

# 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 214

SPONSOR: Commerce and Economic Opportunities Committee and Senators Cowin and Crist

SUBJECT: Sales Tax/Florida Residents' Tax Relief Act

DATE: March 14, 2002      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Bimholz	Maclure	CM	Favorable/CS
2.	_____	_____	FT	_____
3.	_____	_____	AGG	_____
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This committee substitute creates the fifth "Florida Residents' Tax Relief Act," which provides that no sales and use tax shall be collected on sales of clothing, wallets, or certain bags having a selling price of \$100 or less during the period from 12:01 a.m. on Saturday, July 27, 2002, through midnight on Sunday, August 4, 2002. The committee substitute also provides that no sales and use tax shall be collected on sales of school supplies having a selling price of \$10 per item or less during that same period of time. However, in order to receive the tax benefits created by these exemptions, a "purchaser must provide proof of Florida residency by production of a Florida driver's license or Florida identification card."

**II. Present Situation:**

Pursuant to ch. 212, F.S., the State of Florida levies a 6-percent sales tax on most sales of tangible personal property in the state. The statutes currently provide more than 200 non-service exemptions from the sales tax. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting certain types of organizations, such as the government, churches, and charitable organizations. In addition to the state sales and use tax, local government local option sales taxes are levied on the same tax base as the state tax.

For the past four years, the Legislature has created the "Florida Residents' Tax Relief Act" (chs. 98-341, 99-229, 2000-175, and 2001-148, L.O.F.). Last year's act provided that no sales and use tax would be collected on sales of clothing, wallets, or bags having a selling price of \$50 or less during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001. The term "clothing" was defined to mean any article of wearing apparel intended to be worn on or about the human body, including all footwear, except skis, swim fins, roller blades, and skates.

For purposes of the act, the term “clothing” also did not include watches, watchbands, jewelry, umbrellas, or handkerchiefs. The term “bags” included handbags, backpacks, fanny packs, and diaper bags, but excluded briefcases, suitcases, and other garment bags. The act also provided that no sales and use tax would be collected on sales of school supplies having a selling price of \$10 per item or less during the period from 12:01 a.m., July 28, 2001, through midnight, August 5, 2001. The term “school supplies” was defined to mean pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, protractors, compasses, and calculators. These exemptions for clothing, wallets, bags, and school supplies did not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport.

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

This committee substitute creates the “Florida Residents’ Tax Relief Act,” which provides that no sales and use tax shall be collected on sales of clothing, wallets, or bags, including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags, having a selling price of \$100 or less during the period from 12:01 a.m. on Saturday, July 27, 2002, through midnight on Sunday, August 4, 2002. The term “clothing” means any article of wearing apparel, including all footwear, except skis, swim fins, roller blades, and skates, intended to be worn on or about the human body, but excludes watches, watchbands, jewelry, umbrellas, and handkerchiefs.

This committee substitute also provides that no sales and use tax shall be collected on sales of school supplies having a selling price of \$10 per item or less during the period from 12:01 a.m. on Saturday, July 27, 2002, through midnight on Sunday, August 4, 2002. The term “school supplies” includes pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, composition books, poster paper, scissors, tape, glue or paste, rulers, computer discs, protractors, compasses, and calculators.

However, these sales tax exemptions for clothing, wallets, bags, and school supplies do not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport, as defined in ss. 509.013 and 330.27, F.S. Moreover, this committee substitute provides that, in order to receive the tax benefits created by such exemptions, a “purchaser must provide proof of Florida residency by production of a Florida driver’s license or Florida identification card.”

The Department of Revenue may adopt rules to administer these provisions and is appropriated \$200,000 from the General Revenue Fund for the purpose of administering this committee substitute.

This committee substitute takes effect upon becoming a law.

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

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

This committee substitute falls under subsection (b) of s. 18 of Art. VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house of the Legislature 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, this committee substitute has the effect of adding an exemption to the local option county sales surtax. However, if the annual local revenue loss is estimated to be less than \$1.6 million, this committee substitute will be exempt from the requirements of subsection (b).

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

This committee substitute appears to provide a sales tax exemption for Florida residents only. Although research has yielded no court case directly on point, the committee substitute's limitation of eligible purchasers potentially raises several issues regarding various constitutional rights, including equal protection under the law as guaranteed by the Fourteenth Amendment to the U.S. Constitution; the right to travel between states and to own property under the Privileges and Immunities Clause of Article IV, Section 2, of the U.S. Constitution; and the right to conduct interstate commerce under the Commerce Clause in Article I, Section 8, of the U.S. Constitution.

**Equal Protection Clause**

Section 1 of the Fourteenth Amendment to the U.S. Constitution states that no state shall “deny to any person within its jurisdiction the equal protection of the laws.” Accordingly, “[a] State may not treat those within its borders unequally solely on the basis of their different residences or States of incorporation.”<sup>1</sup> However, “[a]s the United States Supreme Court has indicated on numerous occasions: ‘It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation.’”<sup>2</sup>

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<sup>1</sup> *Reinish v. Clark*, 765 So. 2d 197, 203 (Fla. 1<sup>st</sup> DCA 2000), citing *Williams v. Vermont*, 472 U.S. 14, 23, 105 S.Ct. 2465, 86 L.Ed.2d 11 (1985); *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985); and *WHYY, Inc. v. Borough of Glassboro*, 393 U.S. 117, 89 S.Ct. 286, 21 L.Ed.2d 242 (1968). In *Reinish*, the appellants brought action challenging the constitutionality of the state homestead tax exemption, asserting that the exemption discriminated against part-time state residents of the state who owned property within the state. The First District Court of Appeal of Florida held that the homestead exemption did not violate the equal protection clause, the privileges and immunities clause, or the “dormant” commerce clause of the U.S. Constitution.

<sup>2</sup> *Reinish v. Clark*, *supra* note 1, at 204, quoting *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509, 57 S.Ct. 868, 81 L.Ed. 1245 (1937).

As a result, “the High Court ‘has been reluctant to interfere with legislative policy decisions in this area.’”<sup>3</sup>

### **Privileges and Immunities Clause**

Article IV, Section 2, of the U.S. Constitution states that “Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.” The Privileges and Immunities Clause establishes “‘a norm of comity’ or ‘substantial equality of treatment’ without indicating specifically the subjects over which non-residents coming within the jurisdiction of another state are to be accorded equal treatment.”<sup>4</sup> “In an early leading case, Circuit Justice Washington construed the Clause as entitling the citizens of the several states only to ‘those privileges and immunities which are, in their nature, fundamental; which belong, of right, to the citizens of all free governments; and which have, at all times, been enjoyed by the citizens of the several states which compose this Union, from the time of their becoming free, independent, and sovereign.’ . . . Justice Washington included among these ‘fundamental’ privileges and immunities ‘the right of a citizen of one state . . . to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state.’”<sup>5</sup> The United States Supreme Court has “acknowledged that the United States Constitution does not preclude the States from adopting ‘justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits, whether in the form of tax deductions or tax credits.’”<sup>6</sup> “[I]nequalities that result not from hostile discrimination, but occasionally and incidentally in the application of a[tax] system that is not arbitrary in its classification, are not sufficient to defeat the law.”<sup>7</sup>

### **Commerce Clause**

Article I, Section 8, of the U.S. Constitution states that “Congress shall have Power [t]o . . . regulate Commerce with foreign Nations, and among the several States.” This clause constitutes an affirmative grant of power to Congress. However, the clause also has a “negative or dormant aspect, which severely limits the extent to which the States or local governments can discriminate against, unduly burden, tax, or otherwise interfere

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<sup>3</sup> *Reinish v. Clark*, *supra* note 1, at 204, quoting *Williams*, 472 U.S. at 22, 105 S.Ct. 2465, and *Regan v. Taxation With Representation of Washington*, 461 U.S. 540, 103 S.Ct. 1997, 76 L.Ed.2d 129 (1983).

<sup>4</sup> *Reinish v. Clark*, *supra* note 1, at 207, citing *Austin v. New Hampshire*, 420 U.S. 656, 660 & 665, 95 S.Ct. 1191, 43 L.Ed.2d 530 (1975).

<sup>5</sup> *Reinish v. Clark*, *supra* note 1, at 207-208, quoting *Corfield v. Coryell*, 6 F. Cas. 546, 551, 552 (C.C.E.D.Pa.1823), and *Ward v. Maryland*, 79 U.S. 418, 430, 20 L.Ed. 449 (1870); *Paul v. Virginia*, 75 U.S. 168, 180, 19 L.Ed. 357 (1869).

<sup>6</sup> *Reinish v. Clark*, *supra* note 1, at 208-209, quoting *Christopher H. Lunding et ux. v. New York Tax Appeals Tribunal, et al.*, 522 U.S. at 310, 118 S.Ct. 766.

<sup>7</sup> See *Maxwell v. Bugbee*, 250 U.S. 525, 543, 40 S.Ct. 2, 63 L.Ed. 1124 (1919), as cited in *Reinish v. Clark*, *supra* note 1, at 209.

with interstate commerce or engage in economic isolationism, even in the absence of an exercise of Congress' affirmative power.”<sup>8</sup>

As noted in *A.S. Goldmen & Company, Inc. v. New Jersey Bureau of Securities*:

The Supreme Court “has adopted what amounts to a two-tiered approach to analyzing state economic regulation under the Commerce Clause.” *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 578- 79, 106 S.Ct. 2080, 90 L.Ed.2d 552 (1986). “When a state statute directly regulates or discriminates against interstate commerce, or when its effect is to favor in-state economic interests over out-of-state interests, [the Supreme Court] has generally struck down the statute without further inquiry.” *Id.* at 579, 106 S.Ct. 2080. “When, however, a statute has only indirect effects on interstate commerce and regulates evenhandedly, [the Court] has examined whether the State’s interest is legitimate and whether the burden on interest [sic] commerce clearly exceeds the local benefits.” *Id.* (citing *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142, 90 S.Ct. 844, 25 L.Ed.2d 174 (1970)).<sup>9</sup>

However, the United States Supreme Court has ““recognized that there is no clear line separating the category of state regulation that is virtually *per se* invalid under the Commerce Clause, and the category subject to the *Pike v. Bruce Church* balancing approach.””<sup>10</sup> ““In either situation the critical consideration is the overall effect of the statute on both local and interstate activity.””<sup>11</sup>

Moreover, the court notes in *A.S. Goldmen & Company, Inc. v. New Jersey Bureau of Securities*:

the constitutionality of state regulations of interstate commerce depends largely on the territorial scope of the transaction that the state law seeks to regulate. If the transaction to be regulated occurs “wholly outside” the boundaries of the state, the regulation is unconstitutional. *MITE Corp.*, 457 U.S. at 642, 102 S.Ct. 2629.

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<sup>8</sup> See *General Motors Corp. v. Tracy*, 519 U.S. 278, 287, 117 S.Ct. 811, 136 L.Ed.2d 761 (1997); *West Lynn Creamery, Inc. v. Healy*, 512 U.S. 186, 192, 114 S.Ct. 2205, 129 L.Ed.2d 157 (1994) (negative aspect of Commerce Clause bans economic protectionism, *i.e.*, “measures designed to benefit in-state economic interests by burdening out-of-state competitors”); *Oregon Waste Sys., Inc. v. Dep’t of Env. Quality*, 511 U.S. 93, 98, 114 S.Ct. 1345, 128 L.Ed.2d 13 (1994); *Quill Corp. v. North Dakota*, 504 U.S. 298, 309, 112 S.Ct. 1904, 119 L.Ed.2d 91 (1992); and *Hughes v. Oklahoma*, 441 U.S. 322, 336, 99 S.Ct. 1727, 60 L.Ed.2d 250 (1979), as cited in *Reinish v. Clark*, *supra* note 1, at 211.

<sup>9</sup> *A.S. Goldmen & Company, Inc. v. New Jersey Bureau of Securities*, 163 F.3d 780, 793 (3<sup>rd</sup> Cir. 1999).

<sup>10</sup> *A.S. Goldmen & Company, Inc. v. New Jersey Bureau of Securities*, *supra* note 9, at 793, quoting *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. at 578-79, 106 S.Ct. 2080.

<sup>11</sup> *Id.*

If the transaction occurs “within” the boundaries of the state, it is constitutional so long as the regulation furthers legitimate in-state interests. *See id.* at 643-46, 102 S.Ct. 2629; *CTS Corp.*, 481 U.S. at 93, 107 S.Ct. 1637.<sup>12</sup>

It should be noted, though, that the United States Supreme Court did state and/or cite the following in *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine, et. al.*:<sup>13</sup>

- “Denial of a tax exemption is explicitly and primarily triggered by engaging in a certain level of interstate commerce.” (*See Commonwealth Edison Co. [v. Montana]*, 453 U.S. [609], at 617-19 [101 S.Ct. 2946, 2953-54, 69 L.Ed.2d 884].)
- “And, as we [U.S. Supreme Court] noted in *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 580, 106 S.Ct. 2080, 2085, 90 L.Ed.2d 552 (1986): ‘Economic protectionism is not limited to attempts to convey advantages on local merchants; it may include attempts to give local consumers an advantage over consumers in other States.’”
- “We [U.S. Supreme Court] have held that special fees assessed on nonresidents directly by the State when they attempt to use local services impose an impermissible burden on interstate commerce. *See, e.g., Chemical Waste Management, Inc. v. Hunt*, 504 U.S. 334, 342, 112 S.Ct. 2009, 2013-2014, 119 L.Ed.2d 121 (1992) (discriminatory tax imposed on disposal of out-of-state hazardous waste). That the tax discrimination comes in the form of a deprivation of a generally available tax benefit, rather than a specific penalty on the activity itself, is of no moment.”
- “Given the fact that the burden of Maine’s facially discriminatory tax scheme falls by design in a predictably disproportionate way on out-of-staters, the pernicious effect on interstate commerce is the same as in our cases involving taxes targeting out-of-staters alone.”
- “[A]s we [U.S. Supreme Court] noted in *West Lynn Creamery* discussing the general phenomenon of import tariffs: ‘For over 150 years, our cases have rightly concluded that the imposition of a differential burden on any part of the stream of commerce--from wholesaler to retailer to consumer--is invalid, because a burden placed at any point will result in a disadvantage to the out- of-state producer.’ 512 U.S., at 202, 114 S.Ct., at 2216 (citing cases).”

<sup>12</sup> *A.S. Goldmen & Company, Inc. v. New Jersey Bureau of Securities*, *supra* note 9, at 786.

<sup>13</sup> *Camps Newfound/Owatonna, Inc. v. Town of Harrison, Maine, et. al.*, 520 U.S. 564, 117 S.Ct. 1590 (1997), at 570, 577-580. In this case, an operator of a church camp brought action challenging the constitutionality of a Maine property tax exemption statute for charitable institutions.

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

**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not reviewed this committee substitute. However, the Revenue Estimating Conference has reviewed a similar bill, SB 214, which differs substantively from this committee substitute in that SB 214 does not require a purchaser to show proof of Florida residency in order to be eligible for the tax exemptions created by the bill.

The Revenue Estimating Conference estimates the fiscal impact of SB 214 to be a FY 2002-03 General Revenue loss of \$39.4 million and a FY 2002-03 local government loss of \$7.9 million. There is also estimated to be a \$100,000 negative impact on the Solid Waste Management Trust Fund.

Issue/Fund	<u>Fiscal Year 2002-2003</u>							
	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
SB 214 -- Tax Holiday – Clothing	\$ (35.4)	\$ 0	\$ (0.1)	\$ 0	\$ (7.1)	\$ 0	\$ (42.6)	\$ 0
SB 214 -- Tax Holiday – School Supplies	\$ (4.0)	\$ 0	*	\$ 0	\$ (0.8)	\$ 0	\$ (4.8)	\$ 0
<b>TOTAL</b>	<b>\$ (39.4)</b>	<b>\$ 0</b>	<b>\$ (0.1)</b>	<b>\$ 0</b>	<b>\$ (7.9)</b>	<b>\$ 0</b>	<b>\$ (47.4)</b>	<b>\$ 0</b>

\* Insignificant (less than \$50,000)

**B. Private Sector Impact:**

During the specified period, clothing can be purchased, by individuals able to provide proof of Florida residency, for 6 percent to 7.5 percent less depending on the local option tax rate. Given the timing of the tax-free period, families will be able to save money on clothing and school supplies prior to the beginning of the school year. Moreover, the tax exemptions provided by this committee substitute should significantly increase sales of exempt items during the nine tax-free days.

Although retail sellers may incur some costs for the reprogramming of cash registers and accounting systems, these costs should be mitigated by the existence of procedures developed for previous tax-free shopping periods. However, because s. 212.13(2), F.S., requires dealers who collect sales tax to keep “a complete record of tangible personal property...sold at retail...together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department [Department of Revenue] for the reasonable administration of this chapter [ch. 212, F.S.],” it appears that retail sellers might have to develop a method by which to document the residency status of customers who claim a sales tax exemption under this act.

**C. Government Sector Impact:**

The Department of Revenue may adopt rules to carry out the provisions of this committee substitute and is appropriated \$200,000 from the General Revenue Fund for administrative purposes. As in the last four years, the department would adopt a rule that provides a comprehensive list of clothing items and school supplies and their taxable statuses under this committee substitute. According to the department, the use of an emergency rule and a "Taxpayer Information Publication" has been very effective in implementing the tax-free periods in previous years because those documents have notified dealers as to which clothing items and school supplies are exempt from sales tax under the Florida Residents' Tax Relief Act.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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