

STORAGE NAME: h0833s2z.lgva.doc
DATE: July 1, 2002

****AS PASSED BY THE LEGISLATURE****

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LOCAL GOVERNMENT & VETERANS AFFAIRS
FINAL ANALYSIS**

BILL #: CS/CS/HJR 833, 1ST ENG.

RELATING TO: Tax Exemption & Exclusions

SPONSOR(S): Fiscal Responsibility Council; Committee on Local Government & Veterans Affairs and Representative Carassas

TIED BILL(S): None

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

- (1) LOCAL GOVERNMENT & VETERANS AFFAIRS (SGC) YEAS 8 NAYS 0
- (2) FISCAL POLICY & RESOURCES YEAS 11 NAYS 2
- (3) FISCAL RESPONSIBILITY COUNCIL YEAS 17 NAYS 0
- (4)
- (5)

I. SUMMARY:

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

CS/CS/HJR 833, 1st ENG., proposes an amendment to Section 3 of Article VII of the State Constitution to create a legislative review of the tax on sales, use, and other transactions. The proposed constitutional amendment creates a joint committee consisting of six senators appointed by the President of the Senate and six representatives appointed by the Speaker of the House of Representatives. The committee is required to conduct a review of all exemptions from the tax on sales, use, and other transactions imposed by law and all exclusions of sales of services from such taxation. The committee will be governed by joint rules adopted by the legislature no later than the 2003 regular session. Such rules must establish a schedule for review of such exemptions and exclusions over a three-year period and must provide criteria to be considered by the committee in conducting its review. No later than March 1 of 2004, 2005, and 2006, the committee must submit its findings and recommendations to the presiding officers of each house of the legislature. Any decision to deauthorize an exemption or exclusion must be approved by seven members of the committee and must be in the form of a resolution adopted by the committee, which must be submitted to the legislature. The resolution must set forth the specific changes to the statutes necessary to effectuate the deauthorization, which resolution shall have the force of law and shall become effective July 1 following the second regular session occurring after submission to the legislature, except for those exemptions or exclusions expressly rescinded by joint resolution of the legislature prior to that date. The proposed amendment provides that this section does not operate to deauthorize any exemption or exclusion not expressly deauthorized in such resolution, nor does it prohibit subsequent reenactment by law of any exemption or exclusion that was deauthorized. The joint committee is dissolved July 1, 2006.

If the proposed amendment is approved by vote of the electors, it shall be effective as an amendment to the constitution of the state on the first Tuesday after the first Monday in January following the election.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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:

B. PRESENT SITUATION:

Sales and Use 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.

C. EFFECT OF PROPOSED CHANGES:

CS/CS/HJR 833, 1st ENG., proposes an amendment to Section 3 of Article VII of the State Constitution to create a legislative review of the tax on sales, use, and other transactions. The proposed constitutional amendment creates a joint committee consisting of six senators appointed by the President of the Senate and six representatives appointed by the Speaker of the House of Representatives. The committee is required to conduct a review of all exemptions from the tax on sales, use, and other transactions imposed by law and all exclusions of sales of services from such

taxation. The committee will be governed by joint rules adopted by the legislature no later than the 2003 regular session. Such rules must establish a schedule for review of such exemptions and exclusions over a three-year period and must provide criteria to be considered by the committee in conducting its review. No later than March 1 of 2004, 2005, and 2006, the committee must submit its findings and recommendations to the presiding officers of each house of the legislature. Any decision to deauthorize an exemption or exclusion must be approved by seven members of the committee and must be in the form of a resolution adopted by the committee, which must be submitted to the legislature. The resolution must set forth the specific changes to the statutes necessary to effectuate the deauthorization, which resolution shall have the force of law and shall become effective July 1 following the second regular session occurring after submission to the legislature, except for those exemptions or exclusions expressly rescinded by joint resolution of the legislature prior to that date. The proposed amendment provides that this section does not operate to deauthorize any exemption or exclusion not expressly deauthorized in such resolution, nor does it prohibit subsequent reenactment by law of any exemption or exclusion that was deauthorized. The joint committee is dissolved July 1, 2006.

If the proposed amendment is approved by vote of the electors, it shall be effective as an amendment to the constitution of the state on the first Tuesday after the first Monday in January following the election.

D. SECTION-BY-SECTION ANALYSIS:

See EFFECT OF PROPOSED CHANGES.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

Article XI, Section 5 of the Florida Constitution requires that each proposed amendment to the Constitution be published in a newspaper of general circulation in each county two times prior to the general election. It is estimated that the cost to the Division of Elections will be approximately \$47,000, statewide, for each amendment proposed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

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

The provisions of Article VII, Section 18 do not apply to proposed amendments to the Florida Constitution.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

This joint resolution does not grant rule-making authority.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

Floor Amendments

On March 21, 2002, CS/CS/HJR 833 was read a second time, a strike-everything amendment was adopted, and the House of Representatives passed the bill as amended. The strike-everything amendment included the substance of the passed resolution.

Fiscal Responsibility Council

On March 8, 2002, the Fiscal Responsibility Council adopted a Committee Substitute for the Committee Substitute which incorporated the amendments previously passed by the Fiscal Policy and Resources Committee.

Committee on Fiscal Policy & Resources

On February 14, 2002, the Committee on Fiscal Policy & Resources adopted two amendments to the committee substitute. The first amendment removed the provision of the bill which would have deleted

the words "exclusively by it" which currently appear in the Florida Constitution. The second amendment conformed the ballot language with this change.

Committee on Local Government & Veterans Affairs

On January 30, 2002, the Committee on Local Government & Veterans Affairs considered HJR 833, adopted one strike-everything amendment, and passed the resolution as a committee substitute. The amendment replaced the body of the resolution with language from the Senate companion, SJR 630. The major effect was to change the ballot language.

VII. SIGNATURES:

COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith

AS REVISED BY THE COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

Staff Director:

Kama Monroe

Lynne Overton

AS FURTHER REVISED BY THE FISCAL RESPONSIBILITY COUNCIL:

Prepared by:

Staff Director:

Joe McVaney

David Coburn

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON LOCAL GOVERNMENT & VETERANS AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby, Jr.

Joan Highsmith-Smith