

Tab 1	SB 508 by Baxley ; (Identical to H 00429) Sales Tax Absorption
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Tab 2	SB 542 by Perry ; Back-to-school Sales Tax Holiday
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Tab 3	SB 524 by Gruters ; Sales Tax Holiday for Disaster Preparedness Supplies
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Tab 4	SB 576 by Gruters (CO-INTRODUCERS) Hutson ; Research and Development Tax Credit
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMERCE AND TOURISM
Senator Gruters, Chair
Senator Torres, Vice Chair

MEETING DATE: Tuesday, November 12, 2019
TIME: 10:30 a.m.—12:00 noon
PLACE: *Toni Jennings Committee Room*, 110 Senate Building

MEMBERS: Senator Gruters, Chair; Senator Torres, Vice Chair; Senators Hutson, Stewart, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 508 Baxley (Identical H 429)	Sales Tax Absorption; Authorizing dealers, subject to specified conditions, to advertise or hold out to the public that they will absorb all or part of the sales and use tax on taxable transactions, or refund any part thereof to the purchaser; revising a criminal penalty; providing that certain persons who unlawfully fail to remit absorbed sales taxes commit theft of state funds, etc. CM 11/12/2019 Favorable FT AP	Favorable Yeas 5 Nays 0
2	SB 542 Perry	Back-to-school Sales Tax Holiday; Providing exemptions from the sales and use tax on the retail sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during specified timeframes; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements, etc. CM 11/12/2019 Fav/CS FT AP	Fav/CS Yeas 5 Nays 0
3	SB 524 Gruters	Sales Tax Holiday for Disaster Preparedness Supplies; Providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; providing applicability for certain exemptions; specifying locations where the exemptions do not apply, etc. CM 11/12/2019 Favorable FT AP	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Commerce and Tourism

Tuesday, November 12, 2019, 10:30 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 576 Gruters	Research and Development Tax Credit; Deleting a limitation on industries that qualify for the research and development credit against the corporate income tax; increasing the combined total amount of credits which may be granted to business enterprises during any calendar year; requiring that a specified amount of credits be allocated to certain qualified cleantech businesses, etc. CM 11/12/2019 Favorable FT AP	Favorable Yeas 5 Nays 0
5	Other Related Meeting Documents		

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: SB 508

INTRODUCER: Senator Baxley

SUBJECT: Sales Tax Absorption

DATE: November 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 508 allows businesses to advertise that they will pay or refund some or all of the tax due on behalf of their customers. A business that absorbs its customers' tax must provide an invoice or similar document that (1) expresses that the business will pay the tax imposed by ch. 212, F.S., and (2) states the amount of tax due on the sale.

Florida businesses are currently prohibited from absorbing, paying, or refunding their customers' tax, and a business that advertises or actually absorbs the tax is subject to penalties ranging from a second-degree misdemeanor for a first offense, to a first-degree misdemeanor for any subsequent offense.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² rental of commercial real estate,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax receipts are estimated to account for 77 percent of the state's General Revenue Fund in the 2018-2019 fiscal year.⁴

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁵ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.⁶

Florida businesses that sell taxable goods and services must register as a dealer with the Department of Revenue (department).⁷ A dealer must add sales tax to the price of the taxable good or service and collect the tax from a purchaser at the time of sale.⁸ Tax is considered state property at the time the dealer collects it.⁹ Therefore, a dealer who fails to remit the tax to the department is guilty of theft, punishable by up to a first-degree felony, depending on the amount stolen and prior occurrences.¹⁰

A dealer must also provide a purchaser with an invoice at the time of the sale that separately states the amount of sales tax charged, unless it is impracticable to do so.¹¹ If a typical dealer fails to state the tax charged separately on the invoice, it is subject to a second-degree misdemeanor.¹² However, invoices are not required to be provided in the following types of sales because the department has determined that doing so is impracticable:

- Amusement Machines;¹³
- Concession Stands;¹⁴
- Vending Machines;¹⁵ and
- Alcoholic and malt beverage sales.¹⁶

⁵ Section 212.054, F.S.

⁶ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 219-226 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

⁷ Florida Dep't. of Revenue, *Business Owner's Guide for Sales and Use Tax* at 4 (Jul. 2019), available at https://floridarevenue.com/Forms_library/current/gt300015.pdf (last visited Nov. 8, 2019).

⁸ Florida Dep't. of Revenue, *Florida Sales and Use Tax*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019). Sections 212.06(1)(a) and 212.07(2), F.S.

⁹ Sections 212.15(1) and 213.756 F.S. *See also, Blackshears II Aluminum, Inc. v. Dept. of Revenue*, 641 So. 2d 928 (Fla. Dist. Ct. App. 1994).

¹⁰ Section 212.15(2), F.S.

¹¹ Section 212.07(2), F.S. Florida Dep't. of Revenue, *Florida Sales and Use Tax: How Tax is Calculated*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019).

¹² Section 212.07(4), F.S. If a dealer has committed the same violation previously, he or she is subject to a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to 1 year of imprisonment and a \$1,000 fine; a second-degree misdemeanor is punishable by up to 60 days of imprisonment and a \$500 fine. Sections 775.083 and 772.082(4), F.S.

¹³ Florida Dep't. of Revenue, *Sales and Use Tax on Amusement Machines, Form GT-800020* (Sept. 2019), available at https://floridarevenue.com/Forms_library/current/gt800020.pdf (last visited Nov. 8, 2019).

¹⁴ Florida Dep't. of Revenue, *Sales and Use Tax on Concession Sales, Form GT-800003* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800003.pdf (last visited Nov. 8, 2019).

¹⁵ Florida Dep't. of Revenue, *Sales and Use Tax on Vending Machines, Form GT-800041* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800041.pdf (last visited Nov. 8, 2019).

¹⁶ Florida Dep't. of Revenue, *Sales and Use Tax on Alcoholic Beverages, Form GT-800046* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800046.pdf (last visited Nov. 8, 2019).

A business uses its receipts to calculate its tax due, but by virtue of these industries' non-use of receipts, the department allows them to calculate their taxes using effective tax rates and divisors set by the department.¹⁷ For example, dealers who sell alcoholic beverages may either calculate their state tax obligation as an additional percentage of their individual sales (as evidenced on individuals receipts), or as a percentage of their total receipts (in which case the tax rate varies depending on whether the business posts notice that sales tax is included in the price of the beverage).¹⁸ Similarly, specific concession stands may charge an even dollar amount and then calculate the amount of tax due using a divisor rate set by department rule.¹⁹ Dealers who operate vending machines and amusement machines are also subject to a divisor rate set by the department.²⁰

Sales Tax Absorption

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, pay, or refund a purchaser all or part of the sales tax due on a sale. A Florida dealer who violates this prohibition, whether by advertising or refunding, is guilty of a second-degree misdemeanor.²¹

Several states, including Arizona,²² California,²³ Kentucky,²⁴ and Nevada²⁵ have similar laws that prohibit dealers from absorbing or refunding taxes to a purchaser.²⁶ However, a growing number of states permit tax absorption, including Wisconsin,²⁷ Pennsylvania,²⁸ and Georgia.²⁹

¹⁷ Florida Dep't. of Revenue, *Florida Sales and Use Tax*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019).

¹⁸ See Rule 12A-1.057, F.A.C.

¹⁹ Rule 12A-1.080, F.A.C.

²⁰ Rule 12A-15.011, F.A.C.

²¹ *Supra* note 12.

²² AR Rev. Stat. § 42-5165, available at <https://www.azleg.gov/viewdocument/?docName=http%3A%2F%2Fwww.azleg.gov%2Fars%2F42%2F05165.htm> (last visited Nov. 8, 2019).

²³ CA Rev. & Tax Code § 6205 (2018), available at <https://www.cdtfa.ca.gov/lawguides/vol1/sutl/6205.html> (last visited Nov. 8, 2019).

²⁴ KY Rev. Stat. § 139.220 (2011), available at <https://law.justia.com/codes/kentucky/2011/139-00/139-220> (last visited Nov. 8, 2019).

²⁵ NV Rev. Stat. § 372.115, available at <https://www.leg.state.nv.us/nrs/NRS-372.html#NRS372Sec115> (last visited Nov. 8, 2019).

²⁶ Gail Cole, *Absorbing Sales Tax* (Jul. 22, 2019), <https://www.avalara.com/us/en/blog/2015/11/absorbing-sales-tax-wacky-tax-wednesday.html> (last visited Nov. 8, 2019).

²⁷ WI Dep't. of Revenue, *Sales and Use Tax Report at 2* (Jul. 2011), available at <https://www.revenue.wi.gov/SalesUseTaxReport/11-2.pdf> (last visited Nov. 8, 2019).

²⁸ PA Act 2019-13 § 7 (eff. Jul. 1, 2019). See also, Pa. Dep't. of Revenue, *State Tax Summary* (Jul. 2019), available at https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxSummaries/Documents/2019_tax_summary.pdf (last visited Nov. 8, 2019).

²⁹ GA Code. § 48-8-36 (2015), available at <https://law.justia.com/codes/georgia/2015/title-48/chapter-8/article-1/part-2/section-48-8-36/> (last visited Nov. 8, 2019).

Businesses cite various reasons for seeking to absorb sales tax, ranging from quickly moving customers through their lines,³⁰ to preventing confusion during state sales tax holidays when certain items are exempt from sales tax—but others are not.³¹

III. Effect of Proposed Changes:

The bill amends s. 212.07(4), F.S., to remove the prohibition on dealer tax absorption and similar activities. The bill allows a dealer to advertise that it will absorb all or part of the tax due under ch. 212, F.S., and to pay for or give a refund to the purchaser for the tax obligation on a sale. To do so, however, the dealer must provide the customer with an invoice or similar document that (1) expresses that the business will pay the tax imposed by ch. 212, F.S., and (2) states the amount of tax due on the sale. If a dealer violates this provision, he or she is guilty of a second-degree misdemeanor.³²

The bill also amends s. 212.15, F.S., to expand the criminal offense for failure to remit both collected *and absorbed* taxes to the department. Depending on the amount of revenue stolen, and whether the dealer has prior offenses, he or she is subject penalties ranging from a second-degree misdemeanor to a first-degree felony.

The bill takes effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

³⁰ *MJR Group, LLC v. Mich. Dep't. of Treasury*, No. 329119, 2016 WL 7611479 (Mich. Ct. App. Dec. 29, 2016), available at <http://www.michbar.org/file/opinions/appeals/2014/022514/56543.pdf> (last visited Nov. 8, 2019).

³¹ Slim Smith, *Statewide 'Sales Tax Holiday' set for July 31-Aug. 1* (Jul. 22, 2015), <https://www.washingtontimes.com/news/2015/jul/22/statewide-sales-tax-holiday-set-for-july-31-aug-1/> (last visited Nov. 8, 2019).

³² A dealer who commits a subsequent violation of s. 212.07(4), F.S., is subject to a first-degree misdemeanor. *Supra* note 12.

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

None.

B. Private Sector Impact:

Businesses may now absorb their customers' state taxes, and advertise their ability to do so. This may incentivize customers to shop at those businesses that absorb the state tax over those that do not. Consumers may pay fewer state taxes on their purchases.

C. Government Sector Impact:

The Department may be required to update administrative rules to reflect specific industries' abilities to absorb state tax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections 212.07 and 212.15 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

By Senator Baxley

12-00824-20

2020508__

A bill to be entitled

An act relating to sales tax absorption; amending s. 212.07, F.S.; authorizing dealers, subject to specified conditions, to advertise or hold out to the public that they will absorb all or part of the sales and use tax on taxable transactions, or refund any part thereof to the purchaser; revising a criminal penalty; conforming provisions to changes made by the act; amending s. 212.15, F.S.; providing that certain persons who unlawfully fail to remit absorbed sales taxes commit theft of state funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (4) and (8) of section 212.07, Florida Statutes, are amended, and subsection (2) of that section is republished, to read:

212.07 Sales, storage, use tax; tax added to purchase price; tax absorption ~~dealer not to absorb~~; liability of purchasers who cannot prove payment of the tax; penalties; general exemptions.—

(2) A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of the tax shall be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale. Such tax shall constitute a part of such price, charge, or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be

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recoverable at law in the same manner as other debts. Where it is impracticable, due to the nature of the business practices within an industry, to separately state Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale, the department may establish an effective tax rate for such industry. The department may also amend this effective tax rate as the industry's pricing or practices change. Except as otherwise specifically provided, any dealer who neglects, fails, or refuses to collect the tax herein provided upon any, every, and all retail sales made by the dealer or the dealer's agents or employees of tangible personal property or services which are subject to the tax imposed by this chapter shall be liable for and pay the tax himself or herself.

(4) (a) A dealer engaged in any business taxable under this chapter may not advertise or hold out to the public, in any manner, directly or indirectly, that ~~he or she will absorb all or any part of the tax, or that he or she will relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property or services sold or released.~~ However, such dealer may advertise or hold out to the public or, when added, that he or she will absorb all or any part of such tax or that it or any part thereof will be refunded to the purchaser subject to both of the following conditions:

1. In so advertising or holding out to the public, the dealer shall expressly state on any charge ticket, sales slip, invoice, or other tangible evidence of sale given to the purchaser that such dealer will pay the tax imposed by this chapter to the state. The dealer may not indicate or imply that

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59 the transaction is exempt or excluded from the tax imposed by
60 this chapter.

61 2. A charge ticket, sales slip, invoice, or other tangible
62 evidence of sale given to the purchaser must separately state
63 the amount of such tax in accordance with subsection (2) either
64 directly or indirectly by any method whatsoever.

65 (b) A person who violates this subsection commits provision
66 with respect to advertising or refund is guilty of a misdemeanor
67 of the second degree, punishable as provided in s. 775.082 or s.
68 775.083. A second or subsequent offense constitutes a
69 misdemeanor of the first degree, punishable as provided in s.
70 775.082 or s. 775.083.

71 (8) Any person who has purchased at retail, used, consumed,
72 distributed, or stored for use or consumption in this state
73 tangible personal property, admissions, communication or other
74 services taxable under this chapter, or leased tangible personal
75 property, or who has leased, occupied, or used or was entitled
76 to use any real property, space or spaces in parking lots or
77 garages for motor vehicles, docking or storage space or spaces
78 for boats in boat docks or marinas, and cannot prove that the
79 tax levied by this chapter has been paid to his or her vendor,
80 lessor, or other person, or was absorbed by a dealer pursuant to
81 subsection (4), is directly liable to the state for any tax,
82 interest, or penalty due on any such taxable transactions.

83 Section 2. Subsection (2) of section 212.15, Florida
84 Statutes, is amended to read:

85 212.15 Taxes declared state funds; penalties for failure to
86 remit taxes; due and delinquent dates; judicial review.—

87 (2) Any person who, with intent to unlawfully deprive or

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88 defraud the state of its moneys or the use or benefit thereof,
89 fails to remit taxes collected or absorbed under this chapter
90 commits theft of state funds, punishable as follows:

91 (a) If the total amount of stolen revenue is less than
92 \$1,000, the offense is a misdemeanor of the second degree,
93 punishable as provided in s. 775.082 or s. 775.083. Upon a
94 second conviction, the offender commits a misdemeanor of the
95 first degree, punishable as provided in s. 775.082 or s.
96 775.083. Upon a third or subsequent conviction, the offender
97 commits a felony of the third degree, punishable as provided in
98 s. 775.082, s. 775.083, or s. 775.084.

99 (b) If the total amount of stolen revenue is \$1,000 or
100 more, but less than \$20,000, the offense is a felony of the
101 third degree, punishable as provided in s. 775.082, s. 775.083,
102 or s. 775.084.

103 (c) If the total amount of stolen revenue is \$20,000 or
104 more, but less than \$100,000, the offense is a felony of the
105 second degree, punishable as provided in s. 775.082, s. 775.083,
106 or s. 775.084.

107 (d) If the total amount of stolen revenue is \$100,000 or
108 more, the offense is a felony of the first degree, punishable as
109 provided in s. 775.082, s. 775.083, or s. 775.084.

110 Section 3. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

508

11/21/19
Meeting Date

Bill Number (if applicable)

Topic Sales Tax Absorption

Amendment Barcode (if applicable)

Name Tim Nungesser

Job Title Legislative Director

Address 110 E. Jefferson St.
Street

Phone 445-5367

Tallahassee FL 32301
City State Zip

Email tim.nungesser@nfib.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NFIB

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/2019
Meeting Date

SB 508
Bill Number (if applicable)

Topic SALES TAX ABSORPTION

Amendment Barcode (if applicable)

Name CHRISTIAN CALLARA

Job Title

Address PO Box 122

Phone 305 608 4300

YALAHASSEE FL 32301
City State Zip

Email CHRISTIAN@CHAMBERCONSULTANTS
FL, COO

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing B&H PHOTO

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.

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 542

INTRODUCER: Committee on Commerce and Tourism and Senator Perry

SUBJECT: Back-to-school Sales Tax Holiday

DATE: November 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Fav/CS
2.			FT	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 542 establishes a 10-day “back-to-school” sales tax holiday, from Friday, July 31 to Sunday, August 9, 2020, for certain clothing, school supplies, personal computers, and personal computer-related accessories.

The bill appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2019-2020.

The bill takes effect upon becoming law.

II. Present Situation:

Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at

¹ Section 212.05(1)(a)1.a, F.S.

² Section 212.04(b), F.S.

³ Section 212.03(1)(a), F.S.

the time of sale.⁴ Sales tax receipts accounted for approximately 77 percent of the state's General Revenue in Fiscal Year 2018-2019.⁵

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.⁷

"Back-to-School" Sales Tax Holidays

Florida has enacted a "back-to-school" sales tax holiday 18 times since 1998. The Florida Residents' Tax Relief Act of 1998 established Florida's first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.⁸ Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for \$750 or less, purchased for noncommercial home or personal use. The duration of "back-to-school" sales tax holidays has varied from 3 to 10 days. The type and value of exempt items have also varied.⁹

Sixty-seven of the 73 school districts in Florida begin the 2019-2020 school year on August 12, 2019, and the remaining school districts will begin by August 19, 2020.¹⁰

III. Effect of Proposed Changes:

The bill establishes a 10-day period, from July 31 to August 9, 2020, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Clothing with a sales price of \$60 or less per item. "Clothing" is defined as any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs, and all footwear, excluding skis, swim fins, roller blades, and skates;
- Wallets and bags with a sales price of \$60 or less per item, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags;
- School supplies with a sales price of \$15 or less per item. "School supplies" is defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators;

⁴ See s. 212.07(2), F.S.

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 12, 2019).

⁶ Section 212.054(2)(a), F.S.

⁷ *Supra* note 5, at 225-226.

⁸ Chapter 98-341, Laws of Fla.

⁹ *Supra* note 5, at 156-160.

¹⁰ Florida Department of Education, *PK-12 Public School Data Publications and Reports*, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited Nov. 12, 2019).

- Personal computers with a sales price of \$1,000 or less per item. “Personal computers” includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers and excludes cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data; and
- Personal computer-related accessories with a sales price of \$1,000 or less per item. “Personal computer-related accessories” includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and non-recreational software regardless of whether the accessories are used in association with a personal computer base unit. The term excludes furniture or systems, devices, software, monitors with a television tuner, or peripherals that are designed or intended primarily for recreational use.

The bill allows a business to opt out of participating in the sales tax holiday if less than 5 percent of the business’s gross sales of tangible personal property in the prior calendar year consist of items that would be exempt under the bill. A business meeting this threshold must notify the Department of Revenue (DOR), in writing, by July 30, 2020, of its election to collect sales tax during the holiday. The business must post a copy of that notice in a conspicuous location at its place of business.

The exemptions provided for in the bill do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill appropriates, for the 2019-2020 fiscal year, \$237,000 in nonrecurring funds from the General Revenue Fund to the DOR for the purpose of implementing the sales tax holiday. Funds remaining unexpended as of June 30, 2020, shall revert and be re-appropriated for the same purpose in the 2020-2021 fiscal year.

The DOR may adopt emergency rules pursuant s. 120.54(4), F.S., for the purpose of implementing the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the

mandates requirements do not apply to laws having an insignificant impact,^{11, 12} which is \$2.1 million or less for Fiscal Year 2019-2020.¹³

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Persons purchasing exempted items during the sales tax holidays will realize savings.

C. Government Sector Impact:

The bill appropriates \$237,000 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2019-2020 to administer the “back-to-school” sales tax holiday.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

¹¹ FLA. CONST. art. VII, s. 18(d).

¹² An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. *See* Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Nov. 12, 2019).

¹³ Based on the Demographic Estimating Conference’s population adopted on July 8, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Nov. 12, 2019).

VIII. Statutes Affected:

The bill creates two undesignated sections of chapter law.

IX. Additional Information:

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

CS by Commerce and Tourism Committee on November 12, 2019:

The committee substitute lengthens the period during which personal computers and personal computer-related accessories are exempt from the state sales tax and local discretionary sales surtaxes.

- B. **Amendments:**

None.



459404

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
11/12/2019	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 42
and insert:
not be collected during the period from 12:01 a.m. on July 31,

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

And the title is amended as follows:

Delete line 6

and insert:



459404

11

related accessories during a specified timeframe;

By Senator Perry

8-00660-20

2020542__

A bill to be entitled

An act relating to a back-to-school sales tax holiday; providing exemptions from the sales and use tax on the retail sale of certain clothing, wallets, bags, school supplies, personal computers, and personal computer-related accessories during specified timeframes; defining terms; specifying locations where the exemptions do not apply; authorizing certain dealers to opt out of participating in the tax holiday, subject to certain requirements; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Clothing, school supplies, personal computers, and personal computer-related accessories; sales tax holiday.-

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on July 31, 2020, through 11:59 p.m. on August 9, 2020, on the retail sale of:

(a) Clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a sales price of \$60 or less per item. As used in this paragraph, the term "clothing" means:

1. Any article of wearing apparel intended to be worn on or about the human body, excluding watches, watchbands, jewelry,

Page 1 of 4

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

8-00660-20

2020542__

umbrellas, and handkerchiefs; and

2. All footwear, excluding skis, swim fins, roller blades, and skates.

(b) School supplies having a sales price of \$15 or less per item. As used in this paragraph, the term "school supplies" means pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, staplers and staples used to secure paper products, protractors, compasses, and calculators.

(2) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on August 1, 2020, through 11:59 p.m. on August 9, 2020, on the retail sale of personal computers or personal computer-related accessories having a sales price of \$1,000 or less per item and purchased for noncommercial home or personal use. As used in this subsection, the term:

(a) "Personal computers" includes electronic book readers, laptops, desktops, handhelds, tablets, or tower computers. The term does not include cellular telephones, video game consoles, digital media receivers, or devices that are not primarily designed to process data.

(b) "Personal computer-related accessories" includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, software, monitors

Page 2 of 4

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8-00660-20 2020542__

59 with a television tuner, or peripherals that are designed or
 60 intended primarily for recreational use.

61 (3) The tax exemptions provided in this section do not
 62 apply to sales within a theme park or entertainment complex as
 63 defined in s. 509.013(9), Florida Statutes, within a public
 64 lodging establishment as defined in s. 509.013(4), Florida
 65 Statutes, or within an airport as defined in s. 330.27(2),
 66 Florida Statutes.

67 (4) The tax exemptions provided in this section may apply
 68 at the option of a dealer if less than 5 percent of the dealer's
 69 gross sales of tangible personal property in the prior calendar
 70 year consist of items that would be exempt under this section.
 71 If a qualifying dealer chooses not to participate in the tax
 72 holiday, the dealer must notify the Department of Revenue in
 73 writing by July 30, 2020, of its election to collect sales tax
 74 during the holiday and must post a copy of that notice in a
 75 conspicuous location at its place of business.

76 (5) The Department of Revenue may, and all conditions are
 77 deemed met to, adopt emergency rules pursuant to s. 120.54(4),
 78 Florida Statutes, for the purpose of implementing this section.
 79 Notwithstanding any other law, emergency rules adopted pursuant
 80 to this subsection are effective for 6 months after adoption and
 81 may be renewed during the pendency of procedures to adopt
 82 permanent rules addressing the subject of the emergency rule.

83 Section 2. For the 2019-2020 fiscal year, the sum of
 84 \$237,000 in nonrecurring funds is appropriated from the General
 85 Revenue Fund to the Department of Revenue for the purpose of
 86 implementing this act. Funds remaining unexpended or
 87 unencumbered from this appropriation as of June 30, 2020, shall

Page 3 of 4

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8-00660-20 2020542__

88 revert and be reappropriated for the same purpose in the 2020-
 89 2021 fiscal year.

90 Section 3. This act shall take effect upon becoming a law.

Page 4 of 4

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THE FLORIDA SENATE APPEARANCE RECORD

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

11/12/19

Meeting Date

542

Bill Number (if applicable)

Topic Back-to-school Sales Tax Holiday

Name Brewster Bevis

Amendment Barcode (if applicable)

Job Title Senior Vice President

Address 516 N. Adams St

Street

Phone 224-7173

Tallahassee

FL

32301

State

Zip

Email bbevis@aif.com

City

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

542

Bill Number (if applicable)

Topic Back-To-School Sales Tax Holiday

Name JAKE FARMER

Amendment Barcode (if applicable)

Job Title Director of Government Affairs

Address 277 S Adams St.

Phone 352 359 6835

Tallahassee FL 32301

Email Jake@FF.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/2019

Meeting Date

542

Bill Number (if applicable)

Topic Back-to-school Sales Tax Holiday

Name Kurt Wenner

Amendment Barcode (if applicable)

Job Title Vice President

Address 106 N. Bronough

Street

Tallahassee

City

FL

State

32301

Zip

Phone 850-222-5052

Email kwenner@floridatxwatch.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

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.

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: SB 524

INTRODUCER: Senator Gruters

SUBJECT: Sales Tax Holiday for Disaster Preparedness Supplies

DATE: November 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 524 establishes an 18-day “disaster preparedness” sales tax holiday, from Friday, May 29 to Monday, June 15, 2020, for certain disaster preparedness supplies.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2019-2020.

The bill takes effect upon becoming law.

II. Present Situation:

Florida Sales Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,¹ admissions,² transient rentals,³ and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁴ Sales tax receipts accounted for approximately 77 percent of the state’s General Revenue in Fiscal Year 2018-2019.⁵

¹ Section 212.05(1)(a)1.a, F.S.

² Section 212.04(b), F.S.

³ Section 212.03(1)(a), F.S.

⁴ See s. 212.07(2), F.S.

⁵ Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

Section 212.055, F.S., authorizes counties to impose local discretionary sales surtaxes in addition to the state sales tax. A surtax applies to “all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.5 to 2.5 percent.⁷

“Disaster Preparedness” Sales Tax Holidays

Florida has enacted a “disaster preparedness” sales tax holiday six times since 2006, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and length of the exemption periods has varied from 3 to 12 days.⁸

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.⁹

III. Effect of Proposed Changes:

The bill establishes an 18-day period, from Friday, May 29 to Monday, June 15, 2020, during which the following items are exempt from the state sales tax and local discretionary sales surtaxes:

- Portable self-powered light sources selling for \$20 or less;
- Portable self-powered radios, two-way radios, or weather-band radios selling for \$50 or less;
- Tarpaulins or other flexible waterproof sheeting selling for \$50 or less;
- Any items normally sold as, or generally advertised as, ground anchor systems or tie-down kits selling for \$50 or less;
- Gas or diesel fuel tanks selling for \$25 or less;
- Packages of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- Nonelectric food storage coolers selling for \$30 or less;
- Portable generators used to provide light or communications or preserve food selling for \$750 or less;
- Reusable ice selling for \$10 or less;
- Impact-resistant windows, when sold in units of 20 or fewer; and
- Impact-resistant doors, when sold in units of 10 or fewer. The exemptions for impact-resistant windows and doors apply to purchases made by an owner of residential real property where the impact-resistant windows or doors will be installed.

⁶ Section 212.054(2)(a), F.S.

⁷ *Supra* note 5, at 225-226.

⁸ *Id.* at 160.

⁹ Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit*, available at <https://www.floridadisaster.org/planprepare/disaster-supply-kit/> (last visited Nov. 8, 2019).

The exemptions provided for in the bill do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The bill appropriates, for the 2019-2020 fiscal year, \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue for the purpose of implementing the sales tax holiday. Funds remaining unexpended as of June 30, 2020, shall revert and be re-appropriated for the same purpose in the 2020-2021 fiscal year.

The Department of Revenue may adopt emergency rules pursuant s. 120.54(4), F.S., for the purpose of implementing the bill.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{10, 11} which is \$2.1 million or less for Fiscal Year 2019-2020.¹²

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁰ FLA. CONST. art. VII, s. 18(d).

¹¹ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Nov. 8, 2019).

¹² Based on the Demographic Estimating Conference's population adopted on July 8, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Nov. 8, 2019).

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet met regarding the bill.

B. Private Sector Impact:

Persons purchasing exempted items during the sales tax holidays will realize savings.

C. Government Sector Impact:

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2019-2020 to administer the “disaster preparedness” sales tax holiday.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill creates two undesignated sections of chapter law.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Gruters

23-00669-20

2020524__

A bill to be entitled

An act relating to a sales tax holiday for disaster preparedness supplies; providing exemptions from the sales and use tax for specified disaster preparedness supplies during a specified timeframe; providing applicability for certain exemptions; specifying locations where the exemptions do not apply; authorizing the Department of Revenue to adopt emergency rules; providing an appropriation; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Disaster preparedness supplies; sales tax holiday.-

(1) The tax levied under chapter 212, Florida Statutes, may not be collected during the period from 12:01 a.m. on May 29, 2020, through 11:59 p.m. on June 15, 2020, on the sale of:

(a) A portable self-powered light source selling for \$20 or less.

(b) A portable self-powered radio, two-way radio, or weather-band radio selling for \$50 or less.

(c) A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.

(d) An item normally sold as, or generally advertised as, a ground anchor system or tie-down kit selling for \$50 or less.

(e) A gas or diesel fuel tank selling for \$25 or less.

(f) A package of AA-cell, AAA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries,

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23-00669-20

2020524__

selling for \$30 or less.

(g) A nonelectric food storage cooler selling for \$30 or less.

(h) A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.

(i) Reusable ice selling for \$10 or less.

(j) Impact-resistant windows, when sold in units of 20 or fewer.

(k) Impact-resistant doors, when sold in units of 10 or fewer.

The exemptions under paragraphs (j) and (k) apply to purchases made by an owner of residential real property where the impact-resistant windows or impact-resistant doors will be installed.

(2) The tax exemptions provided in this section do not apply to sales within a theme park or entertainment complex as defined in s. 509.013(9), Florida Statutes, within a public lodging establishment as defined in s. 509.013(4), Florida Statutes, or within an airport as defined in s. 330.27(2), Florida Statutes.

(3) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to s. 120.54(4), Florida Statutes, for the purpose of implementing this section. Notwithstanding any other law, emergency rules adopted pursuant to this subsection are effective for 6 months after adoption and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rule.

Section 2. For the 2019-2020 fiscal year, the sum of

Page 2 of 3

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23-00669-20

2020524

59 \$70,072 in nonrecurring funds is appropriated from the General
60 Revenue Fund to the Department of Revenue for the purpose of
61 implementing this act. Funds remaining unexpended or
62 unencumbered from this appropriation as of June 30, 2020, shall
63 revert and be reappropriated for the same purpose in the 2020-
64 2021 fiscal year.

65 Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/2019

Meeting Date

524

Bill Number (if applicable)

Topic Sales Tax Holiday for Disaster Preparedness Supplies

Amendment Barcode (if applicable)

Name Kurt Wenner

Job Title Vice President

Address 106 N. Bronough

Phone 850-222-5052

Street

Tallahassee

FL

32301

Email kwenner@floridatxwatch.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

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.

THE FLORIDA SENATE
APPEARANCE RECORD

11-12-2019
Meeting Date

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

SB 524

Bill Number (if applicable)

Topic _____

Name Kari Hebrank

Amendment Barcode (if applicable)

Job Title _____

Address 215 South Monroe St. #500
Street

Phone 850-224-1585

City _____ State _____ Zip _____

Email khebrank@cartonfields.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing PGT Innovations

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

524

Bill Number (if applicable)

Topic Sales Tax Holiday for Disaster Preparedness

Name JAKE FARMER

Supplies

Amendment Barcode (if applicable)

Job Title Director of Government Affairs

Address 227 S Adams St

Street

Phone 352 359 6835

Tallahassee

City

State

32301

Zip

Email Jake@frf.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

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.

THE FLORIDA SENATE

APPEARANCE RECORD

11/12/19

Meeting Date

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

524

Bill Number (if applicable)

Topic Sales Tax Holiday for Disaster Preparedness Supplies

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Street

Phone 224-7173

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

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.

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: SB 576

INTRODUCER: Senator Gruters

SUBJECT: Research and Development Tax Credit

DATE: November 12, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McMillan	McKay	CM	Favorable
2.			FT	
3.			AP	

I. Summary:

SB 576 increases the annual limit for research and development (R&D) tax credits on corporate income taxes to \$50 million from \$9 million, and provides that the first \$10 million must be allocated to qualified businesses in the cleantech industry. The increased annual limit of \$50 million will apply to the taxable year beginning January 1, 2020, and to all taxable years thereafter. The bill also expands the types of businesses eligible to receive the tax credit.

The bill takes effect upon becoming a law.

II. Present Situation:

Federal Tax Credit

The U.S. Research and Experimentation Tax Credit¹ was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.² In 2015, the Protecting Americans from Tax Hikes (PATH) Act permanently extended the R&D Tax credit.³ For the 2013 federal tax year, 16,624 companies claimed approximately \$11.3 billion in R&D tax credits.⁴ At approximately \$6.8 billion, manufacturing companies claimed the largest portion of research tax credits.⁵ Under federal law,

¹ The U.S. Research and Experimentation Tax Credit is also known as the Research and Development Tax Credit.

² Francisco Moris, *The U.S. Research and Experimentation Tax Credit in the 1990s* (July 2005), National Science Foundation Report, available at <https://wayback.archive-it.org/5902/20150627200929/http://www.nsf.gov/statistics/infbrief/nsf05316/> (last visited on Nov. 8, 2019).

³ Yair Holtzman, *U.S. Research and Development Tax Credit* (October 2017), *The CPA Journal*, available at <https://www.cpapjournal.com> (last visited on Nov. 8, 2019).

⁴ Internal Revenue Service, Statistics of Income Division, <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>, (last visited Nov. 8, 2019).

⁵ *Id.*

qualified research expenditures include in-house research expenses and contract research expenses paid by the taxpayer in carrying on any trade or business of the taxpayer.⁶

Florida Tax Credit

Section 220.196, F.S., authorizes a R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses.⁷ A business is eligible for the tax credit if it:

- Has qualified research expenses in Florida in the taxable year exceeding the base amount;⁸
- Claims, and is allowed, a research credit for such qualified expenses under federal law for the same taxable year; and
- Is in a qualified target industry,⁹ specifically manufacturing, life sciences, information technology, aviation and aerospace, homeland security and defense, cloud information technology, marine sciences, materials sciences, or nanotechnology.¹⁰

The tax credit is 10 percent of the difference between the current tax year's R&D expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.¹¹ The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business for up to five years following the year in which the qualified research expenses were incurred.¹²

The maximum amount of R&D credits that may be approved by the Department of Revenue (DOR) during any calendar year is \$9 million. Applications for the credit may be filed with the DOR on or after March 20 and before March 27 for qualified research expenses incurred within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are allocated on a prorated basis.¹³

The statutory cap of \$9 million for expenses incurred in the 2018 calendar year was allocated in 2019 as follows:¹⁴

- The DOR received 199 applications, requesting a total of \$107,904,637 in credit;
- One hundred eighty eight (188) applications were approved with the applicant receiving an allocation of the available \$9 million in credit. Each applicant received approximately

⁶ 26 U.S.C. s. 41(b)(1)

⁷ Section 220.196(1)(c), F.S., defines "qualified research expenses" as research expenses qualifying for the credit under federal law for in house research expenses incurred in Florida or contract research expenses incurred in Florida.

⁸ "Base amount" means the average of the business' qualified research expenses in Florida allowed under 26 U.S.C. s. 41 for the preceding 4 taxable years. Chapter 220.196(1)(a), F.S.

⁹ The Department of Economic Opportunity (DEO) certifies whether a business is a qualified target industry business, pursuant to s. 220.196(2)(a)3., F.S.

¹⁰ See s. 220.196(2)(a), F.S.

¹¹ See s. 220.196(2)(b), F.S.

¹² See s. 220.196(2)(d), F.S.

¹³ See s. 220.196(2)(e), F.S.

¹⁴ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

eight percent (0.08) of the amount of credit determined in their application. These 188 applications requested \$107,369,288 in credit; and

- Eleven (11) applications were denied for various reasons, including applicant not being a corporation, applicant not having current certification letter from the DEO, and application figures resulting in zero credit requested. These 11 applications requested \$535,349 in credit.¹⁵

The statutory cap was raised to \$16.5 million for expenses incurred during the 2017 calendar year.¹⁶ The credits were allocated in 2018 as follows:¹⁷

- The DOR received 169 applications, requesting a total of \$68,067,382 in credit;
- 145 applications were approved with each applicant receiving an allocation of the available \$16.5 million in credit. Each applicant received approximately 25.17 percent (0.2517) of the amount of credit determined in their application. These 145 applications requested a total of \$65,560,879 in credit; and
- Twenty-three (23) applications were denied for various reasons, including duplicate applications and applications resulting in zero credit requested. These 23 applications requested a total of \$2,506,503 in credit.¹⁸

The statutory cap of \$9 million for expenses incurred in the 2016 calendar year was allocated in 2017 as follows:

- The DOR received 146 applications, requesting a total of \$54,915,138 in credit;
- One hundred thirty-seven (137) applications were approved with each applicant receiving an allocation of the available \$9 million in credit. Each applicant received approximately 16.67 percent (0.1667) of the amount of credit determined in their application. These 137 applications requested a total of \$53,986,728 in credit; and
- Nine (9) applications were denied for various reasons, including duplicate applications and application figures resulting in zero credit requested. These nine applications requested a total of \$928,410 in credit.¹⁹

The statutory cap was raised to \$23 million for expenses incurred in the 2015 calendar year.²⁰ The credits were allocated in 2016 as follows:

- The DOR received 131 applications, requesting a total of \$52,481,052 in credit;
- One hundred eighteen (118) applications were approved with each applicant receiving an allocation of the available \$23 million in credit. Each applicant received approximately 46 percent (0.46) of the amount of credit determined in their application. These 118 applications requested a total of \$50,447,562 in credit; and
- Thirteen (13) applications were denied for various reasons, including withdrawal by the taxpayer, duplicate applications, application figures resulting in a zero credit requested,

¹⁵ *Id.*

¹⁶ Ch. 2017-36, s. 33, Laws of Fla.

¹⁷ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Ch. 2015-221, s. 21, Laws of Fla.

and failure to include a certification letter from the DEO. These 13 applications requested a total of \$2,003,490 in credit.²¹

Qualified Target Industry Businesses

The qualified target industry program is used to identify businesses that are eligible for tax refunds.²² These businesses create jobs with higher than average wages in industries that are expected to have a positive economic impact.²³ Target industry businesses are defined in s. 288.106, Florida Statutes as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to criteria developed by DEO in consultation with Enterprise Florida, Inc. (EFI).²⁴ The criteria includes future growth, stability, high wage, market and resource independence, industrial base diversification and strengthening, and positive economic impact.²⁵ EFI lists the recognized qualified target industries as manufacturing, corporate headquarters, research and development, global logistics, cleantech, life sciences, financial and professional services, aviation and aerospace, homeland security and defense, infotech, emerging technologies, and other manufacturing.²⁶

The cleantech industry includes, biomass and biofuels processing, energy equipment manufacturing, energy storage technologies, photovoltaic, environmental consulting, and sustainable building products.²⁷

III. Effect of Proposed Changes:

Section 1 amends s. 220.196(2)(e), F.S., to increase the combined amount of R&D tax credits that may be issued during any calendar year from \$9 million to \$50 million, and provides that the first \$10 million must be allocated to qualified businesses in the cleantech industry as certified by the DEO. However, if the first \$10 million is not fully allocated to qualified cleantech businesses, the DEO may allocate the remainder. The bill also removes the provision that increased the annual limit to \$16.5 million for the 2018 calendar year.

The bill also deletes a limitation on qualified target industries, which expands the types of businesses eligible to receive the tax credit.

Section 2 stipulates that the amendment of s. 220.196(2)(e), F.S., will apply to the taxable year beginning January 1, 2020, and thereafter.

Section 3 provides that this bill takes effect upon becoming a law.

²¹ Department of Revenue, *Research and Development Tax Credit for Florida Corporate Income Tax*, May 22, 2019, <https://floridarevenue.com/taxes/Documents/flCitRDCredit.pdf> (last visited Nov. 8, 2019).

²² Department of Economic Opportunity and Enterprise Florida, *2018 Incentives Report*, <http://www.floridajobs.org/docs/default-source/reports-and-legislation/2018-annual-incentives-report.pdf?sfvrsn=2> (last visited Nov. 8, 2019).

²³ *Id.*

²⁴ See s. 288.106(2)(n), F.S.

²⁵ See s. 288.106(2)(q), F.S.

²⁶ Enterprise Florida, *Qualified Target Industries for Incentives*, https://www.enterpriseflorida.com/wp-content/uploads/SI_Targeted_Industries.pdf (last visited Nov. 8, 2019).

²⁷ *Id.*

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of the bill.

B. Private Sector Impact:

The bill increases the combined corporate income tax savings from \$9 million to \$50 million annually.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 220.196 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Gruters

23-00290A-20

2020576__

A bill to be entitled

An act relating to the research and development tax credit; amending s. 220.196, F.S.; deleting a limitation on industries that qualify for the research and development credit against the corporate income tax; increasing the combined total amount of credits which may be granted to business enterprises during any calendar year; requiring that a specified amount of credits be allocated to certain qualified cleantech businesses; authorizing the Department of Revenue to allocate such amount that is not fully allocated to other qualifying businesses; providing applicability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (e) of subsection (2) of section 220.196, Florida Statutes, are amended to read:

220.196 Research and development tax credit.—

(2) TAX CREDIT.—

(a) As provided in this section, a business enterprise is eligible for a credit against the tax imposed by this chapter if it:

1. Has qualified research expenses in this state in the taxable year exceeding the base amount;
2. Claims and is allowed a research credit for such qualified research expenses under 26 U.S.C. s. 41 for the same taxable year as subparagraph 1.; and
3. Is a qualified target industry business as defined in s.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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2020576__

288.106(2)(n). ~~Only qualified target industry businesses in the manufacturing, life sciences, information technology, aviation and aerospace, homeland security and defense, cloud information technology, marine sciences, materials science, and nanotechnology industries may qualify for a tax credit under this section.~~ A business applying for a credit pursuant to this section shall include a letter from the Department of Economic Opportunity certifying whether the business meets the requirements of this subparagraph with its application for credit. The Department of Economic Opportunity shall provide such a letter upon receiving a request.

(e) The combined total amount of tax credits which may be granted to all business enterprises under this section during any calendar year is \$50 ~~\$9~~ million, ~~except that the total amount that may be awarded in the 2018 calendar year is \$16.5 million. The first \$10 million must be allocated to qualified businesses in the cleantech industry as certified by the Department of Economic Opportunity. If such amount is not fully allocated to qualified cleantech businesses, the department may allocate the remainder to any qualifying business certified by the Department of Economic Opportunity.~~ Applications may be filed with the department on or after March 20 and before March 27 for qualified research expenses incurred within the preceding calendar year. If the total credits for all applicants exceed the maximum amount allowed under this paragraph, the credits shall be allocated on a prorated basis.

Section 2. The amendment made by this act to s. 220.196, Florida Statutes, first applies to the 2020 allocation of tax credits for expenses incurred in calendar year 2019.

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Section 3. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/2019
Meeting Date

576
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Research and Development Tax Credit

Name Kurt Wenner

Job Title Vice President

Address 106 N. Bronough
Street

Phone 850-222-5052

Tallahassee FL 32301
City State Zip

Email kwenner@floridataxwatch.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida TaxWatch

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

SB 576

Bill Number (if applicable)

Topic R & D Tax Credits

Amendment Barcode (if applicable)

Name JERRY SANSON

Job Title

Address PO Box 98

Phone 321-699-4400

Street

COLOO

FL

32920

Email FISHAWIL @ AOL.COM

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing NORTHROP GRUMMAN CORP.

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.

THE FLORIDA SENATE

APPEARANCE RECORD

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

11/12/19

Meeting Date

576

Bill Number (if applicable)

Topic Research and Development Tax Credit

Amendment Barcode (if applicable)

Name Brewster Bevis

Job Title Senior Vice President

Address 516 N. Adams St

Phone 224-7173

Street

Tallahassee

FL

32301

Email bbevis@aif.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Associated Industries of Florida

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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

11/12/19

Meeting Date

576

Bill Number (if applicable)

Topic Research & Development Tax Credit

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronough St

Phone 521-1200

Street

Tallahassee

FL

32301

Email cjohnson@flchamber.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FL Chamber of Commerce

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.

CourtSmart Tag Report

Room: EL 110

Case No.:

Type:

Caption: Senate Commerce Committee Judge:

Started: 11/12/2019 10:32:06 AM

Ends: 11/12/2019 10:47:25 AM Length: 00:15:20

10:32:04 AM Admin. Assist call roll
10:32:15 AM Quorum is present
10:32:28 AM SB 508, Sen. Baxley
10:34:08 AM Sen. Baxley close on SB 508
10:34:17 AM Roll call on bill
10:34:24 AM Bill reported favorably
10:34:33 AM SB 542, Sen. Perry
10:35:05 AM Amendment 459404
10:35:37 AM Amendment adopted
10:35:46 AM Sen. Torres question
10:36:11 AM Response
10:36:20 AM Sen. Torres continues with question/comment
10:36:49 AM Response Sen. Perry
10:37:10 AM Sen. Stewart comments
10:38:43 AM Sen. Perry to close on bill
10:39:12 AM Roll call
10:39:21 AM Bill passes favorably
10:39:29 AM Chairman turns chair over to Vice Chair Sen. Torres
10:39:45 AM SB 524, Sen. Gruters
10:40:15 AM Vice Chair Torres, question
10:40:28 AM Sen. Gruters responds
10:41:39 AM Sen. Gruters responds
10:41:46 AM Sen. Stewart question/comment
10:42:02 AM Sen. Gruters respond
10:42:08 AM Sen. Gruters close on bill
10:42:40 AM Roll call
10:42:49 AM Bill passes favorably
10:42:57 AM SB 576, Sen. Gruters
10:44:12 AM Sen. Stewart, question
10:44:45 AM Response by sponsor
10:45:47 AM Sen. Gruters to close on bill
10:46:17 AM Roll call
10:46:24 AM Bill passes favorably
10:46:43 AM Sen. Wright requests to vote favorably on missed bills, 508, 524, 542
10:47:08 AM Sen. wright moves adjournment