

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 Finance and Tax

BILL: CS/SB 116

INTRODUCER: Commerce and Tourism Committee and Senator Rodriguez

SUBJECT: Taxation of Investigative Services

DATE: March 13, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Gross</u>	<u>Babin</u>	<u>FT</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 116 exempts from the sales and use tax private investigation services provided by a small private investigative agency.

The bill defines the term “small private investigative agency” as a licensed private investigator that employs three or fewer full-time or part-time employees and, during the previous calendar year, performed private investigation services in which the charges for the services performed were less than \$150,000.

The bill provides emergency rulemaking authority for the Department of Revenue.

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.2 million in Fiscal Year 2023-2024, with a recurring impact of \$1.3 million. The bill will reduce local revenues by \$300,000 in Fiscal Year 2023-2024, with a recurring local impact of \$300,000.

The bill takes effect July 1, 2023. Emergency rulemaking authority granted to the Department of Revenue takes effect upon the bill becoming a law.

II. Present Situation:

Florida Sales and Use 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 and a 5.5 percent sales and use tax on the rental of commercial real estate.⁴ 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.⁵

In addition to the state tax, counties may levy local discretionary surtax, comprised of separate surtaxes.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."⁷ Discretionary sales surtax rates currently levied vary by county in a range from 0.0 to 1.5 percent.⁸

Currently, Florida's sales tax is predominately limited to the taxation of tangible personal property and services that are a part of a sale.⁹

However, in 1986, performing or providing any service was made subject to sales tax effective July 1, 1987.¹⁰ The Legislature, in 1987, narrowed taxable sales of services to exempt essential services such a medical and health services, agricultural services, social services, or religious or humanitarian services.¹¹ Later in 1987, the sales and use tax on services was repealed.¹²

Effective September 1, 1992, the following services were made and continue to be subject to the sales and use tax:

- Charges for detective, burglar protection, and other protection services;
- Nonresidential cleaning; and
- Nonresidential building pest control services.¹³

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), F.S.

⁴ Section 212.031, F.S.

⁵ Section 212.07(2), F.S.

⁶ Section 212.055, F.S.

⁷ Section 212.054, F.S.

⁸ Office of Economic and Demographic Research (EDR), The Florida Legislature, *Florida Tax Handbook*, 2022 Local Discretionary Sales Surtax Rates in Florida's Counties, 231-232 (2022), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2020.pdf> (last visited Mar. 07, 2023).

⁹ Section 212.02(16), F.S. See also 12A-1.006, F.A.C.

¹⁰ Chapter 86-166, L.O.F.

¹¹ Chapter 87-6, L.O.F.

¹² Chapter 87-548, L.O.F.

¹³ Chapter 92-319, L.O.F and section 212.05(1)(i)1., F.S.

Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services oversees the regulation of licensing of private investigative services.¹⁴ As of December 31, 2022, the Division has issued 2,689 private investigative agency licenses and 7,136 private investigator licenses.¹⁵

A “private investigator” is defined as any individual who, for consideration, advertises as providing or performs private investigation.¹⁶ A “private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing privation investigations.¹⁷ 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.¹⁸

Any person, firm, company, partnership, or corporation that engages in business as a private investigative agency must have a Class “A” license.¹⁹ To become a private investigator in Florida, a Class “C” Private Investigator license is required.²⁰ In order to obtain a Class “C” license, an applicant must have two years of lawfully gained, verifiable, full-time experience, or training in one, or a combination of more than one, of private investigative work that provides equivalent experience, certain college coursework, or successful completion of any law enforcement-related training received from any federal, state, county, or municipal agency.²¹

III. Effect of Proposed Changes:

The bill exempts from the sales tax private investigation services provided by a small private investigative agency to a client.

¹⁴ Chapter 493, F.S.

¹⁵ Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2022), available at https://www.fdacs.gov/content/download/82618/file/Number_of_Licensees_By_Type.pdf (last visited Mar. 8, 2023).

¹⁶ Section 493.6101(16), F.S.

¹⁷ Section 493.6101(15), F.S.

¹⁸ Section 493.6101(17), F.S.

¹⁹ Section 493.6201(1), F.S.

²⁰ Section 493.6201(5), F.S.

²¹ Section 493.6203(4), F.S.

The bill defines a “small private investigative agency” as a private investigator licensed under s. 493.6201, F.S., which:

- Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employment leasing arrangement as defined in s. 468.520(4), F.S.; and
- During the previous calendar year, performed private investigation services otherwise taxable under ch. 212, F.S., in which the charges for the services performed were less than \$150,000 for all its businesses related through common ownership.

The exemption may not apply in the first calendar year that an agency conducts sales of services taxable under ch. 212, F.S.

The bill grants emergency rulemaking authority for the Department of Revenue.

The bill takes effect July 1, 2023. Emergency rulemaking authority granted to the Department of Revenue takes effect upon the bill becoming a 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.

Subsection (b) of Art. VII, s. 18 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,^{22, 23} which is \$2.3 million or less for Fiscal Year 2023-2024.²⁴

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$200,000 in Fiscal Year 2023-2024. Therefore, the mandates provision may not apply.

²² FLA. CONST. art. VII, s. 18(d).

²³ 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 Mar. 8, 2023).

²⁴ Based on the Demographic Estimating Conference’s estimated population adopted on July 18, 2022. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/archives/220718demographic.pdf> (last visited Mar. 8, 2023).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference determined the bill will reduce General Revenue Fund receipts by \$1.2 million in Fiscal Year 2023-2024, with a recurring impact of \$1.3 million. The bill will reduce local revenues by \$300,000 in Fiscal Year 2023-2024, with a recurring local impact of \$300,000.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 212.08 of the Florida Statutes.

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 14, 2023:

The amendment clarifies that a private investigative agency is not permanently exempted from the sales tax because it qualified for the tax exemption in the previous year. The amendment also provides that a business is not exempt the first calendar year the agency conducts sales of services taxable.

- B. **Amendments:**

None.

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