

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1447 CS Exemption from the Tax on Sales, Use, and Other Transactions
SPONSOR(S): Gelber and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Tourism Committee</u>	<u>8 Y, 0 N, w/CS</u>	<u>McDonald</u>	<u>McDonald</u>
2) <u>Finance & Tax Committee</u>	<u></u>	<u>Noriega</u>	<u>Diez-Arguelles</u>
3) <u>State Infrastructure Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

This bill 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.

The bill states that the repeal does not affect contracts entered into before July 1, 2005; however, the exempt status of charges imposed under such contracts terminates no later than January 1, 2010. In addition, the bill does not affect any exemption granted under chapter 212, F.S., to nonprofit organizations that are qualified under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The bill also states that the act shall not apply to any exemptions in chapter 212, F.S., relating to rentals, leases, subleases or licenses imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The Revenue Estimating Conference estimated that the repeal of this exemption should result in an increase to the General Revenue Fund of \$0.2 million in both FY 2005-06 and FY 2006-07. In addition, the annualized recurring impact in FY 2005-06 is estimated to be \$0.3 million.

The bill takes effect July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes: The bill repeals an existing tax exemption for certain skyboxes, luxury boxes, or other box seats for use during a high school or college football game. However, the bill also states that the act shall not apply to tax exemptions in chapter 212, F.S., for nonprofit organizations pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by chapter 212, F.S. The law provides 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.¹

Chapter 99-238, L.O.F., enacted subsection (9) of s. 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 during a high school or college football game, when the charge for the 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. According to the Department of Revenue (DOR), the following entities utilize the sales tax exemption:

- University of Florida Booster Association for the University of Florida's stadium
- Florida State University Booster Association for Florida State University's stadium
- Florida Citrus Sports Association (Citrus Bowl, Capital One Bowl, Champs Sports Bowl, etc.),
- Gator Bowl,² and
- Miscellaneous other 501(c)(3) nonprofit organizations identified by the IRS with athletic activity codes and names that suggest that they may benefit from the sales tax exemption.

Overview of Sales Taxes

State 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 as follows:

- 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.

¹ Section 212.08(7), F.S., provides for 54 miscellaneous exemptions.

² When the Revenue Estimating Conference met on March 18, 2005, there was some question as to whether or not the Gator Bowl had a 501(c)(3) nonprofit organization responsible for the sale of tickets. DOR staff is obtaining information on this issue.

- 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. 212.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of four 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.

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

Local Discretionary Sales Surtaxes (also referred to as Local Option Sales Taxes)

Local governments are authorized to levy seven different types of local discretionary sales surtaxes pursuant to s. 212.055, 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 authorized pursuant to chapter 212, F.S., and communications services as defined for purposes of chapter 202, F.S.³

The local discretionary sales surtax rate is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. This rate varies from county to county, depending on the particular levies authorized in that jurisdiction. 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.⁴

Proposed Changes

The bill 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.

The bill states that the repeal will not affect contracts entered into before July 1, 2005; however, the exempt status of charges imposed under such contracts terminates no later than January 1, 2010. In addition, the bill does not affect any exemption granted under chapter 212, F.S., to nonprofit organizations that are qualified under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

³ Section 212.054(2), F.S.

⁴ Section 212.054, F.S.

The bill also states that the act will not apply to any exemptions in chapter 212 relating to rentals, leases, subleases or licenses imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The bill will take effect July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Repeals s. 212.031(9), F.S., relating to exemption from taxation on rental, lease, sublease, or license for use of certain skyboxes, luxury boxes, or other box seats; renumbers subsequent subsection.

Section 2. Provides clarification on contracts affected by repeal and on impact on other sales tax exemptions granted under chapter 212, F.S.

Section 3. Provides for non-application of the act.

Section 4. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has determined that this bill will have the following fiscal impact on state government:

	<u>2005-2006</u>	<u>2006-2007</u>
General Revenue	0.2m	0.2m
Trust	<u>(insignificant)</u>	<u>(insignificant)</u>
Total	0.2m	0.2m

The annualized recurring impact in FY 2005-06 is estimated to be \$0.3 million.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has determined that this bill will have an insignificant fiscal impact to local governments.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

The repeal of the tax exemption will require 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 to pay sales tax on such rental, lease, or sublease. However, the bill also states that the act shall not apply to tax exemptions in chapter 212, F.S., for nonprofit organizations pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision applies to this bill because it reduces the authority that counties have to raise revenue through local option sales taxes; however, an exemption applies because the reduction is less than \$1.8 million and is therefore insignificant.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2005, the Tourism Committee passed HB 1447 with a committee substitute. The committee substitute differs from the original bill in the following ways:

- The date of the contracts to be affected by Section 2 of the bill was conformed to the effective date of the bill. This addresses concerns regarding the violation of contract law due to encumbering contracts existing before the effective date of the bill. The effective date of these contracts was changed from January 1, 2005, to July 1, 2005.
- Section 3 was added to provide language that the act would not apply to any exemptions in chapter 212 relating to rentals, leases, subleases or licenses imposed by a nonprofit sponsoring organization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.