

City of Los Alamitos

**Agenda Report
Consent Calendar**

**December 16, 2013
Item No: 8L**

To: Mayor Warren Kusumoto & Members of the City Council
Via: Bret M. Plumlee, City Manager
From: Cary S. Reisman, City Attorney
Subject: Transient Occupancy Tax (TOT) Appeal

Summary: Best Western has appealed from an assessment of penalties and interest regarding its transmittal of Transient Occupancy Tax payments to the City.

Recommendation: Set a Hearing on the Transient Occupancy Tax Appeal from Best Western for January 21, 2014 at 6:00 p.m.

Background

On November 13, 2013, Govind Investments, Inc, doing business as Best Western ("Best Western"), 10591 Los Alamitos Boulevard, filed two appeals from assessments of penalty and interest charges in the amount of \$5,312.21 and \$2,846.08, respectively. The penalties and interest were imposed because Best Western was late in paying transient occupancy taxes ("TOT") due on October 31, 2012 and on October 31, 2013. The appeals state that the third quarter, 2012 late payment resulted from a lost in the mail situation, and that the 3rd quarter 2013 late payment was due to an oversight. Best Western paid the underlying taxes on the 2012 payment on January 31, 2013, and on the 2013 payment on November 5, 2013. The 2012 appeal was not timely filed, but the 2013 appeal was.

Discussion

Pursuant to the Los Alamitos Municipal Code, tax underpayments may be appealed within fifteen days of receiving notice of the determination of tax due. The Council shall then fix a time and place for hearing the appeal. The text of section 3.16.090 of the Los Alamitos Municipal Code setting forth the procedure on appeals is:

Any operator aggrieved by any decision of the tax administrator with respect to the amount of such tax, interest and penalties, if any, may appeal to the council by filing a notice of appeal with the city clerk within fifteen (15) days of the serving or mailing of the determination of tax due. The council shall fix a time and place for hearing such appeal, and the city clerk shall give notice in writing to such operator at his last known place of address. The findings of the council shall be final and conclusive and shall be served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found to be due shall be immediately due and payable upon the service of notice. (Ord. 115 § 10, 1964)

Therefore, at this time, the City Council should set a hearing on the appeal, for January 21, 2014 at 6:00 p.m.

Fiscal Impact


None.

Submitted By:



Cary S. Reisman
City Attorney

Approved By:



Bret M. Plumlee
City Manager

*Attachment: 1. Appeal Letters dated November 13, 2013 and E-mail from Dan Bhakta dated April 24, 2013
2. E-mail from Linda Magnuson, Interim Finance Director, dated November 6, 2013*

RECEIVED
CITY OF LOS ALAMITOS
2013 NOV 13 PM 12:54

Govind Investments, Inc.
DBA Best Western
10591 Los Alamitos BLVD
Los Alamitos, CA 90720

November 13, 2013

City of Los Alamitos
3191 Katella
Los Alamitos, CA 90720

Account No: 01-0366
Invoice No: 201311062729

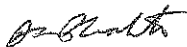
I wish to appeal the penalty and interest charge in the amount of \$2,846.08 that was incurred because of new management.

On November 5, 2013 we received an email notice from Kim Engel that the City of Los Alamitos had not received a payment for the TOT tax for July through September 30 that was due October 30, 2013 from the Best Western in Los Alamitos. The same day we realized that the payment was late, the GM at Best Western, 10591 Los Alamitos BLVD hand delivered the check to the city of Los Alamitos. Although, our check was somehow lost in the mail for the 3rd Quarter of 2012, technically this is the first time that we made a late payment to the city of Los Alamitos for our TOT tax.

Since our acquisition of this property in 1998, we have spent over \$1,000,000 in capital improvements and in 15 years we have never been late with our payment. I request that you check the history of the TOT tax paid on this hotel, you will see what we have been paying in taxes is more than double compared to previous ownership.

Please review the case and if you have any questions do not hesitate to contact me at 562-799-5593. I would appreciate a waiver of the penalty and interest charges of ~~\$1,012.21~~ 2,846.08.

Sincerely,



Dan Bhakta
President

Aylin Forbes
562-598-2299

Please call & let her
know what the next
step is.

RECEIVED
CITY OF LOS ALAMITOS

2013 NOV 13 PM 12: 54

Govind Investments, Inc.
DBA Best Western
10591 Los Alamitos BLVD
Los Alamitos, CA 90720

November 13, 2013

City of Los Alamitos
3191 Katella
Los Alamitos, CA 90720

Account No: 01-0366
Invoice No: 201302202109

I wish to appeal the penalty and interest charge in the amount of \$5,312.21 that was incurred because of a check that was originally sent on time by post but for some reason it was not received by the City of Los Alamitos.

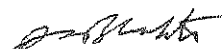
On January 24, 2013 we received notice that the City of Los Alamitos had not received a payment for the TOT tax for the 3rd Quarter of 2012 from the Best Western in Los Alamitos. I had called and spoke with Kim Engel and explained to her that the check was mailed as usual and for some reason you never received it. As soon as we were aware of the city not receiving the payment we hand delivered a replacement check for the 3rd and 4th Quarter. The checks were both dated January 31, 2013.

Also on April 22, 2013 we received an invoice for a penalty charge for the amount of \$5,312.21. I again called and spoke Kim Engel whom instructed me to call and email J. Brooks of the penalty charge and the explanation on why there should be no penalty fine. On April 24, 2013 I left J. Brooks a lengthy voice mail and I emailed J. Brooks in addition to copying Kim Engel (see proof of email enclosed) I never received any instruction or reply from either J. Brooks or Kim Engel therefore I assumed that it was resolved. I never received any invoices or follow up letters sent to our location until November of 2013.

Since our acquisition of the property in 1998, we have spent over \$1,000,000 in capital improvements and in 15 years we have never been late with our payment. I request that you check the history of the TOT tax paid on this hotel, you will see what we have been paying in taxes is more than double compared to previous ownership.

Again, since my email to Kim Engel and J. Brooks I never received any invoices or follow up letters therefore I assumed that the penalty had been waived. Please review the case and if you have any questions do not hesitate to contact me at 562-799-5593. I would appreciate a waiver of the penalty and interest charges of \$5,312.21.

Sincerely,



Dan Bhakta
President

kim engel

Search Mail

Search Web



- Compose
- Inbox (3)
- Drafts (67)
- Sent
- Spam (99+)
- Trash (20)
- Folders
- Recent

Search results | Delete | Move

FW: Best Western (2)

Immediately notify the sender of this error and delete the original message and attachment(s).

From: /o=EX1/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ashish1
Sent: Wednesday, April 24, 2013 5:20 PM
To: JBrooks@cityoflosalamitos.org
Cc: KEngel@cityoflosalamitos.org
Subject: Best Western

Hello,

I had left you a detailed voicemail Monday regarding a TOT penalty for my hotel. I had contacted you based on the instructions from your assistant. Again, in 15 years we have never been late with our payment. The payment was mailed like usual & for some reason you never received it. I had mailed a replacement check as soon as I was aware of the city not receiving my payment. Finally, you will see what I have been paying in taxes is more then double compared to previous ownership. I would appreciate a waiver of the penalty.

Regards,
Dan Bhakta
 President

Govind Investments
 3020 Old Ranch Parkway, Suite 300
 Seal Beach, Ca 90740
 562 799 5593 - Tel
 714 761 3700 - Fax
dan@govindinvestments.com

ABILITY (aripiprazole)

IMPORTANT WARNING ON SUICIDALITY AND ANTIDEPRESSANT DRUGS: Children, adolescents, and young adults taking antidepressants for Major Depressive Disorder (MDD) and other psychiatric disorders are at an increased risk of suicidal thinking and behavior. [More](#)

[Click to expand](#)

U.S. FULL PRESCRIBING INFORMATION, including Boxed WARNINGS, and Medication Guide

IMPORTANT SAFETY INFORMATION AND INDICATION: Elderly people with dementia-related psychosis (eg, an inability to perform daily activities due to increased memory loss) taking

- Messenger
- Calendar
- Contacts
- Notepad
- Yahoo Mail for Mobile
- Send Feedback

Windy Quintanar

From: Linda Magnuson
Sent: Tuesday, December 03, 2013 4:30 PM
To: Windy Quintanar
Subject: FW: TOT Delinquency Penalties
Attachments: SKMBT_C45213110509490.pdf; SKMBT_C45213110613520.pdf

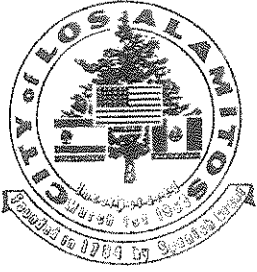
From: Linda Magnuson
Sent: Wednesday, November 06, 2013 2:20 PM
To: bestwesternia@yahoo.com
Cc: Kim Engel; Greg Korduner
Subject: TOT Delinquency Penalties

As a follow up to our meeting yesterday, November 5, I have verified that the Code is pretty clear on the collection of late penalties and interest. Unfortunately there is no recourse for the late penalties incurred last year. This amounts to \$5,312.21. In addition since this past quarter's tax was due on October 30, 2013 and wasn't paid until yesterday, there is penalty and interest due equaling \$2,846.08. According to the Code, Section 3.16.090 you may appeal the current fees (\$2,846.08) to the City Council by filing a notice of appeal with the City Clerk within fifteen (15) days of receiving this notice.

As indicated the City is willing to work with Best Western by offering a six month payment option. If accepted the payments will be \$1,359.72/mo for five months with the final payment being \$1,359.69. The first payment will be due by 11/30/13 and continuing on a monthly basis until paid.

Sincerely,

Linda G. Magnuson
Interim Finance Director
City of Los Alamitos
3191 Katella Ave.
Los Alamitos, CA 90720-5800
(562) 431-3838 Ext. 202



Please make payment to:
City of Los Alamitos
 3191 Katella
 Los Alamitos, CA 90720
 Phone 562 431-3538

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-0366	11/06/2013	11/27/2013

INVOICE

INVOICE NUMBER	AMOUNT DUE	AMOUNT ENCLOSED
201311062729	\$2,846.08	

GOVIND INVESTMENTS, INC.
 DBA BEST WESTERN
 10591 LOS ALAMITOS BLVD.
 LOS ALAMITOS CA 90720

----- Important: Return this portion -----

----- Retain this portion for your records -----

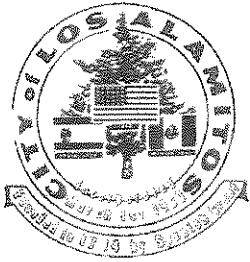
INVOICE NUMBER
201311062729

City of Los Alamitos

3191 Katella
 Los Alamitos, CA 90720
 Phone 562 431-3538

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-0366	11/06/2013	11/27/2013

ITEM DESCRIPTION	UNITS	TYPE	PRICE	AMOUNT
PENALTY AND INTEREST	N/A		N/A	2,846.08
<p>TOTAL PENALTY AND INTEREST DUE FOR LATE PAYMENT OF TRANSIENT OCCUPANCY TAX FOR 3Q13 = \$2,846.08</p>				
*****THANK YOU*****			TOTAL DUE	\$2,846.08



Please make payment to:
City of Los Alamitos
 3191 Katella
 Los Alamitos, CA 90720
 Phone 562 431-3538

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-0366	2/20/2013	3/13/2013

INVOICE

INVOICE NUMBER	AMOUNT DUE	AMOUNT ENCLOSED
201302202109	\$5,312.21	

GOVIND INVESTMENTS, INC.
 DBA BEST WESTERN
 10591 LOS ALAMITOS BLVD.
 LOS ALAMITOS CA 90720

----- Important: Return this portion -----

----- Retain this portion for your records -----

INVOICE NUMBER
201302202109

City of Los Alamitos

3191 Katella
 Los Alamitos, CA 90720
 Phone 562 431-3538

ACCOUNT NUMBER	BILL DATE	DUE DATE
01-0366	2/20/2013	3/13/2013

ITEM DESCRIPTION	UNITS	TYPE	PRICE	AMOUNT
PENALTY AND INTEREST	N/A		N/A	5,312.21
<p>TOTAL PENALTY AND INTEREST DUE FOR LATE PAYMENT OF TRANSIENT OCCUPANCY TAX FOR 3Q12 = \$5,312.21</p>				
*****THANK YOU*****			TOTAL DUE	\$5,312.21