

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 Committee on Finance and Tax

BILL: CS/CS/SB 1236

INTRODUCER: Finance and Tax Committee; Commerce and Tourism Committee; and Senator Garcia

SUBJECT: Small Business Saturday Sales Tax Holiday

DATE: February 17, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	Fav/CS
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

The bill defines “small business” as one that:

- Has registered with the DOR;
- Began operation in Florida on or before January 11, 2016; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
 - A one-year period ending on September 30, 2016, or
 - The period beginning on the date the business began operating in Florida and ending on September 30, 2016, if the business has not been in operation for the one-year period ending September 30, 2016.

The Revenue Estimating Conference determined that the bill will reduce General Revenue receipts by \$29.7 million and local government revenues by \$6.9 million in Fiscal Year 2016-2017.¹

¹ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, CS/SB 1236*, p. 508-512, Jan. 22, 2016 Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page508-512.pdf> (last visited Feb. 9, 2016).

The bill provides DOR with a nonrecurring General Revenue appropriation of \$200,000 in Fiscal Year 2016-2017 to administer the provisions of the act.

The bill takes effect July 1, 2016.

II. Present Situation:

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions², transient rentals³, rental of commercial real estate,⁴ 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.⁵ 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. A surtax applies to "all transactions occurring in the county which transactions are 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."⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or delivered into.

The Florida Legislature has not previously authorized a sales and use tax exemption for items of tangible personal property purchased from a small business.

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."⁷ 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.⁸ One analyst estimated that consumers spent \$14.3 billion at small, independent businesses on Small Business Saturday in 2014.⁹

III. Effect of Proposed Changes:

The bill establishes a one-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,

² Section 212.04, F.S.

³ Section 212.03, F.S.

⁴ 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 (last visited Feb. 8, 2016).

⁵ See Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 164-167 (2016).

⁶ Section 212.054, F.S.

⁷ American Express, "Small Business Saturday" available at <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited Jan. 29, 2016).

⁸ A Resolution Recognizing Small Business Saturday, S. Res. 304, 114th Cong. (2015).

⁹ 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).

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 January 11, 2016; and
- Owed and remitted less than \$200,000 in tax under ch. 212, F.S., to the DOR during either:
 - A one-year period ending on September 30, 2016, or
 - The period beginning on the date the business began operating in Florida and ending on September 30, 2016, if the business has not been in operation for the one-year period ending September 30, 2016.

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 2016-2017, is \$2.0 million or less.^{10,11}

The Revenue Estimating Conference estimated that the bill would reduce the authority that counties have to raise revenues through local option sales surtax by \$3.0 million in Fiscal Year 2016-2017.¹² Therefore, the bill may be a mandate requiring a two-thirds vote of the membership.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ 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 visited Jan. 29, 2016).

¹¹ Based on the Demographic Estimating Conference’s population adopted on December 1, 2015. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Jan. 19, 2016).

¹² Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, CS/SB 1236*, p. 508-512, Jan. 22, 2016, Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page508-512.pdf> (last visited Feb. 9, 2016).

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

The Revenue Estimating Conference determined that CS/SB 1236 will reduce General Revenue receipts by \$29.7 million and local government revenues by \$6.9 million in Fiscal Year 2016-2017.¹³

B. Private Sector Impact:

The sales tax holiday may promote retail sales at businesses that qualify under CS/CS/SB 1236.

C. Government Sector Impact:

CS/CS/SB 1236 provides DOR with 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.¹⁴

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the DOR, small business dealers will have to maintain documentation regarding whether and how they participated in the holiday.¹⁵

VIII. Statutes Affected:

This bill creates an unnumbered section of Florida law.

¹³ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Small Business Saturday Tax Holiday, SB 1236*, p. 508-512 (Jan. 22, 2016) Revenue Impact Results, available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2016/pdf/page508-512.pdf> (last visited Feb. 9, 2016).

¹⁴ Department of Revenue, *Committee Substitute for Senate Bill 1236 Fiscal Analysis*, (Feb. 9, 2016) (on file with the Senate Committee on Finance and Tax).

¹⁵ *Id.*

IX. Additional Information:

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

CS/CS by Finance and Tax on February 16, 2016:

The CS/CS changes the dates for determining which businesses qualify for the holiday.

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.