

STORAGE NAME: h0499.tu

DATE: February 28, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
TOURISM
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 499

RELATING TO: Tax on Sales, Use, and Other Transactions

SPONSOR(S): Representative Bitner and others

STATUTE(S) AFFECTED: Section 212.08, Florida Statutes, 1996 Supplement

COMPANION BILL(S): SB 208 (I)

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

- (1) TOURISM
- (2) FINANCE AND TAXATION
- (3)
- (4)
- (5)

I. SUMMARY:

The bill provides an exemption from the sales and use tax for purchase of food or beverage items offered as part of a packaged room rate to guests of licensed transient living accommodation establishments. Such establishments would not be considered the ultimate consumers of such items and, therefore, not responsible for any retail tax due at the point of purchase of such items.

This bill will take effect January 1, 1998. The estimated fiscal impact of this bill on General Revenue is (\$1) million in FY 1997-98 and (\$2.2) million in FY 1998-99. The impact to the Solid Waste Management Trust Fund is negative but insignificant in both years. The impact on local governments is (\$0.1) million in FY 1997-98 and (\$0.2) million in FY 1998-99.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 212.05, F.S., 1996 Supplement, provides for a tax on the retail sales, storage, or use of tangible personal property. Paragraph (b) of subsection (1) of this section further states that the tax is collectable on tangible personal property that is not sold but used, consumed, distributed, or stored for use or consumption. Although this tax applies to food and beverages, general groceries are specifically exempted from the tax in s. 212.08(1), F.S., 1996 Supplement, if the sale of such items meets certain conditions. The statutes are specific concerning these conditions; but, in general, the sales and use taxes are collected on those foods which have been prepared for immediate consumption.

The federal income tax deduction for business expenses no longer includes the cost of meals incurred on business trips. It has become the practice of certain hotels to promote their establishments by offering complimentary or "free" food and beverages to their guests.

The Department of Revenue 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., 1996 Supplement). 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.

B. 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 Chapter 509, F.S., 1996 Supplement. Such establishments would 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 effective date of the bill is set for January 1, 1998, which will result in a partial year impact on General Revenue for FY 1997-98.

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?

No.

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

No.

(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, transient living establishments which provide food or beverages to guests as part of a package deal would not have to pay use taxes on preparation of such items or pay retail sales tax at the point of sale for such items.

- 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?

No.

- 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?

Yes, those transient living establishments which choose to package services or amenities for their guests and advertise portions of those packages as complimentary may do so without being subjected to additional sales and use taxes.

- 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:

(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:

N/A

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Not required.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

<u>Revenue</u>	<u>1997-98</u>
General Revenue Fund	(\$1.0M)
Solid Waste Management Trust Fund	(insig)

2. Recurring Effects:

<u>Revenue</u>	<u>1997-98</u>	<u>1998-99</u>
General Revenue Fund	(\$2.2M)	(\$2.2M)
Solid Waste Management Trust Fund	(insig)	(insig)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The estimated fiscal impact of this bill on General Revenue is (\$1) million in FY 1997-98 and (\$2.2) million in FY 1998-99. The impact on the Solid Waste Management Trust Fund is insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

<u>Revenue</u>	<u>1997-98</u>
Local Revenue Share	(\$.1M)

2. Recurring Effects:

<u>Revenue</u>	<u>1997-98</u>	<u>1998-99</u>
Local Revenue Share	(\$.2M)	(\$.2M)

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:

Those transient living establishments which choose to package services or amenities for their guests and advertise portions of those packages as complimentary may do so without being subjected to additional sales and use taxes, and can purchase such items at wholesale.

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

Under the bill, hotels and motels giving away foods or beverages (and including their costs in the room charge) will be treated the same with respect to sales tax as hotels and motels which charge for such things.

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 expend funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of cities and counties to raise revenues, the impact is expected to be insignificant and the bill, therefore, is 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 cities and counties, it does not reduce the percentage of a state tax shared with cities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

The Florida Hotel and Motel Association has a concern regarding the application of the tax on "free" or "complimentary" meals due to marketing practices being employed by several national accommodations chains which have establishments in Florida. The association asserts that if the Florida chain members must use the term "included" instead of "free" or "complimentary," that the parent organization will run national advertising which promotes "free meals for kids except in Florida."

The Department of Revenue has ascertained that of the 45 states which levy a sales or use tax, at least 21 do assess a use tax against hotels and like establishments on complimentary meals served to guests. In the majority of such states, the tax is measured on the direct cost of the food products to the hotel and excludes preparation costs incurred by the hotel. The balance of the states surveyed treat the complimentary meals as a sale to the guest, as a component cost of the room charge, or have not resolved the issue. The department also notes that [unlike] Florida, 18 states tax general groceries.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Legislative Research Director:

Susan F. Cutchins

Judy C. McDonald