

**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.)

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Prepared By: The Professional Staff of the Committee on Commerce and Tourism

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BILL: SB 858

INTRODUCER: Senator Garcia

SUBJECT: Exemption from the Sales and Use Tax for Direct Mail Advertising Literature

DATE: March 20, 2015

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	<b>Favorable</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 858 provides an exemption from the sales and use tax on the printing of direct mail advertising literature, including catalogs, letters, postcards, circulars, brochures, and pamphlets. Under current law, a 6 percent sales and use tax is levied pursuant to ch. 212, F.S., on the printing of direct mail advertising literature that consists of printed sales messages for the sale of property or a service.

**II. Present Situation:**

Florida levies a 6 percent state sales and use tax which applies to the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions that authorize the levy 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. There are currently more than 200 different exemptions.<sup>1</sup>

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S. The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold or delivered into, and is levied in addition to the state sales and use tax of 6 percent.

Currently, newspapers, magazines, and newsletter subscriptions that are delivered to a customer by mail are exempt from the sales and use tax.<sup>2</sup> Additionally, free, regularly-circulated

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<sup>1</sup> Florida Revenue Estimating Conference, *Florida Tax Handbook*, (2015), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/index.cfm>.

<sup>2</sup> Section 212.08(7)(w), F.S. The exemption on free advertising materials was passed in 1990, and the magazine tax exemption was passed in 1996.

publications that function primarily as advertisements are exempt from the state and local sales and use tax, if they are distributed to the customer by mail, home delivery, or newsstands. Postcards, letters, and similar materials that function primarily as a sales message for the sale of property or a service, however, are subject to state and local sales and use taxes.

### III. Effect of Proposed Changes:

**Section 1** of the bill creates a sales tax exemption for direct mail advertising literature that:

- Consists primarily of a printed sales message;
- Is printed pursuant to a seller's special order;
- Is mailed or delivered by the seller or its agent, such as a direct mail services provider; and
- Is provided at no cost to its recipient.

The bill also defines "direct mail advertising literature" as any printed material, including catalogs, letters, postcards, circulars, brochures, and pamphlets.

**Section 2** of the bill provides an effective date of July 1, 2015.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, governs laws that require counties and municipalities to spend funds or limit their ability to raise revenue or receive state tax revenues.

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, except where the Legislature passes such a law by 2/3<sup>rd</sup> of the membership of each chamber.

Subsection (c) of this provision prohibits the Legislature from "enacting, amending, or repealing any general law if the anticipated effect" is to reduce the percentage of a state tax shared with counties and municipalities. The exception to this prohibition exists where the Legislature passes such law by 2/3<sup>rd</sup> of the membership of each chamber.

Subsection (d) provides an exemption from these provisions. 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 \$2,014,830 for FY 2014-2015<sup>3</sup>), are exempt.<sup>4</sup>

The Revenue Estimating Conference has not evaluated the effects of this bill.

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<sup>3</sup> Based on the Demographic Estimating Conference's population adopted on February 11, 2015. The post-conference packet can be found at: <http://edr.state.fl.us/Content/conferences/population/index.cfm> (last accessed March 18, 2015).

<sup>4</sup> See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (September 2011), available at <http://www.flsenate.gov/PublishedContent?Session/2012/InterimReports/2012-115ca.pdf>, (last accessed March 17, 2015).

**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:**

Sellers of property or services who advertise via direct mail advertising will be exempt from state and local taxes on the printing of their advertisements.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet determined the impact of this bill. However, the exemption is likely to result in a reduction of tax revenues to the state and local governments.

Additionally, the Department of Revenue may incur costs related to updating relevant departmental rules to reflect the bill.<sup>5</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends s. 212.08, F.S.

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

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

None.

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<sup>5</sup> See, Florida Department of Revenue *SB 858 Agency Analysis*, (March 5, 2015), on file with the Senate Commerce and Tourism Committee).

B. Amendments:

None.

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

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