



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure: CP 48

REFERENCE:

ACTION:

Sponsor: Finance and Taxation
Committee

1. FTC
- 2.
- 3.

Pre-meeting

Subject: Legislative Review of Sales Tax
Exemptions and Services not
Subject to Sales Tax

Date: February 22, 2008

I. Summary:

Constitutional Proposal 48 requires the Legislature to review sales tax exemptions and services not subject to the sales tax every 20 years. As part of the review, the Legislature must consider whether an exemption or service satisfies criteria to be established by law. The review must result in recommendations for new exemptions; the repeal, modification, and retention of existing exemptions; and identification of services that should be subject to sales tax.

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

Discretionary Sales Surtax

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).

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

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

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

- \$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.

III. Effect of Proposed Changes:

The proposal requires the Legislature to establish a procedure to review exemptions from sales and use tax prior to January 1, 2010. The procedure must also include a review of

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.

services not subject to the sales and use tax. The Legislature must establish criteria, by general law, which must be used in the review procedure to evaluate exemptions and services. This proposal expressly excludes from the review the exemptions for:

- items purchased for subsequent resale;
- intangible personal property;
- tangible personal property imported or produced for export; and
- purchase of agricultural products for further processing for resale.

The review must include recommendations to the Legislature on exemptions to be retained, repealed, or modified and which services should be subject to the sales and use tax. The review may also include recommendations for new exemptions from the sales and use tax and must be conducted every twenty years.

A majority vote of each house of the Legislature is required to repeal or modify a current exemption, or to create a new exemption. Legislators may continue to file legislation which proposes the repeal, modification or exemption from the sales and use tax or the imposition of the tax on the sale of services.

IV. Constitutional Issues:

A. Constitutional or Legislative Matter:

Previously, HB 195 (2006) and HB 2027 (2002) proposed a statutory mechanism to provide for a review of sales tax exemptions. However, a statutory requirement may not provide the same results as a constitutional proposal to conduct a comprehensive review with recommendations. The Florida Senate's Fiscal Resource Committee provided a comprehensive report in August, 2000 which included an analysis of all sales and use tax exemptions and services not subject to tax. The report was to be used as a tool to broaden the sales tax base and lower the sales tax rate. However, no specific action was taken to repeal exemptions or impose the sales and use tax on excluded services.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This proposal may facilitate the repeal of sales tax exemptions by the Legislature and tax services which were previously not subject to the sales and use tax.

B. Private Sector Impact:

This proposal may facilitate the repeal of sales tax exemptions by the Legislature and tax services which were previously not subject to the sales and use tax.

C. Government Sector Impact:

The Department of Revenue may incur additional expenses to notify sales tax dealers of the repeal of sales tax exemptions and taxing of services. In addition, the department may be required to modify current processes and/or data bases to facilitate access to information.

Under Art. XI, s. 5(d), Fla. Const., the Secretary of State must publish in newspapers throughout the state proposed constitutional amendments and notice of the date of the election at which it will be submitted to the electors. According to the Department of State, the average publishing costs for citizen initiative amendments is \$60,000. However, the cost to publish lengthy amendments will exceed that amount.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.