HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1357 CS 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	9 Y, 0 N, w/CS	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 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. Intermediary companies must register with the Department of Revenue and remit taxes on the total consideration received for the transient accommodation.

The changes made by the bill are intended to clarify existing law.

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

The Revenue Estimating Conference has estimated that clarifying existing law will not have an impact on state revenues. The amnesty provisions will have a negative indeterminate impact on state 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 rentals 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.

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 believes that existing statutes make the tax applicable to the entire amount paid to the intermediary company. However, the Department also believes that litigation will be needed to resolve the issue.

Proposed Changes

The bill proposes to clarify existing law and 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.

The bill defines the terms "total rental," "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 persons engaging in the business of renting transient rental accommodations must register with the Department of Revenue and collect and remit taxes on the total rental charged to their customers. These persons must also extend resale certificates to the owner or operator of the accommodations instead of paying taxes on the amounts paid to owner or operator.

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.

C. SECTION DIRECTORY:

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

Section 2. Provides that the bill is intended to clarify existing law.

Section 3. Provides for amnesty.

Section 4. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has estimated that clarifying existing law will not have an impact on state revenues. The amnesty provisions will have a negative indeterminate impact on state revenues.

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has estimated that the provisions of this bill clarifying existing law will not have an impact on local government revenues. The amnesty provisions will have a negative indeterminate impact on local revenues.

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:

None

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:

None

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue authority to promulgate emergency rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2005, the Finance and Tax Committee adopted one strike-all amendment. This analysis reflects those changes.