

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 733 Tax on Sales, Use, and Other Transactions

**SPONSOR(S):** Porter and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 508

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Committee	23 Y, 0 N, As CS	Flieger	Langston
2) Appropriations Committee			

### SUMMARY ANALYSIS

CS/HB 733 establishes a 3 day sales tax exempt period on certain items from August 12, 2011, through August 14, 2011. During the sales tax holiday, clothing, footwear, wallets, bags, and textbooks that cost \$75 or less, and school supplies that cost \$15 or less are exempt from the state sales tax and county discretionary sales surtaxes (commonly called "local option sales taxes").

The bill specifies that the exemption during the period does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport.

Based on similar proposals reviewed by the 2011 Revenue Estimating Conference, staff estimates that this bill would have a negative, nonrecurring impact of \$34.7 million to General Revenue and \$7.6 million to local governments in Fiscal Year 2011-12.

The Department of Revenue (DOR) is given authority to adopt emergency rules. A nonrecurring General Revenue appropriation of \$218,905 is made to DOR to administer the act.

The bill will take effect upon becoming a law.

**This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

Current law imposes a 6-percent tax on the retail sale of tangible personal property,<sup>1</sup> which includes books, clothing, footwear, wallets, bags, school supplies, and computers.

In addition, county governments may impose discretionary sales surtaxes (e.g., indigent care and trauma center surtax, county public hospital surtax, school capital outlay surtax).<sup>2</sup> County discretionary sales surtaxes (commonly called “local option sales taxes”) apply to all transactions in the county which are subject to the state sales tax.<sup>3</sup>

#### History of Sales Tax Holidays:

Since 1998, the Legislature has enacted nine temporary periods (commonly called “sales tax holidays”) during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.<sup>4</sup>

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear has always been exempted. In seven of the nine holidays such items valued at \$50 or less were exempted. Twice, items valued at \$100 or less were exempt. Books valued at \$50 or less were included in the most recent five exempt periods. Schools supplies valued at \$10 or less were included in the most recent six holidays.

The following table summarizes the history of the “back to school” sales tax holidays:

Dates	Length	TAX EXEMPTION THRESHOLDS				Appropriation/ DOR
		Clothing/ Footwear	Wallets/ Bags	Books	School Supplies	
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	\$200,000
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	\$200,000
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	\$215,000
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	\$10 or less	\$200,000
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$206,000
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$224,110
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	\$10 or less	\$250,304

<sup>1</sup> Sections 212.02(19) and 212.05(1)(a)1.a., Florida Statutes.

<sup>2</sup> Section 212.055, Florida Statutes.

<sup>3</sup> Section 212.054(2)(a), Florida Statutes.

<sup>4</sup> Chapters 98-341, 99-229, 2000-175, 2001-148, 2004-73, 2005-271, 2006-63, 2007-144, and 2010-93, Laws of Florida.

## Tax Information Publications:

Since 2004, the Department of Revenue has published a Tax Information Publication (“TIP”) for each sales tax holiday.<sup>5</sup> A TIP provides detailed information about the sales tax holiday, including instructions and specific examples, for dealers who collect the tax.

### **Proposed Changes**

The bill establishes a 3 day sales tax holiday beginning August 12, 2011 at 12:01 a.m. and ending at 11:59 p.m. August 14, 2011. During the sales tax holiday, the following items that cost \$75 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets;
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags); and
- Textbooks (defined as required instruction manuals for any course of study).

During the sales tax holiday, the bill also exempts “school supplies” that cost \$15 or less per item. “School supplies” are defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, calculators, binders, lunch boxes, construction paper, markers, folders, and poster board.

The bill provides that the sales tax holiday does not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales in these locations will be subject to taxation during the sales tax holiday.

The also gives the Department of Revenue (DOR) authority to adopt emergency rules.

The bill will take effect upon becoming a law.

## B. SECTION DIRECTORY:

**Section 1.** Providing for a sales tax holiday, identifying exempt items, providing exceptions from the holiday.

**Section 2.** Appropriating funds to administer the holiday.

**Section 3.** Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

Based on similar proposals reviewed by the 2011 Revenue Estimating Conference, staff estimates that this bill would have a negative, nonrecurring impact of \$34.7 million to General Revenue and a negative insignificant impact to state trust funds.

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<sup>5</sup> See Florida Department of Revenue, *2004 Sales Tax Holiday*, TIP# 04A01-05 (June 10, 2004); *2005 Sales Tax Holiday*, TIP# 05A01-02 (June 1, 2005), *2006 Sales Tax Holiday*, TIP# 06A01-04 (June 9, 2006), and *2007 Sales Tax Holiday*, TIP# 07A01-07 (June 15, 2007).

2. Expenditures:

The bill contains a nonrecurring appropriation of \$218,905. This appropriation will be used on printing and postage for a Tax Information Publication ("TIP") for the sales tax holiday to be mailed to the state's approximately 554,000 active sales tax accounts each year. In addition, the appropriation includes printing of an additional 5,000 copies of the TIP for mailing to retail associations and for distribution to others upon request.

Printing 554,000 x \$.13561 per personalized TIP = \$ 75,128

Printing 5,000 x \$.16896 per non-personalized TIP = \$845

Postage 554,000 x \$.258 per personalized TIP = \$142,932

Total = \$218,905

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenue

Based on similar proposals reviewed by the 2011 Revenue Estimating Conference, staff estimates that this bill would have a negative, nonrecurring impact of \$7.6 million to local governments in Fiscal Year 2011-12.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Due to the timing of the sales tax holiday, families will be able to save money on books, clothing, footwear, wallets, bags, computers, computer software, and school supplies before the beginning of the school year. In addition, the tax exemption may increase the sales of non-exempt items during the sales tax holiday.

Although retail sellers may incur costs reprogramming cash registers and accounting systems, those costs would likely be mitigated by the use of existing procedures developed for previous sales tax holidays.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill is expected to result in a reduction in local option sales taxes on those items included in the sales tax holiday. This bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill grants emergency rulemaking authority to the Department of Revenue.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 30, 2011, the Finance and Tax Committee adopted a strike-all amendment. The strike-all amendment:

- Changes the initial 10 day recurring sales tax holiday to a 3 day nonrecurring holiday
- Decreases the clothing price limit to \$75 from \$100
- Increases the school supplies price limit to \$15 from \$10
- Adds textbooks with a price under \$75 to the list of exempt items
- Removes the exemption on computers
- Adds an appropriation and rulemaking authority
- Changes the effective date

This analysis is updated to reflect the above amendment.