

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/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>13 Y, 0 N, As CS</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.

CS/HB 721 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, and is to be applied retroactively to amounts paid on or after January 1, 2006. CS/HB 721 also provides that the retroactive application is remedial in nature, and is not to be construed as a right to a refund or to require a refund by any governmental entity of any tax prior to the effective date of this act

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 cites, however, the fiscal impact is insignificant.

CS/HB 721 takes effect upon becoming a law and is required to operate retroactively to amounts paid on or after January 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensure lower taxes – CS/HB 721 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:

CS/HB 721 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. CS/HB 721 provides a definition for “bookstore operations”. CS/HB 721 also provides the retroactive application is remedial in nature, and is not to be construed as a right to a refund or to require a refund by any governmental entity of any tax prior to the effective date of this act.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., exempting payments to postsecondary educational institutions made by certain bookstore operations; providing a definition; providing construction;

Section 2: Provides for retroactive application.

Section 3: 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 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.

1. Revenues:

Please refer to the Fiscal Comments, section II(d) of this analysis.

2. Expenditures:

Please refer to the Fiscal Comments, section II(d) of this analysis.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please refer to the Fiscal Comments, section II(d) of this analysis.

2. Expenditures:

Please refer to the Fiscal Comments, section II(d) 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 is 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)
Cent					
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 the sales tax exemptions, CS/HB 721 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:

None.

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 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.

On March 27, 2007, the Schools and Learning Council reported the bill out favorably as a council substitute. CS/HB 721 incorporates the two amendments adopted by the Committee on Postsecondary Education.