

**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 Community Affairs Committee

BILL: SB 376

INTRODUCER: Senator Gaetz

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: January 13, 2011      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Fav/2 amendments</b>
2.	_____	_____	BC	_____
3.	_____	_____	RC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input type="checkbox"/>            | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input checked="" type="checkbox"/> | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

SB 376 provides that the state transient rentals tax, local tourist impact tax, local tourist development taxes, local convention development taxes, and municipal resort tax are imposed on the amount received by a person operating transient rental accommodations – not on the payments received by unrelated persons facilitating the booking of reservations of such accommodations. The bill requires the owner or person operating transient rental accommodations to separately state the tax from the rental charged on receipts, invoices, or other documents for transient accommodations.

The bill also allows compensation for county governments that provide information to the Department of Revenue (DOR) that leads to the collection of taxes, or registration of a noncompliant taxpayer.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 125.0108, 212.03, 212.0305, and 213.30.

This bill substantially amends ss. 1 and 3, of chapter 67-930, of the Laws of Florida, as amended.

This bill may require a two-thirds vote of the membership of each house of the Legislature for passage.

## II. Present Situation:

### Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for a period of 6 months or less. The term “accommodation” includes stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks, recreational vehicle parks, or real property.<sup>1</sup>

Under current law, transient rentals are potentially subject to the following taxes:

1. **Local Option Tourist Development Taxes:** Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(c), F.S., provides that the local option tourist development tax is levied on the “total consideration charged for such lease or rental.”
  - The tourist development tax may be levied at the rate of 1 or 2 percent.<sup>2</sup> Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.<sup>3</sup>
  - An additional tourist development tax of 1 percent may be levied.<sup>4</sup> Currently 43 counties levy this tax and only 56 counties are currently eligible to levy this tax.<sup>5</sup>
  - A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.<sup>6</sup> Currently 35 counties levy this additional tax and all 67 counties are eligible to levy this tax.<sup>7</sup>
  - A high tourism impact county may levy an additional 1 percent on transient rental transactions.<sup>8</sup> Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax.<sup>9</sup>
  - 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>10</sup> Out of 65 counties eligible to levy this tax, only 20 do.<sup>11</sup>
2. **Local Option Tourist Impact Tax:** The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe

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<sup>1</sup> These accommodations are defined in s. 212.02(10), F.S. *See also* Rule 12A-1.061(2)(f), F.A.C.

<sup>2</sup> Section 125.0104(3)(c), F.S.

<sup>3</sup> Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf> (last visited on Jan. 13, 2011). This chart is provided under the Related Issues section of this analysis.

<sup>4</sup> Section 125.0104(3)(d), F.S.

<sup>5</sup> *See* fn. 3, *supra*.

<sup>6</sup> Section 125.0104(3)(l), F.S.

<sup>7</sup> *See* fn. 3, *supra*.

<sup>8</sup> Section 125.0104(3)(m), F.S.

<sup>9</sup> *See* fn. 3, *supra*.

<sup>10</sup> Section 125.0104(3)(n), F.S.

<sup>11</sup> *See* fn. 3, *supra*.

County is eligible and does levy this tax in areas designated as areas of critical state concern.<sup>12</sup>

3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is charged on the total consideration charged for the transient rental. 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-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>13</sup> No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.<sup>14</sup>
4. Municipality Resort Tax: Certain municipalities may levy and collect a municipal resort tax at a rate of up to 4 percent on transient rental transactions.<sup>15</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 (Bal Harbour, Miami Beach, and Surfside).
5. State Transient Rentals Tax: 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.

In general, the local taxes are adopted by ordinance that must be approved by a voter referendum in the county or area where the tax is to be levied. Local taxes on transient rentals are required to be remitted to DOR by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and self-administration of the tax.<sup>16</sup> The use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from these taxes. These include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.<sup>17</sup>

Every person desiring to engage in or conduct business in Florida as a dealer, or to lease, rent, let, or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file an application to collect and/or report taxes with DOR prior to engaging in such business. A separate application is required for each county where property is located. After the application is approved by DOR, the applicant receives a Certificate of Registration for each place of business.<sup>18</sup> Agents, representatives, or management companies that collect and receive rent as the

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

<sup>15</sup> Chapter 67-930, L.O.F., as amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

<sup>16</sup> This is also known as “self-administering.”

<sup>17</sup> Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

<sup>18</sup> Section 212.18(3)(a), F.S.

accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.<sup>19</sup>

In addition to the Certificate of Registration, each newly registered dealer also receives a Resale Certificate for Sales Tax from DOR. The resale certificate is renewed annually for dealers that have an active sales tax account, and expires on December 31 each year.<sup>20</sup> An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale. Examples include the re-rental of transient rental property and the resale of tangible personal property. An annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.<sup>21</sup>

### **Online Rental Accommodation Intermediaries<sup>22</sup>**

There are a number of internet websites that specialize in offering reservations for transient rental accommodations. These websites are generally operated by independent third party intermediaries who act either as an "agent" or "merchant" for the transient rental facility.<sup>23</sup>

#### ***A. Agent Business Model***

The agent business model is the general practice used by classical travel agencies. When an internet intermediary acts as an "agent", the intermediary is solely acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and pays the hotel directly during check-out, at which point taxes are charged. At the time of the online reservation, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. After the transaction, the agent receives a commission from the hotel owner, based on the retail rate set by the hotel. Under the agency business model, the room rate is subject to tax without any reduction for the commission paid to the agent. Agents do not arrange to purchase room inventory at the hotel in advance of the customer's transaction.

#### ***B. Merchant Business Model***

When an internet intermediary acts as a "merchant", he/she enters into a contract with a hotel owner to offer rooms to the public. Under this method, the accommodation owner agrees to make a certain number of rooms available for reservation at a wholesale rate, which is not disclosed to the public.<sup>24</sup> In return, the merchant agrees to pay the owner the wholesale rate plus

<sup>19</sup> Rule 12A-1.061(7), F.A.C.

<sup>20</sup> Section 212.18(3)(c), F.S.

<sup>21</sup> Florida Department of Revenue, *Annual Resale Certificate for Sales Tax (Guidelines)*, available online at <http://dor.myflorida.com/dor/taxes/resale.html> (last visited Jan. 13, 2011).

<sup>22</sup> The information from this section was obtained from the following interim reports: Comm. on Government Efficiency Appropriations, The Florida Senate, *Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and to Hotel Reward Points Programs* (Interim Project 2005-131) (Nov. 2004); and Comm. on Finance and Tax, The Florida Senate, *Application of the State Sales Tax and the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet* (Issue Brief 2009-320) (Oct. 2008).

<sup>23</sup> Travel agents have been granted computerized access to search hotel room inventories and book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

<sup>24</sup> The negotiated rate is also referred to as the "discounted" or "negotiated" rate/price.

an additional amount to cover the hotel's estimate of projected state or local taxes. The merchant's website advertises the retail price they want to charge with disclosures for separate charges labeled as "taxes and service fees".<sup>25</sup> Since the merchant's "taxes and service fees" charges are lumped together, consumers do not know how much they are paying in taxes and how much they are paying in fees.<sup>26</sup> Once a customer decides to rent an accommodation through the merchant's internet intermediary service, the merchant initiates a charge to the customer's credit card for the full retail rate established by the merchant plus the disclosed line items. In return the customer receives confirmation of the reservation from the merchant. After the customer's stay, the accommodation owner sends the merchant an invoice for the room and the merchant pays the owner the wholesale room rate and applicable taxes due on the wholesale amount. If no invoice is sent, the merchant may keep the money.<sup>27</sup>

The general concern associated with on-line accommodation reservations facilitated by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws were adopted before the existence of internet intermediaries.

### **Transient Rentals Taxes and Online Rental Accommodations**

There has been dispute as to the proper amount against which state and local transient rentals taxes can be levied, specifically whether they are only levied against the "wholesale" price (the negotiated/discounted rate paid by the intermediary to the hotel owner) or the full "retail" price (the total rate charged to the customer by the intermediary).

#### ***A. Internet Intermediaries' Position***

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner/operator for the right to use the transient accommodation (wholesale rate); and not by the full retail rate. The intermediaries state that the facilitation fee, which is generally the difference between the retail rate and the wholesale rate, is not subject to the tourist development tax because it is not an amount that is paid to the hotel owner.<sup>28</sup> They further argue that the 'taxable incident' is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, the fees that are received for facilitating booking, processing reservation applications, or provide a similar services, are not subject to tax when the receiving company lacks an ownership interest in the accommodation. This argument extends to the tax treatment provided for other customer charges, variously labeled as "tax reimbursements," "tax recovery charges," or "taxes and fees."

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<sup>25</sup> Since the tax paid by the internet intermediary is based on the wholesale rate and not the retail rate, the fee portion is much larger than it might seem.

<sup>26</sup> The rationale given by internet intermediaries for not breaking out taxes and fees is to prohibit other on-line merchants from knowing what type of deals they received from the accommodation owners; which could be obtained simply by subtracting the amount withheld for taxes. The standard facilitation fee on such internet room rates is 25 percent.

<sup>27</sup> For a detailed description of the merchant model, see, *Columbus, Georgia v. Expedia*, (Civil Action No. SU-06-CV-1974-7) (Superior Court, Muscogee County, Ga., Sept. 22, 2008).

<sup>28</sup> A facilitation fee generally involves money received by the intermediary to facilitate booking, process reservation applications, or provide similar services.

### ***B. Local Governments' Position***

Local governments argue that the tourist development tax should be levied against the full retail rate that is charged by the internet intermediaries to the customer, not just the wholesale price that is paid to the hotel owner. Local governments contend that intermediaries acting as merchants are considered sales tax dealers. They argue that the internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments assert that dividing the sale of an accommodation reservation into discrete transactions ignores the sale's singular nature. They are concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

### ***C. When Taxes Should Be Remitted***

There is also dispute as to when the transient rentals tax is due. Internet intermediaries argue that the transient rentals tax should be remitted by the hotel or facility, as owner of the accommodation, and shall therefore be due once the wholesale/negotiated room charge is forwarded to the owner after the consumer's hotel stay. On the other hand, local governments argue that the transient rentals tax is due at the time the money is paid by the consumer to the intermediary, not when the accommodation owner is later paid the wholesale/negotiated rate.

## **Litigation in Florida<sup>29</sup>**

### ***A. Orange County v. Expedia, Inc. et al***

Orange County is one of the counties in Florida that self-administers their local tourist development tax.<sup>30</sup> In 2008, Orange County brought a lawsuit against internet intermediaries Expedia and Orbitz to determine whether the local tourist development tax is due "on the difference between the wholesale price and the retail price they receive for the rooms when they re-sell them."<sup>31</sup> The trial court dismissed the case, ruling that the county must first exhaust administrative remedies, by completing audits to estimate taxes due. Thereafter, the appellate court reversed the trial court's ruling and remanded the case for further proceedings stating that the county is entitled to know whether it can lawfully assess the tourist development tax before attempting to audit the companies.

On January 20, 2011, the Ninth Judicial Circuit Court denied a motion for summary judgment filed by Orange County,<sup>32</sup> and held that the "facts on summary judgment . . . do not unequivocally demonstrate that the entirety of the transactions here are within the intendment of

<sup>29</sup> Lawsuits in other states "are based on the specific language of each jurisdiction's taxing scheme and on the variety of causes of action pled. . . ." *Orange County v. Expedia, Inc. et al.*, 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, *Expedia, Inc. v. Orange County*, 999 So.2d 644 (Fla. 2008) (unpublished disposition).

<sup>30</sup> Self-administering means that the county has adopted an ordinance providing for local collection and administration of the tax.

<sup>31</sup> *Orange County*, at 2.

<sup>32</sup> A "motion for summary judgment" is "a [p]rocedural device available for prompt and expeditious disposition of controversy without trial when there is no dispute as to either a material fact or inferences to be drawn from undisputed facts, or if only question of law is involved. BLACK'S LAW DICTIONARY 1435 (6<sup>th</sup> ed. 1990). The moving party must prove that there is "no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." *Volusia County v. Aberdeen at Ormond beach, L.P.*, (Fla. 2000). In deciding a motion for summary judgment, "the trial judge must draw every possible inference against the moving party and in favor of the party opposing the motion." *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (citing Padovano, West Florida Civil Practice, Sec. 13-2).

the TDT” (tourist development tax).<sup>33</sup> The Ninth Circuit further ordered that no additional motions be filed until the parties conduct a status conference hearing to discuss future contemplated filings and other necessary activities necessary to the case.

### ***B. Additional Florida Cases***

There are currently several cases pending in Florida between counties and various internet intermediaries addressing the levy of transient rentals taxes on online hotel accommodations provided through internet intermediary services.<sup>34</sup> The following are a few cases that are pending in the 2<sup>nd</sup> Judicial Circuit in Leon County:

- *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126) is a consolidated case led by Orbitz LLC that involves various internet intermediaries who are suing Broward County Florida for the assessment of Broward’s tourist development tax.<sup>35</sup>
- *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006) is part of another set of cases involving a dispute between various internet intermediaries and Miami-Dade County for the assessment of both the tourist development tax and the convention development tax.<sup>36</sup>
- *Leon County vs. Expedia Inc.* (Case No. 37 2009 CA 004319) & (Case No. 37 2009 CA 004882): In this case, a number of counties and tax collectors filed an action for declaratory and equitable relief for a mandatory injunction against various internet intermediaries for the payment of transient rentals tax and any local option sales taxes levied on the total rental charged for hotel accommodations. A notice for trial was filed on May 26, 2010.<sup>37</sup>

The Florida Attorney General has also filed an action for declaratory judgment against Expedia and Orbitz asking whether the internet companies’ failure to remit the appropriate amount of transient rentals taxes on hotel room rentals is in violation of Florida law.<sup>38</sup>

<sup>33</sup> *Orange County v. Expedia* (Case No. 48-2006-CA-2104-O) (Fla. 9th Cir. Ct. 2011) (emphasis added).

<sup>34</sup> See *Anne Gannon v. Hotels.com, L.P.* (Case No. 50 2009 CA 025919 XXXXMB)(Fla. 15th Cir. Ct. 2009). See also *Brevard County v. Priceline.org et al* (Case No. 6-09-cv-1695-GAP-GJK)(M.D. Fla. filed Oct. 2, 2009).

<sup>35</sup> Leon County Clerk of Courts Website, *Orbitz LLC vs. Broward County* (Case No. 37 2009 CA 000126), available at [http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real\\_case.case\\_id='61797026'](http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='61797026') (last visited on Jan. 14, 2011).

<sup>36</sup> Leon County Clerk of Courts Website, *Orbitz LLC vs. Miami-Dade County* (Case No. 2009 CA 005006), available at [http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real\\_case.case\\_id='81922577'](http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='81922577') (last visited on Jan. 14, 2011).

<sup>37</sup> Leon County Clerk of Courts Website, *Leon County v. Expedia Inc.*, (Case No. 2009 CA 004319), docket available at [http://www.clerk.leon.fl.us/index.php?section=2&server=image&page=high\\_profile/index.asp?year=2009](http://www.clerk.leon.fl.us/index.php?section=2&server=image&page=high_profile/index.asp?year=2009) (last visited on Jan. 14, 2011) (The plaintiffs in this case include: Leon County, Leon County Tax Collector Doris Maloy, Flagler County, Lee County, Manatee County, Pinellas County, Pinellas County Tax Collector Diane Nelson, Polk County, Polk County Tax Collector Joe Tedder, St. Johns County, Escambia County, Charlotte County, Walton County, Hillsborough County, Hillsborough Tax Collector Doug Belden, Pasco County, Alachua County, Nassau County, Okaloosa County, Seminole County, and Wakulla County).

<sup>38</sup> Leon County Clerk of Courts Website, *Dep’t. of Legal Affairs vs. Expedia Inc.* (Case No. 37 2009 CA 004304), available at [http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real\\_case.case\\_id='84428357'](http://cvweb.clerk.leon.fl.us/process.asp?template=summary&addQuery=real_case.case_id='84428357') (last visited on Jan. 14, 2011).

In August 2010, Monroe County entered into a settlement agreement on behalf of 32 counties<sup>39</sup> in a federal class-action suit against certain online travel companies. As a result of the settlement order, the online travel companies were required to pay \$6.5 million to the counties, and in return were released from any obligation to pay or remit tourist development taxes on the full retail price for hotel accommodations.<sup>40</sup> The participating counties agreed to dismiss all current claims against the online travel companies with prejudice, and are further precluded from suing Expedia, Travelocity and Orbitz for two years, and Priceline for three years.

### III. Effect of Proposed Changes:

This bill requires that the state transient rentals tax, local tourist development taxes, local tourist impact taxes, local convention development taxes, and municipal resort taxes are imposed on the amount received by the owner of or the person operating transient rental accommodations – not the payments received by unrelated persons facilitating the booking of reservations of such accommodations.

The following terms are defined in sections 1, 2, 3, 4 and 6 of the bill:

- The terms “*consideration*,” “*rental*,” and “*rents*” means “the amount received by the owner of or the person operating a transient accommodation for the use of any living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with, a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium.” Section 3 of the bill, amending s. 212.03, F.S., also provides this definition for the term “rental payments” and does not define the term “consideration”. Section 6 of the bill, amending ch. 67-930, Laws of Florida, only uses this definition for the term “rent”.
- The terms “*consideration*,” “*rental*” and “*rents*” (and “*rental payments*” for section 3 of the bill) do not include payments received by “unrelated persons” from a lessee, tenant, or customer for facilitating the booking of reservations for or on behalf of the lessee, tenant, or customers at a hotel, apartment house, roominghouse, timeshare resort, tourist or trailer camp, mobile home park, recreational vehicle park, or condominium in this state.”
- A “*person operating transient accommodations*” means “the person who conducts the daily affairs of the physical facilities that furnish transient accommodations and who is responsible for providing any of the services commonly associated with operating those facilities, including providing physical access, regardless of whether the commonly associated services are provided by an unrelated person.”
- The term “*unrelated person*” is defined as “a person who is not related to the owner or the person operating transient accommodations within the meaning of s. 267(b) or s. 707(b) of the Internal Revenue Code of 1986, as amended.”

<sup>39</sup> The class action suit represented the following counties: Baker, Bradford, Citrus, Clay, Collier, Columbia, Duval, Franklin, Gadsden, Gilchrist, Glades, Hamilton, Hendry, Hernando, Highlands, Holmes, Indian River, Jackson, Jefferson, Lake, Levy, Madison, Martin, Miami-Dade, Monroe, Okeechobee, Putnam, St. Lucie, Santa Rosa, Sarasota, Sumter, Suwannee, and Taylor. The 15 defendants included: Expedia, Inc., Hotels.com, L.P., Hotwire, Inc., Hotels.com, and TravelNow.com, Inc. (the “Expedia parties”); priceline.com incorporated and Travelweb LLC (the “Priceline parties”); Travelocity.com LP and Site59.com (the “Travelocity parties”); and Orbitz, LLC and Trip Network Inc. d/b/a Cheaptickets.com (the “Orbitz parties”).

<sup>40</sup> *Monroe County v. Priceline, Inc. et al.* Master Settlement Agreement (Case No. 09-10004-CIV-MOORE/SIMONTON)(S.D. Fla. 2010) (on file with the Senate Committee on Community Affairs).



**Section 1** amends s. 125.0104(3), F.S. (Local Option Tourist Development Taxes), to define the terms “consideration,” “rental,” and “rents”, and the terms “person operating transient accommodations” and “unrelated persons” as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

**Section 2** amends s. 125.0108, F.S. (Local Tourist Impact Tax), to define the terms “consideration,” “rental,” and “rents”, and the terms “person operating transient accommodations” and “unrelated persons” as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

**Section 3** amends s. 212.03(1)(b), F.S. (State Transient Rentals Tax), to define the terms “rent”, “rental,” “rentals,” and “rental payments”, and the terms “person operating transient accommodations” and “unrelated persons” as provided above. The section also amends s. 212.03(2), F.S., to provide that the state transient rentals tax is charged by the owner of, or the person operating transient accommodations subject to the tax imposed under the chapter. The tax is due on the amount of rent received at the time the person operating transient accommodations receives the rental payment.

The owner of or the person operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations the tax from the rental charged on the receipt. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

**Section 4** amends s. 212.0305(3)(a), F.S. (Local Convention Development Tax), to define “consideration,” “rental,” and “rents”, and the terms “person operating transient accommodations” and “unrelated persons” as provided above. This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

**Section 5** amends s. 213.30(1), F.S., to provide authority for the Department of Revenue (DOR) to compensate a county government that provides information to the department that leads to:

- The punishment of, or the collection of taxes, penalties, or interest from, any person related to the state transient rentals tax in s. 212.03, F.S. The amount of payment to a

county may not exceed 10 percent of any tax, penalties, or interest collected as a result of the information.

- The identification and registration of a taxpayer not already in compliance with the state transient rentals tax registration requirements. The amount of payment made to any person providing information that results in the registration of the noncompliant taxpayer shall be \$100. The reward shall be paid only if the noncompliant taxpayer is:
  - Engaged in a bona fide taxable activity; and
  - Found by DOR to have an unpaid tax liability.

Currently, s. 212.30, F.S., permits the Executive Director of DOR to compensate persons who provide information to the department that leads to the punishment or collection of taxes from any person or to the identification and registration of a noncompliant taxpayer.<sup>41</sup> This program is known as the DOR Rewards Program. The statute provides the conditions under which compensation may be paid. Employees of DOR or any other state or federal agency may not be compensated.

**Section 6** amends ss. 1 and 3 of chapter 67-930, Laws of Florida, as amended by chapters 93-286 and 94-344, Laws of Florida, (Municipal Resort Tax), to define the terms “rent”, “person operating transient accommodations” and “unrelated persons” as provided above. This section also provides that the municipal resort tax shall be collected by the owner or the person operating transient accommodations at the time of payment of the rent or the retail sales price.

The bill states that it shall be the duty of every *owner or person operating the transient accommodations*, to collect from the person paying the rent or the retail sales price, for the use of the city or town, the tax imposed and levied pursuant to this section, and to report and pay over to the city or town all such taxes imposed, levied and collected, in accordance with the accounting and other provisions of the enacted ordinance.

This section also provides that the person who owns or is operating transient accommodations must separately state the amount of the tax collected and the consideration charged from the rental on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations. Persons facilitating the booking of reservations who are unrelated persons are not required to separately state such taxes. Any amounts specifically collected as tax are county funds and shall be remitted as tax.

This section provides an exception to eligible cities’ and towns’ (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages for beer and malt beverages.

**Section 7** states that this act is clarifying and remedial in nature and does not provide a basis for assessments or refunds of tax for periods before July 1, 2011. The bill also states that this act

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<sup>41</sup> Between 2007 and 2010, DOR received 3,898 rewards cases and collected \$18.6M as a result of the rewards program. Of these cases, 728 rewards have been paid out, with the total amount paid equaling approximately \$1.1M. This information was obtained via email from Lynne Moeller, Florida Department of Revenue (Feb. 4, 2011) (on file with the Senate Committee on Community Affairs).

does not affect any lawsuit existing on July 1, 2011, related to the taxes imposed by the provisions of law amended by this act.

**Section 8** provides that this act shall take effect on July 1, 2011.

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

##### **A. Municipality/County Mandates Restrictions:**

Article, VII, section 18(b), of the Florida Constitution, provides that “except upon a approval by two-thirds of members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989”.<sup>42</sup> Since this bill would reduce a county or municipality’s authority to raise revenue in the aggregate, it will require a two-thirds vote of the membership of each house of the Legislature for passage.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

This bill would prevent local governments from levying certain taxes on payments received by unrelated persons facilitating the booking of accommodation reservations.

At this time, the Revenue Estimating Conference (REC) has not reviewed the fiscal impact for SB 376. However, the REC did review similar legislation (2010 SB 2436) that was filed during the 2010 Regular Session. On March 23, 2010, the REC determined that the 2010 legislation would have had a cash impact for FY 2010-2011 of -\$22.7 million on the tourist development tax, but found the recurring impact on both state and local revenues to be indeterminate.<sup>43</sup>

##### **B. Private Sector Impact:**

This bill clarifies that transient rentals taxes are levied upon the amount of payment received by the owner or person operating the transient rental facility.

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<sup>42</sup> FLA. CONST. art. VII, s. 18(b).

<sup>43</sup> Senate Committee on Commerce, *Senate Bill 2436 Committee Analysis*, 9 (March 23, 2010) (on file with the Senate Committee on Community Affairs).

This bill also requires the owner or person operating the transient accommodation to separately state the amount of tax collected and the consideration charged on the receipt, invoice, or other documentation issued with respect to charges for transient accommodations.

**C. Government Sector Impact:**

The Department of Revenue (DOR) has indicated that this bill will cost the Department \$19,070 in non-recurring expenses for the 2010-2011 FY as a result of printing and mailing Tax Information Publications (TIPs) to transient rental sales and use tax dealers and counties.<sup>44</sup>

This bill provides an exception to eligible cities' and towns' (Miami Beach, Bal Harbour, and Surfside) authority to impose a municipal resort tax on the retail sale price of alcoholic beverages for beer and malt beverages.

Counties that provide information to DOR, that leads to the punishment of, or the collection of taxes, penalties or interest related to state transient rentals tax, or to the identification and registration of a taxpayer who is not in compliance with state transient rentals tax registration requirements, may be entitled to compensation by DOR in an amount not to exceed 10 percent of the taxes, penalties, or interest collected as a result of such information.

See Tax/Fee Issues.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The following table represents the current transient rentals tax rates in all 67 Florida Counties:

2011 Local Option Taxes on Transient Rental Transactions										
County	Current Tax Rate	Tourist Impact Tax (1%)	Tourist Development Taxes					Convention Development Taxes		
			Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)
Alachua	*	5	2	1	1	1				
Baker	*	2	2							
Bay	*	5	2	1	1	1				
Bradford		4	2	1	1					
Brevard	*	5	2	1	1	1				

<sup>44</sup> Department of Revenue, *Senate Bill 376 Fiscal Analysis* (Jan. 24, 2011) (on file with the Senate Committee on Community Affairs).

2011 Local Option Taxes on Transient Rental Transactions										
County	Current Tax Rate	Tourist Impact Tax (1%)	Tourist Development Taxes				Convention Development Taxes			
			Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)
Broward	*	5	2	1	1	1				
Calhoun		0								
Charlotte	*	5	2	1	1	1				
Citrus		3	2	1						
Clay	*	3	2	1						
Collier	*	4	2	1	1					
Columbia		3	2	1						
De Soto		0								
Dixie		0								
Duval	*	6	2		1	1	2			
Escambia	*	4	2	1	1					
Flagler		4	2	1	1					
Franklin		2	2							
Gadsden		2	2							
Gilchrist		2	2							
Glades		2	2							
Gulf	*	4	2	1	1					
Hamilton		3	2	1						
Hardee		0								
Hendry		3	2	1						
Hernando	*	3	2	1						
Highlands		2	2							
Hillsborough	*	5	2	1	1	1				
Holmes		2	2							
Indian River	*	4	2	1	1					
Jackson		4	2	1	1					
Jefferson		2	2							
Lafayette		0								
Lake	*	4	2	1	1					
Lee	*	5	2	1	1	1				
Leon	*	5	2	1	1	1				
Levy		2	2							
Liberty		0								
Madison		3	2	1						
Manatee	*	5	2	1	1	1				
Marion	*	2	2							
Martin	*	4	2	1	1					
Miami-Dade	*	6	2		1			3		
Monroe	*	5	2	1			1			
Nassau	*	4	2	1	1					
Okaloosa	*	5	2	1	1	1				
Okeechobee		3	2	1						
Orange	*	6	2	1	1	1	1			
Osceola	*	6	2	1	1	1	1			
Palm Beach	*	5	2	1	1	1				
Pasco		2	2							
Pinellas	*	5	2	1	1	1				
Polk	*	5	2	1	1	1				
Putnam	*	4	2	1	1					

2011 Local Option Taxes on Transient Rental Transactions											
County	Current Tax Rate	Tourist Impact Tax (1%)	Tourist Development Taxes					Convention Development Taxes			
			Original Tax (1 or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Consolidated County Convention Tax (2%)	Charter County Convention Tax (3%)	Special District, Special, & Subcounty Convention Tax (3%)	
Saint Johns	*	4	2	1	1						
Saint Lucie	*	5	2	1	1	1					
Santa Rosa	*	4	2	1	1						
Sarasota	*	4.5	2	1	1	0.5					
Seminole	*	5	2	1	1	1					
Sumter		2	2								
Suwannee	*	2	2								
Taylor	*	3	2	1							
Union		0									
Volusia	*	6	2		1					3	
Wakulla	*	2	2								
Walton	*	4.5	2	1	1	0.5					
Washington		3	2	1							
# Eligible to Levy		67	1	67	56	67	65	5	1	1	1
# Levying		60	1	60	43	35	20	3	1	1	1

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**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:

**Barcode 964784 by Community Affairs Committee on February 21, 2011:**  
Clarifying amendment that changes the term “offer” to “furnish” in order to make the definition for “persons operating transient accommodations” consistent with the remainder of the bill.

**Barcode 741410 by Community Affairs Committee on February 21, 2011:**  
Technical amendment that deletes language that was added to the bill in error.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>45</sup> Chart provided by the Office of Economic and Demographic Research, 2011 Local Option Tourist/Food and Beverage/Tax Rates in Florida’s Counties, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/2011LOTTrates.pdf> (last visited on Jan. 13, 2011) (Note: County names that are followed by an asterisk represent those counties that self-administer these taxes and boxed areas indicate those counties that are eligible to impose the particular tax prescribed in the table. As noted in the Present Situation section of this analysis, three municipalities in Miami-Dade County (Bal Harbour, Miami Beach, and Surfside) are eligible to impose the Municipal Resort Tax).