

Feasibility of Exempting All s. 501(c)(3) Organizations from Florida's Sales and Use Tax

Report No. 2000-47

August 1999

Prepared for
The Florida Senate

by
Fiscal Resource Committee

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Background

Nationally, there are more than one million groups recognized by the IRS as nonprofit organizations. They include social welfare organizations, social and recreational clubs, employee pension funds, religious organizations, business leagues, and credit unions. These diverse organizations are all nonprofit, but only about half (600,000 organizations in 1994) had charitable, tax-exempt status under section 501(c)(3) of the Internal Revenue Code (IRC).¹

Section 501(c)(3) of the IRC exempts from the federal corporate income tax, corporations and associations organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition . . . or for the prevention of cruelty to children or animals . . .²

Florida provides a number of sales tax exemptions based on the perceived nature of an organization as supplying goods or services that are beneficial to the public or promote a socially desirable goal. Such entities include nonprofit organizations considered charitable, educational, and religious. Nonprofit organizations holding section 501(c)(3) status is insufficient under current Florida law to qualify an entity for exemption from Florida's sales and use tax. However, many of Florida's sales and use tax exemptions do currently require that an organization hold section 501(c)(3) status as one of several requirements, all of which must be met, in order to qualify for exemption. Every year, the Florida Legislature spends significant time and effort to provide sales and use tax exemptions to section 501(c)(3) organizations that have failed to meet one or more of the myriad of requirements for exemption under Florida law. In addition, it is difficult for taxpayers to understand why they do not qualify for state sales tax exemption when they qualify for federal income tax exemption. The purpose of this report is to evaluate the feasibility of exempting all section 501(c)(3) organizations from Florida's sales and use tax. Current sales tax exemptions offered section 501(c)(3) organizations and dates enacted are listed along with a five year list of proposed legislation to exempt section 501(c)(3) organizations from the state sales and use tax. The report also looks at the number and types of section 501(c)(3) organizations denied Florida sales tax exemption. In addition, a list of states which exempt purchases by organizations exempt under section 501(c)(3) is provided.

¹ Carol J. De Vita, Viewing Nonprofits Across the States, 1999, The Urban Institute.

² Title 26, Subtitle A, Chapter 1, Subchapter F, Part I, Sec. 501(c)(3), IRC.

Section 212.08(7), F.S. - Nonprofit Organizations Exempt From State Sales and Use Tax

The Florida Legislature provides sales and use tax exemptions to many nonprofit organizations. Section 212.08(7), F.S., lists over fifty miscellaneous exemptions. Listed below are specific exemptions offered to section 501(c)(3) organizations, the date the exemption was enacted, and, for those organizations where data is available, the number of active consumer exemption (CEX) accounts as of May, 1999:

(7) MISCELLANEOUS EXEMPTIONS.--

(l) Military museums - nonprofit corporations which hold current exemptions from federal corporate income tax pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and whose primary purpose is to raise money for military museums. (1986, ch. 86-152, L.O.F. - 5 CEX accounts)

(m) Nonprofit corporations; homes for the aged, nursing homes, or hospices - nonprofit corporations which hold current exemptions from federal corporate income tax pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and which either qualify as homes for the aged pursuant to s. 196.1975(2) (204 CEX accounts) or are licensed as a nursing home (76 CEX accounts) or hospice under the provisions of chapter 400. (23 CEX accounts) (1985, ch. 85-230, L.O.F.)

(n) Organizations providing special educational, cultural, recreational, and social benefits to minors - nonprofit organizations which are incorporated pursuant to chapter 617 or which hold a current exemption from federal corporate income tax pursuant to s. 501(c)(3) of the Internal Revenue Code the primary purpose of which is providing activities that contribute to the development of good character or good sportsmanship, or to the educational or cultural development, of minors. This exemption is extended only to that level of the organization that has a salaried executive officer or an elected nonsalaried executive officer. (1983, ch. 83-338, L.O.F. - 3,018 CEX accounts)

(o) Religious, charitable, scientific, educational, and veterans' institutions and organizations³

1. There are exempt from the tax imposed by this chapter transactions involving:
a. Sales or leases directly to churches or sales or leases of tangible personal

³ Section 501(c)(3) of the IRC specifically exempts religious, charitable, scientific, and educational organizations.

property by churches; (1949, ch. 26319, 1949, L.O.F)

b. Sales or leases to nonprofit religious (21,027 CEX accounts, includes churches), nonprofit charitable (5,231 CEX accounts), nonprofit scientific (1983, ch. 83-297, L.O.F. - 413 CEX accounts), or nonprofit educational institutions (5,671 CEX accounts) when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities, including church cemeteries; (1949, ch. 26319, 1949, L.O.F) and

c. Sales or leases to qualified veterans' organizations and of their auxiliaries when used in carrying on their customary veterans' organization activities. (1978, ch. 78-270, L.O.F. and 1999, ch. 99-238, L.O.F.)⁴

2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

a. "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on. The term "religious institutions" includes nonprofit corporations the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees. (1983, ch. 83-154, L.O.F.) The term "religious institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of religious organizations or members. The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which owns and operates a Florida television station, at least 90 percent of the programming of which station consists of programs of a religious nature, and the financial support for which, exclusive of receipts for broadcasting from other nonprofit organizations, is predominantly from contributions from the general public. (1988, ch. 88-243, L.O.F.) The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which provides regular religious services to Florida state prisoners and which from its own established physical place of worship, operates a ministry providing worship and services of a charitable nature to the community on a weekly basis. (1995, ch. 95-232, L.O.F.) The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, the primary activity of which is making and distributing audio recordings of religious scriptures and teachings to blind or visually impaired persons at no charge. (1998, ch. 98-328, L.O.F.) The term "religious institutions" also includes any nonprofit corporation that is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, the sole or primary function of which is to provide, upon invitation, nonprofit religious services, evangelistic services, religious education,

⁴ The 1999 Legislature passed HB 561 which expanded the sales and use tax exemption provided to veterans' organizations so that the exemption applies to all qualified veterans' organizations and not just to state headquarters, which was ordinarily passed in 1978.

administration assistance, or missionary assistance for a church, synagogue, or established physical place of worship at which nonprofit religious services and activities are regularly conducted. (1998, ch. 98-328, L.O.F.)

b. "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service: (1983, ch. 83-297, L.O.F.)

(I) Medical aid for the relief of disease, injury, or disability;

(II) Regular provision of physical necessities such as food, clothing, or shelter;

(III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;

(IV) Social welfare services including adoption placement, child care, community care for the elderly, **consumer credit counseling**, (1999, ch. 99-238, L.O.F.) and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

(V) Medical research for the relief of disease, injury, or disability;

(VI) Legal services; or

(VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals; (1985, ch. 85-230, L.O.F.) and the term includes groups providing volunteer staff to organizations designated as charitable institutions under this sub-subparagraph; (1984, ch. 84-324 and ch. 84-350, L.O.F.) nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable institutions under this sub-subparagraph with those persons, animals, or organizations in need of their services; and nonprofit national, state, district, or other governing, coordinating, or administrative organizations the sole or primary purpose of which is to represent or regulate the customary activities of other institutions designated as charitable institutions under this sub-subparagraph. (1995, ch. 95-232, L.O.F.) Notwithstanding any other requirement of this section, any blood bank that relies solely upon volunteer donations of blood and tissue, that is licensed under chapter 483, and that qualifies as tax exempt under s. 501(c)(3) of the Internal Revenue Code constitutes a charitable institution and is exempt from the tax imposed by this chapter. (1995, ch. 95-232, L.O.F.) Sales to a health system foundation, qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which filed an application for exemption with the department prior to November 15, 1997, and which application is subsequently approved, shall be exempt as to any unpaid taxes on purchases made from November 14, 1990, to December 31, 1997. (1998, ch. 98-273, L.O.F.)

c. "Scientific organizations" means scientific organizations which hold current exemptions from federal income tax under s. 501(c)(3) of the Internal Revenue Code (1983, ch. 83-297, L.O.F.) and also means organizations the purpose of which is to protect air and water quality or the purpose of which is to protect

wildlife and which hold current exemptions from the federal income tax under s. 501(c)(3) of the Internal Revenue Code. (1983, ch. 83-338, L.O.F.)

d. "Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities which conduct regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, the Department of Education, the Florida Council of Independent Schools, or the Florida Association of Christian Colleges and Schools, Inc., (1983, ch. 83-297, L.O.F.) or nonprofit private schools which conduct regular classes and courses of study accepted for continuing education credit by a board of the Division of Medical Quality Assurance of the Department of Health or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association. (1984, ch. 84-362, L.O.F.) Nonprofit libraries, art galleries, **performing arts centers** that provide educational programs to school children, which programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,000 school children a year, and museums open to the public are defined as educational institutions and are eligible for exemption. (1997, ch. 97-221, L.O.F.) The term "educational institutions" includes private nonprofit organizations the purpose of which is to raise funds for schools teaching grades kindergarten through high school, (1984, ch. 84-362, L.O.F.)⁵ colleges, and universities. The term "educational institutions" includes any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, (1987, ch. 87-101, L.O.F.) and any educational television or radio network or system established pursuant to s. 229.805 or s. 229.8051 and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. (1983, ch. 83-297, L.O.F.) The term "educational institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members. The term "educational institutions" also includes a nonprofit educational cable consortium which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of

⁵ Chapter 84-362, L.O.F., expanded the definition of "educational institutions" for exemption purposes, to include private nonprofit organizations which raise funds for schools teaching kindergarten through high school. Prior to ch. 84-362, L.O.F., only such organizations raising funds for high schools were exempt.

educational organizations which hold a valid consumer certificate of exemption and which are either an educational institution as defined in this sub-subparagraph, or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended. (1994, ch. 94-186, L.O.F.)

e. "Veterans' organizations" means nationally chartered or recognized veterans' organizations, including, but not limited to, Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., (1983, ch. 83-297, L.O.F.) and the **Disabled American Veterans**, Department of Florida, Inc., which hold current exemptions from federal income tax under s. 501(c)(3), (4) or (19) of the Internal Revenue Code. (1999, ch. 99-238, L.O.F.)⁶

(r) State theater contract organizations - nonprofit organizations incorporated in accordance with chapter 617 which have qualified under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which have been designated as state theater contract organizations as provided in s. 265.289 are exempt from the tax imposed by this chapter. (1982, ch. 82-206, L.O.F. - 4 CEX accounts)

(z) Vending machines sponsored by nonprofit or charitable organizations - also exempt are food or drinks for human consumption sold for 25 cents or less through a coin-operated vending machine sponsored by a nonprofit corporation qualified as nonprofit pursuant to s. 501(c)(3) or (4) of the Internal Revenue Code of 1986, as amended. (1988, ch. 88-243, L.O.F.)

(bb) Community cemeteries - also exempt are purchases by any nonprofit corporation that has qualified under s. 501(c)(13) of the Internal Revenue Code of 1986, as amended, and is operated for the purpose of maintaining a cemetery that was donated to the community by deed. (1992, ch. 92-168, L.O.F.)

(cc) Coast Guard auxiliaries - nonprofit organization that is affiliated with the Coast Guard, that is exempt from federal income tax pursuant to s. 501(a) and (c)(3) of the Internal Revenue Code of 1986, as amended, and the primary purpose of which is to promote safe boating and to conduct free public education classes in basic seamanship is exempt from the tax imposed by this chapter. (1992, ch. 92-168, L.O.F.)

(gg) Athletic event sponsors - sales or leases to those organizations which: are incorporated pursuant to chapter 617; and hold a current exemption from federal

⁶ The 1999 Legislature passed HB 561 which added as a requirement for exemption for veterans' organizations, section 501(c)(3) status.

corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and sponsor golf tournaments sanctioned by the PGA Tour, PGA of America, or the LPGA. (1995, ch. 95-232, L.O.F. - 5 CEX accounts)

(kk) Citizen support organizations - nonprofit organizations that are incorporated under chapter 617 or hold a current exemption from federal corporate income tax under s. 501(c)(3) of the Internal Revenue Code, as amended, and that have been designated citizen support organizations in support of state-funded environmental programs or the management of state-owned lands in accordance with s. 370.0205, or to support one or more state parks in accordance with s. 258.015. (1996, ch. 96-395, L.O.F. - 30 CEX accounts)

(nn) Nonprofit cooperative hospital laundries - nonprofit organizations that are incorporated under chapter 617 and which are treated, for federal income tax purposes, as cooperatives under subchapter T of the Internal Revenue Code, whose sole purpose is to offer laundry supplies and services to their members, which members must all be exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code, are exempt from the tax imposed by this chapter. (1997, ch. 97-221, L.O.F.)

(yy) Sales or leases to Gasparilla Distance Classic Association, Inc. - also exempt from the tax imposed by this chapter are sales or leases to the Gasparilla Distance Classic Association, Inc., if that organization holds a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended. (1998, ch. 98-291, L.O.F.)

(zz) Nonprofit organizations raising funds for or making grants to organizations holding consumer's certificate of exemption - nonprofit organizations which holds current exemption from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code, as amended, the sole or primary function of which is to raise funds for or make grants to another organization or organizations currently holding a consumer's certificate of exemption issued by the department. (1999, ch. 99-238, L.O.F.)

Methodology

Information for this project was obtained in a number of ways. First, federal and state statutes were researched to determine criteria for exemption. Next, a legislative history of s. 212.08(7), F.S., as it pertains to section 501(c)(3) organizations, was performed along with all proposed section 501(c)(3) legislation over the past five legislative sessions. Information was obtained from

the Department of Revenue on the following topics: section 501(c)(3) organizations denied a Florida sales tax exemption for failure to meet all statutory requirements; growth in the number of section 501(c)(3) organizations since 1994; estimated annual cost to administer the consumers' certificate of exemption program; and the revenue estimate of exempting all section 501(c)(3) organizations from the sales tax. The report also looks at other states that provide a sales tax exemption by cross-referencing the federal exemption.

Findings

Since 1978, there have been approximately thirty-seven sales tax exemptions enacted for section 501(c)(3) organizations. Each new exemption requires action by the Legislature. A bill is filed and referenced to several legislative committees. If placed on a committee agenda, an analysis is performed by legislative staff and the bill is heard by the committee. Once the bill is favorably considered, it is sent to the next committee of reference and the process begins again. If placed on the Special Order Calendar, the bill is available for floor discussion, open to amendments, and can be voted on for passage. If passed, the bill is sent to the other chamber for similar action. Table 1 is a time table showing each section 501(c)(3) exemption passed by the Legislature since the inception of the sales tax in 1949.

Table 1
Florida Sales Tax Exemptions Awarded Section 501(c)(3) Organizations

| Year Enacted | Laws of Florida | Type of Organization |
|---------------------|------------------------|--|
| 1949 | ch. 26319,1949 | Religious, charitable and educational |
| 1978 | ch. 78-270 | Veterans' /state headquarters |
| 1982 | ch. 82-206 | State theater contract |
| 1983 | ch. 83-154 | Provides free transportation services to church members |
| 1983 | ch. 83-297 | Scientific; fund raising for charitable organizations; educational television or radio stations; Florida Association of Christian Colleges and Schools; Paralyzed Veterans' of America, Catholic War Veterans' of U.S.A., and Jewish War Veterans' of U.S.A. |

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| Year Enacted | Laws of Florida | Type of Organization |
|---------------------|--------------------------|--|
| | ch. 83-338 | Youth; protects air and water quality or wildlife |
| 1984 | ch. 84-324 ch. 84-350 | Provides manpower services |
| | ch. 84-362 | Private schools that conduct classes for continuing education credit accepted by AMA; fund raising for K-12th grades |
| 1985 | ch. 85-230 | Homes for the aged, nursing homes or hospices; Provides food, shelter, or medical care for animals or adoption services |
| 1986 | ch. 86-152 | Military museums |
| 1987 | ch. 87-101 | University newspapers |
| 1988 | ch. 88-243 | Religious television stations; vending machines sponsored b nonprofit corporation |
| 1992 | ch. 92-168 | Community cemeteries; Coast Guard auxiliaries |
| 1994 | ch. 94-186 | Educational cable consortium |
| 1995 | ch. 95-232 | Provides religious services to Florida state prisoners; network charitable institutions; blood banks; athletic events sponsors |
| 1996 | ch. 96-395 | State parks citizen support organizations |
| 1997 | ch. 97-221 | Performing arts centers; cooperative hospital laundries |
| 1998 | ch. 98-273 | Health system foundations |
| | ch. 98-291 | Gasparilla Distance Classic |
| 1998 | ch. 98-328 | Make and distribute audio recording of religious scriptures for the blind; provides religious evangelistic services |

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| Year Enacted | Laws of Florida | Type of Organization |
|---------------------|------------------------|--|
| 1999 | ch. 99-238 | All veterans' organizations; consumer credit counseling; nonprofit organizations raising funds for organizations holding CEX |

In addition to the thirty-four, section 501(c)(3) exemptions passed by the Legislature since 1978, there have been numerous bills filed each year proposing new sales tax exemptions for worthy section 501(c)(3) organizations. Table 2 shows the types of nonprofit organizations seeking exemption from the sales tax between 1995 and 1999 and the outcome of the legislation.

Table 2
Florida Sales Tax Exemption for Section 501(c)(3) Organizations
Proposed Legislation: 1995 - 1999

| Year | Bill Number | Type of s. 501(c)(3) Organization | Results |
|-------------|--------------------|--|---|
| 1995 | SB 1660 | Provides religious services to Florida State prisoner | ch. 95-232 |
| | | Network charitable institutions | ch. 95-232 |
| | | Blood banks | ch. 95-232 |
| | | Athletic events sponsors | ch. 95-232 |
| | SB 2262 | Nonprofits that provide service to charitable institutions | Died in Committee |
| | SB 2422 | "Educational institutions" to include dental schools | Died in messages |
| 1996 | SB 248 | Citizen support organizations | ch. 96-395 |
| | SB 872 | Nonprofit organizations raising funds for organizations holding CEX | Died on Calendar |
| | SB 624 SB 858 | "Religious institutions" to include religious radio stations and evangelistic services | SB 624 Vetoed SB 858 Died in W&M Comm. |
| | SB 624 | U.S.O's | Vetoed |

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| Year | Bill Number | Type of s. 501(c)(3) Organization | Results |
|-------------|--------------------|--|--|
| | | Jacksonville Marine Charities, Inc. | Vetoed |
| | | Nonprofit organizations raising funds for organizations holding CEX | Vetoed |
| | | Florida Nat'l Parks and Monument Association | Vetoed |
| | | State parks citizen support organizations | Vetoed |
| | | Gasparilla Distance Classic | Vetoed |
| | | Hadassah, Womens' Zionist Organization of America | Vetoed |
| 1997 | SB 1660 SB 368 | "Religious institutions" to include religious radio stations and evangelistic services | SB 1660 Vetoed SB 368 Died in Committee |
| | SB 1660 | Health system foundations | Vetoed |
| | | Gasparilla Distance Classic | Vetoed |
| | HB 915 | Performing arts centers | ch. 97-221 |
| | | Cooperative hospital laundries | ch. 97-221 |
| 1998 | SB 1356 | "Charitable institution" purpose is to provide funds to other such nonprofit organizations | Died in W&M Committee |
| | HB 4183 | Exempts all s. 501(c)(3) organizations | Died in Approp. Comm. |
| | SB 1060 | Health system foundations | ch. 98-273 |
| | SB 458 | Consumer credit counseling | Died in W&M Committee |
| | SB 732 | Gasparilla Distance Classic | ch. 98-291 |

| Year | Bill Number | Type of s. 501(c)(3) Organization | Results |
|-------------|--------------------|--|--|
| | SB 936 | “Religious Institutions” to include organizations that make and distribute audio recording of religious scriptures for the blind; provides religious evangelistic services | ch. 98-328 |
| 1999 | SB 700 HB 561 | Exempts all veterans’ organizations | SB 700 Died in messages ch. 99-238 |
| | SB 1818 HB 561 | Nonprofit organizations raising funds for organizations holding CEX | SB 1818 Died in messages ch. 99-238 |
| | HB 561 | Consumer credit counseling | ch. 99-238 |
| | SB 328 | Exempts all s. 501(c)(3) organizations | Died in Fiscal Resource Comm. |

Generally speaking, when legislation is proposed to exempt a section 501(c)(3) organization, it is the result of the Department of Revenue denying the organization a Consumers’ Certificate of Exemption (CEX) because the organization did not meet all of the state requirements for exemption. There are many worthy organizations denied exemption each year. It is difficult for these organizations to understand why they do not qualify for exemption from state sales tax when they qualify for exemption from federal income tax as a result of having undergone IRS scrutiny. Such denials can result in bad feelings on the part of the taxpayer towards the Department, even though the Department is just implementing the law. Table 3 is a list of section 501(c)(3) organizations denied exemption for failure to meet statutory requirements and which brought suit against the Department of Revenue.

**Table 3
Section 501(c)(3) Organizations Denied Florida Sales Tax Exemption
For Failure to Meet All Statutory Requirements**

| Name of Organization | Services Provided By s. 501(c)(3) Organizations | Results of Litigation |
|---------------------------------|---|------------------------------|
| Affordable Home Ownership Corp. | Recruits families who are qualified for federal home loans & who wish to help construct own home. | Upheld 10/23/97 |

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| Name of Organization | Services Provided By s. 501(c)(3) Organizations | Results of Litigation |
|--|--|------------------------------|
| Children's Charity Fund, Inc. | Educates & inform public about needs of handicapped children; provides equipment | Upheld 8/19/98 |
| Construction for Worldwide Evangelism, Inc. | Trains and places missionaries; builds church facilities | Upheld 9/18/97 |
| Consumer Credit Counseling Services of Central FL | Provides financial counseling, debt management education & intercedes between consumer and creditors | Upheld (Note 1) |
| Consumer Credit Counseling Services of FL Gulf Coast | Provides financial counseling, debt management education & intercedes between consumer and creditors | Upheld 7/2/97 (Note 1) |
| David Ben Gurion Culture Club, Inc. | Educates public about the holocaust & about Jewish culture | Upheld 2/23/96 |
| Holocaust Survivors Federation | Provides education on the holocaust; raises funds for other organizations | Upheld 9/27/96 |
| Miami Capital Development, Inc. | Makes low-interest business loans to promote economic dev. & revitalization | Upheld 2/19/97 |
| Dormouse Productions, Inc. | Provides copies of soft-cover books, free of charge, to third graders | Upheld 6/30/97 |
| Haitian-American Comm. Foundation | Provides services to persons of Haitian descent; raises funds for other orgs. | Upheld 12/18/98 |
| Holiday Rotary Endowment Fund | Raises funds for an endowment fund to be used to fund scholarships | Upheld 12/4/98 |
| International Conf. of Police Chaplains | Trains and educates persons who minister to law enforcement officers | Upheld 12/19/96 |
| Junior League of Tampa, Inc. | Provides money and volunteer time to other organizations | Upheld 4/8/97 |
| National Christian Network | No data available | Upheld 12/17/85 |
| National Council of La Raza | Provides services, education and training to migrant workers' | Upheld 3/11/96 |

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| Name of Organization | Services Provided By s. 501(c)(3) Organizations | Results of Litigation |
|---|--|------------------------------|
| Roy Harthern Ministries, Inc. | Traveling ministry | Upheld 7/1/98 |
| Scleroderma Federation Gulf Coast Affiliate | Raises funds for a national group which provides funds to other worthy organizations | Upheld 7/3/96 |
| Vietnam Veterans of FL Foundation | Provides computer time and volunteers to assist veterans | Upheld 12/4/98 |
| Central FL Library Association | Serves as a library network for the exchange of materials among members | Pending |
| Crime Stoppers Council of Broward | Provides support to law enforcement agencies | Pending |
| Delray Ben Gurion Chap. of Hadassah | Raises funds for national organization | Pending (Note 1) |
| Panhandle Library Access Network | No data available | On Appeal |
| Sedacca Foundation | Raises funds for Univ. of Miami mentoring program & American Cancer Society | Pending |
| Women for Hospice | Raises funds for Hospice care programs | Pending |

Source: Department of Revenue, Office of the General Council

Note 1: The 1999 Legislature passed HB 561, providing a sales tax exemption to Consumers' Credit Counseling Services and to nonprofit organizations raising funds for organizations holding a current CEX

In a year, the Department of Revenue denies approximately 350 section 501(c)(3) applications for exemption. Section 213.053, F.S., and s. 212.084, F.S., prohibits the Department from identifying by name, entities denied an exemption. However, the Department can provide an overview of the activities engaged in by organizations holding section 501(c)(3) status. Each of these entities was denied because one or more of the numerous statutory criteria was not met. In addition to the litigated cases above, between October, 1998 and March, 1999, section 501(c)(3) organizations engaged in the following activities were denied an exemption:

- advocated for persons with disabilities
- educated the public on health and well-being issues
- educated the public on issues concerning animals
- funded activities for minors
- funded other “fund raiser” groups (1999 Legislature exempted in HB 561)
- funded conservation education
- fulfilled the desires of terminally ill children
- provided volunteers for other nonprofit organizations
- supports a county-operated public park

The number of active section 501(c)(3) Consumers' Certificates of Exemption (CEX) accounts have grown over the years. Each sales tax exemption certificate expires five years after the date of issuance. Table 4 is a comparison of the number of active CEX accounts as of June 1, 1994 and May 1, 1999. As can be seen, there has been a thirty-seven percent increase in the total number of active CEX accounts in Florida over the past five years.

Table 4
Growth in the Number of Active Consumer Exemption Account
From June 1, 1994 to May 1, 1999

| <u>Type of Exemption</u> | <u>Active Consumer Exemption Accounts as of June 1, 1994</u> | <u>Active Consumer Exemption Accounts as of May 1, 1999</u> | <u>% Increase/ Decrease</u> |
|--------------------------|--|---|-------------------------------------|
| Religious | 15,943 | 21,027 | 31.9% |
| Charitable | 4,306 | 5,231 | 21.5% |
| Educational | 3,695 | 5,671 | 53.5% |
| Veterans | 440 | 640 | 45.5% |
| Scientific | 325 | 413 | 27.1% |
| Youth | 1,635 | 3,018 | 84.6% |
| Homes for Aged | 100 | 204 | 104.0% |
| Nursing Homes | 56 | 76 | 35.7% |
| Hospice | 23 | 23 | 0.0% |
| State Theater | 1 | 4 | 300.0% |
| State Park CSO | - | 30 | n/a |
| Military Museum | - | 5 | n/a |
| Athletic Event Sponsor | - | 5 | n/a |
| Total | 26,524 | 36,347 | 37.0% |

The Department of Revenue expends considerable resources determining whether organizations qualify for exemption under the complex definitions of “religious”, “charitable”, “scientific”, and “educational” in paragraph (o) of section 212.08(7), F.S., and resolving disputes on that issue. The Department estimates the cost to administer the consumers’ certificate of exemption program to be \$281,622 annually. The \$281,622 is composed of the following:

- Processing applications: The average cost to process an application for exemption, approval or denial, is estimated to be \$23.32. The Department processed 8,826 new and renewal applications in 1998 for a total cost of approximately \$ 205,822.
- Litigation expenses: In 1996, the department attended 21 Department of Administrative Hearings (DOAH), in 1997, 13 DOAH hearings, and in 1998, 19 DOAH hearings. The costs per year have been approximately \$75,800, which covers attorney time, attorney travel expenses, travel expenses for the witnesses, and administrative expenses.

Other States

Thirteen states give sales tax exemptions for purchases by organizations that hold section 501(c)(3) status either by cross-referencing section 501(c)(3) or by exempting an identical or nearly identical list of organizations. Exemption by cross-reference to section 501(c)(3) offers the broadest protection to nonprofit charitable, educational, and religious organizations. It also benefits states by reducing the administrative burden of processing exemption applications. These states are identified in Table 5.

Table 5
States Which Exempt Purchases by Organizations Exempt
under Section 501(c)(3) of the Internal Revenue Code

| | |
|----------|--|
| Colorado | Statutory language identical, but does not cross-reference. |
| Indiana | Statutory language similar, but does not include testing for public safety, fostering national or international competition, or preventing cruelty to children or animals. |
| Kentucky | Exempts all charitable, educational, and religious organizations which have qualified for exemption under section 501(c)(3) |

| | |
|---------------|---|
| Maryland | Exemption under section 501(c)(3) creates a presumption that an organization is charitable, educational or religious. |
| Massachusetts | Any organization exempt under section 501(c)(3). |
| New Jersey | No cross reference. Exempts the same list of organizations, except fostering national or international sports competition. |
| New Mexico | By cross-reference |
| New York | No cross-reference. Identical statutory language. |
| Tennessee | By cross-reference. |
| Texas | By cross-reference. |
| Vermont | By cross-reference. |
| West Virginia | By cross-reference, except that the organization must pass a special public support test. |
| Wisconsin | No cross-reference, but lists the same entities as the federal law except testing for public safety, literary purposes and fostering national and international sports competition. |

Source: “Sales Tax Exemptions for Charitable, Educational, and Religious Nonprofit Organizations”, a special report from The Human Services Forum, prepared by Janne G. Gallagher, of Harnom, Curran, Gallagher and Spielberg, September, 1992. (Information re-verified for accuracy on March 23, 1999 by Tracy Allen, Senior Attorney, Office of the General Council, the Florida Department of Revenue.)

Revenue Impact of Exempting All Section 501(c)(3) Organizations From the Sales and Use Tax

The Revenue Estimating Conference (REC) estimates the fiscal impact of proposed legislation. In 1998 and 1999, the REC provided revenue estimates for proposed legislation to exempt all section 501(c)(3) organizations. The Department of Revenue, Office of Research and Analysis did extensive work on the 1998 REC estimate in order to produce a more accurate portrayal of the fiscal impact of exempting all section 501(c)(3) organizations from the sales tax. As a result, the analysis based on the 1999 legislation estimated a recurring General Revenue loss of \$23.8 million, with a loss to local governments of \$2.2 million in the half-cent sales tax and \$1.5 million in local option sales tax revenue, and a loss to the Solid Waste Management Trust Fund of \$0.1 million..

| General Revenue | | Trust | | Local | | Total | |
|-----------------|-----------|----------|----------|----------|----------|-----------|-----------|
| 1st Year | Recur. | 1st Year | Recur. | 1st Year | Recur. | 1st Year | Recur. |
| \$ (23.8) | \$ (23.8) | \$ (0.1) | \$ (0.1) | \$ (3.7) | \$ (3.7) | \$ (27.6) | \$ (27.6) |

These estimates are based on the following assumptions:

- Revenue of nonprofit organizations represents 8.7% of Florida Gross National Product
- 20% are organizations exempt under section 501(c)(3)
- 70% of section 501(c)(3) organizations are already exempt
- Approximately 20% of total annual income is spent on taxable items
- 6% sales tax

For details of the revenue estimate, please see Appendices 1.

Conclusions and Recommendations

Since the inception of the state sales tax in 1949, the Florida Legislature has provided a sales tax exemption to over thirty-five nonprofit, section 501(c)(3) organizations, primarily religious, charitable, educational, scientific, and veterans' organizations. Nonprofit organizations holding section 501(c)(3) status is insufficient under Florida law to qualify an entity for exemption from Florida's sales and use tax. However, many of Florida's sales and use tax exemptions do currently require that an organization hold section 501(c)(3) status as one of several requirements, all of which must be met, in order to qualify for exemption. Every year, the Florida Legislature spends significant time and effort to provide sales and use tax exemptions to section 501(c)(3) organizations that have been denied a consumers' certificate of exemption by the Department of Revenue because the organization did not meet all of the state requirements for exemption. As presented in this report, many section 501(c)(3) organizations are denied exemption even though they provide necessary services to those in need. Between 1995 and 1999, the Legislature dealt with thirty-one such proposed exemptions, resulting in fourteen becoming law. In addition, it is difficult for taxpayers to understand why they do not qualify for state sales tax exemption when they qualify for federal income tax exemption. As a result of the denial of exemption for section 501(c)(3) organizations, some of the organizations spent considerable resources filing suit against the Department of Revenue contesting their denial, and in response, the Department spends an estimated \$75,000 annually in litigation expenses. As can be seen in Table 3, twenty-three organizations filed suit against the Department between 1996 and 1999.

Feasibility of Exempting All s. 501(c)(3) Organizations from Florida's Sales and Use Tax

There are both costs and benefits associated with exempting all section 501(c)(3) organizations. The costs would be a recurring General Revenue loss of \$23.8 million. The benefits would be: easing current administrative burdens and lowering annual administrative costs; providing exemptions to worthy nonprofit organizations; good will between the Department of Revenue and the taxpayer; and major reductions in annual legislation filed.

Based on the findings of this report, it is the recommendation of the Fiscal Resource Committee that the Legislature consider exempting all section 501(c)(3) organizations from the state sales and use tax. The extrinsic benefits to the taxpayers and the State of Florida from exempting all section 501(c)(3) organizations outweigh the monetary costs to the General Revenue Fund.

Appendix