

STORAGE NAME: h0117s1a.ft

DATE: April 12, 1997

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 117

RELATING TO: Sales Tax Exemption/Nonprofit Fund Raising Entities

SPONSOR(S): The Committee on Business Development and International Trade and
Representative Culp

STATUTE(S) AFFECTED: Section 212.08, Florida Statutes

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 8 NAYS 1
 - (2) FINANCE AND TAXATION YEAS 7 NAYS 4
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

CS/HB 117 exempts the charitable institution, the Gasparilla Distance Classic Association, Inc., from the state sales tax.

The fiscal impact is an insignificant negative impact on General Revenue.

This bill does not increase or otherwise change the rule-making authority of a state agency.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 212, F.S., provides for the taxation on and exemption from transactions. Generally, it is the policy of the state to tax every person who engages in the business of selling tangible personal property at retail, renting or furnishing things or services, storing for use or consumption, and leasing or renting tangible personal property.

The rate of taxation in Florida is six (6) percent of the sales or use price of each item or article of tangible personal property when sold at retail, computed on each taxable sale or use for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

In addition to the state rate of 6 percent, local governments are authorized to levy one or more of six types of Local Discretionary Sales Surtaxes, ranging from up to 0.5 percent to 1.0 percent each.

Section 212.08(7), F.S., establishes a number of miscellaneous sales tax exemptions, including sales and leases to religious, charitable, scientific, educational, and veterans' institutions and organizations. Paragraph (o)2.b., specifically establishes an exemption from the payment of sales tax for "charitable institutions." "Charitable Institutions" are defined as corporations qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code of 1954, as amended, and other nonprofit entities, whose "sole or primary function" is to directly provide one or more of the following services, if a reasonable percentage of the services is provided free of charge or at a substantially reduced rate:

- medical aid;
- regular provision of physical necessities such as food, clothing and shelter;
- services to prevent alcoholism, drug abuse or suicide, or to alleviate mental, physical or sensory health problems;
- social welfare services, including adoption placement, child care or care for the elderly;
- medical research;
- legal services; and,
- food, shelter, medical care, adoption services, cruelty investigations, or education programs concerning animals.

According to the Department of Revenue, for the period of July 1 through December 31, 1995, sales tax exemption certificates were renewed for 520 charitable institutions and revoked for 124. Of 898 new applications for exemption, 154 were approved and 744 were denied.

According to the sponsor, the Gasparilla Distance Classic Association, Inc. is a benevolent institution who's sole purpose is to raise funds for charities in the surrounding communities through the organizing, staging, and promoting of the Gasparilla Distance Classic foot race. The Gasparilla Distance Classic is considered to be one of the premier race events of its type and has an international drawing.

B. EFFECT OF PROPOSED CHANGES:

The bill establishes a sales tax exemption for to the Gasparilla Distance Classic Association, Inc.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

The bill reduces the taxes of one institution, the Gasparilla Distance Classic Association, Inc. thereby reducing state revenue by an insignificant amount. See fiscal analysis.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

N/A

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

N/A

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

(3) government employees/agencies?

N/A

D. SECTION-BY-SECTION ANALYSIS:

Section 1. adds Paragraph (nn) to Subsection (7) of Section 212.08, Florida Statutes, to establish a sales tax exemption for the Gasparilla Distance Classic Association, Inc.

Section 2. provides that the bill become law July 1, 1997.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The fiscal impact of this bill has been determined to be insignificant.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A.2. above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The fiscal impacts of this bill have been determined to be insignificant.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

The Gasparilla Distance Classic Association, Inc. will be exempt from payment of sales tax.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill is not projected to significantly reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill may reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

There may be a constitutional question regarding the Equal Protection Clause of both the Florida and the U.S. Constitutions. The bill gives preferential treatment to the Gasparilla Distance Classic Association, Inc. over all other charitable institutions that would not qualify for tax exempt status.

But, the courts have ruled that "[l]egislatures have especially broad latitude in creating classifications and distinctions in tax statutes." Department of Revenue v. Magazine Publishers of America, Inc. 604 so. 2d 459 (Fla. 1992)(quoting Regan v. Taxation With

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Representation, 461, U.S. 540, 547 (1983). Such classifications and distinctions are constitutional if a rational basis exists between the classification and a legitimate state purpose. Magazine Publishers at 465. The bill is constitutional if the state has a legitimate purpose in treating the Gasparilla Distance Classic Association, Inc., differently than other charitable institutions.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 19, 1997, the Business Development and International Trade Committee adopted an amendment limiting the sales tax exemption to the Gasparilla Distance Classic Association, Inc. **only**. The bill was made into a CS.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE:

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