

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 557 Heavy Equipment Rental Property
SPONSOR(S): Insurance, Business & Financial Affairs Policy Committee, Workman
TIED BILLS: **IDEN./SIM. BILLS:** SB 1170

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Insurance, Business & Financial Affairs Policy Committee	12 Y, 0 N, As CS	Livingston	Cooper
2)	Finance & Tax Council		Diez-Arguelles	Langston
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a “tangible personal property tax recovery fee” on the rental of heavy equipment. The bill states that “the purpose of the fee is to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed on such equipment.” The amount of the fee must be disclosed in the rental agreement.

The bill provides a method for determining the amount of the fee. The rate of the recovery fee may not exceed the rate of the tangible personal property tax imposed by the county.

The bill provides definitions of “heavy equipment property” and “short term rental agreement.”

The bill is not anticipated to have a fiscal impact on state or local governments.

The effective date of the bill is July 1, 2010.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Florida law provides for ad valorem taxation of real and tangible personal property by local governments, including school districts and special districts authorized to levy ad valorem taxes (property taxes).

Tangible personal property (TPP) is statutorily defined to mean all goods, chattels, and other articles of value (not including most vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself.¹ With the exception of household goods and inventory, TPP is subject to property taxes.

Owners of TPP subject to property tax are required to file a return indicating the value of the TPP subject to tax by April 1 of each year.²

The amount of tax owed by the owner of TPP is determined by multiplying the value of the TPP by the sum of the millage rates (tax rates)³ imposed by all the taxing authorities authorized to levy property taxes where the property is physically present on January 1.⁴ Special rules apply to TPP that may be in different locations throughout the year. Generally, the location for tax purposes is where the property is kept for use or storage or where it is consistently returned for use and storage.⁵

Currently, Chapter 196, F.S., does not contain any provision granting specific authority to companies that rent heavy equipment to charge a fee designed to recover annual tangible personal property taxes paid on rental TPP.

¹ Sec. 192.001(11)(d), F.S.

² Secs. 193.052 and 193.062, F.S.

³ Property tax rates are expressed in terms of mills. One mill can also be expressed as 1/1000, .001, or .1 percent. For example, if the sum of the rates imposed by all taxing authorities is 20 mills, the taxpayer will pay a tax equal 2% of the TPP's value.

⁴ Sec. 193.032, F.S., sets for the rules for determining the "situs," or location of property for tax purposes.

⁵ Id.

Effect of Proposed Changes

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a “tangible personal property tax recovery fee” on the rental of heavy equipment. The bill states that “the purpose of the fee is to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed on such equipment.” The amount of the fee must be disclosed in the rental agreement.

The bill provides that the rate of the recovery fee may not exceed the rate of the tangible personal property tax imposed by the county in which the equipment rental business is located.

The bill provides a definition of the term “heavy equipment property” to mean “industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS) code 532412 . . .” NAICS code 532412, states:

53241 Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing

This industry comprises establishments primarily engaged in renting or leasing one or more of the following without operators: heavy construction, off-highway transportation, mining, and forestry machinery and equipment. Establishments in this industry may rent or lease products, such as aircraft, railroad cars, steamships, tugboats, bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.⁶

Finally, the bill provides that “short-term rental agreement” means “only a lease or rental agreement entered into for a term of less than 365 days or an at-will contract that does not specify the length of time of the contract. The term does not include any extension or renewal of a lease contract with an original term of 1 year or more.”

B. SECTION DIRECTORY:

Section 1. Creates a provision of general law to authorize heavy equipment rental companies to charge and collect a fee to recover annual tangible personal property taxes imposed on the rental equipment.

Section 2. Provides an effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None anticipated.

2. Expenditures:

None. The DOR anticipates no operational impact resulting from the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None anticipated.

2. Expenditures:

⁶ <http://www.census.gov/econ/census02/naics/sector53/53241.htm>, February 9, 2010.

None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The DOR notes that "The fee proposed by this section would be paid by one private party to another private party. This fee would need to be included in the private contractual arrangement of the two private parties."⁷

D. FISCAL COMMENTS:

The DOR comments that "This fee would not be paid to, paid by, or administered by the property appraiser, tax collector, or any other public entity involved in assessing, administering, or collection of property taxes. The DOR has no authority to administer or enforce the fees collected by rental companies."⁸

Under current law, the entire amount paid for the rental of TPP is subject to sales tax under Chapter 212, F.S.⁹ Since the fee proposed by this bill will be part of the amount paid for the rental, the amount of the fee will be subject to sales tax.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The intent of the bill appears to encompass property taxes levied by all taxing authorities that levy property taxes. The use of the word "county" in the bill may limit the provisions of the bill to taxes levied by county government only.

The bill does not specify the time periods needed to measure how the taxes are being recovered.

There is no guarantee that the fee proposed by the bill will result in the rental business recovering the amount of property taxes paid on the rental property. Based on the fee rate described in the bill, the business may recover more, or less, than what it paid in property taxes, depending on how many times and at what rental charges the equipment is rented. For example, if the business owns TPP valued at \$50,000 and the total property tax rate is 20 mills (2%), it will pay \$1,000 in taxes. In order to recover this exact amount through the recovery fee, the business will have to receive exactly \$50,000 in rental charges during some unspecified period.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

⁷ DOR 2010 Bill Analysis, HB 557, DOR Legislative and Cabinet Services, dated 02/02/2010, page 1, available in committee files.

⁸ Id.

⁹ See s. 212,05(1)(c), F.S.

On February 17, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted a strike all amendment, and passed the bill as a Committee Substitute by a vote of 12-0.

The CS differs from the bill, as filed, in the following areas:

- creates an unnumbered section of the statutes;
- requires disclosure of the fee in the rental agreement;
- bases the calculation of the tax on the county where the business is located rather than the county where the rental property is located; and
- defines “short term rental” to mean an agreement for a term of less than one year.