

By Senator Diaz de la Portilla

36-00325-08

20081418\_\_

1 A bill to be entitled

2 An act relating to the tax on property rental fees and the  
3 tax on admissions; amending s. 212.031, F.S.; abrogating  
4 the repeal of the tax exemption on rental or license fees  
5 provided for certain property rented, leased, or licensed  
6 by a convention or exhibition hall, auditorium, stadium,  
7 theater, arena, civic center, performing arts center, or  
8 publicly owned recreational facility; amending s. 2 of  
9 chapter 2006-101, Laws of Florida; abrogating the repeal  
10 of the tax exemption provided for certain charges imposed  
11 by a convention or exhibition hall, auditorium, stadium,  
12 theater, arena, civic center, performing arts center, or  
13 publicly owned recreational facility upon a lessee or  
14 licensee; amending s. 212.04, F.S.; abrogating the repeal  
15 of the tax exemption for admission charges to events  
16 sponsored by governmental entities, sports authorities,  
17 and sports commissions; providing an effective date.

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21 Section 1. Paragraph (a) of subsection (1) of section  
22 212.031, Florida Statutes, is amended to read:

23 212.031 Tax on rental or license fee for use of real  
24 property.--

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

29 1. Assessed as agricultural property under s. 193.461.

36-00325-08

20081418\_\_

30           2. Used exclusively as dwelling units.

31           3. Property subject to tax on parking, docking, or storage  
32 spaces under s. 212.03(6).

33           4. Recreational property or the common elements of a  
34 condominium when subject to a lease between the developer or  
35 owner thereof and the condominium association in its own right or  
36 as agent for the owners of individual condominium units or the  
37 owners of individual condominium units. However, only the lease  
38 payments on such property shall be exempt from the tax imposed by  
39 this chapter, and any other use made by the owner or the  
40 condominium association shall be fully taxable under this  
41 chapter.

42           5. A public or private street or right-of-way and poles,  
43 conduits, fixtures, and similar improvements located on such  
44 streets or rights-of-way, occupied or used by a utility or  
45 provider of communications services, as defined by s. 202.11, for  
46 utility or communications or television purposes. For purposes of  
47 this subparagraph, the term "utility" means any person providing  
48 utility services as defined in s. 203.012. This exception also  
49 applies to property, wherever located, on which the following are  
50 placed: towers, antennas, cables, accessory structures, or  
51 equipment, not including switching equipment, used in the  
52 provision of mobile communications services as defined in s.  
53 202.11. For purposes of this chapter, towers used in the  
54 provision of mobile communications services, as defined in s.  
55 202.11, are considered to be fixtures.

56           6. A public street or road which is used for transportation  
57 purposes.

58           7. Property used at an airport exclusively for the purpose

36-00325-08

20081418\_\_

59 | of aircraft landing or aircraft taxiing or property used by an  
60 | airline for the purpose of loading or unloading passengers or  
61 | property onto or from aircraft or for fueling aircraft.

62 |       8.a. Property used at a port authority, as defined in s.  
63 | 315.02(2), exclusively for the purpose of oceangoing vessels or  
64 | tugs docking, or such vessels mooring on property used by a port  
65 | authority for the purpose of loading or unloading passengers or  
66 | cargo onto or from such a vessel, or property used at a port  
67 | authority for fueling such vessels, or to the extent that the  
68 | amount paid for the use of any property at the port is based on  
69 | the charge for the amount of tonnage actually imported or  
70 | exported through the port by a tenant.

71 |       b. The amount charged for the use of any property at the  
72 | port in excess of the amount charged for tonnage actually  
73 | imported or exported shall remain subject to tax except as  
74 | provided in sub-subparagraph a.

75 |       9. Property used as an integral part of the performance of  
76 | qualified production services. As used in this subparagraph, the  
77 | term "qualified production services" means any activity or  
78 | service performed directly in connection with the production of a  
79 | qualified motion picture, as defined in s. 212.06(1)(b), and  
80 | includes:

81 |       a. Photography, sound and recording, casting, location  
82 | managing and scouting, shooting, creation of special and optical  
83 | effects, animation, adaptation (language, media, electronic, or  
84 | otherwise), technological modifications, computer graphics, set  
85 | and stage support (such as electricians, lighting designers and  
86 | operators, greensmen, prop managers and assistants, and grips),  
87 | wardrobe (design, preparation, and management), hair and makeup

36-00325-08

20081418\_\_

88 (design, production, and application), performing (such as  
89 acting, dancing, and playing), designing and executing stunts,  
90 coaching, consulting, writing, scoring, composing,  
91 choreographing, script supervising, directing, producing,  
92 transmitting dailies, dubbing, mixing, editing, cutting, looping,  
93 printing, processing, duplicating, storing, and distributing;

94 b. The design, planning, engineering, construction,  
95 alteration, repair, and maintenance of real or personal property  
96 including stages, sets, props, models, paintings, and facilities  
97 principally required for the performance of those services listed  
98 in sub-subparagraph a.; and

99 c. Property management services directly related to  
100 property used in connection with the services described in sub-  
101 subparagraphs a. and b.

102

103 This exemption will inure to the taxpayer upon presentation of  
104 the certificate of exemption issued to the taxpayer under the  
105 provisions of s. 288.1258.

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

36-00325-08

20081418\_\_

117 | subparagraph, the term "sale" shall not include the leasing of  
118 | tangible personal property.

119 |       11. Property occupied pursuant to an instrument calling for  
120 | payments which the department has declared, in a Technical  
121 | Assistance Advisement issued on or before March 15, 1993, to be  
122 | nontaxable pursuant to rule 12A-1.070(19)(c), Florida  
123 | Administrative Code; provided that this subparagraph shall only  
124 | apply to property occupied by the same person before and after  
125 | the execution of the subject instrument and only to those  
126 | payments made pursuant to such instrument, exclusive of renewals  
127 | and extensions thereof occurring after March 15, 1993.

128 |       12. Rented, leased, subleased, or licensed to a  
129 | concessionaire by a convention hall, exhibition hall, auditorium,  
130 | stadium, theater, arena, civic center, performing arts center, or  
131 | publicly owned recreational facility, during an event at the  
132 | facility, to be used by the concessionaire to sell souvenirs,  
133 | novelties, or other event-related products. This subparagraph  
134 | applies only to that portion of the rental, lease, or license  
135 | payment which is based on a percentage of sales and not based on  
136 | a fixed price. ~~This subparagraph is repealed July 1, 2009.~~

137 |       13. Property used or occupied predominantly for space  
138 | flight business purposes. As used in this subparagraph, "space  
139 | flight business" means the manufacturing, processing, or assembly  
140 | of a space facility, space propulsion system, space vehicle,  
141 | satellite, or station of any kind possessing the capacity for  
142 | space flight, as defined by s. 212.02(23), or components thereof,  
143 | and also means the following activities supporting space flight:  
144 | vehicle launch activities, flight operations, ground control or  
145 | ground support, and all administrative activities directly

36-00325-08

20081418\_\_

146 related thereto. Property shall be deemed to be used or occupied  
147 predominantly for space flight business purposes if more than 50  
148 percent of the property, or improvements thereon, is used for one  
149 or more space flight business purposes. Possession by a landlord,  
150 lessor, or licensor of a signed written statement from the  
151 tenant, lessee, or licensee claiming the exemption shall relieve  
152 the landlord, lessor, or licensor from the responsibility of  
153 collecting the tax, and the department shall look solely to the  
154 tenant, lessee, or licensee for recovery of such tax if it  
155 determines that the exemption was not applicable.

156 Section 2. Section 2 of chapter 2006-101, Laws of Florida,  
157 is amended to read:

158 Section 2. Notwithstanding the provisions of section 3 of  
159 chapter 2000-345, Laws of Florida, as amended by section 55 of  
160 chapter 2002-218, Laws of Florida, subsection (10) of s. 212.031,  
161 Florida Statutes, shall not stand repealed on July 1, 2006, as  
162 scheduled by such laws, but that subsection is revived and  
163 readopted. ~~Subsection (10) of s. 212.031, Florida Statutes, is~~  
164 ~~repealed July 1, 2009.~~

165 Section 3. Paragraph (a) of subsection (2) of section  
166 212.04, Florida Statutes, is amended to read:

167 212.04 Admissions tax; rate, procedure, enforcement.--

168 (2)(a)1. No tax shall be levied on admissions to athletic  
169 or other events sponsored by elementary schools, junior high  
170 schools, middle schools, high schools, community colleges, public  
171 or private colleges and universities, deaf and blind schools,  
172 facilities of the youth services programs of the Department of  
173 Children and Family Services, and state correctional institutions  
174 when only student, faculty, or inmate talent is used. However,

36-00325-08

20081418\_\_

175 | this exemption shall not apply to admission to athletic events  
176 | sponsored by a state university, and the proceeds of the tax  
177 | collected on such admissions shall be retained and used by each  
178 | institution to support women's athletics as provided in s.  
179 | 1006.71(2)(c).

180 |       2.a. No tax shall be levied on dues, membership fees, and  
181 | admission charges imposed by not-for-profit sponsoring  
182 | organizations. To receive this exemption, the sponsoring  
183 | organization must qualify as a not-for-profit entity under the  
184 | provisions of s. 501(c)(3) of the Internal Revenue Code of 1954,  
185 | as amended.

186 |       b. No tax shall be levied on admission charges to an event  
187 | sponsored by a governmental entity, sports authority, or sports  
188 | commission when held in a convention hall, exhibition hall,  
189 | auditorium, stadium, theater, arena, civic center, performing  
190 | arts center, or publicly owned recreational facility and when 100  
191 | percent of the risk of success or failure lies with the sponsor  
192 | of the event and 100 percent of the funds at risk for the event  
193 | belong to the sponsor, and student or faculty talent is not  
194 | exclusively used. As used in this sub-subparagraph, the terms  
195 | "sports authority" and "sports commission" mean a nonprofit  
196 | organization that is exempt from federal income tax under s.  
197 | 501(c)(3) of the Internal Revenue Code and that contracts with a  
198 | county or municipal government for the purpose of promoting and  
199 | attracting sports-tourism events to the community with which it  
200 | contracts. ~~This sub-subparagraph is repealed July 1, 2009.~~

201 |       3. No tax shall be levied on an admission paid by a  
202 | student, or on the student's behalf, to any required place of  
203 | sport or recreation if the student's participation in the sport

36-00325-08

20081418\_\_

204 or recreational activity is required as a part of a program or  
205 activity sponsored by, and under the jurisdiction of, the  
206 student's educational institution, provided his or her attendance  
207 is as a participant and not as a spectator.

208 4. No tax shall be levied on admissions to the National  
209 Football League championship game, on admissions to any semifinal  
210 game or championship game of a national collegiate tournament, or  
211 on admissions to a Major League Baseball all-star game.

212 5. A participation fee or sponsorship fee imposed by a  
213 governmental entity as described in s. 212.08(6) for an athletic  
214 or recreational program is exempt when the governmental entity by  
215 itself, or in conjunction with an organization exempt under s.  
216 501(c)(3) of the Internal Revenue Code of 1954, as amended,  
217 sponsors, administers, plans, supervises, directs, and controls  
218 the athletic or recreational program.

219 6. Also exempt from the tax imposed by this section to the  
220 extent provided in this subparagraph are admissions to live  
221 theater, live opera, or live ballet productions in this state  
222 which are sponsored by an organization that has received a  
223 determination from the Internal Revenue Service that the  
224 organization is exempt from federal income tax under s. 501(c)(3)  
225 of the Internal Revenue Code of 1954, as amended, if the  
226 organization actively participates in planning and conducting the  
227 event, is responsible for the safety and success of the event, is  
228 organized for the purpose of sponsoring live theater, live opera,  
229 or live ballet productions in this state, has more than 10,000  
230 subscribing members and has among the stated purposes in its  
231 charter the promotion of arts education in the communities which  
232 it serves, and will receive at least 20 percent of the net



36-00325-08

20081418\_\_

233 profits, if any, of the events which the organization sponsors  
234 and will bear the risk of at least 20 percent of the losses, if  
235 any, from the events which it sponsors if the organization  
236 employs other persons as agents to provide services in connection  
237 with a sponsored event. Prior to March 1 of each year, such  
238 organization may apply to the department for a certificate of  
239 exemption for admissions to such events sponsored in this state  
240 by the organization during the immediately following state fiscal  
241 year. The application shall state the total dollar amount of  
242 admissions receipts collected by the organization or its agents  
243 from such events in this state sponsored by the organization or  
244 its agents in the year immediately preceding the year in which  
245 the organization applies for the exemption. Such organization  
246 shall receive the exemption only to the extent of \$1.5 million  
247 multiplied by the ratio that such receipts bear to the total of  
248 such receipts of all organizations applying for the exemption in  
249 such year; however, in no event shall such exemption granted to  
250 any organization exceed 6 percent of such admissions receipts  
251 collected by the organization or its agents in the year  
252 immediately preceding the year in which the organization applies  
253 for the exemption. Each organization receiving the exemption  
254 shall report each month to the department the total admissions  
255 receipts collected from such events sponsored by the organization  
256 during the preceding month and shall remit to the department an  
257 amount equal to 6 percent of such receipts reduced by any amount  
258 remaining under the exemption. Tickets for such events sold by  
259 such organizations shall not reflect the tax otherwise imposed  
260 under this section.

261 7. Also exempt from the tax imposed by this section are

36-00325-08

20081418\_\_

262 entry fees for participation in freshwater fishing tournaments.

263 8. Also exempt from the tax imposed by this section are  
264 participation or entry fees charged to participants in a game,  
265 race, or other sport or recreational event if spectators are  
266 charged a taxable admission to such event.

267 9. No tax shall be levied on admissions to any postseason  
268 collegiate football game sanctioned by the National Collegiate  
269 Athletic Association.

270 Section 4. This act shall take effect upon becoming a law.