

STORAGE NAME: h0561z.ca
DATE: August 3, 1999

****FINAL ACTION****
****SEE FINAL ACTION STATUS SECTION****

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
COMMUNITY AFFAIRS
FINAL ANALYSIS**

BILL #: 1ST ENG/HB 561

RELATING TO: Tax on Sales, Use and Other Transactions

SPONSOR(S): Representative Fasano and others

COMPANION BILL(S): HB 375 (c), HB 583 (c), HB 747 (c), HB 983 (c), HB 1693 (c), HB 1925 (c), SB 120 (c), CS/SB 682 (c), 1ST ENG/SB 700 (c), CS/SB 992 (c), SB 1388, SB 1778 (c), CS/SB 1818 (c), SB 2344 (c), SB 2374 (c)

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

- (1) COMMUNITY AFFAIRS (PRC) YEAS 9 NAYS 0
- (2) FINANCE & TAXATION (FRC) YEAS 15 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC) (W/D)

I. FINAL ACTION STATUS:

House Bill 561 was referred to the House Committees on Community Affairs, Finance and Taxation and General Government Appropriations on February 4, 1999. The bill was unanimously approved by the Committee on Community Affairs on March 1, 1999. The bill was unanimously approved by the Committee on Finance and Taxation with a strike-everything amendment on April 16, 1999. The bill was withdrawn from the Committee on General Government Appropriations on April 21, 1999. The bill passed the House by a vote 116 YEAS and 0 NAYS on April 22, 1999.

The bill was received in the Senate and referred to the Senate Committees on Fiscal Resources and Comprehensive Planning, Local and Military Affairs on April 27, 1999. The bill was withdrawn from the Senate Committees and substituted for Senate Bill 2374 on April 27, 1999. The bill passed the Senate by a vote of 34 YEAS and 0 NAYS on April 28, 1999. The bill became law on June 4, 1999 as ch. 99-238, Laws of Florida.

II. SUMMARY

1ST ENG/HB 561 creates sales and use tax exemptions for sales and leases to the following not-for-profit organizations: all qualified veterans' organizations and their auxiliaries; consumer credit counseling organizations that provides free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship; athletic event sponsors that: 1) are incorporated pursuant to chapter 617, F.S.; 2) hold a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and, 3) are funded primarily by county or municipal governments and have as their primary purpose the encouragement and facilitation of the use of certain locations within Florida as venues for sporting events; organizations whose sole or primary function is to raise funds for another organization or organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue; not-for-profit corporations which hold a current exemption from federal income tax under s. 501(c)(12) of the Internal Revenue Code, as amended, if the sole or primary function of the corporation is to construct, maintain, or operate a water system in this state; and, library cooperatives certified under s. 257.41(2), F.S.

The amendment also: creates a sales and use tax exemption for works of art donated to educational institutions; expands the sales tax exemption for schools preparing students for jobs in the motion picture industry to include leases of real property to the schools; and, creates a sales and use tax exemption for the charge paid for the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game in a high tourism impact county when the charge for such box seats is imposed by a nonprofit sponsoring organization.

The estimated fiscal impact of the bill as amended upon the State General Revenue Fund is (\$4.7) million for FY 99-2000 and (\$5.1) million for FY 2000-2001. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.5) million for FY 1999-2000 and (\$0.5) for FY2000-2001. Thus, the total estimated fiscal impact for this bill is (\$5.2) million for FY 1999-2000 and (\$5.6) million for FY 2000-2001.

III. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Chapter 212, Florida Statutes, establishes taxation and exemptions on the retail sales, storage and use of all tangible personal property in the State of Florida. The rate of taxation in Florida is 6 percent of the sales price of each item or article of tangible personal property when sold at retail, computed on each taxable sale for the purpose of remitting the amount of tax due to the state, and including each and every retail sale. Furthermore, 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.

Currently, section 212.08(7)(o), Florida Statutes, provides a sales and use tax exemption for sales and leases to nonprofit organizations, including religious, charitable, scientific, educational, and veterans' institutions and organizations, when these organizations meet specified criteria. The exemption does not include sales or leases by these nonprofit organizations; except that sales or leases by churches are also exempt from sales and use tax.

Specifically, the exemption provided to veterans' organizations applies only to state headquarters of qualified veterans' organizations and the state headquarters of their auxiliaries when used in providing customary veterans' organization activities. If a qualified veterans' organization or its auxiliary does not maintain a permanent state headquarters, then transactions involving sales or leases to such organizations and used to maintain the highest ranking state official, of the qualified veterans' organization, are exempt from the sales and use taxes.

Section 212.08, F.S., defines a "qualified veterans' organization" as a nationally chartered or recognized veterans' organization, including but not limited to; Florida Chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., and the Disabled American Veterans, Department of Florida, Inc., which hold current exemptions from federal income tax under section 501(c)(4) or (19) of the Internal Revenue Code.

Currently, subsection 257.04(2), F.S., authorizes the Division of Library and Information Services within the Department of State to give aid and assistance to libraries of all types in the development and operation of library services. The Division estimates that there are over 500 libraries of all types serving the residents of Florida. In general, each of the libraries operates independently to fill the needs of a specific clientele defined by political or economic constraints. Although the libraries hold over 25,000,000 volumes of books and periodicals, each library separately acquires and retains materials for its primary clientele.

In addition, section 212.08(7)(dd), F.S., provides for a sales and use tax exemption for works of art sold to or used by certain educational institutions.

Currently, a nonprofit entity that raises funds for other nonprofit entities is granted an exemption from sales and use tax in limited circumstances. To qualify for the exemption, the nonprofit fundraising entity must comply with the requirements of either ss. 212.08(7)(o)2.b. or 212.08(7)(o)2.d., F.S.

To qualify under s. 212.08(7)(o)2.b., F.S., the fundraising entity's "sole or primary" function must be to raise funds for other nonprofit entities that provide specified services, free of charge or at substantially reduced rates, to needy individuals, animals or organizations. The specified services include provision of medical aid or medical research; provision of the physical necessities of life; prevention of or rehabilitation from alcoholism or drug addiction; prevention of suicide; alleviation of mental, physical or sensory health problems; social welfare services; legal services; or provision of food, shelter, medical care, or adoption services for animals.

The "sole or primary" function requirement is interpreted by the Department of Revenue to mean that the fundraising entity expend in excess of 50 percent of its operational expenditures on qualified charitable services, within the fundraising entity's most recent fiscal year.

To qualify under s. 212.08(7)(o)2.d., F.S., the fundraising entity must have as a purpose, the fundraising of funds for schools teaching grades kindergarten through high school, or for colleges and universities.

Section 501(c)(12) of the Internal Revenue Code provides exemptions for benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

26 U.S.C. s. 501 (c)(3) provides exemption from federal income taxation for certain groups which are organized exclusively for one or more of the purposes listed below. The exemption is available only if no part of the group's net earnings benefit private parties and only if the group refrains from political activities. The groups covered by the exemption granted in s. 501 (c)(3) of the Internal Revenue Code (IRC) are as follows:

- (1) Religious
- (2) Charitable
- (3) Scientific
- (4) Educational
- (5) Literary
- (6) Testing for public safety
- (7) Groups fostering national or international amateur sports competition (does not include provision of facilities or sports equipment)
- (8) Prevention of cruelty to children or animals.

Presently, Florida exempts many organizations with 501(c)(3) status; however, the entities also must meet additional Florida-specific criteria to qualify for an exemption from sales and use tax on purchases and leases to the entity. Therefore, some organizations may be exempt from federal taxes but not from state taxes. Under section 212.08(7), F.S., the following nonprofit organizations, and transactions by nonprofit organizations, are presently exempt from sales and use tax:

Sale or rental of guide dogs for the blind and the sale of food or other items for such dogs.

Room rentals and meals for patients and inmates of any hospital or other facility operated primarily for the care of persons who are ill, aged, infirm, mentally or physically incapacitated, or otherwise dependent on special care or attention.

Meals provided by certain nonprofit volunteer organizations to handicapped, elderly, or indigent.

501(c)(3) corporations whose primary purpose is to raise money for military museums.

Homes for the aged, nursing homes, or hospices which are nonprofit 501(c)(3) corporations and must qualify under s. 196.1975(2), F.S., or chapter 400, F.S., as applicable.

Organizations providing special educational, cultural, recreational, and social benefits to minors which are incorporated pursuant to chapter 617, F.S., or are 501(c)(3) exempt.

Sales or leases directly to churches and sales or leases of tangible personal property by churches.

Sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions are exempt when used in carrying out their customary activities.

Sales or leases to the state headquarters of qualified veterans' organizations and their auxiliaries are exempt when used in carrying out their customary activities.

A state theater contract organization which is a nonprofit organization incorporated in accordance with ch. 617, designated as a state theater contract organization pursuant to s. 265.289, and is a 501(c)(3).

Purchases by a 501(c)(3) nonprofit corporation operating a cemetery, and is operated for the purpose of maintaining a cemetery that was donated to the community by deed.

A 501(a) and (c)(3) nonprofit organization that is affiliated with the Coast Guard, and whose primary purpose is to promote safe boating.

Certain works of art, including art sold or used by an educational institution.

Sales or leases to organizations incorporated pursuant to ch. 617, which are exempt under 501(c)(3), and sponsor certain sanctioned golf tournaments.

Nonprofit organizations incorporated under ch. 617, or are 501(c)(3)'s, that are designated citizen support organizations in support of state-funded environmental programs or the management of state-owned lands, or to support state parks.

Nonprofit organizations incorporated under ch. 617, which are treated as cooperatives under subchapter T of the IRC, whose sole purpose is to offer laundry supplies and services to their members, and whose members are all 501(c)(3)'s.

B. EFFECT OF PROPOSED CHANGES:

1ST ENG/HB 561 creates sales and use tax exemptions for sales and leases to the following not-for-profit organizations:

- all qualified veterans' organizations and their auxiliaries;
- consumer credit counseling organizations that provide free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship;
- athletic event sponsors that: 1) are incorporated pursuant to ch. 617, F.S.; 2) hold a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and, 3) are funded primarily by county or municipal governments and have as their primary purpose the encouragement and facilitation of the use of certain locations within Florida as venues for sporting events;
- organizations whose sole or primary function is to raise funds for another organization or organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue;
- not-for-profit corporations which hold a current exemption from federal income tax under s. 501(c)(12) of the Internal Revenue Code, as amended, if the sole or primary function of the corporation is to construct, maintain, or operate a water system in this state; and,
- library cooperatives certified under s. 257.41(2), F.S.

The amendment also:

- creates a sales and use tax exemption for works of art donated to educational institutions;
- expands the sales tax exemption for schools preparing students for jobs in the motion picture industry to include leases of real property to the schools; and,
- creates a sales and use tax exemption for the charge paid for the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game in a high tourism impact county when the charge for such box seats is imposed by a nonprofit sponsoring organization.

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?

Yes.

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?

No.

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

No.

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?

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:

- (1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 212.031, 212.0602, 212.08, 212.031, and 257.41, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

SECTION 1: Amends section 212.031, F.S., 1998 Supplement, to grant a sales and use tax exemption for the charge paid for the rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game in a high tourism impact county when the charge for such box seats is imposed by a nonprofit sponsoring organization.

SECTION 2: Amends section 212.0602, F.S., expands the sales tax exemption for schools preparing students for jobs in the motion picture industry to include leases of real property to the schools.

SECTION 3: Amends section 212.08 (7) (o),(dd) and (gg), F.S. and adds paragraphs (zz), (aaa) and (bbb) to said section to expand sales and use tax exemptions on sales and leases.

Section 212.08 (7)(o), F.S. is amended to exempt all qualified veterans' organizations and their auxiliaries when used in carrying on their customary veteran's organization activities. In addition, the section is amended to exempt consumer credit counseling organizations that provide free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship; paragraph (dd) is amended to create a sales and use tax exemption for works of art donated to educational institutions; paragraph (gg) is amended to include athletic event sponsors that: 1) are incorporated pursuant to chapter 617, F.S.; 2) hold a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and, 3) are funded primarily by county or municipal governments and have as their primary purpose the encouragement and facilitate of the use of certain locations within Florida as venues for sporting events.

Paragraph (zz) is added to exempt organizations whose sole or primary function is to raise funds for another organization or organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue; paragraph (aaa) is added to exempt not-for-profit corporations which hold a current exemption from federal income tax under s. 501(c)(12) of the Internal Revenue Code, as amended, if the sole or primary function of the corporation is to construct, maintain, or operate a water system in this state; and, paragraph (bbb) is added to exempt library cooperatives certified under s. 257.41(2), F.S.

SECTION 4: Provides that the exemption provided in section 212.08(7)(zz), F.S., 1998 Supplement, as created by the act, applies retroactively, except that all taxes that have been collected must be remitted, and taxes that have been remitted before July 1, 1999, on transactions that are subject to exemption under this paragraph are not subject to refund. In addition, the exemption provided by paragraph (bbb) of the same section applies retroactively to July 1, 1997.

SECTION 5: Subsection (2) of section 257.41, F.S. is amended to provide that the Division of Library and Information Services of the Department of State is directed to issue a certificate to each library cooperative that meets the rules and standards under this subsection.

SECTION 6: The bill takes effect July 1, 1999.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The estimated fiscal impact of the bill as amended upon General Revenue is (\$4.7) million for FY 99-2000 and (\$5.1) million for FY 2000-2001. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The total estimated fiscal impact for this bill is (\$5.2) million for FY 1999-2000 and (\$5.6) million for FY

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

4. Total Revenues and Expenditures:

See 2.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

The estimated fiscal impact upon local governments is (\$0.5) million for FY 1999-2000 and (\$0.5) for FY2000-2001.

3. Long Run Effects Other Than Normal Growth:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The variety of Sales and Use tax exemptions will reduce tax burdens for the affected entities.

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

N/A

D. FISCAL COMMENTS:

None.

V. 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 expend funds or to take 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 on local option sales tax is estimated to be no greater than \$1.5 million, and therefore insignificant. The bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

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

While the bill reduces 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.

VI. COMMENTS:

By the Committee on Community Affairs

The Tri-state chapter of the Paralyzed Veterans of America and the Council of Veterans Organization are supportive of the provisions of the bill relating to providing an exemption from chapter 212, Florida Statutes, for all veterans' organizations.

The Department of Revenue is supportive of the provisions of the bill relating to the additional exemption for all 501(c)(3) organizations and maintains this change will reduce continual administrative difficulties with the current exemption structure.

The Florida Association of Counties supports the provisions of the bill relating to providing an exemption from chapter 212, Florida Statutes, for all veterans' organizations.

The Florida League of Cities was contacted regarding the bill and did not provide a response prior to the publication of this analysis.

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 16, 1999, the Committee on Finance and Taxation adopted a strike everything amendment that creates sales and use tax exemptions for sales and leases to the following not-for-profit organizations:

- all qualified veterans' organizations and their auxiliaries;
- consumer credit counseling organizations that provides, free of charge, or at a substantially reduced cost, consumer credit counseling to a client population which is disadvantaged or suffers a hardship;
- athletic event sponsors that: 1) are incorporated pursuant to chapter 617, F.S.; 2) hold a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and, 3) are funded primarily by county or municipal governments and have as their primary purpose the encouragement and facilitation of the use of certain locations within Florida as venues for sporting events;
- organizations whose sole or primary function is to raise funds for another organization or organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue;

- not-for-profit corporations which hold a current exemption from federal income tax under s. 501(c)(12) of the Internal Revenue Code, as amended, if the sole or primary function of the corporation is to construct, maintain, or operate a water system in this state; and,
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VIII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Lisa C. Cervenka

Staff Director:

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Lynne Overton

Staff Director:

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Lisa C. Cervenka

Staff Director:

Joan Highsmith-Smith