

Transient Occupancy Tax:

What is Transient Occupancy Tax?

Transient Occupancy Tax (TOT), also known as a "bed tax" or "hotel tax", is authorized under State Revenue and Taxation Code Section 7280 et seq. (see pp. 2 - 6 of this compendium for the actual content/language of the State enabling Statute).

The authority to levy TOT is granted to the legislative bodies of both cities and counties. The authority to collect TOT is generally granted to the County Tax Collector by the Board of Supervisors by means of an ordinance. The ordinance passed by a Board and is specific to that County.

TOT is an important additional source of non-property tax revenue to local government.

Transient Occupancy Tax (TOT) is levied for the privilege of occupying a room or rooms or other living space in a hotel, inn, tourist home or house, motel or other lodging (defined below) for a period of 30 days or less.

'Other lodging' includes, but not limited to:

- Camping sites
- Space at a campground or recreational vehicle park

Transient Occupancy Tax

From: "A Planner's Guide to Financing Public Improvements"

And

California Legislative Analysis's Office

The transient occupancy tax (TOT) is a popular type of excise tax available to both cities and counties. A TOT may be levied on the occupation of rooms in a hotel, inn, tourist home or house, motel, or other lodging where occupancy is to be 30 days or less. A TOT may also be levied on spaces in an RV park or campground (Chapter 1186, Stats. 1992). In concept, the revenues from a TOT can help offset general fund costs, such as police protection, street cleaning, and museums, that are engendered by the traveling public.

At this writing, over 340 cities and several counties levy transient occupancy taxes. Proposition 218 requires some existing TOTs (i.e., those enacted in 1995-96 without popular vote) to stand for a vote of ratification. Any new TOTs or increases must likewise be approved by voters.

The transient occupancy tax (TOT) is imposed on occupants for the privilege of occupying a motel, hotel, or similar room. The tax represents an attempt on the part of many local governments to "export" a portion of the tax burden to nonresidents and/or to recoup the costs imposed by nonresidents.

Cities and counties collected nearly \$900 million in TOT revenues in 1997-98.

See pp. 7-8 for taxation limitations

State of California
REVENUE AND TAXATION CODE
SECTION 7280-7283.51

7280. (a) The legislative body of any city, county, or city and county may levy a tax on the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days. The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county.

(b) For purposes of this section, the term "the privilege of occupying a room or rooms, or other living space, in a hotel, inn, tourist home or house, motel, or other lodging" does not include the right of an owner of a time-share estate in a room or rooms in a time-share project, or the owner of a membership camping contract in a camping site at a campground, or the guest of the owner, to occupy the room, rooms, camping site, or other real property in which the owner retains that interest.

For purposes of this subdivision:

(1) "Time-share estate" means a time-share estate, as defined by paragraph (1) of subdivision (x) of Section 11212 of the Business and Professions Code.

(2) "Membership camping contract" means a right or license as defined by subdivision (b) of Section 1812.300 of the Civil Code.

(3) "Guest of that owner" means a person who does either of the following:

(A) Occupies real property accompanied by the owner of either of the following:

(i) A time-share estate in that real property.

(ii) A camping site in a campground pursuant to a right or license under a membership camping contract.

(B) Exercises that owner's right of occupancy without payment of any compensation to the owner.

(C) "Guest of that owner" specifically includes a person occupying a time-share unit or a camping site in a campground pursuant to any form of exchange program.

(c) For purposes of this section, "other lodging" includes, but is not limited to, a camping site or a space at a campground or recreational vehicle park, but does not include any of the following:

(1) Any facilities operated by a local government entity.

(2) Any lodging excluded pursuant to subdivision (b).

(3) Any campsite excluded from taxation pursuant to Section 7282.

(d) Subdivision (b) does not affect or apply to the authority of any city, county, or city and county to collect a transient occupancy tax from time-share projects that were in existence as of May 1, 1985, and which time-share projects were then subject to a transient occupancy tax imposed by an ordinance duly enacted prior to May 1, 1985, pursuant to this section. Chapter 257 of the Statutes of 1985 may not be construed to affect any litigation pending on or prior to December 31, 1985.

(e) (1) (A) If the legislative body of a city, county, or city and county elects to exempt from a tax imposed pursuant to this section any of the following persons whose occupancy is for the official business of their employers, the legislative body shall create a standard form to claim this exemption and the officer or employee claiming the exemption shall sign the form under penalty of perjury:

(i) An employee or officer of a government outside the United States.

(ii) An employee or officer of the United States government.

(iii) An employee or officer of the state government or of the government of a political subdivision of the state.

(B) The standard form described in subparagraph (A) shall contain a requirement that the employee or officer claiming the exemption provide to the property owner one of the following, as determined by the legislative body of the city, county, or city and county imposing the tax, as conclusive evidence that his or her occupancy is for the official business of his or her employer:

(i) Travel orders from his or her government employer.

(ii) A government warrant issued by his or her employer to pay for the occupancy.

(iii) A government credit card issued by his or her employer to pay for the occupancy.

(C) The standard form described in subparagraph (A) shall contain a requirement that the officer or employee provide photo identification, proof of his or her governmental employment as an employee or officer as described in clause (i), (ii), or (iii) of subparagraph (A), and proof, consistent with the provisions of subparagraph (B), that his or her occupancy is for the official business of his or her governmental employer.

(2) There shall be a rebuttable presumption that a property owner is not liable for the tax imposed pursuant to this section with respect to any government employee or officer described in clause (i), (ii), or (iii) of subparagraph (A) of paragraph (1) for whom the property owner retains a signed and dated copy of a standard form that complies with the provisions of subparagraphs (B) and (C) of paragraph (1).

(f) The provisions of subdivision (e) are not intended to preclude a city, county, or city and county from electing to exempt any other class of persons from the tax imposed pursuant to this section.

7280.5. (a) The redevelopment agency of any city which has levied a transient occupancy tax pursuant to Section 7280 or 7281 may also, by ordinance, levy a transient occupancy tax in accordance with this part, if the city's ordinance entitles any person subject to a transient occupancy tax under the city's ordinance to credit the amount of transient occupancy taxes due to the redevelopment agency of that city pursuant to this section against the payment of taxes due under the city's ordinance.

(b) An ordinance of a redevelopment agency imposing a transient occupancy tax pursuant to this section shall contain an enacting clause which states as follows:

"The redevelopment agency of the City of ____ does ordain as follows:"

The ordinance shall be signed by the chairperson of the agency and attested by the clerk or secretary of the agency, and shall take effect immediately upon its final passage, but shall become operative on the first day of the first calendar quarter commencing more than 180 days after adoption of the ordinance. In all other respects, the ordinance shall be introduced and passed, and notice given by publication, in the manner provided by law for general law cities.

(c) Any redevelopment agency adopting an ordinance pursuant to this section shall not levy a transient occupancy tax in excess of the rate of transient occupancy tax levied by its city, and the tax shall be levied only on accommodations located in a redevelopment project area for which the taxes are pledged pursuant to subdivision (e) of Section 33641 of the Health and Safety Code.

(d) Any pledge pursuant to Section 33641 of the Health and Safety Code made with respect to taxes imposed under this section for the payment of principal and interest on bonds of a redevelopment agency shall constitute the obligation of a contract between the redevelopment agency and the holder of the bonds and shall be protected from impairment by the United States and California Constitutions. The provisions of this section which authorize the imposition of the taxes may not be repealed during the time that any of the bonds remain outstanding.

7281. The legislative body of any city or county may levy a tax on the privilege of renting a mobilehome, as defined in Section 18008 of the Health and Safety Code, which is located outside a mobilehome park for occupancy on a transient basis unless such occupancy is for any period of more than 30 days. Such tax when levied by the legislative body of a county shall apply only to the unincorporated areas of the county.

This section does not authorize any city or county to levy a tax on the privilege of renting any mobilehome when the tenant is an employee of the owner or operator of the mobilehome.

7282. Notwithstanding any other provision of law, no city, county, or city and county may levy a tax on the privilege of occupying a campsite in a unit of the state park system.

7282.3. (a) Notwithstanding any other provision of law, no city, county, or city and county may levy a tax under Section 7280 on any amount subject to tax under the Sales and Use Tax Law (Part 1 (commencing with Section 6001)) with respect to the sale of food products.

(b) This section shall also apply to charter cities.

(c) For purposes of this section, "food products" means food and beverage products of every kind, regardless of how or where served, and shall specifically include, but not be limited to, alcoholic beverages and carbonated beverages of every kind.

7283. A board of supervisors may, by ordinance or resolution, establish procedures for the collection of delinquent amounts of any tax levied pursuant to this chapter.

7283.5. (a) (1) A purchaser, transferee, or other person or entity attempting to obtain ownership of a property, the owner of which is required to collect the tax imposed pursuant to this chapter, may request the city, county, or city and county in which that property is located to issue a tax clearance certificate under this section.

(2) A city, county, or city and county that issues a tax clearance certificate under this section may charge an administrative fee to cover its costs in issuing the certificate.

(b) Within 90 days of receiving a request described in subdivision (a), a city, county, or city and county shall do either of the following:

(1) Issue the tax clearance certificate.

(2) (A) Request the current owner of the property to make available that owner's transient occupancy tax records for the purpose of conducting an audit regarding transient occupancy taxes that may be due and owing from the owner of the property.

(B) (i) Complete the audit described in subparagraph (A) on or before 90 days after the date that the current or former owner's records are made available to the auditing jurisdiction and issue a tax clearance certificate within 30 days of completing the audit.

(ii) If, after completing the audit, the city, county, or city and county makes a determination that the current owner's records are insufficient to make a determination of whether transient occupancy taxes may be due and owing, the city, county, or city and county is not required to issue a tax clearance certificate as otherwise required by this subdivision. The city, county, or city and county shall, within 30 days of making that determination, notify the purchaser, transferee, or other person or entity that made the request that it will not issue a tax clearance certificate due to the insufficiency of the prior owner's records.

(c) If a city, county, or city and county does not comply with subdivision (b), the purchaser, transferee, or other person or entity that obtains ownership of the property shall not be liable for any transient occupancy tax obligations incurred prior to the purchase or transfer of the property.

(d) For a tax clearance certificate issued under this section, all of the following apply:

(1) The certificate shall state the amount of tax due and owing for the subject property, if any.

(2) The certificate shall state the period of time for which it is valid.

(3) The purchaser, transferee, or other person or entity who obtains ownership of the property may rely upon the tax clearance certificate as conclusive evidence of the tax liability associated with the property as of the date specified on the certificate.

(e) Any purchaser, transferee, or other person or entity described in subdivision (a) who does not obtain a tax clearance certificate under this section, or who obtains a tax clearance certificate that indicates that tax is due and fails to withhold, for the benefit of the city, county, or city and county, sufficient funds in the escrow account for the purchase of the property to satisfy the transient occupancy tax liability, shall be held liable for the amount of tax due and owing on the property.

(f) This section may not be construed to relieve a property owner of transient occupancy tax obligations incurred when that owner owned the property.

7283.51. Notwithstanding any other provision of law, except in the case of fraud or the failure of a property owner to file a transient occupancy tax return, a city, county, or city and county may institute an action to collect unpaid transient occupancy taxes within four years of the date on which the transient occupancy taxes were required to be paid.

Voter-Approved Initiatives that Affect How Local Government Can Raise Revenues.

Prop. 218

Summary of Proposition 218's Major Points

- Proposition 218 is a Constitutional amendment. It supersedes any conflicting statutory law.
- Proposition 218 applies to all local government agencies, including charter cities. It does not apply to state agencies.

General and Special Taxes (Article XIII C, California Constitution)

- No general tax may be imposed, extended, or increased without first being approved by a majority of the jurisdiction's voters. A general tax must be considered at a general election. Any other scheduling of the vote requires unanimous approval of the agency's governing board.
- All taxes imposed by any local government are deemed to be either general taxes or special taxes. "Special tax" includes any tax imposed for specific purposes which is placed into a general fund. Special districts can only impose special taxes, not general taxes.
- Any general tax imposed on or after January 1, 1995 which was not subjected to voter approval must be placed before the voters for ratification by November 5, 1998. Any tax not ratified by the voters is repealed.
- General and special taxes can be reduced or repealed through the initiative process.

Prop. 62

GOVERNMENT CODE SECTION 53720-53730

Prop. 13

CALIFORNIA CONSTITUTION ARTICLE 13A [TAX LIMITATION]

Taxes

All cities and counties have the power to impose a variety of taxes. All taxes are either general or special taxes. Special taxes must be used for the specific purpose for which they are imposed.

Key things to know

- Cities may impose any type of tax not preempted by state law.
- Cities may not tax cigarettes, alcohol or personal income.
- A new or increased general tax requires approval by a majority of voters.
- A new or increased special tax requires approval by two-thirds of voters.
- General taxes and special taxes may be reduced or repealed by initiative.
- Special tax revenues must be accounted for in a separate fund. The city must prepare an annual report that includes (1) the special tax rate; (2) revenues collected and expended and (3) the status of any project funded by the special tax.

PROPERTY TAX

The property tax is based upon the value of real and tangible personal property.

Key things to know

- Property tax revenue is collected by counties and allocated according to state law within the county to cities, counties, special districts and school districts.
- The tax rate is constitutionally limited to 1 percent of the property's assessed value, plus rates imposed to fund indebtedness approved by voters prior to 1978.
- For the purpose of taxation, appraised real property values are limited to 1975-76 "full cash value" plus an annual adjustment for inflation not to exceed 2 percent.
- Property is reassessed at current full cash value upon a change in ownership.
- Property that declines in value may be reassessed.
- Cities may not increase the property tax, nor impose additional property tax, transaction tax or sales tax on the sale of real property.

TRANSIENT OCCUPANCY (BED) TAX

A transient occupancy tax is imposed on persons staying 30 days or less in a hotel, inn, or other lodging facility.

Key things to know

- Most cities use transient occupancy tax revenues for general purposes, but some budget a portion of them for tourism, business development or related purposes.
- Although collected by the hotel operator, the tax is imposed on the guest.