

STORAGE NAME: h0245.ca

DATE: March 21, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 245

RELATING TO: Sales Tax Exemption/Building Materials

SPONSOR(S): Representative Bradley

TIED BILL(S): None

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

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE (EDC) YEAS 8 NAYS 0
 - (2) COMMUNITY AFFAIRS (PRC)
 - (3) FINANCE & TAXATION (FRC)
 - (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS (FRC)
 - (5)
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I. SUMMARY:

This bill exempts from sales tax materials and labor used in the construction of a single-family home in an enterprise zone, empowerment zone, or Front Porch Florida Community if the assessed value of the home is \$60,000 or more but less than \$120,000. The exemption is granted to the owner of the home as a refund of taxes previously paid on materials and labor used in the construction of the home. The bill specifies the requirements the home owner must meet in order to receive the refund, and directs the Department of Revenue (DOR) to establish, by rule, an application form and criteria for establishing eligibility for the exemption.

This bill reduces revenues generated by the state sales tax. The bill also reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, and reduces revenues collected by local governments under local option sales taxes. Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant.

The effective date of the bill is July 1, 2000.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input 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:

B. 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. Section 212.05(1)(b), F.S., provides for a six percent tax on the cost price of any item of tangible personal property that is not sold but is used in the state. Additionally, local governments are authorized to levy one or more of six types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each.

Section 212.08(5)(g), F.S., exempts from sales tax those building materials used in the rehabilitation of real property located in an enterprise zone. Upon affirmative showing to the satisfaction of the department, the exemption inures to the owner, lessee, or lessor of the rehabilitated property, located in an enterprise zone in the form of a refund of previously paid taxes. The refund is capped at \$5,000. DOR interprets the statute to allow a person building a new house on qualifying property to apply for the refund. The exemption is not limited to single-family residences, nor does it require the owner to reside in the home.

In an analysis of HB 245, the Office of Tourism, Trade, and Economic Development (OTTED) provided information received from the National Association of Homebuilders (NAHB) regarding estimates on building materials costs for single-family homes. The NAHB reports that 20% of the total cost of a \$60,000 home is spent on building materials costs which are subject to the rate of 6 percent sales tax, or \$720. Additionally, 30% of the total cost of a \$100,000 home is spent on building materials costs subject to the rate of 6 percent sales tax, or \$1,800. On-site labor costs are not subject to the state sales tax.

Currently, there are 34 enterprise zones, including one empowerment zone, designated in the state. On October 8, 1999, Governor Bush designated the first six Front Porch Florida Neighborhoods. The Governor's Front Porch Florida Initiative calls for 20 such designations.

C. EFFECT OF PROPOSED CHANGES:

This bill will reduce the cost of constructing a qualifying single-family home in a Front Porch Florida Community by creating a sales tax exemption on materials and labor used in the construction of single-family homes having an assessed value of \$60,000 or more but less than \$120,000. The exemption is granted to the owner of the home as a refund of taxes previously paid on material and labor used in the construction of a qualified home. The bill specifies the requirements the home owner must meet in order to receive the refund and directs DOR to establish, by rule, an application form and criteria for establishing eligibility for the exemption. (See "Comments" section.)

D. SECTION-BY-SECTION ANALYSIS:

Section 1. A new paragraph (n) is added to subsection (5) of section 212.08, F.S., to create an exemption from sales tax materials and labor used in the construction of a single-family home in an enterprise zone, empowerment zone, or Front Porch Florida Community, if the assessed value of the home is \$60,000 or more but less than \$120,000. The exemption is granted to the owner of the home as a refund of taxes previously paid on materials and labor used in the construction of the home.

To receive a refund, the owner must file a refund application, under oath, with the DOR which includes:

1. The owner's name and address.
2. The address and assessment roll parcel number of the qualified home.
3. A copy of the building permit issued for the home.
4. A certification by the local building inspector that the home is substantially complete.
5. A sworn statement, under penalty of perjury, from the general contractor with whom the owner contracted to construct the home, that lists the building material used, the actual cost, labor costs associated with the construction, actual costs of construction and the applicable sales tax paid. In the event a general contractor was not used, the owner must provide the same information in a sworn statement and copies of invoices evidencing payment of applicable sales tax.
6. A sworn statement, under penalty of perjury, from the owner that he or she is occupying the home for residential purposes.

An application for refund must be submitted to DOR within 6 months after the date the home is considered "substantially" complete by the local building inspector. Within 30 days of receipt of the refund application, DOR must determine if the application meets the criteria established for the refund, and the refund must be made by DOR within 30 days after formal approval of the application.

DOR is directed to establish, by rule, an application form and criteria for establishing eligibility for the exemption.

Section 2. An effective date of July 1, 2000, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill will reduce revenues generated by the state sales tax. (See "Fiscal Comments" section.)

2. Expenditures:

DOR indicates the bill will have no fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, and reduces revenues collected by local governments under local option sales taxes. (See "Fiscal Comments" section.)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The exemption created by this bill will reduce the cost of constructing a qualifying single-family home in a Front Porch Florida Community.

D. FISCAL COMMENTS:

The Revenue Estimating Conference addressed HB 245 at its March 13, 2000, meeting. However, the estimated impact was subsequently withdrawn. A new estimate is being prepared.

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.

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:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill directs DOR to establish, by rule, an application form and criteria for establishing eligibility for the exemption.

C. OTHER COMMENTS:

There are several technical concerns with the bill that may need clarification through the amendatory process. These concerns are discussed below.

Application of the Bill

DOR's analysis of HB 245 indicates that direction is needed as to whether the sponsor intends for the tax exemption to apply only to qualifying residential construction begun on or after the bill's effective date, or whether the department should accept applications for refunds based on qualified residential construction started or completed within the 6 months prior to the bill's effective date.

Exemption in Enterprise Zones

As noted in the "Present Situation," 212.08(5)(g), F.S., currently exempts from sales tax those building materials used in the rehabilitation of real property located in an enterprise zone, and DOR interprets the statute to allow a person building a new house on qualifying property to apply for the refund. The refund is capped at \$5,000, but is not limited to single-family residences and does not require the owner to reside in the home, as does the exemption created by this bill. It is unclear what effect this bill will have on the existing sales tax exemption for enterprise zones as it applies to construction of single-family homes; however, DOR could interpret the bill to limit exemption from sales tax for materials used in the construction of single-family homes to the exemption created by this bill.

Administration

To qualify for the sales tax exemption created by this bill, a home must have an assessed value of \$60,000 or more but less than \$120,000. A home completed in January will not be assessed and submitted to DOR as part of the tax roll until the July of the next year. DOR may take up to 90 days in some circumstances to approve the tax roll. As a result, a home built in January would not be on the certified tax roll until 18 or 19 months after its completion. The bill, however, requires an application for refund to be submitted to DOR within 6 months after the date the home is considered "substantially" complete by the local building inspector, and provides that within 30 days of receipt of the refund application,

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DOR must determine if the application meets the criteria established for the refund. Given the delay between completion of the home and inclusion in the certified tax roll, an applicant could not submit a complete application within 6 months of the home's completion, and DOR could not comply with the requirement to approve the application within 30 days. The bill should be amended to allow an applicant to submit an application within 19 months after the date the home is substantially complete, or use some other criteria than assessed value to define a qualified home.

Labor Cost

The analysis of HB 245 by the Office of Tourism, Trade and Economic Development (OTTED) indicates that clarification is needed regarding the sponsor's intent on the type of labor cost to be exempt. On-site labor costs are not subject to the state sales tax or the local discretionary tax; however, there may be off-site labor costs associated with the construction or assembly of certain building materials or supplies affected.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

Jill F. Turman

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith