

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: SB 392

INTRODUCER: Senator Haridopolos

SUBJECT: Timeshare Resort Taxation

DATE: March 27, 2009

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Rhea	RI	<b>Favorable</b>
2.	Hrdlicka	Cooper	CM	<b>Favorable</b>
3.			FT	
4.			WPSC	
5.				
6.				

**I. Summary:**

The bill clarifies the laws governing state and local taxes due from timeshare transactions and from transient stays at timeshare resorts. The bill provides that the tourist development tax, the tourist impact tax, the transient rentals tax, and the convention development tax are applicable to transient stays at timeshare resorts.

The bill specifies the types of transactions that are not taxable subject to the tourist development tax, the tourist impact tax, the transient rentals tax, and the convention development tax. The exempted transactions include timeshare exchanges, fees charged by a third party to facilitate a timeshare exchange, and inspection packages. Inspection packages are a timeshare marketing practice in which the seller or operator of a timeshare offers a one-time inspection privilege package to prospective timeshare buyers.

The bill includes mobile home parks, recreational vehicle parks, and condominiums as the types of facilities that may be subject to a transient rental tax. These types of facilities are currently specifically listed as the types of facilities that are subject to the local option tourist development tax, the tourist impact tax, and the convention development tax.

The bill provides an effective date of July 1, 2009. The bill further provides that it is intended to be clarifying and remedial in nature, and does not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 212.03, and 212.0305.

## II. Present Situation:

### Taxation of Transient Rentals

Transient rentals are potentially subject to the following taxes:

1. Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the “total consideration charged for such lease or rental.”
  - a. The tourist development tax may be levied at the rate of 1 or 2 percent.<sup>1</sup> Currently, 59 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.<sup>2</sup>
  - b. An additional tourist development tax of 1 percent may be levied.<sup>3</sup> Currently 41 counties levy this tax; only 54 counties are currently eligible to levy this tax.<sup>4</sup>
  - c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.<sup>5</sup> Currently 28 counties levy this additional tax; all 67 counties are eligible to levy this tax.<sup>6</sup>
  - d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.<sup>7</sup> Only Monroe, Orange, and Osceola counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange and Osceola counties impose the tax.<sup>8</sup>
  - e. An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.<sup>9</sup> Out of 65 counties eligible to levy this tax, only 13 do.<sup>10</sup>
2. The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total rental charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.<sup>11</sup>
3. The transient rentals tax under s. 212.03, F.S., is levied in the amount of 6 percent of the total rental charged for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.
4. The convention development tax under s. 212.0305, F.S. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-

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<sup>1</sup> Section 125.0104(3)(c), F.S.

<sup>2</sup> 2008 Local Government Financial Information Handbook, prepared by the Florida Legislative Committee on Intergovernmental Relations.

<sup>3</sup> Section 125.0104(3)(d), F.S.

<sup>4</sup> See fn. 2, supra.

<sup>5</sup> Section 125.0104(3)(l), F.S.

<sup>6</sup> See fn. 2, supra.

<sup>7</sup> Section 125.0104(3)(m), F.S.

<sup>8</sup> See fn. 2, supra.

<sup>9</sup> Section 125.0104(3)(n), F.S.

<sup>10</sup> See fn. 2, supra.

<sup>11</sup> Id.

Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).<sup>12</sup> No county authorized to levy this tax can levy more than 2 percent of the of the tourist development tax, excluding the professional sports franchise facility tax.<sup>13</sup>

5. Municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.<sup>14</sup> The tourist development tax may not be levied in any municipality imposing the municipal resort tax. Currently only three municipalities in Miami-Dade county are eligible to impose the tax.

Section 212.02(10), F.S., defines “lease,” “let,” or “rental,” as meaning the leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, and real property. It further defines these accommodations, including “mobile home park” and “recreational vehicle park,” within this definitional section.

### **Timeshares**

Chapter 721, F.S., provides for regulation of the offering, sale, management, and operation of real and personal property timeshare plans consisting of more than 7 timeshare periods over a period of at least 3 years in which the accommodations and facilities are located within this state or offered within this state.<sup>15</sup> A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.<sup>16</sup>

A timeshare interest is a form of ownership of real property. The real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

Section 721.05(32), F.S., defines a “regulated short-term product” to mean:

a contractual right, offered by the seller, to use accommodations of a timeshare plan or other accommodations, provided that:

- (a) The agreement to purchase the short-term right to use is executed in this state on the same day that the prospective purchaser receives an offer to acquire an interest in a timeshare plan and does not execute a purchase contract, after attending a sales presentation; and
- (b) The acquisition of the right to use includes an agreement that all or a portion of the consideration paid by the prospective purchaser for the right to use will be applied to or

<sup>12</sup> Id.

<sup>13</sup> Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

<sup>14</sup> Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

<sup>15</sup> Section 721.03, F.S.

<sup>16</sup> Section 721.07, F.S.

credited against the price of a future purchase of a timeshare interest, or that the cost of a future purchase of a timeshare interest will be fixed or locked in at a specified price.

Section 721.11(6), F.S., sets forth the specific requirements for the sale of a regulated short-term product, and the agreement is regulated as advertising material under the section. A purchaser of a regulated short-term product has the right to cancel the agreement until midnight of the 10th calendar day following the execution date of the agreement.

Section 721.05(34), F.S., defines a “timeshare estate” to mean:

a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property or a specified portion thereof. The term shall also mean an interest in a condominium unit pursuant to s. 718.103, an interest in a cooperative unit pursuant to s. 719.103, or an interest in a trust that complies in all respects with the provisions of s. 721.08(2)(c)4., provided that the trust does not contain any personal property timeshare interests. A timeshare estate is a parcel of real property under the laws of this state.

Section 721.05(16), F.S., defines a timeshare “exchange program” to mean:

any method, arrangement, or procedure for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers. The term does not include the assignment of the right to use and occupy accommodations and facilities to purchasers pursuant to a particular multisite timeshare plan's reservation system. Any method, arrangement, or procedure that otherwise meets this definition, wherein the purchaser's total contractual financial obligation exceeds \$3,000 per any individual, recurring timeshare period, shall be regulated as a multisite timeshare plan in accordance with part II [of ch. 721, F.S.]

Exchange programs are regulated under s. 721.12, F.S.

Section 721.05(37), F.S., defines the term “timeshare license” to mean “a right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.” According to representatives for the timeshare industry, the term “timeshare license” is a broad term and includes all non-ownership interests in a timeshare which do not have a real property fee interest in the timeshare estate, such as a membership agreement, a rental agreement, or an agreement to use an accommodation.

Section 721.05(39), F.S., defines a “timeshare plan” to mean:

any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby a purchaser, for consideration, receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years. The term “timeshare plan” includes:

- (a) A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and
- (b) A “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

Section 721.52, F.S., defines a “multisite timeshare plan” to mean:

any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term "multisite timeshare plan" shall not include any method, arrangement, or procedure wherein:

- (a) The contractually specified maximum total financial obligation on the purchaser's part is \$3,000 or less, during the entire term of the plan; or
- (b) The term is for a period of 3 years or less, regardless of the purchaser's contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05, F.S. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57, F.S.

Multisite timeshare plans are regulated under part II of ch. 721, F.S.

“Timeshare resort” is not a defined terms in the Florida Statutes.

### **Taxation of Timeshares**

Timeshares are treated in the same manner as any other real estate transaction for purposes of taxation. However, there is uncertainty regarding the application of transient rental taxes to transient stays at timeshares, timeshare exchanges, rentals, fees charged by third parties to facilitate a timeshare exchange, or other similar activities.

According to representatives for the timeshare industry, timeshare developers have historically collected and remitted sales taxes and tourist development taxes on timeshare units held out for rental to the general public. However, this practice is not uniform and timeshare owners have collected taxes on some transactions and not others leading to confusion in the timeshare industry and local governments. The issue is not explicitly addressed in the Florida Statutes.

Administrative rules of the Department of Revenue do currently address timeshares, although minimally. Rule 12A-1.060(3), F.A.C., requires the registration of transient accommodations, including timeshares;<sup>17</sup> “any person exercising a taxable privilege of engaging in the business of renting, leasing, letting, or granting licenses to others to use transient accommodations is required to register as a dealer and obtain a separate dealer’s certificate of registration for each place of business where transient accommodations are provided.” A timeshare that is rented, leased, or let by written lease or agreement for a continuous period greater than 6 months is not required to be registered. Registration with the Department of Revenue is required for purposes of the sales and use tax.

Rule 12A-1.061(3)(h).14., F.A.C., provides that “consideration paid under a timeshare license, as defined in Section 721.05, F.S., are rental charges or room rates and is subject to tax.” However, “consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in Section 721.05, F.S.” is not rental charge or room rate subject to sales tax when the consideration is separately itemized on a guest’s or tenant’s bill, invoice, or other tangible evidence of sale.

### **Taxation of Timeshare Inspection Packages**

In 2006, the Florida 4th District Court of Appeal reviewed a case in which Fairfield Resorts, Inc., was disputing the application of the tourist development tax, s. 125.014(3), F.S., to its sale of timeshare “inspection privilege packages.” Sale of an “inspection package” is a marketing practice in which the seller or operator of a timeshare offers a one-time inspection privilege package to prospective timeshare buyers. The prospective buyers pay for the inspection package and acquire points for use of a timeshare within a 12-month period. The money spent on the inspection package can be credited towards the future purchase price of a timeshare. Inspection packages may be purchased anywhere in the United States, but can only be used where the seller has a timeshare property that is part of its inspection package program.<sup>18</sup>

In *Broward County v. Fairfield Resorts, Inc.*, the court ruled that timeshare inspection packages were not subject to the local option tourist development tax because “the plain wording of these tourist development provisions [s.125.0104(3), F.S.] do not include either timeshares or inspection packages. Indeed, timeshares and inspection privilege packages did not exist when the statute and ordinance were enacted.”<sup>19</sup> The court stated that “[i]t is a fundamental rule of construction that tax laws are to be construed strongly in favor of the taxpayer and against the government and that all ambiguities or doubts are to be resolved in favor of the taxpayer.”<sup>20</sup>

### **III. Effect of Proposed Changes:**

The bill amends s. 125.0104(3), F.S., relating to the local option tourist development tax, s. 125.0108(1), F.S., relating to the tourist impact tax, s. 212.03, F.S., relating the transient rentals tax, and s. 212.0305, F.S., relating to the convention development tax, to include timeshare resorts within the list of the types of occupancies of living quarters or accommodations that are subject to these taxes. The amendments to each of these sections are identical.

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<sup>17</sup> “Transient accommodation” is defined in Rule 12A-1.061(2)(f), F.A.C.

<sup>18</sup> *Broward County v. Fairfield Resorts, Inc.*, 946 So.2d 1144, 1145 (Fla. 4<sup>th</sup> DCA 2006).

<sup>19</sup> *Id.* at 1147.

<sup>20</sup> *Id.*

The bill provides that the amount of each tax is based on the consideration paid for the occupancy in the county. The tax must be collected on the last day of the occupancy, unless the consideration is applied to the purchase of a timeshare estate.

The bill specifies that the following types of occupancies of an accommodation or transactions are not subject to taxation under ss. 125.0104(3), 125.0108(1), 212.03, and 121.0305, F.S.:

- The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program;
- The occupancy of an accommodation by the owner of a timeshare interest or the nonpaying owner's guest;
- A membership or transaction fee paid by a timeshare owner that does not provide the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program.

The bill also provides that the consideration paid for the purchase of a timeshare license in a timeshare plan is rent subject to taxation. This provision in the bill is consistent with rule 12A-1.061(3)(h).14., F.A.C., of the Department of Revenue which provides that "consideration paid under a timeshare license, as defined in Section 721.05, F.S., are rental charges or room rates and is subject to tax."

The bill also amends s. 212.03, F.S., to include mobile home parks, recreational vehicle parks, and condominiums as the types of facilities that may be subject to a transient rentals tax. These types of facilities are currently specifically listed as the types of facilities that are subject to the local option tourist development tax under s. 125.0104(3)(a), F.S., the tourist impact tax under s. 125.0108(1), F.S., and the convention development tax under s. 212.0305, F.S. This bill would conform the transient rental tax provision in s. 212.03, F.S., to the other tax provisions.

The bill provides an effective date of July 1, 2009. The bill further provides that it is intended to be clarifying and remedial in nature, and does not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference met on February 13, 2009, and made the following assessment of the impact of the application of local option taxes to timeshares:

	<b>FY 2009-2010</b>	<b>FY 2010-2011</b>	<b>FY 2011-2012</b>	<b>FY 2012-2013</b>
<b>Total Local Impact</b>	1.1	1.2	1.2	1.3

B. Private Sector Impact:

Persons who purchase a transient accommodation at a timeshare resort may have to pay a local option tourist development tax, a tourist impact tax, and/or a convention development tax. Persons who purchase a transient accommodation at a mobile home park, recreational vehicle park, and condominium may be subject to a transient rental tax.

C. Government Sector Impact:

According to the Department of Revenue, it would have to produce a two-page, four-sided Tax Information Publication to be sent to hotels, timeshares, and other transient renters, including 21,525 condominium and 600 timeshare resorts, at a non-recurring cost of \$25,651.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.