

Chapter 7.65 of Title 10 of the California Code of Regulations is amended to read:

**Title 10. Investment
Chapter 7.65.**

TOURISM MARKETING ACT

Subchapter 1. Definitions

§ 5350. Definitions.

(a) "Accommodation Location" is any passenger car rental location on the property of a hotel, motel or other accommodation facility.

(b) "Act" means the California Tourism Marketing Act, Government Code Section 13995 *et seq.*

(c) "Airport Location" is any passenger car rental location on an airport property or servicing an airport and subject to either an airport concession agreement or an airport access fee agreement.

(d) "Assessed Business" means a Business which derives any California Gross Receipts from a California Business Location from one or more Industry Segments and participates in the Tourism Assessment Program by paying an annual Assessment pursuant to the Act.

(e) "Assessment" means the amount of Business Location annual fees owed by the Assessed Business to the Office pursuant to the Act.

(f) "Assessment Rate" for the Passenger Rental Car Industry Segment shall be set forth in Section 5357.1 below. For all other segments, the "Assessment Rate" shall be as determined by referendum under the Act.

(g) "Authorized Representative" means a person authorized by the Business to sign and provide the information required in the Registration Form and the Ballot. Examples of authorized representatives include sole proprietor, corporate officers, general partners and fiduciaries.

(h) "Ballot" means the written document sent to Assessed Businesses consisting of the information listed in Section 5355.

(i) "Business" means an individual (sole proprietorship), partnership, fiduciary, corporation, association, or any other business organization, whether operating on a profit or nonprofit basis.

(j) "Business Location" means the California street address where Travel and Tourism Revenues are generated by a Business. If the Business has more than one business license for a single address, then each activity requiring a business license is a separate Business Location.

(k) California Travel and Tourism Commission ("CTTC") is the commission that promotes California as a tourism destination, both domestically and internationally.

(l) "California Gross Receipts" means gross receipts minus returns and allowances from sales in California. Examples of California Gross Receipts are the amount shown on line 1c of Schedule F, Form 100 of the California Franchise Tax Board, 1996 revision date, line 3 on Schedule C, Form 1040 of the Internal Revenue Service, 1996 revision date,

or for multi-state operations, column (b) on line 3, "total sales" of schedule R-1 of the California Franchise Tax Board, 1996 revision date.

(m) "Commissioner" means a member of the board of commissioners of the California Travel and Tourism Commission, established pursuant to Government Code Section 13995.40.

(n) "Estimated Amount" means for a given fiscal year the sum of the amount estimated by the Office to be (i) payable as Assessments by all Assessed Businesses other than the Passenger Car Rental Industry Segment and (ii) contributed by the State of California general funding.

(o) "Expenditures" shall mean the total amount of dollars budgeted in a given fiscal year to be spent by CTTC, including without limitation utilities, rent, insurance, services, products, goods, advertising, salaries, building equipment, fixed, tangible and intangible assets.

(p) "Exempt Business" means a Business meeting one or both of the following requirements:

- (1) The Business is an Exempt Travel Agent/Tour Operator; and/or
- (2) The Business is a Public Body.

(q) "Exempt Business Location" means a Business Location meeting one or more of the following:

- (1) The Business Location derives less than one percent (1%) of its California Gross Receipts from Travel and Tourism Revenue within Industry Segment(s);
- (2) The Business Location derives California Gross Receipts from any of the following Industry Segments within the attractions and recreation Industry Category where the business does not charge an admission fee or gate: museums and art galleries, arts or science center, historical society, planetarium, botanical and zoological gardens, aquarium, animal and reptile exhibit and arboretum;
- (3) The Business Location derives Revenue from any Industry Segment(s) in the restaurants and retail Industry Category, where the business activity meets one or more of the following definitions:
 - (A) Contract feeders serving hospitals, schools, prisons, employee cafeterias and/or restaurants;
 - (B) Catering vendor trucks serving job sites and other employment locations; and/or
 - (C) Restaurants on university campuses and military bases; and/or
- (4) The Business Location has California Gross Receipts under one million dollars (\$1,000,000) for the accounting period listed in the Business' most recent income tax return. If the accounting period is less than twelve (12) months, California Gross Receipts shall be annualized using the formula described in section 5353(d)(2).

(r) "Exempt Revenues" means:

- (1) Within the attractions and recreation Industry Category, California Gross Revenue from rentals of the following for more than thirty (30) days: canoes, houseboats, pleasure boats, rowboats, sailboats, surfing equipment and spaces in marine basins and/or yacht basins.
- (2) Within the travel and transportation Industry Category, California Gross Revenue from interstate transportation and/or sales of diesel fuel.
- (3) Within the travel and transportation Industry Category, California Gross Revenue from regular route intrastate and interstate bus service; provided, however that Exempt

Revenues shall not include California Gross Revenue derived from bus service which is of a type that requires authority (whether in the form of a certificate of public convenience and necessity or a permit) to operate as a charter-party carrier of passengers pursuant to Chapter 8 (commencing with Section 5351) of Division 2 of the Public Utilities Code.

(s) "Exempt Travel Agent/Tour Operator" means a Business which meets both of the following requirements:

(1) It derives at least 51% of its California Gross Receipts from one or more of the following Industry Segments: travel agencies and/or tour operator/packager & wholesaler ("Travel Agent"); and

(2) It derives less than twenty percent (20%) of its Travel Agent California Gross Receipts from Travel and Tourism Revenue where the travel occurs within California.

(t) "Industry Category" means the following classifications within the tourism industry:

(1) Accommodations.

(2) Restaurants and retail.

(3) Attractions and recreation.

(4) Transportation and travel services.

(5) Passenger Car Rental Industry.

The definition of each Industry Category is the sum of all Industry Segments contained within that Industry Category. For example, the accommodations Industry Category is the sum of its Industry Segments, including motel, vacation lodges and ski lodges.

(u) "Industry Segment" means those subsets of Industry Categories contained in Section 5352.

(v) "Office" means the Office of Tourism, also popularly referred to as the Division of Tourism, within the Governor's Office of Business and Economic Development.

(w) "Paid in Full" means the Assessed Business has paid all past and current annual Assessments, late fees and/or penalties due.

(x) "Passenger Car Rental Industry Segment" is defined as those companies renting passenger vehicles at an Airport Location or Accommodation Location in California. Passenger Vehicle is as defined in Section 465 of the California Vehicle Code.

(y) "Public Body" means a public entity or a corporation where a majority of the corporation's board of directors is appointed by a public official or public entity, or serves on the corporation's board of directors by virtue of being elected to public office, or both. As used herein, a "public entity" is an agency, department or instrumentality of the United States, State of California, or any political subdivision thereof. As used herein, a "public official" is an employee of a public body or a person elected to the public body, who serves as a representative of that public body when making the appointment.

(z) "Referendum" means any vote by mailed ballot of measures recommended by the Commission and approved by the Director pursuant to Government Code Section 13995.60 and/or 13995.92.

(aa) "Referendum Request" means the method used by Assessed Businesses to place on a Referendum additional Commissioner candidates and/or a different assessment level pursuant to Government Code Section 13995.62 and section 5354.1 of this chapter except for the initial referendum, which shall consist of measures contained in the selection committee report, discussed in Section 13995.30.

(bb) "Revenue" is all paid time and/or mileage charges only, including upgrades, as shown on each concluded Rental Agreement, net of any discount at California Airport Locations and Accommodation Locations. Revenue shall not include "replacement rentals". A "replacement rental" is defined as any rental which is a temporary replacement of an individual's primary vehicle arising from loss of use due to maintenance, repairs, physical damage, or theft.

(cc) "Tourism Assessment Form" means the form described in Section 5353.

(dd) "Travel and Tourism Revenue" means California Gross Receipts derived from expenditures to and/or within California by people who (1) travel at least fifty (50) miles from home, one way, for purposes other than commuting to work or school; or (2) have an overnight accommodation as part of the travel, regardless of the distance or purpose traveled. "Home" as used in this definition means the place where the person has resided for the most recent 31 consecutive days.

(ee) "Voluntary Participant" means a Business which participates in the Tourism Assessment Program pursuant to Government Code Sections 13995.49 or 13995.77.

(ff) "Weighted Vote" means a vote equal to the Assessment paid by the Assessed Business; used to determine issues on a Referendum pursuant to Government Code Section 13995.64.

Authority cited: Government Code Sections 13995.20 and 13995.92.

Subchapter 2. Tourism Assessment Program

§ 5352. Industry Segments.

Below is a non-exhaustive listing of Industry Segments, categorized by Industry Category:

(a) ACCOMMODATIONS

Bed and breakfast inn
Campgrounds
Campsite
Casino hotel
Dude ranch
Hotels
Hotel, franchised
Inns
Lodging house, except organization
Lodging house, organization
Motels
Motel, franchised
Motor Inn
Recreational vehicle parks
Resort hotel

Resort hotel, franchised
Seasonal hotel
Ski lodge
Tourist camps, cabins, cottages, and courts
Trailer park
Vacation lodges

(b) RESTAURANTS & RETAIL

American restaurant
Barbecue restaurant
Cajun restaurant
Carry-out only (except pizza) restaurant
Chicken restaurant
Chinese restaurant
Commissary restaurant
Drive-in restaurant
Ethnic food restaurants
Family restaurant, chain
Family restaurant, independent
Fast-food restaurant, chain
Fast-food restaurant, independent
Fast-food stand
French restaurant
German restaurant
Greek restaurant
Health food restaurant
Indian/Pakistan restaurant
Italian restaurant
Japanese restaurant
Korean restaurant
Lebanese restaurant
Lunch counter (restaurant)
Mexican restaurant
Pakistani restaurant
Pizza restaurants
Seafood restaurants
Spanish restaurant

Sushi bar
Steak restaurant
Thai restaurant
Vietnamese restaurant
Box lunch stand
Buffet (eating places)

Cafeteria
Cafe
Chili stand
Coffee shop
Concessionaire
Contract food services
Delicatessen (eating places)
Diner
Dinner theater
Eating places
Food bars
Frozen yogurt stand
Grills (eating places)
Hamburger stand
Hot dog stand
Ice cream stands or dairy bars
Luncheonette
Lunchroom
Oyster bar
Pizzeria, chain
Pizzeria, independent
Sandwiches and submarines shop
Seafood shack
Snack bar
Snack shop
Snow cone stand
Soda fountain stand
Soft drink stand
Drinking places
Bar (drinking places)
Bars and lounges
Beer garden (drinking places)
Cocktail lounge
Saloon
Tavern (drinking places)
Wine bar
Night clubs
Cabaret
Discotheque
Art dealers

Athletic shoes
Books
Camera, photo
Children's apparel

Children's shoes
Computer & software
Department stores, discount
Department stores, non-discount
Family apparel
Family shoes
Florists
Gems and precious stones
Gift, novelty; souvenir
Hobby, toys, games
Jewelry
Luggage, leather
Men's shoes
Men's/boys apparel
Misc. apparel
Misc. general merchandise stores
Misc. home furnishings
News stands
Optical
Radio, television, electronics
Record & tape
Specialty sporting goods
Sporting goods
Stationery
Tobacco
Variety stores
Women's apparel
Women's shoes
Women's specialty apparel

(c) ATTRACTIONS AND RECREATION

Aerial tramway or ski lift, amusement or scenic
Air shows
Amusement concession
Amusement parks
Amusement ride
Animal and reptile exhibit, with admission fee
Aquarium, with admission fee
Aquariums and zoological gardens, with admission fee

Arboretum, with admission fee
Art gallery, with admission fee

Art gallery, noncommercial, with admission fee
Arts or science center, with admission fee
Ballet production
Beach and water sports equipment rental and services
Botanical garden, with admission fee
Cave operation
Concession operator
Fair
Festival operation
Fishing boats, party, operation
Fishing lakes and piers, operation
Gambling establishment
Gambling machines, operation
Historical society, with admission fee
Hot air balloon rides
Houseboat rentals, revenue on rental of 30 days or less
Marine basins, revenue on rental of 30 days or less
Museum, with admission fee
Observation tower operation
Opera company
Pack train, for amusement
Performing arts center production
Pier, amusement
Planetarium, with admission fee
Plays, road and stock companies
Pleasure boat rental, revenue on rental of 30 days or less
Recreation equipment rental
Repertory, road or stock companies; theatrical
Rodeo operation
Rowboat and canoe rental, revenue on rental of 30 days or less
Saddlehorse rental
Sailboat rental, revenue on rental of 30 days or less
Scenic railroads for amusement
Ski rental concession
Spas
Sporting goods rental (not elsewhere classified)
Summer theater
Surfing equipment rental, revenue on rental of 30 days or less
Symphony orchestra
Theatrical companies
Theme park, amusement
Tourist attraction, commercial
Tourist attractions, amusement park concessions and rides
Waterslide operation

Wax museum, commercial
Yacht basins, revenue on rental of 30 days or less
Zoological garden, commercial
Zoological garden, noncommercial, with admission fee

(d) TRANSPORTATION AND TRAVEL SERVICES

Airport ground transportation service
Automobile rental, with driver
Charter buses, excursions except interstate, revenue reportable to PUC
Cruise ships/deep sea passenger transport, revenue reportable to PUC
Excursion board operators/inland water local tour
Ferries operating across rivers or within harbors
Filling stations, gasoline (exempt sales of diesel fuel)
Gasoline service stations (exempt sales of diesel fuel)
Inland water taxis/ferries
Intercity highway transport, special service
Interstate bus line, revenue reportable to PUC
Intraport transportation
Limousine rental, with driver
Local bus charter service
Local passenger transportation, not elsewhere classified
Local rental transportation
Marine service station
Motor
home rental
Motorcycle rental
Rafting tours
Recreational vehicle rental
Rent-a-car service

Sightseeing boats
Sightseeing bus, revenue reportable to PUC
Taxicabs
Tour and guide services
Tour operators/packagegers & wholesalers
Travel agencies
Water taxis

(e) PASSENGER CAR RENTAL INDUSTRY

Passenger car rentals

§ 5353. Tourism Assessment Form.

(a) The Tourism Assessment Form which shall be available on the Office's website shall consist of the below listed items. A Business must complete a separate form for each Business Location by the due date indicated on the Form.

Section I. Business Location Information. A pre-printed Tourism Assessment Form shall be mailed to the Business and shall include the following information. If the preprinted label information is incorrect or missing, enter the correct information as follows:

(1) Tourism ID Number

(2) Business Location name, Address, and Contact Information;

(3) Enter the federal employer identification number ("FEIN") of the Business.

(4) Identify the Industry Segment from which the Business Location earns the greatest portion of its California Gross Receipts. The Industry Segments are provided in Section 5352.

(b) Section II. Parent or Billing Information. This information shall be included for any business that has a separate mailing address or a parent company to which all information for this program is sent.

(1) Bil ID Number,

(2) Billing or Parent Name

(3) Address and Contact Information

(c) Section III. Ownership Changes. Provide information regarding any change in ownership in the past year, including change in business name, business closed or change in ownership.

(d) Section IV. Assessment Calculation.

(1) Enter the ending month and the year of the accounting period for the Business' most recent income tax return. For example, for the calendar year 2011, enter 12/11.

(2) Enter the California Gross Receipts of this Business Location for the period listed in subsection (d)(1). If the income tax return for the period shown in subsection (d)(1) is less than twelve months, annualize the revenue by multiplying the revenue by the number twelve (12) and dividing the result by the number of months on the short period. Thus, a business with \$1,000,000 in California Gross Receipts for six months would multiply that number by 12 and divide by 6, giving an annualized California Gross Receipts of \$2,000,000.

(3) Enter the estimated percentage of the California gross receipts that is Travel and Tourism Revenue.

(4) Multiply the California Gross Receipts number by the percentage. Enter the resulting number. For example, \$1,000,000 times 0.65=\$650,000.

(5) Multiply the number listed in subsection (d)(4) by the assessment factor of .00065 and enter the resulting number, rounded to the nearest dollar. This amount represents the Assessment Due.

(e) Section V. Determination of Exempt Status

A business shall indicate if any of the exempt status provisions apply to the business location.

(1) The Business Location derives no California Gross Receipts from any Industry Segment,

(2) The Business Location is a Public Body pursuant to section 5350(o)(2)

(3) The Business a travel agency, tour operator, packager or wholesaler that derives less than twenty percent (20%) of its California Gross Revenue from Travel and Tourism Revenue where the travel occurs within California.

(4) The business total gross receipts for the year, as entered in Section IV. are less than one million dollars.

(5) The business total percentage of tourism revenue is less than one percent.

(f) Section VI. Optional Payment of Maximum Assessment. If the Business wishes to pay a flat rate assessment of \$250,000 for this Business Location, which is the maximum assessment amount, check the box in this section.

(g) Section VII. Certification

(1) The Tourism Assessment Form requires a signature: "Under penalty of perjury, under the laws of the State of California that the foregoing is true and correct. This section of the Form shall be completed listing the name of the Authorized Representative, and shall include the signature and date of signature of the Authorized Representative.

Authority cited: Government Code Section 13995.65.

Subchapter 3. Referendum Procedures

§ 5354. Referendum Voting Eligibility.

(a) An Assessed Business, including a Voluntary Participant, which is Paid in Full by the date declared by the Director pursuant to section 5356(a)(1), is entitled to a Weighted Vote in a Referendum.

(b) An Assessed Business shall vote for Commissioners representing the Industry Category under which the Business Location is classified.

(c) An Exempt Business or an Exempt Business Location, that is not a Voluntary Participant, is not eligible to vote in a Referendum.

Authority cited: Government Code Section 13995.20.

§ 5354.1. Referendum Subject Matter.

(a) A Referendum shall contain the following subject matter:

(1) The slate of Commissioner candidates identified by Industry Category,

(2) The proposed assessment level, based on specified assessment formulae,

(3) Yes/No vote for continuation of the Commission and the Tourism Assessment Program.

(b) A Referendum may contain additional subject matter as specified in Government Code Section 15372.102(a) and (b).

(c) The content of the Referendum is determined as follows:

(1) By the Commission in the form of a resolution outlining the subject matter for the Referendum to the Director and/or

(2) By Assessed Businesses in the form of a Referendum Request to the Director.

(d) An Assessed Business Referendum Request shall be presented to the Director by the date announced pursuant to section 5356(a)(2).

(e) An Assessed Business Referendum Request shall include all of the following:

(1) The subject matter requested to be placed on the Referendum:

(A) Additional Commissioner candidates pursuant to Government Code Section 15372.102(c), and/or

(B) Different assessment levels pursuant to Government Code Section 15372.102(b).

(2) A list of each Assessed Business supporting the Referendum Request, and a copy of each Assessed Business's agreement to add candidates for Commissioner or to change the assessment levels. The agreement shall include:

(A) A statement supporting the Referendum Request to add candidates and/or assessment levels to the Referendum, specifying the candidate's names and/or assessment levels,

(B) The Assessed Business name, address, assessment program identification number, Industry Category, and the number of Weighted Votes attributed to the Assessed Business, and

(C) The printed name and title of the Authorized Representative for the Assessed Business.

(f) Upon receipt of the Referendum Request the Director shall verify the documentation provided in the Referendum Request to determine whether or not the required Weighted Votes have been presented in support of placing the subject matter of the Referendum Request on the Referendum.

Authority cited: Government Code Section 13995.20.

§ 5355. Ballot and Voting Procedure.

(a) The Ballot for the Referendum shall consist of the following items:

(1) The voting deadline;

(2) The proposed Assessment formula or formulae, the amount of votes the Assessed Business will receive and the total votes from all Assessed Businesses eligible to vote;

(3) The Commissioner candidates from each Industry Category as well as the Industry Category of the Assessed Business;

(4) A space for write-in Commissioner candidate(s);

(5) The following question: "Shall the California Travel and Tourism Commission and the California Tourism Assessment Program continue to operate for the purpose of promoting California as a travel and tourism destination?" (asking the Assessed Business to mark yes or no);

(6) A signature line for the Authorized Representative and a certification that the individual is the Authorized Representative; and

(7) Instructions on where to return the Ballot.

(b) The Assessed Business shall mark the Ballot, sign the Ballot, and return the Ballot by the voting deadline.

(c) A Ballot shall be considered valid if it is postmarked or hand delivered to the Office by the voting deadline, completed as required in subsection 5355(b) and submitted by an eligible Assessed Business.

§ 5356. Referendum Procedure.

(a) The Director shall call a Referendum every two years as required by the Act. The following information shall be announced:

(1) The date Assessed Businesses shall be Paid in Full, thereby ensuring their eligibility to vote in the Referendum.

(2) The dates by which all Commission resolutions and Assessed Business Referendum Requests shall be delivered to the Director for inclusion in the Referendum,

(3) The Referendum time periods are determined pursuant to Government Code Section 15372.103.

(b) The Office shall mail the Ballot to all eligible Assessed Businesses as described in section 5354. The number of votes that each Assessed Business receives is determined as described in Government Code Section 15372.104.

(c) For each vacant Commissioner slot within its Industry Category, an Assessed Business shall be authorized to substitute the name of one write-in candidate, as provided in section 5355(a)(4). In the event a write-in candidate and a candidate listed on the section 5355(a)(1) slate of Commissioner candidates receive the same number of votes, the Director shall break the tie with a random selection process such as a coin toss. If the total number of write-in candidates exceeds the total number of vacant Commissioner slots within a Business' Industry Category, the Ballot shall be void.

(d) The Director shall count and tabulate the valid Ballots and certify the results not later than 30 calendar days from the voting deadline. The certified results shall be sent to all Assessed Businesses that returned valid Ballots.

Authority cited: Government Code Section 13995.20.

Subchapter 4. Passenger Car Rental Industry Tourism Assessment

§ 5357. Passenger Car Rental Industry Assessment.

(a) The passenger car rental industry tourism assessment collection program shall apply to companies that have business locations renting passenger vehicles at either Airport Location or Accommodation Locations in California.

(b) The Passenger Car Rental Industry Tourism Assessment shall not be subject to the exemption provisions in Government Code section 13995.77.

§ 5357.1. Determination of Annual Assessment Rate for Passenger Car Rental Industry Assessment.

(a) The assessment for each business of the Passenger Car Rental Industry Segment shall be the rate set by the Commission and shall be no more than 3.5 percent and shall be set at a level that will generate no more than 60 percent of all Expenditures by the Commission as set forth in Government Code Section 13995.45..

(b) The rate shall be adjusted annually by the Commission and such adjustment shall not be subject to annual referendum.

(1) By March 31st of each year, each member of the Passenger Car Rental Industry Segment shall submit to the Office the Revenue data for the previous calendar year.

(2) The Office shall annually determine the percentage of Revenue to be collected from the Passenger Car Rental Industry Segment for the following fiscal year, based on the Revenue data received by the Industry as required in Section (b)(1). If the Office does not receive a complete report of Revenue for a given fiscal year, the Office may estimate the additional Revenue based on prior year's information, extrapolation from reported revenue or any other reasonable method.

(3) The Office shall notify the passenger car rental industry of the applicable assessment rate for the next fiscal year by May 1st of that year.

(4) At the end of each fiscal year, if the amount paid by the Passenger Car Rental Industry Segment provides an excess the 60 percent of all expenditures that excess shall be taken into account in setting the subsequent year's rate as set by the Commission.

Authority cited: Government Code Sections 13995.20 and 13995.92.

§ 5357.2. Payment of Assessment.

(a) The Passenger Car Rental Industry Segment assessment will be payable monthly.. All assessments collected by a car rental company for a given month shall be submitted to the Office within 25 days of each month end.

(b) The Passenger Car Rental Industry Segment Assessment Form as set forth of the Office's website shall be submitted by each member of the Passenger Car Rental Industry Segment together with the remittance of the assessment calculated thereon.

Authority cited: Government Code Section 13995.69(c).

§ 5358. Confidentiality.

(a) All information or data provided by the Passenger Car Rental Industry Segment shall be maintained by the Office and will be confidential. It shall not be released to any person or company, including the CTTC.

Authority cited. Government Code Section 13995.69(c).

Subchapter 5. Tourism Assessment Program Collection and Enforcement

§ 5358.5. Assessment Bill.

(a) A Tourism Assessment Form completed by the Business Location and approved by the Office shall constitute an Assessment Bill. A completed Tourism Assessment Form shall include the most current yearly gross receipts, the percentage of revenue derived from tourism that year, a correct calculation of the assessment due, contact information, and a signature under penalty of perjury that the information is true and correct as required in section 5353.

(b) A Tourism Assessment Form partially completed by the Business Location, but containing sufficient information to compute the amount of assessment shall be reviewed by the Office. The Office shall compute the amount of assessment based on the information provided and issue an Assessment Bill.

(1) An Assessment Bill shall state the amount of assessment owed by the Business Location and the date due for the payment of such assessment.

(2) The Assessment Bill issued by the Office shall be mailed to the Business Location at the current address on file with the Office. Service of the Assessment Bill shall be complete upon deposit in the U.S. mail.

§ 5358.6. Failure to Provide Information for Assessment.

(a) The Office shall notice a Business Location of failure to provide information as required in section 5353.

(b) Any Business that fails to submit the required information 30 calendar days after the date of the notice of failure to submit the Tourism Assessment Form shall be assessed at the highest assessment rate applicable within that Business' Industry Segment.

(2) The retail and restaurant industry segment shall be two separate upper assessment levels, one for the retail industry and one for the restaurant industry.

(c) The Office shall mail or email to the Business Location a Notice of Assessment Determination at the current address or email address for the Business Location on file with the Office that will include:

(1) An explanation of the reasons and circumstances for the notice;

(2) An Assessment Determination reflecting the amount of assessment owed as determined by subdivision (b);

(3) A statement declaring the notice to be an Assessment Bill and providing payment instructions to the Business Location including a due date for the payment of the assessment owed; and

(4) An explanation of the right to filing an Appeal as described in Section 5358.7.

(d) The notice shall be delivered to the Business Location by mail, email or personal service and shall be complete upon sending of email, deposit in the U.S. mail or upon actual personal service.

(e) The Assessment Determination becomes final and effective unless an Appeal has been filed within 30 calendar days of completion of service.

Authority cited. Government Code Section 13995.69(c).

§ 5358.7. Appeal of Assessment.

(a) An Assessed Business receiving a Tourism Assessment Form, Assessment Bill, or an Assessment Determination may file an Appeal with the Office on any of the following grounds:

(1) Assertion of the fact that the Business Location does not meet the definition of an Assessed Business within its industry segment and thereby exempt;

(2) Stating that the level of assessment is incorrect.

(b) The Appeal must be submitted in writing complying with all the following requirements:

(1) The writing must be completed under the penalty of perjury in a form of a declaration or an affidavit.

(2) The assertions must be supported with substantial evidence establishing the validity of the allegations in the appeal.

(3) The Appeal shall be filed with the Office no later than 30 days after the due date of the Tourism Assessment Form, or the date of the Assessment Bill or Assessment Determination.

(4) Filing with the Office is completed on the date of actual receipt by the Office through mail or by personal service.

(c) The Appeal will be granted or denied by the Office within 30 calendar days. The Appeal Determination shall be in writing and sent by U.S. mail to the business at the Business Location on file with the Office.

(1) If the appeal is granted, the Business shall be advised of the successful appeal and provided with information regarding the Business Location status.

(2) If the appeal is denied, the Business shall be advised on the process to make the assessment payment in a Revised Assessment Bill and shall be considered an Assessed Business.

(3) A revised Assessment Bill corrected due to an error caused by the failure of the Business Location to provide the required information in a timely manner shall include the actual incurred cost for recouping the cost in making the correction.

(4) An Appeal Determination may also include a Deficiency Determination as described in section 5258.8, if applicable.

Authority cited. Government Code Section 13995.69(c).

§ 5358.8. Deficiency of Payment of Assessment.

(a) The Office shall notice an Assessed Business of non-payment of an Assessment Bill. Upon noticing the Assessed Business, the Office shall make a determination that the assessment is deficient.

(b) The amount established by a Deficiency Determination shall include:

(1) The principal amount of assessment, and

(2) An amount of penalty of 7% per annum prorated over the days unpaid.

(c) The amount established by a Deficiency Determination may also include the actual dollar amount to defray the cost of enforcing the collection of the unpaid assessment, not to exceed 10 percent of that unpaid assessment.

(d) Upon the decision of a Deficiency Determination the Office shall mail to the Assessed Business a Notice of Proposed Deficiency Determination at the current address for the business on file with the Office that will include:

(1) An explanation of the reasoning and circumstances triggering the notice;

(2) A Deficiency Determination reflecting the principal amount of assessment owed and delinquent;

(3) A determination of cost based on the actual cost incurred in the enforcement of the collection;

(4) The amount or rate of the penalty to be assessed commencing 30 days after the notice has been given to the Business;

(5) Providing payment instructions to the Business; and

(6) Explaining the right to filing a Petition for Review as described in Section 5358.9.

(e) The Notice shall be delivered to the Assessed Business by mail or personal service and service shall be complete upon deposit in the U.S. mail or upon actual personal service, respectively.

(f) The Deficiency Determination becomes final and effective unless a Petition for Review has been filed within 30 calendar days of completion of service.

§ 5358.9. Review of Deficiency Determination.

(a) An Assessed Business receiving a Deficiency Determination may file a Petition for Review requesting a review of the determination of deficiency.

(b) The petition shall be submitted in writing complying with all the following requirements:

(1) It shall state the specific grounds upon which it is based;

(2) It shall be supported by records applicable and declarations or affidavits under the penalty of perjury;

(3) It shall be filed with the Office no later than 30 calendar days after the service of the Notice of Proposed Deficiency Determination.

(4) Filing with the Office is accomplished on the date of actual receipt by the Office through mail or by personal service.

(c) In reconsidering the Determination of Deficiency, the Office may grant an administrative hearing to provide the Assessed Business an opportunity to personally appear and present its request for Review.

(d) The Petition after review or administrative hearing will be granted or denied by the Office in writing no later than 30 calendar days of the date of the Petition, by issuing an Order of Review as follows:

(1) A Notice of Order of Review shall be issued in writing and mailed to the Assessed Business at the current address for the Business Location on file with the Office.

(2) The Notice will advise about the assessment owed and a Revised Assessment Bill shall be issued.

(3) An assessment correction correcting an error caused by the failure of the Assessed Business to provide the required information in a timely manner as required in section 5358.6(b) shall include the actual amount for recouping the cost incurred in making the correction.

(e) The Order of Review becomes final and effective 30 calendar days after completion of service of the notice an order on the petitioner Business.

§ 5358.10. Judicial Enforcement.

(a) Upon the failure of payment of assessment, cost and penalties pursuant to a Deficiency Determination or an Order of Review, judicial enforcement and collection of the debt is available pursuant to Subdivisions (f), (g), and (h) of Section 13995.82 of the Government Code.

(b) Initiation of such civil action shall be in the sole discretionary decision of the Director or in the discretionary decision of the Deputy Director of Tourism in consultation with the Executive Committee of the California Travel and Tourism Committee.

(c) All civil actions shall be taken in the name of the Director.

Authority cited: Government Code Section 13995.20.

Subchapter 6. Passenger Car Rental Industry Collection and Enforcement

§ 5358.11. Collection of Assessments.

(a) The Passenger Car Rental Industry Assessment shall be paid in accordance with the provisions in section 5357.2.

(b) Any payment not received in the Office by the 25th of any given month, shall be considered deficient and subject to the provisions of sections 5358.6 through 5358.10.

(c) A Passenger Car Rental Assessment Form submitted by the 25th of the month, without payment received in the Office by the 25th of that same month, shall be considered deficient and shall be subject to the provisions the provisions of sections 5358.6 through 5358.10.