STORAGE NAME: h0523a.ft
DATE: April 19, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS

BILL #: HB 523

RELATING TO: Tax on sales, use, and other transactions/T.V. Broadcast Station

SPONSOR(S): Representatives Logan, Fasano, and others

COMPANION BILL(S): SB 1156

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) UTILITIES AND COMMUNICATIONS YEAS 9 NAYS 0
(2) FINANCE AND TAXATION YEAS 15 NAYS 0
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill provides a sales tax exemption for personal or real property purchased or leased for use in the operation of television broadcasting stations that meet these specified requirements: 1) the broadcast station must be acquired from a previously unrelated owner; 2) the station must maintain 75 full-time jobs; 3) the station must invest more than $5 million in capital improvements; 4) the station must share common ownership with a station in a different metropolitan statistical area; and 5) the station must broadcast at no cost to the state youth-oriented anti-tobacco programming equal in value to the tax exemption.

The bill requires return of tax refunds plus interest and penalties if these requirements are not met.

The bill limits the amount of the tax refunds to $350,000 for any television broadcasting station or group of television broadcasting stations that share common ownership or management, and limits the duration of the tax refunds to five years.

The estimated fiscal impact upon General Revenue is ($0.6) million for FY 99-2000 and ($0.6) 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 ($0.1) million for FY 1999-2000 and ($0.1) for FY2000-2001. The total estimated fiscal impact for this bill is ($0.7) million for FY 1999-2000 and ($0.7) million for FY 2000-2001.

The act shall take effect July 1, 1999.

II. <u>SUBSTANTIVE ANALYSIS</u>:

A. PRESENT SITUATION:

Chapter 212, Florida Statutes, provides for the tax on sales, use, and other transactions. Section 212.08, F.S., provides specified exemptions to the tax levied pursuant to this chapter. This section provides that:

> (t)he sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

Paragraph (f) of subsection (5) provides that motion picture or video equipment and sound recording equipment purchased or leased for use in this state in production activities is exempt from the tax imposed by ch. 212, F.S., upon an affirmative showing by the purchaser or lessee, to the satisfaction of the Department of Revenue, that the equipment will be used for production activities. The exemption is provided to the taxpayer only through a refund of previously paid taxes.

"Motion picture or video equipment" and "sound recording equipment" includes only equipment meeting the definition of "section 38 property" as defined in s. 48(a)(1)(A) and (B)(I) of the Internal Revenue Code that is used by the lessee or purchaser exclusively as an integral part of production activities. The definition specifically does not include:

> supplies, tape, records, film, or video tape used in productions or other similar items; vehicles or vessels; or general office equipment not specifically suited to production activities. In addition the term does not include equipment purchased or leased by television or radio broadcasting or cable companies licensed by the Federal Communications Commission.

The production activities are those activities directed toward the preparation of a master tape or master record embodying sound or motion picture or television production which is produced for theatrical, commercial, advertising, or educational purposes and utilizes live or animated actions or a combination of live and animated actions. The motion picture or television production shall be commercially produced for sale or for showing on screens or broadcasting on television and may be on film or video tape.

The definition of "section 38 property" is defined in s. 48(a)(1)(A) and (B)(I) of the Internal Revenue Code summarily as tangible personal property (other than an air conditioning or heating unit) or other specified tangible property.

Section 212.08(12), F.S., provides for a partial exemption for master tapes, records, films, or video tapes. Section 212.08(12)(a), F.S., provides that these items are exempt from the taxes imposed by ch. 212, F.S., the gross receipts from the sale or lease of, and the storage, use, or other consumption in this state of, master tapes or master records embodying sound, or master films or master video tapes; except that amounts paid to recording studios or motion picture or television studios for the tangible elements of such master tapes, records, films, or video tapes are taxable as otherwise provided in ch. 212, F.S.

According to the Department of Revenue, the only sales tax exemption currently provided to television broadcasting stations for property purchased, leased or licensed, is for direct charges for films, videotapes, and transcriptions used by such stations.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(f), F.S., by adding a new subparagraph 2., to broaden the specified exemptions to include all personal and real property purchased and leased to operate television broadcasting stations that are not licensed by the Federal Communications Commission.

The bill provides in s. 212.08(5)(f)2., F.S., enumerated requirements that must be completely met in order to qualify for the exemption. The requirements are that:

- the acquiring station must have acquired a broadcast station from a previously unrelated owner. The general manager of the acquiring station must attest to having no prior ownership interest or other business relationship with the acquired stations.
- the acquiring station's general manager must submit an affidavit that the station establish and maintain more than 75 full-time jobs since its acquisition.
- the acquiring owner invest more than $5 million dollars in capital improvement to the acquired stations.
- the station must be located within the boundaries of a metropolitan statistical area and share common ownership or management with another television broadcasting station that has been acquired following a bankruptcy proceeding that is located in a different metropolitan statistical area.
- in the year following receipt of a tax refund pursuant to this section, the station must broadcast at no cost to the state, youth-oriented anti-tobacco public service announcements and programming of a value equal to or greater than the tax refund received in the previous year. If the station fails to broadcast sufficient public service announcements and programming, the refund must be returned to the state together with penalties and interest.

Section 212.08(5)(f)3., F.S., is added to discuss the refund provisions of the exemption. Part of this section was moved from s. 212.08(5)(f)1., F.S. It provides that the refund allowed with respect to the television broadcasting stations is limited to $350,000 per year for any station or group of stations that share common ownership or management. It further provides that no taxpayer shall receive a refund for more than 5 years, and the refunds shall be made on a quarterly basis.

This act shall take effect July 1, 1999.

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?

The bill provides a sales tax exemption for certain television broadcasting stations.

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:

   Amends Section 212.08(5)(f), Florida Statutes

E. SECTION-BY-SECTION ANALYSIS:

   Please 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:

	FY 1999-00	FY 2000-01
General Revenue	($0.6M)	($1.6M)
Trust Fund	(*)	(*)
Local Government	($0.1M)	($0.1M)

3. Long Run Effects Other Than Normal Growth:

   The bill limits the tax refunds to 5 years.

4. Total Revenues and Expenditures:

   See III.A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   See III.A.2.

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:

   The bill creates a sales and use tax exemption for personal or real property purchased or leased for use in the operation of certain television broadcasting stations.

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

   N/A

D. FISCAL COMMENTS:

According to the Department of Revenue, this exemption is currently applicable to two stations.

The exemption is limited to $350,000 per company, per year, up to five years.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the 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 form 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.

V. COMMENTS:

By the Committee on Utilities and Communications:

According to the Department of Revenue, difficulty exist in the administration and/or enforcement as follows:

- it is unclear to whom the general station manager must submit the required affidavits, and when the affidavits must be submitted.
- the definition of "metropolitan statistical area" is unclear. If it is the definition provided in s. 334.03(17), F.S., it should be referenced as such.
- it is unclear if the year following the receipt of the tax means the calendar year, the state's fiscal year, the taxpayer's fiscal year, or the immediately succeeding 12 month period. It is unclear what the time frame is in which the taxpayer must return the tax, penalty, and interest to the state if the taxpayer does not provided the required anti-tobacco programming. It is also unclear from which date the interest and penalty accrues.

The Committee on Tourism recently passed HB 983. This bill also has proposed changes to s. 212.08, F.S. The bill provides an exemption for certain motion picture or video equipment and sound recording equipment as a point of sale exemption rather than by refund.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, the House Utilities and Communications Committee adopted five amendments to the bill. There were four technical amendments: 1) instructs the acquiring station's general manager to submit its refund related affidavits to the Department of Revenue. 2) defines "statistical area" as in s. 334.03(17), F.S. 3) clarifies that it is the calendar year following receipt of a tax refund that the acquiring station must broadcast youth-oriented anti-tobacco public service announcements. 4) the Department of Revenue shall provide the Office of Tourism, Trade and Economic Development, in lieu of the Department Commerce, a copy of each refund application and the amount of the refund. The fifth amendment provides that if the station fails to provide the refund equivalent youth oriented public service announcements, return of the tax refund is to be made 30 days after the one year period has expired to avoid interest and penalties.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:	Staff Director:
Wendy G. Holt	Patrick L. "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Staff Director:
Lynne Overton	Alan Johansen