

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	18 Y, 0 N	Schmiege	Langston

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, this 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). Fingerprinting services fall under NAICS National number 561611. Thus, sales tax generally applies to fingerprinting services. 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).

Administration of Tax on Fingerprinting Services

The Florida Department of Revenue (DOR) has publicly stated that fingerprinting services are taxable under s. 212.05(1)(i)1, F.S., on multiple occasions.

In 1994, DOR received a taxpayer's request for a technical assistance advisement 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 issued the advisement, stating that the background check fee was mandated by the state, thus it was not taxable.¹ In doing so, DOR noted that fingerprinting services were taxable.

On March 2, 2016, DOR issued a tax information publication entitled "Fingerprinting Services Are Taxable."² 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.

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).

² <http://floridarevenue.com/dor/tips/tip16a01-02.html>

Although fingerprinting services are generally taxable, fingerprinting services for a concealed carry weapon are not. Separately stated governmentally imposed fees that are identifiable apart from the elements of "sales price" defined in s. 212.02(16), F.S. are excluded from sales tax. Fingerprinting services for a concealed carry weapon meet this definition of a governmentally imposed fee, and are therefore already excluded from sales tax.

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., clarifying that fingerprinting services for concealed carry licenses are not subject to sales tax.

Section 2. Amends s. 790.06, F.S., clarifying that fingerprinting services for concealed carry licenses are not subject to sales tax.

Section 3. Amends s. 790.062, F.S., clarifying that fingerprinting services for concealed carry licenses are not subject to sales tax.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: On February 17, 2017, the Revenue Estimating Conference (REC) determined that this bill will have no impact on state revenues.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: On February 17, 2017, the REC determined that this bill will have no 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