

**SEMINOLE COUNTY
AUDIT OF TOURIST DEVELOPMENT TRUST FUND**

REPORT NO. 080805

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Prepared by:
Internal Audit Division
Clerk of the Circuit Court

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Seminole County Audit of Tourist Development Trust Fund

The Internal Audit Division of the Office of the Clerk of the Circuit Court has completed an audit of the Tourist Development Trust Fund.

PURPOSE

The audit was conducted in order to determine if the administrative controls over the division's expenditures are adequate and operating as intended in accordance with applicable laws, regulations and other Seminole County policies and procedures. In addition, testing was performed to determine whether the Hotel Room Tax (sales and use) had been assessed accurately by hoteliers and innkeepers as prescribed by Seminole County Ordinance 93-7 and properly remitted to the Seminole County tax collector.

BACKGROUND

Florida Statute 125.0104 allows each county the option of collecting tourist tax at the local level in lieu of having the tax collected by the State of Florida. On May 25th, 1993, the Board of County Commissioners enacted Ordinance 93-7 authorizing the tax collector to collect the tax in accordance with the guidelines of Florida Statute 125.0104; the tax assessment is three percent of all rents and leases.

Florida Statute 125.0104 3(a) states:

“every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section.”

Therefore, it is also the responsibility of each person who collects the taxes from the tourists to register with the county's tax collector and remit the tax each month to the county. The tax collector is responsible for collecting and enforcing payment of the tourist development taxes; the clerk of the circuit court is responsible for performing the audit functions associated with the tax.

The Board of County Commissioners must approve all expenditures of tourist development tax funds used to promote activities that will bring a significant number of new or repeat visitors to the county, and to create a positive economic impact to the county.

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SCOPE OF WORK

The scope of the audit was limited to a review of contracts, applicable invoices, and procedures and controls associated with collection of Tourist Development Tax revenue and disbursement, and budgeting processes. We examined transactions and documentation for the period October 1, 2002 to January 31, 2005.

The audit included:

- Review of applicable policies, procedures, statutes and county ordinances;
- Review of internal controls to ensure that tourist taxes are levied and remitted to Seminole County;
- Reviews of 19 sponsorship agreements and evaluations of corresponding expenditure and contract related documentation; and,
- Review of other materials as considered necessary in the circumstances.

The audit was performed in two phases: The first phase included a review of expenditures paid out of the fund; the second included a review of selected revenues going into the fund. Specifically, Internal Audit selected six hotels/apartment complexes for compliance testing.

The audit was conducted by Gail Joubran, Susan Krause and Bill Carroll.

OVERALL EVALUATION

It is our opinion, based on the results of this audit, the financial and administrative controls exercised over tourist development tax expenditures and revenues are adequate and working as intended. However, the following conditions require management's attention:

- Some hotels remitted taxes on "no-show" revenues, and some do not; and,
- One instance was discovered in which short term leases were not reported properly to the Tax Collector;

We also found two very minor conditions: a few of the TDC vendor invoices remitted for payment did not contain necessary supporting documentation; and, TDC staff on one occasion elected not to use a change order for a small overrun as required by Purchasing Code 220.4 (N). These issues have been brought to management's attention and no further action is required.

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FINDING NO. 1

Some hotels remit taxes for “no-show” revenues and some do not.

During our review of the six selected hotels, we noted that some hotels included “no-show” revenues in the computation of the hotel room tax, while others do not include these types of revenues. “No-show” revenues are deposits submitted by potential hotel guests who, for various reasons, cancel their stay. Most hotels require a non-refundable deposit if cancellation is not made by a certain time before the hotel stay. Although the hotels that included the “no-show” revenues in their computation of the hotel room tax did not collect tax from the potential hotel guest, it was included in the computation of the monthly tax return prepared by the hotel.

The Seminole County ordinance does not address the county’s policy relating to “no-show” revenues and whether it should be included in the computation of the hotel room tax. County officials should review the pros and cons of taxing “no-shows”, while taking into consideration that the charges frequently are reversed. By not having a written policy on this subject there is not assurance that the collection of tax dollars is consistent between properties.

Recommendation

Develop specific guidelines to be used in the computation, assessment and collection of the hotel room tax, specifically a policy on the treatment of “no-show” revenues, so that all hotels/inns can be uniform in the inclusion in the computation of the Hotel Room Tax.

Management Response

In reference to “no show” revenues, we concur that it is a valid suggestion to have the BCC state a specific policy. Our recommendation would be that the “no show” is not a fee for use of the room, but rather a penalty for not honoring a reservation within a specified timeframe.

It may be of interest to note that the Florida Legislature debated a bill in the last two sessions relating to questions as to whether or not the tourist development tax should be applicable in these circumstances and when discounts are granted for rooms purchased for resale by third party.com providers. The will of the Legislature was not to consider the tourist development tax applicable by allowing the question to remain mute. Therefore, by omission, those conditions are deemed to be non-taxable.

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FINDING NO. 2

One instance was discovered in which short term leases were not reported properly to the Tax Collector.

County Ordinance No. 93-7 requires each owner of rental property who leases property for six months or less to submit on a monthly basis a return and monies collected for the tourist development tax. The return is due by the 21st of the following month.

Florida Statute 125.014 3(a) states:

“It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel resort motel, apartment, apartment motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unlessare exempt according to the provisions of chapter 212.”

The audit revealed that one property owner (Colonial Properties, Inc.) had not registered one of its new properties with Seminole County and therefore had not been paying tourist development taxes for that property. Eight corporate leases (units fully furnished) were with tenants wishing short term (less than six months) occupancy. We also identified another 13 corporate tenants that signed seven month leases, but ended their leases early. Had these 21 units been properly taxed for six months, the tax assessed would approximate \$4,290.00.

The intent of the law is to tax renters of six months or less to help compensate the County and the State of Florida for the cost of tourism related activities. By not collecting tourist tax on these short term leases, a loss of revenues of up to \$700.00 per month or \$8,400.00 per year is incurred.

Recommendation

The Tax Collector should prepare and submit a formal demand notice to Colonial Properties, Inc. for unpaid tourist tax.

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Management Response

We accept your finding that the eight corporate units were leased directly to tenants of Colonial Properties, Inc. prior to January 1, 2005 when they began reporting them to us. We do need for you to give us the specific information you collected so that we may take steps to properly identify, clarify, and seek any delinquent tourist development taxes that should be forthcoming from Colonial Properties, Inc.

In addition, we would like to see your detail findings on the 13 other corporate tenants of Colonial Properties, Inc. that signed seven month leases, but ended their leases early. I believe you may be premature in adding those to the other eight in determining the approximate \$4,290 revenue that may be due. The Florida Department of Revenue Rule #12A-1.060 and 12A-1.061 define two criteria for determining inclusion or exemption from the tourist development property tax related to these 13:

- (15) Bonafide written leases
- (a) Transient accommodations that are leased under the terms of a bonafide **written lease for periods longer than six months** for continuous residence by the individual or entity leasing the transient accommodations to which the written lease applies **are exempt**.
- (15)(h)(1)(a) “The DOR will presume that the parties to the lease did not in fact intend to enter a bonafide written lease for a period of more that six months for continuous residence when the leased **transient accommodations are leased more than two times in a calendar year....**” (Therefore, even if the accommodation written for a seven month lease expired early, if the entity – Colonial Properties, Inc. – did not lease the same unit more than two times within the same year, the tourist development taxes would still be exempt.)

As you can see, we need to review the 13 units you referenced in order to determine if any of them were leased three or more times in 2004 and thereby qualify to be taxable under the Tourist Development Tax.

Internal Audit Comment

Internal Audit has provided the tax collector with backup necessary to assess any taxes due Seminole County. We appreciate the commitment by the Tax Collector to pursue collection of any unpaid tourist development tax.

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