

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS for SB 236

SPONSOR: Appropriations Subcommittee on General Government and Senator Posey

SUBJECT: Sales Tax\Box Seat/Skybox/Luxury Box

DATE: February 9, 2004 REVISED: 1/8/04 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/1 amendment</u>
2.	<u>Blizzard</u>	<u>Hayes</u>	<u>AGG</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The committee substitute repeals the exemption from sales and use tax, on the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game, when the charge for such rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

This repeal does not affect contracts entered into before January 1, 2004; however the exempt status of charges imposed under such contract terminates no later than January 1, 2009.

This committee substitute repeals subsection (9) of s. 212.031, F.S.

II. Present Situation:

Sales Tax

Florida’s six percent sales and use tax as provided in chapter 212, F.S., is not a single levy, but is composed of a number of different levies on a variety of transactions. A “use” tax is imposed on items not sold, but used in Florida. The various levies of sales and use tax are:

- **Transient rental** (s. 212.03, F.S.): Establishes a taxable privilege for lease or rental of hotels, motels, and apartments for periods of less than six months.
- **Lease or rental of or license in real property** (s. 212.031, F.S.): Establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real commercial property.

- **Admissions** (s. 212.04, F.S.): Establishes a taxable privilege for selling or receiving anything of value by way of admissions.
- **Sale of tangible personal property** (s. 212.05(1)(a), F.S.): Establishes a taxable privilege for the sale of items or articles of tangible personal property.
- **Use of tangible personal property** (s. 212.05(1)(b), F.S.): Establishes a taxable privilege on items or articles of tangible personal property which are not sold but are used, consumed, distributed, or stored for use or consumption in Florida. The tax is based on the “cost price” of the article, which is a calculation of the cost of an item including materials, labor, service costs, transportation and any other expenses.
- **Lease or rental of tangible personal property** (s. 212.05(1)(c), F.S.): Establishes a taxable privilege for the lease or rental of tangible personal property.
- **Coin-operated amusement machines** (s. 2312.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of 4 percent.
- **Certain services** (s. 212.05(1)(j), F.S.): Establishes a taxable privilege for the sale of detective, burglar protection, and other protective services and for the sale of nonresidential cleaning and nonresidential pest control services.
- **Service Warranties** (s. 212.0506, F.S.) Establishes a taxable privilege on every person who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty. “Service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property.

Aside from the services mentioned above, services are not directly subject to Florida’s sales and use tax. This lack of tax on most services is not due solely to exemptions from the tax, but from the fact that the services are not specified as taxable. In addition, s. 212.08(7)(v), F.S., exempts personal, professional, and financial services when provision of such services involves inconsequential elements of tangible personal property such as documents representing the service provided. Numerous other services, however, are taxed such as repair and maintenance services that also involve the sale of tangible personal property.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter. The statutes currently provide more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for 54 miscellaneous exemptions.

Chapter 99-238, L.O.F., enacted subsection (9) of section 212.031, F.S., providing an exemption from sales and use tax, for the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game, when the charge for

such rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

Local Discretionary Sales Surtaxes

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions” by chapter 212, F.S. and on communications services by chapter 202, F.S. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to tax if the property or service is delivered within a county that does not impose a surtax. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. As of January 2003, 59 counties levied at least one discretionary sales surtax with 8 counties levying two.

III. Effect of Proposed Changes:

The committee substitute repeals subsection (9) of s. 212.031, F.S., the exemption from sales and use tax, on the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game, when the charge for such rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

This repeal does not affect contracts entered into before January 1, 2004; however, the exempt status of charges imposed under such contracts terminates no later than January 1, 2009.

The committee substitute clarifies that the repeal does not affect any other sales tax exemption granted under chapter 212, F.S., to qualified s. 501(c)(3) organizations.

The committee substitute takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This committee substitute does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The committee substitute repeals the exemption from sales and use tax, on the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game, when the charge for such rental, lease, sublease or license is imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

This repeal does not affect contracts entered into before January 1, 2004; however, the exempt status of charges imposed under such contracts terminates no later than January 1, 2009.

The Revenue Estimating Conference estimated that repeal of this exemption should result in an increase to the General Revenue Fund of an estimated \$400,000 in sales tax revenue. The \$400,000 estimate is based on the following s. 501(c)(3) non-profit organizations currently qualifying under this exemption:

- Florida Citrus Sports Association
 - Capital One Bowl
 - Tangerine Bowl
 - Florida Classic – Bethune Cookman
- University of Florida Boosters
 - Assuming annual skybox leases of \$1 million
- Florida State University Boosters
 - Assuming annual skybox leases of \$1 million
- Other s. 501(c)(3) organizations identified by the IRS with athletic activity codes, that may qualify under this exemption

B. Private Sector Impact:

A person who rents, leases, or subleases, a skybox, luxury box, or other box seat from a s. 501(c)(3) organization, for use during a high school or college football game will have to pay sales tax on such rental, lease, or sublease.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
