ALBANY COUNTY

Department of Audit and Control

Final Report

Hotel Occupancy Tax Audit

Fall 2020

SEAL OF THE COUNTY OF ALBANY

1683

November 2020

Susan Rizzo, Comptroller

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Background

The Albany County Comptroller's Office performed an audit of Occupancy Tax records related to tax collected by hotels and motels within the County. New York State and Local Laws[1] grant Albany County the authority[2] to impose and collect taxes on occupancy of hotel and motel rooms in Albany County and provides for the structure for the distribution of the funds collected. Occupancy tax collected equals six percent (6%) of the per diem rental rate charged to occupants for each hotel or motel room. The whole of the monies collected are distributed as follows:

- Albany Convention Center Authority Fund – 50%
- Times Union Center (Civic Center) Debt Service Fund. – 33%
- Albany County Convention and Visitors Bureau – 17%
    - Up to ten percent of this amount is retained by Albany County to offset the administrative expenses related to the occupancy tax.

The table below details occupancy tax collections for the first three quarters of 2020.

Collections Q1, Q2 & Q3 2020				
	2019	2020	Variance	
1st Quarter Collections	$ 1,387,618	$ 1,389,304	$ 1,686	0.12%
Late Payments	$ -	$ 301,367		
2nd Quarter Collections	$ 2,096,337	$ 586,428	$ (1,509,909)	-72%
3rd Quarter Collections	$ 2,507,881	$ 899,701	$ (1,608,180)	-61%
Total	$ 5,991,836	$ 3,176,801	$ (2,815,035)	-47%

Hotel and motel operators are required to keep current and accurate records of exempt and non-exempt revenue. Additionally, quarterly returns with payment in full must be filed in a timely manner through the Albany County Department of Finance. A penalty is imposed for the late filing of a quarterly return in the amount of five percent of the total amount owed for the first month past due. An additional one percent of the original amount due at the start of each additional month past due. During the second month past due, a notice will be delivered stating that the operator must file the past due return (with payment) within 30 days to avoid the

[1] Local Law No. 3 for 1980 as amended by Local Law No. 8 for 1981, Local Law No. 3 for 1986, Local Law No. 3 for 2005, Local Law No. 11 for 2006, Local Law No. 8 for 2009, Local Law No. 10 for 2010, Local Law No. 2 for 2012, Local Law No. 4 for 2014 and Local Law No.8 for 2016 pursuant to Chapter 693 of the Laws of 1980 of the State of New York, Chapter 375 of the Laws of 1985 of the State of New York, Chapter 531 of the Laws of 2005 of the State of New York, Chapter 194 of the Laws of 2006 of the State of New York, Chapter 105 of the Laws of 2009 of the State of New York, Chapter 401 of the Laws of 2010 of the State of New York, Chapter 312 of the Laws of 2012 of the State of New York, Chapter 228 of the Laws of 2014 of the State of New York, Chapter 452 of the Laws of 2016 of the State of New York and Chapter 134 of the Laws of the State of New York and Chapter 58 of the Laws of the State of New York.

[2] Authority is granted for a term of two years and must be renewed by resolution through the Albany County Legislature.

issuance of a warrant and lien against the property. Additional penalties are imposed for misclassification of exempt revenue in the amount of five percent of the amount owed as a result of the misclassification and one percent per month charged back to the date the original return and payment was due. Specific and flat rate fines are imposed in the amount of one thousand dollars for the following issues as observed during the audit process:

- Non-compliance with audit in terms of scheduling and participation with auditors
- Failure to have tax certificate displayed in the appropriate manner as required by law
- Operating an unregistered hotel or motel

Objectives

- Confirm that the hotel or motel is registered and is in compliance with tax certificate display requirements;
- Determine whether operator has accurately classified exempt and non-exempt revenue;
- Ensure that records provided related to exempt revenue are substantiated with appropriate documentation; and
- Determine amount of late fees, penalties and fines to be assessed, if any.

Scope

The scope of this audit includes all hotels and motels located and operating in Albany County. The Occupancy Tax Audit is performed twice annually and in total generally reviews between 30 and 40% of the existing locations. Locations are selected for audit on a two year rotating basis. Any location observed to be in noncompliance is reviewed as part of subsequent audits continuously until compliance is established and verified, as such the total number of locations audited varies from year to year.

Audit work was substantially completed in October, 2020.

Approach

To accomplish these objectives the DAC performed the following:

- Schedule site visit with hotel or motel operators;
- Perform reconciliation of physical records provided against quarterly returns filed with the Albany County Department of Finance;
- Review sample of documentation provided to support exempt revenue;

- Issue an invoice for any and all late fees, penalties and fines imposed.

Observations

We noted the following observation:

- Misclassification of exempt revenue at two locations. Auditors issued invoices to the management of both locations for unpaid tax and penalties totaling $7,100

Conclusion

The DAC performed the hotel occupancy tax audit at a total of 12 locations. The auditors reviewed records for taxable room sales of $12,267,615 which generated $736,057 in Occupancy Tax. Observations noted by auditors resulted in two hotels invoiced for $7,100 in unpaid occupancy tax and penalties.

Additionally, of the two hotels scheduled to be reviewed in the Spring that were closed due to the current public health crisis, one was re-opened and was audited. The remaining hotel will be added to next year's audit locations, if they do not reopen in 2020.

It should be noted that the Comptroller's Office observed, outside the scope of this audit, one hotel is currently in arrears of occupancy tax payments for the past eight quarters (two years). This hotel has been permanently shut down and will potentially be listed for sale in the near future. Warrants that would impede the sale contingent on the satisfaction of the owner's tax liability have not been filed, a procedure which is normally performed by Albany County Department of Law at the request of the Finance Department, a subdivision of the Department of Management and Budget (DMB). This matter remains under investigation and is being handled by the Albany County Finance Department.

I would like to thank all participating hotels for their cooperation with our audit team in performing this review.

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County Comptroller

Stephanie Slominski CIA,
Chief Auditor

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Michael Wheeler, Executive Deputy Comptroller