

STORAGE NAME: h0743z.tu
DATE: June 6, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 00-182, Laws of Florida

**HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
TOURISM
FINAL ANALYSIS**

BILL #: HB 743, 1st ENG (PCB TU 00-02a)

RELATING TO: Entertainment Industry Incentives

SPONSOR(S): Committee on Tourism, Representative Starks and others

TIED BILL(S):

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

- (1) TOURISM YEAS 5 NAYS 0
- (2) GOVERNMENTAL RULES & REGULATIONS YEAS 6 NAYS 0
- (3) FINANCE AND TAXATION YEAS 13 NAYS 2
- (4) TRANSPORTATION & ECONOMIC DEVELOPMENT APPROPRIATIONS W/D
- (5)

I. SUMMARY:

HB 743, 1st ENG, creates s. 288.1258, F.S., to provide a single application process for qualified entertainment industry production companies to obtain a certificate of exemption from sales and use taxes on: the lease or rental of real property used as an integral part of the performance of qualified production services; motion picture or video equipment and sound recording equipment that is purchased or leased for use in this state in certain specific entertainment production activities; and, part of the sales price of master tapes, records, films, or video tapes.

The bill directs the Office of the Film Commissioner to do the following:

- work with the Department of Revenue and local film commissions to develop an application form for qualifying production companies;
- forward an approved application to the Department of Revenue which must issue a certificate of exemption within five working days of receiving the application;
- gather and maintain information on the relationship of tax exemptions to the entertainment industry growth; and
- report to the Legislature information on annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages by December 1 of each year.

The Department of Revenue is responsible for the initial receipt of applications for exemptions. Once in receipt of a properly completed application, the Department is required to forward it to the Office of the Film Commissioner within 10 working days. The Office then determines if the production company is qualified and, if so, approves the application for exemption.

The bill amends ss. 212.031, 212.06, and 212.08, F.S., to reference processes established in s. 288.1258, F.S. The bill also changes the current sales and use tax refund in s. 212.08(5)(f), F.S., relating to certain motion picture or video equipment and sound recording equipment, to a point-of-sale exemption. The bill also provides for information sharing between the Department of Revenue and the Office of the Film Commissioner.

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The estimated fiscal impact upon General Revenue is (\$1.5) million for FY 00-01 and (\$3.7) million for FY 01-02. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.2) million for FY 00-01 and (\$0.5) million for FY 01-02. The total estimated fiscal impact for this bill is (\$1.7) million for FY 00-01 and (\$4.2) million for FY 01-02.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill authorizes the Department of Revenue to promulgate rules to govern the state's entertainment industry sales tax exemptions as revised by the bill. The bill also provides that the Office of the Film Commissioner will be responsible for administering the application and approval process for the state's entertainment industry tax exemptions as amended by the bill.

B. PRESENT SITUATION:

Recent History of Entertainment Industry Promotion by the State

In 1992, s. 20.17, F.S., was amended to authorize the Department of Commerce to create a direct-support organization and to contract with this organization for the administration of Florida's entertainment industry promotion and development programs. The initial organization was named the Florida Entertainment Commission (FEC). In 1993, Governor Chiles dissolved the Department of Commerce's Film Bureau and the department directly contracted with the FEC to conduct the state's programs for the entertainment industry. The executive director was charged with promoting and developing Florida's entertainment industry and was directed to raise private funds to supplement an appropriation of \$200,000.

Chapter 96-320, L.O.F., dissolved the Florida Department of Commerce and authorized the newly created Governor's Office of Tourism, Trade, and Economic Development (OTTED) to contract with either a not-for-profit corporation or a direct-support organization to assist OTTED in developing and promoting the state's entertainment industry. In 1996, the FEC reorganized itself into the Florida Entertainment Industry Council, Inc. (FEIC). The FEIC board of directors consisted of the same members that had served on the FEC even though the FEIC members were not officially appointed by the Governor. At that time, OTTED contracted with FEIC and continued to contract with FEIC until June 30, 1998.

Numerous problems were reported by the industry regarding the contract. Production deadlines were delayed or missed, and in some instances, production did not occur. The FEIC had difficulty maintaining the toll-free telephone line used by industry representatives to contact the state and concerns had been expressed about the possibility of financial difficulties. The Office of the Inspector General of the Executive Office of the Governor conducted a management review in February 1998 and found that FEIC did not follow

prudent business practices, that the accounts receivable could not be confirmed under current circumstances, and that the current financial resources were not adequate to pay accounts payable.

Section 14.2015, F.S., requires that performance measures be included in any contract entered into by OTTED. The performance measures included in the contract between OTTED and FEIC related to the publications and not to any other development or promotion activities which the FEIC was carrying out on behalf of the state.

Staff of the House Tourism Committee conducted a 1997 interim study on the entertainment industry. Staff reviewed the laws of Florida and other states and assessed the involvement of local governmental entities in attracting entertainment industry productions. Staff assessed the level of interaction between entertainment industry groups and the state's designated entertainment industry promotional representative. Staff surveyed entertainment industry segments such as large studios and entertainment support businesses for input on the relationship between such groups and government representatives. Staff also interviewed governmental entertainment industry liaisons from other states about the organization of those state entertainment industry liaison offices and the incentives offered by those states. In several hearings, the committee received public testimony from entertainment industry professionals operating in Florida. HB 3687 (1998) was developed from this interim work and proposed both structural changes and industry incentives.

Continued appropriations for entertainment promotion under OTTED were tied to the passage of HB 3687. No state revenues were appropriated in FY 1998-99 because the bill died on the Senate Special Order Calendar.

Current Status of Entertainment Industry Promotion Activities by the State

In 1999, two bills were introduced by the Committee on Tourism to address the entertainment industry: one relating to organizational structure for promotion of the entertainment industry and the other relating to incentives for promotion and development of the industry. On June 8, 1999, the Governor signed into law a bill which created the Office of the State Film Commissioner within the OTTED to develop and promote the states entertainment industry. The Office is directed, among other things, to develop and implement a 5-year strategic plan, develop a methodology for providing service to the industry, and serve as a liaison between government and the entertainment industry and between the entertainment industry and labor interests. The Office is authorized to expend funds on travel and entertainment for certain business clients and certain business-related functions. The new law also created the Florida Film Advisory Council, to be administratively housed within OTTED, to provide industry direction on promoting the growth of the entertainment industry in the state, to advise on the 5-year strategic plan, and to provide other advice and direction to help the Office of the Film Commissioner to function effectively and efficiently. The Office of the Film Commissioner received \$535,000 for FY 1999-00 and 3 FTEs were authorized to staff the office. The Film Commissioner was hired in October 1999. Progress is underway for establishment of a web page and identification of a statewide directory for entertainment, establishment of liaisons with local commissioners and labor organizations, providing assistance and encouragement to rural areas to become active in entertainment industry work, providing assistance to educational institutions meeting training needs for the industry, and continuing basic promotion and development.

In Interim 1999, Tourism Committee staff studied the status of the fifty states' tax incentives and other incentives utilized to encourage the entertainment industry to locate production in that state. Staff also examined the major competitive foreign markets and found that in order for Florida to stay competitive with other states and countries, the sales refund should be modified to an up-front exemption.

Current Tax Exemptions for the Entertainment Industry in Florida

Florida's sales tax code contains three exemptions related to entertainment industry sales activities. The administrative activities associated with these are the responsibility of the Department of Revenue.

- Section 212.031(1)(a)9, F.S., provides an exemption on the lease or rental of real property used as an integral part of the performance of qualified production services.
- Section 212.08(5)(f), F.S., provides a refund on sales taxes paid on motion picture or video equipment and sound recording equipment that is purchased or leased for use in this state in certain specific entertainment production activities. Equipment must meet the definition of "Section 38 Property" as defined in s. 48(a)(1)(A) and (B)(I) of the Internal Revenue Code. (The estimated fiscal impact for FY 1999-00 is \$3.22 million.)
- Section 212.08(12), F.S., provides a partial exemption on the sale of master tapes, records, films, or video tapes. (Department of Revenue reported that the fiscal impact of this exemption may only be \$3.5 million annually.)

Governmental entertainment industry liaisons and industry representatives have questioned the value of the sales tax refund provided in s. 212.08(5)(f), F.S., as an effective incentive. Typical entertainment industry financing and accounting practices treat each production activity or project as an independent entity with a finite lifespan. The retroactive and time consumptive nature of the refund does not allow the production decision makers to account for the financial value this "incentive" may have in the projected expense budget. By the time the refund is computed and returned, the books of the project for which it was intended may have already been closed out. Ultimately, the parent company may realize some financial value from the incentive, but the decision on where to activate the project is not currently based on the offer of the refund.

C. EFFECT OF PROPOSED CHANGES:

The bill creates s. 288.1258, F.S., to provide a single application process for qualified entertainment industry production companies to obtain a certificate of exemption to take advantage of the exemptions under ss. 212.031, 212.06, and 212.08, F.S. The Office of the Film Commissioner is directed to work with the Department of Revenue and local film commissions to develop an application form for qualifying production companies. The Department of Revenue is responsible for the initial receipt of applications for exemptions. Once in receipt of a properly completed application, the Department is required to forward it to the Office of the Film Commissioner within 10 working days. The Office determines if the application is from a qualified entertainment industry production company. If so, the Office is directed to forward an approved application to the Department of Revenue which must issue a certificate of exemption within five working days of receiving the application. Two exemption certificate categories are provided: a one-year certificate and a 90-day

certificate. Finally, the application process provides a mechanism for obtaining information on the level of production activated in the state.

The bill requires the Office of the Film Commissioner to keep annual records from information provided to reflect a percentage comparison of the annual amount of funds exempted to the estimated amount of funds expended in relation to entertainment industry products. Additionally, data is to be maintained showing the annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages and the Office is to submit a report on this information to the Legislature by December 1 of each year.

The bill amends provisions in ss. 212.031, 212.06, and 212.08, F.S., to reference the process established in s. 288.1258, F.S. The proposal also changes the current sales and use tax refund in Fla. Stat. s. 212.08(5)(f), relating to certain motion picture or video equipment and sound recording equipment, to a point of sale exemption. This change addresses concerns expressed to the Committee about the existing retroactive and time consumptive nature of the refund.

Additionally, the bill amends s. 213.053(7), F.S., to provide for information sharing between the Department of Revenue and the Office of the Film Commissioner.

Sections 1 and 5 of the bill take effect on July 1, 2000. All provisions relating to changes in the tax code take effect on January 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 creates s. 288.1258, F.S., to establish the application process for qualified entertainment industry production companies that are seeking sales tax certificates of exemption from the Department of Revenue. This section provides that initial applications must be submitted to the Department of Revenue which will review all submitted applications for completeness. The Department must notify an applicant of any omissions and request additional information. Upon receipt of all necessary information, the Department shall forward completed applications to the Office of the Film Commissioner. Once an application is complete, it must be forwarded to the Office within 10 working days. The Office will then determine if an applicant is a qualified entertainment industry production company. If so, the Office will send an approved application to the Department which must issue a certificate within 5 working days. The section provides that any entertainment industry production company may apply for such a certificate, and provides for renewal, extension, and revocation of the certificates.

The Office of the Film Commissioner is directed to work with the Department of Revenue and local entertainment promotion entities to develop an application form for qualifying production companies. Forms may be distributed by both the Office of the Film Commissioner and local entertainment promotion entities. Information gathered on the application forms will provide the Office and the Department of Revenue with statistical data on the physical and fiscal level of production in the state and will be treated as confidential taxpayer information under s. 213.053, F.S. The Office is directed to forward an approved application to the Department of Revenue which must issue a certificate of exemption to the qualified production company within five business days of receiving the application.

This section also provides for two categories of certificates of exemption. The one-year certificate category is created for companies that have been residing in Florida for at least 12 months. A qualified production company that has received a one-year certificate may annually request the Office of the Film Commissioner to renew its application for a period of up to five years without having to resubmit an application. Such companies may also provide summary historical data for production-related information on budgets, employment, and purchase of tax exempt items rather than projection figures for such information. The 90-day certificate of exemption category may be applied for by any entertainment industry production company. The Office of the Film Commissioner is authorized to process extensions for this category.

This section takes effect July 1, 2000.

Section 2 amends s. 212.031(l)(a)9, F.S., to provide that exemption under this subparagraph will inure to the taxpayer upon presentation of a certificate of exemption issued pursuant to s. 288.1258, F.S.

Section 3 amends s. 212.06(1)(b), F.S., to provide that exemption under this paragraph will inure to the taxpayer upon presentation of a certificate of exemption issued pursuant to s. 288.1258, F.S.

Section 4 amends s. 212.08(5)(f), F.S., relating to the current tax exemption for equipment used as an integral part of entertainment production, to change the exemption from a refund to a point-of-sale exemption. The exemption will inure to the taxpayer upon presentation of a certificate of exemption issued under the provisions of s. 288.1258, F.S. The section also amends s. 212.08(12), F.S., to provide that the current sales tax exemption for the sale or use of master visual or audio tapes will inure to qualified production companies which have received a certificate of exemption from the Department of Revenue pursuant to the provisions of s. 288.1258, F.S.

Section 5 adds paragraph (s) to s. 213.053, F.S., to provide for the sharing of qualified production company taxpayer information in the aggregate between the Department of Revenue and the Office of the Film Commissioner.

This section is effective on July 1, 2000.

Section 6 provides that the bill takes effect January 1, 2001, unless otherwise provided for in the bill.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. <u>Revenues:</u>	<u>2000-01</u>	<u>2001-02</u>
General Revenue - Sales Tax	(\$1.5 m)	(\$3.7 m)
Solid Waste Management TF	(Insignificant)	(Insignificant)
Local	(\$0.2 m)	(\$0.5 m)
TOTAL REVENUES	(\$1.7 m)	(\$4.2 m)

2. Expenditures:

There may be both non-recurring and recurring expenditures incurred by the Office of the Film Commissioner because of the added responsibilities.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III.A.1.

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill changes a sales tax refund to a point-of-sale exemption, thereby, increasing the opportunity that entertainment industry companies will benefit from the tax break.

D. FISCAL COMMENTS:

The estimated combined total state and local impact for the changes in the tax provisions for FY 2000-01 is (\$1.7 m) and the estimated total impact for FY 2001-02 is (\$4.2 m).

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the 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 will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and 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 will 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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue is authorized to promulgate rules and prescribe and publish forms as necessary to carry out the provisions of the bill, or any of the sales tax exemptions reasonably related to the provisions of this section.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

HB 743 (PCB TU 00-02a) was reported favorably for introduction by the Committee on Tourism on December 7, 2000 by a unanimous vote of the Committee. The bill was prefiled in the House of Representatives on January 10, 2000 and was referred to the Committees on Governmental Rules & Regulations, Finance & Taxation, and Transportation & Economic Development Appropriations on January 24, 2000. The Governmental Rules & Regulations Committee passed the bill unanimously favorable on February 8, 2000. On April 24, 2000, the Committee on Finance & Taxation passed the bill with one amendment. The amendment shifted, from the Office of the Film Commissioner to the Department of Revenue, the responsibility for receiving the initial application from an entertainment industry production company to determine completeness of the application. The bill was placed on the House Calendar on April 27, 2000, on the Special Order Calendar on April 28, 2000, where the Committee amendment was adopted, and on May 3, 2000, it passed the House by a vote of 112 YEAS to 0 NAYS.

HB 743, 1st ENG was received in Senate Messages on May 3, 2000, was referred to the Committee on Fiscal Resource, withdrawn from the Committee, substituted for CS/SB 804, and read a second time. On May 5, 2000, the bill was read a third time and passed by the Senate by a vote of 36 YEAS to 0 NAYS. On May 5, 2000, the House ordered the bill enrolled.

HB 743, 1st ENG was signed into law by the Governor on June 2, 2000 and now may be cited as Chapter 00-182, Laws of Florida.

HB 804, the Senate companion measure, by Senator Saunders was prefiled on December 15, 1999 and referred to the Committees on Fiscal Resource and Commerce & Economic Opportunities on January 3, 2000. The bill was heard by the Fiscal Resource Committee on April 6, 2000 when it adopted amendments that shifted, from the Office of the Film Commissioner to the Department of Revenue, the responsibility for receiving the initial application from an entertainment industry production company to determine completeness of the application. After adoption of the amendments the bill was temporarily postponed. On April 25, 2000, the Committee on Fiscal Resource reagendaed the bill and passed it unanimously as a committee substitute.

CS/SB 804 was received by the Commerce & Economic Opportunities Committee on April 27, 2000 where it resided until being withdrawn and placed on the Senate Calendar on May 2,

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2000. On May 3, 2000, the bill was placed on the Senate Special Order Calendar and the House companion measure was substituted for it. CS/SB 804 was then Laid on the Table.

SB 884, a similar measure, was prefiled by Senator Kirkpatrick on January 6, 2000. The bill was referred to the Committees on Fiscal Resource and Commerce & Economic Opportunities on January 18, 2000. The bill was heard by the Fiscal Resource Committee on April 6, 2000 when it adopted amendments that shifted, from the Office of the Film Commissioner to the Department of Revenue, the responsibility for receiving the initial application from an entertainment industry production company to determine completeness of the application. After adoption of the amendments the bill was temporarily postponed. SB 884 remained in the Committee and died there on May 5, 2000.

VII. SIGNATURES:

COMMITTEE ON TOURISM:

Prepared by:

Staff Director:

Judy C. McDonald

Judy C. McDonald

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL RULES & REGULATIONS:

Prepared by:

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AS FURTHER REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

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FINAL ANALYSIS PREPARED BY THE COMMITTEE ON TOURISM:

Prepared by:

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