

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Antone
TIED BILLS: **IDEN./SIM. BILLS:** SB 2454

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee		Diez-Arguelles	Diez-Arguelles
2) Tourism Committee			
3) Local Government Council			
4) Fiscal Council			
5) _____			

SUMMARY ANALYSIS

The sale of hotel rooms over the internet by intermediary companies raises questions about the proper application of transient rental taxes to such transactions. In the typical transaction an internet intermediary company acquires rooms from a hotel at a discounted rate. The intermediary then sells the rooms to customers over the internet at a markup over the discounted rate.

The current practice for the collection and remittance of taxes on the sales by intermediary companies is for the intermediary company to remit to the hotel company taxes based on the discounted rate.

The intermediary companies assert that the current practice is the appropriate method to calculate and remit taxes. They argue that the tax is measured by the amount received by the hotel and that the amount of their markup is a nontaxable service provided to the customer. Others, including some local governments, assert that the tax applies to the total amount paid by the customer to the intermediary company and that tax should be collected and remitted based on that amount. The Department of Revenue has not taken an official position on this matter.

The bill proposes to resolve any questions regarding the proper method of imposing taxes on transient rentals by making it clear that taxes on transient rentals are imposed on the total consideration paid by the customer for the transient accommodation.

The bill provides three different methods that can be used by an intermediary company to remit taxes on the total consideration received for the transient accommodation.

The bill provides for a limited amnesty for intermediary companies that may owe past taxes on their sales of hotel rooms.

The bill will have an indeterminate positive impact on state and local revenues.

The bill has an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes: The bill makes clear that taxes are due on the entire amount paid by a customer for a transient rental accommodation.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law contains various taxes that are applicable to transient rentals. Transient rentals are rentals or leases of living quarters or accommodations for a period of less than six months. The applicable taxes are: the state sales tax (s. 212.03, F.S.), the local discretionary sales surtax (s. 212.054, F.S.), the tourist development tax (s. 125.0104, F.S.), the convention development tax (s. 212.0305, F.S.), the tourist impact tax in areas of critical state concern (s. 125.0108, F.S.), and the municipal resort tax (Chapter 67-390, L.O.F.).

Florida law provides that the sales tax on transient rental is levied "on the total rental charged . . . by the person charging or collecting the rental." Sec. 212.03(1), F.S. Further, s. 212.03(2), F.S., provides that the sales tax "shall be in addition to the total amount of the rental, shall be charged by the lessor or person receiving the rent . . . to the lessee or person paying the rental, and shall be due and payable at the time of receipt of such rental payment by the lessor or person . . . who receives said rental or payment."

The tourist development tax is levied "at a rate of 1 percent or 2 percent of . . . the total consideration charged for such lease or rental." Sec. 212.0104(3)(c), F.S. The convention development taxes and the tourist impact tax statutes contain similar language. See ss. 212.00305(3) and 125.108(1), F.S.

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Proposed Changes

The bill proposes to resolve any questions regarding the proper method of imposing tax on transient rentals by making it clear that taxes on transient rentals are imposed on the total consideration paid by the customer for the transient accommodation.

The bill provides that the term "engaging in the business of renting, leasing, letting, or granting a license to use transient rental accommodations" includes offering information about the availability of accommodations, arranging for the customer's occupancy, establishing the total rental price paid by the

customer, and collecting the rental payments from the customer. A person engaging in these activities is defined as a “remarketer.”

The bill defines the terms “total rent,” “total consideration,” and “consideration,” as those terms are used in the transient rental statutes, to include the total consideration a customer must pay in order to use or occupy a transient accommodation, including any mandatory charges or fees that are separately itemized on the customer’s bill.

The bill provides that remarketers must register with the Department of Revenue and collect and remit taxes on the total rent charged to their customers, unless the owners or operators of the accommodation agree in writing to report and remit taxes on their behalf. If the owners or operators do not agree to remit taxes on a remarketer’s behalf, the remarketer must extend a resale certificate to the owner or operator.

The bill also provides two other methods for remarketers to remit taxes. Under a dual-remittance system, the remarketer remits taxes to the owner or operator based on the discount rate the remarketer agreed to pay for the accommodation, and remits taxes directly to the Department of Revenue on the amount of its markup.

Under a single remittance system, the remarketer must disclose to the owner or operator the total rental paid by the customer and remit taxes to the owner or operator based on that amount. If the remarketer does not disclose the total rental received from the customer, the remarketer must remit to the owner or operator taxes based either on 135% of the discount rate or on the maximum amount that the remarketer can charge under a written agreement with the owner or operator.

If the remarketer is a travel agent within the meaning of 212.04.(1)(d), F.S., the remarketer may treat transient accommodations as component part of vacation packages under that section. The remarketer only needs to pay tax on the amount paid to the owner or operator for the accommodation.

The bill further provides for the Department of Revenue to administer, collect, enforce, and audit all taxes paid by remarketers under a dual-remittance system, notwithstanding any election made by a county to self-administer local taxes impose under chapter 125 or sec. 212.0305, F.S.

In order to clear up any uncertainty regarding past tax liability, the bill provides amnesty for unpaid transient rental taxes, if the following conditions are met by the party requesting amnesty: (1) the rentals subject to amnesty were made prior to July 1, 2005; (2) the rental payments were collected by remarketers who are not owners, operators, or managers of transient rental facilities, or their agents; (3) the remarketers who collected the rental payments register with the Department of Revenue by July 1, 2005; and (4) the remarketer applies for amnesty within 3 months after July 1, 2005, pursuant to rules of the Department of Revenue. The Department of Revenue is given authority to promulgate emergency rules to implement the amnesty provision of the bill.

The bill defines the term “travel agent” as used in s. 212.04(1)(d), F.S., as a registered seller of travel as defined in s. 559.927, F.S.

The bill also provides that remarketers who elect to remit taxes under the dual-remittance system only need to obtain one certificate of registration from the Department of Revenue.

C. SECTION DIRECTORY:

Section 1. Amends section 212.03, F.S. to add the changes proposed by the bill.

Section 2. Provides for amnesty.

Section 3. Amends section 212.04, F.S., to add a definition.

Section 4. Amends section 212.18 , F.S., to provide for one certificate of registration.

Section 5. Provides an effective date of July 1, 2005

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The provisions of this bill will have an indeterminate positive impact on state revenues. By making it clear that tax is due on the entire amount charged to the customer for a transient accommodation, taxes will be remitted on a higher tax base that under current industry practices. The Revenue Estimating Conference has not developed an estimate for this bill.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The provisions of this bill will have an indeterminate positive impact on local government revenues. By making it clear that tax is due on the entire amount charged to the customer for a transient accommodation, taxes will be remitted on a higher tax base that under current industry practices. The Revenue Estimating Conference has not developed an estimate for this bill.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The provisions of this bill will make clear that tax is due on the entire amount charged by an intermediary company to a person renting a transient accommodation. It is unclear to what extent this increase will be passed on to the customer. Intermediary companies will have increased expenses in order to collect and remit taxes.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because the bill does not: require cities or counties to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue rulemaking authority for the notification and determination processes regarding local governments. Also, the bill grants the Department of Revenue authority to promulgate emergency rules to implement the amnesty provisions.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES