

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 137 Sales and Use Tax/Partial Exemption for Clothing and School Supplies
SPONSOR(S): Representative Kilmer
TIED BILLS: **IDEN./SIM. BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Future of Florida's Families</u>	<u>13 Y, 3 N</u>	<u>Preston</u>	<u>Liem</u>
2) <u>Finance and Tax</u>	<u></u>	<u>Overton</u>	<u>Diez-Arguelles</u>
3) <u>Appropriations</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Contingent upon "funding by the Legislature in the General Appropriations Act each year," the bill creates a partial exemption which provides that no sales tax will be collected upon clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$50 or less or upon school supplies having a selling price of \$10 per item or less during a two to nine day period in August of each year. Specifically, the bill:

- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;
- excludes from the definition of "clothing" watches, watchbands, jewelry, handkerchiefs, and umbrellas;
- defines "school supplies" to mean pens, pencils, erasers, crayons, notebooks, paper, legal pads, composition books, poster paper, scissors, tape, glue, rulers, computer discs, protractors, compasses, calculators, and any books or text books which are designated to be used by children in kindergarten through third grade;
- provides that the provisions of the Act do not apply theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

The bill has an indeterminate fiscal impact.

The bill is effective upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0137b.ft.doc
DATE: April 7, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|-----------------------------------------|-----------------------------|-----------------------------------------|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | 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. EFFECT OF PROPOSED CHANGES:

Section 212.05, Florida Statutes, provides that a sales and use tax be imposed on the retail sale, storage, or use of tangible personal property. The sales tax rate is 6%. Chapter 212, Florida Statutes, also lists items and transactions that are exempt from sales and use tax. Under current law, the retail sale of clothing and school supplies is subject to sales tax.

Chapter 98-341, Laws of Florida, the Florida Family Tax Relief Act of 1998, provided that apparel, including footwear, with a taxable value of \$50 or less, was exempt from the imposition of sales tax during the period from 12:01 a.m., August 15, 1998, through midnight, August 21, 1998. The Act defined "clothing" to mean any article of wearing apparel, including footwear, intended to be worn on or about the human body. For purposes of the Act, "clothing" did not include watches, watchbands, jewelry, handbags, handkerchiefs, umbrellas, scarves, ties, headbands, or belt buckles.

Chapter 99-229, Laws of Florida, the Florida Residents' Tax Relief Act of 1999, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$100 or less during the period from 12:01 a.m., July 31, 1999, through midnight, August 8, 1999. The tax-free week was earlier in 1999 than in 1998 to allow families shopping for school clothing an opportunity to take advantage of tax savings prior to the start of the school year. An appropriation of \$200,000 was provided to the Department of Revenue to administer the Act in 1999.

Chapter 2000-175, Laws of Florida, the Florida Residents' Tax Relief Act of 2000, created an exemption from sales tax for clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$100 or less during the period from 12:01 a.m., July 29, 2000, through midnight, August 6, 2000. An appropriation of \$215,000 was provided to the Department of Revenue to administer the Act in 2000.

Chapter 2001-148, Laws of Florida, the Florida Residents' Tax Relief Act of 2001, created an exemption from sales tax during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001, for: 1) clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags having a taxable value of \$50 or less; and 2) school supplies having a taxable value of \$10 or less per item. An appropriation of \$200,000 was provided to the Department of Revenue to administer the Act in 2001.

Contingent upon "funding by the Legislature in the General Appropriations Act each year," the bill creates a partial exemption which provides that no sales tax will be collected upon clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, having a selling price of \$50 or less or upon school supplies having a selling price of \$10 per item or less during a two to nine day period in August of each year. Specifically, the bill:

- defines "clothing" to mean any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body;

- excludes from the definition of “clothing” watches, watchbands, jewelry, handkerchiefs, and umbrellas;
- defines “school supplies” to mean pens, pencils, erasers, crayons, notebooks, paper, legal pads, composition books, poster paper, scissors, tape, glue, rulers, computer discs, protractors, compasses, calculators, and any books or text books which are designated to be used by children in kindergarten through third grade;
- provides that the provisions of the Act do not apply theme parks, public lodging establishments, and airports; and
- provides specific rule-making authority to the Department of Revenue to adopt rules to implement the Act.

C. SECTION DIRECTORY:

Section 1. Amends §212.08, Florida Statutes, relating to partial exemptions from sales tax, to create a two to nine day period of time in August of each year during which clothing, certain other items and school supplies are exempt from sales tax. The section defines the terms “clothing” and ”school supplies”, provides an exception for certain types of establishments, and provides that the Act is contingent upon an annual appropriation in the General Appropriations Act.

Section 2. Provides the Act is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The implementation of the partial exemption is contingent upon action by the Legislature each year; therefore, the bill has an indeterminate fiscal impact. If the partial exemptions was authorized for the full nine days in August of 2003, the fiscal impact would be as follows:

FY 2002-03

General Revenue	(\$28.4 m)
Solid Waste Management Trust Fund	<u>(\$0.1 m)</u>
Total State Impact	(\$28.5 m)

2. Expenditures:

The Department of Revenue estimates it will cost the agency \$198,780 to administer the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The implementation of the partial exemption is contingent upon action by the Legislature each year; therefore, the bill has an indeterminate fiscal impact. If the partial exemptions was authorized for the full nine days in August of 2003, the fiscal impact would be as follows:

FY 2002-03

Total Local Impact:	(\$5.7 m)
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2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

During the specified period, clothing and school supplies can be purchased for 6% to 7½% less depending on the local option rate. Given the timing of the tax-free period, families will be able to save money on clothing and school supplies prior to the beginning of the school year.

Retail sellers may incur some costs for the reprogramming of cash registers and accounting systems.

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Since the bill is contingent upon another act of the Legislature, the bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds, does not reduce the authority of cities and counties to raise revenues in the aggregate, and does not reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties.

3. Other:

The bill provides that new s. 212.08(18), F.S., is “contingent upon funding by the Legislature in the General Appropriations Act each year.” Art. III, Sec. 12, of the Florida Constitution requires that the General Appropriations Act have no other subject but appropriations. It is unclear whether the General Appropriations Act could authorize a sales tax exemption.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to adopt rules to implement the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

While similar legislation enacted during prior years created an exemption from sales tax for specified items, the exemption has never been placed in statute. The bill creates s. 212.08(18), F.S. Additionally, the bill provides that s. 212.08(18), F.S., is “contingent upon funding by the Legislature in the General Appropriations Act each year.” By their nature exemptions from sale and use tax are not “funded”: taxpayers simply do not pay the taxes to the state. It is unclear how the Legislature could “fund” the provisions of s. 212.08(18), F.S.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 18, 2003, the Committee on the Future of Florida’s Families adopted three technical and conforming amendments to the bill:

- **Amendment #1** replaces the term “selling price” with the term “sales price” which is already defined in statute.
- **Amendment #2** replaces the term “selling price” with the term “sales price” which is already defined in statute.
- **Amendment #3** replaces the term “includes” with the term “means” to better clarify what is contained in the definition.