



The Florida Senate

Interim Report 2011-121

October 2010

Committee on Finance and Tax

IMPACT OF LOCAL DISCRETIONARY SALES TAXES ON STATE REVENUE CAPACITY

Issue Description

Eight different types of local discretionary sales surtaxes are currently authorized sources for county and municipal revenue. Maximum authorized combined surtax rates vary from county to county, but none impose surtaxes at their maximum overall rate. Recent legislation expands overall county revenue raising capacity. In 2009, counties were authorized to impose an Emergency Fire Rescue Services and Facilities Discretionary Sales Surtax of up to 1 percent. The number of counties eligible to levy the Charter County Transportation System Surtax was increased in 2009, opening it up to all charter counties. In 2010, the Legislature passed ch. 2010-225, Laws of Florida, which expands the number of jurisdictions that may impose the 1 percent renamed Charter County and Regional Transportation System Surtax to include any county that is a part of a regional transportation authority. Moreover, the legislation did not limit the imposition of the newly authorized Emergency Fire Rescue Services and Facilities Discretionary Sales Surtax or the expanded authority to impose the Charter County and Regional Transportation System Surtax in combination with any of the other local option surtaxes either already being levied by a county or available to a county under section 212.055, F.S. As a result, under current law, a number of counties could impose discretionary sales surtaxes of up to four pennies, leaving open the possibility under current law of an overall sales tax rate of 10% in some jurisdictions.

Background

Local option sales taxes were first authorized in 1976, but were not widely adopted until the authorization of the Local Government Infrastructure Surtax in 1987. This section presents a brief overview and legislative history of each local discretionary sales surtax that has been authorized by the Florida Legislature since 1976.

Charter County and Regional Transportation System Surtax

In 1976, s.1, ch. 76-284, Laws of Florida, created §125.0165, Florida Statutes, which, in conjunction with §212.055, Florida Statutes, would become the Charter County Transit System Surtax. The law was restricted to Florida counties that had adopted a charter before June 1, 1976, i.e., Miami-Dade, Duval, Volusia, Sarasota, and Broward Counties. Subject to approval by the voters, these counties were authorized to levy an additional 1 percent tax on all transactions that were subject to state sales tax, limited to the first \$1,000 of any one transaction. The revenues from the surtax would be deposited into a rapid transit trust fund and could only be used for the purposes of development, construction, equipment, maintenance, operation, supportive services, and related cost of a fixed guideway rapid transit system. A majority vote of the county's electorate was required in order to levy the surtax.

In the same law, s. 2 created §212.055, Florida Statutes. It has language similar to §125.0165, Florida Statutes, concerning the eligible counties and the additional 1 percent tax rate on all transactions that are taxed at 4 percent, and limits the surtax to the first \$1,000 of any one transaction. There are no direct references to the rapid transit trust fund, or to the use of the revenue. It does require the Department of Revenue to administer and collect the tax and to distribute the revenues on a regular and periodic basis.

In a 1978 referendum, Miami-Dade County voters rejected this surtax. In 1985, s. 125.0165, F.S., was transferred to s. 212.055, F.S., and the statutory framework for local options sales taxes was revised. In 1987, ch. 87-548, Laws of Florida, extended the surtax to sales up to \$5,000, and chs. 87-99 and 87-100, Laws of Florida, expanded eligibility to levy this tax to counties whose governments are consolidated with one or more municipalities, and created the option to remit the revenue to an expressway or transportation authority instead of the rapid transit trust fund. These counties were authorized to levy at the 1 percent tax rate until all previously issued bonds have been retired, at which time the rate was limited to 0.5 percent. Duval County levied this tax at 0.5 percent, effective 1/1/1989.

In 2002¹ the list of counties eligible to levy the Charter County Transit System Surtax was expanded to include counties that had adopted a charter prior to January 1, 1984, adding Pinellas and Hillsborough Counties. Effective 1/1/2003, Miami-Dade County levied this tax at 0.5 percent.

In 2009² the name of the tax was changed to “Charter County Transportation System Surtax,” and eligibility was expanded to all charter counties. In 2010 the tax was renamed the Charter County and Regional Transportation System surtax, eligibility was expanded to include counties served by a regional transportation or transit authority created under ch. 343 or 349, F.S., and the allowable use of surtax revenue was expanded to include expansion, operation, and maintenance of on-demand transportation systems. Under the new eligibility criteria 31 counties could levy the surtax; currently only Duval and Miami-Dade Counties have done so.

Criminal Justice Facilities Sales Tax

In 1983, the Florida Legislature authorized a 1 percent local option sales tax, upon approval of the voters, to fund the construction, repair or improvement of criminal justice facilities.³ The tax was limited to the 1985 calendar year. Eleven counties levied this tax; 2 counties—Monroe and Polk—levied it for less than the full year.

Local Government Infrastructure Surtax

In 1987, the Local Government Infrastructure Surtax was created.⁴ It allowed the governing authority of each county to levy a surtax of 0.5 percent or 1 percent for a period of up to 15 years. The surtax must be approved by a majority of voters in a referendum. The ballot must include a brief general description of the projects to be funded by and the amount of the surtax. The surtax is limited to the first \$5,000 of any taxable sale of personal property. The proceeds of the surtax, including interest, are divided between the county and municipalities based on an agreement or formula.

In 1988, 7 counties levied the Local Government Infrastructure Surtax; by January 1991 it was levied by 25 counties.

Small County Surtax

The Small County Surtax was authorized by the Florida Legislature in 1992.⁵ It gave counties with an April 1, 1992 population of 50,000 or less the authority to levy a discretionary sales surtax of 0.5 percent or 1.0 percent. If the revenues are to be used for operating purposes, the surtax may be enacted by an extraordinary vote of the county governing authority. If the revenues are to be used to service bonded indebtedness the surtax must be approved in a referendum and the ballot must include a brief description of the projects to be funded and the amount of the surtax. The proceeds of the surtax are distributed among the county and its municipalities by the terms of an interlocal agreement or formula.

The Small County Surtax is currently (2010) levied by 28 of 31 eligible counties at the 1 percent rate.

¹ S. 100, ch. 2002-20, Laws of Florida.

² Ch. 2009-146, Laws of Florida.

³ Ch. 83-355, Laws of Florida.

⁴ Chs. 87-239 and 87-548, Laws of Florida, s. 212.055(2), F.S..

⁵ Ch. 92-309, Laws of Florida.

County Public Hospital Surtax, Indigent Care and Trauma Center Surtax, Voter-Approved Indigent Care Surtax, and Small County Indigent Care Surtax

In 1991 the Florida Legislature authorized 2 local option surtaxes related to provision of health care. The **County Public Hospital Surtax**⁶ authorizes a county as defined in s. 125.100(1), F.S., (Miami-Dade County) to levy a 0.5 percent sales surtax to supplement the operation, maintenance, and administration of the county public general hospital. The tax may be approved by an extraordinary vote of the county's governing body or by referendum. The tax has been levied in Miami-Dade County since 1/1/1992.

The **Indigent Care Surtax**⁷ was authorized in 1991 for certain counties with population of 800,000 or greater (Broward, Hillsborough, Palm Beach, and Pinellas), and could be levied at a rate of 0.5 percent by an extraordinary vote of the county's governing body or by referendum. In 2000 the surtax was renamed the Indigent Care and Trauma Center Surtax and the eligibility requirements were broadened to include all non-consolidated counties. If a county's population is less than 800,000 the surtax is capped at .25 percent, must be approved by the voters, and must be used to fund trauma services by a licensed trauma center. Currently all counties except Miami-Dade and Duval are eligible to levy the tax; it is levied in Hillsborough County at 0.5 percent.

Authorized in 2000, counties with fewer than 800,000 residents may impose, by referendum only, the **Voter-Approved Indigent Care Surtax**.⁸ The rate is capped at 0.5 percent, or 1 percent if a publicly supported medical school is located in the county. Any county with a total population less than 50,000 may levy the surtax at a rate up to 1 percent, and may pledge the proceeds to service new or existing bonds to finance, plan, construct, or reconstruct a public or not-for-profit hospital in the county.

From 2002 through 2009, counties with a population of less than 50,000 were authorized to levy the **Small County Indigent Care Surtax** at a rate of 0.5 percent, by an extraordinary vote of the county governing body.

School Capital Outlay Surtax

In 1995, s.1, 95-258, Laws of Florida, created the School Capital Outlay Surtax.⁹ It allows the school board in each county, with a majority vote of a county referendum, to levy a surtax of up to 0.5 percent. The ballot must have a brief general description of the projects funded by the surtax and the amount of the surtax. The surtax proceeds must be used to fund capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities that have a life expectancy of 5 years or longer, or related land acquisition and improvement. The proceeds may also be used for technology acquisitions and implementation for school district sites. The proceeds may not be used for operational expenses. The revenues are collected by the Department of Revenue and distributed to each school board imposing the surtax.

Emergency Fire Rescue Services and Facilities Surtax

In 2009, the Florida Legislature enacted ch. 2009-182, Laws of Florida, authorizing the Emergency Fire Rescue Services and Facilities Surtax¹⁰, to be levied at the rate of up to 1 percent pursuant to an ordinance enacted by a county's governing body and approved by referendum. The proceeds must be used for emergency fire rescue services, which term includes but is not limited to preventing and extinguishing fires; protecting and saving life and property from fires or natural or intentional acts or disasters; enforcing municipal, county, or state fire prevention codes and laws pertaining to the prevention and control of fires; and providing prehospital emergency medical treatment. A county that levies this surtax, and any participating jurisdiction that enters into an interlocal agreement to receive proceeds of the surtax, must reduce its ad valorem tax levy or any non-ad valorem assessment for fire control and emergency rescue services. Eligibility is limited to counties that have not imposed two separate discretionary surtaxes without expiration dates; Miami-Dade and Madison are currently ineligible to levy the surtax. No county currently levies this surtax.

⁶ Section 212.055(5), F.S.

⁷ Section 212.055(4), F.S.

⁸ Section 212.055(7), F.S.

⁹ Section 212.055(6), F.S.

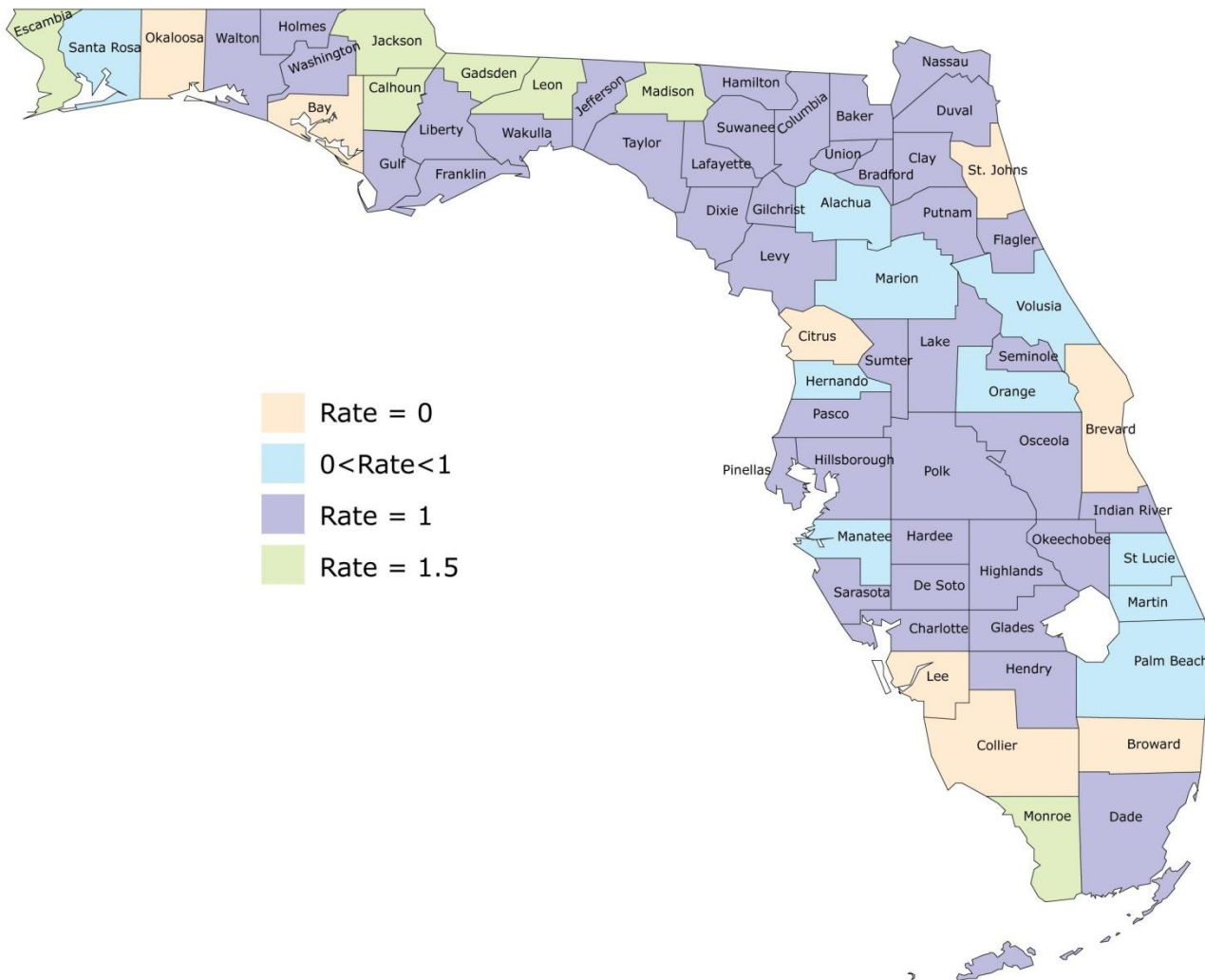
¹⁰ Section 212.055(8), F.S.

Limits on Surtax Levies

There are several statutory limits on the combinations of surtaxes that may be levied. A county may not levy the Local Government Infrastructure, Small County, Indigent Care and Trauma Center, and County Public Hospital surtaxes in excess of a combined rate of 1 percent.¹¹ Another limitation on the imposition of surtaxes is that most must be approved by referendum. The Small County, County Public Hospital, and Indigent Care and Trauma Center surtaxes may be levied by an extraordinary vote of the county governing body, limited to a non-consolidated county with population greater than 800,000 for the Indigent Care and Trauma Center surtax.

Local Government Utilization of Local Option Surtaxes

Current Local Sales Surtax Rates LFY 2009-10



Even though potential local sales surtax levies have increased significantly in the past 2 years because of the creation of the Emergency Fire Rescue Services and Facilities Surtax and extension of the Charter County and Regional Transportation System Surtax, discretionary tax rates have not risen in the past two years. According to Department of Revenue [data](#), discretionary surtax rates will decrease by 0.5 percent in Alachua and Palm Beach Counties effective December 31, 2010,

¹¹ Sections 212.055(2)(h), (3)(f), (4)(b)5, and (5)(f), F.S.

and Marion County's tax rate decreased by 0.5 percent December 31, 2009 upon the expiration of the school surtax. A chart showing which taxes are available to and levied in each county is available [here](#).

Potential New Surtax Levies for 2011 and Later

According to information provided by the Department of Revenue¹², six counties have either already held or will hold referenda on new discretionary surtaxes in 2010.

- Bay County voters approved a 0.5 percent school surtax to be levied for 10 years.
- Hillsborough County voters will decide whether to approve a 1 percent Charter County and Regional Transportation System Surtax on 11/2/2010. If approved, it will begin 1/1/2011 and has no expiration date.
- Okaloosa County voters rejected a 0.5 percent school surtax.
- Osceola County voters will decide whether to approve a 1 percent Charter County and Regional Transportation System Surtax on 11/2/2010. If approved, it will be in effect 1/1/2011 through 12/31/2020.
- Polk County voters will decide whether to approve a 0.5 percent Charter County and Regional Transportation System Surtax on 11/2/2010. If approved, it will begin 1/1/2011 and will be in effect until December 31 of the year in which it is repealed.
- Seminole County voters will decide whether to approve a 0.5 percent school surtax on 11/2/2010. If approved, it will be in effect 1/1/2012 through 12/31/2021.

If voters in Hillsborough and Osceola Counties approve their proposed surtaxes the combined sales tax rate in those counties will be 8 percent.

Findings and/or Conclusions

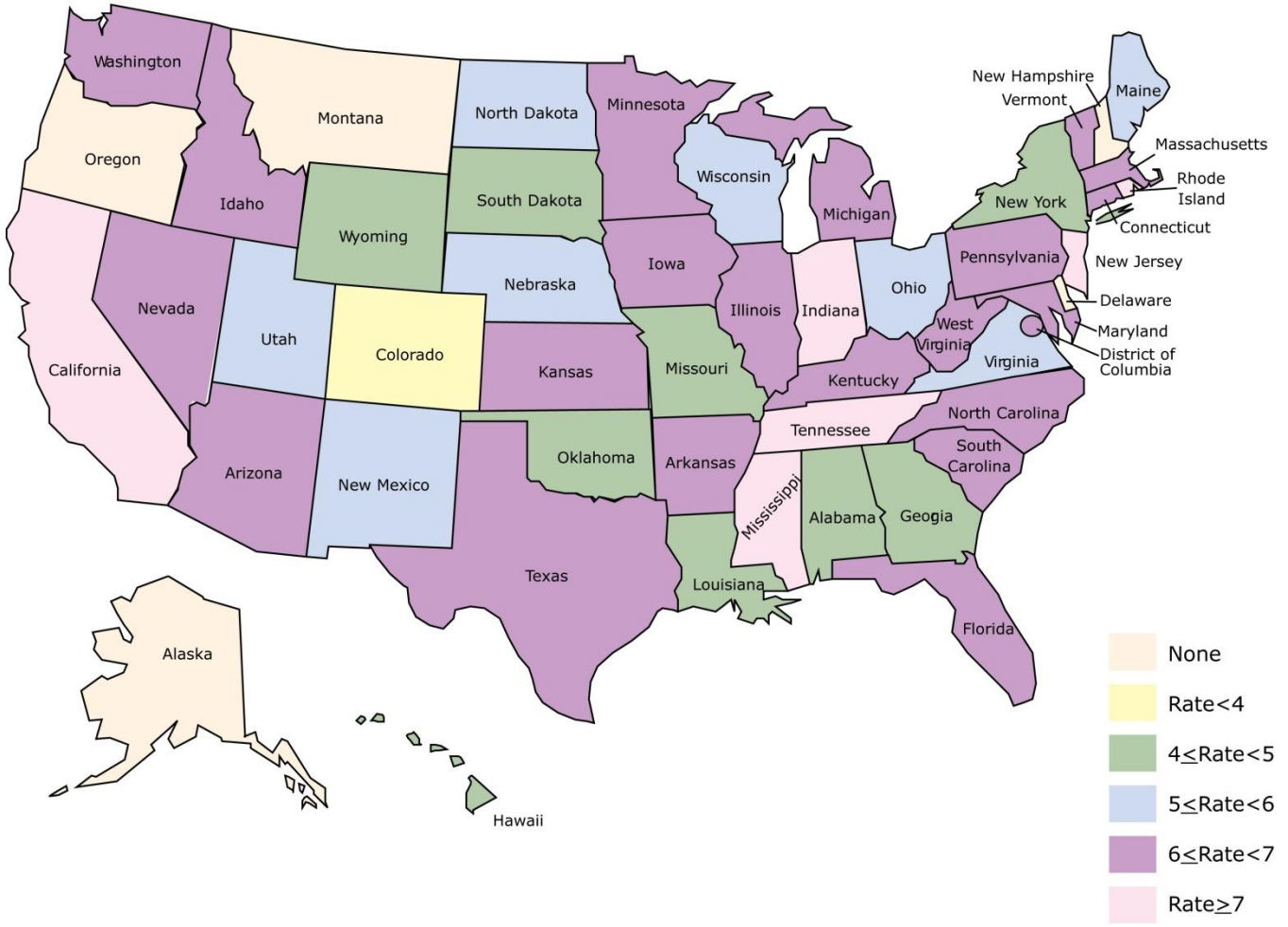
Local discretionary sales taxes are a common source of local tax revenue across the United States, and add significantly to the total sales tax burden. As pointed out in a 2009 study by the Tax Foundation in its analysis of the effect of sales tax rates on a state's business climate, "Comparisons of state-level sales taxes miss an entire layer of taxation beneath it in many states. ... Despite the difficulties associated with this mass of local data, it is essential to include the local option sales tax to portray an accurate picture of the actual sales tax paid."¹³ Information on sales tax rates and population-weighted average local sales tax rates can be found [here](#). Based on the population-weighted average local sales tax for each state, in 5 states—Alabama, Alaska, Colorado, Louisiana, and New York—the weighted average local tax rate is higher than the state rate. In 3 states—Georgia, Missouri, and Oklahoma—the local rate is more than half the state rate.

The importance of local sales taxes can be seen in these maps, which show state sales tax rates, and state plus local rates. Many states that have relatively low state rates become average or high-tax states when the effect of local taxes is included. Looking at state-wide average local tax rates obscures the range of local taxes in some states. In Florida local sales tax rates range from zero to 1.5 percent. In a state with high local tax rates such as Colorado, city sales tax rates range from 1 percent to 5 percent. Idaho and Utah authorize higher local taxes in resort areas.

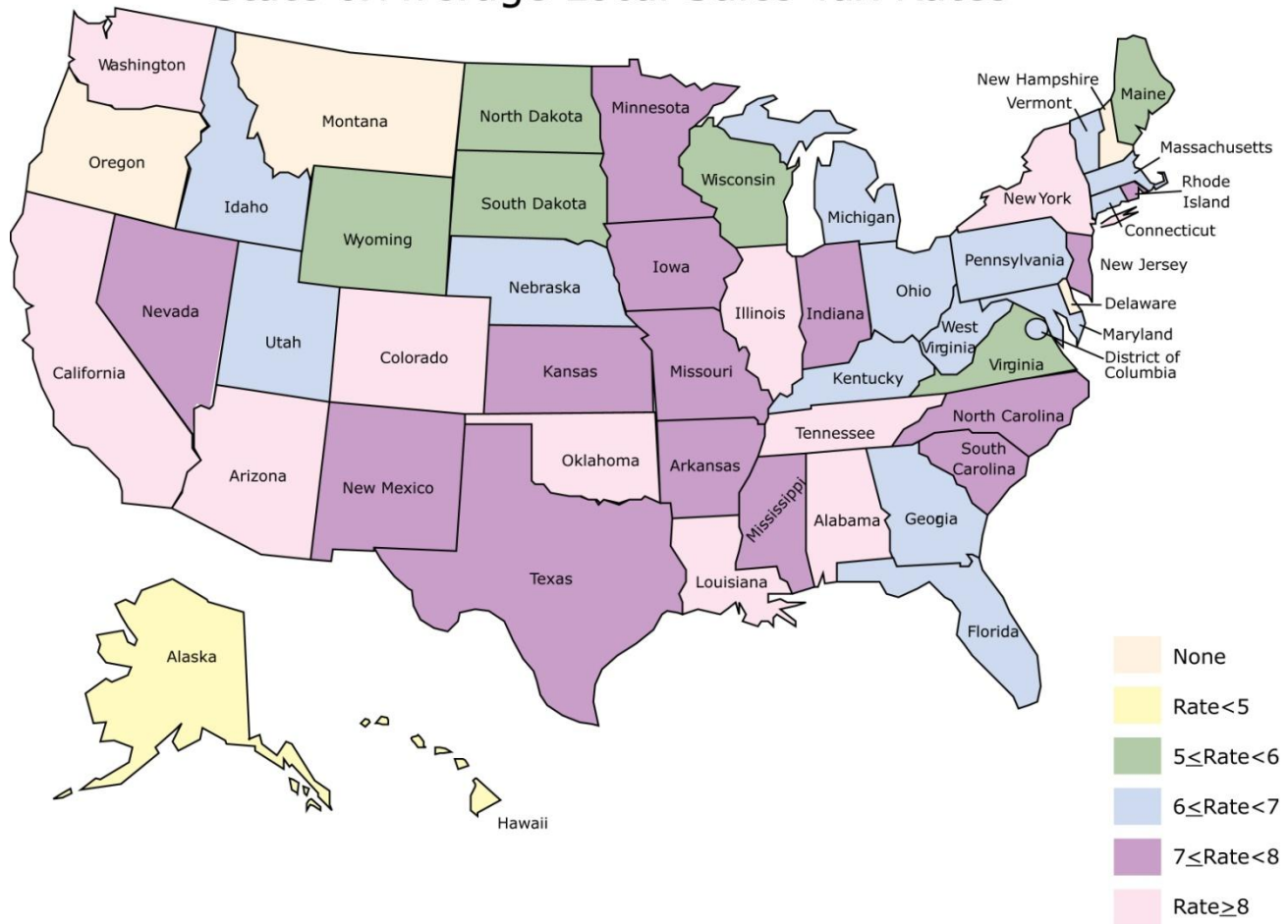
¹² Information provided by David Ansley, Department of Revenue, August 31, 2010.

¹³ "2010 State Business Climate Index", Kail Padgett Background Paper September 2009, p. 22.

State Sales Tax Rates



State & Average Local Sales Tax Rates



++

Potential Impact of Local Discretionary Sales Taxes on State Revenue-Raising Capacity

Recent increases in the levels of local discretionary sales taxes available to Florida counties have raised the question of whether the state’s sales tax revenue-raising capacity is at risk. There is a possibility that if sales tax rates rise too high they will damage the state’s ability to raise revenue. As described in an academic article about the impact of sales tax on retail activity, “There are three main ways in which sales taxes affect retail sales. First, they may increase the after-tax price of goods and thus they may have a negative wealth effect that reduces total sales. Second, selective taxation of goods induces substitution from the taxed goods towards the non-taxed goods. And third, if the tax rate varies across jurisdictions, it induces geographic substitution of purchases.”¹⁴ The first two effects are unlikely to be important because local discretionary sales taxes in Florida are too small to have a noticeable wealth effect, and since they apply to the same tax base as the state sales tax they will not induce substitution away from taxed goods. They could, however, induce consumers to shift their purchases to lower-tax jurisdictions.

Cross-Border Shopping

Since each state or nation may determine the tax rate within its own borders, the issue of cross-border shopping has been a subject of several economic studies. The literature includes theoretical and empirical analyses of this phenomenon in the United States, between the United States and Canada, and in the European Union. Studies of consumers that live adjacent to lower-tax jurisdictions have shown that cross-border shopping can affect the revenue generating capabilities of state

¹⁴ Francisco M. Torralba, “New Evidence on Effects of Sales Tax on Retail Activity,” presented at the 2004 SRSA Annual Conference, New Orleans.

governments,¹⁵ but another study¹⁶ of local sales taxation in rural areas concludes that raising local sales tax rates does not jeopardize retail sales as long as the tax differential between communities is not large. Given Florida's peninsular geography, the effective sales tax rates in Georgia and Alabama, and the distance of its major population centers from adjacent states it is not likely that the imposition of discretionary local sales taxes in border counties would significantly impact the state's revenue-raising capacity.

"Tax-Free" Shopping

The rise in e-commerce has created a situation in which shoppers do not need to travel to another jurisdiction for a lower sales tax rate—there is an alternative that has a zero effective tax rate.¹⁷ In 1992, the U.S. Supreme Court ruled in *Quill Corp. v. North Dakota* that states cannot require a retailer to collect sales and use taxes for in-state customers unless the retailer has "nexus", e.g., a physical presence in their state.¹⁸ The Supreme Court reasoned that with over 6,000 different tax jurisdictions in the United States, taxes on out-of-state businesses "might unduly burden interstate commerce." The estimated losses resulting from states' inability to require out-of-state sellers to collect and remit sales taxes are substantial. In 2010, uncollected state and local sales tax from e-commerce will total approximately \$8.6 billion.¹⁹

Studies of the effect of sales-tax rates on Internet shopping indicate that sales taxes typically have a positive and statistically significant impact on the probability of buying online.^{20, 21} Even though the magnitude is small—Alm and Melnik find that a 1 percent change in the tax price reduces the probability of buying online by roughly 0.5 percent-- it is significant. The availability of essentially "tax-free" purchasing opportunities creates a policy conundrum for states and local governments--increasing the sales tax rate in response to falling sales tax revenues will encourage purchases online, further eroding the revenue-raising capacity of the sales tax. To the extent that a local discretionary sales surtax increase encourages online purchases, it may increase revenue for the local government levying the surtax (the higher tax rate will somewhat offset the loss in transactions) but decrease state sales tax revenue because the tax rate is unchanged but there are fewer transactions.

Options and/or Recommendations

Generalizing from these findings to Florida's situation with respect to local discretionary sales taxes, it appears that Florida's current level of sales tax, both state and local, is not out of line with other states. As of July 1, 2010, Florida ranked 24th among the states (with 1 being the highest) in state and state-wide average local tax rate.²² No local governments have levied the additional discretionary surtaxes that were authorized by the Legislature in 2009 or 2010, but voters in 3 counties—Hillsborough, Osceola, and Polk—will vote on Charter County and Regional Transportation System Surtaxes in November.

There are at least two options that the Legislature could consider to prevent local sales tax rates from becoming so high that they undermine the state's tax base:

¹⁵ Mehmet S. Tosun and Mark L. Skidmore, "Cross-Border Shopping and the Sales Tax: An Examination of Food Purchases in West Virginia," *The B/E/ Journal of Economic Analysis and Policy* Vol. 7 Iss. 1(Topics), 2007 Article 63.

¹⁶ Dodd w. Snodgrass and Daniel M. Otto, "Analysis of State and Local Sales Taxation in Rural Areas: An Oklahoma Case Study," *Growth and Change*, 1990, 21, 34-35.

¹⁷ Although Chapter 212, F.S., does not exempt Internet sales of tangible personal property, and the Department of Revenue's website advises that if the person selling the property into this State does not have sufficient nexus or is not registered with the department as a dealer to collect sales tax, the purchaser is obligated to pay use tax, the Department of Revenue does not have the ability to enforce this law for most items delivered from out of state.

¹⁸ *Quill Corp. v. North Dakota*. 504 U.S. 298 (1992).

¹⁹ Donald Bruce, William F. Fox, and LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce," The University of Tennessee (April 13, 2009), <http://cber.utk.edu/ecomm/ecom0409.pdf>.

²⁰ James Alm and Mikhail I. Melnik, "Sales Taxes and the Decision to Purchase Online," *Public Finance Review*, Vol. 33 No. 2, March 2005 184-212.

²¹ Charles L. Ballard and Jaimin Lee, "Internet Purchases, Cross-Border Shopping, and Sales Taxes," *National Tax Journal*, Vol. LX, No. 4, December 2007 711-725.

²² Tax Foundation, "State and Local-Option General Sales Tax Rates," Fiscal Fact No. 240, August 19, 2010.

- Amend s. 212.055, F.S., to limit the total local discretionary sales surtax levy in any county. If these surtaxes were limited to 2 percent, no surtax currently levied or on the November ballot would be affected, but future increases would be limited.
- Repeal the Emergency Fire Rescue Services and Facilities Surtax, which is not levied and is not before the voters in any county. According to information²³ provided by the Department of Revenue three counties discussed this surtax, but none adopted an ordinance to place it on the ballot. In Palm Beach County it was reported that “county administrators concluded there were too many unanswered questions about the new state law making the increase possible.”

Another option would be for the Legislature to convert the Charter County and Regional Transportation System Surtax to a fuel tax for any future levies. This would impose the burden of the tax on the potential beneficiaries of improved transportation facilities, and could it not be avoided as easily.

²³ Information provided by David Ansley, Department of Revenue, August 31, 2010.