

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.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 734

INTRODUCER: Senator Gruters

SUBJECT: Sales Tax Holiday for Disaster Preparedness Supplies

DATE: February 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 734 establishes a 17-day “disaster preparedness” sales tax holiday, from Friday, May 28, to Sunday, June 13, 2021, for certain disaster preparedness supplies. The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2020-2021 to implement the sales tax holiday.

The bill also creates a documentary stamp tax exemption on federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor.

The Revenue Estimating Conference has not yet estimated the revenue impact of the bill.

Except as otherwise expressly provided, the bill takes effect July 1, 2021.

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,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S.,

¹ Section 212.05(1)(a)1.a, F.S.

² Section 212.04(b), F.S.

³ Section 212.03(1)(a), 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. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴ Sales tax receipts accounted for approximately 79 percent of the state's General Revenue in Fiscal Year 2019-2020.⁵

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.⁷

"Disaster Preparedness" Sales Tax Holidays

Florida has enacted a "disaster preparedness" sales tax holiday eight times since 2005, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and length of the exemption periods has varied from 3 to 18 days.⁸

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.⁹

Documentary Stamp Tax

Florida levies a documentary stamp tax on certain documents, which is comprised of two taxes imposed on different bases at different rates. The tax on deeds and other documents related to real property is 70 cents per \$100,¹⁰ and the tax on bonds, debentures, certificates of indebtedness, promissory notes, nonnegotiable notes, and other written obligations to pay money is 35 cents per \$100.^{11, 12} Documentary stamp taxes levied on promissory notes, nonnegotiable notes, and written obligations may not exceed \$2,450.¹³

Documentary stamp tax revenue accounted for approximately 2.9 percent of the state's General Revenue in Fiscal Year 2019-2020.¹⁴

⁴ See s. 212.07(2), F.S.

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2020), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Feb. 17, 2021).

⁶ Section 212.054(2)(a), F.S.

⁷ *Supra* note 5, at 231-232.

⁸ *Id.* at 163.

⁹ Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit Checklist*, available at <https://www.floridadisaster.org/planprepare/hurricane-supply-checklist/> (last visited Feb. 17, 2021).

¹⁰ Section 201.02(1)(a), F.S.

¹¹ Section 201.07, F.S.

¹² Section 201.08(1)(a), F.S.

¹³ *Id.*

¹⁴ *Supra* note 5.

Chapter 201, F.S., provides that certain transactions are exempt from the documentary stamp tax; notably, s. 201.25, F.S., exempts loans made by the Small Business Emergency Bridge Loan Program in response to a disaster for which the Governor declares a state of emergency.

Federal CARES Act

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law on March 27, 2020, in response to the economic fallout of the COVID-19 pandemic. Title I of the CARES Act established, among other programs, the Paycheck Protection Program (PPP), which expanded the scope of both the businesses eligible for and allowable uses of loans made under section 7(a) of the Small Business Act.¹⁵ In addition to businesses already eligible for Small Business Administration (SBA) loans, eligibility was expanded to businesses, nonprofits, veterans' organizations, and tribal businesses with 500 or fewer employees or that meet the size standards based on the business's NAICS code.¹⁶

In its first iteration, the PPP provided up to \$349 billion in forgivable loans of up to \$10 million or 2.5 times the average monthly payroll costs in the 12 months prior to the covered period of February 15 to June 30, 2020. Loans made under the PPP were forgiven if businesses used the loans to cover payroll costs¹⁷ and interest on mortgages, rent, and utilities. Loans forgiveness was also related to a business's employees and salaries; the amount of a business's loan that may be forgiven is reduced in proportion to the average number of employees a business maintains in the covered period compared to the average number of employees for the year prior to the covered period. Reductions of 25 percent or more of any employee's salary compared to their salary in the year prior also caused the loan forgiveness amount to decrease.¹⁸

On April 24, 2020, Congress passed the Paycheck Protection Program and Health Care Enhancement Act to provide an additional \$310 billion in funding for the PPP.¹⁹ The Consolidated Appropriations Act, signed into law on December 27, 2020, reinstated the PPP following its expiration on August 8, 2020, made a \$284 billion appropriation, and introduced several changes to the program. For borrowers taking out PPP loans for the first time (First Draw borrowers), the act expanded eligible businesses to include housing cooperatives, certain section 501(c)(6) organizations, and destination marketing organizations with no more than 300 employees. First Draw loans are available for the lesser of \$10 million or 2.5 times a business's average monthly payroll, and 60 percent of each loan must go towards payroll.²⁰ Second Draw loans are available to businesses that previously received, and used the full amount of, a PPP loan. A business is only eligible for a Second Draw loan if it has 300 or fewer employees and experienced a revenue reduction of 25 percent or more in 2020 relative to 2019.²¹ Under the act, forgiven loan funds are excluded from gross income and expenses are tax deductible.

¹⁵ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 286 (2020).

¹⁶ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1102, 134 Stat. 288 (2020).

¹⁷ *Id.* Payroll costs include employee salaries, benefits, and sick leave, and do not include compensation to employees with an annual salary of more than \$100,000 or to employees who live outside the United States.

¹⁸ Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, § 1106, 134 Stat. 299 (2020).

¹⁹ Paycheck Protection Program and Health Care Enhancement Act, Pub. L. No. 116-139, § 101, 134 Stat. 620 (2020).

²⁰ Consolidated Appropriations Act, Pub. L. No. 116-260, § 318, 134 Stat. 1182 (2020).

²¹ Consolidated Appropriations Act, Pub. L. No. 116-260, § 311, 134 Stat. 1182 (2020).

COVID-19 State of Emergency

On April 6, 2020, Governor DeSantis issued Executive Order 20-95, suspending the collection of documentary stamp taxes levied on notes and other written obligations made under Title I of the federal CARES Act. The suspension remains in effect until the expiration of Executive Order 20-52, which declared a state of emergency in response to the COVID-19 pandemic.²² Executive Order 20-52 has been extended four times since its issuance, most recently on December 29, 2020.²³

III. Effect of Proposed Changes:

Section 1 of the bill establishes a documentary stamp tax exemption on federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor.

Section 2 of the bill establishes a 17-day period, from Friday, May 28, to Sunday, June 13, 2021, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Portable self-powered light sources selling for \$20 or less;
- Portable self-powered radios, two-way radios, or weather-band radios selling for \$50 or less;
- Tarpaulins or other flexible waterproof sheeting selling for \$50 or less;
- Any items normally sold as, or generally advertised as, ground anchor systems or tie-down kits selling for \$50 or less;
- Gas or diesel fuel tanks selling for \$25 or less;
- Packages of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- Nonelectric food storage coolers selling for \$30 or less;
- Portable generators used to provide light or communications or to preserve food selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors and impact-resistant garage doors, when sold in units of 10 or fewer.

The exemptions for impact-resistant windows, doors, and garage doors apply to purchases made by an owner of residential real property where the impact-resistant windows, doors, or garage doors will be installed. The bill defines “impact-resistant” to mean that the window, door, or garage door complies with the standards for protection of openings and for windborne debris protection in the Florida Building Code, 7th Edition (2020) Residential, or in the Florida Building Code, 7th Edition (2020) Building. The purchaser must furnish to the selling dealer an affidavit stating that the impact-resistant items are to be used on residential property owned by the purchaser. The affidavit must include the name of the owner and the address of the residential property where the items will be installed. If a person furnishes a false affidavit in order to evade payment of the sales tax, the purchaser is subject to repayment of the tax plus a mandatory

²² Section 252.36(2), F.S., provides that states of emergency may not continue for more than 60 days unless renewed by the Governor.

²³ Fla. Exec. Order No. 20-316 (Dec. 29, 2020).

penalty of 200 percent of the tax in addition to a fine and punishment as provided by law for a conviction of a felony of the third degree.²⁴

The exemptions provided for in the bill do not apply to the following:

- 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 appropriates \$70,072 in nonrecurring funds in Fiscal Year 2020-2021 from the General Revenue Fund to the Department of Revenue (DOR) for the purpose of implementing the sales tax holiday. Funds remaining unexpended as of June 30, 2021, shall revert and be re-appropriated for the same purpose in the 2021-2022 fiscal year.

The DOR may adopt emergency rules pursuant to s. 120.54(4), F.S., for the purpose of implementing the sales tax holiday.

This section of the bill takes effect upon becoming law.

Section 3 of the bill provides that, except as otherwise expressly provided, the bill takes effect July 1, 2021.

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.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that 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,^{25, 26} which is \$2.1 million or less for Fiscal Year 2020-2021.²⁷

B. Public Records/Open Meetings Issues:

None.

²⁴ Section 212.085, F.S.

²⁵ FLA. CONST. art. VII, s. 18(d).

²⁶ 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 Feb. 17, 2021).

²⁷ Based on the Demographic Estimating Conference's population adopted on November 13, 2020. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 17, 2021).

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 Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Persons taking out certain federal loans that are subject to the documentary stamp tax and persons purchasing items from stores participating in the sales tax holiday exemption will realize savings.

C. Government Sector Impact:

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2020-2021 to administer the sales tax holiday.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill amends section 201.25 of the Florida Statutes.

The bill also creates two undesignated sections of chapter law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on February 15, 2021:

The committee substitute provides for a documentary stamp tax exemption on federal loans made in response to a state of emergency declared by executive order or proclamation of the Governor.

B. Amendments:

None.