

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 243 Tangible Personal Property Taxation

SPONSOR(S): Workman

TIED BILLS: **IDEN./SIM. BILLS:** SB 384

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Consumer Affairs Subcommittee	15 Y, 0 N	Livingston	Creamer
2) Finance & Tax Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

The bill statutorily authorizes an equipment rental company that rents heavy equipment to collect a fee on the rental of the equipment as a method of recovering the cost of TPP taxes that are otherwise due.

The bill specifies that the recovery fee may not exceed the amount of the estimated prorated annual tax paid on the equipment. It requires the TPP tax to be paid, the transaction be covered by a short term rental agreement, the fee to be disclosed in the rental agreement, and reimbursement to the person renting the equipment if the rental business overcharged on the recovery fee in excess of the TPP taxes paid.

The bill defines the term "heavy equipment" to mean industrial or construction equipment and, by reference, includes equipment described under North American Industry Classification System code, such as, bulldozers or mining equipment. The bill specifies that "short term rental agreement" refers to rental agreements of less than one year, as well as, agreements that do not specify the length of time of the contract.

The bill is not anticipated to have a fiscal impact on state or local government funds.

The effective date of the bill is July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation

Florida law provides for ad valorem taxation of real and tangible personal property by local governments, including school districts and special districts authorized to levy ad valorem taxes (property taxes).

Currently, "personal property" for purposes of ad valorem taxation in Florida, is divided into four categories: "household goods," "intangible personal property," "inventory," and "tangible personal property" (also referred to as TPP). TPP as defined in s. 192.001(11)(d), F.S., means all goods, chattels, and other articles of value (but does not include vehicular items) capable of manual possession and whose chief value is intrinsic to the article itself. Inventory and household goods are expressly excluded from this definition.

TPP is subject to property taxes. Anyone owning tangible personal property on January 1, who has a proprietorship, partnership, corporation, is a self-employed agent or a contractor, must file a tangible personal property return with the local property appraiser by April 1 each year¹. Property owners who lease, lend, or rent tangible personal property must file a tangible personal property return with the local property appraiser. The local property appraiser assesses the value of the property for tax purposes in that particular county.

The amount of tax owed by the owner of TPP is determined by multiplying the value of the TPP by the sum of the millage rates (tax rates) imposed by all the taxing authorities authorized to levy property taxes where the property is physically present on January 1. Special rules apply to TPP that may be in different locations throughout the year. Generally, the location for tax purposes is where the property is kept for use or storage or where it is consistently returned for use and storage.

Currently, chapter 196, F.S., does not contain a provision that grants specific authority to companies that rent heavy equipment property to charge a fee designed specifically to recover annual tangible personal property taxes paid upon the rental property.

Effect of proposed changes

The bill authorizes a person who engages in the business of renting heavy equipment under short-term rental agreements to collect a "tangible personal property tax recovery fee" on the rental of heavy equipment. The bill states that "the purpose of the fee is to allow the owner of the heavy equipment to recover the tangible personal property taxes imposed on such equipment."

The bill provides a method for determining the amount of the fee. The rate of the recovery fee must be based on the estimated pro rata annual TPP tax to be imposed on the equipment. The recovery fees collected may not exceed the TPP tax levied on the equipment. Any amounts collected in excess of the taxes levied must be reimbursed to the customer.

The bill specifies that the recovery fee may not exceed the amount of the estimated prorated annual tax paid on the equipment. It requires the TPP tax to be paid, the transaction be covered by a short term rental agreement, the fee to be disclosed in the rental agreement, and reimbursement to the person renting the equipment if the rental business overcharged on the recovery fee in excess of the TPP taxes paid.

¹ See s. 193.062, F.S.

The bill provides a definition of the term “heavy equipment” to mean “industrial or construction equipment and includes, but is not limited to, equipment described under North American Industry Classification System (NAICS) code 532412 . . .”

Construction, Transportation, Mining, and Forestry Machinery and Equipment Rental and Leasing

This industry comprises establishments primarily engaged in renting or leasing one or more of the following without operators: heavy construction, off-highway transportation, mining, and forestry machinery and equipment. Establishments in this industry may rent or lease products, such as aircraft, railroad cars, steamships, tugboats, bulldozers, earthmoving equipment, well-drilling machinery and equipment, or cranes.²

Finally, the bill provides that “short-term rental agreement” means “only a lease or rental agreement entered into for a term of less than 365 days or an at-will contract that does not specify the length of time of the contract. The term does not include any extension or renewal of a lease contract with an original term of 1 year or more.”

B. SECTION DIRECTORY:

Section 1. Creates a provision of general law to authorize heavy equipment rental companies to charge and collect a fee to recover annual tangible personal property taxes imposed on the rental equipment.

Section 2. Effective date – July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None. The Department of Revenue anticipates no operational impact resulting from the provisions of the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None. This charge is currently collected through the rental cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

² <http://www.naicscod.com/Search/MoreNAICSDetail.asp?N=532412>, viewed February 10, 2011.

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that the counties or municipalities have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.