

STORAGE NAME: h1119a.ft

DATE: April 16, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 1119

RELATING TO: Sales and Use Tax/Private Equity Membership Clubs

SPONSOR(S): Representative Sembler

COMPANION BILL(S): Identical SB 970

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

(1) FINANCE AND TAXATION YEAS 14 NAYS 1

(2)

(3)

(4)

(5)

I. SUMMARY:

The bill amends s. 212.08, F.S., to create a sale and use tax exemption for refundable and nonrefundable purchases of membership rights in, and the payment of initiation fees to, private equity membership clubs that also levy fees or dues for the use of facilities owned or operated by such clubs.

This bill has not been reviewed by the Revenue Estimating Conference. As presently drafted, the bill creates a more expansive sales tax exemption than anticipated by the sponsor because the terms "private equity membership club" and "membership rights" are not defined. The Revenue Estimating Conference did address a clarifying amendment. If this amendment is adopted, the bill is estimated to have the following fiscal impact: The estimated fiscal impact upon General Revenue is (\$0.8) million for FY 99-2000 and (\$0.9) million for FY 2000-2001. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.2) million for FY 1999-2000 and (\$0.2) for FY2000-2001. The total estimated fiscal impact for this bill is (\$1.0) million for FY 1999-2000 and (\$1.1) million for FY 2000-2001.

The effective date of the bill is July 1, 1999.

See Amendments or Committee Substitute Changes.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 212.04, F.S., imposes a 6% sales tax on charges paid for admissions. In general, taxable admissions fees include the charges for admitting a person to any place of amusement, sport, or recreation. Such fees include: sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other such fees or receipts. For the purposes of Chapter 212, F.S., the term "admissions" also includes the 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, except physical fitness facilities owned or operated by any hospital licensed under chapter 395.

Initiation fees are subject to the sales tax on admissions when paid to equity or nonequity private clubs and membership clubs. Rule 12A-1.005(5)(d)1.a., F.A.C. Exempt from tax are the purchase of equitable ownership in a corporation and refundable deposits advanced to an organization when the organization is obligated to repay the deposit and the deposit is reflected as a liability in the organizations's books and records. Rule 12A-1.005(d)1.c. & e., F.A.C.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08, F.S., to create a sale and use tax exemption for refundable and nonrefundable purchases of membership rights in, and the payment of initiation fees to, private equity membership clubs that also levy fees or dues for the use of facilities owned or operated by such clubs.

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

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 ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The fiscal impact of the bill has not been estimated by the Revenue Estimating Conference. See Fiscal Comments.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

The fiscal impact of the bill has not been estimated by the Revenue Estimating Conference. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The fiscal impact of the bill has not been estimated by the Revenue Estimating Conference. See Fiscal Comments.

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:

Certain memberships in private equity clubs will not be subject to sales and use tax.

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

Indeterminate.

D. FISCAL COMMENTS:

This bill has not been reviewed by the Revenue Estimating Conference. As presently drafted, the bill creates a more expansive sales tax exemption than anticipated by the sponsor because the terms "private equity membership club" and "membership rights" are not defined. The Revenue Estimating Conference did address a clarifying amendment. If this amendment is adopted, the bill is estimated to have the following fiscal impact:

	FY 1999-00	FY 2000-01
General Revenue	(\$0.8M)	(\$0.9M)
Trust Fund	(*)	(*)
Local Government	(\$0.2M)	(\$0.2M)

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:

The fiscal impact of the bill has not been estimated by the Revenue Estimating Conference. If the bill is amended as described in Fiscal Comments, then 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:

The fiscal impact of the bill has not been estimated by the Revenue Estimating Conference. If the bill is amended as described in Fiscal Comments, then 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.

V. COMMENTS:

The bill does not contain definitions for the terms "private equity membership club" and "membership rights." Consequently, the bill will be difficult for the Department of Revenue to administer and difficult for the public to apply.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 16, 1999, the Committee on Finance and Taxation adopted one amendment which substantially rewrites the bill to narrow the exemption and reflect the intent of the sponsor. The amendment exempts from sales and use tax joining fees paid for memberships and ownership interests in and assessments for capital expenditures levied by private not-for-profit membership clubs.

"Joining fees" are monies paid on a one-time-only basis for the privilege of joining and acquiring ownership interest in private not-for-profit membership clubs, regardless of whether such monies are refundable or not and regardless of the purposes for which such monies are used.

"Assessments for capital expenditures" are levied by private, not-for-profit membership clubs in which members have an ownership interest, whether such assessments are recurring or non-recurring provided, however, that such assessments do not result in a reduction of dues or fees.

The estimated fiscal impact of the bill as amended upon General Revenue is (\$0.8) million for FY 99-2000 and (\$0.9) million for FY 2000-2001. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.2) million for FY 1999-2000 and (\$0.25) for FY2000-2001. The total estimated fiscal impact for this bill is (\$1.0) million for FY 1999-2000 and (\$1.1) million for FY 2000-2001.

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

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