

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1330

SPONSOR: Senator Latvala

SUBJECT: Exemption/Ad Agencies

DATE: March 26, 1999

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill creates a sales tax exemption for certain items of tangible personal property when they are: sold to an advertising agency acting as an agent for its client; produced or created by the advertising agency for its client and used in the performance of advertising services for its client; or sold by the advertising agency to its client in the performance of advertising services for its client. Additionally, this bill specifically states that creative services used by an advertising agency to design promotional items are not subject to taxation.

This bill provides that the exemptions created are retroactive; however, taxes paid before July 1, 1999 are not subject to refund.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.08

II. Present Situation:

Chapter 212, F.S., imposes a 6 percent tax on sales, use and other transactions including the transfer of tangible personal property. Section 212.02(19), F.S., provides a definition for tangible personal property of property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses. Section 212.08, F.S., provides for certain exemptions from the tax imposed by this chapter and s. 212.08(7)(v), F.S., provides for an exemption for certain professional services, specifically: "professional, insurance, or personal service transactions that involve sales as inconsequential elements for which no separate charges are made." Tangible personal property intended for resale is exempt, except that property purchased for use in manufacturing other property intended for resale must be physically incorporated into the product later sold.

Advertising agencies purchase tangible items such as videos, photographs and illustrations when providing their services to a client. Additionally, advertising agencies may sell items such as

videos and other forms of design work to their client as part of the advertising service. The Department of Revenue's position on the transfer of such tangible personal property is that it is taxable because the items are a *consequential* part of the sale of the professional service. Advertising agencies take the position that their creative services are the *consequential* part of the sale and the medium on which those services are delivered is *inconsequential* thereby making the transfer of those items exempt under s. 212.08(7)(v), F.S.

There are divergent appellate decisions concerning the professional service exemption. The decisions found in Southern Bell v. Department of Revenue 336 So.2nd 30 (1979) and William Cook Agency v. Department of Revenue, 93 TAX FALR 458 (1993), supports the industry's position while the decisions found in Green v. Sgurovsky, 133 So.2nd 663 (1961) and Florida Association of Broadcasters v. Kirk, 264 So.2nd 437 (1972) supports the Departments position.

III. Effect of Proposed Changes:

The bill amends s. 212.08(7), F.S., adding subparagraph (zz). The bill defines the term "advertising agency" as a firm regularly engaged in the business of providing advertising materials and services to its clients. Such agencies would be exempt from sales tax on items of tangible personal property such as photographic negatives and positives, videos, films, galleys, mechanicals, veloxes, illustrations, and artwork and the services used to produce them if the items are: 1) sold to the agency acting as an agent for its client and are created for the performance of advertising services; 2) created or produced by an advertising agency for its clients and used in the performance of advertising services; or 3) sold by an advertising agency to its client in the performance of advertising services.

The exemption does not apply when tangible personal property such as film, paper, and videotapes is purchased to create item such as photographic negatives and positives, videos, films, galleys, mechanicals, veloxes, illustrations, and art work, that are sold to an advertising agency or produced in-house by an advertising agency on behalf of its clients.

The bill clarifies that promotional items and creative services used by the advertising agency are exempt; however, when promotional items such as key chains, shirts, hats, pens, etc..., are produced for distribution, tax applies to the sales price charged to the client for such promotional goods..

The exemption is to apply retroactively except with respect to taxes that have already been remitted. The bill does not allow for refunds of taxes paid prior to July 1, 1999.

The Department of Revenue is authorized to adopt rules that interpret or define the provisions of these exemptions and provide examples regarding the application of these exemptions.

The bill takes effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill initially falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989 to raise revenues in the aggregate. By adding an exemption to the state sales tax, the bill has the effect of adding an exemption to the local option county sales surtax. Since the annual local revenue loss is estimated to be less than \$1.4 million, the bill will be exempt from the requirements of subsection (b) due to the insignificant negative fiscal impact as permitted under subsection (d) of section 18 of Article VII. (See subsection (d) of s. 18, Art. VII, Florida Constitution, for various types of general laws, including those with insignificant fiscal impact.)

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates a 1999-00 fiscal year and recurring General Revenue impact of (\$11.2) million and a corresponding loss to local governments of sales tax revenues of (\$1.8) million.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Sales Tax Exemption: Advertising Agencies	(11.2)	(11.2)	(*)	(*)	(1.8)	(1.8)	(13.0)	(13.0)

* Insignificant
** Indeterminate

B. Private Sector Impact:

Advertising agencies would have a clearly defined tax exemption on certain items of tangible personal property.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

HB 99 as amended, is identical to SB 1330.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
