

IHOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1157 Tax on Sales, Use, and Other Transactions
SPONSOR(S): Attkisson
TIED BILLS: **IDEN./SIM. BILLS:** SB 568

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Business Regulation</u>	_____	<u>Gallen</u>	<u>Liepshutz</u>
2) <u>State Administration</u>	_____	_____	_____
3) <u>Finance & Tax</u>	_____	_____	_____
4) <u>Subcommittee on Commerce & Local Affairs</u> <u>Appropriations</u>	_____	_____	_____
5) <u>Appropriations</u>	_____	_____	_____

SUMMARY ANALYSIS

Chapter 212, Florida Statute, provides a 6 percent sales tax on all sales, use, and other transactions, unless exempted by statute. Each article of tangible personal property when sold at retail in this state, used or consumed, or rented or leased, will be taxed at a rate of 6 percent of the sales, use, or rental price. Tangible personal property means personal property which may be weighed, measured, or touched or is in any manner perceptible to the senses.

The bill creates a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property is for the construction of a public or charter K-12 school owned or chartered by the governmental entity.

The bill provides conditions for tax exemption, including, record keeping, certificates of exemption, and verification that the property sales are being purchased and incorporated into a public or charter K-12 school project.

The Impact Conference has estimated that this sales tax exemption will result in a 2004-2005 fiscal year loss to the General Revenue Fund of \$29 million. The estimated impact on local government is \$5.7 million.

The bill takes effect upon becoming a law.

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

STORAGE NAME: h1157.br.doc
DATE: March 8, 2004

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:

Present Situation

Chapter 212, F.S., provides a 6 percent sales tax on all sales, use, and other transactions, unless exempted by statute. Each article of tangible personal property when sold at retail in this state, used or consumed, or rented or leased, will be taxed at a rate of 6 percent of the sales, use, or rental price.¹ Tangible personal property means personal property which may be weighed, measured, or touched or is in any manner perceptible to the senses.

Local governments are authorized to levy one or more of seven types of Local Discretionary Sales Surtaxes, ranging from 0.5 percent to 1.0 percent each, with a maximum of 2.5 percent in some jurisdictions.² The local discretionary sales surtax applies to all transactions subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions.³ 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 on any sales amount above \$5,000 on any item of tangible personal property is not subject to the surtax. The \$5,000 cap does not apply to the sale of any other service.

Currently, a sales tax exemption is provided for sales made to the United States, state, or local government (governmental entity) when payment is made directly to the dealer by the governmental entity. However, this exemption does not include sales of tangible personal property made to contractors employed either directly or as agents of the government when the tangible personal property goes into or becomes part of public works owned by the governmental entity.

The lack of exemption for contractor purchases leaves governmental entities with two main options with regard to the purchase of materials for a public works project. The governmental entity can either directly purchase construction materials for a project contractor (and, thus, take advantage of the sales tax exemption for governmental entities), or the governmental entity can reimburse the contractor, in accordance with the terms of the contract, for sales tax paid by the contractor during the project.⁴ Both

¹ s. 212.05, F.S.

² s. 212.055, F.S.

³ s. 212.054, F.S.

⁴ In 2001, The Department of Revenue estimated that local governments directly purchase approximately 49 percent of the materials for their public works projects (based on a limited survey conducted by the Florida League of Cities), that state government directly purchase approximately 50 percent of the materials for its public works projects (based on information from the Department of Management Services), and that the federal government does not directly purchase any of the materials for its public works projects (based on information from a federal purchasing expert).

options have disadvantages. If a governmental entity decides to directly purchase construction materials for a contractor, the contractor has to arrange to have the property picked up from the governmental entity, thus postponing the start date of the project. Moreover, if more supplies are needed during the project, the governmental entity, although not involved in the construction work, must purchase the additional supplies and coordinate delivery with the contractor. On the other hand, if the governmental entity chooses to reimburse a contractor for sales tax paid by the contractor during the project, the governmental entity might be tying up funds for sales tax payment that could be used for additional construction or other purposes.

Effect of Proposed Changes

The bill creates a sales tax exemption for tangible personal property sold or rented by a contractor employed directly by or as an agent of a governmental entity, when the purchased property is for the construction of a public or charter K–12 school owned or chartered by the governmental entity.

The tax exemption applies providing the following conditions are met:

- The governmental entity bears the economic burden of the cost of the property, either through direct reimbursement of the cost to the contractor or by inclusion of the cost in the contractor's price for performance of the contract.
- The seller of the property must be presented with:
 - 1.) a copy the consumer's certificate of exemption held by the governmental entity;
 - 2.) a statement by the governmental entity that identifies a specific public or charter K-12 school project and names the contractors engaged to perform the work who have been authorized to make exempt purchases of materials for the project;
 - 3.) and a statement by the purchasing contractor certifying that all purchases will be for incorporation into public or charter K–12 school project.
- The records of the seller contain the purchase order that identifies the tangible personal property being purchased or other records that establish the purchased property was charged by a contractor to an account only for purchases for the public or charter K-12 school project.
- The seller verifies that a purchasing contractor is named in the statement from the governmental entity and that the project identified in the statement of the contractor is the same project identified in the statement of the government entity.
- The seller maintains the records for a period of time during which the department may conduct an audit of the sellers books and records. A seller may provide the department with evidence of any exempt status of sale during any protest period provided by statute.⁵
- A contractor that claims an exemption must maintain records to establish that the materials purchased were actually incorporated into the public or charter K-12 school project.

A purchase does not qualify as an exemption if a contractor made the purchase before the date on which a governmental entity issued a statement authorizing that contractor to make exempt purchases for a specific public or charter K-12 school project.

All statements by a governmental entity or a contractor must be made under penalty of perjury as provided by statute.⁶

⁵ s. 213.21, F.S., Informal conferences, compromises – Protest provision.

⁶ s. 92.525, F.S.

Any person who fraudulently issues a statement for use in claiming a tax exemption, for materials that do not satisfy the requirements, are subject to the penalties for fraud.⁷ The penalties for a fraudulent claim of exemption includes payment of the tax plus a mandatory penalty of 200 percent of the tax and a fine and punishment as provided for a conviction of a felony of the third degree. Punishment includes a term of imprisonment not exceeding 5 years⁸, unless deemed a habitual offender⁹, and a fine not exceeding \$5,000.¹⁰

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S.; creates a tax exemption for tangible personal property sold to a contractor employed directly by or as an agent a governmental entity when such property will become part of a public or charter K-12 school; provides certain conditions; provides penalties for fraudulent activities.

Section 2: This act will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Impact Conference has estimated that this sales tax exemption will result in a 2004-2005 fiscal year loss to the General Revenue Fund of \$29 million.

2. Expenditures:

The Department of Revenue has stated that the impact on the department is minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Impact Conference has estimated that this sales tax exemption will result in a \$5.7 million loss to local government for fiscal year 2004-2005.

2. Expenditures:

None determined.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a sales tax exemption for tangible personal property sold to a contractor employed directly by or as an agent of a governmental entity, when the purchased property is for the construction of a public or charter K-12 school owned or chartered by the governmental entity. The bill requires certain parties, including the contractor and seller, to meet certain conditions before claiming tax-exempt status. The process of purchasing tangible personal property for use in public works projects appears to be simplified by this bill.

D. FISCAL COMMENTS:

⁷ s. 212.085, F.S.

⁸ s. 775.082, F.S.

⁹ s. 775.084, F.S.

¹⁰ s. 775.083, F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does apply because the bill reduces the authority that municipalities or counties have to raise revenues. The bill does not qualify for an exemption or exception, accordingly the bill must have a 2/3 vote of the membership of each house.

Subsection 18(b) of Art. VII, Florida Constitution, requires a 2/3 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, this bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be \$5.7 million, this bill is subject to the requirements of this constitutional provision.

2. Other:

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES