

STORAGE NAME: h0889s1.bdt

DATE: March 11, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE
ANALYSIS**

BILL #: CS/HB 889

RELATING TO: Sales Tax/Exemption/Fill Dirt

SPONSOR(S): Committee on Business Development & International Trade and Representative J. Miller

COMPANION BILL(S): SB 1762 (S)

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

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 7 NAYS 0
 - (2) FINANCE AND TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

This bill revises the application of provisions which exempt from the use tax a person who secures rock, fill dirt, or similar materials from a location he or she owns for use on his or her own property. The provisions are expanded to include affiliated groups. "Affiliated groups" is defined in s. 220.03(1)(b), F.S., as two or more corporations which constitute an affiliated group of corporations as defined in s. 1504(a) of the Internal Revenue Code.

This bill does not address the issue of rulemaking.

The revenue estimating conference has not yet addressed this bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 212, Florida Statutes, provides for the tax on sales, use and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under chapter 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a, F.S., provides for a six percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in this state. Tangible personal property is defined in s. 212.02(19), F.S., to mean and include personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses.

Section 212.06, F.S., provides for the six percent tax rate to be collectible from all dealers at the time of sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in Florida of tangible personal property or services taxable under chapter 212, F.S. The term "Dealer" is defined in s. 212.06(2)(a), F.S., to include every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

Section 212.06(15)(a), F.S., provides that a contractor securing rock, shell, fill dirt, or similar materials from a location that he or she owns or leases for use to fulfill a real property contract on the property of another person is the ultimate consumer of such materials and is liable for use tax thereon. This paragraph does not apply to a person who secures such materials from a location that he or she owns for use on his or her own property. The basis for the tax the contractor must remit is the fair retail market value determined by establishing either the price the contractor would have to pay for it on the open market or the price the contractor would charge if he sold it to another contractor.

Chapter 220, F.S., provides the income tax code for corporations, organizations, associations, and other artificial entities which derive from this state permanent and inherent attributes not inherent in or available to natural persons, such as perpetual life, transferable ownership represented by shares or certificates, and limited liability for all owners. Paragraph (2) of section 220.02, F.S., provides that the tax levied by chapter 220, F.S., is an excise or privilege tax measured by net income.

Section 220.03(1)(b), F.S., provides the following definition: "Affiliated group of corporations" means two or more corporations which constitute an affiliated group of corporations as defined in s. 1504(a) of the Internal Revenue Code.

Section 1504(a) of the Internal Revenue Code defines "affiliated group" as: one or more chains of includible corporations connected through stock ownership with a common parent corporation which is an includible corporation, but only if - (i) - the common parent owns directly stock meeting the requirements of paragraph (2) below in at least 1 of the other includible corporations, and (ii) stock meeting the requirements of paragraph (2) in each of the includible corporations (except the common parent) is owned directly by 1 or more of the other includible corporations.

(2) 80-percent voting and value test: the ownership of stock of any corporation meets the requirements of this definition if it (i) possesses at least 80 percent of the total voting power of the stock of such corporation, and (ii) has a value equal to at least 80 percent of the total value of the stock of such corporation.

B. EFFECT OF PROPOSED CHANGES:

Affiliated groups would be included in the provision that exempts persons from the sales and use tax when such persons secure rock, fill dirt, or similar materials from a location he or she owns to be used on property he or she owns.

The bill would take effect on January 1, 2000.

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?

None.

(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?

Indeterminate.

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.

- 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:

Section 212.06(15)(a), F.S.

E. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes, Section II., B.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The revenue estimating conference has not yet addressed this bill.

2. Recurring Effects:

The revenue estimating conference has not yet addressed this bill.

3. Long Run Effects Other Than Normal Growth:

The revenue estimating conference has not yet addressed this bill.

4. Total Revenues and Expenditures:

The revenue estimating conference has not yet addressed this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The revenue estimating conference has not yet addressed this bill.

2. Recurring Effects:

The revenue estimating conference has not yet addressed this bill.

3. Long Run Effects Other Than Normal Growth:

The revenue estimating conference has not yet addressed this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Affiliated groups owning the location where fill dirt, rock, shell and other similar materials are taken from in order to be used on property owned by such corporation or affiliated group, would be exempt from sales and use tax on those materials.

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

Indeterminate.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The revenue estimating conference has not yet addressed this bill.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The revenue estimating conference has not yet addressed this bill.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The revenue estimating conference has not yet addressed this bill.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, 1999, the Committee on Business Development and International Trade adopted three amendments and subsequently passed HB 889 as a committee substitute. The first two amendments effectively deleted "corporation" from the new language because it is already included by virtue of being included in the definition of "person." The third amendment changed the effective date to January 1, 2000.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

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