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COUNTY COUNCIL

**ANNE ARUNDEL COUNTY
OFFICE OF THE COUNTY AUDITOR**

February 24, 2014

COUNTY EXECUTIVE'S
OFFICE
EX

The Honorable Members of the County Council
The Honorable County Executive Laura Neuman
Ms. Julie Mussog, Controller
Anne Arundel County
44 Calvert Street
Annapolis, Maryland 21401

Dear Members, Ms. Neuman, and Ms. Mussog:

In accordance with §311 of the County Charter, I am calling to your attention and taking exception to the following improper procedures.

Section 20-603(c)(1) of the Annotated Code of Maryland Local Government Article requires the County to remit a percentage of the hotel taxes collected within the county to the Anne Arundel County Conference and Visitors Bureau (AACCVB) and to the Arts Council of Anne Arundel County. The State imposed this requirement on the County beginning in fiscal year 2010 for AACCVB and beginning in fiscal year 2012 for the Arts Council.

The required distribution percentages are as follows:

	Fiscal Year 2010	Fiscal Year 2011	Fiscal Year 2012	Fiscal Year 2013	Fiscal Year 2014
AACCVB	7%	7%	8%	12.5%	17%
Arts Council	0%	0%	2%	2.5%	3%

The County remits required distributions quarterly, and for fiscal years 2010 through 2013, the County distributed approximately \$5.2 million to AACCVB and approximately \$700,000 to the Arts Council.

When we were reviewing fiscal year 2013 revenues, we noted that the County did not distribute hotel tax revenues to AACCVB and to the Arts Council in accordance with the required distribution percentages. The Office of Finance staff advised us that the County distributes the taxes to AACCVB and to the Arts Council based on the percentage in effect during the month in which the hotel collected the taxes; however, Deputy County Attorney Nancy Duden advised us that the Office of Finance's procedures do not comply with the provisions of State law. According to Ms. Duden, State law requires the County to apply the percentage in effect when the funds are distributed by the County to AACCVB and to the Arts Council, not the percentage in effect when the taxes were collected by the hotel or remitted to the County.

Based on Ms. Duden's advice, we recalculated the amounts that the County should have distributed to AACCVB and the Arts Council. Our calculations show that the county distributed \$485,385 less than required to AACCVB and \$51,086 less than required to the Arts Council. Accordingly, we recommend that the County take corrective action to distribute these funds to AACCVB and to the Arts Council as required by State law. Further, we recommend that the Administration implement procedures to ensure all future distributions comply with State law.

Members of the County Council
Ms. Neuman
Ms. Mussog
February 24, 2014

Finally, we noted that Section 20-603(b)(3) of the Local Government Article, which took effect on July 1, 2009, states that "Any revenue generated in the City of Annapolis from the hotel tax shall be collected by Anne Arundel County," and the County shall distribute 17% of the tax to AACCVB and 3% to the Arts Council. However, subsequent to the enactment of this requirement in State law, the County and the City entered into an agreement in July 2011 delegating to the City the County's rights, duties, and obligation to collect and distribute hotel taxes within the City's boundaries (attached). Because State law specifically states that the County shall collect and distribute hotel taxes from hotels within the City limits, we asked Ms. Duden whether the agreement between the County and the City was in violation of State law. In response, County Attorney David Plymyer wrote:

"Although the Agreement in question does delegate the physical collection of the tax to the City of Annapolis, it certainly is correct that the duty to collect the tax is non-delegable in the sense that, if the City fails to collect the tax, the County would remain under a legal duty to do so. No language in the Agreement can alter the fact the County retains ultimate legal responsibility for collection.

Whether the County had the right to delegate the act of collecting the tax to the City is a separate legal question, and the answer is not free from doubt. The cases involving duties that the Maryland courts have held to be "non-delegable" have involved the exercise of discretionary functions by specified public officials, not ministerial ones such as the collection of a tax. At the end of the day, all duties imposed on "the County" are exercised by agents of the County, including its officers and employees. Having the City act in effect as the County's agent to perform a legal duty imposed on the County is not that great a stretch.

In any event, the doubts were not sufficiently substantial to persuade me that the Agreement was unequivocally unlawful, and both the County and the City wanted to proceed with the Agreement despite the risks of unlawfulness, which are absolutely minimal."

Given that the County has the ultimate legal responsibility to collect hotel taxes within the City and remit the required amounts to AACCVB and the Arts Council, we recommend that the Office of Finance review the City's collection and distribution records and ensure the City, acting as the County's agent, collected the proper amounts and remitted the required percentages to AACCVB and the Arts Council. Further, given that answer to the question of whether the County had the right to delegate the act of collecting the tax within the City limits is not free from doubt, we recommend that the County discontinue this arrangement with the City and that the County collect and remit hotel taxes from hotels within the city limits to minimize the risk of noncompliance with State law.

Management's Response

See the attached response from Ms. Mussog.

We thank the Office of Finance staff for their courteous cooperation. Please call if you have any questions on our findings and recommendations.

Sincerely,



Teresa Sutherland, CPA
County Auditor

Anne Arundel County Conference and Visitors Bureau

Date of Distribution	Actual Distribution Amount	Correct Distribtuion Amount	Difference
12/1/2009	\$251,244.06	\$250,343.40	(\$900.66)
2/3/2010	\$218,479.60	\$218,479.60	(\$0.00)
5/5/2012	\$209,414.70	\$209,414.70	(\$0.00)
8/6/2010	\$283,469.25	\$286,019.30	\$2,550.05
11/5/2010	\$281,595.21	\$279,045.32	(\$2,549.89)
2/5/2011	\$233,577.11	\$233,576.93	(\$0.18)
5/6/2011	\$216,318.84	\$216,318.84	(\$0.00)
8/10/2011	\$296,796.04	\$342,098.82	\$45,302.78
11/3/2011	\$331,302.24	\$328,398.90	(\$2,903.34)
2/3/2012	\$279,545.89	\$279,545.89	\$0.00
5/4/2012	\$238,346.53	\$238,346.53	(\$0.00)
8/9/2012	\$354,747.96	\$576,261.25	\$221,513.29
11/13/2012	\$563,641.30	\$549,582.07	(\$14,059.23)
2/13/2013	\$457,284.63	\$457,354.92	\$70.29
5/20/2013	\$397,180.81	\$430,419.36	\$33,238.55
9/12/2013	\$568,567.39	\$771,690.89	\$203,123.50
Total	\$5,181,511.56	\$5,666,896.71	\$485,385.15

Arts Council of Anne Arundel County			
Date of Distribution	Actual Distribution Amount	Correct Distribtuion Amount	Difference
10/4/2011	\$51,029.50		
11/3/2011	\$31,812.51		
Subtotal	\$82,842.01	\$82,100.00	(\$742.01)
2/3/2012	\$69,886.47	\$69,886.47	\$0.00
5/4/2012	\$59,586.83	\$59,586.63	(\$0.20)
8/9/2012	\$88,686.99	\$115,252.25	\$26,565.26
11/13/2012	\$113,431.23	\$109,916.41	(\$3,514.82)
2/13/2013	\$91,456.93	\$91,470.98	\$14.05
5/20/2013	\$79,703.00	\$86,083.87	\$6,380.87
9/12/2013	\$113,797.14	\$136,180.75	\$22,383.61
Total	\$699,390.60	\$750,477.37	\$51,086.77



**OFFICE OF FINANCE
ARUNDEL CENTER
44 CALVERT STREET
ANNAPOLIS, MD 21401**

JULIE MUSSOG, CONTROLLER

MEMORANDUM

TO: Teresa Sutherland, County Auditor

FROM: Julie Mussog

SUBJECT: Hotel Sales Tax Audit Response

DATE: February 5, 2014

General accounting practices would normally dictate computing the payment rate on the month of the collection of the tax by the hotel, rather than the rate in effect as of the distribution date. However, we understand that the Office of Law has made the determination that State law requires the County to use the rate in effect as of distribution date and we will abide by their determination.

The Office of Finance has reviewed the auditor's calculation and agrees with the underpayment amount calculated for fiscal 2010 through fiscal 2013. These funds will be remitted to the Visitors Bureau and Arts Council when the second quarter fiscal 2014 distributions are made.

We have requested that our legislative liaison could meet with the Anne Arundel County delegation to determine if this was the intent of the law or if it was an oversight that needs legislative change.

Procedures have been put in place to insure accurate calculations going forward and will be followed. If there is a change to the State law and procedures will be updated accordingly.

The County Auditor accurately notes in her report a discrepancy between State and County law. In the County Code we have the ability to delegate collection authority to the city of Annapolis, but the State law does not contain the same language. We have requested a legislative change to the State law in the 2014 Session to enable us the authority to delegate to the city of Annapolis hotel tax collection authority from hotels within the city. We will review the City's collection and disbursement reports for the hotel tax and inform their Office of Finance of any discrepancies we find.

If you have any additional questions, please do not hesitate to contact my office.

Cc: County Executive Laura Neuman
Karen L. Cook, Esq., Chief Administrative Officer

AGREEMENT

THIS AGREEMENT is made this 5th day of July, 2011, by and between Anne Arundel County, Maryland, a body corporate and politic of the State of Maryland (the "County"), and the City of Annapolis, a municipal corporation of the State of Maryland (the "City").

WHEREAS, Maryland Code Annotated, Article 24, § 9-602 permits the County to impose, by ordinance, and collect a sale or use tax on space rentals; and

WHEREAS, the County has imposed a tax, by ordinance, "on gross amounts of money paid to the owners or operators of hotels in the County by transient guests or tenants for renting, using, or occupying a room in the hotels" (§ 4-5-105(b) of the Anne Arundel County (2005, as amended)) (the "hotel tax"); and

WHEREAS, Maryland Code Annotated, Article 24, § 9-602 was amended during the 2009 session of the Maryland legislature; and

WHEREAS, prior to the 2009 amendment, Maryland Code Annotated, Article 24, § 9-602, provided that the City would collect and retain the hotel tax revenues generated within the boundaries of the City;

WHEREAS, pursuant to the 2009 amendment, the Maryland Code Annotated, Article 24, § 9-602 requires the County to collect hotel tax revenue generated from facilities within the boundaries of the City and to distribute that revenue in a specified manner, including distributing the balance to the City; and

WHEREAS, the City and the County agree that the City should continue to collect the hotel tax revenue generated within the boundaries of the City; and

WHEREAS, it is the purpose of this Agreement to describe the formal rights and obligations of the parties with respect to the hotel tax;

NOW, THEREFORE, WITNESSETH that, in consideration of the mutual promises and covenants set forth in this Agreement, the City and the County agree as follows:

1. The County hereby delegates to the City its rights, duties, and obligations with respect to collection and distribution of the hotel tax within the boundaries of the City, as set forth in Maryland Code Annotated, Article 24, § 9-602, as amended. The City hereby accepts the delegation of the County's rights, duties, and obligations with respect to collection and distribution of the hotel tax within the boundaries of the City, as set forth in Maryland Code Annotated, Article 24, § 9-602, as amended.

2. The City understands and agrees that its collection of the tax as permitted by this Agreement shall be in accordance with all provisions of County law, including provisions of County law related to the hotel tax and all provisions of County law generally related to the collections of taxes and funds due to the County.

3. The City shall maintain complete and accurate books and records of its financial activities related to the collection and distribution of the hotel tax and shall make these books and records available upon reasonable notice for inspection and copying by County representatives. The City agrees that the County Controller may audit all books and records of the City related to the collection and distribution of the hotel tax.

4. The city shall file with the County Controller detailed reports of hotel tax collections and distributions, including an itemized accounting, signed by the chief financial officer of the City, as follows:

- a. for the period of July 1 through December 31, by February 28 of the following year; and
- b. for the period of January 1 through June 30, by the following August 31.

5. The City shall furnish reports to the County from time to time as requested and in such form and number as may be requested by the County relating to the City's collection and distribution of the hotel tax within the boundaries of the City.

6. The term of this Agreement shall begin July 1, 2009, and shall continue until terminated by either party, as set forth herein.

7. No payment shall be due to or from either party under this Agreement.

8. The County and the City bind themselves, their partners, successors, assignees, and legal representatives to this Agreement. Neither the County nor the City shall assign, sublet, or transfer any interest in this Agreement.

9. The City agrees to indemnify, defend, and hold harmless the County, its officers, agents, and employees from any and all losses, damages, liabilities, claims, and costs arising out of

or resulting from any act or omission by the City, its directors, officers, agents, employees, and contractors in performance of this Agreement or otherwise arising out of the collection or distribution of the hotel tax within the boundaries of the City.

10. In the performance of this Agreement, the City, including its employees, agents, and subcontractors, shall act solely as an independent contractor, and nothing contained in or implied by this Agreement shall be construed at any time to create any other relationship between the County and the City, including employer and employee, partnership, principal and agent, or joint venturer.

11. Either party may terminate this Agreement at any time without cause upon 60 days written notice to the other party.

12. Either party may terminate this Agreement for cause upon 7 days written notice.

13. If, at the time of either the expiration or termination of this Agreement, the City has on hand any hotel tax revenues for the then current fiscal year, those revenues shall be returned and transferred to the County within 30 days of the said expiration or termination so that the County can distribute the hotel tax revenues in accordance with State law.

14. The interpretation of this Agreement shall be governed by the laws of the State of Maryland.

15. This Agreement represents the full and final understanding of the parties, and no other understanding or representations, oral or written, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto unless in writing and signed by the parties.

16. The parties certify that this Agreement has been duly authorized and approved by all required organizational action of the party.

17. The person executing this Agreement on behalf of each party certifies that he or she has the legal and organizational authority to do so.

IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

ATTEST:

ANNE ARUNDEL COUNTY, MARYLAND



Witness

 4-29-11

By: Dennis Callahan Date (Seal)

Title: Chief Administrative Officer

CITY OF ANNAPOLIS

[Signature]
Witness Regina C. Williams - Edwards
City Clerk

[Signature] 7/1/11
By: Joshua L. Cohen Date (Seal)
Title: Mayor

Approved as to form and legal sufficiency.

[Signature] 4-26-11
Anne Arundel County Date
Office of Law

[Signature] 5-6-11
Gary M. Elson Date
Assistant City Attorney

Approved.

[Signature] 4/29/11
Controller Date

[Signature] 5/20/11
City of Annapolis Finance Director Date