

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 704

INTRODUCER: Senator Garcia

SUBJECT: Tax on Sales, Use, and Other Transactions

DATE: March 21, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 704 provides a limited exception from the sales tax on commercial leases and rents. Specifically, separately itemized charges for ad valorem taxes paid to the lessor or the licensor, or to any other person if itemized and not taxed, are not subject to the sales tax on commercial leases of real property.

The maximum amount that may fall under the exception is the lesser of ad valorem taxes actually paid to the tax collector or the ad valorem taxes delinquent on April 1 of the following year. If the total ad valorem tax exception exceeds the amount of taxes actually paid or delinquent on April 1, the excess ad valorem tax charges are subject to tax, which must be remitted on the December sales and use tax return to the Department of Revenue.

Additionally, if multiple tenants or licensees occupy a parcel of real property that is not subject to the aforementioned sales tax, the tenants' or licensees' ad valorem taxes shall be calculated based on a reasonable allocation to the real property occupied by each tenant or used by each licensee.

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. In the 1987 Regular Session, the Legislature passed legislation extending the tax to sales of many services.² During Special Session D in December

¹ Chapter 212, F.S.

² Chapter 87-6, 101, Laws of Fla.

1987, the Legislature repealed the recently-enacted service tax and increased the general sales tax rate from 5 percent to 6 percent, the current tax rate.³

Section 212.031, F.S., provides for a tax levied in an amount equal to 6 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 exist for the following types of property:

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

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.¹⁶
- A limited exemption exists for leases of real property used to provide education services described in s. 212.031 (1)(a)(9), F.S.¹⁷

³ Chapter 87-548, Laws of Fla.

⁴ Section 212.031 (1)(a)1, F.S.

⁵ Section 212.031 (1)(a)2, F.S.

⁶ 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.

⁷ Section 212.031 (1)(a)4, F.S.

⁸ Section 212.031 (1)(a)5, F.S.

⁹ Section 212.031 (1)(a)6, F.S.

¹⁰ Section 212.031 (1)(a)7, F.S.

¹¹ Section 212.031 (1)(a)8, F.S.

¹² Section 212.031 (1)(a)9, F.S.

¹³ Section 212.031 (1)(a)10, F.S.

¹⁴ 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.

¹⁵ Section 212.031 (1)(a)12, F.S.

¹⁶ Section 212.0598, F.S.

¹⁷ Section 212.0602, F.S.

- Business properties within an enterprise zone are authorized to receive a refund for certain previously paid taxes.¹⁸
- Exemptions exist for religious institutions, Section 501(c)(3) organizations, and fair associations.¹⁹

The 6 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 airports²⁰ is not affected by this bill.

III. Effect of Proposed Changes:

Section 1 amends s. 212.031, F.S., to provide an exception from the tax on rental or licenses fees charged for the use of real property for certain ad valorem charges. Specifically, separately itemized charges for ad valorem taxes paid to the lessor or the licensor, or to any other person if itemized and not taxed, are not subject to the sales tax on commercial leases of real property.

The bill limits the maximum charges that are not subject to tax in a calendar year for a single parcel of real property to the lesser of the ad valorem taxes actually paid to the tax collector or the ad valorem taxes delinquent on April 1 of the following calendar year. If the total ad valorem tax charges exceed the taxes actually paid or delinquent on April 1 of the following calendar year, the excess ad valorem tax charges are subject to the tax, which must be remitted on the December sales and use tax return to the Department of Revenue in the manner provided for dealers to remit taxes under s. 212.11, F.S.

If multiple tenants or licensees occupy a parcel of real property or portions of the real property are not subject to a lease or license to use real property, the tenants' or licensees' ad valorem tax charges shall be calculated based on a reasonable allocation related to the real property occupied by each tenant or used by each licensee.

Section 2 provides that this act shall take effect January 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandate requirements do not apply to laws having an insignificant

¹⁸Section 212.08(5)(h), F.S.

¹⁹Sections 212.08(7)(m),(p),and (gg), F.S.

²⁰ Section 212.03(1) and (6), F.S.

impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{21,22,23} The Revenue Estimating Conference estimated a negative recurring impact for the local option of \$17.5 million in 2017-18; \$18.2 in 2018-19; \$18.9 in 2019-20; \$19.5 in 2020-21; and \$20.2 in 2021-22.²⁴

The county/municipality mandates provision of Article VII, Section 18 of the Florida Constitution, may apply because this bill reduces local government authority to raise revenue by providing an exception from the sales tax on commercial leases and rents. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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,” 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.”²⁵ The report 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

²¹ FLA. CONST. art. VII, s. 18(d).

²² An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited March 16, 2017).

²³ Based on the Demographic Estimating Conference’s population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited March 16, 2017).

²⁴ Revenue Estimating Conference, HB 463/SB 704, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0303.pdf (analyzed March 3, 2017).

²⁵ Office of Economic and Demographic Research, The Florida Legislature, p. 3, available at <http://edr.state.fl.us/Content/returnoninvestment/SalesTaxontheRentalofRealProperty.pdf> (Nov. 15, 2014).

years by the length of existing contracts.”²⁶ The report adds “A straight reduction in the tax rate is analyzed in the same manner as complete elimination.”²⁷

C. Government Sector Impact:

The Revenue Estimating Conference estimated a negative recurring impact in general revenue of \$137.5 million; and a negative recurring total local impact of \$35.3 million.²⁸

In its analysis, the Department of Revenue provided that it will need to mail a Tax Information Publication (TIP) notifying approximately 146,000 taxpayers of the sales and use tax exemption to separately itemized ad valorem tax charges paid by certain tenants and licensees.²⁹ The estimated cost for this TIP is \$49,000, but it is nonrecurring.³⁰

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.

²⁶ *Id.* p. 5.

²⁷ *Id.*

²⁸ Office of Economic and Demographic Research, Revenue Estimating Conference, HB 463/SB 704, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/Impact0303.pdf (analyzed March 3, 2017).

²⁹ Department of Revenue, Legislative Bill Analysis for SB 704, p. 6 (analyzed February 20, 2017).

³⁰ *Id.*