

LEE COUNTY ORDINANCE NO. 13-14

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA, REPEALING AND REPLACING IN THE ENTIRETY LEE COUNTY ORDINANCE NO. 07-28, AS AMENDED BY LEE COUNTY ORDINANCE NO. 09-01, AS AMENDED BY LEE COUNTY ORDINANCE NO. 10-31, AS AMENDED BY LEE COUNTY ORDINANCE NO. 13-07, WHICH LEVIED, IMPOSED AND SET A FIVE PERCENT (5%) TOURIST DEVELOPMENT TAX THROUGHOUT LEE COUNTY PURSUANT TO THE "LOCAL OPTION TOURIST DEVELOPMENT ACT", SECTION 125.0104, FLORIDA STATUTES; PROVIDING FOR RECITALS, PURPOSE, RESTATEMENT AND REPEALER; PROVIDING FOR A TITLE; PROVIDING FOR APPLICATION AND DEFINITIONS; PROVIDING FOR THE COLLECTION OF SAID TAX, RELATING TO A TAX ON EACH WHOLE AND MAJOR FRACTION OF EACH DOLLAR OF THE TOTAL RENTAL CHARGED EVERY PERSON WHO RENTS, LEASES OR LETS FOR CONSIDERATION ANY LIVING QUARTERS OR ACCOMMODATIONS IN ANY HOTEL, APARTMENT HOTEL, MOTEL, RESORT MOTEL, APARTMENT, APARTMENT MOTEL, ROOMINGHOUSE, TOURIST AND TRAILER CAMP, MOBILE HOME PARK, RECREATIONAL VEHICLE PARK, CONDOMINIUM, REAL PROPERTY OR TIMESHARE RESORT FOR A TERM OF SIX (6) MONTHS OR LESS; PROVIDING THAT THE REVENUES SO RAISED BE UTILIZED TO IMPLEMENT THE LEE COUNTY TOURIST DEVELOPMENT PLAN, RELATING TO BEACH PARK FACILITIES AND BEACH RELATED IMPROVEMENTS; PROVIDING FOR THE ADOPTION OF THE LEE COUNTY TOURIST DEVELOPMENT TAX; PROVIDING FOR COMPOSITION OF THE LEE COUNTY TOURIST DEVELOPMENT COUNCIL; PROVIDING AN EXCEPTION TO GENERAL LAW RELATING TO THE COMPOSITION OF THE LEE COUNTY TOURIST DEVELOPMENT COUNCIL; PROVIDING FOR THE TERMS, QUALIFICATIONS AND POWERS OF THE MEMBERS OF SAID COUNCIL; PROVIDING FOR PENALTIES FOR FAILURE TO COLLECT THE TAX LEVIED; PROVIDING FOR REPEAL OF THE TAX BY REFERENDUM ELECTION; PROVIDING FOR LOCAL ADMINISTRATION OF THE TAX SO AS TO HAVE COLLECTION AND ADMINISTRATION DUTIES PERFORMED BY THE INTERNAL AUDIT DEPARTMENT OF THE CLERK OF COURT AND TO HAVE THE ENFORCEMENT AND AUDIT RESPONSIBILITIES PERFORMED BY THE LEE COUNTY CLERK OF COURT INTERNAL AUDIT DEPARTMENT; PROVIDING FOR SEVERABILITY OF ORDINANCE PROVISIONS, CONFLICTS OF LAW, CODIFICATION, INCLUSION IN CODE AND SCRIVENORS ERRORS, AND PROVIDING FOR AN EFFECTIVE DATE.

**WHEREAS**, Section 125.0104, Florida Statutes, provides for the levy of a "Local Option Tourist Development Tax" by any county; and

**WHEREAS**, under the provisions of Section 125.0104, Florida Statutes, the Board of County Commissioners, Lee County, Florida, did on June 2, 1982, adopt a Resolution establishing and appointing the members of the Lee County Tourist Development Council; and

**WHEREAS**, said Tourist Development Council has presented to the Board of County Commissioners its plan for tourist development; and

**WHEREAS**, it is the intent of this Ordinance that the Tourist Development Tax be used to stabilize the tourist-related economy of Lee County on a year-round basis.

**NOW THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA that:**

**SECTION ONE:                    RECITALS**

The above recitals are hereby incorporated by reference as if set out herein at length.

**SECTION TWO:                    PURPOSE, RESTATEMENT AND REPEALER**

It is the intent of this Ordinance to repeal and replace in the entirety Lee County Ordinance No. 07-28, as amended by Ordinance No. 09-01, as amended by Ordinance No. 10-31, and as amended by Ordinance No. 13-07. Accordingly, upon adoption of this Ordinance Lee County Ordinance Nos. 07-28, 09-01, 10-31 and 13-07 are hereby duly repealed and replaced.

**SECTION THREE:            TITLE**

This Ordinance shall be known and may be cited as the "Lee County Tourist Development Ordinance".

**SECTION FOUR:            APPLICATION; DEFINITIONS**

A.     Application - The provisions contained in Florida Statutes, Chapter 212, as may be amended, apply to the administration of any tax levied pursuant to this Ordinance.

B.     Definitions – Pursuant to Florida Statutes, Chapter 125.0104, as may be amended, and for purposes of this section:

1.     "Promotion" means marketing or advertising designed to increase tourist-related business activities.
2.     "Tourist" means a person who participates in trade or recreation activities outside the county of his or her permanent residence or who rents or leases transient accommodations as described in paragraph (3)(a).

**SECTION FIVE:            TAXABLE PRIVILEGES; LEVY; RATE**

A.     There is hereby levied and imposed and set a tourist development tax throughout Lee County, Florida, at a rate of three percent (3%) of each whole and major fraction of each dollar of the total rental charged every person who rents, leases or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, tourist and trailer camp, mobile home park, recreational vehicle park, condominium, real property or timeshare resort for a term of six (6) months or less. When receipt of consideration is

by way of property other than money, the tax shall be levied and imposed on the fair market value of such non-monetary considerations.

B. In addition to the three percent (3%) tax rate imposed in Paragraph A., the County hereby levies, imposes, and sets an additional one percent (1%) tax pursuant to Section 125.0104(3)(d), Florida Statutes, on the exercise of privilege described in Paragraph A.

C. In addition to the original three percent (3%) tax rate imposed and the one percent (1%) tax imposed under Paragraph B., the County hereby levies, imposes and sets an additional one percent (1%) tax pursuant to Section 125.0104(3)(n), Florida Statutes, on the exercise of the privilege described in Paragraph A.

D. The Tourist Development Tax shall be in addition to any other tax imposed pursuant to Chapter 212, Florida Statutes, and in addition to all other taxes, fees and the considerations for the rental or lease.

E. The Tourist Development Tax shall be charged by the dealer 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.

F. The dealer receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Lee County Clerk of the Circuit Court at the time and in the manner provided for dealers who collect and remit taxes under Section 212.03, Florida Statutes. The same duties and privileges imposed by Chapter 212, Florida Statutes, upon dealers in tangible property, respecting the collection and remission of tax, the making of returns, the keeping of books, records and accounts, and compliance with the rules of the Florida Department of Revenue in the

administration of said chapter shall apply to and be binding upon all dealers who are subject to the provisions of this Act.

G. Collections received by the said Clerk less costs of administration of this Ordinance shall be paid and returned, on a monthly basis to Lee County for use by the County in accordance with the provisions of this Ordinance and shall be placed in the County tourist development trust fund in accordance with the Tourist Development Plan in Section Four hereof.

H. The effective date of the levy and imposition of the additional one percent (1%) of each dollar above the tax rate of two percent (2%) of each dollar, as previously set by Section Three hereof, shall be the first day of March, 1988. The proceeds of the additional levy shall be used for the purposes set forth in Section Four hereof.

I. The effective date of the levy and imposition of the additional two percent (2%) of each dollar above the tax rate of three percent (3%) of each dollar, as previously set out in Section Five A. hereof, shall be the first day of January 2006. The proceeds of the additional levy shall be used for the purposes set forth in Section Six A., B., and C. hereof. See also Section Six A., B., and C.

**SECTION SIX: TOURIST DEVELOPMENT PLAN**

A. The tax revenues received pursuant to this Ordinance shall be used to fund the Lee County Tourist Development Plan, which is hereby adopted as follows:

1. The two percent (2%) Tourist Development Tax was levied throughout Lee County beginning the first day of the month following the referendum. An additional one percent (1%) was levied in March of 1988. The additional two percent (2%) was

levied in January 2006. The Tourist Development Tax for Lee County is to strengthen our local economy and advance tourism by investing the revenue in the following priority:

- a) Fifty-three and six-tenths percent (53.6%) of the receipts of the Tourist Development Tax shall be placed into a trust fund to be used for tourist advertising and promotion for Lee County.
- b) Twenty percent (20%) of the receipts of the Tourist Development Tax shall be placed into the trust fund to be used to acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate or promote one or more publicly-owned and operated convention centers, sports stadiums, sports arenas, (including funding Sports Development and the Development's tourism related activities) coliseums, auditoriums or museums (funds will not be used for any museum general maintenance) within the boundaries of the County and for those other lawful purposes authorized by Sections 125.0104(5)(a) 1.,2.,3., and (b), 125.0104(3)(1), Florida Statutes, except as noted in Subparagraph c) below.
- c) Twenty-six and four tenths percent (26.4%) of the receipts of the Tourist Development Tax shall be placed into the trust fund to be used for beach park facilities and beach-related improvements to include but not limited to, beach

improvements, fishing piers, maintenance, re nourishment, restoration and erosion control, including shoreline protection, enhancement, clean-up or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.

B. The above and foregoing Tourist Ordinance may be enacted by an affirmative vote of a majority plus one additional member of the Board of County Commissioners.

C. The Plan and Tax shall continue until amended or repealed according to this Ordinance and Section 125.0104, Florida Statutes. Appropriations of the Tourist Development Tax shall be budgeted and approved by the Board of County Commissioners.

D. The revenues to be derived from the Tourist Development Tax may be used as authorized herein and Section 125.0104, Florida Statutes. In the event bonds are issued by the County for any of the purposes enumerated by the Tourist Development Plan, the amount of Tourist Development Tax receipts used to pay debt service on such bonds may exceed the percentages provided for the purpose for which such bonds were issued; provided, however, the annual debt service on such bonds (less any projected federal direct subsidy payments), together with any other obligations of the County which were issued to finance improvements for the same purpose and which are secured by the Tourist Development Tax, must not exceed in each fiscal year in which bonds and other obligations are outstanding, the amount of Tourist

Development Tax receipts provided in the Tourist Development Plan for such purpose which are projected by the County to be received in each such fiscal year and, in the case of a facility described in Section Six.A.1.b) hereof, the revenues projected to be received by the County from the use of such facility in each such fiscal year and the amount of moneys anticipated to be received from the State of Florida in each fiscal year pursuant to Sections 288.11621, 288.1162 and 212.20, Florida Statutes. For purposes of performing the calculations described in this paragraph, the amount of Tourist Development Tax receipts shall take into account any projected increase or decrease in such receipts, plus, if the levy of such tax was increased prior to the date of sale of the bonds, an amount equal to the monies the County would have received if the tax increase had been in effect during the entire period in question. The above projections shall be certified by the County Manager at the time of sale of the bonds and shall be conclusive evidence of satisfaction of the provisions of this Section Six D.

E. Trust funds in the amount of 6.6% deposited in the beach and shoreline portion of the Tourist Development Tax on December 9, 2008, and thereafter until the adoption of this Ordinance shall be transferred to the Stadium/Attractions Trust Fund

**SECTION SEVEN: THE LEE COUNTY TOURIST DEVELOPMENT COUNCIL**

A. There is hereby established, pursuant to the provisions of Section 125.0104, Florida Statutes, and Chapter 2013-258, Laws of Florida, an advisory council to be known as the "Lee County Tourist Development Council". The Council shall be composed of nine (9) members who shall be appointed by the Board of County Commissioners of Lee County. The Chair of the Board of County Commissioners of Lee County or another member as designated by the Chair shall serve on the Council.

Two (2) members of the Council shall be elected municipal officials, one of whom shall be from one of the two municipalities that generated the highest revenues from the tourist tax in the previous two (2) fiscal years and these two (2) municipalities shall rotate membership every two (2) years. The second elected municipal official shall be from one of the remaining municipalities and the second municipal seat shall also rotate every two (2) years. Elected municipal officials appointed to those two (2) seats on the Council shall serve for terms of two (2) years. Six (6) members of the Council shall be persons who are involved in the tourist industry and have demonstrated an interest in tourist development, of which members, not less than three (3) no more than four (4) shall be owners or operators of motels, hotels, recreational vehicle parks, or other tourist accommodations in the County and subject to the tax. All members of the Council shall be electors of the County. The changes in the composition of the membership of the Lee County Tourist Development Council mandated by this act are effective July 1, 2013. The changes in composition of the membership of the Lee County Tourist Development Council mandated by the act shall not cause the interruption of the current term of any person who is a member of the Lee County Tourist Development Council, except the two (2) municipal members appointed on July 1, 2013. The governing Board of the County shall have the option of designating the Chair of the Council or allowing the Council to elect a Chair. The Chair shall be appointed or elected annually and may be re-elected or reappointed. The members of the Council shall serve for staggered terms of four (4) years.

B. The Council hereby established shall, from time to time, make recommendations to the Board of County Commissioners for the effective operation of the special projects or uses of the Tourist Development Tax revenue raised by the tax hereby levied and may perform such other duties or functions as hereinafter may be prescribed by Ordinance or Resolution.

C. The Council shall continuously review all expenditures of revenues from the tourist development trust fund and shall receive, at least quarterly, expenditure reports from the Board of County Commissioners or its designee. Expenditures which the Council believes to be unauthorized shall be reported to the Board of County Commissioners. The Board of County Commissioners shall review the Council's findings and take such administrative or judicial action as it sees fit to insure compliance with this Ordinance and the provisions of Section 125.0104, Florida Statutes.

D. The members of the Council may be appointed or reappointed as authorized by Section 125.0104, Florida Statutes, and Chapter 2013-258, Laws of Florida.

**SECTION EIGHT:**                    **LOCAL COLLECTION ADMINISTRATION, AUDIT AND ENFORCEMENT OF THE TAX**

A. Notwithstanding any provisions hereof to the contrary, it is the intent of the County to be exempt from those requirements of Section 125.0104, Florida Statutes, that the tax collected be remitted to the Department of Revenue before being returned to the County. It is the intent of the County to provide for the collection and administration of the tax on a local basis.

B. Definitions – Pursuant to Section 212.06, Florida Statutes, as may be amended, and for purposes of this Ordinance section:

1. “Dealer” means any person who leases, or grants a license to use, occupy, or enter upon, living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property. The term “dealer” also means any person who has leased, occupied, or used or was entitled to use any living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property and who cannot prove that the tax levied by this Ordinance has been paid to the vendor or lessor on any such transactions.

C. Collection of the tax shall continue to be made in the same manner as the tax imposed under Part I of Chapter 212, Florida Statutes and as the applicable statute may be subsequently amended from time to time. Lee County, in assuming such responsibility, agrees it shall be bound by all rules promulgated by the Department of Revenue pursuant to Section 125.0104, as well as those rules pertaining to the sales and use tax on transient rentals imposed by Section 212.03. The County may use any power granted in this Section 125.0104, Florida Statutes, to the department to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest.

D. The Lee County Clerk of Court, (hereinafter "Clerk of Court") Internal Audit Department shall be responsible for the collection, audit, enforcement and administration of the tax. The dealers receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Lee County Clerk of Court. The Clerk of Court, Internal Audit Department, or their successor department or division, shall keep appropriate records of said funds. The same duties and privileges imposed by Chapter 212, Florida Statutes, and as the applicable statute may be subsequently amended from time to time, upon dealers in tangible property, respecting the collection and remission of tax; the making of returns, the keeping of books, records and accounts, the payment of a dealer's credit in compliance with the rules of the Lee County Clerk of Court in the administration of said Chapter shall apply to and be binding upon all dealer who are subject to the provisions of this Ordinance.

E. The Clerk of Court may promulgate rules, prescribe and publish the forms necessary to effectuate this Ordinance. The rules may include guidelines for registration and reporting requirements that are consistent with the provisions of Chapter 212, Florida Statutes.

F. In accordance with Chapter 125.0105, Florida Statutes, the Clerk of Court may adopt a service fee not to exceed the service fees authorized under Section 832.08(5) or five percent (5%) of the fact amount of the check, draft, or order, whichever is greater, for the collection of a dishonored check, draft, or other order for the payment of tax under this Ordinance. The service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee, if imposed, shall be retained by the Lee

County Clerk of Court.

G. The Lee County Clerk of Court, Internal Audit Department, or their successor department or division, shall perform the enforcement and audit functions associated with the collection and remission of this tax, including, without limitation, the following:

1. For the purpose of enforcing the collection of the tax levied by this Chapter, the Internal Audit Department of the Clerk of Courts is hereby specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all dealers, charged with the duty to report or pay a tax under this Ordinance, in order to determine whether they are collecting the tax or otherwise complying with this Ordinance. In the event said dealer refuses to permit such examination of its books, records, or other documents by the department as aforesaid, it is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes. The Clerk shall have the right to proceed in Circuit Court to seek a mandatory injunction or other appropriate remedy to enforce its right against the offender, as granted by this section, to require an examination of the books and records of such dealer.
2. Each dealer, as defined in Section 212.06, Florida Statutes, and this Ordinance shall secure, maintain, and keep for a period of three (3) years a complete record of rooms or other lodging, that

was leased, rented, or granted license to use, occupy or enter upon living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps or real property, by said dealer, together with gross receipts from such sales, and other pertinent records and documents as may be required by the Clerk of Court for the reasonable administration of this Ordinance; and all such records which are located or maintained in this state shall be open for inspection by the Internal Audit Department of the Clerk of Court at all reasonable hours at such dealer's place of business located in Lee County. Any dealer who maintains such books and records at a point outside this County must make such books and records available for inspection by the Internal Audit Department of the Clerk of Courts in Lee County, Florida. Any dealer subject to the provisions of this Ordinance, who violates these provisions, is guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082 or Section 775.083, Florida Statutes.

3. Enforcement investigations include the examination of documents from any of the following, including but not limited to:
  - a) any person;
  - b) any community;
  - c) any condominium association;
  - d) any homeowner association; and

- e) any property management company that are relevant to transient renters and rental activities. Relevant documents include but are not limited to:
  - f) association approval of guests to rent or lease;
  - g) guest gate entry passes;
  - h) guest golf and/or tennis membership records, and
  - i) other guest amenity records such as pool and community center passes.
4. The Internal Audit Department of the Clerk of Courts shall send written notification, at least thirty (30) days prior to the date an auditor is scheduled to begin an audit, informing the dealer of the audit. The Internal Audit Department of the Clerk of Courts is not required to give thirty (30) days prior notification of a forthcoming audit in any instance in which the dealer requests an emergency audit.
5. Such written notification shall contain:
- a) The proximate date on which the auditor is scheduled to begin the audit.
  - b) A reminder that all of the records, receipts, invoices, and related documentation of the taxpayer must be made available to the auditor.

c) Any other requests or suggestions the Internal Audit Department may deem necessary.

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

H. All taxes collected under this Ordinance shall be remitted to the Internal Audit Department of the Clerk of Court. In addition to criminal sanctions, the Clerk is empowered, and it shall be its duty, when any tax becomes delinquent or is otherwise in jeopardy under this Ordinance, to issue a warrant for the full amount of the tax due or estimated to be due, with the interest, penalties, and cost of collection, directed to all and singular the sheriffs of the state, and shall record the warrant in the public records of the County, and thereupon the amount of the warrant shall become a lien of any real or personal property of the taxpayer in the same manner as a recorded judgment. The Internal Audit Department of the Clerk may issue a tax execution to enforce the collection of taxes imposed by this Ordinance and deliver it to the Sheriff. The Sheriff shall thereupon proceed in the same manner as prescribed by law for executions and shall be entitled to the same fees for his services in executing the warrant to be collected. The Clerk may also have a writ of garnishment to subject any indebtedness due to the delinquent dealer by a third person in any goods, money, chattels, or effects of the delinquent dealer in the hands, possession, or control of the third person in the manner provided by law for the payment of the tax due. Upon payment of the execution, warrant, judgment, or garnishment, the department shall satisfy the lien of record within thirty (30) days.

I. Pursuant to Section 213.24(3) and Section 125.0104, Florida Statutes, a fee shall be imposed to offset the extraordinary costs incurred by the Clerk of Court for enforcement, administration and payment agreements incurred due to late payment of a collection event.

1. "Collection Event" means failure by a taxpayer to:
  - a) timely file a complete return;
  - b) timely pay the full amount of tax reported on a return;
  - c) timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined; or
  - d) respond to attempts to contact the dealer.

The fee shall be equal to ten percent (10%) of the total amount of tax, penalty, and interest which remains unpaid after ninety (90) days. The fee shall be imposed in addition to the taxes, fees, penalties, and interest prescribed by law.

J. Tax revenues may be used only in accordance with the provision of Section 125.0104, Florida Statutes.

K. A total of three percent (3%) of said tax collected each month herein shall be retained by the Clerk of the Circuit Court for costs of administration by the Clerk of Courts. The remainder of the tax collected shall be distributed to the County on a monthly basis.

L. The County assumes responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payment of delinquent Tourist Development Taxes. The County adopts any and all powers and authority granted to

the State of Florida in Section 125.0104, Florida Statutes, and Chapter 212, Florida Statutes, and as further amended or incorporated therein to determine the amount of the tax, penalties and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest by, but not limited to, distress warrants, writ of garnishments and criminal penalties as provided in Chapter 212, Florida Statutes.

M. An action may not be brought to contest an assessment of any tax, interest or penalty assessed under this Ordinance more than sixty (60) days after the date the assessment becomes final. An action may not be brought to contest a denial of refund of any tax, interest or penalty paid under this Ordinance more than sixty (60) days after the date the denial becomes final.

**SECTION TEN: PERSONAL LIABILITY**

Any dealer who exercises a taxable privilege hereunder and who willfully fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, shall be, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, Section 775.083, or Section 775.084, Florida Statutes.

Any dealer who willfully makes a false or fraudulent return, fails to file six (6) consecutive returns, attempts in any manner to evade the tax, and/or diverts or converts tax monies to their own use or the benefits of others shall be, in addition to being personally liable for the payment of the tax, guilty of a misdemeanor or felony, punishable as provided in Sections 212.12, 775.082, and 775.083, Florida Statutes.

Any dealer who, after the Clerk's delivery of a written notice to the dealer's last known address specifically alerting the dealer of the requirement to register the dealer's business as a dealer, intentionally fails to register the business; and any dealer who, after the clerk's delivery of a written notice to the dealer's last known address specifically alerting the dealer of the requirement to collect tax on specific transactions, intentionally fails to collect such tax, shall, in addition to the other penalties provided by law, be liable for a specific penalty of one hundred percent (100%) of any unreported or any uncollected tax or fee and, upon conviction, for fine and punishment as provided in Section 775.082 or 775.083, Florida Statutes. Delivery of written notice may be made by certified mail, or by the use of such other method as is documented as being necessary and reasonable under the circumstances. The civil and criminal penalties imposed herein for failure to comply with a written notice alerting the dealer of the requirement to register the business as a dealer or to collect tax on specific transactions shall not apply if the dealer timely files a written challenge to such notice in accordance with procedures established by the department by rule or the notice fails to clearly advise that failure to comply with or timely challenge the notice will result in the imposition of the civil and criminal penalties imposed herein.

The rental property owner is ultimately responsible to ensure the required filing of tax returns and payment of taxes owed regardless of any agreement with an agent to collect, report and/or remit the tax.

**SECTION ELEVEN:                    REFUSAL TO COLLECT TAX**

No dealer shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he 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 dealer who willfully violates any provision of this subsection shall be guilty of a misdemeanor of the second degree, punishable as provided in Section 775.082, Section 775.083, or Section 775.084, Florida Statutes.

**SECTION TWELVE:                SEVERABILITY**

Upon petition of fifteen percent (15%) or more of the electors of Lee County, the Board of County Commissioners shall cause an election to be held for the repeal of this Ordinance and the Tourist Development Tax levied subject only to any outstanding revenue bonds for which the tax has been pledged.

**SECTION THIRTEEN:            INVALID OR UNCONSTITUTIONAL SECTIONS**

It is declared to be the intent of the Board of County Commissioners that, if any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof. It is hereby declared to be the legislative intent that this Ordinance would have been adopted had such unconstitutional provisions not been included herein.

**SECTION FOURTEEN: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements shall apply.

**SECTION FIFTEEN: CODIFICATION, INCLUSION IN CODE AND SCRIVENER'S ERRORS**

It is the intention of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lee County code; and that sections of this Ordinance may be renumbered or relettered and that the word "ordinance" may be changed to "section", "article", or other such appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the code is accomplished, sections of this Ordinance may be renumbered or relettered and typographical errors which do not affect the intent may be authorized by the County Manager or his designee, without need of public hearing, by filing a corrected or recodified copy of same with the Clerk of Circuit Court.

**SECTION SIXTEEN: EFFECTIVE DATE**

This Ordinance will take effect July 1, 2013, and upon its filing with the Office of the Secretary of the Florida Department of State, with a certified copy hereof being furnished to the State of Florida, Department of Revenue.

Commissioner Hall made a motion to adopt the foregoing ordinance, seconded by Commissioner Pendergrass. The vote was as follows:

JOHN E. MANNING	<u>AYE</u>
CECIL L PENDERGRASS	<u>AYE</u>
LARRY KIKER	<u>AYE</u>
TAMMARA HALL	<u>AYE</u>
FRANK MANN	<u>AYE</u>

DULY PASSED AND ADOPTED THIS 25<sup>th</sup> day of June, 2013.

ATTEST: LINDA DOGGETT  
CLERK OF COURTS

BY: Marcia Wilson  
Deputy Clerk

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: [Signature]  
Chair



APPROVED AS TO FORM:

BY: [Signature]  
Office of the County Attorney



## FLORIDA DEPARTMENT *of* STATE

**RICK SCOTT**  
Governor

**KEN DETZNER**  
Secretary of State

July 8, 2013

Honorable Linda Doggett  
Clerk of the Circuit Courts  
Lee County  
Post Office Box 2469  
Fort Myers, Florida 33902-2469

Attention: Lisa L. Pierce, Deputy Clerk

Dear Ms. Doggett:

Pursuant to the provisions of Section 125.66, Florida Statutes, this will acknowledge receipt of your letter dated July 3, 2013 and certified copy of Lee County Ordinance No. 13-14, which was filed in this office on July 8, 2013.

Sincerely,

A handwritten signature in cursive script that reads "Liz Cloud".

Liz Cloud  
Program Administrator

LC/elr

