



## TAXATION AND BUDGET REFORM COMMISSION

600 South Calhoun Street, Room 245, Tallahassee, FL 32399-1300

Ph. (850) 921-8905 Suncom 291-8905 Fax (850) 921-0492

Website: [www.floridatbrc.org](http://www.floridatbrc.org)

### Staff Analysis and Economic Impact Statement

Measure:	CS/SR 29	REFERENCE:	ACTION:
Sponsor:	Finance and Taxation Committee	1. FTC 2. GPSC 3. TBRC	Fav/ 1 Amendment Fav/CS
Subject:	Joint Legislative Committee Review of Sales Tax Exemptions		
Date:	March 3, 2008		

#### I. Summary:

Committee Substitute for Statutory Recommendation 29 creates a joint legislative committee to review sales tax exemptions. The committee must review exemptions over three-year periods for conformance with the principles of equity, compliance, pro-competitiveness, neutrality, stability, integration, and public purpose. The Committee Substitute for Statutory Recommendation 29 revises the definition for neutrality. As a result of the review, the committee must make findings of fact and recommend whether each exemption should be retained, modified, or repealed. Bills to repeal or modify an exemption must be submitted to a vote in each house of the Legislature without reference to a committee. The bills may address only the subject of a single exemption.

The measure creates section 11.95, Florida Statutes.

#### 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.<sup>1</sup>

##### *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

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

sales tax rate for each county, the county imposed discretionary sales surtax rate is added to the general sales and use tax rate.<sup>2</sup>

### ***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.<sup>3</sup>

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.<sup>4</sup>

### ***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.<sup>5</sup>

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.<sup>6</sup>

### ***Sales Tax Exemptions***

The *2007 Florida Tax Handbook* lists 246 exemptions from the sales tax.<sup>7</sup> 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.

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<sup>2</sup> Department of Revenue, Florida Sales and Use Tax, [http://dor.myflorida.com/dor/taxes/sales\\_tax.html](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited Jan. 15, 2008).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> The Florida Senate, 2007 Florida Tax Handbook: Including Fiscal Impact of Potential Changes

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:

- \$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.<sup>8</sup>

### ***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 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.<sup>9</sup>

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."<sup>10</sup>

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.<sup>11</sup>

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<sup>8</sup> *Id.* at 118.

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

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 13-14.

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:**

Committee Substitute for Statutory Recommendation 29 creates a joint legislative committee to review sales tax exemptions. The measure is the substance of HB 195 (2006) and HB 2027 (2002). The Committee Substitute for Statutory Recommendation 29 revises the definition for neutrality that was included in SR29 by deleting the reference to “social engineering.”

The joint legislative committee must review exemptions over three-year periods for conformance with the principles of equity, compliance, pro-competitiveness, neutrality, stability, and integration, and public purpose. As a result of the review, the committee must make findings of fact and recommend whether each exemption should be retained, modified, or repealed. Bills to repeal or modify an exemption must be submitted to a vote in each house of the Legislature without reference to a committee. The bills may address only the subject of a single exemption.

#### ***Procedure***

The committee must review exemptions over three-year periods in ten-year cycles. Exemptions must be reviewed for compliance with the principles of equity, compliance, pro-competitiveness, neutrality, stability, and integration, and public purpose. These principles may have had their genesis in a report of the State Tax Reform Task Force.<sup>12 13</sup> As a result of the review, the committee must make findings of fact and recommend whether each exemption should be retained, modified, or repealed.

The ranking member of each house on the committee must file bills to implement the committee’s recommendations. A bill may address only the subject of a single exemption. These bills must be submitted to a vote in each house of the Legislature without further reference to a committee.

A bill to repeal an exemption through the process created by the measure takes effect no sooner than 180 days after the passage of the bill. New exemptions are not subject to review until they have been in effect for six years.

#### ***Transactions Not Subject to Review***

This measure expressly excludes the following transactions from review:

- Export sales;
- Sales for resale;
- Occasional and isolated sales;

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<sup>12</sup> See House of Representatives, Committee on Fiscal Policy and Resources Analysis of HB 2027 (March 18, 2002). The State Tax Reform Task Force was created by ch. 2000-222, L.O.F.

<sup>13</sup> The State Tax Reform Task Force was created by ch. 2000-222, L.O.F.

- The sale or use of intangible personal property;
- The sale of real property; and
- The sale or use of services.

***Effective Date***

This statutory recommendation provides that it will take effect upon becoming a law.

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

This measure is the substance of HB 195 (2006) and HB 2027 (2002). If this measure is enacted by the Legislature it may be amended or repealed by a future Legislature.<sup>14</sup>

**B. Other Constitutional Issues:**

None.

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

This measure may facilitate the repeal of sales tax exemptions by the Legislature.

**B. Private Sector Impact:**

This measure may facilitate the repeal of sales tax exemptions by the Legislature.

**C. Government Sector Impact:**

The Department of Revenue will have to notify sales tax dealers of the repeal of sales tax exemptions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>14</sup> *Neu v. Miami Herald Pub. Co.*, 462 So. 2d 821, 824 (Fla. 1985) (stating that “a legislature may not bind the hands of future legislatures by prohibiting amendments to statutory law”).