

Item #24⁽¹⁾

ADDITIONAL MATERIAL

**10:00 a.m. Regular Meeting
November 14, 2017**

**SUBMITTED AT THE REQUEST OF
OFFICE of the COUNTY AUDITOR**



OFFICE OF THE COUNTY AUDITOR

115 S. Andrews Avenue, Room 520 • Fort Lauderdale, Florida 33301 • 954-357-7590 • FAX 954-357-7592

Advisory No. 102

November 13, 2017

TO: Honorable Mayor and Members of the Board of County Commissioners
FROM: Bob Melton, County Auditor *Bob*
SUBJECT: Agenda Item No. 24 – Memorandum of Understanding with HomeAway.com, Inc. regarding collection of Broward County Tourist Development Taxes

Agenda Item No. 24 is a Memorandum of Understanding (MOU) Regarding Collection of Broward County Tourist Development Taxes between HomeAway.com, Inc. for the prospective collection and remittance of tourist development taxes (TDT) commencing as of December 1, 2017. The MOU reserves both parties' rights, claims, and defenses regarding past-due TDT. It also includes provisions entitled "County Audit and Inspection of Records" (Audit Rights).

It is important that you be aware that the Audit Rights provisions will not clearly allow for adequate determination of whether all applicable taxes have been remitted. This represents an audit scope restriction that hampers, if not precludes, an audit to ensure taxes have been remitted for all applicable properties that have been rented on a short-term basis. The provisions restrict access to homeowner and property addresses. Specifically, the provisions state that:

"the County agrees to audit HomeAway in the manner provided under the County Code, except that: (a) HomeAway will not be required on the basis of this MOU to disclose the Homeowner or Guest name or property address at issue; and (b) the County shall not, directly or indirectly, audit any individual Guest or Homeowner relating to such transactions unless and until an audit of HomeAway by the County has been exhausted with the matter not resolved to the County's full satisfaction. Nothing in this paragraph prevents the County from auditing an individual who (or entity that) happens to be a Homeowner based upon transactions that the County learns of independently."

Such restrictions, unless a subpoena is issued by the County for all properties, would preclude an audit under the MOU to ensure individual properties are having taxes remitted for their rental. Consequently, there is a risk that taxes may not be collected and/or remitted to Broward County for all rentals, and we would have no reliable method to detect such.

We are submitting this Advisory solely to ensure you have complete information regarding the audit provisions before you vote on this agenda item. We are not recommending disapproval of the item. We have been advised by the County Attorney's Office that these provisions are consistent with agreements entered into by the state and other counties. We have not performed a review of those agreements. Further, the County Attorney's Office has advised that the MOU provides that any additional provision that HomeAway.com Inc. provides to any other jurisdiction will also be available to the County.

Also, to my knowledge, we have not been involved in negotiations of this and other similar agreements pertaining to the vacation rental companies. We suggest that management consult our office on such ongoing and future matters.

If you have any questions, or if you would like more information, please feel free to contact me.

BM/JS/besa

cc: Bertha Henry, County Administrator
Andrew Meyers, County Attorney