

STORAGE NAME: s0388z.ft
DATE: June 7, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-228, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
FINAL ANALYSIS**

BILL #: CS/SB 388
RELATING TO: Taxation
SPONSOR(S): Committee on Fiscal Resource
TIED BILL(S): None

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

- (1)
 - (2)
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Committee Substitute provides a sales tax exemption for sales and leases to organizations holding a current exemption from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code.

Since the bill grants a sales tax exemption to organizations holding a current exemption from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code, parts of s. 212.08(7), F.S., become obsolete and redundant. Consequently, this bill substantially amends or repeals the obsolete and redundant language.

The bill reduces state general revenues by an estimated (\$7.8) million in FY 2000-01 and (\$20.9) million in FY 2001-02. The impact on local revenues during the same period is a reduction of (\$1.2) million and (\$3.5) million.

The bill takes effect on January 1, 2001.

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"/> |

B. PRESENT SITUATION:

Florida's sales and use tax is a tax of general applicability which applies to receipts from the sales, storage, and use of all tangible personal property unless specifically exempted. Florida provides a number of sales tax exemptions based on the perceived nature of an organization as supplying goods or services that are beneficial to the public or promote a socially desirable goal. Section 212.08(7)(o)1.b., F.S., provides general non-profit exemption on sales or leases to non-profit organizations considered charitable, educational, scientific and religious. Section 212.08(7)(o)1.a., F.S., exempts sales or leases to churches as well as sales of tangible personal property by churches. Section 212.08(7)(o)1.c., F.S., provides an exemption on sales or leases to qualified veterans' organizations and their auxiliaries.

A non-profit organization's holding of section 501(c)(3) status is insufficient under current Florida law to qualify the entity for exemption from Florida's sales and use tax. However, many of Florida's sales and use tax exemptions require that an organization hold section 501(c)(3) status as one of several requirements, all of which must be met, in order to qualify for exemption.

Section 501(c)(3) of the Internal Revenue Code exempts from the federal corporate income tax, corporations and associations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition or for the prevention of cruelty to children or animals.

Each year the Legislature spends significant time and effort to provide sales and use tax exemptions to section 501(c)(3) organizations that have failed to meet one or more of the myriad of statutory requirements for exemption provided under Florida law. In addition, it is difficult for taxpayers to understand why they do not qualify for state sales tax exemption when they qualify for federal income tax exemption.

The Senate Fiscal Resource Committee Interim Project 2000-47, "Feasibility of Exempting All S. 501(c)(3) Organizations From Florida's Sales and Use Tax", recommended that the Legislature consider exempting all section 501(c)(3) organizations from the state sales and use tax. The recommendation was based on the findings that the extrinsic benefits to the

taxpayers and the State of Florida outweigh the monetary costs to the General Revenue Fund. (See Interim Project Report 2000-47).

An administrative law judge recently determined in Associated Marine Institute, Inc. v. Department of Revenue that the following organizations are not required to collect sales tax on sales or leases they make: nonprofit homes for the aged, nursing homes, or hospices [s. 212.08(7)(m), F.S.]; nonprofit organizations providing certain benefits to minors [s. 212.08(7)(n), F.S.]; cooperative hospital laundries [s. 212.08(7)(nn), F.S.]; state theater contract organizations [s. 212.08(7)(r), F.S.]; Coast Guard auxiliaries [s. 212.08(7)(cc), F.S.]; and citizen support organizations [s. 212.08(7)(kk), F.S.].

Section 196.195(4), F.S., provides that a corporation organized as non-profit under Chapter 617 which has a valid consumer certificate of exemption under s. 212.08(o), F.S., and which has an exemption from federal taxation under section 501(c)(3) of the Internal Revenue Code must be considered nonprofit for purposes of receiving an exemption from ad valorem taxation. Section 196.196(1)(c), F.S. provides that the extent to which property is used to conduct activities which cause a corporation to qualify for a consumer certificate of exemption under s. 212.08(o), F.S., such activities will be considered as part of the exempt purpose of the applicant for an ad valorem tax exemption. These provisions were added to the statute in 1997 (Ch. 97-294, L.O.F.) The constitutionality of these provisions has been challenged in a recent case in Highlands County (Fairhaven South, Inc v. McIntyre) in which an application for exemption was rejected by the property appraiser.

C. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(7), F.S., to delete the current general exemption for non-profit charitable, scientific, educational and veterans' institutions and organizations, as well as deleting all specific provisions in s. 212.08(7), F.S., that grant exemptions to particular types of section 501(c)(3) organizations. The bill replaces the deleted exemptions with a new s. 212.08(7)(p), F.S., that exempts sales or leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, when such leases or purchases are used in carrying on their customary non-profit activities.

The bill does not reverse the recent determination of the administrative law judge in Associated Marine Institute, Inc. v. Department of Revenue that non-profit organizations providing certain benefits to minors are not required to collect sales tax on sales or leases they make. However, it limits the exemption for sales by such nonprofit organizations to sales of donated property. The bill defines "donated property" as property transferred to such non-profits for less than 50 percent of its fair market value. The bill does, however, reverse such determination that sales made to others by citizen support organizations, cooperative hospital laundries, nonprofit homes for the aged, nursing homes, or hospices, state theater contract organizations and Coast Guard auxiliaries are tax exempt.

The bill repeals ss. 196.195(4) and 196.196(1)(c), F.S., which provides that any s. 501(c)(3) organization with a sales tax consumer certificate of exemption is non-profit for ad valorem taxation. By providing a sales tax exemption for all section 501(c)(3) organizations, the bill relieves the Department of Revenue of determining whether such organizations are charitable, and repealing these sections will give responsibility for making this determination for ad valorem purposes to the property appraiser.

The bill will take effect July 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates a new section 212.08(7)(p), F.S., which exempts from tax sales and leases to organizations determined by the Internal Revenue Service to be currently exempt from federal income tax pursuant to section 501(c)(3) of the Internal Revenue Code of 1986, as amended, when such leases or purchases are used in carrying on their customary nonprofit activities. Subsection (7) is further amended to conform. Additionally, subsection (7) is amended to state that only sales and leases to citizen support organizations, cooperative hospital laundries, non-profit homes for the aged, nursing homes, or hospices, state theater contract organizations and Coast Guard auxiliaries are tax exempt. The sales tax exemption for property sold by organizations providing special educational, cultural, recreational, and social benefits to minors is limited to sales of donated property. Paragraph (l) defines "donated property" as any property transferred to such nonprofit organization for less than 50 percent of its fair market value.

Section 2 conforms a cross reference in s. 212.084(6), F.S.

Section 3 repeals ss. 196.195(4) and 196.196(c)(1), F.S.

Section 4 conforms a cross reference in s. 212.0821(2), F.S.

Section 5 conforms a cross reference in s. 376.3072(2)(a), F.S.

Section 6 conforms a cross reference in s. 403.715, F.S.

Section 7 conforms a cross reference in s. 414.029, F.S.

Section 8 conforms a cross reference in s. 496.404(8), F.S.

Section 9 conforms a cross reference in s. 564.02(3)(b), F.S.

Section 10 provides an effective date of January 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$7.8M)	(\$22.0M)
Trust Fund	(*)	(*)
Local Gov't Half Cent TF	(\$0.6)	(\$2.1)
Local Option Sales Tax	(\$0.6)	(\$1.4)

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2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III.A.1.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

More nonprofit organizations who provide valuable services to the community will be able to make purchases and leases tax exempt.

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 an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Section 18, Article VII, of the Florida Constitution provides that a general law is a mandate when the law would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The term "authority" includes a reduction in the base against which the tax is levied. A bill providing a sales tax exemption is a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base. If the bill has an insignificant fiscal impact, it is not considered a reduction in authority. "Insignificant" means an amount not greater than the average statewide population for the applicable fiscal year times ten cents. For the FY 2000-01, a bill that would have a statewide annual fiscal impact on counties and municipalities of \$1.6 million or less is not considered a mandate. The official population estimate for FY 2000-2001 is 15.8 million.

The estimated reduction in Local Option Sales tax by this bill is \$1.4 million. The bill therefore does not reduce the authority of cities and counties to raise revenues in the aggregate and is not a mandate to local governments.

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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:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

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