

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Appropriations

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BILL: CS/SB 1450

INTRODUCER: Commerce and Tourism Committee and Senator Steube

SUBJECT: Sales Tax Refund for Eligible Job Training Organizations

DATE: March 1, 2018

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

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Little</u>	<u>McKay</u>	<u>CM</u>	<b>Fav/CS</b>
2. <u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>ATD</u>	<b>Recommend: Fav/CS</b>
3. <u>Hrdlicka</u>	<u>Hansen</u>	<u>AP</u>	<b>Pre-meeting</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1450 creates a sales tax refund for eligible job training organizations. Under the bill, an eligible job training organization may apply for a refund of 10 percent of the sales tax the organization remitted to the DOR on its sales of donated goods during the previous state fiscal year.

The Department of Economic Opportunity (DEO) is required to determine an applicant's eligibility for the sales tax refund and certify the eligibility of organizations that meet the specified requirements. After obtaining certification from the DEO, an eligible job training organization must apply to the Department of Revenue (DOR) in August each year that a refund is sought.

The bill limits the use of a sales tax refund issued to an eligible job training organization to the following purposes:

- Growth in employment hours;
- Job training and employment services to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment; or
- Job training and employment services for veterans.

An eligible job training organization that receives a refund must annually report eligibility information to the DEO, including how the previously issued refund was used. If the DEO determines an organization no longer qualifies for the refund, the DEO must immediately notify

the DOR. The DOR is prohibited from issuing a refund after receiving such notification. The bill authorizes the DOR to audit any refund within 4 years of the date the refund was granted and subjects the overpayment of a refund or a refund issued to an ineligible job training organization to repayment.

The Revenue Estimating Conference has not yet estimated the impact of this bill. However, the bill limits the total amount of sales tax refunds issued annually to \$2 million.

The bill takes effect July 1, 2018.

## II. Present Situation:

### Florida Sales and Use Tax

Florida levies a six percent state sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rentals of commercial real estate, and a limited number of services.<sup>1</sup>

In addition to the state level tax, counties are authorized to levy surtaxes under certain situations.<sup>2</sup> Surtaxes apply to all transactions occurring in the county that are subject to the state level tax.<sup>3</sup>

Generally, sales tax is added to the price of taxable goods or services, and the tax is collected from the purchaser at the time of sale.<sup>4</sup> Anyone that sells taxable goods or services in Florida must register with the DOR as a sales tax dealer to collect, report, and remit sales tax.<sup>5</sup> The DOR is authorized to audit organizations in the state for the purpose of determining whether such taxes are properly collected, reported, and paid.<sup>6</sup>

### *Charitable Organizations*

Charitable organizations are eligible to receive tax-deductible contributions.<sup>7</sup> To qualify as a charitable organization under section 501(c)(3) of the Internal Revenue Code an organization must be organized and operated exclusively for an exempt purpose,<sup>8</sup> none of its earnings may inure to any private shareholder or individual, and it cannot be an action organization.<sup>9</sup>

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<sup>1</sup> See s. 212.05, F.S.

<sup>2</sup> Section 212.055, F.S.

<sup>3</sup> Section 212.054, F.S.

<sup>4</sup> Sections 212.06(3) and 212.07(2), F.S.

<sup>5</sup> Section 212.18(3)(a), F.S.; Department of Revenue, *Florida Sales and Use Tax*, GT-800013, Revised 1/18, available at [http://floridarevenue.com/Forms\\_library/current/gt800013.pdf](http://floridarevenue.com/Forms_library/current/gt800013.pdf) (last visited Feb. 9, 2018).

<sup>6</sup> Section 212.13(3), F.S.

<sup>7</sup> 26 U.S.C. s. 170

<sup>8</sup> Exempt purposes under section 501(c)(3) include: charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.” IRS, *Exempt Purposes – Internal Revenue Code Section 501(c)(3)*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exempt-purposes-internal-revenue-code-section-501c3> (last visited Feb. 4, 2018).

<sup>9</sup> The prohibition on the organization being an “action organization” means that the organization “may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates.” IRS, *Exemption Requirements - 501(c)(3) Organizations*, available at <https://www.irs.gov/charities-non-profits/charitable-organizations/exemption-requirements-section-501c3-organizations> (last visited Feb. 4, 2018).

Additionally, organizations that qualify under section 501(c)(3) may be eligible for other tax benefits, such as state and federal sales, property, and income tax exemptions.<sup>10</sup>

### **Qualified Job Training Organizations Program**

Section 288.1097, F.S., allows a “qualified job training organization” to receive grant funding from the Department of Economic Opportunity (DEO).

To be eligible, a job training organization must:

- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code;
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities;
- Collect Florida sales tax;
- Specialize in the retail sale of donated items;
- Operate statewide through more than 100 locations;
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development; and
- Be certified by the DEO that the organization meets the requirements described above.

The DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include “net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment...” and that salaries paid to officers and employees of the organization meet certain Internal Revenue Code requirements.<sup>11</sup>

The organization must use the grant funds “solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.” The statute also requires the following results to be met within a 10-year period:

- Creation of at least 5,000 direct, new jobs;
- Minimum of 23,000 new clients served;
- Production of a minimum of \$24 million in new sales tax revenues from increased sales;
- Minimum of \$42 million in new salaries; and
- Minimum of \$6 million for job placement services.

No funds have ever been appropriated to this program.

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<sup>10</sup> See Internal Revenue Service, *Federal Tax Obligations of Non-Profit Corporations*, available at <https://www.irs.gov/pub/irs-pdf/n844.pdf> (last visited Feb. 4, 2018). “Nonprofit organizations may qualify for exemption from some Florida taxes. Each tax is separate and distinct and has its own requirements. As a result, exemption from one tax does not necessarily exempt the organization from all taxes and not all Florida tax exemptions require the organization obtain a federal tax-exempt status.” Department of Revenue, *Nonprofit Organizations*, available at <http://floridarevenue.com/taxes/businesses/Pages/nonprofit.aspx> (last visited Feb. 4, 2018).

<sup>11</sup> Section 288.1097(2), F.S.

### III. Effect of Proposed Changes:

The bill creates a sales tax refund for an eligible job training organization on the organization's sales of goods donated to the organization and requires the organization to use the refund for specific employment purposes.<sup>12</sup>

To be eligible for the refund, a job training organization must:

- Be exempt under s. 501(c)(3) of the Internal Revenue Code;
- Provide job training and employment services to low-income persons,<sup>13</sup> individuals who have workplace disadvantages, or individuals with barriers to employment;
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities; and
- Be certified by the DEO that the organization meets the requirements of the refund.

The bill also specifies that an eligible job training organization consisting of commonly owned and controlled entities is deemed to be a single organization.

An eligible job training organization is entitled to a refund equal to 10 percent of the sales tax remitted to the DOR during the prior state fiscal year on the organization's sales of goods donated to the organization. The total amount of sales tax refunds issued to eligible job training organizations may not exceed \$2 million in any state fiscal year. Refunds are granted on a first-come, first-served basis.

The organization must use the refund for any of the following purposes:

- Growth in employment hours.<sup>14</sup>
- Job training and employment services<sup>15</sup> to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment.
- Job training and employment services for veterans.

An organization seeking a refund must submit an initial application to the DEO by July 15. The application must establish that the organization meets the eligibility requirements and that the refund will be used exclusively for the purposes listed above and *may* include any supporting information set forth by the DEO in rule. The DEO is required to verify the application and notify the organization of the DEO's determination within 15 days of receiving the application. The bill authorizes the DEO to adopt rules necessary to administer the sales tax refund, including rules for the approval and disapproval of applications by organizations.

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<sup>12</sup> The bill creates s. 212.099, F.S.

<sup>13</sup> "Low-income persons" means "one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater." Section 420.0004(11), F.S.

<sup>14</sup> "Growth in employment hours" is defined by the bill as "the annual growth in hours worked by employees in the current year compared with the number of hours worked by employees in the previous year."

<sup>15</sup> "Job training and employment services" is defined by the bill as programs and services that improve workers' job readiness, assist them in gaining employment and adapting to the changing labor market, and help them achieve employment success through self-sufficiency.

For approved applications, the DEO must send the eligible job training organization a notice indicating that the organization is certified to receive the sales tax refund. This notice must be in writing, or e-mail if agreed to by the organization. Upon approval the DEO must send a copy of the decision to the DOR. The DEO's issuance of a certification remains in effect as long as the eligible job training organization remains in compliance with the requirements.

An eligible job training organization that has received certification by the DEO must then apply to the DOR between August 1 and August 31 of each year that the organization seeks a refund. The first application for a refund submitted to the DOR must also include a copy of the DEO certification.

By July 15 of each year, an eligible job training organization is required to provide a report to the DEO describing the use of the refund previously issued. The report must include the following:

- The amount of the refund used to create growth in employment hours;
- The total annual growth in employment hours;
- The amount of the refund used for job training and employment services;
- The number of individuals who participated in job training and employment services at the eligible job training organization for the fiscal year in which the requested funds were remitted to the department; and
- A statement declaring that the organization continues to meet the necessary requirements to remain eligible for the sales tax refund.

If the DEO determines that a job training organization no longer qualifies for the refund, the DEO must notify the DOR immediately. The DOR is prohibited from issuing a refund after receiving such notification. The bill also provides that the DOR has the authority to audit any refund within 4 years after the date the refund was granted. The overpayment of a refund, or a refund issued to an ineligible job training organization, is subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

The bill takes effect on July 1, 2018.

#### **IV. Constitutional Issues:**

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

None.

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

None.

**C. Trust Funds Restrictions:**

None.

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

The bill creates a sales tax refund for eligible job training organizations equal to 10 percent of the sales tax remitted to the DOR on its sales of goods donated to the organization during the prior state fiscal year.

**B. Private Sector Impact:**

The bill will have a positive impact on eligible job training organizations that receive a sales tax refund.

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill. However, the bill limits the total amount of sales tax refunds issued annually to \$2 million.

The DEO has stated that any costs related to increased workload to administer the provisions of this bill can be absorbed within existing resources.<sup>16</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 60-62 provide that “[t]he total amount of refunds issued under this section may not exceed \$2 million in any state fiscal year granted on a first-come, first-served basis.” This language may be confusing to applicants trying to determine when and how the first-come, first-served standard will be applied to the sales tax refund. The language could be amended to clarify whether the standard applies to applications submitted to the DEO or applications submitted to the DOR.

The bill requires the DEO to verify the application and notify the organization of its determination within 15 days of receiving the application. The bill may need to clarify that the 15 days start to run on the date that the DEO receives a “complete” application. As the bill is currently drafted, the 15 days runs upon receipt of the application, no matter if the application is complete or not.

The bill gives the organization discretion on whether or not to include supporting information set forth by the DEO in rule by stating that the organization *may* include any supporting information set forth by the DEO in rule. The bill grants the DEO rulemaking authority to adopt rules to administer the refund program.

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<sup>16</sup> Department of Economic Opportunity, *2018 Agency Legislative Bill Analysis: SB 1450*,

**VIII. Statutes Affected:**

This bill creates section 212.099 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on January 29, 2018:**

The bill is amended to:

- Make references to “eligible job training organizations” rather than “eligible businesses;”
- Remove “capital costs” from the uses of the sales tax refund authorized by the bill; and
- Clarify that the DOR may audit, rather than examine, any sales tax refund granted to an eligible job training organization within 4 years of issuance.

**B. Amendments:**

None.