

HB 311

2011

1 A bill to be entitled
2 An act relating to local business taxes; amending s.
3 205.022, F.S.; defining the term "independent contractor";
4 creating s. 205.066, F.S.; exempting an individual
5 engaging in or managing a business in an individual
6 capacity as an employee from requirements related to local
7 business taxes; specifying that an independent contractor
8 is not an employee; prohibiting a local governing
9 authority from holding an exempt employee liable for the
10 failure of a principal or employer to comply with certain
11 obligations related to a local business tax or requiring
12 an exempt employee to take certain actions related to a
13 local business tax; prohibiting a local governing
14 authority from requiring a principal or employer to
15 provide personal or contact information for exempt
16 individuals in order to obtain a local business tax
17 receipt; amending s. 205.194, F.S.; deleting obsolete
18 language; deleting a requirement that the Department of
19 Business and Professional Regulation provide certain
20 professional regulation information to local officials who
21 issue business tax receipts; deleting a provision
22 prohibiting a local official who issues business tax
23 receipts from renewing a license under certain
24 circumstances; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Subsection (9) is added to section 205.022,
 29 Florida Statutes, to read:

30 205.022 Definitions.—When used in this chapter, the
 31 following terms and phrases shall have the meanings ascribed to
 32 them in this section, except when the context clearly indicates
 33 a different meaning:

34 (9) (a) "Independent contractor" means a person who meets
 35 at least four of the following criteria:

36 1. The independent contractor maintains a separate
 37 business with his or her own work facility, truck, equipment,
 38 materials, or similar accommodations;

39 2. The independent contractor holds or has applied for a
 40 federal employer identification number, unless the independent
 41 contractor is a sole proprietor who is not required to obtain a
 42 federal employer identification number under state or federal
 43 regulations;

44 3. The independent contractor receives compensation for
 45 services rendered or work performed and such compensation is
 46 paid to a business rather than to an individual;

47 4. The independent contractor holds one or more bank
 48 accounts in the name of the business entity for purposes of
 49 paying business expenses or other expenses related to services
 50 rendered or work performed for compensation;

51 5. The independent contractor performs work or is able to
 52 perform work for any entity in addition to or besides the
 53 employer at his or her own election without the necessity of
 54 completing an employment application or process; or

55 6. The independent contractor receives compensation for

56 work or services rendered on a competitive-bid basis or
57 completion of a task or a set of tasks as defined by a
58 contractual agreement, unless such contractual agreement
59 expressly states that an employment relationship exists.

60 (b) If four of the criteria listed in paragraph (a) are
61 not met, an individual may still be presumed to be an
62 independent contractor based on full consideration of the nature
63 of the individual situation with regard to satisfying any of the
64 following conditions:

65 1. The independent contractor performs or agrees to
66 perform specific services or work for a specific amount of money
67 and controls the means of performing the services or work.

68 2. The independent contractor incurs the principal
69 expenses related to the service or work that he or she performs
70 or agrees to perform.

71 3. The independent contractor is responsible for the
72 satisfactory completion of the work or services that he or she
73 performs or agrees to perform.

74 4. The independent contractor receives compensation for
75 work or services performed for a commission or on a per-job
76 basis and not on any other basis.

77 5. The independent contractor may realize a profit or
78 suffer a loss in connection with performing work or services.

79 6. The independent contractor has continuing or recurring
80 business liabilities or obligations.

81 7. The success or failure of the independent contractor's
82 business depends on the relationship of business receipts to
83 expenditures.

84 Section 2. Section 205.066, Florida Statutes, is created
 85 to read:

86 205.066 Exemptions; employees acting in an individual
 87 capacity.—

88 (1) An individual who engages in or manages a business,
 89 profession, or occupation in an individual capacity as an
 90 employee of another person is not required to apply for an
 91 exemption from a local business tax, pay a local business tax,
 92 or obtain a local business tax receipt. An individual acting in
 93 the capacity of an independent contractor is not an employee.

94 (2) An employee may not be held liable by any local
 95 governing authority for the failure of a principal or employer
 96 to apply for an exemption from a local business tax, pay a local
 97 business tax, or obtain a local business tax receipt. An
 98 individual exempt under this section may not be required by any
 99 local governing authority to apply for an exemption from a local
 100 business tax, otherwise prove his or her exempt status, or pay
 101 any tax or fee related to a local business tax.

102 (3) A principal or employer who is required to obtain a
 103 local business tax receipt may not be required by a local
 104 governing authority to provide personal or contact information
 105 for individuals exempt under this section in order to obtain a
 106 local business tax receipt.

107 Section 3. Section 205.194, Florida Statutes, is amended
 108 to read:

109 205.194 Prohibition of local business tax receipt without
 110 exhibition of state license or registration.—

111 (1) Any person applying for or renewing a local business

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112 tax receipt ~~for the period beginning October 1, 1985,~~ to
113 practice any profession regulated by the Department of Business
114 and Professional Regulation, or any board or commission thereof,
115 must exhibit an active state certificate, registration, or
116 license, or proof of copy of the same, before such local receipt
117 may be issued. ~~Thereafter, only persons applying for the first~~
118 ~~time for a receipt must exhibit such certification,~~
119 ~~registration, or license.~~

120 ~~(2) The Department of Business and Professional Regulation~~
121 ~~shall, by August 1 of each year, supply to the local official~~
122 ~~who issues local business tax receipts a current list of~~
123 ~~professions it regulates and information regarding those persons~~
124 ~~for whom receipts should not be renewed due to the suspension,~~
125 ~~revocation, or inactivation of such person's state license,~~
126 ~~certificate, or registration. The official who issues local~~
127 ~~business tax receipts shall not renew such license unless such~~
128 ~~person can exhibit an active state certificate, registration, or~~
129 ~~license.~~

130 ~~(2)(3)~~ This section shall not apply to s. 489.113, s.
131 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.
132 489.521, or s. 489.537.

133 Section 4. This act shall take effect July 1, 2011.