Economic Impact:
Sales Tax on the Rental of Real Property

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Economic Impact of the Sales Tax on the Rental of Real Property

Introduction and Executive Summary…

At the request of Speaker Will Weatherford to conduct a special project analyzing the economic impact of the sales tax on the rental of real property, the Office of Economic and Demographic Research undertook both historical and literature reviews of the tax with particular emphasis on any potential economic distortions, adverse effects on business location and expansion decisions, and impact on competiveness and Florida's overall business climate. See APPENDIX A for a copy of the letter from the Speaker.

Florida is remarkably diverse with strong regional differences. This, coupled with the scarcity of in-state data, makes it difficult to draw definitive conclusions about the effects of the sales tax on the rental of real property—especially the impact of its possible removal. However, the economic literature and available data support the identification of some general tendencies and characterizations. This analysis is built on that broad framework and uses the most widely accepted economic principles. In keeping with the terms of the original request, most of the conclusions and findings are directional rather than specifically quantified. This paper is divided into discrete areas addressing the key points raised in the Speaker's letter, most of which can stand alone.

The Florida Revenue Act of 1949 established the foundation of Florida's current sales tax structure. Twenty years later, the law was amended to extend the sales tax to the rental of real property. In 1986, the law was further amended to include licenses for the use of real property. This paper focuses on traditional commercial leases for office, retail and industrial space—and not on licenses to use. Similarly, this paper does not address small scale leases such as those for ATM machines, car vac and air machines, kiosks and booth rentals.

Today, the state's tax rate of 6 percent applies to the total amount of the rental payment, as do any local discretionary sales surtaxes. The surtaxes currently range from 0.5 percent to 1.5 percent for those counties that impose them. After adjusting for vacancy rates, projected state sales tax collections in Fiscal Year 2014-15 for traditional rents and leases for commercial space are expected to be $678.5 million. If all vacancy rates were zero in the current year, collections would reach $781.7 million. Future growth is expected to strengthen as vacancy rates continue to decline, asking rents increase and construction activity returns to a higher level. As a result of these factors, states sales tax collections in Fiscal Year 2015-16 would increase by 3.2 percent to $700.3 million. If all vacancy rates were zero next year, collections would reach $808.8 million. The separate revenues from the local discretionary surtax range from just over $55 million to nearly $64 million for the 2014-15 and 2015-16 fiscal years, or about 8.1 percent of the total collections received by state government.

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 has materially driven a significant number of the economic actors into other paths. These paths would be demonstrated by private ownership in lieu of leasing by potential tenants or alternative investments in lieu of renewing or expanding the leasing stock by the owners of leased property. By most accounts, the commercial leasing industry in Florida is robust relative to many other states. A 2010 analysis estimated that—compared to other states—Florida had average to above average per capita levels of office and retail space, and was on par with Texas with industrial space. In a more recent report, Real Capital Analytics ranked South Florida, Orlando and Tampa among the top 20 most active U.S. markets for commercial real estate in the past 12 months.

The greatest potential market distortion from the commercial rental tax on real property comes from the likelihood of pyramiding where a tax is paid at multiple points prior to the sale of the final product. From a tax policy perspective, the concern is that the inclusion of business purchases in the tax base distorts business decisions and leads to inequities through cascading taxes on some products but not others. While this may occur in some cases, the fraction of those cases is somewhat limited by the number of non-taxable services and other avenues for tenants to absorb the tax. Regardless, the overall issue of the appropriate tax treatment of business purchases is a much larger policy and fiscal question that would not be solved by the elimination of the commercial rental tax on real property.

One of the tests to prove the existence of pyramiding is the tax incidence. In essence, the intermediate consumer (the business tenant) must be able to shift the tax's cost to the ultimate consumers of its products or services. This is the same as asking who actually bears the tax burden. The literature on this subject uses the principle that the greatest burden of a tax will be borne by the person or entity that will be least responsive to its effect. In this regard, much of the discussion focuses on alternatives and substitutes to the original decision—for the subject at hand, the decision to lease a particular space.

In the case of commercial lease property, only suboptimal options are available to potential tenants. These include consuming less desirable—but cheaper—space elsewhere or less overall space than needed. Since all leased commercial property is taxed at the same state rate in all its uses in Florida, the number of less costly, but essentially equivalent leased options is limited or nonexistent within a local competitive market. A possible exception is caused by the existence of local discretionary sales surtaxes. They have been levied to a greater or lesser extent in some jurisdictions, but not at all in others. However, there are a variety of reasons that leasing has become the preferred way to occupy commercial space, and all of these support tenant demand that is only weakly responsive to price changes.

On the other hand, the owners and landlords of space typically are legal entities (such as partnerships or corporations) that have engaged in the leasing activity as an investment strategy within the larger financial capital market. Relative to the tenants, suppliers of leased space have greater options over time. Investment capital competes with other opportunities in a broader capital market that is becoming more and more global in nature. The availability of alternative uses makes the supply particularly sensitive to price changes. The combination of these economic forces between tenants and property owners makes it probable that the economic burden of the commercial rental tax is pushed in its entirety to the tenants. This is the essential conclusion of the paper.

While not discussed in great detail, further shifting of the burden will occur after the tenant pays the tax. A portion of the tenant's burden is pushed on to the federal government, a portion is paid by the tenant's consumers (both in-state and out-of-state) through higher prices for their products and services, and a portion is absorbed by the tenant's owners and investors (some of which are outside the state). Several of these outcomes (shifting to the federal government, out-of-state consumers, or out-of-state owners and investors) involve exporting the tax completely outside of Florida.

Following similar economic reasoning, the property owners would likely gain the greatest benefit from eliminating the tax, but this effect would be masked for a period of at least three to five years by the length of existing lease contracts. The existing contracts temporarily lock the current rent structure in place, and most specify that the tenant pays the sales tax. Its removal would give the tenants the break for the remainder of the contract length, unless the contract specifies otherwise. The tenant responses to the windfall would vary, resulting in increased spending on goods or services, increased profits, or additional physical capital investment by the tenants. The likelihood that the increased spending capacity would result in the significant rental of additional space is low. This activity would be constrained by the value of the tax receipts initially restored to the tenants. Using the Fiscal Year 2014-15 state sales tax estimate of $678.5 million and the mix of properties and asking rents from 2014, the savings would enable a 5 percent maximum increase in total leased square feet—assuming every tenant chose to invest in additional space. Using individual drug stores, supermarkets and home centers as examples, the sales tax savings averaged about one-quarter of 1 percent of total projected sales. Assuming the all of the savings would be invested in additional space is unlikely because other factors would come into play for the individual tenants. As the existing contracts expire, the bargaining strength would shift to the property owners, likely resulting in higher rents.

There are several ways to partially reduce the tax, and each has a different effect. While a straight reduction in the tax rate is analyzed in the same manner as complete elimination, the introduction of an exempt dollar amount per lease or an amount of exempt square footage prior to the tax rate applying is more complex. The effects would be the same whether a dollar amount or square footage were made exempt, but both have the potential to induce behavioral changes and economic distortions to take advantage of the new tax regime. There are reasons to believe that these actions would be somewhat limited; however, to the extent these arrangements occur, state government would lose more tax revenue than implied by the direct amount of the reduction in today's structure.

Statutory Framework and History…

Use of sales taxes began in the United States in the early 1930s. They can take several different forms, but general sales taxes are commonly based on a uniform rate applied to the final transaction value of a broad base of products or services. Unlike some other taxes, changes in wealth (inclusive of savings) or ability to pay are not the focus of the sales tax.

While heavily amended through the years, the Florida Revenue Act of 1949 established the foundation of Florida's current sales tax structure. Conceptually, the state is imposing the tax for the privilege of engaging in an activity—primarily, selling tangible personal property or rendering certain taxable services—within its territorial boundaries.

In Florida, a "sale" includes: "(a) any transfer of title or possession or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration." [See 212.02(15), F.S.] Through this mechanism, Florida Statutes specifically treat the lease or rental of tangible personal property and the possession or use of such property by the lessee for consideration as a sale.

Enacted in 1969, s. 212.031(1)(a), F.S., extends this treatment to the rental of real property. The current law reads, "It is declared to be 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…"[1] Real property is defined by s. 212.02(10)(h), F.S., to mean, "...the surface land, improvements thereto, and fixtures, and is synonymous with 'realty' and 'real estate'." Examples of real property include office or retail space, warehouses, convention and meeting rooms, and mini-warehouses.

In this regard, the Supreme Court of the United States has found that a property owner's rights (or "bundle of privileges") include the right to lease the land. However, according to James M. Ervin of Holland & Knight, Florida is one of only a few jurisdictions to actually impose the sales tax on commercial leases of realty.[2] Overall, Florida's rental levy is broad-based and comprehensive. For example, the reference to "engages in the business of..." has been determined by the courts to not preclude incidental activity. Another is the law's application to related "persons" as defined by s. 212.02(12), F.S., which includes a rental from a corporation to a subsidiary or from a shareholder to a corporation. Only legitimate joint ventures are excluded from the law's definitional reach.

This does not mean, however, that the tax is applied across-the-board. According to the Tax Section of the Florida Bar's *Florida State and Local Taxes*: "The Florida sales tax law carves out of its general taxing scheme many special transactions that are treated specifically and exempts many other transactions and properties from the imposition of the tax altogether." For example, s. 212.031(1)(a)2., F.S., excludes the rental of all dwelling units, but some are addressed elsewhere by the transient rental tax.

[1] An attempt to find the original staff analysis for HB 969 from 1969 was not successful. A document produced by Florida Information Associates, Inc., discusses the research used to identify legislative intent: "In addition to these difficulties, many committees did not develop consistent criteria for creating and keeping their records until several years after the formal creation of the committee staff structure. Records created prior to 1976 are often fragmented and disorganized, where they exist at all."

[2] Another jurisdiction is Manhattan.

The law is currently structured to require the lowest level of sub-leasing to pay the tax; unless otherwise specified, the person immediately higher in the chain of leases becomes the dealer who collects the tax. In this manner, only one tax is collected on the rental payment, and the tax is not pyramided on the progression of transactions, nor is it reduced by subdividing.

Generally, for the tax on the rental of real property to apply, control over a specified area of property must be involved. If control over a designated area of property is not involved, then the underlying agreement has the characteristic of being a license to do an act upon the property. In its most significant policy change since the original enactment of the commercial rental tax, the Legislature amended Section 212.031, F.S., in 1986, to make licenses to use real property subject to the tax.[3] This is a legally and economically different concept from that of the rental of real property. The Legislature defined the term license in s. 212.02(10)(i), F.S.,: " 'License' as used in this chapter [Chapter 212] with reference to the use of real property, means the granting of a privilege to use or occupy a building or a parcel of real property for any purpose." According to *Black's Law Dictionary*, a license to use real property is "a privilege to go on premises for a certain purpose, but does not operate to confer on, or vest in, licensee any title, interest, or estate in such property." This paper focuses on traditional commercial leases and not on licenses to use.

In the case of real property subject to s. 212.031, F.S., the tax rate is applied to the total amount of the rental payment and—with one exception—is due at the time of receipt by the lessor or person receiving the rent on his or her behalf. If the rental agreement also requires the lessee to pay the ad valorem taxes, mortgage or certain insurance premiums as a condition of occupancy, those amounts are included in the rental amount subject to the sales tax. According to Wigdor's article in the Florida Bar Journal, "The DOR generally considers any payment required to be paid as a condition of occupancy under a commercial lease to be taxable as rent." Likewise, other "things of value" included in the rental agreement are subject to the tax. If the tenant does not have the option to accept or reject the services, this can include common area maintenance costs, certain utility and parking charges, janitorial expenses, lease termination payments when reported as rental income or expense, and, when applicable, capital improvement payments.

Section 212.031(1)(c), F.S., imposes the 6 percent tax on the total rental payment of any real property that is not specifically exempt or treated otherwise in statute. Section 212.054, F.S., addresses discretionary sales surtaxes and allows their imposition on the rental, lease or license to use commercial real property located in the county imposing the surtax. The applicable discretionary sales surtax rate depends on the county. Rates currently range from 0.5 percent to 1.5 percent for those counties that impose the tax. In this regard, the $5,000 local cap only applies to items of tangible personal property and not to commercial rental transactions.

[3] See TAA 91A-062 from the Department of Revenue and *S & W Air Vac Systems, Inc., v. Department of Revenue*, 697 So. 2d 1313 (Fla. 5th D.C.A 1997) for a further discussion of this topic.

Sales Tax Revenue from the Commercial Rental Tax on Real Property…

Because the Department of Revenue's data does not identify total collections received from the imposition of commercial rental tax on real property, the Office of Economic and Demographic Research (EDR) has purchased two proprietary datasets that are Florida-specific in order to develop the estimates included in this paper. The CBRE dataset is used to develop estimates of all commercial space, whether owner-occupied or for lease. The REIS dataset specifically excludes owner-occupied property which should more closely align with the amount (in square feet) of commercial space for lease. However, the REIS dataset had to be further supplemented with a separate EDR estimate for regional malls and a small number of stand-alone stores. The separate estimate was developed using data from the 2003 Commercial Buildings Energy Consumption Survey collected by the U.S. Energy Information Administration (EIA)[4], and a related paper by Reed, Johnson, Riggert and Dion. While the two primary datasets (REIS and CBRE) serve different purposes, the adjusted results seem to be reasonably consistent and in line with industry publications and expectations.

After adjusting for vacancy rates, projected state sales tax collections in Fiscal Year 2014-15 for traditional rents and leases for commercial space are expected to be $678.5 million.[5] If all vacancy rates were zero in the current year, collections would reach $781.7 million. Future growth is expected to strengthen as vacancy rates continue to decline, asking rents increase and construction activity returns to a higher level. As a result of these factors, states sales tax collections in Fiscal Year 2015-16 would increase by 3.2 percent to $700.3 million. If all vacancy rates were zero next year, collections would reach $808.8 million.

The state portion is further shared with local governments. Of the $678.5 million estimated to be collected in Fiscal Year 2014-15, only $601.5 million would be available for state expenditure. The remaining $77.0 million would go to local governments. The local discretionary sales surtaxes would generate another $55.2 million, for a total of $132.2 million in local government benefit.

($'s in millions)	**FY 2014-15**		**Zero Vacancy**	
Total State Taxes		**678.5**		**781.7**
Total Local Taxes		**55.2**		**63.6**
		733.7		**845.3**
Full Distribution...				
General Revenue		601.4		692.9
State Trust Fund		0.1		0.1
Local		132.2		152.4
Revenue Sharing	*19.8*		*22.9*	
Local Half Cent	*57.2*		*65.9*	
Local Option	*55.2*		*63.6*	
Total		733.7		845.4

Note: Color-coded shading in the full distribution components align to the like colored-totals for state and local taxes shown at the top of the chart. Differences are due to rounding.

[4] Source: EIA, CBECS; Table A2, 2003-South.

[5] The sales tax distribution table used in this analysis has yet to be adjusted for the effects of the electricity swap authorized by 2014-38, L.O.F.

Since the leasing market has a demonstrated history of growth and manageable vacancies over the long run, it is unlikely on its face that the rental tax has materially driven a significant number the economic actors into other paths. These paths would be demonstrated by private ownership in lieu of leasing by potential tenants or alternative investments in lieu of renewing or expanding the leasing stock by the owners of leased property.

While not explicitly estimated for this paper, it should be noted that the collective rentals on licenses to use real property and small scale leases such as those for ATM machines, car vac machines, kiosks and booth rentals would not be an insignificant addition to this total.

General Sales Taxes and a Potential Source of Market Distortion…

Sales tax transactions typically involve the final purchaser and exclude sales for resale, purchases of materials to be further incorporated into other products that are for sale, and purchases of machinery and equipment that are used to produce items for sale. These exclusions are an attempt to mitigate the potential market distortion caused by pyramiding or cascading where a tax is paid at multiple points prior to the sale of the final product.

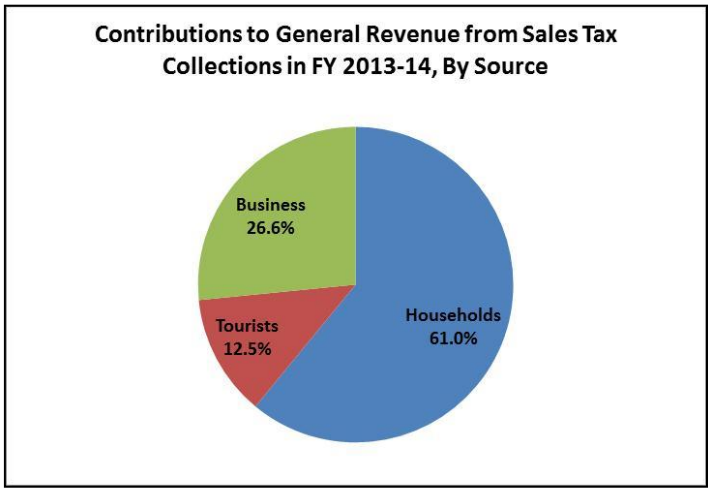
From the brief discussion of theory above, it is possible to conclude that all taxable purchases are made by individual consumers or households; however, in practice, a significant portion of the applicable purchases is made by businesses. In an unrelated study, the Office of Economic and Demographic Research performed an empirical analysis of the source of the state's sales tax collections. In Fiscal Year 2013-14, sales tax collections provided $19.7 billion dollars or 75 percent of Florida's total General Revenue collections. Of this amount, 26.6 percent is attributable to purchases made by businesses. State business shares that are even higher have been developed by studies of other states. Clearly, many states treat a number of business transactions as sales of the final product.

From a tax policy perspective, the concern is that the inclusion of business purchases in the tax base distorts business decisions and leads to inequities through cascading taxes on some products but not others. For the latter concern regarding price inequities to be valid, two pre-conditions for tax pyramiding must be met. First, both the final product or service sold to the ultimate consumer and the intermediate input must be taxable.[6] Second, the intermediate consumer (the business) must be able to shift the cost of the tax to the ultimate consumer. Confirmation of the second condition would be found by determining who actually bears the tax burden. This issue is discussed further below in reference to the subject of this analysis—the tax on the commercial rental of real property—but the overall issue of the appropriate tax treatment of business purchases is a much larger policy and fiscal question not addressed by this paper. In regard to the fraction of the commercial rental tax base that meets the two conditions described above, completely eliminating the tax on the commercial rental of real property would simply reduce the overall pie and still leave a significant share of all taxable transactions from businesses. For example, if the <u>entire</u> estimate of General Revenue collections from the commercial rental tax on real property in Fiscal Year 2014-15 were eliminated from the pie below ($601.4 million), the business share of the remaining total would still be 24.3 percent—and this would

[6] A notable reason the first condition fails is the significant percentage of all final goods and services represented by non-taxable services.

include collections associated with many non-taxable final services. In effect, elimination of the sales tax on commercial realty would not have much effect on the portion of sales taxes paid by businesses.

FY 2013-14 Estimated GR Collections from Sales Tax		
Households	***$12,015.47***	***60.97%***
Tourists	***$2,457.43***	***12.47%***
Business	***$5,234.80***	***26.56%***
Total	***$19,707.70***	



Incidence and the Tax Burden…

Broadly, the term "incidence" refers to who pays the tax—an entirely different concept from identifying the person who has the procedural duty to remit it to the taxing authority. In Florida law, the statutory framework requires the tax to be collected from the lessee and remitted to the state by the lessor. According to the Tax Section of the Florida Bar's *Florida State and Local Taxes*: "Dealers may not advertise or hold out to the public that they will absorb or refund all or any part of the tax, directly or indirectly." The Supreme Court of the United States has previously held that the presence of a similar statutory framework requiring a tax to be passed on to the purchaser establishes incidence upon the consumer by finding, "...where a state requires that its sales tax be passed on to the purchaser and be collected by the vendor from him, this establishes as a matter of law that the legal incidence of the tax falls upon the purchaser." Moreover, guidance on commercial real property rentals from the Department of Revenue has a heading entitled "Tenant Liability" with the following caution: "If you cannot prove that sales tax has been paid to your landlord, you are directly liable to the Department for any unpaid sales tax, interest, or penalty due."

Taken at face value, these requirements seemingly place the tax burden entirely on the lessee. However, there is a practical difference between statutory or legal incidence and economic incidence. In this regard, the ultimate tax burden is more appropriately associated with economic incidence, and often involves a split of the burden between the buyer and seller. This has more to do with real-world market conditions and behavioral changes that cause the full or partial "shifting" of the burden from one set of economic actors to another than with legislative intent. According to Kotlikoff and Summer's 1987 literature survey, "The distinctive contribution of economic analysis to the study of tax incidence has been the recognition that the burden of taxes is not necessarily borne by those upon whom they are levied."

In Poterba's 1996 empirical study analyzing retail taxes' effects on consumers, he summarizes prior studies by saying, "Applied incidence studies typically assume that sales taxes are fully reflected in consumer prices and are fully borne by consumers." Similarly, *The Encyclopedia of Taxation & Tax Policy* finds that: "The traditional view of the distributional effects of a retail sales tax is that the tax will be reflected in higher prices to consumers, and thus the burden will be distributed in relation to consumption expenditures." Even Entin, a critic of the traditional view, states, "Consumption taxes, such as the retail sales tax, a VAT, or excise taxes, whether imposed on consumers or on manufacturers, are routinely described as being paid by consumers in the form of higher prices because it is assumed that consumers are less flexible than producers, so that consumer prices increase by an amount equal to the tax, with none of the tax borne by the producers of the taxed goods."[7]

Conceptually, the tax is shifted forward to the consumer in its entirety, where the term "consumer" can be replaced with "tenant" for the purposes of this analysis.[8] In reality, it is possible that this generalization only holds true in specialized circumstances. Key among these is the extent to which the consumers (tenants) are similar in their needs and situations. Varying demand price elasticities—that is, the sensitivity of individual or specific groups of consumers to price changes[9]—can provide exceptions to the central theory. These can be caused by differences in preferences between the various types of business tenants, as well as between new tenant entrants and established tenants. Also, there will likely be differing effects in the short and long runs.

The literature has developed using the principle that the greatest burden of a tax will be borne by the person or entity that will be least responsive (most inelastic) to its effect. At its polar extreme, inelastic demand means that consumers have negligible or no sensitivity to price changes.[10] This enables the price change induced by the imposition of a tax to be pushed fully to the buyer. In the case of commercial lease property, only suboptimal options are available to potential tenants. These include consuming less desirable—but cheaper—space elsewhere or less overall space than needed. Since all leased commercial property is taxed at the same state rate in all its uses in Florida, the number of less costly, but essentially equivalent leased options is limited or nonexistent within a local competitive market. Further limiting the pool of viable options, many businesses have a need to be in a specific geographic or market area where both the number of locations and property type are constrained; in

[7] Entin agrees with the traditional view only to the extent it portrays the initial tax incidence or first-round effects.
[8] The most recent literature is fairly uniform on full forward shifting of retail sales taxes and suggests that the tenants would have fewer viable alternatives than the owners (acting as the landlords) of the property. Some recent studies have even found instances of over-shifting of retail sales taxes to consumers which occurs when the retail price rises by more than the tax—usually in imperfectly competitive markets. This paper generally follows current convention.
[9] In the present context, this is measured as the percent change in the quantity of a product demanded divided by the percent change in its price.
[10] Unlike an elastic response, there is no movement along the demand curve in response to the increased price, and the quantity demanded does not change.

this regard, they are effectively location-bound or imperfectly mobile. It is possible that the absorption of the tax would affect new location decisions by the subset of tenants who are not market or resource dependent—but likely only at the margin since the class of all taxes is only one issue of the multitude that are considered in making the final location decision. All of this suggests that the overall demand is more inelastic than elastic.

A possible exception to the discussion above can be found where local discretionary sales surtaxes have been imposed. In those cases, the tax rate is higher within the local government jurisdiction than nearby areas. This may cause some businesses that are not place-bound to that jurisdiction to locate in another area. However, the tax differential is relative modest—ranging from 0.5 to 1.5 percent of the rental cost depending on the affected jurisdiction.

A more elastic demand may lead the sellers (in this case, the property owners) to share in the incremental price adjustment, especially in those instances where the supply is inelastic because the property owners have no viable choices other than to rent. This situation would occur more often in the short run than the long run because the decision to offer the property for sale (the supplier's first-round alternative) would—given sufficient time—entail minimal costs.[11] A reason for differing short-term effects would be a delay in the property conversion to accommodate the search time needed to find a willing buyer. Another reason is the duration of current leases which may encompass different ending dates. Nevertheless, if the demand for commercial lease space is elastic, potential tenants have choices that they believe are equally viable and potential landlords would have to compete for their business in order to stay in business—even if it means absorbing part of the tax burden.

More recent studies have focused on a general equilibrium approach to the analysis of tax incidence. This type of analysis looks more broadly across markets and includes induced effects on the prices of all goods and services to derive a net result. Among other things, this means the use or loss of the applicable tax revenue is typically evaluated in tandem with the tax's full effects on all parties (directly and indirectly) to the taxable activity. According to Kotlikoff and Summer's 1987 literature survey, "...the incidence of tax cannot be considered in isolation. Its incidence must be assessed along with the feasible disposition of tax revenue." This is not a new concept. In 1960, J. M. Buchanan wrote, "When a sales tax is imposed, there must be some change on the use-of-funds side: the revenue must replace that of another tax, or be used to finance an increase in government spending, to retire debt, to add to liquid balances, etc." Essentially, the specific use (or loss) of funds by government alters the *effective* incidence among the economic actors by benefiting (or harming) some agents more than others. State sales taxes in Florida are typically spent in accordance with the general market basket of government goods which has its heaviest concentration in the education policy area.

Delving Further into the Elasticity Question to Assess Alternatives…

Elasticity is largely shaped by the availability of alternative uses for the inputs on the supply side and substitutes for the products on the demand side. Commercial lease space has unique features where both the best alternative input uses and product substitutes are limited and perfectly aligned in the

[11] Many economists believe the supply curve for commercial lease properties is "kinked" meaning that the supply is constant or constrained in the short run, at least in regard to downward movements.

extreme case. To that point, if leasing were no longer a viable option either for the property owner or the tenant, the suppliers of space for lease would offer their properties for sale and the renters would buy them. In reality, the choice is not as straightforward as the extreme case, and purchasing the property is not a perfect substitute for renters. Since World War II, "leasing has become the dominant way in which most commercial space is occupied and paid for by the space users in the United States, at least for the larger and more valuable properties..."[12] According to a 2008 study by Ambrose and Lusht:

> *"For a variety of reasons, many businesses find that leasing real estate is preferred to ownership. Leasing is often more cost effective when space requirements are less than the quantity supplied in a typical building in the desired location. In this case, purchasing a property would place a firm in the 'real estate business' by requiring that it assume the risks of ownership for leasing space that it does not occupy. Furthermore, owning property often requires a large capital commitment to an asset that is not integral to the firm's core business. Finally, many firms find that leasing offers additional flexibility to leave markets or consolidate to a different location more efficiently than if space were owned."*

In addition to these hurdles, property ownership entails significant transaction and carrying costs, many of which see economies of scale if spread over a larger property base. Among these are practical costs related to maintenance, repairs and security. However, there are also transactions costs related to assessing the long-term value of the real estate location and the stability of the surrounding market area, as well as to choosing the best among several potential real estate investments. The property owner must take on these costs, but the tenant can largely avoid them through leasing. And, with regard to all of these expenses, leasing is often the least costly alternative.

Also, there are tax advantages to leasing in some instances. From an income tax perspective, it is generally better for a profitable corporation to lease rather than to own its space; however, recent financial innovations have put the general rule to the test. According to Geltner, Miller, Clayton and Eichholtz, "The particular situations of tenants and landlords in the context of specific provisions of the corporate and personal income tax codes can cause leasing to create a tax arbitrage, to save taxes overall on a net basis across the property investors and the tenants..."

Further factoring into the lease-buy decision is the age and financial strength of the business. For new businesses, the initial sunk costs can be a significant challenge, even without consideration of the additional up-front costs of real estate acquisition. At best, small business startups are risky investments because their survival rate is relatively low, meaning they are less likely to succeed and remain in operation over the long-term. Several studies have analyzed the probability of new business success. The U.S. Small Business Association reports that only about half of new establishments survive five years or more and only one-third survive ten years or more. Even if they are willing to take on this risk, there are some tenants who do not have sufficient access to capital to purchase or develop their own business locations.

Historically, small mercantile and service retailers have owned the space they occupy to a greater extent than other businesses in the commercial property market. This implies a predisposition to view the purchase of space as a viable option to leasing. However, this tendency may have a relatively small effect on the overall market since "most of the general mercantile and service establishments have

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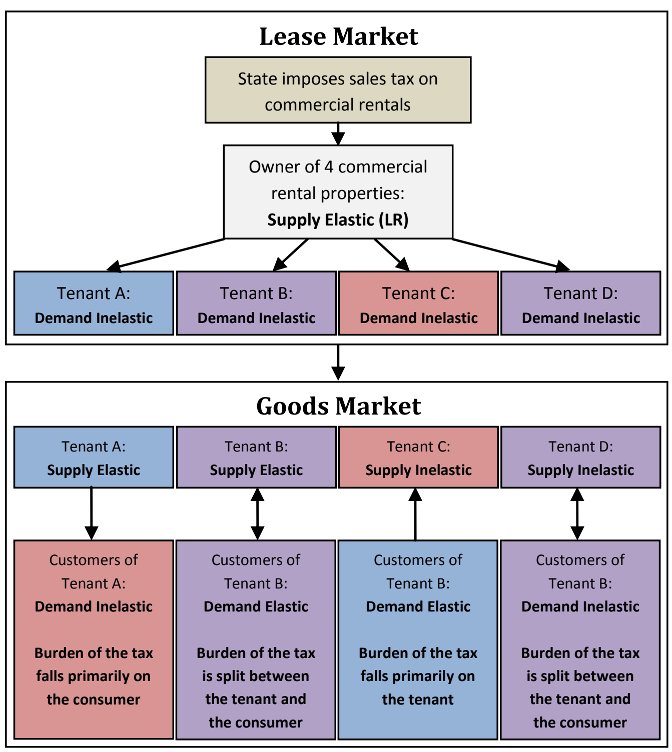
[12] See Geltner, Miller, Clayton and Eichholtz for a more in-depth discussion of this topic.

small footprints with approximately sixty percent occupying less than 5,000 square feet."[13] The ones that lease are likely driven by the risk of failure and lack of access to capital.

The lack of viable substitutes (caused in this case by the decisive market preference to lease rather than to own) is the key feature that creates demand that tends to be more inelastic than not. Relative to the tenants, the supplier of leased space does have greater options over time. Once the initial property holding was sold as a result of the only viable first round decision, the prior supplier of leased space would face the decision of where to place his investment capital in the subsequent round. Most owners of commercial lease space perceive leasing to be foremost an investment which competes with other opportunities in the broader capital market. Other forms of investment have to be constantly evaluated as alternatives to either remaining in the leasing market or expanding current holdings. If the owners made the decision to stay in the leasing market, they would have the additional option of staying in Florida or moving their holdings to another part of the country or world. The availability of alternative uses for the investment capital makes the supply more elastic than not.

The combined tendencies of inelastic demand and elastic supply support the conclusion that the tenants bear the initial tax burden. Whether this burden is then passed on to the tenants' customers in the form of higher prices for final goods and services would require a separate analysis by industry—and, in many cases, by discrete product or service. That evaluation is beyond the scope of this analysis, but the same economic reasoning would apply. It should also be noted that the potential market distortion of pyramiding would only occur at this lower level—and only in those cases where the final sales are taxable and where the cost of the tax on commercial rentals was shifted forward from the tenant to his customer. The chart below shows the interaction between the tenants and their customers, highlighting the tax burden being initially borne by the tenants.



13 See Reed, Johnson, Riggert and Dion for a more in-depth discussion of this topic.

Exporting the Rental Tax…

To export a tax means that it is paid by entities or persons who are not residents of the imposing state. According to Pollock, "…state policymakers generally view tax exporting as desirable, because they would prefer nonresidents to bear the burden of the taxes they impose. Residents, too, are more than happy to have someone else pay for the services that primarily benefit themselves." One study has found that as much as 21.8 percent of Connecticut's total sales tax collections ultimately comes from outside the state, with only a small fraction related to tourists. Again according to Pollock, "Exporting of the sales tax, in particular, is correlated with the level of taxation of business purchases of inputs."

There are several forms of exporting that are relevant to the discussion of sales taxes on commercial leases:

- Tax cost is partially shifted to the federal government – The rental tax is deductible on corporate and business returns as a cost of the tenant's doing business. In this regard, IRC §162(a)(3) provides that a tenant may deduct "rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the [tenant] has not taken or is not taking title or in which he has no equity." These provisions hold whether the tenant is a resident of the imposing state or not. Pollock would refer to this as a form of "indirect federal revenue sharing" since the deduction reduces federal income tax liability for those taking the deduction.

- Tax is paid by a nonresident tenant that has an in-state commercial lease – To the extent that the deduction on federal returns does not fully offset the cost of the tax, a nonresident tenant faces increased production costs related to the tax if they cannot pass the difference along to consumers in the form of increased prices.

- Tax is paid by out-of-state shareholders when the Florida-based tenant is a publicly owned corporation and the cost cannot be further shifted forward to consumers – To the extent that the deduction on federal returns does not fully offset the cost of the tax, and the difference cannot be passed on to consumers in the form of higher prices, the out-of-state shareholders of the Florida-based business tenant would absorb the cost through reduced profits and dividends.

- Tax is paid by out-of-state consumers in those instances where the tenant's product price includes some or all of the sales tax paid on commercial leases – To the extent that the deduction on federal returns does not fully offset the cost of the tax, and some of the difference is passed on (i.e., further shifted forward) to final consumers, out-of state purchasers would bear part of the economic burden.

Putting this discussion in context, while tenants bear the initial burden of the commercial rental tax, further shifting of the burden will occur after the tenant absorbs the cost. A portion of the tenant's burden is pushed on to the federal government, a portion is paid by the tenant's consumers (both in-state and out-of-state) through higher prices for their products and services, and a portion is absorbed by the tenant's owners and investors (some of which are outside the state). Several of these outcomes (shifting to the federal government, out-of-state consumers, and out-of-state owners and investors) involve exporting the tax completely outside of Florida.

Description of the Overall Commercial Property Market…

Overall, the commercial lease industry is well-established, mature and highly competitive. While many large investors have significant amounts of real estate within their portfolios, the core leasing industry is dispersed. Excluding major pension funds and other financial institutions whose primary role is something other than being lessors of commercial property, a recent IBIS analysis of the national commercial leasing industry found the following:

> *"The Commercial Leasing industry comprises small, independent lessor firms. According to Statistics of US Businesses, 77.2% of industry operators have fewer than five employees; only about 5.8% of companies employ more than 20 employees. Not only are these companies relatively small in size, but there are numerous companies vying for industry market share. In 2014, there will be an estimated 29,639 commercial leasing enterprises. No one player dominates the market; the top four firms account for less than 10.0% of total industry revenue. Hence, this industry is categorized by a low level of market share concentration."*

The market is essentially fragmented into local geographic areas where there are multiple suppliers of commercial property for lease, and they compete against each other for tenants within those territories. Geltner, Miller, Clayton and Eichholtz sum up the market as follows, "Because both supply and demand are location and type specific, real estate space markets are highly segmented. That is, space markets tend to be local rather than national, and specialized around building usage categories...where conversions [between categories] are relatively rare and often require considerable construction expenditure."

The commercial real estate market is frequently categorized by property type. While there is no universal standard for these categorizations, the major market segments are commonly used by industry analysts. However, the inclusion or exclusion of the various specialty segments makes comparisons difficult when using datasets from different sources. The information below describes the status of each market segment. Bear in mind that it is normal within the commercial lease market for there to be some amount of vacancies—often referred to as the natural vacancy rate. Usually, this is a deliberate reserve of space in case future gains in rents become possible.

Market Segment Descriptions

(based largely on analyses produced by REIS, IBISWorld, and Real Capital Analytics)

- Office---Major Market Segment
    - The national vacancy rate for office space was at a still-elevated 16.8 percent in the third quarter of 2014; peak vacancy rates were reached in 2010 and 2011. The cyclical low is around 12.5 percent, last observed in the third quarter of 2007.
    - Only a handful of technology- or energy-oriented markets such as Raleigh-Durham, San Jose, Houston, Suburban Virginia and Seattle had supply growth. The markets with the strongest rent growth were San Francisco, Dallas, San Jose, Seattle and New York. Washington, D.C. and New York City had the tightest markets.
    - In 2013, the primary capital sources for office properties broke out as follows: 65 percent private investors and institutional / equity funds; 13 percent foreign investors; and, 12 percent real estate investment trusts (REITs) and listed funds.

- Significant external threats are the proliferation of work-from-home programs, telecommuting, and videoconferencing techniques.
    - In addition to overall population growth, the major drivers of demand for office space are employment and the state of the economic cycle. Typically demand goes up when the economy is in an expansion and goes down during recessions.

- Industrial (inclusive of warehouse, distribution space, and flex / R&D properties)---Major Market Segment
    - Nationally and in Florida, the largest category by the amount of physical space dedicated to it.
    - The national vacancy rate for warehouse and distribution space was 11.2 percent in the third quarter of 2014; peak vacancy rates were reached in 2010. Transportation hubs in Kansas City, Memphis and St. Louis were the top performers in effective rent growth over the past three and twelve months. Also on the list are Houston, Dallas, Fort Worth and San Antonio.
    - The national vacancy rate for Flex / R&D space was 13.1 percent in the third quarter of 2014; peak vacancy rates were reached in 2010. The west coast markets of Los Angeles, San Francisco, San Jose and Oakland-East Bay have been top performers in effective rent growth, as well as Columbus Ohio.
    - In 2013, the primary capital sources for industrial properties broke out as follows: 41 percent private investors; 4 percent foreign investors; and, 39 percent REITs and equity funds.
    - The major drivers of demand for industrial space are the proximity and development of distribution channels (airports, railroads, interstate highways and ports), and growth in international trade. The local tax structure and regulatory environment are also important since the industrial sector generally has more flexibility to choose among wide-ranging geographic options, so long as they have distribution channels appropriate for their needs.

- Retail (usually subdivided between neighborhood/community and malls)---Major Market Segment
    - Nationally, the largest category by dollar value of rents.
    - The retail market is comprised of goods and service establishments located in malls, strip malls, multi-use structures, and stand alone buildings.
    - The national vacancy rate for neighborhood and community shopping centers was 10.3 percent in the third quarter of 2013; peak vacancy rates were reached in 2009.
    - The national vacancy rate for malls was 7.9 percent in the third quarter of 2014.
    - In 2013, the primary capital sources for retail properties broke out as follows: 42 percent private investors and 31 percent REITs.
    - The most significant external threat is e-commerce and on-line purchasing.
    - In addition to overall population growth, the major driver of demand for retail space is consumer spending, which is closely related to disposable income and household wealth.

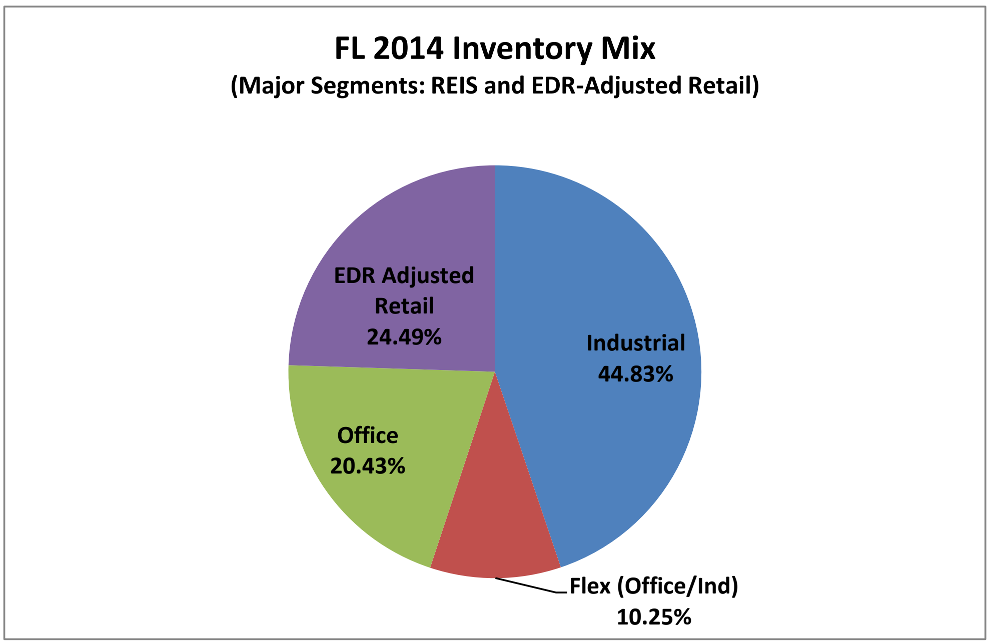
- Flex (Office / Industrial)---Categorized as a Major Market Segment in some reports.

- *Hotel and Hospitality---Specialty Segment, most often included in retail space when not separately categorized.*

- *Health Care---Specialty Segment, most often included in office space when not separately categorized.*

- *Mixed-Use---Specialty Segment, most often split between residential, retail and office when not separately categorized.*

Florida has 6.2 percent of the U.S. population, but 5.4 percent of commercial lease revenues and 8.0 percent of the commercial leasing establishments.[14] To put these numbers in perspective, Florida currently has more establishments than Texas, even though Florida only has 73.9 percent of its population. Using data from REIS that excludes owner-occupied and multi-family space, the 2014 physical inventory mix of the major segments in Florida is estimated to be as follows:

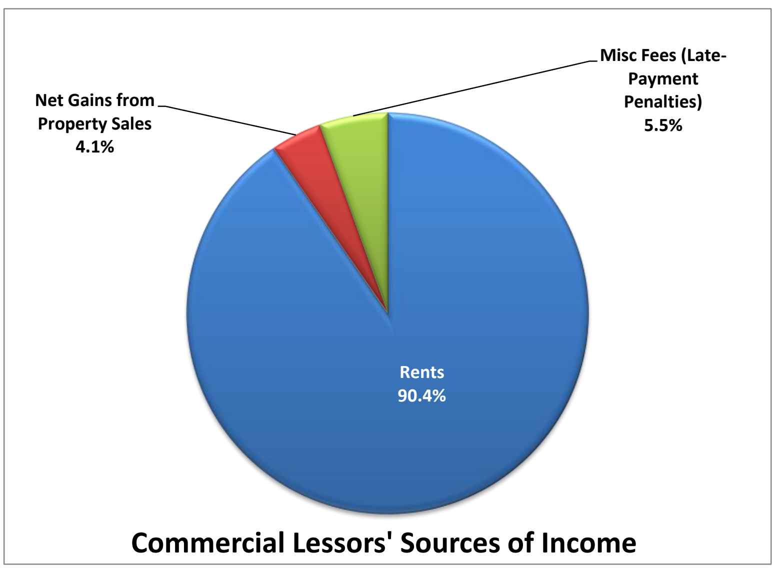


Conceptually, it would seem that the industrial segment would be the most likely to be influenced by the rental tax because it tends to be less dependent on location. As a general rule, this segment is not market or resource specific and is therefore not singularly tied to Florida. Further, new industrial entrants have the greatest potential to select among states. In contrast, each of the other major segments (retail, office and flex) is dependent to a greater extent on Florida's population and demographics. However, in the reviewed data sources, there does not appear to be a deficiency of industrial space in Florida relative to other states. This lack of a detectable response may be due to Florida's overall favorable business and tax climate which mitigates any effects from the rental tax.

[14] See IBISWorld estimates on commercial leases.

Owners and Landlords of Commercial Space…

Typically, the owners and landlords are legal entities (such as partnerships or corporations) that have engaged in the leasing activity as an investment strategy within the larger financial capital market. The investment value (the owner's rate of return) comes from the expected cash flows associated with the leases, as well as the underlying value of the property. According to Geltner, Miller, Clayton and Eichholtz, the cash value "will fundamentally be determined in the rental market." The property value comes from both the defining characteristics of the property (such as the attainment of appropriate regulatory permits and compliance with local land development regulations) and the expected property appreciation. Again according to Geltner, Miller, Clayton and Eichholtz, "The net rents generated by a building are analogous in this respect to the dividends paid out by stocks or the interest paid out by bonds, and property competes for investors' capital against these other forms of investments." By far, the prime source of revenue is rental income; according to US Census data and IBISWorld estimates, "about 90.4% of commercial property owner income is associated with rents." Earnings before interest and taxes (EBIT) are high relative to other industries; IBISWorld calculates an average of 35 percent for the larger companies. However, most commercial property is highly leveraged, and interest is a significant part of the cost structure.



Private investors (individuals and smaller entrepreneurial firms) account for the largest share of the acquisition volume. For example, private investors accounted for 41 percent of the market in 2013, based on data from Real Capital Analytics. In general, this property represents the smaller and less expensive part of the market. Not infrequently, these are small businesses leasing out a handful of individual spaces. Large financial institutions and investment entities (such as banks, insurance companies and pension funds) gravitate to the higher-end and more expensive properties, where they dominate the market through their ability to garner larger pools of capital on a per project basis. During the Great Recession and its aftermath, there was a significant amount of industry consolidation to create larger firms with better capitalization and greater access to capital.

Roughly one-third of the overall equity investment in commercial real estate is controlled by REITs.[15] According to a 2008 study by Ambrose and Lusht: “In commercial markets, segmentation occurs on the basis of both price and quality, with higher end, more costly properties in larger Metropolitan Statistical Areas (MSAs) tending to be concentrated in institutional portfolios. As a result, a high percentage of properties in REIT portfolios are in the 30-35 largest MSAs. These are referred to as institutional or investment grade properties.” There are three Florida MSAs in the top 35 U.S. MSAs by population (2013 1-Year ACS):

- Miami-Fort Lauderdale-West Palm Beach, FL Metro Area
- Tampa-St. Petersburg-Clearwater, FL Metro Area
- Orlando-Kissimmee-Sanford, FL Metro Area

Reflecting the dynamics of the global financial market, foreign individuals and institutions (including sovereign wealth funds) have increasingly become significant participants in the U.S. commercial property market.

Some property owners still directly oversee and administer their properties; however, the growing trend is to outsource significant parts of real estate operations, including the property and facilities management function. According to IBISWorld, “Property managers work on behalf of owners and are responsible for the daily upkeep and operation of a building or property, including rent collection, accounting, staffing and building maintenance. Property managers also act as the liaison between owners and tenants and often negotiate tenant leases and process maintenance requests.”

Eliminating the Rental Tax…

The short-term and long-term effects from eliminating the tax would differ strongly. All else being equal, firms choose the allocation of resources that minimizes costs and maximizes profits, and consumers seek the lowest price among goods they perceive to be essentially equivalent. Because the rental tax has been in place for 45 years, the market has fully adjusted to its existence and has moved to a post-tax equilibrium.[16] By most accounts, the commercial leasing industry in Florida is robust relative to many other states. A 2010 analysis by Florance, Miller, Spivey, and Peng estimated that—compared to other states—Florida had average to above average per capita levels of office and retail space, and was on par with Texas with industrial space. In a more recent report, Real Capital Analytics ranked South Florida, Orlando and Tampa among the top 20 most active U.S. markets for commercial real estate in the past 12 months.[17]

Eliminating the rental tax would be modeled as a permanent shock to the current functioning of the market, and the economic responses would evolve over time. Initially, the burden on consumers of

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[15] Typically, REITs act as a vehicle for small investors to invest in real estate through the stock market, and, as such, they are not corporate income tax payers.

[16] This characterization portrays the long term condition, irrespective of the spillover effects from the housing boom/bust and the Great Recession that have occurred in the short term.

[17] All three areas showed up on the overall top 20 and the separate ranking for retail space; South Florida and Tampa were in the top 20 markets for office space; South Florida and Orlando were in the top 20 markets for hotels; and South Florida was in the top 20 for industrial space.

commercial lease property would be removed, and current tenants would see an immediate benefit absent a specific lease provision to the contrary. This first-round benefit would last at least through the expiration of the existing leases. While there is no industry standard regarding lease-length, short-term leases typically range from several months to about five years, the beginning point for long-term leases. As a class, tenants with longer remaining leases would experience the benefit over a longer time-horizon than tenants with short-term leases. To the extent that this results in long-term tenants receiving the greater cumulative benefit, the policy change to remove the tax would tend initially to favor more stable or established companies. This is because riskier, newly established businesses gravitate to shorter-term leases where the rent comes with a significant embedded premium. Among the market segments shown in the table below, industrial properties tend to have the longest leases, and small retail businesses have the shortest. The tenant responses to the windfall would vary, resulting in increased spending on goods or services, increased profits, or additional physical capital investment by the tenants.

Typical Lease-Length

Market Segment	Term
Small Retail	2-5 Years
Office	3-10 Years
Anchor Retail	5-15 Years
Industrial	5-20 Years
Unique Corporate Space	20 + Years

Table from Geltner, Miller, Clayton and Eichholtz

Over a longer period, the likelihood that the increased spending capacity would result in the significant rental of additional space is low. This activity would be constrained by the value of the tax receipts restored to the tenants. Using the Fiscal Year 2014-15 state sales tax estimate of $678.5 million and the mix of properties and asking rents from 2014, the savings would enable a 5 percent maximum increase in total leased square feet—assuming every tenant chose to invest in additional space. This outcome is unlikely because other factors would come into play for individual tenants. For example, many rental spaces are lumpy and do not easily lend themselves to incremental adjustments. In addition, established tenants would have to weigh the cost of moving to a new location (especially if the market area changes) against the savings from the tax change. Because the savings amount is relatively small per tenant, the benefits would likely require increased demand for the final product or lowered production costs in order to result in a move. Some examples of potential savings per type of retail store are shown below for reference. While complete information was not available for all store types, a more in-depth review of drug stores, supermarkets and home centers showed that the sales tax savings averaged about one-quarter of 1 percent of total projected sales.

Retail	Sq Ft	Rent	Savings
Drug Store	15,962	$ 306,231	$ 18,374
Supermarket	57,549	$ 1,104,078	$ 66,245
Department Store	139,286	$ 2,672,202	$ 160,332
Home Center	53,600	$ 1,028,316	$ 61,699
Specialty Apparel	7,389	$ 141,758	$ 8,505
Big-Box Store	88,188	$ 1,691,887	$ 101,513

These challenges also apply to the possibility of moving up in class of space—that is, occupying similar square footage, but in a better location. In this case, the premium space may place the tenant in a better market area leading to increased product demand or lowered transportation costs, but the difference in rents can be significant. For example, Class B rents are typically two-thirds to three quarters of the Class A rents, which swamps the potential savings from the removal of the tax. One of the primary differences in space quality is that premium properties "tend to be newer and have more amenities or better design and features" which may not translate dollar-for-dollar to increased sales or lower production costs.[18] Even when it does, for this equation to result in a decision to move, the tenant would have to believe that the tax savings advantage is essentially permanent, an assumption that is problematic by the discussion below.

To the extent that all hurdles are overcome or avoided by new tenant entrants, the increased demand for rental space would lower vacancies and place upward pressure on rental pricing. The near-term result would be higher rental prices and increased profits for the owners of rental property since the cost of ownership would be unaltered.[19] Property owners would likely obtain the greatest rent increases in more densely populated urban areas where the supply of available rental property and space suitable for conversion is already tight.

The upward pressure on rents would hold until the supply itself changes. In this regard, it is difficult to quickly increase the overall stock of commercial property. For example, it can take two or three years to construct new commercial or office buildings and the transactions costs are high. However, given sufficient time and magnitude, the higher available profits (the owner's rate of return) would induce additional investments in the offering of rental space.[20] Because the demand for additional space is expected to be relatively modest and mostly coming from the marginal changes made by new tenant entrants, these investments are not expected to materially affect the size of the overall market. The result would not be dissimilar to the one described immediately above, but with somewhat greater competition, marginally lower rents, and slight adjustments in the investment capital market to accommodate the new (albeit low) investments in the supply of commercial lease space.

In those instances where this scenario proves to be incorrect and the supply of commercial lease space strongly responds to a larger than expected surge in demand, the eventual increase in supply would place significant downward pressure on rents until a new equilibrium price is reached and the scarcity relative to demand is eliminated. The detectable benefit associated with the increased supply resulting

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[18] See Geltner, Miller, Clayton and Eichholtz for a discussion of space classifications, especially premium or Class A.

[19] As real-world proof of the economic theory regarding the likely immediate response to lower vacancy rates, the National Association of Realtors included the following statement in the *Commercial Real Estate Market Survey – 2014.Q2*, "As vacancies contracted, landlords gained a stronger position, and provided fewer concessions." Also, a research report on Fort Lauderdale's retail market by Marcus & Millichap noted, "Competition for limited amounts of space has enabled operators to accelerate rent growth over the past several quarters." A similar report for Miami indicated, "As retailers continue their expansion in the county, vacancy levels will dip below 4 percent for the first time in more than six years, allowing operators to push rent growth after a lull in the previous year... As available space becomes more scarce, operators will be able to lift rents for marketed space 4.5 percent to $28.70 per square foot this year."

[20] Strictly speaking, developers frequently construct, rehabilitate or redevelop the commercial building that would then be sold to investors—although some property owners still undertake the development / construction activity directly. That part of the process is not discussed in this paper.

from the tax change would then tend to split between the owners of property and the renters. This scenario is not expected to be the general case, but it is probable that both situations will be found in Florida, since the regional markets vary greatly in their supply of leased space.

After all economic adjustments have been made, the final balance between the demand and supply elasticities will drive the end results. To the extent the consumers bore the original tax burden because their demand for space was inelastic while supply was elastic, the benefit from the tax's removal would be subject to same economic framework. The tenants still have the more inelastic demand, so the owners are better positioned to increase the non-tax price to the taxed level. Further, the property owners would also have the added benefit of knowing that the potential tenants previously bore the higher tax-inclusive price per square foot. Relative to the pre-tax situation, more perfect information regarding the price that the market is willing to bear absent the tax gives the owners a negotiating edge by effectively creating a zero-cost price discovery process. Bargaining and game theory have already demonstrated that price is more favorable to the better-informed party to a transaction.[21]

State government would initially lose the tax receipts and see a reduction in the services and goods it would have purchased with those dollars. Because the reduction would likely be from the general market basket of goods, using the General Revenue expenditures from FY 2014-15 would suggest a possible distribution for the losses. This distribution is shown in the following table; however, no consideration is given to the additional loss of any federal dollars matched by these dollars:

Policy Area (FY 2014-15 GAA)	GR Expenditures	GR Loss Distribution	GR Dollar Distribution of $601.4 M
Education	14,466.2	51.8%	311.7
Human Services	8,270.6	29.6%	178.2
Judicial Branch	389.0	1.4%	8.4
Criminal Justice and Corrections	3,480.5	12.5%	75.0
Nat Resources/Env/Growth Mgmt/Trans	516.9	1.9%	11.1
General Government	790.7	2.8%	17.0
	27,913.9	100.0%	601.4

Obviously, there are more directed options available to the Legislature, including permanently reducing reserves by a commensurate amount. As a caution, the static dollar loss may be misleading because the extent to which any of the initial loss would be subsequently recovered by the state is currently unknown. Identifying the degree of offsetting economic activity would require a separate study of the state's return on investment once a proposal is put together.

Likelihood of Behavioral Changes from Reducing the Rental Tax…

There are several ways to partially reduce the tax, and each has a different effect. The first approach is a straight reduction of the 6% tax rate to a lesser amount. Here, the same economic reasoning would

[21] See, for example, Chatterjee and Samuelson: "Indeed, the better the bargainer's information about his opponent, the better he can expect to fare in the negotiations."

apply as did in the case of complete elimination. Tenants would initially experience a windfall, but over time, this benefit would shift to the owners in the form of higher rental income. There appears to be little economic distortion that would be caused by this approach.

The second approach introduces an exempt dollar amount per lease or an amount of exempt square footage prior to the tax rate applying. The effects would be the same either way, but both have the potential to induce behavioral changes and economic distortions to take advantage of the new tax regime. This is because a large single lease could be broken into smaller leases. Where the exempt dollar amount applied one time in the case of the single lease, it would apply multiple times if there was more than one lease for the same space. The incentive structure for this behavioral shift to occur is somewhat complicated. The property owners would gain bargaining strength to achieve higher rental income as existing leases expire—and theoretically, they would have more to gain from a greater number of leases involving the same space. However, the tenants would have little incentive to take extraordinary steps to subdivide their leases if the benefit accrues to the property owner. For example, if the benefit of the tax savings shifted entirely to the owner of the property, the tenant would effectively pay the same price per square foot as he does today.

Further, for the portion of the commercial lease market represented by large institutional investors, it is unlikely that they would initiate significant structural changes to the size of leases given the significant transaction burden those changes would entail. As a general rule, these investors are firmly rooted in the investment capital market where alternative investment choices exist for the portion of their portfolios comprised of real estate holdings. Further, these investors are typically far removed from the daily management of the property and the specifics of any individual lease. While the property managers could take steps on their behalf, there would be costs to doing so that would have to be evaluated against the tax savings. To the extent these steps occur, state government would lose more tax revenue than implied by estimating the direct amount of the reduction in today's structure.

Significant Changes in Law and Court Cases…

Other than its expansion to cover licenses to use, the sales tax on commercial rentals has been little changed since its introduction in 1969. The subsections below address the more significant developments in statute, court cases, Attorney General Advisory Opinions, and Department of Revenue rulemaking.

Statutes

Section 212.031, F.S., was created by Chapter 69-222, L.O.F., to extend the sales tax to the lease or rental of real property. The sales tax rate at the time was 4%, and the sales tax extension to commercial rentals was viewed as a broadening of the tax base. The current law's basic framework was established in the original bill, and subsequent changes generally dealt with sales tax rate changes and exemptions or exclusions. A notable exception was the addition to the taxable base of certain license agreements to use, enter upon, or occupy real property in 1986 (see Chapter 86-152, L.O.F.). The sales tax rate was changed from 4% to 5% in Chapter 82-154, L.O.F., and from 5% to 6% in Chapter 87-548, L.O.F. See APPENDIX B for detailed annotation of statutory changes.

Court Cases

According to an article published in the Florida Bar Journal (December, 2009), s. 212.031, F.S., has “not received a significant amount of attention in the Florida courts.” However, the following cases stand out:

Florida Supreme Court ---

- *Schnurmacher Holding, Inc. v. Noriega*, 542 So. 2d 1327 (Fla. 1989)...requires the tenant to pay the sales tax on a lease that does not specify which party is liable if the sales tax is not paid. Rejected Oven v. Dawirs, 419 So. 2d 1186 (Fla. 1st DCA 1982).
  Excerpt from Opinion: The facts of this case make it unnecessary to examine the merits of *Oven*. However, we find that we must, as a matter of great public importance, disapprove that decision. In *Oven* the First District Court of Appeal held that when a commercial lease is silent as to the party responsible for payment of the tax imposed by section 212.03, Florida Statutes,* the obligation to pay the tax is on the lessor. *Oven*, 419 So.2d at 1187. It is evident from the language of both section 212.03 and section 212.031 that the burden is on the lessor to remit the tax to the state. §§ 212.03(2), 212.031(3). We believe it is equally clear that the plain language of these statutes and the public policy of this state require the lessee to pay the tax. §§ 212.03(2), 212.031(2)(a), 212.031(3). *Gaulden v. Kirk*, 47 So.2d 567 (Fla. 1950). The statute imposes a duty on the lessor or other person receiving the rental payments under the lease agreement to collect the tax from the lessee "in addition" to the rent. §§ 212.03(2), 212.031(3).
  Excerpt from Westlaw: When commercial lease is silent as to party responsible for payment of sales tax on rental payments, burden is on lessor to remit tax to state and on lessee to pay tax; under this section, lessor or other person receiving rental payments under lease must collect tax from lessee “in addition” to rent

District Court of Appeal ---

- *Department of Revenue v. Ruehl No. 925, LLC*, 76 So. 3rd 389 (Fla. 1st D.C.A. 2011)
  Excerpt from Opinion: Every person who engages in the business of renting or leasing real property in this state is exercising a taxable privilege, unless such property is otherwise exempt from taxation. See § 212.031(1)(a), Fla. Stat. (2004-2007). For the exercise of such a privilege, a six percent tax is assessed on the "total rent" charged by the person charging or collecting the rental fee. See § 212.031(1)(c), Fla. Stat. (2004-2007). The "total rent" includes payments for the granting of the privilege to use or occupy the property and includes base rent, percentage rents, or similar charges. In the instant case, there is no

evidence that the parties to the leases intended for the costs of the leasehold improvements to be part of the total rent charged. Accordingly, we affirm.
Excerpt from Akerman Practice Update: Unlike the clear relationship between the leasehold improvements and the payment of cash rent in *Seminole Clubs*, the value of constructed leasehold improvements in *Ruehl* had no impact on the periodic payments of cash rent due under the two commercial leases.
Excerpt from Westlaw: Costs of leasehold improvements were not part of "total rent" and therefore were not subject to tax that was imposed on property owners regarding rental of real property; there was no indication that landlord and tenants intended for costs of leasehold improvements to be part of total rent charged.

- *USCardio Vascular, Inc., v. Florida Department of Revenue*, 993 So. 2d 81 (Fla. 1st D.C.A. 2008)
  Excerpt from Opinion: The appellant argues that DOR does not have the authority to assess taxes on the total amount it billed as base rent, as that amount encompassed more than just the total rent it charged to the physician groups. We agree and reverse. On a monthly basis, the appellant provides the physician groups with a financial summary and an invoice. The financial summary provides, *inter alia*, a breakdown of the center expenses. These include salaries and benefits, medical director fee, rent, maintenance, medical supplies, insurance, utilities, property taxes, office supplies, equipment leases, depreciation, patient meals, other, and medical supplies adjustment. The sum of the center expenses and the sales tax is referred to as both the current month base rent and the rental fee. The invoice provides the total amount due for the month, broken down as the base rent, the service fee, and the sales tax due. In June of 2004, after conducting an audit on the appellant for the period of November 1, 2001, to October 31, 2003, DOR issued a notice of proposed assessment to the appellant. The proposed assessment included additional sales tax due on items included in the amount billed as the base rent, specifically the center expenses for the salaries, benefits, and insurance of the employees leased by the appellant to the physician groups. The appellant filed an informal written protest and a petition for reconsideration. DOR, however, sustained its assessment. The appellant then filed a complaint in the trial court. The parties filed cross-motions for summary judgment. The trial court entered summary judgment for DOR. The trial court found that the Agreement identified what items were to be included in calculating the base rent amount, defined the rental fee to mean the base rent amount, and provided that the use of the premises was conditioned upon payment of the rental fee.
  Excerpt from Westlaw: Department of Revenue could not tax, as rent, the entire amount charged by corporation to medical practices for the use of specialized medical facilities, even though such amount was called "Base Rent" in the contract between corporation and practices; amount included the costs to operate the facilities, including some elements that were not taxable, such as salaries, benefits, and insurance for employees leased to the practices by corporation

- *State of Florida v. Seminole Clubs, Inc.*, 745 So. 2d 473 (Fla. 5th D.C.A. 1999)
  Excerpt from Opinion: The Department of Revenue [“Department”] appeals the final judgment awarding declaratory relief in favor of Seminole Clubs, Inc., d/b/a/ Mayfair Country Club [“Mayfair”] denying the department's claim for unpaid sales tax on a commercial lease. Because we conclude that sales tax was due on Mayfair's capital expenditures made as a condition of occupancy, we reverse. On March 11, 1981, Mayfair executed a sixty-seven year and seven month lease with the City of Sanford [“Sanford”] to operate a public golf club in Sanford, Florida. The issue is whether certain capital improvements made by the taxpayer/lessee, and required by the terms of the lease agreement, constitute rental consideration flowing to the landlord and thus a taxable transaction. The lower court concluded, based on the lease, that “rent” was payable to Sanford only if the agreed capital improvement expenditures of five percent of gross revenues were not expended. Because no such “rent” was paid, no tax was due. The court implicitly concluded that the five percent gross revenue expenditures were not “rent” because they were paid “in lieu of rent.” We reject Mayfair's argument that its lease was effectively “rentless” unless Mayfair did not meet its five percent of revenue quota. The capital improvements were made for the privilege of occupancy and, therefore, represented “rent in kind” taxable under Section 212.031, Florida Statutes (1991) and Florida Administrative Code Rule 12A-1.070.
  Excerpt from Westlaw: Lessee's capital improvements to golf course premises represented “rent in kind” subject to sales tax, where lease with city gave lessee option of expending five percent of gross revenues on capital improvements, in lieu of paying cash “rent,” in order to retain possession of premises.

- *S & W Air Vac Systems, Inc., v. Department of Revenue*, 697 So. 2d 1313 (Fla. 5th D.C.A 1997).
  Excerpt from Opinion: S & W Air Vac Systems, Inc. ["S & W"] appeals a final administrative decision by the Department of Revenue ["the Department"] which adopted a hearing officer's recommendation that S & W is liable to the Department for use taxes as the licensee of real property pursuant to section 212.031, Florida Statutes (1995). We affirm. S & W owns coin-operated machines, referred to here as "air-vac" machines, or units, which allow people to vacuum their cars and add air to their tires. S & W placed the machines, which are attached to concrete pads, on the properties of convenience and gas stores pursuant to agreements between itself and the stores' owners. Monthly compensation to the owners is a percentage of the gross receipts generated by the unit. S & W characterized this scheme as a "revenue sharing arrangement." The hearing officer found that payment was based upon the right of placement of the machine on the property of another distinct business entity and that a store owner was not entitled to receive any compensation once a unit was removed from the owner's premises, and thus concluded that S & W had been granted licenses for the use of real property. Therefore, pursuant to section 212.031, Florida Statutes, use taxes were owed to the Department. Here, the

licensors operated a commercial premises designed to attract customers for revenue-generating purposes. Such ventures do not limit themselves to the sales of goods but also derive income from a range of activities that take place on their premises. These typically include advertising, amusement machines, lottery and other facilities. To determine that store owners were in the business of granting a license was not a clearly erroneous interpretation of subsection 212.02(2) and of section 212.031.

Excerpt from Westlaw: Arrangement in which owner of coin-operated "air-vac" machines, which allowed motorist to vacuum automobiles and add air to tires, placed machines at gas stations and convenience stores created "license" for use of real property, so that machine owner was subject to use taxes. Statute which imposes tax on license for use of real property does not concern itself with primary business of land owner who grants license. In the case of a license to use real property, obligation to pay statutory tax ultimately falls on licensee.

Related Ruling: Affirmed prior ruling in *Conklin Shows, Inc. v. Department of Revenue*, 684 So. 2d 328 (Fla. 4th D.C.A. 1996). This ruling found revenues of joint ventures are not taxable under statute levying tax on licenses for use of real property.

- *Regal Kitchens, Inc. v. Florida Department of Revenue*, 641 So. 2d 158 (Fla. 1st D.C.A. 1994).

  Excerpt from Opinion: The agreement between Regal Kitchens and 8600 Associates was reduced to writing in the form of a commercial lease. According to the most recent version of the lease, Regal Kitchens pays rent each month and 8600 Associates applies the rental income to its payments on the first and second mortgages on the property and the insurance and taxes. There is no profit to 8600 Associates. The rent payments received from Regal do not exceed the total financial obligation by 8600 Associates for the expenses and the debt service. 8600 Associates is not engaged in any other business. Apparently, the partnership was formed for the sole purpose of taking title to the real property and leasing it back to Regal Kitchens... Regal Kitchens formally requested that the Department of Revenue issue a technical assistance advisement to address the applicability of the sales tax laws to the transaction between Regal and 8600 Associates. On April 24, 1992, the Department answered by informing Regal Kitchens that the rental income paid to 8600 Associates under the written lease is taxable under chapter 212, Florida Statutes, and that it is not subject to any exemption. Section 212.031, Florida Statutes (1993), provides in part 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." Regal Kitchens maintains that the transaction in this case is not taxable because 8600 Associates is not engaged in the business of leasing property. We disagree. 8600 Associates was established for the sole purpose of taking title to the property and leasing it back to Regal Kitchens. On these facts it appears that 8600 Associates is in the business of leasing property. In fact, that is its only business.

Excerpt from Westlaw: In determining whether sales tax was due on rental income paid under sale and leaseback arrangement between corporation and related general partnership, existence of landlord/tenant relationship did not turn on whether rental agreement was reduced to writing. Department of Revenue's conclusion that exemption from state sales tax on rental income did not apply to sale and leaseback between corporation and related partnership was not clearly erroneous; Department properly concluded that exemption applicable to “related corporations” transaction could not be applied to “related partnership.”

- *Natural Kitchen, Inc., v. American Transworld Corp.*, 449 So. 2d 855 (Fla. 2nd D.C.A. 1984).
  Excerpt from Opinion: The argument over sales taxes arose because of the lease provision which required the lessee to pay to the lessor its pro rata share of any increase in ad valorem taxes. When an increase occurred, Transworld contended that Natural Kitchen was obligated to pay sales taxes of $45.53 on Natural Kitchen's pro rata share of the increase. The lease provided for the lessee to pay sales taxes on the base rent as annually adjusted by reference to the consumer price index but did not address the question of sales taxes on the payment of pro rata increases in ad valorem taxation. Section 212.031(2)(a), Florida Statutes (1981), provides that a tenant occupying real property shall pay sales taxes on rentals to his landlord. Florida Administrative Code Annotated Rule 12A-1.70(3) (Supp. 1983) states in pertinent part that: “The [sales] tax shall be paid ... by the tenant or lessee on all considerations due and payable for the privilege of occupancy... . Ad valorem taxes paid by the tenant or lessee to the landlord or lessor or to anyone else on behalf of the landlord are taxable as rent...” Thus, the court properly held that Natural Kitchen was obligated to pay sales taxes to Transworld. Thus, the court properly held that Natural Kitchen was obligated to pay sales taxes to Transworld.
  Excerpt from Westlaw: Where lease called for tenant to pay sales tax on rentals and the only basis for imposing sales taxes upon payment for pro rata increase in ad valorem taxes was to view such payment as equivalent of rent, tenant was obligated to pay sales taxes to landlord.

- *Oven v. Dawirs*, 419 So. 2d 1186 (Fla. 1st D.C.A. 1982).
  Except from Opinion: This appeal involves the apparently novel question of whether, when a commercial lease is silent as to the party responsible for payment of the tax imposed by Section 212.03, Florida Statutes, the burden of payment falls on the landlord or the tenant. We affirm the judgment of the trial court and adopt the reasoning for the result expressed in the final judgment.
  Excerpt from Weslaw: ---NONE PROVIDED---
  Excerpt from Florida State and Local Taxes, Vol. 1: The trial court arrived at its decision by misinterpreting the statute that states that persons who rent real property (lessors) are exercising a taxable privilege. The court concluded the statute caused the sales tax to be levied on the landlord. The trial court, however, ignored the statutory provision directing tenants to pay the sales tax

to their landlords. The District Court of Appeal, First District, affirmed the trial court's decision and simply adopted the trial court's incorrect reasoning. SEE *Schnurmacher Holding, Inc. v. Noriega,* above which addressed the conflict.

- *Department of Revenue v. Ryder System, Inc.*, 406 So. 2d 1299 (Fla. 1st D.C.A. 1981).
  Excerpt from Opinion: In this case, the court...found no landlord and tenant relationship and that Ryder Systems, Inc. was not engaged in the business of renting, leasing or letting any real property. Since there was no finding a rental payment was made, the trial court correctly disapproved the tax. The judgment...is, therefore, affirmed.
  Excerpt from Westlaw: Where there was no landlord and tenant relationship and taxpayer was not engaged in business of renting, leasing or letting any real property, trial court properly disapproved assessment of rental tax.

- *Lord Chumley's of Stuart, Inc. v. Department of Revenue*, 401 So. 2d 817 and 819 (Fla. 2nd D.C.A. 1981).
  Excerpt from Opinion: The primary issue between the parties is whether appellants were in the business of renting or leasing real property within the meaning of Section 212.031, Florida Statutes (1977), so as to require that a four percent sales tax be paid on all rentals accruing under said arrangement... Peter G. Makris purchased four parcels of real property. Subsequent to the purchase of said properties Makris formed the four appellant corporations for the purpose of operating three separate restaurants, and a meat market and liquor store on the respective parcels of property. The title to three of the parcels of property was placed in the name of Peter G. Makris, as trustee, while the fourth was taken in the name of Makris and wife. Although each corporation had exclusive possession of one of said parcels, there were no written or oral leases between the corporations and Makris, nor were any payments made by the corporations to Makris as rent, or otherwise... In our judgment the totality of the record before the Hearing Examiner justified his findings of fact, as well as his conclusions of law. The purpose of Section 212.031 is to levy a tax upon the privilege of engaging in the business of renting real property. The finding that Makris was not engaged in such a business is borne out by the record and thus under Section 120.57(1)(b)9, the Cabinet, sitting as the Department of Revenue, abused its function because the Hearing Examiner's findings and conclusions were not clearly erroneous.
  Excerpt from Westlaw: Record supported hearing examiner's findings and conclusions that person who held title to properties, on which taxpayer corporations operated restaurants and meat market and liquor store was not engaged in business of renting property to corporations and that mortgage payments, property taxes and insurance payments paid by corporations did not constitute rent payments for sales tax purposes.

- *Zero Food Storage Division of American Consumer Industries, Inc., v. Department of Revenue*, 330 So. 2d 765 (Fla. 1st D.C.A. 1976).

Excerpt from Opinion: From 1 May 1969 to 1 April 1970, Zero occupied a building owned by American Consumer Industries, Inc., who also owned Zero. Zero contends that there was no tenancy between American and it, and that the monthly sum of money paid by Zero to American was a cash contribution between subsidiary and parent, not rent. However, the monthly sum paid by Zero to American was carried on the corporate books as rent. The trial court found that the monthly payment made by Zero to American was rent. We agree.
Excerpt from Westlaw: This section providing that only one tax shall be collected on rental payable for occupancy or use of property, that tax so collected shall not be pyramided by progression of transactions and that amount of tax due shall not be decreased by any such progression of transactions is not arbitrary, unreasonable or discriminatory.

Florida Attorney General Advisory Opinions

(quoting from Westlaw when indicated)

- AGO 97-055...Direct Quote: the ad valorem tax and maintenance portions of the "pass-through charge," are consideration for the lease or rent. The insurance premiums paid for the benefit and protection of the landlord, rather than for the benefit and protection of the tenant, also constitute consideration for the lease or rent. However, the insurance premium portion of the "pass-through charge" does not constitute rent merely because the landlord is named as a joint insured. To tax a portion of the insurance premium charge as rent, there would have to be an itemized amount attributable to the protection of the landlord. This would be determined by reviewing the insurance policies and the premium statements which contain the insurance company's itemization of charges.
- AGO 88-38...Westlaw: Moneys from the rental of real property by housing authorities, port authorities, and hospital authorities are subject to sales taxation pursuant to this section.
- AGO 80-47...Westlaw: For the purposes and within the general purview of the sales tax law, a health facility authority created pursuant to the Health Facility Authorities Law (Part III, chapter 154), is a “person” operating a business which engages in a taxable privilege under subsec. (1) of this section, when it rents real property in the state of Florida. However, § 154.233 (repealed; see, now, § 154.2331), exempts the authority from liability for sales tax on such rentals under this chapter; and, this exemption applies even where the other party to the transaction is not expressly exempted from taxation by law.
- AGO 76-429...Westlaw: It is not arbitrary or discriminatory to impose the sales tax on dues paid by a tenant to a merchant's association pursuant to the terms of the lease because such payments are presumably part of the consideration for rental of the space to the tenant.
- AGO 75-267...Westlaw: The City of Jacksonville department of housing and urban renewal development is liable for sales taxes due on rentals received from the leasing of commercial property acquired through urban renewal and leased temporarily until disposed of.

- AGO 73-429...Westlaw: If a store which sub-leases a portion of its leased space to a tenant for a certain sum and provided services to the tenant with a portion of the rent being allocated for such services, then the sum is not taxed as rent if the parties intend not to treat it as rent, the agreement between the parties does not treat the sum as rent, the services rendered are separable and not incidental to the furnishing of the space, the rental and service charges are separately stated and billed, and the services furnished are not otherwise taxable.
- AGO 71-232...Westlaw: Leases of land by the Okaloosa Island authority are taxable under this section as such lands are not of a class specifically exempt therein.
- AGO 70-151...Westlaw: Payments for merchants' association dues and advertising, pursuant to a lessor's requirements in lease of space in shopping center, constitute taxable rentals within purview of this section.

Department of Revenue Rules

Rule 12A-1.070, F.A.C., provides guidance on the application of sales and use tax on the rental, lease and license to use real property. The rule has been amended nine times since the bill creating s. 212.031, F.S., became law without signature on June 29, 1969. Most of the revisions relate to statutory changes and judicial decisions. However, several statutory changes have occurred since the last time the rule was amended in 1995. These changes have yet to be incorporated.

APPENDIX A: REQUEST FROM THE SPEAKER

The Florida House of Representatives

Office of the Speaker

Will Weatherford
Speaker

August 14, 2014

Ms. Amy Baker, Coordinator
Office of Economic and Demographic Research
111 West Madison Street, Suite 574
Tallahassee, FL 32399-6588

Mr. R. Philip Twogood, Coordinator
Office of Program Policy Analysis and Government Accountability
111 West Madison Street, Suite 312
Tallahassee, FL 32399-1475

Dear Ms. Baker and Mr. Twogood:

I am hereby directing the Office of Economic and Demographic Research (EDR) and Office of Program Policy Analysis and Government Accountability (OPPAGA) to perform special projects which begin to analyze the economic impact of the sales tax on the rental of real property under section 212.031, Florida Statutes (the "commercial rental sales tax"). My desires for the overall review's scope are set forth below.

First, EDR will produce a detailed history of the tax and its implementation since original enactment, as well as an estimate of the state and local revenue generated by the tax. Based on that information, EDR will then evaluate the distribution of the tax burden among industries over time, with particular emphasis on its current administration and the percentage of the tax that is being exported. A key component of this evaluation will be the identification and discussion of the underlying economic theory behind any significant:

- economic distortions caused by the tax;
- adverse effects on business location and expansion decisions; and
- impact on competitiveness and Florida's overall business climate.

Second, OPPAGA will place Florida's tax within a broader context. This analysis will incorporate several elements, including reviews of:

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- transaction-based taxes levied by other states or local governments on the rental or license to use real property and any action taken by states or local governments to reduce or repeal such taxes; and
- existing surveys and literature related to the factors that influence business relocation decisions, including businesses' perceptions of the impact of taxes, such as the sales tax on commercial leases and other similar taxes, on Florida's and other states' ability to attract and retain businesses.

To allow the Legislature to consider these issues during the 2015 Legislative Session as well as an opportunity to make additional requests to EDR or OPPAGA based on the initial findings, I am requesting that both projects be completed by October 31, 2014.

Thank you for your attention to these matters.

Sincerely,

Will Weatherford
Speaker

APPENDIX B
Sales Tax on Commercial Rentals
Annotated Statute

Section 212.031, F.S., was created by Chapter 69-222, L.O.F., to extend the sales tax to the lease or rental of real property. The sales tax rate at the time was 4%, and the sales tax extension to commercial rentals was viewed as a broadening of the tax base. The current law's basic framework was established in the original bill, and subsequent changes generally dealt with sales tax rate changes and exemptions or exclusions. A notable exception was the addition to the taxable base of certain license agreements to use, enter upon, or occupy real property in 1986 (see Chapter 86-152, L.O.F.). The sales tax rate was changed from 4% to 5% in Chapter 82-154, L.O.F., and from 5% to 6% in Chapter 87-548, L.O.F.

Note: Bulleted language in red italics following the current statutory language (in black regular font) provides the annotation(s) related to that provision. The annotations relate to statutory changes in chronological order, as well as excerpts from some legislative staff analyses.

212.031 Tax on rental or license fee for use of real property.—

(1)(a) It is declared to be 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 such property is:

- Chapter 86-152, L.O.F., added the language regarding "granting a license for the use of..." The rest of the section was also amended to conform. According to the legislative staff analysis, "For fiscal year 1986-86, the taxation of license agreements to use, enter upon, or occupy real property is estimated to provide $6.2 million to General Revenue and $ .6 million to local governments. The annualized effect on General Revenue would be $6.8 million."

1. Assessed as agricultural property under s. 193.461.
2. Used exclusively as dwelling units.
   - The original law specifically excluded "Property subject to transient rental tax under section 212.03." Chapter 71-986, L.O.F., struck this language entirely, but retained the exclusion for dwelling units. The overall purpose of the bill was to amend the sales tax on transient rentals to exempt permanent residents, particularly focusing on apartment and trailer court rentals. See also 71-360, L.O.F., which has been omitted from the History contained in the statutes.
3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).
4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.
   - Chapter 85-310, L.O.F., added the exemption in 4.

- Chapter 86-166, L.O.F., struck all of the language in 4. Similar exemptions in s. 212.031, F.S., were provided a future repeal, but this one was treated differently.
- Chapter 87-6, L.O.F., reinstated the exemption by restoring the language.

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

- Chapter 86-152, L.O.F., added the exclusion for "5. A public or private street or right-of-way occupied or used by a utility for utility purposes."
- Chapter 99-363, L.O.F., amended the subparagraph to read: "5. A public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or franchised cable television company for utility or communications or television purposes. For purposes of this subparagraph, the term "utility" means any person providing utility services as defined in s. 203.012. This exception also applies to property, excluding buildings, wherever located, on which antennas, cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services are placed." The statutory exemption for franchised cable companies was generally consistent with the Department of Revenue's prior treatment; however, the exemption for wireless telecommunications providers was not.
- Chapter 2000-260, L.O.F., modified the prior language to include leases for the placement of wireless towers and leases of space on buildings for the placement of wireless antennas to the exemption.
- Chapter 2001-140, L.O.F., replaced "franchised cable television company" with "provider of communications services, as defined by s. 202.11." This change produced the language that currently exists.

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

- Chapter 86-152, L.O.F., added the exclusion found in 6.

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

- Chapter 86-152, L.O.F., added the exclusion found in 7.
- Chapter 90-132, L.O.F., added—for one year only—an exemption for property used at an airport to operate advertising displays. The language was limited to Dade County.
- Chapter 96-397, L.O.F., removed the language that had served its purpose—the one-year exemption for property used at an airport to operate advertising displays.

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

- Chapter 86-152, L.O.F., added the exclusion for "Property used at a port authority, as defined in s. 315.02(2), exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such a vessel, or property used at a port authority for fueling such vessels."

- Chapter 97-221, L.O.F., expanded the language to produce the entire exemption that is currently in place. The new language was as follows: "...or to the extent that the amount paid for the use of any property at the port is based on the charge for the amount of tonnage actually imported or exported through the port by a tenant."

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

- Chapter 97-221, L.O.F., added the language in "b." to produce the statute currently in place.

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

a. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing, scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

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

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

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

- Chapter 87-6, L.O.F., created an exemption for, "9. Property used as an integral part of the performance of qualified production services as defined in s. 212.0592(18)(a)."
- Chapter 87-548, L.O.F., expanded the language to produce the exemption as it appears in a., b., and c., but did not include the flush left language at the end.
- Chapter 2000-182, L.O.F., added the flush-left language at the end to conform to changes relating to an application process made in the rest of the bill.

CROSS REFERENCE: Purchases of Cinematography School, Including Leases
212.0602 Education; limited exemption.—To facilitate investment in education and job training, there is also exempt from the taxes levied under this chapter, subject to the provisions of this section, the purchase or lease of materials, equipment, and other items or the license in or lease of real property by any entity, institution, or organization that is primarily engaged in teaching students to perform any of the activities or services described in s. 212.031(1)(a)9., that conducts classes at a fixed location located in this state, that is licensed under chapter 1005, and that has at least 500 enrolled students. Any entity, institution, or organization meeting the requirements of this section shall be deemed to qualify for the exemptions in ss. 212.031(1)(a)9. and 212.08(5)(f) and (12), and to qualify for an exemption for its purchase or lease of materials, equipment, and other items used for education or demonstration of the school's curriculum, including supporting operations. Nothing in this section shall preclude an entity described in this section from qualifying for any other exemption provided for in this chapter.

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

- Chapter 83-297, L.O.F., created the following exclusion: "(8) The lease, sublease, or rental of space by a movie theater owner or operator to a person providing food and drink concessionaire services within the premises of such theater shall be exempt from the tax imposed by this section."
- Chapter 86-166, L.O.F., provided a future repeal of the language above, and directed a study commission to review.
- Chapter 87-6, L.O.F., restored and expanded this exemption for areas, "10. Leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of an airport, a movie theater, a business operated under a permit issued pursuant to chapter 550 or 551, or any publicly owned arena, sports stadium, convention hall, or exhibition hall."
- Chapter 87-101, L.O.F., modified the language and extended the exemption to read as follows: "Leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of a movie theater, a business operated under a permit issued pursuant to chapter 550 or 551, or any publicly owned arena, sports stadium, convention hall, exhibition hall, auditorium, or recreational facility. A person providing retail concessionaire services involving the sale of food and drink or other or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property."
- Chapter 92-348, L.O.F., removed the reference to chapter 551; characterized in the legislative staff analysis as a "technical reference change" to conform to all sections in Chapter 551 being repealed and combined (as relevant) with chapter 550.

- Chapter 99-270, L.O.F., added "licensed" to the types of qualifying arrangements, expanded the list of venues, and specified that any of them could be publicly or privately owned. The listing of applicable venues contained the following: convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, and recreational facility. Conforming changes were also made to the rest of the sub-paragraph to reflect the newly consolidated listing of public and private venues.
- Chapter 2000-345, L.O.F., limited "recreational facility" to "publicly owned." With this change, the language became the version currently in place.

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

- Chapter 93-86, L.O.F., added the exemption found in 11.

12. Property used or occupied predominantly for space flight business purposes. As used in this subparagraph, "space flight business" means the manufacturing, processing, or assembly of a space facility, space propulsion system, space vehicle, satellite, or station of any kind possessing the capacity for space flight, as defined by s. 212.02(23), or components thereof, and also means the following activities supporting space flight: vehicle launch activities, flight operations, ground control or ground support, and all administrative activities directly related thereto. Property shall be deemed to be used or occupied predominantly for space flight business purposes if more than 50 percent of the property, or improvements thereon, is used for one or more space flight business purposes. Possession by a landlord, lessor, or licensor of a signed written statement from the tenant, lessee, or licensee claiming the exemption shall relieve the landlord, lessor, or licensor from the responsibility of collecting the tax, and the department shall look solely to the tenant, lessee, or licensee for recovery of such tax if it determines that the exemption was not applicable.

- Chapter 2000-183, L.O.F., added the exemption found in 12.

13. Rented, leased, subleased, or licensed to a person providing telecommunications, data systems management, or Internet services at a publicly or privately owned convention hall, civic center, or meeting space at a public lodging establishment as defined in s. 509.013. This subparagraph applies only to that portion of the rental, lease, or license payment that is based upon a percentage of sales, revenue sharing, or royalty payments and not based upon a fixed price. This subparagraph is intended to be clarifying and remedial in nature and shall apply retroactively. This subparagraph does not provide a basis for an assessment of any tax not paid, or create a right to a refund of any tax paid, pursuant to this section before July 1, 2010.

- Chapter 2010-147, L.O.F., added the exemption found in 13.

- Chapter 2000-345, L.O.F., added a new exemption to the above list. It applied to real property, "Rented, leased, subleased, or licensed to a concessionaire by a conventional hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility, during an event at the facility, to be used by the concessionaire to sell souvenirs, novelties, or other event-related products. This subparagraph applies only to that portion of rental, lease, or license payment which is based on a percentage of sales and not based on a fixed price." Further, the bill struck this language effective July 1, 2003. Accompanying language stated, "No tax imposed by chapter 212, Florida Statutes, on the transactions exempted under this section, and not actually paid or collected by a taxpayer before the effective date of this section, shall be due from such taxpayer. However, any tax actually collected shall be remitted to the Department of Revenue, and no refund shall be due."

- Chapter 2002-218, L.O.F., changed the repeal date from July 1, 2003, to July 1, 2006.
- Chapter 2006-101, L.O.F., reinstated the language with a repeal date of July 1, 2009.
- Chapter 2010-4, L.O.F., permanently removed the expired language in a reviser's bill.

(b) When a lease involves multiple use of real property wherein a part of the real property is subject to the tax herein, and a part of the property would be excluded from the tax under subparagraph (a)1., subparagraph (a)2., subparagraph (a)3., or subparagraph (a)5., the department shall determine, from the lease or license and such other information as may be available, that portion of the total rental charge which is exempt from the tax imposed by this section. The portion of the premises leased or rented by a for-profit entity providing a residential facility for the aged will be exempt on the basis of a pro rata portion calculated by combining the square footage of the areas used for residential units by the aged and for the care of such residents and dividing the resultant sum by the total square footage of the rented premises. For purposes of this section, the term "residential facility for the aged" means a facility that is licensed or certified in whole or in part under chapter 400, chapter 429, or chapter 651; or that provides residences to the elderly and is financed by a mortgage or loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act; or other such similar facility that provides residences primarily for the elderly.

- Chapter 98-140, L.O.F., added language to the statute as follows: "The portion of the premises leased or rented by a for-profit entity providing a residential facility for the aged will be exempt on the basis of a pro rata portion calculated by combining the square footage of the areas used for residential units by the aged and for the care of such residents and dividing the resultant sum by the total square footage of the rented premises. For purposes of this section, the term "residential facility for the aged" means a facility that is licensed or certified in whole or in part under chapter 400 or chapter 651; or that provides residences to the elderly and is financed by a mortgage or loan made or insured by the United States Department of Housing and Urban Development under s. 202, s. 202 with a s. 8 subsidy, s. 221(d)(3) or (4), s. 232, or s. 236 of the National Housing Act; or other such similar facility that provides residences primarily for the elderly." This change authorized an existing Department of Revenue rule.
- Chapter 2006-197, L.O.F., added a cross reference to a newly created chapter (chapter 429) and produced the statute that is currently in place.

(c) For the exercise of such privilege, a tax is levied in an amount equal to 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee. The total rent or license fee charged for such real property shall include payments for the granting of a privilege to use or occupy real property for any purpose and shall include base rent, percentage rents, or similar charges. Such charges shall be included in the total rent or license fee subject to tax under this section whether or not they can be attributed to the ability of the lessor's or licensor's property as used or operated to attract customers. Payments for intrinsically valuable personal property such as franchises, trademarks, service marks, logos, or patents are not subject to tax under this section. In the case of a contractual arrangement that provides for both payments taxable as total rent or license fee and payments not subject to tax, the tax shall be based on a reasonable allocation of such payments and shall not apply to that portion which is for the nontaxable payments.

- Chapter 95-391, L.O.F., added language to the statute to provide additional specificity regarding which payments are to be considered rental payments. The stated intent was to clarify and confirm existing law. This change produced the entire paragraph as it currently reads. Prior to the change, the paragraph read as follows: "(c) For the exercise of such privilege, a tax is levied in an amount equal to 6 percent of and on the total rent or license fee charged for such real property by the person charging or collecting the rental or license fee." The other section of the bill amended s. 212.02(10)(j), F.S., to provide that privilege, franchise, or concession fees or fees for a license to do business in airports only are not to be considered leasing, letting, renting, or granting a license for the use of real property for the purpose of applying the sales tax. According to the legislative staff analysis, such taxes had never been collected.

(d) When the rental or license fee of any such real property is paid by way of property, goods, wares, merchandise, services, or other thing of value, the tax shall be at the rate of 6 percent of the value of the property, goods, wares, merchandise, services, or other thing of value.

(2)(a) The tenant or person actually occupying, using, or entitled to the use of any property from which the rental or license fee is subject to taxation under this section shall pay the tax to his or her immediate landlord or other person granting the right to such tenant or person to occupy or use such real property.

(b) It is the further intent of this Legislature that only one tax be collected on the rental or license fee payable for the occupancy or use of any such property, that the tax so collected shall not be pyramided by a progression of transactions, and that the amount of the tax due the state shall not be decreased by any such progression of transactions.

(3) The tax imposed by this section shall be in addition to the total amount of the rental or license fee, shall be charged by the lessor or person receiving the rent or payment in and by a rental or license fee arrangement with the lessee or person paying the rental or license fee, and shall be due and payable at the time of the receipt of such rental or license fee payment by the lessor or other person who receives the rental or payment. Notwithstanding any other provision of this chapter, the tax imposed by this section on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility to hold an event of not more than 7 consecutive days' duration shall be collected at the time of the payment for that rental, lease, or license but is not due and payable to the department until the first day of the month following the last day that the event for which the payment is made is actually held, and becomes delinquent on the 21st day of that month. The owner, lessor, or person receiving the rent or license fee shall remit the tax to the department at the times and in the manner hereinafter provided for dealers to remit taxes under this chapter. The same duties imposed by this chapter upon dealers in tangible personal property respecting the collection and remission of the tax; the making of returns; the keeping of books, records, and accounts; and the compliance with the rules and regulations of the department in the administration of this chapter shall apply to and be binding upon all persons who manage any leases or operate real property, hotels, apartment houses, roominghouses, or tourist and trailer camps and all persons who collect or receive rents or license fees taxable under this chapter on behalf of owners or lessors.

- Chapter 2000-345, L.O.F., extended the original language by adding, "Notwithstanding any other provision of this chapter, the tax imposed by this section on the rental, lease, or license for the use of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility to hold an event of not more than 7 consecutive days' duration shall be collected at the time of the payment for that rental, lease, or license but is not due and payable to the department until the first day of the month following the last day that the event for which the payment is made is actually held, and becomes delinquent on the 21st day of that month."

With this change, the language became the version currently in place, but the bill struck this language effective July 1, 2003. Accompanying language stated, "No tax imposed by chapter 212, Florida Statutes, on the transactions exempted under this section, and not actually paid or collected by a taxpayer before the effective date of this section, shall be due from such taxpayer. However, any tax actually collected shall be remitted to the Department of Revenue, and no refund shall be due."

- Chapter 2002-218, L.O.F., changed the repeal date from July 1, 2003, to July 1, 2006.
- Chapter 2006-101, L.O.F., permanently reinstated the language. This change produced the provision that currently exists.

(4) The tax imposed by this section shall constitute a lien on the property of the lessee or licensee of any real estate in the same manner as, and shall be collectible as are, liens authorized and imposed by ss. 713.68 and 713.69.

- Chapter 77-194, L.O.F., created the following exclusion: "(5) No money paid to a merchants' association by a lessee shall be considered rent for the purposes of this section, whether or not the payment of the money to the association is a condition of the lease. As used in this section, "merchants' association" means a corporation not for profit organized and existing for the sole and exclusive purpose of promoting the businesses of a group of merchants."
- Chapter 86-166, L.O.F., provided a future repeal of the language above, and directed a study commission to review. The provision was allowed to expire.

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(5) When space is subleased to a convention or industry trade show in a convention hall, exhibition hall, or auditorium, whether publicly or privately owned, the sponsor who holds the prime lease is subject to tax on the prime lease and the sublease is exempt.

- Chapter 78-107, L.O.F., added the language addressing the treatment of a sublease involving a convention or industry trade show held in a convention hall, exhibition hall, or auditorium. The legislative staff analysis indicated, "...would possibly make it easier for the sponsor or promoter of a show to sublease space to exhibitors since no tax would be due on the consideration paid to the prime lessee." The bill was in response to rule enforcement actions by the Department of Revenue to enforce the tax on the subleases. The staff analysis further indicated, "The economic impact of losing <u>one</u> convention would be far greater than any potential revenue loss. Florida is the <u>only</u> state to levy a sales tax on the rental of exhibit booths. Florida is therefore disadvantages in competing for national and regional conventions."
- Chapter 86-166, L.O.F., provided a future repeal of the language above, and directed a study commission to review.
- Chapter 87-6, L.O.F., removed the future repeal of this language.

(6) The lease or rental of land or a hall or other facilities by a fair association subject to the provisions of chapter 616 to a show promoter or prime operator of a carnival or midway attraction is exempt from the tax imposed by this section; however, the sublease of land or a hall or other facilities by the show promoter or prime operator is not exempt from the provisions of this section.

- Chapter 82-207, L.O.F., added the exemption in (6).
- Chapter 86-166, L.O.F., provided a future repeal of the language above, and directed a study commission to review.

- Chapter 87-6, L.O.F., removed the future repeal of this language.

(7) Utility charges subject to sales tax which are paid by a tenant to the lessor and which are part of a payment for the privilege or right to use or occupy real property are exempt from tax if the lessor has paid sales tax on the purchase of such utilities and the charges billed by the lessor to the tenant are separately stated and at the same or a lower price than those paid by the lessor.

- Chapter 98-140, L.O.F., added the language found in (7). This change authorized an existing Department of Revenue rule.

(8) Charges by lessors to a lessee to cancel or terminate a lease agreement are presumed taxable if the lessor records such charges as rental income in its books and records. This presumption can be overcome by the provision of sufficient documentation by either the lessor or the lessee that such charges were other than for the rental of real property.

- Chapter 98-140, L.O.F., added the language found in (8). This change authorized an existing Department of Revenue rule.

(9) 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 is exempt from the tax imposed by this section 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.

- Chapter 99-238, L.O.F., added the exclusion found in (9). Accompanying language indicated, "No tax imposed by chapter 212, Florida Statutes, on the transactions made exempt by the amendment to s. 212.021, Florida Statutes, 1998 Supplement, by this section, and not actually paid or collected by a nonprofit sponsoring organization prior to the effective date of this section, shall be due from the nonprofit sponsoring organization."

- Chapter 2000-345, L.O.F., created the following exclusion, "(10) Separately stated charges imposed by a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, or publicly owned recreational facility upon a lessee or licensee for food, drink, or services required or available in connection with a lease or license to use real property, including charges for laborers, stagehands, ticket takers, event staff, security personnel, cleaning staff, and other event-related personnel, advertising, and credit card processing, are exempt from the tax imposed by this section." Accompanying language stated, "No tax imposed by chapter 212, Florida Statutes, on the transactions exempted under this section, and not actually paid or collected by a taxpayer before the effective date of this section, shall be due from such taxpayer. However, any tax actually collected shall be remitted to the Department of Revenue, and no refund shall be due." Further, the bill provided a future repeal date, "Effective July 1, 2003, subsection (10) of section 212.031, Florida Statutes, as created by this act, is repealed."
- Chapter 2002-218, L.O.F., changed the repeal date from July 1, 2003, to July 1, 2006.
- Chapter 2006-101, L.O.F., reinstated the language with a repeal date of July 1, 2009.
- Chapter 2010-4, L.O.F., permanently removed the expired language via reference in a reviser's bill.

General Cross References to Section 212.031, Florida Statutes:

CROSS REFERENCE: Florida Rail Enterprise Act
341.840 Tax exemption.—
(3)(a) Purchases or leases of tangible personal property or real property by the enterprise, excluding agents of the enterprise, are exempt from taxes imposed by chapter 212 as provided in s. 212.08(6). Purchases or leases of tangible personal property that is incorporated into the high-speed rail system as a component part thereof, as determined by the enterprise, by agents of the enterprise or the owner of the high-speed rail system are exempt from sales or use taxes imposed by chapter 212. Leases, rentals, or licenses to use real property granted to agents of the enterprise or the owner of the high-speed rail system are exempt from taxes imposed by s. 212.031 if the real property becomes part of such system. The exemptions granted in this subsection do not apply to sales, leases, or licenses by the enterprise, agents of the enterprise, or the owner of the high-speed rail system.

CROSS REFERENCE: Limited Access and Toll Facilities
338.234 Granting concessions or selling along the turnpike system; immunity from taxation.—
(2) The effectuation of the authorized purposes of the Strategic Intermodal System, created under ss. 339.61-339.65, and Florida Turnpike Enterprise, created under this chapter, is for the benefit of the people of the state, for the increase of their commerce and prosperity, and for the improvement of their health and living conditions; and, because the system and enterprise perform essential government functions in effectuating such purposes, neither the turnpike enterprise nor any nongovernment lessee or licensee renting, leasing, or licensing real property from the turnpike enterprise, pursuant to an agreement authorized by this section, are required to pay any commercial rental tax imposed under s. 212.031 on any capital improvements constructed, improved, acquired, installed, or used for such purposes.

APPENDIX C

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