducted our review and hotel records indicated compliance for the audit period, we initiated an exit process immediately. These hotels were also sent letters of “no deficiency”. Where records indicated that exclusions and/or exemptions rules had been misapplied by hotel staff, we performed further tests to determine the extent of the misapplication. We employed a risk based approach throughout, selecting sample periods to arrive at a determination of additional liability. We also delivered an informational packet (see Appendix B) on key compliance issues to the hotel contact and discussed these issues with auditees.

For each hotel, auditors developed *findings* of compliance or non-compliance and *deficiency determinations* of tax liability, and completed a letter of determination. We summarize our findings and determinations in the body of this report.

Throughout the audit, the Office of the City Auditor coordinated with the Financial and Administrative Service Department and the Law Department to ensure that the audit procedures fit with management’s current process for handling tax delinquencies. In accordance with standard audit practices, OCA gave auditees 10 business days to contest the OCA findings, and 30 days to make payment arrangements with the Controller’s Office without further charges. The Controller’s process currently includes steps to refer delinquent cases to the Law Department for collection.

Sources required and requested from hotels for each audit included:

- Schedule of all excluded and exempt rent with supporting documentation,
- For permanent residents, the name of the guest, dates of check-in /check-out, room rate, and written evidence of their intent to stay,
- Daily reports and monthly rent summaries,
- Individual guest folios,
- Housekeeping reports,
- Submissions to franchiser if applicable, and
- Bank statements.

Additional sources of data for conducting the audit included:

- Historic returns data obtained from the Controller's Office,
- State Comptroller's Office returns data on State HOT revenues,
- Austin Convention and Visitor's Bureau data on total rooms,
- Hotel websites to verify rooms data, locate the property, and obtain other information,
- The City Ordinance, Chapter 11-2 of the City Code, and Texas Tax Code, Chapters 156 and 351 and the Texas Administrative Code.

AUDIT RESULTS

We identified liability and compliance concerns at a number of hotels.

Of the 28 hotels selected, nine demonstrated compliance and were assessed no additional tax liability. Of the remaining 19 hotels, six audits have yet to be completed, while the remaining 13 hotels were found to have compliance issues and/or additional tax liability of \$508,340. Austin hotels operate in an environment of lenient enforcement and insufficient communication with regard to the HOT, which may contribute to the level and types of compliance problems identified. The City’s Financial Services and Administration Department makes payment arrangements with these deficient hotels to collect liability, and have recourse in the event hotel owner/operators are non-responsive to demands.

Nine of the audited hotels demonstrated good compliance and were assessed no additional tax liability. As described in the methodology section of this report, we selected 28 hotels identified as being a high-risk for non compliance with specific sections of the HOT regulations.

EXHIBIT 3
Audit Findings and Related Tax Liability
Audit period: July 2001 – June 2005

Hotel	Audit Result	Total Deficiency
Hotel A	In compliance	\$0.00
Hotel B	In compliance	\$0.00
Hotel C	In compliance	\$0.00
Hotel D	In compliance	\$0.00
Hotel E	In compliance	\$0.00
Hotel F	In compliance	\$0.00
Hotel G	In compliance	\$0.00
Hotel H	In compliance	\$0.00
Hotel I	In compliance	\$0.00
Hotel J	Issues found	\$0.00
Hotel K	Issues found	\$0.00
Hotel L	Issues found	\$ 11,777.80
Hotel M	Issues found	\$111,635.19
Hotel N	Issues found	\$ 333.59
Hotel O	Issues found	\$ 10,346.27
Hotel P	Issues found	\$ 2,000.00
Hotel Q	Issues found	\$ 40,948.21
Hotel R	Issues found	\$ 6,939.77
Hotel S	Issues found	\$ 4,952.30
Hotel T	Issues found	\$ 7,134.93
Hotel Y	Issues found	\$ 13,942.35
Hotel AA	Issues found	\$298,329.41
		\$508,339.82

SOURCE: Auditor summary of hotel deficiencies.

At the time this report went to print we had completed 22 audits. Of these properties, we found that 9 demonstrated thorough knowledge of State and City law concerning hotel occupancy taxes. Our findings show that small individually owned and operated hotels as well as large corporate hotels appropriately understand and implement the hotel occupancy tax laws. Exhibit A summarizes the findings and associated deficiencies.

Complying hotels were able to answer questions posed in exploratory audit interviews, and demonstrate support for the representations made to the City in quarterly reports of non-taxable receipts. Records presented to substantiate representations include individual folios for long-term stays, showing the taxes charged, refunded, or adjusted. For exemptions, these hotels kept sufficient documentation to support claims of non-taxable revenue, such as standardized tax exempt cards and a copy of identification.

Two barriers that affected the efficiency of conducting these audits were ease of getting such records from a prior owner, and the storing of records in the corporate office outside the city or state. Both of these barriers were overcome in completed audits. Prior owners made records available and corporate offices mailed records to the hotels or to our office. However, delays related to these barriers contribute to the incomplete status of four audits.

Audits of 13 hotels identified compliance weaknesses and an additional tax liability of \$508,340. In our work we identified a number of compliance issues that resulted in additional tax liability to area hotels. Of the 13 hotels with audit deficiencies, eleven had deficiencies resulting in additional tax liability. When penalties and interest are calculated and applied, this additional revenue due the City totals over \$600,000. The scope of this work meant that the compliance issues we identified related principally to treatment of exclusions for resident guests and other exemptions for qualified guests such as federal employees. Exhibit B presents the types of issues found, each of which is described in greater detail in later sections of this report. The median deficiency for the eleven deficient hotels was \$10,346, with two cases having disproportionately high liabilities, of about \$110,000 and \$300,000 respectively.

In one case, additional liability arose from a calculation mistake; no compliance problem was otherwise identified in that case. In another case, inconsistency in the treatment of exemptions by front desk personnel and a weakness in compensating controls in the back office led to a deficiency finding. For some hotels, different types of tax exemption were improperly consolidated on quarterly tax reports, masking the actual type of exemption. Such cases themselves don't result in deficiencies.

We have issued letters of finding to all 22 hotels with completed audits. For those hotels with deficiency findings, we gave hotel management ten days to contest the findings and 30 days to make payment arrangements with the Controller's Office without further assessment of interest. In the first ten days, audit findings can be contested and the auditors may adjust the total deficiency based on additional support provided by the hotel operator. Also, the penalty or interest may be waived at the Controller's discretion. The dollars in Exhibit A reflect the City Auditor's assessment following the period for contesting findings, and reflect any adjustments made by the City Auditor in light of new materials submitted by the property. If cases advance to court proceedings or negotiations with management, the revenues collected may be lower than the finding.

EXHIBIT 4
Types of Audit Findings

Hotel	Misapplication of exemptions	Misapplication of 30-day exclusions	Reporting issues	Records retention issues	Registration system control weaknesses	Calculation mistake
Hotel J					X	
Hotel K					X	
Hotel L		X				
Hotel M		X		X	X	
Hotel N	X		X			
Hotel O	X	X	X			
Hotel P						X
Hotel Q			X	X		
Hotel R	X	X	X			
Hotel S	X					
Hotel T	X					
Hotel Y	X	X	X			
Hotel AA	X	X		X		

SOURCE: Auditor summary of hotel deficiencies.

Findings were made across the gamut of hotels audited. While the sample was judgmental and thus not representative of the population, we audited large, corporate hotels, smaller franchises, as well as locally owned hotels. The hotels audited ranged in their average quarterly earnings per room (QEPR) from \$1,500 at the low end, to an \$10,000 EPR bed and breakfast, to a hotel earning \$19,000 quarterly per room. The biggest deficiencies found in the course of this audit were at one low-revenue motel and a brand-name, mid-priced hotel.

Austin hotels operate in an environment of lenient enforcement with regard to the HOT, which may contribute to the level of compliance problems. As reported in the previous HOT audit, the City’s internal processes for administration of this tax had room for improvement. In the past, Controller’s Office staff have conducted significant reviews, detecting problems or ‘red flags’ pertaining to certain area hotels, but have not acted on these concerns due to limited resources. In our first audit we noted weaknesses in enforcement and collection, and noted that hotels had not been audited by the City in at least 10 years. In the current audit project, we found problems at hotels which had appeared on the Controller’s file of delinquent hotels when we completed the first HOT audit. Specifically, nine of the 28 hotels selected for audit were already delinquent. Our series of audits revealed that eight of these nine had additional liability. Many of the City’s collection and enforcement weaknesses have since been improved following that first audit. However, these historical enforcement weaknesses may contribute to the compliance issues noted here.

In addition, the State Comptroller’s Office audit coverage of Austin hotels is limited. According to information requested from the SCO, between 2001 and 2004 the SCO audited fourteen of the 180 Austin hotels.

The City's Financial Services and Administration Department (FASD) makes payment arrangements with hotels to collect any additional liability. To resolve additional liability, hotels must work with FASD and the Law Department to make payment. In the event that a hotel operator does not respond to audit findings, or cannot make payment arrangements, the City of Austin can take different actions. These include:

- adding penalties and interest to the unpaid tax debt,
- bringing a civil suit against the hotel operator for noncompliance, or
- asking the District Court to enjoin operation of the hotel until the tax is paid.

Understanding and application of rules related to non-taxable guests varies across the hotels selected for the audit.

Guests qualifying as permanent residents are entitled to a hotel occupancy tax exclusion. However, we noted that some hotels incorrectly apply the exclusions for such guests. Guests who are employees of certain agencies and organizations are also exempt from the tax. We found multiple instances where hotels exempt guests who are not eligible for these exemptions.

Guests qualifying as permanent residents are entitled to a hotel occupancy tax exemption. A permanent resident is not subject to the Hotel Occupancy Tax under Texas Tax Code, Chapter 156.101. According to the Texas Administrative Code, Rule 3.161,a permanent resident is defined as any person/occupant who has or shall have the right to occupancy of any room or space in a hotel for at least 30 consecutive days without interruption. The Austin City Ordinance, Chapter 11-2-2 of the City Code, mirrors State law by providing an exclusion from the hotel occupancy tax to a person who has the right to use or possess a hotel room for at least 30 consecutive days so long as there is no interruption of payment. A person becomes a permanent resident by either providing written notification to occupy a room for 30 or more consecutive days, paying in advance for 30 days, or by having actually occupied a room for 30 consecutive days. *Guests without a written commitment, or payment in full, do not become permanent residents until the 31st day and they owe the tax on the first 30 days.* An interruption in the right to use or occupy a room ends the exemption.

Exclusions under the 30 day rule not only apply to individuals, but also to organizations and entities. Organizations or entities may rent hotel rooms without having the same employee occupy the same room during the 30 days. For example, airlines enter into a written agreement with area hotels to guarantee payment of a room for 30 consecutive days or longer. Lobbyists and film production companies also contract for long term stays. The hotel must demonstrate that these contracts are not merely room rate agreements, and must demonstrate the number of rooms actually paid for rather than simply reserved.

Appropriate record keeping by the hotel should demonstrate the entire length of stay for a guest claiming exclusion under the 30 day rule. The guest folio should show the guest

occupancy history. We found two principal types of registration and record keeping systems at the hotels audited: manual and electronic. Manual systems present a risk due to the challenges of compiling a guest occupancy history. Electronic guest registration and management systems can be more reliable than manual systems and have the capacity to produce reports of guest occupancy histories quickly, but systems must be designed with sufficient emphasis on the documentation needed to justify the 30-day rule. A hotel may not be able to rely solely on their electronic systems to support 30-day exclusions.

We noted that some hotels incorrectly apply 30-day exclusions. One misunderstanding by hotel operators is that a resident's status on the 31st day of their stay affords the guest a refund of taxes from the transient period (the first 30 days). As noted above, however, a guest must have a written intent to stay, or have paid in full, to be exempt from the first 30 days of their stay. If they do not meet one of these requirements the hotel must collect the tax and remit it to the City. The guest is not eligible for a refund of the tax. Of the hotels noted in Exhibit B, we found three hotels where the hotels had collected and remitted the tax retroactively. On the other hand, we found that Hotel E for example requires every guest registration card have a 30-day written intent statement prepared for the guest's consideration, helping the hotel meet the requirements of the law.

Another observed misunderstanding is that hotels may exempt long-term guests who pay weekly rates. Without a written intent to stay, and unless the guest stays a full 30 days, the guest must pay tax on their first four weekly payments plus the first two days of the fifth weekly payment, and the hotel operator must collect and remit the tax to the City. We found two hotels where the tax was not collected and remitted appropriately.

Guests who are employees of certain agencies and organizations are also exempt from the tax. State law provides that U.S. government agencies and its employees, including military personnel, traveling on official business representing the United States government are exempt from state and local hotel occupancy taxes. Federal employees traveling on official business for the federal government must furnish a signed hotel occupancy tax exempt certificate in the name of the exempt entity to the hotel to gain the exemption from paying the state and local hotel occupancy taxes. The American Red Cross, federal credit unions, and regional home loan banks are also considered instrumentalities of the federal government and thus are exempt. Diplomatic personnel of a foreign government who present an appropriate Tax Exemption Card issued by the United States Department of State are also exempt. Hotels may request that the employee show proof of employment such as a government ID, business card, or payroll receipt. We identified a few hotels granting this type of exemption.

In contrast to this exemption process, employees of State governmental entities other than an institution of higher learning are entitled to refunds of the tax, but must pay the hotel occupancy tax up front.

In addition, employees of Texas Housing Authorities and Housing Finance Corporations, Texas Health Facilities Development Corporations, Texas Public Facilities Corporations, Texas Electric Cooperatives and Telephone Cooperatives may present a Hotel Occupancy Tax Exemption Certificate to qualify for a tax exemption.

We found multiple instances where hotels incorrectly exempt guests who are not eligible for exemptions. The most frequently observed misunderstanding of the law was exempting religious and educational institutions. *However, these exemptions apply only to the State's hotel occupancy tax and not the municipal hotel occupancy tax.* Texas Attorney General Opinion JM-865 states that neither a county nor a home rule city possesses the authority to grant an exception for religious, charitable, or educational purposes from the hotel occupancy tax absent constitutional and statutory authority to do so. Though the Austin City Code does not grant exceptions for these groups, we found several hotels that routinely grant City hotel occupancy tax exemptions to such groups due to their misunderstanding of the law.

In one case, we observed an internal control system, where back office tax specialists with knowledge of exempt groups, correct errors made by front desk staff. There were some historical weaknesses in that control system. We heard from this and another hotel manager that guests will argue for exemptions with front desk staff. Better staff training or a tax information brochure could better help hotels explain the differences between the State tax and the City tax and resolve potential customer conflicts.

During the course of the audit, we provided hotels with information explaining the differences in the law (see Appendix B). The City could consider revising the hotel occupancy tax ordinance to better clarify these differences.

We encountered isolated egregious issues, including potential fraud.

We found four hotels with major records keeping issues, three of which were unable to provide reliable documentation for the four-year audit scope period. In addition, one hotel owner reported that he used tax collections for building improvements, which is in direct contravention of the City ordinance.

We found hotels unable to provide any reliable documentation for the entire period.

Access to a hotel's books and records is necessary to determine the correctness of the tax report filed, the amount of the taxes due, and exemptions from the hotel occupancy tax claimed. The Austin City Code requires that the person responsible for collecting the tax at a hotel shall provide documentation such as the names, addresses, and identification relied upon to grant an exemption from the hotel occupancy tax as well as any other reasonable information required. Without proper documentation, hotels are liable for the unpaid tax and also for penalties and interest on the unpaid tax.

During the course of the audit, we identified hotels with non-existent, missing or questionable records. For example:

- Hotel AA was missing half of the required documentation for the audit period, resulting in a deficiency of almost \$300,000. The operator explained the issue as related to human resources and internal control issues at their corporate headquarters. Some long-term stays could be verified, however only three percent of the claimed exemptions were documented. The City Controller's Office confirmed that tax reports submitted by this operator are often confusing and incomplete, requiring significant follow up and additional staff time to credit the appropriate account.
- The operator of Hotel Q reported that he had disposed of all documentation, even from the month prior to the field visit, and thus could offer no evidence to support the exemptions from the hotel occupancy tax claimed. He explained he did not know he was supposed to keep the records but would now do so. This operator has a history of filing and paying monthly taxes to the State while not paying the City's quarterly hotel occupancy tax. In our previous Hotel Occupancy Tax Administration audit report, we identified this hotel as being chronically non-compliant and recommended that additional enforcement steps be taken to collect the delinquent tax. The estimated tax liability including penalty and interest, as a result of auditing exclusions and exemptions claimed, is \$53,947.
- Hotel M had no reliable historical records to support the claims of exemption and presented inherently contradictory documentation. While we do not doubt there are some guests eligible for resident exclusions, the absence of reliable registration information, as well as grave internal and external discrepancies in the daily sales report led to a determination disallowing all taxes claimed as non-exempt. In this case, the percent of total revenues that were claimed as excludable was the same for most days of the four-year period. The unlikelihood that the rate would rarely vary raised questions that were never adequately answered in meetings with hotel management. Registration documentation also showed significant signs of tampering. This case has subsequently been referred to the City Auditor's Integrity Unit. The assessed tax liability to the City of this hotel, including penalties and interest, is \$145,950. This hotel owner has operational control over three other hotels in Austin that have not been audited.
- Hotel K presented documentation supporting the small number of long-term stays claimed in their exclusions, but these documents appeared to be falsified. If disallowed, the value to the City would be less than \$1,000. We referred this case to the City Auditor Integrity Unit for further work. Other indicators of non-compliance also presented at this hotel: namely, the rate of 30-day exclusions appears far too low for the type of business, which suggests underreported gross revenues.

Three of these four hotels are small- to medium-sized operations, independently owned and operated, with no oversight or guidance from a franchise or corporate management organization. This lack of oversight or intervention may be a contributing factor to the misunderstanding of the applicable hotel occupancy tax laws and the documentation problems.

One hotel owner reported that he used tax collections for building improvements. During the course of our Hotel Occupancy Tax Administration audit, one concern was that with limited oversight from the City, hotel operators could be left to their own devices regarding conversion of hotel occupancy tax funds to cover operating deficiencies or infrastructure improvements to their properties. The owner of Hotel R candidly confirmed in an interview that though he had previously paid his taxes timely over the years, he had needed funds to improve his property, thus had not remitted taxes for a period of time.

The City should combine improved industry outreach and education, stronger enforcement procedures, and regular audits to deter this. In our last report, we recommended changes to the City hotel tax ordinance that, if implemented, will allow the Controller's Office to begin collecting tax on a monthly basis which should achieve stronger control. In addition, the State has legislated that delinquencies of two payment periods will allow the City to pass the cost of performing a hotel audit to the hotel.

Recommendation 1:

In order to ensure that hotel owners and operators clearly comprehend the City's requirements for the Hotel Occupancy Tax, the City Controller should work with the Law Department to review best practices for formulating a HOT ordinance and revise the current City ordinance accordingly. More specifically, the revised ordinance should include:

- A requirement for registration of lodging providers
- A clear explanation of who is exempt from the tax and what documentation must be collected and maintained related to exemptions

The current City ordinance is compared to best practices in Appendix C.

Significant turnover in hotel ownership in recent years has fiscal implications for both the City and hotel operators.

Owner/operators are responsible for tax liabilities incurred by the prior owner under laws referred to as successor liability laws. However, certain types of corporations may be protected from successor liability. The City can improve monitoring controls and limit revenue losses by coordinating business registration with Code Compliance, and FASD's tax administrators. Currently, completing a picture of a property's historical record can be time consuming for City financial, legal and/or audit staff.

Of the 28 hotels audited, 11 had changed ownership or operators at least once in the last four years. Of these 11 hotels:

- Five hotels had been sold or changed management and the new operators could not obtain records from the previous operators.
- The other six hotels had been sold and the records were located at a corporate headquarters in a different state.

Four audits remain unresolved due to the follow up time required to obtain records.

Owner-operators may find they are responsible for tax liabilities incurred by the prior owner, under laws referred to as successor liability. According to State Tax Code, Chapters 156 and 351 and the Austin City Code, Chapter 11-2, the purchaser of the hotel is liable for any unpaid tax owed by the previous operator. State law requires the purchaser, at the time of purchase, to withhold a sufficient amount from the purchase price to pay any tax amounts due. City ordinance has a similar requirement that a seller must either provide a purchaser with a receipt showing that the amount of the tax due has been paid or a certificate issued by the City Controller's Office showing that no tax is due. If the City Controller's Office fails to issue the certificate or statement of no tax due within 60 days, then the purchaser is released from the obligation to withhold or pay the outstanding tax.

Hotel management was often aware of successor liability but was not necessarily aware of how it would impact them. The new operators often had not done proper due diligence to check with the City regarding tax liabilities, and we found hotels where successor liability will result in tax liability for the current owner.

While the State Tax Code and the Austin City Code provide the mechanism to protect purchasers from a tax liability incurred by a previous owner, it is only applicable to known tax liabilities and offers no protection to the new owners from a tax liability found in the course of a later audit.

Laws may provide 'loop holes' that protect some successors from liability. In the course of our work we learned about Real Estate Investment Trusts (REITs). In the case of Hotel Y, an out-of-state REIT has owned the property for the scope of the audit. The REIT originally hired a lease hold operator. In 2004, the REIT cancelled that lease hold agreement and now has a long-term management agreement with a "drop down

subsidiary.” Liability for the initial period under the lease hold operator is difficult to discern at this point in our work, as the parent company, or REIT, has never had transactional tax liability, and the drop down subsidiary appears to be liable only for the period under their control.

Corporate structures such as these indicate another reason for increased monitoring and auditing. Relying on successor liability to protect uncollected back taxes or revenue appears risky.

The City can improve monitoring controls and limit revenue losses by coordinating registration and tax administration. The City of Austin Code currently requires hotels to acquire a business license or permit from the City’s Code Compliance group. However, as reported in the previous audit, FASD does not coordinate with this compliance group. According to the City Controller’s Office, one or more of the following occurs to alert the Controller’s Office about a hotel ownership change:

- The previous owner makes a note on their last return that it is the final return and future returns will be submitted by new owners.
- The new owner contacts the City to set up an account for a hotel that they recently purchased.
- Reports submitted to the State and appearing on the State's HOT website note a new owner name

However, if a permit application from a buyer is received prior to transfer of ownership, there would be an opportunity to audit the seller.

Hotels can protect themselves by requesting audits and the City can limit revenue losses by conducting periodic audits. To avoid liability for past taxes from non-compliance, incomplete record keeping, or fraud, the purchaser of a hotel could request that an audit by a private firm be conducted as a part of due diligence. We did not identify any such audits being conducted prior to a change of ownership in the hotels that we audited. However, some of the corporate properties may have ordered such audits.

In the Hotel Occupancy Tax Administration audit we found that the Financial and Administrative Services Department is not set up to detect compliance issues or associated deficiencies. No actual field audits had been conducted since 1996. While the City Controller’s Office records hotel occupancy tax revenues accurately and consistently, their primary function is accounting, not detecting non-compliance or conducting audits.

Regular auditing of local hotels would have a beneficial effect on hotel occupancy tax revenue. It is a practice in major cities such as Dallas to have a dedicated revenue auditor to conduct regular audits of hotels. Funding for such a function for the City of Austin may be justified by the enhanced flow of hotel occupancy tax revenue. In this audit work, we selected 58 hotels presenting high-risk for non-compliance, providing a starting point for such an effort.

Recommendation 2:

To ensure the complete, timely, and accurate collection of hotel occupancy tax revenues, the City's Chief Financial Officer should consider staffing a full time hotel auditor to monitor collection and remittance of hotel occupancy taxes.

Although beyond the scope of the audit, we identified two additional risks.

Cash-based operations present a risk of under-reporting gross revenues. And some guests may not be aware that a portion of their room bill is a nine percent transient tax for funding City venue projects and other civic programs.

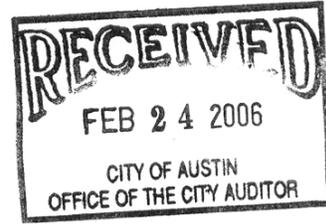
Some hotels may under-report gross revenue, impacting the City's complete collection of taxes due. Verifying that gross revenues have been under-reported can be challenging, and was beyond the scope of our audits. However, during our initial sample selection, we did designate eight hotels as high risk for under-reporting. Low earnings per room for the type of hotel is a good indicator of under-reported revenue. In addition, patterns of lower-than-average gross sales during periods of operation under prior ownership can be telling, or indicative of potential fraud, without sufficient explanation such as reduction in available rooms due to remodeling, reservation system membership, or construction projects blocking access to properties. Smaller, sole proprietor operations where cash payments are common also present such inherent risks.

A number of smaller, independently owned hotels do not denominate the City's hotel occupancy tax as required by the ordinance and State law. Several hotels in Austin operate using entirely manual registration systems. In these cases, hotels do not consistently denominate the taxes charged on room rent, rather they charge a set rate that masks the separate room charge and applicable tax. This affects the guest's understanding of the room charges and applicable tax.

We observed however that manual systems and 'lump rates' had no effect on correct remittance per se. In these cases, hotels charge the guest a set rate and then back out the tax manually. For the one hotel where we could not walk the taxes paid back to the room rents collected, we discovered much larger issues of tax liability.

City ordinance also requires hotels to conspicuously include the following statement on each bill or receipt: "The City of Austin requires an additional tax of two percent be imposed on each hotel charge for the purpose of financing a venue project." This two percent tax supports the Convention Center / Waller Creek Venue Project approved by the voters at the May 2, 1998 election. We did not see this language on any folios reviewed.

APPENDIX A
MANAGEMENT RESPONSE



MEMORANDUM

To: Steve Morgan, City Auditor
Office of the City Auditor

From: John Stephens, Chief Financial Officer
Financial and Administrative Services Department

Date: February 24, 2006

Subject: Hotel Occupancy Tax Audit – Phase 2

Thank you for the opportunity to respond to the Hotel Occupancy Tax Audit – Phase 2. We look forward to working with the Law Department to enhance the City's collection processes.

Before making a commitment to adding a full-time position, I would like to wait until OCA has completed its HOT audits to properly assess the need of staffing a full-time auditor for HOT audits. The completion of the current audits and future planned audits will provide more extensive data to assess the feasibility of a full-time position.

Thanks again for the opportunity to respond. Please call me if you have any questions.

John Stephens, Chief Financial Officer
Financial and Administrative Services Department

ACTION PLAN
HOTEL OCCUPANCY TAX : COLLECTION AND REMITTANCE AUDIT

	Recommendation Text	Proposed Strategies for Implementation	Status of Strategies	Responsible Person/Phone Number	Proposed Implementation Date
1	<p>In order to ensure that hotel owners and operators clearly comprehend the City’s requirements for the Hotel Occupancy Tax, the City Controller should work with the Law Department to review best practices for formulating a HOT ordinance and revise the current City ordinance accordingly. More specifically, the revised ordinance should include:</p> <ul style="list-style-type: none"> • A requirement for registration of lodging providers • A clear explanation of who is exempt from the tax and what documentation must be collected and maintained related to exemptions <p>The current City ordinance is compared to best practices in Appendix C.</p>	<p>Agree.</p> <p>The HOT ordinance should be revised to help ensure the City has the proper requirements to facilitate collections.</p> <p>However, the best practices document in Appendix C may contain certain practices that the City may elect not to institute.</p> <p>Strategies:</p> <ul style="list-style-type: none"> • Develop preliminary strategies to strengthen collection process • Meet with stakeholders to discuss • Plan timing of potential ordinance revision • Develop educational and information dissemination process to hotels 	Planned	Jeff Knodel 974-2589	
2	<p>To ensure the complete, timely, and accurate collection of hotel occupancy tax revenues, the City’s Chief Financial Officer should consider staffing a full time hotel auditor to monitor collection and remittance of hotel occupancy taxes.</p>	<p>Under consideration.</p> <p>City management will conduct a feasibility assessment at the conclusion of all OCA HOT audits.</p>	Pending	John Stephens 974-2076	

APPENDIX B

**HOTEL OCCUPANCY TAX GUIDANCE
FOR LODGING PROVIDERS**

INFORMATION FOR LODGING PROVIDERS



INTENT TO RENT ACCOMMODATIONS

<PROPERTY NAME>
<PROPERTY ADDRESS>

CHECK IN

Pursuant to law, this letter serves to notify you that I will be staying at your property for at least 30 consecutive days. My check-in date is _____ and I will be checking out on or after _____.

Print Name

Signature

Date

After staying 30 consecutive days, a refund check will be issued to you for the occupancy tax charged.

CHECK OUT

Under penalties of perjury, I declare that facts stated on this form are correct and true and that I have been a guest in your hotel from _____ to _____.

Print Name

Signature

Date

Under penalties of perjury, I declare that I have verified the facts stated on this form(s) and to the best of my knowledge and belief all the facts are correct and true.

Property Manager

(Property Use Only)	
Refund Check Ordered	
Yes _____	No _____
Date Issued: _____ / _____ / _____	

TEXAS HOTEL OCCUPANCY TAX EXEMPTION CERTIFICATE



CAROLE KEETON STRAYHORN • TEXAS COMPTROLLER OF PUBLIC ACCOUNTS

NOTE: This certificate is for business only, not to be used for private purposes, under penalty of law. The hotel operator may request a government ID, business card or other identification to verify exemption claimed. Certificate should be furnished to the hotel or motel. DO NOT send the completed certificate to the Comptroller of Public Accounts. The certificate does not require a number to be valid. Refer to Hotel Rule 3.161 for exemptions.

Check exemption claimed:

- United States government or Texas government official exempt from state, city, and county taxes.** Includes US government agencies and its employees traveling on official business. Texas state officials or employees who present a Hotel Tax Exemption Photo Identification Card, and diplomatic personnel of a foreign government who present a Tax Exemption Card issued by the US Department of State.
- Religious, charitable, or educational organization or employee exempt from state tax only.** Educational organizations include school districts, private or public elementary and secondary schools, and Texas institutions of higher education as defined in Section 61.003, Texas Education Code. Beginning October 1, 2003, non-Texas institutions of higher education (public and private universities, junior colleges, community colleges) must pay the state hotel occupancy tax. Religious and charitable organizations must hold a letter of exemption issued by the Comptroller of Public Accounts to claim the exemption.
- Other. Organization exempt by law other than Chapter 156, Tax Code.** Specify reason for exempt status below. **Supporting Documentation Required.**

Name of exempt organization	Organization exempt status (Religious, charitable, educational, governmental)
Address of exempt organization (Street and number, city, state, ZIP code)	

GUEST CERTIFICATION: I declare that I am an occupant of this hotel/motel on official business sanctioned by the exempt organization named above and that all information shown on this document is true and correct.

Guest name (Please print)

sign here ↘

Date

FOR HOTEL/MOTEL USE ONLY (OPTIONAL)

Name of hotel/motel				
Address of hotel/motel (Street and number, city, state, ZIP code)				
Room rate	Local tax	Exempt state tax	Amount paid by guest	Method of payment

You have certain rights under Ch. 559, Government Code, to review, request, and correct information we have on file about you. To review or correct your state tax-related information, contact the Texas State Comptroller's office.

Hotels may require verification before accepting a hotel occupancy tax exemption certificate. An organization may qualify for hotel occupancy tax exemption even when it does not have a Comptroller's letter of hotel tax exemption or cannot be found on the Comptroller's list of exempt organizations. Some examples include churches, public schools, and community colleges.

You may need to pay the tax until verification of hotel tax exemption can be obtained from the Comptroller's office. You can apply to the hotel for a refund or credit.

To receive verification or to apply for exemption, please contact a hotel tax specialist toll free at 1-800-252-1385 or in Austin at 512/463-4600. From a Telecommunications Device for the Deaf (TDD), call 1-800-248-4099 or in Austin 512/463-4621.

You may also visit us online at <http://www.window.state.tx.us/taxinfo/exempt/>. Receive tax help via e-mail at exempt.orgs@cpa.state.tx.us.

TEXAS HOTEL OCCUPANCY TAX INFORMATION FOR LODGING PROVIDERS

This information is intended as a *guideline* for determining rent exempt from the local Hotel Occupancy Tax only. The meaning of the word “employee” can be inclusive of “officer” and “member.”

Term Exemption:

For stays of more than thirty (30) continuous days; -- that is, after thirty (30) consecutive days' stay. The tax must be collected for days one (1) through thirty (30), unless there is in an indication in writing to rent the accommodations for longer than thirty continuous (30) days given by the lodger.

Personal Status Exemptions:

Federal employees presenting documentation. The American Red Cross, federal credit unions and the regional home loan banks are considered instrumentalities of the federal government.

Foreign diplomats presenting identification issued by the United States Department of State.

State of Texas employees presenting the Photo ID Hotel Tax Exemption Card or other documentation indicating that the bearer is Exempt from paying the Hotel Occupancy Tax.

Employees of Texas Housing Authorities and Housing Finance Corporations presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Texas Health Facilities Development Corporations presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Texas Public Facilities Corporations presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Texas Electric Cooperatives and Telephone Cooperatives presenting a Hotel Occupancy Tax Exemption Certificate.

Note: For guest rooms contracted and paid for directly by any of the above named entities, the rent would be exempt from taxation.

TEXAS HOTEL OCCUPANCY TAX INFORMATION FOR LODGING PROVIDERS

All of the exemptions presented on the obverse are also applicable to the State Hotel Occupancy Tax. In addition, these **Personal Status Exemptions** apply to the State Hotel Occupancy Tax (but not to the local Tax):

Employees of Texas public and private Universities, Colleges and Junior Colleges presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Texas Regional Education Service Centers presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Elementary and Secondary Educational Organizations in Texas, other states and foreign countries presenting a Hotel Occupancy Tax Exemption Certificate.

Employees of Charitable Organizations presenting State Comptroller's letter of exemption.

Employees of Religious Organizations presenting State Comptroller's letter of exemption.

Note: The exempt status of any organization can be instantly checked at the State Comptroller's website, <http://www.window.state.tx.us/taxinfo/hotel/>, or by telephoning the Comptroller's office toll free at 1-800-252-1385.

APPENDIX C

**COMPARISON OF CITY HOTEL OCCUPANCY TAX ORDINANCE
TO MODEL HOTEL OCCUPANCY TAX ORDINANCE**

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<p>§ 11-2-1 DEFINITIONS. In this chapter:</p> <p>(1) CONSIDERATION means the cost of a hotel room only if the room is ordinarily used for sleeping, and does not include the cost of any food served or personal services rendered to the room or a person in the room unless related to the cleaning and readying of the room for occupancy.</p> <p>(2) DEPARTMENT means the Financial and Administrative Service Department.</p> <p>(3) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration, but does include a hospital, sanitarium, or nursing home. Source: 1992 Code Section 5-3-1; Ord. 031204-10; Ordinance 031211-11.</p>	<p>Adds definitions to make the terminology easier to understand for the lodging providers</p>	<p>In this chapter.</p> <p>(1) CITY means the City of Austin and the incorporated territory wherein the city government is empowered to impose this tax by chapter 351 of the Texas Tax Code.</p> <p>(2) CONSIDERATION means the cost of a hotel room only if the room is ordinarily used for sleeping, and does not include the cost of any food served or personal services rendered to the room or a person in the room unless related to the cleaning and readying of the room for occupancy.</p> <p>(3) DEPARTMENT means the Finance and Administrative Service Department.</p> <p>(4) DUE DATE is the twentieth (20th) day after the close of the monthly period for which the tax is to be computed.</p> <p>(5) FOLIO is the primary documentation of a hotel that demonstrates interaction between the lodging provider and the occupant. The occupant's name and address, driver's license or identification card number, the date of the occupancy, the amount of rent charged for each date together with the amounts of applicable tax, and the means of payment.</p> <p>(6) GUEST is any person, who for a consideration, uses, possesses, or has the right to use or possess any guest room in a hotel under any lease, concession, permit, right of access, license, contract, or agreement.</p> <p>(7) GUEST ROOM is a room in a hotel occupied, or intended, arranged, or designed for sleeping, and rented for more than \$2.00 a day.</p> <p>(8) HOTEL means a building in which members of the public may obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house, or other building where a room is furnished for a consideration, but does not include a hospital, sanitarium, or nursing home.</p> <p>(9) LODGING PROVIDER is any person operating a hotel in the city, including, but not limited to, the owner or proprietor of such premises, lessee, sub-lessee, lender in possession, licensee or any other person operating such hotel; and who is subject to collecting and remitting the tax imposed upon guests.</p> <p>(10) MONTHLY PERIOD is the calendar months of any year.</p> <p>(11) OCCUPANCY is the use or possession, or the right to the use and possession of any guest room in a hotel.</p> <p>(12) PERMANENT RESIDENT is any guest who, as of a given date, has or shall have occupied, or has or shall have established the right of occupancy to any guest room in a hotel for more than thirty (30) continuous days.</p> <p>(13) PERSON is any individual, firm, partnership, joint venture, association, social club, fraternal organization, joint stock company, corporation, cooperative, estate, trust, receiver, trustee, syndicate, or any other group or combination acting as a unit, the plural as well as the singular member.</p> <p>(14) RENT is the consideration charged for the occupancy of a guest room, valued in money, whether received in money or otherwise, including all receipts, cash, credits, and property or services of any kind or nature, and also the amount for which credit is allowed by the lodging provider to the guest, without any deduction allowed.</p> <p>(15) TAX is the tax on occupants imposed by this ordinance, as provided for by Chapter 351 of the Texas Tax Code.</p>

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<i>No such provision</i>	Suggests a new provision requiring registration of lodging providers to make it easier to identify changes in ownership and collect any taxes due.	REGISTRATION OF LODGING PROVIDER. Persons engaged in or about to engage in business as a lodging provider in the city are required to register with the City Financial Director. The registration form will require pertinent information to establish the ownership. A certificate of authority may be issued by the City for the lodging provider to collect the tax from the occupant. Registration shall set forth the name under which such person transacts business or intends to transact business, the business location, and any other information which would facilitate the administration of the tax as prescribed by the City Financial Director. Separate registrations are required if the owner has multiple properties. A certificate of authority shall be issued by the City Financial Director to each lodging provider to collect the tax from the occupant.
§ 11-2-2 TAX LEVIED; [EXCEPTIONS.] (A) A tax of seven percent of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping.	Combines discussion of the 7% tax and the 2% tax.	TAX LEVY. (A) A City Hotel Occupancy Tax of nine percent (9%) of the consideration paid for a hotel room is levied on a person who, under a lease, concession, permit, right of access, license, contract, or agreement, pays the consideration for the use or possession or for the right to the use or possession of a hotel room that costs two dollars or more each day and is ordinarily used for sleeping. The nine percent (9%) tax is composed of the seven percent (7%) tax to promote tourism, the convention and hotel industry, historical restoration and preservation projects or activities, and cultural arts programs and the two percent (2%) venue projects tax. The lodging provider shall provide a receipt to each guest that reflects both the amount of rent and applicable State and City taxes. This tax shall be due from the guest and shall be collected by the lodging provider at the time that the rent is collected. The lodging provider shall be liable for any amount of tax that he fails to collect appropriately and must remit to the City any amount of tax collected in excess of that which should have been collected.

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<p>§ 11-2-2 [TAX LEVIED;] EXCEPTIONS. (B) This chapter does not impose a tax on: (1) a person who has the right to use or possess a hotel room for at least 30 consecutive days, so long as there is no interruption of payment for the period; or (2) the United States, a governmental entity of the United States, or an officer or employee of the United States.</p> <p>(C) Except as otherwise provided in Section 156.103 (Exception-State and Federal Government) of the Texas Tax Code, the State of Texas, or an agency, institution, board, or commission of the State of Texas other than an institution of higher education, as that term is defined by Section 61.003 (Definitions) of the Texas Education Code, shall pay the tax imposed by this chapter and is entitled to a refund of the amount of tax paid.</p> <p>(D) A person entitled to a refund of tax paid under this section shall make an application for a refund according to the rules prescribed by the department in the form prescribed by the department. Source: 1992 Code Section 5-3-1 and 5-3-2; Ord. 031204-10; Ord. 031211-11.</p>	<p>Clarifies the tax exceptions.</p>	<p>EXCEPTIONS TO THE TAX - PERMANENT RESIDENTS. (A) No tax shall be collected from a guest after becoming a permanent resident. A guest becomes a permanent resident either after thirty (30) continuous days occupancy, or upon notifying the lodging provider in writing of their intention to occupy a guest room for longer than thirty (30) continuous days and then proceeding to actually occupy the guest room for such period. (B) Written intent to stay thirty (30) days is established and must be documented either by providing evidence of pre-payment in full for the entire thirty (30) day stay or evidence of the guest filling out and signing a form declaring their intent to stay for thirty (30) days. A guest who expresses intent, but fails to stay thirty (30) continuous days, is not a permanent resident and is not excepted from the tax.</p> <p>EXCEPTIONS TO THE TAX - FEDERAL GOVERNMENT EMPLOYEES. (A) No tax shall be collected from the federal government or an officer or employee of the federal government when traveling on government business and presenting official identification. No tax shall be collected from officers or employees of the American Red Cross, federally chartered credit unions, and the regional home loan banks when traveling on business and presenting official identification. The lodging provider shall make a copy of the guest's official identification card or have the guest fill out a Texas Hotel Occupancy Tax Exemption Certificate (form 12-302) and attach it to the guest folio.</p> <p>EXCEPTIONS TO THE TAX - TEXAS QUASI-GOVERNMENTAL ENTITIES. (A) No tax shall be collected from the following quasi-governmental entities formed under the Texas Local Government, and Health and Safety Codes, nor an officer or employee of any thereof when presenting a Texas Hotel Occupancy Tax Exemption Certificate: public facility corporations, housing authorities, housing finance corporations, and health facilities development corporations. (B) The lodging provider shall make a copy of the guest's official identification card and attach it with the Texas Hotel Occupancy Tax Exemption Certificate to the guest folio.</p> <p>EXCEPTIONS TO THE TAX- ELECTRIC AND TELEPHONE COOPERATIVES. (A) No tax shall be collected from electric cooperatives formed under Chapter 161 of the Texas Utilities Code; nor telephone cooperatives formed under Chapter 162; nor an officer or employee of either thereof when presenting a Texas Hotel Occupancy Tax Exemption Certificate. (B) The lodging provider shall make a copy of the guest's official identification card and attach it with the Texas Hotel Occupancy Tax Exemption Certificate to the guest folio.</p> <p>EXCEPTIONS TO THE TAX - STATE TAX EXEMPT CARD. (A) No tax shall be collected from a State of Texas Officer or employee when presenting a photo identification card or other documentation that indicates that the bearer is exempt, or excepted, from paying hotel occupancy tax. (B) The lodging provider shall make a copy of the guest's official identification card.</p> <p>EXCEPTIONS TO THE TAX- FOREIGN DIPLOMATS. (A) No tax shall be collected from a foreign diplomat when presenting a tax exemption card issued by the United States Department of State. (B) The lodging provider shall make a copy of the guest's official identification card.</p>

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<i>No such provision</i>	Adds a provision to specify what groups or persons are not exempt from paying the tax	NON-EXEMPT ORGANIZATIONS. Employees and representatives of non-profit religious, charitable, educational organizations, State college and university personnel, and local government employees are not exempt from the City Hotel Occupancy Tax and lodging providers must collect and remit the nine (9%) percent tax to the City.
<i>No such provision</i>	Suggests a new provision to address who is responsible for administration of the provisions for the hotel occupancy tax.	ADMINISTRATION OF THE ORDINANCE. (A) The Finance and Administrative Services Department shall administer and enforce the provisions of this ordinance for the collection of the tax.
<p>§ 11-2-4 QUARTERLY REPORTS; PAYMENTS. (A) A quarterly period under this section is based on the City's fiscal year, with the first quarter beginning on October 1 and ending on December 31. (B) On or before the last day of the month following each quarterly period, a person required to collect the tax imposed under this chapter shall: (1) file a written report with the department for that quarterly period, with a copy of the report for state hotel occupancy taxes required by Section 156.151 (Report and Payment) of the Texas Tax Code for the same quarterly period; and (2) pay the tax due for the quarter.</p> <p>(C) A report under this section shall be in the form prescribed by the department and shall include: (1) the total consideration paid for rooms subject to the tax in the preceding quarter. (2) the total amount of tax collected; and (3) the total amount of tax exemptions granted. (D) If requested by the department, a person responsible for collecting the tax shall provide the department with: (1) the names, addresses, and identification relied upon to grant an exemption from the tax; and (2) any other information the department may reasonably require.</p> <p>(E) The department may request, and a person required to collect the tax shall provide within a reasonable time, additional documentation verifying the information contained in the report to the City. Source: 1992 Code Section 5-3-1 and 5-3-4(A); Ord. 031204-10; Ord. 031211-11.</p>	The tax reports should be filed monthly. This tightens up the rules on when penalty and interest should be added.	<p>FILING MONTHLY REPORTS AND REMITTING TAX PAYMENTS. (A) The hotel occupancy tax shall be due and payable to the City Finance and Administrative Services Department monthly on or before the twentieth (20th) day of the month next succeeding the respective monthly period. The tax shall become delinquent for any monthly period after the twentieth (20th) day of the succeeding month in which it remains unpaid.</p> <p>(B) A lodging provider who fails to file any monthly return or pay the amount of tax as prescribed, shall be assessed a specific penalty to be added to the tax in the amount of fifteen percent (15%).</p> <p>(C) A lodging provider who fails to file any monthly return or pay the amount of tax as prescribed, shall be assessed a specific interest to be added to the tax and the penalty in the amount of ten (10%) percent per year beginning at the date of delinquency.</p> <p>(D) If the failure to file any return or to pay the full amount of the tax due by the due date results from providential cause shown to the satisfaction of the governing authority of the City by affidavit attached to the return, and remittance is made within ten (10) days of the due date, such return may be accepted exclusive of penalty and interest.</p> <p>(E) Only the City Financial Director, or their assignee, may waive the penalty and interest prescribed. (F) The Finance and Administrative Services Department may request, and a person required to collect the tax shall provide within a reasonable time, additional documentation verifying the information contained in the report to the City. The tax return reports the gross rent, taxable rent, and non-taxable rent earned, the amount of the tax collected or otherwise due for the period, and such other information or documentation as may be required by the City Finance and Administrative Services Department to verify the information filed on the tax return.</p> <p>(G) The City Finance and Administrative Services Department may for good cause, extend the time for filing a tax return for up to thirty days after the due date. No extension shall be valid unless granted in writing upon written application of the lodging provider.</p>

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<i>No such provision</i>	Suggests a provision that gives the City the right to require lodging providers to produce records in 10 days upon notice and requires that the records be kept in Austin - not Atlanta or Washington, D.C., or elsewhere.	RECORDKEEPING REQUIREMENTS OF THE LODGING PROVIDERS. (A) Every lodging provider renting guest rooms in the City shall preserve for a minimum of four (4) years, all guest folios, receipts, certificates of exemption, financial records and such other documents as the Finance and Administrative Services Department may prescribe, and in such form as required. (B) The Finance and Administrative Services Department, the Office of the City Auditor, or any third party contractually designated by the City may examine the books, papers, records, financial reports, equipment and other facilities of any lodging provider renting guest rooms and any lodging provider liable for the tax, in order to verify the accuracy of any return made, or if no return is made by the lodging provider, to ascertain and determine the amount required to be paid. (C) Required records shall at all times be available for examination with ten (10) days written notice to the lodging provider and must be kept at the place of lodging provision within the City.
§ 11-2-6 RULES; ACCESS TO RECORDS. (A) The department may promulgate rules to effectively collect the tax imposed by this chapter. (B) Upon reasonable notice, a person responsible for collecting the tax shall give the department access to the records necessary to determine the accuracy of a report filed or the amount of tax due under this chapter. Source: 1992 Code Section 5-3-5; Ord. 031204-10; Ord. 031211-11.	Sets a statute of limitations period of four years	RULES, ACCESS TO RECORDS, STATUTE OF LIMITATIONS. (A) The Finance and Administrative Services Department may promulgate rules to effectively collect the tax imposed by this chapter. (B) Upon reasonable notice, a person responsible for collecting the tax shall give the City access to the records necessary to determine the accuracy of a report filed or the amount of tax due. (C) The statute of limitations point for collections of delinquent taxes is set at four years from the day the cause of action accrues. At any time within four years after the delinquency of the tax, the City may bring action in a court of competent jurisdiction to collect the delinquent tax with penalty, court fees, filing fees, attorney's fees and other legal fees. The City may have the lodging provider enjoined from operating the hotel until such time as the delinquency is paid as well as require forfeiture of any applicable collection fee retained by the lodging provider.

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<i>No such provision</i>	Defines deficiency determinations more explicitly.	<p>DEFICIENCY DETERMINATIONS BY THE FINANCE AND ADMINISTRATIVE SERVICES DEPARTMENT. (A) If the City Finance and Administrative Services Department is not satisfied with the tax return(s) or the amount of the tax required to be paid to the City by any lodging provider, they may compute and determine the amount of the tax required to be paid to the City by any lodging provider. (B) A penalty of fifteen (15%) percent and interest of ten (10%) percent a year on the tax owed and the penalty shall be assessed upon the amount of any deficiency determination. (C) The City Finance and Administrative Services Department shall give the lodging provider written notice of the determination by means of certified mail with a receipt signed by the addressee or by statutory overnight delivery. (D) Except in cases of failure to file a return or of fraud, the statute of limitations point for mailing the notice of deficiency determination is set at four (4) years prior to the month the deficiency was determined. (E) Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the City Finance and Administrative Services Department. The lodging provider shall provide such documents as he believes may present grounds for abatement of the determination. The City Financial and Administrative Services Department shall give written notice of their decision to the lodging provider in the same manner as provided in Section C and that decision shall be deemed final.</p> <p>DEFICIENCY DETERMINATION IF NO RETURN IS MADE. (A) If a lodging provider fails to file a return and pay the tax, the City Finance and Administrative Services Department shall make an estimate of the amount of the gross receipts of the lodging provider. The estimate shall be made for the period(s) in which the lodging provider failed to file the tax return and remit the tax. (B) The City Finance and Administrative Services Department shall give the lodging provider written notice of the determination by means of certified mail with a receipt signed by the addressee or by statutory overnight delivery. (C) A penalty of fifteen (15%) percent and interest of ten (10%) percent a year on the tax owed and the penalty shall be assessed upon the amount of any deficiency determination. (D) Except in cases of failure to file a return or of fraud, the statute of limitations point for mailing the notice of deficiency determination is set at four (4) years prior to the month the deficiency was determined. (E) Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the City Finance and Administrative Services Department. The lodging provider shall provide such documents as he believes may present grounds for abatement of the determination. The City Finance and Administrative Services Department shall give written notice of their decision to the lodging provider in the same manner as provided in Section B and that decision shall be deemed final.</p>

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
(Continued from prior page)	Defines Office of the City Auditor's role in deficiency determinations.	DEFICIENCY DETERMINATIONS BY THE OFFICE OF THE CITY AUDITOR. (A) When an audit is conducted by the Office of the City Auditor and a tax deficiency is identified, auditors may compute and determine the amount of the tax required to be paid to the City by any lodging provider. (B) A penalty of fifteen (15%) percent and interest of ten (10%) percent a year on the tax owed and the penalty shall be assessed upon the amount of any deficiency determination. (C) The Office of the City Auditor shall give the lodging provider written notice of the determination by means of certified mail with a receipt signed by the addressee or by statutory overnight delivery. (D) The statute of limitations point for auditing lodging providers for delinquent taxes is set at four years prior to the month the audit is conducted. (E) Within ten (10) days of being served a notice of deficiency determination, the lodging provider may contest such in writing addressed to the City Auditor. The lodging provider shall provide such documents as he believes may present grounds for abatement of the determination. After review and consideration of any documents provided by the lodging provider, the City Auditor shall give written notice, in the same manner as provided in Section C, of the deficiency determination to the lodging provider and notify the lodging provider that they have thirty (30) days to pay all tax, penalty and interest due. (F) The City Auditor shall refer the case to the Financial and Administrative Service Department for collection action.

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<p>§ 11-2-7 ALLOCATION AND USE OF HOTEL OCCUPANCY TAX REVENUE. (A) This section does not apply to taxes collected under Article 2 (Venue Projects). (B) The revenue derived from the tax authorized by this chapter may be used only as provided by Section 351.101 (Use of Tax Revenue) of the Texas Tax Code to promote tourism and the convention and hotel industry as follows: (1) 64-2/7 percent of the funds collected is allocated to the Convention Center Capital Improvement Project Fund and may be used for: (a) the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities as defined in Section 351.001 (Definitions) of the Texas Tax Code; and (b) the City's provision of facilities, personnel, and materials for the registration of convention delegates or registrants; (2) 20-5/7 percent of the funds collected is allocated to the Tourism/Promotion Fund and may be used for: (a) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity; and (b) for historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums located at or in the immediate vicinity of convention center facilities or elsewhere in the City or its vicinity; and (3) 15 percent of the funds collected is allocated to the Cultural Arts Fund and may be used for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of a major art form. (C) Revenue derived from the tax shall only be expended to directly enhance and promote tourism and the City's convention and hotel industry. Tax revenue may not be used as general revenue for general governmental operations of the City. Source: 1992 Code Section 5-3-6; Ord. 031204-10; Ord. 031211-11.</p>	<p>Combines the 7% tax and the 2% tax into one chapter.</p>	<p>ALLOCATION AND USE OF HOTEL OCCUPANCY TAX - PROMOTION OF TOURISM AND THE CONVENTION CENTER AND HOTEL INDUSTRY. (A) The hotel occupancy tax is nine (9%) percent of the amount of rent for the occupancy of a guest room. It is comprised of two (2) taxes, a seven (7%) percent tax and a two (2%) tax. (B) The revenue derived from the seven percent (7%) tax authorized by this chapter may be used only as provided by Section 351.101 (Use of Tax Revenue) of the Texas Tax Code to promote tourism and the convention and hotel industry as follows: (1) 64-2/7 percent of the funds collected is allocated to the Convention Center Capital Improvement Project Fund and may be used for: (a) the construction, improvement, enlarging, equipping, repairing, operation, and maintenance of convention center facilities as defined in Section 351.001 (Definitions) of the Texas Tax Code; and (b) the City's provision of facilities, personnel, and materials for the registration of convention delegates or registrants; (2) 20-5/7 percent of the funds collected is allocated to the Tourism/Promotion Fund and may be used for: (a) advertising and conducting solicitations and promotional programs to attract tourists and convention delegates or registrants to the City or its vicinity; and (b) for historical restoration and preservation projects or activities, or advertising and conducting solicitations and promotional programs to encourage tourists and convention delegates to visit preserved historic sites or museums located at or in the immediate vicinity of convention center facilities or elsewhere in the City or its vicinity; and (3) fifteen (15%) percent of the funds collected is allocated to the Cultural Arts Fund and may be used for the encouragement, promotion, improvement, and application of the arts, including instrumental and vocal music, dance, drama, folk art, creative writing, architecture, design and allied fields, painting, sculpture, photography, graphic and craft arts, motion pictures, radio, television, tape and sound recording, and other arts related to the presentation, performance, execution, and exhibition of a major art form. (C) Revenue derived from the tax shall only be expended to directly enhance and promote tourism and the City's convention and hotel industry. Hotel occupancy tax revenue may not be used as general revenue for general governmental operations of the City.</p>

AUSTIN ORDINANCE	SUMMARY OF SUGGESTED CHANGES	MODEL ORDINANCE LANGUAGE
<p>§ 11-2-11 ADDITIONAL HOTEL TAX. (A) In addition to the tax levied under Section 11-2-2 (Tax Levied, Exceptions), a tax in the amount of two percent of the consideration paid for a hotel room is levied. (B) This tax supports the Convention Center/Waller Creek Venue Project approved by the voters at the May 2, 1998 election as authorized under Chapter 334 (Sports and Community Venues), Subchapter H (Hotel Occupancy Taxes) of the Texas Local Government Code. (C) Articles 1 (General Provisions) and 3 (Violations) of this chapter apply to this article except to the extent of a conflict. Source: 1992 Code Sections 5-3-11 and 5-3-12; Ord. 031204-10; Ord. 031211-11.</p>	<p>Combines the 7% tax and the 2% tax into one chapter.</p>	<p>ALLOCATION AND USE OF HOTEL OCCUPANCY TAX REVENUE TO SUPPORT THE CONVENTION CENTER AND WALLER CREEK VENUE PROJECTS. (A) An additional tax in the amount of two percent of the consideration paid for a hotel room is levied. (B) This tax supports the Convention Center/Waller Creek Venue Project approved by the voters at the May 2, 1998 election as authorized under Chapter 334 (Sports and Community Venues), Subchapter H (Hotel Occupancy Taxes) of the Texas Local Government Code.</p>
<p>§ 11-2-21 PENALTIES; INTEREST. A) In addition to the tax imposed under this chapter, a person shall pay a penalty of five percent of the tax due if the person: (1) fails to file a report on or before the due date; (2) fails to pay the tax imposed on or before the due date; or (3) files a report containing false information. (B) A person who fails to pay any amount of the tax and penalty due under Subsection (A) on or before the 60th day after the tax is due shall pay an additional five percent penalty on the unpaid tax. A delinquency penalty shall not be less than one dollar. (C) Beginning on the 61st day after the due date, delinquent taxes shall draw interest at a rate of 10 percent per annum. Source: 1992 Code Section 5-3-20(A); Ord. 031204-10; Ord. 031211-11.</p>	<p>Tightens timelines for adding penalty and interest.</p>	<p>PENALTIES AND INTEREST - DELINQUENCIES. A) In addition to the tax imposed under this chapter, a lodging provider shall pay a penalty of fifteen (15%) percent of the tax due and interest of ten (10%) percent per year if the hotel: (1) fails to file a report on or before the due date; (2) fails to pay the tax imposed on or before the due date; or (3) files a report containing false information. (B) The penalty of fifteen (15%) percent will be added eleven (11) days after the date of delinquency by the Finance and Administrative Services Department. A delinquency penalty shall not be less than one dollar. (C) Interest of ten (10%) percent will be added to the tax and penalty owed and will accrue eleven (11) days after the date of delinquency. (D) The City Finance and Administrative Services Department shall give the lodging provider written notice of the addition of the penalty by means of certified mail with a receipt signed by the addressee or by statutory overnight delivery.</p> <p>PENALTIES AND INTEREST ACCRUED AS A RESULT OF AN AUDIT. A) In addition to the tax imposed under this chapter, a lodging provider shall pay a penalty of fifteen (15%) percent of the tax due when an audit is conducted and the lodging provider is found to have filed a report containing false information, has improper or no documentation to support tax exclusions, or committed fraud. (B) The penalty of fifteen (15%) percent of the tax due will be added eleven (11) days after the date of delinquency by the Finance and Administrative Services Department. A delinquency penalty shall not be less than one dollar. (C) Interest of ten (10%) percent will be added to the tax and penalty owed and will accrue eleven (11) days after the date of delinquency. (D) The City Finance and Administrative Services Department, the Office of the City Auditor, or any third party contractually designated by the City shall give the lodging provider written notice of the addition of the penalty and interest by means of certified mail with a receipt signed by the addressee or by statutory overnight delivery.</p>