

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.48
(ID # 13262)**

MEETING DATE:
Tuesday, December 15, 2020

FROM: TREASURER-TAX COLLECTOR:

SUBJECT: TREASURER-TAX COLLECTOR: Approve the Voluntary Collection Agreement for Riverside County (California) Transient Occupancy Tax and Applicable Assessments with Airbnb, Inc., All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the Voluntary Collection Agreement for Riverside County (California) Transient Occupancy Tax and Applicable Assessments with Airbnb, Inc. to collect and remit Transient Occupancy Taxes (TOT), including select Tourism Business Improvement District (TBID) taxes, on behalf of the third-party individuals or entities that utilize Airbnb's online booking platform for short-term lodging in the County.

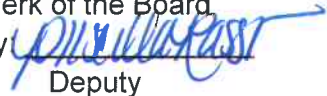
ACTION: Policy


Matthew Jennings, Treasurer-Tax Collector 11/30/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 15, 2020
xc: Treasurer

Kecia R. Harper
Clerk of the Board
By 
Deputy

**SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA**

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$ 0	\$ 0	\$ 0	\$ 0
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0
SOURCE OF FUNDS:			Budget Adjustment:	N/A
			For Fiscal Year:	
			20/21	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

California Revenue and Taxation Code Section 7280 affords the County the ability to levy a tax on the privilege of occupying a room or rooms or other living space in a hotel, inn, tourist home or house, motel, or other lodging unless the occupancy is for a period of more than 30 days (the "Transient Occupancy Tax" or "TOT"). The tax, when levied by the legislative body of a county, applies only to the unincorporated areas of the county. Ordinance No. 495 imposes a Transient Occupancy Tax within the unincorporated areas of the County of Riverside. Pursuant to Section 9 of Ordinance No. 927, operators of short-term rentals are subject to the tax.

The Treasurer-Tax Collector (TTC) is responsible for the collection of the Transient Occupancy Tax (also known as "hotel tax" or "bed tax") and related assessments from owners (operators), including vacation/part-time rental owners and operators, in the County.

Vacation rentals listed on websites such as Airbnb have been difficult to regulate with regard to Transient Occupancy Tax collection. In order to better ensure that all operators/owners are collecting and remitting the required TOT, the TTC has negotiated a voluntary collection agreement (VCA), with Airbnb, Inc., the largest online vacation rental-listing website. Under this agreement, Airbnb will collect and remit TOT and related assessments to the TTC on behalf of hosts who use the Airbnb platform to rent their properties.

Impact on Residents and Businesses

Acceptance of this agreement will greatly improve the efficiency with which the County collects TOT taxes. Once in force, the VCA will capture the TOT not currently being collected and bring additional revenue to the county.

Financial Considerations

It is anticipated that the VCA will result in increased TOT and related assessment collections. It is difficult to estimate the amount of increased collections because both the total number of unlicensed active vacation rentals, and the level of their activity, are currently unknown. Agreeing to the VCA has no monetary cost to the County, only benefit.

ATTACHMENTS:

SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE,
STATE OF CALIFORNIA

ATTACHMENT A. Voluntary Collection Agreement


Stephanie P. B., Principal Management Analyst 12/8/2020


Gregory V. Priamos, Director County Counsel 11/24/2020

**VOLUNTARY COLLECTION AGREEMENT
FOR
RIVERSIDE COUNTY (CALIFORNIA) TRANSIENT OCCUPANCY TAX
AND
APPLICABLE ASSESSMENTS**

THIS VOLUNTARY COLLECTION AGREEMENT (the “Agreement”) is dated December 15, 2020 and is between AIRBNB, INC., a Delaware corporation (“Airbnb”), and the TREASURER-TAX COLLECTOR of the COUNTY OF RIVERSIDE (the “Taxing Jurisdiction”), which is a political subdivision of the State of California. Each party may be referred to individually as a “Party” and collectively as the “Parties.”

RECITALS:

WHEREAS, Airbnb represents that it provides an Internet-based platform (the “Platform”) through which third parties offering accommodations and/or activities (“Hosts”) and third parties booking such accommodations and/or activities (“Guests”) may communicate, negotiate and consummate a direct booking transaction for accommodations and/or activities to which Airbnb is not a party (“Booking Transactions”); and

WHEREAS, the Taxing Jurisdiction and Airbnb enter into this Agreement voluntarily in order to facilitate the reporting, collection and remittance of applicable transient occupancy taxes and applicable sales taxes (“Taxes”) imposed under applicable Riverside County law (the applicable “Code”), and the Temecula Wine Country Tourism Marketing District (“TWCTMD”) assessments (“Assessments”) levied pursuant to the Taxing Jurisdiction’s Resolution No. 2016-190 and the TWCTMD Management District Plan (“Plan”), on behalf of certain Hosts for Booking Transactions completed by Hosts and Guests on the Platform for accommodations located in unincorporated Riverside County, California (the “Taxable Booking Transactions”).

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, PROMISES AND AGREEMENTS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

(A) Solely pursuant to the terms and conditions of this Agreement, including only for periods in which this Agreement is effective (defined below), and solely for Taxable Booking Transactions completed on the Platform by Hosts other than those defined in Paragraphs (F) and (E-1) below, Airbnb agrees contractually to assume the duties of a Taxes collector as described in the Code solely for the collection and remittance of Taxes (hereinafter referred to as a “Taxes

Collector”) and assume the duties of a TWCTMD assessment collector pursuant to the Plan (“TWCTMD Collector”).

(B) Starting on the first day of the month commencing no sooner than thirty (30) days after the Taxing Jurisdiction signs the Agreement (the “Effective Date”), Airbnb agrees to commence collecting and remitting Taxes and Assessments on behalf of certain Hosts, pursuant to the terms of this Agreement, at the applicable rate, on Taxable Booking Transactions. Except as set forth in Paragraph (M) below, Airbnb shall not assume any obligation or liability to collect Taxes or Assessments for any period or for any transaction prior to the Effective Date or after termination of this Agreement.

(C) Except as set forth in Paragraph (E) below, Airbnb agrees to register as a Taxes Collector and TWCTMD Collector on behalf of Hosts for the sole purpose of reporting, collection and remittance of Taxes and Assessments under this Agreement, and Airbnb will be the registered Taxes Collector and TWCTMD Collector on behalf of any affiliate or subsidiary collecting Taxes and Assessments. The assumption of such duties described in Paragraph (A) above and this Paragraph (C) shall not trigger any other registration requirements to which Airbnb is not otherwise subject.

REMITTANCE OF TAXES AND ASSESSMENTS

(D) Airbnb agrees reasonably to report aggregate information on the tax return form prescribed by the Taxing Jurisdiction, including an aggregate of gross receipts, exemptions and adjustments, and taxable receipts of all Taxes and Assessments that are subject to the provisions of this Agreement. Airbnb shall remit all Taxes and Assessments collected from Guests in accordance with this Agreement in the time and manner described in the Code or as otherwise agreed to in writing. As between Airbnb, Hosts and Guests, Airbnb’s collection of Taxes and Assessments from Guests on behalf of the Hosts is governed by Airbnb’s Terms of Service (the “TOS”) located at <https://www.airbnb.com/terms>.

TWCTMD PARTICIPATION

(D-1) Solely for the purposes of satisfying any listing or reporting requirements under the Plan, Airbnb shall be listed as the “lodging business” for the purposes of any disclosure under the Plan. Airbnb expressly waives the right to vote or otherwise participate or take any action relating to the TWCTMD except for acting as a TWCTMD Collector and remitting Assessments

to the Taxing Jurisdiction pursuant to the Plan. Any Host shall be entitled to vote, participate or otherwise take any action that could be taken by a “lodging business” that collects and remits TWCTMD directly to the Taxing Jurisdiction. The Taxing Jurisdiction shall accept transactional records produced by a Host from the Platform as sufficient evidence to substantiate the amount of TWCTMD paid by any Host. The Taxing Jurisdiction shall post any notices required to be delivered to any “lodging business” on the Taxing Jurisdiction’s website.

REGISTERED HOSTS

(E) Airbnb reserves the right to implement a software feature on the Platform whereby Airbnb collects Taxes and Assessments based on tax information supplied by the Host and remits such Taxes and Assessments to Hosts for ultimate reporting and remittance by the Host to the Taxing Jurisdiction. In such cases, a Host must provide to Airbnb its (i) applicable tax identification or registration number; (ii) applicable business identification number; and (iii) acknowledgement of its obligation to collect all Taxes and Assessments owed on a Host’s Taxable Booking Transactions and to remit and report any Taxes and Assessments collected directly to the Taxing Jurisdiction (a “**Registered Host**”). Upon request from the Taxing Jurisdiction, and not more than once per consecutive twelve-month period, Airbnb will provide the Taxing Jurisdiction with copies of documentation related to all Registered Hosts.

(E-1) Airbnb satisfies its obligations under this Agreement by remitting the full amount of Taxes and Assessments collected on behalf of Hosts to the Taxing Jurisdiction, and in the case of Registered Hosts only, by remitting the Taxes and Assessments collected on a Registered Host’s Taxable Booking Transactions directly to the Registered Host.

AIRBNB LIABILITY

(F) Pursuant to the terms of this Agreement, Airbnb agrees contractually to assume liability for any failure to report, collect and/or remit the correct amount of Taxes and Assessments, including, but not limited to, penalties and interest, lawfully and properly imposed in compliance with the Code. Nothing contained herein nor any action taken pursuant to this Agreement shall impair, restrict or prevent Airbnb from asserting that any Taxes, Assessments and/or penalties, interest, fines or other amounts assessed against it were not due or are the subject of a claim for refund under applicable law, or otherwise bar it from enforcing any rights accorded by law.

(F-1) Notwithstanding the above and solely with respect to Registered Hosts, Airbnb does not assume any liability for the failure of a Registered Host to comply with any applicable collection, reporting or remittance obligations related to Taxable Booking Transactions. Further, Airbnb does not assume any liability for collection based on information supplied by the Registered Host.

AUDIT

(G) During any period for which Airbnb is not in breach of its obligations under this Agreement, the Taxing Jurisdiction agrees to audit Airbnb on the basis of tax returns filed and supporting documentation. The Taxing Jurisdiction reserves the right to audit any individual Host for activity that has been brought to the attention of the Taxing Jurisdiction in the form of a complaint or other means independent of this Agreement or independent of data or information provided pursuant to this Agreement.

(H) The Taxing Jurisdiction agrees to audit Airbnb on an aggregated and anonymized transaction basis for Taxable Booking Transactions. Except as otherwise agreed herein, Airbnb shall not be required to produce any personally identifiable information relating to any Host or Guest or relating to any Taxable Booking Transaction without binding legal process served only after completion of, or reasonable attempt to complete, an audit by the Taxing Jurisdiction of Airbnb with respect to such users. The parties agree to utilize appropriate sampling audit methodologies based on a standard sample period which may be projected against the remainder of any periods open under the applicable statute of limitations, unless Airbnb elects, at its sole discretion, to undergo further audit of such open periods by the Taxing Jurisdiction.

GUEST AND HOST LIABILITY

(I) During any period in which this Agreement is effective, and provided Airbnb is in compliance with its obligations herein, Hosts shall be relieved of any obligation to collect and remit Taxes and Assessments on Taxable Booking Transactions, and shall be permitted but not required to register individually with the Taxing Jurisdiction to collect and remit Taxes and Assessments. Notwithstanding the above, Registered Hosts will be solely responsible for directly remitting Taxes and Assessments collected on Taxable Booking Transactions to the Taxing Jurisdiction. Nothing in this Agreement shall relieve Guests or Hosts from any

responsibilities with respect to Taxes and Assessments for transactions completed other than on the Platform, or restrict the Taxing Jurisdiction from investigating or enforcing any provision of applicable law against such users for such transactions.

WAIVER OF LOOK-BACK

(J) The Taxing Jurisdiction expressly releases, acquits, waives and forever discharges Airbnb, its current or past affiliated parent or subsidiary companies, directors, shareholders, investors, employees and other agents from any and all actions, causes of action, indebtedness, suits, damages or claims arising out of or relating to payment of and/or collection of Taxes, Assessments or other tax indebtedness, including but not limited to penalties, fines, interest or other payments relating to Taxes and Assessments on any Taxable Booking Transactions prior to the Effective Date. Nothing contained in this Paragraph of this Agreement will constitute a release or waiver of any claim, cause of action or indebtedness that the Taxing Jurisdiction may have or claim to have against any Host or Guest unrelated to Taxable Booking Transactions under this Agreement.

NOTIFICATION TO GUESTS AND HOSTS

(K) Airbnb agrees, for the purposes of facilitating this Agreement, and as required by its TOS, that, except with respect to Registered Hosts, it will notify (i) Hosts that Taxes and Assessments will be collected and remitted to the Taxing Jurisdiction as of the Effective Date pursuant to the terms of this Agreement; and (ii) Guests and Hosts of the amount of Taxes and Assessments collected and remitted on each Taxable Booking Transaction, and (iii) Hosts that neither the existence of this Agreement, nor any of its specific terms, nor the payment of Taxes and Assessments contemplated by this Agreement or otherwise required by the Code shall be construed as authorizing any activity that is otherwise prohibited under the Code or any other applicable rules or regulations, or relieving any Host of their obligation to comply with applicable rules and regulations.

LIMITATION OF APPLICATION

(L) This Agreement is solely for the purpose of facilitating the administration and collection of the Taxes and Assessments with respect to Taxable Booking Transactions and, except with respect to the rights and liabilities set forth herein, the execution of or actions taken under this Agreement shall not be considered an admission of law or fact or constitute evidence

thereof under the Code or any other provisions of the laws of the United States of America or of any State or subdivision or municipality thereof. Neither Party waives and each Party expressly preserves, any and all arguments, contentions, claims, causes of action, defenses or assertions relating to the validity or interpretation or applicability of the Code, regulations or application of law.

(L-1) If Airbnb expands the types of transactions that may be completed by Hosts and Guests on the Platform to include additional taxable services or products located in the Taxing Jurisdiction, and Airbnb decides in its sole discretion to collect and remit any applicable taxes with respect to such transactions on behalf of Hosts and/or Guests, Airbnb agrees to provide reasonable notice to the Taxing Jurisdiction regarding the collection and remittance of such taxes.

DURATION/TERMINATION

(M) This Agreement may be terminated by Airbnb or the Taxing Jurisdiction for convenience on 30-day written notification to the other Party and, in the case where Airbnb is the party terminating the Agreement, 15-day notification to each Host within the County that Airbnb will cease the collection and remittance of TOT and Assessments for Taxable Booking Transactions subject to this Agreement. Such termination will be effective on the first day of the first calendar month commencing at least 30 days after notice of termination is deemed to be given to the other Party pursuant to Paragraph (W) below. Any termination under this Paragraph shall not affect the duty of Airbnb to remit to the Taxing Jurisdiction any TOT and Assessments collected from Guests up through and including the effective date of termination of this Agreement, even if not remitted by Airbnb to the Taxing Jurisdiction as of the effective date of termination.

MISCELLANEOUS

(N) CHOICE OF LAW. This Agreement, its construction and any and all disputes arising out of or relating to it, shall be interpreted in accordance with the substantive laws of the State of California without regard to its conflict of law principles.

(O) MODIFICATION. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by both Parties.

(P) MERGER AND INTEGRATION. This Agreement contains the entire agreement of the Parties with respect to the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings with respect thereto.

(Q) COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. The Agreement shall become effective when a counterpart has been signed by each Party and delivered to the other Party in its original form.

(R) RELATIONSHIP OF THE PARTIES. The Parties are entering into an arm's-length transaction and do not have any relationship, employment or otherwise. This Agreement does not create nor is it intended to create a partnership, franchise, joint venture, agency, or employment relationship between the Parties. There are no third-party beneficiaries to this Agreement.

(S) WAIVER AND CUMULATIVE REMEDIES. No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right or any other right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

(T) FORCE MAJEURE. Neither Party shall be liable for any failure or delay in performance under this Agreement for causes beyond that Party's reasonable control and occurring without that Party's fault or negligence, including, but not limited to, acts of God, acts of government, flood, fire, civil unrest, acts of terror, strikes or other labor problems (other than those involving Airbnb employees), computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

(U) ASSIGNMENT. Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (which consent shall not be unreasonably withheld). Notwithstanding the foregoing, Airbnb may assign this Agreement in its entirety without consent of the other Party in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

(V) MISCELLANEOUS. If any provision of this Agreement is held by a court of

competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

NOTICES

(W) All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the third business day after first class mailing postage prepaid; or (iii) the second business day after sending by overnight mail or by facsimile with telephonic confirmation of receipt. Notices shall be addressed to the attention of the following persons, provided each Party may modify the authorized recipients by providing written notice to the other Party:

To Airbnb:

Airbnb, Inc.
Attn: General Counsel
888 Brannan Street, 4th Fl.
SF, CA 94103
legal@airbnb.com

Airbnb, Inc.
Attn: Global Head of Tax
888 Brannan Street, 4th Fl.
SF, CA 94103
tax@airbnb.com

To the Taxing Jurisdiction:

Riverside County Treasurer-Tax Collector
Attn: Melissa Johnson
P.O Box 12005
Riverside, CA 92502-2205
MJohnson@RIVCO.ORG

Riverside County Treasurer-Tax Collector
Attn: Tony Danciu
P.O Box 12005
Riverside, CA 92502-2205
rcttc@rivco.org

(Signatures follow on next page)


IN WITNESS WHEREOF, Airbnb and the Taxing Jurisdiction have executed this Agreement effective on the date set forth in the introductory clause.

AIRBNB, INC., a Delaware corporation

By: 
Signature of Authorized Representative

Mirei Yasumatsu, Global Tax Director
Name and Title of Authorized Representative

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: 
Signature

Matthew Jennings, Assistant Treasurer-Tax Collector
Name and Title of Authorized Representative

ATTEST: BOARD OF SUPERVISORS

KECIA R. HARPER
Clerk of the Board of Supervisors

By: **V. MANUEL PEREZ**

By: 
Deputy

By: 
Chairman of the Board of Supervisors