

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 965 Sales and Use Tax on Investigation and Detective Services
SPONSOR(S): Donalds
TIED BILLS: IDEN./SIM. **BILLS:** SB 524

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Judiciary Committee	14 Y, 1 N	Camechis	Camechis
2) Ways & Means Committee			

SUMMARY ANALYSIS

Florida law 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, or an approved tax collector.

According to the Florida Department of Revenue (DOR), fingerprinting services are subject to sales tax and the applicable discretionary sales surtax. However, if fingerprinting is performed by a law enforcement officer in the performance of his or her duties, the fee is exempt under current law. In addition, according to DOR practice, if fingerprinting is performed by staff of a Tax Collector's office or the Department of Agriculture and Consumer Services, the fee is not a part of the sales price because it is a required governmental fee.

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

According to the Revenue Estimating Conference, the identical Senate bill will not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Florida Statutes

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). However, any law enforcement officer who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer is subject to the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer's uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source. The term "law enforcement officer" includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

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, requires 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).

Florida Department of Revenue

According to the Florida Department of Revenue (DOR), examples of services that are subject to sales tax and the applicable discretionary sales surtax include fingerprinting services.

In 1994, DOR received a taxpayer's request for guidance 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 agency answered in the negative, basing its decision on the fact that the background check, and thus the associated fee or charge, was mandated by the state.¹

On March 2, 2016, DOR issued a memo entitled "Fingerprinting Services Are Taxable." The memo stated as follows:

Florida law imposes sales and use tax on services listed under NAICS National Numbers 561611, 561612, 561613, and 561621 of the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President. Fingerprint services are specifically included under NAICS National Number 561611 and as such, this service is taxable under section 212.05(1)(i), Florida Statutes.

¹ 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).

Businesses that capture and transmit fingerprints, whether transmitting digitalized fingerprints (e.g., live scan*) or traditional ink fingerprints (e.g., cardscan**), are providing a taxable service. If you charge for fingerprint services, you must register as a Florida dealer to collect and remit the sales tax to the Florida Department of Revenue. You can register to collect and report tax through our website www.myflorida.com/dor/.

Other mandatory fees, such as fees imposed by the Florida Department of Law Enforcement (FDLE) or Federal Bureau of Investigation (FBI), are not subject to sales tax when separately stated from the charges for fingerprinting services. [Emphasis added.]

Some Florida businesses may be unaware that fingerprinting services are taxable. Businesses that owe tax may want to take advantage of the Department's Voluntary Disclosure Program. Florida's Voluntary Disclosure Program allows you to report previously unpaid tax liabilities. It is an opportunity to voluntarily pay taxes due and in most cases, penalty is waived. Under this program, the Department will look back three years from the postmark date of the voluntary disclosure request. For more information, review our website or call the Voluntary Disclosure Unit at 850-617-8552.

Revenue Estimating Conference

On February 15, 2017, the Revenue Estimating Conference (REC) analyzed SB 524, which is identical to this bill. The REC analysis states as follows:

The bill language matches the current administration by [DOR] with regards to the fingerprinting services and sales tax application off (sic) charges for fingerprinting for concealed weapons permits. Where the fingerprinting is performed by a law enforcement officer in the performance of his or her duties, the fee is exempt under current law. Where the fingerprinting is performed by staff in the Tax Collector's office or by staff of the Department of Agriculture and Consumer Services, the fee is not a part of the sales price as it is a required governmental fee.

Effect of Proposed Changes

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

B. SECTION DIRECTORY:

Section 1. Amends s. 212.05, F.S., regarding sales, storage, and use tax.

Section 2. Amends s. 790.06, F.S., regarding licenses to carry concealed weapons or firearms.

Section 3. Amends s. 790.062, F.S., regarding members and veterans of the U.S. Armed Forces.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None. On February 15, 2017, the Revenue Estimating Conference (REC) analyzed SB 524, which is identical to this bill. The REC determined that the identical Senate bill will not have a fiscal impact on state revenues.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None. On February 15, 2017, the REC analyzed SB 524, which is identical to this bill. The REC determined that the identical Senate bill will not have a fiscal impact on local government revenues.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provision of Art. VII, section 18 of the Florida Constitution may apply because this bill creates a sales tax exemption for fingerprinting services. However, because revenues of local governments will not be reduced, the bill is exempt.

2. Other: None.

B. RULE-MAKING AUTHORITY: None provided.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None