

By Senator Gutman

34-914-99

1                                   A bill to be entitled  
2           An act relating to the tax on sales, use, and  
3           other transactions; amending s. 212.031, F.S.;  
4           providing for exemptions from the tax on  
5           renting, leasing, letting, or granting a  
6           license for the use of real property; amending  
7           s. 212.04, F.S.; providing for exemptions from  
8           the tax on admissions; providing for when the  
9           tax on admissions is due for events at  
10          specified facilities; providing retroactive  
11          relief to certain taxpayers; providing an  
12          effective date.

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14           WHEREAS, the promotion of business within the state  
15          serves the interests of Florida generally, and

16           WHEREAS, enhanced business activity within the state of  
17          Florida results in the generation of greater revenues to the  
18          state, NOW, THEREFORE,

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20          Be It Enacted by the Legislature of the State of Florida:

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22           Section 1. Paragraph (a) of subsection (1), and  
23          subsection (3) of section 212.031, Florida Statutes, 1998  
24          Supplement, are amended and subsection (9) is added to that  
25          section to read:

26           212.031 Lease or rental of or license in real  
27          property.--

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

- 3 1. Assessed as agricultural property under s. 193.461.
- 4 2. Used exclusively as dwelling units.
- 5 3. Property subject to tax on parking, docking, or  
6 storage spaces under s. 212.03(6).
- 7 4. Recreational property or the common elements of a  
8 condominium when subject to a lease between the developer or  
9 owner thereof and the condominium association in its own right  
10 or as agent for the owners of individual condominium units or  
11 the owners of individual condominium units. However, only the  
12 lease payments on such property shall be exempt from the tax  
13 imposed by this chapter, and any other use made by the owner  
14 or the condominium association shall be fully taxable under  
15 this chapter.
- 16 5. A public or private street or right-of-way occupied  
17 or used by a utility for utility purposes.
- 18 6. A public street or road which is used for  
19 transportation purposes.
- 20 7. Property used at an airport exclusively for the  
21 purpose of aircraft landing or aircraft taxiing or property  
22 used by an airline for the purpose of loading or unloading  
23 passengers or property onto or from aircraft or for fueling  
24 aircraft.
- 25 8.a. Property used at a port authority, as defined in  
26 s. 315.02(2), exclusively for the purpose of oceangoing  
27 vessels or tugs docking, or such vessels mooring on property  
28 used by a port authority for the purpose of loading or  
29 unloading passengers or cargo onto or from such a vessel, or  
30 property used at a port authority for fueling such vessels, or  
31 to the extent that the amount paid for the use of any property

1 at the port is based on the charge for the amount of tonnage  
2 actually imported or exported through the port by a tenant.

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

7 9. Property used as an integral part of the  
8 performance of qualified production services. As used in this  
9 subparagraph, the term "qualified production services" means  
10 any activity or service performed directly in connection with  
11 the production of a qualified motion picture, as defined in s.  
12 212.06(1)(b), and includes:

13 a. Photography, sound and recording, casting, location  
14 managing and scouting, shooting, creation of special and  
15 optical effects, animation, adaptation (language, media,  
16 electronic, or otherwise), technological modifications,  
17 computer graphics, set and stage support (such as  
18 electricians, lighting designers and operators, greensmen,  
19 prop managers and assistants, and grips), wardrobe (design,  
20 preparation, and management), hair and makeup (design,  
21 production, and application), performing (such as acting,  
22 dancing, and playing), designing and executing stunts,  
23 coaching, consulting, writing, scoring, composing,  
24 choreographing, script supervising, directing, producing,  
25 transmitting dailies, dubbing, mixing, editing, cutting,  
26 looping, printing, processing, duplicating, storing, and  
27 distributing;

28 b. The design, planning, engineering, construction,  
29 alteration, repair, and maintenance of real or personal  
30 property including stages, sets, props, models, paintings, and  
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1 facilities principally required for the performance of those  
2 services listed in sub-subparagraph a.; and

3 c. Property management services directly related to  
4 property used in connection with the services described in  
5 sub-subparagraphs a. and b.

6 10. Leased, subleased, licensed, or rented to a person  
7 providing food and drink concessionaire services within the  
8 premises of a movie theater, a business operated under a  
9 permit issued pursuant to chapter 550, or any publicly owned  
10 arena, sports stadium, convention hall, exhibition hall,  
11 auditorium, civic center, performing arts center, or  
12 recreational facility. A person providing retail  
13 concessionaire services involving the sale of food and drink  
14 or other tangible personal property within the premises of an  
15 airport shall be subject to tax on the rental of real property  
16 used for that purpose, but shall not be subject to the tax on  
17 any license to use the property. For purposes of this  
18 subparagraph, the term "sale" shall not include the leasing of  
19 tangible personal property.

20 11. Property occupied pursuant to an instrument  
21 calling for payments which the department has declared, in a  
22 Technical Assistance Advisement issued on or before March 15,  
23 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),  
24 Florida Administrative Code; provided that this subparagraph  
25 shall only apply to property occupied by the same person  
26 before and after the execution of the subject instrument and  
27 only to those payments made pursuant to such instrument,  
28 exclusive of renewals and extensions thereof occurring after  
29 March 15, 1993.

30 12. Rented, leased, subleased, or licensed to a  
31 concessionaire by a convention hall, exhibition hall,

1 auditorium, sports stadium, theater, arena, civic center,  
2 performing arts center, or recreational facility, during an  
3 event at such facility, to be used by such concessionaire to  
4 sell souvenirs, novelties, or other event-related products,  
5 when the rental, lease, or license payment is based on a  
6 percentage of sales and not based on a fixed price.

7 (3) The tax imposed by this section shall be in  
8 addition to the total amount of the rental or license fee,  
9 shall be charged by the lessor or person receiving the rent or  
10 payment in and by a rental or license fee arrangement with the  
11 lessee or person paying the rental or license fee, and shall  
12 be due and payable at the time of the receipt of such rental  
13 or license fee payment by the lessor or other person who  
14 receives the rental or payment. The tax imposed by this  
15 section on the rental, lease, or license for the use of a  
16 convention hall, auditorium, stadium, theater, arena, civic  
17 center, or performing arts center to hold an event shall be  
18 collected at the time of the payment for that rental, lease,  
19 or license, but shall not be due and payable to the department  
20 until the actual date of the event for which the payment is  
21 made.The owner, lessor, or person receiving the rent or  
22 license fee shall remit the tax to the department at the times  
23 and in the manner hereinafter provided for dealers to remit  
24 taxes under this chapter. The same duties imposed by this  
25 chapter upon dealers in tangible personal property respecting  
26 the collection and remission of the tax; the making of  
27 returns; the keeping of books, records, and accounts; and the  
28 compliance with the rules and regulations of the department in  
29 the administration of this chapter shall apply to and be  
30 binding upon all persons who manage any leases or operate real  
31 property, hotels, apartment houses, roominghouses, or tourist

1 and trailer camps and all persons who collect or receive rents  
2 or license fees taxable under this chapter on behalf of owners  
3 or lessors.

4 (9) Separately stated charges by a convention hall,  
5 auditorium, stadium, theater, arena, civic center, or  
6 performing arts center to a lessee or licensee for services  
7 required under a lease or license to use real property,  
8 including charges for laborers, stage hands, ticket takers,  
9 event staff, security personnel, cleaning staff, and other  
10 event-related personnel, are exempt from the tax imposed by  
11 this section.

12 Section 2. Paragraph (b) of subsection (1), paragraph  
13 (a) of subsection (2), and subsection (3) of section 212.04,  
14 Florida Statutes, 1998 Supplement, are amended to read:

15 212.04 Admissions tax; rate, procedure, enforcement.--

16 (1)

17 (b) For the exercise of such privilege, a tax is  
18 levied at the rate of 6 percent of sales price, or the actual  
19 value received from such admissions, which 6 percent shall be  
20 added to and collected with all such admissions from the  
21 purchaser thereof, and such tax shall be paid for the exercise  
22 of the privilege as defined in the preceding paragraph. Each  
23 ticket must show on its face the actual sales price of the  
24 admission, or each dealer selling the admission must  
25 prominently display at the box office or other place where the  
26 admission charge is made a notice disclosing the price of the  
27 admission, and the tax shall be computed and collected on the  
28 basis of the actual price of the admission charged by the  
29 dealer. The sale price or actual value of admission shall,  
30 for the purpose of this chapter, be that price remaining after  
31 deduction of federal taxes and state or locally imposed seat

1 surcharges, taxes, or fees, if any, imposed upon such  
2 admission. The sale price or actual value do not include  
3 separately stated ticket service charges imposed by a facility  
4 ticket office or a ticketing service, when the service charges  
5 are added to a separately stated, established ticket price.<sup>7</sup>

6 ~~and~~ The rate of tax on each admission shall be according to  
7 the brackets established by s. 212.12(9).

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

21 2.a. No tax shall be levied on dues, membership fees,  
22 and admission charges imposed by not-for-profit sponsoring  
23 organizations. To receive this exemption, the sponsoring  
24 organization must qualify as a not-for-profit entity under the  
25 provisions of s. 501(c)(3) of the Internal Revenue Code of  
26 1954, as amended.

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

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1           c. A tax may not be levied on admission charges to an  
2 event sponsored by a government-owned convention hall,  
3 auditorium, stadium, theater, arena, civic center, or  
4 performing arts center, when 100 percent of the risk of  
5 success or failure lies with the governmental entity  
6 sponsoring the event and 100 percent of the funds at risk for  
7 the event belong to the facility. For purposes of this  
8 sub-subparagraph, the term "government-owned" facilities  
9 includes facilities owned by the state, a county, a  
10 municipality, or a political subdivision of this state. The  
11 term does not include facilities owned by a school district, a  
12 community college, a university, or a deaf and blind school;  
13 facilities of the youth services programs of the Department of  
14 Children and Family Services; or facilities of a state  
15 correctional institution; and the tax on admissions to events  
16 sponsored by these entities shall be determined as provided in  
17 subparagraph (2)(a)1.

18           3. No tax shall be levied on an admission paid by a  
19 student, or on the student's behalf, to any required place of  
20 sport or recreation if the student's participation in the  
21 sport or recreational activity is required as a part of a  
22 program or activity sponsored by, and under the jurisdiction  
23 of, the student's educational institution, provided his or her  
24 attendance is as a participant and not as a spectator.

25           4. No tax shall be levied on admissions to the  
26 National Football League championship game, on admissions to  
27 any semifinal game or championship game of a national  
28 collegiate tournament, or on admissions to a Major League  
29 Baseball all-star game.

30           5. A participation fee or sponsorship fee imposed by a  
31 governmental entity as described in s. 212.08(6) for an

1 athletic or recreational program is exempt when the  
2 governmental entity by itself, or in conjunction with an  
3 organization exempt under s. 501(c)(3) of the Internal Revenue  
4 Code of 1954, as amended, sponsors, administers, plans,  
5 supervises, directs, and controls the athletic or recreational  
6 program.

7           6. Also exempt from the tax imposed by this section to  
8 the extent provided in this subparagraph are admissions to  
9 live theater, live opera, or live ballet productions in this  
10 state which are sponsored by an organization that has received  
11 a determination from the Internal Revenue Service that the  
12 organization is exempt from federal income tax under s.  
13 501(c)(3) of the Internal Revenue Code of 1954, as amended, if  
14 the organization actively participates in planning and  
15 conducting the event, is responsible for the safety and  
16 success of the event, is organized for the purpose of  
17 sponsoring live theater, live opera, or live ballet  
18 productions in this state, has more than 10,000 subscribing  
19 members and has among the stated purposes in its charter the  
20 promotion of arts education in the communities which it  
21 serves, and will receive at least 20 percent of the net  
22 profits, if any, of the events which the organization sponsors  
23 and will bear the risk of at least 20 percent of the losses,  
24 if any, from the events which it sponsors if the organization  
25 employs other persons as agents to provide services in  
26 connection with a sponsored event. Prior to March 1 of each  
27 year, such organization may apply to the department for a  
28 certificate of exemption for admissions to such events  
29 sponsored in this state by the organization during the  
30 immediately following state fiscal year. The application shall  
31 state the total dollar amount of admissions receipts collected

1 by the organization or its agents from such events in this  
2 state sponsored by the organization or its agents in the year  
3 immediately preceding the year in which the organization  
4 applies for the exemption. Such organization shall receive the  
5 exemption only to the extent of \$1.5 million multiplied by the  
6 ratio that such receipts bear to the total of such receipts of  
7 all organizations applying for the exemption in such year;  
8 however, in no event shall such exemption granted to any  
9 organization exceed 6 percent of such admissions receipts  
10 collected by the organization or its agents in the year  
11 immediately preceding the year in which the organization  
12 applies for the exemption. Each organization receiving the  
13 exemption shall report each month to the department the total  
14 admissions receipts collected from such events sponsored by  
15 the organization during the preceding month and shall remit to  
16 the department an amount equal to 6 percent of such receipts  
17 reduced by any amount remaining under the exemption. Tickets  
18 for such events sold by such organizations shall not reflect  
19 the tax otherwise imposed under this section.

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

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

27           9. No tax shall be levied on admissions to any  
28 postseason collegiate football game sanctioned by the National  
29 Collegiate Athletic Association.

30           (3) Such taxes shall be paid and remitted at the same  
31 time and in the same manner as provided for remitting taxes on

1 sales of tangible personal property, as hereinafter provided.  
2 However, for admission to an event at convention hall,  
3 auditorium, stadium, theater, arena, civic center, or  
4 performing arts center, the tax shall be collected at the time  
5 of payment for the admission, but shall not be due to the  
6 department until the actual date of the event for which the  
7 admission is sold.

8 Section 3. No tax imposed by Chapter 212, Florida  
9 Statutes, on the transactions exempted under section 1 or  
10 section 2 of this act and not actually paid or collected by a  
11 taxpayer before the effective date of this act shall be due  
12 from such taxpayer. However, any tax actually collected shall  
13 be remitted to the Department of Revenue, and no refund shall  
14 be due.

15 Section 4. This act shall take effect July 1, 1999.

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17 SENATE SUMMARY

18 Provides for various exemptions from the tax on renting,  
19 leasing, letting, or granting a license for the use of  
20 real property and from the tax on admissions. Provides  
21 for when the admissions tax is due on events at certain  
22 facilities.  
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