

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	HB 7109	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SUBJECT/SHORT TITLE</b>	Taxation	109	Y's 3 N's
<b>SPONSOR(S):</b>	Ways & Means Committee, Boyd and others	<b>GOVERNOR'S ACTION:</b>	Approved
<b>COMPANION BILLS:</b>	HB 63, HB 555, HB 765, CS/HB 1123, SB 176, SB 490, CS/SB 664, SB 1320, CS/SB 1442, CS/SB 1536		

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**SUMMARY ANALYSIS**

HB 7109 provides for a wide range of tax reductions and modifications designed to directly impact both households and businesses, and to improve tax administration.

The bill contains several sales tax provisions. The bill reduces the tax rate on rental of commercial real estate (business rent tax) from 6 percent to 5.8 percent beginning January 1, 2018. The bill includes new or expanded sales tax exemptions for products used to control menstrual flow; certain animal and aquaculture health products; certain resales of admissions; certain purchases for the operation and maintenance of municipally owned golf courses; purchases of certain construction materials, equipment and electricity for certain datacenters; and purchases of certain materials, goods and services used for new construction in Rural Areas of Opportunity. The bill also includes a three-day "back-to-school" holiday for clothing, school supplies, and computers; and a three-day "disaster preparedness" holiday for certain items related to disaster preparedness.

For property tax purposes, the bill provides property tax relief for certain property used to provide affordable housing, amends the definition of inventory to include certain construction and agricultural equipment, clarifies the documentation required to obtain an exemption for certain nonprofit homes for the aged, exempts charitable assisted living facilities, clarifies the current exemption for property leased to a charter school and extends the deadline for charter schools to apply for an exemption for the 2016 tax year.

For corporate income tax, the bill increases the tax credits available for voluntary brownfields clean-up from \$5 to \$10 million per year, increases the amount available for research and development tax credits in calendar year 2018 from \$9 million to \$16.5 million, and makes the Community Contribution Tax Credit permanent, with \$14 million in tax credits each fiscal year (also may be taken against sales tax and insurance premiums tax).

Further changes in the bill include: various improvements to general tax administration; elimination of several tax registration fees; exempting registration taxes and fees for marine boat trailers owned by ch. 501(c)(3) organizations; amending the definition of "beer" and "malt beverage"; extension of the cigarette tax distribution to the Moffitt Cancer Center; clarification of geographic boundaries for local incentive programs; and allowing the use of tourist development taxes for publically owned auditoriums operated by charitable organizations.

The total impact of the bill in fiscal year 2017-2018 is -\$91.6 million (-\$134.7 million recurring). See FISCAL COMMENTS section for details.

The bill was approved by the Governor on May 25, 2017, ch. 2017-36, L.O.F., and will become effective July 1, 2017, except as otherwise provided.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7109z1.WMC

DATE: June 5, 2017

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Sales Tax**

Florida's sales and use tax is a six percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, and commercial real estate rentals, unless expressly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (78.5 percent for FY 2016-17)<sup>1</sup> and is administered by the Department of Revenue (DOR) under ch. 212, F.S.

#### **Sales Tax on Rental of Commercial Real Estate (Business Rent Tax)**

##### Current Situation

Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease of real property.<sup>2</sup> Sales tax is due at the rate of six percent on the total rent paid for the right to use or occupy commercial real property and county sales surtax can also be levied on total rent.<sup>3</sup> If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are numerous commercial rentals that are not subject to sales tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.

Florida is the only state to charge sales tax on commercial rentals of real property. The Legislature's Office of Economic and Demographic Research reviewed and issued a report on the business rent tax in 2014.<sup>4</sup>

##### Proposed Changes

The bill reduces the state sales tax rate on rental of commercial real estate (business rent tax) from 6 percent to 5.8 percent, beginning January 1, 2018.

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<sup>1</sup> FLORIDA REVENUE ESTIMATING CONFERENCE, 2017 FLORIDA TAX HANDBOOK (2017).

<sup>2</sup> Ch. 1969-222, Laws of Fla.

<sup>3</sup> s. 212.031, F.S., and Rule 12A-1.070, F.A.C.

<sup>4</sup> Office of Economic and Demographic Research, Economic Impact: Sales Tax on the Rental of Real Property (Nov. 15, 2014).

## Admissions

### Current Situation

Section 212.04, F.S., governs the state sales tax on admissions. Sales tax is levied at the rate of six percent of sales price or the actual value received from admissions. Admissions are defined<sup>5</sup> as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any:

- Place of amusement, sport, or recreation including, but not limited to, theaters, shows, exhibitions, games, races;
- Place where charge is made by way of sale of tickets, gate charges, and similar fees or charges;
- Receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation; and
- All dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.

Several exceptions and exemptions exist,<sup>6</sup> such as:

- Memberships for physical fitness facilities owned or operated by any hospital;
- Admissions to athletic or other events sponsored by a school;
- Fees or charges imposed by certain not-for-profit organizations;
- Events sponsored by a governmental entity, nonprofit sports authority, or nonprofit sports commission under certain circumstances;
- Admissions to certain professional and collegiate sports all-star and championship games;
- Entry fees for freshwater fishing tournaments;
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event;
- Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

Generally, sales of tangible personal property made for resale are exempt from sales tax.<sup>7</sup> This treatment does not apply to sales of taxable admissions.<sup>8</sup>

### Proposed Changes

The bill provides an exemption for certain resales of admissions to a purchaser that is eligible for an exemption from sales tax, beginning January 1, 2018. The bill allows a person who has purchased a taxable admission and resells that admission to an entity that is exempt from sales and use tax, to seek from the DOR a refund or credit of the tax paid on its purchase of the admission. The bill also provides that if a purchaser of a taxable admission resells that admission to an entity that is exempt from sales and use tax, and that purchaser is a member of the same controlled group of corporations for federal income tax purposes as the dealer that sold it the admission, the purchaser may then seek a refund or credit of the tax from the vendor who may then seek a credit or refund from the DOR.

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<sup>5</sup> s. 212.02(1), F.S.

<sup>6</sup> See s. 212.04(2)(a), F.S.

<sup>7</sup> See the definition of "retail sale" in s. 212.02(14), F.S. Also see s. 212.07, F.S.

<sup>8</sup> s. 212.04(1)(c), F.S.

## Products Used to Control Menstrual Flow

### Current Situation

Products used to absorb menstrual flow are currently subject to state sales and use tax. These products include tampons, sanitary napkins, panty liners, and menstrual cups.

From 1977 through 1986, the sales of products used to absorb menstrual flow in Florida were specifically exempt from sales and use tax.<sup>9</sup> However, the Legislature repealed various sales tax exemptions in 1986, including products used to absorb menstrual flow.<sup>10</sup> The 1986 legislation also created a commission to review the changes made by ch. 1986-166, L.O.F., and to recommend prior to the subsequent legislative session whether to allow the repeal to remain effective. The commission's findings did not specifically address the repeal of the exemption for products used to absorb menstrual flow, but it recommended that all sales tax exemptions not specifically recommended in the report should be repealed.<sup>11</sup>

In 2016, a class action lawsuit was filed in Leon County, Florida to challenge the state sales tax levied on the sale of products used to absorb menstrual flow.<sup>12</sup> The plaintiffs argue that such products are necessary for women's health and should be exempt as common household remedies. The plaintiffs also argue that the taxation of products used to absorb menstrual flow violates the Equal Protection Clauses of both the Florida and United States Constitutions. The plaintiffs seek declaratory and injunctive relief, along with a refund of taxes. The case is currently pending in circuit court.

Of the 45 states<sup>13</sup> that currently levy sales and use tax, eight states do not impose the tax on the sale of products used to absorb menstrual flow. Illinois,<sup>14</sup> Maryland,<sup>15</sup> Massachusetts,<sup>16</sup> Pennsylvania,<sup>17</sup> Minnesota,<sup>18</sup> New Jersey,<sup>19</sup> Connecticut,<sup>20</sup> and New York<sup>21</sup> have passed legislation to specifically exempt these products from sales and use tax.

### Proposed Changes

Effective January 1, 2018, the bill creates a sales tax exemption for products used to absorb menstrual flow.

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<sup>9</sup> Ch. 77-193, Laws of Fla.

<sup>10</sup> Ch. 86-166, Laws of Fla.

<sup>11</sup> Sales Tax Exemption Study Commission, *Report and Recommendations of the Sales Tax Exemption Study Commission* (April, 1987).

<sup>12</sup> *Wendell v. Florida Dep't. of Rev.*, No. 2016 CA 001526 (Fla. Leon Cty. Ct. July 7, 2016).

<sup>13</sup> Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose state sales tax.

<sup>14</sup> 35 Ill. Comp. Stat. 110/3-5 (2016).

<sup>15</sup> Md. Tax-Gen. Code Ann., §11-211 (2016).

<sup>16</sup> Mass. Gen. Laws ch. 64H, § 6 (2016).

<sup>17</sup> 72 Pa. Cons. Stat. § 7204 (2016).

<sup>18</sup> Minn. Stat. §297A.67 (2016).

<sup>19</sup> N.J. Stat. Ann. § 54:32B-8.1 (2016).

<sup>20</sup> Conn. Gen. Stat. § 12-412 (2016).

<sup>21</sup> N.Y. Tax Law §1115 (2016).

## Agriculture-Related Sales Tax Exemptions

### Current Situation

Current law exempts specified items for agricultural use from sales and use tax.<sup>22</sup> For example, disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock are exempt. To obtain the exemption, the purchaser must sign a certificate stating that the item to be exempted is for the exclusive use designated in statute.<sup>23</sup>

In addition, current law exempts the purchase by a veterinarian of commonly recognized substances possessing curative or remedial properties which are ordered and dispensed as treatment for a diagnosed health disorder by or on the prescription of a duly licensed veterinarian, and which are applied to or consumed by animals for alleviation of pain or the cure or prevention of sickness, disease, or suffering are exempt.<sup>24</sup> However, the exemption is not allowed if these health products are not purchased by a veterinarian. It is common in the livestock and poultry industry for such health products to be purchased from farm supply stores or directly from the manufacturer.

### Proposed Changes

Effective July 1, 2017, the bill provides an exemption for animal health products which are applied to, administered to, or consumed by livestock or poultry for alleviation of pain or the cure or prevention of sickness, disease, or suffering, including:

- Antiseptics,
- Absorbent cotton,
- Gauze for bandages,
- Lotions,
- Vaccines,
- Vitamins, and
- Worm remedies.

The bill also exempts aquaculture health products used by aquaculture producers to prevent or treat fungi, bacteria, and parasitic diseases.

The bill provides that the above exemptions are remedial in nature and apply retroactively, but do not create a right to a refund or credit of any tax paid before the effective date of the bill.

## Data Centers

### Current Situation

A data center provides a central location for a business to house all of the necessary computer hardware—servers, server racks, cables and other infrastructure, and cooling components—and computer software required to, “organize, process, store and disseminate large amounts of data.”<sup>25</sup> Currently, approximately 131 data centers and colocation data centers are located in Florida. The

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<sup>22</sup> s. 212.08(5)(a), F.S.

<sup>23</sup> s. 212.08(5)(a), F.S.

<sup>24</sup> s. 212.08(2)(h), F.S.

<sup>25</sup> TechTarget, *Definition, data center*, <http://searchdatacenter.techtarget.com/definition/data-center> (last visited May 4, 2017).

majority of data centers located in Florida are in South Florida, Orlando, Tampa, and Jacksonville.<sup>26</sup> There is no current provision or program that specifically provides sales tax exemptions for purchases of equipment, electricity and building materials for datacenters.

### Proposed Changes

The bill exempts from the sales and use tax data center property purchased, rented, or leased by a data center's owners and tenants when used to construct, maintain, and operate computer server equipment at a data center. The data center's owners and tenants must make a cumulative capital investment of \$150 million and the data center must have at least 15 megawatts of total power capacity and at least 1 megawatt of power capacity dedicated to each individual owner and tenant of the data center. Additionally, a datacenter must meet the requisite investment requirements no later than June 30, 2022, must submit to subsequent periodic review by DOR to assure continued qualification, and is subject to revenue clawback provisions if it utilizes the tax exemption and is not qualified.

## **Rural Areas of Opportunity**

### Current Situation

#### *Background*

Florida's Rural Economic Development Initiative (REDI), housed within DEO, is a multi-agency endeavor that coordinates the efforts of regional, state, and federal agencies to address issues that affect the fiscal, economic and community viability of the state's economically distressed rural communities. REDI works with local governments, community-based organizations, and private entities that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development. A number of agencies and organizations are directed to designate a staff person to serve as REDI representatives.<sup>27</sup>

A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress. The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.<sup>28</sup>

The Governor may designate up to three RAO areas for five-year periods upon recommendation by REDI. This allows these areas to receive priority assignments for REDI, and allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives.<sup>29</sup> Currently, there are three designated RAO areas:

- North West RAO – Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla and Washington Counties, and the City of Freeport in Walton County.
- South Central RAO – DeSoto, Glades, Hardee, Hendry, Highlands and Okeechobee Counties, the Cities of Pahokee, Belle Glade and South Bay in Palm Beach County, and a portion of the Immokalee area in Collier County.
- North Central RAO – Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor and Union Counties.

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<sup>26</sup> See DataCenterAndColocation, *Florida Data Centers*, <http://www.datacenterandcolocation.com/florida-data-centers/> (last visited May 4, 2017).

<sup>27</sup> s. 288.0656(6)(a), F.S.

<sup>28</sup> s. 288.0656(2)(d), F.S.

<sup>29</sup> s. 288.0656(7)(1), F.S.

## *Sales & Use Tax on Building Materials, Rental of Tangible Personal Property, and Pest Control Services*

Sales and use tax are currently levied on the purchase of building materials, pest control services, and the rental of tangible personal property used in the construction of improvements to real property in Rural Areas of Economic Opportunity. The tax is collected at a state rate of 6 percent and a local rate which varies from 0 percent to 2 percent depending on the county.

### Proposed Changes

The bill creates an exemption from sales and use tax for the purchase of building materials, pest control services, and the rental of tangible personal property used in new construction in Rural Areas of Opportunity. The exemption is provided in the form of a refund of taxes paid, and is capped at \$10,000 per parcel. The bill provides for a procedure by which taxpayers submit an application to REDI. Within 10 days of receipt of a completed application, REDI must review the application and, if it meets the requirements of the bill, certify to DOR that a refund is to be issued.

### **Fingerprinting Services**

#### Current Situation

Section 212.05(1)(i)1., F.S., imposes the 6 percent sales tax on detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). Fingerprinting services fall under NAICS National number 561611. Thus, sales tax generally applies to fingerprinting services.

Section 790.06(5)(c), F.S., requires each applicant for a concealed weapons permit to submit a full set of fingerprints administered by a law enforcement agency, the Division of Licensing of the Department of Agriculture and Consumer Services (DACS), or an approved tax collector together with any personal identifying information required by federal law to process fingerprints.

Section 790.062(2), F.S., provides that, if an applicant for a concealed weapons permit is a member or honorably discharged veteran of United States Armed Forces, DACS must accept fingerprints administered by any law enforcement agency, military provost, or other military unit charged with law enforcement duties or as otherwise provided for in s. 790.06(5)(c).

In 1994, DOR received a taxpayer's request for a technical assistance advisement (TAA) on whether criminal history background check services provided by the Florida Department of Law Enforcement and required by state law are subject to a sales tax. The TAA concluded that the charges for the criminal background were not taxable, basing its decision on the fact that the background check, and the associated fee or charge, are mandated by the state.<sup>30</sup>

On March 2, 2016, DOR issued an informal tax information publication (TIP) entitled "Fingerprinting Services Are Taxable."<sup>31</sup> This publication affirmed that fingerprint services are specifically included under NAICS National Number 561611, and therefore fingerprinting services are taxable under section 212.05(1)(i), F.S. The TIP did not specifically address fingerprint services required under ss. 790.06(5)(c) or 790.062(2), F.S., to obtain a license to carry a concealed weapon.

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<sup>30</sup> Dept. of Revenue, *Technical Assistance Advisement 94(A)-035, Whether FDLE Criminal History Check Fee of \$8 is Subject to Sales Tax* (June 17, 1994).

<sup>31</sup> <http://floridarevenue.com/dor/tips/tip16a01-02.html>

## Proposed Changes

The bill amends ss. 212.05, 790.06, and 790.062, F.S., to clarify that charges for fingerprint services required by law to obtain a license to carry a concealed weapon or firearm are not subject to sales tax.

## **Purchases by Municipal Golf Courses**

### Current Situation

Sales made to the United States government, the state, or any county, municipality, or political subdivision of the state are exempt from sales tax, *when payment is made directly to the dealer by the governmental entity.*<sup>32</sup> When payment is made by another who is subsequently reimbursed by the government, the sale is generally not exempt.<sup>33</sup>

### Proposed Changes

The bill provides that the phrase “when payment is made directly to the dealer by the governmental entity” includes a situation in which an entity under contract with a municipality to maintain and operate a municipally owned golf course pays for a purchase or lease for the operation or maintenance of that golf course using the golf course revenues or other funds provided by the municipality for use by that entity. The new provision applies to a municipally owned golf course that is located in a county with a population of at least 2 million residents and is the site upon which youth education programs are delivered on an ongoing basis by a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

## **Sales Tax Holidays**

### Current Situation

Since 1998, the Legislature has enacted 20 temporary periods (commonly called “sales tax holidays”) during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

*Back-to-School Holidays*--Florida has enacted a “back to school” sales tax holiday fifteen times since 1998. The length of the exemption periods has varied from three to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently \$60. Books valued at \$50 or less were exempted in six periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. In 2014, the first \$750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use were exempted. The following table describes the history of back-to-school sales tax holidays in Florida.

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A

<sup>32</sup> s. 212.08(6), F.S.

<sup>33</sup> *Id.*



July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 7 - 16, 2015	10 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 5 - 7, 2016	3 days	\$60 or less	\$60 or less	N/A	N/A	\$15 or less

*Hurricanes and Disasters in Florida*--In 2016, the Florida Office of Insurance Regulation estimated a gross probable loss of over \$1 billion due to hurricanes Hermine and Mathew in 2016,<sup>34</sup> \$25 billion due to four hurricanes in 2004, and \$10.8 billion due to four in 2005.<sup>35</sup> Tropical Storm Fay was estimated to have resulted in \$242 million of damage in 2008.<sup>36</sup> The Florida Division of Emergency Management (DEM) recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit.<sup>37</sup>

### Proposed Changes

The bill establishes a temporary disaster preparedness sales tax holiday in fiscal year (FY) 2016-17 and a temporary back-to-school sales tax holiday in FY 2017-18.

*Back-to-School Holiday*--The bill provides for a three-day sales tax holiday from August 4, 2017, through August 6, 2017. During the holiday, the following items that cost \$60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts “school supplies” that cost \$15 or less per item during the holiday.

<sup>34</sup> Florida Office of Insurance Regulation, Florida Office of Insurance Regulation Catastrophe Report, <http://www.flair.com/Sections/PandC/ProductReview/CatastropheReporting.aspx> (last visited March 17, 2017).

<sup>35</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, <http://www.flair.com/siteDocuments/HurricaneSummary20042005.pdf> (last visited March 17, 2017).

<sup>36</sup> Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, <http://www.flair.com/siteDocuments/HurricaneSummary2008.pdf> (last visited March 17, 2017).

<sup>37</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, <http://www.floridadisaster.org/supplykit.htm> (last visited May 12, 2017).

The bill also exempts personal computers and related accessories purchased for noncommercial home or personal use that are priced at \$750 or less. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

*Disaster Preparedness Sales Tax Holiday*-- The bill provides for a three day sales tax holiday from June 2, 2017, through June 4, 2017, for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A self-contained first-aid kit selling for \$30 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less; and
- Reusable ice selling for \$10 or less.

The sales tax holidays in the bill do not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill allows the “back to school” sales tax holiday to apply at the option of the dealer if less than five percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the holiday. If a qualifying dealer chooses not to participate in the tax holiday, by August 1, 2017, the dealer must notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The bill authorizes the DOR to adopt emergency rules to implement the provisions of both holidays.

### **Corporate Income Tax**

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.<sup>38</sup> The calculation of Florida corporate income tax starts with a corporation’s federal taxable income.<sup>39</sup> After certain addbacks and subtractions to federal taxable income required by ch. 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>40</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation’s business activities attributable to Florida.<sup>41</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>42</sup>

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<sup>38</sup> s. 220.11, F.S.

<sup>39</sup> s. 220.12, F.S.

<sup>40</sup> s. 220.15, F.S.

<sup>41</sup> s. 220.15, F.S.

<sup>42</sup> s. 220.14, F.S.

## Research and Development Tax Credits

### Current Situation

*Federal Tax Credit*--The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.<sup>43</sup> For the 2013 federal tax year, 16,624 companies claimed \$11.3 billion in R&D tax credits, including \$177.1 million claimed via "pass-through" entities.<sup>44</sup> At \$97.8 billion, manufacturing companies claimed the largest portion of research tax credits.<sup>45</sup>

*Florida Tax Credit*--Section 220.196, F.S., authorizes an R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses that received the federal credit. The tax credit is 10 percent of the difference between the current tax year's research and development expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.

The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business that originally earned them for up to five years following the year in which the qualified research expenses were incurred.

The maximum amount of research and development credits that may be approved by the DOR during any calendar year is \$9 million. Applications for the credit may be filed with the DOR between March 20th and March 27th for qualified research expenses incurred within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.

The Legislature passed a one-time increase in the \$9 million cap for research and development tax credits to \$23 million for calendar year 2016.<sup>46</sup> This cap amount was allocated as follows:

- The DOR received 131 applications during the one week application window, requesting a total of \$52,481,052 in credits.
- 118 applications were approved. Each applicant received approximately 46 percent of the amount of credit determined in their application. These 118 applications requested \$50,447,562 in credit.
- 13 applications were denied for various reasons, including withdrawal by the taxpayer, duplicate applications, application figures resulting in zero credit requested, and failure to include a required certification letter from the Department of Economic Opportunity (DEO). These 13 applications requested \$2,003,490 in credit.

The statutory cap of \$9 million in credits available in the 2017 calendar year was allocated as follows:

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<sup>43</sup> "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at <http://www.nsf.gov/statistics/infbrief/nsf05316/> and "The Prospects for Economic Recovery," prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at <http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf>. (last visited on March 22, 2017)

<sup>44</sup> Internal Revenue Service, Statistics of Income Division, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>, (last visited March 22, 2017).

<sup>45</sup> Internal Revenue Service, Statistics of Income Division, available at: <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>, (last visited March 22, 2017).

<sup>46</sup> See s. 21, ch. 2015-221, Laws of Fla.

- The DOR received 146 applications, requesting a total of \$54,915,138 in credit.
- Of the 146 applicants, 137 requested an allocation of \$53,986,728 in credit.
- An allocation of the available \$9 million credit cap was made to 137 applicants. Each applicant received a reserve of the credit equal to approximately 16.67 percent of the amount they requested on their application.
- Nine applications were denied for various reasons, including duplicate applications and application figures resulting in zero credit requested. These nine applications requested a total of \$928,410 in credit.

### Proposed Changes

The bill increases the maximum amount of credits that may be granted in calendar year 2018 from \$9 million to \$16.5 million.

### **Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit**

#### Current Situation

In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;<sup>47</sup>
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.<sup>48</sup>

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$5 million annually. In the event that approved tax credit applications exceed the \$5 million annual authorization, the statute provides for remaining applications to roll over into the next FY to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Since 1998, the VCTC Program has awarded \$66.9 million in VCTCs. Total requests for tax credits have met or exceeded the annual authorization since 2007.<sup>49</sup> Since 2012, the approved tax credits

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<sup>47</sup> s. 376.30781, F.S.

<sup>48</sup> s. 220.1845, F.S.

have averaged more than \$8.3 million per year. In 2015, the Legislature approved a one-time tax credit authorization of \$21.6 million, which allowed the DEP to issue certificates for all tax credits that were approved but had not received funding. In 2016, DEP received 99 tax credit applications and approved \$10.8 million in VCTCs for site rehabilitation work completed in 2015. However, some of the tax credit recipients will not receive their certificates until 2018 because the total eligible requests received for 2015 site rehabilitation work exceeded the \$5 million authorization by \$5.8 million. In 2017, DEP received 133 tax credit applications in the amount of \$14.8 million in requested tax credits for site rehabilitation work completed in 2016.<sup>50</sup>

### Proposed Changes

The bill increases the amount of credits that may be awarded from \$5 million to \$10 million in each fiscal year.

## **Sales/Corporate/Ins. Premiums Tax: Community Contribution Tax Credit Program**

### Current Situation

In 1980, the Legislature established the Community Contribution Tax Credit Program (“CCTCP”) to encourage private sector participation in community revitalization and housing projects.<sup>51</sup> Broadly, the CCTCP offers tax credits to businesses or persons (“taxpayers”) anywhere in Florida that contribute<sup>52</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>53</sup>

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>54</sup> As of November, 2016, the CCTCP had 119 approved sponsors.<sup>55</sup>

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>56</sup>

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015<sup>57</sup> or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a

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<sup>49</sup> DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, available at: [http://www.dep.state.fl.us/Waste/quick\\_topics/publications/wc/brownfields/AnnualReport/2016/2015-16\\_FDEP\\_Annual.pdf](http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf) (last visited March 22, 2017).

<sup>50</sup> DEP, Agency Analysis of 2017 HB 753, p. 5 (March 3, 2017).

<sup>51</sup> Ch. 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which was partially repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

<sup>52</sup> ss. 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S. require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

<sup>53</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>54</sup> See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

<sup>55</sup> DEO, Division of Community Development, Email to House Ways & Means staff, Nov. 8, 2016. Email on file with the Ways & Means Committee.

<sup>56</sup> ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>57</sup> The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- see ch. 2015-221, L.O.F.; s. 290.016, F.S.

rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The DEO administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.<sup>58</sup> Once approved by the DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.<sup>59</sup> The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.<sup>60</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>61</sup> Unused credits against sales taxes may be carried forward for three years.<sup>62</sup>

DOR may approve \$21.4 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects. "Persons with special needs" is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans' disability benefits.<sup>63</sup> During FY 2015-2016, the DEO approved 430 tax credit applications submitted by 60 eligible sponsors for eligible projects located in 32 counties. For FY 2016-17, as of March 16, 2017, the DEO has approved 349 tax credit applications.<sup>64</sup> For FY 2014-15, as of December 31, 2014, the DEO has approved 383 tax credit applications.<sup>65</sup> The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015.<sup>66</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>67</sup> The CCTCP cap, which started at \$3 million annually, is currently set at \$24.9 million. The cap has been reached every year since fiscal year 2001-02.

The CCTCP expires June 30, 2018.<sup>68</sup>

### Proposed Changes

The bill makes the CCTCP permanent with \$10.5 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects.

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<sup>58</sup> ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

<sup>59</sup> ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>60</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>61</sup> ss. 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>62</sup> s. 212.08(5)(p)1.b. and f., F.S.

<sup>63</sup> s. 420.0004(13), F.S.

<sup>64</sup> Email correspondence with DEO staff, March 22, 2017, on file with House Ways & Means Committee.

<sup>65</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, Community Contribution Tax Credits Extension, HB 311/SB 302, p. 19, January 26, 2015 Revenue Impact Results, [http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/\\_pdf/impact0126.pdf](http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/impact0126.pdf).

<sup>66</sup> Chs. 84-356, 94-136, 2005-282, 2014-38, and 2015-221 Laws of Fla.

<sup>67</sup> See Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, and 2015-221 Laws of Fla.

<sup>68</sup> Ch. 2014-038, s. 15 Laws of Fla.

## Cigarette Tax

### **H. Lee Moffitt Cancer Center Distribution**

#### Current Situation

Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco (division) in the DBPR are deposited into the Cigarette Tax Collection Trust Fund. Section 210.20, F.S., provides for the payment of monthly distributions as follows:

From the total amount of cigarette tax collections:<sup>69</sup>

- 8.0 percent service charge to the General Revenue Fund;<sup>70</sup> and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:<sup>71</sup>

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the Moffitt Center;<sup>72</sup> and
- 1.0 percent to the Biomedical Research Trust Fund in the Department of Health (DOH).<sup>73</sup>

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.<sup>74</sup>

The funds distributed to the Moffitt Center may not be less than \$15.6 million annually, which is the amount that would have been paid to the Moffitt Center in Fiscal Year 2001-2002 at the 4.04 percent rate. This distribution is scheduled to expire June 30, 2033.<sup>75</sup>

#### Proposed Changes

The bill extends the 4.04 percent distribution, not to fall below \$15.6 million annually, to the Moffitt Center until June 30, 2053.

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<sup>69</sup> See s. 210.20(2)(a), F.S.

<sup>70</sup> See s. 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.

<sup>71</sup> See s. 210.20(2)(a), F.S.

<sup>72</sup> See s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the Moffitt Center was initiated in 1998, using 2.59 percent for the calculation on net cigarette tax collections. See ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04 percent from July 1, 2014 through June 30, 2017. See s. 8 of ch. 2014-38., Laws of Fla.

<sup>73</sup> Pursuant to s. 210.20(2)(c), F.S. these funds (constituting 1.0 percent of net collections) are appropriated in an amount up to \$3 million annually during the period of July 1, 2013 to June 30, 2033, to the DOH and the Sanford-Burnham Medical Research Institute for the purpose of those entities working to establish activities and grant opportunities relating to biomedical research.

<sup>74</sup> See s. 210.20(b), F.S.

<sup>75</sup> s. 210.20(2)(b), F.S.

## **Highway Safety Taxes**

### **Boat Trailers Fees for ch. 501 (c)(3) Organizations**

#### **Current Situation**

Florida law imposes annual license taxes and one-time registration fees for the operation of motor vehicles, mopeds, motorized bicycles, tri-vehicles, trailers, and mobile homes.<sup>76</sup> The amount of the fee depends of the type and size of the vehicle.

#### **Proposed Changes**

The bill provides an exemption from the annual license tax and surcharges for any marine boat trailer owned and operated by a nonprofit organization that is exempt under s. 501(c)(3) of the Internal Revenue Code and which is used exclusively in carrying on their customary nonprofit activities. The annual tax and surcharge savings on a trailer weighing 500 lbs. or less would be \$21.10.

## **Alcoholic Beverages Excise Taxes**

#### **Current Situation**

Section 563.01, F.S., defines “beer” and “malt beverage” to mean all brewed beverages containing malt. Section 534.01, F.S., defines “wine,” in part, to mean all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Section 565.01, F.S., defines “liquor” to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Excise taxes are imposed upon the manufacturers and distributors of beer, wine and liquor.<sup>77</sup>

<b>Beer</b>	
Pints or less	\$0.06 each
Quarts	\$0.12 each
Bulk Gallons	\$0.48 per gallon
<b>Wine</b> (% alcohol by volume)	
Less than 17.259%	\$2.25 per gallon
17.259% or more	\$3.00 per gallon
Natural Sparkling	\$3.50 per gallon
Cider	\$0.89 per gallon
<b>Liquor</b> (% alcohol by volume)	
Less than 17.259%	\$2.25 per gallon
17.259% to 55.780%	\$6.50 per gallon
More than 55.780%	\$9.53 per gallon

<sup>76</sup> s. 320.08, F.S.

<sup>77</sup> See ss. 563.05, F.S., 564.06, F.S., and 565.12, F.S.



There are some products that meet the federal definition of “beer,” but are not beer under current Florida law because they do not contain malt. Consequently, they are taxed at the \$2.25 per gallon liquor tax rate.

On January 17, 2017, the DBPR’s Division of Alcoholic Beverages and Tobacco published Industry Notice 2017-001.<sup>78</sup> The notice provided, in pertinent part:

The Division of Alcoholic Beverages and Tobacco has recently reviewed the brand registration and excise tax classification for several alcoholic beverage brands comprising a product variety commonly known as non-malt spirituous seltzer beverages. The Division’s review has determined that clarification regarding this product variety may be needed to ensure the consistent and compliant registration and reporting of these particular products within the industry in Florida.

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The alcoholic beverage products regulated by the Florida Beverage Law are classified in three primary beverage types – beer or malt beverages, wine, and liquor. The Division relies on this statutory delineation of the alcoholic beverage product types in the licensing, auditing, and enforcement of regulated entities engaged in the manufacturing, distribution, or retail sale of alcoholic beverages in Florida.

Section 563.01, Florida Statutes, defines “beer” and “malt beverages” to mean all brewed beverages containing malt. Section 564.01, Florida Statutes, defines “wine,” in part, to mean all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Section 565.01, Florida Statutes, defines “liquor” to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

By definition, alcoholic beverages not containing malt do not qualify to be registered as beer or malt beverage. Similarly, alcoholic beverages not made from fresh fruits, berries, or grapes do not qualify to be registered as wine. If unable to qualify as beer or wine, an alcoholic beverage may be categorized as liquor. ***Pursuant to the Florida Beverage Law, spirituous seltzer beverages and similar products that do not contain malt and are not made from fresh fruits are classified as liquor for the purpose of brand registration in Florida. (emphasis supplied)***

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Alcoholic beverages that are not classified as a malt beverage or as wine, which contain less than 17.259 percent alcohol by volume, are subject to alcoholic beverage excise taxes at a rate of \$2.25 per gallon. The Florida Beverage Law requires that this rate be computed and remitted with the monthly report for all spirituous seltzer beverages or similar alcoholic beverages sold during the previous calendar month.

### Proposed Changes

The bill amends the definition of “beer” and “malt beverage” to more closely align with the federal definition of beer set forth in 27-CFR 25.11, but limits the alignment to beverages that are under six percent alcohol by volume. The federal definition of beer appears to encompass non-malt spirituous seltzer type beverages, although specific determinations would depend on the specific formulation of the beverage in question.

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<sup>78</sup> <http://www.myfloridalicense.com/dbpr/abt/documents/2017.01.17%20Industry%20Notice%202017-001%20Spirituous%20Seltzer%20Beverages.pdf>

## Tourist Development Taxes

### Current Situation

Florida law permits counties to impose local option taxes on rentals or leases of accommodations with a term of six months or less.<sup>79</sup> The taxes are generally referred to as “tourist development taxes,” but consist of several separate levied taxes.

- 1 or 2 Percent Tax:<sup>80</sup> This tax may only be levied with approval of the voters in the county at a rate of 1 or 2 percent on the total amount charged for transient rental transactions.
- Additional 1 Percent Tax:<sup>81</sup> This tax may be levied by an extraordinary vote of a county’s governing board, in addition to the 1 or 2 percent tax on the total amount charged for transient rental transactions. To be eligible to levy the tax, a county must have levied the 1 or 2 percent tax for at least 3 years.
- High Tourism Impact Tax:<sup>82</sup> A county with high tourism impact may levy an additional 1 percent tax on the total amount charged for transient rental transactions.<sup>83</sup>
- Professional Sports Franchise Facility Tax:<sup>84</sup> In addition to any other tourist development taxes, a 1 percent tax on the total amount charged for transient rental transactions may be levied to pay debt service on bonds issued to finance professional sports franchise facilities, retaining spring training franchise facilities, and convention centers. These funds may also be used to promote tourism in the state.
- Additional Professional Sports Franchise Facility Tax:<sup>85</sup> Counties that levy the professional sports franchise facility tax may levy an additional tax no greater than 1 percent to be used for the same purposes.

Depending on a county’s eligibility, the maximum tax rate varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.<sup>86</sup>

	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	8	65
Levying:	63	48	41	5	26

These local option taxes may be administered by the DOR or by one or more units of local government. These taxes may be levied within a subcounty special district. If the tax is levied in a subcounty special district, the additional taxes must be levied only in that district.<sup>87</sup>

<sup>79</sup> s. 125.0104, F.S.

<sup>80</sup> s. 125.0104(3)(c), F.S.

<sup>81</sup> s. 125.0104(3)(d), F.S.

<sup>82</sup> s. 125.0104(3)(m), F.S.

<sup>83</sup> A county may be designated as having a “high tourism impact” by the DOR as provided by s. 125.0104(3)(m)2, F.S.

<sup>84</sup> s. 125.0104(3)(l), F.S.

<sup>85</sup> s. 125.0104(3)(n), F.S.

<sup>86</sup> Office of Economic Demographic Research, The Florida Legislature, *County Tax Rates: CY 2007-2017, Local Option Tourist Taxes*, (website last revised, Mar 14, 2017), available at <http://edr.state.fl.us/Content/local-government/data/data-a-to-z/g-l.cfm> (last visited Mar 14, 2017).

<sup>87</sup> See ss. 125.0104(b), (d), and (l), F.S.

As a requirement for adopting tourist development taxes, a county's tourist development council<sup>88</sup> must prepare a plan for tourist development and present it before the governing board of the county. The plan must include the anticipated revenue derived from the tax for the first 24 months, the tax district where it will be imposed, and a list prioritizing the use of the revenue. Any changes to the plan after the levy has been enacted must be approved by the county's governing board.<sup>89</sup>

Local option tourist development tax revenues may be used for capital construction of tourist-related facilities, tourism promotion, and beach or shoreline maintenance, unless otherwise restricted. More specifically, the revenues derived from tourist development taxes are authorized to be used:

- To acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote one or more:
  - Publicly owned and operated convention centers, sports stadiums, sports arenas, coliseums, or auditoriums; or
  - Aquariums and museums that are publicly owned and operated, or owned and operated by a non-profit organization that is open to the public;
- To promote zoological parks that are publicly owned and operated or owned and operated by a non-profit organization that is open to the public;
- To promote and advertise tourism in the state;
- To fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies; or
- To finance beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.<sup>90</sup>

### Proposed Changes

The bill expands the authorized uses of revenue derived from local option tourist development taxes to include the acquisition, construction, extension, enlargement, remodel, repair, improvement, maintenance, operation, or promotion of auditoriums that are publicly owned and open to the public, but operated by an organization that is tax-exempt under 26 U.S.C. s. 501(c)(3) and within the boundaries in which the tax is levied.<sup>91</sup>

### Property Taxation in Florida

Local governments, including counties, school districts, and municipalities have the constitutional authority to levy ad valorem taxes. Special districts may also be given this authority by law.<sup>92</sup> Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>93</sup> However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.<sup>94</sup>

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<sup>88</sup> Also referred to as a “tourism” development council.

<sup>89</sup> See ss. 125.0104(4), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the high tourism impact tax, the professional sports franchise facility tax, or the additional professional sports franchise facility tax.  
<sup>90</sup> s. 125.0104(5)(a), F.S.

<sup>91</sup> Examples of publicly owned auditoriums that are operated by 501(c)(3) organizations include the Florida Theatre in Jacksonville, the Tampa Theatre, and the Ruth Eckerd Hall in Clearwater.

<sup>92</sup> FLA. CONST. art VII, s. 9,

<sup>93</sup> FLA. CONST. art VII, s. 2.

<sup>94</sup> See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.<sup>95</sup> The Florida Constitution grants property tax relief in the form of certain valuation differentials,<sup>96</sup> assessment limitations,<sup>97</sup> and exemptions,<sup>98</sup> including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

## **Inventory Definition**

### Current Situation

Current law exempts from ad valorem taxation all items of inventory.<sup>99</sup> "Inventory" is defined as chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business.<sup>100</sup> Supplies and raw materials are considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed will be held for sale or lease to customers in the ordinary course of business are deemed items of inventory. All livestock is considered inventory.

Items of inventory held for lease to customers in the ordinary course of business, rather than for sale, are deemed inventory only prior to the initial lease of such items. Current administration of the law by property appraisers in most counties is to treat such property as taxable tangible personal property once in the hands of a lessee. Should the property be back in the hands of the lessor, the property appraiser will look to the intent of the lessor and determine whether the lessor intends to sell or lease the property. If the intent is to lease the property, it remains taxable. If the intent is to sell the property, it is again treated as inventory. However, the property is never considered inventory when it is in the hands of a lessee.

### Proposed Changes

The bill amends the definition of inventory to explicitly include construction and agricultural equipment weighing 1,000 pounds or more that is returned to a dealership under a rent to purchase option and held for sale to customers in the ordinary course of business.

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<sup>95</sup> "Exemption" presupposes the existence of a power to tax, while "immunity" implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

<sup>96</sup> FLA. CONST. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.

<sup>97</sup> FLA. CONST. art VII, s. 4(c), authorizes the "Save Our Homes" property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. S. 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the "Granny Flats" assessment limitation.

<sup>98</sup> FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>99</sup> s. 196.185, F.S.

<sup>100</sup> s. 192.001(11)(c), F.S.

## Affordable Housing Agreements

### Current Situation

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>101</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>102</sup> Such exemptions include, but are not limited to, exemptions for such portions of property used predominately for educational, literary, scientific, religious or charitable purposes.<sup>103</sup>

In 1999,<sup>104</sup> the Legislature authorized a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption. The property must be owned entirely by a not for profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.<sup>105</sup> In order to qualify for the exemption, the property must comply with ss. 196.195 for determining non-profit status of the property owner and s. 196.196 for determining exempt status of the use of the property.

In determining whether an applicant is a nonprofit or profit-making venture, s. 196.195 outlines the statutory criteria that a property appraiser must consider.<sup>106</sup> The applicant must show that “no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.”<sup>107</sup>

In determining whether the use of a property qualifies as charitable, s. 196.196 requires the property appraiser to consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other qualifying entities.<sup>108</sup>

The Florida Housing Finance Corporation (FHFC) was created by the Legislature to administer the governmental function of financing or refinancing housing and related facilities, and is described as an “entrepreneurial public corporation” that is housed in, but not controlled by, the DEO.<sup>109</sup> The FHFC programming provides numerous financing resources, such as loans and tax credits, to real estate developers who build certain low-income housing projects. Rental property developers who receive financing from the FHFC must agree to enter a Land Use Restrictive Agreement (LURA), which subjects the rental property to certain limitations in exchange for preferable financing, in the way of low-interest loans or tax credits.<sup>110</sup> The purpose of a LURA is to ensure FHFC-financed housing remains affordable by limiting the maximum rent that can be charged for a unit and by requiring that some or all of the units be made available only to households with specified lower income.<sup>111</sup> The land use restrictions are documented in the LURA, and recorded in the public record.<sup>112</sup> Recording the LURA means its restrictions run with the land, so that if the property is sold during the term of the agreement,

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<sup>101</sup> FLA. CONST., art. VII, s. 4.

<sup>102</sup> FLA. CONST., art. VII, ss. 3, 4, and 6.

<sup>103</sup> FLA. CONST., art. VII, s. 3.

<sup>104</sup> s. 15, ch. 99-378, Laws of Fla., codified at s. 196.1978, F.S.

<sup>105</sup> The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) (“charitable purposes” include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

<sup>106</sup> s. 196.195, F.S.

<sup>107</sup> s. 196.195(3), F.S.

<sup>108</sup> s. 196.196(1)(a)-(b), F.S.

<sup>109</sup> s. 420.504(1), F.S.

<sup>110</sup> Correspondence with Florida Housing Finance Corporation Staff, on file with the House Ways and Means Committee.

<sup>111</sup> Correspondence with Florida Housing Finance Corporation Staff, on file with the House Ways and Means Committee.

<sup>112</sup> See s. 420.504(46), F.S.

then the buyer must also abide by the terms of the LURA. Depending on applicable federal and state program requirements, the restriction period for the property may be as short as 10 years or as long as 50 years.<sup>113</sup>

### Proposed Changes

Effective January 1, 2018, the bill provides that certain property used to provide affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount, notwithstanding the requirements of ss. 196.195 and 196.196, F.S.

In order to qualify for the discount, the property must:

- Provide affordable housing to natural persons or families meeting the extremely low, very low, or low-income limits specified in s. 420.0004, F.S.;
- Provide the housing in a multifamily project in which at least 70 units are providing affordable housing to the above group; and
- Be subject to an agreement with the Florida Housing Finance Corporation to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.

The discount will begin on January 1 of the year following the 15th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount will terminate when the property is no longer serving extremely low, very low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

### **Homes for the Aged**

#### Current Situation

Florida law exempts from ad valorem taxation property used as a home for the aged by certain nonprofit corporations.<sup>114</sup> In order to qualify for the exemption, the following criteria must be met:

- The applicant for exemption must be qualified as a 501(c)(3) exempt charitable organization under federal law by January 1 of the year it requests to be exempt from Florida ad valorem taxation; and either:
  - A corporation not for profit pursuant to ch. 17, F.S.; or
  - A Florida limited partnership, the sole general partner of which is a corporation not for profit pursuant to ch. 17, F.S.; and
- Seventy-five percent of the occupants of the facility must be over the age of 62 years or be totally and permanently disabled;
- Certain facilities must also acquire licensing by the Agency for Health Care Administration.<sup>115</sup>

Upon sufficient proof that the applicant meets the above criteria, the property appraiser will exempt the portions of the facility which are devoted exclusively to the conduct religious services or the rendering of nursing or medical services. In addition, the property appraiser may exempt individual units or apartments in the facility if residency in those units or apartments is restricted to or occupied by certain persons who are either low income or disabled as specified below:

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<sup>113</sup> Correspondence with Florida Housing Finance Corporation Staff, on file with the House Ways and Means Committee.

<sup>114</sup> Fla. Const. ss. 3(a), 6(c), art. VII, implemented by s. 196.1975, F.S.

<sup>115</sup> Facilities that furnish medical facilities or nursing services, or qualifies as an assisted living facility under ch. 429. See s. 196.1975(2), F.S.

- Persons who have gross incomes<sup>116</sup> of not more than \$7,200<sup>117</sup> per year and who are 62 years of age or older;
- Couples, one of whom must be 62 years of age or older, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged;
- Persons who are totally and permanently disabled and who have gross incomes of not more than \$7,200 per year;<sup>118</sup>
- Couples, one or both of whom are totally and permanently disabled, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged.

Any portion of the facility used for nonexempt purposes may be valued and placed upon the tax rolls separately from any portion entitled to the exemption.

In order to demonstrate to the property appraiser the facility is qualified for the exemption, the facility must annually file an application for exemption with the property appraiser (DR-504HA).<sup>119</sup> Section 196.1975(9)(b), F.S., also requires the facility to file with the application an affidavit from each person residing in a unit or apartment in the facility that meets the disability or income requirements described above (DR-504S). Paragraph (9)(b) provides that the person signing the affidavit attests that he or she resides in the unit or apartment claiming the exemption and, in good faith, makes that unit or apartment his or her permanent residence. The application notifies the facility that it may be required to provide supplemental information other than the application upon a reasonable request by the property appraiser.<sup>120</sup>

### Proposed Changes

The bill provides that each facility applying for an exemption must file with the annual application for exemption an affidavit approved by the DOR from each person who occupies a unit or apartment stating the person's income and provides that the affidavit is prima facie evidence of the person's income. However, if the property appraiser determines, at a later time, that additional documentation proving an affiant's income is necessary, the property appraiser may request such documentation. The bill provides that the facility is not required to provide an income affidavit from a resident who is a totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S.

## **Assisted Living Facilities**

### Current Situation

Nursing homes, hospitals and homes for special services that are exempt organizations under s. 501(c)(3) of the Internal Revenue Code are exempt from property tax.<sup>121</sup>

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<sup>116</sup> Includes social security benefits for purposes of this exemption. See s. 196.1975(6), F.S.

<sup>117</sup> Section 196.1975(4)(b), F.S., provides all of the income limitations are annually adjusted by the percentage change in the average cost-of-living index.

<sup>118</sup> Section 196.1975(4)(a), F.S., provides the income limitations do not apply to totally and permanently disabled veterans that meet the requirements of s. 196.081, F.S.

<sup>119</sup> s. 196.1975(9)(b), F.S.

<sup>120</sup> DOR, Ad Valorem Tax Exemption Application and Return, Homes for the Aged, DR-504HA, available at: [http://floridarevenue.com/Pages/forms\\_index.aspx](http://floridarevenue.com/Pages/forms_index.aspx) (last visited April 1, 2017).

<sup>121</sup> s. 196.197, F.S.

## Proposed Changes

The bill exempts 501(c)(3) Assisted Living Facilities from property tax, beginning in calendar year 2017.

## **Charter School Facilities**

### Current Situation

Property leased by a charter school and used for educational purposes is exempt from property tax, if the landlord reduces the rental payment by the full amount of the property taxes otherwise due.<sup>122</sup> In some situations, the rental agreement between the landlord and the charter school requires the charter school to pay any applicable property tax on the educational facility directly to the tax collector.

### Proposed Changes

The bill clarifies that the exemption applies as long as the payments required under a lease are reduced by the tax savings, whether paid to the landlord or on behalf of the landlord to a third party.

## **Charter School Facilities- Application Deadline**

### Current Situation

Property used for educational purposes by a charter school is generally exempt from property tax; however, the specific exemption involved is different depending on whether the charter school owns or leases the property.<sup>123</sup> If the property is *owned* by the charter school, the charter school applies for the exemption.<sup>124</sup> If the property is *leased* by the charter school, the landlord applies for the exemption.<sup>125</sup> When a charter school purchases the property that it previously leased, the charter school must apply for a new exemption.

### Proposed Changes

The bill extends to August 1, 2017, the time for a charter school to apply for exemption on property that it leased in 2015 and owned in 2016.

## **Local Incentive Programs**

### Current Situation

The Florida Enterprise Zone Program sunset on December 31, 2015.<sup>126</sup> Local governments employ various business and economic development programs. Some of these programs use enterprise zone boundaries to delineate as a determinant of where or how incentive funds are deployed. For example, Miami-Dade County has a Targeted Jobs Incentive Fund intended to spur business activity and promote economic growth in the county. The program awards cash incentives to companies in selected industries that create above-average paying jobs (at least 10 new jobs) and make a capital investment of at least \$3 million. Businesses that expand or relocate within the boundaries of the

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<sup>122</sup> s. 196.1983, F.S.

<sup>123</sup> Compare ss. 196.198, F.S., and 196.1983, F.S.

<sup>124</sup> s. 196.198, F.S.

<sup>125</sup> s. 196.1983, F.S.

<sup>126</sup> When the Enterprise Zone Program expired, the Legislature preserved state incentives for certain businesses with incentive agreements with the state that were located within enterprise zones. See ch. 2015-221, L.O.F.



Enterprise Zone, Targeted Urban Areas, Brownfield areas and Community Development Block Grant eligible areas are eligible for an additional incentive amount.<sup>127</sup>

### Proposed Changes

The bill provides that enterprise zone boundaries in existence before December 31, 2015, are preserved for the purpose of allowing local governments to administer local incentive programs within these boundaries through December 31, 2020, except for eligible contiguous multi-phase projects in which at least one certificate of use or occupancy has been issued before December 31, 2020, and which project will then vest the remaining project phases until completion, but no later than December 31, 2025.

### DOR Tax Administration

This bill contains general tax administration improvements, primarily consisting of legislative concepts proposed by the DOR following approval by the Governor and Cabinet. The bill includes numerous statutory changes intended to reduce the burden of compliance on taxpayers, reduce the DOR's costs, increase efficiency in tax administration, and improve the enforcement of tax laws.

### **Estate Administration Reporting**

#### Current Situation

Current law requires each circuit judge of this state to notify the DOR and the Agency for Healthcare Administration on a monthly basis of names and certain other information related to all estates of decedents that commenced estate administration during the preceding month.<sup>128</sup> Due to changes in estate and intangible tax law, the DOR no longer uses or needs this information.

In addition, the personal representative of an estate generally must notify the creditors of the decedent that estate administration proceedings have commenced.<sup>129</sup> If the DOR has not previously been served with a copy of the notice to creditors, then the personal representative is also required to provide the DOR with a copy of the estate's inventory, even when the DOR is not a creditor.<sup>130</sup>

#### Proposed Changes

The bill removes the DOR from the monthly reporting requirement for circuit court judges.

In addition, the bill provides that the personal representative has to provide the DOR with a copy of the notice of creditors only when the DOR is a creditor.

### **Registration Fees**

#### Current Situation

Under current law, the following registration and licensing fees must be paid to the DOR:

- Terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel license tax (\$30 annually);<sup>131</sup>

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<sup>127</sup> See <http://www.miamidade.gov/business/targeted-jobs-incentive-fund.asp> (last visited May 9, 2017).

<sup>128</sup> s. 198.30, F.S.

<sup>129</sup> s. 733.2121, F.S.

<sup>130</sup> s. 733.2121(3)(e), F.S.

<sup>131</sup> s. 206.02, F.S.

- Private or common carrier of motor fuel license tax (\$30 annually);<sup>132</sup>
- Terminal operator license tax (\$30 annually);<sup>133</sup>
- Any person who is not otherwise licensed pursuant to ch. 206 (fuel taxes) and who produces, imports, or causes to be imported pollutants, a temporary license fee (\$30 annually);<sup>134</sup>
- Commercial air carrier license application fee (\$30 annually);<sup>135</sup>
- Natural gas fuel retailer license fee (\$5 annually);<sup>136</sup>
- Unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the DOR (unspecified amount);<sup>137</sup>
- Most sales tax dealers (one time \$5 registration fee for paper return filers);<sup>138</sup>
- Drycleaning facility or drycleaning drop-off facility registration fee (\$30 annually);<sup>139</sup> and
- Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene registration fee (e.g., chemical sold to drycleaning facilities).<sup>140</sup>

In addition, when motor fuel or diesel fuel is sold by a retail dealer to a person who claims to be entitled to a refund, such person may file a refund claim pursuant to s. 206.41, F.S., and is charged \$2 per refund claim.

### Proposed Changes

The bill eliminates the license registration fees described above, as well as the \$2 per refund charge.

## **Vending Machine Operators**

### Current Situation

An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the DOR, has obtained a separate registration certificate for each county in which such machines are located, and has affixed a notice to each vending machine selling food or beverages.<sup>141</sup> The penalty for noncompliance with the notice requirement is \$250 per machine.<sup>142</sup> The notice is intended to notify customers that each vending machine must contain the required notice, and if a machine does not have such notice the customer may report the noncompliance to the DOR and potentially receive a cash reward.<sup>143</sup>

The DOR estimates that they receive approximate 100-150 calls per year on the toll-free number provided on the notice related to vending machines, but almost all of those calls are individuals complaining that the machine does not work. The DOR has never issued the \$250 penalty, nor the reward for reporting noncompliance.

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<sup>132</sup> s. 206.021, F.S.

<sup>133</sup> s. 206.022, F.S.

<sup>134</sup> s. 206.9943, F.S.

<sup>135</sup> s. 206.9865, F.S.

<sup>136</sup> s. 206.9952, F.S.

<sup>137</sup> s. 212.0596, F.S.

<sup>138</sup> s. 212.18, F.S.

<sup>139</sup> s. 376.70, F.S.

<sup>140</sup> s. 376.75(2), F.S.

<sup>141</sup> s. 212.0515(3)(a), F.S.

<sup>142</sup> s. 212.0515(4), F.S.

<sup>143</sup> s. 212.0515(3)(b), F.S.

## Proposed Changes

The bill removes the notice requirement, the associated penalty, and the customer reward for reporting noncompliance.

## **Local Option Fuel Taxes**

### Current Situation

Counties may levy a “ninth-cent fuel tax” (one cent per net gallon) on motor fuel and diesel fuel if approved by extraordinary vote of its governing board or by voter referendum.<sup>144</sup> Counties also may levy a “local option fuel tax” on motor fuel (between one cent and eleven cents per net gallon) and diesel fuel (six cents per net gallon).

All impositions of the ninth-cent fuel tax or the local option fuel tax must be levied before October 1 of each year to be effective January 1 of the following year. This timing allows the DOR sufficient time to implement necessary changes in distribution programs and other administrative changes needed to implement the tax levy. However, levies of the tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be re-imposed at the current authorized rate to be effective September 1 of the year of expiration. Current law does not specify when the re-imposition of the tax must be levied, which has resulted in some confusion and administrative challenges for implementing such re-impositions of tax.

### Proposed Changes

The bill provides that levies of the ninth-cent fuel tax or the local option fuel tax which were in effect on July 1, 2002, and which expire on August 31 of any year may be re-imposed at the current authorized rate provided that the imposition of the tax is levied before July 1 to be effective September 1 of that year.

## **Tax Remittance Due Dates**

### Current Situation

Employers in Florida required to remit reemployment assistance contributions must do so on a quarterly basis, except that they may remit annually between January 1 and February 1 for employees performing domestic services, as defined in s. 443.1216(6), F.S.<sup>145</sup>

For an annual administrative fee not to exceed \$5, employers can remit the quarterly contributions in equal installments according to specified due dates for each installment.<sup>146</sup>

Any employer who employed 10 or more employees in any quarter during the preceding state FY must file the Employers Quarterly Reports (UCT-6) for the current calendar year and remit the contributions and reimbursements due by electronic means approved by the tax collection service provider.<sup>147</sup> An employer who is required file a UCT-6 report by approved electronic means, but who files the report by a means other than approved electronic means, is liable for a penalty of \$50 for that report and \$1 for each employee.<sup>148</sup>

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<sup>144</sup> s. 336.021(1)(a), F.S.

<sup>145</sup> s. 443.131, F.S.

<sup>146</sup> s. 443.141, F.S.

<sup>147</sup> s. 443.161(1), F.S.

<sup>148</sup> s. 443.161(2)(a)-(b), F.S.

## Proposed Changes

The bill provides that employers of employees performing domestic services described above must remit no later than January 31, or if that day is a Saturday, Sunday, or holiday, then on the next day that is not a Saturday, Sunday, or holiday.

Further, if any of the quarterly due dates for employers remitting contributions on an installment basis fall on a Saturday, Sunday, or holiday, then the due date will be the next day that is not a Saturday, Sunday, or holiday.

For purposes of these changes, holidays are those dates designated by ss. 110.117(1) and (2), F.S., and any other day that the offices of the United States Postal Service are closed.

Lastly, the tax collection service provider (i.e., DOR) may waive the penalty for reporting by a means other than approved electronic means if a written request for waiver is filed that establishes that imposition would be inequitable. Examples of inequity include, but are not limited to, situations where the failure to e-file was caused by one of the following factors:

- Death or serious illness of the person responsible for the preparation and filing of the report.
- Destruction of the business records by fire or other casualty.
- Unscheduled and unavoidable computer down time.

## **DOR Emergency Rulemaking Authority**

### Current Situation

The DOR has the authority to adopt rules to enforce the laws it administers.<sup>149</sup> Section 125.54(4), F.S., provides emergency rulemaking authority to an agency if the agency finds that an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules adopted by an agency are temporary and not renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule.<sup>150</sup> Tax legislation occasionally contains an express grant of emergency rulemaking authority to the DOR when the timeframe for implementing the tax law changes contained in the legislation is too short to allow for formal rulemaking to be completed in time to implement the law change. In the past, several such grants of emergency rulemaking authority were provided without an express mechanism to repeal such authority when the emergency rulemaking authority was no longer needed.

### Proposed changes

The bill repeals several obsolete grants of emergency rulemaking authority for the DOR.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

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<sup>149</sup> See e.g. s. 212.18(2) and s. 220.51, F.S.

<sup>150</sup> s. 120.54(4)(c), F.S.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides for a wide range of tax reductions and modifications designed to directly impact both households and businesses. Direct economic impacts on the private sector include:

- Broad-based business cost reductions due to lower sales taxes on rental of commercial property.
- Budget savings to many households on necessities such as clothing, school supplies, products used to control menstrual flow, and disaster preparedness supplies.
- Expanded incentives for businesses to clean up brownfield sites, engage in research and development, and contribute to or invest in the creation of affordable housing.
- Reduced construction costs in Rural Areas of Opportunity.
- Increased interstate economic competitiveness of Florida-based, large capacity datacenters.

D. FISCAL COMMENTS:

The total impact of the bill in Fiscal Year (FY) 2017-2018 is -\$91.6 million (-\$134.7 million recurring) of which -\$71.8 million (-\$88.9 million recurring) is to General Revenue and -\$19.8 million (-\$45.8 million recurring) is to local government (see table below). Non-recurring General Revenue impacts in years beyond FY 2017-18, total -\$2.1 million. Total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The total of -\$180.3 million in tax reductions proposed by the bill is the sum of -\$134.7 million (recurring), -\$43.5 million (pure nonrecurring in FY 2017-18), and -\$2.1 million (pure nonrecurring after FY 2017-18).

Appropriations Detail—The \$681,598 appropriated in the bill consists of \$241,200 to implement the “back-to-school” sales tax holiday, \$290,580 to implement the disaster preparedness sales tax holiday, and \$149,818 to implement the business rent tax rate reduction and the new exemption for products used to control menstrual flow. Most of the above appropriations are needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

### HB 7109 Estimated Fiscal Impacts (millions of \$)

<b>Issue</b>	General Revenue		State Trust Funds		Local		Total	
	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.
<u>Sales Tax</u> : Business Rent/0.2% Rate Cut	(22.5)	(54.0)	(*)	(*)	(2.9)	(7.0)	(25.4)	(61.0)
<u>Sales Tax</u> : Tax Holiday/"Back-to-School" <b>[Aug 4-6]</b>	(26.6)	-	(*)	-	(6.8)	-	(33.4)	-
<u>Sales Tax</u> : Tax Holiday/Disaster Prep <b>[June 2-4]</b>	(3.6)	-	-	-	(0.9)	-	(4.5)	-
<u>Sales Tax</u> : Agriculture/Animal Health Products	(2.1)	(2.1)	-	-	(0.6)	(0.5)	(2.7)	(2.6)
<u>Sales Tax</u> : Admissions Resales	(1.0)	(2.4)	(*)	(*)	(0.3)	(0.6)	(1.3)	(3.0)
<u>Sales Tax</u> : Building Materials used in RAO	(**)	(1.3)	(**)	(*)	(**)	(0.6)	(**)	(1.9)
<u>Sales Tax</u> : Data Centers	(0.7)	(2.1)	(*)	(*)	(0.2)	(0.5)	(0.9)	(2.6)
<u>Sales Tax</u> : Hygiene Products	(3.8)	(8.9)	(*)	(*)	(1.0)	(2.3)	(4.8)	(11.2)
<u>Sales Tax</u> : Purchases by Government Contractors	(0.3)	(0.2)	(*)	(*)	(*)	(*)	(0.3)	(0.2)
<u>Ad Valorem</u> : Affordable Housing (1)	-	-	-	-	-	(25.8)	-	(25.8)
<u>Ad Valorem</u> : Assisted Living Facilities Exemption (1)	-	-	-	-	(6.9)	(6.9)	(6.9)	(6.9)
<u>Ad Valorem</u> : Charter School Late Application (1)	-	-	-	-	(0.1)	-	(0.1)	-
<u>Ad Valorem</u> : Charter School Lease Clarification (1)	-	-	-	-	(0.1)	(0.1)	(0.1)	(0.1)
<u>Ad Valorem</u> : Inventory Definition (1)	-	-	-	-	-	(0.2)	-	(0.2)
<u>Beverage Tax</u> : Beer/Malt Beverage Definitions	(**)	(**)	(**)	(**)	-	-	(**)	(**)
<u>Corp Income Tax</u> : Brownfields Credit Increase	(5.0)	(5.0)	-	-	-	-	(5.0)	(5.0)
<u>Corp Income Tax</u> : R&D Credit Increase (7.5m)	(5.4)	-	-	-	-	-	(5.4)	-
<u>Sales/Corporate</u> : Community Cont Tax Credits	-	(12.7)	-	-	-	(1.3)	-	(14.0)
<u>HSMV Fees</u> : Boat Trailers Fees for 501(c)(3)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
<u>DOR Legislative Concepts</u>	(0.1)	(0.2)	(*)	(*)	-	-	(0.1)	(0.2)
<u>Appropriations</u> : Tax Holidays & Admin	(0.7)	-	-	-	-	-	(0.7)	-
<b>FY 2017-18 Total</b>	<b>(71.8)</b>	<b>(88.9)</b>	<b>-</b>	<b>-</b>	<b>(19.8)</b>	<b>(45.8)</b>	<b>(91.6)</b>	<b>(134.7)</b>

<b>Non-recurring Impacts After FY 2017-18</b>	<b>Cash</b>		<b>Cash</b>		<b>Cash</b>		<b>Cash</b>	
<u>Corp Income Tax</u> : R&D Credit Increase	(2.1)	-	-	-	-	-	(2.1)	-
<b>Bill Total</b>	<b>(73.9)</b>	<b>(88.9)</b>	<b>-</b>	<b>-</b>	<b>(19.8)</b>	<b>(45.8)</b>	<b>(93.7)</b>	<b>(134.7)</b>

Recurring + Pure Nonrecurring (2) = **(180.3)**

(\*) Impact less than \$50,000;  
 (\*\*) Impact is indeterminate.  
 (1) Ad valorem tax impacts assume current tax rates.  
 (2) Recurring tax cut total (excl. appropriations) = -\$134.7 million  
 Pure nonrecurring tax cuts in FY 2017-18= -\$43.5 million  
 Pure nonrecurring tax cuts after FY 2017-18 = -\$2.1 million  
-\$180.3 million