

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: Commerce Committee

BILL: SB 2530

INTRODUCER: Senator Haridopolos

SUBJECT: Sales Tax Exemptions/Direct Mail Ad Literature

DATE: April 23, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Pugh</u>	<u>Cooper</u>	<u>CM</u>	Favorable
2.	_____	_____	<u>FT</u>	_____
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The Florida Statutes lists a number of exemptions from sales and use taxes, including exemptions for various forms of advertising.

SB 2530 creates a new exemption from the state and local-option sales and use taxes under ch. 212, F.S., for direct mail advertising literature, which includes catalogs, letters, postcards, circulars, brochures, and pamphlets that are distributed free of charge by mail or by common carrier.

The Revenue Estimating Conference has estimated passage of the bill could reduce state revenues by \$14 million and local governments' revenues by \$3.1 million in FY 2007-2008.

SB 2530 amends s. 212.08, Florida Statutes.

II. Present Situation:

Advertising-related sales tax exemptions

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of taxes on sales, use, and other transactions. This chapter also contains provisions for sales and use tax exemptions and credits applicable to certain items under specific circumstances.

The statutes currently provide more than 200 non-service-related tax 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 54 miscellaneous sales and use tax exemptions, including three for different types of advertising products. Briefly:

- Section 212.08(7)(w), F.S., provides a sales and use tax exemption for newspaper, magazine, and newsletter subscriptions, entered into after 1997, that are delivered by mail. Also exempt are free “shoppers” and community newspapers that are published on a regular basis, have a content which is primarily advertising, and which are distributed through the mail, home delivery, or newsstands.
- Section 212.08(7)(vv), F.S., provides a sales and use tax exemption for the sale of advertising services by an advertising agency to its clients and on certain tangible personal property taxes. Not exempt under this paragraph are advertising promotional goods that are produced or reproduced for distribution.
- Section 212.08(7)(ddd), F.S., provides a sales and use tax exemption for advertising materials that are distributed free of charge to 10 or more persons via mail in an envelope on a monthly, bimonthly, or other regular basis.

The direct-mail industry

Probably the most commonly used medium for direct marketing is direct mail, in which marketing communications are sent to customers via the U.S. Postal Service or other carriers. Direct mail represents such a significant amount of the total volume of mail that special rate classes have been established.

Direct mail permits a marketer to design marketing literature in many different formats, depending on the targeted audience. The direct mail advertising literature ranges from catalogues to post cards and plastic-bag packages of inserts.

Based on an industry report,¹ direct mail generated \$582 billion in sales in 2001, about one-third of the total sales in direct and interactive media and second behind telemarketing. Florida ranked fourth overall with \$105 billion in sales.

III. Effect of Proposed Changes:

Section 1 of SB 2530 creates s. 212.08(7)(eee), F.S., creating an exemption from the state and local-option sales and use taxes under ch. 212, F.S., for direct mail advertising. This type of advertising is defined to include catalogs, letters, postcards, circulars, brochures, pamphlets, and integral components of such items. To be eligible for the exemption:

- The literature must consist substantially of printed sales messages for property or services printed to the specifications of the purchaser;
- It must be mailed or delivered by the seller, the seller’s agent or a mailing house acting as an agent for the purchaser through U.S. mail or by a common carrier; and
- The literature must be free of charge to the recipients.

Section 2 of the bill provides an effective date of July 1, 2007.

¹ “Findings and Analysis from the Direct Marketing 2001-2002 Economic Impact Report.” Found at www.the-dma.org.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article 18, Section VII, of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met. Subsections (b) and (c) of the provision prohibits, with some exceptions, the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority or aggregate percentage of state shared revenues as they exist on February 1, 1989. The principal exception to these prohibitions in subsections (b) and (c) is if the Legislature passes such a law by two-thirds vote of the membership of each chamber.

Subsection (d) exempts certain categories of laws from the enacting conditions contained in the constitutional provision. The principle exemption is for laws having an insignificant fiscal impact, which means an amount not greater than the average statewide population for the applicable fiscal year times 10 cents, which is approximately \$1.9 million for FY 2007-2008.

On April 6, 2007, the Revenue Impact Conference determined by consensus that cities and counties may lose a total of \$3.1 million next fiscal year: \$1.3 million in local-option sales tax revenue and \$1.8 in revenue sharing.

Therefore, this bill is exempt from the mandates restriction and does not require passage by a two-third vote.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

On April 6, the Revenue Estimating Conference determined by consensus that the impact of SB 2530 could be a \$14 million loss of state general revenue in FY 2007-2008. Cities and counties may lose a total \$3.1 million next fiscal year: \$1.3 million in local-option sales tax revenues and \$1.8 million in revenue-sharing.

The second-year impact could be a \$15.2 million reduction in state revenue and a total \$3.4 million loss to local governments.

B. Private Sector Impact:

Businesses and other entities that use direct mail advertisements will benefit because they will no longer be subject to state and local-option sales taxes on the costs associated with production of the material. Florida-based printers also will benefit, to the extent that they were losing business to Georgia and other out-of-state printing operations where direct mail already is exempt from sales taxes.

C. Government Sector Impact:

The Department of Revenue may incur administrative costs related to the administration of this sales tax exemption; such costs are likely to be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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