

Committee Substitute for House Bill No. 61

An act relating to temporary accommodations; amending ss. 125.0104, 125.0108, 212.03, and 212.0305, F.S.; revising application of provisions imposing certain taxes upon consideration paid for occupancy of certain timeshare resort products; providing application and construction; amending s. 624.605, F.S.; expanding the list of entities authorized to offer debt cancellation products for purposes of the definition of the term “casualty insurance” to include sellers of timeshare interests; amending s. 721.05, F.S.; revising a definition; amending s. 721.07, F.S.; specifying additional information required in certain public offering statements for timeshare plans; amending s. 721.20, F.S.; requiring resale service providers to provide certain fee or cost and listings information to timeshare interest owners; specifying that failure to disclose constitutes an unfair and deceptive trade practice; providing that certain contracts are void and purchasers are entitled to refunds of certain moneys; providing severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (3) of section 125.0104, Florida Statutes, is amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.—

(3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.—

(a)1. It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, ~~or~~ condominium, or timeshare resort for a term of 6 months or less is exercising a privilege which is subject to taxation under this section, unless such person rents, leases, or lets for consideration any living quarters or accommodations which are exempt according to the provisions of chapter 212.

2.a. Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner’s guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section.

A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

b. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

Section 2. Paragraph (b) of subsection (1) of section 125.0108, Florida Statutes, is amended to read:

125.0108 Areas of critical state concern; tourist impact tax.—

(1)

(b)1. It is declared to be the intent of the Legislature that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium, or timeshare resort for a term of 6 months or less, unless such establishment is exempt from the tax imposed by s. 212.03, is exercising a taxable privilege on the proceeds therefrom under this section.

2.a. Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner's guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

b. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

Section 3. Subsection (1) of section 212.03, Florida Statutes, is amended to read:

212.03 Transient rentals tax; rate, procedure, enforcement, exemptions.—

(1)(a) It is hereby 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 to use any living quarters or sleeping or housekeeping accommodations in, from, or a part of, or in connection with any hotel, apartment house, roominghouse, ~~or~~ tourist or trailer camp, mobile home park, recreational vehicle park, condominium, or timeshare resort. However, any person who rents, leases, lets, or grants a license to others to use, occupy, or enter upon any living quarters or sleeping or housekeeping accommodations in any apartment house houses, roominghouse rooming-houses, tourist camp camps, or trailer camp camps, mobile home park, recreational vehicle park, condominium, or timeshare resort and who exclusively enters into a bona fide written agreement for continuous residence for longer than 6 months in duration at such property is not exercising a taxable privilege. For the exercise of such taxable privilege, a tax is hereby levied in an amount equal to 6 percent of and on the total rental charged for such living quarters or sleeping or housekeeping accommodations by the person charging or collecting the rental. Such tax shall apply to hotels, apartment houses, roominghouses, ~~or~~ tourist or trailer camps, mobile home parks, recreational vehicle parks, condominiums, or timeshare resorts, whether or not these facilities have there is in connection with any of the same any dining rooms, cafes, or other places where meals or lunches are sold or served to guests.

(b)1. Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner's guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

2. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

Section 4. Paragraph (a) of subsection (3) of section 212.0305, Florida Statutes, is amended to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.—

(3) APPLICATION; ADMINISTRATION; PENALTIES.—

(a)1. The convention development tax on transient rentals imposed by the governing body of any county authorized to so levy shall apply to the amount of any payment made by any person to rent, lease, or use for a period of 6 months or less any living quarters or accommodations in a hotel, apartment hotel, motel, resort motel, apartment, apartment motel, rooming-house, tourist or trailer camp, mobile home park, recreational vehicle park, ~~or condominium, or timeshare resort~~. When receipt of consideration is by way of property other than money, the tax shall be levied and imposed on the fair market value of such nonmonetary consideration. Any payment made by a person to rent, lease, or use any living quarters or accommodations which are exempt from the tax imposed under s. 212.03 shall likewise be exempt from any tax imposed under this section.

2.a. Tax shall be due on the consideration paid for occupancy in the county pursuant to a regulated short-term product, as defined in s. 721.05, or occupancy in the county pursuant to a product that would be deemed a regulated short-term product if the agreement to purchase the short-term right were executed in this state. Such tax shall be collected on the last day of occupancy within the county unless such consideration is applied to the purchase of a timeshare estate. The occupancy of an accommodation of a timeshare resort pursuant to a timeshare plan, a multisite timeshare plan, or an exchange transaction in an exchange program, as defined in s. 721.05, by the owner of a timeshare interest or such owner's guest, which guest is not paying monetary consideration to the owner or to a third party for the benefit of the owner, is not a privilege subject to taxation under this section. A membership or transaction fee paid by a timeshare owner that does not provide the timeshare owner with the right to occupy any specific timeshare unit but merely provides the timeshare owner with the opportunity to exchange a timeshare interest through an exchange program is a service charge and not subject to taxation under this section.

b. Consideration paid for the purchase of a timeshare license in a timeshare plan, as defined in s. 721.05, is rent subject to taxation under this section.

Section 5. The amendments to sections 125.0104, 125.0108, 212.03, and 212.0305, Florida Statutes, made by this act are intended to be clarifying and remedial in nature and do not provide a basis for assessments of tax, or refunds of tax, for periods prior to July 1, 2009.

Section 6. Paragraph (r) of subsection (1) of section 624.605, Florida Statutes, is amended to read:

624.605 "Casualty insurance" defined.—

(1) "Casualty insurance" includes:

(r) Insurance for debt cancellation products.—Insurance that a creditor may purchase against the risk of financial loss from the use of debt cancellation products with consumer loans or leases or retail installment contracts. Insurance for debt cancellation products is not liability insurance but shall be considered credit insurance only for the purposes of s. 631.52(4).

1. For purposes of this paragraph, the term “debt cancellation products” means loan, lease, or retail installment contract terms, or modifications to loan, lease, or retail installment contracts, under which a creditor agrees to cancel or suspend all or part of a customer’s obligation to make payments upon the occurrence of specified events and includes, but is not limited to, debt cancellation contracts, debt suspension agreements, and guaranteed asset protection contracts. However, the term “debt cancellation products” does not include title insurance as defined in s. 624.608.

2. Debt cancellation products may be offered by financial institutions, as defined in s. 655.005(1)(h), insured depository institutions as defined in 12 U.S.C. s. 1813(c), and subsidiaries of such institutions, as provided in the financial institutions codes; by sellers as defined in s. 721.05, or by the parents, subsidiaries, or affiliated entities of sellers, in connection with the sale of timeshare interests; or by other business entities as may be specifically authorized by law, and such products shall not constitute insurance for purposes of the Florida Insurance Code.

Section 7. Subsection (17) of section 721.05, Florida Statutes, is amended to read:

721.05 Definitions.—As used in this chapter, the term:

(17) “Facility” means any permanent amenity, including any structure, furnishing, fixture, equipment, service, improvement, or real or personal property, improved or unimproved, other than an accommodation of the timeshare plan, which is made available to the purchasers of a timeshare plan. The term does not include an incidental benefit as defined in this section.

Section 8. Paragraph (ii) is added to subsection (5) of section 721.07, Florida Statutes, to read:

721.07 Public offering statement.—Prior to offering any timeshare plan, the developer must submit a filed public offering statement to the division for approval as prescribed by s. 721.03, s. 721.55, or this section. Until the division approves such filing, any contract regarding the sale of that timeshare plan is subject to cancellation by the purchaser pursuant to s. 721.10.

(5) Every filed public offering statement for a timeshare plan which is not a multisite timeshare plan shall contain the information required by this subsection. The division is authorized to provide by rule the method by which a developer must provide such information to the division.

(ii) A statement that the owner’s obligation to pay assessments continues for as long as he or she owns the timeshare interest and that when a person inherits a timeshare interest, that person is responsible for paying those assessments.

Section 9. Subsection (9) is added to section 721.20, Florida Statutes, to read:

721.20 Licensing requirements; suspension or revocation of license; exceptions to applicability; collection of advance fees for listings unlawful.—

(9)(a) Prior to listing or advertising a timeshare interest for resale, a resale service provider shall provide to the timeshare interest owner a description of any fees or costs relating to the advertising, listing, or sale of the timeshare interest that the timeshare interest owner, or any other person, must pay to the resale service provider or any third party, when such fees or costs are due, and the ratio or percentage of the number of listings of timeshare interests for sale versus the number of timeshare interests sold by the resale service provider for each of the previous 2 calendar years.

(b) Failure to disclose this information in writing constitutes an unfair and deceptive trade practice pursuant to chapter 501. Any contract entered into in violation of this subsection is void and the purchaser is entitled to a full refund of any moneys paid to the resale service provider.

Section 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 11. This act shall take effect July 1, 2009.

Approved by the Governor June 10, 2009.

Filed in Office Secretary of State June 10, 2009.