

**STORAGE NAME:** h3349a.ft

**DATE:** March 5, 1998

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

**BILL #:** HB 3349

**RELATING TO:** Sales and Use Tax/Exempt Organizations

**SPONSOR(S):** Representative Livingston

**COMPANION BILL(S):** Identical SB 1356

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

(1) FINANCE AND TAXATION YEAS 11 NAYS 0

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I. SUMMARY:

The bill amends §212.08(7)(o), F.S. to expand the organizations which are qualified for a certificate of exemption from sales and use tax. Any organization that is qualified as nonprofit pursuant to s. 501(c)(3), the primary purpose of which is to provide funds to other such nonprofit organizations, is qualified to receive a certificate of exemption if at least 75 percent of such funds it provides annually are provided to organizations that are either charitable institutions or educational institutions.

The effective date is July 1 of the year in which enacted.

The bill is projected to reduce General Revenue receipts by (\$0.6) million in FY 1998-99 and (\$0.6) million in FY 1999-00. Revenues to local governments will be reduced by (\$0.1) million and (\$0.1) million in FY's 1998-99 and 1999-00, respectively.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 212.08(7)(o), F.S., provides a sales and use tax exemption for sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities. Such entities must obtain a tax exemption certificate from the Department of Revenue in order to make tax exempt purchases or enter into tax exempt leases. §212.084, F.S. The exemption certificate must be renewed every five years.

Section 212.08(7)(o)2.b., F.S., states:

"Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

(I) Medical aid for the relief of disease, injury, or disability;

(II) Regular provision of physical necessities such as food, clothing, or shelter;

(III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;

(IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

(V) Medical research for the relief of disease, injury, or disability;

(VI) Legal services; or

(VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

and the term includes groups providing volunteer staff to organizations designated as charitable institutions under this sub-subparagraph; nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable institutions under this sub-subparagraph with those persons, animals, or organizations in need of their services; and nonprofit national, state, district, or other governing, coordinating, or administrative organizations the sole or primary purpose of which is to represent or regulate the customary activities of other institutions designated as charitable institutions under this sub-subparagraph. Notwithstanding any other requirement of this section, any blood bank that relies solely upon volunteer donations of blood and tissue, that is

licensed under chapter 483, and that qualifies as tax exempt under s. 501(c)(3) of the Internal Revenue Code constitutes a charitable institution and is exempt from the tax imposed by this chapter. Sales to a health system, qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which filed an application for exemption with the department prior to April 5, 1997, and which application is subsequently approved, shall be exempt as to any unpaid taxes on purchases made from January 1, 1994, to June 1, 1997.

Section 212.08(7)(o)2.d., F.S., states:

"Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities which conduct regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, the Department of Education, the Florida Council of Independent Schools, or the Florida Association of Christian Colleges and Schools, Inc., or nonprofit private schools which conduct regular classes and courses of study accepted for continuing education credit by a Board of the Division of Medical Quality Assurance of the Department of Business and Professional Regulation or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association. Nonprofit libraries, art galleries, performing arts centers that provide educational programs to school children, which programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,000 school children a year, and museums open to the public are defined as educational institutions and are eligible for exemption. The term "educational institutions" includes private nonprofit organizations the purpose of which is to raise funds for schools teaching grades kindergarten through high school, colleges, and universities. The term "educational institutions" includes any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, and any educational television or radio network or system established pursuant to s. 229.805 or s. 229.8051 and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term "educational institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members. The term "educational institutions" also includes a nonprofit educational cable consortium which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations which hold a valid consumer certificate of exemption and which are either an educational institution as defined in this sub-subparagraph, or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

Section 212.08(7)(o)2, F.S., states the terms "charitable institutions" and "educational institutions" must be "strictly defined, limited, and applied."

A "charitable institution" includes an organization *the sole or primary function* is to provide or to raise funds for organizations which provide, one or more of the following services:

- (I) Medical aid for the relief of disease, injury, or disability;
- (II) Regular provision of physical necessities such as food, clothing, or shelter;
- (III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;
- (IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;
- (V) Medical research for the relief of disease, injury, or disability;
- (VI) Legal services; or
- (VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

Florida Administrative Code Rule 12A-1.001 defines "sole or primary function" to mean that a charitable institution must establish and support its function as providing or raising funds for services by expending in excess of 50.0 percent of the charitable institution's operational expenditures towards qualified charitable services within the charitable institution's most recent fiscal year.

Since the definition of "charitable organization" must be strictly construed, a nonprofit organization qualified as a 501(c)(3) of the Internal Revenue Code of 1986, as amended, is not qualified for a tax exemption certificate if it provides funds to other exempt entities who do not meet the strict criteria for a fund raising organization stated above. For example, if the fund raising organization which otherwise qualified for the exemption certificate distributed funds to other holders of exemption certificates that did not fit within the limited criteria, the fund raising organization would be denied an exemption certificate.

**B. EFFECT OF PROPOSED CHANGES:**

The bill amends §212.08(7)(o), F.S., to add to the definition of "charitable institutions" any organization that is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, the primary purpose of which is to provide funds to other such nonprofit organizations, if at least 75 percent of such funds it provides annually are provided to organizations that are either charitable institutions or educational institutions.

Before such an organization could qualify for a tax exemption certificate, it still must utilize in excess of 50.0 percent of the charitable institution's operational expenditures towards qualified charitable services within the charitable institution's most recent fiscal

year. However, the list of allowable receipt organizations is expanded. No longer will all of the funds have to be given only to the organization listed in §212.08(7)(o)2.b.I - VII. Now the 75% of funds must be given to any "charitable institutions" or "educational institutions" as defined by §212.08(7)(o). There is no restriction on the type of nonprofit organization as to the donation of the other 25% of the funds.

**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?

N/A

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

N/A

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

N/A

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. The bill creates a sale and use tax exemption.

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

No.

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?

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

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

(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. STATUTE(S) AFFECTED:

Section 212.08, F.S.

E. SECTION-BY-SECTION RESEARCH:

N/A

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	(\$0.6M)	(\$0.6M)
Trust Fund	(*)	(*)
Local Government	(0.1M)	(0.1M)

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Total for FY 98-99 is (\$0.7M). The total for FY 99-00 is (\$0.7M).

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

See Section III. A. 2. above.



3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

More organizations that are involved in charitable fund raising will be eligible for a certificate of exemption from sales and use tax.

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

N/A

D. FISCAL COMMENTS:

N/A

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:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

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