STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BOCA RATON RESORT AND CLUB,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 05-1781
	)	
PALM BEACH COUNTY, TAX COLLECTOR,	)	
	)	
	)	
Respondent.	)	
	)	

RECOMMENDED ORDER

Pursuant to notice, a final hearing was held in this case on October 11, 2005, by video teleconference with connecting sites in West Palm Beach and Tallahassee, Florida, before Errol H. Powell, a designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Joseph C. Moffa, Esquire
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For Respondent: Usher L. Brown, Esquire
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STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner is liable for the Local Option Tourist Development Tax assessment as set forth by Respondent's Notice of Reconsideration and Notice of Final Assessment, dated March 10, 2005, for the audit period October 1, 2000 through September 30, 2003.

PRELIMINARY STATEMENT

By Notice of Final Assessment, dated March 10, 2005, the Tax Collector of Palm Beach County (Tax Collector) notified Boca Raton Resort and Club (Resort) that the Resort owed Local Option Tourist Development Tax (TDT), for the audit period October 1, 2000 through September 30, 2003, inclusive, in the amount of $88,775.28, plus penalties ($44,387.64) and interest through March 31, 2005 ($29,081.06) minus overpayment ($19,583.64), resulting in an assessment totaling $142,660.34. The Resort disputed the assessment and requested a hearing. On May 17, 2005, this matter was referred to the Division of Administrative Hearings.

At hearing, the Resort presented the testimony of four witnesses and entered nine exhibits (Petitioner’s Exhibits numbered 1, 2, 6, 7, 9, 14, 15, 17, and 18)[1] into evidence. The Tax Collector presented the testimony of two witnesses and entered nine exhibits into evidence (Respondent's Exhibits numbered 1-9).

A transcript of the hearing was ordered. At the request of the parties, the time for filing post-hearing submissions was set for more than ten days following the filing of the transcript. The Transcript, consisting of one volume, was filed on December 6, 2005. The Resort filed its post-hearing submission on January 19, 2006, and the Tax Collector filed its post-hearing submission on January 20, 2006. Subsequently, on January 25, 2006, the Tax Collector requested leave to file a supplement to its post-hearing submission, filing the supplement together with its request. The Tax Collector's supplement was accepted, as filed, and the Resort was granted leave to file a supplement to its post-hearing submission, as well. The Resort filed its supplement on February 24, 2006.

The parties' post-hearing submissions and supplements have been considered in the preparation of this Recommended Order.

FINDINGS OF FACT

1. At all times material hereto, the Resort operated as a hotel licensed under the provisions of Chapter 509, Florida Statutes, and was located at 501 East Camino Real, Boca Raton, Palm Beach County, Florida 33432.

2. At all times material hereto, the Resort’s taxpayer identification number was 65-0762249 and Florida tax registration number was 60-03-1871843-99.

3. No dispute exists that Palm Beach County enacted the TDT, authorized by Section 125.0204, Florida Statutes. No dispute exists that TDT is levied on room rental revenues in Palm Beach County pursuant to Section 125.0104, Florida Statutes.

4. The Resort is subject to and is a dealer under the TDT. Pursuant to an ordinance enacted by Palm Beach County, the Resort is obligated to collect and remit to Palm Beach County the TDT due on taxable transactions.

5. A TDT audit of the Resort's business was performed by the Tax Collector covering the period from October 1, 2000 through September 30, 2003. The Tax Collector relied upon the information and documents provided by the Resort in performing the audit.

6. During the audit period, guests desiring to reserve and book a room at the Resort were required to pay a deposit, which guaranteed the reservation, of one night's room within 10 days of making the reservation. No matter what the length of stay, the deposit did not vary. The Resort did not collect any sales tax or TDT on the deposits.

7. A deposit confirmation form (Confirmation Form) always confirmed the deposit.

8. The front of the Confirmation Form contained the abbreviation “Guar” for guaranteed and, among other things, referred the guest to the reverse side of the Confirmation Form for important information (“PLEASE SEE REVERSE SIDE FOR IMPORTANT ADDITIONAL INFORMATION”). The guarantee, as indicated on the back of the Confirmation Form, was that the accommodations were guaranteed to the confirming-guest from the scheduled date of arrival through 2:00 a.m. of the next day.

9. The back of the Confirmation Form provided in pertinent part:

> DEPOSITS – A deposit of one night’s room revenue is required within 10 days of making a reservation. Advance deposits made via credit card will be billed at the time of booking. Your deposit will hold a room until 2 A.M. of the day following your scheduled arrival date. Upon arrival, the deposit is applied to your last confirmed night of the reservation. In the event of an early departure, the deposit is non-refundable unless the Resort is notified prior to or at check-in.
>
> CANCELLATIONS – Deposits are refundable in the event of cancellation, providing notice is received at least 14 days prior to scheduled arrival date between January 4th to April 30th, 7 days between May 1st to May 27th and October 1st to December 19th, and 72 hours between May 28th to September 30th. Cancellations, without penalty, for the Holiday/Christmas period (December 19th through January 3, 2004),

> must be received prior to November 30, 2003 or deposit will be subject to full forfeiture, in accordance with established resort policies. Please be sure to record your cancellation number to insure proper return.
>
> ACCOMMODATIONS – We will make every effort to meet requests for specific room types, views, and bedding preferences, however, on occasion, we cannot always accomplish such requests, and reserve the right to provide alternate accommodations.

10. For the majority of the audit period, forfeited deposits were identified as "no-show" revenue.

11. A block of rooms may be held available and reserved for a group. Fees are charged for unused rooms within a reserved room block. These fees are "attrition fees."

12. The Resort was unable to separately identify no-show revenue attributable to reservations for which persons failed to check-in by the cutoff day and time, as opposed to reservations for which persons canceled but failed to cancel within the required time-period. Furthermore, the Resort was unable to separately identify the general category of no-show revenue attributable to unused rooms within a reserved room block.

13. For the first four months of the audit period, the Resort asserted that it mistakenly included attrition fees in the no-show revenue. For the remainder of the audit period, the Resort asserts that attrition fees were not included in the no-show revenue. The Resort was unable to separately identify

attrition fees in the no-show revenue. Therefore, the attrition fees could not be separately factored out of the no-show revenue. Consequently, an inference is drawn and a finding of fact is made that, as to the first four months of the audit period, all revenue shown as no-show revenue is considered as no-show revenue.

14. During the audit period, the Resort identified no-show revenue in its monthly financial reports totaling $2,139,252.00.

15. No TDT was collected by the Resort on the no-show revenue of $2,139,252.00 collected during the audit period.

16. No dispute exists that, during the audit period, the TDT was due on the rental of the Resort's rooms and that the TDT was collected and remitted to the Tax Collector by the Resort.

17. Having conducted the audit, on March 1, 2004, the Tax Collector issued a "DRAFT" Notice of Intent to Make Audit Changes (Draft Notice). The Draft Notice indicated, among other things, that $88,775.28 in TDT was due, which included TDT in the amount of $85,570.08 on the no-show revenue of $2,139,252.00 and included denied exempt rental in the amount of $3,205.20; and that a credit in the amount of $19,583.64 was due, as an overpayment of tax, discovered by the auditor. Furthermore, the Draft Notice indicated that, as a result, a proposed total tax assessment was due in the amount of $149,252.07, which included penalties in the amount of $44,387.64 and interest in the amount

of $35,672.79 as of March 31, 2004, with additional interest of $57.74 per day through the date of the Resort's payment.

18. After the issuance of the Draft Notice, the Tax Collector's auditor met with a representative of the Resort. Of particular interest to the Resort was to return to its monthly financial reports and to separately indicate in the monthly financial reports the categories of no-show revenue representing failure to check-in, failure to timely cancel, and failure to use rooms in block (attrition revenue).

19. However, the Resort was unable to identify and separately indicate these categories of revenue.

20. Subsequently, the Resort was to provide the Tax Collector's auditor with an eight-month sample of financial records "to address the issue of no show revenues versus cancellation fees." The eight-month sample would "represent the transactions for the entire audit period." However, the Resort was unable to provide data that would allow for the separation of the categories. The sample was not provided.

21. After the sample was not provided by the Resort, the Resort took the position that none of its no-show revenue was subject to the TDT.

22. On June 7, 2004, after the Resort changed its position, the Tax Collector issued a Notice of Intent to Make Audit Changes (Notice). The Notice indicated, among other

things, that, as of June 21, 2004, the tax assessment for the audit period was in the amount of $153,986.75, which represented TDT on no-show rentals in the amount of $85,570.08, a denial of exempt rentals in the amount of $3,205.20, a credit for overpayment of TDT in the amount of $19,583.64, penalties in the amount of $44,387.64, and interest in the amount of $40,407.47, plus additional interest of $57.74 per day through the date of payment.

23. As to no-show revenues, the Notice indicated that such revenues were taxable and also cited, as supporting authority, Florida Administrative Code Rules 12A-1.061(5)(b) and 12A-1.061(5)(b)2. Citing Florida Administrative Code Rule 12A-1.061(5)(b), the Notice provided the following:

> *"Rental charges or room rates include deposits or prepayments that guarantee the guest or tenant the use or possession, or the right to the use or possession, of transient accommodations during a specified rental period under the provisions of an agreement with the owner or owner's representatives of transient accommodations. The owner or owner's representative is required to provide transient accommodations to any guest or tenant that enters into such an agreement and pays the required prepayment or deposit, even when the guest or tenant does not occupy the accommodation."*

Citing Florida Administrative Code Rule 12A-1.061(5)(b), the Notice provided the following:

> *"Example: A hotel guarantees that it will provide room accommodations on a designated date to potential guests that make reservations and pay a required room deposit. To receive a refund of the required room deposit, the potential guest must cancel his or her reservation by 4:00pm of the designated date. A potential guest that has made reservations and has paid the required room deposit fails to arrive at the hotel on the designated date to use the reserved room accommodations. Because the potential guest fails to cancel the reservations, the guest forfeits the room deposit. Even though the guest did not occupy a room at the hotel, the forfeited room deposit is subject to tax."*

Further, the Tax Collector indicated in the Notice that the "stated policy of [the Resort] that a guest's deposit will **hold a room** (which is a guarantee to the guest that they will have a room available) until the day following their scheduled arrival date. . . whether or not the guest shows up. It is irrelevant whether the guest shows up or not on the scheduled date of arrival, their deposit has paid for a room and this is a taxable transaction."

24. As to attrition and cancellation fees, the Notice indicated that such fees were considered "penalties" and were, therefore, "not taxable" revenue "because if a guest cancels their reservation too late, their deposit is not refunded even though a room is **not held** for them."

25. The Resort requested an audit conference. On August 6, 2004, an audit conference was held at which the parties were unable to reach an agreement.

26. On August 9, 2004, the Tax Collector issued a Notice of Proposed Assessment (Proposed Assessment). The Proposed Assessment indicated that the total assessment, including tax, penalty and interest accrued through August 20, 2004, was in the amount of $157,451.15. Additionally, the Proposed Assessment contained, among other things, a re-citation of Florida Administrative Code Rules 12A-1.061(5)(b) and 12A-1.061(5)(b)2. The Resort protested the Proposed Assessment.

27. By letter dated August 8, 2004, the Resort requested from the Department of Revenue (DOR) a Letter of Technical Advice (LTA) regarding the taxation of cancellations and no-shows.[2] By letter dated October 27, 2004, a representative of DOR issued a LTA on the facts and circumstances presented to DOR by the Resort, providing that the LTA was "not an official statement or opinion of this Department [DOR] but, instead, represents the opinion of the writer" and that if the Resort wished "an official binding statement on the issues, you may file a written request for a Technical Assistance Advisement . . . ."[3]

28. A finding of fact is made that the LTA was not binding on the parties. The LTA was not an opinion of DOR or a

statement of policy by DOR on the taxation of cancellations and no-shows.

29. The Resort did not request a Technical Assistance Advisement from DOR.

30. On January 4, 2005, the Tax Collector issued a Notice of Decision (Decision) denying the Resort's protest and a Notice of Final Assessment (Final Assessment).

31. The Decision contained, among other things, a part of the provision of Florida Administrative Code Rule 12A-1.061(3)(a)—*"**Rental charges or room rates** for the use or possession, or the right to the use or possession, of transient accommodations **are subject to tax**. . ."*—and the provisions of Florida Administrative Code Rule 12A-1.061(5)(b).

32. The Final Assessment indicated that the total assessment was in the amount of $141,515.48, plus additional interest of $19.40 per day, as of January 1, 2005, through the date of payment. The total assessment was reduced due to the Tax Collector discovering an error in the calculation of the interest.

33. The Resort requested a reconsideration of the Final Assessment. The Tax Collector denied the request for reconsideration.

34. The Resort requested a hearing pursuant to Chapter 120, Florida Statutes (2005).

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to Sections 120.569 and 120.57(1), Florida Statutes (2006).

36. Taxing statutes are strictly construed against a taxing authority. See Department of Revenue v. Anderson, 403 So. 2d 397, 399 (Fla. 1981). Doubtful language in taxing statutes should be resolved in favor of the taxpayer. United States Gypsum Co. v. Green, 110 So. 2d 409, 413 (Fla. 1959).

37. The Resort, as challenger to the assessment, has the burden of proof in showing by a preponderance of the evidence that the assessment is improper, whether in whole or in part. Homer v. Dadeland Shopping Center, Inc., 229 So. 2d 834, 837 (Fla. 1969); § 120.57(j), Fla. Stat. (2005). A tax assessment has a presumption of correctness and, in its proof, the Resort must exclude every reasonable hypothesis of a valid assessment, i.e., it must show that the assessment is so unreasonable as to be arbitrary and capricious. Homer, supra; District School Board of Leon County v. Askew, 278 So. 2d 272, 277 (Fla. 1973).

38. Section 125.0104, Florida Statutes, entitled "Tourist development tax; procedure for levying; authorized uses; referendum; enforcement," provides in pertinent part:[4]

(1) SHORT TITLE. --This section shall be known and may be cited as the "Local Option Tourist Development Act."

(2) APPLICATION; DEFINITIONS.
(a) Application. --The provisions contained in chapter 212 apply to the administration of any tax levied pursuant to this section.
(b) Definitions. --For purposes of this section:

* * *

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).

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.
(a) It is declared to be the intent of the Legislature that 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, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.
(b) Subject to the provisions of this section, any county in this state may levy and impose a tourist development tax on the exercise within its boundaries of the taxable privilege described in paragraph (a), except that there shall be no additional levy under this section in any cities or towns presently imposing a municipal resort tax as authorized under chapter 67-930, Laws of Florida, and this section shall not in any way affect the

powers and existence of any tourist development authority created pursuant to chapter 67-930, Laws of Florida. . .

* * *

(f) The tourist development tax shall be charged by the person 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.

(g) The person receiving the consideration for such rental or lease shall receive, account for, and remit the tax to the Department of Revenue at the time and in the manner provided for persons who collect and remit taxes under s. 212.03. The same duties and privileges imposed by chapter 212 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 Department of Revenue in the administration of that chapter shall apply to and be binding upon all persons who are subject to the provisions of this section. . . .

* * *

(k) The Department of Revenue shall promulgate such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section.

* * *

(4) ORDINANCE LEVY TAX; PROCEDURE.

(a) The tourist development tax shall be levied and imposed pursuant to an ordinance containing the county tourist development plan prescribed under paragraph (c), enacted by the governing board of the county. . .

* * *

(10) LOCAL ADMINISTRATION OF TAX.
(a) A county levying a tax under this section or s. 125.0108 may be exempted from the requirements of the respective section that:
1. The tax collected be remitted to the Department of Revenue before being returned to the county; and
2. The tax be administered according to chapter 212,

if the county adopts an ordinance providing for the local collection and administration of the tax.

* * *

(c) A county adopting an ordinance providing for the collection and administration of the tax on a local basis shall also adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such authority to the Department of Revenue. If the county elects to assume such responsibility, it shall be bound by all rules promulgated by the Department of Revenue pursuant to paragraph (3)(k), as well as those rules pertaining to the sales and use tax on transient rentals imposed by s. 212.03. The county may use any power granted in this section 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. The county may use a certified public accountant licensed in this state in the administration of its statutory duties and responsibilities. . . .

39. Section 212.03, Florida Statues, entitled "Transient rentals tax; rate, procedure, enforcement, exemptions," provides in pertinent part:[5]

> (1) It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp. However, any person who rents, leases, lets, or grants a license to others to use, occupy, or enter upon any living quarters or sleeping or housekeeping accommodations in apartment houses, roominghouses, tourist camps, or trailer camps, and who exclusively enters into a bona fide written agreement for continuous residence for longer than 6 months in duration at such property is not exercising a taxable privilege. For the exercise of such taxable privilege, a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental. Such tax shall apply to hotels, apartment houses, roominghouses, or tourist or trailer camps whether or not there is in connection with any of the same any dining rooms, cafes, or other places where meals or lunches are sold or served to guests.

40. DOR promulgated Florida Administrative Code Rule 12A-1.061, entitled "Rentals, Leases, and Licenses to Use Transient Accommodations," which addresses the TDT and provides in pertinent part:[6]

(1) Except as provided in paragraphs (a) through (d), every person is exercising a taxable privilege when engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations, unless the rental charges or room rates are specifically exempt.

* * *

(2) DEFINITIONS. For the purposes of this rule, the following terms are defined:

* * *

(e) "Rental charges or room rates" means the total consideration received solely for the use or possession, or the right to the use or possession, of any transient accommodation. See subsection (3) of this rule.

(f) "Transient accommodation" means each living quarter or sleeping or housekeeping accommodation in any hotel, motel, apartment house, multiple unit structure (e.g., duplex, triplex, quadraplex, condominium), roominghouse, . . or other structure, place, or location held out to the public to be a place where living quarters or sleeping or housekeeping accommodations are provided to transient guests for consideration. Each room or unit within a multiple unit structure is an accommodation.

* * *

(3) RENTAL CHARGES OR ROOM RATES.

(a) Rental charges or room rates for the use or possession, or the right to the use or possession, of transient accommodations are subject to tax, whether received in cash, credits, property, goods, wares, merchandise, services, or other things of value.

* * *

(5) DEPOSITS, PREPAYMENTS, AND RESERVATION VOUCHERS.

(a) The following deposits or prepayments paid by guests or tenants to the owner or owner's representative of transient accommodations are NOT rental charges or room rates and are not subject to tax:

1.a. Deposits or prepayments that are required to be paid to secure a potential guest or tenant the right to rent, lease, let, or license a transient accommodation by a time certain. Such deposits do not guarantee the transient guest or tenant the use or possession, or the right to the use or possession, of transient accommodations.

* * *

c. Example: A potential guest makes reservations at a hotel for a designated night. The hotel requires a deposit equal to the room rate to hold a room until a time certain, such as 6:00 p.m., on the designated night. The guest does not arrive at the hotel and fails to cancel the reservation. The hotel retains the deposit. Because payment of the deposit did not provide the potential guest the right to the use of the room and the hotel did not collect any tax from the potential guest, the room deposit is not subject to tax.

* * *

(b) Rental charges or room rates include deposits or prepayments that guarantee the guest or tenant the use or possession, or the right to the use or possession, of transient accommodations during a specified rental period under the provisions of an agreement with the owner or owner's representative of transient accommodations. The owner or owner's representative is required to provide transient accommodations to any guest or tenant that enters into such an agreement and pays the required

> prepayment or deposit, even when the guest or tenant does not occupy the accommodation.
>
> * * *
>
> 2. Example: A hotel guarantees that it will provide room accommodations on a designated date to potential guests that make reservations and pay a required room deposit. To receive a refund of the required room deposit, the potential guest must cancel his or her reservations by 4:00 p.m. of the designated date. A potential guest that has made reservations and has paid the required room deposit fails to cancel the reservations and fails to arrive at the hotel on the designated date to use the reserved room accommodations. Because the potential guest fails to cancel the reservations, the guest forfeits the room deposit. Even though the guest did not occupy a room at the hotel, the forfeited room deposit is subject to tax.

41. No dispute exists that Palm Beach County decided that it would collect the TDT and took the appropriate steps to do so. Furthermore, no dispute exists that Palm Beach County is authorized to collect the TDT.

42. No dispute exists that, as a result of Palm Beach County assuming all responsibility for the TDT, Palm Beach County was bound by the rules promulgated by DOR pertaining to the TDT and the sales and use tax on transient rentals.

43. No dispute exists that the Resort rents hotel accommodations for a term of six months or less.

44. The evidence demonstrates that, during the audit period, the Resort was exercising a taxable privilege by

engaging in the business of renting hotel/transient accommodations. §§ 212.03 and 125.0104(3), Fla. Stat.

45. The Resort disputes that the deposits collected under its circumstances of renting hotel/transient accommodations are subject to the TDT.

46. In Florida Administrative Code Rule 12A-1.061, DOR addresses deposits or prepayments of transient accommodations and deposits or prepayments that are not rental charges or room rates and are not subject to tax and that are rental charges or room rates and are subject to tax. The evidence demonstrates that the rental charges or room rates include the deposits collected by the Resort as no-shows and are, therefore, subject to tax pursuant to Florida Administrative Code Rules 12A-1.061(5)(b) and 12A-1.061(5)(b)2. The deposits guarantee the potential guests the use or possession or right to the use or possession of the Resort's transient accommodations. The Resort guarantees to provide room accommodations on a designated date to potential guests who make a reservation and pay a required room deposit. To receive a refund of the deposit, potential guests must cancel the reservation by a time certain of the designated date; but, if guests fail to cancel the reservations and fail to arrive at the Resort on the designated date in accordance with the Resort's requirements, such potential guests forfeit the deposit. The forfeited deposits are subject to tax.

47. During the audit period, the forfeited deposits were reflected by the Resort as no-show revenue. The Resort asserts that attritions were also reflected as no-show revenue in its monthly financial reports during the first four months of the audit period. In its Notice, the Tax Collector indicated that attrition and cancellation fees were considered penalties and were, therefore, not taxable revenue. But, the Resort was unable to identify the attritions and factor them out of the no-show revenue. Consequently, all no-show revenue reflected by the Resort's financial records, during the audit period, and provided to the Tax Collector by the Resort were taxable.

48. In order for the Resort's no-show revenue, during the audit period, not to be subject to the TDT, the Resort must show that it falls within an exemption from the tax. A tax exemption is to be strictly construed against the claimer of the exemption. Capital City Country Club, Inc. v. Tucker, 613 So. 2d 448 (Fla. 1993); State ex rel. Szabo Food Services, Inc. v. Dickinson, 286 So. 2d 529 (Fla. 1973); Asphalt Pavers, Inc. v. Department of Revenue, 584 So. 2d 55 (Fla. 1st DCA 1991). Moreover, doubtful language in exemption statutes is construed against the taxpayer. United States Gypsum Co. v. Green, supra.

49. The Resort has the burden to demonstrate its entitlement to the exemption. Green v. Pederson, 99 So. 2d 292 (Fla. 1957).

50. The Resort attempted to present evidence to demonstrate that the forfeited deposits fell within Florida Administrative Code Rule 12A-1.061(5)(a), were not taxable and were, therefore, not subject to the TDT. As set forth above, the evidence demonstrates to the contrary. The evidence fails to demonstrate that the Resort is exempt from the TDT tax. Furthermore, the evidence fails to demonstrate that the forfeited deposits are exempt from the TDT tax.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

RECOMMENDED that the Palm Beach County Tax Collector enter a final order affirming the final assessment of Local Option Tourist Development Tax against Boca Raton Resort and Club, for the audit period October 1, 2000 through September 30, 2003, in the total amount of $141,515.48 (which includes tax, penalties, and interest), plus additional interest of $19.40 per day, as of January 1, 2005, through the day of payment.

DONE AND ENTERED this 1st day of June, 2006, in Tallahassee, Leon County, Florida.

ERROL H. POWELL
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 1st day of June, 2006.

ENDNOTES

[1/] As to Petitioner's Exhibit 7, by Order dated October 4, 2005, as a result of the Tax Collector filing a Motion in Limine and Motion for Protective Order, limitations were placed on the use of the Letter of Technical Advice from the Department of Revenue during discovery and at hearing.

[2/] Petitioner's Exhibits 6 and 9 were admitted for the limited purpose to show that the Resort sought the guidance from the Department of Revenue through a Letter of Technical Advice.

[3/] Id.

[4/] The pertinent provisions of Section 125.0104, Florida Statutes, did not change for the years 2000 through 2003 of the audit period. Consequently, the citing of Section 125.0104, Florida Statutes, is applicable for the years 2000 through 2003.

[5/] The pertinent provisions of Section 212.03, Florida Statutes, did not change for the years 2000 through 2003 of the audit period. Consequently, the citing of Section 212.03, Florida Statutes, is applicable for the years 2000 through 2003.

[6/] The pertinent provisions of Florida Administrative Code Rule 12A-1.061 did not change for the years 2000 through 2003 of the audit period. Consequently, the citing of Florida Administrative Code Rule 12A-1.061 is applicable for the years 2000 through 2003.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order should be filed with the agency that will issue the final order in this case.