

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 Committee on Community Affairs

BILL: SB 140

INTRODUCER: Senators Hukill and Richter

SUBJECT: Tax On Sales, Use, and Other Transactions

DATE: March 3, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Yeatman	CA	Pre-meeting
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

I. Summary:

SB 140 reduces the tax imposed on rental or license fees charged for the use of commercial property from 6 percent to 5 percent.

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

II. Present Situation:

The Florida Sales and Use Tax is a 6 percent levy on retail sales of most tangible personal property, admissions, transient lodgings, commercial rentals, and motor vehicles.¹ Since enactment in 1949, Florida's sales tax rate has been modified several times. In 1968, the Legislature increased rates on most items from 3 percent to 4 percent. In 1982, rates were increased from 4 percent to 5 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.² During Special Session D in December 1987, the Legislature increased the general sales tax rate from 5 percent to 6 percent.³

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.⁴ Section 212.031, F.S., provides for a tax levied in an amount equal to 6% 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

¹ Fifteen states have higher state sales tax rates than Florida. Federation of Tax Administrators, Tax Rate Data, available at http://taxadmin.org/fta/rate/tax_stru.html (last visited Dec. 17, 2014).

² Chapter 87-6, 101, Laws of Fla.

³ Chapter 87-548, Laws of Fla.

⁴ 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.

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,⁵
- dwelling units,⁶
- parking, docking, or storage spaces,⁷
- recreational property or common elements of a condominium that meet certain conditions,⁸
- streets or right-of-ways with improvements used by a utility or provider of communications services,⁹
- public street or road used for transportation services,¹⁰
- airport property used exclusively for landing, taxiing, passenger movement or fueling,¹¹
- port authority property used exclusively for docking, mooring, passenger movement, or fueling,¹²
- property used as an integral part of the performance of qualified production services,¹³
- property used by concessionaires at certain venues,¹⁴
- property declared to be nontaxable pursuant to a Technical Assistance Advisement issued before March 15, 1993,¹⁵ and
- property used or occupied predominately for space-flight business.¹⁶

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.¹⁷
- A limited exemption exists for lease of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.¹⁸
- Business properties within an enterprise zone are authorized to receive a refund for certain previously paid taxes.¹⁹
- Exemptions exist for religious institutions, Section 501(c)(3) organizations, and fair associations.²⁰
- Exemptions exist for property used by an entertainment industry, qualified production company.²¹

⁵ Section 212.031 (1)(a) 1, F.S.

⁶ Section 212.031 (1)(a) 2, F.S.

⁷ Section 212.031 (1)(a) 3, F.S.

⁸ Section 212.031 (1)(a) 4, F.S.

⁹ Section 212.031 (1)(a) 5, F.S.

¹⁰ Section 212.031 (1)(a) 6, F.S.

¹¹ Section 212.031 (1)(a) 7, F.S.

¹² Section 212.031 (1)(a) 8, F.S.

¹³ Section 212.031 (1)(a) 9, F.S.

¹⁴ Section 212.031 (1)(a) 10, F.S.

¹⁵ Section 212.031 (1)(a) 11, F.S.

¹⁶ Section 212.031 (1)(a) 12, F.S.

¹⁷ Section 212.0598, F.S.

¹⁸ Section 212.0602, F.S.

¹⁹ Section 212.08(5)(h), F.S.

²⁰ Sections 212.08(7)(m), (p), and (gg), F.S.

²¹ Section 288.1258, F.S.

Total Sales and Use Tax collections exceeded \$20 billion for FY 2012-13, with roughly 12 percent of distributions going to local governments.²² Local government distributions include the half-cent, county and municipal revenue sharing, and the shift of nearly \$30 million to counties that used to be funded from pari-mutual tax revenues.²³

III. Effect of Proposed Changes:

Section 1 amends s. 212.031(1)(c), F.S., providing a reduction from 6 percent to 5 percent for the tax imposed on the rental or license fees charged for the use of commercial property. Similarly, the bill amends s. 212.031(1)(d), F.S., to extend the tax reduction for use of commercial property to include transactions paid by way of property, goods, wares, merchandise, services, or other things of value.

Section 2 provides for 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:

Sales and Use Tax collections have exceeded recent estimates,²⁴ leading the Revenue Estimating Conference for the General Revenue Fund to revise the FY 2014-15 forecast upwards by \$207.9 million, and the FY 2015-16 forecast by 176.3 million.²⁵

The Revenue Estimating Conference analyzed the fiscal impact of the bill,²⁶ finding that sales and use tax revenue decreases arising from a 1 percent decrease to the tax imposed

²² Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 154 (2014).

²³*Id.*

²⁴ *E.g.* The sales tax collections for June 2014 of \$1.9 billion were \$47.6 million (2.5%) above the estimates conducted at the March 9, 2014 REC conference. Florida Dep't of Revenue, Office of Tax Research, *Revenue Collection Report June 2014*, available at <http://dor.myflorida.com/dor/pdf/MCR0614.pdf> (last visited Dec. 17, 2014).

²⁵ Office of Economic and Demographic Research, Revenue Estimating Conference, *General Revenue Fund* (Dec. 15, 2014), available at <http://edr.state.fl.us/content/conferences/generalrevenue/index.cfm> (last visited Dec. 17, 2014).

²⁶ Office of Economic and Demographic Research, Revenue Estimating Conference, *Reduce state tax rate from 6% to 5% for commercial rentals: SB140*, (Jan. 2015).

on the rental of commercial real property would amount to \$275 million in Fiscal Year 2016-2017. This negative impact would be recurring.

B. Private Sector Impact:

Individuals and entities that offer real property for rent subject to tax under s. 212.031, F.S., will benefit from a 1 percent decrease in their payment of that tax.

C. Government Sector Impact:

The Revenue Estimating Conference reviewed the legislation, finding that sales and use tax revenue decreases arising from a 1 percent decrease to the tax imposed on the rental of commercial real property would amount to \$275 million, recurring. Of that amount, the estimated impact to General Revenue would be \$243.5 million, while the impact to local funds, due to revenue sharing, would be \$31.5 million, annually.²⁷

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.

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

²⁷ *Id.*