



SHORT-TERM RENTALS (AKA SHORT-TERM VACATION RENTALS)

Preserving and Protecting Transient Occupancy Taxes (TOT)

Issue

We understand that platform operators, specifically for short-term rentals, have reached out to cities in the nation, including some in California, regarding programs to collaborate to implement this sharing economy – and to collect the taxes.

MuniServices has partnered with over 200 jurisdictions in the State for various revenue enhancement projects that go beyond auditing general fund revenue streams. MuniServices consults its local government partners and encourages and supports innovation, the use of technology and creativity to enhance and protect local revenues. We have provided lodging audit services to its clients for over 20 years and also developed a way to discover vacation rental properties to confirm they are in a jurisdiction's boundaries and collecting and remitting TOT.

We have been active and monitoring the emergence of the shared economy when it comes to short-term vacation rentals. The proliferation of this lodging option has created some difficulties for local governments to equitably enforce its TOT ordinance and collect taxes from short-term rentals (stays for less than 30 days).

This paper captures considerations when contemplating a partnership with a short-term rental platform operator (websites advertising vacation rentals) for the collection of the corresponding local revenues. This report is organized as follows:

- Broader Considerations
- Protection and Recommendations
- New Laws and New Technology

Broader Considerations for Municipalities

- **Enforce an Existing TOT Ordinance:** Ensure the ability to continue to equitably enforce the jurisdiction's TOT ordinance.
- **Data Requirements:** Require the necessary data from any platform program to ensure the proper tracking, collection and remittance of revenues.
- **Access to Data and Audits:** Ensure access to the data and adequate audit frequency.
- **Transparency:** Consider the impact open data and transparency requirements when entering into a contract (confidential or not).
- **Future Laws and Technology:** Ensure that the provisions of any contract with respect to new laws and technology with an operator protect revenues and enforcement.
- **Protecting Enforcement:** Are health and safety requirements being met and as well as policy with respect to illegal operators.



Protection and Recommendations

For the Jurisdiction

- **Data for all Taxable Items:** Clarify and ensure that other taxable items are included in the rent reported to the jurisdiction. Short-term rentals need to provide all gross revenue including no-show fees, pet fees, non-refunded deposits, and anything that is mandatory to the rental of the house.
- **Forms:** Consider a review of forms and making the necessary updating to list all and other taxable items (any charge that is mandatory to the stay such as mandatory resort fees, no show fees, pet fees, etc.).
- **Exemptions:** Short-term rental platform needs to keep documentation on any exemptions (stays over 30 days and Federal employees traveling on federal business).
- **Final Invoice Documenting Separate Taxes:** The final invoice should be documented that has the various charges and taxes broken out separately to allow for the determination that the correct taxes are being charged and remitted.
- **Determining Fees and Taxes:** Clarify which charges by the host are subject to the tax. For example charges such as cleaning fees, damage waiver fees, and credit card fees are generally considered mandatory charges and subject to being taxable. Please refer to your specific ordinance to be sure.
- **Deposits:** Returned deposits may take a week or so before they are returned to the transient, so a final invoice should be documented that includes the rent, fees, taxes, etc., broken out, separately.

For the Host

- **Record Keeping:** Ideally, they would follow as best as possible the reporting and records keeping required of your current traditional lodging providers.
- **Record Retention and Types:** As for records access and reviews, we encourage a requirement that conforms to the jurisdiction's TOT ordinance. Many ordinances require operators to keep records for 3 or 4 years; this allows a more comprehensive and fair review. The types of records that should be retained include: individual guest folios; housekeeping reports; submissions to franchiser, if applicable; bank statements; food cost allocation (if incorporated into room charge); and documentation to support compliance with any special conditions imposed by the jurisdiction.

For the Platform Operator

- **Host Charges a Fee on Collections:** If the collections include the taxes, clarify whether the (operator) fee also applies to the 'rent' and does the fee become taxable. In many cases all mandatory charges that get charged to the occupancy are taxable. (Note: Receive clarification if the operator is also the platform provider and if the fee is deducted from the rent that is reportable to the jurisdiction.)

New Laws and New Technology

We encourage the protection to ensure that future legislation and technology does not impede the enforcement of a contract or the ability to collect revenues. The below for example is representative of significant related legislation from the 2015 Legislative Session.

- **Advertiser of an online platform:** Must have property owner's permission (**SB 761/ Hall**) *Chaptered*
- **Use of shared economy services by state employees:** Prevents state agencies from prohibiting employees on official business from using transportation network companies or short-term rentals (**AB 229/ Chang**) *Chaptered*
- **TOT revenues from residential rentals:** Bolsters local effort to regulate land use impacts and collect taxes (**SB 593/ McGuire**) *Two-Year*