



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604 11
www. CityofSacramento.org

CONSENT
December 15, 2009

Honorable Mayor and
Members of the City Council

Title: Ordinance Amendment: Uniform Transient Occupancy Tax Ordinance.

Location/Council District: Citywide

Recommendation: Adopt an **Ordinance** adding section 3.28.190 to the Sacramento City Code relating to the Uniform Transient Occupancy Tax and requiring payment prior to litigation.

Contact: Brad Wasson, Revenue Manager, 916-808-5844

Presenters: Brad Wasson, Revenue Manager, 916-808-5844

Department: Finance

Division: Revenue

Organization No: 06001211

Description/Analysis

Issue: The City's Uniform Transient Occupancy Tax provisions, Chapter 3.28 of the City Code, do not expressly require a party responsible for collecting and remitting to the City transient occupancy taxes to remit to the City the amount of a tax assessment, including interest and penalties, prior to pursuing judicial review of the assessment. Additionally, those provisions do not prevent parties from attempting to enjoin or prevent the City's efforts to collect such taxes. As such, a party may attempt to delay payment of taxes due and owing to the City while litigation related to the City's tax assessment is pending.

The proposed ordinance (referred to herein as "pay first, litigate later") will expressly require the transient occupancy tax assessment, including interest and penalties, to be paid as a condition precedent to pursuing judicial review by way of litigation relating to the tax assessment. It will thereby protect the City against delay tactics that could preclude collection of taxes legitimately due and owing to the City.

The State of California enforces this rule for state taxes, as set forth in Art. XIII, Sec. 32 of the California Constitution:

SEC. 32. No legal or equitable process shall issue in any proceeding in any court against this State or any officer thereof to prevent or enjoin the collection of any tax. After payment of a tax claimed to be illegal, an action may be maintained to recover the tax paid, with interest, in such manner as may be provided by the Legislature.

The State requires that all taxes due to the State be paid before seeking judicial review of a tax assessment. The pay first, litigate later rule allows revenue collection to continue during litigation so funds necessary for essential public services are not withheld from the State.

However, there is no comparable constitutional provision expressly applying the pay first, litigate later rule to local taxes. Although there is case law that arguably requires taxpayers to pay contested local taxes before they can litigate the matter even if the local ordinance does not so require, out of an abundance of caution many local governments in the State have added this rule to their municipal codes to ensure the application of the pay first, litigate later rule for local tax assessments. The City Attorney has advised that it is in the City's best interest to include an express provision to this effect.

Policy Considerations: Adoption of the proposed ordinance will provide the City with the same benefits as the State and other local jurisdictions. Furthermore, it will provide for the timely recovery of transient occupancy taxes due and owing to the City and reduce costs associated with potential delays incurred in litigation.

Committee Action: The City Manager determined this matter was urgent and Chairperson Sheedy approved that this item bypass the Law and Legislation Committee.

Environmental Considerations: None. The ordinance recommended in this report is not considered a project so it does not have any potential to effect the environment as stated in the California Environmental Quality Act ("CEQA").

Rational for Recommendation: In accordance with Sacramento City Code Chapter 3.28 and existing case law, the City is allowed to collect tax due to it prior to litigation of a refund claim consistent with the Constitutional requirement for State taxes.

Financial Considerations: The ordinance recommended in this report will not have a negative financial impact on the City and may in fact reduce costs associated with litigating tax liability issues.

Emerging Small Business Development (ESBD): Not applicable. No goods or services are being purchased.

Respectfully Submitted by: Brad Wasson
Brad Wasson, Revenue Manager

Approved by: Leyne Milstein
for Leyne Milstein, Director of Finance

Recommendation Approved:

for Ray Kerridge
Ray Kerridge
City Manager

Table of Contents:

Report	Pg	1
Attachments		
1 Ordinance	Pg	4

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE ADDING SECTION 3.28.190 TO THE SACRAMENTO CITY CODE FORBIDDING THE ENJOINMENT OF CITY TAX COLLECTION EFFORTS AND REQUIRING THE PAYMENT OF ASSESSED TAXES TO THE CITY AS A PREREQUISITE TO JUDICIAL REVIEW

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Section 3.28.190 is added to the Sacramento City Code to read as follows:

3.28.190 Lawsuits for Tax Refunds or Injunctive Relief.

No suit for a tax refund, or for injunctive relief to prevent or enjoin the collection of taxes sought to be collected pursuant to Title 3 of the City Code, may be brought against the city or any officer, employee, board, commission or authority of the city until said disputed tax, interest and penalties owing have been first paid to the city.

Adopted by the City of Sacramento City Council on by the following vote:

Ayes:

Noes:

Abstain:

Absent:

MAYOR

Attest:

City Clerk

Passed for Publication:

Published:

Effective: