

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 763 Tax Exemption for Charges for Private Investigations

SPONSOR(S): Regulatory Reform Subcommittee, Casello and others

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1146

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Regulatory Reform Subcommittee	17 Y, 0 N, As CS	Thompson	Anstead
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, transient rentals, and a limited number of services.

The state of Florida does not usually collect sales tax from the vast majority of services performed. An example of taxed services would be investigative and crime protection services, interior nonresidential cleaning services, nonresidential pest control services, or a service which includes repairing or creating a product. This means that a yoga instructor would not be required to collect sales tax, while a janitor or private investigator may be required to collect sales tax.

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. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS), including investigative services, security guards and patrol services, armored car services, and security systems services, except locksmiths, are subject to the 6 percent sales and use tax.

The bill exempts charges for private investigations provided by a small private investigative agency from the sales and use tax.

The bill defines the term "small private investigative agency" as a person licensed as a private investigative agency that employs three or fewer employees that each received less than \$50,000 in taxable compensation during the preceding calendar year for providing private investigations.

The Revenue Estimating Conference (REC) estimated that the bill as filed would have a negative cash and recurring impact on General Revenue of \$0.3 million in FY 2022-23, and a negative cash and recurring impact on local government revenues of \$0.1 million in FY 2022-23. The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative fiscal impact due to additional entities that would qualify for the exemption.

The effective date of the bill is July 1, 2022.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Florida Sales and Use Tax

Florida levies a six 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., authorizes the levy and collection of Florida's sales and use tax and provides 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

The state of Florida does not usually collect sales tax from the vast majority of services performed. An example of taxed services would be investigative and crime protection services, interior nonresidential cleaning services, nonresidential pest control services, or a service which includes repairing or creating a product. This means that a yoga instructor would not be required to collect sales tax, while a janitor or private investigator may be required to collect sales tax.⁵

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁶ 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, F.S."⁷ 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 being levied vary by county in a range of 0.5 to 2.5 percent.⁸

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS) National Numbers 561611 (investigative services), 561612 (security guards and patrol services), 561613 (armored car services), and 561621 (security systems services, except locksmiths) are subject to the 6 percent sales and use tax.⁹ Fingerprint services required under s. 790.06, F.S., or s. 790.062, F.S., are not subject to the tax.

Law enforcement¹⁰ 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.

Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.¹¹

¹ S. 212.05(1)(a)1.a., F.S.

² S. 212.04(1)(b), F.S.

³ S. 212.03(1)(a), F.S.

⁴ S. 212.07(2), F.S.

⁵ Sales Tax Handbook, Florida Sales Tax, <https://www.salestaxhandbook.com/florida> (last visited Feb. 4, 2022).

⁶ S. 212.055, F.S.

⁷ Section 212.054(2)(a), F.S.

⁸ Office of Economic and Demographic Research, *Florida Tax Handbook*, 227-228 (2021), <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2021.pdf> (last visited Feb. 02, 2022).

⁹ S. 212.05(1)(i)1., F.S.

¹⁰ S. 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

¹¹ S. 212.05(1)(i)3., F.S.

Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees the regulation of licensing of private investigative services.¹² As of December 31, 2021, the Division has issued 2,627 private investigative agency licenses and 6,992 private investigator licenses.¹³

A “private investigator” is defined as any individual who, for consideration, advertises as providing or performs private investigations.¹⁴ A “private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.¹⁵ “Private investigation” is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.¹⁶

Applicants for licensure as a private investigator must complete and submit an application to DACS and meet certain requirements. An applicant must:

- Be at least 18 years old;
- Be one of the following:
 - A United States citizen,
 - A permanent legal resident, or
 - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
 - Mental illness,
 - Alcohol abuse, or
 - Substance abuse; and
- Submit an application with certain identifying information;¹⁷ and
- Complete 40 hours of required training and submit proof thereof to DACS.¹⁸

Any person, firm, company, partnership, or corporation which engages in business as a private investigative agency shall have a Class “A” license.¹⁹ To become a private investigator in Florida, a Class “C” Private Investigator license is required.²⁰ An applicant for the Class “C” Private Investigator

¹² Ch. 493, F.S.

¹³ Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2021), available at <https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports> (last visited Jan. 28, 2022).

¹⁴ Section 493.6101(16), F.S.

¹⁵ Section 493.6101(15), F.S.

¹⁶ Section 493.6101(17), F.S.

¹⁷ S. 493.6105, F.S.

¹⁸ S. 493.6303(4)(a), F.S.

¹⁹ S. 493.6201(1), F.S.

²⁰ S. 493.6201(5), F.S.

license must have two years of lawfully gained, verifiable, full-time experience to qualify for the license.²¹ In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class “G” Statewide Firearm license in addition to the Class “C” Private Investigator license.²²

Effect of the Bill

The bill exempts charges for private investigations provided by a “small private investigative agency” from the sales and use tax.

The bill defines the term “small private investigative agency” as:

a person as defined in s. 212.02(12), F.S.,²³ licensed as a private investigative agency under s. 493.6201, F.S., that employs three or fewer employees that each received less than \$50,000 in taxable compensation during the preceding calendar year for providing private investigations, as that term is defined in s. 493.6101(17), F.S.

The bill defines the term “employees” as:

all full-time and part-time employees currently employed by a small private investigative agency at all of its business locations, wherever they are located, including any person performing services for the small private investigative agency under an arrangement for employee leasing as that term is defined in s. 468.520(4), F.S.²⁴

B. SECTION DIRECTORY:

Section 1: Amends s. 212.05, F.S., relating to sales, storage, use tax.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating conference estimated that the bill will have a negative cash and recurring impact on General Revenue of \$0.3 million in FY 2022-23.²⁵ The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative fiscal impact due to additional entities that would qualify for the exemption.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

²¹ S. 493.6203, F.S.

²² S. 493.6115(2), F.S.

²³ S. 212.02(12), F.S., defines “person” as any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and also any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number.

²⁴ S. 468.520(4), defines “employee leasing” as an arrangement whereby a leasing company assigns its employees to a client and allocates the direction of and control over the leased employees between the leasing company and the client.

²⁵ 2022 Regular Session Revenue Estimating Conference, Impact Conference Results (Jan. 07, 2022), ps. 173-175, <http://edr.state.fl.us/content/conferences/revenueimpact/archives/2022/pdf/Impact0107.pdf> (last visited Feb. 02, 2022).

The Revenue Estimating conference estimated that the bill as filed would have a negative cash and recurring impact on local government revenues of \$0.1 million in FY 2022-23.²⁶ The REC has not reviewed the bill as amended; however, staff estimates that the amended bill may have a larger negative fiscal impact due to additional entities that would qualify for the exemption.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Charges for private investigations provided by small private investigative agencies will be exempt from sales tax.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce revenues collected by counties and municipalities related to taxes and private investigative services; however, an exemption may apply. The insignificant fiscal impact exemption may apply because the statewide fiscal impact to counties and municipalities is likely insignificant. The REC has not reviewed the bill as amended.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue may be required to undergo rulemaking to update Rule 12A-1.0092 of the Florida Administrative Code.²⁷

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On Tuesday, February 8, 2022, the Regulatory Reform Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Clarified that the sales tax exemption applies to “private investigative agencies.”
- Applied the \$50,000 compensation threshold to “each” of the three or less employees, instead of to the businesses, and specifies that it must be “taxable” compensation.

The analysis is drafted to the committee substitute as passed by the Regulatory Reform Subcommittee.

²⁶ *Id.*

²⁷ Fla. Dept. of Revenue, Agency Analysis of 2022 HB 763, p.2 (Dec. 16, 2021).