**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 Appropriations Subcommittee on Finance and Tax

BILL: PCS/SB 378

INTRODUCER: Appropriations Subcommittee on Finance and Tax and Senator Flores

SUBJECT: Taxation

DATE: March 22, 2017 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Babin/Fournier | Diez-Arguelles | AFT | **Recommend: Fav/CS** |
| 2. | | | AP | |

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

## I. Summary:

PCS/SB 378 reduces the state's sales tax rate on commercial rentals by one percentage point, effective January 1, 2018, and deletes the salary tax credit associated with the insurance premium tax, effective for premiums received after December 31, 2016.

The Revenue Estimating Conference has not reviewed the impact of the tax rate reduction included in the bill. Staff estimates that the reduction in the state sales tax on commercial rentals will decrease General Revenue receipts by $125.9 million in Fiscal Year 2017-2018, with a recurring reduction of $302.2 million. The Revenue Estimating Conference estimates that the deletion of the salary tax credit will increase General Revenue receipts by $453.3 million in Fiscal Year 2017-2018, and $299.6 million on a recurring basis. In total, the bill will increase General Revenue receipts by $327.4 million in Fiscal Year 2017-2018, and decrease General Revenue receipts by $2.6 million on a recurring basis.

## II. Present Situation:

The bill affects two revenue sources. The present situation for each issue is explained below in Effect of Proposed Changes.

## III. Effect of Proposed Changes:

**Sections 1 – 3 (Commercial Rentals)**

**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.[1]

The state levies a six percent tax on the total rent or license fee charged for renting, leasing, letting, or granting a license for the use of any real property, unless the type of property is specifically exempted.[2] Exemptions exist for the following types of property:

- Property assessed as agricultural property,[3]
- Dwelling units,[4]
- Parking, docking, or storage spaces,[5]
- Recreational property or common elements of a condominium that meet certain conditions,[6]
- Streets or right-of-ways with improvements used by a utility or provider of communications services,[7]
- Public street or road used for transportation services,[8]
- Airport property used exclusively for landing, taxiing, passenger movement or fueling,[9]
- Port authority property used exclusively for docking, mooring, passenger movement, or fueling,[10]
- Property used as an integral part of the performance of qualified production services,[11]
- Property used by concessionaires at certain venues,[12]
- Property declared to be nontaxable pursuant to a Technical Assistance Advisement issued before March 15, 1993,[13] and
- Property used or occupied predominately for space-flight business.[14]

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.[15]

[1] Chapter 212, F.S.
[2] Section 212.031(1)(c), F.S.
[3] Section 212.031 (1)(a)1, F.S.
[4] Section 212.031 (1)(a)2, F.S.
[5] 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.
[6] Section 212.031 (1)(a)4, F.S.
[7] Section 212.031 (1)(a)5, F.S.
[8] Section 212.031 (1)(a)6, F.S.
[9] Section 212.031 (1)(a)7, F.S.
[10] Section 212.031 (1)(a)8, F.S.
[11] Section 212.031 (1)(a)9, F.S.
[12] Section 212.031 (1)(a)10, F.S.
[13] 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.
[14] Section 212.031 (1)(a)12, F.S.
[15] Section 212.0598, F.S.

- A limited exemption exists for leases of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.[16]
- Business properties within an enterprise zone are authorized to receive a refund for certain previously paid taxes.[17]
- Exemptions exist for religious institutions, Section 501(c)(3) organizations, and fair associations.[18]

The six percent tax on transient lodging rentals, parking and storage for motor vehicles in parking lots or garages, docking or storage for boats in boat docks or marinas, or tie-down or storage space for aircraft in airports[19] is not affected by this bill.

State sales tax collections are distributed through a statutory formula. A portion of these collections is shared with local governments, and the remainder is deposited into the General Revenue Fund.[20]

In additional to the state tax on commercial rentals, local governments may impose their local option sales surtaxes. These surtaxes currently range between 0.5 percent and 2 percent, depending on the county.[21] These surtaxes are not affected by the bill.

**Proposed Changes**: The bill permanently reduces the state tax rate on commercial rentals from 6 percent to 5 percent, beginning January 1, 2018. The bill revises the percentages of collections shared with local governments to ensure that local government receipts are not significantly affected by the rate change. The bill clarifies that the tax rate that applies to a commercial rental is the tax rate in effect on the day that the tenant or licensee has the right to occupy or use the property, and thus, tax may not be avoided by delaying rental or license payments until after the effective date of the rate change.

**Sections 4-7 (Insurance Premium Tax)**

**Present Situation:** Florida imposes a tax of 1.75 percent on most Florida insurance premiums.[22] (Different tax rates apply to wet marine and transportation insurance, self-insurance, and annuity premiums.) Several credits are provided that can be used by insurance companies to reduce their premium tax liability.[23]

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[16] Section 212.0602, F.S.
[17] Section 212.08(5)(h), F.S.
[18] Sections 212.08(7)(m),(p),and (gg), F.S.
[19] Section 212.03(1) and (6), F.S.
[20] *See generally* section 212.20, F.S.
[21] *See* s. 212.055, F.S. A listing of 2017 surtaxes can be found on Department of Revenue Form DR-15DSS, available at: http://floridarevenue.com/Forms_library/current/dr15dssyear2017.pdf
[22] Section 624.509(1), F.S.
[23] Credit for payments to police and firefighters' retirement trust funds (s. 175.141, F.S.) and (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.); Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for assessments paid to the Workers' Compensation Administration Trust Fund (s. 440.51(5), F.S.); and assessments paid to the Florida Life and Health Insurance Guaranty Association (s. 631.72, F.S.).

The Florida employees' salary credit is equal to 15 percent of salaries paid to employees located or based within this state, and does not include amounts paid as commissions. For purposes of this credit, "employees" does not include independent contractors or any person whose duties require that the person hold a valid license under the Florida Insurance Code, except adjustors, managing general agents, and service representatives.

Until 1987, Florida exempted insurance companies that maintained their home offices in Florida from the insurance premium tax, and provided a lower tax rate for out-of-state insurance companies doing business in Florida if they owned and substantially occupied any building in the state as a regional home office. Chapter 87-99, L.O.F., repealed these differential rates and provided a credit equal to 10 percent of the salaries of Florida employees. One year later, chapter 88-20, L.O.F., increased the salary credit to 15 percent.

The maximum salary credit that can be taken is equal to the lesser of total premium tax due after subtracting credits for taxes levied for police and firefighters' retirement funds and corporate income taxes paid, or 15 percent of eligible Florida salaries.[24] This amount is further limited by a requirement that the sum of the salary credit and the credit for corporate income taxes paid may not exceed 65 percent of the total premium tax due after subtracting credits for taxes levied for police and firefighters' retirement funds and workers' compensation administrative assessment credits.

Credits and deductions against the insurance premium tax must be taken in the following order prescribed in s. 624.509(7), F.S.: credits for assessments paid to the Workers' Compensation Administration Trust Fund, credits for taxes levied by local governments to fund firefighters' and police retirement trust funds, credits for corporate income taxes, credits for employees' salaries, and all other available credits and deductions.

Because of the types of credits that are available, the order in which they must be taken, and the limits placed on some credits, an insurer may not be able to take full advantage of all the credits available to it. In the 2015 insurance premium tax year, 15 percent of eligible salaries equaled $558.4 million. However, because of the other credits taken and the 65 percent limitation on combined salary and corporate income tax credits, total salary credits taken on tax returns were $287.4 million.

**Proposed Change:** The bill amends s. 624.509, F.S., to delete the Florida employees' salary tax credit applied to the insurance premium tax for premiums received after December 31, 2016, and makes conforming changes to ss. 624.5091, F.S., and 624.51055, F.S.

## IV. Constitutional Issues:

### A. Municipality/County Mandates Restrictions:

None.

[24] Section 624.509(4), F.S.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed the impact of the tax rate reduction included in the bill. Staff estimates that the reduction in the state tax on commercial rentals will decrease General Revenue receipts by $125.9 million in Fiscal Year 2017-2018, with a recurring impact of $302.2 million.[25] The Revenue Estimating Conference estimates that the deletion of the salary tax credit will increase General Revenue receipts by $453.3 million in Fiscal Year 2017-2018, and $299.6 million on a recurring basis.[26,27] In total, the bill will increase General Revenue receipts by $327.4 million in Fiscal Year 2017-2018, and will decrease General Revenue receipts by $2.6 million on a recurring basis.

The nonrecurring increase in General Revenue receipts in Fiscal Year 2017-2018 is the result of timing differences between insurance premium tax payments and the state's fiscal year. Insurance premium taxes are based on premiums received in a calendar year. The bill, which applies to taxes on premiums received on or after January 1, 2017, will increase premium tax receipts in Fiscal Year 2017-2018 due to premiums received in 2017. Insurers also make installment payments on April 15, June 15, and October 15 of each year, based on the estimated gross amount of receipts of insurance premiums received during the immediately preceding calendar quarter.[28] Two installment payments for calendar year 2018 will also occur in Fiscal Year 2017-2018.

Cities and counties will experience a small, indeterminate impact due to the rate change contained in the bill.

### B. Private Sector Impact:

Businesses that pay sales tax on commercial rentals will pay less tax beginning January 1, 2018.

Some insurance companies will pay more insurance premium tax in the future.

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[25] Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results, available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page241-247.pdf (last visited March 9, 2017).
[26] Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results, available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page248-249.pdf (last visited March 9, 2017).
[27] The Fiscal Year 2017-2018 increase is larger than the recurring impact because it includes estimated payments for calendar year 2018 premiums.
[28] Section 624.5092(2)(a), F.S.

### C. Government Sector Impact:

None.

## VI. Technical Deficiencies:

None.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 212.031, 212.20, 624.509, 624.5091, and 624.51055.

## IX. Additional Information:

### A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**Recommended CS by Appropriations Subcommittee on Finance and Tax on March 21, 2017:** The CS removes the provisions related to communications services tax and replaces them with provisions that reduce the commercial rents tax rate from 6 percent to 5 percent. Distributions to local governments are adjusted so that they are not impacted by the tax reduction in the bill.

### B. Amendments:

None.