

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Attkisson offered the following:

2
3 **Amendment (with title amendment)**

4 Between lines 434 and 435, insert:

5 Section 10. Subsection (3) and paragraph (c) of subsection
6 (5) of section 212.0305, Florida Statutes, are amended to read:

7 212.0305 Convention development taxes; intent;
8 administration; authorization; use of proceeds.--

9 (3) APPLICATION; ADMINISTRATION; PENALTIES.--

10 (a) The convention development tax on transient rentals
11 imposed by the governing body of any county authorized to so
12 levy shall apply to the amount of any payment made by any person
13 to rent, lease, or use for a period of 6 months or less any
14 living quarters or accommodations in a hotel, apartment hotel,
15 motel, resort motel, apartment, apartment motel, roominghouse,
16 timeshare resort, tourist or trailer camp, mobile home park,

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17 recreational vehicle park, or condominium. When receipt of
18 consideration is by way of property other than money, the tax
19 shall be levied and imposed on the fair market value of such
20 nonmonetary consideration. Any payment made by a person to rent,
21 lease, or use any living quarters or accommodations which are
22 exempt from the tax imposed under s. 212.03 shall likewise be
23 exempt from any tax imposed under this section.

24 (b) As used in this section, the terms "payment" and
25 "consideration" mean the amount received by a person operating
26 transient accommodations for the use or securing the use of any
27 living quarters or sleeping or housekeeping accommodations that
28 are part of, in, from, or in connection with any hotel,
29 apartment house, roominghouse, timeshare resort, or tourist or
30 trailer camp. The term "person operating transient
31 accommodations" means the person conducting the daily affairs of
32 the physical facilities furnishing transient accommodations who
33 is responsible for providing the services commonly associated
34 with operating the facilities furnishing transient
35 accommodations regardless of whether such commonly associated
36 services are provided by third parties. The terms "payment" and
37 "consideration" do not include payments received by an unrelated
38 person for facilitating the booking of reservations for or on
39 behalf of a lessee or licensee at a hotel, apartment house,
40 roominghouse, mobile home park, recreational vehicle park,
41 condominium, timeshare resort, or tourist or trailer camp in
42 this state. The term "unrelated person" means a person who is
43 not in the same affiliated group of corporations pursuant to s.
44 1504 of the Internal Revenue Code of 1986, as amended.

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45 (c) Tax shall be due on the consideration paid for
46 occupancy in the county pursuant to a regulated short-term
47 product as defined in s. 721.05 or occupancy in the county
48 pursuant to a product that would be deemed a regulated short-
49 term product if the agreement to purchase the short-term product
50 were executed in this state. Such tax shall be collected on the
51 last day of occupancy within the county unless the consideration
52 is applied to the purchase of a timeshare estate.

53 Notwithstanding paragraph (b), the occupancy of an accommodation
54 of a timeshare resort pursuant to a timeshare plan, a multisite
55 timeshare plan, or an exchange transaction in an exchange
56 program as defined in s. 721.05 by the owner of a timeshare
57 interest or such owner's guest, which guest is not paying
58 monetary consideration to the owner or to a third party for the
59 benefit of the owner, is not a privilege subject to taxation
60 under this section. A membership or transaction fee paid by a
61 timeshare owner that does not provide the timeshare owner with a
62 right to occupy any specific timeshare unit but merely provides
63 the timeshare owner with an opportunity to exchange a timeshare
64 interest through an exchange program is a service charge and is
65 not subject to taxation.

66 (d) Consideration paid for the purchase of a timeshare
67 license in a timeshare plan as defined in s. 721.05 is rent
68 subject to taxation under this section.

69 (e)~~(b)~~ The tax shall be charged by the person receiving
70 the consideration for the lease or rental, and the tax shall be
71 collected from the lessee, tenant, or customer at the time of
72 payment of the consideration for such lease or rental. The

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73 person operating transient accommodations shall state the tax
74 separately from the rental charged on the receipt, invoice, or
75 other documentation issued with respect to charges for transient
76 accommodations. A person facilitating the booking of
77 reservations who is unrelated to the person operating the
78 transient accommodations in which the reservation is booked is
79 not required to separately state amounts charged on the receipt,
80 invoice, or other documentation issued by the person
81 facilitating the booking of the reservation. Any amounts
82 specifically collected as a tax are county funds and must be
83 remitted as tax.

84 (f)~~(e)~~ The person receiving the consideration for such
85 rental or lease shall receive, account for, and remit the tax to
86 the department at the time and in the manner provided for
87 persons who collect and remit taxes under s. 212.03. The same
88 duties and privileges imposed by this chapter upon dealers in
89 tangible property respecting the collection and remission of
90 tax; the making of returns; the keeping of books, records, and
91 accounts; and compliance with the rules of the department in the
92 administration of this chapter apply to and are binding upon all
93 persons who are subject to the provisions of this section.
94 However, the department may authorize a quarterly return and
95 payment when the tax remitted by the dealer for the preceding
96 quarter did not exceed \$25.

97 (g)~~(d)~~ The department shall keep records showing the
98 amount of taxes collected, which records shall disclose the
99 taxes collected from each county in which a local government
100 resort tax is levied. These records shall be subject to the

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101 provisions of s. 213.053 and are confidential and exempt from
102 the provisions of s. 119.07(1).

103 ~~(h)(e)~~ The collections received by the department from the
104 tax, less costs of administration, shall be paid and returned
105 monthly to the county which imposed the tax, for use by the
106 county as provided in this section. Such receipts shall be
107 placed in a specific trust fund or funds created by the county.

108 ~~(i)(f)~~ The department shall adopt ~~promulgate such~~ rules
109 and ~~shall~~ prescribe and publish ~~such forms as may be~~ necessary
110 to effectuate the purposes of this section. The department may
111 ~~is authorized to~~ establish audit procedures and to assess for
112 delinquent taxes.

113 ~~(j)(g)~~ The estimated tax provisions contained in s. 212.11
114 do not apply to the administration of any tax levied under this
115 section.

116 ~~(k)(h)~~ Any person taxable under this section who, ~~either~~
117 by himself or herself or through the person's agents or
118 employees, fails or refuses to charge and collect the taxes
119 herein provided from the person paying any rental or lease ~~is~~,
120 in addition to being personally liable for the payment of the
121 tax, commits ~~guilty of~~ a misdemeanor of the first degree,
122 punishable as provided in s. 775.082 or s. 775.083.

123 ~~(l)(i)~~ A ~~No~~ person may not ~~shall~~ advertise or hold out to
124 the public in any manner, directly or indirectly, that he or she
125 will absorb all or any part of the tax; that he or she will
126 relieve the person paying the rental of the payment of all or
127 any part of the tax; or that the tax will not be added to the
128 rental or lease consideration or, if added, that the tax or any

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129 part thereof will be refunded or refused, either directly or
130 indirectly, by any method whatsoever. Any person who willfully
131 violates any provision of this paragraph commits ~~is guilty of~~ a
132 misdemeanor of the first degree, punishable as provided in s.
133 775.082 or s. 775.083.

134 (m) ~~(j)~~ The tax shall constitute a lien on the property of
135 the lessee, customer, or tenant in the same manner as, and shall
136 be collectible as are, liens authorized and imposed by ss.
137 713.67, 713.68, and 713.69.

138 (n) ~~(k)~~ Any tax levied pursuant to this section shall be in
139 addition to any other tax imposed pursuant to this chapter and
140 in addition to all other taxes and fees and the consideration
141 for the rental or lease.

142 (o) ~~(l)~~ The department shall administer the taxes levied
143 herein as increases in the rate of the tax authorized in s.
144 125.0104. The department shall collect and enforce the
145 provisions of this section and s. 125.0104 in conjunction with
146 each other in those counties authorized to levy the taxes
147 authorized herein. The department shall distribute the proceeds
148 received from the taxes levied pursuant to this section and s.
149 125.0104 in proportion to the rates of the taxes authorized to
150 the appropriate trust funds as provided by law. In the event of
151 underpayment of the total amount due by a taxpayer pursuant to
152 this section and s. 125.0104, the department shall distribute
153 the amount received in proportion to the rates of the taxes
154 authorized to the appropriate trust funds as provided by law and
155 the penalties and interest due on both of said taxes shall be
156 applicable.

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157 (5) LOCAL ADMINISTRATION OF TAX.--

158 (c) A county adopting an ordinance providing for the
159 collection and administration of the tax on a local basis shall
160 also adopt an ordinance electing either to assume all
161 responsibility for auditing the records and accounts of dealers,
162 and assessing, collecting, and enforcing payments of delinquent
163 taxes, or to delegate such authority to the Department of
164 Revenue. If the county elects to assume such responsibility, it
165 shall be bound by the rules promulgated by the Department of
166 Revenue pursuant to paragraph (3) (i) ~~(f)~~, as well as those rules
167 pertaining to the sales and use tax on transient rentals imposed
168 by s. 212.03. The county may use any power granted in this
169 chapter to the department to determine the amount of tax,
170 penalties, and interest to be paid by each dealer and to enforce
171 payment of such tax, penalties, and interest. The county may use
172 a certified public accountant licensed in this state in the
173 administration of its statutory duties and responsibilities.
174 Such certified public accountants are bound by the same
175 confidentiality requirements and subject to the same penalties
176 as the county under s. 213.053. If the county delegates such
177 authority to the department, the department shall distribute any
178 collections so received, less costs of administration, to the
179 county. The amount deducted for costs of administration by the
180 department shall be used only for those costs which are solely
181 and directly attributable to auditing, assessing, collecting,
182 processing, and enforcing payments of delinquent taxes
183 authorized in this section. If a county elects to delegate such
184 authority to the department, the department shall audit only

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185 those businesses in the county that it audits pursuant to this
186 chapter.

187 Section 11. The amendments made by this act to section
188 212.0305, Florida Statutes, are intended to be clarifying and
189 remedial in nature and are not a basis for assessments of tax
190 for periods before July 1, 2008, or for refunds of tax for
191 periods before July 1, 2008.

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197 **T I T L E A M E N D M E N T**

198 Remove line 62 and insert:

199 in Florida; amending s. 212.0305, F.S.; revising the list
200 of living quarters or sleeping or housekeeping
201 accommodations that are subject to the convention
202 development tax; providing definitions; providing for
203 taxation of regulated short-term products; providing that
204 the occupancy of an accommodation of a timeshare resort
205 and membership or transaction fee paid by a timeshare
206 owner is not a privilege subject to taxation; providing
207 that consideration paid for the purchase of a timeshare
208 license in a timeshare plan is rent subject to taxation;
209 requiring the person operating transient accommodations to
210 separately state the tax charged on a receipt or other
211 documentation; providing that persons facilitating the
212 booking of reservations are not required to separately

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213 state tax amounts charged; requiring that such amounts be
214 remitted as tax and classified as county funds;
215 authorizing the department to establish audit procedures
216 and assess for delinquent taxes; specifying that certain
217 provisions of the act are clarifying and remedial in
218 nature and are not a basis for assessments of tax or for
219 refunds of tax for periods before the effective date of
220 the act; providing an effective date.