

ORDINANCE NO. 2008-12

AN ORDINANCE OF HERNANDO COUNTY, FLORIDA, AMENDING SECTION 27-34 OF THE HERNANDO COUNTY CODE BY ADDING LANGUAGE TO SUBSECTION (f)(4) TO AUTHORIZE FILING OF LIENS TO COLLECT DELINQUENT TOURIST DEVELOPMENT TAX; PROVIDING FOR SEVERABILITY CLAUSE; PROVIDING FOR INCLUSION IN THE CODE; PROVIDING FOR AN EFFECTIVE DATE.

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

SECTION 1.

Section 27-34 of the Hernando County Code of Ordinances is hereby amended to read as follows, with underlined language added to subsection (f)(4) to provide specific authority for filing of liens as a means of collecting delinquent tourist development tax.

Sec. 27-34. Collection.

(a) Notwithstanding any provisions hereof to the contrary, it is the intent of the county to be exempted from those requirements of section 125.0104, Florida Statutes, that the tax collected be remitted to the department of revenue before being returned to the county. It is hereby intended that the county provide for the collection and administration of the tax on a local basis as allowed by section 125.0104(10), Florida Statutes. Notwithstanding anything to the contrary that may be contained in the plan described in section 27-32 above, revenues received pursuant to this article shall be used by the county only for the purposes authorized by section 125.0104, Florida Statutes, as amended from time to time.

(b) Initial collection of the tax by the person receiving the consideration for such rental or lease shall continue to be made in the same manner as for the tax imposed under part I of chapter 212, Florida Statutes.

(c) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the county clerk of circuit court at the time and in the manner

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HERNANDO COUNTY, FLORIDA

provided for persons who collect and remit taxes under part I of chapter 212, Florida Statutes, as amended. The same duties and privileges imposed by part I of chapter 212, Florida Statutes, as amended, upon dealers in tangible property, respecting the collection and remission of tax, discounts, dealer's credits, the making of returns, the keeping of books, records, and accounts, and the rules of the Florida Department of Revenue in the administration of said chapter and the collection, accounting and remission of the county tourist development tax shall apply to and be binding upon all dealers and persons who are subject to the provisions of this article; provided, however, such persons shall remit the tourist development tax to the county clerk of circuit court instead of the Florida Department of Revenue; and the county clerk of circuit court may authorize a quarterly return and payment when the tax remitted by the person receiving the consideration for such rental or lease for the preceding quarter did not exceed twenty-five dollars (\$25.00) or such other amount as set by law. The dealers and persons who are subject to this article shall also comply with the rules of the county clerk of circuit court, as such rules shall exist from time to time, and pertain to the subject matter of this article.

(d) The county clerk of circuit court shall keep appropriate books, records and accounts for the tourist development tax revenues remitted to the clerk's office and shall do a monthly basis pay for the county board of county commissioners.

(e) The county clerk of circuit court shall forthwith notify all persons and dealers collecting the county tourist development tax of the passage of this article and of the first date on which the tax must be remitted to the clerk of circuit court instead of the department of revenue. The clerk of circuit court may promulgate rules and prescribe and publish the forms necessary to effectuate this article.

(f) The county clerk of circuit court shall perform the enforcement and audit functions associated with the collection and remission of the county tourist development tax including, without limitation, the following:

(1) For the purpose of enforcing the collection of the tax levied by this article, the clerk is hereby specifically authorized and empowered to examine at all reasonable hours and audit the books, records, and other documents of all dealers, or other persons charged with the duty to report or pay a tax under this article, in order to determine whether they

are collecting the tax or otherwise complying with this article. In the event said person or dealer refuses to permit such examination of its books, records, or other documents by the clerk or the clerk's employees, as aforesaid, such dealer or person shall be prosecuted in the same manner as misdemeanors are prosecuted and, upon conviction, shall be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the county jail not to exceed sixty (60) days, or by both such fine and imprisonment. Each day that such violation continues shall constitute a separate offense. The clerk 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 an examination of the books and records of such person.

(2) Each dealer and person required by this article to collect the county tourist development tax shall secure, maintain, and keep for a period of three (3) years a complete record of rooms or other lodging, leased or rented by said dealer or person, together with records of gross receipts from such sales, and other pertinent records and papers as may be required by the clerk for the reasonable administration of this article; and all such records which are located or maintained in this state shall be open for inspection by the clerk or the clerk's employees, at all reasonable hours at such dealer's place or person's place of business located in the county. Any dealer or person who maintains such books and records at a point outside this county must make such books and records available for inspection by the clerk or the clerk's employees in the county. Any dealer or person subject to the provisions shall be prosecuted as described in Chapter 2, Article III as amended from time to time. Each day that such violation continues shall constitute a separate offense.

(3) Notification.

a. The clerk shall send written notification, at least thirty (30) days prior to the date an auditor is scheduled to begin an audit, informing the dealer or person of the audit. The clerk is not required to give thirty (30) days' prior notification of a forthcoming audit in any instance in which the dealer or person requests an emergency audit.

b. Such written notification shall contain the approximate date of which the auditor is scheduled to begin the audit; a reminder that all of the records, receipts, invoices, and

related documentation of the dealer or person must be made available to the auditor; and any other requests or suggestions the clerk may deem necessary.

c. 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.

(4) In addition to criminal sanctions, the clerk is empowered, and it shall be the clerk's duty, when any tax becomes delinquent or is otherwise in jeopardy under this article, to use all appropriate remedies at law or equity necessary to collect such delinquent tax, including but not limited to the filing of a notice of tourist development tax lien, upon exhaustion of the taxpayer's administrative remedies. Upon recording of any such lien, a certified copy shall be sent to the taxpayer and shall be equal in dignity and superiority to any other lien for taxes owed to the state or any political subdivision thereof.

(5) Pursuant to Section 125.0104, the clerk of the court shall be allowed to retain three (3) percent of the tax collected for cost of administration.

SECTION 2. INCLUSION IN THE CODE

It is the intention of the Board of County Commissioners of Hernando County, Florida and it is hereby provided that the provisions of this ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, the sections of this ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", or other appropriate designation.

SECTION 3. SEVERABILITY

If any section, subsection, sentence, clause phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, or administrative agency, such portion shall be deemed a separate, distinct and independent provision, and except as otherwise expressly provided herein, such holding shall not affect the validity of the remaining portions thereof, all of which will remain in full force and effect, except as otherwise provided for herein.

SECTION 4. EFFECTIVE DATE

This ordinance shall become effective upon filing with the Department of State.

ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS in Regular Session this 3 day of June, 2008.

**BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA**

Attest: Karen Nicolai
KAREN NICOLAI
Clerk



By: Christopher A. Kingsley
CHRISTOPHER A. KINGSLEY
Chairman

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY
BY KW 5/23/08
County Attorney's Office