

Audit of
Records, Taxes, and Treasury Division's
Tourist Development Tax Collection and
Enforcement Section

Office of the County Auditor

Audit Report

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County Auditor

Audit Conducted by:
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Report No. 18-26
August 15, 2018



OFFICE OF THE COUNTY AUDITOR

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August 15, 2018

Honorable Mayor and Board of County Commissioners,

We have conducted our audit of the Records, Taxes, and Treasury Division's Tourist Development Tax Collection and Enforcement Section.

The objectives of this audit were to determine whether collection processes are adequate, and monies are accounted for properly; to determine whether enforcement is reasonable to ensure that all taxes are collected; and to evaluate the adequacy of the Records, Taxes, and Treasury Division's audit function.

We conclude that collection processes are adequate, and monies are accounted for properly in accordance with the policies and procedures established for the Tourist Development Tax program. We conclude that enforcement is not adequate to ensure all taxes are collected. We conclude that the audit function is not adequate. Opportunities for Improvement are included in the report.

Management's response is included as an appendix to this report. We have reviewed the response and determined that it does not change the Opportunities for Improvement included in the report.

We appreciate the cooperation and assistance provided by the Records, Taxes, and Treasury Division throughout our review process.

Respectfully submitted,

A handwritten signature in black ink that reads "Bob Melton".

Bob Melton
County Auditor

cc: Bertha Henry, County Administrator
Andrew Meyers, County Attorney
George Tablack, Director, Finance and Administrative Services
Tom Kennedy, Director, Records, Taxes, and Treasury

Broward County Board of County Commissioners

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EXECUTIVE SUMMARY

We have conducted our audit of the Records, Taxes, and Treasury Division's Tourist Development Tax Collection and Enforcement Section. The objectives of this audit were to determine whether collection processes are adequate, and monies are accounted for properly; to determine whether enforcement is reasonable to ensure that all taxes are collected; and to evaluate the adequacy of the Records, Taxes, and Treasury Division's audit function.

We conclude that collection processes are adequate, and monies are accounted for properly in accordance with the policies and procedures established for the Tourist Development Tax program. We conclude that enforcement is not adequate to ensure all taxes are collected. We conclude that the audit function is not adequate.

The TDT Section does not utilize all collection efforts available by law resulting in approximately \$2.5 Million in uncollected revenue. The TDT Section has employed some collection efforts including placing liens on properties; however, the liens often remain in place for multiple years without collection. Additional collection efforts such as freezing of bank accounts and garnishments are available and provide greater enforcement impact and more timely collection; however, these enforcement mechanisms were not being used by the TDT Section. After we questioned the TDT Section as to whether they use the freezing of bank accounts, they issued several "notice of freeze" for one account in November 2017. However, as of March 22, 2018, no further such notices have been issued. In accordance with Section 125.0104(8)(a) Florida Statutes, if the Tax Dealer fails or refuses to charge and collect the tax from the person paying the rental or lease, the Tax Dealer is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year, in addition to being personally liable for the payment of the tax.

An estimated \$354,258 in General Fund monies were used to subsidize the cost of TDT collection and enforcement over the past three years while \$4,191,583 in available TDT funds remained unutilized. Pursuant to Section 125.0104(10)(b)5., Florida Statutes, "a portion of the tax collected may be retained by the County for costs of administration, but such portion shall not exceed 3 percent of collections."

Four County Parks do not remit TDT for their RV Campground activities which is estimated to be \$303,962 over a three-year period. These parks, which offer campgrounds that are primarily tailored to RV Camping, are Easterlin, Topeekeegee Yugnee (TY), C.B. Smith, and Markham parks.

These parks collectively offer 265 camping sites. We also noted the TDT Section lists eight private RV Parks as tax exempt but lacks adequate support for the exemption status. The TDT Section has not performed adequate enforcement and monitoring of RV Parks.

Audit coverage and practices are inadequate. The current number and frequency of TDT audits performed is inadequate. This is caused by a lack of audit staffing resources and their dual responsibilities performing other administrative and collection functions. Also, no formalized risk assessment and audit plan exists. Additionally, audit project time is not effectively monitored through a time reporting system.

Vacation rental companies, such as Airbnb and HomeAway, are services that facilitate individual property owners renting out their spaces to travelers. Typically, single family and condominium homeowners list their properties with these companies as available for rent on a short-term basis. The Airbnb and HomeAway MOUs do not include provisions which will allow an adequate determination that all applicable taxes have been paid under the agreements, the County does not receive a list of properties included in the total amount remitted. Further, the Audit Rights provisions in both MOUs will not allow for adequate determination of whether all applicable taxes have been remitted. This represents an audit scope restriction that hampers, if not precludes, an audit to ensure taxes have been remitted for all applicable properties that have been rented on a short-term basis.

Our report contains a total of 11 recommendations for improvement. We appreciate the cooperation and assistance provided by the Records, Taxes, and Treasury Division throughout our review process.

INTRODUCTION

Scope and Methodology

The County Auditor's Office conducts audits of Broward County's entities, programs, activities, and contractors to provide the Board of County Commissioners, Broward County's residents, County management, and other stakeholders unbiased, timely, and relevant information for use in promoting government accountability and stewardship and improving government operations.

We conducted an audit of Tourist Development Tax (TDT) Collection and Enforcement Section of the Records, Taxes, and Treasury Division (RTT). Our audit objectives were:

1. To determine whether collection processes are adequate, and monies are accounted for properly.
2. To determine whether enforcement is reasonable to ensure all taxes are collected.
3. To evaluate the adequacy of the RTT audit function.
4. To determine whether any opportunities for improvement exist.

To determine whether collection processes are adequate, and monies are accounted for properly, we reviewed a sample of tax filings and payments; evaluated the reasonableness of the collection and enforcement policies; and reviewed the TDT section costs and administrative charges.

To determine whether enforcement is reasonable to ensure all taxes are collected, we reviewed a sample of delinquent tax returns; analyzed a report of delinquent accounts as of September 30, 2017; and estimated additional monies owed.

To evaluate the adequacy of the TDT audit function, we interviewed the TDT Section Manager; reviewed policies and procedures; reviewed the list of audits performed by the TDT section within the past five years; reviewed a sample of five audits performed during FY 2016 and FY 2017 for adequacy of the audit program, work paper documentation, supervisory review, conclusions, and timely collection of audit assessments; researched the websites for the Department of Revenue (DOR) and Attorney General (AG); researched the Florida Administrative Code (FAC); reviewed the Memorandum of Understanding with Airbnb, Inc. and HomeAway, Inc.; and reviewed the compromises granted during FY 2016 and FY 2017.

Our audit included such tests of records and other auditing procedures, as we considered necessary in the circumstances. The audit period was from October 1, 2015 through September

30, 2017. However, transactions, processes, and situations reviewed were not limited by the audit period.

Overall Conclusion

We conclude that collection processes are adequate, and monies are accounted for properly in accordance with the policies and procedures established for the County's Tourist Development Tax program. We conclude that enforcement is not adequate to ensure all taxes are collected. We conclude that the audit function is not adequate. Opportunities for Improvement are included in the report.

Background

The Board of County Commissioners (Board) adopted Ordinance No. 80-70 for the collection of a Tourist Development Tax on rental accommodations on September 8, 1980. The tax is levied on every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, motel, apartment, rooming house, mobile home park, recreation vehicle park, condominium, or time share resort for a term of six months or less. The tax must be charged and collected by the person (Tax Dealer) receiving the consideration. Initially, the tax was remitted by the Tax Dealers to the State of Florida; however, on February 22, 1994, the Board adopted Ordinance No. 94-6, amending Broward County's Code of Ordinances to provide for the local collection and enforcement of the tax effective March 1, 1994. The collection and enforcement of Tourist Development Tax (TDT) is established pursuant County Ordinances and Section 125.0104 Florida Statutes.

The TDT was initially established at 3% with the proceeds designated to fund the Broward County Tourist Development Plan. Effective July 1, 1996, the tax was increased by 2% to assist in the payment of the debt service on bonds issued to finance the construction of the professional sports franchise facility. Effective January 1, 2018, the tax was increased by 1% with the proceeds designated for any of the authorized uses permitted by Section 125.0104(5), Florida Statutes.

The collection and enforcement of the TDT is administrated by the TDT Section of the Records, Taxes, and Treasury Division (RTT).

Collection Process

In Fiscal Year 2017, the County collected \$62,125,000 of TDT. As shown in Figure 1, there were 2,104 active Tax Dealers, including 449 hotels/motels as of September 1, 2017.

Figure 1 - Active Tax Dealer Accounts as of September 2017

Rental Type	Active Accounts		Units	
	#	%	#	%
01-Hotel/Motel	449	21.3%	33,062	86.7%
02-Condominium	770	36.6%	1,595	4.2%
03-Interval Ownership	32	1.5%	1,000	2.6%
04-RV / Mobile Home	8	0.4%	232	0.6%
05-Real Estate Agent	43	2.0%	260	0.7%
06-Apartment	112	5.3%	1,055	2.8%
07-Boarding Rooms	10	0.5%	32	0.1%
08-Multi-family	105	5.0%	267	0.7%
09-Single Family Home	575	27.3%	610	1.6%
Total	2,104	100%	38,113	100.0%

Prepared by the Office of the County Auditor using TaxSys Information

TDT is either collected on-line or through the mail. Tax Dealers may mail a check with a paper return or use the on-line system, TouristExpress to file and remit the TDT. After the end of the month, Tax Dealers have 21 days to remit the tax. Tax Dealers using the TouristExpress filing method are entitled to a 2.5% collection allowance, up to a maximum of \$30 per return, as compensation for keeping the prescribed records and filing tax returns within the 21 days after the month end.

Enforcement Process

There are penalties for remitting the tax late. In accordance with Section 212.12 Florida Statutes, the 2.5% collection allowance is forfeited for tax returns filed late and a minimum penalty of \$50 is assessed. A penalty of 10 percent of the total tax due is added if the return is filed not more than 30 days late, and an additional 10 percent is added for each additional 30-day period, or fraction thereof, during which the failure continues. Total penalties will not exceed 50% of the total tax due for each period.

Failure to pay the Tourist Development Tax is a violation of a Broward County Ordinance which is punishable by a fine in an amount not to exceed \$500 or imprisonment not to exceed 60 days. Under some conditions, failure to remit the tax can be a criminal offense.

As the Tax Collector, Broward County may place a tax warrant lien on the property, issue a tax execution to enforce the collection, and request a writ of garnishment on any assets held by a third party on behalf of the delinquent taxpayer.

In accordance with Section 125.0104(8)(a) Florida Statutes, if the Tax Dealer fails or refuses to charge and collect the tax from the person paying the rental or lease, the Tax Dealer is guilty of a misdemeanor of the first degree, punishable by a term of imprisonment not to exceed one year, in addition to being personally liable for the payment of the tax.

The manager of the TDT Section has the authority to settle and compromise taxes and interest of \$10,000 or less and penalties of \$10,000 or less and enter into a written closing agreement with the Tax Dealer. All other compromises and settlements of taxes, interest, or penalties must be approved by the Board. Settlements and compromises of taxes, interest or penalties in excess of \$5,000 are required by Broward County's Code of Ordinances to be reported quarterly to the County Auditor and annually to the Board.

Allowable Use of TDT Funds

County Ordinance allows up to 3% of the TDT collected to be used to pay for the cost of collecting and enforcing the tax. For fiscal year 2017, \$1.86 million, which represents 3% of the total TDT collected (\$62.1 million) was allowed to be used for operations; however, only \$449,223 (0.7%) was retained by RTT to partially recover the cost to collect, administer, enforce, and audit this tax.

Audit Process

The TDT Section audits Tax Dealers to determine whether TDT were collected, reported, and remitted correctly. Although the audit is used as an enforcement tool to monitor and evaluate tax compliance, it can also be educational and promote voluntary compliance. During an audit, the TDT auditor can help Tax Dealers identify and correct bookkeeping problems that could cause additional tax liabilities.

Audits may not always result in an assessment of additional tax, penalty or interest. The auditor may adjust a credit carryover or correct distribution without assessing additional tax. The auditor may determine that a refund is due.

Broward County participates in the Registration Information Sharing and Exchange Program (RISE), which allows participating government agencies to periodically exchange specific tax information with the Florida Department of Revenue. Since many tax administering agencies commonly deal with a significant number of the same taxpayers, agencies may improve registration and enhance revenue collections by exchanging information.

OPPORTUNITIES FOR IMPROVEMENT

Our audit disclosed certain policies, procedures and practices that could be improved. Our audit was neither designed nor intended to be a detailed study of every relevant system, procedure or transaction. Accordingly, the Opportunities for Improvement presented in this report may not be all-inclusive of areas where improvement may be needed.

1. The TDT Section Does Not Utilize All Collection Efforts Available by Law Resulting in Approximately \$2.5 Million in Uncollected Revenue

The TDT Section has not used all collection mechanisms available to them. The TDT Section has employed some collection efforts including placing liens on properties; however, the liens often remain in place for multiple years without collection. Some of the accounts with lien properties remain active without satisfying the lien or paying the TDT due from continuing operations. Additional collection efforts such as freezing of bank accounts and garnishments are available and provide greater enforcement impact and more timely collection; however, these enforcement mechanisms were not being used by the TDT Section. A discussion of our observations and concerns is presented below.

Liens Do Not Provide Adequate Enforcement Impact and Timely Collection

We identified 26 delinquent accounts with recorded liens totaling \$1,174,393 and estimate that 16 of the accounts owe an additional \$1,339,116 accruing after the property was lien resulting in a total of \$2,513,509 in uncollected revenue. Figure 2 shows the recorded lien amounts and additional estimated amounts due by the number of years outstanding.

Figure 2 – Recorded Liens and Additional Estimated Amounts Due

	< 1 Year	1 Year	2 to 5 Years	6 to 10 Years	11 to 16 Years	Total
Recorded Liens	\$9,387	\$3,706	\$93,308	\$662,057	\$405,935	\$1,174,393
Additional Estimated Due	\$126,446	\$155,360	\$683,208	\$369,685	\$4,317	\$1,339,116
Total	\$135,833	\$159,066	\$776,616	\$1,031,742	\$410,252	\$2,513,509

Source: Prepared by the Office of the County Auditor based on compilation of recorded liens and estimates of additional amounts due based on review of account records and historical payments

We noted the following observations from our analysis of the use of liens to collect delinquent taxes:

- *88% of Uncollected Monies Have Been Delinquent for Over Two Years*

As shown in Figure 2, \$2,218,601 (88%) of \$2,513,509 has remained uncollected for over two years.

- *Accounts Remain Active and Continue to Not Pay TDT After the Property Is Liened*

As shown in Figure 2, we estimated that 16 of the accounts owe an additional \$1,339,116 accruing after the property was liened. The estimates were based on the length of time that account remained active after lien and the monthly TDT paid by the property before becoming delinquent. The estimates do not include penalties or interest.

- *Properties Changed Ownership Without Satisfying Outstanding Liens*

Typically, outstanding liens are satisfied at the time at the time a property is sold. However, we identified two of the 26 delinquent accounts that changed ownership without satisfying the lien.

- One account was liened in 2008 for \$505,350 and changed ownership four times, but the lien was not satisfied. The current owner acquired the property in 2014 for \$7.5 million. The property has been paid in full since 2008 but the lien of \$505,350 for the prior unpaid amounts remains.
- One account was liened in 2013 for \$72,575. The property was sold on April 12, 2016 for \$1,320,000, but the lien was not satisfied. The property has been paid in full since the April 2016 acquisition, but the lien of \$72,575 for the prior unpaid amounts remains.

- *Liens Are Often Satisfied After Many Years*

For fiscal years 2015, 2016 and 2017, twenty-five (25) liens were released.

- Two (2) liens required 20 years to collect,
- Two (2) liens required 11 and 19 years to collect,
- Six (6) liens required 3 to 8 years to collect, and
- Fifteen (15) liens required less than one year to collect.

Other Accounts Are Not Liened But Paid Late

We analyzed a sample of 19 accounts that were delinquent at some point during the the audit period from October 1, 2015 – September 30, 2017.

- Four accounts remain unpaid, of which three totaling \$32,322 were liened and included in the \$1.2 million discussed above, and one consists of a \$50 penalty.
- Four accounts were paid over 90 days late and ranged from 109 to 427 days past due at the time of payment.
- The remaining 15 accounts were paid within 90 days.

Freezing of Bank Accounts and Garnishments Provide Greater Enforcement Impact and More Timely Collection

As shown above, current collection practices do not always result in timely collection. To address this, during our audit, the TDT Section initiated a new procedure in November 2017 where the Tax Dealer's bank is sent a "notice of freeze". Pursuant to Section 213.67, Florida Statutes, the notice informs the bank that the County has the authority to initiate garnishment procedures (Writ of Garnishment) against the delinquent taxpayer. A Writ of Garnishment is a process by which the court orders the seizure or attachment of the property of a debtor in the possession or control of a third party, such as a bank. The notice also states that the bank is prohibited from disposing, transferring, or releasing any Tax Dealer assets for sixty (60) days. Upon receipt from the Tax Dealer of the amount due, the freeze is lifted. Since a business requires cash to operate, the Tax Dealer is motivated to remit the delinquent funds. Usually, if the business is still operating, they will pay amounts due to "unfreeze" the account without the necessity of obtaining a Writ of Garnishment.

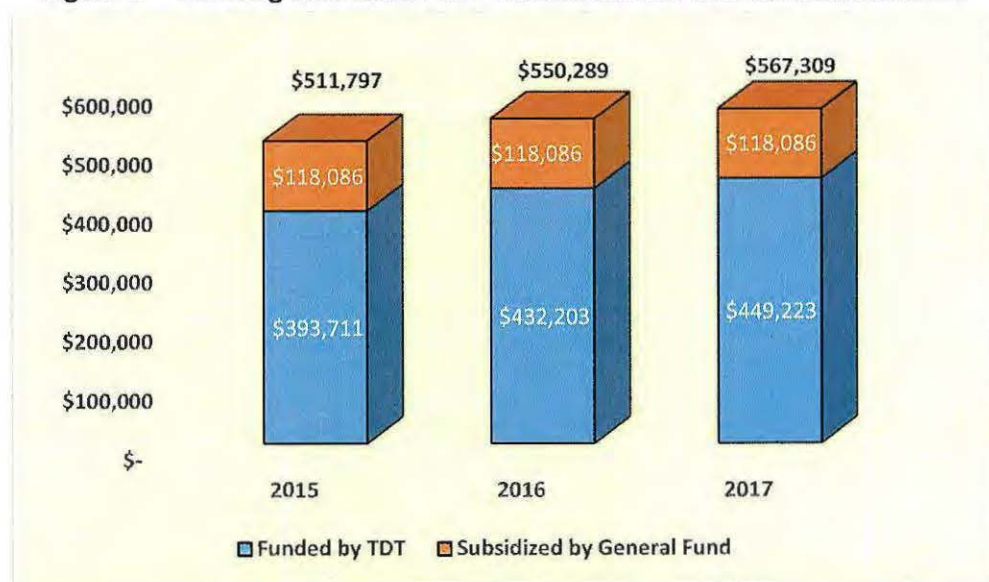
After we questioned the TDT Section as to whether they use the freezing of bank accounts, they issued several "notice of freeze" for one account in November 2017. However, as of March 22, 2018, no further such notices have been issued.

We recommend management send a "notice of freeze", for all accounts over 120 days past due, to the Tax Dealer's banking institution. If funds are not provided within 30 days, RTT management along with the County Attorney should recover the tax due by utilizing a Writ of Garnishment.

2. An Estimated \$354,258 in General Fund Monies Were Used to Subsidize the Cost of TDT Collection and Enforcement Over the Past Three Years While \$4,191,583 in Available TDT Funds Remained Unutilized

- A. An estimated \$354,258 in General Fund monies were used to partially fund the cost of TDT collection and enforcement over the past three years. The TDT Section retained \$1,275,137 (0.7%) of the \$182,224,000 in TDT collections to offset the cost of collection and enforcement of TDT in fiscal years 2015 through 2017. However, the total estimated cost incurred during this period was \$1,629,395 resulting in a \$354,258 shortage funded by the General Fund rather than TDT. Figure 3 shows collection and enforcement costs funded by TDT and subsidized by the General Fund for fiscal years 2015, 2016, and 2017.

Figure 3 – Funding Sources of TDT Collection and Enforcement Section



Source: Prepared by the Office of the County Auditor based on analysis of recorded cost and estimated cost allocations.

We determined the \$1,629,395 actual costs of TDT collection and enforcement by identifying \$1,275,137 recorded within the County's financial reporting system for the TDT Section as well as estimating \$354,258 in additional costs that have not been allocated to the TDT Section. These costs are further detailed in Figure 4.

Figure 4 – Cost of TDT Collection and Enforcement – Fiscal Years 2015, 2016, and 2017

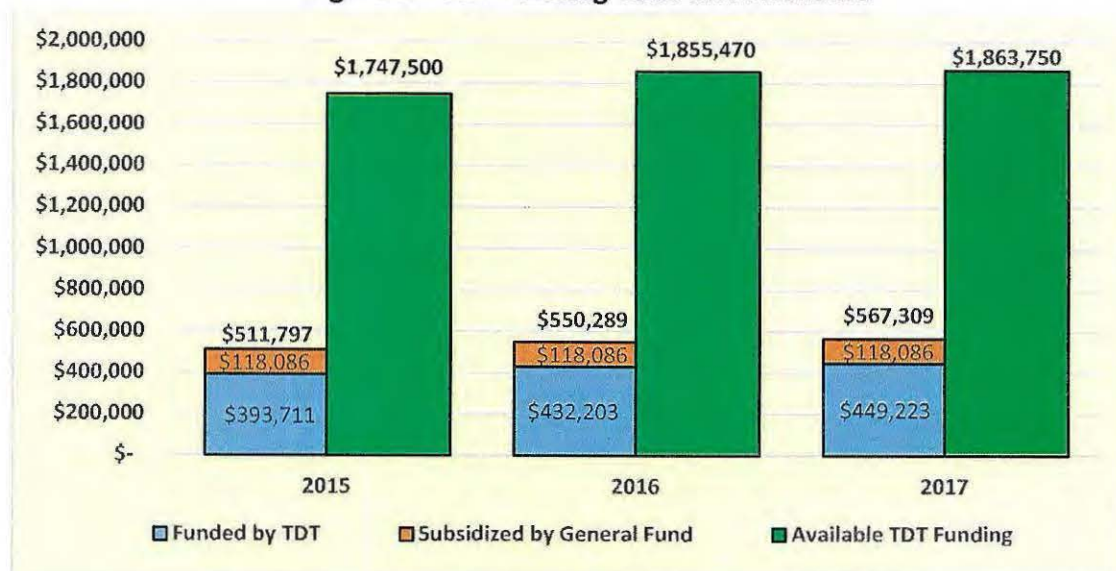
	2015	2016	2017	Total
Personnel Cost	\$376,729	\$418,380	\$439,339	\$1,234,448
Operating Cost	16,982	13,823	9,884	40,689
Recorded Costs	393,711	432,203	449,223	1,275,137
Management Personnel Cost	10,900	10,900	10,900	32,700
Office Space	43,873	43,873	43,873	131,619
Parking	5,400	5,400	5,400	16,200
Facilities Maintenance	15,894	15,894	15,894	47,682
Indirect Services	42,019	42,019	42,019	126,057
Estimated Cost Allocations	118,086	118,086	118,086	354,258
Total Costs	\$511,797	\$550,289	\$567,309	\$1,629,395

Source: Prepared by the Office of the County Auditor based on analysis of TDT costs

Recorded costs consist of personnel costs for six employees within the TDT Section and related operating costs. Division Management Personnel Costs consists of an allocation of management salaries within the Records, Taxes, and Treasury Division. Office Space and Parking was based on actual square footage and necessary parking spaces multiplied by market rates. Facilities Maintenance costs were provided by the Facilities Maintenance Division and consist of an allocation of cleaning, security, utilities, repairs and maintenance, program administration, and grounds maintenance. Indirect Services Costs consists of costs of services provided by County central service divisions.

- B. \$4,191,583 in available TDT funds remained unutilized for collection and enforcement. Pursuant to Section 125.0104(10)(b)5., Florida Statutes, "a portion of the tax collected may be retained by the County for costs of administration, but such portion shall not exceed 3 percent of collections." For fiscal years 2015 through 2017, this amount would be \$5,466,720 (\$182,224,000 total TDT collections x 3%). However, only \$1,275,137 was used to fund TDT collection and enforcement resulting in \$4,191,583 of unutilized TDT. Figure 5 compares the portion of TDT collection and enforcement funded by TDT (as well as the portion subsidized by the General Fund) to the total TDT funding available for collection and enforcement.

Figure 5 – TDT Funding Used and Available



Source: Prepared by the Office of the County Auditor based on analysis of recorded cost and estimated cost allocations.

While it is important to not spend TDT funds unnecessarily, it is also important to use the funds necessary to effectively and efficiently collect the tax.

We recommend management:

- A. Retain an additional amount of \$354,258 from the TDT funds to reimburse the General Fund for the cost of the TDT Section for fiscal years 2015 through 2017
- B. Budget and retain sufficient TDT funds to fully offset the cost of efficient and effective TDT collection and enforcement.

3. Some Recreational Vehicle (RV) Parks Are Not Properly Registered and Remitting TDT

Section 125.0104(3)(a)1., Florida Statutes entitled "Tourist Development Tax..." states

*"...that every person who rents, leases, or lets for consideration any living quarters or accommodations in any...**recreational vehicle park**...for a term of 6 months or less is exercising a privilege which is subject to taxation."* [emphasis added]

We noted the following specific concerns:

- A. Four County Parks do not remit TDT for their RV Campground activities which is estimated to be \$303,962 over a three year period. These parks, which offer campgrounds that are primarily tailored to RV Camping, are Easterlin, Topeekeegee Yugnee (TY), C.B Smith, and

Markham parks. These parks collectively offer 265 camping sites. We obtained the total campground revenue from the County Parks revenue system (RecTrac) for these three parks for each of the past three fiscal years and multiplied the amounts by the 5% TDT rate. Figure 6 shows the resulting \$303,962 in estimated TDT that was not collected by County Parks.

**Figure 6 – Estimated Unremitted TDT for Four
County Parks over a Three Year Period**

Fiscal Year	Revenue	TDT
2015	\$ 2,166,206	\$ 108,310
2016	1,943,748	97,187
2017	1,969,287	98,464
Total	\$ 6,079,241	\$ 303,962

Office of the County Auditor identification of applicable campground
revenue estimation of applicable TDT over a three-year period.

- B. The TDT Section lists eight private RV Parks as tax exempt but lacks adequate support for the exemption status. Section 212.03(7)(c) of the Florida Statutes provides a mechanism for facility owners to file for exemption based on the total rental units that are occupied by tenants who have a continuous residence in excess of 3 months. Although notes with the TDT Section's tax system indicates the filing and granting of initial exemptions, there is no indication of follow-up in the years following the exemption to determine whether the facility is still eligible for the exemption. Six of the eight exempt facilities received exemptions over ten years ago. Figure 7 lists the number of sites and date the exemption was applied for the eight facilities.

Figure 7 – RV Parks Listed as Tax Exempt

RV Park	Sites	Exemption Date
RV Park 1	67	1999
RV Park 2	123	1998
RV Park 3	232	1996
RV Park 4	104	2011
RV Park 5	402	1998
RV Park 6	587	2003
RV Park 7	87	2004
RV Park 8	20	2017
Total	1,622	

Source – County Auditor identification of
registered Tax Exempt RV Parks.

The TDT Section has not performed adequate enforcement and monitoring of RV Parks. It is essential that the TDT Section maintain an aggressive auditing and enforcement function over the TDT.

We recommend management:

- A. Coordinate with County Parks that do not remit TDT for their RV Campground activities and conduct an audit to identify amounts owed.
- B1. Investigate the exemption status of the eight RV Parks that do not remit TDT but listed as exempt and conduct an audit to determine the amounts owed.
- B2. Establish procedures to periodically review the status of TDT exemptions.

4. Audit Coverage and Practices Are Inadequate

During our review of the TDT Section's audit functions, we noted the following concerns:

- A. The current number and frequency of TDT audits performed is inadequate. This is caused by a lack of audit staffing resources and their dual responsibilities performing other administrative and collection functions.

Three of the six employees of the TDT Section perform audits. However, according to the TDT Section Manager, each auditor is responsible for both conducting audits as well as performing administrative and collection functions such as answering questions from Tax Dealers, handling delinquent accounts, preparing internal reports, and maintaining information within the tax system database. According to the TDT Section Manager, each auditor performs approximately ten audits per year for a total of approximately 1,000 hours per auditor per year devoted to auditing. At this level and configuration of staffing, it will take approximately 70 years to audit each Tax Dealer one time. For the past five years, 135 (6%) of the 2,104 active Tax Dealers have been audited or are currently under audit.

Audit frequencies should be established using a risk based audit plan. County Ordinance 31 1/2 - 16 (12) requires the Director of the Finance and Administrative Services Department or his/her designee to perform the enforcement and audit functions associated with the collection and remission of the TDT, to examine at all reasonable hours the books, records, and other documents of all dealers, or other persons charged with the duty to collect, report, or pay a tax under this article, in order to determine whether they are collecting the tax or otherwise complying with this article. Audit responsibilities are not being effectively performed.

Audits of Tax Dealers are important to ensure that TDT revenues are collected in entirety and in an efficient manner. The audits:

- determine whether the Tax Dealer is collecting and remitting TDT in the correct amounts,
- result in collection of additional revenue through the assessments of tax, interest, and penalties,
- increase future tax remittances once errors have been identified and corrected, and
- educate Tax Dealers and ensure that ongoing remittances occur timely and efficiently.

As a result of the lack of audits, there is less assurance that all taxes are collected and remitted properly.

B. Deficiencies with Audit Practices

We identified deficiencies in audit practices followed by the TDT Section:

- 1) No formalized risk assessment and audit plan exists. As a result, there is little assurance that the TDT Section's audit resources are being used in the most effective manner.

As stated in Opportunity for Improvement 2A above, audit frequencies should be established utilizing a risk based audit plan. This involves establishing criteria to assess risk for each Tax Dealer and audit frequencies for each dealer based on their assessed risk.

- 2) No audit manual exists. An audit manual is necessary to ensure prescribed audit procedures are followed by all staff.

An audit manual contains the protocol of the audit process, the tools and methodologies for conducting the audit, forms to be completed, workpaper requirements, and people to contact. TDT Section does not have an audit manual.

- 3) Audit project time is not effectively monitored through a time reporting system.

Without time monitoring of individual audits, effective audit supervision is hampered, if not precluded. Time reporting systems assist in tracking staffing resources including the allocation of time, costs to perform each audit, and monitoring of utilization and efficiency. As discussed above, we received an estimate that each auditor spends approximately 1,000 hours per year conducting 10 audits; however, there is no time reporting system to support this estimate.

We recommend management:

A. Perform an assessment of required staffing resources in order to achieve adequate audit cycles. Management should also cease using auditors for operational activities.

B1. Develop a formalized audit plan based on a comprehensive risk assessment.

B2. Prepare a comprehensive audit manual prescribing audit procedures to be performed and workpaper documentation to be completed.

B3. Track, monitor, and report time incurred by each auditor on each audit and non-audit function.

5. The Airbnb and HomeAway MOUs Do Not Include Provisions which Will Allow an Adequate Determination that All Applicable Taxes Have been Paid

Vacation rental companies, such as Airbnb and HomeAway, are services that facilitate individual property owners renting out their spaces to travelers. Typically, single family and condominium homeowners list their properties with these companies as available for rent on a short-term basis.

The County has a Memorandum of Understanding (MOU) with Airbnb (as of April 2017) and HomeAway (as of November 2017). Under the agreements, the County does not receive a list of properties included in the total amount remitted. Further, the Audit Rights provisions in both MOUs will not allow for adequate determination of whether all applicable taxes have been remitted. This represents an audit scope restriction that hampers, if not precludes, an audit to ensure taxes have been remitted for all applicable properties that have been rented on a short-term basis. Consequently, there is a risk that taxes may not be collected and/or remitted to Broward County for all rentals, and we would have no reliable method to detect such. Consequently, the County is, in effect, precluded from determining whether tax is being collected and remitted for residential properties.

We recommend management coordinate with the County Attorney to modify the MOU with Airbnb and HomeAway to add provisions that will allow for itemized reporting and/or other adequate determination that all applicable taxes have been remitted and properties can be identified.

APPENDIX – MANAGEMENT RESPONSE

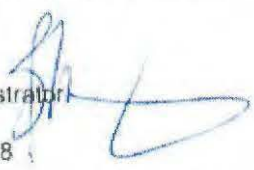


BERTHA W. HENRY, County Administrator

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MEMORANDUM

TO: Robert Melton, CPA, CIA, CFE, CIG
County Auditor

FROM: Bertha Henry
County Administrator 

DATE: August 10, 2018

RE: Management Response to the Office of the County Auditor's Audit of Records, Taxes, and Treasury Division's Tourist Development Tax Collection and Enforcement

The Finance and Administrative Services Department and the Records, Taxes and Treasury Division (RTT) have reviewed the Office of the County Auditor's Audit Report on the Tourist Development Tax Collection and Enforcement and submits the following as Management's response.

In summary, Management concurs with the Audit report conclusion that the collection procedures are adequate and monies are accounted for properly. Management accepts most of the Audit Report opportunities for improvement relating to the enforcement and audit functions. Many of the opportunities for improvement involve adding resources in the collection and audit functions, which management is currently reviewing. In addition, the Section continues to work to accommodate the adaptation of the Internet Platforms such as AirBnB and HomeAway and also is working diligently with the County Attorney's Office to pursue delinquent collections.

Enclosed below please find detailed responses to each of the Auditor's opportunities for improvement and recommendations.

Opportunity for Improvement 1: The TDT Section Does Not Utilize All Collection Efforts Available by Law Resulting in Approximately \$2.5 Million in Uncollected Revenue

Recommendation: *"We Recommend management send a "notice of freeze", for all accounts over 120 days past due, to the Tax Dealer's banking institution. If funds are not provided within 30 days, RTT management along with the County Attorney should recover the tax due by utilizing a Writ of Garnishment."*

Broward County Board of County Commissioners
Mark D. Bogen • Sean Furr • Steve Ginter • Dale V.C. Holsman • Chip LaMarca • Nan H. Rich • Tim Ryan • Barbara Shanof • Michael Udino
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Response: Agree in part. Realizing there are a number of methods to pursue delinquent accounts, Management agrees to utilize appropriate collection methods. However, the use of notices of freeze and Garnishment/Levy are not appropriate in all cases. The Tourist Development Tax (TDT) Section works with the CAO to determine appropriate enforcement methods for resolving delinquent accounts.

Recently, at the request of Records, Taxes and Treasury (RTT) Management, the CAO prepared a memorandum dated March 16, 2018, regarding Collection Tools for Delinquent Tourist Development Tax. To date, the TDT Section has provided the CAO with files of 13 liened accounts for review and recommendation of the most appropriate tool to apply to each account. The review will include recommending particular actions on each account as deemed appropriate. Collection options are limited for delinquent accounts that are in bankruptcy since resolution is governed by federal bankruptcy law; collections may also be impeded by foreclosures and other third-party claims. In extreme instances of delinquency, Management, in consultation with the CAO, may recommend litigation to collect against the real and personal property of a business or individual to satisfy the tax liability.

It should be noted that as of September 30, 2017, there were 22 recorded liens out of a total 2,098 active TDT accounts. This represented 1% of the total active TDT accounts. The lien amounts totaled \$1,167,500 and represented 1.9% of the total FY17 revenues of \$61,982,534 collected.

Management agrees, where deemed appropriate by the TDT Manager and CAO, to a general timeline of 120 days from the date of property lien to issue a bank freeze letter for delinquent accounts. This new bank freeze process was put into place on November 22, 2017. Management agrees, where deemed appropriate by the TDT Manager and CAO, if funds are not provided within 30 days, to issue a Notice of Intent to Levy and if necessary, a Notice of Levy consistent with Chapter 213.67, Florida Statutes and Rule 12-21, Florida Administrative Code.

Of the estimated \$2.5 million in uncollected revenue stated in the Audit, approximately \$1.2 million is attributed to a single delinquent account. During and subsequent to this Audit, 25 bank freeze letters were issued for this single delinquent account. As a result, one bank account was identified and approximately \$1,000 in the account was frozen. A Notice of Intent to Levy was issued to the taxpayer with no response during the statutory time period for dispute, and a Notice of Levy was issued to the bank. The County subsequently collected \$17,885 from the bank levy. The business was also visited by RTT Management and the TDT Manager was not able to gain access to the Company's records, as required by Florida Statute. Considering the delinquency remained outstanding, the CAO filed a Complaint in the Circuit Court of the Seventeenth Judicial Circuit, to determine the County's rights to recover, and to actually recover unpaid TDT owed by the defendants to the County and additional penalties equaling double the tax

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owed as provided under Section 213.29, Florida Statutes. During this time the delinquent taxpayer made a payment of \$175,000 which was applied to the TDT delinquency. RTT will continue to work on this case and all other cases with CAO and take the appropriate collection action(s) as deemed appropriate for each circumstance.

For FY15, FY16 and FY17, the County collected over \$1.2 million from the 35 liens that were released during that time period. It should be noted that any amount of uncollected revenue varies as liens are collected and new liens are recorded.

Opportunity for Improvement 2: An Estimated \$354,258 in General Fund Monies Were Used to Subsidize the Cost of TDT Collection and Enforcement over the Past Three Years while \$4,191,583 in Available TDT Funds Remained Unutilized.

Recommendation A: *"Retain an additional amount of \$354,258 from the TDT funds to reimburse the General Fund for the cost of the TDT Section for fiscal years 2015 through 2017."*

Response A: Management partially agrees. Management notes that, each year, the direct General Fund costs of the Records, Taxes and Treasury unit that administers Tourist Development Tax collection is fully recovered from the Tourist Development Tax revenues.

Management also notes that each year, a "Full Cost Allocation Plan" is prepared by MGT Consulting Group to estimate the share of General Fund expenditures that relate to activities of non-General Fund funds. Expenditures used in the analysis include Building Depreciation, central county functions (Commission, Auditor, Attorney, County Administration, Budget), Finance & Administrative Services Department central costs, other finance divisions, Facilities Management, and utilities.

Based on the annual "Full Cost Allocation Plan", non-General Fund funds such as the Tourist Development Tax are budgeted cost allocation amounts each year in the adopted Broward County budget. Management will review the cost allocation methodology for the next update related to the Tourist Development Tax so that appropriate General Fund costs are recovered each year in the annual budget.

Recommendation B: *"Budget and retain sufficient TDT funds to fully offset the cost of efficient and effective TDT collection and enforcement."*

Response B: Management agrees that sufficient TDT funds should be budgeted for efficient and effective TDT collection and enforcement. To enhance TDT collection and enforcement and address an increase in administrative demand due to technology and changes in the industry (i.e., internet platforms and implementation of new city ordinances), additional resources would be required in the TDT Section. RTT

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Management, working with OMB, has identified adding one full-time support staff member to support collection and enforcement as well as reduce the amount of administrative work on the TDT auditors. The annual recurring personnel costs for one full-time support staff member is approximately \$50,000. Estimated startup costs to accommodate the new position would be \$5,000 and annual recurring overhead costs would be an additional \$20,000. Including these costs in the FY19 operating budget would bring the estimated TDT Section budget to \$704,000, which would be funded through the TDT collections and is 0.9% of the anticipated FY18 collections of \$78 million. This cost would be expended directly from TDT funds and not the County's general or other funds. Even including adding this position, the fiscal impact is still less than the 3% of collections allowed for administration, provided in Section 125.0104(10)(b)5, Florida Statutes.

Please note this does not include any allowance for legal-related staffing and expenses. The County Attorney intends to seek two additional positions to address various collection matters County-wide (including but not limited to the matters addressed in this audit report): one entry level attorney position and one paralegal position (both primarily assigned to County-wide collections).

Opportunity for Improvement 3: Some Recreational Vehicle (RV) Parks Are Not Properly Registered and Remitting TDT.

Recommendation A: *"Coordinate with County Parks that do not remit TDT for their RV Campground activities and conduct an audit to identify amounts owed."*

Response A: Management agrees, and this item has been resolved prospectively effective April 2018. The Parks and Recreation Division has registered all five County-operated parks that allow overnight camping with the TDT Section for the collection and remittance of Tourist Development Tax. RTT will continue to work with County Administration regarding the estimated uncollected taxes.

Recommendation B1: *"Investigate the exemption status of the eight RV Parks that do not remit TDT but are listed as exempt and conduct an audit to determine the amounts owed."*

Response B1: Management agrees. The TDT Section will periodically investigate the exemption status of RV Parks in Broward County. However, Management respectfully notes the following: RV Parks classified as exempt pursuant to Florida Statute 212.03(7)(c), as well as Mobile Home Parks regulated under Florida Statute 723 are not required to be registered for TDT. Florida Statutes do not require exempt facilities to file annual documentation to support continued exemption. Thus, audits are not necessary to investigate the eight accounts listed in Figure 7 of this Audit since all the accounts are inactive, one as early as 1996.

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In addition, exemption evidence was obtained at the time of inactivation and Parks 1 through 7 have been inactive for over five years. Park 8 is currently licensed by the Florida Department of Business and Professional Regulation as a "Mobile Home Project". This licensing demonstrates the property is not required to be registered for TDT. The TDT Section has custody of the paper file and exemption evidence for Park 8.

Recommendation B2: *"Establish procedures to periodically review the status of TDT exemptions."*

Response B2: Management agrees. The TDT Section receives a monthly report from the Florida Department of Revenue listing all new and reactivated transient rental accounts. Tourist Development Tax Section staff reviews this list and contacts taxpayers who are not found to have active Tourist Development Tax accounts.

Opportunity for Improvement 4: Audit Coverage and Practices Are Inadequate.

Recommendation A: *"Perform an assessment of required staffing resources in order to achieve adequate audit cycles. Management should also cease using auditors for operational activities."*

Response A: Management agrees in part. While Management does not agree that current audit coverage is inadequate, conducting more audits and reducing audit cycles is always an opportunity for improvement. As discussed in response to recommendation, 2A above, RTT will be adding one additional support staff to assist auditors in administrative functions. This additional support staff should relieve the auditors from some administrative duties and allow them to conduct more audits and reduce audit cycles. Management will continue to review the use of auditors for operational activities noting that the classification description for the Auditor classification include performing administrative work, oversight of daily operations, preparation of monthly revenue reports and enforcement activities, etc., as part of its duties and responsibilities. Management also respectfully notes that the TDT Section audited over 18% of the Hotel/Motel and Apartment accounts that generated over 90% of the TDT revenue collected during the previous five years.

RTT Management will continue to work with the Office of Management and Budget to review and evaluate the appropriate number of auditors for additional TDT collection, audit and enforcement resources in the next annual operating budget cycle.

Recommendation B1: *"Develop a formalized audit plan based on a comprehensive risk assessment."*

Response B1: Management agrees that the TDT Section will develop a formalized audit plan appropriate for TDT audits beginning with FY19. Currently, the TDT Section uses a

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formalized audit program containing specific procedures to be considered in the performance of the audit. Each audit file contains work papers to summarize and document the audit procedures performed, audit findings and conclusions. The findings and conclusions documented in the audit file form the basis for issuance of the audit findings letter which may include a tax assessment.

As part of the preparation of this Audit response, the TDT Section contacted other Florida counties to request a copy of their formalized audit plan and comprehensive risk assessment process. The TDT Section contacted 5 other Florida counties and of the 4 responding, none had a formalized audit plan or comprehensive risk assessment for TDT audits. In most cases, the TDT auditors randomly select an area and perform his/her own risk assessment on dealers within the area to determine the next audit to be performed. Management already performs a similar informal risk assessment when selecting accounts for audit.

It is further noted that the County Auditor, as part of this Audit, reviewed a sample of the TDT Section's audits and did not report any deficiencies in the formalized audit program, the performance or conclusions of the audits.

Recommendation B2: *"Prepare a comprehensive audit manual prescribing audit procedures to be performed and work paper documentation to be completed."*

Response B2: *Management agrees* there should be an audit manual containing the procedures and work to be performed during the course of an audit. RTT Management will continue to develop and improve the current audit program as dictated by marketplace changes and best practices. This will include preparing a comprehensive file containing all letters, forms and worksheets used in the performance of a TDT audit including the dispute process and closing agreements.

As part of the preparation of this Audit response, the TDT Section contacted other Florida counties to request copies of their comprehensive audit manual. The TDT section contacted the same 5 Florida counties and of the 4 responding, none had a comprehensive audit manual.

In addition, Management has examined portions of the Government Auditing Standards, 2011 Revision, issued by the United States Government Accountability Office. Compliance audits performed by the TDT Section do not warrant the detailed procedures contained in the Government Auditing Standards (GAS) publication. There are certain processes described in the GAS manual ("Yellow Book") that are applicable to TDT audits and will be included in the TDT comprehensive audit file.

Recommendation B3: *"Track, monitor, and report time incurred by each auditor on each audit and non-audit function."*

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Response B3: Management partially agrees. Management agrees that there should be an adequate and accurate accounting for time involved in each audit. Generally, the TDT Manager will estimate expected times needed to perform each audit and assign resources accordingly. The TDT auditors will prepare a log for the time incurred on each audit. The time log will be included in the audit file and the time incurred will be tabulated upon completion of the audit. It should be noted that effective personnel supervision of all staff, including auditors, is achieved through established management techniques and quality controls.

Opportunity for Improvement 5: The AirBnB and HomeAway MOUs Do Not Include Provisions which Will Allow an Adequate Determination that All Applicable Taxes have been Paid.

Recommendation: *"Coordinate with the County Attorney to modify the MOU with Airbnb and HomeAway to add provisions that will allow for itemized reporting and/or other adequate determination that all applicable taxes have been remitted and properties can be identified."*

Response: Management disagrees. The MOUs with online platforms were negotiated by the County Attorney's Office and County Administration. The MOUs repeatedly state that the County does not waive any of its authority under Florida law. The MOUs require the internet platforms (i.e., AirBnB, Homeaway, etc.) to allow County auditing using transactional data, without identifying homeowners or guest names or addresses; the MOUs specifically state the internet platform is not required to produce homeowner or guest names or addresses without a subpoena. If, and to the extent the internet platform enters into a MOU with any other local government entity that provides broader audit rights, the Broward County MOU is automatically expanded to include the broader audit rights. To date, RTT is unaware of any local government entity signing a MOU with an internet platform that contains broader audit rights than provided in our MOUs. This is the identical audit provision agreed to by Miami-Dade County. Without this provision, the online platforms would not have agreed to the MOUs. The MOUs are the primary reason for this year's dramatic growth in TDT revenue. In addition, Miami-Dade and Broward were the first counties in Florida to enter into agreements of this type without waiving the right to pursue back taxes.

It should be noted the County Auditor's Advisory No. 102, dated November 13, 2017, described the Audit Rights provisions contained in the MOU with HomeAway. The Advisory was submitted to the Board of County Commissioners on November 14, 2017 (Item No. 24), and specifically stated, "We are not recommending disapproval of the item." The Board subsequently approved Agenda Item No. 24, which authorized the MOU with HomeAway.com.

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On January 23, 2018 (Item No. 26), the Board authorized the County Administrator to negotiate and execute MOUs between Broward County and online short-term accommodation rental platforms. Two additional MOUs have been executed by the County Administrator since the January 23, 2018 Commission Meeting.

Thank you for the opportunity to respond and provide Management's comments to the Audit. If there are any addition, deletions/omissions, or other changes or modifications to Management's response, please provide us the opportunity to review prior to issuance. Should you have any questions, please do not hesitate to contact me.

c: Mayor and Broward County Board of County Commissioners
Monica Cepero, Deputy County Administrator
Norman Foster, Director, Office of Management and Budget
George Tablack, CPA, Chief Financial Officer
Kevin Kelleher, Deputy Chief Financial Officer
Tom Kennedy, Director, Records, Taxes and Treasury Division
Gary Mehringer, Assistant Director, Records, Taxes and Treasury Division
Randall Luechauer, Operations Manager, Tourist Development Tax Section
Andrew Meyers, County Attorney