

TOWN COUNCIL STAFF REPORT

Subject: Appeal of TOT/TBID penalties and interest for enforcement case #66
2059 Meridian Blvd Unit #29

Meeting Date: September 15, 2021

Written by: Rob Patterson, Administrative Services / Finance Director

RECOMMENDATION:

Uphold the findings of hearing officer Haislip Hayes regarding the administrative citation hearing. Make a finding of noncompliance with the Town of Mammoth Lakes Municipal Code, and uphold the TOT, TBID, penalties, interest, administrative citations, and enforcement charges from the Notice of Determination in an amount due of \$6,016.03.

BACKGROUND:

Chapter 3.12 of the Municipal Code established the Uniform Transient Occupancy Tax (TOT) ordinance for the Town of Mammoth Lakes. This enforcement case is a revenue violation, meaning the operator is conducting business in an area zoned for transient rental but has not adhered to the Municipal Code regarding the remittance of TOT and Tourism Business Improvement District (TBID). The Town of Mammoth Lakes Revenue team maintains the business tax and transient occupancy tax certificate accounts using monthly routines of creating returns and sending delinquency notices. According to the Municipal Code, when operators fail to remit TOT and TBID on time the delinquency is cause for penalties and interest to be applied. Enforcement of the Municipal Code is a primary function of the Revenue team in order to preserve a transparent and equitable business environment. Operators who fail to remit TOT and TBID negatively affect legal businesses conducting transient rentals and paying tax.

ANALYSIS/DISCUSSION:

On April 27, 2021, while searching Host Compliance for unverified properties, the owner, Ms. Renee Croce, was advertising and operating a transient rental business at 2059 Meridian Blvd, Unit 29, without a valid Business Tax Certificate or Transient Occupancy Tax certificate. On April 28, 2021 an initial \$500 Administrative Citation was sent to Ms. Croce with a response due within 15 days, May 13, 2021. On May 13, 2021 a request for an extension to produce rental revenue documents was granted due to Ms. Croce being out of the country. The revenue documents were due by June 4, 2021. On June 3, 2021 revenue documents were received but were heavily redacted and materially altered, so they were returned to Ms. Croce. A subsequent non-altered version was received on June 8, 2021 and included \$16,413.75 in taxable revenue that was not included on previous revenue documents.

The team completed analysis of the supplied revenue documents and utilizing the gross receipts provided by Ms. Croce, prepared a Notice of Determination outlining the total TOT, TBID, penalties, interest, administrative citations, and enforcement charges for this enforcement case totaling \$11,016.03.

2059 Meridian Boulevard Unit 29
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Taxable Gross Revenues	\$	52,977.75
TOT	\$	6,887.11
TOT - Penalties & Interest	\$	2,295.29
TBID	\$	529.78
TBID Penalties & Interest	\$	403.85
Citations - Health Order Violations	\$	400.00
Enforcement Charges	\$	500.00
Total Notice of Determination	\$	11,016.03

The penalties and interest for TOT were calculated in accordance with the Town of Mammoth Lakes Municipal Code 3.12.090 and 3.12.100 covering the penalty portion and section 3.12.120 covering the interest portion.

A summarization of Section 3.12.090 and 3.12.100 outline the charge of 15% penalty for the first month of delinquency and 15% for the second month of delinquency. These penalties are charged against each month of revenue identified in the documentation supplied by Ms. Croce. The total penalty for any individual month of revenue is 30% of the TOT Tax due.

3.12.090 - Original delinquency.

Any operator who fails to pay any tax imposed by this chapter within the time required shall pay, in addition to such tax and any interest such tax may accrue, an original delinquency penalty of ten dollars or fifteen percent of the amount of the tax, whichever dollar amount is greater; provided, however, that any operator who has not been late in paying any tax imposed by this chapter within the preceding three calendar years shall, upon application of the operator to the tax collector within fifteen days after the date such tax first became due, pay an original delinquency penalty of ten dollars or a total of one percent per day of the amount of tax due for each day such tax is delinquent, whichever dollar amount is greater. Every penalty imposed, and such interest as accrues under the provisions of this chapter, shall become part of the tax required to be paid. Interest shall accrue on all unpaid taxes until paid. Notwithstanding the foregoing, the town council may by resolution specify that interest shall accrue on all unpaid taxes until paid, but not on penalties imposed on delinquent amounts.

3.12.100 - Continued delinquency.

A. Any operator who fails to pay any delinquent tax, penalties and interest on or before the lapse of thirty days following the date on which the tax first became delinquent, shall pay an additional delinquency penalty, over and above that provided in [Section 3.12.090](#), of ten dollars or fifteen percent of the amount of the tax, penalties and interest then due, whichever is greater. Notwithstanding the foregoing, the town council may by resolution specify that the delinquency penalty shall be the greater of ten dollars or fifteen percent of the amount of the tax then due, excluding penalties and interest.

The interest calculated in this case is in accordance with section 3.12.120 of the Municipal Code which has been provided below.

3.12.120 - Interest.

In addition to the penalties imposed by this chapter, any operator who fails to remit any tax imposed by this chapter shall pay interest at the rate of one and one-half percent per month or fraction thereof on the amount of the tax, inclusive of penalties, from the date on which the remittance first become delinquent, until paid. Notwithstanding the foregoing, the town council may by resolution specify that interest shall accrue on all unpaid taxes until paid, but not on penalties imposed on delinquent amounts.

The calculation of TBID penalties and interest are governed by the TBID Management District Plan 2018 – 2023, with similar language and identical rates of penalty and interest as the calculations used for TOT. The penalties and interest in this enforcement case were calculated in accordance with these governing rules.

During the pandemic the Mono County Health Officer issued several orders designed to minimize the impact of COVID-19 on our community from visitation. One of those restrictions was requiring a 24-hour gap between rental stays. The nature of these orders applies to the activity regardless of the fact the business was being operated legally or illegally. During our enforcement cases, we review the data to determine if violation of these orders occurred and if so, citations are issued for those violations. In this enforcement case, there were two instances where the 24-hour gap order was violated with an administrative citation of \$200 issued for each bringing the total to \$400 on this enforcement case.

One of the appeal remedies afforded to Ms. Croce was a review of administrative citations by a citation hearing officer. This hearing was conducted on July 7, 2021, by the Town Finance Director, revenue team staff, and Haislip Hayes, in the capacity of Hearing Officer. Ms. Croce attended via Zoom, stated her case, and answered questions from Mr. Hayes. On July 14, 2021, Officer Hayes upheld the citations and a letter stating the findings was mailed to Ms. Croce on July 16, 2021. The citation hearing is an opportunity to review citations issued and reduce the number, if appropriate, prior to a full appeal with Town Council. In this case, no reduction was warranted, and all citations are available for appeal and review by Town Council.

Enforcement charges are charged against all enforcement cases and are designed to recover costs incurred by the Town in the form of staff time necessary to conduct the enforcement case. The minimum charge for an enforcement case is \$500 which was applied to this case.

Ms. Croce has provided \$5,000 in payments against the total balance reducing the outstanding balance to \$6,016.13 and she has requested a payment plan for the remaining balance. The Town has granted a 6-month payment plan for this outstanding balance.

During this enforcement case, there were a number of times where communication lapses caused additional steps by Town staff. In particular, after the administrative citation hearing was completed, a final notice of determination was sent to Ms. Croce. The Town did not receive payment or further correspondence from Ms. Croce during the required timeframe and an intent to lien was sent to Ms. Croce on July 30, 2021. At the deadline for response to the intent to lien, staff received a request for a payment plan and a request for appeal to Town Council.

Staff granted the request for a payment plan and initiated the process to bring this appeal to Town Council on September 15, 2021. During the appeal hearing on this date, staff will provide a brief on the enforcement case and Ms. Croce will provide information in defense of her case and a request for removal of penalties, interest, citations, and enforcement charges.

OPTIONS ANALYSIS

Option 1: Uphold the findings of hearing officer Haislip Hayes regarding the administrative citation hearing. Make a finding of noncompliance with the Town of Mammoth Lakes Municipal Code, and uphold the TOT, TBID, penalties, interest, administrative citations, and enforcement charges from the Notice of Determination in an amount due of \$6,016.03.

Option 2: Make alternate findings and direct town staff accordingly.

FINANCIAL CONSIDERATIONS:

The Town of Mammoth Lakes relies on transient occupancy tax for more than 60% of its General Fund, without which it would not be able to provide services such as snow removal, recreation programming, and road maintenance. Operators of illegal transient rental properties are not only failing to contribute funds necessary for the Mammoth Lakes community to thrive but are taking away potential business from operators who are following the Town laws. To waive penalties, interest, enforcement charges, and/or administrative citations routinely would result in a significant loss of revenue and likely increase tax collection efforts and enforcement difficulties.

LEGAL CONSIDERATIONS:

The Town's Municipal Code does not authorize the Tax Collector to waive or reduce tax, penalties, interest, enforcement charges, or administrative citations that are due to the Town. The Town Council is acting in a semi-judiciary capacity and may reduce or amend the recommendation of the Tax Collector.