

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 Appropriations

BILL: HB 7109, 1st Eng.

INTRODUCER: Ways and Means Committee and Representative Boyd

SUBJECT: Taxation

DATE: May 2, 2017

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Diez-Arguelles</u>	<u>Hansen</u>	<u>AP</u>	Fav/1 amendment

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

Sections I. – VIII. of the analysis discuss HB 7109, as passed by the House of Representatives. Section IX. describes the amendment adopted by the Senate Appropriations Committee.

HB 7109 provides for a wide range of tax reductions and modifications that affect households and businesses and improve tax administration. The bill:

- Allows low-income residents of homes for the aged to prove their income by providing an affidavit to the property appraiser;
- Provides a 50 percent discount in property taxes to certain multifamily, low-income housing projects;
- Deletes a requirement that circuit courts provide estate administration information to the Department of Revenue;
- Provides guidance for the determination of whether certain heavy construction and agricultural equipment returned under a rent-to-purchase option is inventory and exempt from property tax;
- Repeals several annual license taxes and registration fees;
- Repeals a cigarette tax distribution to the Sanford-Burnham Medical Research Institute;
- Reduces the state sales tax rate on the rental of commercial real estate from 6.0 percent to 4.5 percent for two years, beginning January 1, 2018, then maintains a permanent tax rate reduction from 6.0 percent to 5.5 percent, beginning January 1, 2020;
- Sets forth procedures for certain resellers of admissions to receive a refund of taxes paid when they make a sale to a tax-exempt person;

- Repeals a requirement that a tax notice be placed on vending machines, and the related penalty;
- Increases the exempt sales price for farm trailers from \$20,000 to \$25,000;
- Exempts from sales tax certain animal health products and other agricultural items;
- Extends the Community Contribution Tax Credit against sales tax, corporate income tax, and insurance premium tax from June 30, 2018, to June 30, 2019, and provides \$21.4 million of credits for donations related to housing for special needs persons and low-income households;
- Exempts from sales tax certain purchases made by municipally-owned golf course operators;
- Exempts from sales tax products used to control menstrual flow;
- Exempts from sales tax diapers and incontinence products;
- Provides an annual sales tax holiday for veterans;
- Exempts from sales tax certain purchases of tangible personal property by related companies covered by the federal Dodd-Frank Act;
- Provides \$20 million of Contaminated Site Rehabilitation Tax Credits for Fiscal Year 2017-2018 and increases the current \$5 million annual credit limit to \$10 million, thereafter;
- Increases the amount of Research and Development Tax Credits that may be taken against the Corporate Income Tax from \$9 million to \$20 million for calendar year 2018;
- Extends the Corporate Income Tax filing extension period from 5 months to 6 months for certain corporate taxpayers to conform with federal changes;
- Requires estimated payments of Corporate income tax that are due on the last Saturday or Sunday in June to be paid on or before the last Friday in June;
- Provides that tax collectors and certain county commissions have the sole authority to contract with private license tag agents for the operation of a branch office to issue and renew license tag registrations and motor vehicle titles;
- Exempts from license fees the registration of certain marine boat trailers;
- Requires local motor fuel taxes to be renewed before July 1 to be effective on September 1 of the year they expire;
- Changes the filing due date for Reemployment Assistance Tax returns and allows the Department of Revenue to waive penalties for late filing in certain circumstances;
- Redefines “beer” for purposes of the beverage law;
- Exempts from sales tax the sale of college textbooks and instructional materials for one year;
- Provides a ten-day “back-to-school” holiday for clothing, footwear, school supplies, and computers; and
- Provides a nine-day “disaster preparedness” holiday for certain items related to disaster preparedness.

Except as otherwise provided, the bill takes effect on July 1, 2017.

The total fiscal impact of the bill in Fiscal Year 2017-2018 is a reduction of \$296.7 million. This includes reductions of \$238.5 million to the General Revenue Fund, \$2.6 million to state trust funds, and \$55 million to local governments. **See Section V., Fiscal Impact Statement for details.**

This bill may be a mandate requiring a two-thirds vote of the membership of each House of the Legislature. See Section IV. A., Constitutional Issues for details.

II. Present Situation:

The present situation for each issue is described in the Effect of Proposed Changes section below.

III. Effect of Proposed Changes:

Section 1 – Ad Valorem Tax: Nonprofit Homes for the Aged, Income Affidavits

Present situation: Certain portions of homes for the aged may be exempt from property tax if the owner meets certain statutory requirements.¹ Relevant to the bill, units or apartments of a qualifying home for the aged are exempt from tax if they are restricted for use as a permanent residence by the following low-income persons:

- Persons who have gross incomes² of not more than \$7,200³ per year and who are 62 years of age or older.
- Couples, one of whom must be 62 years of age or older, having a combined gross income of not more than \$8,000⁴ per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged.
- Persons who are totally and permanently disabled and who have gross incomes of not more than \$7,200 per year.⁵
- Couples, one or both of whom are totally and permanently disabled, having a combined gross income of not more than \$8,000 per year, or the surviving spouse thereof, who lived with the deceased at the time of the deceased's death in a home for the aged.

Homes for the aged must annually apply for exemption.⁶ A home for the aged must include with the application an affidavit from each person residing in a unit or apartment attesting that he or she resides in the unit or apartment and, in good faith, makes that unit or apartment his or her permanent residence.⁷ The application notifies the facility that it may be required to provide supplemental information upon a reasonable request by the property appraiser.⁸

Proposed change: The bill provides that each facility must file with the annual application for exemption an affidavit approved by the Department of Revenue from each person who occupies a unit or apartment stating the person's income. The affidavit is prima facie evidence of the person's income. If the property appraiser determines, at a later time, that additional documentation proving an affiant's income is necessary, the property appraiser may request such

¹ See s. 196.1975, F.S.

² Includes social security benefits for purposes of this exemption. Section 196.1975(6), F.S.

³ The income limitation is adjusted annually. See s. 196.1975(4)(b), F.S. For 2017, the annual limit is \$31,877. See Florida Property Tax Valuation and Income Limitation Rates, Florida Department of Revenue, available at <http://floridarevenue.com/dor/property/resources/limitations.html>.

⁴ See *id.* For 2017, the annual limit for couples is \$35,787.

⁵ The income limitations do not apply to totally and permanently disabled veterans that meet the requirements of s. 196.081, F.S. Section 196.1975(4)(a), F.S.

⁶ Section 196.1975(9)(b), F.S.

⁷ *Id.*

⁸ Florida Department of Revenue Form DR-504HA, Ad Valorem Tax Exemption Application and Return, Homes for the Aged, available at http://floridarevenue.com/Pages/forms_index.aspx (last visited April 27, 2017).

documentation. The facility is not required to provide an income affidavit from a resident who is a totally and permanently disabled veteran who meets the requirements of s. 196.081, F.S.

Section 2 – Ad Valorem Tax: Affordable Housing

Present situation: All property must be assessed at just value for ad valorem tax (property tax) purposes.⁹ The Legislature is authorized to exempt from property tax property used predominately for educational, literary, scientific, religious or charitable purposes.¹⁰

Florida exempts certain property used to provide affordable housing to persons with income classified as extremely low, very low, low, or moderate.¹¹ The property must be owned entirely by a not for profit corporation that qualifies as charitable under s. 501(c)(3) of the Internal Revenue Code.¹² The property appraiser must also ensure that the property complies with the requirements of s. 196.195, F.S., which provides criteria for determining that a property owner is nonprofit, and s. 196.196, F.S., which provides the extent to which property may be treated as exempt due to charitable, religious, scientific or literary use.

In determining whether an applicant is a nonprofit or profit-making venture, s. 196.195, F.S., outlines the statutory criteria that a property appraiser must consider.¹³ The applicant must show that “no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.”¹⁴

In determining whether the use of a property qualifies as charitable, s. 196.196, F.S., requires the property appraiser to consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other qualifying entities.¹⁵

The Florida Housing Finance Corporation (FHFC) was created by the Legislature to administer the governmental function of financing or refinancing housing and related facilities, and is described as an “entrepreneurial public corporation” that is housed in, but not controlled by, the Department of Economic Opportunity.¹⁶ The FHFC provides numerous financing resources, such as loans and tax credits, to real estate developers who build certain low-income housing projects. Rental property developers who receive financing from the FHFC must agree to enter a Land Use Restrictive Agreement (LURA), which subjects the rental property to certain limitations in exchange for preferable financing, in the way of low-interest loans or tax credits.¹⁷ The purpose of a LURA is to ensure FHFC-financed housing remains affordable by limiting the maximum rent that can be charged for a unit and by requiring that some or all of the units be made available

⁹ FLA CONST., art. VII, s. 4.

¹⁰ FLA CONST., art. VII, s. 3.

¹¹ Section 196.1978, F.S.

¹² *Id.*

¹³ Section 196.195, F.S.

¹⁴ Section 196.195(3), F.S.

¹⁵ Section 196.196(1)(a)-(b), F.S.

¹⁶ Section 420.504(1), F.S.

¹⁷ Correspondence between Florida Housing Finance Corporation staff and House Ways and Means Committee staff (on file with the Senate Appropriations Subcommittee on Finance and Tax).

only to households with specified lower incomes.¹⁸ The land use restrictions are documented in the LURA, and recorded in the public record.¹⁹ Recording the LURA means its restrictions run with the land, so that if the property is sold during the term of the agreement, the buyer must also abide by the terms of the LURA. Depending on applicable federal and state program requirements, the restriction period for the property may be as short as 10 years or as long as 50 years.

Proposed change: The bill provides a 50 percent discount on the amount of property tax otherwise due for property used to provide affordable housing. The property will be considered to be used for a charitable purpose, notwithstanding the requirements of ss. 196.195 and 196.196, F.S. In order to qualify for the discount, the property must:

- Provide affordable housing to natural persons or families meeting the extremely low, very low, or low-income limits specified in s. 420.0004, F.S.;
- Contain more than 70 units that provide affordable housing to the above group; and
- Be subject to an agreement with the Florida Housing Finance Corporation to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.

The discount will begin in the 16th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount will terminate when the property is no longer serving extremely low, very low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

Sections 3 and 42 – Department of Revenue Administration: Estate Administration Reporting and Notice to Creditors

Present situation: Each circuit judge of this state must notify the DOR and the Agency for Healthcare Administration on a monthly basis of names and certain other information related to all estates of decedents that commenced estate administration during the preceding month.²⁰ Due to changes in estate and intangible tax law, the DOR no longer uses or needs this information.

Proposed change: The bill removes the DOR from the monthly reporting requirement for circuit court judges. However, the personal representative must provide to the DOR a copy of the notice of creditors when the DOR is a creditor.

¹⁸ Correspondence between Florida Housing Finance Corporation staff and House Ways and Means Committee staff (on file with the Senate Appropriations Subcommittee on Finance and Tax).

¹⁹ See. s. 420.504(46), F.S.

²⁰ Section 198.30, F.S.

Section 4 – Ad Valorem Tax: Inventory

Present situation: Florida exempts from property tax all items of inventory.²¹ Inventory includes goods, wares, and merchandise that are held for sale or lease to customers in the ordinary course of business.²²

Items of inventory become taxable after they are sold or leased. If an item of inventory is sold, the item will become taxable to the buyer after the sale; if an item of inventory is leased or rented, the item will become taxable to the owner after it is leased the first time.²³

If an item of inventory is sold, but is returned to the seller because the sale falls through, the property may reacquire its status as inventory. If the item was sold under a “rent to purchase” arrangement, a property appraiser may review the provisions in the contract to determine whether a lease or sale has occurred. If it was a sale, the property may reacquire its status as inventory; if it was a lease, the property remains taxable.

Proposed change: The bill classifies as inventory construction and agricultural equipment weighing 1,000 pounds or more that is returned to a dealership under a rent to purchase option and held for sale to customers in the ordinary course of business.

Sections 5-14, 19, 21, 35-36, and 47 – Sales and Use Tax: Registration Fees

Present situation: The following registration and licensing fees must be paid to the DOR:

- Terminal supplier, importer, exporter, blender, biodiesel manufacturer, or wholesaler of motor fuel license tax (\$30 annually);²⁴
- Private or common carrier of motor fuel license tax (\$30 annually);²⁵
- Terminal operator license tax (\$30 annually);²⁶
- Any person who is not otherwise licensed pursuant to ch. 206 (fuel taxes) and who produces, imports, or causes to be imported pollutants, a temporary license fee (\$30 annually);²⁷
- Commercial air carrier license application fee (\$30 annually);²⁸
- Natural gas fuel retailer license fee (\$5 annually);²⁹
- Unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the DOR (unspecified amount);³⁰
- Most sales tax dealers (one time \$5 registration fee for paper return filers);³¹
- Drycleaning facility or drycleaning drop-off facility registration fee (\$30 annually);³² and

²¹ Section 196.185, F.S.

²² Section 192.001(11)(c), F.S.

²³ *See id.*

²⁴ Section 206.02, F.S.

²⁵ Section 206.021, F.S.

²⁶ Section 206.022, F.S.

²⁷ Section 206.9943, F.S.

²⁸ Section 206.9865, F.S.

²⁹ Section 206.9952, F.S.

³⁰ Section 212.0596, F.S.

³¹ Section 212.18, F.S.

³² Section 376.70, F.S.

- Any person producing in, importing into, or causing to be imported into, or selling in, this state perchloroethylene registration fee (e.g., chemical sold to drycleaning facilities).³³

In addition, when motor fuel or diesel fuel is sold by a retail dealer to a person entitled to a refund, such person may file a refund claim pursuant to s. 206.41, F.S. The DOR is authorized to deduct \$2 from each refund claim.

Proposed change: The bill eliminates the license registration fees and the \$2 deduction described above.

Section 15 -- Cigarette Tax: Biomedical Research

Present situation: Chapter 210, F.S., governs taxes on tobacco products. Cigarette tax collections received by the Division of Alcoholic Beverages and Tobacco (division) in the Department of Business and Professional Regulation are deposited into the Cigarette Tax Collection Trust Fund. Section 210.20, F.S., provides for the payment of monthly distributions as follows:

From the total amount of cigarette tax collections:³⁴

- 8.0 percent service charge to the General Revenue Fund;³⁵ and
- 0.9 percent to the Alcoholic Beverage and Tobacco Trust Fund.

From the remaining net collections:³⁶

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the Moffitt Center;³⁷ and
- 1.0 percent to the Biomedical Research Trust Fund in the Department of Health (DOH).³⁸

After the above distributions are made, the remaining balance of net cigarette tax collections is deposited in the General Revenue Fund.³⁹

The funds deposited into the Biomedical Research Trust Fund are appropriated annually in an amount not to exceed \$3 million for the purpose of establishing activities and grant opportunities

³³ Section 376.75(2), F.S.

³⁴ See s. 210.20(2)(a), F.S.

³⁵ See s. 215.20(1), F.S. concerning the appropriation of the eight percent service charge to the General Revenue Fund.

³⁶ See s. 210.20(2)(a), F.S.

³⁷ See s. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the H. Lee Moffitt Cancer Center and Research Institute was initiated in 1998, using 2.59 percent for the calculation on net cigarette tax collections. See ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04 percent from July 1, 2014 through June 30, 2033. The statute provides that the “appropriation ... shall not be less than the amount that would have been paid to the H. Lee Moffitt Cancer Center and Research Institute in fiscal year 2001-2002, had this subparagraph been in effect,” resulting in the distribution being more than 4.04 percent of net collections. See s. 8 of Chapter 2014-38., Laws of Fla.

³⁸ Pursuant to s. 210.20(2)(c), F.S., these funds (constituting 1.0 percent of net collections) are appropriated in an amount up to \$3 million annually during the period of July 1, 2013 to June 30, 2033, to the DOH and the Sanford-Burnham Medical Research Institute for the purpose of those entities working to establish activities and grant opportunities relating to biomedical research.

³⁹ See s. 210.20(3), F.S.

in relation to biomedical research.⁴⁰ The Department of Health and the Sanford-Burnham Medical Research Institute are required to use the funding to work in conjunction for these purposes.

Proposed change: The bill repeals the 1.0 percent distribution to the Biomedical Research Trust Fund. Upon this bill becoming a law, those funds will instead go to the General Revenue Fund.

Section 16 – Sales and Use Tax: Commercial Real Estate Rentals (Business Rent Tax)

Present situation: Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease of real property.⁴¹ State sales tax is due at the rate of six percent on the total rent paid for the right to use or occupy commercial real property and county local option sales surtax may also be levied on total rent.⁴² If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are numerous commercial rentals that are not subject to sales tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.

Florida is the only state to charge sales tax on commercial rentals of real property statewide; however, similar taxes are imposed by some cities.⁴³

The Legislature's Office of Economic and Demographic Research issued a report on the business rent tax in 2014.⁴⁴

Proposed change: The bill reduces the state sales tax rate on rental of commercial real estate (business rent tax) from six percent to 4.5 percent for two years, beginning January 1, 2018, then maintains a permanent tax rate reduction from six percent to 5.5 percent beginning January 1, 2020.

⁴⁰ Section 210.20(2)(c), F.S.

⁴¹ Chapter 1969-222, Laws of Fla.

⁴² Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

⁴³ See e.g. New York City's Commercial Rent Tax. See New York City Department of Finance website, available at <http://www1.nyc.gov/site/finance/taxes/business-commercial-rent-tax-crt.page> (last visited April 27, 2017).

⁴⁴ Office of Economic and Demographic Research, Economic Impact: Sales Tax on the Rental of Real Property (Nov. 15, 2014), available at <http://edr.state.fl.us/Content/returnoninvestment/SalesTaxontheRentalofRealProperty.pdf> (last visited April 27, 2017).

Section 17 – Sales and Use Tax: Resales of Admissions

Present situation: Section 212.04, F.S., governs the state sales tax on admissions. Sales tax is levied at the rate of six percent of the sales price or the actual value received from admissions. Admissions are defined as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any:

- Place of amusement, sport, or recreation including, but not limited to, theaters, shows, exhibitions, games, races;
- Place where a charge is made by way of ticket sales, gate charges, and similar fees or charges;
- Receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation; and
- All dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.⁴⁵

Several exceptions and exemptions exist, such as:

- Memberships for physical fitness facilities owned or operated by any hospital;
- Admissions to athletic or other events sponsored by a school;
- Fees or charges imposed by certain not-for-profit organizations;
- Events sponsored by a governmental entity, nonprofit sports authority, or nonprofit sports commission under certain circumstances;
- Admissions to certain professional and collegiate sports all-star and championship games;
- Entry fees for freshwater fishing tournaments;
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event;
- Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.⁴⁶

Generally, sales of tangible personal property made for resale are exempt from sales tax.⁴⁷ This treatment does not apply to sales of taxable admissions.⁴⁸

Proposed change: The bill provides an exemption for certain resales of admissions to a purchaser that is eligible for an exemption from sales tax. The bill allows a person who has purchased a taxable admission and resells that admission to an entity with a valid exemption certificate from the DOR to seek a refund or credit of the tax paid on its initial purchase of the admission from the vendor of the initial sale. The vendor may then seek a refund or credit of the tax from the DOR.

⁴⁵ Section 212.02(1), F.S.

⁴⁶ See s. 212.04(2)(a), F.S.

⁴⁷ See the definition of “retail sale” in s. 212.02(14), F.S. Also see s. 212.07, F.S.

⁴⁸ Section 212.04(1)(c), F.S.

Section 18 – Sales and Use Tax: Vending Machine Sales

Present situation: An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the DOR, has obtained a separate registration certificate for each county in which such machines are located, and has affixed a notice to each vending machine selling food or beverages.⁴⁹ The penalty for noncompliance with the notice requirement is \$250 per machine.⁵⁰ The notice is intended to notify customers that each vending machine must contain the required notice, and if a machine does not have such notice the customer may report the noncompliance to the DOR and potentially receive a cash reward.⁵¹

The DOR estimates that it receives approximately 100-150 calls per year on the toll free number provided on the notice related to vending machines, but almost all of those calls are individuals complaining that the machine does not work. The DOR has never issued the \$250 penalty, nor the reward for reporting noncompliance.

Proposed change: The bill removes the notice requirement, the associated penalty, and the customer reward for reporting noncompliance.

Section 20 – Sales and Use Tax: Various Exemptions

Agriculture-Related Exemptions

Present situation: Specific items for agricultural use are exempt from the sales and use tax.⁵² For example, disinfectants, fertilizers, insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock. To obtain the exemption, the purchaser must sign a certificate stating that the item to be exempted is for the exclusive use designated in statute.⁵³

Also exempt from the sales and use tax are sales of drugs to or by a veterinarian in connection with medical treatment⁵⁴ and purchases by a veterinarian of commonly recognized substances possessing curative or remedial properties which are ordered and dispensed as treatment for a diagnosed health disorder by or on the prescription of a duly licensed veterinarian, and which are applied to or consumed by animals for alleviation of pain or the cure or prevention of sickness, disease, or suffering.⁵⁵

Additionally, the portion of the sales price below \$20,000 for a trailer that weighs 12,000 pounds or less that is purchased by a farmer is exempt from the sales and use tax. The trailer must be

⁴⁹ Section 212.0515(3)(a), F.S.

⁵⁰ Section 212.0515(4), F.S.

⁵¹ Section 212.0515(3)(b), F.S.

⁵² Section 212.08(5)(a), F.S.

⁵³ Section 212.08(5)(a), F.S.

⁵⁴ Section 212.08(2)(f), F.S.

⁵⁵ Section 212.08(2)(h), F.S.

used exclusively in agricultural production or to transport farm products from the farm to the place where the farmer transfers ownership of the product or products.⁵⁶

Proposed change: Effective July 1, 2017, the bill adds the following to the list of items in agricultural use that are exempt from the sales and use tax:

- Hog wire and nylon mesh netting used on a farm for protection from predatory or destructive animals;
- Barbed wire fencing, including gates and materials used to construct or repair such fencing, used on a beef or dairy cattle farm;
- Compressed or liquefied oxygen used in aquaculture production;
- Aquaculture health products; and
- Animal health products which are applied to, administered to, or consumed by livestock or poultry for alleviation of pain or the cure or prevention of sickness, disease, or suffering, including:

For purposes of the exemptions for animal health products and aquaculture health products, the bill provides that this exemption is remedial in nature and applies retroactively, but does not create a right to a refund or credit of any tax paid before the effective date of the bill.

The bill increases the portion of a trailer's sales price exempt from the sales and use tax to \$25,000.

Purchases by Municipal Golf Courses

Present situation: Sales made to the United States government, the state, or any county, municipality, or political subdivision of the state are exempt from sales tax, *when payment is made directly to the dealer by the governmental entity*;⁵⁷ when payment is made by another who is subsequently reimbursed by the government, the sale is generally not exempt.⁵⁸

Proposed change: The bill provides that the phrase “when payment is made directly to the dealer by the governmental entity” includes a situation in which an entity under contract with a municipality to maintain and operate a municipally owned golf course pays for a purchase or lease for the operation or maintenance of that golf course using the golf course revenues or other funds provided by the municipality for use by that entity. The new provision applies to a municipally owned golf course that is located in a county with a population of at least 2 million residents and is the site upon which youth education programs are delivered on an ongoing basis by a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code.

Products Used to Control Menstrual Flow

Present situation: Products used to absorb menstrual flow are currently subject to state sales and use tax. These products include tampons, sanitary napkins, panty liners, and menstrual cups.

⁵⁶ Section 212.08(3)(b), F.S.

⁵⁷ Section 212.08(6), F.S.

⁵⁸ *Id.*

From 1977 through 1986, the sales of products used to absorb menstrual flow in Florida were specifically exempt from sales and use tax.⁵⁹ However, the Legislature repealed various sales tax exemptions in 1986, including products used to absorb menstrual flow.⁶⁰ The 1986 legislation also created a commission to review the changes made by Chapter 1986-166, L.O.F., and to recommend prior to the subsequent legislative session whether to allow the repeal to remain effective. The commission's findings did not specifically address the repeal of the exemption for products used to absorb menstrual flow, but it recommended that all sales tax exemptions not specifically recommended in the report should be repealed.⁶¹

In 2016, a class action lawsuit was filed in Leon County, Florida to challenge the state sales tax levied on the sale of products used to absorb menstrual flow.⁶² The plaintiffs argue that such products are necessary for women's health and should be exempt as common household remedies. The plaintiffs also argue that the taxation of products used to absorb menstrual flow violates the Equal Protection Clauses of both the Florida and United States Constitutions. The plaintiffs seek declaratory and injunctive relief, along with a refund of taxes. The case is currently pending in circuit court.

Of the 45 states⁶³ that currently levy sales and use tax, eight states do not impose the tax on the sale of products used to absorb menstrual flow. Illinois,⁶⁴ Maryland,⁶⁵ Massachusetts,⁶⁶ Pennsylvania,⁶⁷ Minnesota,⁶⁸ New Jersey,⁶⁹ Connecticut,⁷⁰ and New York⁷¹ have passed legislation to specifically exempt these products from sales and use tax.

Proposed change: Effective January 1, 2018, the bill creates a sales tax exemption for products used to absorb menstrual flow.

Diapers and Incontinence Products

Present situation: Certain medical products and supplies are exempt from sales and use tax, including supplies or medicine dispensed according to a prescription and other non-prescription common household remedies used in the cure, mitigation, treatment, or prevention of illness or disease.⁷²

⁵⁹ Chapter 77-193, Laws of Fla.

⁶⁰ Chapter 86-166, Laws of Fla.

⁶¹ Sales Tax Exemption Study Commission, *Report and Recommendations of the Sales Tax Exemption Study Commission* (April, 1987).

⁶² *Wendell v. Florida Dep't. of Rev.*, No. 2016 CA 001526 (Fla. Leon Cty. Ct. July 7, 2016).

⁶³ Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose state sales tax.

⁶⁴ 35 Ill. Comp. Stat. 110/3-5 (2016).

⁶⁵ Md. Tax-Gen. Code Ann., §11-211 (2016).

⁶⁶ Mass. Gen. Laws ch. 64H, § 6 (2016).

⁶⁷ 72 Pa. Cons. Stat. § 7204 (2016).

⁶⁸ Minn. Stat. §297A.67 (2016).

⁶⁹ N.J. Stat. Ann. § 54:32B-8.1 (2016).

⁷⁰ Conn. Gen. Stat. § 12-412 (2016).

⁷¹ N.Y. Tax Law §1115 (2016).

⁷² See s. 212.08(2)(a), F.S.

Alcohol wipes, bandages, and gauze are examples of common household remedies. Cosmetics⁷³ and toilet articles⁷⁴ are specifically excluded from the common household remedy exemption, notwithstanding the presence of medicinal ingredients therein. The Department of Business and Professional Regulation (DBPR) prescribe and approve a list of common household remedies that qualify for the exemption, which is certified by the DOR and included in the rules promulgated by the DOR.⁷⁵ Additional items can be added to the list at the discretion of the DBPR or through a process involving a Technical Assistance Advisory Committee.⁷⁶

Certain products relating to infants are exempt, including baby food, formulas, and teething lotion.⁷⁷ However, diapers are not currently exempt from sales and use tax in Florida.⁷⁸

Proposed change: Effective January 1, 2018, the bill establishes a sales tax exemption for the following items:

- Diapers;
- Incontinence undergarments;
- Incontinence pads; and
- Incontinence liners.

Veterans Sales Tax Holiday

Present situation: Florida is home to almost 1.6 million veterans⁷⁹ and 20 major military installations, with eight Military Exchanges on base.⁸⁰ Military Exchanges sell consumer goods and services tax free.

Proposed change: The bill provides an annual one-day sales tax holiday on November 11, beginning in FY 2017-18. During the holiday, certain clothing and footwear that cost \$60 or less are exempt from the state sales tax and county discretionary sales surtaxes when sold to a veteran.

The bill defines a veteran as any person who served in the active military, naval, or air service and who was honorably discharged or who later received an upgraded honorable discharge. To

⁷³ Section 212.08(2)(b)2., F.S., defines “cosmetics” as articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body for cleansing, beautifying, promoting attractiveness, or altering the appearance and also means articles intended for use as a compound of any such articles, including, but not limited to, cold creams, suntan lotions, makeup, and body lotions.

⁷⁴ Section 212.08(2)(b)3., F.S., defines “toilet articles” as any article advertised or held out for sale for grooming purposes and those articles that are customarily used for grooming purposes, regardless of the name by which they may be known, including, but not limited to, soap, toothpaste, hair spray, shaving products, colognes, perfumes, shampoo, deodorant, and mouthwash.

⁷⁵ Rule 12A-1.020, F.A.C.; Form DR-46NT, Nontaxable Medical Items and General Grocery List (R. 01/16), available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06368> (last visited April 29, 2017).

⁷⁶ Section 212.08(14), F.S.

⁷⁷ Rule 12A-1.020, F.A.C.; Form DR-46NT, Nontaxable Medical Items and General Grocery List (R. 01/16), available at <http://www.flrules.org/Gateway/reference.asp?No=Ref-06368> (last visited April 29, 2017).

⁷⁸ However, diapers for children and adults, diaper bags, and diaper inserts have been temporarily exempt from sales tax during sales tax holidays. See e.g. Rule 12AER16-01, F.A.C.

⁷⁹ See Department of Veterans of Affairs, State Summary, Florida, available at https://www.va.gov/vetdata/docs/SpecialReports/State_Summaries_Florida.pdf (last visited April 29, 2017).

⁸⁰ Military Exchange store locator, available at <https://www.shopmyexchange.com/exchange-stores> (last visited April 29, 2017).

be eligible for the sales tax holiday, a veteran must show proof of military status at the time he or she purchases the eligible items by presenting a DD Form 2, DD Form 2765, DD Form 214, veteran identification card, veteran health identification card, a valid driver license with the “V” or word “veteran” designation on it, or any other proof of veteran status issued by the Department of Highway Safety and Motor Vehicles.

The veteran’s sales tax holiday does not apply to the following sales:

- 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.

A dealer may choose not to participate in the annual holiday if less than five percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of clothing that would be exempt under the holiday. If a qualifying dealer chooses not to participate in the tax holiday, by November 1 each year, the dealer must notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business.

Dodd-Frank Act Exemption

Present situation: Sales of tangible personal property or services from a dealer to a related party are currently subject to the sales and use tax.

The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010⁸¹ (Dodd-Frank) requires that certain large banks and insurers (“systemically important financial institutions”) (hereinafter referred to as financial institutions) periodically submit recovery & resolution plans to the Federal Reserve and the Federal Deposit Insurance Corporation.⁸² Each plan must describe the financial institution’s strategy for recovery from a financial crisis, as well as its rapid and orderly resolution in the event of material financial distress or failure of the financial institution.

Under most plans, the financial institution may create a Shared Services Entity (SSE) to provide all of the support services that are currently provided by employees of the financial institution.⁸³ The purpose of an SSE is to separate and insulate these support services, including customer support functions, from the investment and asset management side of the financial institution, thus ensuring that these support services will continue to be provided despite major losses elsewhere in the business.

Because SSE’s will be separate legal entities from the affected financial institutions, sales of tangible personal property or services by SSEs to affected financial institutions will be subject to sales tax in Florida.

⁸¹ Pub. Law No. 111–203, H.R. 4173, 111th Cong. (July 21, 2010).

⁸² Federal Depository Insurance Corporation, Board of Governors of the Federal Reserve System, *Guidance for 2017 s. 165(d) Annual Resolution Plan Submissions By Domestic Covered Companies that Submitted Resolution Plans in July 2015*, 14, available at <https://www.fdic.gov/news/news/press/2016/pr16031b.pdf> (last visited April 29, 2017).

⁸³ U.S.C. s. 5365(d)(5).

Proposed change: The bill provides an exemption for sales of tangible personal property or services otherwise taxable under ch. 212, F.S. by a dealer to a related party where the purchaser can show that:

- The vendor and the purchaser are either:
- Referenced as either a "covered company," as described in 12 C.F.R. s. 243.2(f), or a "material entity," as described in 12 C.F.R. s. 243.2(l), in a resolution plan that has been submitted to an agency of the United States for the purpose of satisfying the Dodd Frank Act or any successor law, or
- Separate legal entities pursuant to a divestiture directed pursuant to the Dodd Frank Act or any successor law; and
- The sale would not have occurred between such related entities were it not for such resolution plan or divestiture;
- The services sold by the vendor to the purchaser are performed by an employee of the vendor, or by an independent contractor hired by the vendor where the vendor paid the tax imposed under this chapter; and
- In acquiring such property or services, the vendor did not claim an exemption from the tax imposed under this chapter or by another state.

Sections 20, 22 – 23 and 41 – Sales and Use Tax, Corporate Income Tax, and Insurance Premium Tax: The Community Contribution Program

Present situation: In 1980, the Legislature established the Community Contribution Tax Credit Program ("CCTCP") to encourage private sector participation in community revitalization and housing projects.⁸⁴ Broadly, the CCTCP offers tax credits to businesses or persons ("taxpayers") anywhere in Florida that contribute⁸⁵ to certain projects undertaken by approved CCTCP sponsors.⁸⁶

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.⁸⁷ As of November 2016, the CCTCP had 119 approved sponsors.⁸⁸

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S.;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.⁸⁹

⁸⁴ Chapter 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which is scheduled to be repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

⁸⁵ Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S., require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

⁸⁶ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

⁸⁷ See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

⁸⁸ DEO, Division of Community Development, Email to House Ways & Means staff (Nov. 8, 2016) (on file with the Ways & Means Committee and the Senate Appropriations Subcommittee on Finance and Tax).

⁸⁹ ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

In addition, eligible projects must be located in an area that was designated as an enterprise zone as of May 1, 2015⁹⁰ or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement. Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage in a rural community that had an enterprise zone designation as of May 1, 2015, may locate the project's infrastructure in any area of a rural county (inside or outside of the zone).

The DEO administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.⁹¹ Once approved by the DEO, the taxpayer must claim the community contribution tax credit from the DOR.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.⁹² The taxpayer may use the credit against corporate income tax, insurance premiums tax, or as a refund against sales tax.⁹³ Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.⁹⁴ Unused credits against sales taxes may be carried forward for three years.⁹⁵

The DOR may approve \$21.4 million in annual funding for projects that provide homeownership opportunities for low-income and very-low-income households or housing opportunities for persons with special needs and \$3.5 million for all other projects. "Persons with special needs" is defined in current statute to include adults requiring independent living services, young adults formerly in foster care, survivors of domestic violence, and people receiving Social Security Disability Insurance, Supplemental Security Income, or veterans' disability benefits.⁹⁶ During Fiscal Year 2015-2016, the DEO approved 430 tax credit applications submitted by 60 eligible sponsors for eligible projects located in 32 counties. For Fiscal Year 2016-2017, as of March 16, 2017, the DEO has approved 349 tax credit applications.⁹⁷ For Fiscal Year 2014-2015, as of December 31, 2014, the DEO has approved 383 tax credit applications.⁹⁸

⁹⁰ The Florida Enterprise Zone Act was partially repealed as of December 31, 2015- See Chapter 2015-221, L.O.F.; s. 290.016, F.S.

⁹¹ Sections 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

⁹² Sections 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

⁹³ See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

⁹⁴ Sections 220.183(1)(e) and (g); and 624.5105, F.S.

⁹⁵ Sections 212.08(5)(p)1.b. and f., F.S.

⁹⁶ Section 420.0004(13), F.S.

⁹⁷ Email correspondence with DEO staff (March 22, 2017 (on file with House Ways & Means Committee and on file with the Senate Appropriations Subcommittee on Finance and Tax).

⁹⁸ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, Community Contribution Tax Credits Extension, HB 311/SB 302, p. 19, January 26, 2015 Revenue Impact Results, *available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/_pdf/impact0126.pdf

The Legislature extended the CCTCP in 1984, 1994, 2005, 2014, and 2015.⁹⁹ It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.¹⁰⁰ The CCTCP cap, which started at \$3 million annually, is currently set at \$24.9 million. The cap has been reached every year since Fiscal Year 2001-2002.

The CCTCP expires June 30, 2018.¹⁰¹

Proposed change: The bill extends the expiration date of the CCTCP to June 30, 2019, at current funding levels.

Sections 24 and 34 – Corporate Income Tax: The Contaminated Site Rehabilitation Tax Credit

Present situation: In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;¹⁰²
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.¹⁰³

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, current law also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$5 million annually. In the event that approved tax credit applications exceed the \$5 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be

⁹⁹ Chs. 84-356, 94-136, 2005-282, 2014-38, and 2015-221 Laws of Fla.

¹⁰⁰ See Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, 2008-153, and 2015-221 Laws of Fla.

¹⁰¹ Chapter 2014-038, s. 15 Laws of Fla.

¹⁰² Section 376.30781, F.S.

¹⁰³ Section 220.1845, F.S.

transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

Since 1998, the VCTC Program has awarded \$66.9 million in VCTCs. Total requests for tax credits have met or exceeded the annual authorization since 2007.¹⁰⁴ Since 2012, the approved tax credits have averaged more than \$8.3 million per year. In 2015, the Legislature approved a one-time tax credit authorization of \$21.6 million, which allowed the DEP to issue certificates for all tax credits that were approved but had not received funding. In 2016, DEP received 99 tax credit applications and approved \$10.8 million in VCTCs for site rehabilitation work completed in 2015. However, some of the tax credit recipients will not receive their certificates until 2018 because the total eligible requests received for 2015 site rehabilitation work exceeded the \$5 million authorization by \$5.8 million. In 2017, DEP received 133 tax credit applications in the amount of \$14.8 million in requested tax credits for site rehabilitation work completed in 2016.¹⁰⁵

Proposed change: The bill provides the amount of credits that may be awarded in Fiscal Year 2017-2018 is \$20 million, and increases the annual amount of credits that may be awarded from \$5 million to \$10 million in each fiscal year thereafter.

Section 25 – Corporate Income Tax: The Research and Development Tax Credit

Present situation: The federal “U.S. Research and Experimentation Tax Credit” was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.¹⁰⁶ For the 2013 federal tax year, 16,624 companies claimed \$11.3 billion in R&D tax credits, including \$177.1 million claimed via “pass-through” entities.¹⁰⁷ At \$97.8 billion, manufacturing companies claimed the largest portion of research tax credits.¹⁰⁸

Section 220.196, F.S., authorizes an R&D tax credit against Florida’s corporate income taxes for certain businesses with qualified research expenses that received the federal credit. The tax credit is 10 percent of the difference between the current tax year’s R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.

¹⁰⁴ DEP, Florida Brownfields Redevelopment Program, 2016 Annual Report, *available at* http://www.dep.state.fl.us/Waste/quick_topics/publications/wc/brownfields/AnnualReport/2016/2015-16_FDEP_Annual.pdf (last visited April 27, 2017).

¹⁰⁵ DEP, Agency Analysis of 2017 HB 753, p. 5 (March 3, 2017).

¹⁰⁶ “The U.S. Research and Experimentation Tax Credit in the 1990s” by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at <http://www.nsf.gov/statistics/infbrief/nsf05316/> and “The Prospects for Economic Recovery,” prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93, *available at* https://www.cbo.gov/sites/default/files/97th-congress-1981-1982/reports/doc03b-entire_1.pdf (last visited on April 27, 2017).

¹⁰⁷ Internal Revenue Service, Statistics of Income Division, *available at* <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit> (last visited April 27, 2017).

¹⁰⁸ Internal Revenue Service, Statistics of Income Division, *available at* <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit> (last visited April 27, 2017).

The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business that originally earned them for up to five years following the year in which the qualified research expenses were incurred.

The maximum amount of credits that may be approved by the DOR during any calendar year is \$9 million. Applications for the credit may be filed with the DOR between March 20th and March 27th for qualified research expenses incurred within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.

The Legislature increased the \$9 million cap for credits to \$23 million for calendar year 2016.¹⁰⁹ This cap amount was allocated as follows:

- The DOR received 131 applications during the one week application window, requesting a total of \$52,481,052 in credits.
- 118 applications were approved. Each applicant received approximately 46 percent of the amount of credit determined in their application. These 118 applications requested \$50,447,562 in credit.
- 13 applications were denied for various reasons, including withdrawal by the taxpayer, duplicate applications, application figures resulting in zero credit requested, and failure to include a required certification letter from the Department of Economic Opportunity (DEO). These 13 applications requested \$2,003,490 in credit.

Proposed change: The bill increases the maximum amount of credits that may be granted in calendar year 2018 from \$9 million to \$20 million.

Sections 26 and 50 – Corporate Income Tax: Extension of Time to File Returns

Present situation: A corporate income taxpayer is required to file a Florida income tax return in every year that it is liable for Florida corporate income tax or is required to file a federal income tax return.¹¹⁰ Returns are due on or before the 1st day of the 5th month following the close of the taxable year.¹¹¹ Typically, corporate taxpayers may receive a 6-month extension of the time to file a return for both federal and Florida returns.¹¹²

In 2015, the federal government passed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015.¹¹³ This federal legislation moved the filing dates for most federal corporate income taxpayers to one month later, and, for taxable years beginning on or between January 1, 2016, and January 1, 2026, it limited the normal 6-month extension period to 5 months for calendar year taxpayers. The 2016 Legislature made identical changes to the relevant provisions of Florida law.¹¹⁴

¹⁰⁹ See Chapter 2015-221, s. 21, Laws of Fla.

¹¹⁰ Section 220.22, F.S.

¹¹¹ Section 220.222, F.S.

¹¹² See 26 U.S.C. s. 6081(b); s. 220.222(2)(b), F.S.

¹¹³ Pub. Law No. 114-41, H.R. 3236, 114th Cong. (July 31, 2015).

¹¹⁴ Section 16, ch. 2016-220, Laws of Fla.

In February 2017, the Internal Revenue Service (IRS) announced that although federal law provides for a 5-month extension for certain corporate taxpayers, the IRS will continue to grant a 6-month extension to these taxpayers.¹¹⁵

Proposed change: The bill extends from 5 months to 6 months, the extension time for calendar year corporate taxpayers to file their Florida returns for taxable years beginning on or after January 1, 2016, and before January 1, 2026. The change applies to taxable years beginning on or after January 1, 2016.

Section 27 – Corporate Income Tax: Payments of Estimated Tax

Present situation: Florida requires each corporate income taxpayer to declare its estimated tax for the taxable year, if the amount payable as estimated tax can be expected to be more than \$2,500.¹¹⁶ Taxpayers must pay estimated taxes in equal installments, depending on when they are required to file their declarations of estimated taxes.¹¹⁷ For the majority of taxpayers, the second estimated payment is due by June 30.¹¹⁸ Generally, if the day on which a payment is due falls on a Saturday, Sunday, or legal holiday, payments may be made on the next succeeding business day.¹¹⁹ When June 30 is a Saturday or Sunday, payments made on the following Monday fall into the next state fiscal year.

Proposed change: The bill provides that, notwithstanding any administrative rule or determination of the Department of Revenue to the contrary, an estimated payment that would otherwise be due on the last Saturday or Sunday of June must be paid by the last Friday of June.

Section 28 – Motor Vehicle Title and Registration Administration: Tax Collectors Contracting with License Tag Agents

Present situation: Section 320.03, F.S., provides that county tax collectors are authorized agents of the Department of Highway Safety and Motor Vehicles (DHSMV) for the purpose of issuing registration certificates, registration license plates, validation stickers, and mobile home stickers to applicants. Tax collectors are given system equipment, software, and access to the DHSMV's Florida Real Time Vehicle Information System (FRVIS) to perform these tasks. The Florida Statutes specify the service fees tax collectors are authorized to collect in exchange for providing these registration and titling services.¹²⁰ Additionally, tax collectors are required to keep full and complete records of all validation stickers, mobile home stickers, or other properties received by the DHSMV, and electronically transfer funds collected into the State Treasury no later than five working days after the close of business on the day the funds were received.¹²¹

¹¹⁵ IRS Article, dated February 8, 2017, available at <https://www.irs.gov/uac/rda-2017-02-08-2016-form-7004> (last visited April 27, 2017).

¹¹⁶ Section 220.24(1), F.S.

¹¹⁷ Section 220.33, F.S.

¹¹⁸ Section 220.33(1), F.S.

¹¹⁹ See e.g. Rule 12C-1.0222(1)(a), Fla. Admin. Code (relating to filing of corporate income tax returns).

¹²⁰ See ss. 320.04 and 319.32, F.S.

¹²¹ Section 320.03(3), F.S.

Although Florida law references “license tag agents” and “private tag agents” in various motor vehicle license provisions,¹²² there are no statutory provisions that expressly authorize DHSMV or tax collectors to enter into agreements with private license tag agents to provide these services. However, according to the DHSMV, there are over 50 private license tag agencies within the state.¹²³ Most of these private agents are located in counties that do not have an elected tax collector (specifically, Miami-Dade and Broward) and contract with the county to be a branch office for the county tag agency.¹²⁴ Additionally, these private license tag agents are authorized by county ordinance to charge fees to consumers in addition to the fees authorized in Florida Statutes.¹²⁵

According to the DHSMV, the DHSMV enters into a Memorandum of Understanding (MOU) with tax collectors and private license tag agents to ensure the DHSMV retains oversight of such agents by providing that:¹²⁶

- Agents are subject to any restrictions, limitations, or conditions enacted by the Florida Legislature;
- Tax collectors and the DHSMV may perform quality assurance audits;
- Tag agents are subject to information confidentiality agreements and must retain records as required by the state;
- The DHSMV may, at any time during normal business hours, without prior notice, inspect and audit all registration records and processes required by such agreement; and
- The DHSMV has sole discretion to terminate such agreement for cause.

Section 320.03(4), F.S., provides that, contingent upon state funds being made available for FRVIS, the system shall be installed in every tax collector’s and license tag agent’s office in accordance with a schedule established by DHSMV in consultation with the tax collectors. DHSMV does not currently charge tax collectors or agents for use of the system. According to the DHSMV, costs associated with the hardware, installation, annual maintenance, and the annual circuit costs for use of the systems range from approximately \$2,200 to \$2,700 per workstation, depending on the number of workstations.¹²⁷ In addition, there is a recurring cost of approximately \$750 to \$1,265 per workstation, depending on the number of workstations.

Proposed change: The bill provides that a tax collector or, in a charter county with an appointed tax collector, the county commission, has the sole authority to enter into a contract with a license

¹²² See ss. 320.03(4) and (8), and 320.04(1) and (2), F.S.

¹²³ Spreadsheet from the DHSMV, *Private Tag Agency List* (April 27, 2017) (on file with the Senate Appropriations Subcommittee on Finance and Tax).

¹²⁴ *Id.* and The Florida Senate, *Interim Project Report 2007-138, Services Provided by License Tag Agents* (Oct. 2006), available at http://archive.flsenate.gov/data/Publications/2007/Senate/reports/interim_reports/pdf/2007-138tr.pdf at p.5. (last visited April 28, 2017).

¹²⁵ For an example of such county regulations and a fee schedule, see Miami-Dade Implementing Order No.: 4-83, *Rules Regulations and Fee Schedule for Branch Auto Tag Agencies and Fees Paid by Agencies to the County* (Sept. 2007) available at <http://www.miamidade.gov/aopdfdoc/aopdf/pdffiles/ao4-83.pdf> (last visited April 28, 2017).

¹²⁶ See Memorandum of Understanding Between the Florida DHSMV, the Tax Collector for Broward County, and Private Auto Tag Agency, a License Plate Agent in Broward County, Florida, available at http://205.166.161.204/docs/2016/CCCM/20160614_502/22134_Exhibit%202%20MOU%20New.pdf (last visited April 28, 2017).

¹²⁷ Email from the DHSMV, *Estimated Tax Collector Office Costs* (April 27, 2017) (on file with the Senate Committee on Transportation).

tag agent for the operation of a branch office to issue and renew license tag registrations and motor vehicle titles. At the discretion of the tax collector, the contract may include a convenience fee if the tax collector does not reduce such services at any other tax collector branch office. The contracted license tag agent must pay to the department any costs incurred by the department for the initial purchase and routine maintenance of any necessary equipment for such license tag agent.

Section 29-31 -- Highway Safety Fees: Boat Trailer Fees for 501 (c)(3) Organizations

Present situation: Florida law imposes annual license taxes and one-time registration fees for the operation of motor vehicles, mopeds, motorized bicycles, tri-vehicles, trailers, and mobile homes.¹²⁸ The amount of the fee depends on the type and size of the vehicle. The annual tax and surcharge savings on a trailer weighing 500 lbs. or less is \$21.10.

Proposed change: The bill provides an exemption from the annual license tax and surcharges for any marine boat trailer owned and operated by a nonprofit organization that is exempt under s. 501(c)(3) of the Internal Revenue Code and which is used exclusively in carrying on their customary nonprofit activities.

Sections 32-33 – Motor Fuel Tax: Local Option Surtaxes

Present situation: Chapter 336, F.S., provides clear direction on the administration of rate changes for ninth-cent and local option fuel taxes imposed after July 1, 2002. For taxes imposed prior to July 2002, however, the statutes do not clearly identify adoption dates for ordinances or the length of time the adopted ordinance will remain in effect.

Proposed change: The bill provides specific guidelines and clarification for the notification, adoption, and expiration of the ninth-cent fuel taxes imposed prior to July 2002. For those tax levies, any re-imposition would be required to be levied before July 1 to allow the Department time to make any necessary changes to distribution programs.

Sections 37 - 39 – Reemployment Assistance Contributions: Due Dates and Waiver

Present situation: Due dates for reemployment tax installment payments and annual filings are provided for by statute and do not allow for additional time when the due dates fall on a Saturday, Sunday, or holiday. Quarterly filing due dates are provided for by rule and have provisions allowing later due dates when the date falls on a weekend or holiday.¹²⁹

Florida law requires certain employers to file their Employers Quarterly Report electronically.¹³⁰ When employers fail to file electronically as required, current law imposes a penalty. The tax collection service provider (the DOR) has no flexibility to waive the penalty.

¹²⁸ Section 320.08, F.S.

¹²⁹ Sections 443.131 and 443.141, F.S.

¹³⁰ Section 443.163, F.S.

Proposed change: The bill allows for annual filings and installment payments to be submitted the next day that is not a Saturday, Sunday, or holiday or any other day when the United States Postal Service is closed.

The bill allows a tax collection service provider (the DOR) to waive the penalty imposed for a failure to file electronically if the tax collection service provider finds a penalty to be inequitable. Grounds for inequity include the death or serious illness of the person who prepares and files the report, destructions of the business records by fire or another casualty, or unscheduled and unavoidable computer downtime.

Section 40 – Alcoholic Beverage Tax: Definition of Beer

Present situation: Section 563.01, F.S., defines “beer” and “malt beverage” to mean all brewed beverages containing malt. Section 534.01, F.S., defines “wine,” in part, to mean all beverages made from fresh fruits, berries, or grapes, either by natural fermentation or by natural fermentation with brandy added, in the manner required by the laws and regulations of the United States, and includes all sparkling wines, champagnes, combination of the aforesaid beverages, vermouths, and like products. Section 565.01, F.S., defines “liquor” to mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Pursuant to the Florida Beverage Law, spirituous seltzer beverages and similar products that do not contain malt and are not made from fresh fruits are classified as liquor for the purpose of brand registration in Florida.¹³¹

Alcoholic beverages that are not classified as a malt beverage or as wine, which contain less than 17.259 percent alcohol by volume, are subject to alcoholic beverage excise taxes at a rate of \$2.25 per gallon. However, brewed beverages that contain malt are subject to an excise tax rate of \$0.48 per gallon.

Some alcoholic beverages that meet the federal definition of “beer” do not contain malt.

Proposed change: The bill amends the definition of “beer” to align with the federal definition of beer set forth in 27-CFR 25.11, except that this bill limits “beer” to those alcoholic beverages that are under six percent alcohol by volume.

Sections 43-44 – Sales and Use Tax: One-Time Sales Tax Holidays

Present situation: Since 1998, the Legislature has enacted 20 temporary periods (commonly called “sales tax holidays”) during which time certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

¹³¹ Florida Department of Business and Professional Regulation, *Industry Notice 2017-001*, available at <http://www.myfloridalicense.com/dbpr/abt/documents/2017.01.17%20Industry%20Notice%202017-001%20Spirituous%20Seltzer%20Beverages.pdf> (last visited April 29, 2017).

Back-to-School Holidays--Florida has enacted a “back to school” sales tax holiday 15 times since 1998. The following table describes the dates, length, items, and value of the exemption during the back-to-school sales tax holidays in Florida:

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	\$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	\$100 or less	\$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	\$50 or less	\$50 or less	N/A	N/A	\$10 or less
July 24-August 1, 2004	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 23-31, 2005	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
July 22-30, 2006	9 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 4-13, 2007	10 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 13-15, 2010	3 days	\$50 or less	\$50 or less	\$50 or less	N/A	\$10 or less
August 12-14, 2011	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 3-5, 2012	3 days	\$75 or less	\$75 or less	N/A	N/A	\$15 or less
August 2-4, 2013	3 days	\$75 or less	\$75 or less	N/A	\$750 or less	\$15 or less
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 7 - 16, 2015	10 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 5 - 7, 2016	3 days	\$60 or less	\$60 or less	N/A	N/A	\$15 or less

Hurricanes and Disasters in Florida--In 2016, the Florida Office of Insurance Regulation estimated a gross probable loss of over \$1 billion due to hurricanes Hermine and Mathew in 2016,¹³² \$25 billion due to four hurricanes in 2004, and \$10.8 billion due to four in 2005.¹³³ Tropical Storm Fay was estimated to have resulted in \$242 million of damage in 2008.¹³⁴ The Florida Division of Emergency Management (DEM) recommends having a disaster supply kit that contains a battery operated radio, flashlight, batteries, and first-aid kit.¹³⁵

Proposed change: The bill creates a ten-day sales tax holiday from August 4, 2017, through August 13, 2017 (*Back-to-School Holiday*). During the holiday, the following items that cost \$100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

¹³² Florida Office of Insurance Regulation, Florida Office of Insurance Regulation Catastrophe Report, available at <http://www.flor.com/Sections/PandC/ProductReview/CatastropheReporting.aspx> (last visited April 29, 2017).

¹³³ Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at <http://www.flor.com/siteDocuments/HurricaneSummary20042005.pdf> (last visited April 29, 2017).

¹³⁴ Florida Office of Insurance Regulation, *Florida Office of Insurance Regulation Hurricane Summary Data*, available at <http://www.flor.com/siteDocuments/HurricaneSummary2008.pdf> (last visited April 29, 2017).

¹³⁵ Florida Division of Emergency Management, *Disaster Supply Kit*, available at <http://www.floridadisaster.org/supplykit.htm> (last visited April 29, 2017).

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill exempts “school supplies” that cost \$15 or less per item during the holiday.

Also exempt is the first \$1,000 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This includes tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture, devices, and software intended primarily for recreational use are not exempted.

The bill allows the holiday to apply at the option of the dealer if less than five percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the holiday. If a qualifying dealer chooses not to participate in the tax holiday, the dealer must notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The bill authorizes the DOR to adopt emergency rules to implement the provisions of each holiday.

The bill appropriates \$241,200 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions of the holiday.

The bill also creates a nine-day sales tax holiday from May 27, 2017, through June 4, 2017, for specified items related to disaster preparedness (*Disaster Preparedness Sales Tax Holiday*). During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A self-contained first-aid kit selling for \$30 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;
- A gas or diesel fuel tank selling for \$25 or less;
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less; and
- Reusable ice selling for \$10 or less.

The bill appropriates \$290,580 in Fiscal Year 2016-2017 nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the provisions of the holiday.

The Back-to-school and Disaster Preparedness holidays do not apply to the following sales:

- 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.

Section 45 – Sales and Use Tax: College or University Textbooks Sales Tax Exemption

Present situation: In 2015, the Legislature created a one-year sales tax exemption for textbooks required or recommended for a course offered by a public postsecondary educational institution or a nonpublic postsecondary educational institution that is eligible to participate in the tuition assistance programs.¹³⁶

The law defined “textbooks” to include educational materials, in printed or digital format, that are required or recommended for use in a course or field of study.

To obtain the tax exemption, a student must have provided the vendor either a physical or an electronic copy of:

- His or her student identification number; and
- Either an applicable course syllabus or list of required and recommended textbooks and instructional materials.

The vendor must have maintained proper documentation, as prescribed by rule, to identify either complete transactions or the portion of a transaction, which involves the sale of tax-exempted textbooks.

Proposed change: The bill exempts the sale of textbooks and instructional materials from July 1, 2017 through June 30, 2018, using the same requirements as in 2015.

Sections 46 and 48 grant the Department of Revenue emergency rulemaking authority to implement the annual veterans sales tax holiday created by the bill and appropriate \$121,398 in recurring funds and \$11,730 in nonrecurring funds from the Operating Trust Fund to the Department of Revenue to implement the provisions related to the veterans sales tax holiday.

Section 49 provides that amendments made by the bill to exempt from sales tax certain animal health products and aquaculture health products apply retroactively, but do not create a basis for an assessment or create a right to a refund or credit of tax paid before the effective date of the bill.

Section 51 appropriates \$149,818 in nonrecurring funds from the General Revenue Fund to the Department of Revenue to implement the sales tax exemptions for products used to

¹³⁶ Chapter 2015-221, s. 29, Laws of Fla.

absorb menstrual flow, diapers and incontinence products, and the sales tax rate reduction on the lease of commercial rental property.

Section 52 provides an effective date of July 1, 2017, unless otherwise expressly stated, and provides that section 52 is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, s. 18(b), of the State Constitution may apply because the provision in the bill for a property tax discount for certain property used to provide affordable housing and sales tax exemptions contained in the bill may reduce county and municipal government authority to raise revenue.

The bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

In total, HB 7109, 1st Eng., will reduce Fiscal Year 2017-2018 revenues by \$296.7 million, with a \$276.2 million recurring reduction. General Revenue receipts are reduced in Fiscal Year 2017-2018 by \$238.5 million, with a \$212.2 million recurring reduction. State trust fund receipts are reduced in Fiscal Year 2017-2018 by \$2.6 million, and recurring. Local government receipts are reduced in Fiscal Year 2017-2018 by \$55.6 million, with a \$61.4 million recurring reduction.

Non-recurring General Revenue and local government receipts in years after Fiscal Year 2017-2018 are reduced by \$480.4 million and \$61.1 million, respectively.

The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The total of \$954.1 million in tax reductions proposed by the bill is the sum of \$276.1 million (recurring, excluding appropriations), \$136.7 million (pure nonrecurring in

Fiscal Year 2017-18), and \$541.3 million (pure nonrecurring after Fiscal Year 2017-2018). The fiscal impact is detailed below:

Fiscal Year 2017-18 Estimated Fiscal Impacts (millions of \$)								
Issue	General Revenue		State Trust Funds		Local		Total	
	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.	1st Yr	Recur.
<u>Sales Tax</u> : Business Rent/1.5% for 2 yrs/0.5% Perm.								
<u>Sales Tax</u> : Business Rent 1.0%; 2 year	(112.6)				(14.5)		(127.1)	-
<u>Sales Tax</u> : Business Rent 0.5%; Perm	(56.3)	(135.1)			(7.3)	(17.5)	(63.6)	(152.6)
<u>Sales Tax</u> : Tax Holiday/"Back-to-School" [Aug 4-13]	(56.0)	-	(*)	-	(14.3)	-	(70.3)	-
<u>Sales Tax</u> : Tax Holiday/Disaster Preparedness	(5.3)	-	(*)	-	(1.4)	-	(6.7)	-
<u>Sales Tax</u> : Veterans' Tax Holiday/Annual	(1.4)	(1.4)	(*)	(*)	(0.3)	(0.3)	(1.7)	(1.7)
<u>Sales Tax</u> : Diapers & Incontinence Products	(18.0)	(43.1)	(*)	(*)	(4.6)	(11.0)	(22.6)	(54.1)
<u>Sales Tax</u> : Hygiene Products	(3.8)	(8.9)	(*)	(*)	(1.0)	(2.3)	(4.8)	(11.2)
<u>Sales Tax</u> : College Textbooks (1 Yr)	(33.3)	-	(*)	-	(8.5)	-	(41.8)	-
<u>Sales Tax</u> : Agriculture/Animal Health & Other	(10.5)	(10.9)	-	-	(2.8)	(2.7)	(13.3)	(13.6)
<u>Sales Tax</u> : Admissions Resales	(2.2)	(2.4)	(*)	(*)	(0.6)	(0.6)	(2.8)	(3.0)
<u>Sales Tax</u> : Dodd-Frank Exemption	(1.6)	(7.5)	(*)	(*)	(0.3)	(1.0)	(1.9)	(8.5)
<u>Sales Tax</u> : Municipally Owned Golf Courses	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
<u>Ad Valorem</u> : Inventory Definition	-	-	-	-	-	(0.2)	-	(0.2)
<u>Ad Valorem</u> : Nonprofit Homes for the Aged								
<u>Ad Valorem</u> : Affordable Housing	-	-	-	-	-	(25.8)	-	(25.8)
<u>Beverage Tax</u> : Beer/Malt Beverage Definitions	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
<u>Corp Income Tax</u> : Brownfields Credit Increase	(15.0)	(5.0)	-	-	-	-	(15.0)	(5.0)
<u>Corp Income Tax</u> : R&D Credit Increase	(7.9)	-	-	-	-	-	(7.9)	-
<u>HSMV Fees</u> : Boat Trailers Fees for 501(c)(3)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
<u>DOR Registration Fees and Administration</u>	(0.1)	(0.2)	(*)	(*)	-	-	(0.1)	(0.2)
<u>Appropriations</u> : Tax Holidays & Admin	(0.7)	-	(0.1)	(0.1)	-	-	(0.8)	(0.1)
<u>Corp Income Tax</u> : Payment Due Date	83.9	-	-	-	-	-	83.9	-
<u>Cigarette Tax</u> : Biomedical Research	2.5	2.5	(2.5)	(2.5)	-	-	-	-
2017-18 Total	(238.5)	(212.2)	(2.6)	(2.6)	(55.6)	(61.4)	(296.7)	(276.2)
<u>Non-recurring Impacts After FY 2017-18</u>	Cash		Cash		Cash		Cash	
<u>Sales/Corporate/Ins. Prem.</u> : Comm Cont Tax Credit Extension (1 Yr)	(22.5)	-	(*)	-	(2.4)	-	(24.9)	-
<u>Corp Income Tax</u> : R&D Credit Increase	(3.1)	-	-	-	-	-	(3.1)	-
<u>Sales Tax</u> : Business Rent/1.5% for 2 yrs								
<u>Sales Tax</u> : Business Rent FY 2018-19	(282.9)				(36.5)		(319.4)	
<u>Sales Tax</u> : Business Rent FY 2019-20	(171.7)				(22.2)		(193.9)	
Bill Total	(718.7)	(212.2)	(2.6)	(2.6)	(116.7)	(61.4)	(838.0)	(276.2)
					Recurring + Pure Nonrecurring =		(954.1)	

B. Private Sector Impact:

The bill will remove, either during specific periods of time or on an ongoing basis, the sales tax on various purchases of tangible personal property, and reduce the sales tax rate on the rental of commercial real estate.

The bill will reduce the corporate income tax liability for certain taxpayers that utilize the tax credit programs affected by the bill.

C. Government Sector Impact:

The bill appropriates a total of \$814,726. The bill:

- Appropriates \$241,200 for Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the back-to-school sales tax holiday;
- Appropriates \$290,580 for Fiscal Year 2016-2017 from the General Revenue Fund to the Department of Revenue to implement the disaster preparedness sales tax holiday;
- Appropriates \$149,818 for Fiscal Year 2017-2018 from the General Revenue Fund to the Department of Revenue to implement the commercial rent tax rate reduction and the new exemptions for diapers, incontinence products, and products used to control menstrual flow; and
- Appropriates \$133,128 for Fiscal Year 2017-2018 from the Operating Trust Fund to the Department of Revenue to administer the annual veterans' clothing sales tax holiday.

Most of the appropriations are needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 192.001; 196.1975; 196.1978; 198.30; 206.02; 206.021; 206.022; 206.03; 206.045; 206.41; 206.9943; 206.9952; 206.9865; 206.998; 210.20; 212.031; 212.04; 212.0515; 212.0596; 212.08; 212.18; 220.03; 220.183; 220.1845; 220.196; 220.222; 220.33; 320.04; 320.08; 320.10; 320.102; 336.021; 336.025; 376.30781; 376.70; 376.75; 443.131; 443.141; 443.163; 563.01; 624.5105; and 733.2121.

The bill repeals the following sections of the Florida Statutes: 206.405 and 206.406.

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:**Barcode 945880 by Appropriations on May 1, 2017:**

The provisions included in the amendment are listed below. “Retained Issues” are issues included in the HB 7099 and retained without change in the amendment. “Changed Issues” are issues included in HB 7099 that have been revised in the amendment. “New Issues” are issues added by the amendment.

The *Present Situation* and *Proposed Change* for Retained Issues are set forth in Section III, above. The *Present Situation* for Changed Issues are also in Section III, and the *Proposed Changes* are discussed below. For New Issues, the *Present Situation* and *Proposed Change* are discussed below.

Retained Issues

The following provisions of HB 7109 are retained in the amendment:

- Allows low-income residents of homes for the aged to prove their income by providing an affidavit to the property appraiser.
- Provides a 50 percent discount in property taxes to certain multifamily projects that provide affordable housing to low-income persons and families.
- Deletes a requirement that circuit courts provide estate administration information to the Department of Revenue.
- Provides guidance for the determination of whether certain heavy construction and agricultural equipment returned under a rent-to-purchase option is inventory and exempt from property tax.
- Repeals several annual license taxes and registration fees.
- Repeals a requirement that a tax notice be placed on vending machines, and the related penalty.
- Exempts from sales tax certain purchases made by municipally owned golf course operators.
- Exempts from sales tax products used to control menstrual flow.
- Extends the Corporate Income Tax filing extension period from 5 months to 6 months for certain corporate taxpayers to conform to federal changes.
- Exempts from license fees the registration of certain marine boat trailers;
- Requires local motor fuel taxes to be renewed before July 1 to be effective on September 1 of the year they expire.
- Changes the filing due date for Reemployment Assistance Tax returns and allows the Department of Revenue to waive penalties for late filing in certain circumstances; and
- Redefines “beer” for purposes of the beverage law.

Changed Issues

- Reduces the state sales tax rate on the rental of commercial real estate from 6.0 percent to 5.8 percent.
- Makes permanent the Community Contribution Tax Credit and limits credits to \$14 million per fiscal year.
- Increases the Contaminated Site Rehabilitation Tax Credit program annual tax credit limit from \$5 million to \$10 million;
- Increases the limit on Research and Development Corporate Tax Credits from \$9 million to \$18 million for calendar year 2018.
- Provides a 3-day “back-to-school” holiday for sales of clothing valued at \$60 or less and school supplies valued at \$15 or less, and exempts the first \$750 of the sales price of personal computers from the sales and use tax.
- Exempts from sales tax health products for livestock, poultry, and aquaculture.
- Sets forth procedures for certain resellers of admissions to receive a refund or a credit of taxes paid when they make a sale to a tax-exempt person.

New Issues

The following provisions are added by the amendment:

Property Tax on Assisted Living Facilities

Present situation: Nursing homes, hospitals and homes for special services that are exempt organizations under s. 501(c)(3) of the Internal Revenue Code are exempt from property tax.¹³⁷

Proposed change: The amendment exempts 501(c)(3) Assisted Living Facilities from property tax, beginning in 2017.

Property Tax on Charter School Facilities

Present situation: Property leased by a charter school and used for educational purposes is exempt from property tax, if the landlord reduces the rental payment by the full amount of the property taxes otherwise due.¹³⁸ In some situations, the rental agreement between the landlord and the charter school requires the charter school to pay any applicable property tax on the educational facility to the tax collector.

Proposed change: The amendment clarifies that the exemption also applies when the charter school makes a payment directly to a third party, and it deletes the explicit requirement that the landlord adjust the lease payment.

Present situation: Property used for educational purposes by a charter school is generally exempt from property tax; however, the specific exemption involved is

¹³⁷ Section 196.197, F.S.

¹³⁸ Section 196.1983, F.S.

different depending on whether the charter school owns or leases the property.¹³⁹ If the property is *owned* by the charter school, the charter school applies for the exemption.¹⁴⁰ If the property is *leased* by the charter school, the landlord applies for the exemption.¹⁴¹ When a charter school purchases the property that it previously leased, the charter school must apply for a new exemption.

Proposed change: The amendment extends to August 1, 2017, the time for a charter school to apply for exemption on property that it leased in 2015 and owned in 2016.

Emergency Rulemaking Authority with the Department of Revenue

Present situation: The Department of Revenue has the authority to adopt rules to enforce the laws it administers.¹⁴² Section 125.54(4) provides emergency rulemaking authority to an agency if the agency finds that an immediate danger to the public health, safety, or welfare requires emergency action. Emergency rules adopted by an agency are temporary and not renewable, except when the agency has initiated rulemaking to adopt rules addressing the subject of the emergency rule.¹⁴³ Legislation often contains an explicit recognition of the need for emergency rules without a mechanism to repeal such authority when the emergency rulemaking process becomes obsolete.

Proposed change: Repeals obsolete emergency rulemaking authority for the Department of Revenue.

Building Materials and Pest Control Services Used in New Construction

Present situation: A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress. The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.¹⁴⁴

Proposed change: The amendment creates a sales tax exemption for building materials, pest control services, and the rental of tangible personal property used in new construction in Rural Areas of Opportunity. The exemption is limited to \$10,000 for any single parcel.

Data Centers

Present Situation: A data center provides a central location for a business to house all of the necessary computer hardware—servers, server racks, cables and other infrastructure, and cooling components—and computer software required to,

¹³⁹ Compare ss. 196.198, F.S., and 196.1983, F.S.

¹⁴⁰ Section 196.198, F.S.

¹⁴¹ Section 196.1983, F.S.

¹⁴² See e.g. s. 212.18(2) and s. 220.51, F.S.

¹⁴³ Section 120.54(4)(c), F.S.

¹⁴⁴ Section 288.0656(2)(d), F.S.

“organize, process, store and disseminate large amounts of data.”¹⁴⁵ Currently, approximately 131 data centers and colocation data centers are located in Florida. The majority of data centers located in Florida are in South Florida, Orlando, Tampa, and Jacksonville.¹⁴⁶

Proposed change: the amendment exempts from the sales and use tax data center property purchased, rented, or leased by a data center’s owners and tenants when used to construct, maintain, and operate computer server equipment at a data center. The data center’s owners and tenants must make a cumulative capital investment of \$150 million and the data center must have at least 15 megawatts of power and at least 1 megawatt of power dedicated to each individual owner and tenant of the data center.

Publicly Owned Auditoriums Operated by a Nonprofit

Present situation: Tourist Development Tax revenues may be used for an auditorium only if the auditorium is publicly owned and operated.

Proposed change: The amendment expands the authority of counties to use revenue derived from local option tourist development taxes for a publicly owned auditorium operated by an organization exempt from federal income tax under the provisions of section 501(c)(3) of the Internal Revenue Code.

Fingerprint Services for Concealed Carry License Applications

Present situation: In 1994, the Department of Revenue issued a Technical Assistance Advisement (TAA) in response to a taxpayer requesting guidance on whether criminal history background check services provided by the Florida Department of Law Enforcement and required by state law are subject to sales tax. The department’s answer was no, basing its decision on the fact that the background check, and the associated fee or charge, was mandated by the state.¹⁴⁷

Additionally, fingerprint services provided by a law enforcement officer who is performing approved duties in his capacity as a law enforcement officer are not subject to sales tax.¹⁴⁸

Proposed change: The amendment expressly exempts from the sales and use tax fingerprint services that are part of the application to obtain a concealed weapons and concealed firearms license.

¹⁴⁵ TechTarget, *Definition, data center*, <http://searchdatacenter.techtarget.com/definition/data-center> (last visited April 19, 2017).

¹⁴⁶ See DataCenterAndColocation, *Florida Data Centers*, <http://www.datacenterandcolocation.com/florida-data-centers/> (last visited April 19, 2017).

¹⁴⁷ See Florida Dep’t of Revenue, *Technical Assistance Advisement No. 94(A)-035, Sales Tax – Whether FDLE Criminal History Check Fee of \$8 is Subject to Sales Tax*, (Jun. 17, 1994), available at https://revenue.law.floridarevenue.com/LawLibraryDocuments/1994/06/TAA-104246_c12bcdeb-4dc3-4000-96a3-078c66658e83.pdf (last visited Feb. 21, 2017).

¹⁴⁸ Section 212.05(1)(i), F.S.

Cigarette Tax Distributions to the Moffitt Cancer Center

Present situation: Section 210.20, F.S., provides for the monthly distribution of 4.04 percent of net cigarette tax revenue to the H. Lee Moffitt Cancer Center and Research Institute (Moffitt Center).¹⁴⁹ The funds distributed to the Moffitt Center may not be less than \$15.6 million annually, which is the amount that would have been paid to the Moffitt Center in Fiscal Year 2001-2002 at the 4.04 percent rate. This distribution is scheduled to expire June 30, 2033.¹⁵⁰

Proposed change: The bill extends the 4.04 percent distribution, not to fall below \$15.6 million annually, to the Moffitt Center until June 30, 2053.

The fiscal impact of the amendment is detailed in the table on the following page.

¹⁴⁹ Section. 210.20(2)(b), F.S. The distribution of cigarette tax funds to the H. Lee Moffitt Cancer Center and Research Institute was initiated in 1998, using 2.59 percent for the calculation on net cigarette tax collections. *See* ch. 98-286, Laws of Fla. The last adjustment to the percentage for the calculation occurred in 2014, when the percentage was set at the current 4.04 percent from July 1, 2014 through June 30, 2033. The actual appropriation shall not be less than the amount that would have been paid to the Center in fiscal year 2001-2002, resulting in the actual distribution being more than 4.04 percent of net collections. *See* s. 8 of Chapter 2014-38., Laws of Fla.

¹⁵⁰ Section. 210.20(2)(b), F.S.

HB 7109 Senate Amendment									
Barcode 945880									
Fiscal Year 2017-2018 Estimated Fiscal Impacts (millions of \$)									
Issues	General Revenue		Trust Fund		Local		Total		
	1st yr	Recur	1st yr	Recur	1st yr	Recur	1st yr	Recur	
<u>Sales Tax</u> : Business Rent/0.2% Rate Cut	(22.5)	(54.0)	(*)	(*)	(2.9)	(7.0)	(25.4)	(61.0)	
<u>Sales Tax</u> : Tax Holiday/"Back-to-School" 3 Days 60/15/750	(27.7)	-	(*)	-	(7.1)	-	(34.8)	-	
<u>Sales Tax</u> : Feminine Hygiene Products	(3.8)	(8.9)	(*)	(*)	(1.0)	(2.3)	(4.8)	(11.2)	
<u>Sales Tax</u> : Agriculture - Animal/Aqua Health Products	(2.1)	(2.1)	-	-	(0.6)	(0.5)	(2.7)	(2.6)	
<u>Sales Tax</u> : Admissions Resales to Exempt Entities	(2.2)	(2.4)	(*)	(*)	(0.6)	(0.6)	(2.8)	(3.0)	
<u>Sales Tax</u> : Governments/Golf Courses	(0.3)	(0.2)	(*)	(*)	(*)	(*)	(0.3)	(0.2)	
<u>Sales Tax</u> : Building Materials used in RAO	(**)	(1.3)	(**)	(*)	(**)	(0.6)	(**)	(1.9)	
<u>Ad Valorem</u> : Inventory Definition	-	-	-	-	-	(0.2)	-	(0.2)	
<u>Ad Valorem</u> : Nonprofit Homes for the Aged	-	-	-	-	-	-	-	-	
<u>Ad Valorem</u> : Affordable Housing - 50% Reduction	-	-	-	-	-	(25.8)	-	(25.8)	
<u>Beverage Tax</u> : Beer/Malt Beverage Definitions	(**)	(**)	(**)	(**)	-	-	(**)	(**)	
<u>Sales/Corporate</u> : Comm Cont Tax Credit Extension	-	(12.7)	-	-	-	(1.3)	-	(14.0)	
<u>Corp Income Tax</u> : Brownfields Credit Increase	(5.0)	(5.0)	-	-	-	-	(5.0)	(5.0)	
<u>Corp Income Tax</u> : R&D Credit Increase (9m)	(6.4)	-	-	-	-	-	(6.4)	-	
<u>Corp Income Tax</u> : 5-Month Admin Issue	-	-	-	-	-	-	-	-	
<u>HSMV Fees</u> : Boat Trailers Fees for 501(c)(3)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	
<u>DOR Legislative Concepts</u>	(0.1)	(0.2)	(*)	(*)	-	-	(0.1)	(0.2)	
<u>Sales Tax</u> : Data centers	(0.7)	(2.1)	(*)	(*)	(0.2)	(0.5)	(0.9)	(2.6)	
<u>Sales Tax</u> : Exempt Fingerprint Services for Concealed Weapons License (SB524)	-	-	-	-	-	-	-	-	
<u>TDT</u> : 501(C)(3) operated/Publicly Owned Auditoriums (SB68)	-	-	-	-	-	-	-	-	
<u>Ad Valorem</u> : Charter School Late Application	-	-	-	-	(0.1)	-	(0.1)	-	
<u>Ad Valorem</u> : Exempt 501(c)(3) ALFs	-	-	-	-	(6.9)	(6.9)	(6.9)	(6.9)	
<u>Ad Valorem</u> : Charter Schools Triple Net Lease	-	-	-	-	(0.1)	(0.1)	(0.1)	(0.1)	
<u>Cigarette Tax</u> : Extend Moffitt Dist. Add 20yrs	-	-	-	-	-	-	-	-	
<u>Appropriations</u> : Tax Holidays & Admin	(0.4)	-	-	-	-	-	(0.40)	-	
FY 17-18 Total	(71.2)	(88.9)	-	-	(19.5)	(45.8)	(90.7)	(134.7)	
Out-Year Nonrecurring Impacts (not in FY 2017-18 Total)									
Corp Income Tax: R&D Credit Increase	(2.6)	-	-	-	-	-	(2.6)	-	
Out-Year Total	(2.6)	-	-	-	-	-	(2.6)	-	
BILL TOTAL	(73.8)	(88.9)	-	-	(19.5)	(45.8)	(93.3)	(134.7)	
Recurring + Pure Nonrecurring =							(178.6)		

The total of \$178.6 million in tax reductions contained in the amendment is the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and of the nonrecurring impacts from temporary tax reductions.
(WITH TITLE AMENDMENT)