

STORAGE NAME: h0879.grr

DATE: March 17, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL RULES & REGULATIONS
ANALYSIS**

BILL #: HB 879

RELATING TO: Sales Tax/Printed Materials

SPONSOR(S): Representative Lynn and others

TIED BILL(S):

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

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (2) GOVERNMENTAL RULES & REGULATIONS
 - (3) FINANCE & TAXATION
 - (4) GENERAL GOVERNMENT APPROPRIATIONS
 - (5)
-

I. SUMMARY:

The bill provides language limiting responsibility for paying sales and use taxes due on printed materials by a printer when the materials are delivered to the United States Postal Service for mailing to persons located within and outside Florida. Further, the bill provides that the printer of materials delivered by mail to persons located within and outside Florida has no obligation or responsibility for the payment or collection of any taxes imposed on the printed materials. However, the language specifies that printers are obligated to collect taxes due on the printed materials when all, or substantially all, of the materials will be mailed to persons within Florida. Language is included stating that, for the purposes of the printer's tax collection obligation, there is a rebuttable presumption that all materials printed at a facility are mailed to persons located within that same state as that in which the facility is located. The purchaser of the printed materials remains responsible for any taxes due on the printed material.

The Department of Revenue (DOR or department) is authorized to adopt reasonable rules, forms, and procedures necessary to implement and administer the provisions of the bill.

The bill provides an effective date of July 1, 2000.

The bill does not appear to affect general revenue.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

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

Less Government

The Department of Revenue will need to adopt rules, forms, and procedures in order to implement and administer the provisions of the bill. In addition, with the changing over from a sales tax by printers to a use tax by customers, the department will be interacting with and auditing more taxpayers.

B. PRESENT SITUATION:

Section 212.06, Florida Statutes, sets forth the general provisions for the determination and collection of the tax on sales, storage, and use tax. It provides definitions, and legislative intent. Section 212.06(1)(a), F.S., states that the tax rate is 6 percent of the retail sales price at the moment of sale, 6 percent cost price at the moment of purchase, or 6 percent of the cost price as of the moment of commingling with the general mass of property in this state, and shall be collectible from all dealers as herein defined on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in Florida of tangible personal property taxable under Chapter 212, F.S.

Section 212.06(2), F.S., provides the definition for "dealer" and includes every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in Florida.

Section 212.06(6), F.S., provides that the intent of Chapter 212, F.S., is to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass property of this state. "Tangible personal property" is defined in s. 212.02(19), F.S., to include personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses. "Use" is defined in s. 212.06(20), F.S., to mean and include the exercise of any right or power over tangible personal property.

The Department of Revenue, in rule 12A-1.027, Florida Administrative Code, Sales by Persons Engaged in Printing, states that sales to ultimate consumers for the printing of tangible personal property are taxable. Additionally, this rule states a "nonresident print

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purchaser” is an out-of-state purchaser who is not required to be registered with the DOR as a dealer. Exemptions to the otherwise taxable sale are also provided.

For example: a mail order company engages a printer to print a catalog to be mailed directly to its customers. The mail-order company sends to the printer a diskette providing the mailing list of its customers to be affixed to the catalogs and subsequently mailed to the customers by the printer. The amount of tax due is based on the actual number of catalogs mailed to Florida residents.

C. EFFECT OF PROPOSED CHANGES:

The bill would provide an exception to the responsibility of collecting the taxes due on the sale of tangible personal property for distribution, storage, or use or other consumption, in the state of Florida to a dealer.

The exception provides that the purchaser of printed materials shall have sole responsibility for the taxes imposed by chapter 212, F.S., on those materials when the printer of the materials delivers them to the United States Postal Service for mailing to persons located within and outside Florida. However, printers are obligated to collect the taxes imposed by Chapter 212, F.S., when all or substantially all of the printed materials will be mailed to persons located within Florida.

Specifically, the bill adds language stating that, for the purposes of the printer’s tax collection responsibilities, there is a rebuttable presumption that all materials printed at a facility are mailed to persons located within the same state as that in which the facility is located.

The bill authorizes the DOR to adopt reasonable rules, forms, and procedures necessary to implement and administer the provisions of the bill in accordance with chapter 120, Florida Statutes.

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:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Printers would no longer be obligated to collect the taxes due for the “use” and “consumption” of certain printed materials under certain circumstances.

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:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

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

The fiscal impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The bill provides authority for DOR to adopt “reasonable” rules, forms, and procedures necessary to implement its provisions. See OTHER COMMENTS.

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C. OTHER COMMENTS:

Comments by the Committee on Governmental Rules & Regulations

In 1996, the Legislature disapproved the judicially created reasonableness standard for determining the validity of agency rules and enacted a more strict standard that required citation to a specific statute as a basis for a rule. As such, any grant of rulemaking should be drafted so to limit agency authority to adopt rules to the specific powers and duties described in the section. The committee recommends the rewording of the rulemaking authority provided in this bill to make it conform to current practice.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

Staff Director:

Jill Fike Turman

J. Paul Whitfield, Jr.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

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