



County Bed Tax Applicable to Condo Rentals

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Q: As a new member in a condominium association, a question has come up regarding the Florida “bed tax”. A number of our members are absentee owners who rent their units on a seasonal or monthly basis. Are such rentals subject to the bed tax, and if so, during what time period? Who is responsible for collecting the bed tax? If an owner doesn’t collect any required taxes, is there any liability for the board of directors? **J.H. (via e-mail)**

A: You are correct that there is a “bed tax” in many counties in Florida, including both Lee and Collier Counties. The tax is authorized by the Local Option Tourist Development Tax Act, initially passed in 1977, and applies to any rental that is 6 months or less in duration. The Board of County Commissioners has the authority to adopt all or part of the permitted tax. Lee County currently has a 5% bed tax and Collier County has a 4% bed tax. Fortunately for condominium and homeowners’ associations, it is the owner and/or rental agent of the owner who are required to collect the tax. Ultimately, the owner is always liable for payment of the tax. If the association is not involved in the marketing, management and administration of the rental, then the association has no obligation or liability to collect the tax.

Any property owner or rental agent who enters into rental agreements for single-family homes,

condominium units, motel rooms, apartments, beach houses, trailers, and other qualifying residences, must report to the County, and pay the required tax. Once an owner reports a rental of less than 6 months to the County, a tax account is established, and the owner must continue to file returns in the future, even if there is no tax owing for the period in question. Returns must generally be filed monthly, and are considered late if not postmarked by the 20th of each month. However, there are filing options for seasonal, quarterly and semi-annual payment periods. A rental unit owner must consult with their County Tax Collector to confirm the reporting and payment periods that are available for any particular rental scheme. In order to encourage payment of the tax, all timely payments can benefit from a 2.5% (up to \$30.00 maximum) collection allowance. However, if the owner or rental agent fails to remit the tax in a timely manner, the collection allowance is not available, and penalties and interest will be added to the tax liability.

A rental is exempt from the bed tax if there is a bona fide written lease for a term in excess of 6 months, or in the case of month-to-month rentals, the lease is exempt after the initial 6 months, if the bed tax had been properly and continuously paid during the prior 6 months.

It is not unusual to hear of some condo unit owners not reporting and paying the bed tax, either out of

ignorance or intentionally. I am also aware of some owners who believe entering into a 6 month lease, even though neither party intends for the occupancy to last for 6 months, is a way to legally avoid the bed tax. However, they should know that in addition to penalties and interest, enforcement of the bed tax is also supported by criminal law, and a knowing refusal to pay the tax or fraudulent conduct to avoid the tax can be met with criminal sanctions.

Both Lee and Collier County have excellent web pages discussing the bed tax. See http://www.leeclerk.org/TouristTax_Info.asp; <http://www.colliertax.com/TTax.htm>.

Q: Recently, you responded to a question regarding the preparation of the required annual financial report for homeowners' associations. I live in a homeowners' association and would appreciate if you would explain the similarities and differences between (1) a report of cash receipts and expenditures for HOA's with less than \$100,000.00 of annual revenues, or less than 50 parcels in the association, (2) compiled financial statements for associations with revenues of \$100,000.00 to \$200,000.00 per year, (3) reviewed financial statements for associations with revenues between \$200,000.00 and \$400,000.00 per year, and (4) audited financial statements, for associations with total annual revenues of \$400,000.00 or more. Also, how long must these types of reports be retained in the files of the HOA? **J.W. (via e-mail)**

A: Your question accurately lists the financial reporting requirements for homeowners' associations of different sizes and with different revenues. You may also know that an association may conduct a members' meeting, and if a majority of a quorum of the members of the association vote to reduce the financial reporting requirement, then an association need prepare only a report of cash receipts and expenditures, or any of the other lesser reports, without regard to the amount of revenue of the association.

While a detailed response to a question of this nature is more appropriate for an accounting professional (CPA), I can generally outline the differences between the various types of association financial reports.

The Homeowners' Association Act itself assists with a description of "cash receipts and disbursements" as that statute specifically provides that such a report must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications. The expense classifications must include, at a minimum, costs for security, professional services and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves if maintained by the association. Therefore, a report of cash receipts and disbursements can typically include simply the well-kept accounting records of the association. Other than grouping the receipts and expenditures in the proper accounts and classifying those amounts with a brief description, the report generally requires nothing further.

Compiled financial statements involve simply the presentation of the receipt and expense information in a different format, including a balance sheet, a statement of revenues and expenses, a statement of changes in fund balances, and a statement of cash flows. However, compiled financial statements are not reviewed or audited in any way, but are simply recopied ("compiled") into the financial statements, from the financial records. There is no attempt whatsoever to confirm the validity or check the accuracy of the account information.

Reviewed financial statements are compiled financial statements, but with a basic level of review by a CPA that confirms that the numbers reported in the financial statements do correspond with the records of the association. However, there is little or no verification of the underlying transactions, unless the preparer finds some obvious discrepancy. In short, the reviewed financial statements will not look different than the compiled financial statements, but

the entries on the reviewed financial statements would have been compared to the actual account statements and expense invoices.

Finally, an audit involves the actual review and investigation by a CPA of select transactions to confirm that they actually occurred, and that the funds related to the transaction were applied properly. It is important to note that an audit does not test every transaction, as that would be cost

prohibitive, time consuming and essentially impossible for the auditor to complete. Instead, the auditor samples certain transactions and only investigates additional transactions if there are some irregularities found.

Finally, the Homeowners' Association Act requires that all financial and accounting records be maintained by the association for a period of at least seven years.

Mr. Adams concentrates his practice on the law of community association law, primarily representing condominium, co-operative, and homeowners' associations and country clubs. Mr. Adams has represented more than 600 community associations and serves as managing shareholder of the Firm's Naples and Ft. Myers offices.

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