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HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
ANALYSIS

BILL #: HB 249

RELATING TO: Tax Exemption/Digital Television Signals

SPONSOR(S): Representatives Byrd and Hart

TIED BILL(S): SB 112 (S)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE
(2) FINANCE & TAXATION
(3) GENERAL GOVERNMENT APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill creates a sales tax exemption, which inures in the form of a refund of taxes already paid for property which produces, transmits, receives, or redistributes digital television signals. The bill exempts from sales tax machinery and equipment purchased or leased in Florida for use by a television studio, television network, television production company or federally licensed television station in the production, origination, broadcast, transmission, receipt, or redistribution of television signals.

The bill defines “machinery and equipment” subject to this exemption as that described in 47 C.F.R, part 73, or “section 38 property” as defined in s. 48(a)(1)(A) and (B)(1) of the Internal Revenue Code (IRC, Title 26, United States Code).

The revenue estimating conference has not yet addressed this bill.

The issue of rulemaking is not addressed in the bill.

The bill would be effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

1.	Less Government	Yes []	No []	N/A [x]
2.	Lower Taxes	Yes [x]	No []	N/A []
3.	Individual Freedom	Yes []	No []	N/A [x]
4.	Personal Responsibility	Yes []	No []	N/A [x]
5.	Family Empowerment	Yes []	No []	N/A [x]

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

B. PRESENT SITUATION:

Digital Broadcasting

Digital broadcasting transmits the information used to make a TV picture and sound as "data bits" (as does a computer). A digital broadcaster can carry more information than is currently possible with analog broadcast technology, allowing for the transmission of pictures with higher resolution, resulting in dramatically better picture and sound quality. ("Standard definition" digital TV pictures would be similar in clarity and detail to the best TV pictures being received and displayed today using the current (analog NTSC) broadcast system and TV receivers.) Digital television technology can also be used to transmit large amounts of other data that consumers may be able to access using computers or television sets. This means that broadcasters will be able to offer customers an entire edition of a newspaper, sports information, computer software, telephone directories, or stock market updates if they choose to do so. Not only will broadcasters be able to broadcast at least one high definition TV program, they may also simultaneously transmit several standard definition TV programs. Another possibility is broadcasts in multiple languages with picture and information inserts and, in some cases, viewers will have the opportunity to select camera angles. An important additional benefit of digital television is that it will free up parts of the broadcast spectrum for other uses due to the fact that modern technology of digital television is more efficient than analog TV technology.

Pursuant to Congressional authorization, the Federal Communications Commission (FCC) has established rules for the transition to digital broadcasting. In order to ensure the successful introduction of digital television and to make it available to as many Americans as quickly as possible, the FCC established an accelerated schedule for its introduction. Because of this FCC rule, most Americans are scheduled to have access to digital television by 1999. By the year 2006, all US TV stations are to be operating in a digital format only and they will abandon their analog broadcasts. The FCC required affiliates of the top four networks in the top ten markets (none in Florida) to be on the air with a digital signal by May 1, 1999. Markets 11 through 30, which includes the Miami-Ft. Lauderdale, Tampa-St. Petersburg, and Orlando-Daytona Beach markets, were to be on the air with digital signal by November 1, 1999. The top ten markets include 30 percent of television households, and the top 30 markets include 53 percent.

It will take a number of years to convert fully to digital television because today's television sets are not designed to receive digital transmissions. In order to provide a smooth transition to digital television service with as little disruption to the public as possible, and as provided in the Telecommunications Act of 1996, the FCC granted each existing broadcaster an additional 6MHz channel to be used for digital transmissions. Broadcasters will send out both analog and digital signals at least until 2006, and will not be required to return their analog spectrum stations until 85 percent of households have access to digital television.

Broadcasters will be required to spend millions of dollars toward the creation of a digital infrastructure, including the need to purchase digital antennas and camera equipment.

Section 6 of Chapter No. 99-251, Laws of Florida, created the "21st Century Digital Television and Education Task Force." The task force serves through February 1, 2000 and is charged with: devising a plan to recruit digital industries to locate in Florida; recommending economic incentives to assist the recruitment of certain digital industries to Florida; devising a plan to create and maintain higher education opportunities for students interested in the digital television field; recommending methods to hasten the conversion of existing commercial television studios and sound stages from analog to digital technology; investigating means of assisting public broadcast stations in their conversion from analog to digital technology; and issuing a report to the Legislature prior to February 1, 2000.

The membership of the task force includes: two members appointed by the Governor; two members of the Senate, or their designees, appointed by the Senate President; two members of the House of Representatives, or their designees, appointed by the House Speaker; the Commissioner of Education or the Commissioner's designee; the Chancellor of the State University System, or the Chancellor's designee; the Executive Director of the State Community College System, or the director's designee; the President of the Independent Colleges and Universities of Florida or the president's designee; a representative of Enterprise Florida, Inc., with knowledge on workforce development and economic development issue; and the Film Commissioner within the Office of Tourism Trade and Economic Development.

Chapter 212, Tax and Sales, Use and Other Transactions

The state of Florida levies a 6 percent sales tax on most sales of tangible personal property in the state and on some services. The statutes currently provide more than 150 exemptions from the sales tax. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting certain types of organizations, such as the government, churches, and charitable organizations. Currently, s. 212.08(5)(f), F.S., grants a sales tax exemption for motion picture or video equipment used in motion picture or television production activities and sound recording equipment used in the production of master tapes and master records. Section 212.08(5)(f), F.S., states that the sales tax exemption does not apply to equipment purchased or leased by television or radio broadcasting or cable companies licensed by the FCC. The exemptions inure in the form of a refund of taxes once they are paid.

C. EFFECT OF PROPOSED CHANGES:

The bill creates a sales tax exemption, which will inure in the form of a refund, for machinery and equipment purchased or leased in Florida for use by a television studio, television network, television production company, or federally licensed television station in the production, origination, broadcast, transmission, receipt, or redistribution of television signals. Finally, the bill provides that for the purposes of this section, "machinery and equipment" means machinery and equipment as described in 47 C.F.R., part 73 and "section 38 property" as defined in s. 48(a)(1)(A) and (B)(1) of the Internal Revenue Code and used for certain endeavors regarding digital television.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The revenue estimating conference has not yet addressed this bill.

2. Expenditures:

The revenue estimating conference has not yet addressed this bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The revenue estimating conference has not yet addressed this bill.

2. Expenditures:

The revenue estimating conference has not yet addressed this bill.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The sales tax exemption provided to the eligible companies receiving a refund for taxes paid will have some economic benefit; however, the revenue estimating conference has not yet addressed this bill to determine what amount is to be expected.

D. FISCAL COMMENTS:

None.

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 action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

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

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

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

V. COMMENTS:

In the Department of Revenue's (DOR) analysis of the bill, comments provided state that the bill may be difficult to enforce because:

1.) The definition in the bill for machinery and equipment may not be sufficient because the bill provides it is the same definition as that found in 47 C.F.R., part 73, and "section 38 property" as defined in s. 48(a(1)(A) and (B) (i) of the Internal Revenue Code. The former does not provide a clear definition; and the latter is no longer in the Internal Revenue Code. However, the former IRC section 48(a)(1)(A) provided that "section 38" property was "tangible personal property (other than an air conditioning or heating unit)", and the former section 48(a)(1)(A) and (B)(i) provided that "section 38" property was other tangible personal property used as an integral part of manufacturing, production , or extraction or of furnishing transportation, communications, electrical energy, gas, water, or sewage disposal services. The DOR takes the position that property currently exempt, pursuant to s. 212.08(5)(f), F.S., must have a three year useful life.

The DOR believes that the reference to "section 38" property and section 48(a(1)(A) and (B) (i), as well as 47 C.F.R., part 73 may invalidate the exemption. Further, DOR provides that in lieu of including language specifically listing the equipment to be exempt, the bill may provide sufficient guidelines to the department because it states the equipment must be used for the production, origination, broadcast, transmission, receipt, or redistribution of digital television signals. Pursuant to Chapter 212, F.S., the department currently administers exemptions for "equipment" and "machinery and equipment" without specific definition or reference to external laws.

2.) The bill language provides that anyone could purchase the equipment, as long as it will be used by one of the listed entities. Providing the refund would be easier if only applied to those entities using the machinery and equipment. The DOR recommends an amendment to make this clarification.

. 3.) The current effective date may not give the DOR sufficient time to adequately implement because the department must identify affected taxpayers, create new forms, change internal processes, draft and promulgate rule amendments, and prepare a Taxpayer Information Publication (TIP) to be sent to all affected parties. The DOR recommends an effective date of January 1, 2001.

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

HB 2073 passed the House Committee on Business Development and International Trade during the 1999 legislative session unanimously. Section 2 of HB 2073 is identical to HB 249.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

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