

STORAGE NAME: h2109
DATE: April 24, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: H 2109

RELATING TO: Taxation

SPONSOR(S): Committee on Finance & Taxation

STATUTE(S) AFFECTED: Sections 201.09, 212.04, 212.05, 212.054, 212.12, 212.08, 221.02 and 220.15, Florida Statutes

COMPANION BILL(S): CS/SB1660 (similar)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCE AND TAXATION YEAS 11 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill includes various provisions that encourage economic development among Florida businesses and includes provisions that support charitable organizations:

The bill provides a sales and use tax exemption for: 1) food and beverages donated to charity; 2) food and beverage samples; 3) complementary meals provided to guests by hotels and motels; 4) performing arts centers who provide educational programs to school children; 5) commercial aircraft sales and leases by a common carrier; 6) parts for aircraft maintenance and repair of commercial aircraft of more than 20,000 pounds; 7) certain purchases by ad agencies when the agency is acting as an agent for its client; 8) religious organizations that provide nonprofit religious services, evangelistic services, religious education, or missionary activities for, or in direct participation with, churches, synagogues, or other places of worship; 9) organizations who provide audio recordings of religious scripture to the visually impaired at no charge; 10) any nonprofit Florida radio station where at least 90 percent of the programming is religious and is predominantly supported by public contributions; 11) power driven farm equipment; 12) nonprofit cooperative hospital laundries; and 13) gold, silver, or platinum bullion in excess of \$500 per transaction.

The bill also: 1) provides a corporate tax credit to encourage research and development activities conducted through sponsored research at state universities; 2) revises the exemption for electricity used in manufacturing; 3) revises the language relating to the sales tax exemption for food products sold for human consumption; 4) increases in the collection allowance for sales tax dealers from \$30 a month to \$50; 5) allows an exemption from discretionary sales taxes levied by a high tourism impact county if the aggregate rate exceeds 5%; 6) specifies conditions under which a renewal note evidencing a revolving obligation is exempt from documentary stamp tax and providing a retroactive exemption; and 7) provides that credits against the emergency excise tax would have expired on or after July 1, 1996 can be carried forward.

The bill is projected to reduce General Revenue receipts by (\$25.7) million in FY 1997-98 and (\$36.0) million in FY 1998-99. The bill will reduce receipts to the Solid Waste Management Trust Fund by a negative indeterminate amount in FY 1997-98 and in FY 1998-99. Revenues to local governments will be reduced by (\$3.0) million and (\$5.1) million in FY's 1997-98 and 1998-99, respectively. See Section III. Fiscal Analysis for a detailed summary of the bill's fiscal impact.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

See II. B. below.

B. EFFECT OF PROPOSED CHANGES:

The substantive analysis is broken down by topic with a present situation and effect of proposed changes for each topic. The section by section analysis provides a reference as to which statutes have been amended and the effect of the amendment.

Promissory Notes Evidencing a Term Obligation

(Section 1)

PRESENT SITUATION: Section 199.133, F.S., imposes a nonrecurring tax of 2 mills on each dollar of the just value of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed, or other lien upon real property in Florida

Section 201.09, F.S., provides exemption of renewal notes. If a renewal note is executed by the same obligor and continues the identical contractual obligations without enlargement of the original obligation, it is exempt. For revolving lines of credit, one with floating principal balance, the balance is rarely fully funded on a renewal date. In order to periodically renew such obligations, banking institutions either require their customers to repay documentary stamps or structure the transactions to avoid the tax. Typically, institutions require the line to be "funded up" to the original principal amount immediately before the renewal, renew the note tax free pursuant to s. 201.09, F.S., then require repayment of the amount funded. Structuring the renewal in this way avoids the tax on the renewals; however, the method can result in unintended mistakes.

Currently, documents must qualify under s. 201.09, F.S., to be exempt renewals. Payment of documentary stamp tax is a prerequisite to qualify under the section. There is no provision for correcting payment on a prior document; therefore, an error can have the effect of imposing tax on subsequent documents.

EFFECT OF PROPOSED CHANGES: Section 201.09, F.S., is amended to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor and renewed or extended by no more than the original face amount of the original contract or obligation. This exemption would apply retroactively to any revolving obligation dated after January 1, 1990, if the tax had not been pay on the effective date of the section.

Coins and Gold, Silver, or Platinum Bullion

(Sections 2, 3, and 7)

PRESENT SITUATION: Coins and currency which are in general circulation and are considered "legal tender" are exempt from sales and use tax. Sec. 212.05(1)(I), F.S. (1996 Supp.). Coins and currency which are not traded at their face value or are sold based on their precious metal content are not considered legal tender and are subject to sales tax at the rate of 6% except that if the coin or currency of the United States, the tax

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will be only on the amount in excess of the face value. The sale of gold, silver, or platinum bullion is subject to sales tax.

EFFECT OF PROPOSED CHANGE: The sale of coins and currency and the sale of gold, silver, or platinum bullion in excess of \$500 in a single transaction would be exempt from sales tax. Dealers would be required to keep proper documentation, as described by rule. The Department of Revenue would be authorized to adopt emergency rules to implement these exemptions. The emergency rules would be effective for a period of six months.

Discretionary Sales Surtaxes

(Section 4)

PRESENT SITUATION: Under the provisions of s. 212.054(2)(a), F.S., 1996 Supplement, the local discretionary sales surtaxes authorized in s. 212.055, F.S., 1996 Supplement, apply to all transactions subject to the state tax imposed on sales, use, services, rentals and admissions. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax may not be applied to any sales amount above \$5,000 on any item of tangible personal property or to long distance telephone service charges. The \$5,000 cap does not apply to the sale of any other service.

Section 212.054(4), F.S., 1996 Supplement, requires the Department of Revenue (DOR) to administer, collect, and enforce the local discretionary sales surtaxes in the same manner that state sales taxes are handled. The only exception is the Dade County Food and Beverage Surtax, which is self-administered. Pursuant to s. 212.054(6), F.S., 1996 Supplement, the governing body of any county enacting an ordinance providing for the imposition of a surtax must notify DOR within ten days after adoption of the ordinance. Notification to DOR and final adoption of the enabling ordinance must occur at least 45 days prior to the initial imposition of the surtax.

EFFECT OF PROPOSED CHANGES: The bill amends s. 212.054, F.S., 1996 Supplement, by exempting from a discretionary sales surtax levied under s. 212.055, F.S., 1996 Supplement, those transactions which are subject to tourist development tax by the governing body of a county which meets the following criteria:

- ◆ Levies and imposes upon those transactions within the county a tourist development tax of five or more percent in the aggregate; and
- ◆ Levies the discretionary sales surtax effective January 1, 1998 or thereafter.

Furthermore, this section provides that if the tourist development tax is levied and imposed only in a subcounty special district, and not in the entire county, the exemption only applies in the subcounty special district. If the aggregate rate of the tourist development tax levied and imposed within the county or subcounty special district is reduced to less than five percent, the exemption no longer applies within either the county or subcounty special district.

Dealer Collection Allowance

(Sections 5-6)

PRESENT SITUATION: Chapter 212, F.S., among other things, authorizes the assessment and collection of state sales taxes. Dealers who collect sales taxes for the state are required to remit these taxes by the 20th of the month following collection. A "dealer" is generally defined as a person who sells at retail or provides for rental items of tangible personal property, or a person who sells admissions.

Subsection 212.12(1), F.S., authorizes dealers who collect sales and use tax for the state to keep 2.5 percent of the first \$1,200 in taxes collected (up to a maximum of \$30) for their respective reporting period (month, quarter, six months). This collection serves as compensation for keeping prescribed records and for the proper accounting for and remitting of state sales tax.

EFFECT OF PROPOSED CHANGES: The bill increases the maximum amount of sales and use tax upon which a dealer's collection allowance is based from \$1,200 to \$2,000. The maximum monthly collection allowance would increase from \$30 to \$50.

FOOD PRODUCTS FOR HUMAN CONSUMPTION

(Section 7)

PRESENT SITUATION: Section 212.08(1), F.S., currently provides an exemption from the sales and use tax for food and drinks sold for human consumption. Current rules and law identify items that are exempt or taxable. The list of items that are currently exempt includes:

1. Food for human consumption.
2. Tea, unless sold in liquid form.
3. Coffee or coffee substitutes, even if sold in liquid form.
4. Bakery products cooked or prepared for consumption off the premises.
5. Ice cream or frozen yogurt sold in quarts or larger containers for consumption off the premises.
6. Food or drinks cooked or prepared in a grocery store and given to customers as samples.

The list of items that are taxable includes:

1. Food and drinks sold in hotels, restaurants, cafeterias, drugstores, lunch counters, amusement parks, racetracks, taverns, concession stands at arenas, auditoriums, carnivals, fairs, stadiums, theaters, or other like places of businesses.

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2. Food and drinks sold ready for immediate consumption from vending machines, pushcarts, motor vehicles, or any other form of vehicle.
3. Tea sold in liquid form.
4. Bakery products sold ready for immediate consumption on the premises.
5. Soft drinks when sold in cans or similar containers.
6. Food or drinks cooked or prepared on the seller's premises and sold ready for immediate consumption either on or off the premises.
7. Sandwiches sold ready for immediate consumption.
8. Candy.
9. Ice cream and frozen yogurt in cones, small cups or pints, popsicles, frozen fruit bars or other novelty items.
10. Gum and breath mints.
11. Water to which carbonation or minerals have been added.
12. Taxable items such as candy and soft drinks given away to a customer as a sample.

The Department of Revenue notes that there are approximately 1,000 new food products introduced each month. The determination of whether such products are taxable must be made before the product can be sold, and within approximately 10 days from the time a buyer orders such products.

EFFECT OF PROPOSED CHANGES: This bill revises and clarifies the sales tax exemption for food and drinks sold for human consumption. The bill provides specific definitions for terms used in section 212.08(1), F.S. The net effect of the revisions contained in this bill is to delineate that some items currently determined as taxable by the Department of Revenue will now be exempt, and some items currently determined as tax exempt by the Department will now be taxable. Specific items that are currently considered taxable, but would now be tax exempt are:

1. All bakery products sold by bakeries or pastry shops that do not have eating facilities.
2. Items that are not considered candy, based on their normal use, as indicated on the label or advertising.

Food products prepared off the premises and sold for immediate consumption, unless prepared and sold in the original sealed container, would be taxable.

The bill also defines/clarifies the terms "premises," "for consumption off the premises," "for consumption on the premises," and "hot prepared food products."

The bill revises the composition of the technical assistance advisory committee to include representatives of both manufacturers and retailers. The bill requires the Department of Revenue with the advice of the advisory board to develop guidelines to instruct dealers whether specific products are taxable. The bill exempts the development of these guidelines from administrative rule procedures contained in Chapter 120, F.S., but does allow the guidelines to be challenged pursuant to an administrative hearing proceeding conducted under ss. 120.569 and 120.57, F.S. The Department is also authorized to develop a central database of information on the taxability of specific products.

Power-Driven Equipment

(Section 7)

PRESENT SITUATION: Subsection 212.08(3), F.S., currently provides a partial sales tax exemption (reducing the rate from 6% to 3%) on equipment that is either self-propelled or power-drawn and used by farmers in the plowing, planting, cultivating or harvesting of crops. Members of other sectors of the Florida agriculture industry, particularly dairy and poultry, have raised concerns that equipment used to carry out similar functions in these sectors are not able to enjoy the same benefit. This equipment is ineligible for the partial exemption because it is not classified as self-propelled or power-drawn, but rather draw power from an external source. Further, the current statute only refers to activities relating to crops and is not broadly applied to other types of food production such as dairy or poultry farming.

EFFECT OF PROPOSED CHANGES: Section 212.08(3) F.S., is amended to add power-driven equipment to the types of farming equipment eligible to receive a partial sales tax exemption (3% tax rate) and to extend the partial exemption to equipment used by farmers "in producing food." The sales tax on rentals of these types of equipment remains at the 6% level.

Religious Institutions

(Section 7)

PRESENT SITUATION: Section 212.08(7)(o), F.S., provides exemptions from sales and use tax for transactions involving sales and leases directly to churches, and sales or leases of tangible personal property by churches. Sales or leases to nonprofit religious institutions are exempt from sales and use tax when used in carrying on their customary activities. The section defines "religious institutions" as follows:

- ▶ churches, synagogues, and established physical places of worship;
- ▶ nonprofit corporations whose sole purpose is to provide free transportation services to churches;
- ▶ any office whose function is to assist or regulate the customary activities of religious organizations or members;

- ▶ any s. 501(c)(3), I.R.C., non-profit corporation which owns and operates a Florida television station where at least 90 percent of the programming is religious and is predominantly supported by public contributions; and
- ▶ any s. 501(c)(3), I.R.C., non-profit corporation which provides religious services to prisoners and has its own ministry providing services to the community on a weekly basis.

EFFECT OF PROPOSED CHANGES: The bill provides a sales and use tax exemption for non-profit religious organizations, whose primary activity is giving free audio tapes of religious scripture to blind or visually impaired persons. In addition, it modifies the current definition of "religious institutions", for purposes of sales tax exemption, to include those non-profit organizations whose primary purpose is to provide religious services, evangelistic services, religious education, or missionary education. The bill also adds to the definition of "religious institutions" any s. 501(c)(3), I.R.C., non-profit corporation which owns and operates a Florida radio station where at least 90 percent of the programming is religious and is predominantly supported by public contributions.

Performing Arts Centers
(Section 7)

PRESENT SITUATION: Section 212.08(7)(o)1.b., F.S., provides a sales and use tax exemption for sales or leases to nonprofit educational institutions. The definition of "educational institutions" includes nonprofit libraries, art galleries, and museums open to the public.

EFFECT OF PROPOSED CHANGES: The bill would include in the definition of "educational institutions" performing arts centers that provide educational programs exclusively to school children when such programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,00 school children per year.

Electricity Used in Manufacturing
(Section 7)

PRESENT SITUATION: Section 212.08(7), F.S., 1996 Supp., provides an exemption from the sales and use tax which provides that charges for electricity used directly and exclusively at a fixed location to operate manufacturing machinery and equipment are exempt. The exemption is applicable if the electricity used for exempt purposes is separately metered. If it is not separately metered, it is presumed that 50 percent of the charge for electricity is for nonexempt purposes. The exemption applies solely to industries under specified Standard Industrial Classification (SIC) numbers. The percentage of eligible electricity charges exempt under the statute is increased from 20 percent beginning July 1, 1996, to 100 percent beginning July 1, 2000.

EFFECT OF PROPOSED CHANGES: Section 212.08(7)(ii), F.S., 1996 Supp., relating to the sales tax exemption for electricity used to operate manufacturing equipment, is amended to include electricity used to operate equipment in preparing goods for shipment. A provision requiring separate metering of electricity, or creating a presumption that 50 percent of charges are for nonexempt purposes, is replaced with a

requirement that at least 75 percent of the electricity used at the fixed location be used to operate qualifying machinery or equipment. The bill also clarifies that in order to receive the exemption, a taxpayer first must register with the Work and Gain Economic Self-sufficiency (WAGES) Program Business Registry established by the local WAGES coalition for the area in which the taxpayer is located.

Aircraft Replacement Engines and Parts

(Section 7)

PRESENT SITUATION: Part I of ch. 212, F.S., provides for the imposition of a 6 percent state sales and use tax on all parts and equipment installed in connection with the major repair, alteration, rebuilding or maintenance of an aircraft. Current law provides exemptions for the following aircraft parts and maintenance:

- 1) parts and services for aircraft modifications resulting in a major change to the aircraft's design and performed under the authority of a supplemental type certificate issued by the Federal Aviation Administration;
- 2) parts and equipment installed on foreign registered aircraft; and
- 3) repairs and maintenance for air carriers using mileage apportionment for corporate income tax and electing to be taxed on an apportioned basis.

In 1994, the Legislature granted an exemption for labor charges for the repair and maintenance of aircraft of more than 20,000 pounds maximum certified take-off weight. Charges for parts and equipment furnished in connection with such labor charges are taxable. (See s. 212.08(7)(ff), F.S.).

EFFECT OF PROPOSED CHANGES: This bill creates an exemption from the sales and use tax, levied pursuant to part I of ch. 212, F.S., for replacement engines, parts, and equipment used in the repair or maintenance of commercial aircraft with certified maximum take-off weights of more than 20,000 pounds if such parts or equipment are installed on an aircraft that is being repaired or maintained in this state.

Aircraft Sales and Leases

(Section 7)

PRESENT SITUATION: The sale or lease of an aircraft for use by a common carrier is subject to sales tax.

EFFECT OF PROPOSED CHANGES: The sale or lease of an aircraft for use by a common carrier would be exempt from sales tax. A "common carrier" is defined as an airline operating under Federal Aviation Administration regulations contained in Title 14, chapter I, part 12, part 129, or part 135 of the Code of Federal Regulations.

Complimentary Meals, Complimentary Sample Foods and Donated Food

(Section 3)

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PRESENT SITUATION: Groceries are specifically exempted from the tax in s. 212.08(1), F.S., if the sale of such items meets certain conditions; however, sales and use taxes generally are collected on those foods which have been prepared for immediate consumption.

It has become the practice of certain hotels to promote their establishments by offering complimentary or "free" food and beverages to their guests.

The DOR has made a number of determinations regarding the applicability of sales tax on transactions between food and beverage suppliers and hotels and the transactions between hotels and the ultimate consumers of food and beverage items supplied by such establishments.

- 1) Any taxable food or beverage is not subject to tax if it is purchased for resale (at wholesale). The tax is collected when the establishment resells the items.
- 2) Any food or beverage which is prepared by the hotel and sold is subject to the sales tax. The tax is collected when the establishment resells the items at retail.
- 3) Food and beverage items which have been "prepared or served" in some fashion and given away by the hotel are subject to the sales and use tax. The hotel is considered the final consumer of the items (s. 212.08(1)(a)1., F.S.). In Florida Hotel and Motel Association, Inc. v. DOR, 635 So.2d 1044 (Fla. 1st DCA 1994) and Air Jamaica, Ltd. v. DOR, 374 So.2d 575 (Fla. 3rd DCA 1979), these items are considered "nothing more than amenities incidental to the business" and are not purchases for resale. Tax is due on food and beverages included as an amenity to the hotel room.

Presently, complimentary food and beverage items offered as samples are subject to sales and use tax. Food and beverage items donated to a food bank or other charitable organization are subject to use tax to be paid by the business making the donation.

EFFECT OF PROPOSED CHANGES: The bill provides an exemption from the sales and use tax for the purchase of food or beverage items offered as part of a packaged room rate to guests of transient living accommodation establishments licensed under part I of ch. 509, F.S. Such establishments will not be considered the ultimate consumers of such items and therefore, will only be responsible for any tax due on the total charge for the package and not the cost price of the food or beverage items. The establishments will be able to purchase such food and beverage items tax free under the exemption of a sale for resale.

The bill creates a new sales tax exemption for "complimentary food items," and "donated foods or beverages." The bill defines "complimentary food items" as follows:

1. Any food or drink that is provided without charge as a sample or for the convenience of customers.
2. Any item given to a customer as part of a price guarantee plan.

Businesses with the primary activity of serving prepared meals or alcoholic beverages for immediate consumption are not eligible for the exemption for complimentary food

items. "Donated foods or beverages" are defined as food or drink donated to a food bank or a nonprofit organization that is exempt from the state sales and use tax.

Advertiser Inputs

(Section 7)

PRESENT SITUATION: Current law holds that the entire value of a service is taxable if it includes the sale of consequential tangible personal property. The courts have recently found that tangible personal property sold as part of a package of advertising services is inconsequential; therefore, the entire package, including the tangible personal property, is not taxable.

EFFECT OF PROPOSED CHANGES: The bill clarifies that when advertising agencies act as agents for their clients in purchasing property such as photograph negatives and prints, videos, films, etc., such purchases are taxable. However, no tax would be due on sales where the agency packages all the property together into an advertising service product and sells it to its clients with its own markup. The purpose of this language is to clarify the law in light of recent court cases on the matter. The changes proposed in the bill preserve the taxation of tangible personal property while exempting the actual services sold.

Nonprofit Cooperative Hospital Laundries

(Section 7)

PRESENT SITUATION: Under present law, sales and purchases by nonprofit hospital laundries are subject to sales and use tax. A nonprofit cooperative hospital laundry would provide laundry services to its members who are nonprofit hospitals.

EFFECT OF PROPOSED CHANGES: Purchases and sales by nonprofit hospital laundries would be exempt from sales tax if the laundry's sole purpose was to offer laundry supplies and services to its members. All of the cooperative's members must be exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code.

Research and Development Activities

(Section 5)

PRESENT SITUATION: Chapter 220, F.S., imposes the Florida corporate income tax. The tax is equal to 5.5 percent of the taxpayer's net income for the taxable year. Section 220.12, F.S., 1996 Supp., defines net income as the taxpayer's adjusted federal income, or the amount apportioned to Florida, plus nonbusiness income, less child-care facility startup costs, and less a \$5,000 exemption. Section 220.15, F.S., provides that adjusted federal income shall be apportioned to Florida by taxpayers doing business within and without the state. The statute provides for such income to be multiplied by an apportionment fraction composed of sales, property, and payroll factors.

EFFECT OF PROPOSED CHANGES: This section of the bill is designed to further encourage corporations to conduct research and development activities within the State of Florida. This provision will exclude any property or payroll expenses certified as

being exclusively dedicated to research and development activities or sponsored research conducted in conjunction with and through any public or private university or college, located within Florida, from the apportionment formula. Also, no corporation shall become subject to Florida corporate tax as a result of solely conducting research and development activities within this state. The reduction in tax due shall not exceed the amount paid to the state university for the conduct of the sponsored research. And no sponsored contracts in existence prior to July 1, 1997, shall be eligible for the credit.

The Department of Revenue is directed to adopt necessary rules and the Board of Regents shall monitor the sponsored research contracts and report to the Speaker of the House of Representative and to the President of the Senate by February 1, 1999.

Carry Forward of Emergency Excise Tax Credits

(Section 9)

CURRENT SITUATION: Section 221.02, F.S., allows a taxpayer to carry over a credit against its emergency excise tax for a period of five taxable years from the year the credit was first allowed.

EFFECT OF PROPOSED CHANGES: The bill would allow emergency excise tax credits that would have expired on or after July 1, 1996, to be carried forward until such credit is fully utilized.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The Department of Revenue is directed to make emergency rules in connection with the sales tax exemption on coins and bullion. The Department of Revenue is directed to make rules in connection with the corporate income tax credit for research and development activities. The bill requires the Department of Revenue to develop guidelines for determining the taxability of certain products.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

The bill requires the Department of Revenue to develop guidelines and a database of information on the taxability of specific products. The bill requires the Board of Regents to report to the Speaker of the House of Representative and the President of the Senate by February 1, 1999, concerning the success of the corporate income tax credit for sponsored research and development.

- (3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

Yes.

- d. Does the bill reduce total fees, both rates and revenues?

Yes. There are a number of sales and corporate tax exemptions provided for various industries to promote business development.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

- (1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION RESEARCH:

Section 1 amends s. 201.09, F.S., to exempt from taxation a renewal note evidencing a revolving obligation which is executed only by the original obligor for no more than the original face amount of the original contract or obligation. This section also makes the exemption retroactive to any renewal note evidencing a revolving obligation dated after January 1, 1990, if the tax has not been paid on the effective date of this section.

Section 2 amends s. 212.05, F.S. (1996 Supp.), to exempt the sale of coins or currency in which the taxable amount of the sale of such coins or currency exceeds \$500.

Section 3 authorizes the Department of Revenue to adopt emergency rules relating to the sale of coins, currency and precious bullion. The emergency rules would be effective for six months.

Section 4 amends s. 212.054, F.S., 1996 Supplement, by exempting from a discretionary sales surtax levied under s. 212.055, F.S., 1996 Supplement, those transactions which are subject to tourist development tax by the governing body of a county which meets certain specified criteria. The section also provides that if the TDT is levied and imposed only in a subcounty special district, and not the entire county, the exemption only applies in the subcounty special district. If the aggregate rate of the TDT levied and imposed is reduced to less than five percent, the exemption no longer applies.

Sections 5 and 6 amend ss. 212.04(5) and 212.12(1) F.S. respectively, to increase the maximum amount of sales and use tax upon which a dealer's collection allowance is based from \$1,200 to \$2,000. The maximum monthly collection allowance would increase from \$30 to \$50.

Section 7 amends ss. 212.08(1), 212.08(3), 212.08(5)(b), 212.08(7)(o), and 212.08(7)(ff). Subsections 212.08(7)(nn), 212.08(7)(oo), 212.08(7)(pp), 212.08(7)(qq), 212.08(7)(rr), 212.08(7)(ss), 212.08(7)(tt), and 212.08(7)(uu) are created. The detail is as follows:

- * Section 212.08(1), F.S., is amended relating to specific exemptions from the state sales and use tax. The language is relating to the sales tax exemption for food products sold for human consumption. Current language is deleted which delineates which products are exempt, nonexempt items and activities, and which sellers of such products are exempt. New language is added specifically defining "for consumption off the premises," "for consumption on the premises," "premises," "hot prepared food products," and nonexempt items and activities.
- Section 212.08(3) F.S., is amended to add power-driven equipment to the types of farming equipment eligible to receive a partial sales tax exemption (3% tax rate) and to extend the partial exemption to equipment used by farmers "in producing food." The sales tax on rentals of these types of equipment remains at the 6% level.
- Section 212.08(7)(o) is amended to provide for an exemption for non-profit religious organizations, whose primary activity is giving free audio tapes of the Bible to blind or visually impaired persons, from sales tax on the materials to produce the tapes. In addition, it modifies the current definition of "religious institutions", for purposes of sales tax exemption, to include those non-profit organizations whose primary purpose is to provide religious services, evangelistic services, religious education, or missionary education. A nonprofit corporation which owns and operates a Florida radio station, at least 90 percent of the programming of which station consists of programs of a religious nature, is added to the definition of "religious institutions."
- * Section 212.08(7)(o)2.d., F. S., is amended to add to the definition of an "educational institution" performing arts centers that provide educational programs exclusively to school children when such programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,000 school children per year.

- * Section 212.08(7)(ii), F.S., is amended to include electricity used to operate equipment in preparing goods for shipment. A provision requiring separate metering of electricity, or creating a presumption that 50 percent of charges are for nonexempt purposes, is replaced with a requirement that at least 75 percent of the electricity used at the fixed location be used to operate qualifying machinery or equipment. The bill also clarifies that in order to receive the exemption, a taxpayer first must register with the Work and Gain Economic Self-sufficiency (WAGES) Program Business Registry established by the local WAGES coalition for the area in which the taxpayer is located
- Section 212.08(7)(nn) is created to provide a sales tax exemption for replacement engines, parts, and equipment used in the repair or maintenance of commercial aircraft with take-off weight greater than 20,000 lbs if such parts or equipment are installed on an aircraft that is being maintained or repaired in this state.
- Section 212.08(7)(oo) is created to exempt from the sales tax, the sale or lease of aircraft used by a common carrier.
- Sections 212.08(7)(pp), 212.08(7)(qq), and 212.08(7)(rr), are created to provide a sales tax exemption for complimentary food items and donated foods or beverages. This exemption would not apply to restaurants and other eating establishments.
- Section 212.08(7)(ss) is created to clarify that when advertising agencies act as agents for their clients in purchasing property such as photograph negatives and prints, videos, films, etc., such purchases are taxable. However, no tax would be due on sales where the agency packages all the property together into an advertising service product and sells it to its clients with its own markup.
- * Section 212.08(7)(tt) is created to exempt from sales and use tax nonprofit cooperative hospital laundries.
- * Section 212.08(7)(uu) is created to exempt from sales tax the sale of gold, silver, or platinum bullion, if the sales price exceeds \$500.

Section 212.08(14) is amended to require the Department of Revenue to develop guidelines to determine the taxability of specific food products sold for human consumption, and products, supplies, or medicine dispensed in a retail establishment. The section authorizes the department to establish a central data base of taxability of specific products.

Section 8 creates ss. 220.15(2)(c) and 220.15(4)(c) and amends 220.15(5)(c) F.S., to further encourage corporations to conduct research and development activities within the State of Florida. This provision will exclude any property or payroll expenses certified as being dedicated to research and development activities or sponsored research conducted in conjunction with and through any public or private university or college, located within Florida, from the apportionment formula. Also, no corporation shall become subject to Florida corporate tax as a result of solely conducting research and development activities within this state. The reduction in tax due shall not exceed the amount paid to the state university for the conduct of the sponsored research. And no sponsored contracts in existence prior to July 1, 1997, shall be eligible for the credit.

The Department of Revenue is directed to adopt necessary rules and the Board of Regents shall monitor the sponsored research contracts and report to the Speaker of the House of Representative and to the President of the Senate by February 1, 1999.

Section 9 provides effective dates.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Revenues</u>	<u>FY 1997</u>	<u>FY 1998-99</u>
<u>Dealer Collection Allowance Increase</u>		
General Revenue	(\$8.1M)	(\$17.0M)
Trust Fund	(*)	(*)
Local Government	(\$1.3M)	(2.7M)
<u>Donated Food & Beverages</u>		
General Revenue	(**)	(**)
Trust Fund	(**)	(**)
Local Government	(**)	(**)
<u>Food & Drink Samples</u>		
General Revenue	(**)	(**)
Trust Fund	(**)	(**)
Local Government	(**)	(**)
<u>Grocery Items Revision</u>		
General Revenue	(*)	(*)
Trust Fund	(*)	(*)
Local Government	(*)	(*)
<u>Complimentary Meals</u>		
General Revenue	(\$2.0M)	(\$2.2M)
Trust Fund	(*)	(*)
Local Government	(\$0.2M)	(\$0.3M)

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Performing Arts Center

General Revenue	(\$0.4M)	(\$0.4M)
Trust Fund	(*)	(*)
Local Government	(*)	(*)

Aircraft Leases & Sales

General Revenue	(\$0.8M)	(\$1.1M)
Trust Fund	(*)	(*)
Local Government	(\$0.2M)	(\$0.2M)

Aircraft Parts

General Revenue	(\$3.2M)	(\$3.6M)
Trust Fund	(*)	(*)
Local Government	(\$0.5M)	(\$0.5M)

Advertising Agencies

General Revenue	(**)	(**)
Trust Fund	(**)	(**)
Local Government	(**)	(**)

Research & Development

General Revenue	(\$2.3M)	(\$2.3M)
Trust Fund	0.0	0.0
Local Government	0.0	0.0

Electricity Used In Manufacturing

General Revenue	(\$1.4M)	(\$2.4M)
Trust Fund	(*)	(*)
Local Government	(\$0.2)	(\$0.4M)

Power-driven Farm Equipment

General Revenue	(\$1.7M)	(\$4.9M)
Trust Fund	(*)	(*)
Local Government	(\$0.4M)	(\$0.8M)

Religious Organizations

General Revenue	(\$0.9M)	(\$1.0M)
Trust Fund	(*)	(*)
Local Government	(\$0.2)	(\$0.2)

Gold Bullion & Coins

General Revenue	(\$0.5M)	(\$0.5M)
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Trust Fund	(*)	(*)
Local Government	(*)	(*)
<u>Nonprofit Hospital Laundries</u>		
General Revenue	(\$0.2M)	(\$0.2M)
Trust Fund	(*)	(*)
Local Government	(*)	(*)
<u>Carry Forward of EET Credits</u>		
General Revenue	(\$1.2M)	(\$0.4M)
Trust Fund	0.0	0.0
Local government	0.0	0.0
<u>Revolving Charge Exemption</u> (retroactive portion)		
General Revenue	(\$3.0M)	0.0
Trust Fund	0.0	0.0
Local Government	0.0	0.0

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	<u>FY 1997-98</u>	<u>FY 1998-99</u>
General Revenue	(\$25.7M)	(\$36.0M)
Trust Fund	(**)	(**)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See Section III. A. 2. above.

The total impact on local governments is (\$3.0M) in FY 1997-98 and (\$5.1M) in FY 1998-99.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The various tax exemptions outlined above should stimulate business activities and increase competition with out of state business. See details above.

3. Effects on Competition, Private Enterprise and Employment Markets:

The various tax exemptions outlined above should stimulate business activities and increase competition with out of state business. See details above.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill will reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

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V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

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