

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			
3)	General Government Policy Council			
4)				
5)				

SUMMARY ANALYSIS

The Department of Revenue (DOR) provides a list of business activities that are taxable. A partial list includes:

- Sales of taxable items at retail.
- Rental or lease of personal property (for example, vehicles, machinery, equipment, or other goods).

Currently, "tangible personal property" is defined to mean all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

Property owners who lease, lend, or rent tangible personal property must file a tangible personal property return with the local property appraiser by April 1 each year. The DOR is authorized by statute to prepare and maintain guidelines to assist the local property appraisers in assessing the value of this taxable property for each particular county.

The bill defines 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. The bill specifies that "short term rental agreement" refers to rental agreements of less than one year, as well as, agreements that do not specify the length of time of the contract.

The bill authorizes an equipment rental company that rents heavy equipment to collect a fee on the rental of the equipment as a method of recovering the cost of tangible personal property taxes that are otherwise due as a result of the rental transaction.

The bill specifies that the purpose of the fee is to allow the rental company to recover annual tangible personal property taxes imposed upon the equipment. The bill further specifies that the fee may not exceed the amount of the tangible personal property tax imposed on the property by the county in which the property is located and the fee must be disclosed in the 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

Before business may be conducted in Florida, an individual or other entity must first find out if the business activity or products used will be subject to taxation. If it is, it must be registered, in order to collect and pay the appropriate tax. The Department of Revenue (DOR) provides a list of activities and products that are taxable. A partial list includes:

- Sales of taxable items at retail.
- Rental or lease of personal property (for example, vehicles, machinery, equipment, or other goods).¹

Currently, equipment described under the North American Industry Classification System (NAICS), code 532412, include:

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.²

Currently, "personal property" for purposes of ad valorem taxation in Florida, is divided into four categories: "household goods," "intangible personal property," "inventory," and "tangible personal property" (also referred to as TPP). TPP as defined in s. 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return with

¹ http://dor.myflorida.com/dor/taxes/sales_tax.html

² <http://www.census.gov/econ/census02/naics/sector53/53241.htm>, February 9, 2010.

the local property appraiser by April 1 each year (See 193.062, F.S.). Property owners who lease, lend or rent property must also file.

Sections 195.032 and 195.062(1), F.S., authorize the Department of Revenue (DOR) to prepare and maintain guidelines to assist the local property appraisers in assessing the value of taxable property which is located in the appraisers county. The guidelines are intended to assist in the assessment of property. Section 195.002, F.S., specifies, in part:

The Department of Revenue shall have general supervision of the assessment and valuation of property so that all property will be placed on the tax rolls and shall be valued according to its just valuation, as required by the constitution. It shall also have supervision over tax collection and all other aspects of the administration of such taxes. The supervision of the department shall consist primarily of aiding and assisting county officers in the assessing and collection functions, with particular emphasis on the more technical aspects.

Currently, each sale, admission, storage, or rental charge is taxable unless the transaction is specifically exempt. Chapter 196, F.S., specifies numerous tax exemptions that apply to various activities and entities but does not exempt the tangible personal property taxes due on the rental of heavy equipment property.

Pursuant to chapter 212, F.S., sales tax is added to the price of taxable goods or services and is collected from the purchaser at the time of sale. Section 212.05, F.S., states, in part:

It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

Florida's general sales tax rate is 6 percent.

The DOR does not distinguish between the terms "rental" or "lease" for purposes relating to "rental" of "heavy equipment property." For purposes of sales tax provisions, s. 212.02(10)(g), F.S., specifies:

(g) "Lease," "let," or "rental" also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without the transfer of the title of such property..."

Currently, chapter 196, F.S., does not contain any provision that grants specific authority to companies that rent heavy equipment property to charge a fee designed specifically to recover annual tangible personal property taxes paid upon the rental property.

Effect of Proposed Changes

The bill defines 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. The bill specifies that "short term rental agreement" refers to rental agreements of less than one year, as well as, agreements that do not specify the length of time of the contract.

The bill authorizes an equipment rental company that rents "heavy equipment" to collect a fee on the rental of the equipment as a method of recovering the cost of tangible personal property taxes that are otherwise due as a result of the rental transaction.

The bill specifies that the purpose of the fee is to allow the rental company to recover annual tangible personal property taxes imposed upon such equipment. The bill further specifies that the fee may not exceed the amount of the tangible personal property tax imposed on the property by the county in which the business is located and that the fee must be disclosed in the rental agreement.

B. SECTION DIRECTORY:

Section 1. Creates s. 196.186, F.S., to statutorily 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. Effective date – July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Not anticipated to be significant, if any.

2. Expenditures:

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:

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.”³

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.”⁴

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.

³ DOR 2010 Bill Analysis, HB 557, DOR Legislative and Cabinet Services, dated 02/02/2010, page 1, available in committee files.

⁴ Id.

2. Other:

None noted.

B. RULE-MAKING AUTHORITY:

NA

C. DRAFTING ISSUES OR OTHER COMMENTS:

None noted.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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.