



A Tradition of Stewardship
A Commitment to Service

NAPA COUNTY GRAND JURY

2008-2009

Final Report on

NAPA VALLEY TRANSIENT

OCCUPANCY TAX

How Much is Being Lost?

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NAPA COUNTY GRAND JURY
P.O. BOX 5397
NAPA, CALIFORNIA 94581

A Tradition of Stewardship
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May 19, 2009

The Honorable Raymond A. Guadagni
Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, CA 94559

Dear Judge Guadagni,

Pursuant to Section 933(a) of the California Penal Code, the 2008-2009 Napa County Grand Jury submits to you its Final Report on Napa Valley Transient Occupancy Tax "*How Much is Being Lost*". Our investigation of this subject was conducted in a manner consistent with the California Penal Code, this Court's Charge, and the historic role of the Grand Jury – to protect the interests of the citizens of Napa County.

This is the ninth in a series of final reports we will be issuing before our term ends. I would like to acknowledge the hard work and dedication of the Grand Jury which our report reflects. It is a privilege and a pleasure to work with them.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "William E. Trautman", written over a horizontal line.

William E. Trautman
Foreperson
2008-2009 Napa County Grand Jury



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A Commitment to Service

NAPA COUNTY GRAND JURY

P.O. BOX 5397

NAPA, CALIFORNIA 94581

To the Citizens of Napa County:

The 2008-2009 Napa County Grand Jury, in exercise of its duty under California law, investigated the reporting, auditing and collection of the Transient Occupancy Tax collected by local governmental agencies in Napa County for the use of any lodging for 30 days or less. This Tax is unique in that it is the only tax which is completely local and no part of it is shared with any state or federal agency. It becomes discretionary revenue in the General Fund to be administered by the City Council or Board of Supervisors at they deem appropriate.

While investigating the collection and reporting methods of the Transient Occupancy Tax, the Grand Jury learned that only one in five of County hospitality operators reporting the Tax met all the requirements set forth in the County ordinance. The municipal codes and the local ordinances give the tax administrator absolute autonomy regarding penalties, interest and the power to impose them. However, this power is inconsistently applied.

During the Grand Jury's review of the local governmental agencies' audits, the most recurring items of noncompliance were the lack of acceptable records and underreporting of gross receipts by the operators. The Grand Jury is concerned with the lack of oversight in the collection, auditing, and reporting procedures. With potential revenue in the millions of dollars from uncollected Transient Occupancy Tax, interest and penalties, the Grand Jury recommends each local governmental agencies improve its oversight and enforcement of the Tax.

The Grand Jury commends the auxiliary Finance Department personnel of the various cities for their efforts in collecting Transient Occupancy Tax. The Grand Jury is also appreciative of the cooperation of the Auditor/Controller's Department for Napa County.

The Napa County Counsel has reviewed this final report on Transient Occupancy Tax and the Presiding Judge of the Napa County Superior Court has certified that the report complies with Title 4 of the California Penal Code. The report has also been accepted and filed as a public document by the County Clerk.

Copies of this report are available for your review in the Napa City/County Library and online by following the link to Grand Jury at <http://www.napacourt.com/>. It is our pleasure and honor to serve you during the 2009-2009 Grand Jury tenure. We hope you find our report informative.

Respectfully submitted,

The 2008-2009 Napa County Grand Jury

NAPA VALLEY TRANSIENT OCCUPANCY TAX

“How Much is Being Lost?”

SUMMARY

The 2008-2009 Napa County Grand Jury, charged with investigating and reporting on local government agencies, conducted an investigation of the County of Napa, Cities of American Canyon, Napa, St. Helena and Calistoga, and the Township of Yountville Finance Departments' process of reporting, auditing, and collecting the Transient Occupancy Tax (TOT).

TOT is a tax collected from visitors to the Napa Valley who stay in hotels, motels, bed and breakfasts (B&B's) and vessels (houseboats) and then forwarded to the respective General Funds of each city/township and the County. The rate of TOT varies between 10-12 percent. The amount of TOT collected in the entire Napa Valley for the year 2007-08 was over twenty-seven million dollars representing over 225 million dollars in room revenues. The only two audits conducted in 2007-08 show \$96,787 was not collected. Although the ordinances and municipal codes clearly require interest and penalties for nonpayment of the TOT, the governmental agencies are neither enforcing nor collecting the interest or penalties accrued for nonpayment of TOT on a consistent basis. Audits on the collection and payment of the TOT are also not being conducted consistently, resulting in a significant loss of revenue for the Cities and the County.

While investigating the collection and reporting methods of TOT, the Grand Jury learned that only 20 percent of County hospitality operators reporting TOT revenue were in complete compliance with the legal requirements. Only one in five operators met all requirements as set forth in County ordinance regarding the collection of TOT. The municipal codes and local ordinances give the tax administrator absolute autonomy regarding penalties, interest and the power to impose these penalties. However, this power is inconsistently applied.

The TOT collected in the Napa Valley is the only tax which remains completely in the Valley. No part of it is shared with state or federal entities. All TOT revenue is available as discretionary income to local governmental agencies. It is used by these agencies to support public benefit projects such as nonprofit organizations, the community center under construction in the Town of Yountville, and other special projects.

During the Grand Jury's review of the audits provided by local governmental agencies, the most recurring items of noncompliance were the lack of acceptable records and the underreporting of gross receipts by the operators. There exists a serious lack of oversight of the collection of TOT in many cases. Protocols for the collection and tracking of TOT vary among the City and the County agencies resulting in a loss of revenue. For example, due to an inadequate tracking system, the City of Napa Finance Department has no way to

determine whether or not the number of rooms on record corresponds to the number of rooms licensed by the Business Licensing Department. With potential revenue in the millions of dollars from uncollected TOT, interest and penalties, the Grand Jury recommends each local governmental agency improve its oversight and enforcement of the TOT. The accurate reporting and collection of this important source of revenue must be made a high priority. For a more detailed look at the TOT of Napa Valley see appendix.

BACKGROUND

The Napa Valley enjoys a worldwide reputation for its beauty, world-class wine industry, gourmet restaurants and balmy climate, all of which promote many outdoor activities making the Valley a desirable travel destination. According to the Napa Valley Visitor's Bureau 12.5 million visitors came to the Valley last year.

When visitors to the Valley stay for thirty days or less at hotels, motels, B&B's, inns, and houseboats, they pay a 10 to 12 percent TOT. This local tax revenue stays in the specific city or county in which it is collected; it is the only tax that is not shared with state or federal agencies. Newly constructed hotels and resorts have the potential to generate significant revenues for Napa County and the Cities of American Canyon, Napa, St. Helena, Calistoga, and the Town of Yountville.

The collection of TOT is required under local ordinance/municipal code at a rate determined by local elections. However, within all the local governmental agencies investigated, there are inconsistencies in the collection of this tax, and in the respective record keeping systems.

METHODOLOGY

The Grand Jury met with representatives of the Finance Departments of local governmental agencies responsible for monitoring the TOT. The Grand Jury reviewed the policies, procedures, and job descriptions of each person interviewed. It also reviewed the TOT collection and audits performed over the past three to five years.

Napa County

Interviews conducted:

- Representatives of the Napa County Auditor/Controller's Department
- Member of the Board of Supervisors
- Representatives of the Napa County Treasurer's Department

Documents reviewed:

- Uniform Transient Occupancy Tax Ordinance, Napa County code
- Napa County Transient Occupancy Tax Received, 1/07-12/07
- Napa County Transient Occupancy Tax Received, 1/06-12/06
- Napa County Transient Occupancy Tax Received, 1/05-12/05
- Napa County Transient Occupancy Tax Received, 1/04-12/04
- Napa County Transient Occupancy Tax Received, 1/03-12/03
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/04 - 9/30/05

- Napa County Auditor-Controller Internal Audit (lodge operator), 5/01/04 - 9/30/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/06 - 12/31/06
- Napa County Auditor-Controller Internal Audit (lodge operator), 4/01/03 - 4/30/04
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/06 - 12/31/06
- Napa County Auditor-Controller Internal Audit (lodge operator), 10/01/04 - 9/30/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/04 - 9/30/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/04 - 3/31/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/04 - 9/30/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/31/04 - 3/31/05
- Napa County Auditor-Controller Internal Audit (lodge operator), 1/01/05 - 9/30/05
- Transient Occupancy Tax (TOT) sent to Treasure for collection, 2008
- One “Full House” day in Napa County Report
- Napa County Lodging Inventory 2008
- Napa County Transient Occupancy Tax Collection Graph
- Policies and Procedures
- Department Summary
- Comprehensive Financial Report 2007-2008

CITY OF AMERICAN CANYON

Interviews Conducted:

- Representatives of the City of American Canyon

Documents Reviewed:

- American Canyon Chapter 3.16 Transient Occupancy Tax
- Yearly Transient Occupancy Tax Report, 2006-2009
- City of American Canyon Budget 2006-2007
- Comprehensive Financial Report 2005
- Comprehensive Financial Report 2006
- Comprehensive Financial Report 2007
- TOT registration form
- TOT registration permit
- TOT Tax return form
- TOT exemption certificate

CITY OF NAPA

Interviews Conducted:

Representatives of the City of Napa

Documents Reviewed:

- City of Napa Basic Financial Statement, 2002-2003
- City of Napa Basic Financial Statement, 2003-2004
- City of Napa Basic Financial Statement, 2004-2005
- City of Napa Basic Financial Statement, 2005-2006
- City of Napa Basic Financial Statement, 2006-2007

- City of Napa Basic Financial Statement, 2007-2008
- TOT Remitters Report, 2008-2009
- Monthly Transient Occupancy Tax return
- Napa Municipal Code 3.20, Transient Occupancy Tax
- Cover letter sent to new operators
- City of Napa Finance Department Web Site, <http://www.cityofnapa.org>.
- Napa Valley Marketplace, Nov. 2008, *Why Hotels?*

YOUNTVILLE TOWNSHIP

Interview conducted:

- Representative of Yountville Township

Documents reviewed:

- Town of Yountville Request for Exemption from Transient Occupancy Tax Sheet
- Independent Accountants Procedures Report
- Transient Occupancy Tax Revenue (Audit)
 - a. Year 2004
 - b. Year 2005
- Contract with Brownell & Duffey (Auditor)
- Town Council Staff Report (acceptance of the TOT report)
- Town of Yountville Transient Occupancy Tax Revenue Results of Applying Agreed Upon Procedures.
- Return of Transient Occupancy Tax (Tax Return)
- Town of Yountville Transient Occupancy Tax Revenue Summary, 1991-2008
- Receipt from a Yountville hotel
- Yountville, California: Appropriations: General Obligation 2008 (2 credit analyst)
- Transient Occupancy Tax Chapter 3.16
- Independent Accountants Procedures Report
- Transient Occupancy Tax Revenue (Audit)
 - a. Year 1998
 - b. Year 1999
- Contract with Brownell & Duffey (Auditor)
- Town Council Staff Report, 9/02/03
- Transient Occupancy Tax report, 1991-2007
 - a. Revenues
 - b. Occupancy Rate
 - c. Room Rates

CITY OF ST. HELENA

Interview Conducted:

- Representative of the City of St. Helena

Documents reviewed:

- Transient Occupancy Tax Return (Form)

- Management's Discussion and Analysis, 2007
- Comparison of Financial Status (General Fund) 2007
- Statements of Revenues, 2007
- Comprehensive Annual Financial Report, 2007
- Fiscal year 2007-2008 Operations and Maintenance Budget
- Comprehensive Annual Financial Report, 2007
- Operations and Maintenance Budget, 2007-2008
- Transient occupancy Tax Returns
- Financial Statements 2003-2004
- Financial Statements 2004-2005
- Financial Statements 2005-2006
- Financial Statements 2006-2007
- Financial Statements 2007-2008

CITY OF CALISTOGA

Interviews Conducted:

- Representatives of the City of Calistoga

Documents Reviewed:

- Statement of Revenues, Expenditure, Changes in fund balance 2007
- Rules on Diplomatic Customer
- Transient Occupancy Municipal Code chapter 3.16
- Transient Occupancy Tax Reporting (Form)
- City of Calistoga Staff Report, 2007
- Brownell & Duffey Public Accountants Letter of Bid, 2007
- City of Calistoga Memorandum, dated 10/07/08
- City of Calistoga Transient Occupancy Tax Revenues (1998-08)
- *TOT audit pulls in \$23,000*, Weekly Calistogan article 10/09/08
- Calistoga Reporting Form and Guidelines
- TOT Revenues & Monthly Receipts, 2004-2005
- TOT Revenues & Monthly Receipts, 2005-2006
- TOT Revenues & Monthly Receipts, 2006-2007
- TOT Revenues & Monthly Receipts, 2007-2008
- TOT Revenues & Monthly Receipts, 2008-2009
- Copy of Brownell and Duffey Audit (audit date 02/29/08)

DISCUSSION

What is TOT?

The local governmental agencies of Napa Valley have been collecting a tax for the use of any lodging for thirty days or less since 1954. The rate of this tax is determined by a vote of the residents of each City through a ballot measure. In 2004, all Cities and the County, with the exception of American Canyon, voted to raise the TOT rate to 12 percent. The tax rate in American Canyon is 10 percent. This tax is completely local and not shared with the state or

federal government. The funds are allocated by the County Board of Supervisors (BOS) or City Councils within their discretion.

Ordinance/Municipal Code

The local governmental agencies have a municipal code/ordinance outlining the parameters for the collection of TOT. Napa County Ordinance 3.32 details requirements for operators in the unincorporated areas of Napa County. The Cities of American Canyon (Municipal Code 3.24), Napa, (MC 3.20), Yountville (MC 3.16), St. Helena (MC 3.28), and Calistoga (MC 3.16) each detail their requirements under the Municipal Codes listed. A detailed description of these ordinances/municipal codes can be found online at the various city and county websites.

The due date for payment of TOT varies according to the ordinance/municipal code. The Cities of American Canyon, Napa, St. Helena, and Calistoga require payment monthly. The Town of Yountville collects TOT bi-monthly and Napa County requires payment quarterly.

A Provision is made for penalties of 10 percent for nonpayment of TOT if the operator does not remit payment by the day it is due. For delinquencies of over thirty days, an additional 10 percent is assessed on the amount of tax due in addition to the initial penalty.

Interest per month charged on the late payment of TOT varies by city. The City of American Canyon imposes 1.5 percent interest on late payments while the Cities of Napa, Calistoga, and the Town of Yountville impose 1 percent interest. The County of Napa charges 1.5 percent interest, and the City of St. Helena 1.6 percent interest for late payments. The penalties and interest are not consistently collected.

The penalty for failure to remit the TOT is uniformly 25 percent on the amount of tax not paid, with the exception of American Canyon. American Canyon states a penalty for fraud will be assessed on 100 percent of the tax, interest and penalties previously accrued.

The Cities' municipal codes and the County's ordinance provide guidelines for exceptions to the collection of TOT. Government personnel and diplomats, when on official business, are exempt from city and county tax. An exemption form with copy of the individual's picture ID is utilized to meet this requirement. The operator can then provide proof of exemption when remitting the TOT to the local governmental agency.

In the event an operator wishes to appeal a finding on the amount of TOT due, it must first contact the tax administrator in writing within ten days of the finding. If the operator is still not satisfied, it may, within fifteen days of the administrator's decision, appeal to the City Council or BOS by filing a notice of appeal with the City Clerk or Clerk of the BOS's. The ruling of the City Council or BOS is final.

Operators must keep records of TOT for three years. This will enable the auditor to verify the amount of TOT collected. A number of operators were not in compliance with this requirement making an audit impossible.

None of the local governmental agencies provide new operators with a written copy of the municipal code or local ordinance in its entirety. Although this information is available

online, the Grand Jury recommends this information be provided to a new operator so it can be knowledgeable of its obligations with respect to the collection of TOT from guests.

Reporting

As noted above each local governmental agency collects TOT at various intervals: monthly, bi-monthly, or quarterly as set forth in its individual municipal code/ordinance. The operators in American Canyon are given the most complete information regarding the process for remitting the TOT to the Finance Department. This includes a TOT registration form, an “Important Information” document, TOT Return Form, and an Exemption Certificate. The “Important Information” document briefly covers the following: the rate of TOT, an abbreviated version of the Municipal Code, payment submission instructions, exemption regulation, record retention, and contact information.

Unlike American Canyon, the Cities of Napa, St. Helena, Calistoga and the Town of Yountville only provide new operators copies of the TOT remittance form.

Auditing

During the Grand Jury’s review of the TOT audits provided by local governmental agencies, the most recurring items of noncompliance were the lack of acceptable records and the underreporting of gross receipts by the operators. Only Napa County requests a response from the operators regarding the findings and recommendations of an audit. The City of Calistoga and Town of Yountville have no such requirement. The frequency with which the local governmental agencies conduct audits varies. For example, the County attempts to conduct audits yearly. The Town of Yountville has conducted audits bi-annually. The City of Calistoga has had one audit of all operators in the last decade. The Cities of St. Helena and Napa do not conduct audits. The City of American Canyon is new to the hospitality business and a schedule for the auditing process has not yet been developed.

Local governmental agencies conducting audits would like to employ more personnel to facilitate the performance of routine internal audits, but current budget constraints prevent this. Lack of internal audits prevents the local governmental agencies from accurately ascertaining the amount of TOT being reported and collected. The only governmental agencies to audit at least once in the past five years are Napa County, Yountville, and Calistoga.

In addition, the practice of some B&B operators commingling TOT with their own personal funds was reported to be a problem for an agency attempting to conduct an audit.

County of Napa Auditing Procedures

The audits conducted by the County of Napa have three distinctive segments. The operators are rated on the following:

- *NONCOMPLIANCE: “Refers to a failure to comply with the uniform Transient Occupancy Tax code or ordinance. Noncompliance which could have a direct and material effect on the determination of Summary of Room Rent and Tax due amounts. (For example when an operator reported deductions from room rent for occupancies which the operator deemed not transient, but which were less the 30 days).”*

- *IMMATERIAL INTERNAL CONTROL WEAKNESS: “A control deficiency exists when the design or operation of a control does not allow the operator or employees, in the normal course of performing their assigned functions to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency or combination of control deficiencies that adversely affect the resort’s ability to initiate, authorize, record, process, or report taxable receipts and transient tax paid reliably ... such that there is more than a remote likelihood that a misstatement of the resort’s transient occupancy tax return that is more than inconsequential will not be prevented or detected by the resort’s internal controls. (For example when the lack of a procedure for reconciliation between tax owed as 12 percent of room rent, and tax actually collected results in immaterial discrepancies in tax owed not being detected).”*
- *MATERIAL INTERNAL CONTROL WEAKNESS: “A material weakness is a significant deficiency, or combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the tot returns will not be prevented or detected by the resort’s internal control. (For example records maintained are incomplete/inconsistent and the auditor is not able to gain confidence in the reported room rent/tax owed.)”*

The County of Napa has sixty-five operators representing 833 rooms for transient occupancy. The County conducted three audits in the past five years. Only 20 percent of the operators were found to be in complete compliance with the above stated principles. Therefore, 80 percent of operators are not in compliance. No audits were conducted in 2003-04, or 2004-05. During the audits of 2005-06 nine operators were found to be underreporting room revenues by over \$66,000. Tax revenue due to the County was nearly \$18,000, with over \$5,000 being waived at the discretion of the tax administrator.

In the audit of 2006-07, there was an underreporting of over \$245,000, \$206,000 which resulted from a disagreement over the interpretation of the County TOT ordinance (energy surcharge) and more than \$39,000 in disallowed deductions. After clarifying this matter, the tax administrator waived the TOT due on the \$245,000 with the proviso that in the future TOT will be collected on the energy surcharge. The County Finance Department has since advised all operators remitting TOT to the County that it is necessary to collect TOT on all energy surcharges charged to a room. This should prevent any more misunderstandings. The past due TOT, interest and penalties due on the disallowed deductions are to be billed by the tax administrator as the operator has not yet remitted payment.

For the audit conducted in 2007-08, five operators were found to be underreporting nearly \$170,000 in room revenue. The County has not received the past due TOT of over \$17,000 as of the date of this report.

Another potential source of TOT revenue which has recently come under scrutiny is houseboat rentals. It remains to be seen whether the tax administrator will pursue collecting TOT on these vessels as required by the County ordinance.

Yountville and Calistoga Auditing Procedures

The TOT audits by these Cities, on randomly selected days, verified daily occupancy records. Daily records were totaled and compared to monthly revenues and when possible, compared to bank statements. Nontaxable exempt transient occupancy was reviewed for compliance with the City or Town code. The total room revenue for the year was traced to the operator's general ledger, financial statements, and federal income tax returns when available. However, there was no provision made for any operator to respond to the findings of the audit.

Although the same methods were employed to arrive at the findings in the audits for the Town of Yountville and the City of Calistoga, the results were different for each local governmental agency.

The Town of Yountville has ten operators representing 340 rooms for transient occupancy. Only one audit was conducted during the past five years. In the audit conducted in 2007, for the year 2004/05, the operators were found to underreport room revenue of nearly \$108,000, representing over \$20,000 including interest and penalty due to the Town of Yountville. The tax administrator chose to waive the penalties and interest in the audit findings, reducing the amount requested from the operators to \$10,000.

In the audit conducted in 2000, for the fiscal year 1998/99, eight operators underreported room revenues of nearly \$12,000, representing over \$2,000 past due TOT to the Town of Yountville. Included in the audit were two operators who had not maintained adequate records of TOT collected thereby making it impossible to conduct an audit. Yountville gives each of its operators written notice of the date their next audit will be conducted and the dates the audit will cover. With this procedure in place there is no reason for any of the operators to be unprepared.

City Of Calistoga Auditing Procedures

The City of Calistoga has forty-two operators representing 690 rooms for transient occupancy. During the audits of 2008, covering the fiscal year 2005-06, forty two operators were to be audited. However, seven operators could not be fully audited due to a lack of records. These operators were directed to keep records in the manner prescribed by the city municipal code. The municipal code provides a sixty-day window to comply with this requirement. Failure to have adequate records available for the next audit will incur the cost of the audit and each subsequent audit until the operator has complied. The audit also found twelve operators who were current in the payment of TOT and one over payment. The remaining twenty-two operators owed TOT due to underreporting room revenue, commingling of funds, sale of gift certificates, or errors in calculation of TOT. The total underreported room revenue came to over \$483,960. The Weekly Calistogan reported the City of Calistoga recouped \$23,000. To the contrary, the Grand Jury's investigation showed the City was owed \$64,457, including interest and penalties.

Another problem in Calistoga has to do with the use of online reservation services. The operator contracts with the reseller to sell some of these rooms at a markup. The operators

charge the reseller an agreed upon amount plus TOT. The operator pays TOT to the City based upon the agreed upon amount. The reseller sells a room online at a marked up amount plus 14 percent in “taxes and service fees.” The reseller does not remit any TOT to the City on the markup.

The City of St. Helena Auditing Procedures

The City of St. Helena has fourteen operators with 260 rooms for transient occupancy. As St. Helena is a no-growth city, it has put a cap on the number of rooms available. Only a vote by the City Council can increase the number of rooms allowed.

Currently, no internal or independent audits of the fourteen operators have been conducted. However, St. Helena has aggressively recouped the delinquent TOT, which was not reported by an operator. This is considered fraud and carries a penalty of twenty five percent plus interest in addition to the TOT owed. It could also include criminal charges.

The amount of TOT is tracked by the Finance Department as it is remitted. The amount of TOT collected in the year 2007, was \$1.5 million. The subject of audits has been considered and perhaps will be given more serious thought in the future.

The City of Napa Auditing Procedures

The City of Napa has 118 operators and 2056 rooms, but has yet to conduct any independent audits. Its only method of verifying the amount of TOT due is to add up the figures on the TOT remittance form using an adding machine. If the figures on the adding machine tape agree with the figure on the remittance form, it is considered accurate. The Grand Jury recommends this method of accounting be replaced with up-to-date technology.

The lack of communication between the Planning Department and the Finance Department prevents the Finance Department from knowing how many operators are required to remit TOT. Currently, the Finance Department is not made aware of any new operator until the operator makes the first TOT payment. Payment is accepted in the form of cash, check, money order or credit card. Online payments are not yet available.

From documentation provided by the Planning Department and the Finance Department, there are discrepancies in the number of rooms allotted to new B&Bs. The Planning Department consistently reported a greater number of rooms on record than did the Finance Department.

The tracking of the TOT payments is problematic. Payments are currently entered into a spreadsheet which does not keep track of any past due TOT. Only the current amount of monthly tax is recorded. The Grand Jury finds it improbable to think one could keep track of each and every payment made by all operators from memory. Finance Department personnel were uncomfortable with the lack of data security provided by this system. The Grand Jury recommends the City’s TOT payments be incorporated into the current secure system which tracks City water payments.

According to the quarterly financial report of 2008, TOT is the third largest source of revenue (13 percent) for the City of Napa. For the fiscal year ending 2008, the amount of TOT was an impressive 8.7 million dollars. Since the City of Napa does not conduct audits, it

is impossible to know whether the operators are underreporting TOT as has been revealed in the audits of Calistoga, Yountville, and the County of Napa. The City could pursue a contingency audit to ascertain if operators are underreporting room revenues.

Currently the City of Napa employs an interim Finance Manager. In the absence of a permanent Finance Manager charged with the oversight of auditing TOT revenue, it is difficult to monitor operator compliance with the municipal code and address other problems related to the collecting and reporting of TOT.

Recently, the City of Napa Planning Department has altered its business license application to include the number of rooms available at any given establishment.

With the current construction of more hotels in downtown Napa, and the potential for far more TOT revenue, it would behoove the City of Napa to correct their deficiencies.

City of American Canyon Auditing Procedures

The City of American Canyon is new to the hospitality business. Currently, there are only three operators with 213 rooms. American Canyon has not conducted an independent audit in the past five years. Unlike some of the other Cities in the County, the Finance Department personnel have been doing an exemplary job of collecting all past due TOT. However, American Canyon is facing a problem with unlicensed B&Bs and “rooms for rent” operating without a business license. These unlicensed operators prevent American Canyon from collecting TOT on these units.

American Canyon’s business TOT license form does not have a place for the number of rooms the operator will have available for transient occupancy. This is also true of other local governmental agencies in Napa County. In order to maintain the confidentiality of the operators, no graphs depicting TOT revenue for American Canyon will be included in this report.

Collection

The City of Napa faces a unique challenge in its tracking and collection of TOT revenue. The City provides an information packet to new operators; however, it contains only twelve copies of the TOT remittance forms and does not contain a copy of the City TOT municipal code. The City is not aware of tax due from a new operator unless a TOT payment is remitted. The City of Napa accepts as sufficient the amount that operators remit as the City is unable to carry over figures for TOT collected from month to month. Operators remit TOT payments in the form of a check by mail; or in person by cash, check, or credit card. Currently on-line payment or payment by telephone is not an option.

The City of Calistoga has a unique way of collecting past due TOT. The City issues a series of letters to advise an operator of its delinquency. The amount of TOT is based on a number chosen by the tax administrator. The operator is then requested to remit payment or provide documentation showing the amount the operator considers correct.

Since Napa County and the Township of Yountville conducted independent audits, the findings are used to advise an operator of any amount of past TOT and penalties and interest which may apply.

COMMENDATION

The 2008-2009 Grand Jury commends the City of St. Helena for having the foresight to employ up-to-date technology for tracking the collection of TOT. The Grand Jury also commends the auxiliary Finance Department personnel of the various cities for their efforts in collecting TOT.

The Grand Jury is appreciative of the cooperation and assistance provided by representatives of the Napa County Auditor/Controller's Department.

FINDINGS

The 2008-2009 Grand Jury finds:

1. The most recurring items of noncompliance were the lack of acceptable records and the underreporting of gross receipts by the operators.
2. Not every local governmental agency provides adequate information to a new operator.
3. There is a lack of communication between the Finance Departments and the licensing departments of the local governmental agencies.
4. Provisions in the municipal codes/ordinances for interest and penalties are not being executed.
5. The tax administrator has sole discretion to waive TOT and/or interest and penalties due local governmental agencies.
6. Audits provided by the Cities and the County of Napa show past due TOT has not been collected from 2005 to the present.
7. The City of Napa does not have an adequate method of tracking its TOT revenue, relying in part on an out-of-date manual accounting system.
8. Most local governmental agencies do not have an accurate record of how many rooms are available for transient occupancy.
9. The Cities and County do not conduct audits with any degree of frequency or regularity.
10. Potential revenue from uncollected TOT, interest, and penalties in the millions of dollars is being lost throughout the county.

RECOMMENDATIONS

The 2008-2009 Grand Jury recommends:

1. Local governmental agencies provide an operator with a copy of the local ordinance/municipal code and all forms needed to file and remit TOT.
2. Licensing departments alert local Finance Departments when issuing new licenses to TOT applicants indicating number of rooms for transient occupancy.
3. Local governmental agencies follow the municipal code/local ordinance in assessing penalties and interest.
4. Tax administrator to notify City Council or BOS of all past TOT, interest and penalties considered for waiver.
5. City of Napa establish adequate methods for tracking TOT, including past due amounts and consider purchase of software specifically designed to facilitate accounting for this tax.
6. Local governmental agencies expand the municipal code to include the cost of auditing if the operator does not have adequate records.
7. Internal audits or contingency audits should be conducted with regularity.
8. Enforce the provision in the municipal code assessing the cost of auditing to an operator who does not have adequate records.
9. Each local governmental agency improve its oversight and enforcement of the TOT.

REQUEST FOR RESPONSES

The 2008-2009 Grand Jury requests responses from:

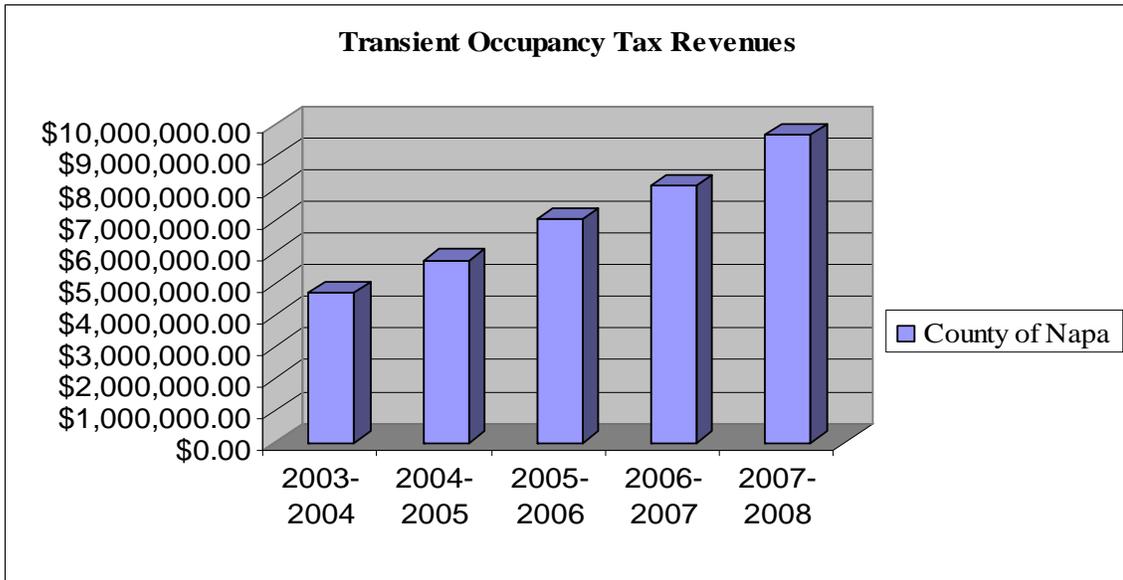
1. The County of Napa recommendations: 1,2,3,4,6,7,8,9
2. The City of American Canyon recommendations: 1,2,3,4,6,7,8,9
3. The City of Napa recommendations: 1,2,3,4,5,6,7,8,9
4. The City of St. Helena recommendations: 1,2,3,4,6,7,8,9
5. The City of Calistoga recommendations: 1,2,3,4,7,8,9
6. The Township of Yountville recommendations: 1,2,3,4,6,8,9

APPENDIX

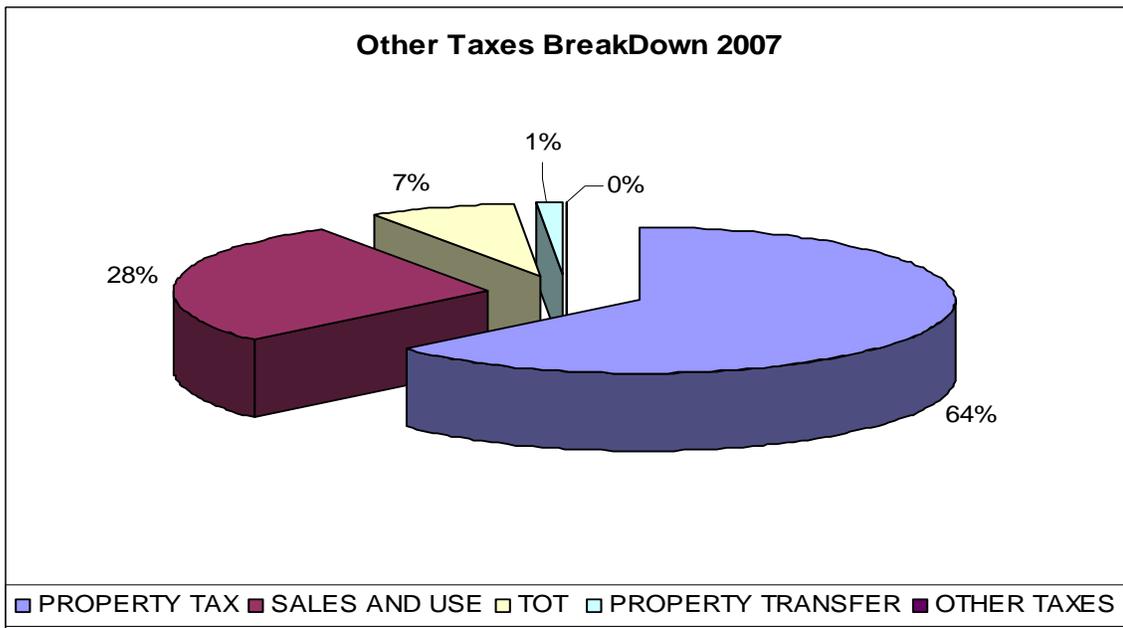
Transient Occupancy Tax Revenues

For the

County of Napa



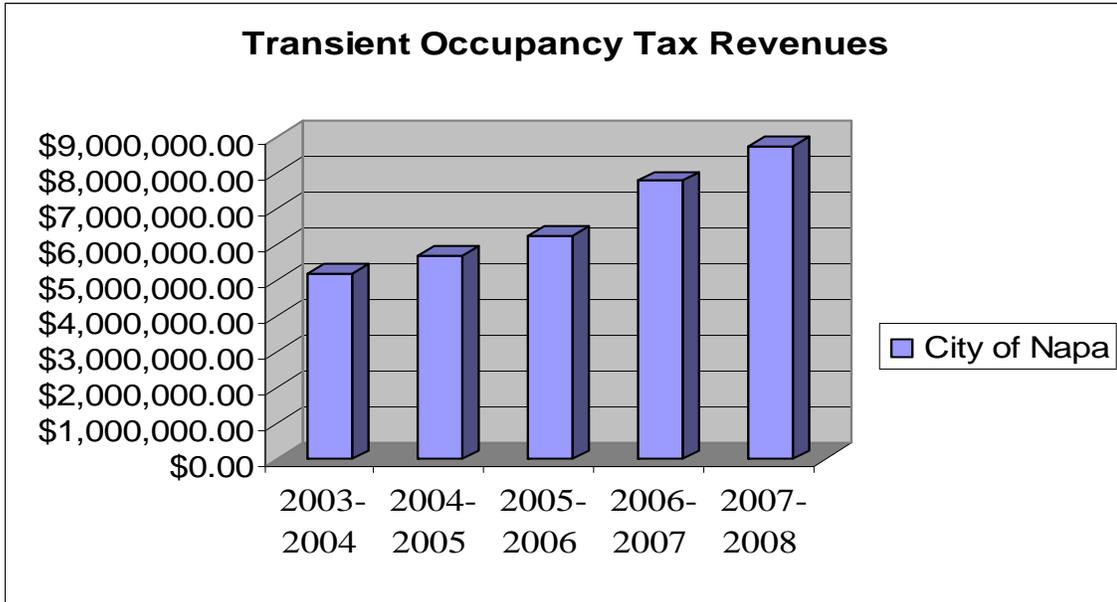
2007



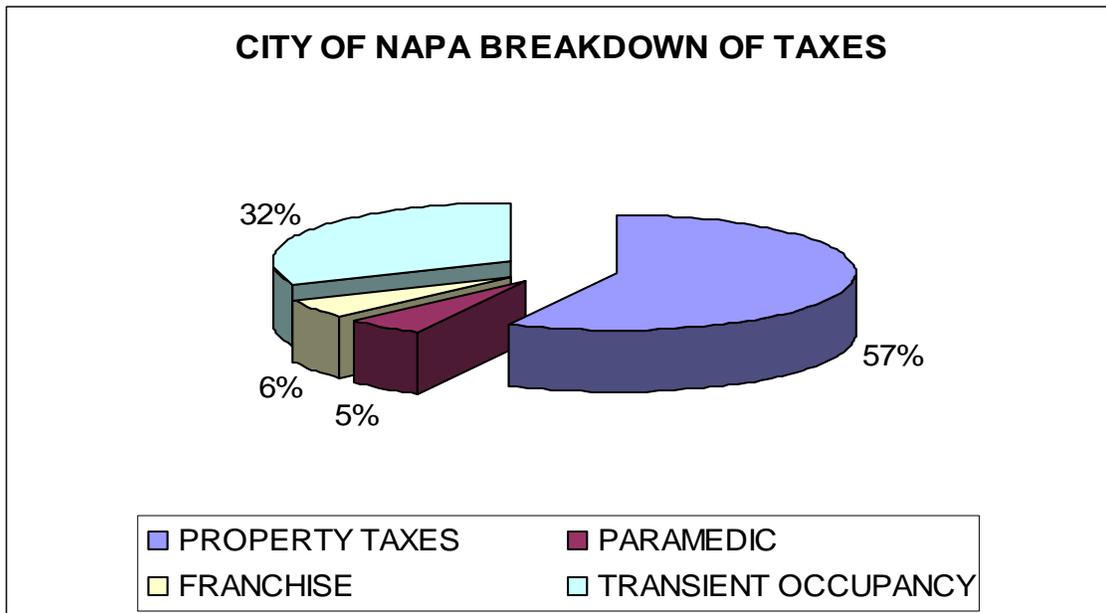
Source: Napa County Comprehensive Financial Reports 2003-08

Transient Occupancy Tax Revenues

**For the
City of Napa**

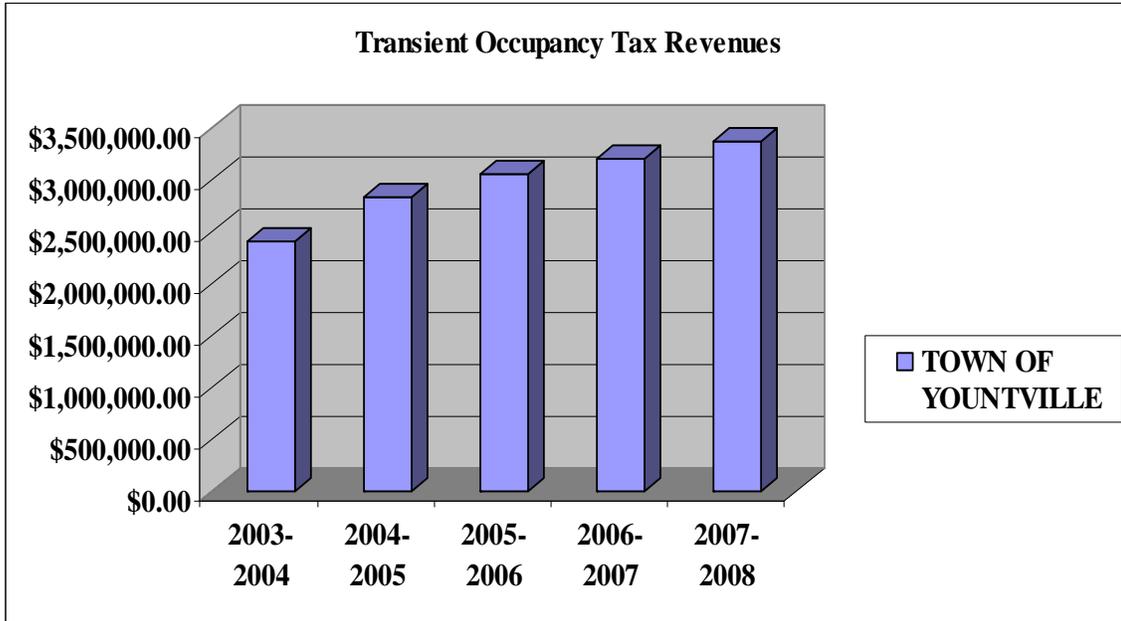


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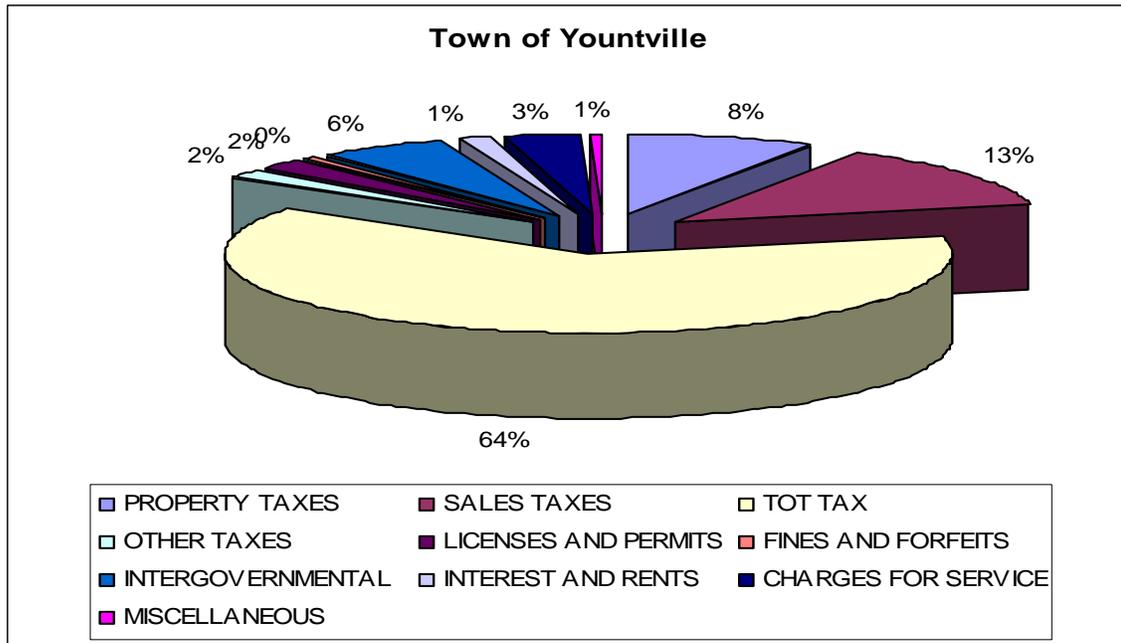


Source: City of Napa Comprehensive Financial Reports 2003-08

Transient Occupancy Tax Revenues
For the
Township of Yountville



2007

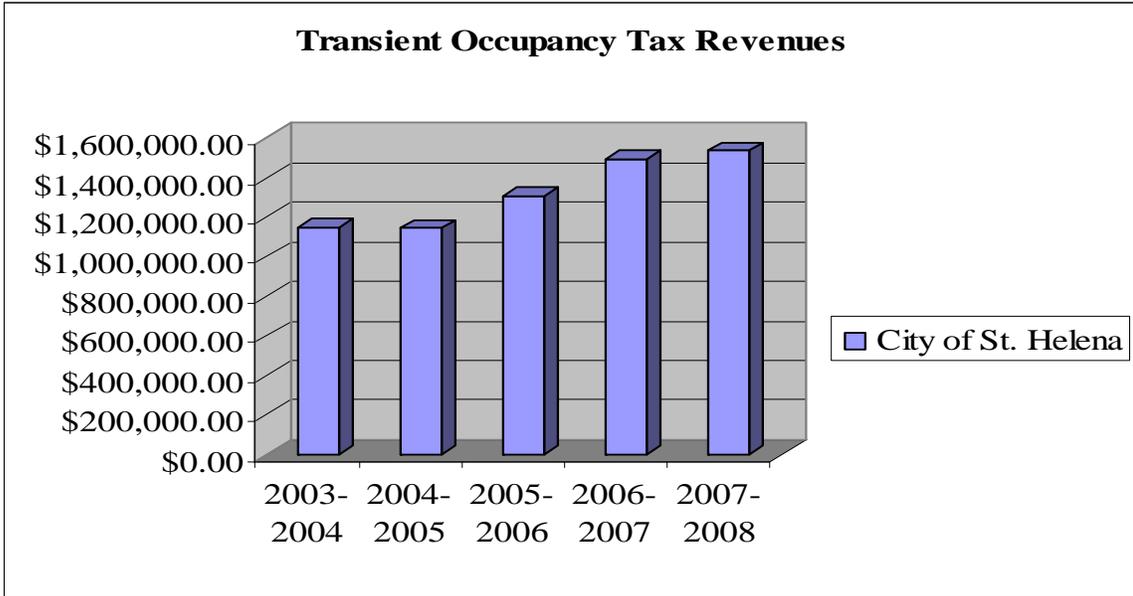


Source: Town of Yountville Comprehensive Financial Reports 2003-08

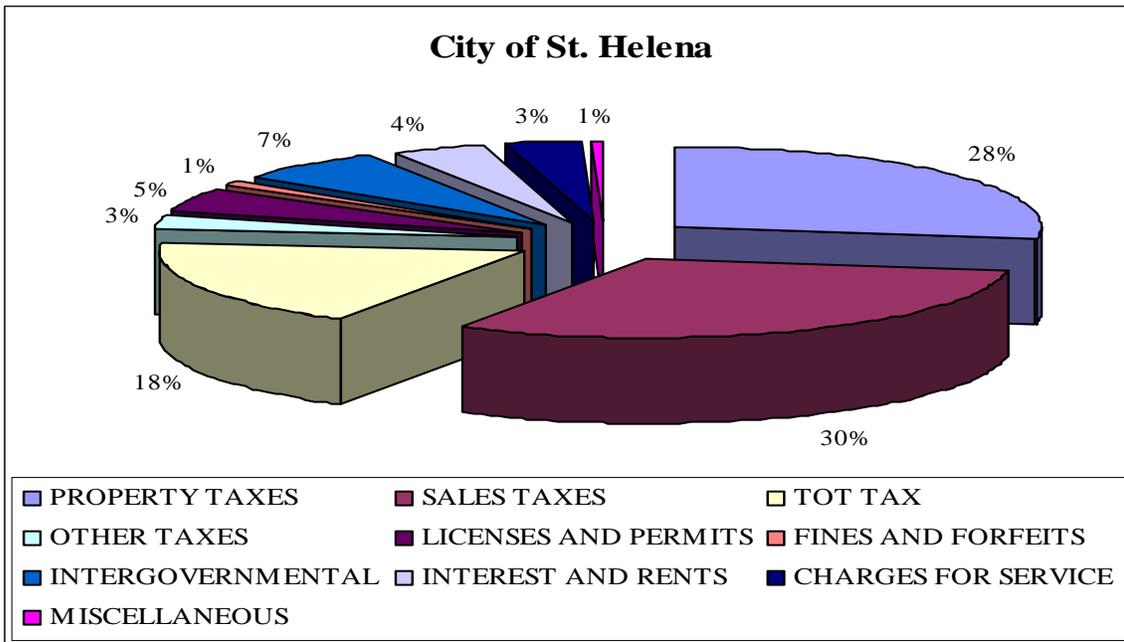
Transient Occupancy Tax Revenues

For the

City of St. Helena



2007

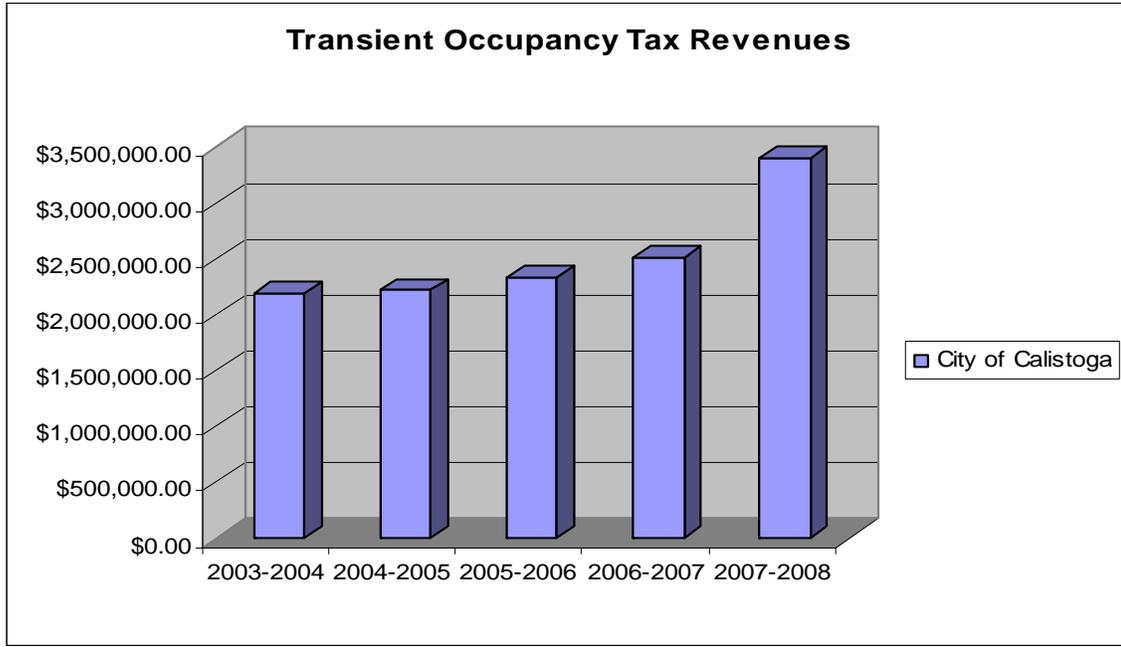


Source: City of St. Helena Comprehensive Financial Reports 2003-08

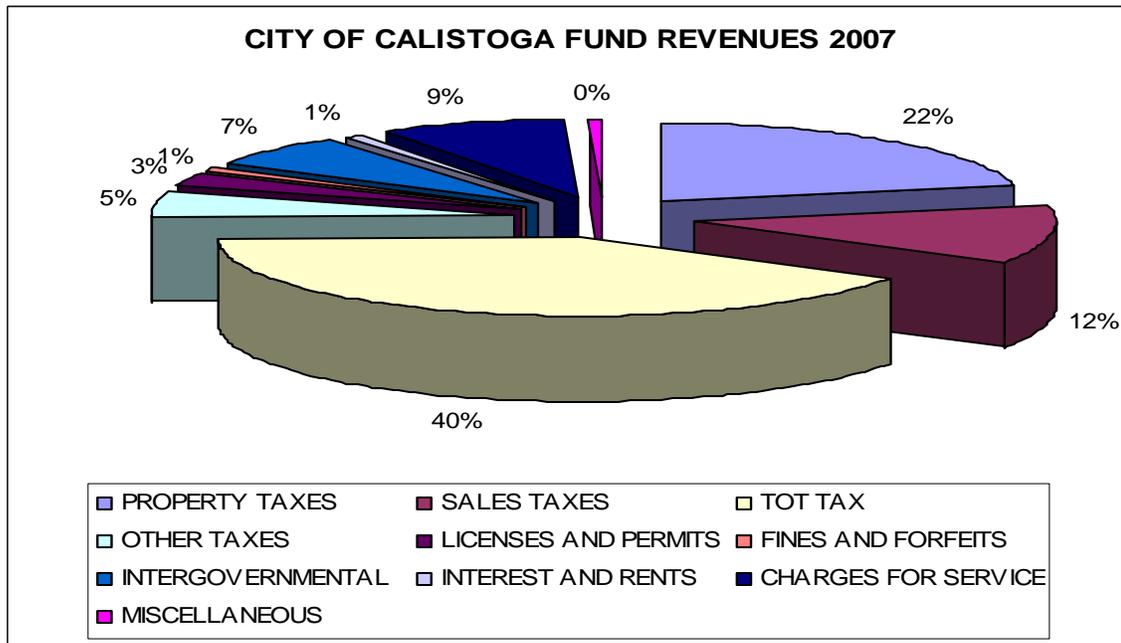
Transient Occupancy Tax Revenues

For the

City of Calistoga



2007



Source: City of Calistoga Comprehensive Financial Reports 2003-08

GLOSSARY

B&B's	Bed and Breakfasts
BOS	Board of Supervisors
TOT	Transient Occupancy Tax
VESSELS	Houseboats