

## HOUSE OF REPRESENTATIVES FINAL BILL ANALYSIS

<b>BILL #:</b>	HB 33A	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Finance and Tax Committee; Gaetz and others	91 Y's	2 N's
<b>COMPANION BILLS:</b>	SB 4-A; SB 6-A	<b>GOVERNOR'S ACTION:</b>	Approved

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### SUMMARY ANALYSIS

HB 33A passed the House on June 5, 2015. The bill was amended by the Senate on June 12, 2015, and subsequently passed the House on May 15, 2015.

The bill provides for a wide range of tax reductions designed to directly impact both households and businesses.

The bill permanently reduces the state communications services tax (CST) rate by 1.73 percentage points.

The bill includes new or expanded sales tax exemptions for the following: agricultural items, including feed for aquatic organisms, irrigation equipment, costs of maintenance and repairs of irrigation and power farm equipment, stakes, and certain trailers used on farms; K-12 school food and beverage concessions in support of extra-curricular activities; boat repairs exceeding the first \$60,000 in tax; gun club memberships or admissions; and motor vehicles brought to Florida by military servicemembers deployed outside of the U.S. Temporary sales tax exemptions in the bill include a ten-day "back-to-school" holiday for clothing, footwear, school supplies, and computers and a one-year exemption for college textbooks and instructional materials.

The bill makes the following corporate income tax changes: increases total tax credits available for voluntary brownfields clean-up; revises the distribution for the current research and development tax credit and increases the annual credits that can be awarded; extends the Community Contribution Tax Credit program with \$24.9 million in tax credits each year for two years (also taken against sales tax); and expands program eligibility to include projects designed to provide housing opportunities to persons with special needs.

Other changes include: clarification of the definition of "common elements" for ad valorem tax purposes; a permanent extension of an existing title insurance premiums tax reduction under certain conditions; an exemption from the aviation fuel tax for fuel used by certain Florida higher educational institutions for flight training; an extension of enterprise zone incentives after that program sunsets to certain businesses under contract with the Department of Economic Opportunity for other economic incentive programs; and clarification of CST dealer tax reporting period requirements and the sales tax exemption on prepaid college meal plans.

The total impact of the bill in fiscal year 2015-2016 is -\$365.0 million (-\$252.1 million recurring) of which -\$341.8 million (-\$248.7 million recurring) is on General Revenue, and -\$23.2 million (-\$3.4 million recurring) is on local government. Several measures in the bill result in further, non-recurring revenue impacts in years beyond fiscal year 2015-2016. Adding the nonrecurring cash impacts beyond fiscal year 2015-2016 to the first year impacts brings the total cash impact of the bill to -\$427.8 million, of which -\$398.9 million is on General Revenue, and -\$28.9 million is on local government.

The bill was approved by the Governor on June 16, 2015, ch. 2015-221, L.O.F., and will become effective on July 1, 2015, except as otherwise expressly provided in the act.

### I. SUBSTANTIVE INFORMATION

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h33AzFTC.doc

DATE: June 19, 2015

A. EFFECT OF CHANGES:

**Communications Services Tax (CST) Rates and Distributions**

*Current Situation*

Chapter 202, F.S., imposes a tax on the sale of communication services, including telecommunications (both wireline and mobile), cable television, direct-to-home satellite television and other services. The CST includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent. In addition, local governments may impose a local tax rate. The maximum rate for municipalities or charter counties is 5.1 percent or 4.98 percent, if the municipality or charter county levies certain permit fees. The maximum rate for non-charter counties is 1.6 percent. Add-ons of .12 percent or .24 percent are authorized under s. 337.401, F.S., and “emergency” rates may exceed the statutory limits.

Direct-to-home satellite service is taxed at a higher state CST rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax for a combined rate of 13.17 percent. The local tax does not apply to these services.

Most of the state taxes collected are deposited into the General Revenue Fund. However, a portion of the state tax is distributed to local governments. Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for funding public education system capital projects.

Communications services dealers are required to report and remit collections on a calendar month basis.<sup>1</sup> Dealer returns and remittances are late after the 20<sup>th</sup> day of the month following the month of collection.<sup>2</sup>

To compensate communications services dealers for keeping prescribed records, filing timely tax returns, and properly accounting and remitting taxes, dealers are allowed to deduct and retain 0.75 percent of the amount of tax due and timely reported and remitted.<sup>3</sup> The collection allowance is not allowed if the required tax return or tax is delinquent.<sup>4</sup>

*Proposed Changes*

The bill permanently reduces the state CST rate by 1.73 percentage points beginning July 1, 2015. The standard rate is reduced from 6.65 percent to 4.92 percent and the rate on direct-to-home satellite is reduced from 10.8 percent to 9.07 percent. These rate changes are made in several places in the bill and revenue distributions are revised to ensure that local governments continue to receive the same amount of distributions as they receive under current law. The gross receipts tax rate is not affected.

Section 202.27, F.S., is amended to authorize a communications services dealer to use a month-long period other than a calendar month to report its CST collections. Dealers who use an alternative month-long period will continue to remit collections by the 20<sup>th</sup> day of the subsequent calendar month. For payments where a percentage of the payment is delinquent, the bill specifies that the disallowance of a collection allowance based on a delinquent tax payment is limited to the percentage of the tax due that was delinquent.

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<sup>1</sup> See s. 202.27, F.S. and rule 12A-19.020(1)(a)1., F.A.C. The Department of Revenue (DOR) is authorized to permit reporting periods longer than 1 month in certain situations. S. 202.27(2), F.S.

<sup>2</sup> See s. 202.27(1), F.S. and rule 12A-19.020(1)(a)3., F.A.C.

<sup>3</sup> s. 202.28(1), F.S. Dealers that do not use specified databases to determine the taxable situs of sales are subject to a reduced collection allowance of 0.25 percent. See s. 202.22(6)(b)1., F.S.

<sup>4</sup> s. 202.28(1)(a), F.S.

The bill specifies that the changes apply to taxable transactions included on bills for communications services that are dated on or after July 1, 2015. The bill grants DOR emergency rulemaking authority to implement these changes to communications services tax. The bill puts in place procedures applicable if a communications services dealer is unable to implement the reduction in the communications services tax rate by July 1, 2015. Specifically, a dealer may continue collecting tax at the previous tax rates as late as October 1, 2015, but must subsequently refund to customers any such excess collections.

Also, the bill specifies that the changes to tax reporting periods and collection allowances are remedial in nature and apply retroactively, but do not provide a basis for an assessment of any unpaid tax or create a right to a refund or credit of any tax paid before October 1, 2015.

## **Sales Tax**

Florida's sales and use tax is a 6 percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles, unless explicitly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (75.7 percent for the 2014-2015 fiscal year<sup>5</sup>) and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

### **Sales Tax Exemptions**

#### *Current Situation*

*Power Farm Equipment*--Florida exempts "power farm equipment" from sales tax when the equipment is used exclusively on a farm or in a forest for the agricultural production of crops or for fire prevention and suppression work with respect to such crops.<sup>6</sup> The exemption does not apply to the repair of power farm equipment.

"Power farm equipment" is moving or stationary equipment that contains within itself the means for its own propulsion or depends on an external power source to perform its functions.<sup>7</sup> Sales of component parts of power farm equipment are not exempt unless the component part is, by itself, power farm equipment.<sup>8</sup>

"Agricultural production" is limited to practices necessary to accomplish the production of plants and animals through the harvest phase.<sup>9</sup> Power farm equipment used in activities that occur after harvesting, such as processing or storage, is not exempt.

*Livestock*--Florida exempts the gross proceeds from the sale of livestock from sales tax provided such sales are made directly by the producers.<sup>10</sup> "Livestock" includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals raised for commercial purposes, as well as fish raised for commercial purposes.<sup>11</sup> Florida also exempts feed for livestock from the sales tax.<sup>12</sup>

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<sup>5</sup> FLORIDA REVENUE ESTIMATING CONFERENCE, 2015 FLORIDA TAX HANDBOOK (2015).

<sup>6</sup> s. 212.08(3), F.S.

<sup>7</sup> s. 212.02(30), F.S.

<sup>8</sup> See Rule 12A-1.087(3)(b), F.A.C.

<sup>9</sup> s. 212.02(32), F.S.

<sup>10</sup> s. 212.07(5)(a), F.S.

<sup>11</sup> s. 212.02(29), F.S.

<sup>12</sup> s. 212.08(7)(d), F.S.

*Aquaculture*--The Department of Agriculture and Consumer Services (DACS) regulates aquaculture pursuant to chapter 597, F.S. DACS certifies aquaculture producers pursuant to s. 597.004, F.S. Section 597.0015, F.S., defines “aquaculture products” as “aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions. Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification.”

*Schools Offering Grades K through 12*--The following types of sales are exempt for schools offering grades K through 12:<sup>13</sup>

- Books used in regularly prescribed courses of study;
- Yearbooks, magazines, newspapers, directories, bulletins, and similar publications; and
- School lunches.

Parent-teacher associations or parent-teacher organizations<sup>14</sup> whose primary purpose is to raise funds for such schools may pay tax to their suppliers on the cost price of items in lieu of registering as a dealer, obtaining a Consumer's Certificate of Exemption, or collecting tax on their sales of the following taxable items:

- School materials and supplies purchased, rented, or leased for resale or rental to students attending grades K through 12;
- Items sold for fund raising purposes, such as candy, photographs, greeting cards, wrapping paper, and similar fund raising items;
- Items sold through vending machines located on the school premises; and
- Food and beverages sold through vending machines located on school premises in locations other than the student lunchroom, student dining room, or other area specifically designated for student dining.

*College Prepaid Meal Plans*--Chapter 2014-38, L.O.F., amended s. 212.07(r), F.S., to create an exemption for prepaid meal plans, which reads:

[P]repaid meal plans purchased from a college or other institution of higher learning by students currently enrolled at that college or other institution of higher learning are exempt. As used in this paragraph, “prepaid meal plans” means payment in advance to a college or institution of higher learning for the provision of a defined quantity of units that must expire at the end of an academic term, cannot be refunded to the student upon expiration, and which may only be exchanged for food.

Feedback from colleges and universities identified a number of issues for clarification. Many colleges contract out their meal plan service to a third party provider. Some students purchase the meal plan before they are enrolled. Some students pay for the plans after the plan begins as a result of financial assistance. Additionally, institutions of higher learning were uncertain as to the taxability of “flex” dollars that can be purchased with a meal plan but effectively act as cash equivalents rather than being restricted exclusively to meal plans.

*College or University Textbooks*-- At present, college and university textbooks are explicitly taxable.<sup>15</sup>

In 2008, the Legislature created a new section in law to address textbook affordability by: prohibiting employees of a Florida College System (FCS) institution or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook; requiring the FCS institutions

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<sup>13</sup> s. 212.08(7)(2), F.S.; rule 12A-1.0011, F.A.C.

<sup>14</sup> “Parent-Teacher Organizations (PTOs)” and “Parent-Teacher Associations (PTAs)” mean those nonprofit organizations associated with schools whose purpose is to raise funds for schools teaching grades K through 12. See rule 12A-1.0011, F.A.C.

<sup>15</sup> s. 212.08(7)(r), F.S.

and universities to provide specific information for textbooks to students prior to the first day of classes; and requiring the State Board of Education (SBE) and the Board of Governors (BOG) to adopt policies, procedures, and guidelines that would further efforts to minimize the cost of textbooks.<sup>16</sup>

State universities and FCS institutions are required to post on their websites, as early as is feasible, but not less than 30 days prior to the first day of class for each term, a list of each textbook required for each course for the term. The list must include the International Standard Book Number (ISBN) for each required textbook and, at a minimum, the following: the title; all authors listed; publishers, edition number, copyright date, published date, and other relevant information necessary to identify the specific textbook.<sup>17</sup>

The SBE adopted Rule 6A-14.092, F.A.C.<sup>18</sup>, in January 2009, and the BOG adopted Regulation 8.003 in March 2009,<sup>19</sup> each in accordance with the following statutory requirements that:

- Textbook adoptions are made with sufficient lead time to bookstores in order to confirm availability of textbooks and ensure maximum availability of used books;
- The course instructor or academic department offering the course confirms that all items ordered, including individual items as part of a bundled package, are going to be used;
- The course instructor or academic department offering the course determines, before adoption of the textbook, that a new edition differs significantly and substantially enough from earlier versions that there is value in changing to the new edition; and
- The policies shall address the availability of required textbooks to students otherwise unable to afford the cost.<sup>20</sup>

According to The College Board, the average annual cost for books and supplies is \$1,225 at four-year postsecondary institutions and \$1,328 at two-year postsecondary institutions. For full-time students (i.e., 30 credit hours or approximately 10 courses per year), this equates to approximately \$122.50 and \$132.80 per course for four-year and two-year institutions, respectively. Often, students try to purchase used textbooks (typically offered at a 25 percent price discount to new books) or they try to rent textbooks. The textbook rental market has expanded in recent years, offering students a variety of short-term, lower-cost rental options. Rented books are typically discounted between 14 percent and 60 percent of the retail price for new books.

*Motor Vehicle and Boat Sales*--Generally, the six percent sales and use tax rate applies to the sale of motor vehicles in Florida; however, there are specific rules that apply to isolated sales<sup>21</sup> and the rental of motor vehicles and boats,<sup>22</sup> including a rental car surcharge.<sup>23</sup> However, the sales tax on the sale of a boat is capped at \$18,000.

Section 212.06(7), F.S., allows a credit to be given on tangible personal property, including motor vehicles and boats, brought into Florida where a like tax has been lawfully imposed and paid in another state. If the amount paid is equal to or greater than the amount imposed by Florida, no additional tax is due.<sup>24</sup> If the amount is less than the amount imposed in Florida, only the difference between the two is due.<sup>25</sup> It is presumed that tangible personal property used in another state, territory of the U.S., or the

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<sup>16</sup> Ch. 2008-78, s. 1 Laws of Fla.

<sup>17</sup> s. 1004.085(3), F.S.

<sup>18</sup> See <https://www.flrules.org/gateway/ruleNo.asp?id=6A-14.092>

<sup>19</sup> See [http://www.flbog.edu/documents\\_regulations/regulations/8\\_003\\_Textbook\\_Adoption.pdf](http://www.flbog.edu/documents_regulations/regulations/8_003_Textbook_Adoption.pdf)

<sup>20</sup> s. 1004.085(4), F.S. Note - The Legislature amended 1004.085, F.S. in 2011 to include the consideration of open-access textbooks within the policies and procedures. The SBE rule and BOG regulation have not been updated to include these provisions.

<sup>21</sup> s. 212.05(1)(a)(1)b., F.S.

<sup>22</sup> s. 212.05(1)(a)(1)(c), F.S.

<sup>23</sup> s. 212.0606, F.S.

<sup>24</sup> s. 212.06(7), F.S.

<sup>25</sup> s. 212.06(7), F.S.

District of Columbia for six months or longer before being brought into Florida was not purchased for use in Florida; and therefore, no Florida tax is due.<sup>26</sup>

No credit of Florida tax is given for use in or taxes paid in another country. Therefore, tax shall apply and be due on any motor vehicle imported or caused to be imported from a foreign country into Florida, even if the motor vehicle was used in another country for a period of six months or more prior to the time it is brought into Florida.<sup>27</sup> Furthermore, tax paid in another country will not be recognized by the State of Florida when calculating the tax due.<sup>28</sup> The tax is calculated on the value of the vehicle at the time it is brought into Florida, not on the original purchase price.<sup>29</sup>

While a military servicemember is deployed overseas, he or she may purchase a motor vehicle for personal use. As of February 25, 2014, two states (North Dakota and Tennessee) do not levy a sales tax on motor vehicles purchases by certain military personnel residing in that state.<sup>30</sup>

### *Proposed Changes*

*Agricultural Exemptions*--The bill amends s. 212.02, F.S., to redefine the term "livestock" to include all aquaculture products identified pursuant to s. 597.003, F.S., and raised for commercial purposes. The term "agricultural production" is also redefined to include the storage of raw products on a farm. The bill goes on to exempt the following from sales tax:

- Irrigation equipment;
- Replacement parts and accessories for power farm equipment and irrigation equipment;
- Repairs of power farm equipment and irrigation equipment;
- Stakes used by a farmer to support plants during agricultural production; and
- The sale price below \$20,000 of a trailer weighing 12,000 pounds or less and purchased by a farmer for exclusive use in agricultural production or to transport farm products from his or her farm to the place where the farmer transfers ownership of the farm product to another. The exemption is not forfeited by using a trailer to transport the farmer's farm equipment. The exemption does not apply to the lease or rental of a trailer.

*School Support Organizations*--The bill authorizes school support organizations to pay tax when they purchase food, drink, and supplies for resale, in lieu of registering as a dealer, obtaining a Consumer's Certificate of Exemption, or collecting tax from the purchaser. The bill defines the term "school support organization" as an organization the sole purpose of which is to raise funds to support extracurricular activities at public, parochial, or nonprofit schools that teach grades K through 12.

*College Prepaid Meal Plans*--The bill clarifies the exemption for prepaid meal plans to make it clear that: sales by meal plan service providers are exempt, students can purchase exempt meal plans prior to enrollment, meal plans may be purchased with financial aid, and "flex" dollars are to be taxed based on the purchase (essentially treating "flex" dollars like gift cards, which are taxed not at the point of sale but when they are used to make a taxable purchase).

*College or University Textbooks*--The bill creates a one-year exemption for textbooks, and printed and digital materials required or recommended for a course offered by a public postsecondary educational institution or a nonpublic postsecondary educational institution that is eligible to participate in the tuition assistance programs.

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<sup>26</sup> s. 212.06(8), F.S.

<sup>27</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

<sup>28</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

<sup>29</sup> s. 212.05, F.S.; DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

<sup>30</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

To obtain the tax exemption, a student must provide either a physical or an electronic copy of the following to the vendor:

- His or her student identification number; and
- Either an applicable course syllabus or list of required and recommended textbooks and instructional materials.

The vendor must maintain proper documentation, as prescribed by rule, to identify either complete transactions or the portion of a transaction which involves the sale of tax-exempted textbooks.

*Motor Vehicle Sales and Boat Repairs*--The bill provides a sales tax exemption for any motor vehicle purchased and used for six months or longer in a foreign country by an active member of the United States Armed Forces or that member's spouse. Proof of the active status of the member, and when applicable, proof of the spouse's relationship to the member, must be provided when the vehicle is titled and registered in this state. Additionally, the bill caps the amount of sales tax paid on repairs of a boat at \$60,000.

### Sales Tax on Admissions

#### *Current Situation*

Section 212.04, F.S., governs the state sales tax on admissions. Sales tax is levied at the rate of 6 percent of sales price or the actual value received from admissions. Admissions is defined as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any:

- Place of amusement, sport, or recreation including, but not limited to, theaters, shows, exhibitions, games, races;
- Place where charge is made by way of sale of tickets, gate charges, and similar fees or charges;
- Receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation; and
- All dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.

Several exceptions and exemptions exist, such as:

- Memberships for physical fitness facilities owned or operated by any hospital;
- Admissions to athletic or other events sponsored by a school;
- Fees or charges imposed by certain not-for-profits;
- Events sponsored by a governmental entity, nonprofit sports authority, or nonprofit sports commission under certain circumstances;
- Certain admissions to professional sports championship games;
- Entry fees for freshwater fishing tournaments;
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event;
- Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

#### *Proposed Changes*

The bill exempts admissions and membership fees for gun clubs. The term "gun club" is defined as an organization whose primary purpose is to offer its members access to one or more shooting ranges for target or skeet shooting.

## Enterprise Zones

### *Present Situation*

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing a variety of incentives aimed at inducing private investment in those areas. Currently, Florida has 65 enterprise zones, of which 29 are rural and 36 are urban.<sup>31</sup>

Local governments are responsible for zone administration and monitoring activities, creating enterprise zone development agencies, and employing zone coordinators. Zone coordinators serve as local contacts and assist businesses applying for state tax credits and refunds, certify incentive applications to the Department of Revenue (DOR), educate the public about the program, and submit data on zone activities to the DEO for inclusion in the enterprise zone annual report. The DEO oversees the program at the state level and approves zone designation applications and zone boundary changes. The DEO also provides technical support to local zone coordinators and submits annual program reports to the Governor and Legislature.<sup>32</sup>

As outlined in s. 290.0056, F.S., each enterprise zone must have an Enterprise Zone Development Agency, which has the following powers and responsibilities:

- Assisting in the development, implementation and annual review of the zone and updating the strategic plan or measurable goals;
- Identifying ways to remove regulatory burdens;
- Promoting the incentives to residents and businesses;
- Recommending boundary changes;
- Working with nonprofit development organizations; and
- Ensuring the enterprise zone coordinator receives annual training and works with Enterprise Florida, Inc.

### *Available Incentives*

Certain economic activities in Florida's enterprise zones qualify for various incentives from corporate income tax and sales and use tax.<sup>33</sup> The DEO reported that \$15.8 million in state incentives were approved by the Department of Revenue (DOR) during the period of July 1, 2013 through June 30, 2014, for all state enterprise zones. During that same time period, \$11 million in incentives were provided by local governing bodies. Examples of local incentives include: utility tax abatement, reduction of occupational license fees, reduced building permit fees or land development fees, and local funds for capital projects.<sup>34</sup>

Available state sales tax incentives for enterprise zones include:

- Building Materials Used in the Rehabilitation of Real Property Located in an Enterprise Zone-- Provides a refund for sales taxes paid on the purchase of certain building materials, up to \$5,000 or 97 percent of the tax paid.<sup>35</sup>

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<sup>31</sup> The Florida Legislature, OPPAGA, *OPPAGA Research Memorandum – Florida's Enterprise Zone Program* (January 5, 2015)

<sup>32</sup> *Id.*

<sup>33</sup> Section 290.007, F.S.

<sup>34</sup> DEO, Florida Enterprise Zone Program Annual Report, November 1, 2014, available at [http://www.floridajobs.org/docs/default-source/reports-and-legislation/2014\\_floridaenterprisezoneprogramannualreport.pdf?sfvrsn=2](http://www.floridajobs.org/docs/default-source/reports-and-legislation/2014_floridaenterprisezoneprogramannualreport.pdf?sfvrsn=2) (last visited April 23, 2015).

<sup>35</sup> Section 9 of ch. 2010-147, L.O.F., removed the eligibility of condominium parcels or property, as defined in s. 718.103, F.S., for the sales tax exemption for building materials, pursuant to s. 212.08(5)(g), F.S.

- Rural Enterprise Zone Jobs Credit against Sales Tax--Provides a sales and use tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.<sup>36</sup>
- Urban Enterprise Zone Jobs Credit against Sales Tax--Provides a sales and use tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.<sup>37</sup>
- Business Property Used in an Enterprise Zone--Provides a refund for sales taxes paid on the purchase of certain business property and equipment, up to \$5,000 or 97 percent of the tax paid per parcel of property, which is used exclusively in an enterprise zone for at least 3 years.<sup>38</sup>
- Community Contribution Tax Credit--Provides a 50 percent sales tax refund for donations made to local community development projects.<sup>39</sup>
- Electrical Energy Used in an Enterprise Zone--Provides a 50 percent sales tax exemption to qualified businesses located within an enterprise zone on the purchase of electrical energy.<sup>40</sup>

Available state corporate income tax incentives for enterprise zones include:

- Rural Enterprise Zone Jobs Credit against Corporate Income Tax--Provides a corporate income tax credit for 30 or 45 percent of wages paid to new employees who live within a rural county.<sup>41</sup>
- Urban Enterprise Zone Jobs Credit against Corporate Income Tax--Provides a corporate income tax credit for 20 or 30 percent of wages paid to new employees who live within the enterprise zone.<sup>42</sup>
- Enterprise Zone Property Tax Credit--Provides a credit against Florida corporate income tax equal to 96 percent of ad valorem taxes paid on the new or improved property.<sup>43</sup>
- Community Contribution Tax Credit--Provides a 50 percent credit on Florida corporate income tax or insurance premium tax, or a sales tax refund, for donations made to local community development projects.<sup>44</sup>

The Enterprise Zone Program is scheduled to sunset on December 31, 2015.

#### *Effect of Proposed Changes*

The bill creates an unnumbered section of law which preserves state incentives for certain businesses with incentive agreements with the state that are currently located within enterprise zones. The bill defines the term “eligible business” to mean a business that entered into a contract with the DEO between January 1, 2012, and July 1, 2015, for a project that is located in an enterprise zone<sup>45</sup> under the following programs:

- The Local Government Distressed Area Matching Grant Program;<sup>46</sup>
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program;<sup>47</sup>
- The Qualified Target Industry (QTI) Business Tax Refund Program;<sup>48</sup>
- The Brownfield Redevelopment Bonus Refund Program;<sup>49</sup>
- The High-Impact Business Performance (HIPI) Grant Program;<sup>50</sup>

<sup>36</sup> Section 212.096, F.S.

<sup>37</sup> Id.

<sup>38</sup> Section 212.08(5)(h), F.S.

<sup>39</sup> Section 212.08(5)(p), F.S.

<sup>40</sup> Section 212.08(15), F.S.

<sup>41</sup> Section 220.181, F.S.

<sup>42</sup> Id.

<sup>43</sup> Section 220.182, F.S.

<sup>44</sup> See ss. 220.183 and 624.5105, F.S.

<sup>45</sup> Enterprise zone as designated pursuant to s. 290.0065, Florida Statutes 2014, on December 31, 2015.

<sup>46</sup> Section 288.0659, Florida Statutes.

<sup>47</sup> Section 288.1045, Florida Statutes.

<sup>48</sup> Section 288.106, Florida Statutes.

<sup>49</sup> Section 288.107, Florida Statutes.

<sup>50</sup> Section 288.108, Florida Statutes.

- The Quick Action Closing Fund (QAC) Program; and<sup>51</sup>
- The Innovation Incentive Program (IIP).<sup>52</sup>

The bill provides that an eligible business may apply for the following enterprise zone incentives, if the contract with the DEO is still deemed active by the department and has not expired or terminated:

- Exemption for a Licensed Child Care Facility operating in an Enterprise Zone;
- Sales Tax Refund for Building Materials;
- Sales Tax Refund for Business Property;
- Sales Tax Exemption for Electrical Energy;
- Enterprise Zone Jobs Tax Credit (Sales & Use Tax);
- Enterprise Zone Jobs Tax Credit (Corporate Income Tax); and
- Enterprise Zone Property Tax Credit (Corporate Income Tax).

This section of law is effective January 1, 2016, and expires on December 31, 2018.

## Sales Tax Holidays

### *Current Situation*

Since 1998, the Legislature has enacted 19 temporary periods (commonly called “sales tax holidays”) during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

*Back-to-School Holidays*--Florida has enacted a “back to school” sales tax holiday 13 times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$100. Books valued at \$50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. In 2014, the first \$750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back to school sales tax holidays in Florida:

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less

<sup>51</sup> Section 288.1088, Florida Statutes.

<sup>52</sup> Section 288.1089, Florida Statutes.

August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less

### *Proposed Changes*

*Back-to-School Holiday*--The bill provides for a ten day sales tax holiday beginning August 7, 2015, and ending August 16, 2015. During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts “school supplies” that cost \$15 or less per item.

Also exempt will be the first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

The “back to school” sales tax holiday does not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The DOR may adopt emergency rules to implement the provisions of this holiday.

### **Property Taxation in Florida**

Local governments, including counties, school districts, and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.<sup>53</sup> Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>54</sup> However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.<sup>55</sup>

When a property appraiser assesses subdivisions, s. 193.0235, F.S., specifies that ad valorem taxes and non-ad valorem assessments are assessed against the lots within a platted residential subdivision

<sup>53</sup> FLA. CONST. art VII, s. 9,

<sup>54</sup> FLA. CONST. art VII, s. 2.

<sup>55</sup> See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

and not upon the subdivision property as a whole. Pursuant to s. 193.0235, F.S., such assessments, including a tax or assessment imposed by a county, municipality, special district, or water management district, may not be assessed separately against common elements utilized exclusively for the benefit of lot owners within the subdivision, regardless of ownership. Property appraisers must prorate the value of the common elements and apply them to all of the lots in the subdivision.

For the purposes of s. 193.0235, F.S., the term “common element” includes:

- Subdivision property not included within lots constituting inventory for the developer which are intended to be conveyed or have been conveyed into private ownership.
- An easement through the subdivision property, which has been dedicated to the public or retained for the benefit of the subdivision.
- Any other part of the subdivision which has been designated on the plat or is required to be designated on the site plan as a drainage pond, or detention or retention pond, for the exclusive benefit of the subdivision.

### *Proposed Changes*

The bill adds to the definition of “common element” in s. 193.0235, F.S., property located within the same county as a subdivision and used for at least 10 years exclusively for the benefit of lot owners within the subdivision.

### **Corporate Income Tax Credits**

Florida levies corporate income tax on corporations at a rate of 5.5 percent on income earned in Florida.<sup>56</sup> The calculation of Florida corporate income tax starts with a corporation’s federal taxable income.<sup>57</sup> After certain addbacks and subtractions to federal taxable income required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>58</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation’s business activities attributable to Florida.<sup>59</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>60</sup>

### **Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit**

#### *Current Situation*

In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);<sup>61</sup>
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.<sup>62</sup>

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<sup>56</sup> s. 220.11, F.S.

<sup>57</sup> s. 220.12, F.S.

<sup>58</sup> See s. 220.15, F.S.

<sup>59</sup> s. 220.15, F.S.

<sup>60</sup> s. 220.14, F.S.

<sup>61</sup> s. 376.30781, F.S.

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$5 million annually. In the event that approved tax credit applications exceed the \$5 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Total requests for tax credits have met or exceeded the annual authorization since 2006.<sup>63</sup> Between 2008 and 2013, 359 applications for credits were submitted, resulting in an average approved credit of approximately \$101,500 per application. All tax credit authorizations have been exhausted to date. The total current backlog of approved credits is \$11.9 million as of July, 2014.

### *Proposed Changes*

The bill increases the annual amount of credits that may be awarded from \$5 million to \$21.6 million in fiscal year 2015-2016.

### Community Contribution Tax Credit

#### *Current Situation*

In 1980, the Legislature established the Community Contribution Tax Credit Program ("CCTCP") to encourage private sector participation in community revitalization and housing projects.<sup>64</sup> Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers") anywhere in Florida that contribute<sup>65</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>66</sup>

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>67</sup> As of January 1, 2015, the CCTCP had 126 approved sponsors.<sup>68</sup>

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

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<sup>62</sup> s. 220.1845, F.S.

<sup>63</sup> Department of Environmental Protection

<sup>64</sup> Ch. 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which is scheduled to be repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

<sup>65</sup> Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

<sup>66</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>67</sup> See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

<sup>68</sup> DEO, Division of Community Development, Email to House Economic Development & Tourism staff, Feb. 23, 2015. Email on file.

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>69</sup>

In addition, eligible projects must be located in an area designated as an enterprise zone<sup>70</sup> or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement.<sup>71</sup> Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage of a rural enterprise zone may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).<sup>72</sup> The Enterprise Zone program is scheduled to sunset on December 31, 2015.<sup>73</sup>

The Department of Economic Opportunity (DEO) administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.<sup>74</sup> Once approved by DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.<sup>75</sup> The taxpayer may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.<sup>76</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>77</sup> Unused credits against sales taxes may be carried forward for three years.<sup>78</sup>

DOR may approve a total of \$18.5 million annually in credits for projects that provide homeownership opportunities for low-income and very-low-income households and \$3.5 million in credits for all other projects.<sup>79</sup> During FY 2013-2014, DEO approved 328 tax credit applications submitted by 67 eligible sponsors for eligible projects located in 32 counties.<sup>80</sup> For FY 2014-2015, as of December 31, 2014, DEO has approved 383 tax credit applications.<sup>81</sup>

The Legislature extended the CCTCP in 1984, 1994, 2005, and 2014.<sup>82</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>83</sup> The CCTCP cap, which started at \$3 million annually, is currently set at \$21.9 million. The cap has been reached every fiscal year since FY 2001-2002.

<sup>69</sup> ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>70</sup> The Florida Enterprise Zone Act is scheduled for repeal on December 31, 2015. Section 290.016, F.S.

<sup>71</sup> *Id.*

<sup>72</sup> *Id.*

<sup>73</sup> s. 290.016, F.S.

<sup>74</sup> ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

<sup>75</sup> ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>76</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>77</sup> ss. 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>78</sup> s. 212.08(5)(p)1.b. and f., F.S.

<sup>79</sup> ss. 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

<sup>80</sup> See *supra* note 5.

<sup>81</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, Community Contribution Tax Credits Extension, HB 311/SB 302, p. 19, January 26, 2015 Revenue Impact Results, <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/pdf/impact0126.pdf>.

<sup>82</sup> Chs. 84-356, 94-136, 2005-282, and 2014-38, Laws of Fla.

<sup>83</sup> See Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, and 2008-153, Laws of Fla. In 2008, the Legislature raised the cap to \$16.5 million for FY 2008-2009. The cap reverted back to \$14 million for subsequent fiscal years. See Ch. 2008-153, s. 35, Laws of Fla.

The CCTCP expires June 30, 2016.<sup>84</sup>

### *Proposed Changes*

The bill extends the expiration date of the Community Contribution Tax Credit Program to June 30, 2018, expands eligibility to include projects designed to provide housing opportunities for persons with special needs, and provides \$21.4 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects. “Persons with special needs” is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans’ disability benefits.<sup>85</sup>

The bill also allows projects which are required to take place in a designated Enterprise Zone to continue to qualify for the Community Contribution Tax Credit after the Enterprise Zone program sunsets by stating that a project may qualify if it is in an area that was in an Enterprise Zone as of May 1, 2015. The bill also prevents the definitions of “community contribution” and “project” needed for administration of the program from sunseting prior to the sunset of the program.

### Research and Development Credits

#### *Current Situation*

*Federal Tax Credit*--The “U.S. Research and Experimentation Tax Credit” was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.<sup>86</sup>

The federal tax credit provides credit for three types of expenses: qualified research expenses; basic research payments; and payments to energy research consortiums.<sup>87</sup>

Under current federal law, “qualified research expenses” include wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or certain depreciable property), and up to 65 percent of funds paid to contracted personnel for qualified research.<sup>88</sup> “Qualified research” includes research undertaken to discover technological information that is intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license, or lease.<sup>89</sup>

The federal tax credit for qualified expenses is an incremental tax credit because a company is only rewarded if it increases its research & development (R&D) spending as compared to its spending during a predetermined base period. The amount of the federal tax credit can be determined by three different methods, depending in part on how long the company has been in business. Under the basic formula, the tax credit is equal to 20 percent of the current tax year’s qualified R&D expenses over the base amount, which is calculated using a ratio of qualified R&D expenses and gross receipts during the

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<sup>84</sup> Ch. 2014-038, s. 15 Laws of Fla.

<sup>85</sup> s. 420.0004(13), F.S.

<sup>86</sup> “The U.S. Research and Experimentation Tax Credit in the 1990s” by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at <http://www.nsf.gov/statistics/infbrief/nsf05316/> and “The Prospects for Economic Recovery,” prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at <http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf>. (last visited on May 24, 2011)

<sup>87</sup> 26 USC § 41(a)(1)

<sup>88</sup> 26 USC § 41(b).

<sup>89</sup> 26 USC § 41(d).

period of 1984 through 1988.<sup>90</sup> Newer companies can use simpler formulas that still compare current year R&D spending with past years.

Business entities that do not pay federal corporate income tax, such as S corporations and partnerships, are allowed to “pass-through” their federal R&D credits to shareholders or partners, based on these individuals’ shares in such business entities.<sup>91</sup>

For the 2012 federal tax year, 15,873 companies claimed \$10.8 billion in R&D tax credits, including \$168.9 million claimed via “pass-through” entities.<sup>92</sup> At \$6.6 billion, manufacturing companies claimed the largest portion of research tax credits.<sup>93</sup>

*Florida Tax Credit*--Section 220.194, F.S., authorizes a R&D tax credit against state corporate income taxes for businesses meeting the definition of a Qualified Target Industry pursuant to s. 288.106, F.S.. The tax credit is 10 percent of the difference between the current tax year’s research and development expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist. The statute relies on the definition from the federal R&D tax credit for determining eligible expenses.

The state tax credit taken in any taxable year may not exceed 50 percent of the company’s remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied.

Any unused credits may be carried forward by the business that originally earned them for up to 5 years following the year in which the qualified research expenses were incurred.

The maximum amount of research and development credits that may be approved by DOR during any calendar year is \$9 million. Applications may be filed with DOR on or after March 20th for qualified research expenses incurred within the preceding calendar year, and credits shall be granted in the order in which completed applications are received.

During the application period beginning in 2015, the DOR received a total of 81 applications for \$24 million of credits. Of these, 21 received funding and 59 were rejected due to the cap having been surpassed (one was rejected as a duplicate). All of the applications which received funding were filed within 9 minutes of the application window opening.<sup>94</sup>

### *Proposed Change*

The bill increases the total amount of credits that may be awarded during calendar year 2016 from \$9 million to \$23 million. It also provides that in the event applications for more than the annual cap are received, the credits shall be distributed on a pro rata basis rather than in the order applications are received.

Credit eligibility is also restricted to businesses to in the following Qualified Target Industries:

- Manufacturing;
- Life Sciences;
- Infotech;
- Aviation & Aerospace;

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<sup>90</sup> 26 USC § 41(c).

<sup>91</sup> 26 USC § 41 (g).

<sup>92</sup> Internal Revenue Service, Statistics of Income Division. Retrievable at <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>. (last visited March 20, 2015)

<sup>93</sup> Ibid.

<sup>94</sup> DOR Tax Information Publication 15C01-02.

- Homeland Security & Defense;
- Cloud IT;
- Marine Sciences;
- Materials Science; and
- Nanotechnology.

## **Insurance Premiums Tax on Title Insurance**

### *Current Situation*

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state.<sup>95</sup> This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75 percent, with deductions allowed for reinsurance accepted, return premiums and assessments.<sup>96</sup> It applies to self-insurance funds at a rate of 1.6 percent.<sup>97</sup> It applies to annuities at a rate of 1 percent.<sup>98</sup> It applies to wet marine and transportation insurance at a rate of 0.75% of gross underwriting profit, defined as net premiums minus net losses paid.<sup>99</sup>

There are a number of credits allowed against insurance premiums tax liability. These include:

- 100 percent of corporate income tax paid pursuant to chapter 220, F.S.;<sup>100</sup>
- 15 percent of salaries paid by the company to its Florida-based employees;<sup>101</sup>
- 50 percent of a community contribution made pursuant to the Community Contribution Tax Credit Program for enterprise zones;<sup>102</sup> and
- 100 percent of donations made to eligible scholarship funding organizations pursuant to s. 1002.395.<sup>103</sup>

The sum of the credits granted for corporate income tax and employee salaries may not exceed 65 percent of the insurer's premium tax liability.<sup>104</sup>

*Title Insurance*--Title insurance companies insure owners of real property and others with an interest in real property against loss due to encumbrance, defective titles, invalidity, or adverse claim to title.<sup>105</sup> The Financial Services Commission, consisting of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services,<sup>106</sup> must adopt a rule setting the rates charged by title insurance companies and determining the minimum portion of those premiums retained by the title insurer.<sup>107</sup> This percentage varies depending on the total coverage of the policy, and ranges from 30 percent to 40 percent.<sup>108</sup> The portion not retained by the title insurer goes to the title insurance agent.

Insurance premiums tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.<sup>109</sup> Title insurers are required to demonstrate to the DEO by July 1, 2016 that in the aggregate they have added a minimum of 600 Florida-based employees since this

<sup>95</sup> s. 624.509, F.S.

<sup>96</sup> s. 624.509(1)(a), F.S.

<sup>97</sup> s. 624.4625(4), F.S.

<sup>98</sup> s. 624.509(1)(b), F.S.

<sup>99</sup> s. 624.510, F.S.

<sup>100</sup> s. 624.509(4), F.S.

<sup>101</sup> s. 624.509(5), F.S.

<sup>102</sup> s. 624.5105, F.S.

<sup>103</sup> s. 624.51055, F.S.

<sup>104</sup> s. 624.509(6)(a), F.S.

<sup>105</sup> s. 624.608, F.S.

<sup>106</sup> s. 20.121(3), F.S.

<sup>107</sup> s. 627.782, F.S.

<sup>108</sup> Rule 69O-186, F.A.C.

<sup>109</sup> s. 624.509(8)(a), F.S.

exemption was put in place in 2014 to provide proof to the Legislature of the effectiveness of the exemption. This exemption will expire December 31, 2017 unless the Legislature reenacts it.

### *Proposed Changes*

The bill repeals the expiration date of the exemption for portions of title insurance premiums retained by agents or agencies if the Department of Economic Opportunity certifies that the title insurance industry has increased employment in Florida by 600 full-time employees by July 1, 2017.

## **Aviation Fuel Tax – Higher Education Reduction**

### *Current Situation*

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use.<sup>110</sup> However, Florida law also provides for a refund or credit of the aviation fuel tax paid on fuel delivered to certain air carriers that met and continued certain job creation criteria after January 1, 1996.<sup>111</sup>

*Aviation Accreditation Board International*--The Aviation Accreditation Board International (AABI) is recognized by the Council for Higher Education Accreditation for its degree programs in aviation offered by colleges and universities in the United States and throughout the world.<sup>112</sup> The goals of the AABI are to:<sup>113</sup>

- stimulate collegiate aviation program excellence and self-improvement;
- establish uniform minimum educational quality standards; and
- increase the credibility, integrity, and acceptance of collegiate aviation programs within institutions of higher education and all aspects of the aviation community, to include industry, government, and the public-at-large.

There are 37 higher education institutions in the world that are accredited by the AABI, four of which are located in Florida.<sup>114</sup>

*Economic Impact of Aviation*--In Fiscal Year 2013-14, there were over 900 million gallons of aviation fuel purchased in Florida, resulting in approximately \$62 million in aviation fuel tax due.<sup>115</sup> According to the Florida Department of Transportation, there are 19 commercial service airports, 102 public-use general aviation airports, and 11 military aviation facilities in Florida.

### *Proposed Changes*

The bill amends s. 206.9825, F.S., to provide an aviation fuel tax exemption or refund for aviation fuel used for flight training through a school of aeronautics or college of aviation by any college based in this state that is tax exempt under s.501(c)(3) of the Internal Revenue Code or any university based in this state that is accredited or has applied for accreditation by the AABI and offers a graduate program in aeronautical or aerospace engineering or offers flight training through a school of aeronautics or college of aviation.

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<sup>110</sup> s. 206.9825, F.S. (Such fuel is not subject to taxes imposed by ss. 206.41(1)(d), (e), and (f) or 206.87(1)(b), (c), and (d), F.S., relating to motor fuel and diesel fuel, respectively.)

<sup>111</sup> See s. 206.9825(1)(a), F.S.

<sup>112</sup> Council for Higher Education Accreditation (CHEA), Summary of Recognition Status, AABI, March 15, 2013. CHEA is a private, nonprofit national organization of 3,000 degree-granting colleges and universities that coordinates accreditation activity.

<sup>113</sup> Aviation Accreditation Board International (AABI), Goals, available at: <http://www.aabi.aero/goals.html> (last visited March 21, 2015).

<sup>114</sup> AABI, Accredited Programs, available at: <http://www.aabi.aero/programs.html> (last visited March 21, 2015).

<sup>115</sup> DOR, Collections data, on file with House Finance & Tax Committee.

The bill also creates a new distribution from sales tax to offset the impact of the exemption on the State Transportation Trust Fund.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See FISCAL COMMENTS below.

#### 2. Expenditures:

The bill appropriates \$277,790 in nonrecurring General Revenue to the Department of Revenue for purposes of implementing various provisions of the bill. See FISCAL COMMENTS below for more details.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See FISCAL COMMENTS below.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Most Floridians, both businesses and individuals, will see a reduction in their phone, cable, or satellite bills.

The agricultural sales tax exemption should reduce the cost of agricultural activities in Florida. Exemptions for concessions will have a positive impact on parents and students in Florida. The exemption for admissions to gun clubs will have a positive impact on gun clubs and gun club members.

Companies that make contributions to low-income housing and certain other projects, clean up and redevelop polluted lands, and engage in research and development will pay less in corporate income and sales taxes.

Title insurance companies and insurance companies that make contributions to low-income housing and certain other projects will pay lower insurance premiums taxes.

Individuals that participate in the Back to School Sales Tax Holiday will benefit from no sales tax on purchases during those periods.

Eligible deployed military servicemembers will save sales tax on certain motor vehicles and save ad valorem tax as a result of this bill.

Eligible higher educational institutions will see reduced costs for the aviation fuel that they use.

Florida businesses engaged in repairing yachts may see increased business as a result of the sales tax limitation on boat repairs.

A. FISCAL COMMENTS:

The total impact of the bill in fiscal year 2015-2016 is -\$365.0 million (-\$252.1 million recurring) of which -\$341.8 million (-\$248.7 million recurring) is on General Revenue, and -\$23.2 million (-\$3.4 million recurring) is on local government (see table below). The impact on state trust funds is negative and insignificant. Several measures in the bill result in further, non-recurring revenue impacts in years beyond fiscal year 2015-2016. The table below indicates the total impacts and the years during which those impacts will occur. Adding nonrecurring cash impacts beyond fiscal year 2015-2016 to the first year impacts brings the total cash impact of the bill to -\$427.8 million, of which -\$398.9 million is on General Revenue, and -\$28.9 million is on local government.

*Appropriations Detail*—The \$277,790 appropriated in the bill consists of the following: \$233,730 to implement the “back-to-school” sales tax holiday; and \$44,060 to implement the communications services tax rate reduction. The appropriation for the back-to-school holiday is to pay the cost of mailing a taxpayer information publication (TIP) to approximately 581,000 sales tax dealers notifying them of the tax free period. Of the appropriation for the CST tax rate reduction, \$39,060 is for computer system reprogramming. The remainder is to update a CST web application.

**Fiscal Year 2015-16 Revenue Impacts (millions of \$)**

<b>ISSUE</b>	<b>General Revenue</b>		<b>State Trust Funds</b>		<b>Local</b>		<b>Total</b>	
	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>
<u>Communication Serv Tax</u> : Rate Cut of 1.73%	(207.3)	(226.1)	-	-	-	-	(207.3)	(226.1)
<u>Sales Tax</u> : Agriculture-related Exemptions	(10.3)	(11.0)	(*)	(*)	(2.1)	(2.4)	(12.4)	(13.4)
<u>Sales Tax</u> : Back-to-School Holiday/10 days	(55.4)	-	(*)	-	(12.4)	-	(67.8)	-
<u>Sales Tax</u> : College Textbooks Exempt/1 Yr	(33.9)	-	(*)	-	(7.6)	-	(41.5)	-
<u>Sales Tax</u> : Gun Club Membership Fees	(1.0)	(1.0)	(*)	(*)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Sales Tax</u> : Boat Repairs/Tax Capped at \$60k	(3.4)	(3.6)	(*)	(*)	(0.4)	(0.5)	(3.8)	(4.1)
<u>Sales/Corporate</u> : Enterprise Zone/Limited Extension	(1.2)	-	(*)	-	(0.2)	-	(1.4)	-
<u>Sales Tax</u> : Motor Vehicles/Military Deployed Overseas	(0.7)	(0.7)	(*)	(*)	(0.1)	(0.1)	(0.8)	(0.8)
<u>Sales Tax</u> : School Concessions	(1.5)	(1.5)	(*)	(*)	(0.2)	(0.2)	(1.7)	(1.7)
<u>Corp Inc Tax</u> : Brownfield Credits	(16.6)	-	-	-	-	-	(16.6)	-
<u>Corp Inc Tax</u> : Research & Development Credits	(10.0)	-	-	-	-	-	(10.0)	-
<u>Ad Valorem</u> : Common Elements Definition	-	-	-	-	+/-	+/-	+/-	+/-
<u>Aviation Fuel Tax</u> : Higher Ed Reduction	(0.2)	(0.2)	-	-	-	-	(0.2)	(0.2)
<u>Insurance Prem Tax</u> : Title Insurance	-	(4.6)	-	-	-	-	-	(4.6)
<u>Tax Holidays &amp; Tax Rate Cuts</u> : Appropriations	(0.3)	-	-	-	-	-	(0.30)	-
<b>FY 2015-16 Total</b>	<b>(341.8)</b>	<b>(248.7)</b>	<b>-</b>	<b>-</b>	<b>(23.2)</b>	<b>(3.4)</b>	<b>(365.0)</b>	<b>(252.1)</b>
<b><u>Non-recurring Impacts After FY 2015-16</u></b>								
<u>Sales Tax</u> : College Textbooks Exempt/1 Yr (FY 2016-17)	(1.7)	-	-	-	(0.5)	-	(2.2)	-
<u>Corp Inc Tax</u> : Research & Development Credits/ 1 Yr Increase (FY 2016-17)	(4.0)	-	-	-	-	-	(4.0)	-
<u>Sales/Corporate</u> : Enterprise Zone/Limited Extension (FY 2016-17 to 2019-20)	(6.4)	-	(*)	-	(0.4)	-	(6.8)	-
<u>Sales/Corporate</u> : Community Contribution Tax Credits (FY 2016-17 & 2017-18)	(45.0)	-	-	(*)	(4.8)	-	(49.8)	-
<b>Bill Total</b>	<b>(398.9)</b>	<b>(248.7)</b>	<b>-</b>	<b>-</b>	<b>(28.9)</b>	<b>(3.4)</b>	<b>(427.8)</b>	<b>(252.1)</b>

**(\*) Impact less than \$50,000.**

**+/- Impact is indeterminate as to magnitude and direction.**