

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 Transportation Committee

BILL: SB 1548
 INTRODUCER: Senator Hays
 SUBJECT: Tax on Sales, Use, and Other Transactions
 DATE: January 25, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Weidenbenner	Buford	TR	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill repeals the sales tax on the rental, lease, letting, or granting of a license for the use of any real property unless specifically exempted by statute. The practical effect is to repeal the sales tax on commercial real estate leases of real property.

This bill substantially amends the following sections of the Florida Statutes: 212.031, 212.0598, 212.0602, 288.1258, 338.234, and 341.840.

II. Present Situation:

Section 212.031 (1)(a), F.S., declares it to be a legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless specifically exempted. Exemptions have been provided for the following types of property:

- agricultural assessed property [s. 212.031 (1)(a) 1, F.S.]
- dwelling units [s. 212.031 (1)(a) 2, F.S.]
- parking, docking, or storage spaces [s. 212.031 (1)(a) 3, F.S.]
- recreational property or common elements of a condominium that meet certain conditions [s. 212.031 (1)(a) 4, F.S.]
- streets or right-of-ways with improvements used by a utility or provider of communications services [s. 212.031 (1)(a) 5, F.S.]
- public street or road used for transportation services [s. 212.031 (1)(a) 6, F.S.]
- airport property used exclusively for landing, taxiing, passenger movement or fueling [s. 212.031 (1)(a) 7, F.S.]

- port authority property used exclusively for docking, mooring, passenger movement, or fueling [s. 212.031 (1)(a) 8, F.S.]
- property used as an integral part of the performance of qualified production services [s. 212.031 (1)(a) 9, F.S.]
- property used by concessionaires at certain venues [s. 212.031 (1)(a) 10, F.S.]
- property declared to be nontaxable pursuant to a Technical Assistance Advisement issued before March 15, 1993 [s. 212.031 (1)(a) 11, F.S.], and
- property used or occupied predominately for space-flight business [s. 212.031 (1)(a) 12, F.S.].

Besides the above specific exemptions, there are other statutory provisions dealing with specific uses of property as described here.

- There is a special provision for air carriers which provides for apportionment for the tax on real property rentals used by the carrier substantially for aircraft maintenance if certain requirements are met (s. 212.0598, F.S.);
- There is a limited exemption (s. 212.0602, F.S.) for lease of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.; and
- There are exemptions for property used by an entertainment industry, qualified production company (s. 288.1258, F.S.) and concessionaires on the Florida turnpike system (s. 388.234, F.S.).

There is not a recent, published report or a Revenue Estimating Conference (REC) report which would show the amount of revenue generated by the tax which is the subject of this bill. The Office of Tax Research, Department of Revenue, in preparation for a REC meeting to discuss this bill has done some preliminary work which indicates their recommendation of the estimate of the tax impact will be in the \$1.2 billion to \$1.3 billion dollar range.¹

III. Effect of Proposed Changes:

Section 1 repeals s. 212.031, F.S., which imposes a sales tax on renting, leasing, letting, or granting a license for the use of any real property subject to certain exemptions based on use.

Section 2 amends s. 212.0598, F.S., to delete a sentence that provides that rental of certain real property by air carriers, that does not qualify for apportionment of the carrier's sales and use tax liability, be taxed in accordance with s. 212.031, F.S., as that latter mentioned section is being repealed.

Section 3 amends s. 212.0602, F.S., to change references related to a limited exemption for taxes imposed by s. 212.031, F.S., on purchases of certain tangible personal property and lease of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S., by adding the word "former" wherever s. 212.031 (1)(a)(9), F.S., appears as that latter mention section is being repealed.

¹ Oral conversation on January 25, 2012 with Bob McKee, Chief Economist, Office of Tax Research, Department of Revenue.

Section 4 amends s. 288.1258, F.S., to delete references to s. 212.031, F.S., that provides an exemption from sales and use taxes for an entertainment industry, qualified production company as the sales and use tax provision is being repealed.

Section 5 amends s. 338.234, F.S., to delete the exemption for sales and use taxes on commercial rentals and related capital improvements for the Florida turnpike enterprise system and its concessionaires as the sales and use tax provision is being repealed.

Section 6 amends s. 341.840, F.S., to delete the exemption for tax imposed by s. 212.031, F.S., on leases, rentals, or licenses to use real property that becomes part of a high-speed rail system as the sales and use tax provision is being repealed.

Section 7 provides that this act shall take effect July 1, 2012.

Other Potential Implications:

The bill's effective date of July 1, 2012 presents administrative and costly problems to implement it as of that date. The Department of Revenue (DOR) updates forms and instructions to incorporate legislative changes in January of each year. A mid-year effective date for tax law changes will require corresponding mid-year revisions to software vendor programs and DOR sales and use tax forms.²

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

As this bill has not been reviewed by the Revenue Estimating Conference, the amount of decrease in sales and use tax revenue arising from rental of commercial real property is unknown at this time but it is believed to be significant.

² Department of Revenue, *Agency Bill Analysis: SB 11548 January 13, 2012* (on file with the Senate Transportation Committee).

B. Private Sector Impact:

All individuals and entities that rent real property subject to tax under s. 212.031, F.S., will benefit from not having to pay that tax. As this bill has not been reviewed by the Revenue Estimating Conference, the amount of that benefit is unknown at this time.

C. Government Sector Impact:

DOR estimates that it will require a one-time appropriation of \$98,975 to implement this bill mid-year.

As this bill has not been reviewed by the Revenue Estimating Conference, the amount of decrease in sales and use tax revenue arising from rental of commercial real property is unknown at this time but it is believed to be significant.

VI. Technical Deficiencies:

Technical deficiencies due to the language used to delete other provisions of the Florida statutes that are related to exemptions from or calculations of the sales and use tax imposed by s. 212.031, F.S. are:

- Section 2 of the bill amends s. 212.0598(2), F.S., but this section of the statute will retain language providing for apportionment of certain tax liability of air carriers for tax on lease or rental of, or license in real property used by the carrier for aircraft maintenance. As Section 1 of the bill repeals the sales and use tax on commercial rentals in its entirety, removal of the retained language would clarify that sales tax does not apply to any real property that an air carrier leases, rents, or has a license in for aircraft maintenance.
- Section 3 of the bill amends s. 212.0602, F.S., but this section of the statute will retain language regarding an exemption pertaining to sales tax on the lease of real property for education activities used for “qualified production services” described in s. 212.031(1)(a)9, F.S. Repeal of the latter mentioned section will result in a loss of the definition of “qualified production services” which needs to be reinstated as it is used to determine other tax exemptions. In addition, the use of the word “former” to refer to a statutory section that granted an exemption from taxes imposed by s. 212.031, F.S., is not necessary since that tax is being repealed.

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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
