

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 582

INTRODUCER: Community Affairs Committee and Senator Detert

SUBJECT: Local Business Taxes

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

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|---------------|
| 1. | Wolfgang | Yeatman | CA | Fav/CS |
| 2. | | | RI | |
| 3. | | | BC | |
| 4. | | | | |
| 5. | | | | |
| 6. | | | | |

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| 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:

The Committee Substitute (CS) specifies that an individual who engages in or manages a business, profession, or occupation as an employee of another person (i.e., an employee) is not required to pay a local business tax, obtain a local business tax receipt, or apply for an exemption from a local business tax.

The CS removes statutory language which requires the Department of Business and Professional Regulation, by August 1 of each year, to submit to the local official who issues local business tax receipts a current list of professions the department regulates and information regarding those practitioners that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of a state license, certification, or registration.

For purposes of the application of the provisions relating to local business taxes, the CS specifies that an employee does not include an independent contractor. An employee does include an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. The CS specifies that “independent contractor” means an entity which satisfies at least 4 of the 6 statutorily listed criteria which are created in the CS. Additionally, the CS further specifies that if at least 4 of the 6 criteria are not met, an individual may still be presumed to be an independent

contractor and not an employee based on consideration of 7 specified work conditions created in the CS. The CS adds clarifying language to capture any business that is regulated, and explicitly allow certification renewals to be done online.

This CS substantially amends the following sections of the Florida Statutes: 205.022 and 205.194.

This CS creates s. 205.066 of the Florida Statutes.

II. Present Situation:

In 1972, the Florida Legislature elected to stop administering occupational license taxes at the state level and gave the authority to local governments. Local governments were then authorized to levy occupational license taxes according to the provisions of the “Local Occupational License Act.”¹

In 2006, 368 of the 404 municipalities and 52 of the 67 counties in Florida had some sort of local occupational license tax in place.² Although the local occupational license tax was designed to be purely revenue producing in nature, it had unintentionally become a measure of profession and business qualification to engage in a specified activity.³ Chapter 2006-152, L.O.F., renamed the act as the “Local Business Tax Act” to reflect that the business or individual has merely paid a tax and it alone does not authenticate the qualifications of a business or individual.⁴ The legislation removed the term “occupational license” and added the terms “local business tax” and “local business tax receipt.”

Based on financial data contained in Annual Financial Reports (AFR) submitted by local governments to the Department of Financial Services, 35 counties reported local business tax revenues totaling \$31.8 million and 265 municipalities reported local business tax revenues totaling \$117.8 million in LFY 2008-09.⁵

Currently, “local business tax” means the fees charged and the method by which a local governing authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction.⁶ It does not mean any fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.⁷ Unless otherwise provided by law, these are deemed to be regulatory and in addition to, but not in lieu of, any local business tax imposed under the provisions of chapter 205, F.S.⁸

¹ FLORIDA REVENUE ESTIMATING CONFERENCE, 2010 FLORIDA TAX HANDBOOK at 227.

² 2006 bill analysis on HB 1269 (chapter 2006-152, L.O.F.) by the House Fiscal Council, dated 4/21/2006, and citing data provided by the Legislative Committee on Intergovernmental Relations.

³ *Id.*

⁴ *Id.*

⁵ OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH, LOCAL BUSINESS TAX, available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm>.

⁶ Section 205.022(5), F.S.

⁷ *Id.*

⁸ *Id.*

“Business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in this state.⁹

Under current law, a county or municipality may, by appropriate resolution or ordinance, impose a local business tax for the privilege of engaging in or managing a business, profession, or occupation within its jurisdiction.¹⁰ The amount of the tax and the occupations and businesses the tax is imposed on are determined at the discretion of the local government within the limitations of ch. 205, F.S. However, a Florida county or municipality may not levy a business tax if any person engaging in or managing a business, profession, or occupation regulated by the Department of Business and Professional Regulation (DBPR) has paid a business tax for the current year to the county or municipality in the state where the company’s permanent business location or branch office is maintained.¹¹

Section 205.194, F.S., prohibits local governments from imposing a “local business tax” for professions regulated by the DBPR without the local government verifying that the person has satisfied the DBPR qualification requirements. Applicants are required to submit proof of registration, certification, or licensure issued by the DBPR upon initial licensure in the local jurisdiction. By August 1 of each year, DBPR is required to supply local officials with a list of the professions it regulates and persons that should not be allowed to renew their local business tax receipt due to suspension, revocation, or inactivation of their state license, certification, or registration.

Several other sections of ch. 205, F.S., require additional verification from state regulatory agencies, such as the Department of Agriculture and Consumer Services and the Agency for Health Care Administration, before a local government may issue a business tax receipt.

Attorney General Opinion 2010-41

In 2010, the attorney general was asked to provide an opinion on, among other things, the following questions:

- Must a municipality impose a local business tax on professionals licensed by the state if such professionals are employed by another person or entity?
- May a municipality amend its local business tax ordinance ... to exempt state-licensed professionals employed by another?

On October 13, 2010, the attorney general issued AGO 2010-41. It provides in pertinent part that:

- A municipality must impose a business tax on all businesses, professions, or occupations within its jurisdiction when adopting a tax pursuant to section 205.042, Florida Statutes, and exempt only those businesses, professions, or occupations addressed [exempted or allowed to be exempted] in Chapter 205.

⁹ Section 205.022(1), F.S.

¹⁰ Sections 205.032 and 205.042, F.S.

¹¹ Section 205.065, F.S.

- For the purposes of the statute, a "person" means "any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, executor, administrator, receiver, or other fiduciary, and includes the plural as well as the singular." Thus, the local business tax law applies to and operates on any person, engaged in any business, profession, or occupation who exercises the taxable privilege within a municipality's jurisdiction and is not excepted or exempted from the license tax by the terms of Chapter 205, Florida Statutes, or other applicable general law.
- A city may apply only the exemptions set forth in Chapter 205, Florida Statutes, to exclude individuals or entities from its local business tax.

There is no exemption in chapter 205, F.S., for individuals who are employees of another person.

III. Effect of Proposed Changes:

Section 1 amends s. 205.022, F.S., to create a definition for "independent contractor." An independent contractor is a person who meets **at least four** of the following criteria:

- The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations;
- The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations;
- The independent contractor receives compensation for services rendered or work performed and such compensation is paid to a business rather than to an individual;
- The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation;
- The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process; or
- The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.

If four of these criteria listed are not met, an individual may still be presumed to be an independent contractor based on full consideration of the nature of the individual situation with regard to satisfying **any** of the following conditions:

- The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.
- The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.
- The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.

- The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.
- The independent contractor may realize a profit or suffer a loss in connection with performing work or services.
- The independent contractor has continuing or recurring business liabilities or obligations.
- The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Section 2 creates s. 205.066, F.S., to exempt employees from having to pay a local business tax in their individual capacity. The CS specifies that independent contractors are not employees. An employee does include an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. Employees are not to be held liable for failure of a principal or employer to apply for an exemption from a local business tax, pay a local business tax, or obtain a local business tax receipt. Employees cannot be required to apply for an exemption.

A principal or employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide personal or contact information for employees in order to obtain a local business tax receipt.

Section 3 amends s. 204.194, F.S., to delete language stating that only persons applying to the DBPR for the first time for a tax receipt must exhibit their certification, registration, or license. The CS further deletes the requirement that DBPR supply the appropriate local official with a current list of the professions it regulates and information regarding those persons for whom receipts should not be renewed. The CS deletes the requirement that the local official review the list. The CS requires persons applying for or renewing a local business receipt from any state regulating agency to exhibit an active state certificate, registration, or license. The CS authorizes online renewals for this purpose.

Section 4 provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Section 18(b), Art. VII of the Florida Constitution provides that except upon approval by two-thirds of the members of each house, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The fiscal impact of this bill has yet to be determined. However, if the fiscal impact of this bill is greater than \$1.9 million then none of the exemptions provided in s. 18(d), Art. VII of the Florida Constitution apply, and the bill will require a two-thirds vote of the membership of each house.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Professionally licensed employees would be exempt from local business taxes.

C. Government Sector Impact:

Local governments would experience an indeterminate negative fiscal impact from their reduced authority to raise revenues.

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 the Community Affairs Committee on March 14, 2011:

- Adds clarifying language to capture any business that is regulated, and explicitly allow certification renewals to be done online.
- Adds a line specifying that an individual licensed and operating as a broker associate or sales associate under chapter 475, F.S. is an employee.

B. Amendments:

None.