



ULSTER COUNTY COMPTROLLER

March Gallagher, Esq.

Short-Term Rental Occupancy Tax Program & Financial Audit

June 24, 2020



Vision: to work in partnership with the County Legislature, County Executive, and the community without compromising independence, objectivity, or integrity in order to become the County's trusted advisor. Mission: to enhance and protect organizational value by providing independent, risk-based objective assurance, advice, and insight to the County. Values: independent fact-based, objective review and analysis done with integrity and due professional care.



**ULSTER COUNTY
OFFICE OF THE COMPTROLLER**

PO Box 1800
Kingston, New York 12402
Telephone: (845) 331-8774 Fax: (845) 340-3697

March S. Gallagher, Esq.
Comptroller

Christopher Quirk, CPA
Deputy Comptroller

Dear County Executive Ryan, Legislative Chairman Donaldson, and Fellow Taxpayers:

The Ulster County Comptroller's Office has completed an audit of the collection of Occupancy Tax from short-term rental (STR) properties. The financial portion of this audit included responses from STR property operators and as a result of the COVID-19 pandemic, responses from taxpayers were delayed. We now present both the Program and Financial Audits together.

Since the adoption of the Hotel Motel Occupancy Tax Law No. 5 of 1991 (Occupancy Tax), short-term rental properties have proliferated. The Department of Finance increased revenue collection of Occupancy Tax from \$1.2 million in 2014 to \$2.0 million in 2019. In addition to increased overall visitation, a portion of this growing revenue is a result of Ulster County Department of Finance capturing Occupancy Tax from STR properties. As this is a growing source of revenue for Ulster County, we recommend a general ledger code to track these revenues separately from traditional hotel, motel and bed and breakfast properties.

We also recommend that Ulster County execute voluntary collection agreements to collect occupancy taxes directly from Airbnb or other STR platforms. Airbnb, just one online STR platform, reported \$31.9 million in revenues for Ulster County STRs in 2019 which should have resulted in \$638,000 of Occupancy Tax, however, current methods of Occupancy Tax record-keeping do not allow monitoring of STR revenue separately. A voluntary collection agreement would not prohibit Ulster County from contracting to identify STR rentals nor would it prohibit requiring properties quarterly filings allowing an audit trail separate from the collection agreement. With collection agreements in place, however, Ulster County could avoid the majority of STR operators failing to pay tax or paying late.

We do not know what the ultimate result of the COVID-19 pandemic will be on visitation to Ulster County or the market for STR rentals. What we do know is that revenue collection is paramount in this fiscally challenged environment.

I thank the Ulster County Department of Finance for their assistance in facilitating this audit.

If we can be of assistance to you, or if you have any questions concerning this report, please feel free to contact us.

Respectfully submitted,

A handwritten signature in blue ink that reads "March S. Gallagher".

Ulster County Comptroller

Table of Contents

Program Audit	p. 1
Objectives	p. 2
Executive Summary	p. 2
Findings & Elements	p. 3
FINDING 1: Disjointed and inefficient registration process and procedures limited ability to capture all short-term rentals thus creating a loss of Occupancy Tax revenue.	p. 3
FINDING 2: Data and records are incomplete and kept in various databases hampering analysis, budgeting and enforcement.	p. 4
FINDING 3: Vendor contract service variances resulted when the research third-party STRcontractor failed to maintain an online database of registrations and correspondence.	p. 5
Background	p. 6
Conclusion	p. 8
Department of Finance Response to Finance Audit	p. 9
Notes to Program Audit	p. 12
Financial Audit	p. 13
Objectives	p. 14
Executive Summary	p. 14
Findings & Elements	p. 15
FINDING F1: Ulster County is not capturing the entire short-term rental occupancy tax revenue due.	p. 15
FINDING F2: STR Taxpayer's do not file quarterly returns timely or at all.	p. 17
FINDING F3: Some STR Owner's do not report accurate total income amounts on quarterly reports.	p. 17
Conclusion	p. 18
Department of Finance Response to Finance Audit	p. 19



ULSTER COUNTY COMPTROLLER

March Gallagher, Esq.

Short-Term Rental Occupancy Tax Program Audit

April 17, 2020



Vision: to work in partnership with the County Legislature, County Executive, and the community without compromising independence, objectivity, or integrity in order to become the County's trusted advisor. Mission: to enhance and protect organizational value by providing independent, risk-based objective assurance, advice, and insight to the County. Values: independent fact-based, objective review and analysis done with integrity and due professional care.

Objectives

The Ulster County Comptroller's Office began an audit of short-term rental (STR) occupancy tax revenues in February 2020. The financial portion of this audit includes responses from a sample of STR property operators. As a result of the COVID-19 pandemic, responses from taxpayers have been delayed. We now present the program audit side of this work to inform imminent legislative and executive actions regarding Occupancy Tax law changes and revenue collection process and procedures. This program audit sought to meet the following objectives:

- How does Ulster County currently process registration and collections from short-term rental properties?
- Is Ulster County capturing all short-term rental occupancy tax revenue due?
- Can Ulster County streamline occupancy tax collections from short-term rentals to reduce costs and increase collections?

Executive Summary

Why this audit is important

Short-term rentals (STRs) have proliferated in Ulster County since the adoption of the Hotel Motel Occupancy Tax Law No. 5 of 1991 (Occupancy Tax). Airbnb, just one online STR platform, reported \$31.9 million in platform-generated revenues for Ulster County STRs in 2019 which should have resulted in \$638,000 of Occupancy Tax. However, current methods of Occupancy Tax record-keeping do not allow monitoring of STR revenue separate from hotel revenue to know if we are collecting all that we should be from the growing STR market.

Ulster County has struggled with effective implementation of the Occupancy Tax with respect to STR operators and as a result some revenues may have been forgone. Ulster County engages a third-party STR research contractor and then collects taxes directly from STR operators in quarterly paper filings rather than online through platforms such as Airbnb or directly. The County now faces a contract renewal with the third-party STR research contractor. The County Legislature is considering amendments to the Occupancy Tax law. Finally, the COVID crisis has jeopardized all revenues making robust tax collection even more important. A program audit of the collection procedures for short-term rental properties will inform changes to Occupancy Tax collection law, and revenue collection process and procedure.

What we found

Our program audit found a disjointed and inefficient Occupancy Tax registration process and procedures leading to the County not capturing all STR revenue due and incurring unnecessary and repeated costs for their collection such as postage and handling. We identified incomplete datasets and records kept in multiple unlinked databases making data collection and management cumbersome and inefficient. Registration data, payment

data, online advertising data and correspondence data are all kept separately across multiple software programs and on paper. Finally, we identified that contractually required services were not provided by the third-party STR research contractor which could have streamlined much of this process and procedure.

What we recommend

We recommend that as short-term rentals have been a “new” and growing source of revenue for the County, segregating them into their own general ledger code would enable more accurate budgeting and analysis. The County should separate out the different types of revenues received by establishment type and could look to surrounding counties that already are in this practice for guidance.

We recommend that the anticipated procurement of online tax collection software allow for *all* tax payments received by Ulster County including Occupancy Tax payments. We recommend the County create an online portal to maintain a centralized system for paperless online registration and payments. Additionally, Ulster County should consider the advantage of entering voluntary collection agreements (VCAs) with all available STR platforms while reserving the right to retain third-party STR research contracts and enforce the Occupancy Tax consistently going forward.

The County should explore the capabilities within its current financial software, New World, to determine if all occupancy tax data such as a property profile, operator type, and correspondence history can be linked to payment data. This system would provide the ability to analyze and monitor the STR population going forward to inform STR regulation and revenue collection strategies such as third-party research and collection agreements. Finally, given limited financial resources going forward, Ulster County should only pay third-party contract for STR research if all contractual services have been rendered.

Findings & Finding Elements

FINDING 1: Disjointed and inefficient registration process and procedures limited ability to capture all short-term rentals thus creating a loss of Occupancy Tax revenue

CONDITION- Currently, the Department of Finance (DOF) pursues registrations from short-term rental property owners via mail. The properties are identified by the County’s third-party vendor, Bear Cloud Systems, and DOF staff then make three attempts by mail to achieve the property owner’s compliance. After three attempts the process is abandoned. The County is failing to register all short-term rentals. If successfully registered, the property owner is required to file their quarterly tax collection or a statement of no quarterly receipts in accordance with the tax payment calendar. The mandatory quarterly filings packets are mailed to each active registered property owner by DOF as a reminder that the filing is due. This process needs automation.

EFFECT - Registration and payment systems need to be more accessible and easily navigable. With no online payment or registration capability both the County and the property owners are incurring additional expenses. The cost to complete each quarterly mailing by the County for all occupancy taxpayers includes postage and handling to be discussed further in the forthcoming financial audit.

CAUSE - As there is no online registration portal for property owners to access, identifying, locating, and registering short-term rentals has been a big undertaking with associated costs. Furthermore, deficiencies in the current process create sporadic enforcement. There are no identifiable thresholds that trigger when registration request letters will be issued to the known properties listing on short-term rental platforms. For example, registration letters are not issued on a monthly or other periodic basis, nor is a numeric threshold, such as 20 new listings used to trigger registration mailings. The same problem exists in relation to follow up correspondence when they do not comply with registration. With the lack of set criteria, the determination to which a property is going to be pursued and the timing is discretionary.

CRITERIA - The Hotel Motel Occupancy Tax Law No. 5 of 1991, allows the county to collect a 2% occupancy tax on room rentals that are under thirty days; this has been interpreted by many counties, Ulster included, to cover short-term rentals. Currently, 29 counties in New York have signed a voluntary collection agreement with Airbnb, one of the largest short-term rental platforms in the world. This agreement allows for Airbnb to collect the tax on the hosts behalf and remit it quarterly to the county. The previous administration chose not to enter voluntary collection agreements because the payment would be a lump sum without property or host identifying information.

RECOMMENDATION 1 - The County is currently in the process of acquiring an online property tax collection software program. Strong consideration should go into ensuring this online platform allow for *all* tax payments received by the County including Occupancy Tax payments. Additionally, the county should consider the advantage of entering voluntary collection agreements with online STR platforms as well as keeping the third-party research contract in place to ensure appropriate information gathering for compliance and enforcement.

FINDING 2: Data and records are incomplete and kept in various databases hampering analysis, budgeting and enforcement.

CONDITION - The data for occupancy tax filers is kept in several programs making it cumbersome and inefficient.

- The third-party vendor has an online database that lists all properties that have been identified as listing on short-term rental platforms. The Commissioner of Finance is the only one with access to this portal.

- An Excel spreadsheet tracks the registration correspondence. The data lists the identified properties with dates of when compliance was sought.
- Registrations and quarterly tax filings are kept on paper by property in the DOF files.
- A Microsoft Access database tracks all properties that have registered along with the payment and filing history. This data source keeps all the properties information such as owner(s), contact information, filing history with dates and amounts.
- The tax collection receipts are entered in the County's financial software program, New World, most often with the property's assigned identifying number as the payee, however, on rare occasion the property owner is entered as the payer if they pay in person. This makes it difficult to run a payment report by property.

EFFECT - Having so many systems tracking separate components can cause errors in record keeping.

CAUSE - The data currently captured on registration forms is not being entered into any dataset for analysis. The DOF's registration asks property owners filing for occupancy tax certificates which type of establishment they are registering (Hotel, Motel, Bed & Breakfast, Other). This information is not captured in any digital form. This data could help distinguish the revenue streams by type if captured during registration and linked to payment data.

CRITERIA - According to the GAO (Government Accountability Office) a key element of data reliability assessments is the consideration of internal controls including information system controls. The internal controls over data an organization has can include the establishment of control activities through procedures intended to accomplish its objectives. Information system controls support the underlying structures and processes of the system where data are maintained.

RECOMMENDATION - We recommend the County explore the capabilities within the New World financial software program to determine if all occupancy tax data can be kept in one database with all pertinent information. If New World cannot accommodate this information, we recommend a single outside database linked by a unique identifier such as taxpayer ID. With the ability to control user access the information should be moved to one source. Additionally, as short-term rentals have been a "new" source of revenue for the County, segregating those into their own general ledger code will make analysis and budgeting more accurate. The County should consider separating out the different types of revenues received by establishment type and could look to surrounding counties that already are in this practice for guidance.

FINDING 3: Vendor contract service variances resulted when the third-party STR research contractor failed to maintain an online database of registrations and correspondence.

CONDITION- Ulster County did not receive all services as stated in Schedule A of the Bear Cloud Software SaaS Agreement.

EFFECT - Ulster County taxpayers were not afforded an online registration portal and instead the County has maintained paper documentation for all registrants. An online document portal would provide a central database to determine compliance with registration requirements and quarterly filings. Lacking this database also prevented the vendor from being able to generate letters of non-compliance as stated in the contract.

CAUSE – Ulster County elected to require all registrants to file via paper forms and an excel spreadsheet was used to monitor compliance. Quarterly payment forms are maintained in paper format as well. These documents are maintained in the Department of Finance.

CRITERIA – Schedule A of the Bear Cloud SaaS Agreement details the services that Ulster County was to receive under the contract, specifically, in sections seven and nine.

RECOMMENDATION 1 - Ulster County is currently not under contract with any third-party, the condition is deemed resolved, however, if the County elects to enter into a new agreement with a third-party, the County should require strict adherence to the scope of services or withhold payment.

RECOMMENDATION 2 - We recommend the County develop an online portal to maintain a centralized system for all STR documentation, including potential registrants, as well as a location to maintain quarterly filings and payments, which would allow registrants a paperless format to file. This system would also provide the ability to analyze the STR population prior to entering into another third-party agreement or a future STR voluntary collection agreement.

Background

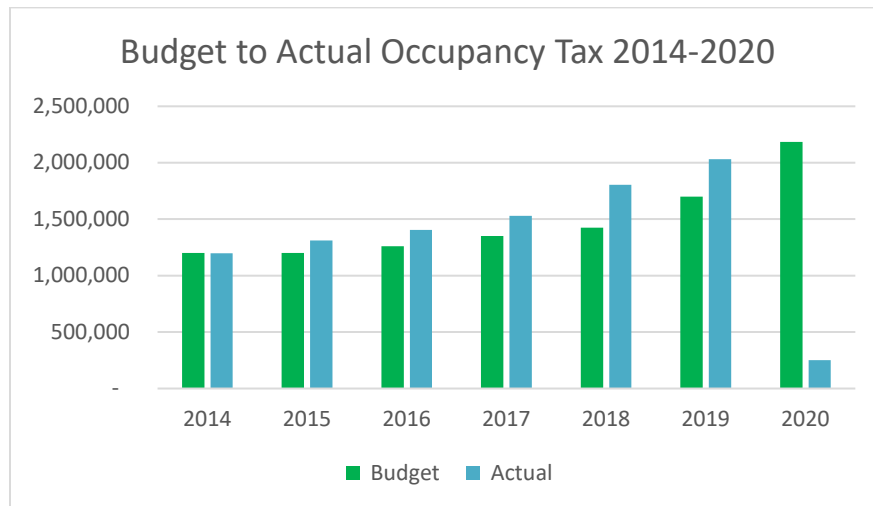
Ulster County's Local Law No. 5 of 1991, a local law authorizing the collection of Hotel and Motel Room Occupancy Tax and applicable to short-term rentals, permits the County to collect a two percent room rental tax on the per diem rental charge.

The Ulster County Comptroller's previous audit of the Ulster County Hotel and Motel Occupancy Tax of Local Law No. 5 of 1991 predated the widespread proliferation of short-term rentals throughout Ulster County. That audit found that there were miscalculations by operators of the taxes due; penalties and interest calculations deviated from the Local Law, and the revenues collected were not kept in a separate fund for tourism promotion as required by the law. The law has not been changed since that 2013 audit.

Occupancy Tax revenue has increased over 69% between 2014 and 2019, since the time of our last audit.

County Of Ulster Hotel Tax Collections by Year "Non-Property Tax Item"					
Calendar Year	Budget	Actual	Actual % +/- From PY	Budgeted vs. Actual % change	% +/- From PY Budget
2014	1,200,000	1,196,771	1%	0%	20%
2015	1,200,000	1,310,887	10%	9%	0%
2016	1,260,000	1,404,744	7%	11%	5%
2017	1,350,000	1,530,160	9%	13%	7%
2018	1,425,000	1,805,747	18%	27%	6%
2019	1,700,342	2,032,778 *	13%	20%	19%
2020	2,185,000	250,397 *			29%

* As of 4/8/2020 from Financial System, unaudited



*As of 4/8/2020 from Financial System, Unaudited

Over the last five years the short-term rental market in Ulster County has grown and now includes many platforms for rental including Airbnb, VRBO, HomeAway, and Red Door. Revenues voluntarily reported by Airbnb as a result of rentals in Ulster grew in just one year from \$24.4 million in 2018 to \$31.9 million in 2019. A review of revenue collection of Occupancy Tax is timely given the increases in short-term rental visitation, as well as potential changes in contractual obligations and local law.

Ulster County towns such as Woodstock have begun regulating STRs¹ and other towns are considering regulation.² Several Ulster County towns have entered into agreements with Ulster County to obtain lists of potential STRs. The COVID-19 pandemic has brought STRs into even sharper focus as towns grapple with STR occupancy as a public health issue.

Short-term rental occupancy tax collection had been at the forefront of Ulster County Leadership's debate for many years. Currently, 29 counties have signed third-party agreements with Airbnb to collect the occupancy tax on their behalf. In the spring of 2017, as other counties in the Hudson Valley and throughout the nation implemented VCAs with Airbnb, Ulster County officials could not come to a consensus to do so. The biggest objection to signing a VCA was the potential inability to audit the collection information. Ulster County chose to go in a different direction and hired a third-party vendor called Bear Cloud Systems, LLC, to identify properties listing themselves as short-term rentals and provide that information to Ulster County on an ongoing basis. The contract began March 16, 2018 and was set to expire March 16, 2019, but was renewed on January 17, 2019, and expired March of 2020. In late 2019, Bear Cloud Systems was bought by a competitor Host Compliance and the County is currently negotiating a new contract with the new vendor.

Conclusion

Ulster County could improve short-term rental registration and collections processes by streamlining registration and payment information through a single online portal linked to the County's financial system. Revenue collected in this category and identified under a separate general ledger code with information kept for each property will inform decisions about contracts with third-party STR research vendors as well as voluntary collection agreements with online platforms to collect taxes directly. These systems will increase revenue collection efficiency and save postage and handling costs.

****Management's Response**

Management's response to our recommendations will be included at the end of our report. If there are factual errors or incorrect information, we will notate these items in the last paragraph of our report.

¹ Woodstock Town Zoning Code §260-56 Bed and Breakfasts and Short-Term Rentals.

² Town of Gardiner, Short-Term Rental Proposed Town Law Draft 2-28-20 available at <https://www.townofgardiner.org/short-term-rental-law>

ULSTER COUNTY DEPARTMENT OF FINANCE

PO Box 1800, 244 Fair Street, Kingston, New York 12402

Telephone (845) 340-3460 Fax (845) 340-3430

Burton Gulnick, Jr.
Commissioner of Finance



C. J. Rioux, CPA
Deputy Commissioner of Finance

Lena Serrano
Deputy Commissioner of Finance

Tracey Williams
Deputy Commissioner of Finance
Director of Real Property Tax Service

May 6, 2020

March Gallagher
Ulster County Comptroller
P.O. Box 1800
Kingston, NY 12402

Re: Short-Term Rental Occupancy Tax Program Audit

Dear March,

Thank you for the opportunity to respond to your "short-term rental occupancy tax program audit." I think we both agree in the importance of tourism and the related occupancy tax it generates for Ulster County. However, I must respectfully disagree with your statement "Ulster County has struggled with effective implementation of the Occupancy Tax with respect to [Short-Term rentals] STR operators and as a result some revenues may have been forgone." I applaud my staff for their diligence and hard work in tracking down unregistered operators and the significant increase in revenues that were a direct result of their effort. I believe the work they have done is to be recognized and appreciated. There was a tremendous volume of unregistered operators that have been contacted which has resulted in a notable increase of STR registrations and quarterly occupancy tax payments, all done with no struggle. In fact, my staff was able to register over 1,000 new properties since undertaking this project in 2018, and due to these efforts, as stated on page 6 of your audit, there was a significant increase in revenues for 2018 and 2019, with occupancy tax revenues increasing \$502,618 from a 2017 total of \$1,530,160 to \$2,032,778 in 2019.

Finding 1: You state there was a "disjointed and inefficient registration process and procedures limited ability to capture all short-term rentals creating a loss of Occupancy Tax revenue." You are correct in that our attempts to contact unregistered STR operators is via mail. The third-party research vendor only provides us with a property address and owner address, leaving us no other means of contact.

Once an operator completes the registration form, we are provided with their phone number and email information; and they are provided with the ability on the form to check a box that authorizes the quarterly Tax Computation Form to be sent to them electronically. Therefore, while you recommend the process needs automation, the process is already automated as much as it can be. If an operator elects to receive their quarterly Tax Computation Form via mail, we will continue to be accommodating to those operators, to maximize compliance and revenues to the County by mailing it to them.

Your recommendation states that the County is currently in the process of acquiring an online property tax collection software. Our goal was to have occupancy tax payments collected through this system. However, due to the global pandemic of COVID-19, the online property tax system project has been temporarily put on hold. The significant cost will need to be reviewed to determine if it is a feasible expenditure during the current or coming years.

Lastly, you recommend “the county should consider the advantage of entering voluntary collection agreements with online STR platforms as well as keeping the third-party research contract in place to ensure appropriate information gathering for compliance and research.” Unfortunately, these two points are not compatible. If the County enters into a voluntary collection agreement with an online platform such as AirBnB, we would receive zero data on the STR operators that make up the payments from them. Without data from the online platforms, there would be no point in continuing the third-party research since there would be nothing to compare it to. An operator renting on AirBnB as well as thru other avenues (direct site/property, Home Away, VRBO, etc) would have the ability to claim that they rented solely thru AirBnB, with Ulster County having no way to verify such. The data we would receive from the third party would be meaningless, and there would be no enforcement or compliance available.

See Note 1
Page 11

Finding 2: You state “data and records are incomplete and kept in various databases hampering analysis, budgeting and enforcement,” and “having so many systems tracking separate components has caused errors in record keeping.” I would ask that you identify the errors your office found in record keeping, because nowhere else in your audit report, except this statement, is there mention of any errors. We are not aware of any errors in record keeping, and if any errors were found by your office, they should have been reported to my office immediately.

See Note 2
Page 11

Your recommendation states that if New World cannot accommodate all occupancy tax data, then a single outside database linked by a unique identifier such as taxpayer ID should be used, Ulster County already does this. Outside of New World, there is a single database that is used to track properties and payment information, and they are all identified by a unique identifying number (UCID#) and receipt date which ties back to New World. The UCID# is also referenced on all receipts in New World (since the beginning of 2019) which allows for a user to reference all payments made for a specific property.

The third-party vendor provides a list of advertised properties to the Commissioner of Finance, not a database. This list is exported to a mailing list, which is maintained to track mailings to potential unregistered operators. Once a property is registered it is entered into the single database by a unique identifying number (UCID#). Unregistered properties that are receiving mailings from us are not entered into the database, as this would create incomplete and unnecessary records in a database that is used to maintain registered operator data. Mailing lists, from a practical standpoint, would not be considered a database, nor is it anything that would “hamper analysis, budgeting, and enforcement.”

You recommend using a separate general ledger code for short-term rentals to make analysis and budgeting more accurate. Ulster County currently maintains one general ledger account “Tax on Hotel Room Occupancy,” which is inclusive of all occupancy tax revenues, from hotels, motels, bed and breakfasts, short-term rentals, etc., as it is irrelevant what type of establishment it is. An example of where the separation may cause confusion is when a property is listed as a lodge and advertises as such, completes bookings on their website, is a registered and fully compliant operator with Ulster County, files all quarterly returns on time, yet also lists their rooms on AirBnB. An operator like this, under your suggestion of separate general ledger accounts, would be listed under which general ledger code? Posting occupancy tax for this establishment to a STR revenue account could be misleading. Arguments could be made either way, and we currently do not wish to add confusion or subjectivity to the posting of revenues to our general ledger accounts, nor do we want to add extra reporting requirements to the operators to distinguish which rental platform their revenues were derived from.

See Note 3
Page 11

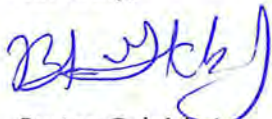
Finding 3: You state “vendor contract service variances resulted when the third-party STR research contractor failed to maintain an online database of registrations and correspondence.” The third-party vendor, under the terms of the contract, was in fact supposed to provide an online database for Ulster County’s use. However, Ulster County already maintains a database, and with the work being done to implement an online tax collection software, it was deemed unnecessary to create a new online database with the vendor at the time. Creating another online database, abandoning the current database, and then replacing it with the new tax collection system was not considered to be efficient. The vendor did not fail to deliver on the terms of the contract, the County at the time elected not to utilize all the services of the contract. As I stated above, because of the current COVID-19 pandemic, the new tax collection software project is on hold, therefore we currently are working on other potential online solutions.

See Note 4
Page 11

Ulster County and the Department of Finance has worked very hard in the increased registration of STRs and the collection of occupancy taxes. As you state in your final paragraphs of your report, occupancy tax revenues increased 69%, over \$836,000, between 2014 and 2019. The most significant revenue increases though, as I stated above, are from 2017 to 2019, an increase of over \$502,000 in just two years, as a direct result of the additional enforcement efforts of the Department of Finance.

Again, I appreciate the opportunity to respond to your audit, and if you have any questions or comments regarding the above, please do not hesitate to reach out to me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Burton Gulnick, Jr.", written in a cursive style.

Burton Gulnick, Jr.
Commissioner of Finance

NOTES TO DEPARTMENT OF FINANCE RESPONSE

Note 1

We recognize the point that the DOF makes on an operator being able to falsely report to the County on their short-term rental income quarterly filings. However, our current collection process could produce that same result.

As it is now, the third-party vendor “discovers” the Ulster County properties that are listing short term rentals and provides copies of all advertisements (which is updated and archived daily) as many properties list on multiple sites. Adding a voluntary collection agreement that would collect a large portion of the taxes and directly remit them to the county does not dismiss the property owner from filing their quarterly filings. The filings could be updated to allow the property owner to categorize which platforms they have rented from along with payments for those that do not offer the VCA services.

Note 2

The wording to finding 2 on page 4 under “effect” has been updated to stress that having several data sources “can” cause errors. The finance portion of this audit with responses from STR operators has been delayed due to the pandemic. The comparison between what the operators provide and tying them back to the datasets for this portion of the audit could change the effect to this finding.

Note 3

Currently the DOF registration filing requires the operators to check which type of establishment they are (i.e. Motel/Hotel, Bed & Breakfast or Other) and the data is not captured within any of the datasets. If this information was captured during registration, when the quarterly filings are paid DOF would know which category to book to which GL code. The separation of GL classification would give county taxpayers and leadership a look into what types of accommodations are driving certain factors within our communities.

Note 4

At the drafting of this report audit staff had not been advised that the DOF had opted to not utilize all services provided within the scope of the original contract. However, we will note that if DOF had elected to forgo portions of services that when they extended the contract instead of keeping the old terms, the scope of services should have been updated upon renewal. Additionally, the contract has again been extended as verbally confirmed by DOF Commissioner during our exit interview.



ULSTER COUNTY COMPTROLLER

March Gallagher, Esq.

Short-Term Rental Occupancy Tax Financial Audit

June 15, 2020



Vision: to work in partnership with the County Legislature, County Executive, and the community without compromising independence, objectivity, or integrity in order to become the County's trusted advisor. Mission: to enhance and protect organizational value by providing independent, risk-based objective assurance, advice, and insight to the County. Values: independent fact-based, objective review and analysis done with integrity and due professional care.

Objectives

The Ulster County Comptroller's Office began an audit of short-term rental (STR) Occupancy Tax revenues in February 2020. As a result of COVID-19 the program side of the audit is presented separately. We now present the financial audit side of this work to inform imminent legislative and executive actions regarding Occupancy Tax law changes and revenue collection process and procedures. This audit sought to meet the following objectives:

- How does Ulster County currently process registration and collections from short-term rental properties?
- Is Ulster County capturing all short-term rental occupancy tax revenue due?
- Can Ulster County streamline occupancy tax collections from short-term rentals to reduce costs and increase collections?

Executive Summary

Why this audit is important

As more and more residential properties have been offered for short-term rentals, Ulster County has worked to adapt the implementation of our Occupancy Tax to address these properties. One of the reasons stated for not entering into a voluntary collection agreement has been that the revenues would not be auditable because the STR platforms such as Airbnb only provide lump-sum tax without identifying which properties the tax has been collected upon. This audit is important because it required STR owners and operators to provide backup documentation for the tax paid and it identified properties not registered to pay Occupancy Tax despite repeated communications.

What we found

Our financial audit found Ulster County is not capturing the entire short-term rental occupancy tax revenue due because some properties identified do not register and some properties are not identified through third-party research. Some STR owners do not file quarterly returns timely or at all. Some STR owner's do not report accurate total income amounts on quarterly reports.

What we recommend

We recommend the County sign a voluntary collection agreement (VCA) with all hosting platforms that offer this collection and remitting service while continuing to retain a third-party STR research contractor to identify properties for registration. Enhanced and consistent enforcement to reduce the number of non-registered taxpayers and ensure compliance is recommended. Quarterly returns should be accompanied by back up documentation, including print outs from the various hosting platforms. Finally, the Legislature should consider simplifying the law, allowing for a more streamlined process for the taxpayers.

Findings

FINDING F1: Ulster County is not capturing the entire short-term rental occupancy tax revenue due.

CONDITION: During our review we identified:

- Unregistered properties that did not respond to at least two communications, but listed for rental per customer reviews posted during our audit period
- Unregistered properties that received communications, but provided a response that they do not rent, are listing for rental per customer reviews posted during our audit period
- Unregistered properties not identified by our third-party vendor that have listings for rent per customer reviews posted during our audit period

EFFECT: Ulster County registration records contain 1,782 properties that have ever registered to pay occupancy tax, of that 393 have certified to Department of Finance (DOF) that they have closed or no longer rent leaving 1,389 properties registered as of February 11, 2020. These 1,389 properties include hotels and motels registered but not separately identified. Airbnb reported that as of 2018 they had 1,800 hosts listing in Ulster County.¹ Thus, Ulster County is not capturing the universe of short-term rental properties in its registration or collection of occupancy tax.

CAUSE: The DOF maintains a separate spreadsheet to track registration communications with properties identified by the third-party STR research contractor. According to this spreadsheet two batches of initial requests to register were sent to 1,036 properties. Of those 770, or 74%, registered leaving 266 properties identified as potentially subject to tax but unregistered. Of the 266 properties sent a 2018 request to register, and a second or third communication, that failed to register, our review excluded 27 properties because no town was identifiable. This left a remainder of 239 properties for review of which we identified 11 properties (or 4.6%) that advertise for occupancy on either Airbnb or VRBO.

CRITERIA: According to the Hotel Motel Occupancy Tax Law No. 5 of 1991, all properties are required to register and be issued a certification of authority. Our verification included a search of the address on Google and a real estate site (Re-Max, Trulia or Zillow) and a search of the street name and town on Airbnb and VRBO. We visually matched photographs of street address identified properties on Google maps and real estate websites to Airbnb and VRBO listings. These street addresses were then checked against DOF's Access database that is used to record taxes received.

¹ Airbnb taxpayers earned million in the Mid-Hudson and Capital regions company says, Daily Freeman (December 31, 2018) available at https://www.dailyfreeman.com/news/local-news/airbnb-taxpayers-earned-millions-in-the-mid-hudson-and-capital-regions-company-says/article_ae6b5718-0d1a-11e9-bc59-570604e16f83.html.

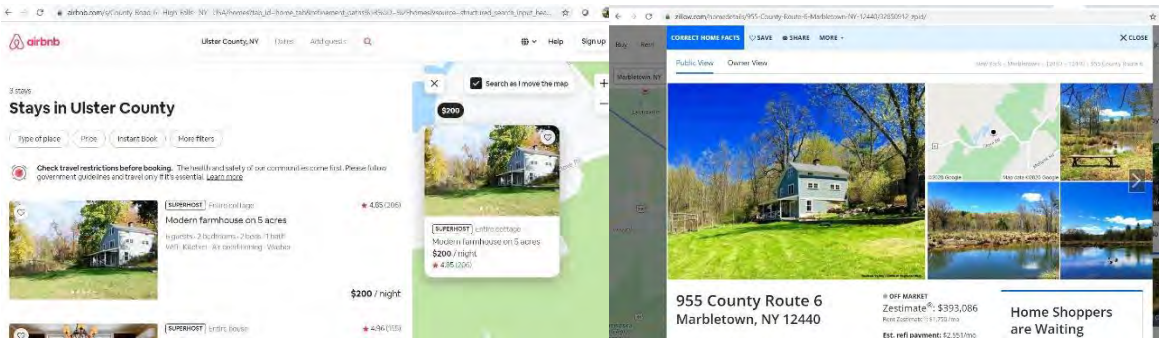


Figure 1: Example property listing on Airbnb visually identified in comparison to Zillow.

For properties that we were able to identify on an Airbnb or VRBO listing website, we recorded the online listing website, current price per night, and the number of reviews in the testing period of December 2018 through November 2019. Of these 11 properties identified as having received multiple requests to register, at least 3 had attested that they do not rent their property.

Unregistered Properties Listing Rentals

Identification by Bear Cloud	Street Address	Town	Listing	Price per Night	Reviews during testing period
BCP-716763	61 St. Kathrin	Big Indian	https://www.airbnb.com/rooms/18367170	\$ 500	23
BCP-747416	1 Clovewood Rd	High Falls	https://www.vrbo.com/109077	\$ 335	8
BCP-717650	14 Wettje Rd	Shandaken	https://www.airbnb.com/rooms/1800650	\$ 250	1
BCP-752984	60 Terra Road	Saugerties	https://www.airbnb.com/rooms/26003267	\$ 200	1
BCP-733602	955 County Route 6	High Falls	https://www.airbnb.com/rooms/14106601	\$ 200	57
BCP-769390	159 Plochmann Lane	Woodstock	https://www.airbnb.com/rooms/43624998	\$ 165	0
BCP-769743	8 Pine Grove St	Woodstock	https://www.vrbo.com/250102ha	\$ 160	4
BCP-757530	712 Sand Hill Rd	Gardiner	https://www.airbnb.com/rooms/23431294	\$ 158	54
BCP-718449	526-542 Olivea Rd	Big Indian	https://www.coldspringlodge.com/	\$ 150	13
BCP-775806	170 Co Rd 2A (Krumville Rd)	Green Cove Springs	https://www.airbnb.com/rooms/13604547	\$ 125	0
BCP-749716	566 Route 213	Brooklyn	https://www.airbnb.com/rooms/20424407	\$ 110	29
not identified	Polaski St.	Saugerties	https://www.airbnb.com/rooms/6215028	\$ 105	26
not identified	Lang Rd	West Shokan	https://www.airbnb.com/rooms/19625459	\$ 220	29
not identified	4 Wasyl	Kerhonkson	https://www.vrbo.com/1981809	\$ 170	0
not identified	913 Route 213 (High Falls House)	High Falls	https://www.csccoachhouse.com/	\$ 176	0
not identified	960 Clove Road	Marbletown	https://www.airbnb.com/rooms/18635309	\$ 399	51
not identified	(Stone House) Clove Road	Marbletown	https://www.airbnb.com/rooms/18914304	\$ 300	11

In cases where visual identification match was not possible, but another property appeared on that street, we searched DOF’s Access registration database, if the property was unregistered, we created a separate log recording the Airbnb or VRBO listing, price per night and number of reviews in the testing period. Six properties were identified this way.

RECOMMENDATION 1: We recommend the County sign a voluntary collection agreement (VCA) with all hosting platforms that offer this collection and remitting service while continuing to retain a third-party STR research contractor so long as cost-benefit analysis shows value in doing so.

RECOMMENDATION 2: We recommend enhanced and consistent enforcement to reduce the number of unregistered taxpayers and ensure compliance.

FINDING F2: STR Taxpayer's do not file quarterly returns timely or at all.

CONDITION: Quarterly returns are not submitted in a timely manner or not submitted at all, and penalties and interest assessed and collected inconsistently.

EFFECT: The Ulster County Comptroller's Office took a sample of 5% from the list of registered properties and requested 2019 backup documentation to support their filings. Both active and deregistered properties were included in the sample. Only 49 of 90 properties responded. We tested 40 active properties. Of those responding there were 6 quarterly filings that were not submitted at all, totaling \$836.19 in tax due based on information provided, before penalties and interest. STR taxpayers are assessed penalties and interest for late filings, we noted that \$161.35 was so assessed in the tested population, however only \$7.43 was noted as collected. Additionally, one taxpayer had included their penalty and interest payment with their 2019 4th quarter filing but DOF returned the incorrectly dated check on December 20, 2019 requesting a new payment. As of June 10, 2020, no payment has been received, resulting in a \$162.56 loss.

CAUSE: Many STR taxpayers are not bookkeepers, many do not live in the area, some simply forget to file, and others may not have the payment considering most do not collect the tax from the person that books. STR taxpayers rely on DOF to provide the form via email or mail and then they mail the form back with payment.

CRITERIA: The local law requires filing a return with payment within one month of the tax period and allows for a penalty and interest amount to be assessed based on the amount of tax due.

RECOMMENDATION: Tax collection at the point of sale through a VCA would ensure timely payment to the county for all filings within the platform. For those listing in other platforms we recommend the DOF prefill interest and penalty amounts owed in the subsequent quarterly form that is mailed or emailed to STR taxpayers, increasing the likelihood of collection of penalties and interest and encouraging future timely filing to avoid penalties and interest. Implementation of an online portal to submit payments could calculate the amount due automatically and accept payment electronically.

FINDING F3: Some STR Owner's do not report accurate total income amounts on quarterly reports.

CONDITION: The owner provided back up documentation does not reconcile to the amounts claimed on the quarterly filings.

EFFECT: This causes the amount of total tax due to be incorrect. We tested 140 quarters of filings as some properties registered during or after the testing period. Of those 70 quarters (50%) had a total income that did not reflect that same total income submitted with the backup documentation provided. The amount of tax forgone noted included \$1,362.41 of incorrect filings, additionally, due to audit inquiry, 2 STR owners provided DOF with new documentation, yielding another \$727.75 in tax for a total of \$2,199.

CAUSE: STR owner's either do not properly reference their documentation and provide an accurate total income during the period or intentionally misrepresent that total income amount.

CRITERIA: STR owners are currently required to report an accurate total income on a quarterly return. There is a taxpayer certification requirement that the property owner sign on each return attesting that the return is to the best of their knowledge, and the law stipulates how the total income should be taxed.

RECOMMENDATION: Quarterly returns should be accompanied by back up documentation, including print outs from the various sources of income, within the date range, this will encourage STR owners to reference backup information prior to submitting a filing. Entering a VCA would alleviate the STR owners who solely rent on one platform from needing to ensure the backup documentation matches the quarterly filing as the platform would calculate the amount for them. For those that rent across platforms, a more intense documentation review may be needed.

Conclusion

Ulster County is not collecting the full universe of potential revenue from short-term rental properties that list through platforms. Ulster County could improve revenue collections by entering into all available voluntary collection agreements with short-term rental platforms such as Airbnb while keeping a third-party STR research contractor so long as benefit outweighs cost. Furthermore, enhanced and consistent enforcement including documentation of interest and penalties due on quarterly bills could ensure better compliance. Finally, the Hotel Motel Occupancy Tax law should be amended to clarify the applicability to properties listed on STR platforms and simplify the calculations.

****Management's Response**

Management's response to our recommendations will be included at the end of our report. If there are factual errors or incorrect information, we will notate these items in the last paragraph of our report.

ULSTER COUNTY DEPARTMENT OF FINANCE

PO Box 1800, 244 Fair Street, Kingston, New York 12402

Telephone (845) 340-3460 Fax (845) 340-3430

Burton Gulnick, Jr.
Commissioner of Finance



C. J. Rioux, CPA
Deputy Commissioner of Finance

Lena Serrano
Deputy Commissioner of Finance

Tracey Williams
Deputy Commissioner of Finance
Director of Real Property Tax Service

June 22, 2020

March Gallagher
Ulster County Comptroller
P.O. Box 1800
Kingston, NY 12401

Re: Short-Term Rental Occupancy Tax Financial Audit

Dear March,

In response to the Short-Term Rental Occupancy Tax Financial Audit, there are a few responses I would like to make. The Department of Finance began utilizing a contract with a short-term rental (STR) research contractor in 2018. The first mailing to STR property owners renting via a third-party site but not registered with Department of Finance was completed in August 2018. Throughout 2019, new processes and procedures were developed and instituted as various situations arose. Depending on the dates and properties included in your test groups, results could be skewed as newer protocols have been put into place.

Finding 1: Owners that state they no longer rent, now must sign an attestation and they do not get removed from Department of Finance's list until the property is no longer listed on the STR research contractor's site. They are notified on a periodic basis that they are still listed as a valid rental until they are removed from the report.


Finding 2: Registrations received as result of notification by Department of Finance based on the STR research contractor's site, are billed for the year prior to the date of the mailing, but have penalties and interest waived for this one-time payment. All other tax returns submitted later than the 30th of the month that they are due, are issued a letter notifying the property owner of the penalties and interest due, if the total amount outstanding is not greater than \$10.00. Documenting the amount of penalties/interest due on the owner's next quarterly tax return will only be accurate if the new return is paid on time. Since penalties/interest accrue each month that they are late, the amount due can change.

Finding 3: Efforts by the Department of Finance have been focused on increasing the amount of STRs registering with the department, collecting as much back taxes as possible, while verifying the amount submitted as payment agrees with what is reported on the owner's certified tax return. Verifying filing backup and documentation is an auditing activity that has not been a part of Department of Finance's function.

Department of Finance has not received any documentation from the Comptroller's Office of their report findings, so we are unable to comment on specific information provided in the audit at this time.

Thank you for the opportunity to respond to your audit, and if you have any questions or comments regarding the above, please do not hesitate to reach out to me.

Sincerely,



Burton Gulnick, Jr.
Commissioner of Finance