

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: SB 384

INTRODUCER: Senator Garcia

SUBJECT: Small Business Saturday Sales Tax Holiday

DATE: February 13, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 384 establishes a one-day sales tax holiday on Saturday, November 28, 2015. During the holiday, any purchase made at a small business or newly created small business is exempt from the state sales tax and county discretionary sales surtaxes.

II. Present Situation:

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. There are currently more than 200 exemptions.¹ Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.² The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of six percent.

¹ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook* (2014).

² The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

In 2014, the Florida Legislature approved three sales tax holidays:

- Energy Star and WaterSense Holiday, during which the first \$1,500 of a qualifying Energy Star and WaterSense appliance purchase was exempted from sales and use tax.³
- Back to School Sales Tax Holiday, during which the first \$750 of personal computers and related-accessories, \$100 or less on clothing, and \$15 on school supplies was exempted from sales and use tax.⁴
- Hurricane Preparedness Sales Tax Holiday, during which specific hurricane-related supplies were exempt from sales and use tax.⁵

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent business on the Saturday after “Black Friday.”⁶ It is estimated that consumers spent \$5.5 billion at small, independent businesses on Small Business Saturday in 2012.⁷

III. Effect of Proposed Changes:

The bill establishes a one-day sales tax holiday, on Saturday, November 28, 2015, to coincide with “Small Business Saturday.” During the tax holiday, any purchase made at a small business or newly created small business is exempt from the state sales tax and county discretionary sales surtaxes.

The bill defines “small business” as one that remits less than \$200,000 in tax revenues to the Florida Department of Revenue (the “department”) during the previous year. It is estimated that a business that owes and remits the full payment of \$200,000 each year in tax revenues makes \$3.3 million dollars in total annual sales.⁸ Approximately 80.4 percent of Florida businesses that remit taxes to the department remit between \$1.00 and \$200,000 in revenue, and 17-21 percent of Florida businesses remits \$0.00.⁹

A “newly created small business” may qualify if it has been in operation more than three months, but less than one year, and has remitted less than \$50,000 in taxes to the department “in at least three out of the previous 12 months.” It is unclear whether the \$50,000 cap applies to the total quarterly filing, or to each of the three months within a business’ quarterly filing (thus allowing a total quarterly filing of \$149,999.97).

The bill will likely decrease sales tax revenue.

³ Florida Department of Revenue, “2014 Sales Tax Holiday for New Energy Star and WaterSense Products” (9/19/14), available at http://dor.myflorida.com/dor/tips/pdf/tip14a01-06_TIP.pdf (last visited 2/12/2015).

⁴ Florida Department of Revenue, “2014 Back-to-School Sales Tax Holiday” (7/1/14), available at <http://dor.myflorida.com/dor/tips/pdf/tip14a01-04.pdf> (last visited 2/12/2015).

⁵ Florida Department of Revenue, “2014 Hurricane Preparedness Sales Tax Holiday” (5/23/14), available at <http://dor.myflorida.com/dor/tips/pdf/tip14a01-03.pdf> (last visited 2/12/2015).

⁶ American Express, “Small Business Saturday” <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited 2/12/2015).

⁷ Cynthia Magnuson-Allen, “U.S. Consumers Spent \$5.5 Billion ‘Shopping Small’ on Saturday” 11/27/2012. Available at <http://www.nfib.com/article/m-nfib-and-american-expres-61497/>. Last accessed 2/12/2015.

⁸ Economic and Demographic Research Conference, February 6, 2015, Impact Conference.

⁹ Economic and Demographic Research Conference, February 6, 2015, Impact Conference.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The fiscal impact of the current version of this bill is indeterminate.

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under the bill.

C. Government Sector Impact:

The bill appropriates \$200,000 in non-recurring funds to the department for Fiscal Year 2015-2016, for administrative costs. The department estimates its costs of administration will be \$211,775.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The definition of “small business” may benefit larger businesses that remit proportionately less tax compared to their overall sales as a result of their non-taxable sales of, e.g., unprepared food or medicines. Conversely, businesses that remitted \$0 in taxes either because the business was delinquent on its tax payments, or because it was dormant and not actually in operation during the immediately prior year, may qualify under the current definition. Additionally, whether individual units (that remit less than \$200,000 in taxes) of a larger chain retailer (that remits over \$200,000 in taxes) will classify as a small business under the bill is unclear. Further limits on the definition of “small business” may be needed.

As discussed in the Effect of Proposed Changes section, above, “newly created small business” is subject to varying interpretations, and may benefit from a more specific definition.

“Small business” is defined based on the amount of taxes remitted during “the previous year.” For the sake of clarity, “previous year” could be further defined as either a calendar year, fiscal year, or a year beginning and ending on any specific date.

In certain instances, a business owes more taxes than it remits to the department; thus, under the bill, a business that owes \$5 million in taxes but only remitted \$199,999 to the department in the previous year may qualify as a small business. “Remitted” could be replaced with “owed and remitted.”

The term “Small Business Saturday” is trademarked by American Express.¹⁰

Consumers may shift, rather than supplement, their purchases to this sales tax holiday. This may prove especially true on larger ticket price items like furniture, cars, boats, and technology, since there is no price cap on goods subject to this holiday.

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁰ See U.S. Patent and Trademark Office, <http://tmsearch.uspto.gov/bin/showfield?f=doc&state=4810:qxjz99.5.2> (last visited 2/13/2015).