

STORAGE NAME: h0349.ca

DATE: February 11, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 349

RELATING TO: Sales Tax Exemptions

SPONSOR(S): Representative Johnson and Others

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE (EDC) YEAS 7 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) FINANCE & TAXATION (FRC)
 - (4) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (5)
-

I. SUMMARY:

This bill revises the application of the sales tax exemption on the lease, sublease, license to use, or rental of property to a concessionaire by the following public and private facilities: convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, and recreational facilities. Specifically, the bill exempts the portion of payment that is based on a percentage of sales and not based on a fixed price paid by concessionaires to sell souvenirs, novelties, or other event-related products.

The bill specifies sales tax imposed on the rental, lease, or license for the use of the above listed facilities to hold an event of not more than seven consecutive days' duration shall be collected at the time of payment for that rental, lease, or license but is not due and payable to the department until the first day of the month following the last day that the event for which the payment is actually held. The bill exempts from sales tax separately stated charges by the above facilities to a lessee or licensee for food, drink, or services required or available in connection with the lease or license to use real property.

The bill provides that state or local seat surcharges, taxes, or fees imposed on admission to events are exempt from taxation. Separately stated ticket service charges imposed by a facility ticket office or a ticketing service company are exempted from taxation if the service charge is added to a separately stated, established ticket price.

The bill exempts from sales tax admission to an event sponsored by a sports authority, sports commission, or government entity held in any of the above listed facilities when (1) 100 percent of the risk of success or failure for the event lies with the sponsor; (2) 100 percent of the funds at risk for the event belong to the sponsor; and (3) student and faculty talent is not exclusively used. The bill provides that sales tax on admissions to an event at the above listed facilities shall be collected at the time payment for admission is made, but is not due to DOR until the first day of the month following the date of the event.

The bill provides that no taxes imposed on the transactions exempted under the bill, and not actually paid or collected prior to the effective date, shall be due.

The Revenue Estimating Conference estimates a negative fiscal impact upon General Revenue of (\$11) million for FY 2000-2001 and (\$2.9) million for FY 2001-2002, and a negative fiscal

STORAGE NAME: h0349.ca

DATE: February 11, 2000

PAGE 2

impact upon local government revenues of (\$1.7) million for FY 2000-2001 and (\$0.5) million for FY 2001-2002.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Sales Tax on Lease or Rental of or License in Real Property

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 licence 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.

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 DOR at the times and in the manner provided by chapter 212, F.S., for dealers. Section 212.15(1), F.S., provides that taxes collected under chapter 212, F.S., are due on the first day of the succeeding month after they are collected and late on the 21st day of that succeeding month. Advance payments of rent are taxable when received, not when the payor occupies the premises.

During the 1999 legislative session, a bill substantially similar to HB 349, CS/HB 1083, died on the House Calendar. However, chapter 99-270, L.O.F., did include section 1 from CS/HB 1083. This provision amended s. 212.031(1)(a)10., F.S., to revise the application of the exemption for property leased, subleased, licensed, or rented to a person providing food and drink concessionaire services to include both publicly and privately owned convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, and recreational facilities.

The total payment, whether based on a fixed-fee, percentage of sales, or other charges, to a convention hall, auditorium, stadium, exhibition hall, recreational facility, theater, arena, civic center, or performing arts center for lease, license, or rental of real property to a concessionaire for the purpose of selling souvenirs, novelties, or other event-related products is subject to tax.

All charges that the lessee or licensee is required to pay to occupy the premises are considered part of the total rental or license fee and therefore are taxable under s. 212.031(1)(a), F.S. This includes mandatory requirements to purchase services or tangible

personal property as a condition of occupying the premises, such as food, drink, laborers, stage hands, ticket takers, security staff, and cleaning staff.

Admissions Sales Tax

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 shall be computed after deducting any federal taxes imposed on the admission. Any state or local government imposed or authorized seat surcharges, taxes, or fees imposed upon admission is part of the sales price or actual value of that admission and is subject to sales tax. A service or convenience charge added to the price of an admission by a ticket office or ticketing service company is part of the sales price and is subject to sales tax.

Admissions charges to events sponsored by sports authorities, sports commissions, or governmental entities are subject to sales tax unless specifically exempt. Section 212.04(2)(a)1., F.S., provides an exemption for events sponsored by elementary schools, junior high schools, middle schools, high schools, community colleges, public or private colleges and universities, deaf and blind schools, facilities of the youth services program of the Department of Children and Family Services, and certain state correctional institutions when only student, faculty, or inmate talent is used. This exemption does not apply to admissions to athletic events sponsored by an institution within the State University System, and the proceeds of the tax collected on such admissions must be retained and used by each institution to support women's athletics.

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 -- taxes are due on the first day of the succeeding month after they are collected and late on the 21st day of that succeeding month. Taxes may not be retained until the event is held.

C. EFFECT OF PROPOSED CHANGES:

SECTION 1

Paragraph (a) of subsection (1) of s. 212.031, F.S., is amended by adding a new subparagraph 12. that exempts the portion of payment which is based on a percentage of sales and not based on a fixed price made for rent, lease, sublease, or license to occupy the premises at specified public and private facilities that is paid by concessionaires to sell souvenirs, novelties, or other event-related products. These facilities include:

- Convention Halls;
- Exhibition Halls;
- Auditoriums;
- Stadiums;
- Theaters;
- Arenas;
- Civic Centers;
- Performing Arts Centers; and
- Recreational Facilities.

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' duration shall be collected at the time of payment for that rental, lease, or license but is not due and payable to DOR until the first day of the month following the last day that the event for which the payment is actually held. Payments for such tax becomes delinquent on the 21st day of that month.

Subsection (10) is added to s. 212.031, F.S., to provide a tax exemption for separately stated charges by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or recreation facility to a lessee or licensee for food, drink, or services required or available in connection with a lease or license for the use of real property. Such charges include: laborers, stage hands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Furthermore, language is provided stating no tax imposed on the transactions exempted under those sections of chapter 212, F.S., affected by section (1) of this bill, and not actually paid or collected by a taxpayer before the effective date of this act, shall be due from such taxpayer. However, any such taxes actually collected shall be remitted to DOR, and no refund shall be due.

SECTION 2

Subsection (1)(b) of s. 212.04, F.S., is amended to state 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 separately stated service charges imposed by a facility ticket office or a ticketing service which is added to a separately stated, established ticket price.

A new sub-subparagraph c., is added to sub-paragraph 2., of subsection (2)(a), of s. 212.04, F.S., providing a tax exemption on admission charges to events sponsored by a governmental entity, a sports authority, or a sports commission when held in specified facilities when: (1) 100 percent of the risk of success or failure lies with the governmental entity sponsoring the event; (2) 100 percent of the funds at risk for the event belong to the sponsor; and (3) student or faculty talent is not exclusively used. Eligible facilities include:

- * Convention Halls;
- * Exhibition Halls;
- * Auditoriums;
- * Theaters;
- * Arenas;
- * Civic Centers;
- * Stadiums;
- * Performing Arts Centers; and
- * Recreational Facilities.

Subsection (3) of s. 212.04, F.S., is amended to state that the taxes imposed by this section are to be collected at the time of payment for the admission, but shall not be due to the Department of Revenue until the first day of the month following the actual date of the event for which the admission is sold. Such payments become delinquent on the 21st day of that month.

Finally, language is provided that states no tax imposed on transactions exempted under those sections of chapter 212, F.S., affected by section (2) of this bill, and not actually paid or collected by a taxpayer before the effective date of this act, shall be due from such

taxpayer. However, any such taxes actually collected shall be remitted to DOR and no refund shall be due.

SECTION 3

The provisions of this bill take effect July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See "Effects of Proposed Changes" section.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference estimates a negative fiscal impact upon General Revenue of (\$11) million for FY 2000-2001 and (\$2.9) million for FY 2001-2002.

2. Expenditures:

DOR states the bill has no fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill reduces revenues collected by local governments under local option sales taxes, and reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties.

The Revenue Estimating Conference estimates a negative fiscal impact upon local government revenues of (\$1.7) million for FY 2000-2001 and (\$0.5) million for FY 2001-2002.

2. Expenditures:

This bill has no direct impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

As discussed in the "Effects of Proposed Changes" section of the analysis, this bill provides several sales tax exemptions and delays payment of specified collected sales taxes to DOR.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill 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, Article VII, Section 18(c), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This bill does not necessitate additional rule making authority.

C. OTHER COMMENTS:

Department of Revenue

DOR submitted an analysis of HB 349 that raised the following technical concerns:

Section 1. of the Bill

Exemption for Souvenir and Novelty Concessionaires

This bill exempts property licensed to a souvenir or novelty concessionaire by a recreational facility. The term "recreational facility" is not defined in the bill. There is currently no definition of "recreational facility" anywhere in Chapter 212, F.S. It is unclear whether certain facilities are intended to be considered "recreational facilities," under this bill, such as beaches, fairs, parks, health clubs, bingo parlors, amusement parks, and bowling alleys.

The Department has received numerous inquiries regarding the scope of the term "recreational facility," as used in s. 212.031(1)(a)10., F.S., which was amended by CS/SB 1502 (1999). Without a definition of this term, the Department will face the same problems administering this bill as it did last year when attempting to administer CS/SB 1502 (1999).

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.

Exemption for Additional Rental Consideration -- Food, Drink, or Services

Charges for food, drink, or services would no longer be part of the taxable rental consideration at the facilities listed. This change presents no administrative difficulties to the Department. Charges for tangible personal property, other than food or drink, at the listed facilities that are required to be purchased as a condition for occupying the premises would still be considered additional rental consideration. The sponsor may want to amend the proposed changes to include all tangible personal property, not just food and drink, which would present no additional administrative difficulties to the Department.

Timing of the Due Date On Advance Payment of Rent

Section 212.15(1) F.S., requires collected sales taxes to be remitted to the Department before the 21st day of the month following the month of collection. This bill provision 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 bill provisions is in conflict with s. 212.15(1), F.S. The sponsor should amend s. 212.15(1), F.S., to provide an exception for tax paid on the rental of certain facilities.

Section 2. of the Bill

Admission Charges

“Sports authority” and “sports commission” are not defined in the proposed section and may be subject to interpretation. Defining these items would aid in administering this section.

Timing of Due Date of Taxes

Section 212.15(1), F.S., requires that collected sales taxes be remitted to the Department before the 21st day of the month following the month of collection. This provision 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 bill provision is in conflict with s. 212.15(1), F.S. The sponsor should amend s. 212.15(1), F.S., to provide an exception for tax paid on admissions to events at certain facilities.

Effective Date

These bill sections are effective July 1, 2000. The Department suggests that the effective date of the bill be changed to January 1, 2001. The current effective date does not give this agency sufficient time to adequately implement this law. The Department must identify affected taxpayers, and may be required to create new forms,

STORAGE NAME: h0349.ca

DATE: February 11, 2000

PAGE 9

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. A January 1 effective date will allow the Department to devote more time and effort to executing a better planned and thorough implementation, which in turn should result in increased voluntary compliance by affected parties.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

James M. Cox

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith