

STORAGE NAME: h0621.ca

DATE: January 20, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 621

RELATING TO: Sales Tax/Manufactured Homes

SPONSOR(S): Representative Bense & Others

TIED BILL(S): None.

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

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) FINANCE & TAXATION (FRC)
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

This bill imposes the use tax, at the rate of 6 percent, on the value or cost of materials used as a component part of a new manufactured home. As a result, sales of new manufactured homes as tangible personal property are not subject to the sales tax. The bill exempts resales of used manufactured homes from sales and use tax. The bill also requires persons who produce or manufacture manufactured homes to pay the tax collected on the cost of materials that become a component part of each manufactured home at the time the manufactured home is transferred out of inventory for sale to a consumer.

The Impact Conference has not yet addressed this bill. The bill reduces revenues generated by the state sales tax, reduces revenues collected by local governments under local option sales taxes, and reduces the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties.

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:

Ad Valorem Taxes

The Florida Constitution provides that counties, school districts, and municipalities must be authorized by law to levy ad valorem taxes. (Fla. Const. art. VII, § 9.) Section 196.001, F.S., subjects the following property to ad valorem taxation, unless otherwise expressly made exempt from such taxation: all real and personal property in this state; all personal property belonging to persons residing in this state; and all leasehold interests in property of the United States, of the state, or any political subdivision, municipality, agency, authority or other public body corporate of the state.

Pursuant to ss. 193.075(1) and 320.01(2), F.S., mobile homes are treated as real property for taxation purposes if the owner of the mobile home is also the owner of the land on which the mobile home is permanently affixed. Section 193.075(1), F.S., provides for a mobile home that is taxed as real property to be issued an "RP" series sticker by the tax collector as provided in s. 320.0815, F.S. All other mobile homes are to be issued licenses under chapter 320, F.S. Pursuant to the Florida Constitution (Fla. Const. art. VII, § 1(b).), and s. 192.001(11)(d), F.S., licensed mobile homes are not subject to ad valorem taxes.

Section 320.01(2)(a), F.S., defines "mobile home" as follows:

a structure, transportable in one or more sections, which is 8 body feet or more in width and which is built on an integral chassis and designed to be used as a dwelling when connected to the required utilities and includes the plumbing, heating, air-conditioning, and electrical systems contained therein. For tax purposes, the length of a mobile home is the distance from the exterior of the wall nearest to the drawbar and coupling mechanism to the exterior of the wall at the opposite end of the home where such walls enclose living or other interior space. Such distance includes expandable rooms, but excludes bay windows, porches, drawbars, couplings, hitches, wall and roof extensions, or other attachments that do not enclose interior space. In the event that the mobile home owner has no proof of the length of the drawbar, coupling, or hitch, then the tax collector may in his or her discretion either inspect the home to determine the actual length or may assume 4 feet to be the length of the drawbar, coupling, or hitch.

Section 320.01(2)(b), F.S., defines "manufactured home" to mean:

a mobile home fabricated on or after June 15, 1976, in an offsite manufacturing facility for installation or assembly at the building site, with each section bearing a seal certifying that it is built in compliance with the federal Manufactured Home Construction and Safety Standard Act.

Sales and Use Tax

Chapter 212, F.S., 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)(a)1.b., F.S., subjects each occasional or isolated sale of an aircraft, boat, mobile, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in Florida or by the United States Government to tax at the rate provided in paragraph (a) (6 percent). 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.

Sales of real property are not taxable under the sales and use tax laws. Pursuant to s. 212.06(1)(b), F.S., the fabricated cost of tangible personal property a contractor manufactures for its own use in performing a real property contract, however, is taxable. The taxable fabricated cost is limited to the cost price of items used in the manufacture of factory-built buildings in the case of a contractor who manufactures a factory-built building for use in performing a real property contract. Section 212.02(7), F.S., defines "factory-built building" to mean "a structure manufactured in a manufacturing facility for installation or erection as a finished building; . . ." The term includes residential as well as commercial, institutional, storage, and industrial structures. Pursuant to s. 212.06(14), F.S., for the purposes of determining whether a person is improving real property, mobile homes not assessed as real property are not to be considered real property. Thus, licensed mobile homes sold as tangible personal property are not subject to the use tax imposed by 212.06(1)(b), F.S., but are subject to the sales tax imposed by s. 212.05, F.S.

Under the foregoing statutes, if a person manufactures a manufactured home and sells and installs it in a permanent manner on land owned by the buyer, that is the performance of a real property contract. The contractor owes use tax on the cost of materials but collects no sales tax from the buyer. If the manufacturer sells the unit as tangible personal property, the manufacturer pays no tax on materials but must collect tax on the full purchase price. In the case of a sale of a unit as tangible personal property, the manufacturer could take a resale certificate or consumer's certification of exemption from the buyer in lieu of collecting sales tax. If a unit is resold by an owner who was not the manufacturer, that sale is taxable if the unit is sold as tangible personal property. If it is permanently attached and the owner is selling it along with land as a package, that is a real property sale that is not subject to sales tax.

Dealers are required to register with the Department of Revenue, collect and remit sales taxes on their sales of tangible personal property, and comply with numerous other provisions in chapter 212, F.S. Section 212.06(2) defines the term "dealer." Manufacturers of manufactured homes are not specifically defined as dealers. If such manufacturers sell

such homes in Florida as tangible personal property, however, they are within the general definition of “dealer” and are required to register as dealers. In addition, if they fabricate factory-built buildings in Florida to install as real property, they are required to register for use tax purposes in order to remit tax on materials if they do not pay tax on all purchases when made.

Overview of Local Discretionary Sales Surtaxes

Section 212.055, F.S., authorizes local governments to levy numerous types of local discretionary sales surtaxes. These include:

- (1) The Charter County Transit System Surtax [s. 212.055(1), F.S.];
- (2) The Local Government Infrastructure Surtax [s. 212.055(2), F.S.];
- (3) The Small County Surtax [s. 212.055(3), F.S.];
- (4) The Indigent Care Surtax [s. 212.055(4), F.S.];
- (5) The County Public Hospital Surtax [s. 212.055(5)]; and
- (6) The School Capital Outlay Surtax [s. 212.055(6), F.S.].

Pursuant to section 212.054, F.S., the local discretionary sales surtaxes apply to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of taxable sale. The sales amount is not subject to the surtax if the property or service is delivered within a county that does not impose a surtax. In addition, the tax is not subject to any sales amount above \$5,000 on any item of tangible personal property and on long distance telephone service. The \$5,000 cap does not apply to the sale of any other service.

C. EFFECT OF PROPOSED CHANGES:

This bill imposes the sales tax, at the rate of 6 percent, on the value of the materials used as a component part of a new manufactured home. As a result, sales of new manufactured homes as tangible personal property are not subject to the sales tax. The bill exempts resales of used manufactured homes from sales and use tax. The bill also amends the definition of “dealer” to include persons who produce or manufacture manufactured homes, and requires such dealers to pay a tax collected on the cost of materials that become a component part of each manufactured home at the time the manufactured home is transferred out of inventory for sale to a consumer.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Paragraph (o) is added to subsection (1) of section 212.05, F.S., to apply the sales tax at a rate of 6 percent on the value of materials used as a component part of a new manufactured home. The paragraph provides that resales of used manufactured homes may not be taxed.

Section 2. Paragraph (m) is added to subsection (2) of section 212.06, F.S., to provide that “dealer” includes every person who produces or manufactures a manufactured home, as defined in s. 320.01, F.S., for sale in this state. The paragraph provides that tax

collected on the cost of the materials that become a component part of each manufactured home shall be paid by the manufacturer at the time the manufactured home is transferred out of inventory for sale to a consumer.

Section 3. An effective date of July 1, 2000, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill reduces overall revenues generated by the collection of sales and use taxes imposed on the sale and manufacture of manufactured homes. See "Fiscal Comments" section.

2. Expenditures:

The Department of Revenue reports this bill has no fiscal impact on the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill reduces overall sales and use taxes for new and used manufactured homes sold as tangible personal property. See "Fiscal Comments" section.

D. FISCAL COMMENTS:

The bill does not affect taxes collected on the cost of materials used to fabricate a manufactured home that a person manufactures, sells, and installs in a permanent manner on land owned by the buyer. The bill reduces taxes imposed on the sales of manufactured homes sold as tangible personal property. Under current law, sales tax is applied to the full purchase price of such homes. Under the bill's provisions, only the value or cost of the materials used as a component part of such homes is taxed. Resales of used manufactured homes, which are currently subject to sales tax if sold as tangible personal property, are exempted from sales or use tax. The Impact Conference has not yet addressed this bill.

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:

This bill reduces the authority of municipalities and counties to raise revenues. The Impact Conference has not yet addressed this bill; therefore, it cannot be determined if the bill will have a significant impact and whether the provisions of Article VII, Section 18(b), Florida Constitution, apply.

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

While the bill reduces 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(c), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill does not necessitate additional rule making authority.

C. OTHER COMMENTS:

The Department of Revenue (DOR) submitted an analysis of HB 621 that raises several administrative problems with the bill.

The analysis notes that new paragraph (o) of subsection (1) of s. 212.05, F.S., imposes the sales tax on the “**value** of the materials used as a component part of a new manufactured home.” However, new paragraph (m) of subsection (2) of section 212.06, F.S., uses the expression “**cost** of materials that become a component part of each manufactured home. DOR states that value is a less objective measure.

DOR also states that the placement of the provision exempting resales of manufactured homes in s. 212.05, F.S, is problematic. Section 212.05 is the basic section that imposes sales and use tax on transactions. DOR believes that placing an exclusion or exemption provision in s. 212.05, F.S., rather than in s. 212.06, F.S., or s. 212.08, F.S, will lead to confusion and noncompliance.

DOR notes that the bill defines “manufactured home” by reference to s. 320.01(2), F.S., in section 2 of the bill but not in section 1. Both sections should reference this definition.

DOR states that the bill is not clear about how manufactured homes are to be taxed if the manufacturer sells them to a dealer who offers a resale certificate. In such cases, the unit is not withdrawn from inventory for sale to a consumer.

DOR notes the interaction between the provisions created by this bill, section 212.06(1)(b), F.S. (which imposes tax on materials used in fabricating a factory-built building for use in performing a real property contract), and s. 212.06(14), F.S. (Which provides that "titled property," including mobile homes licensed under chapter 320, F.S., is not real property) is not clear.

DOR suggests that it might be preferable to create a new subsection in section 212.06, F.S., entitled "manufactured homes," consolidate the bill's provisions there, and address the points where the intent is unclear.

DOR provided the following comments regarding potential enforcement problems:

Depending on the intended scope of this bill, there could be enforcement problems. The application of sales and use taxes to mobile homes is a significant noncompliance area now because they are sometimes real property and sometimes tangible personal property. This is the case even trying to use the objective measure of how a unit is viewed for ad valorem taxation purposes. The confusion extends to subsequent repairs and remodeling as well as sales. Adding a new distinction based on when a unit was built and whether, when built, it carried certain certification seals, adds a possible new level of confusion when used units are resold. If they are attached to land and sold with the land by the owner of both, they are real property and not taxable in any case. If a owner detaches a home from the land and sells it apart from the land, it is now relatively clear that is a taxable sale of tangible personal property. That would not necessarily be the case under this bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

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