

STORAGE NAME: h0545s1a.ft

DATE: April 16, 1999

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

BILL #: CS/HB 545

RELATING TO: Sales Tax/Government Contractors

SPONSOR(S): Committee on Business Development & International Trade and Representatives Sublette and Goode

COMPANION BILL(S):

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

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 15 NAYS 0
 - (3) TRANSPORTATION AND ECONOMIC DEVELOPMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

This bill provides that a sale for resale under chapter 212, Florida Statutes, includes the sale of certain tangible personal property used or consumed by a government contractor in performance of a contract with the United States Department of Defense or the National Aeronautics and Space Administration under certain conditions.

The bill provides a sales tax exemption for sales to or use by a government contractor of overhead materials which are used or consumed in performance of such a contract under certain conditions.

The bill provides a schedule for implementing the exemption over a 5-year period beginning July 1, 1999.

The exemption provided by this bill would be phased in over a five year period with 20 percent exempt from taxation each year until all specified materials were totally tax exempt. The estimated fiscal impact upon General Revenue is (\$2.2) million for FY 99-2000. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.3) million for FY 1999-2000. The total annualized (the impact as if the bill were fully implemented) estimated fiscal impact for this bill is (\$14.8) million for FY 1999-2000.

See Amendments or Committee Substitute Changes, Section VI.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 212.02, (14)(a), Florida Statutes, defines "retail sale" or a "sale at retail" as a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under 212.02, F.S., and includes all such transactions that may be made in lieu of retail sales or sales at retail.

Section 212.06, F.S., is the section of law dealing with sales, storage and use tax. Dealers collect such taxes from purchasers and remit said collections to the state pursuant to the provisions of this section. Legislative intent as to the scope of tax is included in this section.

B. EFFECT OF PROPOSED CHANGES:

See Section by Section.

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?

N/A

(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.

- 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:

Sections 212.02 and 212.06, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 amends Section 212.02, Florida Statutes, 1998 Supplement. The definition of "retail sale" or "sale at retail" is amended to include a sale of qualifying property. "Qualifying property" is defined as tangible property used or consumed by a government contractor in performance of a qualifying contract when the property is a direct item of cost to such contract and the title to such property passes to the government under the contract. The bill provides that a contractor's use of qualifying property is not subject to sales or use tax. The bill states that it is the intent of the legislature that this amendment clarifies and conforms existing law with respect to the tax imposed by Chapter 212, F.S.

Section 2 adds subsection (17) to section 212.06, F.S., 1998 Supplement. The new subsection provides that the tax imposed by Chapter 212, F.S., does not apply to overhead materials used by a government contractor. "Overhead materials" is defined as any tangible personal property, other than electricity, used or consumed in the performance of a qualifying contract, the cost of which is allocated, in whole or in part, to two or more contracts, at least one of which is a qualifying contract, title to which property vests in or passes to the government under the contract. "Qualifying contract" is defined as a contract with the United States Department of Defense or the National Aeronautics and Space Administration, or a subcontract thereunder, which relates to the matters of national defense, to space flight as defined by s. 212.02(23), F.S., or to other National Aeronautics and Space Administration or Department of Defense aviation or aerospace efforts or programs. The bill states that nothing in this section shall be construed as an expression of

legislative intent as to the applicability of any tax to any sale or use of overhead materials prior to July 1, 1999. Further, nothing in this section shall be construed as implying that transactions or costs not described in this section are taxable.

The tax exemption is phased in as follows: Beginning July 1, 1999, the tax imposed shall be applicable to 80 percent of the sales price or cost price of such overhead materials. Beginning July 1, 2000, the tax shall be applicable to 60 percent . . . of such overhead materials. Beginning July 1, 2001, the tax imposed shall be applicable to 40 percent . . . of such overhead materials. Beginning July 1, 2002, the tax imposed shall be applicable to 20 percent . . . of such overhead materials. Beginning July 1, 2003, the entire sales price or cost price of such overhead materials is exempt from the tax.

Section 3 Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The exemption provided by this bill would be phased in over a five year period with 20 percent exempt from taxation each year until all specified materials were totally tax exempt.

	FY 1999-00	FY 2000-01 (Annualized)
General Revenue	(\$2.2M)	(\$12.8M)
Trust Fund	(*)	(*)
Local Government	(\$0.3M)	(\$2.0M)

The annualized figure represents the cost if the exemption was implemented totally for that fiscal year.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See Recurring Effects, Section III.A.2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See Section III.A.2.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The bill could create a more favorable business climate for businesses who compete for NASA or the Department of Defense aviation or aerospace contracts by allowing Florida contractors to offer lower priced proposals.

According to the industry, NASA and DOD contracts awarded to Florida-based contractors exceeded \$7 billion in 1997.

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

Indeterminate.

D. FISCAL COMMENTS:

N/A

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 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:

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 terms "qualifying property," "overhead materials," and "qualifying contract" are not clearly defined in the bill and may cause administrative problems for both the Department of Revenue and the contractors.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 3, 1999, The Committee on Business Development and International Trade adopted an amendment to HB 545 and passed it as a committee substitute. The amendment was a technical one.

On April 16, 1999, the Committee on Finance and Taxation adopted a strike everything amendment to correct technical problems with the bill. The amendment provides definitions for the terms "qualifying property," "overhead materials," and "qualifying contract," "government contractor," and "direct cost."

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The Department of Revenue is also authorized to amend its rules to reflect the use of resale certificate and direct pay permits with respect to the exemption created by the bill.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

Prepared by:

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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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