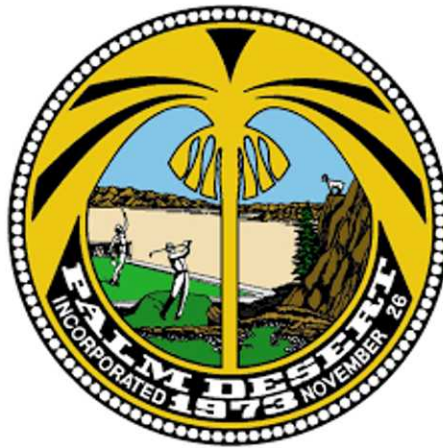


City of Palm Desert
Transient Occupancy Tax Compliance Review
Final Report
Period of Review: January 2019-December 2021



Avenu Insights & Analytics conducted Phase II of the Compliance Program on 13 properties that were determined to require additional investigation of their compliance with the City's TOT ordinance. Prior to the beginning of the reviews the auditors confirmed with the city that they agree with the common guest fees outlined by our team on Exhibit 1. We received correspondence on September 12, 2022, that the city attorney agreed. The City of Palm Desert forwarded appointment letters to the selected hotels on September 15, 2022. Avenu Insights & Analytics consequently sent the Appointment letters on September 26, 2022, to the hotels, requesting the following data to be provided:

1. P&L Statements for December, displaying month-end and YTD totals, for each year in the review period.
2. P&L Statements for each of the selected months .
3. Monthly recap of rents generated from internal reservation system for the selected months.
4. Documents that reconcile the P&L/monthly recaps to the amounts entered on the monthly Transient Occupancy Tax Forms.
5. Copy of one folio for each of the selected months; transient and non-transient.
6. If Applicable – For each of the selected months, please provide a listing by guest, of all exemptions and the nature of each, such as:
 - a. Stays in excess of 30 consecutive days
 - b. Government stays, or any of the other allowable exemptions.
7. For each of the following items, indicated which ones are subjected to the Occupancy Tax:
 - a. No-show fees
 - b. Attrition/cancellation fees from group bookings
 - c. Late/Early check out/in fees
 - d. Extra Person charges
 - e. Resort fees
 - f. Surcharges
 - g. Roll-away bed fees
 - h. Pet fees
8. Schedule of average monthly occupancy rates, by season.
9. Schedule of average monthly room rates, by season.

10. Description of any special package deals such as, “room plus spa plus meals” and a copy of a folio containing any of these deals.

11. Contracts from “Group Bookings” if there were any attrition/cancellation fees.

Audit Procedures and Testing Methodology

Once data is received the auditor performs the analysis and performs 3 main reviews/validation:

1. Review and verification of Gross Rent reported to the City.
2. Review and verification of proper Deductions reported to the city (test).
3. Validation of the legitimacy of the TOT exemptions.

Please find below additional information specific to each property:

1. Business Name: Best Western Plus Palm Desert Resort

Location: 74-695 HWY 111, Palm Desert, CA 92260

Phone: (760) 340-4441

Permit #: 36797

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The taxpayer forwarded the requested audit data in September, October, and November of 2022. The auditor reviewed provided data and found no deficiencies.

2. Business Name: Courtyard by Marriott

Location: 74895 Frank Sinatra Dr, Palm Desert, CA 92211

Phone: (760) 776-4150

Permit #: 66388

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The taxpayer provided the auditor in November 2022 and April, May and September of 2023 Profit & Loss Statements, TOT returns, 2 Daily closing Reports, Income Statements, Exemption Reports and Support, Group Contracts, Recap, No Show Fees and Pet Cleaning Fee reports for the audit period. The auditor reviewed the data and determined that not all taxable charges were included in their reported amounts. The analysis compared reported Gross Rent to the internal accounting records (P&P and Daily Closing Report) and results in an under reporting of \$57,329.06. The final comparison with the P&L was used since it is the result of using the Daily and adjustments made to produce the P&L. The findings were emailed to them on May 4, 2023, and afterward discussed via phone with Mr. Gary Wu.

3. Business Name: Fairfield Inn & Suites

Location: 74-764 Technology Dr, Palm Desert, CA 92211

Phone: (760) 636-1300

Permit #: 2016-68030

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The taxpayer provided the auditor in October and November 2022 as well as July and September 2023 Revenue reports, Tax calculator sheets, TOT forms, Dailey Reports, Folios, Charge backs and other income reports. The analysis compared Gross Rent reported to the city with the internal accounting records which results in an overreporting of \$10,522.26. The auditor informed the Hotel that if a claim for a refund was made to the city that specific detailed support for the claim needs to be presented. During the review, the auditor determined that tax was collected on all fees, except the Cancellation Fees, which was \$75,008.95. The

Tax due on these fees is \$8,250.98. The findings were emailed to Manilal Patel on July 13, 2023.

4. Business Name: Hampton Inn & Suites

Location: 74900 Gerald Ford Dr, Palm Desert, CA 92211

Phone: (760) 340-1001

Permit #: 29435

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The taxpayer provided the auditor in October 2022 with their Gross Revenue, Account Detail Reports Sample Month Reports, Miscellaneous Revenue Reports, Net Revenue reports for the audit period. The auditor reviewed the data and identified that they were not reporting certain “Additional Fees”, “Other Guest Charges”, and “Smoking fees and damage fees”. They collected tax on additional fees and smoking/damage fees but did not collect tax on other guest charges. The proposed assessment report was emailed to the taxpayer on November 4th, 2022, after discussing the audit findings with their taxpayer contact, Mrs. Cornelia Balmer. Cornelia Balmer emailed her agreement to the findings on November 4th, 2022.

5. Business Name: Holiday Inn Express & Suites – Millennium

Location: 74777 Technology Dr, Palm Desert, CA 92211

Phone: (760) 284-1000

Permit #: 2022-0002

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

For this hotel, the city notified us that the hotel opened in November 2021, and they requested an 8-month audit period (Nov21-Jun22). The taxpayer provided in September and November

of 2022 Dailey Activity reports, Manager Reports and exempt reports for multiple months, other Income reports as well as Clearing, Profit & Loss, Daily Room accounts as well as several Folios as requested. The auditor reviewed the records and identified an under-reporting of the gross revenue by \$4,183.53, which resulted in additional tax due of \$460.19. The audit team forwarded the proposed assessment to Debra Bell on June 21, 2023, and received an agreement response on June 21, 2023, from Debra Bell.

6. Business Name: Homewood Suites by Hilton

Location: 36999 Cook St, Palm Desert, CA 92211

Phone: (760) 568-1600

Permit #: 47578

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The hotel provided in February and September of 2023 Annual Sales & Use Tax reports, Sample month detail reports, reconciliations and exemptions, Profit & Loss Statements and Folio examples. The analysis compared reported gross rent with the internal accounting records - the Income Statements and the Daily Reports. Both comparisons resulted in a net underreporting variance caused by the hotel not reporting guest cancellations as gross rent. Since the Daily Report detail was more comprehensive, the results from that analysis were used as the final finding. The auditor provided the hotel with the proposed assessment in February 2023, and they are not in agreement with the taxation of cancellation fees. The delinquent tax found is \$1,381.61.

7. Business Name: Hotel Paseo Autograph Collection

Location: 45-400 Larkspur Ln, Palm Desert, CA 92260

Phone: (760) 340-9001

Permit #: 2018-0001

Examiner: Adrian Cedillo

Audit Commentary

The hotel provided in January, February and May 2023 Attrition & Cancellation Folios, Deduction reports, Excluded Folios, GL, Revenue Data, Transient & Package Folios as well as Miscellaneous reports and reconciliations. The analysis performed by the auditor compared the property's internal records to the TOT filings remitted to the City of Palm Desert. Upon review, it was determined that Gross Rent was under-reported throughout the audit period. In 2019, there was an over-reported variance due to valet parking being included. Credit was allowed as this is not a taxable item. 2020, a portion of the valet parking was included again. In addition to this variance, it was determined that cancellation fees were reported twice in February 2020. Credit was also allowed for the sum of these amounts. There was a large under-reported variance in 2021 due to Resort Fees not being reported for October and November. The total gross under-reporting was \$184,190.43, which caused a tax liability of \$20,260.95. The proposed assessment was emailed to them on July 25th, 2023, but we have not received a response from them regarding an agreement or disagreement.

8. Business Name: JW Marriott Desert Springs Resort & Spa

Location: 74-855 Country Club Dr, Palm Desert, CA 92260

Phone: (760) 341-2211

Permit #: 2482

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The hotel provided the auditor in February, June and July of 2023 with the sample month data and Reconciliation reports. The auditor reviewed the data and found issues with an overall underreporting on gross rent on cancellation fees and attrition fees in the of \$1,450,440.19, creating a tax deficiency of \$159,548.42. Mrs. Denise DeLozier received our proposed assessment on July 20, 2023. She responded right away letting our auditors know that they had reached out to the city to obtain further guidance on the cancellation fees taxability.

9. Business Name: Marriott's Desert Springs Villas

Location: 1091 Pinehurst Ln, Palm Desert, CA 92260

Phone: (760) 779-1200

Permit #: 2673

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The auditor reviewed provided data that was received in November 2022 and July 2023 and found no deficiencies needed to be assessed.

10. **Business Name:** Marriott's Shadow Ridge

Location: 9003 Shadow Ridge Rd, Palm Desert, CA 92211

Phone: (760) 674-2600

Permit #: 60062

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The auditor reviewed provided data in November 2022 and found no deficiencies needed to be assessed.

11. **Business Name:** Residence Inn by Marriott

Location: 38305 Cook St, Palm Desert, CA 92211

Phone: (760) 776-0050

Permit #: 66394

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The hotel provided the requested data in September and October 2022 as well as April and July 2023. The auditor's analysis compared reported gross rent to the underlying accounting records and resulted in an under reporting of \$186,080.63, which is \$20,468.87 in transient occupancy tax. The auditor emailed the proposed assessment to Mr. Gary Wu on April 26, 2023, and Mr. Wu responded on May 10th, 2023, that he was fine with the assessment.

12. **Business Name: Springhill Suites by Marriott**

Location: 72-322 CA-111, Palm Desert, CA 92260

Phone: (760) 341-9100

Permit #: 2020-0001

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The auditor received requested data in June 2023 and found no deficiencies needed to be assessed.

The city notified us that the hotel opened in November 2019.

13. **Business Name: The Westin Desert Willow Villas**

Location: 75 Willow Ridge, Palm Desert, CA 92260

Phone: (760) 636-7000

Permit #: 48304

Examiner: Tami Nguyen/Gennaro DiMassa

Audit Commentary

The auditor received requested data in July 2023 and found no deficiencies needed to be assessed.

Summary Audit Findings and/or Errors Discovered

	NAME	Under-Reported Gross Rent					Total	ADDITIONAL TAX LIABILITY
		Attrition Fees	Cancelation Fees	Other Guest Charges	Unexplained Accounting Errors	Over Deduction of Non-Taxable Rent		
1	Best Western Plus P.D. Resort						\$ -	\$ -
2	Courtyard by Marriott				\$ 57,329.06		\$ 57,329.06	\$ 6,306.20
3	Fairfield Inn & Suites				\$ 75,008.95		\$ 75,008.95	\$ 8,250.98
4	Hampton Inn & Suites			\$ 76,498.68			\$ 76,498.68	\$ 8,414.85
5	Holiday Inn Express & Suites			\$ 4,183.53			\$ 4,183.53	\$ 460.19
6	Homewood Suites by Hilton		\$ 12,560.05				\$ 12,560.05	\$ 1,381.61
7	Hotel Paseo Autograph Collection			\$ 184,190.43			\$ 184,190.43	\$ 20,260.95
8	JW Marriott Desert Springs Resort	\$ 537,318.67	\$ 913,121.52				\$ 1,450,440.19	\$ 159,548.42
9	Marriott's Desert Springs Villas						\$ -	\$ -
10	Marriott's Shadow Ridge						\$ -	\$ -
11	Residence Inn by Marriott	\$ 38,273.00			\$ 144,391.63	\$ 3,416.00	\$ 186,080.63	\$ 20,468.87
12	Springhill Suites by Marriott						\$ -	\$ -
13	The Westin Desert Willow Villas						\$ -	\$ -
		\$ 575,591.67	\$ 925,681.57	\$ 264,872.64	\$ 276,729.64	\$ 3,416.00	\$ 2,046,291.52	
							at 11%	
							\$ 225,092.07	\$ 225,092.07

EXHIBIT 1

Nine Common Guest Fees

1. No-Show Fees:

A No-Show Fee is charged when the potential guest breaches the contract he entered into when the reservation was made. By giving the lodging provider his credit card number, he is authorizing him to charge one nights rent (or however many days were agreed) as liquidated damages for a breach of the contract. And if the potential guest is charged “rent” then he must also be charged TOT.

2. Attrition /Cancellation Fees for group bookings:

Same as No-Show Fees except that whereas these fees relate to an individual guest, Attrition Fees relate to an organization that has booked a series of “sleeping” rooms, meeting rooms and food beverage. The contract generally specifies that an “Attrition Fee” will be charged for any breach with specific liquidated damages. The ratio of sleeping accommodations to total services provided would be the percentage applied to the stated Attrition Fee which would be subject to TOT.

3. Late/Early Check Out/In Fees:

A fee charged to a guest who requests to stay later than the stated check-out time, or early check-in. The Fee directly relates to sleeping accommodations and is therefore considered rent and is subject to TOT.

4. Extra Person Charges:

Room rates are generally quoted for double occupancy and any guests exceeding that stated number would be subject to this extra charge. This charge directly relates to sleeping accommodations and is therefore considered rent and is subject to TOT.

5. Resort Fees:

These fees are an additional charge to guests that cover such things as Wi-Fi, use of swimming pool, Gym or any other guest service. If the fee is Non-Optional (if you don’t pay, you don’t get to stay), then it is just another name for rent. And if it is rent, then it is subject to TOT.

6. Cleaning Fees: (These fees relate only to units rented by rental agencies)

These Non-Optional fees are charged to guests for cleaning the rented sleeping accommodations (single family houses, condominiums or townhouses) owned by individuals. They are sometimes included in the quoted rental rate and would be subjected to TOT. If however these fees are listed separately they are still considered Non-Optional rent charges that are subject to TOT.

7. Surcharges:

A surcharge would be a charge in addition to the usual rental payment and would include such items as an energy surcharge or an in-room safe charge. If these fees are Non-Optional, they are considered rent by another name, but still rent and therefore are subject to TOT.

8. Roll-Away Bed Charge:

These charges are directly related to sleeping accommodations and are therefore deemed consideration paid for the privilege of occupancy and therefore are subject to TOT.

9. Pet Fees:

These Fees are considered as a Non-Optional charge for the guest that agrees to pay this extra charge to have their pet stay in the room. If the guest does not agree to pay the extra charge, then he is not allowed to occupy the room – with his pet. And since Non-Optional charges are considered another name for rent, they are subject to TOT.

These charges can be classified as follows:

DIRECTLY RELATED TO SLEEPING ACCOMMODATIONS

- No-Show Fees
- Attrition/Cancellation Fees
- Late/Early Check-Out/In Fees
- Extra Person charge
- Roll-Away Bed Charge

NON-OPTIONAL CHARGES (Mandatory)

Mandatory fees are charges to the guest that must be paid for the guest to occupy the room. These fees are “suggested as mandatory” for occupancy. However, minor exceptions would not invalidate this rule.

- Resort Fees
- Cleaning Fees
- Surcharges
- Pet Fees