

CHAPTER 38. - TOURIST DEVELOPMENT TAX^[12]

Sec. 38.01. - Tax levied; collection; administration.

- (a) There is hereby levied, imposed, and set a tourist development tax throughout Alachua County at a rate of two percent of each whole and major fraction of each dollar of the total rental charged 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, roominghouse, tourist camp, trailer camp or condominium for a term of six months or less. 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.
- (b) In addition to the two percent tax imposed under subsection (a) above, there is hereby levied, imposed and set an additional one percent of each whole and major fraction of each dollar of the total rental charged 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, roominghouse, tourist camp, trailer camp, or condominium for a term of six months or less. 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. The effective date of the levy and imposition of the additional one percent tax under this subsection shall be the first day of the second month following adoption of Ordinance No. 92-43 by the board of county commissioners.
- (c) In addition to the three percent tax imposed under subsections (a) and (b) above, there is hereby levied, imposed and set an additional one percent of each whole and major fraction of each dollar of the total rental charged 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, roominghouse, tourist camp, trailer camp, or condominium for a term of six months or less. 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. The effective date of the levy and imposition of the additional one percent tax under this subsection shall be May 1, 2010.
- (d)

In addition to the four percent tax imposed under subsections (a), (b), and (c) above, there is hereby levied, imposed and set an additional one percent of each whole and major fraction of each dollar of the total rental charged 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, roominghouse, tourist camp, trailer camp, or condominium for a term of six months or less. 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. The effective date of the levy and imposition of the additional one percent tax under this subsection shall be May 1, 2010.

- (e) 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 the rental or lease. Initial collection of the tax shall continue to be made in the same manner as the tax imposed under Chapter 212, Florida Statutes.
- (f) The tourist development tax shall be charged by the person receiving the consideration for the lease or rental (hereinafter referred to as the "dealer"), and it shall be collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.
- (g) The Alachua County Tax Collector shall be responsible for the collection of the tax from the dealer and for the administration of the tax. The Alachua County Tax Collector shall keep appropriate records of said remittances.
- (h) The dealer for any period subsequent to July 1, 2001, shall receive, account for, and remit the tax to the Alachua County Tax Collector at the time and in the manner provided for persons who collect and remit taxes under F.S. § 212.03. 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, and compliance with the rules of the Florida Department of Revenue in the administration of such chapter shall apply to and be binding upon all persons who are subject to the provisions of this chapter; provided, however, the Alachua County Tax Collector may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed \$25.00.
- (i)

Alachua County Tax Collector shall keep records showing the amount of taxes collected. These records shall be open to the public during the regular office hours of the Alachua County Tax Collector.

- (j) Tax revenues collected hereunder may be used only in accordance with the provisions of F.S. § 125.0104. Taxes collected by the Alachua County Tax Collector, less costs of administration identified in (j) of this section shall be remitted to the Alachua County Clerk of the Circuit Court on a monthly basis for deposit into the "Alachua County Tourist Development Trust Fund."
- (k) The Alachua County Tax Collector 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.
- (l) A total not exceeding three percent of the total tourist development tax collected may be retained by the Alachua County Tax Collector for costs of administration.
- (m) The taxes imposed by this section shall become county funds at the moment of collection and shall for each month be due to the Alachua County Tax Collector on the first day and is delinquent on the twenty-first day of the month following, unless otherwise provided for by subsection (f).
- (n) The Alachua County Tax Collector assumes all responsibility for auditing the records and accounts of dealers and assessing, collecting and enforcing payment of current and delinquent tourist development taxes. The Alachua County Board of County Commissioners adopts any and all powers and authority granted to the State of Florida in Section 125.0104 and F.S. Ch. 212, and as further incorporated therein to determine the amount of the tax, penalties, and interest by, but not limited to, distress warrants, writ of garnishments, and criminal penalties as provided in F.S. Ch. 212.
- (o) As specifically provided by F.S. § 212.12, when any person, firm, or corporation required hereunder to make any return or to pay any tax or fee imposed by this section, fails to timely file such return or fails to pay the tax or fee due within the time required hereunder, in addition to all other penalties provided herein and by the laws of this state in respect to such taxes or fees, a specific penalty shall be added to the tax or fee in the amount of ten percent of any unpaid tax or fee, if the failure is for not more than 30 days, with an additional ten percent of any unpaid tax or fee for each additional thirty days, or fraction thereof, during the time which the failure continues, not to exceed a total penalty of 50 percent, in the aggregate,

of any unpaid tax or fee. In no event may the penalty be less than \$10.00 for failure to timely file a tax return required by section 212.11(1)(b) or \$5.00 for failure to timely file a tax return authorized by 212.11(1)(c) or (d), Florida Statutes.

- (p) Interest earned on the tax collections received by the Alachua County Tax Collector shall be remitted to the Clerk of the Circuit Court on a quarterly basis to be placed in the "Alachua County Tourist Development Trust Fund."
- (q) The Alachua County Tax Collector or its designated agent shall perform the audit functions associated with this tax, including, without limitation, the following:
 - (1) For the purpose of enforcing this section, the Alachua County Tax Collector is hereby specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all persons taxable hereunder, or other persons charged with the duty to report or pay a tax under this section, in order to determine whether they are collecting the tax or otherwise complying with this section. In the event said person refuses to permit such examination of its books, records, or other documents by the Alachua County Tax Collector as aforesaid, such person is guilty of violating the provisions of this part and shall be subject to the penalties provided for in F.S. § 125.69. The county shall have the right to proceed in circuit court to seek a mandatory injunction or other appropriate remedy to enforce its rights against the offender, as granted by this section, to require an examination of the books and records of such dealer.
 - (2) Each person taxable hereunder, shall secure, maintain, and keep for a period of three years a complete record of rooms or other lodging, leased or rented by said persons, together with gross receipts from such sales, and other pertinent records and papers as may be required by the Alachua County Tax Collector for the reasonable administration of this part; and all such records which are located or maintained in this state shall be open for inspection by the Alachua County Tax Collector at all reasonable hours at such person's place of business located in Alachua County. Any person who maintains such books and records at a point outside this county must make such books and records available for inspections by the Alachua County Tax Collector in Alachua County. Any person subject to the provisions of this part who violates these provisions is guilty of violating the provisions of this part and shall be subject to the penalties provided for in F.S. § 125.69.

- (3) The Alachua County Tax Collector shall send written notification, at least 30 days prior to the date an auditor is scheduled to begin an audit, informing the taxpayer of the audit. The Alachua County Tax Collector is not required to give 30 days prior notification of a forthcoming audit in any instance in which the taxpayer requests an emergency audit:
- a. Such written notification shall contain:
 1. The approximate date on which the auditor is scheduled to begin the audit;
 2. A reminder that all records, receipts, invoices, and related documentation of the taxpayer must be made available to the auditor;
 3. Any other request or suggestions the Alachua County Tax Collector may deem necessary.
 - b. Only records, receipts, invoices, and related documentation which are available to the auditor when such audit begins shall be deemed acceptable for the purposes of conducting such audit.
- (r) Any dealer who fails or refuses to charge and collect the tax from the person paying any rental or lease, either by himself or through his agents or employees, is, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the first degree, punishable as provided in F.S. §§ 775.082 and 775.083.
- (s) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, that he will relieve the person paying the rental of the payment of all or part of the tax, or that the tax will not be added to the rental or lease consideration or, when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection is guilty of a misdemeanor of the first degree, punishable as provided in F.S. § 775.082 or 775.083.
- (t) The tax authorized by this section shall constitute a lien on the property of the lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed in F.S. §§ 713.67, 713.68, and 713.69.
- (u)

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

(Ord. No. 87-6, § 1, 3-31-87; Ord. No. 92-43, § 1, 12-8-92; Ord. No. 01-08, § 1, 5-8-01; Ord. No. 10-06, § 1, 3-2-10; Ord. No. 10-07, § 1, 3-2-10)

Sec. 38.02. - Tourist development plan.

- (a) The tax revenues received pursuant to subsection (a) of section 38.01 shall be used to fund the Alachua County Tourist Development Plan, which is hereby adopted as follows:

Tourist Development Plan

In accordance with F.S. § 125.0104(4)(c), the tourist development plan shall set forth the anticipated net tourist development tax revenue to be derived by Alachua County for the 24 months following the levy of the tax. At the time of the adoption of Ordinance 87-6 (March 31, 1987), the anticipated annual revenue for a two percent tourist development tax for all of Alachua County over the 24-month period following the levy of the tax was \$425,000.00, less costs of administration as retained by the State of Florida Department of Revenue.

Beginning with fiscal year 2000-2001, the board of county commissioners shall determine each year during the budget process the allocation of revenues pursuant to the tourist development plan set forth below.

The tax revenues received pursuant to subsection (a) of section 38.01 shall be used for the purposes set forth in subsection 125.0104(5), Florida Statutes.

The board of county commissioners may reallocate the actual unobligated fund balance as of September 30, 2000 to uses authorized by the amended tourist development plan.

- (b) The above and foregoing tourist development plan may not be amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the board of county commissioners.
- (c) The tax revenues received pursuant to subsection (b) of section 38.01 shall be used

for the purposes set forth in F.S. § 125.0104(5).

- (d) The tax revenues received pursuant to subsection (c) of section 38.01 shall be used for the purposes set forth in subsection 125.0104(3)(1), Florida Statutes.
- (e) The tax revenues received pursuant to subsection (d) of section 38.01 shall be used for the purposes set forth in subsection 125.0104(3)(n), Florida Statutes.

(Ord. No. 87-6, § 2, 3-31-87; Ord. No. 92-43, § 2, 12-8-92; Ord. No. 00-18, § 1, 9-26-00; Ord. No. 2010-10, § 1, 5-11-10)

Sec. 38.03. - Pledge of revenues.

All or any portion of the revenues raised by the tax hereby levied may be pledged by the board of county commissioners to secure and liquidate revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, improvement, maintenance, operation, or promotion of one or more publicly owned and operated convention centers, sports arenas, sports stadiums, coliseums, or auditoriums within the boundaries of Alachua County, which projects are set forth within this chapter or may be hereinafter adopted by appropriate amendment to this chapter, as one of the uses to be made of the tourist development tax hereby levied.

(Ord. No. 87-6, § 3, 3-31-87)

Sec. 38.04. - Tourist development council.

- (a) *Establishment.* There is hereby established, pursuant to the provisions of F.S. § 125.0104, an advisory council to be known as the Alachua County Tourist Development Council.
- (b) *Composition.* The council shall be composed of nine members plus one alternate member. One member of the council shall be the chairman of the Board of County Commissioners of Alachua County, Florida, or any other member of the board of county commissioners as designated by the chairman of the board of county commissioners. The alternate member shall be appointed by the board of county commissioners and shall represent either classification (2) or (3) described below. The remaining eight members of the council shall be appointed by the board of county commissioners and shall have the following representative classifications:
 - (1) Two members who are elected municipal officials.
 - (2)

Three members who are owners or operators of motels, hotels, or other tourist accommodations in Alachua County and subject to the tourist development tax.

- (3) Three members who are involved in the tourist industry and who have demonstrated an interest in tourist development, but who are not owners or operators of motels, hotels, or other tourist accommodations in Alachua County and subject to the tax.

(c) *Terms.* All members of the council shall be electors of Alachua County. The members of the council shall serve staggered terms of four years. Those members of the council appointed by the board of county commissioners in its resolution dated November 25, 1986, establishing the initial council shall continue to serve in said capacity for the terms set forth therein. Members of the council may be reappointed, provided they continue to serve in the capacities for the terms set forth therein. Members of the council may be reappointed, provided they continue to meet the qualifications of membership, and may be removed by the board of county commissioners for cause. A vacancy on the council not occurring by expiration of term shall be filled by the board of county commissioners by appointment for the unexpired term. The attendance policy for the council shall be in accordance with the attendance policy for boards and committees as set forth in the Alachua County Commission's Rules of Procedure. The alternate member shall serve in the place of an absent member, and shall have all rights and responsibilities of the absent member, including the right to vote. The attendance policy shall apply to the alternate member

(d) *Powers and duties.*

- (1) The council shall elect a chairman from among its members.
- (2) The council hereby established shall, from time to time, make recommendations to the board of county commissioners for the effective operation of the special projects or uses of the tourist development tax revenues and perform such other duties as may be prescribed by ordinance or resolution of the board of county commissioners. Prior to making recommendations to the board of county commissioners as indicated above, the council shall review each proposal for expenditure of funds and determine that such expenditures comply with the tourist development plan of section 38.02 of this chapter.

- (3) The council shall continuously review all expenditures of revenue from the tourism development trust fund and shall receive, at least quarterly, expenditure reports from the board of county commissioners, or its designee. Expenditures which the council believes to be unauthorized by the provisions of this chapter shall be reported to the board of county commissioners and the Florida Department of Revenue. The board of county commissioners, upon receiving notification of expenditures believed to be unauthorized by the council, shall review the council's findings and take such administrative or judicial action as it sees fit to ensure compliance with this chapter and the provisions of F.S. § 125.0104.

(Ord. No. 87-6, § 4, 3-31-87; Ord. No. 92-43, § 3, 12-8-92; Ord. No. 01-15, § 1, 6-12-01; Ord. No. 04-13, § 4, 8-10-04)

Cross reference— Administration, tit. 2.

Sec. 38.05. - Violations—Failure to collect tax.

Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying any rental or lease the tax herein provided, either by himself or through his agents or employees, shall be, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084.

(Ord. No. 87-6, § 5, 3-31-87)

Sec. 38.06. - Same—Relief from or absorption of tax.

No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the person paying the rental of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration, or when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in F.S. § 775.082, 775.083, or 775.084.

(Ord. No. 87-6, § 6, 3-31-87)

Sec. 38.07. - Tax to constitute lien.

The tax hereby levied shall constitute a lien on the property of the lessee, customer, or tenant in the same manner as, and shall be collectible as are, liens authorized and imposed in F.S. §§ 713.67, 713.68, and 713.69.

(Ord. No. 87-6, § 7, 3-31-87)

Sec. 38.08. - Repeal of chapter.

Upon petition of 15 percent or more of the electors of Alachua County, the board of county commissioners shall cause an election to be held for the repeal of this chapter and the tourist development tax levied, subject only to the outstanding revenue bonds for which the tax has been pledged.

(Ord. No. 87-6, § 8, 3-31-87)