

**STORAGE NAME:** h0153.cp

**DATE:** November 10, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
CRIME AND PUNISHMENT  
ANALYSIS**

**BILL #:** HB 153

**RELATING TO:** Tax Credit / Food Service Business

**SPONSOR(S):** Rep. Gottlieb

**TIED BILL(S):**

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

- (1) CRIME & PUNISHMENT
  - (2) COLLEGES & UNIVERSITIES
  - (3) GOVERNMENTAL RULES & REGULATIONS
  - (4) FINANCE & TAXATION
  - (5) GENERAL GOVERNMENT APPROPRIATIONS
- 

**I. SUMMARY:**

This bill creates s. 212.099 which provides that any food service establishment which sells food products for consumption either on or off the seller's premises is entitled to a credit against its sales or use tax obligations for 25 percent of any amount contributed to a scholarship fund, as defined in this bill.

In effect, this bill would allow a restaurant to keep an amount equal to twenty-five percent of the total that the restaurant donated to scholarships from the sales tax money that it would otherwise pass along to the state.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |                              |                                        |                                         |
|-----------------------------------|------------------------------|----------------------------------------|-----------------------------------------|
| 1. <u>Less Government</u>         | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill does not support the principle of less government because it would require the Department of Revenue to review and approve or deny applications for tax credit for food service businesses within ten days after the receipt of the application.

B. PRESENT SITUATION:

Sales and Use Taxes

Chapter 212 of Florida Statutes provides that with few exceptions, the sale of food or beverages served, prepared or sold by restaurants, lunch counters, cafeterias, hotels, theaters and other similar places are subject to a sales tax. Sec. 212.08(1), F.S. The tax is paid by the consumer to the restaurant which is responsible for collecting the tax at the time of the sale and remitting the taxes collected either quarterly or monthly to the Department of Revenue. Sec. 212.07, F.S. The taxes imposed become state funds at the moment of collection by the restaurant. Sec. 212.15(1), F.S.

Section 212.15, F.S. provides that any person who, with intent to deprive or defraud the state, fails to remit taxes collected under this section is guilty of theft of state funds, punishable as a misdemeanor or a felony depending on the amount of taxes involved and the number of violations of the section. Section 212.12(2)(c) provides that any person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee imposed in the chapter shall be liable for a specific penalty of 100 percent of the tax bill or fee and be punished depending on the total amount of unreported taxes as provided in s. 775.082, 775.083 or 775.084.

Urban High-Crime Area Job Tax Credit

Section 212.097 creates the Urban High-Crime Area Job Tax Credit Program. The program provides sales tax credits for businesses which locate in a high-crime area. Section 212.098 creates the Rural Job Tax Credit Program which provides sales tax credits for businesses which are located in a rural area.

Public Food Service Establishment

Section 509.013(5)(a) defines the term "public food service establishment" to mean "any building, vehicle, place, or structure, or any room or division in a building, vehicle, place or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption." Section 509.013(5)(b) provides a list of places that are excluded from the definition including any place maintained and operated by a public or private school, college or university and any theater.

**C. EFFECT OF PROPOSED CHANGES:**

The bill defines "food service business" to mean "any restaurant, lunch counter, cafeteria or similar establishment licensed as a public food service establishment under chapter 509 which sells food products for consumption either on or off the seller's premises."

The bill defines "scholarship fund" to mean a fund established by either a governmental or private entity to provide scholarships or grants to students from low-income or moderate-income Florida resident families for study at any public or private college, university, community college, or vocational school established in this state.

The bill provides that a food service business that makes a contribution to a scholarship fund shall be allowed a credit against the tax remitted under chapter 212. The bill provides that the credit shall be computed as 25 percent of the amount of contributions to scholarship funds by the food service business. The bill provides that in order to claim the credit, a food service business shall file an application with the department under oath which shall include:

1. The name and address of the food service business.
2. The name of the scholarship fund and the name and address of the person who administers the fund.
3. The amount of each contribution, supported by an affidavit by the administrator of the scholarship fund.

In effect, this bill would allow a restaurant to keep an amount equal to twenty-five percent of the total that the restaurant donated to scholarships from the sales tax money that it would otherwise pass along to the state.

The bill provides that a food service business may apply for a tax credit under this section at any time it is entitled to the credit but cannot apply more than once during a twelve month period.

The bill provides that within ten working days after receipt of an application, the Department of Revenue shall review the application to determine if it contains all the information required pursuant to this section and meets the requirements of this section. Approval of the application, which must be done in writing, shall be transmitted to the food service business. If the application is approved, the credit shall be applied to the next tax return filed by the business. If the credit is greater than can be taken on a single tax return, excess amounts may be taken as credits on any tax return submitted within twelve months after the approval of the application by the department. If the application is insufficient to support the credit authorized by this section, the department shall deny the credit and notify

the food service business of that fact. The food service business may reapply for a credit within three months after such notification.

The bill provides that it is the responsibility of the food service business to affirmatively demonstrate to the satisfaction of the department that it meets the requirements of this section.

The bill provides that the credit authorized by this section shall not be allowed for any month in which the tax due for such period or the tax return required by s. 212.11 for such period is delinquent.

The bill requires the department to adopt rules to administer this section, including rules governing the manner and form of applications for credit and rules to determine those food service businesses and scholarship funds which are qualified under this section.

The bill also provides that any person who fraudulently claims this credit is liable for repayment of the credit plus a mandatory penalty of 100 percent of the credit, and such person commits a second degree misdemeanor, punishable as provided in section 775.082 or 775.083.

**D. SECTION-BY-SECTION ANALYSIS:**

Section 1: Provides that any food service establishment is entitled to a credit against its sales or use tax obligations for 25 percent of any amount contributed to a scholarship fund. Provides procedure for application for credit and establishes responsibilities of Department of Revenue. Provides for penalties if application for credit is fraudulently filed.

Section 2: Provides effective date of July 1, 2001.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

By providing a credit against sales and tax use obligations to food service businesses contributing to scholarship programs, a reduction in sales tax revenues is probable. However, the Department of Revenue has not provided a projection as to the amount of the reduction.

2. Expenditures:

N/A

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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 bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

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

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

During the 1999 session, HB 1673 passed Governmental Rules & Regulations and died in the Committee on Finance and Taxation. The bill did not have a Senate sponsor.

Concerns Raised by the Department of Revenue

The following comments were contained in the bill analysis provided by the Department of Revenue regarding administration and enforcement of HB 153:

The definition of "scholarship fund" may present interpretation and compliance problems. With only 10 days in which to respond to an application, it will not be feasible for the department to investigate each fund listed in an application to assure the purpose of the statute is being fulfilled. Funds set up by private entities could be limited to entities recognized as tax-exempt nonprofit organizations for income tax purposes under s. 501(c)(3) of the Internal Revenue Code or for sales tax purposes under s. 212.08(7), F.S. This would assure that the fund is bona fide and has been reviewed by a governmental body at some time.

In addition, it is unclear whether a fund must be established solely for students from Florida resident families or if it is sufficient that some of the scholarships or grants from a fund go to Florida students. Conditioning the credit on use of the contribution for Florida students would avoid this question.

The bill leaves it to the department to set forth guidelines on how to determine both the businesses and the funds that will qualify by rule. Under current rulemaking guidelines, it is questionable whether the department would be able to define terms and provide criteria without more explicit statutory language.

The bill provides no time limit within which a business must apply for the credit after making the contribution.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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