

RESTRICTED REVENUE AUDIT FINDINGS

FGFOA WEBINAR

FEBRUARY 29, 2024



RESTRICTED REVENUES

- ❖ Tourist Development Tax (TDT)
- ❖ Infrastructure Sales Surtax
- ❖ Traffic Infraction Camera Receipts
- ❖ Fuel Tax

TOURIST DEVELOPMENT TAX (TDT)

- Legal Authority: Section 125.0104, Florida Statutes (F.S.).
- Practical Considerations:
 - Statute is lengthy (approximately 10 pages when printed).
 - Statute changes frequently:

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 77-209; s. 3, ch. 79-359; s. 72, ch. 79-400; s. 4, ch. 80-209; s. 2, ch. 80-222; s. 5, ch. 83-297; s. 1, ch. 83-321; s. 40, ch. 85-55; s. 1, ch. 86-4; s. 76, ch. 86-163; s. 61, ch. 87-6; s. 1, ch. 87-99; s. 35, ch. 87-101; s. 1, ch. 87-175; s. 5, ch. 87-280; s. 4, ch. 88-226; s. 6, ch. 88-243; s. 2, ch. 89-217; ss. 31, 66, ch. 89-356; s. 2, ch. 89-362; s. 1, ch. 90-107; s. 1, ch. 90-349; s. 81, ch. 91-45; s. 230, ch. 91-224; s. 3, ch. 92-175; s. 1, ch. 92-204; s. 32, ch. 92-320; s. 4, ch. 93-233; s. 1, ch. 94-275; s. 3, ch. 94-314; s. 37, ch. 94-338; s. 3, ch. 94-353; s. 1, ch. 95-133; s. 1434, ch. 95-147; s. 3, ch. 95-304; s. 1, ch. 95-360; s. 1, ch. 95-416; ss. 44, 46, ch. 96-397; s. 43, ch. 96-406; s. 15, ch. 97-99; s. 1, ch. 98-106; s. 58, ch. 99-2; s. 1, ch. 99-287; ss. 6, 11, 14, ch. 2000-312; s. 11, ch. 2000-351; s. 14, ch. 2001-252; s. 10, ch. 2002-265; s. 1, ch. 2003-34; s. 1, ch. 2003-37; s. 2, ch. 2003-78; s. 145, ch. 2003-261; s. 1, ch. 2005-96; s. 1, ch. 2009-133; s. 1, ch. 2012-180; s. 1, ch. 2013-168; s. 2, ch. 2016-6; s. 1, ch. 2016-220; s. 1, ch. 2017-36; s. 5, ch. 2018-118; s. 1, ch. 2020-10; s. 3, ch. 2022-5; s. 1, ch. 2022-214; s. 45, ch. 2023-8; s. 2, ch. 2023-157.

¹Note.—The word “of” preceding the word “the” was deleted by the editors to improve clarity.

²Note.—The word “for” was substituted for the word “of” by the editors to conform to context.

TDT

- Six individual 1 percent levies up to 6 percent of each dollar collected from short-term (less than 6 months) living quarter rentals.
- Generally, the first 3 percent of TDT collections may be used for capital construction of tourist facilities, tourist promotion, and beach and shoreline maintenance.
- The additional TDT levies are more restricted, such as the Professional Sports Franchise Facility Tax (PSFFT) and Additional Professional Sports Franchise Facility Tax (APSFFT). However, each 1 percent levy of TDT has separate allowable uses and restrictions.

TDT

- The Attorney General has opined on numerous occasions that, **in addition to carrying out a provision of State law**, an expenditure of TDT collections must be based on a determination by the governing body of the county that the activity directly and primarily promotes tourism.
- When a County administers the tax, both the Clerk of the Courts (Clerk) and Board of County Commissioners (BCC) may retain a portion of TDT collections for the costs of administering the TDT.
 - Clerk amount is capped at 3 percent.
 - BCC amount is not capped.

QUESTION 1

- The Board Of County Commissioners do not have a cap in the amount of TDT collections it can retain for administration of the TDT.
 - True
 - False

TDT

Finding: Lack of Separate Accountability for TDT Levies

- A County provided TDT moneys to a municipality.
- County did not clarify the specific TDT levies passed through.
- Unclear the precise allowable uses of the TDT moneys.
- Municipality did not seek clarification from County.

Note: HB 1081 and SB 1072 would require counties to share TDT moneys with municipalities.

TDT

Finding: Code of Ordinances Provisions

Certain County provisions were contrary to State Law. For example:

- Clerk TDT administrative cost holdback stipulated at 3 percent rather than actual costs with a maximum of 3 percent.
- Unallowable uses of PSFFT and APSFFT levies.

TDT

Finding: Administrative and Judicial Action of Expenditures

- State Law requires tourist development councils (TDC) to review expenditures and report to the BCC and Florida Department of Revenue (DOR) any potentially unauthorized expenditures.
- BCC and DOR required to take “appropriate administrative or judicial action” to comply with State law.
- TDC reported potentially unallowable TDT expenditures to BCC; however, BCC did not take “appropriate administrative or judicial action.”
 - AGO 2015-14: “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.”

TDT

Finding: TDT Expenditure Allowability

- Marine Resources Division salaries, benefits, and operating costs. BCC records did not demonstrate that Division activities were directly and primarily to promote tourism **and** carry out specific State law provisions.
- All-terrain vehicles (ATVs) purchased using PSFFT portion of TDT (unallowable use). Also, not apparent that the ATVs primarily used to promote tourism.
- Truck, artificial reef commemorative plaque, and temporary staffing for sea turtle nest monitoring without documentation that they directly and primarily promote tourism **and** carry out specific State law provisions.
- Landscaping services not related to physical beach preservation or associated with a nature center.
- Vibrio bacteria monitoring that benefited both residents and tourists without documentation that the monitoring directly and primarily promotes tourism **and** carries out specific State law provisions.

TDT

Finding: Clerk Administrative Costs

Clerk retained maximum 3 percent administrative fee rather than calculating actual TDT administrative costs and capping at 3 percent.

TDT

Finding: BCC Administrative Costs

- BCC charged \$937,255 (3 percent cap does not apply to BCC administrative cost) to the TDC based upon a consultant-prepared cost allocation plan (CAP).
- CAP was used to estimate TDT administrative costs based upon prior fiscal year actual costs.
- CAP was used to budget estimated TDT administrative costs, which were charged to TDC.
- However, BCC lacked procedures to reconcile or true up estimated costs to actual costs after end of fiscal year.

TDT

TDT Practice Tips:

- Review for statutory TDT changes after each legislative session.
- Provide separate accountability in accounting records for revenues and expenditures associated with each 1 percent TDT levy.
- Establish policies and procedures to document how each TDT expenditure serves to promote tourism AND the specific provision of State law to which it relates.
- Promulgate procedures for administrative and judicial actions of disputed expenditures.
- Use reasonable and necessary allocation methodology to calculate BCC and Clerk administrative costs and, if charged based upon budgetary estimates, perform true-up after fiscal year-end using actual costs.

QUESTION 2

- The Tourist Development Tax and its administration has been changed by the legislature ____ times since 2020:
 - A- 0
 - B – 1-4 times
 - C – 5-10 times
 - D – 11 or more

SALES INFRASTRUCTURE SURTAX

- Legal Authority: Section 212.055, F.S.
- The governing authority in each county may levy a discretionary sales surtax pursuant to an ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.
- Expenditures restricted to specified uses. For example:
 - Use of the proceeds for operational expenses is generally prohibited.
 - Surtax proceeds can service new bond indebtedness but not pre-existing debt.

SALES INFRASTRUCTURE SURTAX

Finding: Refunded Debt

- City used surtax proceeds to make debt service payments on refunded debt issued subsequent to surtax enactment.
- The original debt refunded was issued prior to the surtax enactment.
 - AGO 90-96: Surtax proceeds may not be used to service debt incurred prior to referendum approval. This opinion referenced AGO 88-59, which precludes use of the surtax for refunding or paying off bond indebtedness incurred prior to the surtax approval.

SALES INFRASTRUCTURE SURTAX

Finding: Public Use

- Sales surtax proceeds may be used to acquire any interest in land for public recreation, conservation, or protection of natural resources.
- City spent \$737,541 for debt service associated with the purchase of blighted property in the City.
- City subsequently sold the land to developer, who built a hotel.

QUESTION 3

- Infrastructure Surtax can _____ for debt payments.
 - A – Not be used
 - B – for new debt only
 - C – for existing debt
 - D – For any existing or new debt

SALES INFRASTRUCTURE SURTAX

Finding: Interlocal Agreement Compliance

- City and County interlocal agreement required the City to submit to the County:
 - Quarterly reports – due February 1, May 1, August 1, and November 1.
 - Annual audited financial statements – due May 1.
 - Yearly Maintenance of Effort (MOE) certification letters – due November 1.
 - Yearly 5-year municipal transportation plans – due November 1.
 - Yearly adopted budgets – due November 1.
 - Fiscal year-end transportation expenditure reports – due November 1.
- City did not submit required records, and County suspended surtax payments to City pending corrective actions.

SALES INFRASTRUCTURE SURTAX

Finding: Debt Maturity and Pledged Revenue Availability

- County with two bond issues totaling \$6.3 million secured primarily by surtax and secondarily by utility system revenue.
- Term of Surtax: 2022 through 2032
- Term of secured revenue bonds: 2008 through 2048
- Utility operations had recurring losses, and the utility fund received recurring General Fund transfers.
- No documented plans for the utility system to be self-sustaining and no long-term water system revenue and expenditure projections.
- No formal plan for using utility system revenues and General Fund revenues to make required future debt service payments.

SALES INFRASTRUCTURE SURTAX

- City reallocated surtax moneys as follows:
 - \$10 million from “bridge repairs/retrofits, residential road resurfacing, sidewalks, and new roadway projects” to “water/wastewater projects, parks and trails, patrol and fleet vehicles, equipment, and building rehabilitation projects.”
 - \$2.8 million from “water/wastewater, parks and trails, patrol and fleet vehicles, and equipment projects” to “residential road resurfacing projects.”
- Of the \$12.8 million reallocated, the City expended \$7.2 million for projects that were not on the initial project list, including \$3.5 million for residential road resurfacing projects; \$2.3 million for patrol and fleet vehicles, equipment, and building rehabilitation projects; and approximately \$925,000 on a parking lot and acquisition of land.

SALES INFRASTRUCTURE SURTAX

- Also, \$3.5 million was budgeted for a second City Hall generator and indoor gymnasium, which were also not included on any approved project lists, as amended.
- Reallocations of surtax moneys were included in consent agendas rather than as separate discussion items, potentially limiting opportunity for public involvement.
- \$2 million transferred to a City utility fund that periodically incurs potentially allowable infrastructure expenses.
- However, accounting records did not separately identify expenses financed from the sales surtax proceeds.
- Consequently, City records do not demonstrate that the \$2 million of transferred sales surtax moneys were used, or earmarked to be used, for specific projects included on the amended project lists or other allowable sales surtax purposes.

SALES INFRASTRUCTURE SURTAX

Finding: Public Trust and Transparency

- The County, School Board, and 7 County municipalities approved an interlocal agreement (ILA).
- ILA indicated that 1 City would expend approximately \$19 million of surtax on 40 specific projects including:
 - Road resurfacing, \$5.2 million.
 - Bridge replacement and repair, \$4.0 million.
 - Roadway improvements (other than resurfacing), \$3.5 million
- Project listing was made available to members of the public before the referendum vote authorizing the surtax.
- Members of the public relied upon project listing.
- However, ILA provision allowed any signatory to unilaterally change any projects on project listing.

SALES INFRASTRUCTURE SURTAX

- Although our examination of City records supporting 38 selected surtax expenditures totaling \$7.5 million disclosed that the expenditures were generally consistent with State law, the City's decisions to expend surtax collections on alternate projects may erode public trust that the moneys will be expended in accordance with voter expectations at the time of the referendum.

SALES INFRASTRUCTURE SURTAX

Topics for discussion:

- When the surtax is subject to renewal, what impact do you think the City's actions will have on County voter willingness to extend the surtax?
- What is the potential impact on the County, the school board, and the other 6 municipalities that receive surtax collections?

SALES INFRASTRUCTURE SURTAX

Surtax Practice Tips:

- Provide separate accountability in accounting records for surtax collections and expenditures, including transferred amounts.
- Establish policies and procedures to ensure compliance with State law, local ordinances, and interlocal agreements.
- Establish policies and procedures to ensure that terms of surtax-pledged debt do not exceed term of surtax.
- Since voter referenda are required to establish and extend surtax, establish procedures that promote transparency and public involvement.

QUESTION 4

- Infrastructure Surtax can be renewed by a super majority vote of the governing body
 - A – True
 - B – False

TRAFFIC INFRACTION CAMERAS

- Legal Authority: Section 316.008, F.S.
- Penalty = \$158, of which \$83 is required to be remitted to DOR.
- Practical Consideration: Remittances required to be sent to DOR weekly.

TRAFFIC INFRACTION CAMERAS

Finding: Traffic Signal Safety Program

- City ceased remitting State's share of traffic signal penalties to DOR.
- Due to staff turnover, City personnel stated that they were unaware of requirement.
- DOR did not contact the City regarding missed payments.
- City's contract with traffic signal vendor required monthly reports, which is inconsistent with weekly remittance requirement.

TRAFFIC INFRACTION CAMERAS

Traffic Infraction Practice Tips:

- Establish policies and procedures to ensure compliance with State law in case of staff turnover, since DOR does not invoice local governmental entities.
- Contracts with third-party vendors to operate program should have reporting frequency (weekly) consistent with State law.

QUESTION 5

- Traffic Infraction Cameras Penalty is...
 - A – \$83 all held by the local authority.
 - B – varied depending on the vendor contract.
 - C – \$158 with \$83 remitted to the DOR.
 - D – \$158 all held by the local authority.

FUEL TAXES

Types and Authorization of Fuel Taxes

- Constitutional Fuel Tax – Authorized by Section 206.41(1)(a), F.S.
- County Fuel Tax – Authorized by Section 206.41(1)(b), F.S.
- First Local Option Fuel Tax – Authorized by Section 206.41(1)(c), F.S.
- Ninth Cent Fuel Tax – Authorized by Section 206.41(1)(d), F.S.

FUEL TAXES

Authorized Uses of Fuel Taxes

- Constitutional Fuel Tax: Section 206.47(7), F.S., uses:
 - First must be used to meet debt service requirements for State Board of Administration debt payable from Constitutional Fuel Tax.
 - Remainder must be used for constructions and installation of traffic signals, sidewalks, bicycle paths, and landscaping (also can be used as matching funds for any Federal, State, or private grant specifically related to these purposes).

FUEL TAXES

- County Fuel Tax: Section 206.60, F.S., uses:
 - Acquisition of right-of-ways.
 - Construction, reconstruction, operation, maintenance, and repair of transportation facilities roads, bridges, bicycle paths, and pedestrian pathways.
 - Debt service for roads, bridges, and transportation purposes.

FUEL TAXES

- First Local Option Fuel Tax: Section 336.025(7), F.S., and Ninth Cent Fuel Tax: Section 336.021(1)(a), F.S., uses:
 - Public transportation operations and maintenance.
 - Roadway and right-of-way maintenance (including drainage) and equipment and structures used primarily for the storage and maintenance of such equipment.
 - Street lighting installation, operation, maintenance, and repair.
 - Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
 - Bridge maintenance and operation.
 - Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

QUESTION 6

- All Fuel Taxes can be intermingled in a single Trust Fund
 - A – True
 - B – False

FUEL TAXES

Finding: Accounting for Fuel Taxes

- County deposited all fuel taxes in County Transportation Trust Fund (Trust Fund) but did not establish separate accountability for each individual fuel tax.
- Certain Trust Fund expenditures were allowable under certain types of fuel taxes but not others.
 - For example, repair and maintenance of traffic signals would not be allowable usage of County Fuel Tax.

FUEL TAXES

Fuel Tax Practice Tips:

- Establish separate accountability for each individual fuel tax revenue and expenditure thereof.
- Establish policies and procedures to ensure that individuals responsible for posting DOR fuel tax remittances to the accounting records are properly trained to distinguish between, and accurately record, the individual fuel taxes in the accounting records.



DEREK H. NOONAN, CPA
AUDIT MANAGER

(850) 412-2864

dereknoonan@aud.state.fl.us

FLAuditor.gov