The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Detert, Chair
Senator Abruzzo, Vice Chair

MEETING DATE: Monday, March 11, 2013
TIME: 3:30 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Detert, Chair; Senator Abruzzo, Vice Chair; Senators Bean, Hays, Hukill, Margolis, Richter, Ring, Simpson, Stargel, and Thompson

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 442** Thompson (Identical H 1199)	Black Cultural Tourism Enhancement Commission; Creating the Black Cultural Tourism Enhancement Commission within the Department of State; directing the commission to independently exercise its powers and duties; requiring the department to provide administrative and staff support services to the commission; authorizing the commission to establish or designate a direct-support organization for specified purposes, etc. CM 03/11/2013 Fav/CS GO ATD AP	Fav/CS Yeas 11 Nays 0
2	**SB 1040** Stargel (Similar H 7023, Compare H 1189, S 720)	Department of Agriculture and Consumer Services; Transferring the collection of the motor fuel inspection fee from the Department of Agriculture and Consumer Services to the Department of Revenue; providing additional grounds for disciplinary action against firearm licensees; revising procedures and requirements with respect to the submission and processing of registration statements and renewal statements by charitable organizations and sponsors; repealing a provision relating to mandatory filings and disclosure of advertisement identification numbers by sellers of business opportunities, etc. CM 03/11/2013 Fav/CS AGG AP	Fav/CS Yeas 11 Nays 0
3	**Workshop** - Discussion and testimony only on the following (no vote to be taken): SM 78 - Income Tax and National Retail Sales Tax, by Senator Hays, with a presentation by Mark Gupton, Managing Director, Florida FairTax Educational Association		
	Other Related Meeting Documents		

An electronic copy of the Appearance Request form is available to download from any Senate committee page of the Senate's website, www.flsenate.gov

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 442

INTRODUCER: Commerce and Tourism Committee and Senator Thompson

SUBJECT: Black Cultural Tourism Enhancement Commission

DATE: March 12, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	**Fav/CS**
2.			GO	
3.			ATD	
4.			AP	
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 442 creates the Black Cultural Tourism Enhancement Commission to provide assistance and resources to promote black cultural sites in the state.

The CS creates general law not contained in a designated section of the Florida Statutes.

II. Present Situation:

Florida has a variety of organizations and programs dedicated to culture, the arts, and tourism in Florida.

State Cultural Programs

Under Florida law, the Secretary of the Department of State (DOS) serves as the state's chief cultural officer.[1] The Division of Cultural Affairs (division) within DOS is overseen by a director who serves at the secretary's pleasure. The division has several responsibilities, including:

[1] Section 265.284, F.S.

- Sponsoring performances and exhibits;
- Promoting and encouraging the study and appreciation of arts and culture;
- Producing information materials related to arts and cultural programs available throughout the state; and
- Conducting and supporting cultural programs and cultural exchanges by coordinating with appropriate state agencies and other organizations.

In addition to the abovementioned responsibilities, the division is responsible for administering and awarding several grant programs relating to arts and culture. The grant programs administered by the division include:

- Cultural Endowment Program[2]- A matching grant program for local cultural endowments to supply day-to-day operating expenses. Applicants and their foundations must be approved by the division. Applicants may request $240,000 of State Matching Share funding, which must be approved through the legislative appropriations process. No funding has been made available for the program since 2002.[3]
- Cultural Facilities Program[4]- A grant program to assist counties, municipalities, and nonprofits in the acquisition, renovation, or construction of cultural facilities. Applications are ranked by the Florida Council on Arts and Culture within DOS and approved by the Secretary of State. High-ranking applications are presented as part of DOS's legislative budget request.[5] For FY 2012-2013, $3,630,822 in Cultural Facilities Program grants have been awarded to date.[6]
- General Program Support Grants[7]- A grant program to assist in the funding of general program support for organizations and local governments that have cultural program activities. Applications for this grant program are ranked and approved by the Secretary of State, with high ranking applications submitted as part of DOS's legislative budget request.[8] For FY 2012-2013, $5,000,000 in General Program Support grants have been awarded to date.[9]
- Specific Cultural Project Grants[10]- A grant program to assist organizations and local governments in the funding of specific cultural projects. Applications for this grant program are ranked and approved by the Secretary of State, with high ranking applications submitted as part of DOS's legislative budget request.[11] No Specific Cultural Project award dollars have been awarded for FY 2012-2013.[12]

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[2] Section 265.606, F.S.
[3] Division of Cultural Affairs, "2013-2014 Cultural Endowment: Priority List for State Matching Share," available at: http://www.florida-arts.org/documents/grantreports/lists/2014.endowment-ranked-list.cfm, (last visited on March 6, 2013).
[4] Section 265.701, F.S.
[5] Division of Cultural Affairs, "2013-2014 Cultural Facilities: Ranked Application List," available at: http://www.florida-arts.org/documents/grantreports/lists/2014.facilities-ranked-list.cfm, (last visited on March 6, 2013).
[6] Division of Cultural Affairs, "Grant Awards and Recommendations" page, available at: http://www.florida-arts.org/resources/awards/, (last visited on March 6, 2013).
[7] Section 265.286(5)(a), F.S.
[8] Division of Cultural Affairs, "Ranked Application List for 2013-2014 General Program Support," available at: http://www.florida-arts.org/documents/grantreports/lists/2014.gps-ranked-list.cfm, (last visited on March 6, 2013).
[9] *Supra* note 6.
[10] Section 265.286(5)(b), F.S.
[11] Division of Cultural Affairs, "Ranked Application List for 2013-2014 Specific Cultural Project," available at: http://www.florida-arts.org/documents/grantreports/lists/2014.scp-ranked-list.cfm, (last visited on March 6, 2013).
[12] *Supra* note 6.

- State Touring Presenters Grants[13]- A grant program to assist artists and organizations in traveling the state to perform and participate in cultural activities. Awards for FY 2012-2013 are still being determined.[14]
- Individual Artist Grant Program[15]- A grant program supporting exceptionally talented Florida artists. Awards for FY 2012-2013 are still being determined.[16]

Florida Council on Arts and Culture[17]
The Florida Council on Arts and Culture (council) is a 15-member advisory body created within DOS to advise the Secretary of State on issues relating to cultural grant funding and other issues regarding culture in Florida. The council advocates for arts and culture by encouraging the study and preservation of arts and cultural activities and by encouraging participation in such activities.

The council is also responsible for handling all nominations for the Florida Artists Hall of Fame, which is located on the Plaza Level in the Capitol rotunda.[18]

In 2005, DOS and the council developed a strategic plan for continuing the development of arts and culture in the state, known as "Culture Builds Florida."[19] The plan focused on linking arts and cultural heritage into four major areas: strengthening the economy, promoting learning and wellness, building leadership, and advancing design and development.

Citizens for Florida Arts, Inc.
Citizens for Florida Arts, Inc., (CFA) is a citizen support organization established by the division for the purpose of providing assistance, funding, and promotional support.[20] CFA is intended to enhance current state programs relating to the arts and to create new arts opportunities, and is not intended to replace current state arts funding.

Tourism Promotion

Florida's tourism promotion and marketing services, functions, and programs are carried out by VISIT Florida in conjunction with Enterprise Florida, Inc.'s, Division of Tourism Marketing.[21] The Florida Tourism Industry Marketing Corporation, known as VISIT Florida, is a public-private partnership, operating as a direct-support organization under contract with Enterprise Florida, Inc.[22] VISIT Florida is overseen by a 31-member board of directors, appointed by Enterprise Florida, Inc., and the Department of Economic Opportunity, who are tourism-industry professionals from regions across the state.

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[13] Section 265.286(5)(c), F.S.
[14] *Supra* note 6.
[15] Section 265.286(5)(d), F.S.
[16] *Supra* note 6.
[17] Section 265.285, F.S.
[18] Section 265.2865, F.S.
[19] Department of State, *Florida Council on Arts and Culture*, (2005), available at: http://www.florida-arts.org/documents/CBFFvisioningbook.pdf, (last visited on March 6, 2013).
[20] Section 265.703, F.S.
[21] Section 288.923, F.S.
[22] Section 288.1226, F.S.

VISIT Florida markets the state to domestic and foreign consumers, "works with major travel journalists, represents the state at domestic and international travel trade shows and promotes the state to travel agents, tour operators and consumers all over the world."[23] VISIT Florida also compiles official travel statistics, tracks tourism market trends, and conducts other research on the tourism market to improve effective advertising and marketing of the state's tourism resources. VISIT Florida also operates the state's five Official Florida Welcome Centers.

VISIT Florida and Enterprise Florida, Inc.'s, Division of Tourism Marketing are jointly responsible for developing a 4-year marketing plan for the purposes of marketing the state's tourism assets. The marketing plan must detail strategies for:

- Continuing overall tourism growth;
- Expanding new or under-represented tourist markets;
- Maintaining traditional and loyal tourist markets;
- Coordinating efforts with county destination marketing organizations, other local government marketing groups, privately owned attractions and designations, and other private sector partners to create a four-season advertising campaign;
- Developing techniques or promotions to build repeat visitation by targeted segments of the tourist population;
- Considering innovative sources of state funding for tourism marketing;
- Promoting nature-based tourism and heritage tourism; and
- Developing a component to address emergency response to natural and manmade disasters from a marketing standpoint.

In order to implement the marketing plan, VISIT Florida and the Division of Tourism Marketing are directed to construct the plan in an "annual and ongoing nature," and the concepts outlined should be carried forward in an on-going and updated manner. The plan must include specific recommendations and performance metrics for VISIT Florida to base its actual performance against.

In addition to state-level tourism marketing and promotion activities carried out by VISIT Florida and the Division of Tourism Marketing, counties may establish tourism promotion agencies for the purpose of attracting guests to the county. Local tourism promotion agencies may use tourist development tax revenues to fund marketing and promotion activities.[24]

VIVA Florida 500

VIVA Florida 500 is a statewide initiative lead by DOS. According to DOS, VIVA Florida 500 will provide "a unique opportunity to strengthen tourism, spur economic development and educate the world about the state's significant history and heritage."[25] VIVA Florida 500 begins in 2013 to celebrate the 500th anniversary of the arrival of Juan Ponce de Leon, who named the

[23] VISIT Florida, *About VISIT Florida website*, available at: http://www.visitflorida.com/about_visit_florida, (last visited on March 6, 2013).
[24] Section 125.0104, F.S.
[25] Department of Stare, *VIVA Florida 500 Press Brief*, available at: http://www.vivaflorida.org/Media2/Press-Brief, (last visited on March 6, 2013).

region La Florida. VIVA Florida 500 will serve as a "platform for Cultural, Heritage and Nature-based Activities/Tourism/Events." DOS's strategic goals for Viva Florida 500 are: [26]

- Provide leadership and facilitate collaboration;
- Create and grow productive public and private partnerships;
- Expand outreach and education;
- Host events in all 67 counties; and
- Stimulate Cultural Heritage Tourism.

Over 200 events and activities are planned statewide in partnership with several agencies and statewide resources. This list includes but is not limited to: VISIT Florida, Florida Lottery, Florida Department of Transportation, Florida Department of Business and Professional Regulation, Florida Department of Agriculture and Consumer Services, The Florida Humanities Council, España-Florida Foundation 500 Years, Florida State Parks, and the Florida Association of Museums.

III. Effect of Proposed Changes:

Section 1 creates the Black Cultural Tourism Enhancement Commission (commission) as a new budget entity. The commission is to be administratively housed within the Department of State (DOS), but is to operate as an independent entity to exercise its powers and duties. DOS is directed to provide administrative and staff support services to the commission.

Duties of the Commission
The bill directs the commission to perform several duties, including:

- Provide financial and technical support services to certain facilities and events;
- Provide training and technical assistance for staff at the state's black cultural tourism sites in order to develop tour guides and tour operators for the sites;
- Provide resources and technical assistance to educators for teaching black history, promoting the state's black cultural sites as historic venues, and supporting tourism through student tours of black cultural and historical sites; and
- Serve as a resource for VISIT Florida in order to expand cultural tourism in the state.

Commission Membership
The bill specifies the commission is composed of 13 members who each serve 4-year terms. The commission is made up of the following:

- Three members appointed by the Governor (Two of whom initially serve 2-year terms);
- Two members appointed by the President of the Senate (One of whom initially serves a 2-year term);
- Two members appointed by the Speaker of the House of Representatives (One of whom initially serves a 2-year term);
- Two members appointed by the Secretary of State (One of whom initially serves a 2-year term);

[26] Kerri Post, *Viva Florida 500 Presentation to the Senate Commerce and Tourism Committee*, (January 15,2013), available at: http://flsenate.gov/PublishedContent/Committees/2012-2014/CM/MeetingRecords/MeetingPacket_1966.pdf, (last visited on March 6, 2013).

- Two members appointed by the Commissioner of Education (One of whom initially serves a 2-year term); and
- Two members appointed by the Florida Conference of Black State Legislators.

Members may be subsequently reappointed to another 4-year term. Members serve without compensation, but are entitled to reimbursement for per diem travel expenses.

Direct Support Organization
The commission is permitted to establish or designate a direct-support organization for the purpose of receiving grants, bequests, and other resources to support the state's black cultural sites and other functions performed by the commission.

Section 2 provides for an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to DOS, the bill will have an indeterminate impact on administrative and other resource demands as it relates to providing administrative and staff support services.[27]

Fiscal impact will likely be negative, depending on the frequency of commission meetings, travel by staff and commission members, and other financial assistance needed to implement the provisions of the bill

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[27] Department of State, *Agency Bill Analysis: SB 442*, (February 1, 2013), (on file with the Senate Commerce and Tourism Committee).

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 20.052, F.S., governs the creation of new advisory bodies, commissions, and boards.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on March 11, 2013:
The CS specifies that each member of the commission serve a term of 4 years. The CS designates 6 members who each initially serve a term of 2 years to create staggered terms. The CS also clarifies that a member may be appointed to a subsequent term.

B. Amendments:

None.

641860

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
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	.	
	.	

The Committee on Commerce and Tourism (Thompson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 40 - 48
and insert:

<u>(3)(a) The commission is composed of 13 members who are appointed in the following manner:</u>

<u>1. Three members appointed by the Governor.</u>

<u>2. Two members appointed by the President of the Senate.</u>

<u>3. Two members appointed by the Speaker of the House of Representatives.</u>

<u>4. Two members appointed by the Secretary of State.</u>

<u>5. Two members appointed by the Commissioner of Education.</u>

6. Two members appointed by the Florida Conference of Black State Legislators.

(b) A member of the commission shall be appointed for a term of 4 years, except that at the time of the initial appointment, two members appointed by the Governor, one member appointed by the President of the Senate, one member appointed by the Speaker of the House of Representatives, one member appointed by the Secretary of State, and one member appointed by the Commissioner of Education shall be appointed for a term of 2 years. A member may be appointed to a subsequent term.

================ T I T L E A M E N D M E N T ================

And the title is amended as follows:

Delete line 9

and insert:

the appointment and terms of commission members; providing for

Florida Rich With African-American History

By The Admin on February 10, 2013

U.S. Senator Bill Nelson

- Tiny-little Eatonville, near Orlando, is where in the summer of 1887 citizens established the first town in the nation governed by blacks.

It was more than a century later, when Barack Obama was a brand new senator in Washington, that I took him to Eatonville – for a meeting at a local church. And it was during that trip in 2005 that I first witnessed with my own eyes the future-president's ascent into political stardom.

The Saturday we visited, about 500 people rose to their feet in a standing ovation worthy of a rock star as Sen. Obama hit the stage in the Macedonia Missionary Baptist Church. The crowd that day was about a fourth of the town's entire population.

To this day, I'm so thankful the president was able to come with me to Eatonville. The town is a key part of African-American history in Florida and one of the many places across the state that embody our rich and vibrant cultural heritage.

Indeed, Florida is home to dozens of African-American historical sites – such as the Jackie Robinson Memorial Ball Park, American Beach, Fort Mose, Mary McLeod Bethune House, Daniel "Chappie" James birthplace, and Lincolnville, just to name a few. Some sites have links to notable figures in American history, like, the Rev. Martin Luther King Jr., Ray Charles, Julian "Cannonball" Adderley and Wallace Amos.

Dr. King, for example, stayed in Lincolnville while supporting local civil rights movements. That same neighborhood in the city of St. Augustine also was home to the man who taught musician and singer Ray Charles to read music in Braille at the local school for the deaf and blind.

In Tallahassee, you'll find the John G. Riley Museum for African-American History and Culture. The museum is in a historically black neighborhood known as Smoky Hollow, in the late 19th century home of a local African-American resident. Smoky Hollow was also home to Wallace Amos, the founder of "Famous Amos" cookies.

In Fort Lauderdale, there's the Old Dillard Museum. The museum was once a segregated school for black children where saxophonist "Cannonball" Adderley directed band. Today, it traces the history of the city's jazz scene and displays masks, musical instruments and other archival artifacts.

Overtown, in Miami, is now rife with black-owned businesses, historic churches and the Lyric Theater, built in 1913. One of Miami's oldest neighborhoods, it dates back to the 1890s. For a closer view of many of Miami's African-American historical sites, Miami-Dade Transit is offering its annual Black History Transit Tour on Feb. 19 and 26. For more info you can visit: http://www.miamidade.gov.

On any given day in Fort Pierce, you might find Florida Highwaymen paintings lined up for sale alongside U.S. Route 1. There's also the A.E. Backus Museum, with paintings from the famous Florida landscape artist side-by-side with works from many of the African-American youth he taught to paint. Together, Backus and his students founded one of the great schools of art in America, the Indian River School.

From Pensacola to Key West, African-American culture, history and people have played an integral part in the development of modern-day Florida.

In 1990, in fact, the state Legislature created the Study Commission on African-American History to increase public awareness of African-American contributions to Florida. The commission was asked to recommend a way to establish a "Heritage Trail" that identified points of interest in black history that should be preserved and promoted as tourist attractions. The resulting Florida Black Heritage Trail is a microcosm of African-American landmarks and legacies that exist in various locations across the state.

One day, I hope I can bring President Obama back to visit a few more of these places, many of which helped mold our state into what it is today. Meantime, many of the sites and buildings on the Heritage Trail should be "must sees" for residents and tourists, alike.

Bill Nelson is Florida's senior U.S. senator and a fifth-generation Floridian.

Fiscal Impact of the Harriet Tubman Florida Legacy Tour and Festival

1. Fiscal Impact on State and Local Governments:

    The appropriations would benefit the Orlando, Mims, St. Augustine, Jacksonville, and Fernandina/Amelia Island municipalities. A comparable African-American event, Zora! Festival, has been successful over the years, and if properly promoted, the Harriet Tubman Florida Legacy Program would have similar results.

    The University of Central Florida conducted a study on the Zora! Festival (Rivera, Hara, and Kock, 2008) using a Social Accounting Matrix. In the case with the Zora! Festival, the attendance in 2006 was 14,930 over a three-day period. Out of those visitors, 40% were from out-of-town—5,972 people in total. Approximately 72% of the latter drove to Orlando, resulting in minimum revenue for car rental companies ($4 per person). Each out-of-town visitor who came especially for the festival spent an average of $43 per night in hotels or other accommodation facilities, spending an average of 2.4 nights in an average group size of 2.8 people. Other expenses on food and miscellaneous items totaled $39 per person per day, setting the total average expenditure for each out-of-town visitor at $86 per day. This resulted in a total injection of $372,175 into the economy, which would otherwise not have been spent in the area. The Zora! Festival takes place only in the Orlando area. The Harriet Tubman Florida Legacy Tour and Festival will take place in an additional three cities, possibly tripling the results of the Zora! Festival. That would put the potential economic impact from out-of-town visitors at nearly $1 million.

ZORA!™

A trademark of The Association to Preserve the Eatonville Community, Inc. (P.E.C.)

P.E.C. is an arts organization whose mission it is to enhance the considerable cultural resources of Eatonville, Florida, which is "the oldest incorporated African American municipality in the United States" and the hometown of writer, folklorist, and anthropologist Zora Neale Hurston; to educate the public about Eatonville's historic and cultural significance; and to use the community's heritage and cultural vibrancy for its economic development.

For more information on P.E.C. and its programs, please:

Write: 227 East Kennedy Boulevard
Eatonville, Florida 32751-5303

Call: (407) 647-3307

Fax: (407) 539-2192

Email: docent@preserveeatonville.org

Visit our websites: www.zorafestival.com
www.zoranealehurstonmuseum.org

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/2013
Meeting Date

Topic: Cultural Tourism - AA Commission

Bill Number: 0442 *(if applicable)*

Name: N. Y. Nathiri

Amendment Barcode: *(if applicable)*

Job Title: Director Multidisciplinary Program - ZORA! Festival & The Hurston Museum Assoc to Preserve the Eatonville Community

Address: 227 East Kennedy Blvd
Street

Eatonville, FL 32751
City *State* *Zip*

Phone:

E-mail: office@preserveeatonville.org

Speaking: ☒ For ☐ Against ☐ Information

Representing: Cultural tourism in State - ZORA! Festival (since 1990), Hurston Museum (since 1990)

Appearing at request of Chair: ☐ Yes ☐ No Senator Thompson

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/13
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Topic ~~SB 442~~ Florida Network

Bill Number SB 442 (if applicable)

Name Althemese Barnes

Amendment Barcode (if applicable)

Job Title Executive Director

Address 419 E. Jefferson St.
Street

Tallahassee FL 32301
City State Zip

Phone (850) 681.7881

E-mail abarnes37@comcast.net

Speaking: ☐ For ☐ Against ☑ Information

Representing Florida African American Heritage Preservation Network

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/13
Meeting Date

Topic: Florida African American Heritage Network

Bill Number: 0442 *(if applicable)*

Name: Annie Harris

Amendment Barcode: ______ *(if applicable)*

Job Title: Supporter/volunteer with the network

Address: 438 Georgia Street
Street

Tallahassee FL
City *State* *Zip*

Phone: (850) 510.5621

E-mail: ______

Speaking: ☐ For ☐ Against ☑ Information

Representing: Get information but I do want the network to continue and be a part of this process moving forward.

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☑ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

____
Meeting Date

Topic: Fla African American Heritage Network

Bill Number: 442 *(if applicable)*

Name: Patsy Eccles

Amendment Barcode: ______ *(if applicable)*

Job Title: ______

Address: 2942 Golden Eagle DR. E
Street

Tallahassee Fl 32312
City *State* *Zip*

Phone: ______

E-mail: ecclesp@iron-bridge.net

Speaking: ☐ For ☐ Against ☐ Information

Representing ______

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/20/11)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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

BILL: CS/SB 1040

INTRODUCER: Commerce and Tourism Committee and Senator Stargel

SUBJECT: Consumer Services

DATE: March 11, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Malcolm	Hrdlicka	CM	**Fav/CS**
2.			AGG	
3.			AP	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1040 modifies several regulatory activities under the jurisdiction of the Florida Department of Agriculture and Consumer Services (DACS). Specifically, the bill:

Division of Licenses

- Revises the definition of repossession to specify when a recovery agent has active possession and command of a recovered vehicle or other equipment, i.e., when the repossession is complete;
- Clarifies that proof of annual firearms training for class "G" and "K" licensees be submitted to DACS upon completion, provides suspension or non-renewal for non-compliance, and creates a third-degree felony for issuing a fraudulent training certificate as part of an application for licensure;
- Removes the 50-mile radius limitation on private investigator and recovery agent internships.

Division of Consumer Services

- Transfers petroleum inspection fee collections from DACS to the Department of Revenue, exempts certain measuring devices from permitting fees, and exempts devices used for measuring aviation fuel from permitting requirements;
- Updates the requirements for filing financial reports for charitable organizations, provides that charitable organization and sponsor renewal statements must be issued by DACS 30 days prior to expiration and may be sent via electronic mail, removes notary requirements for registration packages, increases the application/renewal processing time from 10 to 15 days, and clarifies criminal reporting requirements for charitable organizations and sponsors;
- Updates the annual registration requirement for professional solicitors and fundraising consultants so that registration renewal is based on the date of issuance;
- Exempts charities that have a total revenue of less than $25,000, have no employees or members compensated to do fundraising, and that do not use a professional solicitor from the $10 annual registration fee;
- Reduces the time for professional solicitors to file financial documentation for campaigns lasting less than 1 year and extends the due date for financial reporting on campaigns lasting more than 1 year;
- Eliminates the requirement that charitable organizations and sponsors place a statement on all printed material stating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor;
- Makes it unlawful for solicitors of contributions to provide false, misleading, or inaccurate information and authorizes the issuance of cease and desist orders for certain prohibited acts committed by charitable organizations;
- Reduces the required security for certain health studios from $50,000 to $25,000;
- Amends the Florida Do Not Call statute to prohibit unsolicited calls for charitable donations;
- Updates the definition of "commercial telephone solicitation" to include reference to consumer goods or services, eliminates the requirement that telemarketing salespersons provide a 3-year work history, clarifies that an exempt entity must file a valid affidavit of exemption and allows DACS to request additional information to verify an exemption, requires a telemarketing business keep its bond or other security in force as long as the business is open and operating, authorizes onsite inspection by investigators, requires exempt entities to display either a license or receipt of filing and affidavit of exemption, and provides notice to telemarketers engaged in timeshare sales that they must comply with DACS and DBPR licensing requirements;
- Requires moving brokers to supply a list of affiliated movers, requires moving brokers only contract with properly registered movers, eliminates the bond requirement for moving brokers, makes it unlawful for moving brokers to contract with unregistered movers, and makes it unlawful for movers to contract with unregistered moving brokers;
- Amends the definition of alternative fuel to provide for adopting fuel quality standards that cover new blended fuels;
- Staggers the license expiration dates for LP gas licensees, requires applicants taking the license examination pass each area of the examination with a score of at least 75 percent,

and increases the minimum number of hours of continuing education from 12 to 16 hours;
- Extends the sunset repeal provision from July 1, 2014, to July 1, 2020, relating to permitting fees for weighing and measuring devices;
- Allows pawnshop owners to have their fingerprints taken at an FDLE-authorized fingerprinting service provider;
- Authorizes DACS to create a form allowing franchises to file a notice of exemption from the business opportunity regulation statute, eliminates the required disclosure statements and mandatory filing requirements from the seller of a business opportunity, eliminates the required $300 annual fee and the $50 filing update fee from the seller of a business opportunity, and eliminates DACS enforcement authority on unlawful acts committed by a seller of a business opportunity;
- Decreases the size of the Motor Vehicle Repair Council from 11 to 9 members by merging the positions of "independent automotive collision shops" with "franchise or company owned automotive collision shops" and "independent tire dealer" with "franchise or company owned tire dealer"; and
- Eliminates the option of obtaining a bond for operators of amusement rides.

This bill amends the following sections of the Florida Statutes: 206.45, 493.6101, 493.6113, 493.6116, 493.6118, 493.6120, 493.6121, 496.405, 496.406, 496.407, 496.409, 496.410, 496.411, 496.415, 496.419, 501.016, 501.059, 501.603, 501.604, 501.608, 501.611, 501.615, 501.617, 507.03, 507.04, 507.07, 525.01, 525.10, 527.01, 527.0201, 527.03, 531.415, 531.61, 539.001, 559.802, 559.803, 559.813, 559.815, 559.9221, 616.242, 721.20.

This bill repeals ss. 502.607(1)(b), 525.09(2)-(4), 559.805, 559.807(2), F.S.

This bill amends s. 40, ch. 2009-66, L.O.F.

This bill transfers, redesignates, and amends s. 525.09(1), F.S., as s. 206.41(1)(h), F.S.

II. Present Situation:

The Florida Department of Agriculture and Consumer Services (DACS) is charged with supporting Florida's agricultural economy and protecting consumers from unsafe products and deceptive business practices. To carry out these functions, DACS is organized under the divisions of Consumer Service and Licensing.[1] In the 2012 legislative session, the Division of Standards was eliminated and merged into the Division of Consumer Services.[2]

The Division of Consumer Services is tasked with receiving the state's consumer complaints. It is responsible for overseeing and regulating the following activities and entities: business opportunities, motor vehicle repair shops, charitable organizations, Florida Do Not Call, dance studios, pawnshops, health studios, sellers of travel, intrastate movers, game promotions, telemarketing, and professional surveyors and mappers. In addition, this division is also responsible for protecting consumers from unfair and unsafe business practices across a wide

[1] Section 20.14, F.S. (2011)
[2] Chapter 2012-67, L.O.F. (2012)

range of products, including gasoline, brake fluid, antifreeze, liquefied petroleum gas, amusement rides, and weighing and measuring devices. The Division of Licensing is responsible for regulating and licensing private security, private investigative, and recovery services, as well as issuing concealed weapon and firearm licenses.

III. Effect of Proposed Changes:

Division of Licenses

Recovery Agents, ch. 493, F.S.

Currently, persons engaged in the repossession of vehicles and other equipment are licensed under ch. 493, F.S. Currently, s. 493.6101(22), F.S., defines the term "repossession" to include the following statement:

> A repossession is complete when a licensed recovery agent is in control, custody, and possession of such repossessed property.

"Control, custody, and possession" of a vehicle or other equipment is a legal concept with respect to the act of repossession because it identifies that moment at which the person conducting the repossession has taken active possession and command of the property being repossessed.[3] However, the meaning of that phrase is not defined in statute.

Section 3 amends s. 493.6101, F.S., by revising the definition of repossession to specify when a recovery agent actually has active possession and command of a recovered vehicle or other equipment; i.e., when the repossession is complete. This section specifies that property is considered to be in the control, custody, and possession of a recovery agent if the vehicle or equipment has been secured in preparation for transport from the site of the recovery by means of having been attached to or placed on the towing transport vehicle or if the vehicle or equipment being recovered is being operated or about to be operated by an employee of the recovery agency.

Security Officers and Private Investigators, ch. 493, F.S.

Currently, holders of a Class "G" [4] firearm license must complete 4 hours of recertification training annually and must submit proof of such training at the time of renewal of the license.

Section 4 amends s. 493.6113, F.S., by requiring proof of completion of annual recertification training to be submitted to DACS upon completion of that training. If documentation of the recertification training is not submitted by the end of the first year of the 2-year period of the license, the license is automatically suspended until proof of the training is submitted. If the

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[3] DACS 2013 Legislative Proposal, Division of Licensing, Short Title - Defining "Control, Custody, and Possession" as that Phrase Relates To Property Recovery, 12-18-2012, page 4, copy available in committee files. DACS commentary notes that "by including a technical definition of control, custody, and possession in the statute, we have provided a standard and a benchmark that can be applied both by the recovery industry as well as by law enforcement agents when they are called to get involved with a repossession."

[4] A Class "G" licensee permits Class "C," "CC," "D," "M," "MA," or "MB" licensees to bear a firearm. A Class "G" licensee may carry only the following weapons: a .38 caliber revolver; a .380 caliber or .9mm semiautomatic pistol, or a .357 caliber revolver with .38 caliber ammunition. Such licensee may carry no more than two firearms upon his or her person when performing regulated duties. Section 493.6115, F.S.

documentation is not submitted by the end of the second year of the 2-year period of the license, the license may not be renewed unless the applicant completes the minimum number of hours of range and classroom training required at the time of initial licensure.[5]

Section 6 amends s. 493.6118, F.S., by granting DACS the authority to commence disciplinary action against Class "G" licensees for failing to complete recertification training. The bill specifies that failure of Class "K" licensees to maintain certification as a professional firearms instructor is also grounds for disciplinary action. Lastly, this section makes it a third-degree felony[6] to knowingly possess, issue, cause to be issued, sell, or submit a fraudulent training certificate to a person applying for licensure or to the division as part of an application for licensure.

Sections 7 and 8 amend ss. 492.6120 and 493.6121, F.S., to correct cross-references due to the amendments in s. 493.6118, F.S., by Section 6.

Private Investigators & Recovery Agents: Internships, ch. 493, F.S.
Currently, individuals who do not have the requisite experience for licensure as a private investigator or recovery agent must serve an internship with a licensed private investigator or recovery agent to gain that experience. The law requires that the distance between a sponsor's place of business and the intern's assigned place of business be within a 50-mile radius.

Section 5 amends s. 493.6116, F.S., by eliminating the 50-mile-radius requirement and instead provides that an intern's duties must be performed within the state of Florida.

Division of Consumer Services

Petroleum Inspection Fees, ch. 531, F.S., Weights and Measures Act of 1971
Currently, DACS and the Department of Revenue (DOR) collect taxes and fees on petroleum products. Regulated entities must remit motor fuel taxes to DOR and petroleum inspection fees to DACS.

<u>Petroleum inspection fee collection transfer to DOR from DACS</u>
Currently, a petroleum inspection fee is assessed by DACS on gasoline, kerosene (except when used as aviation fuel), and #1 fuel oil (heating oil) sold or used in this state.

Section 1 transfers and redesignates s. 529.09(1), F.S., to s. 206.41(1)(h), F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from DACS to DOR. The bill assesses the fee based on DOR's definition of "motor fuel."[7]

Sections 2 and 31 amend ss. 206.45 and 525.10, F.S., to transfer the assessment and collection of the 0.125 cent per gallon inspection fee from DACS to DOR.

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[5] Initial licensure requires a minimum of 28 hours of range and classroom training, of which no more than 8 hours may be range training. Section 493.6105(5), F.S.
[6] A third-degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not exceeding $5,000.
[7] "Motor fuel" is defined as all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle. Section 206.01(9), F.S.

Section 30 repeals s. 525.09(2)-(4), F.S., which are no longer necessary due to the transfer of the inspection fee from DACS to DOR.

Section 35, amends s. 531.415, F.S., to exempt measuring devices used to measure petroleum fuel from permitting fees.

<u>Aviation fuel permit exemption</u>
Currently, certain petroleum products assessed inspection fees by DCAS pursuant to s. 525.09, F.S., are exempt from the commercial weights and measures instruments permit requirements of ss. 531.60 – 531.66, F.S. Weights and measures instruments or devices may not be used for commercial purposes within this state without a commercial use permit issued by DACS, unless exempted as provided in s. 531.61, F.S.

Section 36 amends s. 531.61, F.S., to provide that a device used exclusively for measuring aviation fuel is exempt from the permit requirements pursuant to ss. 531.60 – 531.66, F.S. The bill also removes a cross-reference to s. 525.09, F.S., which is being repealed by this bill.

Charitable Organizations: Solicitation of Funds, ch. 496, F.S.
<u>Financial Report Filing Requirements</u>
Currently, ss. 496.405 and 496.407, F.S., allows charities to submit IRS Form 990 with a Schedule A to meet the financial reporting requirements required at registration and renewal. The IRS has redesigned Form 990 and 990EZ; consequently, Schedule A no longer provides the same information it did when the statutes were enacted.

Sections 9 and 11 amend ss. 496.405(2)(a) and 496.407, F.S., by updating the financial reporting requirements for charitable organizations that intend to solicit contributions. The bill requires submission of the updated IRS forms to comply with statutory reporting requirements.

<u>Processing Timelines</u>
Currently applications and renewals for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants must be processed within 10 days by DACS or the organization is automatically approved.

Sections 9, 12, and 13, amend ss. 496.405(7), 496.490(6), and 496.410(5), F.S., to increase the application and renewal processing time by DACS from 10 to 15 days for charitable organizations and sponsors, professional solicitors, and professional fundraising consultants.

<u>Annual Registration</u>
Currently, registrations for professional solicitors and professional fundraising consultants expire on March 31 of each year regardless of the date the license was issued.

Sections 12 and 13 amend ss. 496.409(3) and 496.410(3), F.S., so that professional solicitors and professional fundraising consultants have an annual registration requirement based on the date of issuance rather than all registrations expiring on March 31.

Renewal Statements

Currently, s. 496.405, F.S., requires DACS to send annual renewal notices by mail 60 days before the expiration date of the charitable organization or sponsor. Because the notices are sent so far in advance of expiration, many organizations ignore the notice making a second reminder necessary.

Section 9 amends s. 496.405(1)(b), F.S., by giving DACS the option to send a renewal statement by electronic mail. The bill also reduces from 60 days to 30 days the time before renewal in which the renewal notice must be sent to the charitable organization.

Felony Reporting

Currently, s. 496.405, F.S., specifies the contents of registration statements that are required to be submitted by charitable organizations and sponsors. DACS states the current language related to past criminal activities seems to confuse applicants.[8]

Section 9 amends s. 496.405(2)(d), F.S., to clarify past criminal activities that must be reported by charitable organizations and sponsors. The bill provides for reporting the same information but is clearer and easier to understand.

Small Charity Fee Exemption

Currently, charities who solicit funds from the public must register with DACS. Charities who receive less than $25,000 in contributions must pay a $10 filing fee and file similar financial records as larger charities.

Section 10 amends s. 496.406, F.S., by allowing charities with less than $25,000 in total revenue, that have no employees or members who are compensated, and that do not use a professional solicitor to file an affidavit of exemption that contains basic information about the charity and limited financial information about the charity. These charities will also be exempt from paying the $10 filing fee. However, if a charity exceeds $25,000 in contributions, it must register within 30 days after the date the revenue reaches $25,000.

Remove Notary Requirement

Currently, charitable organizations and sponsors, professional solicitors, and professional fundraisers must all sign their applications under oath. DACS intends to move to an online application process for all registrations. The notarization requirement is a barrier to having this registration process move online because the online filing cannot be notarized.[9]

Sections 9, 12, and 13, amend ss. 496.405(2), 496.409(2), and 496.410(2), F.S., by removing the notarization requirement for charitable organizations and sponsors, professional solicitors, and professional fundraisers applications. The bill allows DACS to add a statement to each registration package that certifies the filing is true and correct and that the person signing the registration is authorized to do so.

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[8] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Felony Reporting Requirements, 12-18-2012, page 1, copy available in committee files.

[9] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Remove Notary Requirements, 12-18-2012, page 39, copy available in committee files.

Financial Reporting

Currently, professional solicitors are required to file a financial report of campaign (FROC) detailing the gross revenue received and an itemization of expenses incurred within 90 days of the end of a solicitation campaign or on the anniversary date of a campaign lasting more than 1 year. The financial information requested for campaigns lasting longer than 1 year must contain data for the previous year. DACS allows professional solicitor's to file FROCs within 30 days of the anniversary date for campaigns lasting more than 1 year. The current statute allows for 90 days to file the FROC for campaigns that last less than 1 year.

Section 13 amends s. 496.410(8), F.S., by reducing the time for professional solicitors to file necessary financial documentation for campaigns lasting less than 1 year from 90 days to 45 days. The bill delays the due date for financial reporting on campaigns lasting more than 1 year from on the anniversary date to 45 days after the anniversary.

Financial Reporting

Currently, s. 496.411, F.S., requires charitable organizations and sponsors to place a statement on printed solicitations, receipts, and contribution reminders stating the percentage of contributions that go to the charity and the percentage that go to a professional solicitor. DACS notes the State of North Carolina has a similar provision which was deemed unconstitutional in a Supreme Court decision in 1988, Riley v. National Federation of the Blind, 487 U.S. 781 (1988). Based on this decision, DACS does not enforce this statute.[10]

Section 14 amends s. 496.411(6), F.S., by removing the requirement that charitable organizations and sponsors place a statement on printed material indicating the percentage of each contribution retained by a professional solicitor and the percentage of each contribution received by the organization or sponsor.

Cease And Desist Orders

Charitable organization registrations have continued to increase over the last several years along with the number of organizations receiving increased media scrutiny for inappropriate use of solicited funds. Several organizations based in Florida have been the subject of high profile investigations for filing false documents and for failing to use proceeds as intended.

Section 15 amends s. 496.415, F.S., to include submitting false, misleading, or inaccurate information to the public by a charitable organization or sponsor as a prohibited act.

Section 16 amends s. 496.419, F.S., by authorizing DACS to issue an immediate cease and desist order for certain prohibited acts. The bill also requires DACS to report any substantiated criminal violations to the proper prosecuting authority.

Bond Reduction for Health Studios, ss. 501.012-.019, F.S., Health Studios

Currently, health studios that sell contracts for services are required to obtain a bond, certificate of deposit, or letter of credit in the amount of $50,000 for each business location. The security is then available to compensate consumers in the event that the health studio violates any of the

[10] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Eliminate Certain Campaign Disclosures, 12-18-2012, page 37, copy available in committee files.

provisions of the Health Studio Act. A health studio that is in business for 5 years under the same ownership and control with no unresolved consumer complaints is allowed to waive the security requirement.

Section 17 amends s. 501.016, F.S., by reducing the required security for health studios from $50,000 per location to $25,000 per location. DACS reports that over the last 2 years, only one payout exceeded $25,000 and most were significantly less.[11]

Do Not Call Program (DNC), s. 501.059, F.S., Telephone Solicitation

Under the Florida Do Not Call (DNC) program, if a person notifies DACS of his or her desire to be place on a list (the "Do Not Call" list) indicating that he or she does not wish to receive unsolicited telephonic sales calls, DACS places the person on the list for 5 years. Telephone solicitors are prohibited from calling phone numbers on the Do Not Call list. However, some unsolicited phone calls do not meet the definition of a "telephonic sales call" as defined by statute, typically because the entity is not selling a product or service. This includes charitable organizations seeking donations. DACS receives frequent complaints from individuals who are frustrated because they have subscribed to the DNC program and continue to receive calls, primarily from professional solicitors calling on behalf of charitable organizations.[12]

Section 18 amends s. 501.059, F.S., to expand the state DNC program to prohibit telephone solicitors seeking donations on behalf of charities from contacting individuals who have previously communicated to the solicitor that he or she does not wish to receive telephone solicitations from that charitable organization. The bill authorizes DACS to enforce this provision against charities and professional solicitors working on behalf of charities. The bill is intended to align Florida's DNC program with the federal DNC program.

Consumer Services – Telemarketing, ss. 501.601-501.626, F.S., Florida Telemarketing Act

Definition

The current definitions of "commercial telephone solicitation" contain three separate definitions that delineate what types of activities fall under the statute.[13] Two of the definitions reference consumer goods or service but one does not. Some interpretations expand the definition to non-consumer goods and services. DACS has stated the discrepancy has caused confusion for DACS and individuals seeking licensure.[14]

Section 19 amends s. 501.603(1), F.S., by adding a reference to consumer goods or services so that all three definitions of "commercial telephone solicitation" include references to consumer goods or services.

Section 20 amends s. 501.604, F.S., by updating the reference to entities exempt from the Telemarketing Act by removing the outdated reference to "National Association of Securities

[11] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Health Studio Bond Reduction, 12-18-2012, page 7, copy available in committee files.

[12] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – DNC Requirements of Charities, 12-18-2012, page 5, copy available in committee files.

[13] Section 501.603(1)(a), (b), and (c), F.S.

[14] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Clarifying Definition of a Commercial Telephone Solicitation, 12-18-2012, page 50, copy available in committee files.

Dealers" and updates the reference to "Financial Industry Regulatory Authority." The amendment further clarifies the application of the exemption to a supervised financial institution or parent, subsidiary, or affiliate operating within the scope of the supervised activity.

Exemption Status

Currently, the definition of a commercial telephone seller does not include a broad range of entities exempted by statute. Entities seeking an exemption are required to provide a notarized affidavit of exemption to DACS. The current language does not provide a way for DACS to verify the information provided in the affidavit of exemption.

Section 19 amends s. 501.603(2), F.S., by clarifying that an entity exempt from the definition of "commercial telephone seller" is only exempt when a valid affidavit of exemption has been filed.

Section 22 amends s. 501.608, F.S., to authorize DACS to review and request additional information before approving affidavits of exemption. The exempt entity must display its either its license or receipt of filing of an affidavit of exemption.

Work History

Currently, the Telemarketing Act requires telemarketing salespersons provide a 3-year work history on their application. DACS indicates it does not have a way to verify the accuracy of the data reported.[15]

Section 21 amends s. 501.607, F.S., by removing the requirement for telemarketing salespersons to provide a 3-year work history as a part of his or her application.

Bond

The Telemarketing Act requires commercial telephone sellers obtain a bond, certificate of deposit, or letter of credit when they register or renew their license. If the bond expires before the renewal date, the statute does not require the commercial telephone seller to provide a valid security prior to its next renewal period.

Section 23 amends 501.611, F.S., by stating that the required bond for telemarketers must remain in force throughout the licensure period.

Timeshare Advertising

Telemarketers who engage in timeshare advertising are regulated by DACS. Activities related to timeshare advertising are regulated by the Department of Business and Professional Regulation (DBPR) under ch. 721, F.S. In 2012, the Legislature enacted provisions to regulate timeshare resale service providers.[16]

Section 24 amends s. 501.615, F.S., to reconcile the new DBPR timeshare reseller language in ch. 721, F.S., with the DACS telemarketing statute. The bill requires telemarketers who advertise timeshares to comply with the contract requirements in s. 721.205, F.S.

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[15] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Telemarketing – Eliminate Salesperson Work History Requirement, 12-18-2012, page 45, copy available in committee files.

[16] Ch. 2012-76, L.O.F.

Section 47 amends s. 721.20 F.S., to highlight the requirement that telemarketers who advertise timeshares must also comply with the licensing requirements in part IV of ch. 501, F.S.

Inspections

DACS has regulatory authority over telemarketing businesses and regularly conducts onsite investigations looking for unlicensed or unlawful activity. Businesses may refuse entry to or refuse to provide required materials, such as scripts, to investigators. Currently, DACS has subpoena power to gain access to these materials.

Section 25 amends s. 501.617, F.S., by expanding DACS' investigative authority to allow onsite investigators to conduct regulatory inspections of telemarketing businesses and thereby view business records.

Moving Services, ch. 507, F.S.

Currently, DACS does not interpret the definition of a moving broker to include online brokering services. DACS has stated that the increase in online brokering services in recent years has made it easy for unregistered movers to advertise and get referrals from moving brokers. Additionally, moving brokers are required to obtain a $25,000 bond. DACS states it has never had to use the bond.[17]

Section 26 amends s. 507.03, F.S., to require moving brokers to report affiliated movers upon request by DACS.

Section 28, amends s. 507.07, F.S., to create two new violations of ch. 507, F.S. The bill makes it unlawful for a moving broker to subcontract for services with an unregistered mover. Similarly, the bill makes it unlawful for a mover to subcontract for services with an unregistered moving broker.

Section 27 amends s. 507.04, F.S., to repeal the requirement that moving brokers obtain a performance bond or certificate of deposit in the amount of $25,000.

Alternative Fuels, ch. 525, F.S.

Currently, fuel products are being developed that are not covered under the definition of alternative fuels found in s. 525.01, F.S. Specifically, the standard for E85 has been amended by ASTM International. ASTM provides a forum for the development and publication of voluntary consensus standards for materials, products, and services. Current ASTM standards have altered the definition of E85 to allow for a gasoline-ethanol blend containing 51 percent to 83 percent ethanol.

Section 29 amends s. 525.01, F.S., to broaden the definition of alternative fuels. The change is designed to allow DACS the flexibility to adjust to changing fuel quality standards and new blended fuels.

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[17] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Moving Broker Registration Requirement, 12-18-2012, page 9, copy available in committee files.

LP Gas Licensees, ch. 527, F.S.

License year

Currently, LP gas licenses expire on August 31st of each year.

Sections 32 and 34, amend ss. 527.01 and 527.03, F.S., to allow for staggered license expiration dates. The bill amends the renewal sequence of licenses to include the period from either September 1 through the following August 31, or April 1 through the following March 31, depending upon the type of license.

Examinations

Section 527.0201, F.S., authorizes DACS to issue competency examinations to licensees based on licensure category. This section currently states that the applicant for licensure must "prove competency by passing a written examination administered by the department or its agent with a grade of 75 percent or above." This language appears to require that an overall score of 75 percent must be achieved, not a score of 75 percent on each area tested on the examination.

Section 33 amends s. 527.0201, F.S., to require that applicants taking the license examinations must pass each area tested with a score of at least 75 percent.

Continuing education

Currently, a minimum of 12 hours of continuing education is required in order to maintain certification as a qualifier or master qualifier. The industry recommends a minimum of 16 hours.

Section 33 amends s. 527.0201(5)(c), F.S., to increase the minimum number of hours of continuing education required to maintain certain licenses from 12 to 16.

Weights and Measures Fees, ch. 531, F.S., Weights and Measures Act of 1971.

Currently, ch. 531, F.S., sets the maximum fees for commercial weighing and measuring devices. Actual fees are established by rule. The permits are issued on a per device basis, but businesses with multiple devices in one location are assessed less per device since certain economies of scale are realized by the regulatory program when conducting multiple inspections at one location.

When the permitting fees were enacted in 2009, the fees were to sunset on July 1, 2014. Prior to 2009, the weights and measures program was funded by General Revenue.

Section 37 amends s. 40 of ch. 2009-66, L.O.F., by extending the sunset provision relating to permitting fees for weighing and measuring devices from July 1, 2014, to July 1, 2020.

Pawn Broker Fingerprinting, ch. 539, F.S.

Currently, pawn shop owners must submit fingerprints taken by a law enforcement agency as part of the registration requirements.

Section 38 amends s. 539.001, F.S., by allowing pawn shop owners to have their fingerprints taken at a fingerprinting service provider authorized by the Florida Department of Law Enforcement.

Sale of Business Opportunities Act, ss. 559.80-559.815, F.S.
Currently, businesses file an annual disclosure statement with DACS if selling or leasing business opportunities in Florida. The Federal Trade Commission regulates business opportunities and DACS has limited regulatory authority. Franchises are exempt from the requirements of the business opportunity statute as long as they meet the Federal Trade Commission's definition of a franchise.

Sections 39, 40, 41, 42, 43, and 44, deregulate sellers of business opportunities as follows:

Section 39 amends s. 559.802, F.S., by authorizing DACS to create a form for a franchise to file its notice of exemption.

Section 40 amends s. 559.803, F.S., by eliminating the provision that allows the seller of a business opportunity file a disclosure statement or any other document required to be filed by the seller under federal regulations in lieu of the documents required by s. 559.803. Elimination of this provision now requires the seller of a business opportunity to comply with the disclosure requirements of s. 559.803.

Section 41 repeals s. 559.805, F.S., which eliminates the requirement that a seller of a business opportunity annually file a copy of its disclosure statement before placing an advertisement or making any other offer to sell, or solicit an offer to buy, a business opportunity to a prospective purchaser in this state. In addition, the seller of a business opportunity is no longer required to file a list of the seller's officers, directors, trustees, general partners, general managers, principal executives, or any other person charged with the responsibility for the seller's business activities. The department will no longer be required to issue an advertisement identification number to a seller of a business opportunity. In addition, the department will no longer collect an annual fee of $300 from sellers of a business opportunity or a $50 fee to update any filing.

Section 42 repeals s. 559.807(2), F.S., which eliminates the requirement that a bond, certificate of deposit, or guaranteed letter of credit be held in favor of the department for the use and benefit of any person who is injured by the fraud, misrepresentation, breach of contract, financial failure, or violation of any statute regulating the acts of a seller of a business opportunity. However, the bill retains the requirement that a seller of a business opportunity obtain a surety bond, establish a certificate of deposit, or a guaranteed letter of credit for the minimum amount of $50,000 if the seller makes certain representations to prospective buyers.

Section 43 amends s. 559.813, F.S., by eliminating the enforcement authority of DACS with respect to unlawful acts committed by a seller of a business opportunity. However, the bill retains a private cause of action for an individual injured by the unlawful acts of a seller of a business opportunity. Similarly, the Attorney General or state attorney may also bring an action against the seller.

Section 44 amends s. 559.815, F.S., by eliminating a reference to mandatory filing requirements required of a seller of a business opportunity by the department.

The bill retains the consumer protection provisions of ch. 559, F.S., such as the requirement that the seller of a business opportunity provide a written disclosure to prospective buyers, the requirement that certain sellers obtain $50,000 in security, a private cause of action against a seller, and other civil sanctions.

Motor Vehicle Repair Advisory Council, ss. 559.901-559.9221, F.S., Florida Motor Vehicle Repair Act.
Currently, the 11 member Motor Vehicle Repair Advisory Council exists to advise and assist DACS in carrying out the provisions of the Motor Vehicle Repair Act.

Section 45 amends s. 559.9221, F.S., by decreasing the size of the Motor Vehicle Repair Council from 11 to 9 members. The bill merges the position of "independent automotive collision shops" with "franchise or company owned automotive collision shops" and merges the position of "independent tire dealer" with "franchise or company owned tire dealer."

Public Fairs & Expositions, ch. 616, F.S.
Currently, an owner of an amusement ride may not operate a ride without meeting the insurance requirements, which may be satisfied with an insurance policy or a bond.

Section 46 amends s. 616.242, F.S., by eliminating the option of obtaining a bond. Although the bill removes a bond option, DACS reports that no entity has utilized the bond option.[18]

Effective Date
Section 48 provides an effective date of July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Because the repeal of the business opportunity registration requirement includes elimination of an annual fee of $300 and a $50 fee to update any filing, DACS calculated an estimated revenue loss of $11,000 annually.[19] Similarly, the elimination of the $10

[18] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Eliminate Fair Rides Bond, 12-18-2012, page 6, copy available in committee files.
[19] DACS Analysis, SB 1040, February 18, 2013, copy available in committee files.

filing fee for charitable organizations that make less than $25,000 in total revenue will result in an estimated revenue loss of $53,520 annually.[20]

Extends the sunset date on permitting fees for commercial weighing and measuring devices from July1, 2014 to July 1, 2020.

B. Private Sector Impact:

According to DACS, the removal of the $300 annual fee for a business opportunity and the $10 filing for charitable organizations making less than $25,000 will reduce administrative costs for these industries. [21] Likewise, reducing the bond security amount from $50,000 to $25,000 for health studios and the elimination of a bonding requirement for moving brokers will produce savings for these industries.[22]

The centralized collection of motor fuel taxes and inspection fees within DOR may decrease administrative costs to the regulated entities.

However, by requiring 4 additional hours for continuing education courses for LP gas licensees, these licensees will incur an added cost for having to register for more courses. DACS provides classes at a cost of $15 to $25. Classes may also be taken with private providers at a higher fee.

Additionally, the enforcement of DNC violations against charities may subject such charities to fines or other civil sanctions.[23]

C. Government Sector Impact:

DACS has estimated the elimination of the filing fee for charitable organizations that make less than $25,000 in total revenue will cause the department to incur an estimated $8,028 in administrative costs.[24] However, eliminating the processing of applications from small charities will provide DACS staff more time to focus on enforcement against larger charities.[25] Additionally, the decrease in applications from small charities will save expenses and resources associated with processing the other applications from charities.[26]

DACS stated that revenue will likely increase due to increased registration and fines of moving brokers and movers; however, there may be minimal expenses to increased administrative costs of processing registrations and pursuing enforcement actions.[27] DACS stated the staggered LP gas license renewal periods may reduce expenses by

[20] DACS Analysis, *supra* note 19.
[21] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Business Opportunity Repeal, 12-18-2012, page 1, copy available in committee files; DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – SOC – Small Charity Exemption, 12-18-2012, page 33, copy available in committee files.
[22] DACS 2013 Legislative Proposal, *supra* note 11; DACS 2013 Legislative Proposal, *supra* note 17.
[23] *See* DACS 2013 Legislative Proposal, *supra* note 12.
[24] DACS Analysis, *supra* note 19.
[25] DACS 2013 Legislative Proposal, *supra* note 21.
[26] DACS 2013 Legislative Proposal, *supra* note 21.
[27] DACS 2013 Legislative Proposal, *supra* note 17.

eliminating the need for additional OPS employees during the renewal period.[28] DACS stated the ability to email renewal notices to charitable organizations and sponsors will save the department on mailing costs.[29]

Lastly, according to DOR, the operational impact of transferring collection of taxes and fees on petroleum products from DACS to DOR will be insignificant. [30]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Commerce and Tourism on March 11, 2013:

The committee substitute does the following:

- Removes the word "applicant" from the provisions allowing for disciplinary proceedings against a Class "G" licensee for failing to complete required recertification training or against a Class "K" licensee for failing to maintain active certification as a professional firearms trainer.
- Reduces the number of days, from 20 to 15, the department has to process applications and renewals for charitable organizations, professional solicitors, and professional fundraising consultants before the application is automatically approved.
- Provides a commercial telephone salesperson the option to display either a license or a receipt of filing of an affidavit of exemption at the place of business. Failure to do so may result in the salesperson being ordered by the department to leave the business until he or she can produce one of the two required documents.

B. Amendments:

None.

[28] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – LP Gas License Renewal, 12-18-2012, page 15, copy available in committee files.
[29] DACS 2013 Legislative Proposal, Division of Consumer Services, Short Title – Renewal Statements, 12-18-2012, page 27, copy available in committee files.
[30] DOR 2013 Bill Analysis, SB 1040, March 6, 2013, copy available in committee files.

300472

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Stargel) recommended the following:

Senate Amendment

Delete lines 352 - 357
and insert:

(u) For a Class “G” licensee, failing to complete recertification training required to carry a firearm while performing regulated duties.

(v) For a Class “K” licensee, failing to maintain active certification as a professional firearms trainer.

303706

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	
	.	
	.	
	.	

The Committee on Commerce and Tourism (Stargel) recommended the following:

Senate Amendment

Delete lines 590 - 604
and insert:
satisfied. Within <u>15</u> ~~10~~ working days after its receipt of a statement, the department must examine the statement, notify the applicant of ~~any~~ apparent errors or omissions, and request ~~any~~ additional information the department is allowed by law to require. Failure to correct an error or omission or to supply additional information is not grounds for denial of the initial registration or annual renewal statement unless the department has notified the applicant within the <u>15</u> ~~10~~-working-day period.

303706

The department must approve or deny each statement, or must notify the applicant that the activity for which she or he seeks registration is exempt from the registration requirement, within 15 ~~10~~ working days after receipt of the initial registration or annual renewal statement or the requested additional information or correction of errors or omissions. A ~~Any~~ statement that is not approved or denied within 15 ~~10~~ working days after receipt

Delete line 768
and insert:
must notify the professional fundraising consultant within 15 ~~10~~

Delete line 865
and insert:
solicitor within 15 ~~10~~ working days after its receipt of the

123898

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2013	.	

The Committee on Commerce and Tourism (Stargel) recommended the following:

Senate Amendment

Delete lines 1243 - 1245

and insert:

a salesperson to display a license or a receipt of filing of an affidavit of exemption may result in the salesperson being summarily ordered by the department to leave the office until he or she can produce a license or a receipt of filing of an affidavit of exemption for the department.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

March 5, 2013

The Honorable Nancy C. Detert
Commerce and Tourism Committee, Chair
416 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairwoman Detert:

I am respectfully requesting that SB 1040, related to *Department of Agriculture and Consumer Services,* be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel

Kelli Stargel
Senator, District 15

Cc: Jennifer Hrdlicka/ Staff Director
Patty Blackburn/ AA

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3/11/2013
Meeting Date

Topic: Consumer / Licensing FDACS

Bill Number: 1040 *(if applicable)*

Name: Grace Lovett

Amendment Barcode: ____ *(if applicable)*

Job Title: Dir. of Legislative Affairs

Address: PL 10 The Capitol
Street

Tallahassee FL 32399
City *State* *Zip*

Phone: 850 617 7700

E-mail: grace.lovett@freshfromflorida.com

Speaking: [X] For [ ] Against [ ] Information

Representing: Dept. of Agriculture & Consumer Services

Appearing at request of Chair: [ ] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [ ] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

DRAFT

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 Commerce and Tourism Committee

BILL: SM 78

INTRODUCER: Senator Hays

SUBJECT: Income Tax and National Retail Sales Tax

DATE: March 8, 2013 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Siples	Hrdlicka	CM	WORKSHOP DRAFT
2.			GO	
3.			RC	
4.				
5.				
6.				

I. Summary:

SM 78 urges the United States Congress to enact H.R. 25, the Fair Tax Act of 2011, which imposes a national retail sales tax and eliminates the personal income tax, the alternative minimum tax, the inheritance tax, the gift tax, the capital gains tax, the corporate income tax, the self-employment tax, and the employee and employer payroll tax.

II. Present Situation:

Background

Sixteenth Amendment[1]

In 1913, the 16th Amendment to the United States Constitution was ratified, establishing the framework for our modern federal tax system. Specifically, the 16th Amendment grants Congress the power to lay and collect taxes on "income, from whatever source derived," and eliminates the previous requirement that all direct federal taxes be apportioned by population.

In 1939, the Internal Revenue Code (IRC) was created to simplify the process for making changes to existing tax statutes. Previously, any statutory revisions to existing law required the passage of an entirely new set of tax provisions. With the creation of the IRC, revisions to existing law would only demand changes to be made to the affected section. Since 1939, the IRC

[1] Information in this section was adapted from Shirley-Dennis-Escoffier & Karen A. Fortin, Taxation for Decision Makers, 3-4 (Thompson South-Western 2008).

has been recodified on two occasions: 1954 and 1986. Presently, the federal government is operating under the Internal Revenue Code of 1986.

Federal Taxes[2]

Federal Income Tax

Federal income tax includes income taxed at both the individual and corporate level. Notable variations in the governing rules apply to each category. An individual taxpayer's liability is determined by the greater of "(1) regular individual income tax liability reduced by credits allowed against the return tax, or (2) tentative minimum tax reduced by credits allowed against the minimum tax."[3] Depending on the applicable tax standard, a different rate schedule will apply.

Determining regular tax liability requires calculating taxable income, defined as "the taxpayer's total gross income less certain exclusions, exemptions, and deductions."[4] An individual's adjusted gross income (AGI) is calculated by subtracting "above-the-line-deductions," such as trade or business expenses, moving expenses, and capital losses, from the individual's gross income.[5] The AGI is then reduced by the personal exemption deduction and by either the appropriate standard deduction or itemized deduction amount to arrive to the taxable income figure.[6] Marginal tax rates based on corresponding ordinary income brackets are then applied to the taxable income, with the maximum rate set at 35 percent. Note that most gain acquired from a capital asset is taxed under a separate rate structure, with the maximum rate set at 20 percent.[7]

Additionally, federal law requires that the alternative minimum tax also be calculated to determine if an individual's regular tax liability falls below the alternative minimum tax liability amount. If so, then an alternative minimum tax will be imposed to account for the difference between the taxable income and alternative minimum taxable income (AMTI) amount.[8] When calculating the AMTI, the taxpayer is precluded from taking a personal exemption, standard deduction, and certain itemized deductions, such as state and local taxes to reduce their overall income.[9] The AMTI is then reduced by the appropriate exemption amount. The difference, if any,[10] is the taxable excess, which serves as the basis for determining the taxpayer's tentative minimum tax liability.

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[2] Staff of J. Comm. on Taxation, 112th Cong., Overview of the Federal Tax System as in Effect for 2013, (Comm. Print 2013), *available at* https://www.jct.gov/publications.html?func=startdown&id=4498 (select download link to access pdf file) (last visited March 6, 2013).

[3] *Id.* at 4.

[4] *Id.* at 2.

[5] *Id.*

[6] *Id.* at 3.

[7] *Id.* at 7. Although historically classified as ordinary income, the Jobs and Growth Tax Relief Reconciliation Act of 2003 allows for dividends to be taxed at favorable capital gains rate subject to certain conditions.

[8] *Id* at 6.

[9] *Id* at 6. ("AMTI is the taxpayer's taxable income increased by the taxpayer's tax preferences and adjusted by determining the tax treatment of certain items in a manner that negates the deferral of income resulting from the regular tax treatment of those items.")

[10] *Id.* Note that if there is no difference then the individual taxpayer is subject to federal tax rules governing regular tax liability.

At the corporate level, regular income tax liability is calculated in a similar way. Numerous rules exist that are unique to corporations, such as the dividend received deduction (DRD) provision that allows a corporate shareholder to deduct, at a minimum, 70 percent of the dividend it receives.[11] The effect of this provision is to mitigate the effects of a triple taxation.[12] However, a distributing corporation is restricted from deducting the dividend amount paid to shareholders.[13] Furthermore, unlike individuals, a separate tax rate structure does not apply for corporate capital gains. Thus, corporate capital gains will be taxed at the same schedule as ordinary corporate income tax rates.[14]

Corporations are also required to calculate an alternative minimum tax. Like the individual taxpayer, a corporation is subject to the alternative minimum tax to the extent that it exceeds its regular income tax liability.[15] A corporation's alternative minimum taxable income is calculated by increasing the corporation's regular taxable income by disallowing favorable tax treatment on certain items. Again, the effect is to negate the deferral of income that would normally take place under the regular tax treatment of those items. The alternative minimum taxable income is then increased by 75 percent of the difference between a corporation's adjusted current earnings and its alternative minimum taxable income.[16] That amount is then reduced by the applicable exemption amount, if one is applicable.[17] The leftover amount is then taxed at a flat rate of 20 percent.[18]

Estate and Gift Tax

In the United States, a gift tax is imposed on the transfer of any property by gift that is made by a U.S. citizen or resident.[19] The gift tax is imposed at the donor level and is based on the fair market value of the property transferred. Deductions are allowed for certain gifts that are made to spouses and charities. As of 2013, annual gifts of $14,000 or less per donor and per donee generally will not be subject to any tax.

An estate tax is imposed on the taxable estate of any person who was a citizen or resident of the United States at the time of death. A nonresident's estate may also be subject to the estate tax if certain property belonging to the decedent is located in the United States at the time of death. Similar to the gift tax, the tax is imposed based on the fair market value of the property at the time of death. In its simplest form, the taxable estate generally will equal the value of the worldwide gross estate reduced by allowable deductions, such as marital deductions and

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[11] *Id.* at 10 and United States Department of the Treasury, Internal Revenue Service, Corporations (Publication 542, Rev. March 2012), *available at* http://www.irs.gov/pub/irs-pdf/p542.pdf (last visited March 7, 2013).
[12] Note that without this deduction, corporate profits would be taxed first to the corporation that earned them, again to the corporate shareholder receiving the distribution, and again to the individual shareholder upon receipt of a distribution from the second corporation.
[13] *See supra* note 14.
[14] Staff of J. Comm. on Taxation. at 11.
[15] *Id.* at 12.
[16] *Id.*
[17] Note that the exemption amount is phased out for corporations with income above certain thresholds, and is completely phased out for corporations with alternative minimum taxable income of $310,000 or more.
[18] *See supra* note 11.
[19] *Id.* at 14.

charitable bequests. In addition to the gift and estate tax, a transfer tax may also be imposed. As a general rule, this tax is imposed on transfers in excess of $5.25 million to a beneficiary in more than one generation below that of the transferor at a flat rate of 40 percent.

Employment Tax

The Federal Insurance Contributions Act (FICA) imposes taxes on both employers and employees.[20] Under the act, employers are required to pay the following: "(1) the old, age survivors, and disability insurance ("OASDI") tax equal to 6.2[21] percent of covered wages up to the taxable wage base ($113,700 in 2013); and (2) the Medical hospital insurance ("HI") tax amount equal to 1.45 percent of covered wages."[22] In addition, employers are required to pay a federal unemployment insurance payroll tax of generally 0.6 percent of the total wages of each employee, up to $7,000, on covered employment.[23]

Employees are also subject to a federal withholding tax equal to the amount of FICA tax imposed on the employer. Note that the withholding tax does not include the employer's obligation to pay unemployment insurance tax. Lastly, the Self-Employment Contributions Act (SECA) requires that taxes be imposed on the net income derived from self-employment. The general rule is that the OASDI and HI tax rate portions will be paid by the self-employed individual at the combined employer and employee rates as required under FICA.

<u>Fair Tax Act of 2011</u>

Below is a summary describing H.R. 25, The Fair Tax Act of 2011, prepared by the Congressional Research Service:

> This proposal would repeal the individual income tax, the corporate income tax, all payroll taxes, the self-employment tax, and the estate and gift taxes and levy a 23 percent (tax-inclusive) national retails sales tax as a replacement. The tax-inclusive retail sales tax would equal 23 percent of the sum of the sales price of an item and the amount of the retail sales tax. Every family would receive a rebate of the sales tax on spending amounts up to the federal poverty level (plus an extra amount to prevent any marriage penalty). The Social Security Administration would provide a monthly sales tax rebate to registered qualified families. The 23 percent national retail sales tax would not be levied on exports. The sales tax would be separately stated and charged. Social Security and Medicare benefits would remain the same with payroll tax revenue replaced by some of the revenue from the retail sales tax. States could elect to collect the national retail sales tax on behalf of the federal government in exchange for a fee. Taxpayer rights provisions are incorporated into the act. The sales tax would sunset at the end of a 7-year period

[20] *Id.* at 16.
[21] Note that under the Tax Relief Act of 2010, this rate was reduced to 4.2 percent. This was then extended through February 2012 by H.R. 3765, and then extended once again through the end of 2012 by H.R. 360. The reduction expired December 31, 2012 and the rate returned to 6.2 percent.
[22] *Id.*
[23] The unemployment insurance payroll tax is 6 percent; however, most states receive a credit of 5.4 percent, making the effective tax rate 0.6 percent.

beginning on the enactment of this act if the Sixteenth Amendment is not repealed. This amendment provided Congress the 'power to lay and collect taxes on income.'[24]

III. Effect of Proposed Changes:

Resolution: SM 78 urges Congress to enact H.R. 25, the Fair Tax Act of 2011, which imposes a national retail sales tax and eliminates the personal income tax, the alternative minimum tax, the inheritance tax, the gift tax, the capital gains tax, the corporate income tax, the self-employment tax, and the employee and employer payroll tax.

Rationale for Resolution: SM 78 stipulates that the current federal taxation regime retards economic growth and the country's international competiveness. It further states that the current system is inequitable and imposes unnecessary administrative and compliance costs to both individual and business taxpayers. As such, SM 78 recommends the repeal of the 16th Amendment to the federal constitution.

In the alternative, SM 78 calls for the imposition of a national sales tax. It provides that the imposition of such tax would promote fairness and reduce administrative burdens faced by American taxpayers. SM 78 recommends that Congress consider administering and collecting the national sales tax at the state level in return for a reasonable administration fee to the states.

Circulation: Copes of this memorial are to be dispatched to the President of the United States, to the President of the United States Senate, to the Speaker of the United States House of Representatives, and to each member of the Florida delegation to the United States Congress.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

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[24] Bickley, James, Cong. Research Serv., R41591, Tax Reform: An Overview of Proposals of the 112th Congress (October 26, 2012, *available at* https://www.fas.org/sgp/crs/misc/R41591.pdf (last visited March 7, 2013).

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

In lines 47 and 53, "business" should be written in the plural form as "businesses."

Congress failed to take up H.R. 25, Fair Tax Act of 2011, during the 112th Congress which adjourned on January 3, 2013. H.R. 25, Fair Tax Act of 2013, was introduced on January 3, 2013, with the convening of the 113th Congress. The two bills appear substantially similar.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

MADAM CHAIR AND COMMITTEE MEMBERS,THANK YOU FOR ALLOWING US TO MAKE A PRESENTATION TO YOU ON THE MERITS OF THE FAIRTAX LEGISLATION, HR 25, S-122, NOW BEFORE THE UNITED STATES CONGRESS.

I'M MANAGING DIRECTOR OF FLORIDA FAIRTAX EDUCATIONAL ASSOCIATION WHICH IS A 501 (C) (3), NON-PROFIT, ALL-VOLUNTEER ORGANIZATION WITH 50,000 PLUS SUPPORTERS IN OUR FLORIDA DATA BASE.

0UR LEADERSHIP BELIEVES, VERY STRONGLY, THAT A TAX REFORM PLAN WILL ADVANCE FROM THE HOUSE OF REPRESENTATIVES COMMITTEE ON WAYS AND MEANS DURING 2013. COMMITTEE CHAIRMAN DAVE CAMP, HAS INDICATED TO THE FAIRTAX SPONSOR, ROB WOODALL, THAT A VOTE WILL BE TAKEN ON FAIRTAX DURING THE CURRENT SESSION.

THIS IS THE FARTHERIST FAIRTAX, A CONSUMPTION TAX, HAS ADVANCED AS A SERIOUS ALTERNATIVE TO THE CURRENT FEDERAL TAX ON INCOME SINCE THE BILLS WERE INTRODUCED IN 2002.

BOTH THE NATIONAL FAIRTAX LEADERSHIP AND INDIVIDUAL STATE LEADERS ARE RALLYING AROUND THIS EXCITING OPPORTUNITY. DR. KAREN WALBY, WHO IS IN ATTENANCE TODAY, HAS WORKED DELIGENTLY PREPARING VARIOUS FAIRTAX RESEARCH PAPERS TO THE 11 WORKING COMMITTEES AND THE COMMITTEE AS A WHOLE. IN FACT, HER WORK, IN COLABORATION WITH OTHER ECONOMIST, IS THE PRIME REASON THAT NON-TAX EXPERTS LIKE ME SUPPORT FAIRTAX. THEIR WORK PROVIDED THE FOUNDATION FOR LITERALLY THOUSANDS OF US TO GET INVOLVED IN FEDERAL TAX POLICY. THEIR WORK BUILT A HIGH LEVEL OF CONFIDENCE FOR ALL OF US WHO HAVE AN OPPORTUNITY TO PRESENT FAIRTAX TO DISTINGUISHED LEGISLATIVE LEADERS AND GRASSROOTS CITIZENS LIKE THOSE OF US WHO RESIDE IN FLORIDA.

WHILE THE RESERCH WORK IS OUR UNDERLYING STRENGTH, EQUALLY IMPORTANT IS THE SUPPORT OF THE VARIOUS STATES. NOTHING COULD AID ULTIMATE PASSAGE OF H.R. 25 BETTER THAN HAVING THE 4TH LARGEST STATE AND THE MOST IMPORTANT DELIBERATIVE BODY IN THAT STATE, REQUEST THE PRESIDENT AND CONGRESS TO CONSIDER A CONSUMPTION TAX, REPRESENTED BY FAIRTAX, AS AN ALTERNATIVE TO THE CURRENT TAXING OF INCOME. **THIS IS THE CENTRAL OBJECTIVE OF SENATE MEMORIAL 78.**

THE MEMORIAL WILL ALSO LEND SUPPORT TO THE 10 FLORIDA CONGRESSMEN WHO ARE CURRENT COSPONSORS. WE ALSO BELIEVE THE NUMBER WILL INCREASE BY TWO DURING 2013 AND YOUR POSITIVE SUPPORT OF SM-78 WILL HELP REACH THAT GOAL.

MADAM CHAIR AND COMMITTEE MEMBERS, **MOMENTUM IS A POWERFUL TOOL AND THAT'S WHY YOUR SUPPORT DURING THIS SESSION OF THE FLORIDA LEGISLATURE IS SO IMPORTANT.**

FROM MY PROSPECTIVE, THERE ARE FOUR CORNERSTONES ASSOCIATED WITH THE FAIRTAX LEGISLATION:

SIMPLICITY: 73,000 PAGE CURENT TAX CODE, FAIRTAX, 133

FAIRNESS: NO LOOPHOLES, NO EXCEPTIONS AND NO EXEMPTIONS

TRANSPARENCY: ONE RATE, 23%

CERTITUDE: BUSINESSES AND INDIVIDUAL CAN MAKE LONGTERM FINANCIAL PLANS KNOWING WHAT THE FEDERAL TAX RATE WILL BE FOR AN EXTENDED PERIOD OF TIME.

STEVE HAYES: MR. HAYES IS A PRACTICING ATTORNEY, GRADUATING FROM THE UNIVERSITY OF ARKANSAS AND WITH HONORS FROM THE UNIVERSITY OF SAN FRANCISCO LAW SCHOOL. MR. HAYES RESIDES IN CLEARWATER AND HAS BEEN INVOLVED WITH ALTERNATIVES TO THE TAXING OF INCOME SERVING AS PRESIDENT OF "CITIZENS FOR AN ALTERNATIVE TAX SYSTEM." MR. HAYES HAS TESTIFIED BEFORE CONGRESS AND SPECIFICALLY THE HOUSE OF REPRESENTATIVE WAYS AND MEANS COMMITTEE.

DR. KAREN WALBY: DR.WALBY LIVES IN PERRY HAS BEEN THE DIRECTOR OF RESEARCH AT FAIRTAX.ORG FOR OVER FOUR YEARS. SHE HAS 20 YEARS EXPERIENCE IN FEDERAL/STATE TAX POLICY ANALYSIS, HAVING WORKED FOR THREE FLORIDA GOVERNORS. OTHER PRIOR PRIVATE SECTOR EXPERIENCE INCLUDES SERVINGS AS THE DIRECTOR OF RESEARCH FOR FLORIDA TAXWATCH.

COMMERCE AND TOURISM COMMITTEE

MARCH 11, 2013

THE FAIRTAX PLAN
TAXES THAT ARE ELIMINATED

- FEDERAL PERSONAL INCOME TAX
- CORPORATE INCOME TAX
- FEDERAL PAYROLL TAX
- SELF-EMPLOYMENT TAX
- MEDICARE TAX
- THE DEATH OR ESTATE TAX
- GIFT TAXES
- THE ALTERNATIVE MINIMUM TAX
- CAPITAL GAINS TAX

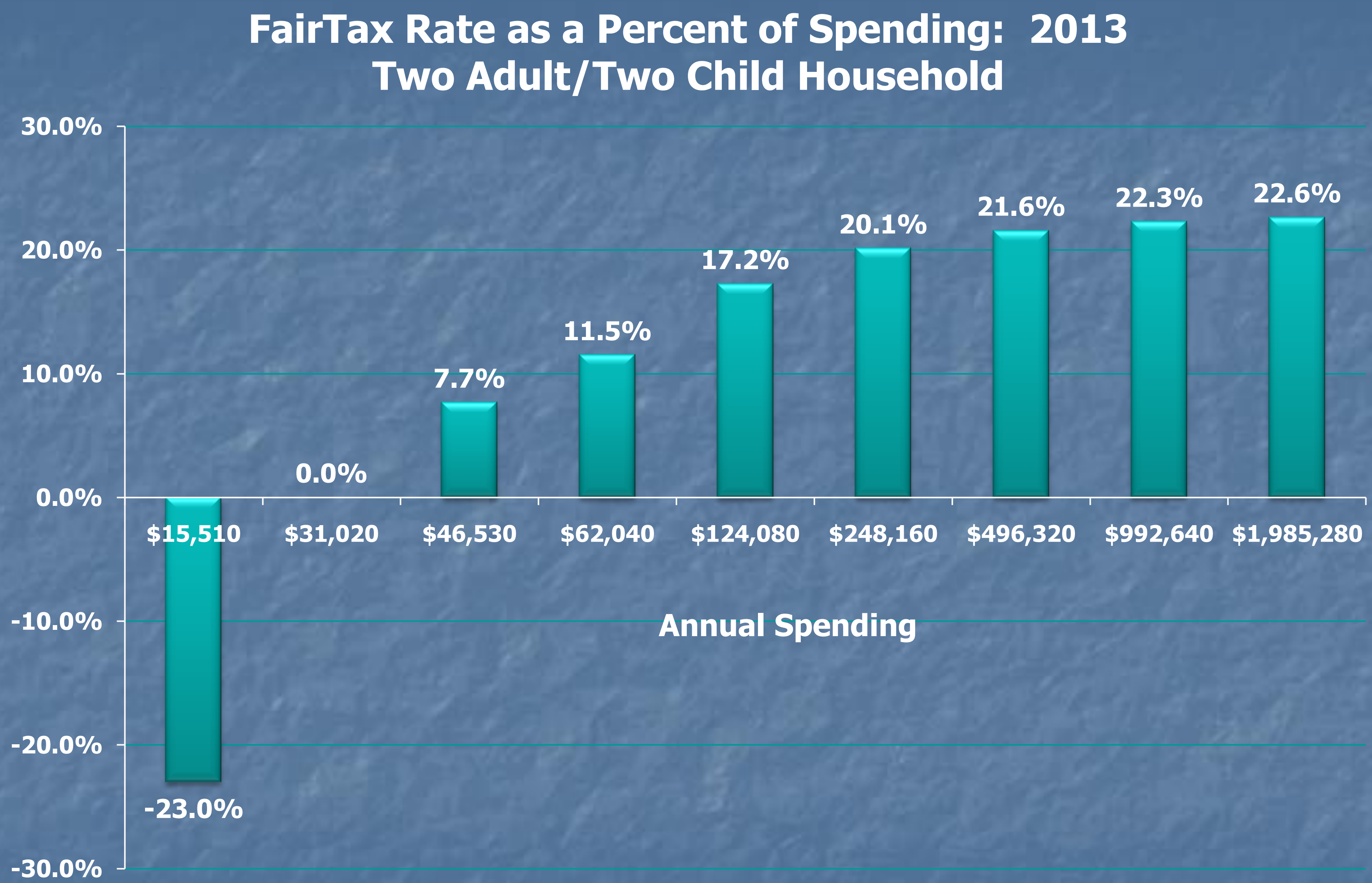
WHAT IS TAXED UNDER THE FAIRTAX PLAN

- TAXES ALL **NEW** GOODS AND SERVICES PURCHASED FOR PERSONAL CONSUMPTION, WITH NO EXCEPTIONS
- TAXES ARE $0.23 ON EACH DOLLAR SPENT
- NO INVESTMENT INCOME IS TAXED
- MAKES TAXES VISIBLE BY ELIMINATING HIDDEN TAXES
- FACILITATES THE REPEAL OF THE 16TH AMENDMENT

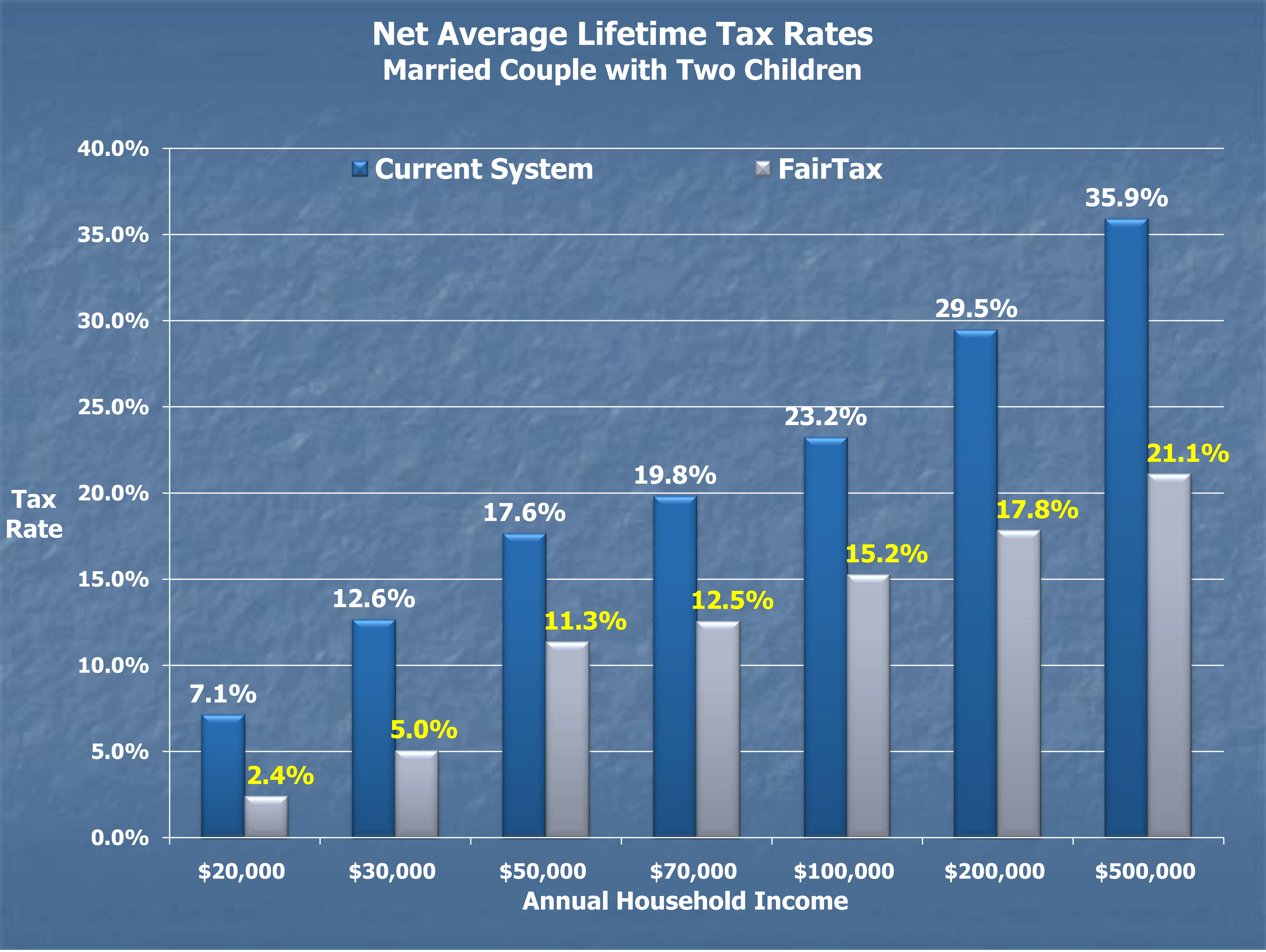
PREBATE

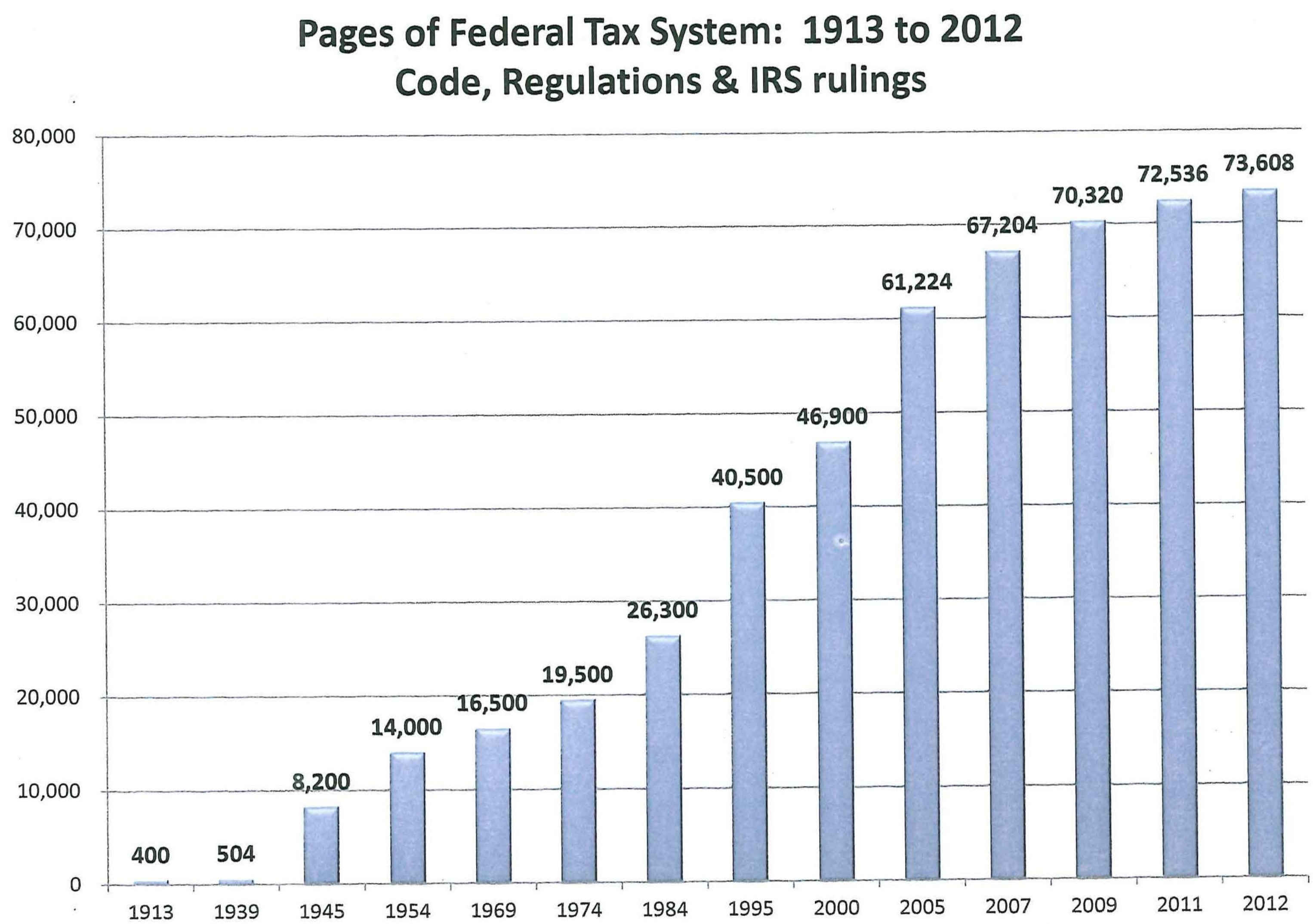
2013 FairTax Prebate Schedule

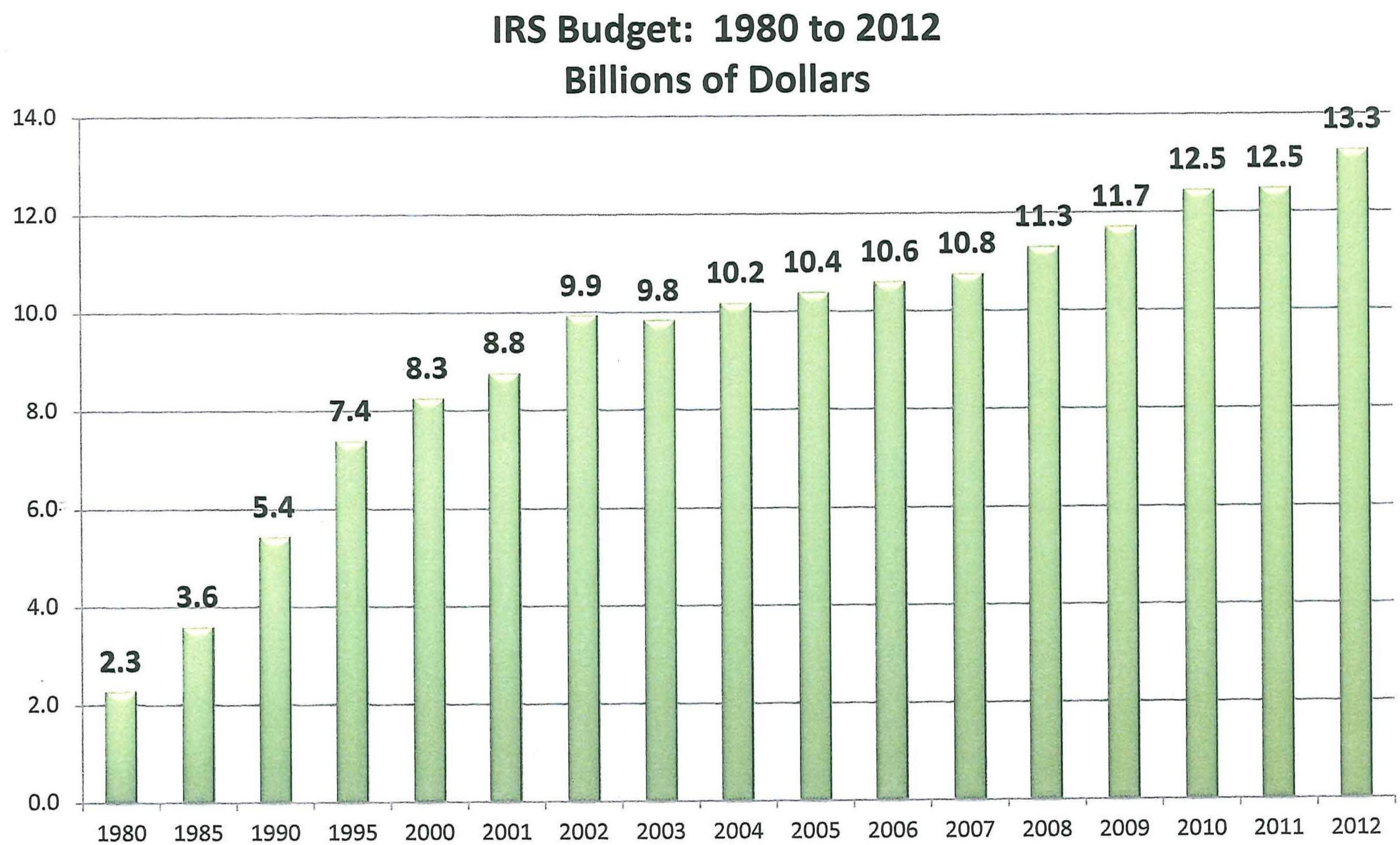
One adult household				Two adult household			
Family Size	Annual Consumption	Annual Rebate	Monthly Rebate	Family Size	Annual Consumption	Annual Rebate	Monthly Rebate
person	$11,490	**$2,643**	$220	**couple**	$22,980	$5,285	$440
and 1 child	$15,510	**$3,567**	$297	and 1 child	$27,000	**$6,210**	$518
and 2 children	$19,530	**$4,492**	$374	**and 2 children**	**$31,020**	**$7,135**	**$595**
and 3 children	$23,550	**$5,417**	$451	and 3 children	$35,040	**$8,059**	$672
and 4 children	$27,570	**$6,341**	$528	and 4 children	$39,060	**$8,984**	$749
and 5 children	$31,590	**$7,266**	$605	and 5 children	$43,080	**$9,908**	$826
and 6 children	$35,610	**$8,190**	$683	and 6 children	$47,100	**$10,833**	$903
and 7 children	$39,630	**$9,115**	$760	and 7 children	$51,120	**$11,758**	$980

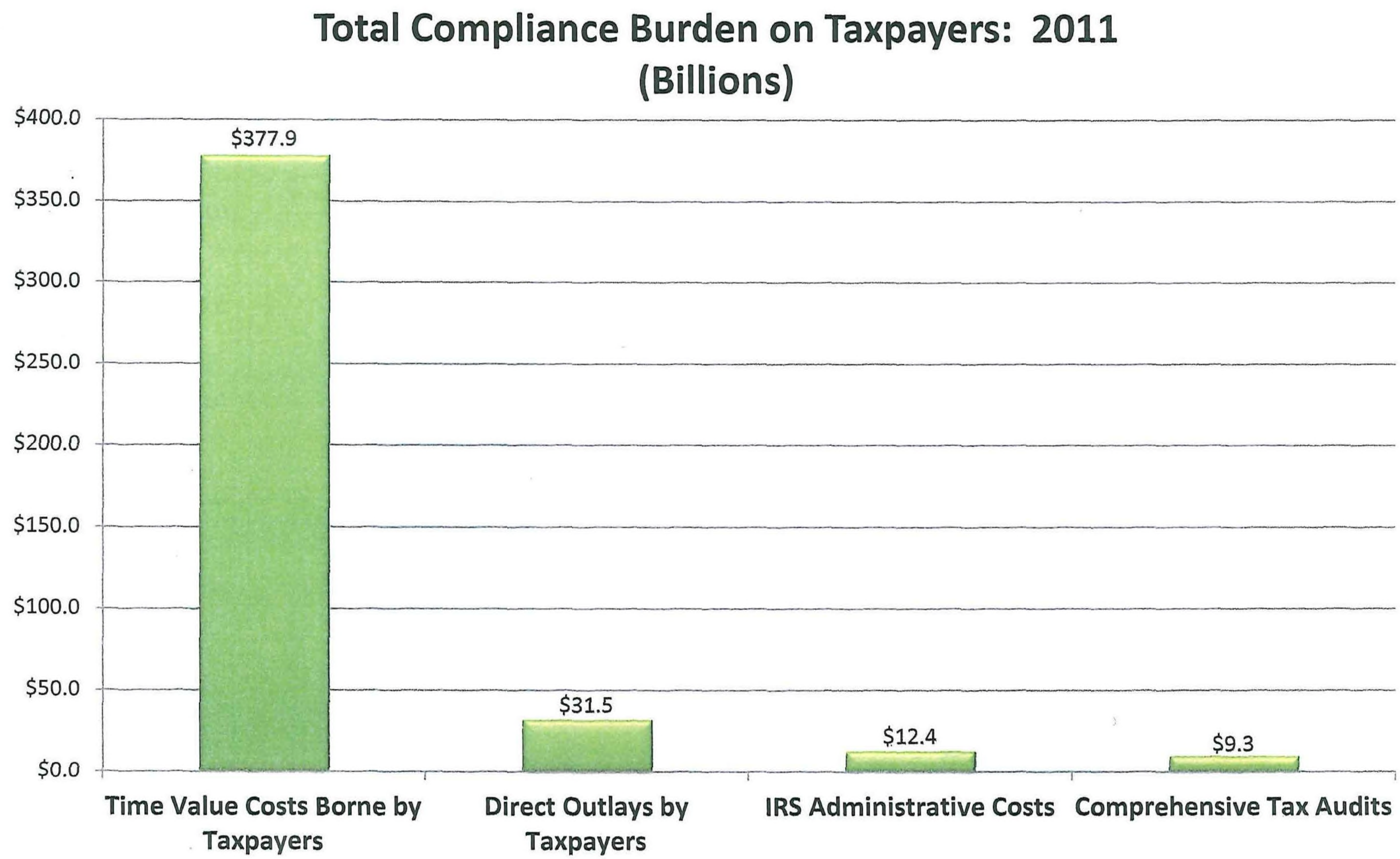


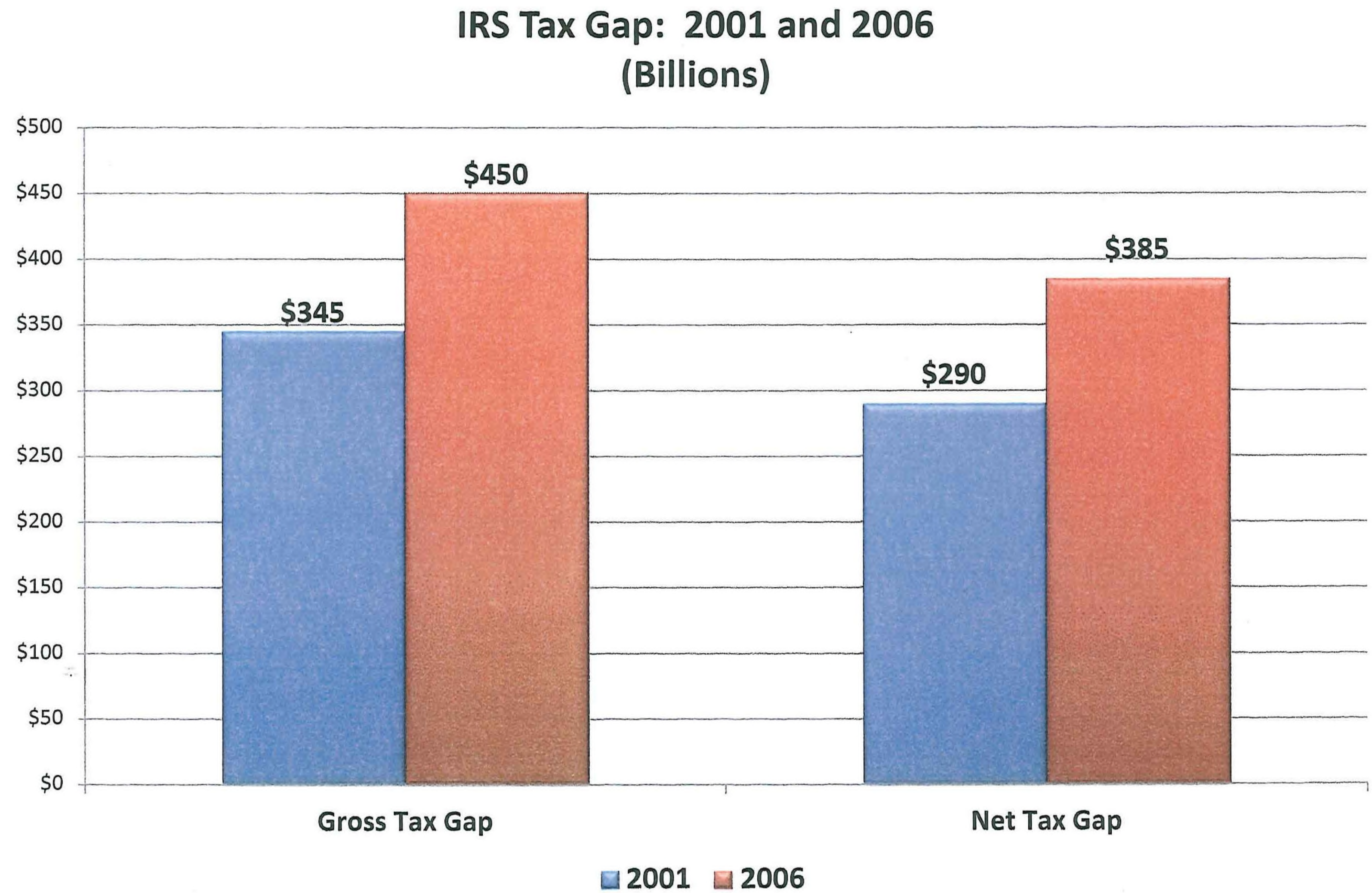
TAX RATE = (Taxes paid on spending - the prebate) divided by annual spending.


Net Average Lifetime Tax Rates
Married Couple with Two Children
Current System
FairTax
Tax Rate
40.0%
35.0%
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
7.1%
2.4%
12.6%
5.0%
17.6%
11.3%
19.8%
12.5%
23.2%
15.2%
29.5%
17.8%
35.9%
21.1%
$20,000
$30,000
$50,000
$70,000
$100,000
$200,000
$500,000
Annual Household Income

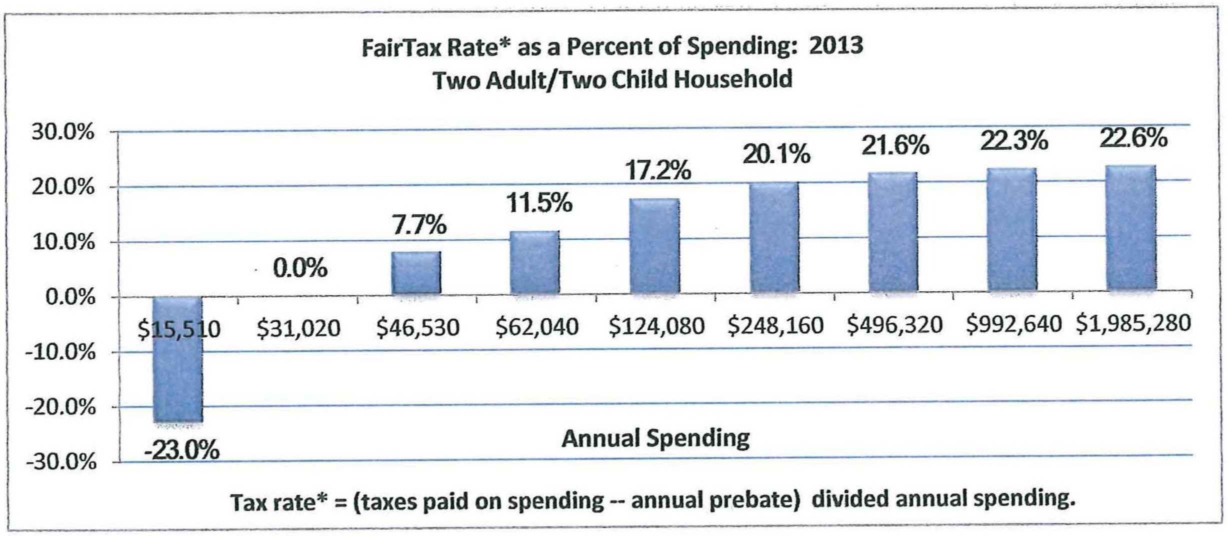

Pages of Federal Tax System: 1913 to 2012
Code, Regulations & IRS rulings
80,000
70,000
60,000
50,000
40,000
30,000
20,000
10,000
0
400
504
8,200
14,000
16,500
19,500
26,300
40,500
46,900
61,224
67,204
70,320
72,536
73,608
1913
1939
1945
1954
1969
1974
1984
1995
2000
2005
2007
2009
2011
2012


IRS Budget: 1980 to 2012
Billions of Dollars
14.0
12.0
10.0
8.0
6.0
4.0
2.0
0.0
2.3
3.6
5.4
7.4
8.3
8.8
9.9
9.8
10.2
10.4
10.6
10.8
11.3
11.7
12.5
12.5
13.3
1980
1985
1990
1995
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012

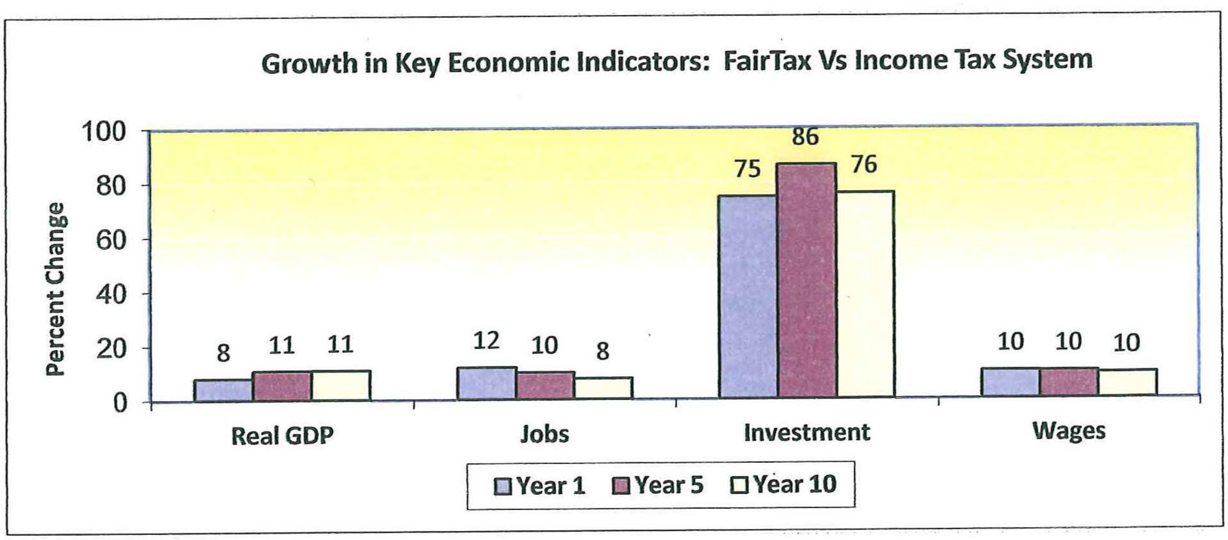

Total Compliance Burden on Taxpayers: 2011
(Billions)
$400.0
$350.0
$300.0
$250.0
$200.0
$150.0
$100.0
$50.0
$0.0
$377.9
$31.5
$12.4
$9.3
Time Value Costs Borne by Taxpayers
Direct Outlays by Taxpayers
IRS Administrative Costs
Comprehensive Tax Audits


IRS Tax Gap: 2001 and 2006
(Billions)
$500
$450
$400
$350
$300
$250
$200
$150
$100
$50
$0
$345
$450
$290
$385
Gross Tax Gap
Net Tax Gap
2001
2006

The FairTax (HR25/S122) is a repeal and replacement of the income/payroll tax system in its entirety with a progressive national consumption tax. It provides a monthly, universal prebate payment (a rebate of tax paid in advance) to ensure that each family unit can consume tax-free up to the poverty level. The federal government defines poverty level spending as that spending necessary for a given sized family to buy its essentials. Thus every family, regardless of income level, will be able to buy their "essentials" untaxed. Although everyone pays the same tax rate at the cash register, the chart below shows that the effect of the prebate on the actual tax rate paid. For example, a family spending at the poverty level ($31,020 for a family of four) has a 0% effective tax rate because the annual prebate of $7,135 refunds all of the taxes paid on annual spending of $31,020. Someone spending at twice the poverty level has an effective tax rate of 11.5%, and so on.



Economic growth as measured by key economic indicators would be greater under the FairTax than if the current tax system remained in place, throughout the next decade. Real GDP would be 8% higher in the first year than under the income tax system, 11% higher in Year 5 and 11% percent higher in Year 10. Likewise, job growth would be 12% higher in Year 1, 10% higher in Year 5 and 8% higher in Year 10. Investment would be 75% higher in Year 1, 86% higher in Year 5 and 76% higher in Year 10 reflecting the growth due to no taxes on savings and investment income. Wages would be 10% higher in Years 1, 5 and 10.



Had the FairTax been in effect in 2009 and 2010, the FairTax would have generated greater revenues than the current tax system. According to estimates by Beacon Hill Institute (2011), revenues would have been $171 billion higher in 2009 and $267 billion more in 2010.

Grading the Tax Reform Plans: Who is the Fairest of Them All?

A Briefing Document by FairTax.org

"The nation's largest grass roots citizens' organization dedicated to fundamental tax reform."

With the exception of tax lawyers, tax preparation firms, some bureacrats, tax lobbyists, tax software firms and more than a few tax professors, almost everyone embraces tax reform. So the Congress is bent on effecting "reform." The problem is that nobody really knows how to define reform.

Because the Internal Revenue Code and the U.S. tax system in general are so universally derided, an uninitiated observer might think it odd that a proper analysis of tax reform must begin by understanding the problems tax reform is meant to address. However, although business owners and executives and all American engaged in the tax reform debate may share a fervent disdain for the tax system, but they do so for a wide array of reasons. The tax reform debate today is not about one problem. It is about a bundle of competing problems searching out competing solutions.

Before we can make true progress in discussing the effectiveness of various alternatives in achieving tax reform goals -- before we can properly analyze the relative benefits of competing plans -- we must agree upon the common issues tax reform is meant to address. Stated another way, we must decide 'what the salient problems with the current system are?' before we can ask 'how well the various competing ideas for reform address those problems?'

Without establishing criteria describing what constitutes genuine tax "reform," it is impossible to assess the relative merits of the various plans or even to decide whether a plan would be constructive. Reform can be embraced by Democrats as well as Republicans. It can be embraced by pro-growth proponents or those who simply want to see wealth redistribution. In other words, reform is a promiscuous term that can be exploited and currently is in the political context. And if "reform" is not defined, then it becomes a political football that can be used by any politicians. It is both nothing and everything at the same time. What the American people need to do is to define for their public servants what they see as true reform.

I. So What is the True Meaning of "Reform"?

This paper sets forth the suggested criteria policymakers might use for purposes of assessing fundamental tax reform plans, including the President's poorly received Tax Panel's proposals. These criteria are not exhaustive but they are the most important. In general, a reformed tax system should minimize the adverse economic impact of raising the revenue that Congress decides is necessary to fund the federal government and do so in a fair manner. A tax reform plan that meets the following twelve specific criteria will accomplish the twin goals of fairness and maximizing the economic prosperity of the American people.

The Criteria for Fundamental Tax Reform ought to be the following:

Prosperity Criteria

- The plan should not be biased toward consumption and against savings and investment but rather it should be neutral between different types of consumption, savings and investment.
- The plan should have the lowest possible marginal tax rates, removing to the greatest extent possible the disincentive to work, save and invest while providing the greatest opportunity for upward mobility.
- The plan should be neutral between whether to produce in the U.S. or abroad; it should not provide an artificial incentive to move jobs and production overseas.
- The plan should impose the same tax burden on all forms of productive activity and should tax each activity at a uniform rate.
- The plan should treat human capital formation and physical capital formation alike.
- The plan should dramatically reduce the administrative and compliance burden on the public.

Fairness Criteria

- The plan should exempt the poor from tax and allow everyone to meet the necessities of life before paying tax.
- Once the necessities of life have been met, however, the plan should treat people equally without favoring one set of taxpayers over another and by taxing the same proportion of goods and services they purchase for their own personal use.
- The plan should not play favorites or reward the politically powerful or well connected.

Civic Criteria

- The plan should be transparent and understandable so the public understands the tax system; it should not hide the true tax burden or obfuscate.
- The plan should be politically stable, so that the reform will last.
- The plan should have a manageable transition.

The answer is that true reform is the plan that best fulfills these criteria. The prosperity criteria are those that will maximize economic growth and the economic well-being of all Americans. The fairness criteria are those that we believe most Americans accept. The civic criteria are those that promote a healthy body politic and improve our political process.

II. Brief Description of the FairTax and the Flat Tax.

FairTax: The FairTax has been introduced in the House by Representative Rob Woodall and in the Senate by Senator Saxby Chambliss as H.R. 25 and S. 13, with 55 cosponsors in the House and five in the Senate. The FairTax Plan is a comprehensive proposal that replaces all federal income and payroll taxes with an integrated approach including a progressive national retail sales tax, a rebate to ensure no American pays federal taxes on spending up to the poverty level, dollar-for-dollar federal revenue replacement, and, through companion legislation, repeal of the 16th Amendment. This nonpartisan legislation abolishes all federal personal, gift, estate, capital gains, alternative minimum, Social Security, Medicare, self-employment, and corporate taxes and replaces them with one simple, visible, federal retail sales tax – collected by existing state sales tax authorities. The FairTax taxes us only on what we choose to spend, not on what we earn. It does not raise any more or less revenue; it is designed to be revenue neutral. The FairTax is a fair, efficient, transparent, and intelligent solution to the frustration and inequity of our current tax system.

Flat Tax: No flat tax legislation has been introduced in either the House of Representatives or the Senate for the 112th Session of Congress. These comments are based on the last version which was filed in 2005. The flat income tax is essentially a modified version of the existing federal income tax that has a single or flat tax rate, using the current system of payroll deductions and the Internal Revenue Service. It can be considered a consumption-based tax because it does not tax income from investments or savings. The tax would be collected in lieu of the current income tax on both individuals and businesses.

It would allow individuals and businesses to elect to be subject to a flat tax of 19 percent of taxable income for the first two years and 17 percent thereafter. This flat tax is in addition to the 7.65 percent Social Security/Medicare/Medicaid payroll tax. Individual taxable income is the amount of earned income received during the tax year that exceeds the year's standard deduction – the sum of a basic standard deduction plus an additional amount for each dependent.

The tax base for the business portion of the flat tax is total gross income minus deductions: Wages paid to employees, pension payments, and purchases from other businesses. It is actually a form of value added tax (VAT) where capital value-added is taxed at the business level and labor value-added is taxed at the individual level, although its proponents often skirt this issue. Since investment is expensed and savings are accorded Roth IRA type treatment, it is a form of consumption tax. Like the income tax imports are exempt from tax and exports are taxed. The administrative means used to collect the tax is similar to the current tax system.

III. How Well do These Plans Meet the Criteria?

To What Degree are They Neutral between Consumption and Savings?

Capital formation promotes greater productivity and output, higher rates of economic growth, and improved competitiveness. More capital per worker, embodying the latest technical innovations means more output, greater competitiveness and higher real wages. The current tax system, however, is very biased against savings and investment, often taxing the returns to savings or investment three or four times. This results in slower economic growth, reduced competitiveness and lower real wages. The solution is to adopt a tax system that is neutral toward savings and investment. The FairTax[sm] and the flat tax would address this issue decisively. In both plans, labor and capital output is taxed equally and one time.

FairTax: In the FairTax, this result is achieved simply by taxing only final consumption and not taxing business inputs. Unlike most state sales taxes, the FairTax does not hide taxes and impose a tax on a tax. It taxes goods and service once when sold to consumers.

Flat Tax: In the flat tax this is accomplished by expensing capital investment and treating all savings effectively as if they were in Roth IRAs.

To What Degree do They Lower or Raise Marginal Tax Rates?

High marginal tax rates reduce the incentive to work, save and invest and therefore reduce the amount people choose to work, to save and to invest. As tax rates are raised, overall economic output declines. Conversely, reducing marginal tax rates has dramatic positive economic effects.

FairTax: The FairTax has the lowest marginal tax rates of any plan and is the most pro-growth of any plan considered. It has the broadest possible consumption tax base and a single tax rate. The FairTax base is equal to that of the BTT. It is larger than the flat tax, primarily due to the fact that currently the U.S. imports dramatically more than it exports. The FairTax is unique in that it replaces the 15.3 percent payroll tax and since the FairTax base is broader than the payroll tax base, it reduces marginal tax rates further than any tax plan being considered.

When comparing the FairTax to other tax plans it is important to remember that the FairTax repeals the 15.3 percent payroll taxes (both Social Security and Medicare employment taxes and self-employment taxes).

Flat Tax: A flat tax with a rate of 17 or 20 percent, for example, is really a 32.3 or 35.3 percent tax on labor or self-employment income, because it is in addition to both individual and employer payroll taxes. .

To What Degree do They Continue to Hurt American Producers?

The current tax system imposes high income and payroll taxes on U.S. producers and workers whether they are selling in the U.S. market or abroad. The current tax system imposes little or no tax on goods imported into the U.S or services provided to U.S. consumers from abroad. Compared to our OECD trading partners, this places American producers at a roughly 18 percent competitive disadvantage, courtesy of the U.S. tax system.

It is no wonder that firms that remain in the U.S. find it difficult to compete. It is no wonder that manufacturing output and employment have fallen roughly since our competitors started adopting border adjusted taxes. Even our agricultural surplus has largely disappeared. The U.S. government, through its tax policy is telling American firms that they are idiots to continue producing in the U.S. since the U.S. government will tax them heavily if they produce goods here but impose no tax on goods produced abroad and imported into the U.S.

In contrast to the U.S., every other significant trading country in the world raises a large part of its revenue from destination principle, border-adjusted consumption taxes. Most use the value added tax but some (for example Canada) rely to some extent on sales taxes. These taxes are not levied on exports from those countries to the U.S. but are imposed on U.S. goods imported into their country.

FairTax: The FairTax would by the very nature of a sales tax remediate this problem by taxing foreign and U.S. goods alike when sold at retail. It would, for the first time, eliminate the advantage accorded to foreign producers by current federal tax policy.

Flat Tax: The flat tax does not address the problem.

To What Degree are They Neutral between Different Types of Productive Activity?
FairTax: The FairTax treats all goods and services alike. Thus, it does not distort the marketplace and allows businesses to adopt the most efficient economic means to meet consumer demands. A plan that taxes economic activity uniformly will promote the most efficient, productive economy.

Flat Tax: The flat tax does so to a lesser extent (because of its retention of payroll taxes).

To What Degree are They Neutral as Between Human and Physical Capital?
Human capital is a critical element in productivity and innovation.
FairTax: The FairTax is the only tax reform plan to grant human capital parity with physical capital. The FairTax accomplishes this result by not taxing tuition or job training or educational wages in either the government or private sector. This is appropriate since the primary reason most people pursue an education is to increase their future earning capacity and the expenditures generated by those future earnings will be taxed. Tuition and job training are an investment in human capital.

Flat Tax: The flat tax does not address this problem. Education is treated like a consumption good and must be purchased with after-flat-tax and after-payroll-tax dollars.

To What Degree do the plans Reduce the Compliance Burden on the Public?
The current tax system has major tax evasion problems notwithstanding billions of tax and information returns filed each year, roughly 6 billion hours spent figuring out the tax due, and an army of tax preparers, tax accountants, tax lawyers and IRS personnel. We waste nearly $300 billion annually complying with the current tax system. The time spent figuring our taxes is more people than the hours spent working in the auto industry, the computer manufacturing industry, the airline manufacturing industry and the steel industry combined.

FairTax: The FairTax would radically reduce these costs and the complexity of the system. Individuals who were not in business for themselves would never need to file a tax return again. Moreover, the FairTax compensates businesses for the time required to file sales tax returns with a credit equal to ¼ of one percent of the sales tax remitted.

Under the FairTax, the question a business or auditor would need to answer is how much was sold to consumers. This is a simple question not that different from line 1 on a tax return today.

Under the FairTax, that would effectively be that. All of the major sources of complexity today would be repealed. Gone would be payroll and income tax withholding, 1099 reporting, inventory tax accounting (including the uniform capitalization rules), tax depreciation accounting and recapture rules, tracking tax basis, the alternative minimum tax, qualified plan rules (including top-heavy, participation and vesting rules), international tax rules, capital gains rules, passive loss limitations, estate and gift tax planning and a host of other rules.

Small businesses are disproportionately harmed today by the large compliance burden imposed by the current tax system, often bearing compliance costs that exceed three times the tax remitted. They would disproportionately gain from implementation of the FairTax.

Flat Tax: The flat tax would reduce it substantially; at least until the political process turned it back into something similar to what we have today. However, the flat tax does require all Americans to file tax returns and would retain income tax withholding and payroll tax rules.

To What Degree do They Exempt the Poor?

It does not make a great deal of sense to impose taxes on poor people. Neither, however, does it make sense to hide from them the cost of government. The poor cannot even meet their basic needs and are receiving financial assistance in many ways. Yet today, they pay significant taxes. Part of those taxes is the payroll tax imposed on the working poor. But the poor also bear the burden of paying higher prices for the goods they buy because of the taxes imposed on businesses and the cost incurred by businesses to comply with the tax system. Businesses, after all, must recover all of their costs, including taxes, in the price of the goods they sell. If they do not, they will quickly go out of business.

FairTax: The FairTax is the only plan that entirely untaxes the poor. It accomplishes this by providing every household in America with a rebate paid monthly in advance equal to 23 percent of the poverty level (plus an extra amount in the case of married couples to prevent a marriage penalty). This, in effect, protects every household in America from paying any tax on spending up to the poverty level which means that no poor person is paying any sales tax and that no household is paying sales tax on the necessities of life.

The rebate makes the FairTax progressive. The effective tax rate climbs as expenditures climb. The effective tax rate is negative or zero for the poor, it is quite low for the lower middle class. The effective tax rate for a married couple with two children with taxable spending of $58,360 would be 11 ½ percent in 2011.[1] The very rich would pay nearly 23 percent on their spending. By repealing the payroll tax, the FairTax eliminates the greatest burden on the working poor and reduces the cost of hiring new, entry level workers. By repealing business taxes, hidden taxes that must be recovered by businesses in the price of goods sold are repealed. No other plan is structured to ensure that no poor person will pay any tax. No other plan ensures that all households may meet the necessities of life without paying tax.

Flat Tax: The flat tax keeps the payroll tax, which is the largest tax paid by poor Americans. For 66 percent of tax filers, the amount of their payroll taxes exceeds their income taxes. Over 80 percent of those earning between $30,000 and $50,000, pay higher payroll taxes than income

[1] The Federal Register, January 20, 2011, Vol. 76. No. 13.

taxes. [2]

How Fairly Do They Treat Taxpayers?

FairTax: The FairTax treats people equally on spending over the poverty level. It does not favor one set of taxpayers over another or one type of producer over another. It taxes everyone at a uniform rate on goods and services they purchase for their own personal use.

Flat Tax: The flat tax moves in the right direction but retains the payroll tax which taxes labor income at different tax rates depending on the level of their income and does not tax capital income.

Do They Play Favorites?

It is unfair for the government to play favorites, rewarding certain politically powerful and well-connected interests over others that do not have the same political pull. The tax system *should* be about do what is right and just rather than what will help fill campaign coffers and satisfy interest groups.

FairTax: The FairTax treats everyone alike and does not exempt any person, any good or any service from tax. The rules are simple and clear and apply to everyone.

Flat Tax: The flat tax would largely eliminate the favoritism of current law. It does, however, retain on major favorite. Foreign produced goods are favored over U.S. produced goods.

How Transparent and Comprehensible is the Plan?

The current tax system is the antithesis or transparency. It divides up the public's tax burden among four or five "apparently low" tax rate taxes, some of which are hidden from view, that add up to very high aggregate tax rates. Similarly, who knows who pays the corporate tax? Most people – small businesses and self-employed people being obvious exceptions – do not even know about the massive employer payroll taxes that drive their wages down. Most people have only the vaguest idea of what they pay in income taxes today and since their taxes are withheld and, as often as not, they used paid preparers or package software to figure their taxes.

FairTax: The FairTax is the easiest of any tax reform plan to understand. That is its virtue and its vice. It is a simple sales tax with a single tax rate. The FairTax has one very transparent tax rate which, in reality, is the lowest marginal tax rate by far of any tax reform plan. Yet because the FairTax is honest and transparent and the current tax system is anything but honest and transparent, FairTax detractors are able to obfuscate, demagogue and confuse by misrepresenting the facts.

Even the poor will pay the tax at the cash register, albeit with funds provided by the FairTax rebate. Under the FairTax, people will understand for the first time in their lifetime how the federal government is actually paid for and who is paying for it.

Flat Tax: The flat tax is relatively simple, yet even many of its most vocal proponents seem to think it is an income tax rather than a consumption tax. In fact, it is the worst of both worlds. It

[2] Urban-Brookings Tax Policy Center Microsimulation Model (version 1006-2).

is a VAT in that it does not double tax returns on capital, but it is an income tax in the sense that it requires the 16th Amendment that authorizes the income tax for its enactment. Therefore, it provides no assurance against a secondary income tax.

How Politically Stable is the Plan?

FairTax: If the FairTax were enacted, it would be much more difficult to go back to an income tax system. The entire massive and expensive administrative apparatus built up over nine decades would be dismantled. It is doubtful that people would want to go back. It is doubtful that they would want to invest the massive resources necessary to do so. The FairTax, then, is a stable reform. There will, of course, be the necessity to fend off those who want to exempt one category or another of goods or services. But if the rebate system is in place, the most commonly used line of argument (we need to help the poor) will fall flat. There will always be better ways to help the poor than exempting some category of goods, especially since such exemptions will raise the tax rate for all.

Flat Tax: If the flat tax is kept as it is but with graduated rates, it becomes what is often called the X-tax, a graduated rate consumption tax. The flat tax can be easily changed back to an income tax. Starting with the flat tax, if we depreciate capital rather than expense it, make inventory purchases deductible when the inventory is sold rather than when purchased, make interest taxable and deductible, then we have largely converted the flat tax back into an income tax. Add a few special interest deductions, credits and exclusions and then we are very nearly back to where we started. That is a very real problem with the flat tax. It is very easy to corrupt its design and eliminate many of the gains to be had from adopting the proposal in the first place. The entire administrative apparatus of the income and payroll tax system is retained and it would be very easy to go back. Attempts to do so would start immediately.

To What Degree are there Transition Problems?

There is a general danger, however, when considering transition to want to compensate every loss. In fact, in most cases where there are losses, there is someone experiencing an equal and offsetting windfall gain on the other side of the transaction. These gains should be taxed to compensate losses (if they exist) because if the loss is unjust then so is the unexpected and windfall gain at another's expense. Moreover, many of the claimed losses on capital assets will in reality be illusory because asset prices will in general increase accordingly due to consumption tax treatment of investment.

FairTax: There is no need to be concerned with basis per se in the FairTax since income streams are no longer subject to tax. Businesses will not get far complaining that their tax rate has been reduced to zero. The analogous problem in the FairTax is the sale of goods subject to FairTax that were not deducted for income tax purposes. Collecting sales tax and failing to allow an income tax deduction would effectively be double taxation. The FairTax legislation addresses this issue by providing a tax credit to businesses selling inventory held on the changeover date to prevent the double taxation.

Flat Tax: The flat tax sidesteps transition issues. It is, however, unlikely that in the final analysis Congress will force businesses to lose trillions of dollars of basis on capital assets if the income generated by those assets remains subject to tax. To do so would amount to wealth loss for existing capital owners of well over a trillion dollars to American businesses. Addressing this transition issue, will force the flat tax rate to climb considerably.

How do the Plans Impact Small Businesses and Farms?
The current system has a disproportionately adverse impact on small businesses because of the high compliance costs that consume a relatively large share of small business income and because of the many ways the current system singles out small businesses for discriminatory tax treatment.

FairTax: The FairTax addresses this issue by radically simplifying the tax law, reducing compliance costs and compensating businesses for their time complying with the system. The FairTax also repeals payroll taxes, which have a disproportionately negative impact on small businesses both because of administrative cost, the self-employment tax and the increased cost of labor. Finally, the FairTax will help small manufacturers and farmers compete against foreign goods in U.S. or foreign markets by taking the taxes out of exports and by taxing U.S. and foreign goods alike in U.S. markets. Many larger U.S. companies have already outsourced a huge portion of their manufacturing or are planning to do so. Small companies located here do not really have the option of outsourcing their manufacturing since they do not generally have both manufacturing and distributional divisions.

Flat Tax: Does not address these needs of small businesses as directly and effectively as the FairTax. The flat tax does not address either payroll tax issues or level the playing field with imports.

Conclusion

The flat tax is a highly constructive proposal, but compares unfavorably where it differs from either a sales tax or a BTT. Moreover, because it retains the administrative apparatus of the income and payroll tax, it is likely to revert back toward an income tax. Finally, by retaining payroll taxes, its rates on labor income are unnecessarily high and the tax burden on poor and lower middle income persons are higher than the FairTax.

The FairTax is the best plan being considered. It is extremely pro-growth. It would cause dramatically higher investment, large productivity gains and higher real wages. It would improve the competitiveness of U.S. producers. It would improve the well-being of the average American dramatically. It would dramatically reduce the vast amount wasted each year on compliance costs. It would untax the poor and be progressive. It would tax people based on what they consumed for themselves rather than what they invested in the community or gave to charities. It would get the government out of the business of playing favorites and rewarding politically powerful interests. It is transparent and understandable. It will lead to a more just and more prosperous America. It is the best plan.

The analysis above demonstrated that the FairTax is the most pro-growth and most fair tax plan being considered in Congress. It showed that the BTT and the flat tax would constitute a significant improvement over current law. The report card below is a summary of these findings.

Tax Reform Report Card

Criteria	Flat Tax	Business Transfer Tax	FairTax
P1. Neutral Toward Savings and Investment	A	A+	A+
P2. Low Marginal Tax Rates	B+	A-	A+
P3. Neutral Between Foreign and U.S. Producers	D	A+	A+
P4. Taxing Economic Activity Uniformly	A-	A-	A
P5. Neutral Between Human and Physical Capital	F	F (usually)	A
P6. Reduce Compliance Costs	B	B	A+
F1. Poor Untaxed	B-	B-	A+
F2. Equal and Uniform Taxation	B	B+	A+
F3. No Favorites or Special Exceptions	A-	A-	A+
C1. Transparency and Understandability	B	B-	A+
C2. Politically Stable	C	B	A
C3. Manageable Transition	B	B	B+
Overall Grade	**B**	**B+**	**A+**

Author: Karen Walby, Ph.D., February 24, 2011. Revision of testimony presented to the House Committee on Small Business by Americans For Fair Taxation, February 1, 2006.

A FairTax® White Paper

The FairTax: Good for taxpayers, good for businesses, good for the economy[1]

The national debate over taxation is shifting from the question of *whether* to alter our current tax system to the question of *how* to alter it. Today, polls indicate that a large majority of Americans are extremely frustrated with the current federal income tax system. The income tax discourages personal savings and investments by taxing capital gains, dividends, and interest earned. Wage earners struggle under the burden of a very regressive payroll tax. The income tax is complex – so complex that no one, not even the experts, truly understands it. Moreover, for the tax to be enforced, the taxpayer must sacrifice significant privacy. As a result, our citizens are governed by needlessly burdensome tax laws that they cannot understand and that are intrusive, complex, costly, and often invisible.

The tremendous undertaking of replacing the income tax requires the American people to put aside partisan politics to arrive at a consensus on how our government should tax its citizens. Any new system of taxation must fairly and efficiently distribute the burden of funding our government, promote economic growth, present less of a compliance burden, and offer every American better economic opportunity.

Americans for Fair Taxation® (FairTax.org), a non-profit, non-partisan organization, believes that replacing the current tax system with a single rate, federal sales tax levied on all new goods and services with no exceptions or exclusions, best meets this challenge. Research has shown that the FairTax is a fair and progressive system of taxation that increases economic growth, investment, capital formation, and the creation of jobs and savings.[2]

The FairTax plan

The FairTax plan involves three specific actions:

- Passage of legislation that repeals the income tax, the payroll tax in its entirety, the estate tax, the gift tax, the capital gains tax, the alternative minimum tax, the self-employment tax, and the corporate tax.

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[1]First published as "A Single Rate, Federal Sales Tax is the Best" in Tax Reform, Opposing Viewpoint Series, Greenhaven Press, 2011, pages 157-166.

[2]Kotlikoff, Laurence J. and Sabine Jokisch, "Simulating the Dynamic Macroeconomic and Microeconomic Effects of the FairTax," *National Tax Journal*, June 2007; David G. Tuerck, et.al., "The Economic Effects of the FairTax: Results from the Beacon Hill Institute CGE Model," The Beacon Hill Institute at Suffolk University, February 2007; Arduin, Laffer & Moore Econometrics, A Macroeconomic Analysis of the FairTax Proposal, June, 2006; David G. Tuerck, Jonathan Haughton, Paul Bachman, and Alfonso Sanchez-Penalver, "A Comparison of the FairTax Base and Rate with Other National Tax Reform Proposals," The Beacon Hill Institute at Suffolk University, February, 2007; Laurence J. Kotlikoff, and David G. Tuerck, *et. al.,* "Taxing Sales under the FairTax: What Rate Works?, *Tax Notes*, November 13, 2006. These papers are available at www.fairtax.org/AboutTheFairTax/ResearchPapers.

- Passage of legislation that installs a single rate, national sales tax on all new goods and services at the point of final purchase for consumption, and that provides for a universal rebate in an amount equal to the sales tax on essential goods and services up to poverty level spending.
- Adoption of a constitutional amendment to repeal the 16th Amendment and to prohibit income taxes. The FairTax will sunset if the 16th Amendment has not been repealed within seven years following enactment, preventing the possibility of having both the income tax and a national sales tax.

The FairTax has been introduced as "The Fair Tax Act of 2013" in the 113th Congress (H.R. 25 in the House of Representatives and S. 122 in the Senate).[3]

Fairness

Throughout the history of our country, our citizens and government have had an objective to increase every American's chance to achieve economic independence by providing greater opportunities to share in our country's growth and prosperity. The FairTax helps us achieve this goal. Americans are better off under the FairTax. Although every taxpayer is subject to the same sales tax rate with no exceptions or exclusions, those least able to share in the cost of government will carry no federal tax burden at all.[4] Under the current system, the more your income is derived from wages, the more you are affected by payroll taxes. In addition, under the FairTax, no one will pay tax on the cost of essential purchases, and those who demonstrate their greater ability to pay by consuming more, will pay more taxes.[5]

Table 1: 2011 Income and Payroll Taxes Includes only Employee portion of federal payroll taxes						**FairTax**	
Family Gross Income	Income Tax	Social Security	Medicare	Total Tax	**Effective Tax Rate[a]**	Sales Tax	**Effective Tax Rate[b]**
$29,420	-$3,048	$1,824	$427	-$797	-2.7%	$0.00	0.0%
$58,840	$4,016	$3,648	$853	$8,517	14.5%	$6,767	11.5%
$88,260	$8,429	$5,472	$1,280	$15,181	17.2%	$13,533	15.3%
$117,680	$15,181	$6,622	$1,706	$23,509	20.0%	$20,300	17.3%

[a] Effective R ate = total taxes / family income. The total taxes are computed for a family of four claiming the standard deduction for joint returns ($11,600) and four personal exemptions ($3,700 each). Taxpayers who itemize (1/3 of taxpayers) would have lower effective rates; higher income taxpayers are more likely to itemize.

[b] Assumes that the family spends all income earned, saving nothing and receives monthly FairTax prebate checks totaling $6,767 annually (equal to 23% of poverty level spending ($29,420 for a family of four).

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[3] H.R. 25 is sponsored by Congressman Rob Woodall, with 58 co-sponsors in the House as of January 23, 2013. The Senate companion bill, S122, is sponsored by Senator Saxby Chambliss and has 7 co-sponsors.

[4] Kotlikoff, Laurence J. and David Rapson, "Comparing Average and Marginal Tax Rates under the FairTax and the Current System of Federal Taxation," NBER Working Paper No. 12533, revised October 2006; Kahn, Joseph, "Examining a Change to a National Retail Sales Tax Regime: Impact on Households," Decisions and Ethics Center, Stanford University, November, 1996.

[5] The analysis shown in Tables 1 and 2 does not include the 2 percentage points payroll tax reduction for employees which expired on Dec. 31, 2012.

Table 1 shows that a sample family of four with a poverty level income of $29,420[6] has an effective federal tax rate of -2.7 percent of their gross income, when the Earned Income Credit of $3,350 is taken into account. A sample family earning $58,840 pays 14.5 percent of their gross income in federal taxes. Under the FairTax, the family of four earning $29,420 (spending all of their income) pays zero federal taxes (after the prebate[7]), and the same family of four earning and spending $58,840 pays an effective tax rate of only 11.5 percent on their taxable purchases.

However, this is not the whole picture. While payroll taxes are levied equally between employers and employees, it is the broad consensus among economists, including those at the Congressional Budget Office and the Joint Committee on Taxation, that it is really the *employee* that bears the burden of the *employer* portions of Social Security and Medicare payroll taxes, and federal unemployment taxes through *lower wages than would otherwise be paid.*[8] On this basis, the true burden of the current federal income tax system on taxpayers becomes even more dramatic. (See Table 2.)

Table 2: 2011 Income and Payroll Taxes (Includes Employee and Employer portions of federal payroll taxes)							**FairTax**	
Family Gross Income[a]	Income Tax	Federal Unemployment Tax	Social Security	Medicare	Total Taxes	**Effective Tax Rate[b]**	Sales Tax	**Effective Tax Rate[c]**
$32,105	-$3,048	$434	$3,648	$854	$1,888	5.9%	$617	1.9%
$63,775	$4,016	$434	$7,296	$1,706	$13,452	21.1%	$7,901	12.4%
$95,446	$8,429	$434	$10,944	$2,560	$22,367	23.4%	$15,186	15.9%
$126,442	$15,181	$434	$13,243	$3,413	$32,271	25.5%	$22,315	17.6%

[a] Employer payroll taxes (federal unemployment, Social Security and Medicare) have been added to family gross income to measure the true burden of the federal tax system on families.

[b] The rate assumes that the employee pays both the employee and the employer portions of Social Security and Medicare payroll taxes and federal unemployment taxes through lower wages. The rate = total taxes / family income. The total taxes are computed for a family of four claiming the standard deduction for joint returns ($11,600) and four personal exemptions ($3,700 each). Taxpayers who itemize (1/3 of taxpayers) would have lower effective rates; higher income taxpayers are more likely to itemize.

[c] Assumes that the family spends all income earned, saving nothing and receives monthly FairTax prebate checks totaling $6,767 annually (equal to 23% of poverty level spending ($29,420 for a family of four).

[6] This income level is derived from the poverty level guideline for a family of four, two adults, two children. See Federal Register, Vol. 76, No. 13, January 20, 2011.

[7] The prebate is a rebate paid at the beginning of each month, in twelve equal installments. The amount of the prebate is determined by the Department of Health & Human Services' poverty level guideline multiplied by the FairTax rate. The poverty guidelines are a well established measurement of the poverty level based on expenditures for necessities such as food, clothing, shelter, transportation, medical care, etc.

[8] See The Corporate Income Tax and Workers' Wages: New Evidence from the 50 States, Tax Foundation Special Report No. 169, August 2009; Congressional Budget Office, "Historical Effective Federal Tax Rates, 1979-2006," April 2009 and Joint Committee on Taxation, "Overview of Present Law and Economic Analysis Relating to Marginal Tax Rates and the President's Individual Income Tax Rate Proposals," March 6, 2001.

Given that the employer share of payroll taxes in actuality reflects a reduction of the employee's potential wages, we can determine the "actual" tax burden as shown in Table 2. First, we increase the gross family income amounts from Table 1 by the amount of employer payroll taxes (Federal Unemployment Tax, Social Security and Medicare taxes). Employer payroll taxes of $434 (FUT), $1,824 (SS), and $427 (Med) are added to the employee's income of $29,420 to obtain a "potential" income of $32,105. The total taxes paid are then compared to the total potential income to determine the actual tax burden which in this case is an effective tax rate of 5.9 percent of their gross income even after deduction of the Earned Income Credit.

The FairTax amount is calculated by multiplying the rate of 23 percent times family income, assuming that all income is spent. This amount is divided by income to yield and effective tax rate. For comparable income levels, the FairTax effective tax rate is substantially less than under the current system. In the case of the family with potential income of $32,105, the effective rate is only 1.9 percent. The tax rate for the $63,775 income level jumps to 12.4 percent but that is still much less than the 21.1 percent rate for the income tax system. The results show that the FairTax is progressive; i.e., the effective tax rate rises as income rises.

Our current tax system is also unfair because it is highly responsive to political influence on behalf of special interest groups. Average taxpayers without the means or organization to influence tax policy are at a clear disadvantage. The inextricable relationship between the tax code and lobbyists is evidenced by the fact that more than half of Washington lobbyists are registered on tax matters. Under the FairTax, there are no exceptions and there are no exclusions – there are no loopholes to be exploited by special interests. Under the FairTax, all taxpayers have an equal voice.

Simplicity

A fundamental notion of fairness is that citizens should be able to comprehend the laws that affect them. However, current tax law is beyond the comprehension of most taxpayers, including many of those who devote their entire professional lives to it. In the long-running experiment of the income tax, it is fairly well demonstrated that it is the nature of the income tax as a hidden tax that breeds complexity. The constantly growing complexity of our tax system is part of a trend that began in 1913 and has only accelerated with the nearly perennial enactment of new tax legislation with 4,428 changes to the tax code in just the last decade. The continuous tinkering with the tax code has resulted in tripling the length of the tax code, now a mind-boggling 3.8 million words, and that, on average, has more than one new provision added to it daily.[9] The combined federal income tax code, regulations, and IRS rulings have mushroomed from 14,000 pages in 1954 to 73,954 pages by 2013 – an increase of 428 percent.[10] To cope with this complexity, nearly 60 percent of taxpayers hire paid preparers and another 30 percent rely on commercial software to prepare their returns.

The FairTax is simple: One single rate, with no exceptions and no exclusions, collected at the point of purchase. The simplicity of the FairTax means that tax planning is now within the reach of the ordinary taxpayer, who can choose the amount and timing of federal tax payments by deciding when to make purchases and whether to buy new or used products.

[9] Taxpayer Advocate Service, 2012 Annual Report to Congress, Executive Summary, Dec. 31, 2012, p. vii.
[10] As measured by the number of pages in the CCH Standard Federal Tax Reporter, 2013.

Efficiency

In addition to the taxes on income that we pay, we also pay the cost of payroll and corporate taxes that are embedded in every product that we purchase. Businesses pass their costs on to consumers in the form of higher prices. But the burden to the consumer doesn't stop there. We also pay for the cost of complying with the tax code. So complicated has the income tax system become that an analysis of IRS data by the Taxpayer Advocate Service estimated that individual taxpayers and businesses spend 6.1 billion hours each year complying with the filing requirements of the Internal Revenue Code. Massive amounts of our national wealth are consumed merely by measuring, tracking, sheltering, documenting, and filing our annual income. The twin burdens of time and money required for record keeping, tax form preparation, calculating and funding estimated payment schedules, and tracking income and expenses are eliminated by the FairTax.

While the economic burden occasioned by compliance has been estimated many ways by many researchers, with a correspondingly large range of values, the most recent credible study shows that U.S. taxpayers waste an astounding $431.1 billion annually on tax compliance. If this figure is near correct, it means that we pay about 30 percent of total income taxes collected, just to … well … pay those taxes.[11] Of the $431.1 billion, 88% is the time value costs borne by taxpayers: $161.7 billion by businesses and $216.2 billion by individuals.

The FairTax generates the same amount of revenue as the current tax system, but at a much lower administrative cost. Of the 154 million tax returns filed in fiscal year 2011, over nine out of ten were filed by individuals (143.6 million). Under the FairTax, individuals do not file tax returns. Only businesses that sell goods or services at retail are required to file tax returns, reducing the number of tax filers by at least 80%. These businesses remit the FairTaxes they collect on consumer purchases along with their state sales taxes once per month. They no longer have to administer income tax withholding and payroll tax deduction on wages paid to their employees on behalf of the federal government. According to an estimate by the Tax Foundation, the replacement of the income tax with a national retail sales tax would reduce compliance costs by 95 percent.[12]

Economic impact

Slow economic growth and economic stagnation have an adverse impact on low wage earners. These families are more likely to lose their jobs, are less likely to have the resources to weather bad economic times, and are more in need of the initial employment opportunities that a dynamic, growing economy provides. The income tax retards economic performance by creating a significant bias against saving and investment through double, triple, and even quadruple taxation. Under the FairTax, what you earn is what you take home. Americans are able to save more and invest more. The FairTax dramatically increases investment levels compared to levels that would have been achieved under the current income tax system.[13] Increased savings will

[11] Laffer, Winegarden, and Childs, "The Economic Burden Caused by Tax Code Complexity, April, 2011. Paperwork is the most visible compliance cost, but it is clearly not the only cost, and perhaps not the largest cost. Return processing, determining liability, record keeping, and other burdens are an estimated 13 to 22 percent of the total revenue raised by the income tax system.

[12] Hall, Arthur P., "Compliance Costs of Alternative Tax Systems," Tax Foundation, Testimony before the House Ways and Means Committee, June 6, 1995.

[13] Kotlikoff, Laurence J. and Sabine Jokisch, "Simulating the Dynamic Macroeconomic and Microeconomic Effects of the FairTax," *National Tax Journal*, June 2007; David G. Tuerck, et.al., "The Economic Effects of the FairTax: Results from the Beacon Hill Institute CGE Model," The Beacon Hill Institute at Suffolk University, February 2007.

stimulate investment and productivity and the economy will grow more rapidly, creating demand for workers and improving job opportunities. Because taxes on capital are removed, foreign capital will flow into the United States, creating businesses and jobs. U.S. products competing abroad are free of the hidden costs of taxation while the FairTax is collected on foreign products sold in the United States. Virtually all economic models project a much healthier economy under a broad-based consumption tax such as the FairTax.

Summary

The ever-increasing taxpayer demand for a simpler, less intrusive system of taxation is building daily. The FairTax delivers these benefits to the American people, and more – more government accountability for taxpayer dollars, the elimination of tax returns for individuals, a tax system which is transparent and less susceptible to being manipulated by special interests, and perhaps most importantly, a tax system that promotes economic growth and job creation.

What is the FairTax Plan?

The FairTax Plan is a comprehensive proposal that replaces all federal income and payroll taxes with an integrated approach including a progressive national retail sales tax, a rebate to ensure no American pays federal taxes on spending up to the poverty level, dollar-for-dollar federal revenue replacement, and, through companion legislation, repeal of the 16th Amendment. This nonpartisan legislation (HR 25) abolishes all federal personal, gift, estate, capital gains, alternative minimum, Social Security, Medicare, self-employment, and corporate taxes and replaces them with one simple, visible, federal retail sales tax – collected by existing state sales tax authorities. The FairTax taxes us only on what we choose to spend, not on what we earn. It does not raise any more or less revenue; it is designed to be revenue neutral. The FairTax is a fair, efficient, transparent, and intelligent solution to the frustration and inequity of our current tax system.

What is Americans for Fair Taxation® (FairTax.org)?

FairTax.org is a nonprofit, nonpartisan, grassroots organization dedicated to replacing the current tax system. The organization has hundreds of thousands of members and volunteers nationwide. Its plan supports sound economic research, education of citizens and community leaders, and grassroots mobilization efforts. For more information visit the Web page: www.FairTax.org or call 1-800-FAIRTAX.

Author: Karen Walby, Ph.D., Chief Economist, Americans For Fair Taxation®, Revised January 2013.
(H:\FILES\AFFT Documents\The FairTax-Good for taxpayers, good for businesses, good for the economy)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

3.11.13
Meeting Date

Topic FAIR TAX

Bill Number SM-78
(if applicable)

Name MARK GUPTON

Amendment Barcode ____________
(if applicable)

Job Title Managing Director

Address 453 River Run Blvd.
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Speaking: [X] For [ ] Against [ ] Information

Representing FAIR TAX

Appearing at request of Chair: [X] Yes [ ] No

Lobbyist registered with Legislature: [ ] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

11 March 2013
Meeting Date

Topic: Fair Tax
Bill Number: SM 78 *(if applicable)*

Name: Steve Hayes
Amendment Barcode: ______ *(if applicable)*

Job Title: Director / Spokesman

Address: P.O. Box 4929 (*Street*)
Clearwater FL. 33758 (*City*, *State*, *Zip*)

Phone: 727-238-5754

E-mail: steve@hayesadvisoryservices.com

Speaking: ☒ For ☐ Against ☐ Information

Representing: Fair Tax

Appearing at request of Chair: ☒ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

CourtSmart Tag Report

Room: EL 110	**Case:**	**Type:**
Caption: Senate Commerce and Tourism	**Judge:**	

Started: **3/11/2013 3:32:45 PM**
Ends: **3/11/2013 4:36:23 PM** **Length: 01:03:39**

3:32:49 PM	Roll Call
3:33:14 PM	SB 442- Sen. Thompson
3:34:00 PM	Amendment Barcode 641860
3:34:42 PM	Sen. Margolis Question
3:36:56 PM	N.Y. Nathili- Assoc. to Preserve the Eatonville Community
3:40:48 PM	Sen. Abruzzo Question
3:42:00 PM	Althemere Barnes- Executive Director- Florida African American Heritage Preservation Network
3:46:22 PM	Annie Harris- Volunteer- Florida African American Heritage Network
3:47:30 PM	Patsy Eccles- Florida African American Heritage Network
3:51:22 PM	Sen. Margolis Question
3:52:30 PM	Sen. Thompson Close
3:53:32 PM	Roll Call
3:53:57 PM	SB 1040- Sen. Stargel
3:56:21 PM	Amendment Barcode 300472
3:57:21 PM	Amendment Barcode 303706
3:57:51 PM	Amendment Barcode 123898
3:58:32 PM	Sen. Detert Question
3:59:26 PM	Sen. Stargel Close
4:00:29 PM	Roll Call
4:00:39 PM	Workshop on SM 78- Income Tax and National Retail Sales Tax- Sen. Hays
4:02:17 PM	Mark Gupton-Managing Director- Florida FairTax Educational Assoc.
4:07:27 PM	Sen. Richter Question
4:12:57 PM	Sen. Detert Question
4:15:42 PM	Steve Hays- Tax Attorney
4:19:24 PM	Sen. Abruzzo
4:20:27 PM	Sen. Detert Question
4:22:57 PM	Sen. Abruzzo Question
4:25:06 PM	Sen. Detert Question
4:28:19 PM	Sen. Detert Question
4:29:50 PM	Sen. Hays Comment
4:31:08 PM	Sen. Detert Comment
4:36:06 PM	Sen. Detert Close