

By the Committee on Business Development & International Trade and Representatives Johnson, Hart, Fasano, Crady, Rayson, Wilson, Henriquez, Dockery, Murman, Dennis, Sanderson, Cosgrove, Patterson and Kilmer

1 A bill to be entitled
2 An act relating to tax on sales, use, and other
3 transactions; amending s. 212.031, F.S.,
4 relating to the tax on the lease or rental of
5 or license in real property; revising the
6 application of the exemption for property
7 leased, subleased, or rented to a person
8 providing food and drink concessionaire
9 services within certain premises; providing an
10 exemption for property rented, leased,
11 subleased, or licensed by certain facilities to
12 a concessionaire selling event-related products
13 during an event at the facility; specifying
14 when the tax on the rental, lease, or license
15 to use certain facilities for an event shall be
16 collected and when it is due to the Department
17 of Revenue; providing that separately stated
18 charges by certain facilities for services
19 required pursuant to a lease or license to use
20 their property are exempt from said tax;
21 amending s. 212.04, F.S., relating to the tax
22 on admissions; providing that the value of an
23 admission does not include state or local seat
24 surcharges, taxes, or fees, or certain ticket
25 service charges under certain conditions;
26 providing an exemption for admission charges to
27 events sponsored by certain government-owned
28 facilities under certain conditions; specifying
29 when the tax on admissions to events at certain
30 facilities shall be collected and when it is
31 due to the department; providing that no tax

1 imposed on the transactions exempted by the act
2 and not actually paid or collected prior to the
3 effective date of the act shall be due;
4 providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. (1) Paragraph (a) of subsection (1) and
9 subsection (3) of section 212.031, Florida Statutes, 1998
10 Supplement, are amended, and subsection (9) is added to said
11 section, to read:

12 212.031 Lease or rental of or license in real
13 property.--

14 (1)(a) It is declared to be the legislative intent
15 that every person is exercising a taxable privilege who
16 engages in the business of renting, leasing, letting, or
17 granting a license for the use of any real property unless
18 such property is:

19 1. Assessed as agricultural property under s. 193.461.

20 2. Used exclusively as dwelling units.

21 3. Property subject to tax on parking, docking, or
22 storage spaces under s. 212.03(6).

23 4. Recreational property or the common elements of a
24 condominium when subject to a lease between the developer or
25 owner thereof and the condominium association in its own right
26 or as agent for the owners of individual condominium units or
27 the owners of individual condominium units. However, only the
28 lease payments on such property shall be exempt from the tax
29 imposed by this chapter, and any other use made by the owner
30 or the condominium association shall be fully taxable under
31 this chapter.

1 5. A public or private street or right-of-way occupied
2 or used by a utility for utility purposes.

3 6. A public street or road which is used for
4 transportation purposes.

5 7. Property used at an airport exclusively for the
6 purpose of aircraft landing or aircraft taxiing or property
7 used by an airline for the purpose of loading or unloading
8 passengers or property onto or from aircraft or for fueling
9 aircraft.

10 8.a. Property used at a port authority, as defined in
11 s. 315.02(2), exclusively for the purpose of oceangoing
12 vessels or tugs docking, or such vessels mooring on property
13 used by a port authority for the purpose of loading or
14 unloading passengers or cargo onto or from such a vessel, or
15 property used at a port authority for fueling such vessels, or
16 to the extent that the amount paid for the use of any property
17 at the port is based on the charge for the amount of tonnage
18 actually imported or exported through the port by a tenant.

19 b. The amount charged for the use of any property at
20 the port in excess of the amount charged for tonnage actually
21 imported or exported shall remain subject to tax except as
22 provided in sub-subparagraph a.

23 9. Property used as an integral part of the
24 performance of qualified production services. As used in this
25 subparagraph, the term "qualified production services" means
26 any activity or service performed directly in connection with
27 the production of a qualified motion picture, as defined in s.
28 212.06(1)(b), and includes:

29 a. Photography, sound and recording, casting, location
30 managing and scouting, shooting, creation of special and
31 optical effects, animation, adaptation (language, media,

1 | electronic, or otherwise), technological modifications,
2 | computer graphics, set and stage support (such as
3 | electricians, lighting designers and operators, greensmen,
4 | prop managers and assistants, and grips), wardrobe (design,
5 | preparation, and management), hair and makeup (design,
6 | production, and application), performing (such as acting,
7 | dancing, and playing), designing and executing stunts,
8 | coaching, consulting, writing, scoring, composing,
9 | choreographing, script supervising, directing, producing,
10 | transmitting dailies, dubbing, mixing, editing, cutting,
11 | looping, printing, processing, duplicating, storing, and
12 | distributing;

13 | b. The design, planning, engineering, construction,
14 | alteration, repair, and maintenance of real or personal
15 | property including stages, sets, props, models, paintings, and
16 | facilities principally required for the performance of those
17 | services listed in sub-subparagraph a.; and

18 | c. Property management services directly related to
19 | property used in connection with the services described in
20 | sub-subparagraphs a. and b.

21 | 10. Leased, subleased, licensed, or rented to a person
22 | providing food and drink concessionaire services within the
23 | premises of a movie theater, a business operated under a
24 | permit issued pursuant to chapter 550, or any publicly owned
25 | arena, ~~sports~~ stadium, convention hall, exhibition hall,
26 | auditorium, theater, civic center, performing arts center, or
27 | recreational facility. A person providing retail
28 | concessionaire services involving the sale of food and drink
29 | or other tangible personal property within the premises of an
30 | airport shall be subject to tax on the rental of real property
31 | used for that purpose, but shall not be subject to the tax on

1 any license to use the property. For purposes of this
2 subparagraph, the term "sale" shall not include the leasing of
3 tangible personal property.

4 11. Property occupied pursuant to an instrument
5 calling for payments which the department has declared, in a
6 Technical Assistance Advisement issued on or before March 15,
7 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
8 Florida Administrative Code; provided that this subparagraph
9 shall only apply to property occupied by the same person
10 before and after the execution of the subject instrument and
11 only to those payments made pursuant to such instrument,
12 exclusive of renewals and extensions thereof occurring after
13 March 15, 1993.

14 12. Rented, leased, subleased, or licensed to a
15 concessionaire by a convention hall, auditorium, stadium,
16 exhibition hall, recreational facility, theater, arena, civic
17 center, or performing arts center during an event at such
18 facility, to be used by such concessionaire to sell souvenirs,
19 novelties, or other event-related products, when the rental,
20 lease, or license payment is based on a percentage of sales
21 and not based on a fixed price.

22 (3) The tax imposed by this section shall be in
23 addition to the total amount of the rental or license fee,
24 shall be charged by the lessor or person receiving the rent or
25 payment in and by a rental or license fee arrangement with the
26 lessee or person paying the rental or license fee, and shall
27 be due and payable at the time of the receipt of such rental
28 or license fee payment by the lessor or other person who
29 receives the rental or payment. The tax imposed by this
30 section on the rental, lease, or license for the use of a
31 convention hall, auditorium, stadium, exhibition hall,

1 recreational facility, theater, arena, civic center, or
2 performing arts center to hold an event shall be collected at
3 the time of payment for such rental, lease, or license, but
4 shall not be due and payable to the department until the
5 actual date of the event for which the payment is made.The
6 owner, lessor, or person receiving the rent or license fee
7 shall remit the tax to the department at the times and in the
8 manner hereinafter provided for dealers to remit taxes under
9 this chapter. The same duties imposed by this chapter upon
10 dealers in tangible personal property respecting the
11 collection and remission of the tax; the making of returns;
12 the keeping of books, records, and accounts; and the
13 compliance with the rules and regulations of the department in
14 the administration of this chapter shall apply to and be
15 binding upon all persons who manage any leases or operate real
16 property, hotels, apartment houses, roominghouses, or tourist
17 and trailer camps and all persons who collect or receive rents
18 or license fees taxable under this chapter on behalf of owners
19 or lessors.

20 (9) Separately stated charges by a convention hall,
21 auditorium, stadium, exhibition hall, recreational facility,
22 theater, arena, civic center, or performing arts center to a
23 lessee or licensee for services required pursuant to a lease
24 or license to use real property, including charges for
25 laborers, stagehands, ticket takers, event staff, security
26 personnel, cleaning staff, and other event-related personnel,
27 are exempt from the tax imposed by this section.

28 (2) No tax imposed by chapter 212, Florida Statutes,
29 on the transactions exempted under this section, and not
30 actually paid or collected by a taxpayer before the effective
31 date of this act, shall be due from such taxpayer. However,

1 any tax actually collected shall be remitted to the Department
2 of Revenue, and no refund shall be due.

3 Section 2. (1) Paragraph (b) of subsection (1),
4 paragraph (a) of subsection (2), and subsections (3) and (4)
5 of section 212.04, Florida Statutes, 1998 Supplement, are
6 amended to read:

7 212.04 Admissions tax; rate, procedure, enforcement.--

8 (1)(a) It is hereby declared to be the legislative
9 intent that every person is exercising a taxable privilege who
10 sells or receives anything of value by way of admissions.

11 (b) For the exercise of such privilege, a tax is
12 levied at the rate of 6 percent of sales price, or the actual
13 value received from such admissions, which 6 percent shall be
14 added to and collected with all such admissions from the
15 purchaser thereof, and such tax shall be paid for the exercise
16 of the privilege as defined in the preceding paragraph. Each
17 ticket must show on its face the actual sales price of the
18 admission, or each dealer selling the admission must
19 prominently display at the box office or other place where the
20 admission charge is made a notice disclosing the price of the
21 admission, and the tax shall be computed and collected on the
22 basis of the actual price of the admission charged by the
23 dealer. The sale price or actual value of admission shall,
24 for the purpose of this chapter, be that price remaining after
25 deduction of federal taxes and state or local seat surcharges,
26 taxes, or fees, if any, imposed upon such admission. The sale
27 price or actual value of admission does not include separately
28 stated ticket service charges imposed by a facility ticket
29 office or a ticketing service, when such service charges are
30 added to a separately stated established ticket price., ~~and~~

31

1 The rate of tax on each admission shall be according to the
2 brackets established by s. 212.12(9).

3 (2)(a)1. No tax shall be levied on admissions to
4 athletic or other events sponsored by elementary schools,
5 junior high schools, middle schools, high schools, community
6 colleges, public or private colleges and universities, deaf
7 and blind schools, facilities of the youth services programs
8 of the Department of Children and Family Services, and state
9 correctional institutions when only student, faculty, or
10 inmate talent is used. However, this exemption shall not apply
11 to admission to athletic events sponsored by an institution
12 within the State University System, and the proceeds of the
13 tax collected on such admissions shall be retained and used by
14 each institution to support women's athletics as provided in
15 s. 240.533(3)(c).

16 2.a. No tax shall be levied on dues, membership fees,
17 and admission charges imposed by not-for-profit sponsoring
18 organizations. To receive this exemption, the sponsoring
19 organization must qualify as a not-for-profit entity under the
20 provisions of s. 501(c)(3) of the Internal Revenue Code of
21 1954, as amended.

22 b. No tax imposed by this section and not actually
23 collected before August 1, 1992, shall be due from any museum
24 or historic building owned by any political subdivision of the
25 state.

26 c. No tax shall be levied on admission charges to an
27 event sponsored by a government-owned convention hall,
28 auditorium, stadium, exhibition hall, recreational facility,
29 theater, arena, civic center, or performing arts center, when
30 100 percent of the risk of success or failure lies with the
31 governmental entity sponsoring the event, and 100 percent of

1 the funds at risk for the event belong to the facility, and
2 student or faculty talent is not exclusively used.

3 3. No tax shall be levied on an admission paid by a
4 student, or on the student's behalf, to any required place of
5 sport or recreation if the student's participation in the
6 sport or recreational activity is required as a part of a
7 program or activity sponsored by, and under the jurisdiction
8 of, the student's educational institution, provided his or her
9 attendance is as a participant and not as a spectator.

10 4. No tax shall be levied on admissions to the
11 National Football League championship game, on admissions to
12 any semifinal game or championship game of a national
13 collegiate tournament, or on admissions to a Major League
14 Baseball all-star game.

15 5. A participation fee or sponsorship fee imposed by a
16 governmental entity as described in s. 212.08(6) for an
17 athletic or recreational program is exempt when the
18 governmental entity by itself, or in conjunction with an
19 organization exempt under s. 501(c)(3) of the Internal Revenue
20 Code of 1954, as amended, sponsors, administers, plans,
21 supervises, directs, and controls the athletic or recreational
22 program.

23 6. Also exempt from the tax imposed by this section to
24 the extent provided in this subparagraph are admissions to
25 live theater, live opera, or live ballet productions in this
26 state which are sponsored by an organization that has received
27 a determination from the Internal Revenue Service that the
28 organization is exempt from federal income tax under s.
29 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
30 the organization actively participates in planning and
31 conducting the event, is responsible for the safety and

1 success of the event, is organized for the purpose of
2 sponsoring live theater, live opera, or live ballet
3 productions in this state, has more than 10,000 subscribing
4 members and has among the stated purposes in its charter the
5 promotion of arts education in the communities which it
6 serves, and will receive at least 20 percent of the net
7 profits, if any, of the events which the organization sponsors
8 and will bear the risk of at least 20 percent of the losses,
9 if any, from the events which it sponsors if the organization
10 employs other persons as agents to provide services in
11 connection with a sponsored event. Prior to March 1 of each
12 year, such organization may apply to the department for a
13 certificate of exemption for admissions to such events
14 sponsored in this state by the organization during the
15 immediately following state fiscal year. The application shall
16 state the total dollar amount of admissions receipts collected
17 by the organization or its agents from such events in this
18 state sponsored by the organization or its agents in the year
19 immediately preceding the year in which the organization
20 applies for the exemption. Such organization shall receive the
21 exemption only to the extent of \$1.5 million multiplied by the
22 ratio that such receipts bear to the total of such receipts of
23 all organizations applying for the exemption in such year;
24 however, in no event shall such exemption granted to any
25 organization exceed 6 percent of such admissions receipts
26 collected by the organization or its agents in the year
27 immediately preceding the year in which the organization
28 applies for the exemption. Each organization receiving the
29 exemption shall report each month to the department the total
30 admissions receipts collected from such events sponsored by
31 the organization during the preceding month and shall remit to

1 the department an amount equal to 6 percent of such receipts
2 reduced by any amount remaining under the exemption. Tickets
3 for such events sold by such organizations shall not reflect
4 the tax otherwise imposed under this section.

5 7. Also exempt from the tax imposed by this section
6 are entry fees for participation in freshwater fishing
7 tournaments.

8 8. Also exempt from the tax imposed by this section
9 are participation or entry fees charged to participants in a
10 game, race, or other sport or recreational event if spectators
11 are charged a taxable admission to such event.

12 9. No tax shall be levied on admissions to any
13 postseason collegiate football game sanctioned by the National
14 Collegiate Athletic Association.

15 (3) Such taxes shall be paid and remitted at the same
16 time and in the same manner as provided for remitting taxes on
17 sales of tangible personal property, as hereinafter provided.
18 However, for admissions to an event at a convention hall,
19 auditorium, stadium, exhibition hall, recreational facility,
20 theater, arena, civic center, or performing arts center, the
21 tax shall be collected at the time of payment for the
22 admission, but shall not be due to the department until the
23 actual date of the event for which the admission is sold.

24 (4) Each person who exercises the privilege of
25 charging admission taxes, as herein defined, shall apply for,
26 and at that time shall furnish the information and comply with
27 the provisions of s. 212.18 not inconsistent herewith and
28 receive from the department, a certificate of right to
29 exercise such privilege, which certificate shall apply to each
30 place of business where such privilege is exercised and shall
31 be in the manner and form prescribed by the department. Such

1 certificate shall be issued upon payment to the department of
2 a registration fee of \$5 by the applicant. Each person
3 exercising the privilege of charging such admission taxes as
4 herein defined shall cause to be kept records and accounts
5 showing the admission which shall be in the form as the
6 department may from time to time prescribe, inclusive of
7 records of all tickets numbered and issued for a period of not
8 less than the time within which the department may, as
9 permitted by s. 95.091(3), make an assessment with respect to
10 any admission evidenced by such records and accounts, and
11 inclusive of all bills or checks of customers who are charged
12 any of the taxes defined herein, showing the charge made to
13 each for that period. The department is empowered to use each
14 and every one of the powers granted herein to the department
15 to discover the amount of tax to be paid by each such person
16 and to enforce the payment thereof as are hereby granted the
17 department for the discovery and enforcement of the payment of
18 taxes hereinafter levied on the sales of tangible personal
19 property. The failure of any person to pay such taxes before
20 the 21st day of the succeeding month after the taxes are
21 collected, or as otherwise provided in subsection (3), shall
22 render such person liable to the same penalties that are
23 hereafter imposed upon such person for being delinquent in the
24 payment of taxes imposed upon the sales of tangible personal
25 property; the failure of any person to render returns and to
26 pay taxes as prescribed herein shall render such person
27 subject to the same penalties, by way of charges for
28 delinquencies, at the rate of 10 percent per month for a total
29 amount of tax delinquent up to a total of 50 percent of such
30 tax and at the rate of 100-percent penalty for attempted
31 evasion of payment of any such tax or for any attempt to file

1 false or misleading returns that are required to be filed by
2 the department.

3 (2) No tax imposed by chapter 212, Florida Statutes,
4 on the transactions exempted under this section, and not
5 actually paid or collected by a taxpayer before the effective
6 date of this act, shall be due from such taxpayer. However,
7 any tax actually collected shall be remitted to the Department
8 of Revenue, and no refund shall be due.

9 Section 3. This act shall take effect July 1, 1999.

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31