

Click or tap here to enter text.**The Florida Senate**
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/HB 7097, 1st Eng.

INTRODUCER: Appropriations Committee; Ways and Means Committee; and Representatives Avila, Beltran, Eagle, and others

SUBJECT: Taxation

DATE: March 11, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Babin</u>	<u>Kynoch</u>	<u>AP</u>	<u>Fav/1amendment</u>

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

Sections 1 through VIII of the analysis discuss CS/HB 7097, as passed by the House of Representatives. Section IX describes the amendment adopted by the Senate Appropriations Committee.

CS/HB 7097:

- Provides a three-day “back-to-school” tax holiday from August 7, 2020, through August 9, 2020, for certain clothing, school supplies, and personal computers.
- A seven-day “disaster preparedness” tax holiday from May 29, 2020, through June 04, 2020, for specified disaster preparedness items.
- Reduces the state communications services tax rate by 0.5 percentage points.
- Reduces the tax rate for commercial property rentals from 5.5 percent to 5.4 percent.
- Requires all surplus lines policies to be taxed at the same tax rate and reduces the rate from 5 percent to 4.94 percent.
- Increases the refund of aviation fuel tax for certain air carriers from 1.42 cents per gallon to 2.38 cents per gallon.
- Creates the Children’s Promise Tax Credit, a \$5 million per year tax credit program to encourage businesses to contribute to charitable organizations that provide services focused on child welfare.
- Provides a one-time increase of \$8.2 million for the brownfields tax credit program.
- Provides a one-time \$2 million corporate income tax credit for certain rental car and car leasing corporations.

- Amends the requirements for hospitals to qualify for a charitable tax exemption. Non-profit hospitals would be required to document the value of the community benefit they provide, and their current charitable tax exemption would be limited to the value of the community benefit.
- Extends the property tax exemption for educational property to certain leaseholds.
- Exempts from property tax certain construction equipment;
- Restructures the authorized uses of tourist development, convention development, and local option food and beverage taxes levied in Miami-Dade County. The bill also expands the allowable uses of the tourist development tax revenues in all counties to allow for water quality improvement and parks and trails projects.
- Increases the amount of receipts from the tax collection enforcement diversion program that are deposited into a reserve account for the Florida Association of Centers for Independent Living.
- Changes when certain utility-owned tangible personal property is included on the tax roll.
- Repeals the Charter County and Regional Transportation System Sales Surtax currently levied in Miami-Dade County, and limits any levy after July 1, 2020, to 20 years.
- Requires that School Capital Outlay sales surtaxes approved in the future be proportionately shared with charter schools.
- Repeals the Sports Development Program.
- Updates the qualifying operations for the deployed servicemember property tax exemption.
- Allows condominium associations to jointly represent condominium owners in certain judicial appeals.
- Amends the statutory provisions that address conflicts of interest for special magistrates.
- Restricts information that may be mailed with the yearly Notice of Proposed Property Taxes.
- Includes contributions to scholarship funding organizations as tax liabilities for purposes of refunds of corporate income tax required by s. 220.1105, Florida Statutes.
- Amends property tax roll classifications and required statistical measurements.
- Provides flexibility in property tax noticing requirements during declared states of emergency.
- Extends the time to provide documentation relating to boat and aircraft purchases by nonresidents.
- Extends the time property owners affected by Hurricane Michael may begin rebuilding in order to retain their prior homestead assessment limitation.
- Increases bond limits for certain bonds required of motor fuel dealers.
- Amends the penalty for mislabeling dyed diesel fuel.
- Requires certain payment settlement entities to provide a federal tax form to the Department of Revenue.
- Provides procedures for local governments to update addresses within their jurisdictions and provides procedures for correcting local government distributions.
- Authorizes the Department of Revenue to send certain notices electronically if the taxpayer consents.
- Extends the time for taxpayers to file a refund claim during informal protests.
- Reduces the penalties for failing to electronically file certain Reemployment Assistance Tax documents.

The bill reduces total state and local government revenue by \$120.5 million (\$133.0 million recurring) in Fiscal Year 2020-2021. *See* Section V.

The bill appropriates \$591,500 in General Revenue funds to the Department of Revenue to implement the two sales tax holidays, the tax rate reduction on the rental of commercial real property, and the Children's Promise Tax Credit program for contributions made to certain charitable organizations.

II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Section 1 – Tourist Development Taxes

Present situation: The Local Option Tourist Development Act authorizes counties to levy up to five separate taxes on the short-term rental¹ or lease of accommodations.² The tourist development taxes (TDT) consist of the following levies:

- The original TDT may be levied at a rate of 1 or 2 percent.³
- An additional 1 percent tax may be levied by counties who have levied the original TDT for at least 3 years.⁴
- A high tourism impact tax of 1 percent may be levied by a county with a high tourism impact.⁵
- A professional sports franchise facility tax may be levied up to an additional 1 percent.⁶
- An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax.⁷

Depending on a county's eligibility, the maximum tax rate that may be levied varies from 3 to 6 percent. The table below displays the five local option tourist development taxes available to counties, the number of counties eligible to levy a specific tourist development tax, and the number of counties currently levying such tax.⁸

¹ Section 125.0104(3)(a), F.S., provides that the tax applies to rentals or leases of 6 months or less.

² Section 125.0104, F.S.

³ Section 125.0104(3)(c), F.S.

⁴ Section 125.0104(3)(d), F.S.

⁵ Section 125.0104(3)(m), F.S.

⁶ Section 125.0104(3)(l), F.S.

⁷ Section 125.0104(3)(n) F.S.

⁸ Office of Economic and Demographic Research, 2020 Local Option Tourist/Food and Beverage/Tax Rates in Florida's Counties, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTRates.pdf>, (published Dec. 19, 2019) (last visited Feb. 12, 2020).

2020 TDT Rates & Number of Counties	Original Tax (1% or 2%)	Additional Tax (1%)	Professional Sports Franchise Facility Tax (up to 1%)	High Tourism Impact Tax (1%)	Additional Professional Sports Franchise Facility Tax (up to 1%)
Eligible to Levy:	67	59	67	9	65
Levying:	63	54	45	7	30

Tourist Development Tax Process

Each county that levies TDTs is required to have a “tourist development council.”⁹ The tourist development council is a group of residents from the county that are appointed by the county governing authority. The tourist development council, among other duties, makes recommendations to the county governing authority for the effective operation of special projects or for uses of TDT revenue and must continuously review expenditures of revenues from the TDT.

Prior to the authorization of the original 1 or 2 percent TDT, the levy must be approved by a countywide referendum¹⁰ and the additional TDT levy must be authorized by a vote of the county’s governing authority or by voter approval of a countywide referendum.¹¹

Each county proposing to levy the original 1 or 2 percent tax must then adopt an ordinance for the levy and imposition of the tax,¹² which must include a plan for tourist development prepared by the tourist development council.¹³ The plan for tourist development must include the anticipated net tax revenue to be derived by the county for the two years following the tax levy, as well as a list of the proposed uses of the tax and the approximate cost for each project or use.¹⁴ The plan for tourist development may not be substantially amended except by ordinance enacted by an affirmative vote of a majority plus one additional member of the governing board.¹⁵

Tourist Development Tax Uses

Generally, TDT revenues may be used for specified tourism marketing, water- or beach-oriented projects, and construction of tourist-related facilities;¹⁶ however, the permitted uses of each local option tax vary according to the particular levy.

Revenues received from the original 1 or 2 percent levy, as well as the additional 1 percent levy, and revenues received from the High Tourism Impact Tax of 1 percent must be used for the purposes listed in s. 125.0104(5), F.S. These purposes are:

⁹ Section 125.0104(4)(e), F.S.

¹⁰ Section 125.0104(6)(a), F.S.

¹¹ Section 125.0104(3)(d), F.S.

¹² Section 125.0104(4)(a), F.S.

¹³ Section 125.0104(4)(c), F.S.

¹⁴ Section 125.0104(4)(c), F.S.

¹⁵ Section 125.0104(4)(d), F.S. The provisions found in ss. 125.0104(4)(a)-(d), F.S., do not apply to the additional 1 percent tax, the high tourism impact tax, or the professional sports franchise facility tax, and s. 125.0104(4), F.S., does not apply to the additional professional sports franchise facility tax.

¹⁶ See s. 125.0104(5), F.S.; see also Florida Legislative Committee on Intergovernmental Relations, Issue Brief: Utilization of Local Option Tourist Taxes by Florida Counties in Fiscal Year 2009-2010 (December 2009), available at <http://edr.state.fl.us/Content/local-government/reports/localopttourist09.pdf> (last visited Mar. 03, 2020).

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, including shoreline protection, enhancement, cleanup or restoration of inland lakes and rivers to which there is public access as those uses relate to the physical preservation of the beach, shoreline, or inland lake or river.¹⁷
- In counties with populations less than 750,000, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.
- A county located adjacent to the Gulf of Mexico or the Atlantic Ocean, except a county that receives revenue from taxes levied pursuant to s. 125.0108, F.S., may use up to 10 percent of the tax revenue received pursuant to this section to reimburse expenses incurred in providing public safety services, including emergency medical services, and law enforcement services, which are needed to address impacts related to increased tourism and visitors to an area.
- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

Revenues received from a Professional Sports Franchise Facility Tax (both the original 1 percent levy and the additional 1 percent levy) can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities or professional sports franchises, and to promote and advertise tourism. The original 1 percent levy may also be used to operate or maintain a convention center.

The use of TDT revenue for any purpose not expressly authorized in statute is expressly prohibited.¹⁸

Tourist Development Tax Administration

A county that levies a TDT may self-administer the tax if the county adopts an ordinance providing for the local collection and administration of the tax.¹⁹ A county that chooses to self-administer the taxes must also choose whether to assume all responsibility for auditing the

¹⁷ In counties with populations less than 100,000, up to 10 percent of TDT revenues may be used for financing beach park facilities. Section 125.0104(5)(a)5., F.S.

¹⁸ Section 125.0104(5)(e), F.S.

¹⁹ Section 125.0104(10), F.S.

records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to the Department of Revenue (DOR).²⁰

Current Collections and Related Expenditures in Miami-Dade County

Based on the Miami-Dade County budget for Fiscal Year 2019-2020,²¹ actual TDT collections for Fiscal Year 2018-2019 were nearly \$47 million, comprised of:

- Tourist Development Tax²² revenues of \$31,223,480, and
- Professional Sports Facilities Tax²³ revenues of \$15,611,740.

The estimated Fiscal Year 2019-2020 collections are nearly \$49 million, comprised of:

- Tourist Development Tax revenues of \$32,464,000, and
- Professional Sports Facilities Tax revenues of \$16,232,000.

These funds were budgeted for use as follows:

- TDT revenues were budgeted for distribution to:
 - The Greater Miami Convention and Visitors Bureau (60 percent minus a stipend to the Tourist Development Council),
 - The Cultural Affairs Council (within the Miami-Dade County Department of Cultural Affairs) (20 percent), and
 - City of Miami (20 percent), which is used for debt service.
- Professional Sports Facilities Tax revenues were exclusively budgeted for debt service.
 - The debt secured and paid by this revenue stream over time has included funds for the Key Biscayne Golf Course, Golf Club of Miami, Orange Bowl Stadium, International Tennis Center, Miami Arena, Homestead Sports Complex, and the Dade International Speedway.²⁴

Proposed change: The bill expands the list of allowable uses of TDT revenues to include public parks and trails and water quality improvement projects. Allowable water quality improvement projects include, but are not limited to, flood mitigation; seagrass or seaweed removal; algae control, cleanup, or prevention measures; and septic-to-sewer conversion projects primarily undertaken to reduce or prevent the discharge of untreated or partially treated wastewater into surface water that is important to the local tourism industry if the applicable septic tank is within 2 miles of any surface water other than those designated as Outstanding Florida Waters, as provided in s. 403.061(27), F.S., or within 5 miles of any surface water designated as Outstanding Florida Waters.

²⁰ Section 125.0104(10)(c), F.S.

²¹ Miami-Dade County, Management and Budget, *FY 2019-20 Adopted Budget and Multi-Year Capital Plan, Volume 1, Appendix 0: Transient Lodging and Food and Beverage Taxes*, 351, available at <https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf> (last visited Mar. 03, 2020).

²² Section 125.0104(3)(c), F.S.

²³ Section 125.0104(3)(l), F.S.

²⁴ Miami-Dade County, *Professional Sports Franchise Facility Tax*, 268, available at <http://www.miamidade.gov/finance/library/bond-book/2018/special/professional-sports-tax-receipts.pdf> (last visited Mar. 03, 2020).

The bill increases, from 750,000 to 950,000, the current population threshold under which counties are allowed to use TDT revenue for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.

The bill limits the uses of TDT revenues in Miami-Dade County.²⁵ It allows Miami-Dade County to use TDT revenues to complete the terms of any project or contract in effect as of the date the bill becomes law, including debt service on such projects, but does not allow use of revenues for extension of any project, contract, or debt service beyond the terms in effect as of the date the bill becomes law. Any revenue not needed for those purposes is redirected to the following:

- 50 percent of the revenues will be distributed to the local government jurisdictions within which the revenues were collected. For amounts collected and remitted within municipalities, the revenues will be distributed back to each local governing body in proportion to the amount of revenue received from that municipality. For unincorporated areas, revenues will be distributed back to Miami-Dade County. The jurisdictions are authorized to use these revenues to:
 - Promote or advertise tourism and fund convention bureaus, tourist bureaus, tourist information centers, and news bureaus. Promotion can be done through direct expenditures by the jurisdiction or through an interlocal agreement with the Greater Miami Convention and Visitors Bureau;
 - Reimburse expenses incurred in providing public safety services related to tourism, like emergency medical or law enforcement services, provided that such revenues may not supplant the normal operating expenses incurred for such services;
 - Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote parks or trails that are publicly owned and operated or owned and operated by not-for-profit organizations and open to the public; or
 - Finance certain public facility infrastructure projects, if the public facilities are needed to increase tourist-related business activities in the county or subcounty special district and are recommended by the county tourist development council. Tourist Development Tax revenues may also be used for any related land acquisition, land improvement, design, and engineering costs and all other professional and related costs required to bring public facilities into service.²⁶ Any public facility infrastructure projects are subject to the conditions currently applicable to similar infrastructure projects in s. 125.0104(5)(a)6., F.S.:
 - The use must be approved by a vote of at least two-thirds of the county governing board membership;
 - No more than 70 percent of the cost of the new facilities may be paid for with these TDT revenues;

²⁵ This section of the bill applies to counties defined in s. 125.011(1), F.S. Section 125.011(1), F.S., defines “county” as “any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.” This definition currently applies only to Miami-Dade County.

²⁶ Infrastructure projects are limited to the acquisition, construction, extension, enlargement, remodel, repair, improvement, maintenance, or operation of public facilities in the jurisdiction. “Public facilities” is defined to mean “major capital improvements that have a life expectancy of 5 or more years, including, but not limited to, transportation; sanitary sewer, including solid waste, drainage, and potable water; and pedestrian facilities.”

- No more than 40 percent of these TDT revenues collected by the county are spent to promote and advertise tourism; and
- An independent analysis, performed at the expense of the county tourist development council, must demonstrate the positive impact of the infrastructure project on tourist-related business in the county.
- Acquire, construct, extend, enlarge, remodel, repair, improve, maintain, operate, or promote parks or trails that are either publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.
- 20 percent of the revenues will be distributed to the county to fund the primary bureau, department, or association responsible for organizing, funding, and promoting opportunities for artists and cultural organizations within the county. The organization currently meeting this criteria is the Miami-Dade Department of Cultural Affairs.²⁷
- 30 percent of the revenues will be distributed to the county to be used for any new purpose specified for the current food and beverage tax in s. 212.0306, F.S., renamed the Local Option Coastal Recovery and Resiliency Tax by the bill. These include any one or more of the following, as decided by a majority of the governing board of the county:
 - Water quality improvement projects, including, but not limited to:
 - Flood mitigation,
 - Seagrass or seaweed removal,
 - Algae control, cleanup, or prevention measures,
 - Biscayne Bay and waterway network restoration measures, and
 - Septic-to-sewer conversion projects primarily undertaken to reduce or prevent the discharge of untreated or partially treated wastewater into surface water that is important to the local tourism industry if the applicable septic tank is within 2 miles of any surface water other than those designated as Outstanding Florida Waters, as provided in s. 403.061(27), F.S., or within 5 miles of any surface water designated as Outstanding Florida Water.
 - Erosion control.
 - Mangrove protection.
 - Removal of invasive plant and animal species.
 - Beach renourishment.
 - Purchase of land for conservation purposes.
 - Coral reef protection.

Sections 2 and 3 – Heavy Equipment and Construction Work in Progress

Present situation: All tangible personal property is subject to ad valorem taxation unless expressly exempted.²⁸ Household goods and personal effects,²⁹ items of inventory,³⁰ and up to \$25,000 of assessed value for each tangible personal property tax return³¹ are exempt from ad valorem taxation. Anyone who owns tangible personal property on January 1 of each year and

²⁷ For more information on this organization, available at <https://www.miamidadearts.org> (last visited Mar. 02, 2020).

²⁸ Section 196.001(1), F.S.

²⁹ Section 196.181, F.S.

³⁰ Section 196.185, F.S.

³¹ Section 196.183, F.S.

who has a proprietorship, partnership, or corporation, or is a self-employed agent or a contractor, must file a tangible personal property return to the property appraiser by April 1 each year.³²

Tangible personal property is defined as all goods, chattels, and other articles of value (not including vehicles) capable of manual possession and whose chief value is intrinsic to the article itself.³³

“Inventory” is defined as chattels consisting of items commonly referred to as goods, wares, and merchandise which are held for sale or lease to customers in the ordinary course of business.³⁴ Items of inventory that are held for lease to customers in the ordinary course of business, rather than for sale, are deemed inventory only prior to the initial lease.

“Construction work in progress” is defined as items consisting of tangible personal property commonly known as fixtures, machinery, and equipment when in the process of being installed in new or expanded improvements to real property and whose value is materially enhanced upon connection or use with a preexisting, taxable, operational system or facility. Construction work in progress is subject to ad valorem taxation when it is deemed to be substantially completed, meaning when it is connected with the preexisting, taxable, operational system or facility.³⁵

Proposed Change: The bill amends s. 192.001(11)(c), F.S., to provide that the term “inventory,” for all levies other than school district levies, also means construction equipment owned by a heavy equipment rental dealer that is for sale or short-term rental in the normal course of business on the annual assessment date. “Heavy equipment rental dealer” means a person or entity principally engaged in the business of short-term rental and sale of equipment described under North American Industry Classification System code 532412. “Short-term rental” means the rental of a dealer’s heavy equipment for less than 365 days under an open-ended contract or under a contract with unlimited terms. The bill provides that the prior short-term rental of the construction or industrial equipment does not disqualify the property from qualifying as inventory, and the term “inventory” does not include heavy equipment rented with an operator.

The bill also amends s. 192.001(11)(d), F.S., to provide that for purposes of tangible personal property constructed or installed by an electric utility, construction work in progress shall not be deemed substantially complete unless all permits or approvals required for commercial operation have been received and approved.

The bill applies the provisions related to construction work in progress retroactively to January 1, 2020.

Section 4 – Hurricane Michael Rebuilding Start Time

Present situation: Changes, additions, or improvements to property are assessed at just value on January 1 after the changes, additions, or improvements are substantially completed; however,

³² Section 193.062, F.S.; See also DOR, Tangible Personal Property, available at https://floridarevenue.com/property/Pages/Taxpayers_TangiblePersonalProperty.aspx (last visited Mar. 02, 2020).

³³ Section 192.001(11)(d), F.S.

³⁴ Section 192.001(11)(c)1., F.S.

³⁵ Section 192.001(11)(d), F.S.

for property damaged or destroyed by misfortune or calamity, Florida allows property owners to retain their assessment limitations – meaning the property is taxed at less than just value – when the property owner replaces all or a portion of damaged property.³⁶ The repairs must begin within three years after the first January 1 after the damage, and the square footage of the improvements may not exceed 110 percent of the property before the damage or destruction. The 110 percent limitation does not apply to property that, as changed or improved, does not exceed 1500 square feet.

Proposed change: The bill creates s. 193.1557, F.S., to extend from three years to five years the timeframe for commencing changes, additions or improvements that replace all or a portion of property damaged or destroyed by Hurricane Michael.

Sections 5, 7, and 47 – Condominium Associations

Present situation: Condominium units and cooperative units are subject to ad valorem taxation. Current law allows condominium associations and cooperative associations to file a single, joint petition to the Value Adjustment Board ("VAB") in order to contest the tax assessment of all units within the condominium or cooperative.³⁷ The association must provide each unit owner notice of the petition and of the unit owner's right to opt out of the petition, if desired.³⁸

Under certain circumstances, a property appraiser may appeal a VAB decision to the circuit court.³⁹ In a recent decision, a Florida court found that if the property appraiser appeals a VAB decision, each unit owner must each defend the suit if the unit owner so chooses; the association may not represent all unit owners in defending the property appraiser's appeal.⁴⁰

Proposed change: The bill amends ss. 194.011, 194.181, and 718.111, F.S., to provide that where an association has filed a single joint petition to challenge a tax assessment, a condominium or cooperative association may continue to represent, prosecute, and defend the unit owners through any related subsequent proceeding in any tribunal and any appeals. This provision would apply to cases pending on July 1, 2020.

The bill provides that in any case brought by the property appraiser concerning a value adjustment board decision on a single joint petition filed by a condominium or cooperative association, the association and all unit owners included in the single joint petition are the party defendants. The association must notify all unit owners of their options to participate or not participate. The notice must be hand-delivered or delivered by certified mail, return receipt requested, or transmitted electronically if a unit owner has expressly consented in writing to receive such notices through electronic transmission. The association must provide at least 14 days for unit owners to respond to the notice. Any unit owner failing to respond to the notice will be represented in the response or answer filed by the association.

³⁶ See ss. 193.155(4)(b), 193.1554(6)(b), and 193.1555(6)(b), F.S.

³⁷ Section 194.011(3)(e), F.S.

³⁸ Section 194.011(3)(e), F.S.

³⁹ See s. 194.036, F.S.

⁴⁰ *Central Carillon Beach Condominium Association, Inc., et al., v. Garcia, etc., et al.*, 245 So. 3d 869 (Fla. 3d DCA 2018).

Section 6 – Special Magistrate Appraisals

Present situation: Florida provides for the administrative review of ad valorem tax assessments and exemption denials through local value adjustment boards (VABs).⁴¹ The VAB hearings are a venue in which taxpayers can present their case to a neutral party without the need to hire an attorney or go through the formal process of a circuit court case.

Current law authorizes a property owner to initiate a review by filing a petition with the clerk of the VAB before the 25th day after the mailing of the Notice of Proposed Property Taxes.⁴²

In most counties, the VAB hearing takes place in front of a special magistrate instead of the VAB.⁴³ Special magistrates are experienced appraisers and attorneys who are hired to serve as impartial hearing officers.⁴⁴ Special magistrates hear evidence and make recommendations to the VAB, and the VAB makes the final decision on a petition.

Proposed change: The bill amends s. 194.035(1), F.S., to provide that an appraisal may not be submitted as evidence to the VAB in any year during which the appraiser who prepared the appraisal serves the board as a special magistrate.

Sections 8 and 9 – Classification of Property

Present situation: All property on an assessment roll must be classified based upon the use of the property.⁴⁵ In Florida, apartment property is classified as multifamily property; however, the industry typically assesses apartment property as commercial property.⁴⁶

Proposed change: The bill amends s. 195.073, F.S., to specify that apartment property with more than nine units should be classified as commercial property.

Section 9 – Review of Assessment Rolls

Present situation: Florida law requires the DOR to conduct an in-depth review of the real property and tangible personal property assessment rolls of each county at least once every two years,⁴⁷ and report the results of its review to specified legislative committees and county officials.⁴⁸ The DOR must adhere to the standards to which property appraisers are required to adhere and to use all practicable steps to maximize the representativeness or statistical reliability of the samples of properties reviewed.

⁴¹ See generally s. 194.011, F.S.

⁴² Section 194.011(3), F.S. This notice is often referred to as the Truth in Millage Notice (TRIM Notice).

⁴³ Section 194.035(1), F.S., requires the use of special magistrates in counties with a population over 75,000. Smaller counties may use special magistrates, but special magistrates are not required.

⁴⁴ Section 194.035(1), F.S.

⁴⁵ Section 195.073, F.S.

⁴⁶ See International Association of Assessing Officers, Standard on Mass Appraisal of Real Property, p. 8, Standard 4.1, Valuation Models, available at <https://www.iaao.org/media/standards/StandardOnMassAppraisal.pdf> (last visited Mar. 7, 2020).

⁴⁷ Section 195.096(1), F.S.

⁴⁸ Section 195.096(3)(c), F.S.

During the review process, the DOR is required to sample and analyze enough of each tax roll to ensure that there is a 95-percent level of confidence that the portions analyzed represent the roll as a whole.⁴⁹ The DOR is required to compute these confidence intervals for each classification or sub-classification studied.⁵⁰ The DOR is also required to compute a confidence interval for the roll as a whole.

The DOR ceased conducting in-depth reviews of the tangible personal property tax rolls approximately 10 years ago as a result of the Legislature cutting the positions that conducted those reviews. As for the confidence interval calculation for the tax roll as a whole, there is no industry standard for such a calculation, as it would combine disparate classifications and sub-classifications that were analyzed independently.

A recently completed Auditor General's report contained findings noting that the DOR has not conducted in-depth reviews of tangible personal property tax rolls, and that the DOR has not met the requirement to compute a confidence interval for the property tax roll as a whole.

Proposed Change: The bill amends s. 195.096, F.S., to specify that in-depth reviews are only required for real property tax rolls and to remove the requirement that the DOR compute confidence intervals for the property tax roll as a whole.

Sections 10, 11 and 12 – Ad Valorem Exemption for Deployed Servicemembers⁵¹

Present situation: The Florida Constitution grants an exemption for military servicemembers that have Florida homesteads and are deployed on active duty outside the continental United States, Alaska or Hawaii in support of military operations designated by the Legislature.⁵² The exemption is equal to the taxable value of the qualifying servicemember's homestead on January 1 of the year in which the exemption is sought, multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year, and divided by the number of days in that year.⁵³

A service member who seeks to claim the tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment.⁵⁴

By January 15 of each year, the Department of Military Affairs must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year.⁵⁵

⁴⁹ See s. 195.096(2)(f), F.S.

⁵⁰ Section 195.096(2)(f), F.S.

⁵¹ Section 196.173(7), F.S., defines the term "servicemember" for purposes of this exemption to mean a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard.

⁵² FLA. CONST. art. VII, s. 3(g). See also s. 196.173, F.S.

⁵³ Section 196.173(4), F.S.

⁵⁴ Section 196.173(5)(a), F.S.

⁵⁵ Section 196.173(3), F.S.

Proposed change: The bill updates the statutory list of military operations eligible for the exemption by adding Operation Juniper Shield, which began February 2007, Operation Pacific Eagle, which began September 2017, and Operation Martillo, which began January 2012. The bill also removes Operation Enduring Freedom which ended on December 31, 2014.

The bill extends the application deadline to receive an exemption for a qualified deployment added by the bill for the 2020 tax roll to June 1, 2020.

For purposes of applying for the exemption, the bill specifies that a property appraiser may grant the exemption to an otherwise qualifying applicant who fails to meet the June 1, 2020, deadline, under the following conditions:

- The applicant files on or before the 25th day after the mailing by the property appraiser of the notice of proposed property taxes;
- The applicant is qualified under the exemption; and
- The applicant produces sufficient evidence to demonstrate that they were unable to apply in a timely manner.

The bill provides an opportunity for review by a VAB, and the bill waives the VAB filing fee.

Section 13 – Ad Valorem Exemption for Hospitals

Present situation: The Florida Constitution authorizes the Legislature to grant property tax exemptions for property used predominately for educational, literary, scientific, religious or charitable purposes.⁵⁶ The Legislature has implemented these exemptions and set forth the criteria used to determine whether property is used for an exempt purpose.⁵⁷

Only the portions of the property used predominantly for exempt purposes may be exempt from ad valorem taxation.⁵⁸ In determining whether the use of a property qualifies the property for an ad valorem tax exemption, the property appraiser must consider the nature and extent of the exempt activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other exempt entities.⁵⁹ If the property owned by an exempt organization is used exclusively for exempt purposes, it is totally exempt from ad valorem taxation.

Charitable Organizations

Under federal law, an organization may only be tax-exempt if it is organized and operated for exempt purposes, including charitable purposes.⁶⁰ None of the organization's earnings may benefit any private shareholder or individual, and the organization may not attempt to influence legislation as a substantial part of its activities.⁶¹

⁵⁶ FLA. CONST., art. VII, s. 3.

⁵⁷ Sections 196.195 and 196.196, F.S.

⁵⁸ Section 196.196(2), F.S.

⁵⁹ Section 196.196(1)(a)-(b), F.S.

⁶⁰ 26 U.S.C. § 501(c)(3).

⁶¹ *Id.*

Florida law defines a charitable purpose as a function or service which is of such a community service that its discontinuance could legally result in the allocation of public funds for the continuance of the function or the service.⁶²

Determining Profit vs. Non-Profit Status of an Entity

Current law outlines the criteria a local property appraiser must consider in determining whether an applicant for a religious, literary, scientific, or charitable exemption is a nonprofit or profit-making venture for the purposes of receiving an exemption.⁶³ An applicant must provide the property appraiser with “such fiscal and other records showing in reasonable detail the financial condition, record of operations, and exempt and nonexempt uses of the property . . . for the immediately preceding fiscal year.”⁶⁴

The applicant must show that “no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.”⁶⁵

Based on the information provided by the applicant, the property appraiser must determine whether the applicant is a nonprofit or profit-making venture or if the property is used for a profit-making purpose.⁶⁶ In doing so, the property appraiser must consider the reasonableness of various payments, loan guarantees, contractual arrangements, management functions, capital expenditures, procurements, charges for services rendered, and other financial dealings.

A religious, literary, scientific, or charitable exemption may not be granted until the property appraiser, or the VAB on appeal, determines the applicant to be nonprofit.⁶⁷

Additional Criteria for Hospitals, Nursing Homes, and Homes for Special Services

The Legislature has used its authority to exempt property used for charitable purposes to exempt, among other property, property used by hospitals, nursing homes, and homes for special services.⁶⁸ In order to qualify for the exemption, a hospital,⁶⁹ nursing home,⁷⁰ or a home for special services⁷¹ must be a Florida non-profit corporation that is exempt organizations under the provisions of s. 501(c)(3) of the Internal Revenue Code.⁷²

⁶² Section 196.012(7), F.S.

⁶³ Section 196.195, F.S.

⁶⁴ Section 196.195(1), F.S.

⁶⁵ Section 196.195(3), F.S.

⁶⁶ Section 196.195(2)(a)-(e), F.S.

⁶⁷ Section 196.195(4), F.S.

⁶⁸ Section 196.197, F.S.

⁶⁹ Section 196.012(8), F.S., “Hospital” means an institution which possesses a valid license granted under chapter 395 on January 1 of the year for which exemption from ad valorem taxation is requested

⁷⁰ Section 196.012(8), F.S., “Nursing home” or “home for special services” means an institution that possesses a valid license under chapter 400 or part I of chapter 429 on January 1 of the year for which exemption from ad valorem taxation is requested.

⁷¹ *Id.*; s. 400.801, F.S. “Home for special services” means a site licensed by AHCA prior to January 1, 2006, where specialized health care services are provided, including personal and custodial care, but not continuous nursing services.

⁷² Section 196.197, F.S.

Community Benefit Activities Reporting Requirements

To qualify for federal tax exemption, hospitals must report their community benefit activities to the Internal Revenue Service by filing IRS Form 990 and a supplemental Schedule H form. Community benefit activities include the net, unreimbursed costs of charity care (providing free or discounted services to patients who qualify under the hospital's financial assistance policy); participation in means-tested government programs, such as Medicaid; health professions education; health services research; subsidized health services; community health improvement activities; and cash or in-kind contributions to other community groups.⁷³ Net community benefit activities do not include revenue from uncompensated care pools or programs, such as Low Income Pool or Disproportionate Share Hospital funds.⁷⁴

Proposed change: The bill requires that the value of net community benefit expense provided by a hospital in each county be compared to the value of the hospital's property exemption in each county. If the value of the charity care is less than the value of the all of the hospital's exempt property, then the hospital's exemption on each parcel in a county will be reduced to reflect the ratio of the hospital's charity care in the county to the tax value of all of the hospital's exempt property in the county. The language provides specific calculations.

The bill requires hospitals when applying for the exemption each year to provide their IRS form 990, schedule H, and a schedule displaying: 1) the value of net community benefit expense provided or performed in each Florida county in which a hospital's properties are located, and 2) the portion of net community benefit expense reported by the hospital on its most recently filed IRS Form 990, schedule H, attributable to the services and activities provided or performed by the hospital outside of Florida. The sum of the amounts provided in the schedule must equal the total net community benefit expense reported by the hospital on its most recently filed IRS Form 990, schedule H.

The bill also requires hospitals to provide a statement signed by the hospital's CEO and an independent certified public accountant that the information submitted is true and correct.

Section 14 – Educational Institution Property Tax Exemption

Present situation: Florida exempts from ad valorem tax property owned by an educational institution and used exclusively for educational purposes.⁷⁵ The exemption applies to any educational institution that uses the property for educational purposes; the institution can be for-profit and private. The exemption has been expanded to include unique ownership situations. For instance, land, buildings, and other improvements used exclusively for educational purposes is deemed to be owned by an educational institution (and therefore exempt) if the entity that owns

⁷³ James, Julia. Health Affairs, *Nonprofit Hospitals' Community Benefit Requirements* (2016), available at <https://www.healthaffairs.org/doi/10.1377/hpb20160225.954803/full/> (last visited Mar. 07, 2019); Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2019) available at <https://www.irs.gov/pub/irs-pdf/i990sh.pdf>. (last visited Mar. 09, 2020).

⁷⁴ Department of the Treasury, Internal Revenue Service, *Instructions for Schedule H (Form 990)* (2019) available at <https://www.irs.gov/pub/irs-pdf/i990sh.pdf>. (last visited Mar. 09, 2020).

⁷⁵ Section 196.198, F.S.

the land is a nonprofit entity and the land is leased by an educational institution that is a 501(c)(3) entity that provides education limited to kindergarten through grade 8.⁷⁶

Proposed change: The bill amends s. 196.198, F.S., to provide that land, buildings, and other improvements used exclusively for educational purposes shall be deemed owned by an educational institution if the educational institution that currently uses the land, buildings, and other improvements for educational purposes received the exemption under s. 196.198, F.S., in any 10 prior years, and, under a lease, the educational institution is responsible for any taxes owed and for ongoing maintenance and operational expenses for the land, buildings, and other improvements. The educational institution must receive the full benefit of the exemption. The owner of the property must disclose to the educational institution the full amount of the benefit derived from the exemption and the method for ensuring that the educational institution receives the benefit.

Section 15 – Notice of Proposed Property Taxes during Declared Emergencies

Present situation: Florida law requires local taxing authorities to annually prepare and deliver to each taxpayer a notice of proposed property taxes. Various noticing requirements, timeframes, and other required procedures are provided in law; however, during a state of emergency, there is no secondary process available to a property appraiser if the emergency stops the property appraiser from complying with the statutory timeframes. Historically, governors have issued executive orders providing the authority for the DOR to make the needed adjustments to the process.

Proposed change: The bill amends s. 200.065, F.S., to provide alternative deadlines, scheduling requirements, revised notice delivery methods and other procedures that may be used by property appraisers and local taxing authorities as a result of a declared state of emergency.

Section 16 – Information Included with the Notice of Proposed Property Taxes

Present situation: Each August, property appraisers send a Notice of Proposed Property Taxes (TRIM Notice) to all property owners. The TRIM Notice provides specific information about the property owner's parcel.⁷⁷

The TRIM notice provides assessment information about the property. It also lists each taxing authority that levies taxes on the property, how much tax the each taxing authority levied on that parcel in the previous year, the proposed levies under the proposed budget, and how much would be levied on the property if the taxing authority made no budget changes.⁷⁸ It also provides notice of the preliminary budget hearing.⁷⁹

Proposed change: The bill amends s. 200.069, F.S., limiting additional information included in the mailing of the TRIM Notice additional statements explaining items in the notice and any other relevant information for property owners.

⁷⁶ *Id.*

⁷⁷ Section 200.069, F.S.

⁷⁸ *Id.*

⁷⁹ Section 200.069(4)(g), F.S.

Sections 17, 18, and 19 – Communications Services Tax

Present situation: Current law imposes a tax on the sale of communication services, including wireline and mobile telecommunications service, cable and video service, and direct-to-home satellite service.

The state tax rate for communications services (state CST) is 4.92 percent and is collected on each retail sale of communications services, except direct-to-home satellite services, which are taxed at a rate of 9.07 percent.⁸⁰ In addition to the 4.92 percent state tax rate, communications services are subject to gross receipts tax at a rate of 2.52 percent.⁸¹

Local governments are authorized to levy a local communications service tax, which varies by jurisdiction.⁸²

Proposed change: The bill reduces the state CST rate for communications services from 4.92 percent to 4.42 percent and the rate for direct-to-home satellite services from 9.07 percent to 8.57 percent. The bill provides that these reduced rates take effect January 1, 2021.

Sections 20 and 22 – Fuel Tax Bond Requirement Increase

Present situation: Sections 206.05 and 206.90, F.S., require fuel tax dealers to file with the DOR a bond to allow for recovery of unpaid tax. The amount of the bond is to be “approximately 3 times the combined average monthly tax levied...during the preceding 12 calendar months”; however, the required bond may not exceed \$100,000.⁸³

Based on information provided by the DOR, three times the combined average monthly tax levied for motor fuel terminal suppliers is currently \$405,209.⁸⁴ Three times the average levy for motor fuel wholesalers and importers is \$151,459. The three-month average of these two types of motor fuel dealers is currently \$278,334, which is significantly over the current \$100,000 limit in statute.

Proposed change: The bill increases the maximum bond amount to \$300,000. This amount is slightly higher than the current three-month average tax levied for motor fuel dealers.

Section 21 – Dyed Diesel Fuel Penalty Revision

Present situation: Florida law exempts from state and local tax dyed diesel fuel used: on a farm for farming purposes; by a local government; in a vehicle owned by an aircraft museum; by the American Red Cross; in a vessel employed in the business of commercial transportation or in commercial fishing; in a school bus; in a local bus service open to the public; by a nonprofit educational facility; in a motor vehicle owned by the US Government which is used off-highway; in a vessel of war; for home heating; in certain off-road or stationary equipment; and

⁸⁰ Section 202.12(1), F.S.

⁸¹ Section 203.01(1), F.S.

⁸² Section 202.19(1), F.S.

⁸³ Section 206.05(1), F.S.

⁸⁴ Document received from DOR staff, Feb. 6, 2020, (on file with the Senate Committee on Appropriations).

for noncommercial vessels.⁸⁵ Dyed diesel fuel is marked with red dye⁸⁶ and when sold, invoices, shipping papers, bills of lading, pumps, and other related items associated with the sale are required to state: “Dyed Diesel Fuel, Nontaxable Use Only, Penalty for Taxable Use.”⁸⁷

Failure to include the required statement subjects the seller to a penalty of \$10 for every gallon of diesel fuel involved or \$1,000, whichever is greater.⁸⁸ This has resulted in large penalties being assessed on taxpayers, even when all tax has been paid.

Proposed change: The bill amends s. 206.8741, F.S., to change the penalty to a flat \$2,500 for each month there is a failure to include the notice as required.

Section 23 – Aviation Fuel Tax

Present situation: Florida law imposes an excise tax of 4.27 cents on every gallon of aviation fuel sold in the state or brought into the state for use.⁸⁹ Aviation fuel is defined as “fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.”⁹⁰

In 2018, the Legislature authorized an air carrier who conducts scheduled operations or all-cargo operations that are authorized under 14 C.F.R. parts 121, 129, or 135 to receive a refund of 1.42 cents per gallon on the aviation fuel the carrier purchases, effectively reducing the tax rate imposed on these carriers to 2.85 cents per gallon.

Proposed change: The bill increases from 1.42 cents per gallon to 2.38 cents per gallon the refund granted to certain air carriers, effectively reducing the tax rate imposed on these carriers from 2.85 cents per gallon to 1.89 cents per gallon.

Section 24 – Convention Development Taxes

Present situation: The Convention Development Tax Act⁹¹ authorizes certain counties or special taxing districts within a county to levy convention development taxes on the short-term rental or lease of accommodations. Depending on a jurisdiction’s eligibility to levy a convention development tax (CDT), the tax rate varies from 1 percent to 3 percent:

- The consolidated county convention development tax may be levied at 2 percent.⁹²
- The charter county convention development tax may be levied at 3 percent.⁹³

⁸⁵ Section 206.874(3), F.S.

⁸⁶ See Rule 12B-5.140(1), F.A.C., and 48.4082-1(b), Treasury Regulations (February 26, 2002), which specifies the dye “Solvent Red 164 (and no other dye) at a concentration spectrally equivalent to at least 3.9 pounds of the solid dye standard Solvent Red 26 per thousand barrels of diesel fuel.”

⁸⁷ Section 206.8741(2), F.S.

⁸⁸ Sections 206.8741(6) and 206.872(11), F.S.

⁸⁹ Section 206.9825, F.S.

⁹⁰ Section 206.9815, F.S.

⁹¹ Section 212.0305, F.S.

⁹² Section 212.0305(4)(a), F.S.

⁹³ Section 212.0305(4)(b), F.S.

- The special district, special, and subcounty convention development tax may be levied at a rate up to 3 percent.⁹⁴

Duval County (as a county consolidated with a municipality), Miami-Dade County (as a charter county), and parts of Volusia County currently levy the maximum convention development tax allowable in their respective jurisdictions.⁹⁵

Convention Development Tax Process

The CDT levies must be authorized pursuant to an ordinance enacted by the county's governing body,⁹⁶ and can take effect the first day of any month at least 60 days after enactment of the ordinance. Revenues must be deposited in the county's convention development trust fund.⁹⁷

The charter county development tax has an exception for municipalities in which a municipal tourist tax is levied and in which a resolution prohibiting imposition of the charter county convention development levy within such municipality has been adopted.⁹⁸ The convention development levy is imposed by the county in all other areas of the county except municipalities which have a municipal tourist tax and which have adopted a resolution. No CDT funds may be used in a municipality which has adopted such a resolution. In Miami-Dade County, three jurisdictions have a municipal tourist tax and have adopted a resolution under this provision. Those jurisdictions are Bal Harbour, Miami Beach, and Surfside.⁹⁹

Convention Development Tax Uses

Generally, the revenues raised by CDT levies may be used for capital construction of convention centers and other tourist-related facilities, as well as tourism promotion; however, the authorized uses vary by levy.

The charter county convention development tax, levied only by Miami-Dade County, is restricted to the following uses:

- Two-thirds of the proceeds were to be used to extend, enlarge, and improve the largest existing publicly owned convention center in the county.¹⁰⁰ Since this project was completed, this tax revenue was authorized for use to acquire, construct, extend, enlarge, remodel, repair, improve, plan for, operate, manage, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or an intercity light rail transportation system.¹⁰¹
- One-third of the proceeds were to be used to construct a new multipurpose convention/coliseum/exhibition center/stadium or the maximum components thereof as funds

⁹⁴ Section 212.0305(4)(c),(d), and (e), F.S.

⁹⁵ Office of Economic & Demographic Research, *2020 Local Option Tourist / Food & Beverage / Tax Rates in Florida's Counties*, available at <http://edr.state.fl.us/Content/local-government/data/county-municipal/2020LOTTRates.pdf> (last visited Mar. 07, 2020).

⁹⁶ Section 212.0305(4)(b)1., F.S.

⁹⁷ Section 212.0305(4)(b)7., F.S.

⁹⁸ Section 212.0305(4)(b)3., F.S.

⁹⁹ Office of Economic & Demographic Research (EDR), *2019 Local Government Financial Handbook* (Nov. 2019), 237-238, available at <http://edr.state.fl.us/Content/local-government/reports/lgfh19.pdf> (last visited Mar. 03, 2020).

¹⁰⁰ Section 212.0305(4)(b)2.a., F.S.

¹⁰¹ Section 212.0305(4)(b)2.c., F.S.

permit in the most populous municipality in the county (Miami).¹⁰² Since this project was completed, tax revenues may be used, as determined by the county, to operate an oversight authority or to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more convention centers, stadiums, exhibition halls, arenas, coliseums, auditoriums, golf courses, or related buildings and parking facilities in Miami.¹⁰³

Current Collections and Related Expenditures in Miami-Dade County

In the State Fiscal Year 2019-2020, Miami-Dade County estimates their CDT will generate \$97,025,000.¹⁰⁴ Budgeted expenditures include payments to Miami-Dade County for bond payments for the Performing Arts Center and neighborhood cultural facilities, Performing Arts Center operations, American Airlines Arena operations and maintenance, and interlocal payments to the Cities of Miami Beach and Miami, as well as residual payments to Miami-Dade County for eligible projects.¹⁰⁵

Proposed change: The bill limits the uses of CDT revenues to the following:

- To complete the terms of any project or contract in effect as of the date the bill would become law, including debt service on such projects, but does not allow revenues to be used for extension of any project, contract, or debt service beyond the terms in effect as of the date the bill would become law.
- Any revenue not needed for those purposes is redirected to the following:
 - One-half of the revenues will be distributed back to the municipal jurisdictions within the county. Revenues will be distributed back to each municipality in proportion to the amount of revenue collected in that municipality compared to the revenues collected in all municipalities within the county. The jurisdictions are authorized to use the revenues to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following: a convention center, exhibition hall, coliseum, auditorium, or related building or parking facility in the jurisdiction. They are also authorized to use the revenues to promote and advertise tourism and tourism promotion bureaus or to enter into an interlocal agreement with the county-wide tourism bureau to use the funds.
 - One-half of the revenues will be distributed to Miami-Dade County. The county is authorized to use the revenues to acquire, construct, extend, enlarge, remodel, repair, improve, operate, or maintain one or more of the following: a convention center, exhibition hall, coliseum, auditorium, or related building or parking facility in the county. The county may also use the proceeds to fund a countywide convention and visitors' bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its cities as business and pleasure destinations. The organization currently meeting this criteria is the Greater Miami Convention and Visitors Bureau.¹⁰⁶

¹⁰² Section 212.0305(4)(b)2.b., F.S.

¹⁰³ Section 212.0305(4)(b)2.d., F.S.

¹⁰⁴ Miami-Dade County, Management and Budget, *FY 2019-20 Adopted Budget and Multi-Year Capital Plan, Volume 1, Appendix 0: Transient Lodging and Food and Beverage Taxes*, 351, available at <https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf> (last visited Mar. 03, 2020).

¹⁰⁵ *Id.*

¹⁰⁶ For more information on this organization, available at <https://www.miamiandbeaches.com/about-gmcbv> (last visited Mar. 08, 2020).

Section 25 – Local Option Food and Beverage Tax

Present situation: Section 212.0306(1)(a), F.S., authorizes Miami-Dade County to impose, by majority vote of the county’s governing body, a 2 percent tax on the sale of food, beverages, and alcoholic beverages in restaurants, coffee shops, snack bars, wet bars, night clubs, banquet halls, catering or room services, and any other food and beverage facilities in or on the property of hotels and motels. Like the tourist development tax, the proceeds of this 2 percent tax must be used to fund a convention bureau or to fund similar tourism promotion activities.¹⁰⁷

Food and Beverage Tax Process

The levy of the food and beverage tax must be authorized pursuant to an ordinance enacted by the county’s governing body.¹⁰⁸ A certified copy of the ordinance imposing the levy must be furnished by the county to DOR within 10 days after approval of such ordinance.¹⁰⁹ The effective date of imposition of the levy can be the first day of any month at least 60 days after enactment of the ordinance.¹¹⁰ The county must locally administer the tax subject to the same provisions in s. 125.0104, F.S., that local jurisdictions which self-administer tourist development taxes must use.¹¹¹

The food and beverage tax has an exception for municipalities in which a municipal tourist tax is levied.¹¹² In Miami-Dade County, three jurisdictions levy a municipal tourist tax: Bal Harbour, Miami Beach, and Surfside.¹¹³

Food and Beverage Tax Uses

The revenues raised by the food and beverage tax are to be used to fund a countywide convention and visitors bureau which, by interlocal agreement and contract with the county, has been given the primary responsibility for promoting the county and its cities as business and pleasure destinations. The organization currently meeting this criteria is the Greater Miami Convention and Visitors Bureau.¹¹⁴ In the event the interlocal agreement and contract end, the funds are to be used for general tourism purposes consistent with the TDT provisions in ss. 125.0104(5)(a)2. and 3., F.S.

¹⁰⁷ Section 212.0306(3)(a), F.S.

¹⁰⁸ Section 212.0306(1)(a), F.S.

¹⁰⁹ Section 212.0306(4), F.S.

¹¹⁰ Section 212.0306(5), F.S.

¹¹¹ Section 212.0306(6), F.S.

¹¹² Section 212.0306(2)(d), F.S.

¹¹³ Office of Economic & Demographic Research (EDR), *2019 Local Government Financial Handbook* (Nov. 2019), 237-238, available at <http://edr.state.fl.us/Content/local-government/reports/lghf19.pdf> (last visited Mar. 03, 2020)

¹¹⁴ For more information on this organization, available at <https://www.miamiandbeaches.com/about-gmcvb> (last visited Mar. 08, 2020).

Current Collections and Related Expenditures in Miami-Dade County

In the State Fiscal Year 2019-2020, Miami-Dade County estimates this tax will generate \$8,131,000.¹¹⁵ Budgeted expenditures include \$100,000 to the Tourist Development Council and the remainder to the Greater Miami Convention and Visitors Bureau.

Proposed change: The bill names the two percent food and beverage tax the “Local Option Coastal Recovery and Resiliency Tax.”

The bill redirects the use of tax revenues as follows:

- Funds are used to complete the terms of the contract in effect as of the date the bill would become law but does not allow the use of revenues for the extension of any contract beyond the terms in effect as of the date the bill would become law.
- Any revenue not needed for those purposes is redirected to any one or more of the following, as decided by a majority of the governing board of the county:
- Water quality improvement projects, including, but not limited to:
 - Flood mitigation,
 - Seagrass or seaweed removal,
 - Algae control, cleanup, or prevention measures,
 - Biscayne Bay and waterway network restoration measures, and
 - Septic to sewer conversion projects primarily undertaken to reduce or prevent the discharge of untreated or partially treated wastewater into surface water that is important to the local tourism industry if the applicable septic tank is within 2 miles of any surface water other than those designated as Outstanding Florida Waters, as provided in s. 403.061(27), F.S., or within 5 miles of any surface water designated as Outstanding Florida Water.
 - Erosion control.
 - Mangrove protection.
 - Removal of invasive plant and animal species.
 - Beach renourishment.
 - Purchase of land for conservation purposes.
 - Coral reef protection.

Section 26 – Sales Tax on the Rental of Commercial Real Property

Present situation: Since 1969, Florida has imposed sales tax on the total rent charged under a commercial lease or license to use real property.¹¹⁶ Sales tax is due at the rate of 5.5 percent on the total rent paid. Local option sales surtaxes can also apply.¹¹⁷ If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to tax.¹¹⁸

Numerous commercial rentals are exempted from the tax, including:

¹¹⁵ Miami-Dade County, Management and Budget, *FY 2019-20 Adopted Budget and Multi-Year Capital Plan, Volume 1, Appendix 0: Transient Lodging and Food and Beverage Taxes*, 351, available at <https://www.miamidade.gov/budget/library/fy2019-20/adopted/appendix-o.pdf> (last visited Mar. 03, 2020).

¹¹⁶ Chapter 1969-222, Laws of Fla.

¹¹⁷ Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

¹¹⁸ Rule 12A-1.070, F.A.C.

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.

Florida is the only state to charge sales tax on commercial rentals of real property.

Proposed change: The bill amends s. 212.031, F.S., to reduce the state sales tax rate on the rental of commercial real property from 5.5 percent to 5.4 percent, beginning January 1, 2021.

Section 27 – Documentation Period for Purchases of Boats and Aircraft

Present situation: Nonresidents¹¹⁹ who purchase a boat or aircraft in Florida for use outside of Florida are not required to pay Florida sales tax, subject to the following documentation requirements:

- A purchaser has **10 days** from the date the boat or aircraft left Florida to provide the DOR with proof of the removal.
- A purchaser has **30 days** from the date of departure to provide the DOR with documentation that the boat or aircraft has been titled or registered in another jurisdiction. If proof of registration is not available within **30 days**, the purchaser must provide evidence that the registration was applied for in another jurisdiction within the timeframe and must send the registration to the DOR once the registration is received.
- The selling dealer has **5 days** from the date of the sale to provide to the DOR a copy of the invoice (or other proof of sale) and a copy of the original affidavit from the purchaser attesting that he or she has read the statute on nonresident purchases.

Proposed change: The bill amends s. 212.05, F.S., to extend the timeframes for providing documentation as follows:

- The time for the purchaser to provide proof of removal is extended from 10 to 30 days.
- The time for the purchaser to provide proof of registration is extended from 30 to 90 days.
- The time for the dealer to provide the invoice and affidavit is extended from 5 to 30 days.

Section 28 – Charter County and Regional Transportation System Surtax

Present situation: Each charter county that has adopted a charter, each county the government of which is consolidated with that of one or more municipalities, and each county that is within or under an interlocal agreement with a regional transportation or transit authority created under ch. 343 or ch. 349, F.S., may levy a discretionary sales surtax of up to one percent, subject to approval by a majority vote of the electorate of the county or by a charter amendment approved by a majority vote of the electorate of the county.¹²⁰

¹¹⁹ Section 212.05(1)(a)2., F.S., provides that Florida sales tax does not apply to the purchase of a boat or aircraft if the purchaser is, at the time of delivery, (1) a nonresident of the state, (2) not engaged in carrying on a trade or business which would use the boat or aircraft in the state, and (3) not a corporation which has any Florida resident officers or directors.

¹²⁰ Section 212.055(1), F.S.

Generally, the surtax proceeds are used for the development, construction, operation, and maintenance of fixed guideway rapid transit systems; bus systems; on-demand transportation services; and roads and bridges.¹²¹ Counties eligible to levy the surtax may also use up to 25 percent of the proceeds for nontransit purposes.¹²² Currently four counties are levying the tax.¹²³

Proposed change: The bill provides that the surtax levied in counties, as defined in s. 125.011(1), F.S.,¹²⁴ shall expire on December 31, 2049. Any new levy of such surtax, on or after January 1, 2050, must be approved by a majority vote of the electorate at a general election held within two years prior to the effective date of a new levy.

The bill also requires any levy of this surtax enacted pursuant to a referendum held on or after July 1, 2020, to be imposed for a period of no more than 20 years.

Sections 28 and 29 – School Capital Outlay Surtax

Present situation: Subsection 212.055(6), F.S., authorizes school districts to levy discretionary sales surtaxes for school capital outlay. Each county school board may levy a discretionary sales surtax at a rate not to exceed 0.5 percent, pursuant to a resolution conditioned to take effect only upon approval by a majority vote of the electors of the county voting in a referendum.¹²⁵

The resolution must include a statement that provides a brief and general description of the school capital outlay projects to be funded by the surtax.¹²⁶ The resolution must include a plan for the use of the surtax proceeds for fixed capital expenditures or fixed capital costs associated with the construction, reconstruction, or improvement of school facilities and campuses that have a useful life expectancy of five or more years, and any land acquisition, land improvement, design, and related engineering costs. The plan must also include the costs of retrofitting and providing for technology implementation, including hardware and software, for the various sites within the school district. Surtax revenues may be used for the purpose of servicing bond indebtedness to finance authorized projects, and any interest accrued may be held in trust to finance the projects.¹²⁷

Twenty-four counties currently levy a school capital outlay surtax.¹²⁸ DOR collects the surtax revenues and is required by law to distribute them to the district school board imposing the tax.¹²⁹ There is currently no provision in law requiring school districts to share the capital outlay surtax funds with charter schools.

¹²¹ Section 212.055(1)(d), F.S.

¹²² Section 212.055(1)(d)3., F.S.

¹²³ Broward, Duval, Hillsborough and Miami-Dade counties levy this tax. See Office of Economic & Demographic Research, *2019 Local Government Financial Information Handbook*, p. 158. available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Mar. 07, 2020).

¹²⁴ Section 125.011(1), F.S., defines “county” as “any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.” This definition currently applies only to Miami-Dade County.

¹²⁵ Section 212.055(6), F.S.

¹²⁶ Section 212.055(6)(b), F.S.

¹²⁷ Section 212.055(6)(c), F.S.

¹²⁸ Office of Economic & Demographic Research, *2019 Local Government Financial Information Handbook*, p. 158., available at <http://edr.state.fl.us/Content/local-government/reports/lgfih19.pdf> (last visited Mar. 03, 2020).

¹²⁹ Section 212.055(6)(d), F.S.

Proposed change: The bill requires resolutions to levy the surtax to include a statement that the revenues collected must be shared with charter schools based on their proportionate share of the total school district enrollment.

The bill also requires that charter schools expend the surtax revenues in a manner consistent with existing allowable uses for charter school capital outlay funding, as set forth in section 1013.62(4), F.S., which are for the:

- Purchase of real property.
- Construction of school facilities.
- Purchase, lease-purchase, or lease of permanent or relocatable school facilities.
- Purchase of vehicles to transport students to and from the charter school.
- Renovation, repair, and maintenance of school facilities that the charter school owns or is purchasing through a lease-purchase or long-term lease of five years or longer.
- Payment of the cost of premiums for property and casualty insurance necessary to insure the school facilities.
- Purchase, lease-purchase, or lease of driver's education vehicles; motor vehicles used for the maintenance or operation of plant and equipment; security vehicles; or vehicles used in storing or distributing materials and equipment.
- Purchase, lease-purchase, or lease of computer and device hardware and operating system software necessary for gaining access to or enhancing the use of electronic and digital instructional content and resources; and enterprise resource software applications that are classified as capital assets in accordance with definitions of the Governmental Accounting Standards Board, have a useful life of at least five years, and are used to support schoolwide administration or state-mandated reporting requirements. Enterprise resource software may be acquired by annual license fees, maintenance fees, or lease agreement.
- Payment of the cost of the opening day collection for the library media center of a new school.

Further, all revenues and expenditures shall be accounted for in a charter school's monthly or quarterly financial statement pursuant to s. 1002.33(9), F.S. These changes only apply to levies authorized by vote of the electors on or after July 1, 2020.

Section 30 – Form 1099-K Reporting Requirement

Present situation: Section 6050W of the Internal Revenue Code requires payment settlement entities¹³⁰ to file a form each year to provide information about payments made by credit card or third party merchants.¹³¹ The Internal Revenue Service requires these entities to use Form 1099-K, and to submit the form each calendar year on or before the last day of February of the year following the transactions.¹³²

¹³⁰“A PSE [payment settlement entity] makes a payment in settlement of a reportable payment transaction, that is, any payment card or third party network transaction, if the PSE submits the instruction to transfer funds to the account of the participating payee to settle the reportable payment transaction.” Internal Revenue Service, *2020 Instructions for Form 1099-k, Payment Card and Third Party Network Transactions*, 1, (Nov. 07, 2019), available at <https://www.irs.gov/pub/irs-pdf/i1099k.pdf> (last visited Mar. 04, 2020).

¹³¹ 26 U.S.C. s. 6050W(e)

¹³² Internal Revenue Service, *About Form 1099-K, Payment Card and Third Party Network Transactions*, available at <https://www.irs.gov/forms-pubs/about-form-1099-k> (last visited Mar. 03, 2020).

Reportable transactions include any payment card transactions (i.e. credit card or debit card) or a third party payment system (i.e. PayPal or Apple Pay). The form is filed by the payment settlement entity (e.g., a bank, credit card company, or payment platform (i.e. PayPal)) and a copy is provided to dealers who have payment card transactions of any amount, or who have third-party payment transactions in excess of \$20,000 and more than 200 transactions.¹³³

Some states require payment settlement entities to submit a copy of Form 1099-K related to sales in that state or for residents of that state, if the IRS already requires the Form 1099-K to be filed. Examples include Alabama,¹³⁴ Tennessee,¹³⁵ North Carolina,¹³⁶ and New York.¹³⁷

For states that do not require separate copies of Form 1099-K to be filed with them, the IRS provides those returns to the states for tax enforcement purposes.¹³⁸ However, the information can be delayed, and thus, a state's ability to use the information for enforcement purposes becomes limited. Most states have a window in which an audit can take place. In Florida, audits have a three-year statute of limitations.¹³⁹ If the information is delayed, transactions that could have been included in an audit may be outside the statute of limitations by the time the state receives Form 1099-K.

Proposed change: The bill creates s. 212.134, F.S., to require entities required to file Form 1099-K to file a copy with the DOR electronically within 15 days of filing the federal form. The bill also creates a penalty of \$1,000 for each month a required form is not filed with the DOR, up to \$10,000 per year, per reporting entity. This penalty may be waived by the DOR if it determines the failure was due to reasonable cause.

Section 31 – Tax Jurisdiction Situs and Distribution Adjustments

Present situation: Businesses that register with the DOR to collect sales and use tax are assigned to a specific county in DOR's computer system based upon the best available address information. The county assignment is used to determine the local tax rate that the business is required to collect and also for the DOR to correctly distribute revenue to the correct local government.

¹³³ Internal Revenue Service, *Understanding Your Form 1099-K*, available at <https://www.irs.gov/businesses/understanding-your-form-1099-k> (last visited Mar.03, 2020).

¹³⁴ Alabama Department of Revenue, *New 1099-K Filing Requirements*, (Feb. 2, 2018), available at <https://revenue.alabama.gov/2018/02/new-1099-k-filing-requirement/> (last visited Mar. 03, 2020).

¹³⁵ Tennessee Department of Revenue, *1099-K Filing Requirement*, available at <https://www.tn.gov/revenue/taxes/sales-and-use-tax/1099-k-filing-requirement.html> (last visited Mar. 03, 2020).

¹³⁶ North Carolina Department of Revenue, *Guidance on Information Reporting, Payment Settlement Entity (1099K)*, available at <https://www.ncdor.gov/file-pay/guidance-information-reporting> (last visited Mar. 03, 2020).

¹³⁷ New York State, Department of Taxation and Finance, available at https://www.tax.ny.gov/bus/multi/reporting_requirements.htm (last visited Mar. 03, 2020).

¹³⁸ See section 6103(d), IRC, authorizing the information to be shared with states. The Internal Revenue Manual, Part 11, Chapter 3, Section 32, provides more information about the disclosures to states for tax administration purposes. It is available at https://www.irs.gov/irm/part11/irm_11-003-032 (last visited Mar. 08, 2020).

¹³⁹ Section 95.091(3)(a)1.a., F.S., provides a statute of limitations that allows for assessments of tax “within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later.”

The DOR uses several sources to determine the county assignment, including United States Postal Service approved software and the DOR's Address/Jurisdiction Database.¹⁴⁰ Communications services dealers¹⁴¹ and insurers¹⁴² use the latter database to identify the tax rates applicable to specific addresses.

The Address/Jurisdiction Database is currently updated twice a year, consistent with statutory requirements.¹⁴³ Local jurisdictions must provide updates 120 days before changes go into effect, and the DOR must publish the updates 90 days before they go into effect.¹⁴⁴ Changes to the database are effective January 1 and July 1 of each year.¹⁴⁵ Some local jurisdictions do not routinely provide the DOR with updated jurisdiction information.

Current law does not require a local jurisdiction to notify the DOR of changes to county address information that would identify sales tax dealers that may be located in their local jurisdiction. As a result, the DOR may be unaware of changes in addresses, annexations, incorporations, reorganizations, or any other changes in jurisdictional boundaries, all which may affect the tax rate assignment and subsequent revenue distributions to a county.

In addition, there is no statutory guidance on how the DOR should resolve a misallocation of distributions among counties.

Proposed change: The bill requires the DOR to update the Address/Jurisdiction Database every six months based on information received from counties. Counties are responsible for providing the DOR with any updates necessary to identify subcounty special districts that may be subject to special tourist development taxes under s. 125.0104(3)(b), F.S., unless the county self-administers that tax. These provisions align with existing requirements for the Address/Jurisdiction Database, and updates will follow the existing January 1/July 1 update schedule.

The bill also provides specific statutory guidance on correcting misallocations due to incorrect local jurisdiction assignments. Generally, for distributions of tourist development taxes, convention development taxes, or discretionary sales surtaxes, or for distributions from the Local Government Half-cent Sales Tax Clearing Trust Fund, misallocations caused by an incorrectly assigned address will be corrected prospectively from the date the DOR is made aware of the incorrect assignment, subject to the following criteria:

- If the county that should have received the distributions has complied with the notification provisions to update the Address/Jurisdiction Database in a timely manner, then prior incorrect distributions may be corrected by adjusting current and future distributions from the

¹⁴⁰ Department of Revenue, available at <https://pointmatch.floridarevenue.com/Default.aspx> (last visited Mar. 08, 2020).

¹⁴¹ See s. 202.22(2)(a), F.S., and Rule 12A-19.071, F.A.C., for more information on how the address/jurisdiction database is used for CST purposes.

¹⁴² Insurance Premium Taxes are specific to street addresses. Insurers use the database to assign policies and premiums to local taxing jurisdictions. More information about how the database is used and updated for IPT purposes available at <https://floridarevenue.com/taxes/taxesfees/Pages/ipt.aspx> (last visited Mar. 08, 2020).

¹⁴³ Section 202.22(2)(b)2., F.S.

¹⁴⁴ Section 202.22(2)(b)1. and 2., F.S.

¹⁴⁵ Section 202.22(2)(b)1., F.S.

incorrect county to the correct county. Those distributions will be prorated and may be distributed over an extended period, not to exceed three years.

- If the county that should have received the distributions did not comply with the notification provisions to update the Address/Jurisdiction Database in a timely manner, but the county which received the amount in error did update the Database in a timely manner, the prior incorrect distributions will not be corrected; only future distributions will be corrected.

The bill also allows the counties affected by incorrect distributions to agree to an alternative method of correction pursuant to an interlocal agreement. The agreement must be submitted to the DOR within 90 days of the date the DOR is notified of the misallocation.

Sections 32, 33, 34, 41, and 42 – Sports Development Program

Present situation: Section 288.11625, F.S., titled Sports Development (Program), provides a statutory process for professional sports programs within Florida to apply for distributions of state sales and use tax revenue to fund professional sports franchise facilities. The Department of Economic Opportunity (DEO) administers the Program and is responsible for screening applicants¹⁴⁶ for state funding. The purpose of the Program is to provide state funding for the construction, reconstruction, renovation, or improvement of a sports facility.¹⁴⁷

Distribution of State Funds

The amount that an applicant may receive is based on 75 percent of the average annual new incremental state sales taxes generated by sales at the facility, and are limited by a tiered system.

The DEO is required to consult with the DOR and the Office of Economic and Demographic Research to develop a standard calculation for estimating the average annual new incremental state sales taxes generated by sales at the facility.

Use of Funds

Once certified, applicants may use the funds for the following purposes:

- Constructing, reconstructing, renovating, or improving a facility or reimbursing such costs;
- Paying or pledging for the payment of debt service on bonds issued for the construction or renovation of a facility;
- Funding debt service reserve funds, arbitrage rebate obligations, or other amounts payable with respect thereto on bonds issued for the construction or renovation of a facility; and
- Reimbursing the costs associated with debt service payments or refinancing of bonds issued for the construction or renovation of a facility.¹⁴⁸

¹⁴⁶ Section 288.11625(1), F.S.

¹⁴⁷ Section 288.11625(3), F.S. A “facility” is a structure, and its adjoining parcels of local-government-owned land, primarily used to host games or events held by a beneficiary and does not include any portion used to provide transient lodging. Section 288.11625(2)(e), F.S.

¹⁴⁸ Section 288.11625(8), F.S.

Contract

Certified applicants must enter into a contract with the DEO that meets certain criteria.¹⁴⁹ The contract must also require the applicant to reimburse the state, after all distributions have been made, any amount by which the total distributions made under the program exceed actual new incremental state sales taxes generated by sales at the facility during the contract, plus a five percent penalty on that amount.

Applicant History under the Sports Development Program

To date, no applicants have been certified and no funds have been distributed under the Program. In Fiscal Year 2014-2015, the DEO received four applications: the City of Jacksonville, the City of Orlando, Daytona International Speedway, LLC, and South Florida Stadium, LLC.

In Fiscal Year 2015-2016, the DEO received four applications: Buccaneers Football Stadium Limited Partnership, the City of Jacksonville, Daytona International Speedway, LLC, and South Florida Stadium, LLC. The Buccaneers application was incomplete and not transmitted to the Legislature.

In Fiscal Year 2016-2017, the DEO received one application. It was from Buccaneers Stadium, LLC.

The DEO did not receive any applications for the Program in Fiscal Years 2017-2018 or 2018-2019.¹⁵⁰

Economic Development Programs Evaluation

Section 288.0001, F.S., requires the Office of Economic and Demographic Research and the OPPAGA to review and analyze the Sports Development Program by January 1, 2018, and every three years thereafter. As no applicants have been certified under the Program and no funds have been distributed, the offices were not able to review the Program in its first three-year reporting cycle.^{151, 152}

Proposed change: The bill repeals s. 288.11625, F.S., eliminating the Sports Development Program. The bill also removes provisions relating to the distribution of funds under the program, reimbursement provisions, and reporting requirements, to conform to elimination of the program.

Section 35 – Electronic Notification

Present situation: The DOR provides taxpayers official notice of actions such as billings, audits, and assessments by United States Postal Service mail delivery.¹⁵³ Certain communications, like

¹⁴⁹ Section 288.11625(7), F.S.

¹⁵⁰ Email from Karis Lockhart, Deputy Director of Legislative Affairs, DEO (Jan. 17, 2020), (on file with the Senate Committee on Appropriations).

¹⁵¹ OPPAGA, Report No. 17-13, Florida Economic Development Program Evaluations-Year 5, p. 45 (Dec. 28, 2017).

¹⁵² EDR, Return on Investment for the Florida Sports Foundation Grants and Related Programs, p. 1 (Jan. 1, 2018).

¹⁵³ Certain taxes provide that notice of agency action should be by personal delivery or registered or certified mail. *See, e.g.*, s. 220.739, F.S. In addition, s. 120.569(1), F.S., provides that any notice in any proceeding in which the substantial interests

ongoing communications related to an audit, general taxpayer information publications, or updates to a taxpayer's account, may be conducted using e-mail if requested by the taxpayer.

The DOR is authorized to use e-mail or other electronic means to distribute information relating to changes in law, tax rates, interest rates, or other information that is not specific to a particular taxpayer; to remind taxpayers of due dates; to respond to a taxpayer at an e-mail address that does not support encryption if the use of that address is authorized by the taxpayer; or to notify taxpayers to contact the DOR.¹⁵⁴

Electronic notification, however, is not used for formal agency action, even in cases where the DOR has communicated with the taxpayer for an extended time through electronic means or where the taxpayer requests electronic delivery.

Proposed change: The bill provides specific authority for the DOR to send taxpayers official notice of actions by electronic means if the DOR receives the consent of the taxpayer.

Section 36 – Tolling the Period during which a Taxpayer Can File a Refund Claim

Present situation: Under Florida law, a taxpayer may file an application for a refund when tax was paid error, an overpayment was made, or when no tax was due.¹⁵⁵ Generally, a taxpayer has three years from the time the tax was paid to apply for the refund.¹⁵⁶

When a taxpayer would like to dispute the outcome of an audit or a refund denial, the taxpayer may pursue a protest through the informal protest process within the DOR.¹⁵⁷ The informal protest process provides taxpayers an independent forum to challenge audit assessments and refund denials.

The time limit for the DOR to make a tax assessment is tolled during the informal protest process;¹⁵⁸ however, the time for a taxpayer to file a refund claim is not tolled during the informal protest. Thus, if a refund claim is identified during informal protest, the time for the taxpayer to file a refund claim may have already expired.

Proposed change: The bill amends s. 213.21, F.S., to toll the time for refund claims during the informal protest process.

of a party are determined by an agency must be delivered or mailed to each party (or attorney of record) at the address of record.

¹⁵⁴ Section 213.053(5)(b), F.S.

¹⁵⁵ Section 215.26(1), F.S.

¹⁵⁶ Section 215.26(2), F.S.

¹⁵⁷ Section 213.21(1)(a), F.S.; see also *Florida Tax Procedure: A Primer* by Robert Babin and Yvonne Gsteiger, Florida Bar Journal, Vol. 81, No. 6, p. 73, June 2007 available at <https://www.floridabar.org/the-florida-bar-journal/florida-tax-procedure-a-primer/> (last visited Mar. 08, 2020).

¹⁵⁸ Section 213.21(1)(b), F.S.

Sections 37 and 38 – Refunds of Corporate Income Tax to Scholarship Funding Contributors

Present situation: On December 22, 2017, the federal government passed the Tax Cuts and Jobs Act,¹⁵⁹ which resulted in Florida's corporate income tax receipts increasing significantly, beginning in Fiscal Year 2018-2019. In response to the increased tax receipts, the Legislature established a refund and rate reduction procedure that will provide refunds to corporate income taxpayers with a positive tax liability.¹⁶⁰ Based on current forecast for corporate income tax collections, only one set of refunds is currently scheduled.¹⁶¹ The refunds will be paid by May 1, 2020.¹⁶²

Florida currently allows corporate income taxpayers to participate in the Florida Tax Scholarship Program. Under the program, a corporate taxpayer receives a credit against the corporate income tax for the amount of its contribution.¹⁶³ If, for instance, a corporate taxpayer makes a qualifying contribution equal to 100 percent of its corporate tax liability, the corporation's final tax liability would be zero. For purposes of the refunds described above, the corporate taxpayer would be treated as if it had paid no tax, when, in fact, it had made a qualifying contribution equal to its tax due.

Proposed change: The bill amends s. 220.1105, F.S., to provide that the amount of corporation's qualifying contribution under the Florida Tax Scholarship Program is treated as a tax payment for purposes of s. 220.1105, F.S.

Section 39 and 43 – Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit

Present situation: In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue corporate income tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. The credit is equal to 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program;¹⁶⁴
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.¹⁶⁵

Applicants may receive up to \$500,000 in tax credits per site, per year for each site voluntarily rehabilitated.

¹⁵⁹ Pub. Law No. 115-97, H.R. 1 (Dec. 22, 2017).

¹⁶⁰ See 220.1105, F.S.

¹⁶¹ Revenue Estimating Conference, *Corporate Income Tax – Supporting Material for Statutory Adjustment*, available at http://www.edr.state.fl.us/Content/conferences/generalrevenue/CIT_AdjustmentSupportingMaterial.pdf (last visited Mar. 08, 2020).

¹⁶² See s. 220.1105(4)(c), F.S.

¹⁶³ Section 220.1875(1), F.S.

¹⁶⁴ Section 376.30781, F.S.

¹⁶⁵ Section 220.1845, F.S.

Applicants may claim tax credits equal to an additional 25 percent of rehabilitation costs, not to exceed \$500,000, in the final year of cleanup, as evidenced by the DEP issuing a “No Further Action” order for that site.¹⁶⁶ Applicants may also claim an additional 25 percent of the rehabilitation costs, not to exceed \$500,000, for redevelopment of the brownfield sites into affordable housing¹⁶⁷ or a health care facility.¹⁶⁸

Applicants may claim 50 percent of the costs, not to exceed \$500,000, for removal, transportation and disposal of solid waste.¹⁶⁹

The total amount of tax credits for all sites that may be granted by the DEP is \$10 million annually. In the event that approved tax credit applications exceed the \$10 million statutory limit, remaining applications roll over into the next fiscal year.

Since 1998, the program has approved \$108.1 million in credits.¹⁷⁰ Since 2014, the approved tax credits have averaged more than \$12.3 million per year. The DEP received 149 applications for 2019 calendar year totaling approximately \$13.0 million.¹⁷¹ As of February 1, 2020, the DEP has been unable to fund \$8.2 million in approved tax credits.¹⁷²

Proposed change: The bill amends ss. 220.1845 and 376.30781, F.S., to provide a one-time additional tax credit authorization of \$8.2 million for Fiscal Year 2020-2021.

Section 40 – Like-Kind Exchange Tax Credit

Present situation: Corporate income taxpayers are allowed to deduct the cost of long-term business assets by deducting a portion of the cost over the useful life of the property (depreciation).¹⁷³ Since taxpayers deduct for depreciation in calculating their federal taxable income, the deduction is already included when the taxpayer begins calculating its Florida taxable income.

For over a decade, federal legislation has granted an additional, first-year depreciation deduction (bonus depreciation).¹⁷⁴ The legislation has generally authorized 50 or 100 percent of the cost of qualifying property to be deducted in the first year of depreciation. Currently, some level of bonus depreciation is authorized through 2026.

¹⁶⁶ Section 376.30781(3)(c), F.S.

¹⁶⁷ Section 376.30781(3)(d), F.S.

¹⁶⁸ Section 376.30781(3) (f), F.S.

¹⁶⁹ 376.30781(3) (e), F.S.

¹⁷⁰ Email correspondence with DEP staff, Feb. 6, 2020, (on file with the Senate Committee on Appropriations).

¹⁷¹ Email correspondence with DEP staff, Feb. 5, 2020, (on file with the Senate Committee on Appropriations).

¹⁷² DEP, Voluntary Cleanup Tax Credit Backlog, *available at* https://floridadep.gov/sites/default/files/VCTC-Pending-Awards_30Jul19.pdf (last visited Mar. 08, 2020)

¹⁷³ *See generally* ss. 167 and 168, IRC.

¹⁷⁴ *See* the Economic Stimulus Act of 2008, Pub. L. No. 110-185; the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5; the Small Business Jobs Act of 2010, Pub. L. No. 111-240; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312; the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240; the Tax Increase Prevention Act of 2014, Pub. L. No. 113-295; the Consolidated Appropriations Act, 2016, Pub. L. No. 114-113; and the Tax Cuts and Jobs Act of 2017, Pub. L. No. 115-97.

Due to the near term fiscal impact that bonus depreciation deductions would have on Florida, the Legislature has chosen to “decouple” from bonus depreciation deductions by requiring taxpayers to add back the amount of bonus depreciation to their taxable income for Florida purposes and then subtract 1/7th of that amount over seven years.¹⁷⁵ This treatment has the effect of giving the taxpayer the benefit of bonus depreciation, but requiring the taxpayer to “spread” that benefit over a 7-year period.

The Tax Cuts and Jobs Act of 2017

On December 22, 2017, President Trump signed into law the Tax Cuts and Jobs Act of 2017 (TCJA).¹⁷⁶ The TCJA made significant changes to federal income tax provisions related to individuals, corporations, and the treatment of foreign income. The TCJA extended bonus depreciation through taxable years beginning before January 1, 2027.¹⁷⁷

Section 1031 (Like-Kind) Exchanges

Generally, when a taxpayer sells an asset, the taxpayer must recognize as income any gain on the sale.¹⁷⁸ One exception to this general recognition rule is provided by section 1031 of the Internal Revenue Code, for transactions commonly known as “like-kind exchanges” or “1031 exchanges.”

Prior to the TCJA, taxpayers were allowed to defer recognition of gain or loss when business property was exchanged for business property of a like kind.¹⁷⁹ Thus, a business that was regularly exchanging old business equipment for new business equipment might avoid having to recognize any relevant income at the federal level by exchanging the old equipment for new equipment, rather than selling the old equipment and buying new equipment in separate transactions. This type of transaction could be used by a rental car company that regularly updates its rental fleet.¹⁸⁰

Importantly, the TCJA amended s. 1031 to limit like-kind exchange treatment to exchanges of realty. The effect of losing the ability to use s. 1031 was mitigated at the federal level because the TCJA provides 100 percent bonus depreciation deduction on the new equipment purchase. For Florida tax purposes, companies are now required to report their income earned on like-kind exchanges and then “spread” the bonus depreciation amount over seven years.

Proposed change: The bill creates s. 220.197, F.S., which provides a \$2 million credit against the 2018 state corporate income tax of certain passenger car rental and leasing and sales financing companies. A corporation is eligible for a \$2 million credit if it deferred gains on the sale of its personal property assets, under s. 1031 of the Internal Revenue Code, for the purposes

¹⁷⁵ See chs. 2008-206, 2009-192, 2011-229, 2013-46, 2015-35, 2016-220, and 2018-119, L.O.F.

¹⁷⁶ Pub. Law No. 115-97 (Dec. 22, 2017).

¹⁷⁷ See Tax Cuts and Jobs Act of 2017, s. 13201, Pub. L. No. 115-97.

¹⁷⁸ See s. 62(a)(3), IRC

¹⁷⁹ See s. 1031(a)(1), IRC (2016)

¹⁸⁰ Gerald Auten, David Joufaian, and Romen Mookerjee, *Recent Trends in Like-kind Exchanges*, 1 (August 1, 2017), available at <http://dx.doi.org/10.2139/ssrn.3049029> (last visited Mar. 08, 2020), stating that: “[i]ndeed, the most common like-kind exchanges are now those involving the ‘trade-in’ of vehicles and replacement vehicles and vehicle fleets, e.g., by rental car companies, farmers, and businesses.”

of federal income tax, during its taxable year that began on or after August 1, 2016, but before August 1, 2017, and it is:

- A car rental or leasing company that is classified under NAICS¹⁸¹ industry group code 53211 and that had a final tax liability of more than \$15 million for its taxable year, beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least 700 percent greater than its final tax liability from its prior tax year; or
- A car sales financing establishment or car leasing company, classified under NAICS industry group code 522220 and 532112, respectively that had a final tax liability of more than \$15 million for its taxable year beginning on or after August 1, 2017, and before August 1, 2018. This tax liability must also be at least \$15 million greater than its final tax liability from the prior tax year.

The bill fixes the NAICS references used in s. 220.197, F.S., to the version published in 2007 by the Office of Management and Budget, Executive Office of the President.

This section of the bill operates retroactively to January 1, 2018.

Section 44 – Tax Collection Enforcement Diversion Program

Present situation: The Tax Collection Enforcement Diversion program, which collects revenue due from persons who have not remitted their sales tax collections, began in 2002 as a pilot program and was fully implemented in 2005. The program, operated by participating State Attorney's Offices in cooperation with the DOR, is available to taxpayers that show a pattern of tax delinquency for several months that does not exceed the misdemeanor level. Eight State Attorney's Offices currently participate in the program: Jacksonville, Clearwater, Miami, Tampa, West Palm Beach, Fort Lauderdale, Fort Myers, and Orlando (Key West participated in the program from Fiscal Year 2008-2009 through Fiscal Year 2013-2014).

Fifty percent of all collections from the program are distributed as sales tax collections via 212.20, F.S., and fifty percent are deposited into a special reserve account for the Florida Association of Centers for Independent Living to be used to administer the James Patrick Memorial Work Incentive Personal Attendant Services and Employment Assistance Program and to contract with the State Attorneys participating in the tax collection enforcement diversion program. The portion of the receipts deposited into the trust fund supports personal care attendants and other support and services to persons with significant and chronic disabilities to enable them to obtain or maintain competitive and integrated employment, including self-employment.

Proposed change: The bill amends s. 413.4021, F.S., to increase the percentage of collections from the program that are deposited into the special reserve account of the Florida Association of Centers for Independent Living from 50 percent to 75 percent.

¹⁸¹ The NAICS is the North American Industry Classification System developed by the Office of Management and Budget for use by Federal statistical agencies to classify business establishments for the collection, analysis, and publication of statistical data related to the U.S. business economy. U.S. Census Bureau, *Introduction to NAICS*, available at <https://www.census.gov/eos/www/naics/> (last visited Mar. 08, 2020).

Section 45 – Reemployment Assistance Tax E-File Revisions

Present situation: The following Reemployment Assistance Tax filers must file and remit payments electronically:

- Agents who prepare and report for 100 or more employers in any quarter of the preceding state fiscal year.¹⁸²
- Employers with 10 or more employees in any quarter during the prior state fiscal year.¹⁸³

Filers who fail to file electronically when required by law are subject to a penalty of \$50 plus \$1 per employee included on the report.¹⁸⁴ If the filer also failed to pay electronically, there is an additional penalty of \$50.¹⁸⁵ An employer or agent has the ability to request a waiver of the penalty. This waiver request must be in writing and must establish that the imposition of the penalty would be inequitable.¹⁸⁶

The DOR has the authority to waive the requirement for electronic filing of reports if the filer is unable to comply.¹⁸⁷

Because the number of employees and number of employers for whom an agent files determines whether the filer has to file electronically, there have been administrative issues in tracking who is required to file electronically, which resulted in unnecessary billing of agents, and caused confusion for taxpayers and the DOR.¹⁸⁸

The DOR reviewed filings under this section and determined that over 99 percent of returns filed by agents were e-filed properly.¹⁸⁹ The DOR believes this would continue even without the statutory requirement, as electronic submissions are more efficient than paper filings.¹⁹⁰

In addition, the DOR reviewed similar provisions in other southern states and found that Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, and Texas all elect not to bill agents for this issue.¹⁹¹

Proposed Change: Section 443.163, F.S., is amended to:

- Remove the electronic filing and payment requirements and penalty for agents.
- Remove the requirement for a written penalty waiver request.
- Require employers to file corrections electronically if they are required to file reports and make payments electronically.

¹⁸² Section 443.163(1), F.S.

¹⁸³ *Id.*

¹⁸⁴ Section 443.163(1)(a), F.S.

¹⁸⁵ *Id.*

¹⁸⁶ Section 443.163(5), F.S.

¹⁸⁷ Section 443.163(3), F.S.

¹⁸⁸ “Reemployment Tax Agent Requirement” document received from the DOR on February 4, 2020, (on file with the Senate Committee on Appropriations).

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.*

- Reduce electronic filing penalties from \$50 to \$25, which is consistent with other reemployment tax penalties.¹⁹²

Section 46 – Surplus Lines Insurance Premiums Tax

Present situation: Surplus lines insurance refers to a category of insurance for which the admitted market is unable or unwilling to provide coverage.¹⁹³ There are three basic categories of surplus lines risks:

- Specialty risks that have unusual underwriting characteristics or underwriting characteristics that authorized insurers¹⁹⁴ view as undesirable;
- Niche risks for which authorized insurers do not have a filed policy form or rate; and
- Capacity risks that are risks where an insured needs higher coverage limits than those that are available in the admitted market.

A surplus lines insurance policy can cover risk held in multiple states. In these instances, Florida imposes a tax rate of 5 percent on that portion of the premium attributed to the risk in Florida; the portion of the premium attributed to risk outside Florida is subject to the rate where the risk is located.

Proposed change: The bill amends s. 626.932, F.S., to reduce the tax rate on surplus lines premium from 5 percent to 4.94 percent and subject all surplus lines risk to the new rate.

Section 48 – “Back-to-School” Sales Tax Exemption

Present situation: Florida has enacted a “back-to-school” sales tax holiday 18 times since 1998. The Florida Residents’ Tax Relief Act of 1998 established Florida’s first tax holiday, during which clothing purchases of \$50 or less were exempt from tax.¹⁹⁵ Backpacks were added to the tax holiday in 1999 and school supplies were added in 2001. In 2013, the Legislature expanded the exemption to include personal computers and related accessories selling for \$750 or less, purchased for noncommercial home or personal use. The duration of “back-to-school” sales tax holidays has varied from three to ten days. The type and value of exempt items have also varied.

Sixty-seven of the 73 school districts in Florida began the 2019-2020 school year on August 12, 2019, and the remaining school districts began by August 19, 2019.¹⁹⁶

Proposed change: The bill establishes a 3-day period, from August 7 to August 9, 2020, during which time the following items that cost \$60 or less are exempt from the state sales tax and county discretionary sales surtaxes:

¹⁹² Section 443.141(1)(b)1., F.S., provides for a \$25 per month penalty for delinquent reports.

¹⁹³ The admitted market is comprised of insurance companies licensed to transact insurance in Florida. The administration of surplus lines insurance business is managed by the Florida Surplus Lines Service Office. Section 626.921, F.S.

¹⁹⁴ Section 624.09, F.S., describes an “authorized” insurer as one who is duly authorized by a subsisting certificate of authority issued by the office of Insurance Regulation to transact insurance in this state.

¹⁹⁵ Chapter 98-341, Laws of Fla.

¹⁹⁶ Florida Department of Education, *PK-12 Public School Data Publications and Reports*, available at <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited Mar. 08, 2020).

- Clothing (defined as an “article of wearing apparel intended to be worn on or about the human body,” but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts various “school supplies” that cost \$15 or less per item and first \$1,000 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones and furniture, and devices or software intended primarily for recreational use, are not exempted.

The exemptions provided for in the “back-to-school” holiday do not apply to the following:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

A dealer may opt-out from participating in the sales tax holiday if less than 5 percent of the dealer’s gross sales of tangible personal property in the prior calendar year are comprised of items that would be exempt under the bill. If a qualifying dealer chooses not to participate in the tax holiday, the dealer must, by August 1, 2020, notify the DOR in writing of its election to collect sales tax during the holiday and must post a copy of that notice in a conspicuous location at its place of business. The DOR is authorized to adopt emergency rules to implement the provisions of the tax holidays.

Section 49 – Sales Tax Exemption for Items Related to Disaster Preparedness

Present situation: Florida has enacted a “disaster preparedness” sales tax holiday six times since 2006, exempting specified items in preparation for the Atlantic hurricane season that officially begins June 1 of each year. The types and values of exempted items have varied, and the length of the exemption periods has varied from 3 to 12 days.

The Florida Division of Emergency Management recommends having a disaster supply kit with items such as a battery operated radio, flashlight, batteries, and first-aid kit to last for a minimum of 7 days.¹⁹⁷

Proposed change: The bill establishes a 7-day sales tax holiday, from May 29 to June 4, 2020, for specified items related to disaster preparedness. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- A portable self-powered light source selling for \$20 or less;
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less;
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less;
- A ground anchor system or tie-down kit selling for \$50 or less;

¹⁹⁷ Florida Division of Emergency Management, *Plan & Prepare: Disaster Supply Kit*, available at <https://www.floridadisaster.org/planprepare/disaster-supply-kit/> (last visited Mar. 08, 2020).

- A gas or diesel fuel tank selling for \$25 or less;
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less;
- A nonelectric food storage cooler selling for \$30 or less;
- A portable generator that is used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less; and
- Reusable ice selling for \$10 or less.

The exemptions provided for in this sales tax holidays do not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

The DOR is authorized to adopt emergency rules to implement the provisions of the tax holidays.

Section 50 to 61 – Children’s Promise Tax Credit

Present situation: The Children’s Promise Tax Credit program does not currently exist.

Proposed change: The bill creates s. 402.62, F.S., the Children’s Promise Tax Credit. Generally speaking, the program grants tax credits to businesses that contribute to charitable organizations that provide services focused on child welfare. The tax credits can be taken against corporate income tax, insurance premium tax, severance taxes on oil and gas production, alcoholic beverage tax on beer, wine, and spirits, or sales tax by direct pay permit holders.

Certification and Responsibilities of Eligible Charitable Organizations

To qualify for the program, an eligible charitable organization must be exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, must be a Florida entity with its principal office in Florida, and must provide services to:

- Prevent child abuse, neglect, abandonment, or exploitation;
- Enhance the safety, permanency, or well-being of children who have child welfare involvement;
- Assist families who have children with a chronic illness or physical, intellectual, developmental, or emotional disability; or
- Provide workforce development services to families of children eligible for a federal free or reduced-price meals program.

An eligible charitable organization cannot:

- Provide abortions, pay for or provide coverage of abortions or financially support any other entity that provides, pays for, or provides coverage of abortions, or
- Receive more than 50 percent of its total annual revenue from the Department of Children and Families (DCF) or the Agency for Persons with Disabilities, either directly or indirectly.

In addition, the organization must:

- Have a contract or written referral agreement with, or reference from, the DCF, a Community-based Care Organization (CBC), a managing entity, or the Agency for Persons with Disabilities to provide the services listed above;
- Apply to the DCF for designation as an eligible charitable organization; and
- Provide ongoing information as requested by the DCF.

An eligible charitable organization must spend 100 percent of the funds received under this program on direct services for Florida residents for an approved purpose under the program. It must also conduct background screenings on all volunteers and staff working with children in any programs funded by the program. In addition, the organization must annually provide a copy of its most recent IRS Return of Organization Exempt from Income Tax form (Form 990), hire an independent certified public accountant to conduct an audit of the organization, and provide the audit report to the DCF within 180 days after completion of the organization's fiscal year.

Responsibilities of the Department of Children and Families

The DCF is responsible for reviewing and approving or denying applications from charitable organizations. The DCF must review and designate eligible charitable organizations each year. The DCF must create and maintain a section of its website dedicated to the program and provide information on the process for becoming an eligible charitable organization, a list of current eligible charitable organizations, and the process for a taxpayer to select an eligible charitable organization as the recipient of funding through the program.

Revenue Sources

Corporate Income Tax: The bill creates s. 220.1876, F.S., which, beginning January 1, 2021, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against any corporate income tax due. The bill makes conforming amendments to ss. 220.02, 220.13, and 220.186.

Severance Taxes on Oil and Gas Production: The bill creates s. 211.0252, F.S., which, beginning July 1, 2021, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against any tax due for oil or gas production. However, this credit, combined with any credits for contributions made to the Florida Tax Credit Scholarship Program, may not exceed 50 percent of the tax due on the return on which the credit is taken. If the combined value of the credits is greater than 50 percent, the taxpayer must first exhaust credits for contributions made pursuant to the Florida Tax Credit Scholarship Program. The bill directs the DOR to ensure that only amounts distributed to the General Revenue Fund are reduced by the credit.

Sales Taxes Paid by Direct Pay Permit Holders: The bill creates s. 212.1833, F.S., which, beginning July 1, 2021, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against any state sales tax due from a direct pay permit holder under s. 212.183, F.S. The bill directs the DOR to ensure that only amounts distributed to the General Revenue Fund are reduced by the credit. Taxpayers claiming this tax credit must file returns and pay taxes by electronic means.

Alcoholic Beverage Taxes: The bill creates s. 561.1212, F.S., which, beginning January 1, 2021, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against tax due under ss. 563.05, 564.06, or 565.12, F.S., except for taxes imposed on domestic wine production. The credit is limited to 90 percent of the tax due on the return on which the credit is taken. The Division of Alcoholic Beverage and Tobacco is directed to ensure that only amounts distributed to the General Revenue Fund are reduced under the credit.

Insurance Premium Tax: The bill creates s. 624.51056, F.S., which, beginning January 1, 2021, authorizes a credit of 100 percent of an eligible contribution to an eligible charitable organization against any insurance premium tax due.

Cap on Annual Tax Credit Approvals

The annual tax credit cap for all credits under this program is \$5 million per state fiscal year.

Application and Approval of Tax Credits by the DOR

Businesses that wish to make contributions to an eligible charitable organization must apply to the DOR beginning October 1, 2020, for an allocation of the tax credit. The taxpayer must specify in the application each tax for which the taxpayer requests a credit, the applicable taxable year for a credit against the corporate income and insurance premium tax, and the applicable state fiscal year for a credit against oil and gas production, direct pay permit sales, and alcoholic beverage tax. The DOR is required to approve the tax credits on a first-come, first-served basis and must obtain the approval of Division of Alcoholic Beverages and Tobacco prior to approving an alcoholic beverage tax credit under s. 561.1212, F.S.

Any unused credit may be carried forward for up to ten years. The bill does not allow a taxpayer to transfer the credit to another entity unless all of the assets of the taxpayer are transferred in the same transaction. The DOR may approve transfers between members of an affiliated group of corporations if the credit transferred will be taken against the same type of tax.

Rescinding Tax Credits

A taxpayer may apply to the DOR to rescind all or part of an approved tax credit. The amount rescinded becomes available for that state fiscal year to another eligible taxpayer as approved by the DOR if the taxpayer receives notice that the rescindment has been accepted.

The bill provides rulemaking authority to the DOR, DCF, and DBPR. In addition, the DOR is granted emergency rulemaking authority for purposes of implementing the act. An appropriation of \$208,000 is provided to the DOR for implementation costs.

The bill directs the Florida Institute for Child Welfare at the Florida State University to perform an analysis of the program and the use of the funds and submit a report to the Governor, the Speaker of the House of Representatives, and President of the Senate by October 31, 2024.

Sections 62 and 63 – Sales Tax Absorption

Present situation: Florida businesses that sell items subject to Florida’s sales tax must register as dealers with the DOR.¹⁹⁸ A dealer must add sales tax to the price of the taxable good or service and collect the tax from a purchaser at the time of sale.¹⁹⁹

Florida prohibits dealers from advertising, directly or indirectly, that they will absorb, or refund to a purchaser all or part of the sales tax due on a sale.²⁰⁰ A dealer who violates this prohibition, whether by advertising or refunding, is guilty of a second-degree misdemeanor.²⁰¹

Proposed Change: The bill amends s. 212.07(4), F.S., to allow a dealer the option to advertise that it will pay all or part of the sales tax due. To do so, however, the dealer must provide the customer with an invoice or similar document that (1) states that the business will pay the sales tax owed, and (2) separately states the sale price and the amount of tax due on the sale. If a dealer violates this provision, he or she is guilty of a second-degree misdemeanor.²⁰²

The bill also amends s. 212.15, F.S., to expand the criminal offense of failure to remit collected taxes to the department to include taxes paid on behalf of the purchaser by the dealer. Depending on the amount of revenue stolen, and whether the dealer has prior offenses, he or she is subject penalties ranging from a second-degree misdemeanor to a first-degree felony.

Section 64 – Appropriation

The bill appropriates \$72,500 in nonrecurring funds from the General Revenue Fund to the DOR to administer the commercial rental tax rate reduction.

Section 65 instructs the Division of Law Revision to replace the phrase “the effective date of this act” wherever it occurs within the bill with the date that the act becomes law.

Section 66 authorizes the DOR to adopt emergency rules to implement the changes to ss. 206.05, 206.8741, 206.90, 212.05, 212.134, 212.181, 213.21, and 220.1105, F.S., made by the bill.

Section 67 provides that the effective date of the bill is July 1, 2020, except where the bill expressly states otherwise.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

¹⁹⁸ Florida Dep’t. of Revenue, *Business Owner’s Guide for Sales and Use Tax* at 4 (Jul. 2019), available at https://floridarevenue.com/Forms_library/current/gt300015.pdf (last visited Mar. 08, 2020).

¹⁹⁹ Sections 212.06(3)(a) and 212.07(2), F.S.

²⁰⁰ Section 212.07(4), F.S.

²⁰¹ Section 212.07(4), F.S.

²⁰² A dealer who commits a subsequent violation of s. 212.07(4), F.S., is subject to a first-degree misdemeanor.

Subsection (b) of Art. VII, s. 18 of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds 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 existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{203, 204} which is \$2.2 million or less for Fiscal Year 2020-2021.²⁰⁵

The Revenue Estimating Conference determined that the bill will reduce the authority that counties have to raise revenue from the local option sales tax by \$6.0 million in Fiscal Year 2020-2021. The bill also reduces local government revenues from ad valorem taxes by \$29 million. Therefore, the mandates provision may apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The total impact of the bill reduces revenues in Fiscal Year 2020-2021 by \$120.5 million (\$133.0 million recurring); General Revenue Fund receipts are reduced by \$92.5 million (\$85.7 million recurring), state trust fund receipts are reduced by \$3.2 million (\$4.8 million recurring), and local government revenue is reduced by \$24.8 million (\$42.5 million recurring), as displayed in the table below.

Total tax reductions are represented by the sum of the recurring impacts (reflecting the annual value of permanent tax cuts when fully implemented) and the pure nonrecurring

²⁰³ FLA. CONST. art. VII, s. 18(d).

²⁰⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Mar. 08, 2020).

²⁰⁵ Based on the Demographic Estimating Conference's April 1, 2020, estimated population adopted on Dec. 3, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Mar. 08, 2020).

impacts (reflecting temporary tax reductions). The total tax reduction of \$198.4 million is the sum of the tax reductions of \$133.0 million (recurring, excluding appropriations), and \$65.4 million (pure nonrecurring in Fiscal Year 2020-2021).

CS/HB 7097, Eng. 1								
Fiscal Year 2020-21 Estimated Fiscal Impacts (million of \$)								
	General Revenue		State Trust Funds		Local		Total	
	1st Yr.	Recur.	1st Yr.	Recur.	1st Yr.	Recur.	1st Yr.	Recur.
Sales Tax: Business Rent Tax/Rate Cut 0.1%	(14.0)	(29.3)	(*)	(*)	(1.8)	(3.8)	(15.8)	(33.1)
Comm Services Tax: Rate Cut 0.5%	(20.9)	(50.1)	(*)	(*)	(4.0)	(9.6)	(24.9)	(59.7)
Sales Tax: BTS Holiday 3 Days	(32.3)	-	(*)	-	(9.5)	-	(41.8)	-
Sales Tax: Tax Holiday/Disaster Preparedness	(4.3)	-	(*)	-	(1.3)	-	(5.6)	-
Sales Tax: Collection Enforcement Diversion Prog.	(0.9)	(0.9)	(*)	(*)	(0.1)	(0.1)	(1.0)	(1.0)
Sales Tax: Absorption	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
Corporate Income Tax: Brownfields Backlog	(8.2)	-	-	-	-	-	(8.2)	-
Corporate Income Tax: Like-Kind Exchange Relief	(6.0)	-	-	-	-	-	(6.0)	-
Ad Valorem: Deployed Service Discount/Update	-	-	-	-	(*)	(*)	(*)	(*)
Ad Valorem: Hospitals Exemption/Charity Care	-	-	-	-	**	**	**	**
Ad Valorem: Condo Assn Appeal Representation	-	-	-	-	(5.5)	(1.7)	(5.5)	(1.7)
Ad Valorem: Const. Work in Progress/Clarification	-	-	-	-	(2.6)	(2.6)	(2.6)	(2.6)
Ad Valorem: Inventory Heavy Equipment Dealers	-	-	-	-	-	(20.5)	-	(20.5)
Ad Valorem: Educational Exemption Transfer	-	-	-	-	-	(4.2)	-	(4.2)
Ins. Premium Tax: Tax all surplus lines premium at 4.94%	+/-	+/-	+/-	+/-	-	-	+/-	+/-
Fuel Tax: Aviation Tax Cut	(0.3)	(0.4)	(3.2)	(4.8)	-	-	(3.5)	(5.2)
Various Taxes: Children's Promise Tax Credits	(5.0)	(5.0)	-	-	-	-	(5.0)	(5.0)
DOR Legislative Concepts:								
Ad Valorem: Hurr. Michael/Extend Rebuild Time	-	-	-	-	-	(**)	-	(**)
Sales Tax: Information Returns/Credit Cards	**	**	**	**	**	**	**	**
Sales Tax: Statute of Limitations/Refunds	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
Appropriations: Tax Holiday & Rate Changes	(0.59)	-	-	-	-	-	(0.59)	-
2020-21 Total	(92.5)	(85.7)	(3.2)	(4.8)	(24.8)	(42.5)	(120.5)	(133.0)
							Pure Nonrecurring =	(65.4)
							Recurring + Pure Nonrecurring (2) =	(198.4)
(*) Impact less than \$50,000; (**) Impact is indeterminate.								
(1) Ad valorem tax impacts assume current rates.								
(2) Recurring tax cut total (excl. appropriations)=-\$133.0million								
Pure nonrecurring tax cuts in FY 2020-21= -\$65.4 million								
- \$198.4 million								

Appropriations Detail - The \$591,500 in General Revenue appropriations included in the bill consists of \$241,000 to implement the “back-to-school” sales tax holiday, \$70,000 to implement the disaster preparedness sales tax holiday, \$72,500 to implement the reduction in the business rent tax, and \$208,000 to implement the Children’s Promise Tax Credit. More than half of the appropriations is needed to pay the cost of notifying several hundred thousand sales tax dealers of either the temporary or permanent law changes.

B. Private Sector Impact:

The bill will reduce the state portion of the communications services tax. The bill will reduce the sales tax on the rental of commercial real estate. The bill provides for a three-

day back-to-school sales tax holiday and a seven-day disaster preparedness sales tax holiday.

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 192.001, 194.011, 194.035, 194.181, 195.073, 195.096, 196.173, 196.197, 196.198, 200.065, 200.069, 202.12, 202.12001, 203.001, 206.05, 206.8741, 206.90, 206.9826, 212.0305, 212.0306, 212.031, 212.05, 212.055, 212.07, 212.134, 212.15, 212.20, 212.205, 213.21, 218.64, 220.02, 220.1105, 220.13, 220.1845, 220.186, 288.0001, 376.30781, 413.4021, 443.163, 626.932, and 718.111.

This bill creates the following sections of the Florida Statutes: 193.1557, 211.0252, 212.181, 212.1833, 213.0537, 220.1876, 220.197, 402.62, 561.1212, and 624.51056.

This bill repeals section 288.11625 of the Florida Statutes.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

Barcode 864620 by Appropriations on March 11, 2020:

The provisions included in the amendment are listed below.

Retained Issues

The Appropriations Committee amendment retains the following provisions of CS/HB 7097, First Engrossed:

- Provides a 3-day “back-to-school” tax holiday from August 7, 2020, through August 9, 2020, for certain clothing, school supplies, and personal computers.
- Provides a 7-day “disaster preparedness” tax holiday from May 29, 2020, through June 04, 2020, for specified disaster preparedness items.
- Reduces the state communications services tax rate by 0.5 percentage points.

- Reduces the tax rate for commercial property rentals from 5.5 percent to 5.4 percent.
- Requires all surplus lines policies to be taxed at the same tax rate and reduces the rate from 5 percent to 4.94 percent.
- Creates the Children’s Promise Tax Credit, a \$5 million per year tax credit program to encourage businesses to contribute to charitable organizations that provide services focused on child welfare.
- Provides a one-time increase of \$8.2 million for the brownfields tax credit program to clear most of the backlog for cleanup credits.
- Provides a one-time \$2 million corporate income tax credit for certain rental car and car leasing corporations.
- Requires that charitable hospitals provide community benefits that equal or exceed the value of their property tax exemption, but the amendment simplifies the process for documenting the community benefits provided by the hospital.
- Extends the property tax exemption for educational property to certain leaseholds.
- Exempts from property tax construction equipment owned by a heavy equipment rental dealer;
- Increases the amount of receipts from the tax collection enforcement diversion program that are deposited into a reserve account for the Florida Association of Centers for Independent Living.
- Clarifies when certain utility-owned tangible personal property is included on the property tax roll and subject to property taxes; however, the amendment amends the language and removes the retroactive treatment; the change is effective July 1, 2020.
- Limits levies of the Charter County and Regional Transportation System Surtax pursuant to a referendum held on or after July 1, 2020; however, the amendment changes the limitation from 20 to 30 years.
- Requires that School Capital Outlay sales surtaxes approved in the future be proportionately shared with charter schools.
- Updates the qualifying operations for the deployed servicemember property tax exemption.
- Allows condominium associations to jointly represent condominium owners in certain judicial appeals.
- Amends the statutory provisions that address conflict of interest for special magistrates.
- Restricts information that may be mailed with the yearly Notice of Proposed Property Taxes to items that explain components on the notice or relate to the taxation of property.
- Includes contributions to scholarship funding organizations as tax liabilities for purposes of refunds of corporate income tax required by s. 220.1105, Florida Statutes.
- Makes changes to eleven tax administration statutes recommended by the Department of Revenue:
 - Amends property tax roll classifications and required statistical measurements.
 - Provides flexibility in property tax noticing requirements during declared states of emergency.
 - Extends the time to provide documentation relating to certain boat and aircraft sales.

- Extends the time property owners affected by Hurricane Michael may begin rebuilding and retain their prior homestead assessment limitation.
- Increases bond limits for certain bonds required of motor fuel dealers.
- Amends the penalty for mislabeling dyed diesel fuel.
- Requires certain payment settlement entities to provide a federal tax form to the Department of Revenue.
- Provides procedures for local governments to update addresses within their jurisdictions and provides procedures for correcting local government distributions.
- Authorizes the Department of Revenue to send certain notices electronically if the taxpayer consents.
- Extends the time for taxpayers to file a refund claim during informal protests.
- Reduces the penalties for failing to electronically file certain Reemployment Assistance Tax documents.

Removed Issues

The Appropriations Committee amendment removes the following issues from CS/HB 7097, First Engrossed.

- Restructured the authorized uses of tourist development, convention development, and local option food and beverage taxes levied in Miami-Dade County. The bill also expanded the allowable uses for tourist development taxes in all counties to allow for water quality improvement and parks and trails projects.
- Repealed the Charter County and Regional Transportation System Sales Surtax currently levied in Miami-Dade County in 2049.

New Issues

The Appropriations Committee amendment adds the following provisions to CS/HB 7097, First Engrossed.

Aircraft Equipment used in Department of Defense Contracts

Present situation: The purchase of an aircraft and related equipment within Florida is generally subject to Florida sales tax.²⁰⁶ Florida exempts from sales and use tax aircraft that will be removed from Florida within specified time periods,²⁰⁷ and aircraft that are brought into Florida, but only remain for a short period, or for specified purposes, such as flight training or repairs.²⁰⁸

Proposed change: The amendment amends s. 212.08(5), F.S., to exempt aircraft equipment used in government contracts from sales and use tax. The amendment exempts equipment used to service, test, operate, upgrade, or configure aircraft for advanced training purposes as part of any contract with the Department of Defense or with a military branch of a recognized foreign government. “Equipment” includes electric and

²⁰⁶ Section 212.05, F.S.

²⁰⁷ Section 212.05, F.S.

²⁰⁸ Section 212.08(7)(fff), F.S.

hydraulic ground power units, jet starter units, oxygen servicing and test equipment, engine trim boxes, and communications and avionics test sets.

The amendment also amends s. 212.08(7)(fff), F.S., to provide that an aircraft owned by a nonresident is exempt from use tax if the aircraft enters or remains in the state exclusively to be used in service of a contract with the Department of Defense or with a military branch of a recognized foreign government.

Parts and Accessories for Industrial Machinery and Equipment

Present situation: The purchase of industrial machinery and equipment is exempt from sales and use tax if the equipment is purchased by an manufacturing businesses within North American Industry Classification System codes 31-33, 112511, or 423930 and used at a fixed location in the state for the manufacture, processing, compounding, or production of items of tangible personal property for sale.²⁰⁹ Parts and accessories for industrial machinery and equipment are also exempt but only if the parts and accessories are purchased before the date the machinery and equipment are placed into service.

Proposed change: The amendment amends s. 212.08(7)(jjj), F.S., relating to tax exemptions for the purchase of industrial machinery and equipment by an eligible manufacturing business and expands “industrial machinery and equipment” to include parts and accessories “necessary for the continued operation of the industrial machinery or equipment.”

Educational Property Tax Exemption

Present situation: Property owned by an educational institution and used for educational purposes is exempt from property tax.²¹⁰ Florida has extended the exemption to specific situations where the educational institution using the property for educational purposes does not own the property, but the owner meets certain specific statutory requirements. Portions of property used predominantly for religious purposes are also exempt.²¹¹

Florida grants a sales tax exemption to educational institutions that are primarily engaged in teaching students to perform production services related to motion pictures, such as photography, sound and recording, casting, location managing and scouting, and similar activities.²¹² These educational institutions receive their sales tax exemption in a specific statute, s. 212.0602, F.S.

Proposed change: The amendment extends the educational property tax exemption to property owned by a house of public worship and used by an educational institution for educational purposes limited to students from preschool to grade 8.

The amendment also exempts land, buildings, and improvements leased by an educational institution described in s. 212.0602, F.S., if the institution is responsible for

²⁰⁹ Section 212.08(7)(iii), F.S.

²¹⁰ Section 196.198, F.S.

²¹¹ Section 196.196, F.S.

²¹² See s. 212.0602, F.S.

any taxes owed, as well as ongoing maintenance and operational expenses for the property.

Affordable Housing

Present situation: Property used to provide housing to low-income persons or families is exempt from property tax.²¹³ The property must be owned by a not-for-profit corporation that is qualified as charitable under 501(c)(3) of the Internal Revenue Code, and the resident's income must be below the thresholds for extremely-low-, very-low-, low-, or moderate-income.²¹⁴

Units that are vacant do not qualify for the exemption.²¹⁵ Similarly, units that are rented to persons who began their tenancy meeting the income thresholds, but whose income grew beyond the qualifying income thresholds do not qualify for exemption.

As indicated above, the affordable housing property must be owned by a 501(c)(3) organization; however, if the property is owned by a limited liability company that is disregarded for federal tax purposes and has a sole member, the statute allows the property appraiser to disregard the limited liability company and treat the sole member of the limited liability company as the owner of the property. If that sole member is a qualifying 501(c)(3) organization, the property qualifies for exemption.²¹⁶ In some instances, affordable housing properties have been required to insert another limited liability company between the original limited liability company and the property. Under current law, these arrangements do not qualify for the exemption.

Portions of property in a multifamily project that contains more than 70 units and is subject to an agreement with the Florida Housing Finance Corporation to provide low-income housing receive a 50 percent property tax discount when used to provide affordable housing to natural persons meeting the income limits described above.²¹⁷ The discount begins on the first January 1 after the 15th completed year of the agreement with the Florida Housing Finance Corporation.

Proposed change: The amendment exempts vacant units and units occupied by persons or families that met the qualifying income thresholds at the time they began their tenancy, but whose income grew beyond the income thresholds. These units are exempted if the entire property is dedicated to providing affordable housing and is being offered for rent.

The amendment exempts an affordable housing project owned by a limited liability company, which is also owned by a limited liability company, as long as the owner of the second limited liability company is a qualifying 501(c)(3) entity.

²¹³ Section 196.1978, F.S.

²¹⁴ Section 196.1978(1), F.S.

²¹⁵ *Parrish v. Pier Club Apartments, LLC.*, 900 So. 2d 683 (Fla. 4th DCA 2005).

²¹⁶ Section 196.1978(1), F.S.

²¹⁷ Section 196.1978(2), F.S.

Lastly, the amendment increases the 50 percent discount for multifamily affordable housing projects to 100 percent.

Student Station Requirements

Present situation: A district school board may not use funds from any source for the new construction of an educational facility with a total cost per student station exceeding the cost per student station limits unless a contract for architectural and design services or for construction management services was executed before July 1, 2017;²¹⁸ however, this limitation does not apply to educational facilities subject to a lease-purchase agreement.

Proposed change: The amendment exempts new construction projects funded solely through local impact fees from the total cost per student station limitation.

Golf Hall of Fame

Present situation: The World Golf Hall of Fame in St. Augustine, Florida, opened to the public in 1998. In 1998, the Florida Department of Commerce certified the World Golf Foundation as eligible for \$50 million in state sales tax revenue, to be distributed over 25 years for the purpose of covering the construction costs related to the Golf Hall of Fame.²¹⁹

The foundation receives a monthly distribution of \$166,666. Use of the state funds is restricted to costs related to the construction, reconstruction, renovation, promotion, or operation of the facility. The last monthly distribution is scheduled for June 2023.²²⁰

Proposed change: The amendment extends the monthly distributions to the Golf Hall of Fame until June 2033.

Formula 1 Grand Prix Admissions

Present situation: Florida levies a 6 percent tax on the sale of admissions.²²¹ A number of events are exempt from the tax. These include admissions to the National Football League championship game or Pro Bowl, any semifinal game or championship game of a national collegiate tournament, a Major League Baseball, Major League Soccer, National Basketball Association, or National Hockey League all-star game, the Major League Baseball Home Run Derby held before the Major League Baseball All-Star Game, or to National Basketball Association all-star events produced by the National Basketball Association and held at a facility such as an arena, convention center, or municipal facility.

Proposed change: The amendment exempts from tax admissions to a Formula 1 Grand Prix and any support races held at the circuit 72 hours before the Grand Prix.

²¹⁸ Section 1013.64(6)(b)1., F.S.

²¹⁹ Office of Economic and Demographic Research, *Return on Investment for the Florida Sports Foundation Grants and Related Programs*, 23-25, Jan. 1, 2018, available at, <http://edr.state.fl.us/Content/returnoninvestment/SportsGrantsandPrograms2018.pdf>, (last visited Mar. 10, 2020).

²²⁰ *Id.*

²²¹ Section 212.04, F.S.

Mobile Homes

Present situation: Florida levies a 6 percent sales and use tax on taxable sales of tangible personal property,²²² including sales of new mobile homes. The tax is added to the selling price and collected from the purchaser at the time of purchase.²²³ Section 319.001, F.S., defines the term “new mobile home” to mean a mobile home the equitable or legal title to which has never been transferred by a manufacturer, distributor, importer, or dealer to an ultimate purchaser.

Proposed change: The amendment reduces the sale tax rate on sales of new mobile homes from 6 percent to 5.5 percent.

Section 179D Letters

Present situation: Section 179D of the Internal Revenue Code provides a federal income tax deduction for the cost of energy efficient commercial building property. For energy efficient commercial property installed on government property, the deduction is authorized for the person primarily responsible for designing the property. The designer is treated as the taxpayer in that instance.²²⁴ This process is known as “allocation” and is typically accomplished by the designer securing an allocation letter from the government entity involved.

Proposed change: The amendment prohibits an owner of a public building or the owner’s employee from seeking, accepting, or soliciting any payment or other form of consideration for providing the written allocation letter.

Scholarship Tax Credit Carry Forward

Present situation: The Florida Tax Credit Scholarship Program grants tax credits in return for contributions to scholarship funding organizations.²²⁵ Prior to 2018, unused tax credits could be carried forward for five years. In 2018, the Legislature extended the carry-forward period from five to 10 years.²²⁶ The new 10-year carry forward period applied to taxable years beginning on or after January 1, 2018.

Proposed change: The amendment allows the 10-year carry forward period to apply to any credits that were available to be carried forward on or after July 1, 2018.

Qualified Target Industry Program

Present situation: The Qualified Target Industry (QTI) Tax Refund Program was created by the Legislature in 1994²²⁷ to encourage the creation and retention of high-quality, high-wage jobs by providing a state grant equal to the amount paid for certain state and

²²² Section 212.05(1)(a)1.a., F.S.

²²³ See s. 212.07(2), F.S., s. 212.06(3)(a), F.S.

²²⁴ Section 179D(d)(4), IRC

²²⁵ See s. 1002.395, F.S.

²²⁶ Section 15, ch. 2018-6, Laws of Fla.

²²⁷ Chapter 94-136, s. 76, Laws of Fla.

local taxes²²⁸ to eligible businesses creating jobs in certain target industries.²²⁹ Under current law, no additional applicants may be certified under the program after June 30, 2020. Existing agreements will continue in effect according to their terms.²³⁰

A business must apply to be certified as a qualified target industry business with the Department of Economic Opportunity (DEO)²³¹ and must be engaged in one of Florida's target industries as identified by the DEO and Enterprise Florida, Inc. (EFI).

Qualified target industry businesses are eligible to receive a tax refund equal to \$3,000 per newly created job. If a business is located in a rural community or an enterprise zone, the amount is increased to \$6,000 per created job.²³² Qualified target industry businesses may also be eligible for the following additional tax refund payments:²³³

\$1,000 per created job if such jobs pay an average annual wage of at least 150 percent of the average private sector wage in a business's area;

\$2,000 per created job if such jobs pay an average annual wage of at least 200 percent of the average private sector wage in a business's area;

\$1,000 per created job if a business's local financial support is equal to the state's incentive award; and

\$2,000 per created job if a business falls within one of the designated high-impact sectors or increases exports of its goods through a seaport²³⁴ or airport in the state by at least 10 percent by value or tonnage in each of the years the business receives a tax refund payment.

Each QTI business must enter into a written agreement with the DEO that specifies what criteria must be met by the business in order to be eligible for a payment, including receipts showing the amount of taxes paid and data showing that the business met its performance requirements.

In the event of negative economic conditions in a business's industry, a named hurricane or tropical storm, or specific acts of terrorism, a qualified target industry business may request an economic recovery extension. The Legislature authorized such an extension between January 1, 2009, and July 1, 2012.²³⁵

In response to the Deepwater Horizon oil spill, the Legislature authorized the DEO to waive any or all wage or local financial support requirements between July 1, 2011, and June 30, 2014, for a business located in a Disproportionally Affected County.

²²⁸ See s. 288.106(3)(9), F.S. Tax refunds may be claimed for the following taxes paid: sales and use taxes, corporate income taxes, insurance premium taxes, intangible personal property taxes, excise taxes on documents, ad valorem taxes paid, as defined in s. 220.03, F.S., certain state communication services taxes, excise taxes on documents.

²²⁹ Section 288.106(1), F.S.

²³⁰ Section 288.106(9), F.S.

²³¹ Section 288.106(4), F.S.

²³² Section 288.106(3)(b)1., F.S.

²³³ Section 288.106(3)(b), F.S.

²³⁴ Section 288.106(3)(b)4.b., F.S., limits seaports to the ports of Jacksonville, Tampa, Port Everglades, Miami, Port Canaveral, Ft. Pierce, Palm Beach, Port Manatee, Port St. Joe, Panama City, St. Petersburg, Pensacola, Fernandina, and Key West.

²³⁵ Section 288.106(5)(b)1., F.S.

Disproportionally Affected Counties are currently defined as Bay County, Escambia County, Franklin County, Gulf County, Okaloosa County, Santa Rosa County, Walton County, or Wakulla County. During this period, a qualified target industry business that relocated all or part of its business to one of these counties from another state was eligible for a tax refund of up to \$6,000 per job created.²³⁶

Proposed change: The amendment amends s. 288.106(8), F.S., to replace references to a “Disproportionally Affected County” with a “county affected by Hurricane Michael” and defines a “county affected by Hurricane Michael” as Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Jefferson, Leon, Liberty, Okaloosa, Wakulla, Walton, or Washington County. In addition, the Department of Economic Opportunity is authorized to waive wage and local financial support requirements, between July 1, 2020, and June 30, 2023, for businesses that locate or expand in a county affected by Hurricane Michael. A business that relocates from another state to, or establishes its business or expands its existing business in, a county affected by Hurricane Michael is eligible for a payment of up to \$10,000 per job created.

The amendment amends s. 288.106(5)(b)4., F.S., to allow a qualified target industry business located in a county affected by Hurricane Michael to request an economic recovery extension in lieu of any claim scheduled to be submitted after January 1, 2021, but before July 1, 2023.

The amendment repeals the provision that prohibits the certification of applicants after June 30, 2020. In effect, it permanently authorizes the program.

Because the amendment redefines “disproportionally affected county,” the amendment deletes a cross-reference in s. 189.033, F.S., and provides that, as used in s. 189.033, F.S., the term “disproportionally affected county” retains its original definition, which includes only Bay, Escambia, Franklin, Gulf, Okaloosa, Santa Rosa, Walton, or Wakulla County.

Tax Collector Service Charges and Access to the Department of Highway Safety Database

Present situation: County tax collector offices process registrations of motor vehicles, mobile homes, and vessels;²³⁷ applications for title for motor vehicles, mobile homes, and vessels;²³⁸ and issuance of driver licenses.²³⁹ The tax collectors are authorized to collect and retain a service charge to perform these duties.²⁴⁰ With the approval of the Department of Highway Safety and Motor Vehicles (DHSMV) some tax collectors use third party agents to conduct transactions on behalf of the tax collector.²⁴¹ In certain counties, by ordinance of the county, these agents are authorized to collect an additional

²³⁶ Section 288.106(8), F.S.

²³⁷ Sections 320.03, 328.48, and 328.73, F.S.

²³⁸ See ss. 319.23 and 328.01, F.S.

²³⁹ Chapter 2010-163, Laws of Florida, and s. 322.02(1), F.S.

²⁴⁰ See ss. 320.04, 319.32(2), and 328.72(7), F.S.

²⁴¹ See Florida Senate, Committee on Transportation, *Services Provided by License Tag Agents*, Interim Project Report 2007-138, October 2006. References to such “agents” appear in ss. 320.03, 320.04(1)(b), and 328.15(1), F.S.

fee for services provided. These additional fees can range from \$2 to \$25 for services rendered.²⁴²

The DHSMV maintains the Florida Real Time Vehicle Information System (FRVIS) that provides real-time access to information related to the tags, titles, and registrations.²⁴³ In addition to residential street addresses, the FRVIS contains e-mail addresses. E-mail addresses may be used, in lieu of the United States Postal Service, to provide certain renewal notices, including registration renewal notices, driver license renewal notices, and vessel registration renewal notices.²⁴⁴ Currently, s. 119.0712(2)(c), F.S., provides public records exemptions for e-mail addresses collected by the DHSMV related to driver licenses, motor vehicle titles, motor vehicle registrations, and identification cards.²⁴⁵

Proposed change: The amendment amends ss. 319.32, 320.03, 320.04, 328.72, and 328.73, F.S., to authorize a tax collector to determine additional services charges to be collected by privately owned license plate agents and requires the tax collector to enter into a contract with the license plate agent regarding the disclosure of the additional service charges.

The fiscal impact of the Appropriations Committee amendment is detailed in the table on the following page.

The total of \$233.7 million in tax reductions contained in the amendment is the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and of the nonrecurring impacts from temporary tax reductions.

²⁴² *Id.*

²⁴³ Florida Auditor General, Department of Highway Safety and Motor Vehicles, *Florida Real Time Vehicle Information System (FRVIS): Information Technology Operational Audit*, at 1, Report No. 2014-183 (April 2014), available at https://flauditor.gov/pages/pdf_files/2014-183.pdf (last visited February 16, 2020).

²⁴⁴ Sections 319.40, 320.95, 322.08(10), 328.30, and 328.80, F.S.

²⁴⁵ See ss. 319.40, 320.95(2), and 322.08(9), F.S.

**CS/HB 7097, 1st Eng.
Senate Amendment Barcode 882296
Fiscal Year 2020-2021 Estimated Fiscal Impacts (millions of \$)**

Issues	General Revenue		State Trust Funds		Local/Other		Total	
	1st Yr.	Recur.	1st Yr.	Recur.	1st Yr.	Recur.	1st Yr.	Recur.
<u>Sales Tax</u> : Business Rent Tax/Rate Cut 0.1%	(14.0)	(29.3)	(*)	(*)	(1.8)	(3.8)	(15.8)	(33.1)
<u>Comm Services Tax</u> : Rate Cut 0.5%	(20.9)	(50.1)	(*)	(*)	(4.0)	(9.6)	(24.9)	(59.7)
<u>Sales Tax</u> : BTS Holiday 3 Days	(32.3)	-	(*)	-	(9.5)	-	(41.8)	-
<u>Sales Tax</u> : Tax Holiday/Disaster Preparedness	(4.3)	-	(*)	-	(1.3)	-	(5.6)	-
<u>Sales Tax</u> : Collection Enforcement Diversion Prog.	(0.9)	(0.9)	(*)	(*)	(0.1)	(0.1)	(1.0)	(1.0)
<u>Corporate Income Tax</u> : Brownfields Backlog	(8.2)	-	-	-	-	-	(8.2)	-
<u>Corporate Income Tax</u> : Like-Kind Exchange Relief	(6.0)	-	-	-	-	-	(6.0)	-
<u>Ad Valorem</u> : Deployed Service Discount/Update	-	-	-	-	(*)	(*)	(*)	(*)
<u>Ad Valorem</u> : Hospitals Exemption/Charity Care	-	-	-	-	-	**	-	**
<u>Ad Valorem</u> : Condo Assn Appeal Representation	-	-	-	-	(5.5)	(1.7)	(5.5)	(1.7)
<u>Ad Valorem</u> : Const. Work in Progress/Clarification	-	-	-	-	-	(2.6)	-	(2.6)
<u>Ad Valorem</u> : Inventory/Heavy Equipment	-	-	-	-	-	(20.5)	-	(20.5)
<u>Ad Valorem</u> : Education Exemption (prior 10 yrs.)	-	-	-	-	-	(4.2)	-	(4.2)
<u>Insurance Taxes</u> : Surplus Lines Tax Rate	+/-	+/-	+/-	+/-	-	-	+/-	+/-
<u>Various Taxes</u> : Child Welfare/Tax Credits	(5.0)	(5.0)	-	-	-	-	(5.0)	(5.0)
<u>Ad Valorem</u> : Allow vacant units to be exempt; allow ownership by multiple llcs; allow units with residents who grow out of income limits to stay exempt	-	-	-	-	-	(*)	-	(*)
<u>Ad Valorem</u> : School Use of Church Property	-	-	-	-	(7.2)	(0.5)	(7.2)	(0.5)
<u>Ad Valorem</u> : Affordable Housing--Increase discount from 50% to 100%	-	-	-	-	-	(26.8)	-	(26.8)
<u>Sales Tax</u> : Extend the distribution to the Golf Hall of Fame for an additional 10 yrs.	-	(2.0)	-	-	-	-	-	(2.0)
<u>Sales Tax</u> : Exempt admissions to Formula 1 Races	-	0/(**)	-	0/(**)	-	0/(**)	-	0/(**)
<u>Sales Tax</u> : Reduce tax rate on sales of new mobile homes from 6% to 5.5%	(1.9)	(2.1)	(*)	(*)	(0.3)	(0.3)	(2.2)	(2.4)
<u>Corp Inc. Tax</u> : Extend scholarship tax credit carryforward from 5 to 10 yrs.	(**)	(**)	-	-	-	-	(**)	(**)
<u>Sales Tax</u> : Industrial M&E Parts and Accessories	(**)	(**)	(*)	(*)	(**)	(**)	(**)	(**)
<u>Sales Tax</u> : Exempt Certain Aircraft & Equipment	(1.6)	(**)	(*)	(*)	(0.5)	(**)	(2.1)	(**)
<u>Ad Valorem</u> : Exempt property leased by a s. 212.0602 entity.	-	-	-	-	-	(**)	-	(**)
DOR Legislative Concepts:								
<u>Ad Valorem</u> : Hurr. Michael/Extend Rebuild Time	-	-	-	-	-	(**)	-	(**)
<u>Sales Tax</u> : Informational Returns/Credit Cards	-	-	**	**	**	**	**	**
<u>Sales Tax</u> : Statute of Limitations/Refunds	-	-	(**)	(**)	(**)	(**)	(**)	(**)
<u>Appropriations</u> : Tax Holidays/Rate Changes/Child Welfare Credits	(0.59)	-	-	-	-	-	(0.59)	-
	(95.7)	(89.4)	-	-	(30.2)	(70.1)	(125.9)	(159.5)

Pure Nonrecurring = **(74.2)**
Recurring + Pure Nonrecurring = **(233.7)**