

DATE EFFECTIVE: 3/07/18

**ORDINANCE NO. 17-18-09**

**AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF HIGHLANDS COUNTY, FLORIDA, AMENDING SECTION 8-221 OF THE CODE OF ORDINANCES, HIGHLANDS COUNTY, FLORIDA, PROVIDING FOR THE COLLECTION, ADMINISTRATION, DISTRIBUTION AND ENFORCEMENT OF THE TOURIST DEVELOPMENT TAX; PROVIDING FOR CONFLICT; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Local Option Tourist Development Act, Section 125.0104, Florida Statutes, permits the Board of County Commissioners to levy a tourist development tax in the manner prescribed therein; and

**WHEREAS**, the Board of County Commissioners adopted Ordinance No. 95-4 on February 14, 1995, establishing the Highlands County Tourist Development Council in the manner prescribed in Section 125.0104(4)(e), Florida Statutes; and

**WHEREAS**, the Highlands County Tourist Development Council adopted for submission to the Board of County Commissioners a plan for tourist development on May 29, 2002, in the manner prescribed in Section 125.0104(4)(c), Florida Statutes; and

**WHEREAS**, the Board of County Commissioners adopted Ordinance No. 01-02-20 on June 25, 2002, which, among other things, levied and imposed throughout the incorporated and unincorporated areas of Highlands County, Florida, a tourist development tax at the rate of two percent (2%) pursuant to the authority of Section 125.0104(3)(c), Florida Statutes, adopted a plan for tourist development, and provided for a referendum; and

**WHEREAS**, the voters of Highlands County approved the tourist development tax by referendum election on November 5, 2002; and

**WHEREAS**, from the initial levy of the tourist development tax, the persons collecting the tourist development tax pursuant to Section 125.0104(3)(f), Florida Statutes, have been required to receive, account for, and remit the tourist development tax to the Florida Department of Revenue pursuant to Section 125.0104(g), Florida Statutes; and

**WHEREAS**, the Board of County Commissioners had determined that it was in the best interests of the County for the collection and administration of the tourist development tax to be done on a local basis and to elect for the County to assume all responsibility for auditing the records and accounts of persons responsible for charging and collecting the tourist development tax

pursuant to Section 125.0104(3)(f), Florida Statutes, and assessing, collecting, and enforcing payments of delinquent tourist development taxes, in order that the County may be exempted from the requirements of Section 125.0104, Florida Statutes, that the tourist development tax collected be remitted to the Florida Department of Revenue before being returned to Highlands County and that the tourist development tax be administered according to Chapter 212, Florida Statutes; and

**WHEREAS**, on May 28, 2013, the Board adopted Ordinance No. 12-13-13 to provide for the collection and administration of the tourist development tax on a local basis and designated the Highlands County Tax Collector to collect the tourist development tax; and

**WHEREAS**, on February 22, 2018, the Highlands County Tourist Development Council voted to recommend the transfer of the duties and responsibilities of collection of the tourist development tax from the Highlands County Tax Collector to the Florida Department of Revenue; and

**WHEREAS**, the Board desires to transfer the duties and responsibilities related to collection of the tourist development tax from the Highlands County Tax Collector to the Florida Department of Revenue; and

**WHEREAS**, the Florida Department of Revenue shall assume the responsibility for the collection of tourist development tax revenues under the provisions of Section 125.0104(3)(i), Florida Statutes, effective March 21, 2018; and

**WHEREAS**, the Board hereby finds that it is necessary to amend Section 8-221 of the Highlands County Code of Ordinances in order to effectuate the change in collection of the tourist development tax.

**NOW, THEREFORE, BE IT ORDAINED** by the Board of County Commissioners of Highlands County, Florida, that:

**SECTION 1. Amended and Adopted.** Section 8-221 of the Code of Ordinances, Highlands County, Florida, is amended and adopted to read as follows:

**Sec. 8-221. Collection and administration.**

(a) It is the intent of the board of county commissioners that ~~the county be exempted from the requirements of Section 125.0104, Florida Statutes, that the tourist development tax collected be remitted to the Florida Department of Revenue before being returned to the County and that the tourist development tax be administered according to Chapter 212, Florida Statutes. It is the intent of the board of county commissioners that beginning on January 1, 2014, the county provide for the collection and administration of the tax on a local basis.~~ beginning on March 21, 2018, the collection of the tax imposed by this division shall continue to be made in the same manner as the tax imposed under Chapter 212, Florida Statutes.

(b) ~~Initial collection of the tourist development tax shall continue to be made in the same manner as the tax imposed under Chapter 212, Florida Statutes.~~ The person receiving the consideration from such rental or lease described in section 8-220 of this division shall receive, account for, and remit the tourist development tax to the ~~Highlands County Tax Collector~~Florida Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under Section 212.03, Florida Statutes.

(c) ~~All persons who are subject to the provisions of this division shall provide their federal employer identification or social security numbers to the Highlands County Tax Collector.~~ The same duties and privileges imposed by Chapter 212, Florida Statutes, upon dealers in tangible property respecting the remission and collection of tax, the making of returns, the payment of the required dealer's credit, the keeping of books, records, and accounts, and compliance with the rules of the Florida Department of Revenue in the administration of Chapter 212, Florida Statutes, shall apply to and be binding upon all persons who are subject to the provisions of this division; provided, however, the ~~Highlands County Tax Collector~~Florida Department of Revenue 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 does not exceed ~~\$100.00~~25.00. All persons who are subject to the provisions of this division shall secure, maintain, and keep for a period of three years a complete record of rooms or other lodging, leased or rented by that person, together with gross receipts from such sales and other pertinent records and papers as may be required by the ~~Highlands County Tax Collector~~Florida Department of Revenue for the administration of this division. Such books and records ~~that are maintained at a point outside Highlands County~~ must be made available to the ~~Highlands County Tax Collector~~Florida Department of Revenue for inspection ~~in Highlands County, Florida,~~ during normal business hours of the ~~Highlands County Tax Collector.~~ Florida Department of Revenue.

(d) The Clerk of the Circuit Court of Highlands County, Florida, acting as clerk and auditor to the board of county commissioners, is hereby authorized and directed to establish in the accounts of the board of county commissioners the Highlands County tourist development trust fund, in which the proceeds of the tourist development tax shall be placed upon receipt from the ~~Highlands County Tax Collector.~~Florida Department of Revenue. The collections received by the Florida Department of Revenue, less any collection fee imposed by the Florida Department of Revenue, are County funds. In accordance with Section 125.0104(3)(i), Florida Statutes, the collections received by the Florida Department of Revenue, shall be paid and returned monthly to the Clerk of the Circuit Court of Highlands County, Florida. The tourist development tax revenues may be used only in accordance with the provisions of Section 125.0104, Florida Statutes.

(e) ~~The Highlands County Tax Collector~~Florida Department of Revenue shall be responsible for the collection, distribution, and enforcement of the tourist development tax.

(1) ~~The tax collector~~Florida Department of Revenue shall keep appropriate records of said funds. ~~The tax collector~~Florida Department of Revenue shall pay over to the Clerk of the Circuit Court of Highlands County all funds received and collected under the provisions of this division, to be credited to the account of the Highlands County tourist development trust fund.

(2) ~~The tax collector~~Florida Department of Revenue is hereby specifically authorized and empowered to examine, at all reasonable hours, the books, records, and other papers of all persons who are subject to the provisions of this division in order to determine whether they are collecting the tax or otherwise complying with this division. In the event that person refuses to permit such examination of books, records and other papers by the ~~tax collector~~Florida Department of Revenue as aforesaid, that person is guilty of violating the provisions of this division and shall be subject to ~~the penalties as provided in Section 125.69, by Florida Statutes. The tax collector shall have~~law. The Florida Department of Revenue shall have all rights and authority to enforce its responsibilities under Florida law, including the right to proceed in circuit court to seek a mandatory injunction or other appropriate remedy to enforce the right of inspection against the offender as granted by this division.

(3) ~~In addition to criminal sanctions, the tax collector is empowered and obligated, when any tax becomes delinquent or is otherwise in jeopardy under this division, to issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular the sheriffs of the state, and shall cause the warrant to be recorded in the public records of Highlands County and in any other county of the state where any property of the taxpayer is located. Upon such recording the amount of the warrant shall become a lien on any real or personal property of the taxpayer in the same manner as a recorded judgment. The tax collector may issue a tax execution to enforce the collection of taxes imposed by this division and deliver it to any sheriff. The sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his services in executing the warrant to be collected. The tax collector may also have a writ of garnishment to subject any indebtedness due to the delinquent taxpayer by a third person in any goods, money, chattels or effects of the delinquent taxpayer in the hands, possession or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of the execution, warrant, judgment or garnishment, the tax collector shall satisfy the lien of record within 30 days and remit the fees for recording and execution services to the clerk of the circuit court and the sheriff. The tax collector shall prescribe and publish such forms as may be necessary to effectuate the purposes~~

~~of this division. When any tax becomes delinquent or is otherwise in jeopardy under this division, persons who collect and remit taxes under Section 212.03, Florida Statutes, shall be subject to the exercise of all enforcement authority of the Florida Department of Revenue or any other authorized entity.~~

(4) All penalties and interest imposed by this division shall be payable to and collectible by the ~~tax collector~~Florida Department of Revenue in the same manner as if they were a part of the tax imposed.

(5) In the event any person required hereunder to make any return or to pay the tax imposed by this division fails or refuses to make the person's records available for inspection so that no audit or examination has been made of the books and records of such person, fails or refuses to register as a dealer, fails to make a report and pay the tax as provided by this division, makes a grossly incorrect report or makes a report that is false or fraudulent, then, in such event, ~~it shall be the duty of the tax collector~~the Florida Department of Revenue, to the extent allowed by Florida law, is authorized to make an assessment from an estimate based upon the best information then available for the taxable period, together with interest, plus penalty. ~~Then the tax collector shall, and is permitted to proceed to collect such tax, interest, and penalty on the basis of such assessment, which shall be considered prima facie correct, and the burden to show the contrary shall rest upon the person from whom the same is due.~~ (6) ~~The tax collector shall~~and to perform the audit functions associated with the collection and remission of the tax, including, without limitation, the following: a. ~~The 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 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 or when the tax becomes delinquent or is otherwise in jeopardy as provided in paragraph (3) of this subsection (e).~~

b. ~~The written notification shall contain:~~

1. ~~The approximate date on which the auditor is scheduled to begin the audit.~~

2. ~~The reminder that all of the records, receipts, invoices, and related documentation of the taxpayer must be made available to the auditor.~~

3. ~~Any other requests or suggestions the tax collector may deem necessary.~~

e. ~~Only records, receipts, invoices, and related documentation that are available to the auditor when the audit begins shall be deemed acceptable for the purposes of conducting such audit.~~

(f) ~~The tax imposed by this division shall become county funds at the moment of collection and shall for each month be due to the tax collector on the first day of the succeeding~~

~~month and be delinquent on the 21st day of such month. All returns postmarked after the 20th day of such month are delinquent.~~

~~(g) Pursuant to Section 125.0104(10)(c), Florida Statutes, Highlands County reserves unto itself any power granted in Section 125.0104, Florida Statutes, to the Florida Department of Revenue to determine the amount of tax, penalties, and interest to be paid by all persons subject to the provisions of this division and to enforce payment of such tax, penalties, and interest.~~

~~(h) Three percent of the tax collected herein shall be retained by the tax collector for costs of administration.~~

**SECTION 2. Conflict.** Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

**SECTION 3. Severability.** The sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

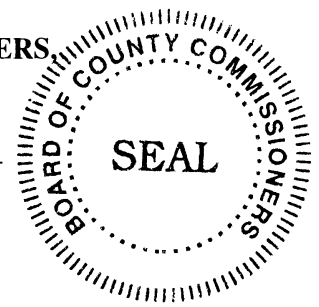
**SECTION 4. Inclusion in the Code:** When the text of this Ordinance is published for inclusion in the Code of Ordinances, Highlands County, Florida, the text included for deletion by strike-through text shall be deleted and the additions appearing as underlined or double underlined shall be added so that the text of the Code shall be as amended rather than in the legislative format used in this Ordinance to highlight the changes being made, and the sections of this Ordinance may be renumbered or re-lettered for such inclusion.

**SECTION 5. Effective Date.** This Ordinance shall take effect immediately upon filing with the Florida Department of State..

**DONE AND ADOPTED** this 6<sup>th</sup> day of March, 2018, by affirmative vote of a majority of the Board of County Commissioners.

**BOARD OF COUNTY COMMISSIONERS,  
HIGHLANDS COUNTY, FLORIDA**

By: R. Greg Harris  
R. Greg Harris, Chairman



**ATTEST:**

By: Robert W. Germaine  
Robert W. Germaine, Clerk



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

March 7, 2018

Honorable Robert W. Germaine  
Clerk of the Circuit Court  
Highlands County  
590 South Commerce Avenue  
Sebring, Florida 33870-3867

Attention: Pamela Gamez, Deputy Clerk

Dear Mr. Germaine:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your electronic copy of Highlands County Ordinance No. 17-18-09, which was filed in this office on March 7, 2018.

Sincerely,

Ernest L. Reddick  
Program Administrator

ELR/lb