

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 721

Tax on Sales, Use, and Other Transactions

SPONSOR(S): Proctor

TIED BILLS:

IDEN./SIM. BILLS: SB 2102

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Postsecondary Education</u>	<u>7 Y, 0 N</u>	<u>Barnhill</u>	<u>Tilton</u>
2) <u>Schools & Learning Council</u>	<u></u>	<u>Barnhill</u>	<u>Cobb</u>
3) <u>Policy & Budget Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Currently, Florida law requires any person engaging in the business of renting, leasing, letting, or granting a license for the use of any real property to pay a tax for the use of real property.

This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions. This exemption will eliminate the taxes imposed on the rent, lease, or other utilization of the property paid by the bookstore operators to postsecondary educational institutions for the use of that property.

The fiscal impact of this bill is indeterminate at this time. The bill does not clarify the type of payment to a university from a bookstore that would be exempt; it does not specifically identify the type of bookstore operation that would qualify for the exemption; it does not clearly state what the phrase "or otherwise operated on behalf of the institution" means; and, it is unclear whether the retroactive operation of the act is intended to provide forgiveness for unpaid tax or to create a right to a refund of taxes paid during this period. Please see the FISCAL ANALYSIS section and the DRAFTING ISSUES section of this analysis.

This bill takes effect upon becoming a law and is required to operate retroactively to amounts paid on or after January 1, 2006.

The Committee on Postsecondary Education adopted two amendments on March 20, 2007. The first amendment clarifies the language in the bill regarding the exemptions of taxes applied to bookstore operations at a postsecondary educational institution and also includes a definition of bookstore operations. The second amendment clarifies that the retroactive application is remedial in nature, and is not to be construed as a right to a refund. The second amendment also clarifies that the bill does not require a government entity to provide a refund of any tax, penalty, or interest paid to the Department of Revenue prior to the effective date of this act. Please see AMENDMENT SECTION, section IV.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Currently, Florida law requires any person engaging in the business of renting, leasing, letting, or granting a license¹ for the use of any real property to pay a tax for the use of real property.² The tax for the use of real property is six percent (6%) of the total rent or license fee charged for such property by the person charging or collecting the rental or license fee, plus any applicable local discretionary sales surtax.³ The tax collected is remitted to the Department of Revenue and the local discretionary sales surtax is then distributed back to the counties that levy the surtax.

Local governments are authorized to levy several types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. The maximum they may levy in total is 2.5 percent. 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 transaction" by ch. 212, F.S. and on communications services by ch. 202, F.S. 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 November 2006, 59 counties levied at least one discretionary sales surtax.

Effects of Proposed Changes:

This bill creates a tax exemption for bookstores operated on behalf of postsecondary educational institutions. This exemption will eliminate the taxes imposed on the rent, lease, or other utilization of the property paid by the bookstore operators to postsecondary educational institutions for the use of that property.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., exempting payments to postsecondary educational institutions made by certain bookstore operators.

Section 2: Provides an effective date of upon becoming a law and provides retroactive application to amounts paid on or after January 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

¹ section 212.02(10)(i), F.S., defines license as the granting of a privilege to use or occupy a building or parcel of real property for any purpose.

² section 212.031(1)(a), F.S.

³ sections 212.031(1)(c), 212.054(2)(a), F.S.

The fiscal impact on state revenues is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

2. Expenditures:

The fiscal impact on state expenditures is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The fiscal impact on local government revenues is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

2. Expenditures:

The fiscal impact on local government expenditures is indeterminate at this time. See the Fiscal Comments and Drafting Issues section of this analysis.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxes on money paid for the utilization of real property would not be paid by the individual operating the bookstore.

D. FISCAL COMMENTS:

On March 2, 2007, the Revenue Estimating Conference (REC) adopted an estimate of - \$1.7 million in fiscal year 2007-2008 and - \$0.7 million thereafter.

The REC assumed the following:

- A 6% increase in colleges that change their bookstore operations for middle estimate. (Historical growth 2000- 2005)
- A 15% increase in colleges that change their bookstore operations. (High Estimate)
- A 5% growth in gross sales.
- The intent of the bill was to refund taxes paid retroactive to January 1, 2006.

	FY 2007-08 Annualized	FY 2007-08 Cash	FY 2008-09 Cash	FY 2009-10 Cash	FY 2010-11 Cash
General Revenue	(.6)	(1.5)	(.6)	(.6)	(.6)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(.6)	(1.5)	(.6)	(.6)	(.6)
Revenue Sharing	(Insignificant)	(.1)	(Insignificant)	(Insignificant)	(Insignificant)
Local Gov't Half	(.1)	(.1)	(.1)	(.1)	(.1)
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Local Option	(.1)	(.1)	(.1)	(.1)	(.1)
Total Local Impact	(.2)	(.3)	(.2)	(.2)	(.2)
Total Impact	(.8)	(1.8)	(.8)	(.8)	(.8)

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Subsection (b) of s. 18, Art. VII, Fla. Const., provides that except upon approval of each house of the Legislature by 2/3 vote of the membership, the Legislature may not enact, amend or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority exists as of February 1, 1989.

A bill that reduces the authority of cities and counties to raise revenues in the aggregate, as such authority existed on February 1, 1989, is exempt if it is:

- a law adopted to require funding of pension benefits existing on January 8, 1991;
- a criminal law;
- an election law;
- the General Appropriations Act;
- a special appropriations act;
- a law reauthorizing but not expanding then-existing statutory authority;
- A law having an insignificant fiscal impact; or
- A law creating, modifying, or repealing a noncriminal infraction.

By expanding sales tax exemptions, the bill reduces the sales tax base of municipalities and counties, thus reducing their revenue-raising authority. The Revenue Estimating Conference estimated that the fiscal impact of the tax exemption proposed by this bill is an estimated cost of \$1.8 million in fiscal year 2007-2008, and a cost of \$800,000 on a recurring basis. The estimated local fiscal impact is \$300,000 in fiscal year 2007-2008, representing an insignificant reduction in revenue raising authority in the form of discretionary sales surtax revenues. This bill appears to reduce the revenue raising authority of municipalities and cities, however, the fiscal impact is insignificant. Therefore, this bill is exempt from the mandates provision of the Constitution.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

This bill does not create any rule-making authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Revenue Estimating Conference⁴ and the Board of Governors⁵ suggest clarification on what is meant by "...or otherwise operated on behalf of that institution" as this language is unclear.

The Department of Revenue recommended three possible amendments in an effort to clarify the intent and scope of the proposed exemption. (1) Define "bookstore operations" to mean the sale, distribution, and provision of textbooks, merchandise, and services traditionally offered in college and university bookstores for the benefit of the institution's students, faculty, and staff. (2) Amend s. 212.031(1), F.S. rather than s. 212.08, F.S., and include the same definition of bookstore. (3) Clarify the retroactive operation of the act and state that the application is remedial, not a right to a refund or to require a refund prior to the effective date of the act.⁶

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2007, the Committee on Postsecondary Education adopted two amendments. Representative Proctor proposed both amendments. The first amendment clarifies the language in the bill regarding the

⁴ Revenue Estimating Conference, March 2, 2007.

⁵ Board of Governors, 2007 Legislative Bill Analysis on HB 721: Sales Tax/Postsecondary Education Bookstores.

⁶ Department of Revenue, 2007 Legislative Bill Analysis on BH 721: Sales Tax/Postsecondary Education Bookstores.

exemptions of taxes applied to bookstore operations at a postsecondary educational institution and also includes a definition of bookstore operations. The second amendment clarifies that the retroactive application is remedial in nature, and is not to be construed as a right to a refund. The second amendment also clarifies that the bill does not require a government entity to provide a refund of any tax, penalty, or interest paid to the Department of Revenue prior to the effective date of this act.