

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: General Government Appropriations Committee

BILL: SB 1416  
 INTRODUCER: Senator Atwater  
 SUBJECT: Agricultural Sales Tax Exemptions  
 DATE: April 24, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	D'Eramo	Poole	AG	<b>Favorable</b>
2.	Keating	Johansen	FT	<b>Favorable</b>
3.	Blizzard	DeLoach	GA	<b>Favorable</b>
4.				
5.				
6.				

**I. Summary:**

Current law provides for a sales and use tax exemption for electricity directly and exclusively used for production or processing of agricultural products. The bill broadens this exemption by applying the exemption to electricity used directly or indirectly for the production or processing of agricultural products. The bill retains the statute's requirement that the electricity be separately metered, and if not, then all of the electricity is taxable.

According to the Revenue Estimating Conference, the fiscal impact of this bill is a reduction in general revenue of \$1.5 million in Fiscal Year 2007-2008, and \$.8 million on a recurring basis.

This bill amends section 212.08(5)(e), Florida Statutes.

**II. Present Situation:**

**Sales Tax**

Florida's six percent sales and use tax as provided in chapter 212, F.S., is not a single levy, but is composed of a number of different levies on a variety of transactions. A "use" tax is imposed on items not sold, but used in Florida. The various levies of sales and use tax are:

- **Transient rental** (s. 212.03, F.S.): Establishes a taxable privilege for lease or rental of hotels, motels, and apartments for periods of less than six months.
- **Lease or rental of or license in real property** (s. 212.031, F.S.): Establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real commercial property.

- **Admissions** (s. 212.04, F.S.): Establishes a taxable privilege for selling or receiving anything of value by way of admissions.
- **Sale of tangible personal property** (s. 212.05(1)(a), F.S.): Establishes a taxable privilege for the sale of items or articles of tangible personal property.
- **Use of tangible personal property** (s. 212.05(1)(b), F.S.): Establishes a taxable privilege on items or articles of tangible personal property which are not sold but are used, consumed, distributed, or stored for use or consumption in Florida. The tax is based on the “cost price” of the article, which is a calculation of the cost of an item including materials, labor, service costs, transportation and any other expenses.
- **Lease or rental of tangible personal property** (s. 212.05(1)(c), F.S.): Establishes a taxable privilege for the lease or rental of tangible personal property.
- **Coin-operated amusement machines** (s. 2312.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of 4 percent.
- **Certain services** (s. 212.05(1)(j), F.S.): Establishes a taxable privilege for the sale of detective, burglar protection, and other protective services and for the sale of nonresidential cleaning and nonresidential pest control services.
- **Service Warranties** (s. 212.0506, F.S.): Establishes a taxable privilege on every person who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty. “Service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property.

Aside from the services mentioned above, services are not directly subject to Florida’s sales and use tax. This lack of tax on most services is not due solely to exemptions from the tax, but from the fact that the services are not specified as taxable. In addition, s. 212.08(7)(v), F.S., exempts personal, professional, and financial services when provision of such services involves inconsequential elements of tangible personal property such as documents representing the service provided. Numerous other services, however, are taxed such as repair and maintenance services that also involve the sale of tangible personal property.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter. The statutes currently provide more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for 56 miscellaneous exemptions.

Section 212.08(5)(e), F. S., provides that electricity used directly and exclusively for production or processing of agricultural products on a farm is exempt from the sales and use tax. The exemption applies only if the electricity used for exempt purposes is separately metered. If the electricity is not separately metered, then it is conclusively presumed that some of the electricity is used for nonexempt purposes and all of the electricity is taxable.

### **Local Discretionary Sales Surtaxes**

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The maximum total surtax rate a local government may levy is 2.5%.

Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions” by chapter 212, F.S. and on communications services by chapter 202, F.S. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to tax if the property or service is delivered within a county that does not impose a surtax. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. As of January 2007, 59 counties levied at least one discretionary sales surtax with seven counties levying two.

### III. Effect of Proposed Changes:

**Section 1** amends s 212.08(5)(e), F.S., to provide electricity used directly or indirectly for production or processing of agricultural products on a farm is exempt from the sales and use tax.

The bill retains the statute’s requirement that the electricity be separately metered and if not, then it is presumed that some of the electricity is used for nonexempt purposes and all of the electricity is taxable.

**Section 2** provides that this act shall take effect July 1, 2007.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the State Constitution provides that, except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists on February 1, 1989.

The bill provides for a sales tax exemption that would reduce the municipalities’ and counties’ sales tax collections, thereby reducing their revenue-raising authority. It is estimated the fiscal impact on local governments of a sales tax exemption for electricity used in the production of agricultural products will not exceed \$1.8 million in the aggregate. Therefore, the bill is exempt from the mandate requiring two-thirds vote of the membership of each house of the Legislature.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

The Revenue Estimating Conference estimated the total recurring loss of state and local sales tax revenue to be \$0.8 million - \$0.6 million to the General Revenue Fund; an insignificant loss to the Ecosystem and Restoration Management Trust Fund; and \$0.2 million to local governments. The first year cash impact on the General Revenue Fund is a loss of \$1.5 million.

**B. Private Sector Impact:**

The financial savings to the private sector reflects the loss of revenue to the Government Sector, as indicated below.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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