

STORAGE NAME: h0221.fs

DATE: February 9, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
ANALYSIS**

BILL #: HB 221

RELATING TO: Sales Tax Exemptions

SPONSOR(S): Representative Trovillion

COMPANION BILL(S): SB 132 (Identical)

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

- (1) FINANCIAL SERVICES
- (2) GOVERNMENTAL RULES AND REGULATIONS
- (3) FINANCE AND TAXATION
- (4) GENERAL GOVERNMENT APPROPRIATIONS
- (5)

I. SUMMARY:

HB 221 creates a retail sales tax exemption for coins or currency transactions over \$500. The bill also provides for a sales tax exemption for gold, silver, and/or platinum bullion transactions over \$500. In either transaction, the seller/dealer would be required to maintain documentation identifying the portion of a transaction to which these exemptions apply.

The Director of the Department of Revenue would be given the authority to adopt emergency rules under section 120.54(4), F.S. (1998 Supp.) to implement this act. Notwithstanding any other provision of law, such emergency rules would remain in effect for a period of six months.

Fiscal Impact: According to the Revenue Estimating Committee the exemption from sales tax may result in a negative fiscal impact of (\$0.9 million) for FY 1999-2000, and (\$1.1 million) for FY 2000-2001.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 212, F.S. provides that a sales and use tax be imposed on the retail sale, storage, or use of tangible personal property. Section 212.02(19), F.S. (1998 Supp.), defines "tangible personal property" as "personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses..."

Sales Tax on Coins and Currency

Section 212.05 (1)(k), F.S. (1998 Supp.), assesses a 6 percent sales tax on the sale, use, consumption, or storage of any coin or currency which:

- a) is not legal tender;
- b) if legal tender, is sold, exchanged, or traded at a rate in excess of its face value; or,
- c) is sold, exchanged, or traded at a rate based on its precious metal content.

If the coin or currency is legal tender the transaction is taxed at a rate of 6 percent of the *difference* between the price at which it is sold, exchanged, or traded, and its face value.

There is a current exemption from taxation for an exchange of coin or currency which is in circulation in one nation, for coin or currency which is in circulation in another nation, when the exchange is solely for use as legal tender and the exchange rate is based on the relative value of each as a medium of exchange.

According to the DOR, there are approximately 250 dealers in the state which engage in transactions of such coin and currency.

Miscellaneous Sales Tax Exemptions

Florida law provides for full and/or partial sales tax exemptions for certain categories of goods that are sold, rented, used or consumed, including certain general groceries and food products, medical products and supplies, certain farm equipment, items bearing other excise taxes, certain machinery and equipment, and sales made to political subdivisions. Subsections (1) through (6) of section 212.08, F.S. (1998 Supp.) Florida law currently lists 51 separate, full exemptions under a "miscellaneous" category, which includes such varied transactions as artificial commemorative flowers, flags of the United States and Florida, guide dogs for the blind, meals provided by some non-profit groups, certain works of art purchased by educational facilities, taxicab leases, aircraft repair and maintenance labor charges, mobile home lot improvements and the sale of racing dogs. Section 212.08 (7), F.S. (1998 Supp.)

Emergency Rulemaking Authority

Section 213.06, F.S. (1998 Supp.), authorizes the executive director of the DOR to adopt emergency rules pursuant to s. 120.54, F.S. (1998 Supp.), when the effective date of a legislative change occurs sooner than 60 days after the close of a legislative

session when the change affects a tax rate or collection or reporting and which affects a substantial number of dealers.

B. EFFECT OF PROPOSED CHANGES:

Sales Tax on Coins and Currency

HB 221 creates a retail sales tax exemption for coins or currency transactions over \$500. The seller/dealer would be required to maintain documentation identifying the portion of a transaction to which these exemptions apply.

Hypothetical 1: A consumer enters Mel Fisher's museum gift shop in Key West, Florida, and purchases:

- (a) two gold crosses for \$600;
- (b) an emerald stone for \$1,800; and,
- (c) four gold two escudo coins which were recovered from the Spanish galleon Nuestra Senora de Antocha, for \$12,800.

Of the \$15,200 spent for the items, \$12,800 (the cost of the gold coins) would be exempted from sales tax. Instead of paying \$912 in sales tax, the consumer would be required to pay only \$144 in sales tax, and the dealer would be required to keep records to account for the exempted portion of the transaction.

Miscellaneous Sales Tax Exemptions

The bill establishes a sales tax exemption for gold, silver, and/or platinum bullion transactions which amount exceeds \$500. The seller/dealer would be required to maintain documentation identifying the portion of a transaction to which these exemptions apply.

Hypothetical 2: Assume the same facts as Hypothetical 1, above, plus an additional transaction of three silver bars worth \$1,700. Under the proposed law, only the gold crosses and the emerald (representing only \$2,400 of the \$16,900 transaction) would be taxed. Instead of paying \$1,014 in taxes, the consumer would be required to pay only \$144 in sales tax, and the dealer would be required to keep records to account for the exempted portion of the transaction.

Rulemaking Authority

The director of the DOR would be given the authority to adopt emergency rules under section 120.54(4), for implementing this act. Notwithstanding any other provision of law, such emergency rules would remain in effect for a period of six months.

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 director of the DOR is given authority to adopt emergency rules in connection with the sales tax exemption on the sales of coins, currency, gold, silver, or silver bullion.

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

Yes. The dealer is required to maintain proper documentation to identify that portion of a transaction involving the sale of coins, currency, gold, silver, or platinum bullion which is tax exempt.

(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. Certain transactions of coin or currency, and/or gold, silver or platinum bullion, that exceed \$500 would be exempt from sales tax.

- 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?

No

4. Individual Freedom:

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

Yes. Representative coin dealers in Florida report a competitive disadvantage with dealers in other states which do not levy a sales tax on certain transactions. Sales tax exemptions may provide even competition between in-state and out-of-state coin and bullion dealers and may attract more numismatist expositions.

- 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends s. 212.05(1)k, F.S. (1998 Supp.), and s. 212.08(7), F.S. (1998 Supp.)

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s.212.05 (1)k, F.S. (1998 Supp.) exempting from sales tax certain transactions of coin or currency in which the taxable amount represented by the sale exceeds \$500. The dealer must maintain proper documentation to identify that portion of a transaction which involves the sale of coins or currency which is tax exempt.

Section 2 amends section 212.08, F.S. (1998 Supp.), adding paragraph (zz) to subsection (7), to exempt the sale of gold, silver, or platinum bullion from sales tax if the sales price exceeds \$500. The dealer must maintain proper documentation to identify that portion of a transaction which involves the sale of gold, silver, or platinum bullion which is tax exempt.

Section 3 provides authority for the executive director of the DOR to adopt emergency rules for a period of six months for purposes of implementing this act.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

	FY 1999-00	FY 2000-01
General Revenue	(\$0.9M)	(\$1.1M)
Local Tax	(Insignificant)	(Insignificant)

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

	FY 1999-00	FY 2000-01
General Revenue	(\$0.9M)	(\$1.1M)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None

2. Recurring Effects:

See Section III. A. 2 above.

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:

These tax exemptions may stimulate coin, currency, and bullion sales in the state, which may have the effect of generating more interest in numismatist conventions and trade shows in the state.

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

These tax exemptions may stimulate coin, currency, and bullion sales in the state, which may have the effect of generating more interest in numismatist conventions and trade shows in the state.

D. FISCAL COMMENTS:

None

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 amount of revenue generated from sales tax, the impact is deemed 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 bill does not reduce the percentage of a state tax shared with counties and municipalities. Therefore, Article VII, Section 18(b), Florida Constitution, does not apply.

V. COMMENTS:

The bill provides a grant of authority to the director of the DOR to adopt emergency rules to implement the act. This grant of rulemaking authority may have the effect of authorizing the DOR director to create rules that may address issues beyond those addressed in the bill. This effect may be avoided by either: (1) amending the bill to focus the grant of rulemaking authority specifically to address the law exempting transactions of coin/currency and/or bullion transactions over \$500; or, (2) amend the bill to change the effective date from July 1, 1999 to a later date (January 1, 2000) in order to give the DOR time to go through the rulemaking process.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Staff Director:

Michael Kliner

Susan F. Cutchins