

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 1784

INTRODUCER: Senator Posey

SUBJECT: Sales Tax Exemption/Ostrich Feed

DATE: April 3, 2007

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------------------|
| 1. | Jones | Poole | AG | Favorable |
| 2. | Keating | Johansen | FT | Favorable |
| 3. | Blizzard | DeLoach | GA | Pre-meeting |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

I. Summary:

This bill removes the sales tax exemption for ostrich feed sales. According to the Revenue Estimating Conference, the amount of sales tax revenue generated will be insignificant.

This bill substantially amends section 212.08 of the 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 four 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.

Since 1992, ostrich feed sales have been exempt from sales tax as a miscellaneous exemption under s. 212.08(7)(d), F.S., which provides that the purchase of feed for poultry, ostriches, and livestock, including racehorses and dairy cows, are exempt from sales tax. The initial purpose of the exemption for ostrich feed was to provide tax relief to ostrich farmers. The ostrich farm industry has diminished considerably since the exemption was adopted in 1992 and is no longer considered a viable industry in Florida.

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 percent. 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 ch. 212, F.S., and on communications services by ch. 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 removes the sales and use tax exemption for ostrich feed.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

According to the Revenue Estimating Conference, the amount of sales tax revenue generated will be insignificant.

B. Private Sector Impact:

Florida ostrich farmers will incur additional expenses in an amount equal to the sales tax paid on ostrich feed purchases.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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