

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 194

SPONSOR: Fiscal Resource Committee, Senator Horne, and others

SUBJECT: Sales Tax Exemptions

DATE: March 20, 2000

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The committee substitute provides a sales tax exemption for property rented, leased, subleased, or licensed to a concessionaire selling event-related products, by a convention hall, auditorium, stadium, exhibition hall, publicly-owned recreational facility, theater, arena, civic center, or performing arts center, when the rental, lease, or license payment is based on a percentage of sales or profits, and not a fixed price. The committee substitute also provides language specifically stating that certain charges to a lessee or licensee of a facility for other services required, such as ticket takers, event staff, security personnel, and other event related personnel, are exempt from the tax on the lease of the property.

Additionally, the committee substitute:

- Provides a tax exemption on that portion of an admission charge that relates to a state or local seat surcharge, separately stated ticket service charge imposed by a facility ticket office, or a ticketing service fee.
- Provides an exemption to the admissions tax for events sponsored by certain government-owned facilities bearing 100 percent of the risk of success or failure for the event.
- Specifies that the tax imposed by s. 212.031, F.S., on the rental, lease, or license for the use of certain facilities to hold an event, and the tax imposed on admissions by s. 212.04, F.S., must be collected at the time of payment, but are not due and payable to the Department of Revenue until the first day of the month following the actual date of the event.
- Provides that no taxes imposed by ch. 212, F.S., on the transactions exempted under this act, and not actually paid or collected prior to the effective date, shall be due.

This committee substitute amends the following sections of the Florida Statutes: 212.031 and 212.04.

II. Present Situation:

Section 212.031(1)(a), F.S., states that every person is exercising a taxable privilege who engages in the renting, leasing, letting, or granting of a license for the use of any real property. There are several exemptions to the tax imposed on this privilege based on the type or use of the property. Subparagraph 10. of s. 212.031(1)(a), F.S., provides an exemption from the taxable privilege imposed when the property is leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, recreational facility, or any business operated under a permit issued pursuant to ch. 550, F.S., which relates to pari-mutual wagering.

Section 212.031(1)(c), F.S., imposes a tax rate of 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. Additionally, s. 212.031(3), F.S., provides that the owner, lessor, or person receiving the rent or license fee shall remit the tax to the Department of Revenue (DOR) at the times and in the manner provided by ch. 212, F.S., for sales tax dealers.

Section 212.04(1)(a), F.S., provides that it is a taxable privilege to sell or receive anything of value by way of admissions. Paragraph (b) of this subsection provides the tax rate of 6 percent for such privilege and specifies the rate must be computed after deducting any federal taxes imposed on the admission. Subparagraph (2)(a)1. of s. 212.04, F.S, provides exemptions to the tax levied on admissions for certain events. Subsection (3) of s. 212.04, F.S., provides that the admissions tax shall be paid and remitted at the same time and in the same manner as provided for remitting taxes on sales of tangible personal property.

III. Effect of Proposed Changes:

The committee substitute amends the statute relating to the tax on leases of real property to: 1) provide that “recreational facilities” are those facilities that are publicly owned, and 2) provide an exemption from the 6 percent tax for property rented, leased, subleased, or licensed by certain facilities to a concessionaire selling event-related products during an event at the facility when the rental, lease, or license payment is based on a percentage of sales or profits and not on a fixed price. These facilities include:

- convention halls
- auditoriums
- stadiums
- exhibition halls
- publicly-owned recreational facilities

- theaters
- arenas
- civic centers
- performing arts centers

Subsection (3) of s. 212.031, F.S., is amended to specify that the tax imposed by this section on the rental, lease, or license for the use of certain facilities to hold an event of not more than seven consecutive days must be collected at the time of payment for such rental, lease, or license but is not due and payable to the Department of Revenue (DOR) until the first day of the month following the actual date of the event and becomes delinquent on the 21st day of that month.

Subsection (10) is added to s. 212.031, F.S., to provide a sales tax exemption for separately stated charges by a convention hall, auditorium, stadium, exhibition hall, theater, arena, civic center, performing arts center, or publicly-owned recreational facility to a lessee or licensee for services required for the use of real property. Included are charges for laborers, stage hands, ticket takers, event staff, security personnel, cleaning staff, other event-related personnel, advertising, and credit card processing.

Paragraph (1)(b) of s. 212.04, F.S., is amended to provide that the value of an admission on which the 6 percent tax rate is imposed does not include state or local seat surcharges, taxes or fees, or service charges imposed by a facility ticket office or a ticketing service.

The statute governing the admissions tax is further amended to provide a tax exemption on admission charges to events sponsored by a governmental entity, a sports authority, or a sports commission when held in a convention hall, auditorium, stadium, exhibition hall, theater, arena, civic center, performing arts center, or publicly-owned recreational facility when 100 percent of the risk of success or failure lies with the governmental entity, sports authority, or sports commission sponsoring the event, and 100 percent of the funds at risk for the event belong to the facility. The committee substitute defines the terms "sports authority" and "sports commission" to mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and that contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

The committee substitute amends subsection (3) of s. 212.04, F.S., providing that the tax on admissions to an event at a convention hall, auditorium, stadium, exhibition hall, theater, arena, civic center, performing arts center, or publicly-owned recreational facility must be collected at the time of payment for the admission but is not due to DOR until the first day of the month following the actual date of the event for which the admission is sold and becomes delinquent on the 21st day of that month.

Finally, the committee substitute provides that any tax imposed on transactions exempted under sections 1 or 3 of this act, that is not actually paid or collected by a taxpayer before the effective date of this act, is not due from such taxpayer. However, any such taxes actually collected must be remitted to DOR, and no refund is due.

The committee substitute takes effect July 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute initially falls under subsection (b) of s. 18 of Art. VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By adding an exemption to the state sales tax, the committee substitute has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the committee substitute is exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of s. 18 of Art. VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

While the committee substitute reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, s. 18 or Art. VII, Florida Constitution does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that the various exemptions provided in the committee substitute will result in a 2000-01 fiscal year loss to the General Revenue Fund of \$11.0 million, with a recurring loss of \$2.8 million. Local governments sales tax revenues will be reduced by an estimated \$1.7 million in fiscal year 2000-01 and \$0.5 million on a recurring basis. The first year impact includes a \$7.3 million loss as a result of the provision in the committee substitute which does not require collection of past taxes.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Exemptions for certain facilities	\$ (11.0)	\$ (2.8)	\$ (*)	\$ (*)	\$ (1.7)	\$ (0.5)	\$ (12.7)	\$ (3.3)

* Insignificant
 ** Indeterminate

B. Private Sector Impact:

The private sector, including certain concessionaires, will benefit from the sales tax exemptions and delays of payment for certain taxes provided in this committee substitute.

C. Government Sector Impact:

The Department of Revenue reports that this committee substitute will have no fiscal impact to administer.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Revenue (DOR) submitted an analysis that raised the following technical concerns:

Section 1Exemption for Souvenir and Novelty Concessionaires

Whether the payment for the lease of space to a concessionaire for the sale of souvenirs, novelties, and other event-related products is based on a percentage of concession sales or is based on a fixed charge is not a meaningful distinction. They both represent a payment for the use of real property. From an administrative standpoint, it is better to exempt all leases of this space, whether the charge is based on a percentage of sales or a fixed charge. The removal of this distinction would probably have little fiscal impact, as a taxpayer could modify its lease or license agreements to base the charge entirely on a percentage of sales in order to fall under this exemption.

Timing of the Due Date On Advance Payment of Rent

Section 212.15(1), F.S., requires collected sales taxes to be remitted to DOR before the 21st day of the month following the month of collection. This committee substitute allows the dealer to keep the tax funds collected on the rent for events of seven consecutive days or less until the first day of the month following the last day of the event. The tax is not late until the 21st day of that month. Therefore, this committee substitute provision is in conflict with s. 212.15(1), F.S. DOR recommends that the sponsor amend s. 212.15(1), F.S., to provide an exception for tax paid on the rental of certain facilities.

Section 2Timing of Due Date of Taxes on Advance Payment of Admissions

Section 212.15(1), F.S., requires that collected sales taxes be remitted to DOR before the 21st day of the month following the month of collection. This committee substitute allows the dealers selling admissions to events at the listed facilities to keep the tax funds until the first day of the month following the date of the event which may be after the 21st day of the succeeding month. The tax is not late until the 21st day of that month. Therefore, this committee substitute provision is in conflict with s. 212.15(1), F.S. DOR recommends that the sponsor amend s. 212.15(1), F.S., to provide an exception for tax paid on admissions to events at certain facilities.

Section 5

Effective Date

These committee substitute sections are effective July 1, 2000. DOR suggests that the effective date of the committee substitute be changed to January 1, 2001, based on the rationale that the current effective date does not give this agency sufficient time to adequately implement this law. DOR must identify affected taxpayers, and may be required to create new forms, change internal processes, draft and promulgate rule amendments, prepare a Taxpayer Information Publication (TIP) to be sent to affected parties, and otherwise notify the public on how to comply with the new tax law. DOR reported that a January 1 effective date would allow the department to devote more time and effort to executing a better planned and thorough implementation.

VIII. Amendments:

None.