

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1079 CS

Exemption from the Tax on Sales, Use, and Other Transactions

SPONSOR(S): Altman

TIED BILLS:

IDEN./SIM. BILLS: SB 1832

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>10 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Carlson</u>
2) <u>Finance & Tax Committee</u>	<u>6 Y, 1 N</u>	<u>Rice</u>	<u>Diez-Arguelles</u>
3) <u>Commerce Council</u>	<u>14 Y, 0 N, w/CS</u>	<u>Carlson</u>	<u>Randle</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising, that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly or other regular basis.

The bill will also exempt from sales and use tax certain "qualified aircraft" that are used by a business operating at least 25 such aircraft in Florida as an on-demand air carrier if the business enters into a flight training and research partnership with a Florida-based technological university that offers a doctoral program in aeronautical engineering and that offers flight training through a school of aeronautics.

The Revenue Estimating Conference has estimated the impact of the bill on state revenues to be (\$2.8) million in FY 2006-07 and (\$0.8) million in FY 2007-08. For local revenues the impact is estimated to be (\$0.6) million in FY 2006-2007 and (\$0.2) million in FY 2007-2008.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill will exempt from sales and use tax advertising materials distributed free of charge in an envelope and certain small turboprop jet aircraft under certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Advertising Exemption

Section 212.08(7)(w), F.S., provides an exemption from the sales and use tax for newspaper, magazine, and newsletter subscriptions in which the product is delivered to the customer by mail and for free, circulated publications that are published on a regular basis, the content of which is primarily advertising, and that are distributed through the mail, home delivery, or newsstands. The exemption for newspaper, magazine, and newsletter subscriptions applies only to subscriptions entered into after March 1, 1997.

The Second District Court of Appeal has ruled that the exemption from sales and use tax for advertising publications provided in s. 212.08(7)(w), F.S., does not apply to advertising materials provided free of charge in an envelope because such advertising materials are not in a “publication” under s. 212.08(7)(w).¹

Aircraft Exemptions

Section 212.08, F.S., provides a number of exemptions from the sales and use tax relating to aircraft, discussed as follows:

Aircraft repair and maintenance labor charges –

For aircraft of more than 15,000 pounds maximum certified takeoff weight and rotary wing aircraft of more than 10,000 pounds maximum certified takeoff weight.²

Equipment used in aircraft repair and maintenance –

For aircraft of more than 15,000 pounds maximum certified takeoff weight and rotary wing aircraft of more than 10,300 pounds maximum certified takeoff weight.³

Aircraft sales and leases –

For aircraft of more than 15,000 pounds maximum certified takeoff weight for use by a common carrier.⁴

Effect of Proposed Changes:

Advertising Exemption

The bill will create a new exemption from sales and use tax under chapter 212, F.S., for advertising materials such as individual coupons or other individual cards, sheets, or pages of printed advertising,

¹ See *Dep't of Revenue v. Val-Pak Direct Marketing Systems, Inc.*, 863 So.2d 1 (Fla. 2d DCA 2003).

² s. 212.08(7)(ee), F.S.

³ s. 212.08(7)(rr), F.S.

⁴ s. 212.08(7)(ss), F.S.

that are distributed free of charge by mail in an envelope for ten or more persons on a monthly, bimonthly, or other regular basis.

Jet Aircraft Exemption

The bill exempts “qualified aircraft,” defined as any aircraft having a maximum certified takeoff weight of less than 10,000 pounds equipped with turbofan engines that meet Stage IV noise requirements and that are used by a business operating a fleet of at least 25 such aircraft as an “on-demand” air carrier under Federal Aviation Administration regulations. The bill includes “qualified aircraft” within the existing exemptions for aircraft repair and maintenance charges, equipment used in aircraft repair and maintenance, and aircraft sales and leases.

The bill requires that any purchaser or lessee enter into a flight training and research partnership with a Florida-based technological university that offers a doctoral program in aeronautical engineering and that offers flight training through a school of aeronautics.

The bill also requires a purchaser or lessee to furnish a dealer with a certificate stating that the lease, purchase, repair or maintenance of the qualified aircraft is for the exclusive uses required by the bill. The bill allows the purchaser or lessee to keep a certificate on file if it makes tax-exempt purchases on a continual basis and to notify the dealer when it no longer qualifies for the exemption. The bill authorizes the Department of Revenue to determine the format of the certificate.

C. SECTION DIRECTORY:

Section 1. Creates s. 212.02(33), relating to a tax exemption for “qualified aircraft.”

Section 2. Amends s. 212.08, F.S., to make conforming changes to paragraphs (ee), (rr) and (ss) relating the exemption for “qualified aircraft” and to create a tax exemption for advertising materials in new paragraph (ccc).

Section 3. Creates s. 212.0801, F.S., providing procedures and eligibility requirements for an exemption.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The Revenue Estimating Conference estimated the following impact of the bill:⁵

	FY 2006-07	FY 2007-08
General Revenue:	(\$2.8)m	(\$0.8)m
State Trust:	<u>(Insignificant)</u>	<u>(Insignificant)</u>
Total:	(\$2.8)m	(\$0.8)m

2. Expenditures:

None

⁵ The Revenue Estimating Conference conducted separate estimates of the effects of the bill as filed and of the “qualified aircraft” exemption. Staff have combined the estimates in this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: The Revenue Estimating Conference Estimated the following impact of the bill:

	FY 2006-07	FY 2007-08
Local Government Half Cent	(\$0.3)m	(\$0.1)m
Local Option	<u>(\$0.3)m</u>	<u>(\$0.1)m</u>
Total	(\$0.6)m	(\$0.2)m

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: The bill will provide an exemption to any entity that provides advertising materials through the mail in an envelope under certain circumstances.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill reduces the authority that municipalities or counties have to raise revenues in the aggregate through local option sales taxes. However, the reduction in authority is insignificant. Therefore, this bill is not a mandate.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Section 1. of the bill authorizes the Department of Revenue to determine the format of a tax exemption certificate that a purchaser or lessee must have to obtain eligibility for a tax exemption. The Department may have to adopt such a certificate by rule.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a technical amendment that replaces the word "to" with the word "for" on line 40.

On April 18, 2006, the Commerce Council adopted one amendment to the bill. The amendment provides an exemption from the sales and use tax for certain "qualified aircraft" if the business using them enters into a research and flight training partnership with a Florida-based technological university that offers a doctoral program in aeronautics and that offers flight training through a school of aeronautics. The amendment provides conforming reference changes to chapter 212.