

**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 Commerce and Tourism

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BILL: SB 654

INTRODUCER: Senator Lee

SUBJECT: Sales Tax Refund for Eligible Job Training Organizations

DATE: December 9, 2019

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Pre-meeting</b>
2.			FT	
3.			AP	

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**I. Summary:**

SB 654 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 Department of Revenue on its sales of donated goods during the previous fiscal year.

The use of sales tax refunds issued to an eligible job training organization is limited to any of the following purposes:

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

The amount of refunds issued may not exceed \$2 million in any state fiscal year.

Except as otherwise expressly provided for in the bill, the bill takes effect upon becoming law.

**II. Present Situation:**

**Florida Sales Tax**

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances.

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<sup>1</sup> Section 212.05(1)(a)1.a, F.S.

<sup>2</sup> Section 212.04(b), F.S.

<sup>3</sup> Section 212.03(1)(a), F.S.

Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>4</sup> Sales tax receipts accounted for approximately 77 percent of the state's General Revenue in Fiscal Year 2018-2019.<sup>5</sup>

In addition to the state level tax, counties are authorized to levy local discretionary sales surtaxes under certain situations.<sup>6</sup> Surtaxes apply to all transactions occurring in the county that are subject to the state level tax.<sup>7</sup> Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.<sup>8</sup>

### ***Charitable Organizations***

Charitable organizations are eligible to receive tax-deductible contributions.<sup>9</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>10</sup> none of its earnings may inure to any private shareholder or individual, and it cannot be an action organization.<sup>11</sup> 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>12</sup>

### **Qualified Job Training Organizations**

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

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<sup>4</sup> See s. 212.07(2), F.S.

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Dec. 9, 2019).

<sup>6</sup> Section 212.055, F.S.

<sup>7</sup> Section 212.054, F.S.

<sup>8</sup> *Supra* note 5, at 225-226.

<sup>9</sup> 26 U.S.C. s. 170

<sup>10</sup> Exempt purposes 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 Dec. 9, 2019).

<sup>11</sup> A charitable 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 Dec. 9, 2019).

<sup>12</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 Dec. 9, 2019).

- 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, including net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements. Salaries paid to officers and employees of the organization must meet certain Internal Revenue Code requirements.<sup>13</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 following results must also be met within a 10-year period:<sup>14</sup>

- 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.

### III. Effect of Proposed Changes:

**Section 1** of the bill creates s. 212.094, F.S., which would allow eligible job training organizations to apply for a 10 percent refund on the sales tax collected on the sale of donated goods. The bill defines an eligible job training organization as an organization that:

- Is an exempt organization under section 501(c)(3) of the Internal Revenue Code;
- Provides job training and employment services to low-income persons,<sup>15</sup> individuals who have workplace disadvantages, or individuals with barriers to employment; and
- Is accredited by the Commission on Accreditation of Rehabilitation Facilities.

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

An organization seeking a refund must submit an application to the DEO by July 15. Applications must establish that the organization meets the eligibility requirements and ensure that the refund will be used exclusively for any the following purposes:

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

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<sup>13</sup> Section 288.1097(2), F.S.

<sup>14</sup> Section 288.1097(3), F.S.

<sup>15</sup> Section 420.0004, F.S., defines a low-income person as “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.”

The DEO is required to verify applications and notify an organization of their determination within 15 days of receiving a completed application. If an organization is approved, the DEO will provide the organization and the Department of Revenue (DOR), if applicable, with a certification of eligibility. The DEO must communicate decisions in writing, or in e-mail if agreed to by the organization. Certifications remain valid so long as the organization is in compliance with the eligibility requirements.

Organizations that are certified by the DEO must then apply to the DOR between August 1 and August 31 of each year the organization seeks a refund. A copy of the organization's certification must be included in the organization's first application but is not required to be included in subsequent applications.

By August 1 following each state fiscal year an eligible job training organization receives a refund, the organization must provide the DEO with a report regarding the use of its refund. The report must include:

- The amount of the refund used to create growth in employment hours;
- The total 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; and
- A statement declaring that the organization continues to meet the requirements of the tax refund.

The bill authorizes the DEO to adopt rules to administer the sales tax refund, including rules for the approval and disapproval of the application. If the DEO determines that a job training organization is no longer qualified to receive a refund, the DEO must notify the DOR by August 31. The DOR is prohibited from issuing a refund after receiving such notification. The overpayment of a refund and refunds issued to ineligible organizations are subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

The total amount of refunds that may be issued in any state fiscal year must not exceed \$2 million. Refunds are granted on a first-come, first-served basis.

Section 1 of the bill takes effect July 1, 2020.

**Section 2** authorizes the DOR to adopt emergency rules for the purpose of administering the sales tax refund. Any other law notwithstanding, emergency rules are effective for 6 months after adoption and may be renewed while procedures to adopt permanent rules are pending. Section 2 of the bill expires July 1, 2021.

**Section 3** provides that, except as otherwise expressly provided for in the bill, the bill takes effect upon becoming law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities. Except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,<sup>16, 17</sup> which is \$2.1 million or less for Fiscal Year 2019-2020.<sup>18</sup>

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

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 likely have a positive fiscal impact on the job training organizations that receive a sales tax refund.

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<sup>16</sup> FLA. CONST. art. VII, s. 18(d).

<sup>17</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Dec. 9, 2019).

<sup>18</sup> Based on the Demographic Estimating Conference's population adopted on July 8, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 9, 2019).

**C. Government Sector Impact:**

The Revenue Estimating Conference has not yet met regarding the bill.

The DOR has stated the bill will not have an impact on its expenditures.<sup>19</sup>

The DEO has not yet analyzed the bill's fiscal impact on its expenditures. For a comparable bill, SB 1098 (Regular Session 2019), the DEO stated that the total impact of expenses incurred to accept and approve applications was not known.<sup>20</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the DEO to notify the DOR by August 31 of any eligible job training organizations that no longer qualify for the sales tax refund. However, organizations must apply to the DOR between August 1 and August 31 to receive a refund. This may result in the DOR processing an organization's refund before receiving notice from the DEO that the organization has been determined as ineligible for the refund. The bill also provides that refunds issued to ineligible organizations are subject to repayment at interest rates specified in statute, though it is unclear how the DOR will facilitate repayments.

**VIII. Statutes Affected:**

This bill creates section 212.094 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.)

None.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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<sup>19</sup> Department of Revenue, *2020 Agency Legislative Bill Analysis: SB 654*, November 14, 2019. On file with the Senate Committee on Commerce and Tourism.

<sup>20</sup> Department of Economic Opportunity, *2019 Agency Legislative Bill Analysis: SB 1098*, March 13, 2019. On file with the Senate Committee on Commerce and Tourism.