

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/CS/HB 243 Tangible Personal Property Taxation

**SPONSOR(S):** Workman

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N	Livingston	Creamer
2) Finance & Tax Committee	23 Y, 0 N, As CS	Aldridge	Langston
3) Economic Affairs Committee			

### SUMMARY ANALYSIS

The bill authorizes a person who engages in the business of leasing or renting heavy equipment to collect a "recovery fee" on the rental of heavy equipment "for the purpose of recovering the tangible personal property tax imposed on heavy equipment... ."

The bill provides that the recovery fee is an amount equal to 2 percent of the total rental transaction fee generated in each county of operation. The recovery fee may be collected and retained after payment of the tangible personal property tax assessed for the previous year only if the heavy equipment is subject to a short-term rental agreement that discloses the amount and purpose for the collection of the recovery fee.

The bill provides that a person engaging in the business of renting or leasing heavy equipment may not seek additional recoupment of the recovery fee for the current year if the actual recovery fee collected in the current year exceeds the tangible personal property tax paid in the prior year. Further, if, during the current year, the recovery fee collected by the person engaging in the business of renting or leasing heavy equipment exceeds the tax paid in the prior year, the recovery fee recoupment for the following year must be reduced by an amount equal to such excess amount.

The bill defines the term "heavy equipment."

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

The effective date of the bill is July 1, 2011.

## 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 defined to mean all goods, chattels, and other articles of value (not including vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself.<sup>1</sup> Inventory and household goods are expressly excluded from this definition.

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.<sup>2</sup>

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)<sup>3</sup> imposed by all the taxing authorities authorized to levy property taxes where the property is physically present on January 1.<sup>4</sup> 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.<sup>5</sup>

Currently, there is no legislatively created provision that expressly grants authority to persons in the business of renting or leasing heavy equipment to charge a fee designed specifically to recover its annual tangible personal property taxes paid upon its heavy equipment from its customers.

##### Effect of proposed changes

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The bill provides a definition of the term "heavy equipment" to mean "industrial or construction equipment including, but is not limited to, equipment described in the North American Industry Classification System (NAICS) code 532412..." NAICS code 532412, states:

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<sup>1</sup> Section 192.001(11)(d), F.S.

<sup>2</sup> Sections 193.052 and 193.062, F.S.

<sup>3</sup> 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.

<sup>4</sup> Section 193.032, F.S., sets for the rules for determining the "situs," or location of property for tax purposes.

<sup>5</sup> Id.

**532412 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.<sup>6</sup>

**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 heavy equipment.

Section 2. Provides an effective date of July 1, 2011.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None anticipated.

2. Expenditures:

None anticipated.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

**FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

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

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<sup>6</sup> <http://www.naicscod.com/Search/MoreNAICSDetail.asp?N=532412>, last viewed March 20, 2011.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On April 12, 2011, the Finance and Tax Committee adopted an amendment which provided that:

- The recovery fee is an amount equal to 2 percent of the total rental transaction fee generated in each county of operation.
- The recovery fee may be collected and retained after payment of the tangible personal property tax assessed for the previous year only if the heavy equipment is subject to a short-term rental agreement that discloses the amount and purpose for the collection of the recovery fee.
- A person engaging in the business of renting or leasing heavy equipment may not seek additional recoupment of the recovery fee for the current year if the actual recovery fee collected in the current year exceeds the tangible personal property tax paid in the prior year.
- If, during the current year, the recovery fee collected by the person engaging in the business of renting or leasing heavy equipment exceeds the tax paid in the prior year, the recovery fee recoupment for the following year must be reduced by an amount equal to such excess amount.

This analysis is updated to reflect the above changes.