

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1106

SPONSOR: Finance and Taxation Committee, Senator Pruitt and others

SUBJECT: Taxation

DATE: January 23, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Fav/CS
2.	_____	_____	RC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The Committee Substitute for SB 1106 implements the tax reform provisions of the Committee Substitute for SJR 938. Effective July 1, 2004, the bill reinstates the various existing sales and use tax exemptions on goods and services. In addition to maintaining the exemptions on groceries, health services, prescription drugs, and residential rent, as constitutionally required by CS for SJR 938, the bill maintains the following major statutory exemptions:

- Purchases of residential electricity and heating fuels
- Water
- Fuel purchased by public and private utilities
- Sewage and garbage collection services
- Tuition charges
- Charges for school lunches and school books
- Automobile trade-ins
- Sale of religious items and sales or leases to churches
- Non-profit homes for the aged
- Section 501(c)(3) charitable organizations
- Sale for resale of tangible personal property
- Items manufactured for export
- Agriculture and forestry services and purchases of agricultural items
- Electricity used for manufacturing
- Space and defense machinery and equipment
- Eye glasses, non-prescription drugs, medical supplies, charges for hospital meals and rooms, and health insurance premiums
- Money lending by banks
- Insurance premiums

- Real estate agent fees
- Insurance agents and brokers services
- Publishing and printing advertising
- Radio and television broadcasting advertising
- Services by advertising agencies
- Services by educational institutions
- Social services
- Employee leasing services
- Legal services rendered by an attorney to a client in a criminal case if the criminal charges are dismissed or the client is adjudicated not guilty

The bill also provides for the taxation of certain construction services at the rate of 1.5 percent.

The bill also repeals, effective July 1, 2005, the health care assessments found in ss. 395.701 and 395.7015, F.S.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.02, 212.03, 212.031, 212.04, 212.05, 212.0502, 212.0506, 212.051, 212.052, 212.0598, 212.06, 212.0601, 212.0602, 212.07, 212.08, 212.0801, 212.0821, 212.09, 376.75, 395.701, and 395.7015.

## II. Present Situation:

### *Sales Tax*

Florida's six percent sales and use tax as provided in chapter 212, F.S., is not a single levy, but is composed of a number of different levies on a variety of transactions. A "use" tax is imposed on items not sold, but used in Florida. The various levies of sales and use tax are:

- **Transient rental** (s. 212.03, F.S.): Establishes a taxable privilege for lease or rental of hotels, motels, and apartments for periods of less than six months.
- **Lease or rental of or license in real property** (s. 212.031, F.S.): Establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real commercial property.
- **Admissions** (s. 212.04, F.S.): Establishes a taxable privilege for selling or receiving anything of value by way of admissions.
- **Sale of tangible personal property** (s. 212.05(1)(a), F.S.): Establishes a taxable privilege for the sale of items or articles of tangible personal property.
- **Use of tangible personal property** (s. 212.05(1)(b), F.S.): Establishes a taxable privilege on items or articles of tangible personal property which are not sold but are used, consumed, distributed, or stored for use or consumption in Florida. The tax is based on the "cost price" of the article, which is a calculation of the cost of an item including materials, labor, service costs, transportation and any other expenses.

- **Lease or rental of tangible personal property** (s. 212.05(1)(c), F.S.): Establishes a taxable privilege for the lease or rental of tangible personal property.
- **Prepaid calling arrangements, installation of telecommunication and telegraphic equipment and electricity** (s. 212.05(1)(e), F.S.): Establishes a taxable privilege for the sale at retail of prepaid calling arrangements and charges for the installation of telecommunication and telegraphic equipment and charges for electrical power or energy. The rate for electrical power or energy is 7 percent. (Effective October 1, 2001, telecommunications were no longer taxable under chapter 212, but became taxable under chapter 202, as the “Communications Services Tax” at a rate of 6.8%)
- **Coin-operated amusement machines** (s. 2312.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of 4 percent.
- **Certain services** (s. 212.05(1)(j), F.S.): Establishes a taxable privilege for the sale of detective, burglar protection, and other protective services and for the sale of nonresidential cleaning and nonresidential pest control services.
- **Service Warranties** (s. 212.0506, F.S.) Establishes a taxable privilege on every person who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty. “Service warranty” means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property.

Aside from the services mentioned above, services are not directly subject to Florida’s sales and use tax. This lack of tax on most services is not due solely to exemptions from the tax, but from the fact that the services are not specified as taxable. In addition, s. 212.08(7)(v), F.S., exempts personal, professional, and financial services when provision of such services involves inconsequential elements of tangible personal property such as documents representing the service provided. Numerous other services, however, are taxed such as repair and maintenance services that also involve the sale of tangible personal property.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter. The statutes currently provide more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for over 50 miscellaneous exemptions.

### ***Local Discretionary Sales Surtaxes***

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions” by chapter 212, F.S. and on communications services by chapter 202, F.S. The surtax is computed by multiplying the rate imposed by the county

where the sale occurs by the amount of the taxable sale. The sales amount is not subject to tax if the property or service is delivered within a county that does not impose a surtax. In addition, the surtax does not apply to any sales amount above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service. As of January 2002, 51 counties levied at least one discretionary sales surtax with 6 counties levying two.

### ***Health Care Assessment***

Part IV of chapter 395, F.S., relates to the Public Medical Assistance Trust Fund (PMATF) which is created in s. 409.918, F.S. Revenues collected from assessments on the specified health care providers under Part IV of chapter 395, F.S., are used to fund Medicaid-reimbursed hospital inpatient services.

Section 395.701, F.S., was originally enacted in 1984 to impose an assessment of 1.5 percent against the annual net operating revenue of each state-licensed hospital. Section 395.7015, F.S., was originally enacted in 1991 to impose an annual assessment of 1.5 percent on the net operating revenues of ambulatory surgical centers and mobile surgical facilities, certain clinical laboratories, freestanding radiation therapy centers, and certain diagnostic imaging centers.

In 1998, the Legislature exempted hospital outpatient radiation therapy services from the assessment and repealed the assessment on freestanding radiation therapy centers.

Chapter 2000-256, Laws of Florida, changed the structure of the PMATF assessment on hospitals. For hospitals, inpatient and outpatient services were made subject to different assessment rates. Inpatient hospital services were continued at the assessed rate of 1.5 percent of net operating revenue. Outpatient hospital services were made subject to an assessed rate of 1 percent of net operating revenue. Chapter 2000-256, Laws of Florida, also reduced the assessment rate on the other health care entities from 1.5 percent to 1 percent.

### **III. Effect of Proposed Changes:**

The Committee Substitute for SB 1106 implements the tax reform provisions of the Committee Substitute for SJR 938. Effective July 1, 2004, the bill makes the following changes to chapter 212:

- Reduces the state sales tax rate from 6 percent to 4.5 percent on all taxable goods, except for the sales tax rate on transient rentals (s. 212.03, F.S.), admissions (s. 212.04, F.S.) and rental cars (s. 212.05(1)(c), F.S.), which remains at 6 percent.
- Effective July 1, 2004, the bill imposes a 4.5 percent state sales and use tax on services, as defined by general law, except for the following services:
  - a) Services by General Physicians (SIC Industry Group Number 801)
  - b) Services by Dentists (SIC Industry Group Number 802)
  - c) Services by Osteopathic Physicians (SIC Industry Group Number 803)
  - d) Services by Chiropractors, Optometrists and Other Health Practitioners (SIC Industry Group Number 804)

- e) Nursing and Personal Care Facilities Services (SIC Industry Group Number 805)
  - f) Hospital Services (SIC Industry Group Number 806)
  - g) Medical and Dental Laboratory Services (SIC Industry Group Number 807)
  - h) Outpatient Care Facility Services (SIC Industry Group Number 808)
  - i) Other Health and Allied Services (SIC Industry Group Number 809)
  - j) Agricultural Services (SIC Major Group Number 07)
  - k) Forestry Services (SIC Industry Group Number 085)
  - l) Services by Real Estate Agents (SIC Industry Group Number 653)
  - m) Insurance Agents and Brokers Services (SIC Major Group Number 64)
  - n) Services between members of an affiliated group of corporations as defined in s. 212.02.
  - o) Money Lending by Banks (SIC Major Group Number 60)
  - p) Money Lending by Non-bank Financial Institutions (SIC Major Group Number 61)
  - q) Security and Commodity Brokers Services (SIC Major Group Number 62)
  - r) Services by Insurance Carriers (SIC Major Group Number 63)
  - s) Publishing and Printing – Newspaper, Periodical and Miscellaneous Advertising (SIC Industry Group Numbers 271 – 274)
  - t) Radio and Television Broadcasting – Advertising (SIC Industry Group Number 483)
  - u) Satellite Up-Link, Down-Link and Miscellaneous Communications Services (SIC Industry Group Numbers 481 – 484)
  - v) Newspaper Delivery by Independent Carriers (SIC Industry Number 5963)
  - w) Services by Advertising Agencies & Advertising Representatives (SIC Industry Numbers 7311 and 7313)
  - x) News and Feature Syndicates (SIC Industry Number 7383)
  - y) Sewage and Garbage Collection Services and Utility Hook-ups (SIC Major Group Number 49)
  - z) Services by Educational Institutions (SIC Major Group Number 82
    - aa) Social Services (SIC Major Group Number 83)
    - bb) Government Enterprise Activity Service Fees (SIC Industry Group Number 919)
    - cc) Local and Suburban Bus Transportation Services (SIC Industry Group Number 411)
    - dd) Employee Leasing Services (SIC Industry Number 7363)
    - ee) Legal services rendered by an attorney to a client in a criminal case if the criminal charges are dismissed or the client is ultimately adjudicated not guilty. This exemption is by refund only.
- Effective July 1, 2004, the bill imposes a 1.5 percent sales and use tax on the following construction services:
    - a) General Contractors – Residential, including repairs (SIC Industry Group Numbers 152 and 153)
    - b) General Contractors – Nonresidential, including repairs (SIC Industry Group Number 154)
    - c) General Contractors – Heavy Construction (SIC Industry Number 1629)
    - d) Construction – Special Trade Contractors, including repairs (SIC Major Group Number 17)
    - e) Heavy Construction Equipment Rental with Operator (SIC Industry Number 7353)

As used in the bill, "SIC" means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

- Reinstates various sales tax exemptions on the sale and use of tangible personal property, lease or rental of tangible personal property, and lease or rental of or license in real property. Effective July 1, 2004, the following currently exempt transactions become taxable at the 4.5 percent rate:
  - a) Hospital physical fitness charges [s. 212.02(1)]
  - b) Leasing of real property between certain corporations [s. 212.02(2)]
  - c) Per diem and mileage charges paid to owners of railroad cars [s. 212.02(10)(g)]
  - d) Privilege, franchise and other fees paid to do business at airports [s. 212.02(10)(j)]
  - e) Leases or rentals of certain property used for movie productions [s. 212.031(1)(a)9.]
  - f) Movie theater concession rent [s. 212.031(1)(a)10.]
  - g) Rents, subleases, or licenses in recreation or sports arenas and civic centers [s. 212.031(1)(a)10.]
  - h) Convention hall subleases [s. 212.031(5)]
  - i) Certain lease termination payments [s. 212.031(8)]
  - j) Lease or rental of high school and college teams' stadium skyboxes [s. 212.031(9)]
  - k) Certain charges for an entertainment facility lease [s. 212.031(10)]
  - l) Super Bowl tickets [s. 212.04(2)(a)4.]
  - m) Tickets for certain non-profit theater, opera or ballet events [s. 212.04(2)(a)6.]
  - n) Long-term motor vehicle leases, if tax paid when purchased by lessor [s. 212.05(1)(c)]
  - o) Operators of game concessions who award tangible personal property as prizes can pay tax on 25% of the gross receipts from the concession [s. 212.05(1)(n)]
  - p) Fabrication labor used in the production of qualified motion pictures [s. 212.06(1)(b)]
  - q) 1% use tax rate per month for airplanes purchased for resale but used by dealer [s. 212.06(13)]
  - r) Contractors' use of rock, shell and fill dirt for own use [s. 212.06(15)]
  - s) Horses sold at claiming races taxed on the mark-up, after initial sale [s. 212.07(5)(b)]
  - t) Contact lens molds costs in excess of \$100,000 of tax paid annually [s. 212.08(2)(a)]
  - u) Partial exemption for fuel for vessels and vehicles in interstate commerce [s. 212.08(4)(a)2.]
  - v) Motion picture or video equipment used in motion picture or television production and sound recording equipment used in production of master tapes and record [s. 212.08(5)(f)]
  - w) Feed for ostrich and racehorses [s. 212.08(7)(d)]
  - x) Utilities purchased for use in a residential model home [s. 212.08(7)(j)]
  - y) Alcoholic beverages used by businesses for tasting [s. 212.08(7)(s)]
  - z) Professional, insurance or personal service transactions involving sales as inconsequential elements for which no separate charges are made [s. 212.08(7)(v)]
  - aa) Newspaper, magazine and newsletter subscriptions delivered by mail [s. 212.08(7)(w)]
  - bb) Charter fishing boats [s. 212.08(7)(y)]
  - cc) Leases to or by fair associations for real or tangible personal property [s. 212.08(7)(gg)]
  - dd) Products sold by PRIDE [s. 212.08(7)(mm)]
  - ee) Mobile home lot improvements [s. 212.08(7)(oo)]

- ff) Racing dogs sold by breeders [s. 212.08(7)(ss)]
  - gg) Railroad roadway materials [s. 212.08(7)(eee)]
  - hh) Partial exemption on the sale or use of vessels used in interstate commerce and the sale or use of related parts [s. 212.08(8)]
  - ii) Partial exemption on motor vehicles and railroads used in interstate commerce and sale or use of related parts [s. 212.08(9)]
- Effective July 1, 2005, the bill repeals the health care assessments found in ss. 395.701 and 395.7015, F.S.
  - The bill provides assurance to holders of bonds issued by local governments and secured by state-shared or local option revenues currently outstanding or issued prior to July 1, 2004, which may be impacted by the passage of CS for SJR 938, that if the passage of the constitutional amendment results in the inability of the local government to pay debt service on such bonds, that it is the intent of the legislature to provide alternative funding sources.

The bill takes effect July 1, 2004, but shall not take effect unless the amendment to the State Constitution proposed by CS for SJR 938 is approved by vote of the electors in the November 2002 general election.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

Total state sales tax revenues for FY 2002-03 are estimated at \$16.7 billion. Reducing the general sales tax rate from 6% to 4.5% provides a tax reduction of \$4.2 billion, which will benefit the purchasers of goods and services that are taxed today. An additional \$40 million tax reduction will take place from reducing the current sales tax rate on electrical power of 7%. Maintaining the tax rate on transient rentals, rental cars, and admissions at 6% offsets approximately \$286 million of the reduction. The repeal of the health care assessment effective July 1, 2005, reduces revenues by approximately \$244 million. The net tax reduction mandated by SJR 938 and contained in SB 1106 is approximately \$4.2 billion based on FY 2002-03 estimates.

Current exemptions from the state sales tax total approximately \$23 billion when evaluated at 6%. At 4.5%, these exemptions total \$17.2 billion. In order to insure revenue neutrality, total exemptions cannot exceed \$13 billion; \$4.2 billion must be raised from goods and services that are currently exempt from the sales tax.

Based on current estimates for FY 2002-03, the exemptions repealed by SB 1106 will raise sufficient revenue to offset the sales tax rate reduction from 6% to 4.5% and satisfy the revenue neutrality requirement in SJR 938. The Legislature will have until July 1, 2004 to refine the revenue estimates and further modify the sales tax to ensure compliance with SJR 938.

Local sales surtaxes imposed by the 51 levying counties are estimated at approximately \$1.3 billion for FY 2002-03. Without sales surtax rate reductions or other tax relief, local sales surtaxes would increase by approximately \$325 million. Under the local government revenue neutrality provisions of the SJR, the Legislature will have to provide for local tax reductions sufficient to offset the increase in local sales surtaxes that would otherwise occur.

**B. Private Sector Impact:**

See A. above

**C. Government Sector Impact:**

The state will incur administrative costs due to restructuring the state sales tax and the addition of significant numbers of new sales tax dealers.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.