

**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.)

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Prepared By: The Professional Staff of the Committee on Finance and Tax

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BILL: SB 140

INTRODUCER: Senators Hukill and Richter

SUBJECT: Tax On Sales, Use, and Other Transactions

DATE: March 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>White</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 140 reduces the tax imposed on rental or license fees charged for the use of commercial property from six percent to five percent.

The bill reduces sales and use tax revenue by \$110.5 million in Fiscal Year 2015-2016 and \$265.2 million on a recurring basis.<sup>1</sup> It decreases General Revenue and local revenue by \$234.9 million and \$30.3 million, respectively, on a recurring basis. In the first year, the bill reduces General Revenue by \$97.8 million and local revenue by \$12.7 million.

The bill provides for an effective date of January 1, 2016.

**II. Present Situation:**

The Florida Sales and Use Tax is a six percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles.<sup>2</sup> Since enactment in 1949, Florida's sales tax rate has been modified several times. In 1968, the Legislature increased rates on most items from three percent to four percent. In 1982, rates were increased from four percent to five percent. Legislation passed during the 1987 Regular Session integrated the tax on services with the tax on tangible personal property, and provided several exemptions from the tax on services.<sup>3</sup> During Special Session D in December 1987, the Legislature increased the general sales tax rate from five percent to six percent.<sup>4</sup>

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<sup>1</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, *Reduce state tax rate from 6 percent to 5 percent for commercial rentals: SB140* (Jan. 2015, updated March 2015).

<sup>2</sup> Chapter 212, F.S.

<sup>3</sup> Chapter 87-6, 101, Laws of Fla.

<sup>4</sup> Chapter 87-548, Laws of Fla.

The Legislature has declared 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.<sup>5</sup> Section 212.031, F.S., provides for a tax levied in an amount equal to six percent on the total rent or license fee charged for the exercise of the taxable privilege of engaging in the business of renting, leasing, letting, or granting a license for the use of any real property unless the type of property is specifically exempted. Exemptions to the sales and use tax exist for the following types of property:

- Agricultural assessed property,<sup>6</sup>
- Dwelling units,<sup>7</sup>
- Parking, docking, or storage spaces,<sup>8</sup>
- Recreational property or common elements of a condominium that meet certain conditions,<sup>9</sup>
- Streets or right-of-ways with improvements used by a utility or provider of communications services,<sup>10</sup>
- Public street or road used for transportation services,<sup>11</sup>
- Airport property used exclusively for landing, taxiing, passenger movement or fueling,<sup>12</sup>
- Port authority property used exclusively for docking, mooring, passenger movement, or fueling,<sup>13</sup>
- Property used as an integral part of the performance of qualified production services,<sup>14</sup>
- Property used by concessionaires at certain venues,<sup>15</sup>
- Property declared to be nontaxable pursuant to a Technical Assistance Advisement issued before March 15, 1993,<sup>16</sup> and
- Property used or occupied predominately for space-flight business.<sup>17</sup>

In addition to the exemptions specified above, other statutory provisions exempt specific uses of property from sales and use taxes.

- A special provision for air carriers provides for apportionment of the tax on real property rentals used by the carrier for aircraft maintenance.<sup>18</sup>
- A limited exemption exists for lease of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.<sup>19</sup>

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<sup>5</sup> Section 212.031 (1)(a), F.S. Additionally, discretionary sales surtax may apply, and the \$5000 discretionary sales surtax cap does not apply to payments made for the lease or license to use real property. Section 212.054, F.S.

<sup>6</sup> Section 212.031 (1)(a)1, F.S.

<sup>7</sup> Section 212.031 (1)(a)2, F.S.

<sup>8</sup> Section 212.031 (1)(a)3, F.S. Parking, docking and storage facilities for boats, and tie-down or storage space for aircraft at airports is taxable under s. 212.03(6), F.S.

<sup>9</sup> Section 212.031 (1)(a)4, F.S.

<sup>10</sup> Section 212.031 (1)(a)5, F.S.

<sup>11</sup> Section 212.031 (1)(a)6, F.S.

<sup>12</sup> Section 212.031 (1)(a)7, F.S.

<sup>13</sup> Section 212.031 (1)(a)8, F.S.

<sup>14</sup> Section 212.031 (1)(a)9, F.S.

<sup>15</sup> Section 212.031 (1)(a)10, F.S.

<sup>16</sup> Section 212.031 (1)(a)11, F.S. This exemption applied to a limited number of situations that existed before April 1993 and is not available to new lease contracts.

<sup>17</sup> Section 212.031 (1)(a)12, F.S.

<sup>18</sup> Section 212.0598, F.S.

<sup>19</sup> Section 212.0602, F.S.

- Business properties within an enterprise zone are authorized to receive a refund for certain previously paid taxes.<sup>20</sup>
- Exemptions exist for religious institutions, Section 501(c)(3) organizations, and fair associations.<sup>21</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.031(1)(c) and (d), F.S., to reduce the tax rate imposed on the rental of, or license fees charged for, the use of commercial property from six percent to five percent.

**Section 2** provides an effective date of January 1, 2016.

### 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:

The Revenue Estimating Conference's analysis of the bill finds it will reduce sales and use tax revenue by \$110.5 million in Fiscal Year 2015-2016 and \$265.2 million on a recurring basis.<sup>22</sup> It decreases General Revenue and local revenue by \$234.9 million and \$30.3 million, respectively, on a recurring basis. In the first year, the bill reduces General Revenue by \$97.8 million and local revenue by \$12.7 million.

#### B. Private Sector Impact:

Landlords and tenants will benefit from a reduction in the tax on commercial rentals. A 2014 study, "The Economic Impact of Sales Tax on the Rental of Real Property,"<sup>23</sup> found that "since the leasing market has demonstrated a history of growth and manageable vacancies over the long run, it is unlikely on its face that the rental tax had materially driven a significant number of the economic actors into other paths."<sup>24</sup> The report

<sup>20</sup>Section 212.08(5)(h), F.S.

<sup>21</sup>Sections 212.08(7)(m),(p),and (gg), F.S.

<sup>22</sup> Office of Economic and Demographic Research, Revenue Estimating Conference, *Reduce state tax rate from 6 percent to 5 percent for commercial rentals: SB140* (Jan. 2015).

<sup>23</sup> Office of Economic and Demographic Research, The Florida Legislature (Nov. 15, 2014).

<sup>24</sup> *Id.* p. 3.

analyzed the impact of a total repeal of the tax on commercial rentals and concluded that “property owners would likely gain the greatest benefit from eliminating the tax (on commercial rentals), but this effect would be masked for a period of at least three to five years by the length of existing contracts.”<sup>25</sup> The report adds “A straight reduction in the tax rate is analyzed in the same manner as complete elimination.”<sup>26</sup>

C. **Government Sector Impact:**

See Tax/Fee Issues, above.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 212.031 of the Florida Statutes.

**IX. Additional Information:**

A. **Committee Substitute – Statement of Changes:**

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

None.

B. **Amendments:**

None.

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

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<sup>25</sup> *Id.* p. 5.

<sup>26</sup> *Id.*