



CITY COUNCIL STAFF REPORT

RESTAURANT LIQUOR LICENSEE – SALES TAX DELINQUENCY Los Espinos, Inc. D/B/A LaCosta Mexican Restaurant

SUMMARY

PREPARED BY: Karen Rimmer, City Clerk
DATE: April 19, 2019
LICENSEE: Los Espinos, Inc. D/B/A LaCosta Mexican Restaurant

HISTORY/COMMENTS:

On April 9, 2019, the City received notification from the Wyoming Liquor Division that Los Espinos, Inc. D/B/A LaCosta Mexican Restaurant had been placed on a liquor hold (also referred to as a “liquor stop”) due to delinquent sales taxes. Both the owner of Los Espinos and the restaurant manager for the Douglas location were notified in writing and via phone calls of the delinquency and the show cause hearing. This is the second sales tax delinquency violation for this licensee, spanning two licensing terms, the first of which occurred on October 3, 2018.

At the time of the writing of this memo, verification has been received from the Wyoming Department of Revenue that all delinquent taxes, penalties, and interest amounts have been paid in full. In addition, notification was received from the Wyoming Liquor Division that the liquor hold had been released as of April 17, 2019. Please note that the amount of the sales tax delinquency was not known and not public record. A representative of the licensee will be present for the hearing.

According to the Dept. of Revenue, when sales taxes become delinquent (prior to a liquor stop being placed upon a liquor license holder), there are one to five written notifications plus one field representative contact via phone call, email, or in person. The number of written notices depends upon the licensee's account, amount owing, and the timing of the process at the state level. When a liquor hold is placed, it is for taxes collected by the licensee at least 90-days prior as tax returns and payments are due on the last day of the month following the month of collection. In this instance, these were taxes collected by the license holder in December.

Another important aspect of delinquent sales taxes are the penalties and interest fees that accrue when payments are delinquent. This process is in part as follows:

“When a [sales tax] return is 10 days overdue, a reminder notice is sent and a **\$10 late filing fee** is assessed. When a [sales tax] return is another 30 days overdue, another reminder notice is sent, and a **\$25 late filing fee is assessed**. If the return is still not filed 60 days after the due date, [the Dept. of Revenue] creates a return on the vendor’s behalf and sends another notice. In addition to the late filing fees, there is a **10% late payment penalty** assessed on any return that is not paid in full by the due date. **Interest** is also assessed on the amount of taxes not paid in full by the due date.” Therefore, the penalties are incurred when a return is late and again if it is still not paid; the interest pertains to the overall amount owing.

The explanation received in this particular case is that the delinquency was due to an internal miscommunication between the owner, the manager, and the bookkeeper; this will be further explained by the representative(s) present for Los Espinos, Inc. I was also informed by Los Espinos that the corporation is on a payment plan with the Department of Revenue and have been for the approximately five years. This is not something that the City of Douglas is made aware of unless the licensee discloses it as it is confidential information pertaining to their account. Note that when a licensee is on a payment plan with the Department of Revenue, which is allowed under WY State Statutes, the licensee is required to keep their payments current as well as pay whatever past due amount was agreed upon.

CONCLUSION/RECOMMENDATION:

Per Section 5.16.107 of Douglas Municipal Code, as well as W.S. §12-7-103, City Council has the authority to suspend the liquor license of Los Espinos, Inc., due to this sales tax delinquency. Other options include the imposition of additional fine(s) for the licensee; imposition of other limitations and/or penalties (e.g. limited hours or days of operation, implementation of policies, etc.); and direction for the City Attorney to move forward with revocation action (this is not recommended due to the cost associated with revocation and the appropriateness in consideration of this violation). In the past, Council has suspended the associated license for a sales tax delinquency until such time as the arrearage was paid in full and notice of such was provided to the City.

As stated above, verification has already been received that the delinquent taxes have been paid and the liquor hold has been released. This was also the case with the first delinquency for this license holder, and Council did not take any further action at that time. However, this is the second sales tax delinquency for Los Espinos Inc. within an approximate six-month period. Regarding their payment plan, staff recommends that this not be a consideration in any action taken as it predates the adoption of Ordinance 970, which was adopted in 2015 and was the first major revision to Title 5.16 of Douglas Municipal Code.

Based upon this particular sales tax delinquency as well as previous action by Council in similar situations, staff recommends the following:

1. Impose a \$500.00 fine to be paid by 12:00 p.m. on Tuesday, April 23, 2019; and
2. If fine is not paid by the deadline, suspend the liquor license until such time as the fine is paid in full; and
3. Remind the licensee of potential consequences if a liquor hold due to sales tax delinquency were to occur for a third time, which could include suspension, a fine of up to \$750.00, and/or other restrictions.

Please let staff know of any other questions or concerns.