

STORAGE NAME: h0499.gg
DATE: April 16, 1997

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
GENERAL GOVERNMENT APPROPRIATIONS
BILL RESEARCH & 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 (Unanimously favorable - recommends bill closed)
- (2) FINANCE AND TAXATION YEAS 14 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

The bill provides an exemption from the sales and use tax for purchases 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 would be not responsible for any sales or use tax upon the 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.

The amendment by the Committee on Finance and Taxation will have a proposed additional fiscal impact of (1.7 M) to General revenue in FY 1997-98. See section VI for details.

II. SUBSTANTIVE RESEARCH:

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. Use tax is assessed on the cost price of tangible personal property that is not sold but used, consumed, distributed, or stored for use or consumption. Although sales and use tax applies to food and beverages, general groceries are specifically exempted from the tax in s. 212.08(1), F.S., 1996 Supplement. Sales tax is imposed on foods which have been prepared for immediate consumption and on foods and drinks served, prepared, or sold by any business required to be licensed by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation. Sales tax is not imposed on wholesale sales or sales for resale.

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

The provision of complimentary meals by hotels and motels involves two transactions. First the public lodging establishment purchases the food and beverages from a supplier. Next the establishment provides the complimentary items to its guests. Food and beverages that are purchased from the supplier for "resale" are not subject to sales tax; however, presently food and beverages that are provided as complimentary to the guests are not considered as purchased for resale. The food and beverages are considered as amenities incidental to the business and are used by the public lodging establishment. Items that are used by a business, rather than being sold, are subject to sales and use tax when used by the business. See Florida Hotel and Motel Association, Inc. v. DOR, 635 So.2d 1044 (Fla. 1st DCA 1994) (imposition of sales or use tax upon purchase of tangible personal property by hotels and motels for use in guest room rental does not result in impermissible duplicate taxation).

Section 212.03, Fla. Stat., imposes sales tax on the rental of transient lodging.

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. Tax will be due on the total charge for the package and not on 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.

Please see section VI for the effect of amendment(s).

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?

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 RESEARCH:

Not required.

III. FISCAL RESEARCH & 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)

Please see section VI for the effect of the amendment(s).

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 but include the costs in the room charge will be taxed the same as hotels and motels which charge additional fees for meals or advertise the meals as included in the price of the room.

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:

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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 provided information 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.

Bills on the same subject matter were introduced in 1996: HB1131, SB672, SB220, SB624. This exemption was contained in SB647 which was vetoed.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Finance and Taxation adopted an amendment that adds an amnesty provision to the bill. The amendment provides that sales and use tax on food and drinks exempted as complimentary under the bill would not be due on transactions before July 1, 1997, if the tax was not actually collected and remitted or actually accrued and remitted. Tax that was collect and remitted or accrued and remitted would not be refunded. Since the bill has an effective date of January 1, 1998, the amendment leaves a six month gap period where the food and beverages items are still subject to tax, but establishments who have failed to pay the tax are not entitled to amnesty.

The estimated fiscal impact of the amendment would be an additional (1.7M) to General Revenue in FY 97-98. This impact would be non-recurring.

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VII. SIGNATURES:

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