

CITY AND COUNTY OF SAN FRANCISCO

Tax Collector Regulation 2012-1

TAX ON TRANSIENT OCCUPANCY – MULTIPLE PARTY TRANSACTIONS; OCCUPANCY OF PRIVATE RESIDENCES

San Francisco Business and Tax Regulations Code

(a) Authority. The Tax Collector promulgates this regulation pursuant to the Tax Collector's authority to adopt rules and regulations under San Francisco Business and Tax Regulations Code §§ 6.16-1 and 504.

(b) Purpose. The transient occupancy tax ("TOT") is a tax on the occupancy of hotel guest rooms imposed under Articles 6 and 7 of the San Francisco Business and Tax Regulations Code ("Article 6" and "Article 7," respectively). This regulation interprets the definitions of "operator" as provided in § 501(a) of Article 7 and § 6.2-13 of Article 6, as well as the definition of "rent" as provided in § 501(f) of Article 7, to address the application of the TOT where a person other than an owner, possessor, or on-site proprietor receives payment for rent in connection with an occupancy transaction, including when payment is made to an Internet- or web-based company ("website company") for occupancy of a guest room in San Francisco. This regulation also interprets the definitions of "hotel" as provided in § 501(d) of Article 7 and "guest room" as provided in § 501(e) of Article 7, where occupancy is of private residences such as houses, condominiums and apartments. This regulation provides guidance regarding the TOT to such operators who receive payment for occupancy, as well as the owners and residents of private residences used for occupancy.

(c) Definitions. For purposes of this regulation the terms "occupant," "occupancy," "hotel," "guest room," and "rent" are as defined in § 501 of Article 7. The term "person" is as defined in § 6.2-15 of Article 6. The term "operator" is as defined in § 6.2-13 of Article 6 and § 501 of Article 7.

(d) Background. The City and County of San Francisco taxes the occupancy of a hotel guest room. The TOT is calculated as a percentage of the rent for the occupancy of a hotel guest room in San Francisco. The occupant is required to pay the TOT when paying rent. An operator is responsible for collecting the TOT from the occupant when it collects the rent from the occupant, and any person that collects rent is responsible for remitting the TOT to the City. If an operator fails to collect the TOT from the occupant, the operator is liable for the full amount of the TOT to the City, "the same as though the tax were paid by the occupant." (Art. 7, § 504.)

(e) Interpretation:

(i) A "guest room" within the meaning of the TOT includes a private residence (whether a single-family residence, condominium, apartment, or any other kind of residence) or any portion thereof, including but not limited to any room or space or portion thereof, without regard to whether such space is shared with or accessible to others. Occupancy of such guest room is subject to the TOT.

(ii) The full amount that an occupant pays to secure or obtain the right to occupy a guest room is "rent" subject to the TOT, regardless of whether any portion of that payment is characterized as a "service fee" or otherwise. The full amount received by a website company, or any other person acting as merchant of record in connection with an occupancy transaction, is "rent" subject to the TOT.

(iii) A website company, or any other person acting as merchant of record who receives rent in connection with an occupancy transaction, is an "operator" who is responsible for collecting the TOT owed by the occupant and for remitting the TOT to the City. Any person receiving such rent shall provide a receipt to the occupant. Such receipt shall include a separate line item specifically identifying the TOT.