

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Community Affairs Committee

BILL: CS/SB 384

INTRODUCER: Senate Committee on Community Affairs and Senator Bogdanoff

SUBJECT: Tangible Personal Property Taxes

DATE: January 14, 2011 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	Fav/CS
2.			CM	
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This Committee Substitute (CS) authorizes a person who engages in the business of renting heaving equipment to collect a tangible personal property tax recovery fee on the rental of heavy equipment in an amount equal to 2 percent of the total rental transaction fee generated in each county of operation. The CS defines certain terms and limits the application of this act to short-term rental agreements or at-will contracts.

This CS creates an undesignated section of law.

II. Present Situation:

Property Tax Assessments

Article VII, section 1(a), of the Florida Constitution, grants exclusive authority to local governments to levy ad valorem taxes on real and tangible personal property, by providing that “. . . [n]o state ad valorem taxes shall be levied upon real estate or tangible personal

property. . .¹ Article VII, section 2, of the State Constitution further requires that all ad valorem taxation be at a uniform rate within each taxing district.²

Tangible Personal Property Tax

Section 192.001(11)(d), F.S., defines the term “tangible personal property” to mean:

All goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII, of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.³

With the exception of certain household goods and inventory, tangible personal property is subject to ad valorem taxation.⁴ Section 193.052, F.S., requires all tax returns for tangible personal property to be filed in the county where the property is located by April 1 of each year.⁵ In completing the return, the owner of the tangible personal property is required to indicate his/her estimate of the value of property owned or otherwise taxable to him/her and covered by such return.⁶

Department of Revenue form DR-405 for tangible personal property instructs taxpayers to report the value of all personal property located in the county as of January 1, at 100% of the original total cost, including any applicable sales tax, transportation, and handling and installation charges incurred.⁷ The Florida Department of Revenue (Department) requires a separate personal property return for each location of personal property in the county, with the exception of owners of vending machines, propane tanks and similar free-standing property at many locations, who may submit a single return.⁸

Property appraisers are authorized to accept tangible personal property tax returns in a form initiated through an electronic data interchange, subject to prescribed rules by the Department. The Department’s rules must provide a uniform format for all counties which closely resembles form DR-405 and that adequate safeguards for verification of taxpayers’ identities be established to avoid unauthorized filing.⁹

At the taxpayer’s request, the property appraiser shall grant a 30-day, and at his/her discretion an additional 15-day, extension for filing tangible personal property tax returns. The request for extension, at the option of the property appraiser, must include any or all of the following:

- The name of the taxable entity,
- The taxable entity’s tax identification number, and

¹ FLA. CONST. art. VII, s. 1(a).

² FLA. CONST. art. VII, s. 2.

³ Section 192.001(11)(d), F.S.

⁴ See FLA. CONST. art. VII, ss. 1(b), 3(b) and (d), and 5(b).

⁵ Sections 193.052 and 193.062(1), F.S.

⁶ Section 193.052(4), F.S.

⁷ Florida Department of Revenue, Form DR-405, Tangible Personal Property Tax Return, available online at <http://dor.myflorida.com/dor/forms/2007/dr405a.pdf> (last visited on Jan. 14, 2011).

⁸ *Id.*

⁹ Section 193.052(7), F.S.

- The reason a discretionary extension should be granted.¹⁰

In 2010, 1,237,106 tangible personal property tax returns were filed with a total taxable value of \$101.1 billion.¹¹

North American Industry Classification System (NAICS) Code 532412

The North American Industry Classification System (NAICS) “is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.”¹² The NAICS Code was adopted in 1997 under the Office of Management and Budget (OMB) to replace the then-existing Standard Industrial Classification (SIC) System. The 2007 version of the NAICS Code is the current version of the code that is utilized today. Code 532412 of the NAICS applies to “construction, mining, and forestry machinery and equipment rental and leasing.”

NAICS code 532412 states:

532412 Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing—This U.S. industry comprises establishments primarily engaged in renting or leasing heavy equipment without operators that may be used for construction, mining, or forestry, such as bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.¹³

III. Effect of Proposed Changes:

Section 1 of the CS defines:

- “Heavy equipment” to mean industrial or construction equipment, including, but not limited to, equipment described in the North American Industry Classification System (NAICS) Code 532412, as published in 2007 by the Office of Management and Budget, Executive Office of the President.
- “Lessee” to mean the person who rents or leases the heavy equipment.
- “Short-term rental agreement” to mean a lease or rental for a term of 365 days or less, or an at-will contract that does not specify a term. A short-term rental agreement does not include any extension or renewal of a lease or rental agreement having an original term of 365 days or longer.

The CS authorizes a person who engages in the business of renting heavy equipment to collect a tangible personal property tax recovery fee on the rental of heavy equipment in order to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed upon the equipment. The CS caps the amount of the tax recovery fee to 2 percent of the total rental transaction fee generated in each county of operation.

¹⁰ Section 193.063, F.S.

¹¹ Florida Department of Revenue website, *Florida Property Tax Data Portal: Statewide Ad Valorem Summary Reports*, available online at <http://dor.myflorida.com/dor/property/resources/data.html> (last visited on March 11, 2011).

¹² U.S. Census Bureau, North American Industry Classification System (NAICS), website available online at <http://www.census.gov/eos/www/naics/> (last visited on March 11, 2011).

¹³ *Id.*

The CS states that the recovery fee may be collected and retained after payment of the 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; and
- The 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 CS requires the excess recovery fee amount collected be applied to reduce the following year's recovery fee recoupment by that amount.

Section 2 provides that this act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This CS will allow individuals who engage in the business of renting heavy equipment to collect a tangible personal property tax recovery fee on short-term rentals of heavy equipment in an amount equal to 2 percent of the total rental transaction fee generated in each county of operation.

B. Private Sector Impact:

Individuals that enter into short-term rental agreements or at-will contracts for the rental of heavy equipment may be required to pay a fee, the amount of which would be disclosed in the rental agreement between the two private parties.

C. Government Sector Impact:

The Department of Revenue has indicated that it does not anticipate an operation impact as a result of the provisions of this CS.¹⁴

In a previous analysis conducted on a similar bill from the 2010 Legislative Session (2010 HB 557), the Department of Revenue stated that since the fee proposed under the bill will be a part of the amount paid for the rental, then the amount of the fee will be subject to a sales tax pursuant to ch. 212, F.S.¹⁵ The Department further stated 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 [and that the] Department has no authority to administer or enforce the fees collected by rental companies.”¹⁶

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs Committee on March 21, 2011:

This CS provides definitions and caps the amount of the tangible personal property tax recovery fee on the rental of heavy equipment at 2 percent of the total rental transaction fee generated in each county of operation.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁴ Department of Revenue, *SB 384 Fiscal Analysis*, at 2 (Jan. 26, 2011) (on file with the Senate Committee on Community Affairs).

¹⁵ Fla. H.R. Comm. on General Gov’t Policy Council, CS/CS/HB 557 (2010) Staff Analysis 4 (final March 25, 2010) (on file with comm.) *citing* Department of Revenue, *HB 556 Fiscal Analysis*, at 2 (Feb. 2, 2010) (on file with the Senate Committee on Community Affairs).

¹⁶ *Id.*