Counties - Tourist Development Tax - Taxation

Number: AGO 2014-02

Date: March 04, 2014

Subject:
Counties – Tourist Development Tax – Taxation

The Honorable William Chapman
Chairman, Walton County Board of
County Commissioners
Post Office Box 1355
DeFuniak Springs, Florida 32435

RE: COUNTIES – TOURIST DEVELOPMENT TAX – TAXATION – whether tourist development tax proceeds may be used to promote and market events held in county but outside subcounty taxing district levying tax. s. 125.0104(5)(a)3., Fla. Stat.

Dear Mr. Chapman:

As Chairman and on behalf of the Walton County Board of County Commissioners, you have asked for my opinion on substantially the following question:

Is Walton County authorized by section 125.0104(5)(a)3., Florida Statutes, to use tourist development tax proceeds to promote and market events held in the county, but outside the subcounty taxing district in which the tourist development taxes are levied and collected?

In sum:

Section 125.0104(5)(a)3., Florida Statutes, does not limit Walton County to using these funds within the boundaries of the subcounty special taxing district levying the tax in which they are levied and collected.

Section 125.0104, Florida Statutes, known as the "Local Option Tourist Development Act"[1] (the act), authorizes a county to impose a tax on short-term rentals of living quarters or accommodations within the county unless such activities are exempt pursuant to Chapter 212, Florida Statutes.[2] The purpose and intent of section 125.0104, Florida Statutes, is to "provide for the advancement, generation, growth and promotion of tourism, the enhancement of the tourist industry, and the attraction of conventioneers and tourists from within and without the state to a particular area or county of the state."[3]

The Local Option Tourist Development Act requires that construction of publicly owned facilities financed by proceeds from the tourist development tax be primarily related to the advancement and promotion of tourism. It is the governing body of the county that must make the factual determination of whether a particular facility or project is related to tourism and primarily promotes such a purpose. This determination must follow appropriate legislative findings and

due consideration of the specific needs and conditions of the particular locality.[4] Any such determination must show a distinct and direct relationship between expenditure of tourist development tax revenues and the promotion of tourism.[5]

Subsection (3) of the act provides legislative intent with regard to the privileges taxed by the act, exemptions from the tax, procedures for the levy of the tax, and the rate at which the tax may be imposed and collected. Subsection (3)(b) provides counties with the discretion to levy and impose a tourist development tax in "a subcounty special district" of the county. If the county elects to levy such a tax, it may only do so in a special district that "embrace[s] all or a significant contiguous portion of the county[.]" No definition of the phrase "subcounty special district" is given in Chapter 125, Florida Statutes, nor is a definition provided elsewhere in the statutes where that term is used.[6] However, this office has opined that a "subcounty special district" for purposes of this statute would appear to refer to any special district that otherwise meets the requirements of the statute, that is, all or significant contiguity with the county.[7]

You have asked whether tourist development tax proceeds may be used to promote and market events held in Walton County, but outside the subcounty taxing district in which the tax is levied. As explained more fully in the discussion below, it is my opinion that section 125.0104(5)(a)3., Florida Statutes, does not limit Walton County to using these funds for activities within the boundaries of the subcounty special taxing district levying the tax although such a district must, by statute, encompass all or a significant portion of the county.

Section 125.0104(5), Florida Statutes, sets forth the authorized uses of tourist development tax revenues. As provided therein,

"(a) All tax revenues received pursuant to this section by a county imposing the tourist development tax shall be used by that county *for the following purposes only*:[8]
1. To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
a. Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums *within the boundaries of the county or subcounty special taxing district in which the tax is levied*; or
b. Aquariums or museums that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public, *within the boundaries of the county or subcounty special taxing district in which the tax is levied*;
2. To promote zoological parks that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public;
3. To promote and advertise tourism in this state and nationally and internationally; however, if tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists;
4. To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies or by contract with the chambers of commerce or similar associations *in the county*, which may include any indirect administrative costs for services performed by the county on behalf of the promotion agency; or
5. To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup, or

restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river. However, any funds identified by a county as the local matching source for beach renourishment, restoration, or erosion control projects included in the long-range budget plan of the state's Beach Management Plan, pursuant to s. 161.091, or funds contractually obligated by a county in the financial plan for a federally authorized shore protection project may not be used or loaned for any other purpose. In counties of fewer than 100,000 population, up to 10 percent of the revenues from the tourist development tax may be used for beach park facilities." (e.s.)

The Legislature has specifically limited the use of tourist development tax revenues to projects located "within the boundaries of the county or subcounty special taxing district in which the tax is levied" in section 125.0104(5)(a)1., Florida Statutes. The statutory provision under which Walton County proposes to act is section 125.0104(5)(a)3., Florida Statutes, which contains no such limiting language.

When the Legislature has used a term in one section of a statute but omits it in another section of the same statute, the existence of the term will not be implied where it has been excluded.[9] Thus, this office will not read into section 125.0104(5)(a)3., Florida Statutes, the limitation that tourist development tax revenues may only be expended for activities within the boundaries of the subcounty special taxing district in which the tax is levied, as the Legislature has clearly imposed such a limitation elsewhere in the statute, but not extended it to subsection (5)(a)3.

In sum, it is my opinion that section 125.0104(5)(a)3., Florida Statutes, does not limit Walton County to using tourist development tax funds for activities within the boundaries of the subcounty special taxing district levying the tax although such a district must, by statute, encompass all or a significant portion of the county.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 125.0104(1), Fla. Stat.

[2] *See* s. 125.0104(3)(a), Fla. Stat., stating it is the intent of the Legislature that every person who rents, leases, or lets living quarters or accommodations in "any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, condominium, or timeshare resort for a term of 6 months or less is exercising a privilege which is subject to taxation under this section . . . ."

[3] *See* Ops. Att'y Gen. Fla. 10-09 (2010), 95-71 (1995), 94-12 (1994), 87-16 (1987), and 83-18 (1983).

[4] *See e.g.,* Ops. Att'y Gen. Fla. 94-12 (1994) (governing body of the county must make

determination that expenditure of tourist development tax revenues for the acquisition of a railway right-of-way and construction of a public recreational trail falls within the scope of expenditures authorized by s. 125.0104, Fla. Stat.), 10-09 (2010), and 98-74 (1998).

[5] *And see* Op. Att'y Gen. Fla. 00-50 (2000).

[6] *See* ss. 212.0305(4)(e) and 213.053(10)(a), Fla. Stat., relating respectively to sales and use taxes and state revenue laws.

[7] *See* Op. Att'y Gen. Fla. 10-26 (2010).

[8] *And see* s. 125.0104(5)(d), Fla. Stat., which provides that "[a]ny use of the local option tourist development tax revenues collected pursuant to this section for a purpose not expressly authorized by paragraph (3)(l) or paragraph (3)(n) or paragraph (a), paragraph (b), or paragraph (c) of this subsection is expressly prohibited."

[9] *See Metropolitan Dade County v. Milton*, 707 So. 2d 913 (Fla. 3d DCA 1998). *And see Thayer v. State*, 335 So. 2d 815 (Fla. 1976) (mention of one thing in statute implies exclusion of another; *expressio unius est exclusio alterius*); *Moonlit Waters Apartments, Inc. v. Cauley*, 666 So. 2d 898 (Fla. 1996).