



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 12

REFERENCE:

ACTION:

Sponsor: Finance and Taxation
Committee

1. FTC
2. GPSC
- 3.

Pre-meeting

Subject: Legislative review and vote to
repeal sales tax exemptions

Date: February 6, 2008

I. Summary:

Constitutional Proposal 12 provides that effective July 1, 2012, the sales tax will apply to all services except those made exempt. Exemptions may be created before or after July 1, 2012, by laws that address a single service.

Constitutional Proposal 12 also requires the Legislature begin a review before January 1, 2010 of services not subject to tax and to identify methods to facilitate administration and compliance with the application of the sales tax to services.

This measure creates a new section in Article VII of the Florida Constitution.

II. Present Situation:

The *2007 Florida Tax Handbook* estimates that Florida's sales tax will raise \$23,581,500,000 for fiscal year 2007-2008. The value of a 1 percent levy on the sales tax base was estimated to be \$3.9303 billion.¹

Sales Tax

Florida law provides that each sale, admission charge, storage, or rental is taxable unless the transaction is specifically exempt. Florida's general sales tax rate is 6 percent. However, there is an established "bracket system" for collecting sales tax on any part of each total taxable sale that is less than a whole dollar amount. Additionally, a discretionary sales surtax is imposed by many Florida counties. To compute the Florida sales tax rate for each county, the county imposed discretionary sales surtax rate is added to the general sales and use tax rate.²

¹ The Florida Senate, *2007 Florida Tax Handbook: Including the Fiscal Impact of Potential Changes*, p. 114 (2007).

² Department of Revenue, Florida Sales and Use Tax, http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited Jan. 15, 2008).

Discretionary Sales Surtax

Under specific conditions, Florida counties are authorized to levy a discretionary sales surtax on most transactions that are subject to sales and use tax. A dealer who sells and delivers taxable merchandise or taxable services is required to collect the surtax at the rate imposed in the county where the merchandise or service is delivered. For motor vehicle and mobile home sales, the surtax rate of the county where the vehicle or mobile home will be registered is used to calculate the appropriate tax.³

Only the first \$5,000 of a single sale of tangible personal property is subject to a discretionary sales surtax if the property is sold as a single item, in bulk, as a working unit, or as part of a working unit. The \$5,000 limit does not apply to commercial rentals, transient rentals, or services.⁴

Use Tax and Consumption

Use tax complements, and is applied in the same manner as, sales tax. The use tax rate and sales tax rate are the same, including discretionary sales surtax, if applicable. Use tax is due on purchases made out of state and brought into Florida within 6 months of the purchase date. Also, if you purchase a product tax-exempt that you plan to sell at retail, but end up using it at your place of business, the “use” of the product is subject to tax. If you purchase materials that are “consumed” in a manufacturing process to create your end product, but are not part of the end product, those materials are subject to tax.⁵

The “use” component of the sales and use tax provides uniform taxation on items that are purchased outside Florida, but are used or stored in the state. If the item brought into Florida is subject to tax, a credit for lawfully imposed taxes paid to another state, a U.S. territory, or the District of Columbia is permitted. Credit is not given for taxes paid to another country.⁶

Sales Tax Exemptions

The *2007 Florida Tax Handbook* lists 246 exemptions from the sales tax.⁷ The *Tax Handbook* states that several of the exemptions are fundamental to the structure of the tax. These structural exemptions include:

- Items purchased for subsequent resale;
- Intangible personal property;
- Tangible personal property imported or produced for export; and
- Purchases of agricultural products used in further processing for resale.

The revenue impact of the remaining exemptions is estimated to be \$12.3403 billion. However, the *Tax Handbook* notes that some of the exemptions overlap such that the

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ The Florida Senate, 2007 Florida Tax Handbook: Including Fiscal Impact of Potential Changes

repeal of all of the exemptions, excepting the structural exemptions, would yield less than \$12.3403 billion. Of non-structural exemptions:

- \$8.15 billion relate to household items;
- \$0.67 billion relate to organizations;
- \$2.16 billion relate to business items; and
- \$1.35 billion relate to miscellaneous items.⁸

Sales Tax on Services

In 1986, the Legislature repealed the sales tax exemptions on services, effective July 1, 1987. In 1987, the Legislature integrated the tax on services with the sales tax on tangible personal property. In a 1987 special session, the Legislature repealed the sales tax on services, effective January 1, 1988. Accordingly, the state's experience with a broad-based sales tax on services lasted six months.

Most services are not [currently] subject to Florida's sales tax. This lack of tax on most services is not due to an exemption from the tax, but from the fact that services are not specified as taxable. There are basically two exceptions to this. First, s. 212.05(1)(k), F.S., specifically states that detective, burglar protection, and other protective services and nonresidential cleaning and pest control services are subject to the sales tax.⁹

Second, the definition of "sales price" in s. 212.02, F.S., states that the amount paid for tangible personal property includes any services which are part of the sale "without any deduction therefrom on account of the cost of property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever." The definition also states that sales price includes "the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property."¹⁰

The third component important in the discussion of sales tax on services is the exemption in s. 212.08(7)(v), F.S., relating to a professional, insurance, or personal service transaction that involves sales of tangible personal property as "inconsequential," and elements for which no separate charges are made. Thus, even though a lawyer might issue a written opinion in the performance of his or her duties, the written report is considered inconsequential to the main service of rendering the opinion.¹¹

The *Tax Handbook* estimates that the annualized receipts from the application of the state sales and use tax on service transactions for fiscal year 2007-2008 would yield \$23.4144 billion.

⁸ *Id.* at 118.

⁹ The Florida Senate, Fiscal Resource Committee, *Sales Tax Exemptions: A Tool for Lowering the Sales Tax Rate in Florida* 13 (Aug. 2000).

¹⁰ *Id.*

¹¹ *Id.* at 13-14.

NAICS Codes

“The North American Industry Classification System (NAICS, pronounced Nakes) was developed as the standard for use by Federal statistical agencies in classifying business establishments for the collection, analysis, and publication of statistical data related to the business economy of the United States. NAICS was developed under the auspices of the Office of Management and Budget (OMB), and adopted in 1997 to replace the old Standard Industrial Classification (SIC) system. It was also developed in cooperation with the statistical agencies of Canada and Mexico to establish a 3-country standard that allows for a high level of comparability in business statistics among the three countries. NAICS is the first economic classification system to be constructed based on a single economic concept.”¹²

III. Effect of Proposed Changes:

Constitutional Proposal 12 provides that effective July 1, 2012, the sales tax will apply to all services except those made exempt.

Exemptions may be created before or after July 1, 2012, by laws that address a single service. A single service is a service that is identified by at least the first four digits of a NAICS code number. Exemptions must also advance one of the following state public purposes:

- Encouraging economic development and competitiveness;
- Supporting educational, governmental, religious, or charitable initiatives or institutions; or
- Securing tax fairness by reducing or eliminating regressive tax burdens.

When creating an exemption from the application of the sales tax to a service, the Legislature will likely include some finding in the bill stating or explaining that the exemption satisfies an important public purpose.

Constitutional Proposal 12 also requires the Legislature to begin a review before January 1, 2010 of services not subject to tax and to identify methods to facilitate administration and compliance with the application of the sales tax to services.

The measure expires January 1, 2015.

By operation of Article XI, section 5 of the Florida Constitution, this measure, if approved by the electors, will take effect January 6, 2009.

¹² U.S. Census Bureau, Ask Dr. NAICS, What Is NAICS and How Is It Used?, <http://www.census.gov/epcd/www/drnaics.htm#q1> (last visited Jan. 15, 2008).

IV. Constitutional Issues:**A. Constitutional or Legislative Matter:**

In 1987, the Legislature made the sales tax applicable to a broad group of services by statute.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

This measure may result in increased sales tax revenues for state and local governments.

B. Private Sector Impact:

Individuals and business will pay more sales taxes.

C. Government Sector Impact:

The Legislature will have to develop implementing legislation. The Department of Revenue will have to promulgate rules to facilitate the administration of the application of the sales tax to services.

VI. Technical Deficiencies:

The date of "November 4, 2008" on line 37 of the measure takes place before the January 6, 2009, effective date. The measure should be amended to replace "November 4, 2008," with January 6, 2009.

VII. Related Issues:

None.