

STORAGE NAME: h3375.rpp

DATE: March 15, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
REAL PROPERTY & PROBATE
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 3375

RELATING TO: Tax on sales, use, and other transactions

SPONSOR(S): Representative Tamargo

COMPANION BILL(S): SB 274

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) REAL PROPERTY & PROBATE
 - (2) FINANCE AND TAX
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 3375 provides that the total rent and license fee for a commercial real estate lease subject to the sales tax does not include a proportionate share of pass-through charges comprised of ad valorem taxes, maintenance charges, and certain insurance premiums.

This bill will have a fiscal impact.

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II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 212.031(1)(a), Florida Statutes, provides that it is the legislative intent 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 the property is specifically exempted from this provision.

Section 212.031(1)(c), Florida Statute, provides that for the exercise of the privilege, a tax is levied in the amount of 6 percent of and on the total rent or license fee charged for the real property by the person charging or collecting the rental or license fee.

The total rent or license fee charged for the real property includes payments for the granting of a privilege to use or occupy real property for any purpose and includes base rent, percentage rents, or similar charges. The charges are to be included in the total rent or license fee subject to tax under this section.

Section 212.031(2)(a), Florida Statutes, provides that the tenant or person actually occupying, using, or entitled to the use of the property from which the rental or license fee is subject to taxation must pay the tax to his or her immediate landlord or other person granting the right to occupy or use the real property.

Rule 12A-1.070(4)(c), Florida Administrative Code, provides that ad valorem taxes paid by the tenant or other person actually occupying, using, or entitled to use any real property to the lessor or any other person on behalf of the lessor, including transactions between affiliated entities, are taxable.

Rule 12A-1.070(4)(d), Florida Administrative Code, provides that common area maintenance charges paid by a tenant to the lessor for the privilege or right to use or occupy real property are taxable.

Rule 12A-1.070(12), Florida Administrative Code, provides that when a tenant or other person pays insurance for his own protection, the premium is not regarded as rental or license fee consideration, even though the landlord or other person granting the right to occupy or use the real property is also protected by the coverage. However, any portion of the premium which secures the protection of the landlord or person granting the right to occupy or use the real property and which is separately stated or itemized is regarded as rental or license fee consideration and is taxable.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.031(1)(c), F.S., to exclude from the term "total rent or license fee," ad valorem taxes, maintenance charges, or insurance premiums paid for the benefit and protection of the landlord when the proportionate share of each of those items is separately billed on an invoice by the landlord. Therefore, the payments made for these items and billed separately by the landlord, will no longer be subject to tax as additional rental or license consideration.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

Yes.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 212.031, Florida Statutes.

E. SECTION-BY-SECTION RESEARCH:

See Effect of Proposed Changes.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Unknown.

2. Recurring Effects:

HB 3375 takes effect July 1, 1998.

ASSUMPTIONS: The Economic Impact Conference assumed, in arriving at their estimate of the tax revenue lost as a result of this bill, that any separate insurance component is not now taxed. In addition, the value of commercial property is assumed to be 8 times the annual rent. Maintenance charges are assumed to be either 5%, 7.5% or 10% of rent on average.

The Impact Summary indicates this bill will result in lost tax revenue as follows:

FY 1998-99 Annualized	FY 1998-99 Cash	FY 1999-2000 Cash
(\$169,700,000)	(\$155,600,000)	(\$174,800,000)

3. Long Run Effects Other Than Normal Growth:

Unknown.

4. Total Revenues and Expenditures:

Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

Unknown.

2. Direct Private Sector Benefits:

This bill would result in lower sales taxes for individuals who rent or license the use of real property pursuant to s. 212.031, F.S.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

According to the Department of Revenue, the bill does not consider situations where the lease agreement requires the tenant to pay ad valorem taxes or insurance for the protection of the landlord, when the charges are not separately billed by the landlord. In many cases the tenant is required by the terms of the lease agreement to pay the ad valorem taxes as a separate item, but the ad valorem tax transaction occurs between the tenant and the property appraiser and therefore is not billed by the landlord. In addition, the tenant may be required to obtain insurance for the benefit of the landlord directly from an insurance company. If so, the landlord does not separately bill the tenant for the insurance.

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The Department also points out that the bill does not include a definition of "maintenance charges." The Department uses the term "common area maintenance charges" in Rule 12A-1.070, F.A.C., which may be more narrow than the term "maintenance charges". The term "maintenance charges" may be interpreted to mean that not only the common area maintenance charges, but charges for general maintenance of the property used exclusively by a tenant may be exempted from sales taxes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REAL PROPERTY & PROBATE:

Prepared by:

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