

STORAGE NAME: h3747a.ft

DATE: April 3, 1998

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

BILL #: HB 3747

RELATING TO: Tax on sales, use and other transactions

SPONSOR(S): Representative Tamargo

COMPANION BILL(S): SB 485

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

- (1) BUSINESS DEVELOPMENT AND INTERNATIONAL TRADE YEAS 9 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 12 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill amends §212.08(7)(o), F.S., to add “consumer credit counseling” to the definition of “social welfare services”. Consequently, an organization could qualify for a sales and use tax exemption certificate as a “charitable institution” if in addition to the other statutory requirements, such organization provided free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship.

The total estimated fiscal impact upon General Revenue is (\$0.3) million for FY 98-99 and (\$0.3) million for FY 99-2000. There will be an insignificant impact on the Solid Waste Management Trust Fund and local governments.

II. SUBSTANTIVE RESEARCH:

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)(o), F.S., provides a sales and use tax exemption for sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities. Such entities must obtain a tax exemption certificate from the Department of Revenue in order to make tax exempt purchases or enter into tax exempt leases. §212.084, F.S. The exemption certificate must be renewed every five years.

Section 212.08(7)(o)2.b., F.S., states:

"Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

(I) Medical aid for the relief of disease, injury, or disability;

(II) Regular provision of physical necessities such as food, clothing, or shelter;

(III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;

(IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

(V) Medical research for the relief of disease, injury, or disability;

(VI) Legal services; or

(VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

and the term includes groups providing volunteer staff to organizations designated as charitable institutions under this sub-subparagraph; nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable institutions under this sub-subparagraph with those persons, animals, or organizations in need of their services; and nonprofit national, state, district, or other governing, coordinating, or administrative organizations the sole or primary purpose of which is to represent or regulate the customary activities of other institutions designated as charitable institutions under this sub-subparagraph. Notwithstanding any other requirement of this section, any blood bank that relies solely upon volunteer donations of blood and tissue, that is licensed under chapter 483, and that qualifies as tax exempt under s. 501(c)(3) of the Internal Revenue Code constitutes a charitable institution and is exempt from the tax imposed by this chapter. Sales to a health system, qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which filed an application for exemption with the department prior to April 5, 1997, and which application is subsequently approved, shall be exempt as to any unpaid taxes on purchases made from January 1, 1994, to June 1, 1997.

Section 212.08(7)(o)2, F.S., states the terms "charitable institutions" and "educational institutions" must be "strictly defined, limited, and applied."

A "charitable institution" includes an organization *the sole or primary function* is to provide or to raise funds for organizations which provide, one or more of the following services:

- (I) Medical aid for the relief of disease, injury, or disability;
- (II) Regular provision of physical necessities such as food, clothing, or shelter;
- (III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;
- (IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;
- (V) Medical research for the relief of disease, injury, or disability;
- (VI) Legal services; or
- (VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

Florida Administrative Code Rule 12A-1.001 defines "sole or primary function" to mean that a charitable institution must establish and support its function as providing or raising funds for services by expending in excess of 50.0 percent of the charitable institution's

operational expenditures towards qualified charitable services within the charitable institution's most recent fiscal year.

Since the definition of "social welfare services" must be strictly construed, an organization that provides consumer credit counseling is not considered an organization providing social welfare services and consequently, such organization would not qualify as a "charitable institution" for purposes of receiving an exemption certificate.

B. EFFECT OF PROPOSED CHANGES:

The bill amends §212.08(7)(o), F.S., to add "consumer credit counseling" to the definition of "social welfare services". Consequently, an organization could qualify for an exemption certificate as a "charitable institution" if in addition to the other statutory requirements discussed above, such organization provided free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship.

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?

No.

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

No.

(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?

Yes, the bill reduces taxes paid by those taxpayers qualifying for the exemption.

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?

N/A

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:

- (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?

No.

- 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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 212.08, F.S.

E. SECTION-BY-SECTION RESEARCH:

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-2000</u>
General Revenue	(\$0.3M)	(\$0.3M)
Trust Fund	(*)	(*)
Local Government	(*)	(*)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See A2 above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See 2.A. above.

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:

Consumer Credit Counseling Services would be exempt for 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:

The 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:

Although the bill reduces the authority of municipalities and counties to raise revenues, the impact should be insignificant and the bill should be exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

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

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

V. COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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