

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 61 Timeshare Resort Taxation
SPONSOR(S): Economic Development Policy Committee & 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	14 Y, 0 N	West	Tinker
3)	Finance & Tax Council	14 Y, 0 N	Shaw	Langston
4)	Transportation & Economic Development Appropriations Committee			
5)	Full Appropriations Council on Education & Economic Development			

SUMMARY ANALYSIS

CS/HB 61 clarifies the laws governing state and local taxes due from timeshare transactions and from transient stays at timeshare resorts. 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.

The bill 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 when timeshare resorts are acting more like hotels, motels, resorts, or other public lodging facilities.

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.

CS/HB 61 also provides that timeshare owners are obligated to pay all applicable assessments. 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.

The bill has no fiscal impact on state government and a positive fiscal impact on local governments of \$1.1 million annually.

The bill provides that the portions of the bill related to taxation are intended to be clarifying and remedial in nature, and do not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

The bill has an effective date of July 1, 2009.

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

Taxation of Transient Rentals

Transient rentals are potentially subject to the following taxes:

1. The local option tourist development tax under s. 125.0104(3)(a), F.S., which provides that the tax is levied on the "total consideration charged for such lease or rental." The tourist development tax may be levied at the rate of 1 or 2 percent.
2. The local option tourist impact tax under s. 125.0108, F.S., which is levied at the rate of 1 percent of the total rental charged.
3. The transient rentals tax under s. 212.03, F.S. The transient rental tax is levied in the amount of 6 percent of the total rental charged for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.
4. The convention development tax under s. 212.0305, F.S. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).

Counties may increase the tourist development tax under s. 125.0104, F.S., with a one cent tax on transient rentals under s. 125.0101(3)(d), F.S. An additional one percent tax may also be imposed by counties under s. 125.0104(3)(m)2., F.S., which high tourism impact counties are authorized to levy for professional sports facilities or tourism promotion.

Timeshare Taxation

A timeshare interest is a form of ownership of real property. The real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

At sale, an interest in a timeshare resort is treated as any other real estate transaction. However, transient stays at timeshares, timeshare exchanges, rentals, fees charged by third parties to facilitate a timeshare exchange, or other similar activities are not specifically addressed in Florida's tax code.

Historically, timeshare developers have collected and remitted sales tax and tourist development tax on timeshare units held out for rental to the general public. However, there is uncertainty regarding the application of transient rental taxes to transient stays at timeshares, timeshare exchanges, rentals, fees charged by third parties to facilitate a timeshare exchange, or other similar activities. At times, timeshare owners collected taxes on some transactions and not on others leading to confusion in the timeshare industry and by local governments as to what transactions are taxable.

Court Ruling

A timeshare "inspection package" is a timeshare marketing practice in which the seller or operator of a timeshare offers a one-time inspection privilege package to prospective timeshare buyers. The prospective buyers pay for the inspection package and acquire points for use of a timeshare within a twelve-month period. The money spent on the inspection package can be credited towards the future purchase price of a timeshare. Inspection packages may be purchased anywhere in the United States, but the inspection package may be used anywhere in which the seller has a timeshare property that is part of its inspection package program.

In *Broward County v. Fairfield Resorts, Inc.*, Fairfield Resorts provided inspection packages to prospective timeshare buyers. For some of its resorts Fairfield paid the tourist development tax on the inspection package stay but for others it did not. Broward County assessed the county tourist development tax against Fairfield on all its resorts based on Broward's local ordinance and state law. Fairfield appealed the tax assessment. The appellate court found that timeshares inspection packages were not subject to the tourist development tax because timeshare inspection packages were not specifically included in the statute or the ordinance.¹ The Court noted that timeshares and inspection privilege packages did not exist when the statute and ordinance were enacted.

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 false or misleading claims as it relates to the ability to resell 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.

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

Effect of Proposed Changes

Tax Provisions

The bill clarifies the laws governing state and local taxation of timeshares. CS/HB 61 provides that certain transactions are taxable and other transactions are not taxable.

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.

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.

The changes regarding the taxation of timeshares provided in the 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 the bill.

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.

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) determined that the provisions of this legislation had no fiscal impact on state government.

2. Expenditures:

The Department of Revenue estimates a non-recurring cost of \$25,651 in FY 08-09 to administer the bill. The Department would send a two-page Tax Information Publication to approximately 52,265 businesses to notify them of the requirements of the bill. The recipients would include timeshare resorts, condominium associations, and others in the business of making transient rentals.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC determined that the provisions of this legislation may have a positive fiscal impact to local government of \$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.