

**IN THE CIRCUIT COURT OF THE SEVENTEENTH JUDICIAL CIRCUIT,
IN AND FOR BROWARD COUNTY, FLORIDA**

BROWARD COUNTY, a political
subdivision of the State of Florida,

CASE NO.

Plaintiff,

vs.

AIRBNB, INC., a Delaware corporation,

Defendant.

COMPLAINT

Plaintiff Broward County, a political subdivision of the State of Florida (the “County”), brings this action seeking a judicial declaration that Defendant Airbnb, Inc. (“Airbnb”) owes and is legally obligated to pay the applicable tourist development tax due on the rental of short-term accommodations in Broward County transacted on the Airbnb’s internet platform.

I. INTRODUCTION

1. Airbnb advertises that it “uniquely leverages technology to economically empower millions of people around the world to unlock and monetize their spaces, passions and talents to become hospitality entrepreneurs” and that its “accommodation marketplace provides access to 5+ million unique places to stay in more than 81,000 cities and 191 countries.” <https://press.airbnb.com/about-us/> (last visited Oct. 15, 2018).

2. Airbnb operates an online platform through which guests can rent private homes or rooms in Broward County for short-term accommodations. Through its online platform, Airbnb collects and receives the consideration from the guest for the rental. Pursuant to state law and local ordinance, tourist development taxes are owed on the rental of short-term accommodations in Broward County.

3. From May 1, 2017, to date, Airbnb has collected and remitted tourist development taxes to the County for rentals of short-term accommodations transacted on Airbnb's online platform pursuant to an executed agreement between Airbnb and the County.

4. For time periods prior to May 1, 2017, Airbnb has received consideration for rentals of short-term accommodations transacted on Airbnb's online platform, but has failed to remit the required tourist development tax due to the County.

II. PARTIES, JURISDICTION, AND VENUE

5. The County is a political subdivision of the State of Florida and is authorized to bring this action pursuant to Section 125.15, Florida Statutes.

6. The County is authorized under Florida and local law to enforce and collect tourist development tax, including pursuant to Section 125.0104, Florida Statutes, and Section 31½-16, Broward County Code of Ordinances ("County Code").

7. Airbnb is a Delaware corporation registered to transact business in the State of Florida, and maintains a registered agent in Tallahassee, Florida. Airbnb is also a registered dealer of transient accommodations in Broward County. Airbnb has its principal place of business at 888 Brannan St., San Francisco, California, and does business throughout the State of Florida, including in Broward County.

8. Airbnb is engaged in an ongoing business venture throughout the State of Florida, including in Broward County, namely, directly and indirectly marketing, offering, and selling short-term rentals of Florida properties.

9. Airbnb operates websites that advertise and provide a platform on which to transact the rental of short-term accommodations in Broward County. These websites include www.airbnb.com and airbnb.org (collectively, "Airbnb Websites").

10. The Airbnb Websites are accessible in Florida to homeowners and other entities who utilize the Airbnb Websites to rent properties in Broward County for which tourist development tax is due and should be collected and remitted. These Airbnb Websites are available to Florida residents who are looking to rent a short-term accommodation in Broward County or elsewhere in Florida.

11. As of October 2018, Airbnb advertises at least 374 accommodations in Broward County for rental, which advertisements were available for rental by any Florida resident across the State of Florida.

12. The advertisement of short-term rental accommodations in Broward County, including to Florida residents, on the Airbnb Websites constitutes substantial and not isolated activities within Florida and the operating, conducting, engaging in, or carrying on of a business or business venture in Florida sufficient to subject Airbnb to personal jurisdiction within the State of Florida under Section 48.193, Florida Statutes.

13. Airbnb currently collects and remits tourist development tax to Broward County on rentals of short-term accommodations in Broward County transacted on the Airbnb Websites.

14. The extensive contacts of Airbnb with the State of Florida are more than sufficient to establish the requisite minimum contacts with the State of Florida such that maintenance of this suit does not offend traditional notions of fair play and substantial justice, and such that Airbnb should reasonably have anticipated being haled into court in the State of Florida.

15. This Court has jurisdiction of this matter pursuant to Section 86.011, Florida Statutes. Venue is proper in Broward County as the actions giving rise to this action occurred in Broward County, Florida.

16. All conditions precedent to the institution of this lawsuit have been satisfied or waived.

III. FACTUAL ALLEGATIONS

A. TOURIST DEVELOPMENT TAXES GENERALLY

17. The County is authorized to levy taxes on the “taxable privilege” of renting, leasing, or letting “for consideration any living quarters or accommodations . . . for a term of 6 months or less.” § 125.0104, Fla. Stat. These taxes are referred to as tourist development taxes.

18. The applicable tourist development tax is required to be charged “by the person receiving the consideration for the lease or rental” and “collected from the lessee, tenant, or customer at the time of payment of the consideration for such lease or rental.” § 125.0104(3)(f), Fla. Stat.; *see also* § 212.03(2), Fla. Stat. (requiring that tourist development tax “be charged by the lessor or person receiving the rent” and that it is “due and payable at the time of the receipt of such rental payment by the lessor or person . . . who receives said rental payment.”).

19. The entity receiving the consideration for the rental has the obligations of a “dealer,” in connection with remitting the funds to the applicable government entity, and of maintaining books and records of the transactions. § 125.0104(g), Fla. Stat. (“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.”); § 212.03(2), Fla. Stat. (requiring the entity receiving the rent to “remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter.”); § 31½-16(6)-(7), County Code.

20. If a person who is taxable under Section 125.0104 fails or refuses to collect the required tax, that person is both personally liable for the tax and guilty of a misdemeanor of the first degree. § 125.0104(8)(a), Fla. Stat.; § 31½-16(18), County Code.

21. Under Florida law, the person receiving the consideration for a short-term rental has all the same duties and privileges imposed by Chapter 212 on “dealers.” § 125.0104(3)(g), Fla. Stat.; § 212.06(2)(j) and (k), Fla. Stat.; § 31½-16(8), County Code.

22. Rule 12A-1.061 of the Florida Administrative Code further clarifies the scope of a “dealer” for tourist development taxes and explains that three categories of persons are required to register as dealers: (a) every person that rents, leases, lets, or grants a license to others to use any transient accommodation; (b) agents, representatives, or management companies that collect and receive rent as the owner’s representative; and (c) if the agent, representative, or management company has no role in collecting or receiving the rental charges or room rates, then the person receiving such rent is required to register as a dealer. Fla. Admin. Code R. 12A-1.061(9)(a); *see also* § 125.0104(3)(g), Fla. Stat.

B. TOURIST DEVELOPMENT TAX IN BROWARD COUNTY

23. Section 125.0104(10) permits a county to self-administer the collection of tourist development taxes. § 125.0104(10), Fla. Stat. A county electing to self-administer tourist development taxes may exercise the powers otherwise granted to the Florida Department of Revenue “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.” § 125.0104(10)(c), Fla. Stat.

24. Broward County has elected self-administration of the tourist development tax. § 31½-16, County Code.

25. For time periods prior to May 1, 2017, short-term rental transactions in Broward County were subject to a five percent (5%) tourist development tax. § 125.0104, Fla. Stat.; § 31½-16, County Code.

26. As authorized by state law, Broward County has assumed all powers and authority granted to the Florida Department of Revenue in Section 125.0104, Florida Statutes, Chapter 212,

Florida Statutes, and as further incorporated therein “to determine the amount of the taxes, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest.” § 31½-16(17), County Code.

27. A violation of Chapter 31½ of the County Code is punishable as provided in Section 125.69, Florida Statutes. § 31½-16(13)(b), County Code. Section 125.69 entitles the County to recover court fees and costs as a prevailing party. § 125.69(3), Fla. Stat. Unpaid taxes also constitute a lien on the real and personal property of the dealer and are collectible as same. § 31½-16(13)(c), County Code; § 212.15(4), Fla. Stat.

C. AIRBNB FAILED TO COLLECT OR REMIT TOURIST DEVELOPMENT TAX DUE TO BROWARD COUNTY

28. Through the Airbnb Websites, Airbnb offers short-term rental accommodations in Broward County. Homeowners in Broward County register their homes or rooms in their homes for rent on the Airbnb Websites. Prospective guests looking to rent a home or room book a reservation on the Airbnb Websites and pay for the rental through the Airbnb Websites. Airbnb directly or indirectly collects the funds and remits a portion to the homeowner.

29. Airbnb receives consideration from guests for the right to occupy living quarters or accommodations for periods of less than six months. Therefore, Airbnb is responsible for collecting and remitting tourist development tax to the County. *See* Fla. Admin. Code R. 12A-1.061(9)(a); *see also* § 125.0104(3)(g), Fla. Stat.; § 31½-16(8), County Code.

30. Tourist development taxes are due on “the total consideration” received solely for the use or possession of the transient accommodation, including “any charge or surcharge” for the use of services required to be paid by the guest as a condition of the rental. Fla. Admin. Code R. 12A-1.061(3)(e), 1.06(4)(b). As part of every transaction, Airbnb charges guests a “service fee.”

31. Airbnb is liable for tourist development taxes whether or not it qualifies as a “dealer” under applicable statutes and rules. Airbnb is exercising a taxable privilege by actively “engaging in the business” of short-term lodging. Fla. Admin. Code R. 12A-1.061(2).

32. However, Airbnb is also itself a dealer and required to register as a dealer. Airbnb is the person receiving the consideration and therefore is the “dealer” under applicable law. Fla. Admin. Code R. 12A-1.061(9)(a); *see also* § 125.0104(3)(g), Fla. Stat.; § 31½-16(8), County Code (“The person receiving the consideration for such rental or lease (hereinafter “dealer”) shall receive, account for, and remit the tax . . .”).

33. Airbnb is also the entity that grants to others the license or right to use the transient accommodation. Airbnb is therefore a “dealer” as defined in Section 212.06(2)(j), Florida Statutes, as Airbnb “leases or grants a license to use” living quarters or accommodations for periods of less than six months.

34. Alternatively, Airbnb is also acting as an agent or representative of the homeowners for purposes of Rule 12A-1.061(9)(a). Airbnb is authorized by the homeowner to consummate the transaction through Airbnb’s online platform, and Airbnb provides the mechanism for the guest to pay for the rental. Airbnb is therefore an “agent” of the homeowner that collects and receives rent as the owner’s representative.

35. Alternatively, Airbnb is the person receiving the rent for which the agent of the owner has no role in collecting or receiving the rental charges.

36. Finally, Airbnb is also a dealer as defined in Section 212.06(2)(k), Florida Statutes, because Airbnb provides a service taxable under Chapter 212.

37. Despite the foregoing, Airbnb has failed to collect or to remit tourist development tax to the County for time periods prior to May 1, 2017.

38. Airbnb's failure to collect and remit the applicable tourist development taxes has damaged the County by depriving the County of revenues to which it is entitled.

D. AIRBNB AND THE COUNTY ENTERED INTO A MEMORANDUM OF UNDERSTANDING

39. Airbnb entered into a Memorandum of Understanding ("MOU") with Broward County dated April 7, 2017, in which Airbnb agreed to collect and remit tourist development taxes for all short-term accommodation rentals in Broward County for time periods on and after May 1, 2017.

40. Airbnb has collected and remitted certain tourist development taxes to the County since May 1, 2017. This lawsuit does not address the amounts due or paid for time periods on or after May 1, 2017.

41. The MOU expressly addresses only prospective tax treatment and reserves both parties' rights as to tourist development taxes due and owing for periods prior to May 1, 2017. The MOU does not waive any claims or defenses as to Airbnb's obligations under the tourist development tax statutory and local regulatory provisions. However, in the MOU, Airbnb did agree to collect and remit tourist development tax on a prospective basis:

M. Collection and remittance of Tourist Taxes under this MOU shall begin on the Effective Date. Nothing contained herein shall impair or prevent the County from collecting or seeking to collect any amounts related to Tourist Taxes, based on any transaction that occurred prior to the Effective Date of this MOU, from any Guest, Host, or Airbnb. Moreover, nothing contained in this MOU will constitute a release or waiver of any existing or future claim, cause of action, or indebtedness that the County may have, or may claim to have, against any Guest, Host, or Airbnb (or affiliates of Airbnb).

42. In addition, in the MOU, Airbnb did agree to register as a dealer:

H. The Parties agrees that, pursuant to this MOU and during the period in which it is effective, Airbnb shall register as a Dealer for the reporting, collection, and remittance of Tourist Taxes, in connection with its obligations assumed under this MOU. Registration with the County and the issuance of any certificate of authority will be in the name of Airbnb, Inc. at 888 Brannan Street, 4th Floor, San Francisco, CA 94103. Airbnb, Inc. will be the registered taxpayer on behalf of any subsidiary or affiliate of Airbnb collecting Tourist Taxes from Guests. The County reserves the right to audit individual Guests or Hosts as allowed under Florida Law.

43. In accordance with the MOU, Airbnb registered as a dealer for the collection and remittance of tourist development tax.

COUNT I – DECLARATORY JUDGMENT (DUTY TO PAY)

44. The County realleges and incorporates by reference the allegations contained in paragraphs 1 through 44, as if fully set forth herein.

45. This is an action for declaratory judgment, pursuant to Chapter 86, Florida Statutes, that Airbnb is obligated to pay the County the applicable tourist development taxes for transactions occurring prior to May 1, 2017.

46. The County contends that Airbnb has a legal duty to collect and remit tourist development tax to the County on the rental of short-term accommodations in Broward County for time periods prior to May 1, 2017. Airbnb disputes this obligation and has failed to remit the taxes owed.

47. There is a bona fide, actual, present, and practical need for a declaration as to the applicability of state and local law and rules to Airbnb's operations in Broward County.

48. The declaration sought deals with a present, ascertained or ascertainable set of facts, and an ascertainable controversy and justiciable question as to those facts, namely the facts pled in this Complaint.

49. The obligation of Airbnb to collect and remit tourist development taxes, and the right of the County to receive same, is dependent upon the resolution of this dispute.

50. Airbnb and the County have actual, present, adverse, and antagonistic interests in the subject matter of this dispute: the County maintains that Airbnb must pay back taxes, but Airbnb denies this obligation.

51. The persons who have or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter are named in this action.

52. All conditions precedent to the bringing of this action have been met, and the issuance of a declaratory judgment would be in the public interest and the interests of the parties.

COUNT II – DECLARATORY JUDGMENT (DEALER)

53. The County realleges and incorporates by reference the allegations contained in paragraphs 1 through 44, as if fully set forth herein.

54. This is an action for declaratory judgment, pursuant to Chapter 86, Florida Statutes, that Airbnb is obligated as a dealer for tourist development taxes on transactions occurring prior to May 1, 2017.

55. The County contends that Airbnb is a “dealer,” including under Section 31½-16(8), County Code, Section 125.0104(3)(g), Florida Statutes, and Rule 12A-1.061(9)(a), Florida Administrative Code. Airbnb disputes that it is a dealer under Florida or local law.

56. There is a bona fide, actual, present, and practical need for a declaration as to the applicability of state and local laws and rules to Airbnb’s operations in Broward County.

57. The declaration sought deals with a present, ascertained or ascertainable set of facts, and an ascertainable controversy and justiciable question as to those facts, namely the facts set forth in this complaint.

58. The obligation of Airbnb to collect and remit tourist development taxes as a dealer, and the right of the County to receive same, is dependent upon the resolution of this dispute.

59. Airbnb and the County have actual, present, adverse, and antagonistic interests in the subject matter of this dispute: the County maintains that Airbnb has the obligations of a dealer to pay back taxes, which Airbnb denies.

60. The persons who have or reasonably may have an actual, present, adverse, and antagonistic interest in the subject matter are named in this action.

61. All conditions precedent to the bringing of this action have been met, and the issuance of a declaratory judgment would be in the public interest and the interests of the parties.

PRAYER FOR RELIEF

WHEREFORE, Broward County respectfully requests that this Court:

(a) Declare that Airbnb has a legal duty to remit tourist development taxes to the County on rental transactions for short-term accommodations in Broward County transacted through Airbnb's online platform;

(b) Declare that Airbnb is a "dealer," under Sections 125.0104(3)(g) and 212.06(2)(a)(j), Florida Statutes, Rule 12A-1.061(9)(a), Florida Administrative Code, and § 31½-16(7)-(8), County Code, and required to register and collect and remit tourist development tax as such;

(c) Determine the amount of tourist development tax that Airbnb owes to Broward County for all time periods prior to May 1, 2017, and order that such amounts be promptly paid, together with any applicable interest, penalties, and attorneys' fees; and

(d) Grant such other relief as this Court deems proper.

Respectfully submitted,

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