

By Senator Hutson

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1 A bill to be entitled
 2 An act relating to taxation of the rental of
 3 commercial real property; amending s. 212.031, F.S.;
 4 providing an exemption from the tax for property with
 5 a total annual rental payment under a specified limit;
 6 defining the terms "total annual rental payment" and
 7 "affiliated group"; providing construction; providing
 8 an exception to the exemption; providing
 9 applicability; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Paragraph (a) of subsection (1) of section
 14 212.031, Florida Statutes, is amended to read:

15 212.031 Tax on rental or license fee for use of real
 16 property.—

17 (1) (a) It is declared to be the legislative intent that
 18 every person is exercising a taxable privilege who engages in
 19 the business of renting, leasing, letting, or granting a license
 20 for the use of any real property unless such property is:

- 21 1. Assessed as agricultural property under s. 193.461.
- 22 2. Used exclusively as dwelling units.

- 23 3. Property subject to tax on parking, docking, or storage
 24 spaces under s. 212.03(6).

- 25 4. Recreational property or the common elements of a
 26 condominium when subject to a lease between the developer or
 27 owner thereof and the condominium association in its own right
 28 or as agent for the owners of individual condominium units or
 29 the owners of individual condominium units. However, only the
 30 lease payments on such property shall be exempt from the tax
 31 imposed by this chapter, and any other use made by the owner or
 32 the condominium association shall be fully taxable under this

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33 chapter.

34 5. A public or private street or right-of-way and poles,
35 conduits, fixtures, and similar improvements located on such
36 streets or rights-of-way, occupied or used by a utility or
37 provider of communications services, as defined by s. 202.11,
38 for utility or communications or television purposes. For
39 purposes of this subparagraph, the term "utility" means any
40 person providing utility services as defined in s. 203.012. This
41 exception also applies to property, wherever located, on which
42 the following are placed: towers, antennas, cables, accessory
43 structures, or equipment, not including switching equipment,
44 used in the provision of mobile communications services as
45 defined in s. 202.11. For purposes of this chapter, towers used
46 in the provision of mobile communications services, as defined
47 in s. 202.11, are considered to be fixtures.

48 6. A public street or road which is used for transportation
49 purposes.

50 7. Property used at an airport exclusively for the purpose
51 of aircraft landing or aircraft taxiing or property used by an
52 airline for the purpose of loading or unloading passengers or
53 property onto or from aircraft or for fueling aircraft.

54 8.a. Property used at a port authority, as defined in s.
55 315.02(2), exclusively for the purpose of oceangoing vessels or
56 tugs docking, or such vessels mooring on property used by a port
57 authority for the purpose of loading or unloading passengers or
58 cargo onto or from such a vessel, or property used at a port
59 authority for fueling such vessels, or to the extent that the
60 amount paid for the use of any property at the port is based on
61 the charge for the amount of tonnage actually imported or

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62 exported through the port by a tenant.

63 b. The amount charged for the use of any property at the
64 port in excess of the amount charged for tonnage actually
65 imported or exported shall remain subject to tax except as
66 provided in sub-subparagraph a.

67 9. Property used as an integral part of the performance of
68 qualified production services. As used in this subparagraph, the
69 term "qualified production services" means any activity or
70 service performed directly in connection with the production of
71 a qualified motion picture, as defined in s. 212.06(1)(b), and
72 includes:

73 a. Photography, sound and recording, casting, location
74 managing and scouting, shooting, creation of special and optical
75 effects, animation, adaptation (language, media, electronic, or
76 otherwise), technological modifications, computer graphics, set
77 and stage support (such as electricians, lighting designers and
78 operators, greensmen, prop managers and assistants, and grips),
79 wardrobe (design, preparation, and management), hair and makeup
80 (design, production, and application), performing (such as
81 acting, dancing, and playing), designing and executing stunts,
82 coaching, consulting, writing, scoring, composing,
83 choreographing, script supervising, directing, producing,
84 transmitting dailies, dubbing, mixing, editing, cutting,
85 looping, printing, processing, duplicating, storing, and
86 distributing;

87 b. The design, planning, engineering, construction,
88 alteration, repair, and maintenance of real or personal property
89 including stages, sets, props, models, paintings, and facilities
90 principally required for the performance of those services

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91 listed in sub-subparagraph a.; and

92 c. Property management services directly related to
93 property used in connection with the services described in sub-
94 subparagraphs a. and b.

95
96 This exemption will inure to the taxpayer upon presentation of
97 the certificate of exemption issued to the taxpayer under the
98 provisions of s. 288.1258.

99 10. Leased, subleased, licensed, or rented to a person
100 providing food and drink concessionaire services within the
101 premises of a convention hall, exhibition hall, auditorium,
102 stadium, theater, arena, civic center, performing arts center,
103 publicly owned recreational facility, or any business operated
104 under a permit issued pursuant to chapter 550. A person
105 providing retail concessionaire services involving the sale of
106 food and drink or other tangible personal property within the
107 premises of an airport shall be subject to tax on the rental of
108 real property used for that purpose, but shall not be subject to
109 the tax on any license to use the property. For purposes of this
110 subparagraph, the term "sale" shall not include the leasing of
111 tangible personal property.

112 11. Property occupied pursuant to an instrument calling for
113 payments which the department has declared, in a Technical
114 Assistance Advisement issued on or before March 15, 1993, to be
115 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
116 Administrative Code; provided that this subparagraph shall only
117 apply to property occupied by the same person before and after
118 the execution of the subject instrument and only to those
119 payments made pursuant to such instrument, exclusive of renewals

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120 and extensions thereof occurring after March 15, 1993.

121 12. Property used or occupied predominantly for space
122 flight business purposes. As used in this subparagraph, "space
123 flight business" means the manufacturing, processing, or
124 assembly of a space facility, space propulsion system, space
125 vehicle, satellite, or station of any kind possessing the
126 capacity for space flight, as defined by s. 212.02(23), or
127 components thereof, and also means the following activities
128 supporting space flight: vehicle launch activities, flight
129 operations, ground control or ground support, and all
130 administrative activities directly related thereto. Property
131 shall be deemed to be used or occupied predominantly for space
132 flight business purposes if more than 50 percent of the
133 property, or improvements thereon, is used for one or more space
134 flight business purposes. Possession by a landlord, lessor, or
135 licensor of a signed written statement from the tenant, lessee,
136 or licensee claiming the exemption shall relieve the landlord,
137 lessor, or licensor from the responsibility of collecting the
138 tax, and the department shall look solely to the tenant, lessee,
139 or licensee for recovery of such tax if it determines that the
140 exemption was not applicable.

141 13. Rented, leased, subleased, or licensed to a person
142 providing telecommunications, data systems management, or
143 Internet services at a publicly or privately owned convention
144 hall, civic center, or meeting space at a public lodging
145 establishment as defined in s. 509.013. This subparagraph
146 applies only to that portion of the rental, lease, or license
147 payment that is based upon a percentage of sales, revenue
148 sharing, or royalty payments and not based upon a fixed price.

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149 This subparagraph is intended to be clarifying and remedial in
150 nature and shall apply retroactively. This subparagraph does not
151 provide a basis for an assessment of any tax not paid, or create
152 a right to a refund of any tax paid, pursuant to this section
153 before July 1, 2010.

154 14. Property for which the total annual rental payment does
155 not exceed \$50,000.

156 a. For purposes of this subparagraph, the term "total
157 annual rental payment" means the total of all rental fees
158 required during the term of the lease divided by the number of
159 days included in the term of the lease multiplied by 365.

160 b. The \$50,000 threshold is determined by including all
161 leases between the lessor and lessee. For purposes of this
162 subparagraph, lessors and lessees include related entities that,
163 if corporations, would constitute an "affiliated group" of
164 corporations, as that term is defined in s. 1504(a) of the
165 Internal Revenue Code, 26 U.S.C. s. 1504(a).

166 c. A license to use real property does not qualify for the
167 exemption provided in this subparagraph.

168 Section 2. The amendment made by this act to s. 212.031,
169 Florida Statutes, applies to rental payments due under a lease
170 on or after January 1, 2018.

171 Section 3. This act shall take effect January 1, 2018.