

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the tax on sales, use, and other
7 transactions; amending s. 212.031, F.S.; continuing in
8 effect an exemption from the tax on rental or license fees
9 which is provided for certain property rented, leased, or
10 licensed by a convention or exhibition hall, auditorium,
11 stadium, theater, arena, civic center, performing arts
12 center, or publicly owned recreational facility for a
13 specified period; providing for future repeal; postponing
14 the repeal of and reviving and readopting s. 212.031(10),
15 F.S., relating to an exemption provided for certain
16 charges imposed by a convention or exhibition hall,
17 auditorium, stadium, theater, arena, civic center,
18 performing arts center, or publicly owned recreational
19 facility upon a lessee or licensee; providing for future
20 repeal; amending s. 212.04, F.S., relating to the tax on
21 admissions; continuing in effect a provision that excludes
22 certain service charges from the sale price or actual
23 value of an admission; continuing in effect an exemption

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24 from the tax which is provided for admission charges to an
 25 event sponsored by a governmental entity, sports
 26 authority, or sports commission; providing for future
 27 repeal; continuing in effect provisions governing the
 28 remitting of certain admission taxes to the Department of
 29 Revenue; providing effective dates.

30
 31 Be It Enacted by the Legislature of the State of Florida:

32
 33 Section 1. Effective July 1, 2006, paragraph (a) of
 34 subsection (1) of section 212.031, Florida Statutes, as amended
 35 by section 3 of chapter 2000-345, as amended by section 55 of
 36 chapter 2002-218, and as amended by section 2 of chapter 2000-
 37 182, section 1 of chapter 2000-183, section 53 of chapter 2000-
 38 260, and section 27 of chapter 2001-140, Laws of Florida, and
 39 subsection (3) of said section, as amended by section 3 of
 40 chapter 2000-345, as amended by section 55 of chapter 2002-218,
 41 Laws of Florida, are amended to read:

42 212.031 Tax on rental or license fee for use of real
 43 property.--

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

- 48 1. Assessed as agricultural property under s. 193.461.
- 49 2. Used exclusively as dwelling units.
- 50 3. Property subject to tax on parking, docking, or storage
- 51 spaces under s. 212.03(6).

52 4. Recreational property or the common elements of a
 53 condominium when subject to a lease between the developer or
 54 owner thereof and the condominium association in its own right
 55 or as agent for the owners of individual condominium units or
 56 the owners of individual condominium units. However, only the
 57 lease payments on such property shall be exempt from the tax
 58 imposed by this chapter, and any other use made by the owner or
 59 the condominium association shall be fully taxable under this
 60 chapter.

61 5. A public or private street or right-of-way and poles,
 62 conduits, fixtures, and similar improvements located on such
 63 streets or rights-of-way, occupied or used by a utility or
 64 provider of communications services, as defined by s. 202.11,
 65 for utility or communications or television purposes. For
 66 purposes of this subparagraph, the term "utility" means any
 67 person providing utility services as defined in s. 203.012. This
 68 exception also applies to property, wherever located, on which
 69 the following are placed: towers, antennas, cables, accessory
 70 structures, or equipment, not including switching equipment,
 71 used in the provision of mobile communications services as
 72 defined in s. 202.11. For purposes of this chapter, towers used
 73 in the provision of mobile communications services, as defined
 74 in s. 202.11, are considered to be fixtures.

75 6. A public street or road which is used for
 76 transportation purposes.

77 7. Property used at an airport exclusively for the purpose
 78 of aircraft landing or aircraft taxiing or property used by an

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79 | airline for the purpose of loading or unloading passengers or
80 | property onto or from aircraft or for fueling aircraft.

81 | 8.a. Property used at a port authority, as defined in s.
82 | 315.02(2), exclusively for the purpose of oceangoing vessels or
83 | tugs docking, or such vessels mooring on property used by a port
84 | authority for the purpose of loading or unloading passengers or
85 | cargo onto or from such a vessel, or property used at a port
86 | authority for fueling such vessels, or to the extent that the
87 | amount paid for the use of any property at the port is based on
88 | the charge for the amount of tonnage actually imported or
89 | exported through the port by a tenant.

90 | b. The amount charged for the use of any property at the
91 | port in excess of the amount charged for tonnage actually
92 | imported or exported shall remain subject to tax except as
93 | provided in sub-subparagraph a.

94 | 9. Property used as an integral part of the performance of
95 | qualified production services. As used in this subparagraph,
96 | the term "qualified production services" means any activity or
97 | service performed directly in connection with the production of
98 | a qualified motion picture, as defined in s. 212.06(1)(b), and
99 | includes:

100 | a. Photography, sound and recording, casting, location
101 | managing and scouting, shooting, creation of special and optical
102 | effects, animation, adaptation (language, media, electronic, or
103 | otherwise), technological modifications, computer graphics, set
104 | and stage support (such as electricians, lighting designers and
105 | operators, greensmen, prop managers and assistants, and grips),
106 | wardrobe (design, preparation, and management), hair and makeup

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107 (design, production, and application), performing (such as
 108 acting, dancing, and playing), designing and executing stunts,
 109 coaching, consulting, writing, scoring, composing,
 110 choreographing, script supervising, directing, producing,
 111 transmitting dailies, dubbing, mixing, editing, cutting,
 112 looping, printing, processing, duplicating, storing, and
 113 distributing;

114 b. The design, planning, engineering, construction,
 115 alteration, repair, and maintenance of real or personal property
 116 including stages, sets, props, models, paintings, and facilities
 117 principally required for the performance of those services
 118 listed in sub-subparagraph a.; and

119 c. Property management services directly related to
 120 property used in connection with the services described in sub-
 121 subparagraphs a. and b.

122
 123 This exemption will inure to the taxpayer upon presentation of
 124 the certificate of exemption issued to the taxpayer under the
 125 provisions of s. 288.1258.

126 10. Leased, subleased, licensed, or rented to a person
 127 providing food and drink concessionaire services within the
 128 premises of a convention hall, exhibition hall, auditorium,
 129 stadium, theater, arena, civic center, performing arts center,
 130 publicly owned recreational facility, or any business operated
 131 under a permit issued pursuant to chapter 550. A person
 132 providing retail concessionaire services involving the sale of
 133 food and drink or other tangible personal property within the
 134 premises of an airport shall be subject to tax on the rental of

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135 real property used for that purpose, but shall not be subject to
 136 the tax on any license to use the property. For purposes of
 137 this subparagraph, the term "sale" shall not include the leasing
 138 of tangible personal property.

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

148 12. Rented, leased, subleased, or licensed to a
 149 concessionaire by a convention hall, exhibition hall,
 150 auditorium, stadium, theater, arena, civic center, performing
 151 arts center, or publicly owned recreational facility, during an
 152 event at the facility, to be used by the concessionaire to sell
 153 souvenirs, novelties, or other event-related products. This
 154 subparagraph applies only to that portion of the rental, lease,
 155 or license payment which is based on a percentage of sales and
 156 not based on a fixed price. This subparagraph is repealed July
 157 1, 2009.

158 ~~13.12.~~ Property used or occupied predominantly for space
 159 flight business purposes. As used in this subparagraph, "space
 160 flight business" means the manufacturing, processing, or
 161 assembly of a space facility, space propulsion system, space
 162 vehicle, satellite, or station of any kind possessing the

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163 capacity for space flight, as defined by s. 212.02(23), or
 164 components thereof, and also means the following activities
 165 supporting space flight: vehicle launch activities, flight
 166 operations, ground control or ground support, and all
 167 administrative activities directly related thereto. Property
 168 shall be deemed to be used or occupied predominantly for space
 169 flight business purposes if more than 50 percent of the
 170 property, or improvements thereon, is used for one or more space
 171 flight business purposes. Possession by a landlord, lessor, or
 172 licensor of a signed written statement from the tenant, lessee,
 173 or licensee claiming the exemption shall relieve the landlord,
 174 lessor, or licensor from the responsibility of collecting the
 175 tax, and the department shall look solely to the tenant, lessee,
 176 or licensee for recovery of such tax if it determines that the
 177 exemption was not applicable.

178 (3) The tax imposed by this section shall be in addition
 179 to the total amount of the rental or license fee, shall be
 180 charged by the lessor or person receiving the rent or payment in
 181 and by a rental or license fee arrangement with the lessee or
 182 person paying the rental or license fee, and shall be due and
 183 payable at the time of the receipt of such rental or license fee
 184 payment by the lessor or other person who receives the rental or
 185 payment. Notwithstanding any other provision of this chapter,
 186 the tax imposed by this section on the rental, lease, or license
 187 for the use of a convention hall, exhibition hall, auditorium,
 188 stadium, theater, arena, civic center, performing arts center,
 189 or publicly owned recreational facility to hold an event of not
 190 more than 7 consecutive days' duration shall be collected at the

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191 time of the payment for that rental, lease, or license but is
 192 not due and payable to the department until the first day of the
 193 month following the last day that the event for which the
 194 payment is made is actually held, and becomes delinquent on the
 195 21st day of that month. The owner, lessor, or person receiving
 196 the rent or license fee shall remit the tax to the department at
 197 the times and in the manner hereinafter provided for dealers to
 198 remit taxes under this chapter. The same duties imposed by this
 199 chapter upon dealers in tangible personal property respecting
 200 the collection and remission of the tax; the making of returns;
 201 the keeping of books, records, and accounts; and the compliance
 202 with the rules and regulations of the department in the
 203 administration of this chapter shall apply to and be binding
 204 upon all persons who manage any leases or operate real property,
 205 hotels, apartment houses, roominghouses, or tourist and trailer
 206 camps and all persons who collect or receive rents or license
 207 fees taxable under this chapter on behalf of owners or lessors.

208 Section 2. Notwithstanding the provisions of section 3 of
 209 chapter 2000-345, Laws of Florida, as amended by section 55 of
 210 chapter 2002-218, Laws of Florida, subsection (10) of s.
 211 212.031, Florida Statutes, shall not stand repealed on July 1,
 212 2006, as scheduled by such laws, but that subsection is revived
 213 and readopted. Subsection (10) of s. 212.031, Florida Statutes,
 214 is repealed July 1, 2009.

215 Section 3. Effective July 1, 2006, paragraph (b) of
 216 subsection (1) and subsection (3) of section 212.04, Florida
 217 Statutes, as amended by section 4 of chapter 2000-345, as
 218 amended by section 55 of chapter 2002-218, Laws of Florida, and

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219 paragraph (a) of subsection (2) of said section, as amended by
 220 section 4 of chapter 2000-345, as amended by section 55 of
 221 chapter 2002-218, as amended by section 916 of chapter 2002-387,
 222 and as amended by section 24 of chapter 2000-158, and section 11
 223 of chapter 2000-210, Laws of Florida, are amended to read:

224 212.04 Admissions tax; rate, procedure, enforcement.--

225 (1)

226 (b) For the exercise of such privilege, a tax is levied at
 227 the rate of 6 percent of sales price, or the actual value
 228 received from such admissions, which 6 percent shall be added to
 229 and collected with all such admissions from the purchaser
 230 thereof, and such tax shall be paid for the exercise of the
 231 privilege as defined in the preceding paragraph. Each ticket
 232 must show on its face the actual sales price of the admission,
 233 or each dealer selling the admission must prominently display at
 234 the box office or other place where the admission charge is made
 235 a notice disclosing the price of the admission, and the tax
 236 shall be computed and collected on the basis of the actual price
 237 of the admission charged by the dealer. The sale price or
 238 actual value of admission shall, for the purpose of this
 239 chapter, be that price remaining after deduction of federal
 240 taxes and state or locally imposed or authorized seat
 241 surcharges, taxes, or fees, if any, imposed upon such admission.
 242 The sale price or actual value does not include separately
 243 stated ticket service charges that are imposed by a facility
 244 ticket office or a ticketing service and added to a separately
 245 stated, established ticket price. ~~and~~ The rate of tax on each

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246 admission shall be according to the brackets established by s.
247 212.12(9).

248 (2)(a)1. No tax shall be levied on admissions to athletic
249 or other events sponsored by elementary schools, junior high
250 schools, middle schools, high schools, community colleges,
251 public or private colleges and universities, deaf and blind
252 schools, facilities of the youth services programs of the
253 Department of Children and Family Services, and state
254 correctional institutions when only student, faculty, or inmate
255 talent is used. However, this exemption shall not apply to
256 admission to athletic events sponsored by a state university,
257 and the proceeds of the tax collected on such admissions shall
258 be retained and used by each institution to support women's
259 athletics as provided in s. 1006.71(2)(c).

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

266 b. No tax shall be levied on admission charges to an event
267 sponsored by a governmental entity, sports authority, or sports
268 commission when held in a convention hall, exhibition hall,
269 auditorium, stadium, theater, arena, civic center, performing
270 arts center, or publicly owned recreational facility and when
271 100 percent of the risk of success or failure lies with the
272 sponsor of the event and 100 percent of the funds at risk for
273 the event belong to the sponsor, and student or faculty talent

274 is not exclusively used. As used in this sub-subparagraph, the
 275 terms "sports authority" and "sports commission" mean a
 276 nonprofit organization that is exempt from federal income tax
 277 under s. 501(c)(3) of the Internal Revenue Code and that
 278 contracts with a county or municipal government for the purpose
 279 of promoting and attracting sports-tourism events to the
 280 community with which it contracts. This sub-subparagraph is
 281 repealed July 1, 2009.

282 3. No tax shall be levied on an admission paid by a
 283 student, or on the student's behalf, to any required place of
 284 sport or recreation if the student's participation in the sport
 285 or recreational activity is required as a part of a program or
 286 activity sponsored by, and under the jurisdiction of, the
 287 student's educational institution, provided his or her
 288 attendance is as a participant and not as a spectator.

289 4. No tax shall be levied on admissions to the National
 290 Football League championship game, on admissions to any
 291 semifinal game or championship game of a national collegiate
 292 tournament, or on admissions to a Major League Baseball all-star
 293 game.

294 5. A participation fee or sponsorship fee imposed by a
 295 governmental entity as described in s. 212.08(6) for an athletic
 296 or recreational program is exempt when the governmental entity
 297 by itself, or in conjunction with an organization exempt under
 298 s. 501(c)(3) of the Internal Revenue Code of 1954, as amended,
 299 sponsors, administers, plans, supervises, directs, and controls
 300 the athletic or recreational program.

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301 6. Also exempt from the tax imposed by this section to the
302 extent provided in this subparagraph are admissions to live
303 theater, live opera, or live ballet productions in this state
304 which are sponsored by an organization that has received a
305 determination from the Internal Revenue Service that the
306 organization is exempt from federal income tax under s.
307 501(c)(3) of the Internal Revenue Code of 1954, as amended, if
308 the organization actively participates in planning and
309 conducting the event, is responsible for the safety and success
310 of the event, is organized for the purpose of sponsoring live
311 theater, live opera, or live ballet productions in this state,
312 has more than 10,000 subscribing members and has among the
313 stated purposes in its charter the promotion of arts education
314 in the communities which it serves, and will receive at least 20
315 percent of the net profits, if any, of the events which the
316 organization sponsors and will bear the risk of at least 20
317 percent of the losses, if any, from the events which it sponsors
318 if the organization employs other persons as agents to provide
319 services in connection with a sponsored event. Prior to March 1
320 of each year, such organization may apply to the department for
321 a certificate of exemption for admissions to such events
322 sponsored in this state by the organization during the
323 immediately following state fiscal year. The application shall
324 state the total dollar amount of admissions receipts collected
325 by the organization or its agents from such events in this state
326 sponsored by the organization or its agents in the year
327 immediately preceding the year in which the organization applies
328 for the exemption. Such organization shall receive the exemption

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329 only to the extent of \$1.5 million multiplied by the ratio that
 330 such receipts bear to the total of such receipts of all
 331 organizations applying for the exemption in such year; however,
 332 in no event shall such exemption granted to any organization
 333 exceed 6 percent of such admissions receipts collected by the
 334 organization or its agents in the year immediately preceding the
 335 year in which the organization applies for the exemption. Each
 336 organization receiving the exemption shall report each month to
 337 the department the total admissions receipts collected from such
 338 events sponsored by the organization during the preceding month
 339 and shall remit to the department an amount equal to 6 percent
 340 of such receipts reduced by any amount remaining under the
 341 exemption. Tickets for such events sold by such organizations
 342 shall not reflect the tax otherwise imposed under this section.

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

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

349 9. No tax shall be levied on admissions to any postseason
 350 collegiate football game sanctioned by the National Collegiate
 351 Athletic Association.

352 (3) Such taxes shall be paid and remitted at the same time
 353 and in the same manner as provided for remitting taxes on sales
 354 of tangible personal property, as hereinafter provided.

355 Notwithstanding any other provision of this chapter, the tax on
 356 admission to an event at a convention hall, exhibition hall,

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357 auditorium, stadium, theater, arena, civic center, performing
358 arts center, or publicly owned recreational facility shall be
359 collected at the time of payment for the admission but is not
360 due to the department until the first day of the month following
361 the actual date of the event for which the admission is sold and
362 becomes delinquent on the 21st day of that month.

363 Section 4. Except as otherwise provided by this act, this
364 act shall take effect July 1, 2005.