

ORDINANCE NO. 2015-_____

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, AMENDING ARTICLE III OF CHAPTER 11 OF THE CODE OF LAWS OF LEON COUNTY REGARDING THE TOURIST DEVELOPMENT TAX; AMENDING SECTION 11-46 ENTITLED "IMPOSITION; REGISTRATION; COLLECTION; AUDIT; PENALTIES"; AMENDING SECTION 11-46(C) RELATING TO COLLECTIONS; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, on December 9, 2014, the Board entered into an Interlocal Agreement, First Amendment to Interlocal Agreement, and Third Amendment to Interlocal Agreement to effectuate the reallocation of the tourist development tax; and

WHEREAS, the Board desires to amend Section 11-46 of the Leon County Code of Laws to comport with the Interlocal Agreement and Amendments adopted on December 9, 2014;

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEON COUNTY, FLORIDA, THAT:

Section 1. Section 11-46 of Article III of Chapter 11 of the Code of Laws of Leon County, Florida, is hereby amended to read as follows:

Sec. 11-46. Imposition; registration; collection; audit; penalties.

(a) *Imposition.*

(1) There is hereby levied, imposed and set, until hereafter amended or repealed, a tourist development tax throughout the county at the rate of five percent for each whole and major fraction of each dollar of the total rental and/or consideration charged every person who rents, leases, or lets any living quarters or accommodations in any hotel, motel, resort motel, apartment, apartment motel roominghouse, mobile home park, recreational vehicle park, or condominium (hereinafter "facilities") for a term of six months or less, unless such a person rents, leases or lets for consideration any facilities which are exempt according to the provisions of F.S. ch. 212. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration.

(2) The tourist development tax shall be in addition to any other tax imposed pursuant to F.S. ch. 212, and in addition to all other taxes, fees and the consideration for rental or lease.

1 (3) The tourist development tax shall be charged by the person receiving the
2 consideration for the lease or rental and it shall be collected from the lessee, tenant or
3 customer at the time of payment of the consideration for such lease or rental.

4
5 (4) The county and the county tax collector shall be authorized hereby to
6 promulgate such rules, and prescribe and publish such forms as may be necessary to effectuate
7 the purposes of this article.

8
9 (5) Any person receiving the consideration for such rental or lease shall receive,
10 account for, and remit the tourist development tax in full to the county tax collector. Failure to
11 collect and remit the full amount of the tax imposed hereby shall constitute a violation of this
12 section.

13
14 (b) *Registration.*

15
16 (1) Every person (hereinafter "dealer") prior to leasing, renting, or letting any
17 facilities, including all dealers who advertise or otherwise hold themselves out to provide such
18 services, shall register such facilities with the county tax collector by filing an application for
19 registration unless exempt from the tourist development tax pursuant to the provisions of F.S.
20 ch. 212. The application for registration shall be filed before the dealer may lease, rent or let
21 any facilities.

22
23 (2) If claiming an exemption from the tourist development tax, the dealer shall
24 annually make a verified declaration of exemption on the application for registration,
25 including a description of the facilities and the reason for it to be considered exempt from the
26 tourist development tax. Any dealer who has previously registered any facilities as exempt
27 from the tourist development tax shall notify the county tax collector if such facilities no
28 longer qualify for such exemption within 30 days thereof.

29
30 (3) Any dealer who fails or refuses to register such facilities as required hereby or
31 who makes a false or fraudulent registration shall be considered to have committed a violation
32 of this section.

33
34 (c) *Collections.*

35
36 (1) The county tax collector shall perform the enforcement functions associated
37 with the collection and remittance of this tax. The county tax collector shall be responsible for
38 the collection of the tax from the dealer and administration of the tax. The county tax collector
39 shall keep appropriate records and shall report monthly to the county on said remittances.

40
41 (2) A total of three percent of the total tourist development tax collected shall be
42 retained for costs of administration. This percentage shall be apportioned between the county,
43 which shall receive one percent and the county tax collector, which shall receive two percent.

1
2 (3) (A) The taxes imposed by this section shall become county funds at the
3 moment of collection and shall for each month be due to the county tax collector on the first
4 day and is delinquent unless postmarked on or before the twentieth day of the month
5 following. If the twentieth day falls on a Saturday, Sunday, or federal or state holiday, returns
6 shall be accepted as timely, if post-marked on the next succeeding work day.

7
8 (B) Collections received by the county tax collector from the tax, less costs of
9 administration of this article, shall be paid and returned, on a monthly basis to Leon County,
10 Florida, for use by the county in accordance with the provisions of this article and shall be
11 placed in the "Leon County Tourist Development Trust Fund." ~~The county shall establish a~~
12 ~~separate subaccount in the Leon County Tourist Development Trust Fund for receipt of the~~
13 ~~third one percent local option tourist development tax imposed and collected pursuant to~~
14 ~~Ordinance 93-19 and any interest earnings on such third one percent local option tourist~~
15 ~~development tax. Such funds in the subaccount shall be used for all purposes provided in F.S.~~
16 ~~§ 125.0104(5), and shall be distributed pursuant to the direction of the Board of County~~
17 ~~Commissioners. Commencing October 1, 2011, the county shall establish a separate~~
18 ~~subaccount in the Leon County Tourist Development Trust Fund for receipt of the second one-~~
19 ~~percent local option tourist development tax imposed and collected pursuant to Ordinance 88-~~
20 ~~01 and any interest earnings on such second one percent local option tourist development tax.~~
21 ~~Fifty percent of such funds in the subaccount shall be used for all purposes provided in F.S. §~~
22 ~~125.0104(5)(a)(1), and 50 percent of such funds in the subaccount shall be used for all~~
23 ~~purposes provided in F.S. § 125.0104(5), and shall be distributed pursuant to the direction of~~
24 ~~the Board of County Commissioners.~~

25
26 (4) The same duties and privileges imposed by F.S. ch. 212, upon dealers in
27 tangible property, respecting the collection and remittance of tax, the making of returns, the
28 keeping of books, records and accounts, shall apply to and be binding upon all persons who
29 are subject to the provisions of this article; provided, however, that the county tax collector
30 may authorize a quarterly return and payment when the tax remitted by the dealer for the
31 preceding quarter did not exceed \$25.00.

32
33 (5) The county tax collector assumes all responsibility for collecting and enforcing
34 payment of current and delinquent tourist development taxes. The county tax collector is
35 hereby granted any and all powers and authority granted to the State of Florida in F.S. §
36 125.0104, and F.S. ch. 212, to determine the amount of the tax, penalties and interest to be
37 paid by each dealer and to enforce payment of such tax, penalties and interest by any and all
38 means, as provided in F.S. ch. 212, this article, or as otherwise provided under law.

39
40 (d) *Audits.*

41
42 (1) The Board of County Commissioners of Leon County hereby designates the
43 Leon County Clerk of Courts (hereinafter "auditor") as its agent to perform the audit functions
44 associated with this tax.

1
2 (A) In order to aid the administration and enforcement of the provisions of this
3 article, each dealer leasing, renting, or letting any facility required to register or claiming an
4 exemption from registration shall be required to keep a record of each and every lease, license,
5 or rental transaction, and to report such transaction to the county tax collector in such a
6 manner as the county tax collector may prescribe. For the purpose of enforcing the collection
7 of the tax levied by this article, the auditor and the county tax collector are hereby authorized
8 and empowered to examine, at all reasonable hours, the books, records, and other documents
9 of any dealer charged with the duty to keep such books, records, and other documents under
10 this article in order to determine whether they are collecting the tax or otherwise complying
11 with this article, F.S. § 125.0104, and F.S. ch. 212. Failure or refusal to permit such
12 examination of its books, records, or other documents by the auditor or county tax collector,
13 shall constitute a violation of this section. The auditor and the county tax collector shall have
14 the right to proceed in circuit court to seek injunctive relief or other appropriate remedy to
15 enforce its rights against the offender, as granted by this section, to require an examination of
16 the books and the records of such dealer.

17
18 (B) Each dealer shall secure, maintain, and keep for a period of three years a
19 complete record of rooms or other lodging, leased or rented by said persons, together with
20 gross receipts from such sales, and other pertinent records and papers as may be required by
21 the county and the county tax collector for the reasonable administration of this article; and all
22 such records shall be open for inspection by the auditor and the county tax collector at all
23 reasonable hours at such person's place of business located in Leon County at a location
24 designated by the auditor or the county tax collector. Any person who maintains such books
25 and records at a point outside this county must make such books and records available for
26 inspection by the auditor and the county tax collector in Leon County. Failure to comply with
27 the provisions hereof shall constitute a violation of this section.

28
29 (2) The auditor shall send written notification, at least 30 days prior to the date an
30 auditor is scheduled to begin an audit, informing the dealer of the audit. The auditor is not
31 required to give 30 days prior notification of a forthcoming audit which is deemed an
32 emergency audit.

33
34 Such written notification shall contain:

- 35 (i) The appropriate date on which the auditor is scheduled to begin the audit.
36 (ii) A reminder that all of the records, receipts, invoices, and related documentation
37 of the dealer must be made available to the auditor.
38 (iii) Any other request that the auditor may deem necessary.

39
40 (3) As compensation for the keeping of prescribed records and the proper
41 accounting and remitting of taxes, a dealer shall be allowed a dealer's credit in accordance
42 with the provision of F.S. § 212.12(1).

43
44 (e) *Penalties.*

1
2 (1) As specifically provided in F.S. § 212.12, "Penalties for noncompliance," when
3 any person, required hereunder to make any return or to pay the tax imposed by this section,
4 either fails to timely file such return or fails to pay the tax shown due on the return within the
5 time required hereunder, in addition to all other penalties provided herein and by the laws of
6 this state in respect to such taxes, a specific penalty shall be added to the tax in the amount of
7 ten percent of either the tax shown on the return that is not timely filed or any tax not paid
8 timely. The penalty may not be less than \$50.00 for failure to timely file a tax return required
9 by F.S. § 212.11(1), or timely pay the tax shown due on the return except as provided in F.S. §
10 213.21(10). If a person fails to timely file a return required by F.S. § 212.11(1), and to timely
11 pay the tax shown due on the return, only one penalty of ten percent, which may not be less
12 than \$50.00, shall be imposed. Partial payment of the total tax due on the return, including any
13 penalties previously assessed, if applicable, will not be considered "timely" for purposes of
14 this section, and will be subject to penalties for failure to timely file a tax return.

15
16 (2) When any person required under this section to make a return or to pay a tax
17 imposed by this section fails to disclose the tax on the return within the time required,
18 excluding a noncompliant filing event generated by situations covered in subparagraph (e)(1)
19 hereinabove, in addition to all other penalties provided in this section and by the laws of this
20 state in respect to such taxes, a specific penalty shall be added to the additional tax owed in the
21 amount of ten percent of any such unpaid tax or fee not paid timely if the failure is not for
22 more than 30 days, with an additional ten percent of any such unpaid tax for each additional
23 30 days, or fraction thereof while the failure continues, not to exceed a total penalty of 50
24 percent in the aggregate, of any unpaid tax or fee.

25
26 (3) When any person required hereunder to pay the tax imposed by this article fails
27 to remit the tax or any portion thereof, on or before the day when such tax is required by this
28 article to be paid, there shall be added to the amount due interest at the rate established by the
29 Florida Department of Revenue for such tax and period from the date due until paid. Interest
30 on the delinquent tax shall be calculated beginning on the twentieth day of the month
31 following the month for which the tax is due. Interest earned on the tax collected shall be
32 remitted to the county on a monthly basis to be placed in the "Leon County Tourist
33 Development Trust Fund."

34
35 (4) Any person required hereunder to pay the tax imposed by this section who fails
36 to remit the tax in full, and in accordance with the county tax collector's tourist tax
37 administrative collection policy, shall be guilty of a violation of the code and subject to the
38 penalties as provided in section 11-51.

39
40 **Section 2.** **Conflicts.** All ordinances or parts of ordinances in conflict with the
41 provisions of this ordinance are hereby repealed to the extent of such conflict, except to the
42 extent of any conflicts with the Tallahassee-Leon County 2010 Comprehensive Plan as amended,
43 which provisions shall prevail over any part of this ordinance which is inconsistent, either in
44 whole or in part, with the said Comprehensive Plan.

