



The Florida Senate

Interim Project Report 2005-210

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Committee on Government Efficiency Appropriations

Senator Jeffrey H. "Jeff" Atwater, Chair

TOURIST DEVELOPMENT TAX, s. 125.0104(6)(D),(10)(C), F.S.

SUMMARY

During the 2000 Regular Session, a number of bills were amended onto House Bill 509. The amended bill passed the Legislature and, upon approval by the Governor, became ch. 2000-312, Laws of Florida. One of the bills amended into HB 509, HB 71, relating to the county public hospital surtax, contained a repealer section that, once amended into HB 509, was not limited in its scope. The repealer section states that "[t]he provisions of this act shall be reviewed by the Legislature prior to October 1, 2005, and shall be repealed on that date unless otherwise reenacted by the Legislature." This repealer section creates the current situation where a number of provisions in the Florida Statutes will be repealed in 2005 unless reenacted by the Legislature.

Section 125.0104(6)(d), F.S., which relates to the referendum repeal requirements for the Tourist Development Tax, was amended by s. 14 of ch. 2000-312, Laws of Florida, and is set to repeal October 1, 2005, unless reenacted by the Legislature.

Section 125.0104(10), F.S., which relates to local administration of the Tourist Development Tax and the Tourist Impact Tax, was amended by s. 6 of ch. 2000-312, Laws of Florida, and is set to repeal October 1, 2005, unless reenacted by the Legislature.

BACKGROUND

Chapter 77-209, Laws of Florida, created the "Local Option Tourist Development Tax Act" which became s. 125.0104, F.S. Section 125.1040, F.S., imposes tourist-related or "bed taxes" on transient rentals. Transient rentals involve the rental or lease of any living quarters or accommodations in any hotel, apartment, motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of

6 months or less.¹ There are five tourist development taxes authorized by s. 125.0104, F.S. They are:

The original tourist development tax must be approved by referendum and may be levied at 1 percent or 2 percent;

A 1 percent additional tourist development tax can be levied by extraordinary vote of the governing board of the county or by referendum by any county which has levied the initial tax for three years, and does not levy a convention development tax;

A 1 percent professional sports franchise facility tax may be levied by majority vote of the governing board of the county to pay debt service on professional sports facility bonds;

A 1 percent additional professional sports franchise facility tax may be levied by a county that has imposed the professional sports franchise facility tax; and

A 1 percent high tourism impact tax may be imposed by extraordinary vote of the governing board of the county in a high tourism impact county.²

As of January 1, 2004, 53 counties levied tourist development taxes ranging from 2 percent to 5 percent.³ Generally, tourist development tax revenues may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy. In addition to tourist development taxes authorized under s. 125.1040, F.S., there are three other "bed taxes". Section 125.0108, F.S. authorizes a tourist impact tax which is a 1 percent tax restricted to areas of critical state concern. Currently there are four areas of critical state concern: the Florida Keys in Monroe County; the Big Cypress Swamp, primarily in Collier County; the Green Swamp in central Florida; and the Apalachicola Bay area in

¹ Section 212.03(1), F.S.

² Only Monroe County imposes the tax. Orange County and Osceola County are currently certified as a high tourism impact county.

³ 2004 Florida Tax Handbook

Franklin County. Only Monroe County is currently imposing the tourist impact tax.

Section 212.0305, F.S. authorizes the convention development tax. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising special district on January 1, 1984, may levy the tax at 2 percent (Volusia County).

The final tourist-related tax is the municipal resort tax which is authorized and levied in just three cities, Miami Beach, Bal Harbour, and Surfside, at the maximum rate of 4 percent on transient rentals and 2 percent on food and beverages. No other tourist development taxes may be imposed in municipalities levying the municipal resort tax.

Section 125.0104(6), F.S., sets forth the requirements for the adoption by referendum of the tourist development tax. Paragraph (d) of subsection (6) provides that a tax imposed by referendum shall have an election brought for repeal of the tax when 15% of the electors petition the county commissioners for a referendum for repeal of the tax. Section 14 of chapter 2000-312, Laws of Florida, clarified that the repeal of the tax cannot apply to any portion of taxes initially levied in November 1989, which had been pledged or are being used to support bonds under s. 125.0104(3)(d)⁴ or s. 125.0104(3)(l)⁵, F.S., until the retirement of those bonds. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 125.0104(6)(d), F.S., is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

Section 1 of ch. 87-175, Laws of Florida, created subsection (10) of s. 125.0104, F.S., authorizing a county levying a tourist development tax to adopt an ordinance providing for the collection and administration of the tax on a local basis. As of January 1, 2004, 39 counties self-administer tourist development taxes.⁶ Pursuant to s. 31 of ch. 89-356, Laws of Florida, a county adopting an ordinance providing for the collection and administration of the tax on a local basis shall also adopt an ordinance electing either to assume all responsibility for auditing

the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such authority to the Department of Revenue. Section 6 of ch. 2000-312, Laws of Florida, authorizes counties that elect to assume all such auditing responsibility to use certified public accountants licensed in Florida in the administration of its statutory duties and responsibilities. Such certified public accountants are bound by the same confidentiality requirements and subject to the same penalties as the county under s. 213.053, F.S. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 125.0104(10), F.S. is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

METHODOLOGY

The legislative history of s. 125.0104(6)(d) and (10), F.S., was researched. The Department of Revenue was asked to share information on the use of CPA's by counties that self-administer the tourist development tax. Counties identified by the Department of Revenue as using CPA's to audit the tourist development tax were contacted for their feedback.

FINDINGS

Section 125.0104(6)(d), Florida Statutes

The amendment to s. 125.0104(6)(d), F.S., which clarified that the repeal of the tourist development tax cannot apply to any portion of taxes initially levied in November 1989, which has been pledged or are being used to support bonds under s. 125.0104(3)(d) or s. 125.0104(3)(l), F.S., until the retirement of those bonds, was passed primarily for Okaloosa County. Okaloosa County levied a 2% tourist development tax on November 1, 1989. The tax was increased to 4% effective October 1, 1999, in order to fund the construction of the Emerald Coast Convention Center. The bonds issued for the convention center were 30 year bonds. The amendment was adopted to protect Okaloosa County's tourist development tax revenues until the convention center revenue bonds are retired.

Section 125.0104(10), Florida Statutes

According to the Department of Revenue, four counties are currently using CPA's to audit the tourist development tax - Brevard, Collier, Gulf and Sarasota counties.

⁴ 1 percent additional tourist development tax.

⁵ 1 percent professional sports franchise facility tax.

⁶ 2004 Florida Tax Handbook

Brevard County contracts with a CPA firm to audit its tourist development tax. The firm is used twice a year by the tourist development tax department during the months of June through September. Staff of the Brevard County Office of the Tax Collector reported that Brevard County would like to continue to contract with CPA's to audit the tourist development tax. They have been very satisfied with their local CPA firm.

Collier County contracts with a CPA firm to audit its tourist development tax. Staff of the Collier County Tax Collector's office reported that Collier County would like to continue to contract with CPA's to audit the tourist development tax. By having the authority to use a CPA, Collier County does not have to have their own audit staff and their CPA firm does a very good job for them, performing, on average, 20 audits a year. This results in a cost-savings for Collier County.

Gulf County contracts with a CPA firm to audit its tourist development tax. The Gulf County Tax Collector stated that Gulf County is a small county and does not have its own audit staff. It is important to them to continue to have the authority to contract with CPA's to audit the tourist development tax.

Sarasota County contracts with a CPA firm to audit its tourist development tax. Staff of the Sarasota Clerk of the Court, reported that Sarasota County would like to continue to contract with CPA's to audit the tourist development tax. They have been very satisfied with their local CPA firm.

According to Art Heintz, Audit Collection Supervisor, Volusia County, and current President of the Florida Tourist Development Tax Association, it is important to continue the authorization for counties to contract with CPA's to audit their tourist development taxes, especially for counties that currently have contracts with CPA firms. In addition, many of the smaller counties do not have their own audit staff and would benefit from contracting with a CPA firm to audit their tourist development taxes.

RECOMMENDATIONS

It is the recommendation of this report to abrogate the repeal of ss. 6 and 14 of ch. 2000-312, Laws of Florida. Legislation should be drafted to repeal s. 11 of ch. 2000-312, Laws of Florida, which provides for the repeal of ss. 6 and 14 of ch. 2000-312, Laws of Florida.