

ORDINANCE NO. 2021-15

An Ordinance of the Osceola County Board of County Commissioners, Amending Chapter 13 “Licenses, Taxation and Miscellaneous Business Regulations” of the Osceola County Code; Providing for Severability; and Providing for an Effective Date.

WHEREAS, on November 6, 2018 the Citizens of the State of Florida adopted Amendment 10 to the Florida Constitution; and

WHEREAS, as a consequence of Amendment 10 the County can no longer conduct financial audits through a Commission Auditor as provided for in the County Charter; and

WHEREAS, the County Charter provides that the Commission Auditor may perform such other duties as assigned by the County Commission; and

WHEREAS, the Board of County Commissioners met on December 14, 2020, and determined that it would be in the best interest of the County that all other duties of the Office of Commission Auditor should be reassigned; and

WHEREAS, it is the intent of the Board of County Commissioners to remove and reassign all duties of the Commission Auditor as contained in the Code of Ordinances of Osceola County, Florida.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF OSCEOLA COUNTY, FLORIDA:

SECTION 1. That the forgoing “WHEREAS” clauses are hereby ratified and confirmed as true and correct and are hereby made a specific part of this Ordinance upon adoption

SECTION 2. Chapter 13 “Licenses, Taxation, and Miscellaneous Business Regulations” of the Osceola County Code, is hereby amended as follows:

CHAPTER 13

Licenses, Taxation and Miscellaneous Business Regulations

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ARTICLE III. – TOURIST DEVELOPMENT TAX

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Sec. 13-61. Levy; collection.

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- (f) The listed definitions are for purposes of this article. Other definitions not defined herein will be given the meaning as found in the applicable Florida Statutes and Florida Administrative Code.
- (1) *Dealer* means a merchant or individual who is charged with collecting the tax on behalf of the county.
 - (2) *Property management company* means an individual or entity who manages short-term rental property on behalf of the property owner.
 - (3) *Tax actions* means an audit assessment, delinquency assessment or shortage assessment, which is issued for tax, penalties, or interest due.
 - (4) *Tourist development tax appeal committee* means a committee to hear level 2 tourist development tax appeals. The committee is composed of the county manager, county attorney ~~and commission auditor~~, tax collector or their designees.

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Sec. 13-68. -Local collection, administration and enforcement of the tourist tax.

- (a) The county shall collect, administer, and enforce the tax on a local basis. The county tax collector shall collect the tax and ~~the commission auditor~~ shall audit and enforce the tax. The county shall pay the tax collector ~~and commission auditor's offices~~ for the actual cost of administering the tax from the tax revenues, provided that the total payment shall not exceed three (3) percent of collections. The remainder of the tax collected shall be submitted to the county for deposit in the tourist development trust funds on a monthly basis.
- (b) The county tax collector ~~and commission auditor~~ may promulgate procedures and may prescribe and publish forms as may be necessary for the local collection and administration of the tax. The county shall be bound by all rules promulgated by the department of revenue pursuant to F.S. § 125.0104(3)(k), as well as those rules pertaining to the sales and use tax on transient rentals imposed by F.S. § 212.03.
- (c) The county tax collector shall be responsible for the collection and administration of the tax. The dealer or property management company receiving consideration for such rental or lease shall receive, account for and remit the tax to the county tax collector in accordance with F.S.(2001) § 212.11(e), as it may be renumbered from time to time. The tax collector shall keep appropriate records of such funds. The same duties and privileges imposed by F.S. ch. 212 upon dealers in tangible property, respecting the collection and remission of tax, the making of returns, the keeping of books, records and accounts, the payment of a dealer's credit in compliance of the rules of the county tax collector in the administration of such chapter shall apply to and be binding upon all persons who are subject to the provisions of this article;

provided, however, the county tax collector may authorize a quarterly return and payment when the tax remitted by the person receiving the consideration for such rental or lease of the preceding quarter did not exceed one hundred dollars (\$100.00).

- (d) The ~~commission auditor~~ county tax collector shall enforce and audit the collection and remission of this tax by all dealers and property management companies. The ~~commission auditor~~ county tax collector, or designee(s), may use any lawful means to carry out the duties prescribed in accordance with this section and F.S. chs. 212 and 213, including, but not limited to:
 - (1) Performance of audits as authorized by F.S. § 212.13;
 - (2) Garnishments as authorized by F.S. § 213.68;
 - (3) Record inspections as authorized by F.S. § 212.13;
 - (4) Issuance of tax warrants as authorized by F.S. § 213.69.
- (e) The ~~commission auditor~~ county tax collector shall have the right to proceed in circuit court to seek a mandatory injunction or other appropriate remedy to enforce its right against the offender, as granted by this section, to require the examination of the books and records of such dealer.
- (f) Dealer responsibility. All dealers conducting business in the county shall comply with all applicable Florida Statutes and county ordinances in addition to the following duties:
 - (1) Maintain records for as long as a tax action can be pursued under F.S. § 125.0104.
 - (2) Make all records available for inspection during normal business hours at the dealer's place of business in the county. The dealer shall pay any expense incurred to inspect or audit records outside of the county.
 - (3) Provide adequate work space during the performance of an audit.
 - (4) The county may require a security bond from new tourist development tax dealers whose principals or officers were previously with a tourist development tax dealer that has outstanding tourist development tax liabilities. In addition, the county may require a security bond from dealers who have not filed a return in one hundred twenty (120) days.
 - a. If a security bond is required:
 - 1. The bond will name the county tax collector as the payee in default.
 - 2. The bond shall be filed with the county tax collector's office.
 - 3. The bond's value shall be three (3) times the average monthly tourist development tax remittance, plus ten (10) percent; or if sufficient data is not available, an estimate will be calculated by the county auditor based on this formula.
 - b. If, upon demand by the county, the dealer's delinquent filing periods or outstanding tourist development tax liabilities are not received, the bond shall be utilized to satisfy the dealer's tourist development tax liability.
 - c. There shall be no further bonding requirements when:

1. The principal or officer's previous company has satisfied all outstanding tourist development tax liability; or
 2. A dealer with a bond on file with the tax collector has paid all outstanding tourist development tax liabilities and has kept their account current for twelve (12) consecutive months.
- (5) Property management companies shall complete a supplemental schedule to be filed with the tourist development tax return. Failure to provide a supplemental schedule may result in the tax return not being accepted as complete. The supplemental schedule shall provide the following data:
- a. All properties managed with:
 1. Physical street address;
 2. Owner's last name;
 3. Tourist tax account number.
 - b. Number of nights rented by:
 1. Owner bookings.
 2. Property manager bookings.
 - c. Gross rental income by:
 1. Owner bookings.
 2. Property manager bookings.
- (6) Dealers shall provide written notice to the tax collector within ten (10) days of any change to properties managed including:
- a. Management.
 - b. Owner's legal mailing address.
- (g) Appeals. The county provides each dealer with a means of resolving disputes arising out of tax actions. However, all non-disputed amount of tax, penalties, and interest shall be paid prior to the acceptance of the appeal for consideration.
- (1) Level 1 appeals. A written appeal must be filed with the ~~commission auditor office~~ county tax collector within twenty (20) business days from the date of the audit assessment. The appeal must include:
- a. Dealer's personal information:
 1. Legal name.
 2. Doing business as (dba) name, if applicable.
 3. Address.
 4. Tourist tax account number.
 5. Federal taxpayer identification number:
 - A. Social security number.

- B. Federal employee identification number.
- C. Foreign taxpayer identification number.
- b. A statement of the factual or legal grounds in support of the dealer's position that the county's funds are not in jeopardy and/or the assessment or audit statement is incorrect.
- c. A statement of whether an oral presentation is requested.
- d. A copy of the assessment or audit statement.
- e. The time period covered under the assessment and the amount of tax protested.
- (2) Level 2 appeals. In the event the dealer does not receive a satisfactory resolution in the Level 1 appeal, within twenty (20) business days of issuance of the decision, the dealer may file a second appeal with the tourist development tax appeal committee. The appeal must include all of the data requested in section (g)(1) above, with any additional documentation to support their position.
- (3) In the event the dealer does not receive a satisfactory resolution in the Level 2 appeal, they may exercise their rights pursuant to F.S. ch. 72.
- (h) Compromises. The tourist development tax appeal committee is authorized to compromise penalties and interest; and to waive all tax utilizing the applicable criteria established in § 12-13, Florida Administrative Code as guidance. The ~~finance manager~~ county manager or designee is authorized to compromise penalties and interest, and to waive tax up to thirty-five thousand dollars (\$35,000.00) utilizing the applicable criteria established in § 12-13, Florida Administrative Code as guidance. In addition, revenue auditors and tax compliance officers, utilizing the applicable criteria established in § 12-13, Florida Administrative Code as guidance, may compromise up to one thousand five hundred dollars (\$1,500.00) in penalties and interest.
- (i) All tourist development tax assessments become final on the 21st business day after the assessment or final decision of an appeal.
- (j) Tax revenues may be used only in accordance with the provisions of F.S. § 125.0104.

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Sec. 13-189. - Annual impact report.

On or before the 1st day of July, of each year that this article is in effect, the county ~~auditor~~ manager or a designee thereof, shall prepare and deliver, to the board of county commissioners, a report which communicates the impact this article has on the financial status of the county.

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Sec. 13-235. - Collection and remittance.

- (a) It shall be the duty of every seller of electricity, metered natural gas, liquefied petroleum gas (either metered or bottled), manufactured gas (either metered or bottled) or fuel oil within the

unincorporated area of Osceola County to collect from the purchaser, for the use of the county, the tax levied hereby at the time of collecting the payment for such item or service. On or before the twentieth day of each calendar month, each seller shall file a return with payment to Osceola County of all such taxes collected during the preceding calendar month. The form of the return shall be determined by the county manager ~~commission auditor~~, but must include the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from the office of the county manager ~~commission auditor~~ concerning the seller's administration of the tax.

- (b) In the event the total amount of tax anticipated to be collected within a calendar quarter does not exceed one hundred twenty dollars (\$120.00), the seller of such service may, after receiving written authorization from the office of the county manager ~~commission auditor~~, remit the taxes collected during such calendar quarter to the county quarterly. The tax shall be due on or before the 20th day of the month following the end of the calendar quarter in which the taxes were collected.
- (c) It shall be unlawful for any seller to collect payment for any taxable item or service without, at the same time, collecting the tax levied hereby in respect of such sales, unless such seller shall elect to assume and pay such tax without collecting the same from the purchaser. Any seller failing to collect such tax at the time of collecting the price of any sale, where the seller has not elected to assume and pay such tax, shall be liable to the county for the amount of such tax in like manner as if the same had actually been paid to the seller.
- (d) Governmental bodies which sell or resell taxable service to non-exempt end users must collect and remit the tax levied under this article.
- (e) The county manager ~~commission auditor~~ shall be responsible for the administration and enforcement of this article and is authorized and directed to promulgate and publish such rules and procedures from time to time as may be deemed necessary or useful in the collection, remittance, administration, and enforcement of the tax levied under this article. Such rules and procedures shall be binding upon and enforceable against all sellers and other persons subject to the provisions of this article, but only if and to the extent that such rules and procedures are not inconsistent with general law or this article.

Sec. 13-236. - Appeals and compromises.

- (a) A seller may file a written protest of any determination with the office of the commission auditor within sixty (60) business days from the date the determination is issued. The appeal must include:
 - (1) The following information relating to the seller:
 - a. Legal name;
 - b. Fictitious name (dba), if applicable;
 - c. Address;
 - d. Tax account number; and
 - e. Federal taxpayer identification number (social security number, federal employer identification number, or foreign taxpayer identification number).

- (2) A statement of the factual or legal grounds in support of the seller's position that the county's funds are not in jeopardy and/or the assessment or audit statement is incorrect.
- (3) A statement of whether an oral presentation is requested.
- (4) A copy of the determination to be reviewed.
- (5) The time period covered under the determination and the amount of tax protested.

The office of the county manager ~~commission-auditor~~ shall issue a written notice of decision within sixty (60) days.

- (b) If dissatisfied with the written notice of decision, the seller may petition for reconsideration within thirty (30) days after the issuance of the notice. The petition for reconsideration shall be heard by a public service tax appeal committee composed of the county manager and county attorney ~~and commission-auditor~~. Within thirty (30) days, the public service tax appeal committee shall issue a written notice of reconsideration to the seller.
- (c) If dissatisfied with the written notice for reconsideration, the seller may file an action in circuit court within sixty (60) days, pursuant to F.S. § 166.234.
- (d) If there is doubt as to liability for any tax or doubt as to collectability of any such tax, the public service tax appeal committee composed of the county manager and county attorney ~~and commission-auditor~~ is authorized to compromise penalties and interest; and to waive all tax. Under the same circumstances, the audit manager is authorized to compromise penalties and interest, and to waive tax up to thirty-five thousand dollars (\$35,000.00), and auditors and tax compliance officers may compromise up to one thousand five hundred dollars (\$1,500.00) in penalties and interest.

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Sec. 13-239. - Penalty.

Any seller of electricity, metered natural gas, liquefied petroleum gas (either metered or bottled) and manufactured gas (either metered or bottled) or fuel oil failing to remit to the county as prescribed in section 13-125 shall be liable for penalties at a rate of five (5) percent of the delinquent tax per month not to exceed a total penalty of twenty-five (25) percent. In no event will the penalty for failure to file a return be less than fifteen dollars (\$15.00). Sellers filing fraudulent returns or willfully attempting to evade payment of the tax shall be liable for a specific penalty of one hundred (100) percent of the tax. In addition the county manager ~~commission-auditor~~ may bring suit to restrain, enjoin, or otherwise prevent the violation of this article, and to collect such unpaid taxes, and shall be entitled to reasonable attorney's fees and costs if it prevails in such suit.

SECTION 3. SEVERABILITY

If any portion of this Ordinance, or application thereof, is held invalid, the invalidity shall not affect other provisions or applications of this Ordinance, which can be given effect without the

invalid provision or application and, to that end, the provisions of this Ordinance are deemed and declared severable.

SECTION 4. EFFECTIVE DATE

Within 10 days after enactment by the Board of County Commissioners, a certified copy of the ordinance shall be filed with the Department of State and will be effective upon 90 days from the date of filing.

DONE AND ADOPTED this 04 day of January, 2021.

**BOARD OF COUNTY COMMISSIONERS
OF OSCEOLA COUNTY, FLORIDA**

By: _____

Chair/Vice Chair

ATTEST:

OSCEOLA COUNTY CLERK OF THE BOARD

By: Rachel Wildermatt
Deputy Clerk of the Board

As authorized for execution at the Board of
County Commissioners meeting of:

01/04/2021
ORD# 2021-15

