

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 61

Timeshare Resort Taxation

SPONSOR(S): Precourt

TIED BILLS:

IDEN./SIM. BILLS: SB 392

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Economic Development Policy Committee	20 Y, 0 N, As CS	West	Kruse
2)	Economic Development & Community Affairs Policy Council			
3)	Finance & Tax Council			
4)	Transportation & Economic Development Appropriations Committee			
5)	Full Appropriations Council on Education & Economic Development			

SUMMARY ANALYSIS

HB 61 provides that the Tourist Development Tax, Tourist Impact Tax, Transient Rentals Tax, and the Convention Development Tax are applicable to transient stays at timeshare resorts. In those instances, timeshare resorts are acting more like hotels, motels, resorts, or other public lodging facilities.

The bill also clarifies the laws governing state and local taxes due from timeshare transactions. Because of the variety of timeshare transactions, such as purchases, rentals, and exchanges, there has been uncertainty surrounding which transactions were taxable and which transactions were not taxable. A recent appellate court case provided some clarification on timeshare resort taxation holding that the Tourist Development Tax was not applicable to time share transactions.

Transactions that are not taxable under the bill's provisions include timeshare exchanges, fees charged by a third party to facilitate a timeshare exchange, and inspection packages.

HB 61 also provides that timeshare owners are obligated to pay all applicable assessments, including their estate upon an owner's death. In addition, timeshare resale service providers must provide certain information to the owner. Failure to provide proper information to a timeshare interest owner constitutes an unfair and deceptive trade practice. These provisions are designed to prevent timeshare resale service providers from directly or indirectly relating false or misleading information to timeshare interest owners with respect to the resale of timeshare interests.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Timeshare Taxation

Florida law does not provide for the taxation of timeshare resorts. At sale, timeshare resorts are treated as any other real estate transaction, but no taxes exist to address transient stays at timeshares, timeshare exchanges, rentals, fees charged by third parties to facilitate a timeshare exchange, or other similar activities.

Historically, timeshare developers have collected and remitted sales tax and tourist development tax on timeshare units held out for rental to the general public but the issue is not addressed in Florida statutes. The phrase "timeshare" is not mentioned in chapters 125 or 212, F.S. At times, timeshare owners collected taxes on some transactions and not others leading to confusion in the timeshare industry and local governments that wanted to collect taxes on certain transactions.

Court Ruling

The case of *Broward County v. Fairfield Resorts, Inc.*, resulted from a situation where Fairfield Resorts provided inspection packages to prospective timeshare buyers to stay and check out their various timeshare resort facilities in hopes of inducing a timeshare sale. For some of its resorts Fairfield paid the tourist development tax on the inspection package stay but for others it did not. Broward County filed for Fairfield to pay the county tourist development tax on all its resorts based on Broward's local ordinance and state statute and Fairfield appealed. The appellate court found that timeshares and inspection packages were not included in the statute or the ordinance and therefore were not subject to the tourist development tax.¹

Timeshare Ownership and Advertising

In recent years, some owners of timeshare interests have reported being deceived by timeshare resale service providers. The timeshare resale industry is currently unregulated. It appears that some timeshare resale service providers engaged in or are still engaging in advertising practices that make

¹ *Broward County v. Fairfield Resorts, Inc.* 946 So.2d 1144. (Fla. App. 4 dist. 2006).

false or misleading claims as it relates to the ability to resale timeshare interests. In these instances, owners of timeshare interests or potential owners of timeshare interests are led to believe that timeshare resale service providers are able to sell their timeshare interest quickly, should the owner decide to sell his or her interest at a later date. Timeshare interest owners that use resale service providers often face long delays in selling their interest in a timely fashion leaving owners with the costs associated with owning a timeshare interest.

Effect of Proposed Changes

Tax Provisions

This section of the bill is to clarify the laws governing state and local taxes due from timeshare transactions because current law does not address these transactions. HB 61 provides that certain transactions are taxable and other transactions are not taxable. The bill adds the term "timeshare resort" to the list of facilities offering living quarters or accommodations to s. 125.0104(3), F.S., s. 125.0108(1) and (2), F.S., s. 212.03(1), F.S., and s. 212.0305(3), F.S., for the purposes of taxing short-term lodging in timeshare units similar to that offered at hotels, motels, resorts, or other public lodging facilities.

Non-Taxable Transactions

The bill provides that the occupancy of a timeshare unit by the owner, a non-paying guest, or another timeshare owner as a result of an exchange is not taxable. Fees charged by third parties to facilitate a timeshare exchange are considered service fees or membership fees and are not subject to taxation.

Inspection packages are short-term stays at a timeshare resort intended to entice the guest to purchase a timeshare resort or become a member of a timeshare program. Such packages are not taxable transactions.

The changes in statute provided for in this bill are clarifying and remedial in nature and do not provide a basis for assessments of tax or tax refunds for periods of time prior to the effective date of this bill.

Taxable Transactions

Timeshare owners or potential owners must pay all taxes and fees associated with the purchase of real property including annual property taxes. The purchase of a timeshare resort is taxed no differently than standard real estate purchases.

The short-term occupancy of a timeshare unit in a manner similar to that of a hotel, motel, resort, or other public lodging facility stay, is subject to tourist development tax, tourist impact tax, transient rental tax, and convention development tax, when applicable. In cases where a timeshare is acting as a public lodging facility, those transactions will be taxed as such.

Timeshare Ownership and Advertising

Assessments

Timeshare owners must pay applicable assessments for as long as he or she owns a timeshare interest. Any person that inherits a timeshare interest is responsible for paying applicable assessments.

Advertising for Timeshare Resale

Timeshare resale service providers must provide a description of the fees or costs that relate to advertising, listing, or resale of the timeshare interest owed to a resale provider or third party. The description must include a fee due date and the percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for the previous two years.

Unfair Trade Practices

The bill provides that failure of the timeshare resale provider to include a description of the fees and costs constitutes an unfair and deceptive trade practice pursuant to chapter 501, F.S. Any contract that violates this section of the bill is void and the purchaser is entitled to a full refund.

The bill provides an effective date of July 1, 2009, but states that date will not provide a basis for assessments of taxes or tax refunds for any time prior to July 1, 2009.

B. SECTION DIRECTORY:

Section 1: Amends paragraph (a) of subsection (3) of s. 125.0104, F.S., to provide for application of the Tourist Development Tax on short-term stays at timeshare resorts.

Section 2: Amends paragraph (b) of subsection (1) of s. 125.0108, F.S., to provide for application of the Tourist Impact Tax on short-term stays at timeshare resorts.

Section 3: Amends subsection (1) of s. 212.03, F.S., to provide for application of the Transient Rentals Tax on short-term stays at timeshare resorts.

Section 4: Amends paragraph (a) of subsection (3) of s. 212.0305, F.S., to provide for application of the Convention Development Tax on short-term stays at timeshare resorts.

Section 5: Provides that amendments to sections 125.0104, 125.0108, 212.03, and 212.0305, F.S., are clarifying in nature and do not provide a basis for assessments of taxes or tax refunds for any time prior to July 1, 2009.

Section 6: Adds paragraph (ii) to subsection (5) of s. 721.07, F.S., to provide that timeshare interest owners and those that inherit a timeshare interest are obligated to pay applicable assessments

Section 7: Adds subsection (9) to s. 721.20, F.S., to provide that timeshare resale service providers must provide owners with certain information and failure to do so constitutes an unfair and deceptive trade practice pursuant to ch. 501, F.S.

Section 8: Provides an effective date of July 1, 2009

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference (REC) has not made a determination on the fiscal impact of this legislation in 2009 but will meet February 13, 2009, to make such a determination. In 2008, the REC determined that the provisions of this legislation had no fiscal impact on state government.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC has not made a determination on the fiscal impact of this legislation in 2009 but will meet February 13, 2009, to make such a determination. In 2008, the REC determined that the provisions of this legislation may have a positive fiscal impact to local government of at least \$1.1 million annually.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill requires timeshare resale service providers to disclose all costs and fees associated with the services they provide and the number of sales versus the number of timeshare interests for sale for the previous two years. The bill further clarifies what timeshare transactions are taxable for the timeshare industry. Direct economic impact on the private sector will likely be insignificant.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. The bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On February 4, 2009, the Economic Development Policy Committee reported the bill favorably with one amendment. The amendment provided that:

- Timeshare owners are under obligation to pay applicable assessments for as long as he or she owns the timeshare interest and any person that inherits a timeshare interest shall be responsible for payment of applicable assessments;
- Prior to listing or advertising a timeshare interest for resale, resale service providers must provide to the timeshare interest owner a description of fees or costs that relate to advertising, listing or sale of the timeshare interest that a person must pay to the resale service provider or any third party, when such fees are due, and the percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for the previous two years; and
- Failure to comply with the provisions of the bill constitutes an unfair and deceptive trade practice pursuant to chapter 501, F.S., and any contract that violates provisions of the legislation is void and the purchaser is entitled to a full refund.