

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Commerce Committee

BILL: SB 1362

INTRODUCER: Senator Lynn

SUBJECT: Tax on Rental Fees and Admissions

DATE: March 19, 2009

REVISED: 3/25/09

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Favorable
2.			CA	
3.			FT	
4.			WPSC	
5.				
6.				

I. Summary:

SB 1362 removes repeal language in the Florida Statutes and Laws of Florida for three exemptions from state and local sales and use taxes.

Repeal language for an exemption in s. 212.031(1)(a)12., F.S., related to tax on property rented or leased to concessionaires of souvenirs and the like, is deleted. This exemption is set to be repealed July 1, 2009.

Repeal language in ch. 2006-101, L.O.F., for an exemption in s. 212.031(10), F.S., related to tax on separately stated charges related to property rented or leased by a lease or licensee, is deleted. This exemption is set to be repealed July 1, 2009.

Repeal language for an exemption in s. 212.04(2)(a)2.b., F.S., related to tax on admission charges to certain events, is deleted. This exemption is set to be repealed July 1, 2009.

SB 1362 substantially amends s. 212.031, F.S., s. 212.04, F.S., and ch. 2006-101, L.O.F.

II. Present Situation:

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different exemptions. A 6 percent sales and use tax is levied on tangible personal property and a limited number of services.

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax; only those surtaxes specifically designated in s. 212.055, F.S., may be levied. The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum ranges between 1.5% and 2.5% for Florida's 67 counties.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold and is levied in addition to the state taxes. The surtax applies to all transactions occurring in a county that are "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" and on communications services, defined in ch. 202, F.S. The surtax does not apply to a sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections received by DOR are returned monthly to the county imposing the tax.

Section 212.031, F.S.:¹

Section 212.031, F.S., establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real property. The tax imposed by s. 212.031, F.S., is in addition to the total amount of the rental or license fee. There are several exemptions to the imposition of this taxable privilege.

Section 212.031(1)(a)12., F.S., provides an exemption from any sales and use tax to be paid by a concessionaire on property rented, leased, subleased, or licensed from a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility that is renting, leasing, subleasing, or licensing use of the facility to the concessionaire for selling souvenirs, novelties, or other event-related products during an event at the facility. Only the portion of the rental, lease, or license payment that is based on a percentage of sales, not on a fixed price, is exempt from the tax. Section 212.031(1)(a)12., F.S., is scheduled to be repealed on July 1, 2009.

Section 212.031(10), F.S., provides a sales and use tax exemption for lease or license fees on separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use real property. This exemption includes charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing. Section 212.031(10), F.S., is scheduled to be repealed on July 1, 2009.

Section 212.04, F.S.:²

Section 212.04, F.S., establishes a taxable privilege for selling or receiving anything of value by way of admissions. Admissions are taxed at 6 percent of the sales price or actual value received.

¹ Chapter 2000-345, L.O.F., amended s. 212.031, F.S., by creating subparagraph (1)(a)12. and subsection (10). Two new tax exemptions were created, with a repeal date of July 1, 2003. Chapter 2002-218, L.O.F., extended these sales tax exemptions until July 1, 2006; and ch. 2006-101, L.O.F., extended these sales tax exemptions until July 1, 2009.

² Chapter 2000-345, L.O.F., created s. 212.04(2)(a)2.b., F.S. The new admissions tax exemption was created with a repeal date of July 1, 2003. Chapter 2002-218, L.O.F., extended this tax exemption until July 1, 2006; and ch. 2006-101, L.O.F., extended the exemption until July 1, 2009.

The sales price or actual value of admission is the price remaining after deducting federal taxes, state and local seat surcharges, taxes, or fees imposed upon admission, and ticket office or ticketing service charges. A service or convenience charge added to the price of an admission by a ticket office or ticketing service charge is part of the sales price and is subject to sales tax.

Section 212.04(2)(a)2.b., F.S., provides that no tax shall be levied on admission charges to events that are sponsored by a governmental entity, sports authority, or sports commission when held in a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility. The governmental entity, sports authority, or sports commission must be responsible for 100 percent of the risk of success or failure of the event and must own 100 percent of the funds at risk for the event. Student or faculty talent may not be exclusively used for the event. The terms “sports authority” and “sports commission” mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts. Section 212.04(2)(a)2.b., F.S., is scheduled to be repealed on July 1, 2009.

III. Effect of Proposed Changes:

For purposes of this analysis, the term “facility” includes the following: convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, and publicly owned recreational facilities.

Section 1 amends s. 212.031(1)(a)12., F.S., to extend the exemption without expiration.

Section 212.031(1)(a)12., F.S., provides a sales and use tax exemption on property rented, leased, subleased, or licensed by a facility to a concessionaire during an event at a facility. The concessionaire must use the facility for selling souvenirs, novelties, or other event-related products during the event at the facility. Only the portion of the rental, lease, or license payment that is based on a percentage of sales, not on a fixed price, is exempt from the tax.

Section 2 amends ch. 2006-101, L.O.F., to extend the exemption in s. 212.031(10), F.S., without expiration.

Chapter 2006-101, L.O.F., provides a repeal date of July 1, 2009, for s. 212.031(10), F.S. Section 212.031(10), F.S., provides a sales and use tax exemption for lease or license fees on separately stated charges imposed by a facility. The sales and use tax exemption is only available for those separately stated charges imposed upon a lessee or licensee for food, drink, or services required in connection with a lease or license to use the real property. This exemption includes charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing.

Section 3 amends s. 212.04(2)(a)2.b., F.S., to extend the exemption without expiration.

Section 212.04(2)(a)2.b., F.S., provides that no tax shall be levied on admission charges to events that are sponsored by a governmental entity, sports authority, or sports commission when held in a facility. The exemption only applies when the governmental entity, sports authority, or

sports commission is responsible for 100 percent of the risk of success or failure of the event and owns 100 percent of the funds at risk for the event. The event may not exclusively use student or faculty talent. The terms “sports authority” and “sports commission” mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code and contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

Section 4 provides the act is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of s. 18, Art. VII, State Constitution, provides that except upon approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue.

This bill reduces the authority that counties have to raise revenues with local option sales taxes. In January 2006, the Revenue Estimating Conference estimated the total local fiscal impact to be negative \$0.7 million to maintain these exemptions. Because the fiscal impact was determined to be less than \$1.79 million (2006), the impact of the bill was considered insignificant and therefore exempt from the mandate restriction.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not yet determined the impact of this bill for the current year. In April 2008, the REC estimated that the fiscal impact of the extension of these sales tax exemptions would be a recurring reduction of state and local sales and use tax revenues of \$2.5 million.

	FY 2008-2009	FY 2009-2010	FY 2010-2011	FY 2011-2012
General Revenue	(2.0)	(1.9)	(2.0)	(2.0)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(2.0)	(1.9)	(2.0)	(2.0)

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013
Revenue Sharing	(.1)	(.1)	(.1)	(.1)
Local Gov't Half Cent	(.2)	(.2)	(.2)	(.2)
Local Option	(.2)	(.2)	(.2)	(.2)
Total Local Impact	(.5)	(.5)	(.5)	(.5)

	FY 2009-2010	FY 2010-2011	FY 2011-2012	FY 2012-2013
Total Impact	(2.5)	(2.4)	(2.5)	(2.5)

B. Private Sector Impact:

Those persons eligible for the exemptions will continue to benefit, as certain rentals, leases, licenses, services, and fees will continue to be exempt from sales tax.

C. Government Sector Impact:

DOR has stated no administration or fiscal impact to administer the continuance of these exemptions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.