

By Senator Webster

9-1432-05

1 A bill to be entitled

2 An act relating to the tax on transient rental

3 accommodations; amending s. 212.03, F.S.;

4 clarifying the meaning of the term "engaging in

5 the business of renting, leasing, letting, or

6 granting a license to use transient rental

7 accommodations" for taxation purposes to

8 include certain remarketing activities;

9 redefining the term "taxable rent or

10 consideration" to include charges or fees paid

11 by a customer to a person collecting the rent

12 or consideration as a condition of occupancy of

13 a transient rental; requiring persons engaged

14 in certain remarketing activities regarding

15 transient rental accommodations to collect

16 taxes on total rentals; providing alternative

17 methods for remitting the taxes to the

18 Department of Revenue; providing for

19 incorporating transient rentals into vacation

20 packages; providing for administration by the

21 department of taxes remitted by remarketers;

22 providing for a local audit under certain

23 circumstances; providing that specified

24 subsections are intended to clarify existing

25 law; providing intent; providing an amnesty for

26 unpaid taxes, penalties, and interest on

27 transient rentals under certain circumstances;

28 providing for the adoption of emergency rules

29 to implement the amnesty; amending s. 212.04,

30 F.S.; requiring a travel agent to be registered

31 as a seller of travel; providing for

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 recordkeeping; amending s. 212.18, F.S. ;
2 requiring only a single registration for
3 transient rental remarketers; providing an
4 effective date.

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6 Be It Enacted by the Legislature of the State of Florida:

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8 Section 1. Subsections (8), (9), (10), (11), (12), and
9 (13) are added to section 212.03, Florida Statutes, to read:

10 212.03 Transient rentals tax; rate, procedure,
11 enforcement, exemptions.--

12 (8) For purposes of this section and ss. 125.0104,
13 125.0108, and 212.0305, the term "engaging in the business of
14 renting, leasing, letting, or granting a license to use
15 transient rental accommodations" includes any activity in
16 which a person offers information about the availability of
17 accommodations to a customer, arranges for the customer's
18 occupancy of the accommodations, or establishes the total
19 rental price the customer pays for the accommodations, and
20 collects the rental payments from the customer. A person
21 engaged in the activities described in this subsection is
22 referred to in this section as a "remarketer".

23 (9) The terms "total rent" as used in this section,
24 "total consideration" as used in ss. 125.0104 and 125.0108,
25 and "consideration" as used in s. 212.0305 have the same
26 meaning. The terms include the total consideration that a
27 customer must pay in order to use or occupy a transient
28 accommodation, including service charges or fees that are a
29 condition of occupancy, except for mandatory fees imposed for
30 the availability of communications services. Charges or fees
31 paid by a customer to the person collecting the rent or

1 consideration as a condition of occupancy are included in the
2 taxable rent or consideration even if the charges or fees are
3 separately itemized on the customer's bill or are for items or
4 services provided by a third party. Charges for items or
5 services provided to occupants of transient accommodations
6 which are not intrinsic to occupancy of the accommodation,
7 which are provided only upon the election of the occupant, and
8 which are separately itemized are not included in the taxable
9 rent or consideration.

10 (10) The term "discount rate" as used in this section
11 means the rate the registered owner or operator of the
12 accommodation charges the remarketer for the room.

13 (11) The term "markup" as used in this section means
14 the difference between the total rent and the discounted rate.

15 (12)(a) Remarketers shall collect taxes on the total
16 rent collected from their customers. A remarketer may elect to
17 remit the taxes as provided in paragraph (b) or in paragraph
18 (c). A remarketer must remit all taxes collected under this
19 section in the same manner.

20 (b)1. A remarketer may elect to remit under a
21 dual-remittance system. A remarketer who elects this method
22 must register with the department as a dealer for purposes of
23 this chapter. The remarketer must remit to the owner or
24 operator of any transient rental accommodations occupied by a
25 customer of the remarketer the taxes due under chapter 125 and
26 under this chapter on the discount rate at the time of payment
27 of that rate to the owner or operator. The owner or operator
28 shall report and remit the total taxes received from the
29 remarketer with the next return due after the month in which
30 the owner or operator receives payment from the remarketer.
31 The remarketer must report and remit to the department the

1 taxes due under chapter 125 and under this chapter on the
2 markup. The taxes must be reported on and remitted with the
3 first return due from the remarketer after the month in which
4 the customer pays the rental to the remarketer.

5 2. The remarketer must provide a copy of its dealer
6 registration certificate to the owner or operator of any
7 transient rental accommodations with which the remarketer has
8 entered a contractual remarketing arrangement to evidence its
9 election to remit taxes directly to the department on the
10 markup. If a remarketer that has a contractual remarketing
11 arrangement with the owner or operator does not provide the
12 certificate, the owner or operator shall collect and remit
13 taxes under the single-remittance system described in
14 paragraph (c), unless the remarketer provides the
15 documentation described in paragraph (d) concerning use of
16 transient accommodations as components of vacation packages.

17 (c) A remarketer may elect to remit under a
18 single-remittance system. A remarketer who elects this method
19 must disclose to the owner or operator of the transient rental
20 accommodations the total rental paid by the remarketer's
21 customer and must remit the taxes on the total rental to the
22 owner or operator with the payment of the discount rate. If
23 the remarketer does not disclose the total rental received
24 from the customer, the remarketer shall remit to the owner or
25 operator taxes on 135 percent of the discount rate or, if a
26 written contract between the remarketer and the owner or
27 operator establishes a lesser maximum amount, the remarketer
28 may charge as total rental to the customer tax on the maximum
29 amount. The owner or operator shall report and remit the total
30 taxes received from the remarketer with the next return due
31 after the month in which the owner or operator receives the

1 payment. The owner or operator is not liable for any tax,
2 penalty, or interest due if the remarketer fails to accurately
3 report and remit the taxes imposed by this section or by ss.
4 125.0104, 125.0108, and 212.0305. The owner or operator must
5 maintain in its records the information provided by the
6 remarketer for the period of time for which the return in
7 which that information is reflected is subject to audit by the
8 department.

9 (d) If a remarketer is a travel agent within the
10 meaning of s. 212.04(1)(d), the remarketer may treat transient
11 accommodations as component parts of vacation packages when
12 the requirements of that provision are met. A remarketer that
13 operates under a single-remittance system may furnish a copy
14 of the remarketer's certificate of registration as a seller of
15 travel or a letter of exemption from registration as a seller
16 of travel to the owner or operator of accommodations that are
17 incorporated as component parts of vacation packages to
18 establish that the accommodations are not subject to the
19 disclosure and tax collection requirements of paragraph (c).

20 (e) The owner or operator of transient accommodations
21 has no obligation to inquire whether a person that rents
22 transient accommodations is acting as a remarketer in regard
23 to those accommodations. The obligations imposed on an owner
24 or operator by this subsection arise only if there is a
25 contractual remarketing arrangement between the owner or
26 operator and the person that rents transient accommodation
27 from the owner or operator.

28 (13)(a)1. The department shall administer, collect,
29 and enforce all taxes remitted by remarketers on the markup
30 under a dual-remittance system, including interest and
31 penalties attributable thereto, regardless of whether the

1 taxes are imposed under this chapter or chapter 125.
2 Notwithstanding any election made by a county to
3 self-administer local taxes under chapter 125 or s. 212.0305,
4 each remarketer who is obligated to collect and remit one or
5 more local taxes on transient accommodations imposed under
6 chapter 125 or s. 212.0305 under a dual remittance system
7 shall separately report and identify each tax to the
8 department, by jurisdiction, on a form prescribed by the
9 department, and shall pay the taxes to the department. A
10 remarketer may include in a single payment to the department
11 the total amount of all state and local taxes on the markup on
12 transient rentals imposed under this chapter and chapter 125.

13 2. The department shall keep records showing the
14 amount of taxes collected, which records must also include
15 records disclosing the amount of taxes collected for each
16 county in which the tax authorized by this section is
17 applicable. These records must be open for inspection during
18 the regular office hours of the department, subject to s.
19 213.053. Proceeds received by the department from the taxes,
20 less costs of administration of this section, shall be paid
21 and returned monthly to the county that imposed the tax, for
22 use by the county according to the section under which the tax
23 was imposed. The proceeds shall be paid to the county in the
24 month after which they are received by the department in the
25 same manner as other taxes imposed under chapter 125 which are
26 administered by the department. For purposes of this section,
27 the proceeds of any tax levied by a county under chapter 125
28 or s. 212.0305 are all funds collected and received by the
29 department under a specific levy authorized by this chapter or
30 section, including any interest and penalties attributable to
31 the tax levy.

1 (b) Audits performed by the department must include a
2 determination of whether the rates collected for applicable
3 local tourist development taxes, tourist impact taxes, and
4 convention development taxes are correct. A person or entity
5 designated by a county to receive information from the
6 department under s. 213.0535 may provide evidence to the
7 department demonstrating a specific person's failure to fully
8 or correctly report taxable remarketing activities within the
9 jurisdiction, including evidence discovered in a county's
10 audit of a transient rental owner or operator under chapter
11 125 or s. 212.0305. The department may request additional
12 information from the designee to assist in any review. The
13 department shall inform the designee of what action, if any,
14 the department intends to take regarding the person.

15 (c) Notwithstanding paragraph (a), if a remarketer
16 engages in remarketing activities solely in regard to
17 transient accommodations located within a single county in the
18 state and that county self-administers tourist development or
19 tourist impact taxes imposed under chapter 125 or convention
20 development taxes imposed under s. 212.0305, that county may
21 perform an audit of the remarketer with respect to the
22 remarketing activity, unless the department is conducting an
23 audit of the remarketer's compliance with this chapter for the
24 same period.

25 1. Before this authority may be exercised, and for
26 purposes of determining whether a remarketer operates solely
27 within one county, a county may presume the localized
28 operation if the remarketer reports remarketing activity in a
29 single county. Upon notice by the county to the department of
30 an intent to audit a dealer, the department shall notify the
31 county within 60 days if the department has issued a notice of

1 intent to audit the remarketer, or it shall notify the
2 remarketer of the county's request to audit.

3 2. The remarketer may, within 30 days, rebut the
4 presumption of single-county operation by providing evidence
5 to the department that it engages in remarketing activity in
6 more than one county in the state.

7 3. If, during the course of an audit conducted under
8 this paragraph, a county determines that a remarketer was
9 engaged in remarketing activity in regard to transient
10 accommodations located in any other county in the state during
11 the period under audit, the county shall terminate the audit
12 and notify the department of its findings.

13 4. In conducting audits, a county is bound by
14 department rules and technical assistance advisements issued
15 during the course of an audit conducted under this paragraph.
16 A county conducting audits under this paragraph, or taxpayers
17 being audited under this paragraph, may request the department
18 to issue a technical assistance advisement under s. 213.22
19 regarding a pending audit issue. If the department is
20 requested to issue a technical assistance advisement, it shall
21 notify the affected county or taxpayer of the technical
22 assistance request.

23 5. The review, protest, and collection of amounts due
24 under chapter 125 or s. 212.0305 as the result of an audit
25 performed by a county are the responsibility of the county.

26 6. The fee or any portion of a fee for audits
27 conducted on behalf of a county under this paragraph may not
28 be based upon the amount assessed or collected as a result of
29 the audit, and a determination based upon an audit conducted
30 in violation of this prohibition is valid.

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1 7. All audits performed under this paragraph must be
2 conducted according to the standards adopted by the American
3 Institute of Certified Public Accountants, the Institute of
4 Internal Auditors, or the Comptroller General of the United
5 States insofar as those standards are not inconsistent with
6 rules of the department.

7 8. The department may adopt rules for the notification
8 and determination processes established in this paragraph and
9 for the information to be provided by a county conducting an
10 audit.

11 Section 2. Subsections (8) and (9) of section 212.03,
12 Florida Statutes, as created by this act, are intended to
13 clarify existing law.

14 Section 3. Amnesty for registration and remittance of
15 tax.--

16 (1) The state shall provide an amnesty for unpaid
17 taxes, penalties, and interest imposed under chapter 125 or
18 chapter 212, Florida Statutes, on transient rentals if all of
19 the following requirements are satisfied:

20 (a) The rentals subject to amnesty were made before
21 July 1, 2005;

22 (b) The rental payments were collected by remarketers
23 who are not owners, operators, or managers of the transient
24 rental accommodations or their agents;

25 (c) The remarketer who collected the rental payments
26 registers with the Department of Revenue to pay taxes on
27 transient rentals on or before July 1, 2005; and

28 (d) The remarketer who collected the rental payments
29 applies for amnesty by October 1, 2005, under rules of the
30 Department of Revenue.

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1 (2) The amnesty is not available for taxes, penalties,
2 or interest that have been assessed if the assessment is final
3 and has not been timely challenged, or for any taxes,
4 penalties, or interest that have been paid to the department
5 unless the payment is the subject of an assessment that is not
6 final or that has been timely challenged.

7 (3) The amnesty is not available for a tax billed to
8 or collected from the consumer who pays for occupancy of the
9 transient rental accommodation. However, the amnesty applies
10 to the amounts to the extent that the remarketer who collected
11 the rental payments can document that the taxes were remitted
12 to the owner or operator of the transient rental
13 accommodation.

14 (4) The executive director of the Department of
15 Revenue may adopt emergency rules under sections 120.536(1)
16 and 120.54(4), Florida Statutes, to implement the amnesty. The
17 rules may provide forms and procedures for applying for
18 amnesty, for reporting the rentals for which amnesty is
19 sought, and for ensuring the applicant's ongoing commitment to
20 registration, collection, and remittance of the taxes imposed
21 by state law on transient rentals. Notwithstanding any other
22 law to the contrary, the emergency rules shall remain
23 effective until 6 months after the date of adoption of the
24 rule or the date of final resolution of all amnesty
25 applications filed under this section, whichever occurs later.

26 Section 4. Paragraph (d) of subsection (1) of section
27 212.04, Florida Statutes, is amended to read:

28 212.04 Admissions tax; rate, procedure, enforcement.--

29 (1)

30 (d) No additional tax is due on components
31 incorporated as part of a package sold by a travel agent if

1 the package includes two or more components such as
2 admissions, transient rentals, transportation, or meals; if
3 all of the components were purchased by the travel agent from
4 other parties and any sales tax due on such purchases was
5 paid; and if there is no separate itemization of the
6 admission, transient rental, transportation, meal, or other
7 components in the sales price of the package. This paragraph
8 does not apply if the actual price charged for a component by
9 the dealer to a travel agent is less than the price charged to
10 unrelated parties under normal industry practices and the
11 dealer and the travel agent are members of the same controlled
12 group of corporations for federal income tax purposes. For
13 purposes of this paragraph, the term "travel agent" means a
14 seller of travel as defined in s. 559.927 which has registered
15 with the Department of Agriculture and Consumer Services as
16 required by s. 559.928 or obtained a letter of exemption from
17 registration from the Department of Agriculture and Consumer
18 Services under s. 559.935.

19 Section 5. Paragraph (a) of subsection (3) of section
20 212.18, Florida Statutes, is amended to read:

21 212.18 Administration of law; registration of dealers;
22 rules.--

23 (3)(a) Every person desiring to engage in or conduct
24 business in this state as a dealer, as defined in this
25 chapter, or to lease, rent, or let or grant licenses in living
26 quarters or sleeping or housekeeping accommodations in hotels,
27 apartment houses, roominghouses, or tourist or trailer camps
28 that are subject to tax under s. 212.03, or to lease, rent, or
29 let or grant licenses in real property, as defined in this
30 chapter, and every person who sells or receives anything of
31 value by way of admissions, must file with the department an

1 application for a certificate of registration for each place
2 of business, showing the names of the persons who have
3 interests in ~~the such~~ business and their residences, the
4 address of the business, and such other data as the department
5 may reasonably require. However, owners and operators of
6 vending machines or newspaper rack machines are required to
7 obtain only one certificate of registration for each county in
8 which ~~the such~~ machines are located. A person who engages in
9 arranging transient accommodations as a remarketer as
10 described in s. 212.03 and who elects to remit taxes to the
11 department under a dual-remittance system as described in s.
12 212.03 is required to obtain only one certificate of
13 registration in connection with his or her remarketing
14 activities in this state. The department, by rule, may
15 authorize a dealer that uses independent sellers to sell its
16 merchandise to remit tax on the retail sales price charged to
17 the ultimate consumer in lieu of having the independent seller
18 register as a dealer and remit the tax. The department may
19 appoint the county tax collector as the department's agent to
20 accept applications for registrations. The application must be
21 made to the department before the person, firm, copartnership,
22 or corporation may engage in ~~the such~~ business, and it must be
23 accompanied by a registration fee of \$5. However, a
24 registration fee is not required to accompany an application
25 to engage in or conduct business to make mail order sales. The
26 department may waive the registration fee for applications
27 submitted through the department's Internet registration
28 process.

29 Section 6. This act shall take effect July 1, 2005.
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SENATE SUMMARY

Relates to the tax on transient rental accommodations. Clarifies the meaning of the term "engaging in the business of renting, leasing, letting, or granting a license to use transient rental accommodations" for taxation purposes to include certain remarketing activities. Redefines the term "taxable rent or consideration" to include charges or fees paid by a customer to a person collecting the rent or consideration as a condition of occupancy of a transient rental. Requires persons engaged in certain remarketing activities regarding transient rental accommodations to collect taxes on total rentals. Provides alternative methods for remitting the taxes to the Department of Revenue. Provides for incorporating transient rentals into vacation packages. Provides for administration by the department of taxes remitted by remarketers. Provides for a local audit under certain circumstances. Provides that specified subsections are intended to clarify existing law. Provides intent. Provides an amnesty for unpaid taxes, penalties, and interest on transient rentals under certain circumstances. Provides for the adoption of emergency rules to implement the amnesty. Requires a travel agent to be registered as a seller of travel. Provides for recordkeeping. Requires only a single registration for transient rental remarketers.