

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 21, 1998 Revised: _____

Subject: Sales Tax (RAB)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

CS/SB 1692 provides specific statutory authority for Department of Revenue rules or parts thereof that have been identified by the department as subject to repeal under s. 120.536, F.S. These rules all relate to the sales and use tax.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.02, 212.07, 212.08, 212.09, 212.17, and 212.18, F.S.

II. Present Situation:

During the 1996 legislative session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than

the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

Section 120.536(2) also lays out the second step in the process, that of legislative review. The subsection provides:

The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they recommended that the Legislature grant such authority. This bill addresses a number of these issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

III. Effect of Proposed Changes:

Rule 12A-1.098: Flea Markets

Present Situation:

This rule prescribes procedures that must be followed by flea market operators and vendors in collecting and remitting sales tax. In particular, the rule allows for flea market operators to collect and remit tax which is collected by each unregistered flea market vendor. The Department of Revenue has identified this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, sellers of taxable goods at flea markets and other such locations would be required to individually register with the department and remit taxes collected.

Effect of Proposed Changes:

The bill amends ss. 212.02 and 212.18, F.S., providing procedures for flea market operators and vendors to follow in the collection and remittance of sales tax. Such procedures enable the flea market operator to collect and remit sales tax collected from unregistered vendors.

Rule 12A-1.039(1): Sale for Resale of Tangible Personal Property for Own Use or Export

Present Situation:

This rule authorizes manufacturers of tangible personal property for one's own use or for export to purchase inputs into the manufactured product tax free as a sale for resale. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, manufacturers of tangible personal property for one's own use or for export would have to pay sales tax on any inputs into the manufactured product.

Effect of Proposed Changes:

The bill amends s. 212.07(1)(c), F.S., authorizing manufacturers of tangible personal property for one's own use or for export to purchase inputs into the manufactured product tax free as a sale for resale.

Rules 12A-1.001(3): Purchases by Exempt Organizations

Present Situation:

This rule provides that the sales tax exemption for purchases by exempt organizations may only be taken when payment is made directly by the exempt organization and not by employees or other representatives who are later reimbursed by the exempt entity. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation

is enacted by January 1, 1999. If authorizing language is not passed, all purchases by exempt organizations, even those made by employees, will be exempt.

Effect of Proposed Changes:

The bill adds to s. 212.08(7), F.S., the current rule requirement that the sales tax exemption for purchases by exempt organizations may only be taken when payment is made directly by the exempt organization and not by employees or other representatives who are later reimbursed.

Rules 12A-1.001(6)(e), 12A-1.049 (2) and (4) and 12A-1.087(6): Agricultural Exemptions

Present Situation:

Rule 12A-1.001(6)(e), F.A.C., specifies that breeding and raising fish is considered an agricultural project and subject to the sales tax exemption for agriculture. Section (6) of rule 12A-1.087, F.A.C., extends the definition of farmer to include apiarists (beekeepers) and breeders of fish. The Department of Revenue has identified parts of these rules as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, fish breeders and apiarists would not qualify as farmers for sales tax purposes.

Rule 12A-1.049 (2) and (4), F.A.C., provides that the sale of race horses at claiming races occurring over the course of a single season are taxable on the first sale and thereafter only on the increase in selling price over the price at the first sale. The rule also provides that the sale of animals that will be used for fur production are exempt and that the sale of a racing dog by its owner is exempt if the owner is also the breeder of the animal. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, race horses sold at claiming races would be subject to tax at each sale based on the full claim paid. Also, the sale of animals that will be used for fur production would be taxable as well as the sale of all racing dogs.

Effect of Proposed Changes:

The bill amends s. 212.02, F.S., to provide definitions in chapter 212 for “agriculture commodity” to include aquaculture, “farmer” to include apiarists and persons raising fish, and “livestock” to include fish raised for commercial purposes, as well as, all animals raised for commercial purposes other than for sale as a pet. This would exempt animals used for fur production.

The bill amends s. 212.07(1), F.S., providing that the sale of race horses at claiming races occurring over the course of a single season are taxable on the first sale and thereafter only on the increase in selling price over the price at the first sale. Paragraph (qq) is added to s. 212.08(7), F.S., to provide that the sale of a racing dog by its owner is exempt from sales tax if the owner is

also the breeder of the animal.

The term “agricultural commodity” as defined in s. 212.07(8), F.S., is deleted.

Rules 12A-1.007(1)(b) and 12A-1.074 (1) and (2): Trade-ins

Present Situation:

Rule 12A-1.007(1)(b), F.A.C., provides that trade-ins to registered dealers of aircraft, boats or motor vehicles must be for resale to qualify for the sales tax exemption. Also, trade-ins of items other than airplanes, boats and motor vehicles to non-dealers do not qualify for the sales tax exemption when traded for a boat, aircraft or motor vehicle. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, trade-ins of aircraft, boats and motor vehicles to registered dealers of aircraft, boats and motor vehicles would not have to be for resale to qualify for the sales tax exemption. Also, trade-ins of tangible personal property for an aircraft, boat or motor vehicle to non-dealers would qualify for the sales tax exemption.

Rule 12A-1.074 (1) and (2), F.A.C., specifies that separate or independent sales are not to be considered trade-ins even if the proceeds from the sale are immediately applied by the seller to the purchase of a new article. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, any separate sale of items of tangible personal property where the purchase price is applied to the sale of a new item would be considered a trade-in for sales tax purposes.

Effect of Proposed Changes:

The bill amends s. 212.09, F.S., providing that trade-ins to registered dealers of aircraft, boats or motor vehicles must be for resale to qualify for the sales tax exemption. Also, trade-ins of items other than airplanes, boats and motor vehicles to non-dealers do not qualify for the sales tax exemption when traded for a boat, aircraft or motor vehicle. The bill also specifies that separate or independent sales are not to be considered trade-ins even if the proceeds from the sale are immediately applied by the seller to the purchase of a new article.

Rules 12A-1.010(3)(b) and 12A-1.013: Sales of Tangible Personal Property for Dealers Own Use

Present Situation:

Rule 12A-1.010 (3) (b), F.A.C., provides for a credit on the sales tax return for sales tax paid to a supplier by a barber or beauty shop owner or operator on items of tangible personal property

purchased for their own use but later sold at retail, where tax is collected on such item of tangible personal property. Rule 12A-1.013, F.A.C., provides for a credit on the sales tax return for sales tax paid to a supplier by a dealer on tangible personal property purchased for the dealers own use which is later resold. The Department of Revenue has identified part of this rule as exceeding the rulemaking authority permitted by s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal the rule if no authorizing legislation is enacted by January 1, 1999. If authorizing language is not passed, barbers or beauty shop owners or operators could no longer apply credit for taxes paid on items of tangible personal property purchased for their own use and later sold at retail.

Effect of Proposed Changes:

The bill amends s. 212.17, F.S., providing that a registered dealer that purchases property for his or her own use, pays tax on the acquisition but later sells the property at retail, is entitled to reimbursement of taxes paid.

This bill will take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution requires a two-thirds vote of the membership of each house of the Legislature to enact general laws if the anticipated effect is to reduce revenue raising authority of counties or municipalities, as such authority existed on February 1, 1989. Since the revenue raising authority addressed in this bill results from rules to be repealed in 1999, the bill does not affect local revenue raising authority as it existed in 1989 and therefore does not qualify as a mandate under section 18.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill provides statutory authority for a number of the rules identified by the Department of Revenue as exceeding their rulemaking authority permitted by s. 120.536, F.S. If these rules are allowed to be repealed, as current law requires, there would be a significant increase

in sales tax revenue beginning in the 1999-00 fiscal year. This bill provides statutory authority for these rules and would have the effect of eliminating any revenue increases caused by the rule repeal process. The following table shows estimates of the fiscal impact of providing statutory authorization for these rules. While these estimates show a revenue decrease, passage of the bill will not affect the budget process. The revenue estimates being used for the appropriations bill have not recognized any revenue impact from these issues.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Sales Tax Exemptions	\$	\$	\$	\$	\$	\$	\$	\$
1. Exempt. Organ. purchase by employes	0.0	3.3	0.0	*	0.0	0.5	0.0	3.8
2. Fish Breeding	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
3. Sale for resale: manuf. for own use	0.0	(*)	0.0	(*)	0.0	(*)	0.0	(*)
4. Sale of racing horses; livestock	0.0	(0.4)	0.0	(*)	0.0	(*)	0.0	(0.4)
5. Trade-ins	0.0	(**)	0.0	(**)	0.0	(**)	0.0	(**)
6. Sales of goods for dealers use: barber or beauty op/owners	0.0	(0.6)	0.0	(*)	0.0	(0.1)	0.0	(0.7)
7. Dealer registration fee penalty	0.0	(**)	0.0	(**)	0.0	(**)	0.0	(**)
8. Revocation of dealer registration	0.0	(*)	0.0	(*)	0.0	(*)	0.0	(*)
9. Flea Markets	<u>0.0</u>	<u>(**)</u>	<u>0.0</u>	<u>(**)</u>	<u>0.0</u>	<u>(**)</u>	<u>0.0</u>	<u>(**)</u>
TOTAL	0.0	(2.3)	0.0	(**)	0.0	(0.4)	0.0	(2.7)

* Insignificant
** Indeterminate

B. Private Sector Impact:

This bill would counteract the effect of the rule repeal process for those issues addressed, resulting in lower taxes and reduced administrative burdens than would have occurred in many industries had the rules been repealed. Industries with revenue impacts include agriculture and barbers and beauty shop operators or owners who purchase goods for their own use and later resell such items. Barbers or beauty shop operators, manufacturers of tangible personal property for their own use or for export who can purchase inputs into the manufactured product tax free as a sale for resale, and flea market operators and vendors should experience reduced administration burdens.

If the rule requirement that the sales tax exemption for purchases by exempt organizations which may only be taken when payment is made directly by the exempt organization and not

by employees or other representatives who are later reimbursed were repealed, then such organizations would be able to increase their exempt purchases. As a result of the adoption of this rule, such exempt organizations will realize an increase in sales tax paid.

C. Government Sector Impact:

The Department of Revenue should experience reduced sales tax administrative burdens in a number of areas including barbers and beauty shops, manufacturers of tangible personal property for their own use or for export, and flea market operators and vendors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.