

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 Budget Subcommittee on Finance and Tax

BILL: CS/CS/CS/SB 1108

INTRODUCER: Budget Subcommittee on Finance and Tax; Community Affairs Committee; Commerce and Tourism Committee; and Senator Altman

SUBJECT: Taxation

DATE: February 23, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Hrdlicka	CM	Fav/CS
2.	Toman	Yeatman	CA	Fav/CS
3.	Cote	Diez-Arguelles	BFT	Fav/CS
4.			BC	
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:

CS/CS/CS/SB 1108 makes four changes to Florida's tax statutes. The CS:

- creates a new sales tax exemption for certain items used to manufacture and produce aircraft and gas turbine engines;
- provides an exemption from intangible tax for lessees of governmental property that perform a governmental, municipal or public purpose function;
- reduces the productivity requirement for the sales tax exemption for industrial machinery and equipment used by an expanding business from a 10 percent increase in productive output to a 5 percent increase in productive output; and
- increases the current corporate income tax exemption from \$25,000 to \$50,000.

This CS amends sections 196.199, 212.08, 220.14, and 220.63 of the Florida Statutes.

II. Present Situation:

Sales and Use Taxes

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Florida imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida.¹ Section 212.08, F.S., provides a list of sales and use tax exemptions. Currently, there is no exemption for items used in manufacturing and fabricating gas turbine engines.

Turbines

"A turbine is any kind of spinning device that uses the action of a fluid to produce work."² Fluids typically used in turbines include air, wind, water, steam and helium. Windmills and hydroelectric dams are two examples of turbine action being used to turn the core of an electrical generator to produce power.

Gas turbines were first developed in the 1930s, and were used to generate electricity and power airplane flight. Gas turbines use a compressor to draw in and compress gas (usually air), then a combustor (or burner) adds fuel (such as propane, natural gas, kerosene or jet fuel) to heat the compressed gas, and a turbine extracts power from the hot air flow. The gas turbine is an internal combustion engine employing a continuous combustion process. Gas turbines are also known as combustion turbines, turboshaft engines, or gas turbine engines in power generation and marine applications and as jet engines, jet turbine engines, turbojets, turbofans, fanjets, turboprops or prop jets in aviation applications.

Gas turbines have many applications, and are used in power plants, tanks, jets, helicopters and trains.

Castings

"Casting is a manufacturing process by which a liquid material is usually poured into a mold, which contains a hollow cavity of the desired shape, and then allowed to solidify."³ The "casting" is the solidified part, which is generally removed from the mold by breaking the mold.⁴ There are several different methods to create a casting.⁵ Materials used in casting are usually metals or "various cold setting materials that cure after mixing two or more components together. Casting is most often used for making complex shapes that would be otherwise difficult or uneconomical to make by other methods."⁶

¹ See ss. 212.05 and 212.06, F.S.

² See Langston, Lee S., and George Opdyke, Jr., *Introduction to Gas Turbines for Non-Engineers*, *Global Gas Turbine News*, Volume 37: 1997, No.2, available at <http://files.asme.org/IGTI/101/13001.pdf> (last visited Feb. 7, 2012).

³ See Wikipedia article, "Casting," citing Degarmo, E. Paul, J. T. Black, and Ronald A. Kosher, "Materials and Processes in Manufacturing (9th ed.)," Wiley (2003).

⁴ *Id.*

⁵ See Reliance Foundry Co. Ltd. website on Foundry Production for a description of different methods of casting. Available at <http://www.reliance-foundry.com/foundry-production/> (last visited Feb. 7, 2012).

⁶ See "Casting" article.

The World Foundry Organization lists the U.S. as the third largest castings producer in the world in 2009.⁷

Industrial Machinery and Equipment

Section 212.08(5)(b), F.S., provides an exemption for the purchase of industrial machinery and equipment by an expanding business under specified conditions:

- The industrial machinery and equipment must be purchased for exclusive use by an expanding facility engaged in spaceport activities or for use in expanding manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, and must be used to increase the productive output of the expanded facility or business by not less than 10 percent, following the complete installation of the industrial machinery and equipment.
- “Productive output” is defined as the number of units produced by a single plant, product line, or operation in a single continuous 12-month period.
- “Industrial machinery and equipment” is defined as tangible personal property or other property that has a depreciable life of three years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities.

Government Property Taxation

Florida law generally exempts government property from ad valorem taxation.⁸

Portions of governmental property may be leased to private parties. In instances where the government leases property to a private party, the lease is called a “governmental leasehold” and is subject to tax as “intangible personal property.”⁹

Effective January 1, 2007, ch. 2006-312, L.O F., repealed the annual tax on intangible personal property such as stocks, bonds, mutual funds, money market funds, and unsecured notes.¹⁰ The repeal did not include the following two taxes:

- The nonrecurring tax on a note, bond, or other obligation for payment of money that is secured by a mortgage deed or other lien on real property. Taxpayers who are lending money secured by a mortgage on Florida real property must still pay the nonrecurring intangible tax.

⁷ See World Foundry Organization website Modern Castings and the American Foundry Society, *44th Census of World Casting Production* (2010), available at <http://thewfo.com/Page.aspx?pageId=11> (last visited Feb. 7, 2012).

⁸ See s. 196.199, F.S. Subject to certain conditions, property of the United States, property of Florida and property of political subdivisions and municipalities of the state are exempt from ad valorem taxation.

⁹ See s. 196.199(2)(b), F.S. Section 192.001 (11)(b) defines “intangible personal property” as money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value.

¹⁰ Florida Department of Revenue, *2007 Tax Information Publication #07C02-01* (Jan 2, 2007), available at <http://dor.myflorida.com/dor/tips/tip07c02-01.html> (last visited Feb. 14, 2012).

These payments are generally made to the Clerk of Court in the county where the instrument is recorded.¹¹ The proceeds of this tax are deposited into the General Fund.

- The recurring tax on the lease of real property owned by a government and leased to a non-governmental entity when rental payments are due. Taxpayers that lease property from a governmental entity must still file and pay the governmental leasehold intangible tax annually, if the amount of tax owed before discount is \$60 or more.¹² The proceeds of this tax are returned to the local school board for the county in which the property subject to the leasehold is situated.

In Boca Airport, Inc. v. Florida Department of Revenue, 56 So. 3d 140 (Fla. 4th DCA 2011), the court determined that the intangible tax on governmental leaseholds applied to fixed base operators¹³ leasing airport property from the county.

Corporate Income Tax

Florida imposes a 5.5% tax on the net income of corporations doing business in Florida. Section 220.14, F.S., currently exempts \$25,000 of net income from the corporate income tax.

III. Effect of Proposed Changes:

Section 1 amends s. 196.199, F.S., to provide that lessees of governmental property that perform a governmental, municipal or public function are exempt from the intangible tax.

Section 2 provides that the amendment to s.196.199, F.S., is effective upon becoming a law and applies retroactively to all leases of governmental property in existence as of January 1, 2011.

Section 3 creates s. 212.08(7)(hhh), F.S., to establish a sales tax exemption for items used in manufacturing and fabricating aircraft and gas turbine engines. The CS exempts chemicals, machinery, parts, and equipment used and consumed in the manufacture or fabrication of aircraft and gas turbine engines.

Items exempted include cores, electrical discharge machining supplies, brass electrodes, ceramic guides, grinding and deburring wheels, Norton vortex wheels, argon, nitrogen, helium, fluid abrasive cutters, solvents and soaps, borescopes, penetrants, patterns, dies, and molds consumed in the production of castings.

Section 4 amends 212.08(5)(b), F.S., to reduce the productivity requirement for the sales tax exemption for industrial machinery and equipment used by an expanding business from a 10 percent increase in productive output to a 5 percent increase in productive output.

¹¹ *Id.*

¹² *Id.*

¹³ Fixed base operators provide goods and services to the general aviation public by offering hanger space for private and commercial aircraft, aviation fuel, aircraft repairs, tie-down services, and amenities for pilots and the general public in the form of food, beverages, ground transportation, and reservations for rental cars and lodging.

Section 5 amends 220.14(1), F.S., to increase the current corporate income tax exemption from \$25,000 to \$50,000.

Section 6 amends 220.63(3), F.S., to increase the current franchise income tax exemption from \$25,000 to \$50,000.

Section 7 provides emergency rulemaking authority to the Department of Revenue.

Section 8 provides that except as otherwise expressly provided in this act and except for this section, which takes effect upon becoming a law, this act shall take effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by two-thirds of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2012-13), are exempt.

The Revenue Estimating Conference (REC) estimated that the provisions of this CS related to aircraft and gas turbine engines will reduce the revenues received by cities and counties from local option sales taxes by \$100,000 annually. The REC estimated that the provisions of this CS related to lowering the productivity requirement for the sales tax exemption for machinery and equipment used by an expanding business will reduce the revenues received by cities and counties from local option sales taxes by \$4.5 million annually.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The REC estimates the impact of the CS related to sales and use tax for certain items used to manufacture and produce aircraft and gas turbine engines will have a recurring negative impact of \$1.3 million to general revenue and a recurring negative impact of \$300,000 to local governments each year.¹⁴

The REC estimates the impact of the exemption from intangibles tax for lessees of governmental property will have a negative recurring impact of \$0.9 million to school districts.

The REC estimates the impact of lowering the productivity requirement for the sales tax exemption for machinery and equipment used by an expanding business will decrease general revenue by \$19.1 million and local government revenue by \$4.3 million in FY2012-13, with a recurring negative \$46.0 million impact on general revenue and a recurring negative impact of \$10.4 million to local governments.

The REC estimates the impact of increasing the current corporate income tax exemption will decrease general revenue by \$9.9 million in FY2012-13 with a recurring negative impact of \$29.4 million.

B. Private Sector Impact:

Purchasers of the specified items used in the manufacture of aircraft and gas turbine engines will benefit from the exemption of these items from taxes. Lessees performing a governmental, municipal or public purpose function will be exempt from the intangible tax. Corporations will benefit from the lower tax liability that results from the increased corporate income tax exemption, and expanding manufacturing businesses will benefit from the changes to the productivity requirement for the machinery and equipment sales tax exemption.

C. Government Sector Impact:

The Department of Revenue (DOR) has indicated that the aircraft and gas turbine engines provisions of this CS would have an insignificant impact on its operations. The DOR has yet to formally analyze the implications of the intangible tax provisions of the CS.

VI. Technical Deficiencies:

None.

¹⁴ Office of Economic and Demographic Research, The Florida Legislature, *Revenue Estimating Conference for 2012 Regular Session – Exemption on Gas Turbine Manufacturers, HB 939* (December 12, 2011), available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page174-178.pdf> (last visited Feb. 8, 2012).

VII. Related Issues:

Turbine engines are classified by the type of fluid used to drive the engine. In general, the manufacturing process for all engines is the same and uses the same materials (cores, patterns, dies, and molds), although they may vary by type of metal. The exemption provided by this CS is limited to manufacturing and fabricating aircraft and gas turbine engines. The items cited for exemption which are used for other types of manufacturing would not be eligible for the exemption.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS/CS by Budget Subcommittee on Finance and Tax on February 23, 2012:**

This committee substitute increases the current corporate income tax exemption from \$25,000 to \$50,000 and lowers the productivity requirement for the sales tax exemption for industrial machinery and equipment used by an expanding business from a 10% increase in productive output to a 5% increase in productive output. The committee substitute also amends the language relating to governmental leaseholds to apply retroactively to government leaseholds in existence as of January 1, 2011 but does not create a right to a refund.

CS/CS by Community Affairs on February 13, 2012:

This committee substitute provides an exemption from intangible tax for lessees performing a governmental, municipal or public purpose function.

CS by Commerce and Tourism on February 2, 2012:

This committee substitute combined the two separately stated exemptions in the original bill into one.

B. Amendments:

None.