

**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:** CS/SB 1236

**INTRODUCER:** Commerce and Tourism Committee and Senator Garcia

**SUBJECT:** Small Business Saturday Sales Tax Holiday

**DATE:** February 1, 2016

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Fav/CS
2.			FT	
3.			AP	

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1236 establishes a 1-day sales tax holiday on “Small Business Saturday,” November 26, 2016. During the holiday, a small business dealer may opt not to collect state sales tax and county discretionary sales surtaxes on purchases of tangible personal property that cost \$1,000 or less per item.

The bill defines a small business as a dealer<sup>1</sup> that has registered with the Department of Revenue (DOR), began operating in Florida on or before December 31, 2015, and owed and remitted less than \$200,000 in tax for the 1-year period ending on June 30, 2016, or less than \$200,000 if it began operating after June 30, 2015.

The bill provides DOR a nonrecurring General Revenue Appropriation of \$200,000 in Fiscal Year 2015-2016 to administer the provisions of the act. The Revenue Estimating Conference analyzed similar legislation<sup>2</sup> and determined that the bill will reduce General Revenue receipts

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<sup>1</sup> Section 212.06, F.S., defines the term “dealer” as “every person, as used in this chapter, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.”

<sup>2</sup> The EDR analyzed proposed legislation that mandated the Small Business Sales Tax Holiday, rather than allowing it at the small business dealer’s discretion.

by \$35 million and local government revenues will decrease by \$8.1 million in Fiscal Year 2016-2017.<sup>3</sup>

The bill takes effect July 1, 2016.

## II. Present Situation:

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions<sup>4</sup>, transient rentals<sup>5</sup>, rental of commercial real estate,<sup>6</sup> and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing 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 exemptions, exclusions, deductions, and credits from the sales and use tax.<sup>7</sup> Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes. The surtax applies to 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., and on communications services as defined in ch. 202, F.S.<sup>8</sup> The discretionary sales surtax is based on the tax rate imposed by the county in the county where the taxable goods or services are sold, or delivered into.

In 2015, the Florida Legislature approved the Back to School Sales Tax Holiday, during which the first \$750 of personal computers and related-accessories, \$100 or less on clothing, and \$15 or less on school supplies was exempted from sales and use tax.<sup>9</sup>

In 2010, American Express instituted a Small Business Saturday incentive for their cardholders who shopped at small, independent businesses on the Saturday after "Black Friday."<sup>10</sup> The U.S. Senate passed a resolution recognizing Small Business Saturday and encouraging consumers to shop locally in 2015, but this measure was not voted on by the U.S. House of Representatives.<sup>11</sup> It is estimated that consumers spent \$14.3 billion at small, independent businesses on Small Business Saturday in 2014.<sup>12</sup>

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<sup>3</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday*, SB 198, p. 2, Jan. 22, 2016, Revenue Impact Results, available at: [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/\\_pdf/Impact0918.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/Impact0918.pdf) (last accessed Jan. 29, 2016).

<sup>4</sup> Section 212.04, F.S.

<sup>5</sup> Section 212.03, F.S.

<sup>6</sup> Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited Feb. 19, 2015).

<sup>7</sup> See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-167 (2016).

<sup>8</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

<sup>9</sup> Florida Department of Revenue, "2015 Back-to-School Sales Tax Holiday" (July 1, 2014), available at <http://dor.myflorida.com/Documents/tip15a0105.pdf> (last visited Jan. 29, 2016).

<sup>10</sup> American Express, "Small Business Saturday" <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited Jan. 29, 2016).

<sup>11</sup> A Resolution Recognizing Small Business Saturday, S. Res. 304, 114<sup>th</sup> Cong. (2015).

<sup>12</sup> Kate Rogers, "Small Business Saturday Could Exceed \$14 Billion" 11/27/2015. Available at <http://www.cnbc.com/2015/11/27/small-business-saturday-could-exceed-14-billion.html>. (Last visited Jan. 29, 2016.)

### III. Effect of Proposed Changes:

The bill establishes a 1-day sales tax holiday, on Saturday, November 26, 2016, to coincide with “Small Business Saturday.” During the tax holiday, and at the option of the small business, the total sales price of taxable tangible personal property, not to exceed \$1,000 per purchaser, per small business, is exempt from the state sales tax and county discretionary sales surtaxes.

The bill defines “small business” as one that:

- Has registered with the DOR;
- Began operation in Florida on or before December 31, 2015; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
  - A 1-year period ending on June 30, 2016, or
  - The period beginning on the date the business began operating in Florida and ending on June 30, 2016, if the business began operating in Florida after June 30, 2015.

Additionally, the bill requires that businesses with multiple locations and eligible to file a consolidated return have owed and remitted less than \$200,000 for all of the business’ locations in order to be considered a small business.

### IV. Constitutional Issues:

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

Subsection (b) of s. 18, Art VII, Florida Constitution, provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2016, is \$2,012,772.30 or less.<sup>13,14</sup>

The Revenue Estimating Conference estimated that a substantially similar bill will reduce the authority that counties have to raise revenues by \$3.5 million in Fiscal Year 2016-2017.<sup>15</sup>

#### B. Public Records/Open Meetings Issues:

None.

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<sup>13</sup> FLA. CONST. art. VII, s. 18(d).

<sup>14</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. 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 Jan. 29, 2016).

<sup>15</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 198*, p. 2, Jan. 22, 2016, Revenue Impact Results, available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/Impact0918.pdf> (last accessed Jan. 29, 2016).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

The Revenue Estimating Conference analyzed similar legislation and determined that the bill will reduce General Revenue receipts by \$35 million and local government revenues will decrease by \$8.1 million in Fiscal Year 2016-2017.<sup>16</sup>

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under the bill.

C. Government Sector Impact:

The bill provides DOR a nonrecurring General Revenue appropriation of \$200,000 in Fiscal Year 2016-2017, to administer the provisions of the act. The DOR estimates that it can administer the holiday using existing resources, and that the appropriation is therefore unnecessary.<sup>17</sup>

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

According to the DOR, small business dealers will have to specifically document their choice whether to participate in the Small Business Saturday tax holiday, and submit such documentation to the DOR as a result of the permissive application of the holiday.<sup>18</sup> This would not be required if the tax holiday were mandatory.

VIII. **Statutes Affected:**

This bill creates an unnumbered section of Florida law.

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<sup>16</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 198*, p. 2, Jan. 22, 2016, Revenue Impact Results, available at: [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/\\_pdf/Impact0918.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/_pdf/Impact0918.pdf) (last accessed Jan. 29, 2016).

<sup>17</sup> Department of Revenue, *SB 1236 Agency Analysis*, (Jan. 8, 2016), on file with the Committee on Commerce and Tourism.

<sup>18</sup> *Id.*

**IX. Additional Information:**

- A. **Committee Substitute – Statement of Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on February 1, 2016:**

Made a technical change to comply with standard tax holiday language to reflect that the holiday would begin at 12:01 a.m., rather than 12:00 a.m.

- B. **Amendments:**

None.