

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 388

SPONSOR: Fiscal Resource Committee

SUBJECT: Tax Exemptions

DATE: February 23, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

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

This Committee Substitute substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.08(7), 212.084, 196.195 and 196.196.

II. 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 nonprofit exemption on sales or leases to nonprofit 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.

Nonprofit organizations holding section 501(c)(3) status is insufficient under current Florida law to qualify an entity for exemption from Florida's sales and use tax. However, many of Florida's sales and use tax exemptions do currently 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 I.R.C. 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 lease they make: nonprofit homes for the aged, nursing homes, or hospices [s. 212.08(7)(m)]; nonprofit organizations providing certain benefits to minors [s. 212.08(7)(n)]; cooperative hospital laundries [s. 212.08(7)(nn)]; state theater contract organizations [s. 212.08(7)(r)]; Coast Guard auxiliaries [s. 212.08(7)(cc)]; and citizen support organizations [s. 212.08(7)(kk)].

Section 196.195(4), F.S., provides that a corporation organized as nonprofit 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.

III. Effect of Proposed Changes:

The Committee Substitute amends s. 212.08(7), F.S., to delete the current general exemption in paragraph (o), F.S., for nonprofit 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 Committee Substitute replaces most of the deleted exemptions with a new s. 212.08(7)(p), F.S., that would exempt 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 nonprofit activities.

The Committee Substitute does not reverse the recent determination of the administrative law judge in Associated Marine Institute, Inc. v. Department of Revenue that nonprofit organizations

providing certain benefits to minors are not required to collect sales tax on sales or lease they make. However, it limits the exemption for sales by such nonprofit organizations to sales of donated property. The Committee Substitute defines “donated property” as property transferred to such nonprofits for less than 50 percent of its fair market value. The Committee Substitute 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 Committee Substitute amends s. 212.084(6), F.S., to conform current law to the changes made to s. 212.08(7), F.S.

The Committee Substitute also amends ss. 212.0821, 376.3072, 403.715, 414.029, 496.404, and 564.05, F.S., conforming cross-references.

The Committee Substitute repeals ss. 196.195(4) and 196.196(1)(c), F.S., which provides that any s. 501(c)(3) organization with a consumer certificate of exemption is nonprofit for ad valorem taxation. By providing a sales tax exemption for all s. 501(c)(3) organizations, the Committee Substitute 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.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This Committee Substitute initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the Committee Substitute has the effect of adding an exemption to the local option sales surtax. Since the annual local revenue loss is estimated to be more than \$1.4 million, the bill will not be exempt from the requirements of subsection (b).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates the fiscal impact of providing a sales tax exemption to organizations holding a federal exemption pursuant to section 501(c)(3) of the I.R.C., to be a recurring loss to the General Revenue Fund of \$20.9 million and a recurring \$3.3 million loss to local governments.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
501(c)(3) Exemption	\$ (8.7)	\$ (20.9)	\$ (*)	\$ (*)	\$ (1.4)	\$ (3.3)	\$ (10.1)	\$ (24.2)

- * Insignificant
- ** Indeterminate

B. Private Sector Impact:

Organizations holding nonprofit status pursuant to section 501(c)(3) of the Internal Revenue Code will automatically qualify for exemption from payment of state and local sales and use tax. Such organizations will no longer have to meet additional criteria pursuant to s. 212.08(7), F.S.

C. Government Sector Impact:

The passage of this Committee Substitute will lighten the administrative load for the Department of Revenue in relation to the review, issuance, or denial of sales tax exemptions to section 501(c)(3) organizations that do not meet all criteria for exemption pursuant to s. 212.08(7), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

HB 263 is similar to SB 388.

VIII. Amendments:

None.