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MEMORANDUM

DATE: June 7, 2004
TO: Karen Chastain, Deputy General Counsel
FROM: Lee S. Carlin, Assistant General Counsel
RE: Ad Valorem Tax Consequences of Cruise Ship and Private Home Rentals

Jacksonville's Super Bowl Host Committee has arranged for cruise ships to serve as hotel-like, transient rentals during the Super Bowl period. Likewise, an interest has been expressed whereby private homeowners would rent their homesteaded residences for all or some of the Super Bowl period. These rental activities have raised the following legal issues pertaining to ad valorem taxation (real property tax) and tourist development taxation (bed tax) – (1) are the cruise ship and/or homestead rentals subject to local bed taxes; (2) if so, what is the proper procedure for collection of those bed taxes; and (3) would a private home lose its homestead exemption¹ and/or homestead cap protection² if it were rented out during the Super Bowl period? For the reasons that follow, the answers are: (1) yes; (2) they should be collected and paid to the Tax Collector by the entity receiving the rental fee; and (3) probably not.

¹This is the exemption authorized by Article VII, Section 6, Florida Constitution, which currently exempts up to \$25,000 of the assessed value of homesteaded residences from real property taxation.

²This is the favored tax classification authorized by Article VII, Section 4(c), Florida Constitution, popularly known as "Save Our Homes", which essentially limits (i.e., "caps") assessment increases on homesteaded property to the lower of: (a) 3% of the prior year's assessment; or (b) the % change in the Consumer Price Index.

BED TAX APPLICATION

Jacksonville's tourist development tax, our so-called local bed tax, is authorized by Florida's Local Option Tourist Development Act, codified in section 125.0104, Florida Statutes, and is locally enacted via section 666.106, Jacksonville Municipal Code (JMC). The legislative intent behind the tax, as material to our issues, is that "every person who rents, leases, or lets for consideration any living quarters or accommodations in any . . . roominghouse, . . . for a term of 6 months or less is exercising a privilege which is subject to taxation . . ." §125.0104(3)(a), Fla. Stat.

Section 212.02(10)(c), Florida Statutes, which is made applicable to our local bed tax by section 125.0104, Florida Statutes³, is easily broad enough to include private homes and cruise ships within the definition of "roominghouse":

Every house, boat, vehicle, motor court, trailer court, or other structure or any place or location kept, used, maintained, or advertised as, or held out to the public to be, a place where living quarters or sleeping or housekeeping accommodations are supplied for pay to transient or permanent guests or tenants, whether in one or adjoining buildings, shall for the purpose of this chapter be deemed a roominghouse.

It is therefore my legal opinion that all rentals of docked cruise ship sleeping accommodations and private homes to transient tenants during Super Bowl period are subject to our local bed tax.

BED TAX COLLECTIONS

Section 666.106(b), Jacksonville Municipal Code, states:

The tax shall be charged by the person receiving the consideration for the lease or rental and it shall be collected from the lessee, tenant or customer at the time of payment of the consideration for such lease or rental. The provisions contained in F.S. §125.0104(3) shall be applicable to persons collecting the tax, except that the tax shall be remitted by the person receiving the tax

³§125.0104(2)(a) states, "The provisions contained in chapter 212 apply to the administration of any tax levied pursuant to this section." Our local bed tax is a tax levied "pursuant to this section". Furthermore, §666.105, JMC, states in material part, "This chapter (local bed tax) shall be liberally construed to accomplish its purpose".

to the Duval County Tax Collector Such tax shall be administered according to the provisions of F.S. ch. 212, pt. I. The prohibitions and penalties contained in F.S. §125.0104(8) shall be applicable.”

In essence, the person who collects the rent is also charged with the responsibility to collect the local bed tax and remit same (usually on a monthly basis) to the Tax Collector. For more specific collection/payment information pertaining to bed taxes (as well as applicable state sales taxes), including appropriate registration forms, please see the Convention and Tourist Development Tax section of the Tax Collector’s web site⁴, located at www.coj.net.

Failure to collect/remit local bed taxes on a timely basis subjects the responsible party not only to penalties and interest but also to criminal prosecution⁵. Similarly, representing to the public that the tax will not be imposed or collected or will otherwise be reimbursed will also subject the responsible party to criminal prosecution⁶. Any failure or refusal to pay the tax by a

⁴The Convention and Tourist Development Tax section contains the following language:

“The property owner/operator collects the tax. The local Tourist and Convention taxes collected are remitted to the Duval County Tax Collector on a monthly basis. Please complete the Tourist/Convention Development Tax registration form and mail to the address below.

“The State Sales Tax is remitted to the State of Florida, Department of Revenue. The tax return is due on the first of the month following collection from their tenants or guests and are considered delinquent if not remitted by the 20th of each month. The tax return must be filed even if taxes are not due. If the tax return's due date falls on a weekend or a legal holiday, it is due on the following business day.

“If the tax return is not received on time, penalties are assessed at the rate of (10%) per month of the taxes due or fraction thereof to a maximum of (50%) or \$10.00, whichever is greater. Interest is accrued at an annual rate set up by the Department of Revenue prorated daily of the taxes due computed from the due date until payment is received (postmark date).

“To compensate owners/operators for the collections of taxes from their guests and tenants, they are entitled to an allowance of 2.5% of the first \$1,200.00 tax due. In essence, the collection allowance is not to exceed \$30.00. Collection allowance is not allowed for late submission or noncompliance.”

⁵§125.0104(8)(a), Fla. Stat., states in material part:

Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or herself or through agents or employees, is, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the first degree

⁶§125.0104(8)(b), Fla. Stat., states in material part:

tenant results in the tax due becoming a lien on property of the tenant⁷ and, should the tenant attempt to remove his/her property upon which the lien has attached, he/she is guilty of a second degree misdemeanor and may be arrested accordingly.

HOMESTEAD STATUS

Section 196.061, Florida Statutes, "Rental of homestead to constitute abandonment", states in material part:

The rental of an entire dwelling previously claimed to be a homestead for tax purposes shall constitute the abandonment of said dwelling as a homestead, and said abandonment shall continue until such dwelling is physically occupied by the owner thereof. However, such abandonment of such homestead after January 1 of any year shall not affect the homestead exemption for tax purposes for that particular year so long as this provision is not used for 2 consecutive years.

Whether the rental of homesteaded property for the Super Bowl period will cause the property to lose its homestead exemption or classification will depend upon whether the rental exists on January 1, 2005, and whether it was rented out for any period of time in 2004 yet still retained its homestead exemption for tax year 2004.

Ad valorem real property taxes relate to circumstances as they exist on January 1 of the tax year in question. §192.042(1), Fla. Stat. This means that the Property Appraiser must assess property based upon how it is actually used on the first day of each tax year. Homestead exemption requires that every person claiming same "resides thereon and in good faith makes the

No person shall advertise or hold out to the public in any manner, directly or indirectly, that he or she will absorb all or any part of the tax, that he or she 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 is guilty of a misdemeanor of the first degree

⁷§125.0104(8)(c), Fla. Stat., states in material part:

The tax authorized to be levied by this section shall constitute a lien on the property of the . . . tenant in the same manners as, and shall be collectible as are, liens authorized and imposed in ss. 713.67, 713.68, and 713.69.

same his or her permanent residence”. §196.031, Fla. Stat. Since the savings provision of section 196.061, Florida Statutes, specifies that it only applies to “such abandonment (i.e. rental) of such homestead *after January 1* of any year” (emphasis added), it appears that property actually rented *on* January 1 cannot qualify for homestead exemption regardless of its prior status. Such property would concomitantly lose its homestead classification for cap purposes. This means that the property would have to be assessed at its full fair market value with no allowable exemption for tax year 2005. Should the owner reapply for homestead exemption after the rental period, such status could not become effective until tax year 2006 at the earliest.

If the savings provision of section 196.061, Florida Statutes, had been used to retain homestead status for tax year 2004, it could not be used again to retain the status in tax year 2005 even though the property was only being rented out during the Super Bowl period. In other words, if a residence was rented out for any period of time in 2004 yet still retained its homestead exemption for tax year 2004, it could not again retain homestead status for tax year 2005 if it is rented out for even a single day during 2005.

Should you have any questions regarding this memo, please call me at your earliest convenience. As per our earlier discussion, I am prepared to present and/or discuss these matters at the next TDC meeting, or at any other gathering .