

**ESCAMBIA COUNTY BOARD OF COUNTY
COMMISSIONERS USE OF TOURIST
DEVELOPMENT TAXES**

Prior Audit Follow-Up



Sherrill F. Norman, CPA
Auditor General

Board of County Commissioners

During the period October 2023 through February 2024, Wes Moreno served as the Escambia County Administrator, and the following individuals served on the Escambia County Board of County Commissioners:

| | <u>District No.</u> |
|---|---------------------|
| Jeffrey Bergosh | 1 |
| Mike Kohler | 2 |
| Lumon May, Chair through 11-01-23 | 3 |
| Robert Bender, Vice Chair from 11-02-23 through 01-26-24 ^a | 4 |
| Steven Barry, Chair from 11-2-23, Vice Chair through 11-01-23 | 5 |

^a Commissioner and Vice Chair position became vacant 1-27-24 and remained vacant at 2-29-24.

The team leader was Jim Beaumont, CPA, and the audit was supervised by Kenneth C. Danley, CPA.

Please address inquiries regarding this report to Derek H. Noonan, CPA, Audit Manager, by e-mail at dereknoonan@aud.state.fl.us or by telephone at (850) 412-2864.

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ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS USE OF TOURIST DEVELOPMENT TAXES PRIOR AUDIT FOLLOW-UP

SUMMARY

In our operational audit report No. 2023-112 of the Escambia County Board of County Commissioners (BCC) and Clerk of the Circuit Court, we noted three findings related to the BCC's use of tourist development tax revenues. This operational audit focused on the progress that the BCC had made, or was in the process of making, in addressing the findings and recommendations in report No. 2023-112.

Our audit disclosed that the BCC had:

- Corrected 2 findings (Findings 1 and 2).
- Partially corrected 1 finding (Finding 3).

BACKGROUND

Pursuant to the State Constitution,¹ the Board of County Commissioners (BCC) is the governing body in Escambia County (County), and State law outlined the general duties and responsibilities of the BCC. The BCC is composed of five County Commissioners, and each County Commissioner is elected to a 4-year term by the voters in the geographical district in which he or she resides. The BCC approves the County budget, adopts local ordinances and resolutions, and establishes policies and procedures that govern the County and protect the health, safety, and welfare of the citizens.

State law² authorizes counties to levy and impose five separate local option taxes, collectively referred to as the tourist development tax (TDT) and allows TDT rates of up to 6 percent of each dollar collected from rents of living quarters or accommodations in short-term (less than 6-month) arrangements. Pursuant to State law,³ TDT collections are to only be used for purposes specified in law and any use for a purpose not specified is expressly prohibited. Generally, TDT collections may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the local option tax levied.⁴ The Attorney General has opined on numerous occasions⁵ that, in addition to carrying out a provision of State law, an expenditure of TDT collections must be based on a determination by the governing body of the county that the activity directly and primarily promotes tourism.

As a condition precedent to the receipt of TDT collections, State law⁶ provides that a county must establish a tourist development trust fund to account for TDT collections. State law⁷ also provides that

¹ Article VIII, Section 1 of the State Constitution.

² Section 125.0104, Florida Statutes.

³ Section 125.0104(5)(e), Florida Statutes.

⁴ Office of Economic and Demographic Research, *Florida Tax Handbook*, 2023.

⁵ For example, Attorney General Opinion Nos. 83-18, 2010-09, and 2015-14.

⁶ Section 125.0104(3)(i), Florida Statutes.

⁷ Section 125.0104(4)(b) and (e), Florida Statutes.

at least 60 days prior to the enactment of the ordinance levying the tax, the BCC shall adopt a resolution establishing and appointing the members of the county tourist development council (TDC)⁸ and that the TDC is to continuously review expenditures from the tourist development trust fund and receive, at least quarterly, expenditure reports from the BCC or its designee.⁹ Expenditures which the TDC believes to be unauthorized are to be reported to the BCC and the Florida Department of Revenue, which are required to review the TDC's findings and take appropriate administrative or judicial action to ensure compliance with State law.¹⁰

Pursuant to State law and BCC ordinances,¹¹ the BCC accounts for its TDT transactions in the Tourist Promotion Fund. During the period October 2023 through February 2024, the BCC levied and imposed TDT of 5 percent (based on four separate levies) on each dollar collected from short-term rentals of living quarters or accommodations within the County. As shown in Table 1, during the period October 2023 through February 2024, the BCC received TDT collections of \$5.1 million.

Table 1
Tourist Development Tax Collections
(in Thousands)

For the Period October 2023 through February 2024

| TDT Levied | Amount |
|--|-----------------------|
| First Levy: 2 Percent | \$2,033 |
| Second Levy: 1 Percent | 1,016 |
| Third Levy: Professional Sports Franchise Facility Tax (1 Percent) | 1,016 |
| Fourth Levy: Additional Professional Sports Franchise Facility Tax (1 Percent) | 1,016 |
| Total TDT Collections | <u>\$5,081</u> |

Source: BCC Records.

FINDINGS AND RECOMMENDATIONS

Finding 1: Escambia County Code of Ordinances

Previously Reported

BCC ordinances¹² included provisions related to the authorized use of tourist development tax (TDT) collections that were contrary to State law.¹³

⁸ Pursuant to Section 125.0104(4)(e), Florida Statutes, the chair of the BCC, or any other member of the BCC as designated by the chair, shall serve on the TDC. Two members of the TDC shall be elected municipal officials, at least one of whom shall be from the most populous municipality in the county or subcounty special taxing district in which the TDT is levied. Six members shall be persons who are involved in the tourist industry and who have demonstrated an interest in tourist development, of which members, not less than three nor more than four 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 TDC shall be electors of the county.

⁹ Section 125.0104(3)(i) and (4)(e), Florida Statutes.

¹⁰ Section 125.0104(4)(e), Florida Statutes.

¹¹ Section 90-58(a), Escambia County Code of Ordinances.

¹² Sections 90-56(b) and 90-57 of the Escambia County Code of Ordinances.

¹³ Section 125.0104(10)(b)5., Florida Statutes.

We recommended that the BCC amend County ordinances to conform with State law by:

- Clarifying that a portion of TDT collections may be retained by the County for the costs of administration, but such portion shall not exceed 3 percent of collections, rather than requiring 3 percent be retained.
- Restricting the authorized uses of the Professional Sports Franchise Facility Tax (PSFFT) to those provided in State law.¹⁴

Results of Follow-Up Procedures

The BCC corrected this finding. In August 2023, the BCC enhanced its County ordinances¹⁵ to clarify that:

- The actual cost incurred for the collection and administration of the TDT, in an amount not to exceed 3 percent of such tax collected, shall be retained for the costs of administration.
- Any unspent and unencumbered funds from the PSFFT may be used for purposes expressly set forth in Section 125.0104(3)(l), Florida Statutes, and included in the tourist development plan.

Finding 2: Administrative and Judicial Action of Expenditures

Previously Reported

Contrary to State law,¹⁶ the BCC did not review TDT expenditures that the Tourist Development Council (TDC) believed to be unauthorized and take appropriate administrative or judicial actions to ensure compliance with State law.

We recommended that the BCC comply with State law by reviewing TDT expenditures questioned by the TDC and taking appropriate administrative or judicial action. To assist the BCC with such actions, we further recommended that the BCC establish policies and procedures that provide guidance:

- For the conduct of the BCC's review of TDT expenditures reported and questioned by the TDC as unauthorized.
- Requiring documentation of the BCC's determination as to the allowability of such expenditures.
- For ascertaining and taking appropriate administrative or judicial actions should the BCC determine the TDT expenditures to be unallowable.

Results of Follow-Up Procedures

The BCC corrected this finding. In February 2024, the BCC adopted procedures¹⁷ for the review of TDT expenditures that the TDC believed to be unauthorized. The procedures require:

- The BCC review TDC findings and provide records to the TDC documenting the BCC's determination that the TDT expenditures are for activities authorized pursuant to State law that directly and primarily promote tourism.
- An administrative determination with appropriate legislative findings that the primary purpose of the TDT expenditure is carry out provisions of State law and the promotion of tourism.

¹⁴ Section 125.0104(3)(l), Florida Statutes.

¹⁵ Sections 90-56(b) and 90-57 of the Escambia County Code of Ordinances.

¹⁶ Section 125.0104(4)(e), Florida Statutes.

¹⁷ *Tourist Development Tax Policies and Procedures, Section II, Part A.15.*

- When a judicial action or an Attorney General’s opinion (AGO) is required to determine whether a proposed TDT expenditures is authorized by State law:
 - By majority vote, the TDC may send a recommendation to the BCC requesting an AGO, and the BCC by majority vote may request an AGO.
 - If the County Attorney determines that a judicial ruling is more appropriate, the County Attorney shall ask the BCC for authorization to file the appropriate suit to obtain the needed guidance or determination.
 - Upon obtaining an AGO or judicial ruling, the County Attorney shall inform the BCC, TDC, and the Escambia County Office of Management and Budget of the determination.

In addition, prior to adoption of the February 2024 procedures, in its August 8, 2023, meeting, the TDC questioned the proposed expenditure of TDT collections for the construction of a memorial plaza on City of Pensacola property that would be operated and maintained by a private not-for-profit entity. In its meeting held on August 16, 2023, the BCC voted to request an AGO on the allowability of the proposed expenditures, and on January 25, 2024, the BCC requested the AGO. As of April 2024, the Attorney General had not opined on the proposed expenditure of TDT collections.

Finding 3: TDT Expenditure Allowability

Previously Reported

BCC records did not always adequately demonstrate that expenditures of TDT collections were based on a determination that the related activity directly and primarily promoted tourism and were for the TDT purposes specified by State law.¹⁸

We recommended that the BCC establish policies and procedures that require the BCC to document authorization for the expenditure of TDT collections based on a determination that the related activity directly and primarily promotes tourism. The determination should follow appropriate legislative findings and due consideration of the specific needs and conditions of the County and show a distinct and direct relationship between the expenditure of TDT collections and the promotion of tourism and be supported by documentation referencing the applicable specific provision in the governing State law. In addition, the policies and procedures should identify circumstances under which the BCC could request the Attorney General to opine on actual or proposed uses of TDT collections.

Results of Follow-Up Procedures

The BCC partially corrected this finding. In February 2024, the BCC adopted new procedures¹⁹ to enhance TDT expenditure processes to require:

- Documentation of the BCC’s authorization for the expenditure of TDT collections based on a determination that the related activity directly and primarily promotes tourism in accordance with State law.
- Documentation referencing the applicable provisions of governing State law.

¹⁸ Section 125.0104, Florida Statutes.

¹⁹ *Tourist Development Tax Policies and Procedures, Section II, Part A.15.*

- Approvals by the BCC and the TDC and the applicable meeting dates at which the expenditures of TDT revenues were approved.

During the period October 2023 through February 2024, the BCC expended TDT collections of \$7.6 million, including \$46,039 in Marine Resource Division (MRD) salary and benefit costs.²⁰ To determine whether TDT expenditures were primarily for purposes authorized by State law and the promotion of tourism, we selected for examination 14 expenditures totaling \$2.1 million during that period, including MRD salary payments totaling \$10,789.

In September 2023, the BCC adopted Resolution R2023-119 that provides, in part, that 50 percent of the MRD Manager's salary and benefits and 60 percent of the MRD Environmental Program Manager's salary and benefits directly and primarily promote tourism in Escambia County. Upon inquiry, BCC personnel indicated that the percentages used to allocate the managers' salary and benefits to the TDT were based on approximations of the managers' time spent on MRD programs for purposes authorized by State law that directly and primarily promote tourism. However, although requested, BCC records were not provided to document the calculation of the percentages used, or that the salary and benefits costs charged to the TDT based on the percentages used were adjusted as necessary to reflect, the actual time the managers spent on MRD programs for purposes authorized by State law that directly and primarily promoted tourism. The percentages were not adjusted because the Resolution did not require that budgeted MRD allocation percentages be periodically adjusted to reflect actual time and effort spent on allowable TDT activities.

Absent such records, the BCC cannot demonstrate that the \$10,789 MRD salary costs paid with TDT funds were for purposes authorized by State law that directly and primarily promoted tourism.

Recommendation: We recommend that the BCC document the cost allocation methodology to support employee salary and benefits costs charged to the TDT and periodically adjust the charges allocated as necessary to reflect the actual time employees spend on MRD programs for purposes authorized by State law that directly and primarily promote tourism.

OBJECTIVES, SCOPE, AND METHODOLOGY

Pursuant to Section 11.45(3)(a), Florida Statutes, we conducted an operational audit of the Escambia County Board of County Commissioners (BCC) and the Clerk of the Circuit Court and Comptroller (Clerk) and issued our report No. 2023-112 in February 2023. Pursuant to Section 11.45(2)(j), Florida Statutes, the objective of this audit was to perform, no later than 18 months after the release of that report, appropriate follow-up procedures to determine the BCC's progress in addressing the findings and recommendations contained within report No. 2023-112.

We conducted this follow-up audit from December 2023 through April 2024 in accordance with applicable generally accepted government auditing standards. Those standards require that we plan and perform the follow-up audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

²⁰ The MRD provides local knowledge and expertise in issues that affect the health and accessibility of Escambia County's marine, freshwater, and coastal resources.

This audit was designed to identify, for those programs, activities, or functions included within the scope of the follow-up audit, weaknesses in management's internal controls significant to our audit objectives; instances of noncompliance with applicable governing laws, rules, regulations, contracts, grant agreements, and other guidelines; and instances of inefficient or ineffective operational policies, procedures, or practices. The overall objective of this audit was to identify problems so that they may be corrected in such a way as to improve government accountability and efficiency and the stewardship of management. Professional judgment has been used in determining significance and audit risk and in selecting the particular transactions, legal compliance matters, records, and controls considered.

As described in more detail below, for those programs, activities, and functions included within the scope of our follow-up audit, our audit work included, but was not limited to, communicating to management and those charged with governance the scope, objectives, timing, overall methodology, and reporting of our audit; obtaining an understanding of the program, activity, or function; exercising professional judgment in considering significance and audit risk in the design and execution of the research, interviews, tests, analyses, and other procedures included in the audit methodology; obtaining reasonable assurance of the overall sufficiency and appropriateness of the evidence gathered in support of our audit findings and conclusions; and reporting on the results of the audit as required by governing laws and auditing standards.

Our audit included transactions, as well as events and conditions, occurring during the period October 2023 through February 2024, and selected BCC actions taken prior and subsequent thereto. Our audit included the examination of pertinent BCC records and transactions, inquiry of BCC personnel, observation of procedures in practice, and additional follow-up procedures as appropriate. Unless otherwise indicated in this report, records and transactions were not selected with the intent of projecting the results, although we have presented for perspective, where practicable, information concerning the relevant population value or size and quantifications relative to the items selected for examination.

In conducting our audit, we:

- Reviewed applicable laws, ordinances, and policies and procedures, and interviewed BCC personnel to gain an understanding of BCC processes and determine whether the BCC had established effective policies and procedures for the expenditure of TDT collections.
- Examined the BCC and TDC meeting minutes for the period October 2023 through February 2024, and selected meeting minutes prior to that period, to identify any matters significant to the scope of the audit.
- Examined BCC records and reviewed BCC meeting minutes for the period October 2023 through February 2024, to determine if any construction or electrical projects were financed with TDT collections and performed using BCC services, employees, or equipment with estimated or actual costs exceeding the thresholds specified in Section 255.20, Florida Statutes.
- Examined BCC records and inquired of BCC personnel to determine whether the BCC amended County ordinances to conform with State law by clarifying that a portion of the TDT collected may be retained by the County for the costs of administration provided that portion shall not exceed 3 percent of collections and restricting the authorized uses of the various individual TDT collections to only those explicitly provided in State law.
- Examined BCC records and inquired of BCC personnel to determine whether the BCC had established policies and procedures that provided guidance for the conduct of the BCC's review of TDT expenditures reported and questioned by the TDC as unauthorized; required

documentation of the BCC's determination as to the allowability of TDT expenditures; and for ascertaining and taking appropriate administrative or judicial actions should the BCC determine the TDT expenditures to be unallowable.

- Examined BCC records and inquired of BCC personnel to determine whether the TDC questioned any TDT expenditures during the audit period.
- Examined BCC records and inquired of BCC personnel to determine whether the BCC established policies and procedures that require the BCC to document authorization for the expenditure of TDT collections based on a determination that the related activity directly and primarily promotes tourism and was for a specific purpose delineated in Section 125.0104, Florida Statutes, and identified circumstances under which the BCC could request the Attorney General to opine on actual or proposed uses of TDT collections.
- Examined BCC records and inquired of BCC personnel to determine whether the BCC requested the Attorney General to opine on actual or proposed uses of TDT collections during the audit period and whether such requests were in accordance with BCC policies and procedures.
- Examined 14 selected expenditures totaling \$2.1 million from the population of 2,147 TDT expenditures totaling \$7.6 million incurred during the period October 2023 through February 2024, to determine whether BCC records supporting expenditures of TDT revenues showed due consideration of the specific needs and conditions of the County; showed a distinct and direct relationship between the expenditure of TDT collections and the promotion of tourism; and were supported by documentation referencing the applicable specific provision in the governing State law.
- Inquired with BCC personnel to determine whether the BCC made any expenditures or entered into any contracts utilizing the authority granted by a state of emergency declared or renewed on or after July 1, 2021.
- Communicated on an interim basis with applicable officials to ensure the timely resolution of issues involving controls and noncompliance.
- Performed various other auditing procedures, including analytical procedures, as necessary, to accomplish the objectives of the audit.
- Prepared and submitted for management response the findings and recommendations that are included in this report, and which describe the matters requiring corrective actions. Management's response is included in this report under the heading **MANAGEMENT'S RESPONSE**.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



Sherrill F. Norman, CPA
Auditor General

MANAGEMENT'S RESPONSE



Board of County Commissioners Escambia County, Florida

Jeff Bergosh | Mike Kohler | Lumon J. May | Steven Barry
District One | District Two | District Three | District Five
Chairman

June 20, 2024

Honorable Sherrill F. Norman, CPA
Auditor General, State of Florida
Claude Denson Pepper Building, Suite G74
111 West Madison Street
Tallahassee, Florida 32399
flaudgen_audrpt_lg@aud.state.fl.us

Dear Ms. Norman:

Enclosed please find the Escambia County Board of County Commissioners' written statement of explanation responsive to Finding 3 of the Preliminary and Tentative Audit Findings, dated May 29, 2024. This response sets forth the proposed corrective action intended to be taken by the Board of County Commissioners to address Finding 3 set forth by your office.

Pursuant to your previous guidance, this response is provided under signature of the Chairman of the Board of County Commissioners. The Clerk of Court and Comptroller is copied on this response, and she was provided a draft prior to this submission.

It is hoped that the proposed corrective action is sufficient to address the concerns raised in Finding 3. Should any additional information be needed, please contact Alison Rogers, County Attorney, at alison_rogers@myescambia.com or 850-595-4970.

Sincerely,

A handwritten signature in blue ink, appearing to be "S. Barry", is written over a faint, larger blue signature graphic.

Steven Barry
Chairman, BCC

cc: Pam Childers, Clerk of Circuit Court and Comptroller
Enclosure

221 Palafox Place, Suite 400 | Pensacola, FL 32502 | (850) 595-4900

**RESPONSE TO AUDITOR GENERAL'S
PRELIMINARY AND TENTATIVE AUDIT FINDINGS**

Please accept this written response as Escambia County's obligatory response to Finding 3 of your operational audit of the Escambia County Board of County Commissioners Use of Tourist Development Taxes. We appreciate your full explanation of the Preliminary and Tentative Audit Findings at our in-person meeting on Tuesday, May 28, 2024. Following that meeting, as well as review of the written Preliminary and Tentative Audit Findings, it is our understanding that a response is required with regards to Finding 3.

Pursuant to Section 11.45(4)(d), Florida Statutes, the Escambia County Board of County Commissioners (hereinafter the "Board" or the "County") submits the following written statement of explanation with the proposed corrective action in response to the Auditor General's Preliminary and Tentative Audit Findings, Finding 3, dated May 29, 2024.

FINDING 3: TDT Expenditure Allowability

Upon further consideration, Escambia County has determined that commencing with the 2024-25 Fiscal Year, it will fund its Marine Resources Division (MRD) solely from the Escambia County General Fund. This means that one hundred percent of the MRD programs, operations and salaries will be funded from the General Fund and will no longer be funded with TDT funds. To memorialize this decision, the Board of County Commissioners will be asked to repeal Resolution R2023-119, with an effective date of October 1, 2024.

Additionally, to fully comply with Finding 3, Escambia County will complete a proper actual cost determination and analysis for those TDT funds that were used to support MRD tourism activities during the 2023-24 Fiscal Year. The County will submit this to the Clerk for recording at the end of the fiscal year.

The decision to end the practice of using TDT for MRD should alleviate any need to provide legislative findings regarding the MRD and tourism promotion as well as alleviate any need to annually complete a cost determination and analysis of the percentage of MRD expenses paid by TDT funds once the 2023-24 Fiscal Year ends on September 30, 2024.

We believe this response satisfies our obligation to respond to Finding 3. Please let me know if there is a need for any additional information. Minutes of the Board vote relative to the repeal of Resolution 2023-119 can be provided to you, as can the determination and analysis of the TDT funds used for MRD in this fiscal year when those documents are completed.