

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 96

SPONSOR: Appropriations Committee, Committee on Agriculture and Senator Alexander

SUBJECT: Department of Citrus/Equalizing Excise Tax

DATE: April 20, 2004

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|------------------------|
| 1. | <u>Akhavein</u> | <u>Poole</u> | <u>AG</u> | <u>Favorable/CS</u> |
| 2. | <u>Cibula</u> | <u>Lang</u> | <u>JU</u> | <u>Fav/1 amendment</u> |
| 3. | <u>Fournier</u> | <u>Johansen</u> | <u>FT</u> | <u>Favorable</u> |
| 4. | | | <u>AGG</u> | <u>Withdrawn</u> |
| 5. | <u>Blizzard</u> | <u>Coburn</u> | <u>AP</u> | <u>Fav/CS</u> |
| 6. | | | | |

I. Summary:

The Florida Department of Citrus (department) has regulatory responsibility for all aspects of the citrus industry. The department is funded by the "box tax" and the equalizing excise tax. The box tax is an excise tax levied on each standard field box of fruit grown and placed into the primary channel of trade in Florida. The equalizing excise tax is assessed on processed citrus products imported into the state at a rate equal to the box tax. The majority of the proceeds of these taxes must be used by the department to advertise Florida citrus products.

This committee substitute allows persons liable for payment of the equalizing excise tax under the Florida Citrus Code to elect not to pay two-thirds of that tax each year. It codifies into law the "opt out" provision contained in the settlement agreement of Consolidated Case No. 2002-CA-4686 in the Circuit Court of the Tenth Judicial Circuit in Polk County. The bill also codifies the portion of the settlement agreement providing for future payments totaling \$2 million. In exchange for the two provisions, the plaintiffs will dismiss their foreign commerce clause claim.

The bill also requires the Florida Citrus Commission to include a report by the internal auditor of the department as an agenda item at each regularly scheduled meeting.

This bill amends sections 601.04 and 601.155 of the Florida Statutes.

II. Present Situation:

Today, there are more than 12,000 citrus growers cultivating a record 107 million citrus trees on more than 858,000 acres of land in Florida. However, for years, the citrus industry was disorganized and suffered many losses due to freezes, droughts and infestations. In the early

1930s, a new product called orange concentrate was marketed to drug stores and bakeries. The industry did not anticipate much success from the new product.

Florida Department of Citrus

The Florida Department of Citrus (department) was established by the 1935 Legislature at the request of the citrus industry. The act, called the Florida Citrus Code, states that the purpose of the department is to protect and enhance the quality and reputation of Florida citrus in both domestic and foreign markets. The department is charged with the regulation and supervision of the quality and purity of Florida citrus products. By protecting and stabilizing Florida's citrus industry, the department helps to promote the general welfare and social and political economy of the state.

The Florida Citrus Commission (commission) is the head of the department.¹ The commission is a 12-member board comprising individuals who have been: "actively engaged in growing, growing and shipping, or growing and processing citrus fruits in this state" for 5 years.² The commission oversees and guides the activities of the department and must approve all department budgets and actions. It is responsible for setting the annual amount of the excise tax, as well as quality standards for all citrus grown, packed or processed in Florida. (The Florida Department of Agriculture and Consumer Services and the U.S. Department of Agriculture enforce those standards.) In addition, the commission adopts rules regulating packaging and labeling of Florida citrus products and licensing requirements for packers, shippers and processors.

The Box Tax and Equalizing Excise Tax

Activities of the department are funded by revenues generated from the box tax, an excise tax levied on each standard field box grown and placed into the primary channel of trade in Florida. The equalizing tax is levied on citrus products, mainly frozen concentrated orange juice imported into the state to be blended with Florida juice. Brazil is the source of the largest amount of juice imported, but other Central American countries, such as Costa Rica, also export frozen concentrate to the state. Until 2002, non-Florida domestic juices, primarily from California, Texas, and Arizona, were exempt from the equalization tax.

According to the department, the equalizing tax is an excise tax imposed not upon property, but rather upon the activities of processing, reprocessing, blending, mixing, packaging, or repackaging processed orange or grapefruit product of foreign citrus juices or upon the removal of any portion of such products from the original container in which it arrives in Florida. Proceeds from the tax help finance the department's advertising programs for the sale and consumption of Florida citrus fruit and juices. The fee is called the "equalizing excise tax" because it equals the tax on Florida oranges processed for juice.

¹ S. 20.29, F.S.

² S. 601.04, F.S.

Both the box tax and the equalizing excise tax are calculated annually based upon the budget of the department, the amount of Florida fruit projected to be harvested and the amount of frozen concentrated orange juice expected to be imported.

Litigation

In October 1999, five companies sued the State of Florida and the Florida Department of Citrus challenging the legality of the equalization tax. Plaintiffs' legal counsel argued that according to the United States Constitution, only Congress has the authority to levy tax amounts on a tariff on foreign goods. The suit alleged that the law, or application of the law, resulted in violations of the Commerce Clause, Equal Protection Clause, Import/Export Clause and the First Amendment of the United States Constitution.

In March 2002, Judge Dennis Maloney of the Circuit Court in and for Polk County, Florida ruled that s. 601.155, F.S., is unconstitutional because it violates the Commerce Clause. No remedy was given. Subsequent to the ruling, s. 601.155, F.S., was amended to remove the exemption for domestically grown citrus products imported into Florida.³

In July 2003, Judge Maloney issued an Order Approving Settlement in *Tampa Juice Service, Inc., v. State of Florida Department of Citrus*, Consolidated Case No. 2002-CA-4686, which dismissed all claims with the exception of the claim pertaining to the Foreign Commerce Clause. According to the settlement agreement, importers of processed citrus products may opt out of the payment of two-thirds of the equalization tax. The settlement agreement also directed the department to pay the plaintiffs \$1,500,000 by August 10, 2003, and \$500,000 per year for four years beginning July 1, 2004. The \$1,500,000 payment has already been made.

Unconstitutional Taxes

In *Department of Revenue v. Kuhnlein*, 646 So. 2d 717 (Fla. 1994), the court found that an impact fee assessed on cars purchased or titled in other states was an unconstitutional tax and void from its inception. According to the court: "The only clear and certain remedy is a full refund to all who have paid this illegal tax."⁴

Audit Report

A November 2003 audit report by the Auditor General made numerous negative findings regarding the operations of the Department of Citrus.⁵ These findings include:

Finding No. 1: The Department could have avoided legal challenges to a recent single source procurement decision relating to its Citrus Peeling Machine and potentially increased its receipt of associated royalty fees had it followed established guidelines for competitive procurement.

³ Section 2, ch. 2006-26, L.O.F.

⁴ *Department of Revenue v. Kuhnlein*, 646 So. 2d 717, 726 (Fla. 1994).

⁵ Auditor General, *Department of Citrus Operational Audit*, Report No. 2004-029 (August 2003).

Finding No. 2: Significant deficiencies in the department's procurement and oversight processes limited assurances that the \$1.8 million paid for the Mobile Marketing Exhibit and Tour provided reasonable value in support of the advertising and promotional goals of the commission.

Department contract management processes, as implemented, did not provide the necessary assurance that contract payments were only for authorized goods or services that had been actually provided and met performance standards. Absent such assurance, it is not clear that the contracted work assisted in achieving the advertising and promotional goals of the commission.

Finding No. 3: Cost estimates prepared by advertising and promotional contract agencies and approved by the department did not include sufficient information to allow proper monitoring of planned work as it progressed.

Finding No. 4: The department and its advertising and promotional contract agencies did not comply with policies established to ensure the competitive procurement of substantive goods and services.

Finding No. 5: The department does not routinely monitor services provided by affiliated (assumed name) companies of its advertising and promotional contract agencies to provide assurance that such services are obtained in the best interest of the department.

Finding No. 6: The department had not implemented effective controls for reviewing the propriety of disbursements made relating to advertising and promotional contracts.

Finding No. 7: The department could enhance procedures associated with documentation of its employee selection processes to provide assurance that new hires have met the required educational background and employment experience requirements of the position.

Finding No. 8: The department paid \$25,000 to settle a claim of a former employee without obtaining proper approvals from the commission and the State Comptroller. Further, department records did not clearly demonstrate the transactions or events that created the claim, the validity of the claim, or the public purpose served by paying the claim.

Finding No. 9: The department can improve accountability over its tangible personal property by properly documenting transfers of accountability between custodians and by amending its accountability threshold to reflect current law.

Finding No. 10: The department could lower annual travel costs by improving approval, documentation and review processes to ensure compliance with the expense limitations included in applicable travel laws and department fiscal policies.

Finding No. 11: The department could reduce expenditures associated with cellular telephone usage by improving its monitoring for cellular telephone invoices, establishing procedures to provide for the reimbursement for all personal charges, and by periodically reviewing billing options to determine that the most economical option is being utilized.⁶

III. Effect of Proposed Changes:

Codification of Settlement Agreement

The bill codifies the portion of the settlement agreement in *Tampa Juice Service, Inc., v. State of Florida Department of Citrus*, Consolidated Case No. 2002-CA-4686 which authorizes any person liable for the equalizing excise tax to opt out of the payment of two-thirds of the tax. Additionally, the bill prohibits the use of the remaining one-third of the tax to be used for marketing activities, but allows the proceeds to be used for research, administrative, and regulatory activities. The bill also incorporates the portion of the settlement agreement which provides that the plaintiffs will dismiss their Foreign Commerce Clause claim upon a legislative appropriation of amounts due under the agreement. The settlement agreement directed the department to pay the plaintiffs \$1,500,000 lump sum by August 10, 2003, and \$500,000 per year for four years beginning on July 1, 2004. The \$1,500,000 lump sum has been paid.

Audit Report

The bill also requires the commission to include a report by the internal auditor of the department as an agenda item at each regularly scheduled meeting.

The bill takes effect July 1, 2004.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁶ *Id.* at 1 and 2.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

| | FY 2004-05 | FY 2005-06 | FY 2006-07 |
|--|---------------|----------------------|------------|
| Revenues: | | | |
| Recurring – Citrus Advertising Trust Fund (CATF) | (\$2,600,000) | *see fiscal comments | |
| Expenditures: | | | |
| Recurring ** | \$500,000 | \$500,000 | \$500,000 |

The estimated revenue reduction to the CATF is based on the average number of gallons of juice imported over the past five years. The amount of imported juice is usually inverse to the Florida crop size. The reduction is based on an assumption by the department that anyone currently paying the equalization tax will “opt out” each year.

* The recurring revenue impact will vary from year to year based on the domestic crop size. The estimate for 2004-2005 is based on an average of the last five years. Based on the range of those five years, the impact could be \$1.6 to \$3.6 million.

** Under the settlement agreement, the department agreed to pay plaintiffs \$500,000 per year for the next four years, pursuant to legislative approval. The department has requested a recurring expenditure of \$500,000 in its 2004-2005 Legislative Budget Request. This amount will remain a recurring expense through the 2007-2008 fiscal year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.