

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/SB 770

INTRODUCER: Budget Subcommittee on Finance and Tax; and Senator Hays

SUBJECT: Exemptions from Local Business Tax

DATE: February 28, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Anderson	Yeatman	CA	Favorable
2.	Fournier	Diez-Arguelles	BFT	Fav/CS
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 bill specifies that an individual licensed and operating as a broker associate or sales associate is not required to apply for an exemption from a local business tax or take certain actions relating to a local business tax. The bill prohibits a local governing authority from holding such exempt individual liable for the failure of a principal or employer to comply with certain obligations related to a local business tax. The bill also prohibits a local governing authority from requiring a principal or employer to provide personal or contact information for such exempt individuals in order to obtain a local business tax receipt.

This bill creates s. 205.067, F.S., and substantially amends s. 205.066, F.S.

II. Present Situation:

Local Business Tax

The local business tax, authorized in ch. 205, F.S., is the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation

within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.¹ This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.²

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. Municipalities levied their own occupational license taxes pursuant to local ordinance or resolution. Counties had no authority to levy an occupational license tax until October 1, 1972, when Ch. 72-306, Laws of Florida, repealed the state tax and authorized both counties and cities to impose an occupational tax at the state or city rate then in effect. In 1980, the Legislature authorized counties and municipalities to increase rates by a specified percentage based upon the rates then in effect.³ In 1986, the legislature authorized Miami-Dade, Broward, Monroe and Collier counties to increase their rates by an additional 50 percent, with the proceeds being dedicated to specified economic development activities.⁴

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.⁵ This was done in response to some individuals representing that the fact that they had obtained an “occupational license” under ch. 205, F.S., conferred upon them some type of official proof of their competency to perform various repairs and services. The name change was intended to clarify that the payments made under Ch. 205, F.S., were taxes and not some type of regulatory fee.

Administrative Procedures

In order to levy a business tax, the governing body must first give at least 14 days of public notice between the first and last reading of the resolution or ordinance by publishing a notice in a newspaper of general circulation within its jurisdiction as defined by law.⁶ The public notice must contain the proposed classifications and rates applicable to the business tax.⁷ A number of other conditions for levy are imposed on counties and municipalities.⁸

For purposes of Ch. 205, F.S., the terms “business,” “profession,” and “occupation” do not include the customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions in the state.⁹ These institutions are more particularly defined and limited in statute.¹⁰ The term “receipt” means the document that is issued by the local governing authority which bears the words “Local Business Tax Receipt” and evidences that the person in whose name the document is issued has complied with the provisions of Ch. 205, F.S., relating to the business tax.¹¹

¹ Sections 205.033 and 205.042, F.S.

² Section 205.022(5), F.S.

³ Chapter 80-274, L.O.F.

⁴ Chapter 86-298, L.O.F.

⁵ Chapter 2006-152, L.O.F.

⁶ Sections 205.033 and 205.042, F.S.

⁷ Id.

⁸ Sections 205.033 and 205.043, F.S.

⁹ Section 205.022(1), F.S.

¹⁰ Id.

¹¹ Section 205.022(2), F.S.

The governing body of a municipality that levies the tax may request that the county in which the municipality is located issue the municipal receipt and collect the tax.¹² The governing body of a county that levies the tax may request that municipalities within the county issue the county receipt and collect the tax.¹³ However, before any local government issues any business receipts on behalf of another local government, appropriate agreements must be entered into by the affected local governments.¹⁴ All business tax receipts are sold by the appropriate tax collector beginning July 1 of each year.¹⁵ The taxes are due and payable on or before September 30 of each year, and the receipts expire on September 30 of the succeeding year.¹⁶ In several situations, administrative penalties are also imposed.¹⁷

New Tax Levies

A county or municipality that has not yet adopted a business tax ordinance or resolution may adopt a business tax ordinance pursuant to s. 205.0315, F.S. The tax rate structure and classifications in the adopted ordinance must be reasonable and based upon the rate structure and classifications prescribed in ordinances adopted by adjacent local governments that have implemented a local business tax.¹⁸ If no adjacent local government has implemented a local business tax, or if the governing body of the county or municipality finds that the rate structures or classifications of adjacent local governments are unreasonable, then an alternative method is authorized. In such a case, the rate structure or classifications prescribed in the ordinance of the local government seeking to impose the tax may be based upon those prescribed in ordinances adopted by local governments that have implemented a local business tax, in counties or municipalities that have a comparable population.¹⁹

Tax Base/Rate Restructuring

Currently, counties and municipalities with an existing local business tax may not reclassify businesses, professions, and occupations.²⁰ However, those counties and municipalities that underwent a reclassification and rate structure revision pursuant to s. 205.0535, F.S., prior to October 1, 1995, or during a window of time available from July 1, 2007, through October 1, 2008, for certain municipalities may, every other year, increase or decrease by ordinance the rates of business taxes by up to 5 percent.²¹ However, an increase may not be enacted by less than a majority plus one vote of the governing body.²² A county or municipality is not prohibited from decreasing or repealing any authorized local business tax.²³

Exemptions

Ch. 205, F.S., provides several exemptions and exclusions from local business taxes. Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and

¹² Section 205.045, F.S.

¹³ Id.

¹⁴ Id.

¹⁵ Section 205.053, F.S.

¹⁶ Id.

¹⁷ Id.

¹⁸ Section 205.0315, F.S.

¹⁹ Id.

²⁰ Section 205.0535, F.S.

²¹ Section 205.0535(4), F.S.

²² Id.

²³ Id.

nonprofit educational institutions are excluded from the definition of “business,” “profession,” and “occupation” and are thereby excluded from paying local business taxes.²⁴ There is an optional partial exemption for businesses located in enterprise zones.²⁵ The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.²⁶ There are also exemptions for persons engaged in specified farming activities,²⁷ certain nonresident persons regulated by the Department of Professional Regulation,²⁸ certain employees of businesses that are required to pay a local business tax,²⁹ certain disabled persons, the aged, and widows with minor dependents,³⁰ disabled veterans of any war or their unremarried spouses,³¹ and certain mobile home setup operations.³² Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization are also exempt.³³

Exemptions for employees

In 2011 the Florida Legislature passed HB 311, chapter 2011-78, Laws of Florida. This bill created an exemption from local business taxes for an individual who engages in or manages a business, profession, or occupation as an employee of another person. The bill provided that the exempt 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.

Under current law, an individual licensed and operating as a broker associate or sales associate under ch. 475 is an employee. An individual acting in the capacity of an independent contractor is not an employee.³⁴

Regulatory Provisions

Section 205.194, F.S., provides that any person applying for or renewing a local business tax receipt to practice any profession or engage in or manage any business or occupation regulated by the Department of Business and Professional Regulation, the Florida Supreme Court, or any other state regulatory agency, including any board or commission thereof, must exhibit an active state certificate, registration, or license, or proof of copy of the same, before such local receipt may be issued.

Sections 205.196, 205.1965, 205.1967, 205.1969, 205.1971, 205.1973 and 205.1975, F.S., provide similar requirements for production of evidence of appropriate licensure prior to

²⁴ Section 205.022(1), F.S.

²⁵ Section 205.054, F.S.

²⁶ Section 205.063, F.S.

²⁷ Section 205.064, F.S.

²⁸ Section 205.065, F.S.

²⁹ Section 205.066, F.S.

³⁰ Section 205.162, F.S.

³¹ Section 205.171, F.S.

³² Section 205.193, F.S.

³³ Section 205.192, F.S.

³⁴ Section 205.066, F.S.

issuance of a business tax receipt for pharmacies and pharmacists, assisted living facilities, pest control, health studios, sellers of travel and telemarketing businesses, respectively.

Distribution of Revenues

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.³⁵ Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.³⁶

Authorized Uses of Revenues

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.³⁷ The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., shall be distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.³⁸

Total Revenues Collected

According to a report published by the Office of Economic and Demographic Research (EDR), in fiscal year 2008-09 counties collected a total of \$32 million of local business tax revenue. In that same fiscal year, municipalities collected a total of \$120 million of local business tax revenue.³⁹

Real Estate Sales and Broker Associates

Chapter 475, F.S., provides for the licensure of real estate brokers and sales associates. Section 475.01, F.S., defines "broker associate" as a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another. "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person.

III. Effect of Proposed Changes:

Section 1 creates s. 205.067, F.S., which exempts any individual who is licensed and operating as a real estate broker associate or sales associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. He or she is not required to apply for this exemption.

³⁵ Section 205.033(4), F.S.

³⁶ Section 205.033(5), F.S.

³⁷ Section 205.033(7), F.S.

³⁸ Section 205.033(6)(b), F.S.

³⁹ Office of Economic and Demographic Research, 2012 Economic Development Financial Reference Manual (January 11, 2012) available at:

<http://edr.state.fl.us/Content/presentations/local-government/2012economicdevelopmentfinancialreferencemanual.pdf>.

No local governing authority may hold the individual sales associate or broker associate liable for the failure of his employer to pay local business tax, obtain a local business tax receipt, or apply for an exemption from the local business tax. An employer who is required to obtain a local business tax receipt may not be required by a local governing authority to provide contact information to that authority for his or her sales associates and broker associates.

Section 2 amends s. 205.066, F.S., striking a portion of the employee exemption that the bill makes redundant.

Section 3 provides an effective date of October 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution, may apply because this bill eliminates the local businesses taxes authorized under Ch. 205, F.S. This bill does not appear to qualify under any exemption or exception. If the bill is determined to be a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This bill narrows the tax base for the local business tax.

B. Private Sector Impact:

Real estate sales and broker associates who are in a local governing authority that adopted a local business tax imposed upon employees prior to October 13, 2010, will no longer have to pay that tax.

C. Government Sector Impact:

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of \$3.8 million beginning in FY 2012-13. There is no state impact.

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 Subcommittee on Finance and Tax on February 28, 2012:

- Changes the effective date to October 1, 2012 to conform to the local fiscal year.

- B. **Amendments:**

None.