

STORAGE NAME: h1673.grr

DATE: March 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 1673

RELATING TO: Sales tax credit/ Food Service Businesses

SPONSOR(S): Representative Gottlieb and others

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS
 - (2) FINANCE AND TAXATION
 - (3) EDUCATION APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 1673 creates s. 212.099, F.S. It provides that any public food service establishment licensed under chapter 509, F.S., that sells food for consumption on or off the premises is entitled to a credit against its sales or use tax obligations for 25 percent of any amount contributed to a scholarship fund, as defined in this bill. Currently, food service businesses do not receive any credit against sales and use tax obligations, even for contributions made to scholarship funds.

Provides the department with the authority to adopt rules to implement the requirements of this section.

Provides for an effective date of July 1, 1999.

A fiscal impact estimate was not available at time of publication.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, food service businesses do not receive any credit against sales and use tax obligations, even for contributions made to scholarship funds.

Receiving a credit against sales and use tax obligations is not common. The Florida Statute's Index lists twelve citations categorized under "sales and tax use/credits." These citations are mainly exemptions and *not* credits. A sales tax exemption grants an entity exemption from paying the sales tax. A sales tax credit requires an entity to pay the sales tax and also be eligible to receive a credit against a percentage of total tax paid. Examples of sales tax exemptions are provided throughout chapter 212, F.S. However, examples of sales tax credits are specific to enterprise zones. Section 212.096, F.S., provides a credit against the sales and use tax remitted under Ch. 212 for enterprise zones. This sales and use tax credit is contingent upon the provisions of ss. 212.097 and 212.098, F.S., which create an Urban High-Crime Area Job Tax Credit Program and a Rural Job Tax Credit Program.

B. EFFECT OF PROPOSED CHANGES:

HB 1673 creates s. 212.099, F.S. It provides that any public food service establishment licensed under chapter 509, F.S., that sells food for consumption on or off the premises is entitled to a credit against its sales or use tax obligations for 25 percent of any amount contributed to a scholarship fund, as defined in this bill. Scholarship funds include governmental or private entities established to provide scholarships or grants to students from low or moderate-income Florida families to study at any public or private college, university, community college or vocational school. The credit is obtained by applying to the department no more than once in any 12-month period. The application should identify the applicant, the scholarship fund or funds, the administrator or administrators of the donee funds, and the amount of each contribution. Affidavits of the fund administrators are required to support the claimed amounts.

The department is also required to issue a written approval within 10 days of receiving an application that contains all the required information and establishes the applicant's entitlement to the credit. If an application does not support the credit, the department must notify the applicant of its denial. In such cases, the applicant may reapply within three months of notification of the denial.

An approved applicant is awarded the credit on the next sales and use tax return filed with the state after notification of approval. If the credit exceeds the amount owed on that return, the excess could be taken on successive returns so long as the credit is completely absorbed within 12 months of the department's approval.

Any person that fraudulently claims a credit under s. 212.099, F.S., is liable for repayment of credit, is liable for payment of a mandatory 100 percent penalty, and is guilty of a second-degree misdemeanor.

The department is required to adopt rules to administer the section, including procedural rules and rules to determine which business and scholarship funds qualify for the credit.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

- a. Does the bill create, increase or reduce, either directly or indirectly:

- (1) any authority to make rules or adjudicate disputes?

Yes. The bill provides the department with the authority to adopt rules to administer the provisions of s. 212.099, F.S.

- (2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The department must identify affected taxpayers and may be required to create new forms, change internal processes, draft and promulgate rule amendments, prepare a Taxpayer Information Publication (TIP) to be sent to affected parties, and otherwise notify the public on how to comply with the new tax law.

In addition, the department is required to administer the application process, including verifying authenticity of scholarship programs and provide written approval/denial of application.

- (3) any entitlement to a government service or benefit?

N/A

- b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

The bill provides a credit against sales and tax use obligations to food service businesses contributing to scholarship programs. By providing a sales and use tax credit, a reduction in sales tax revenues is anticipated. An official estimate is not available at this time.

- d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 212.099, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates s. 212.099, F.S.; provides definitions; provides that any public food service establishment licensed under chapter 509, F.S., that sells food for consumption on or off the premises is entitled to a credit against its sales or use tax obligations for 25 percent of any amount contributed to a scholarship fund.

Requires that vendors file an application form with the Department of Revenue under oath. Requires the department to review the application within 10 working days, provide verification, approve or deny application in writing, and ensure that the application meets requirements. Provides for the allocation of excess credits to any other tax return provided by the vendor and submitted to the department 12 months after the approval of the application.

Requires the vendors to affirmatively demonstrate to the department that it meets the requirements of this section.

Restricts the credit to months in which the tax due or the tax return required pursuant to s. 212.11, F.S., is not delinquent.

Provides for repayment of the credit plus a mandatory penalty of 100 percent of the credit, if such a credit is fraudulently filed. Provides for a second-degree misdemeanor offense for applications found guilty of fraud.

Authorizes the department to adopt rules to administer this section.

Section 2. Provides for an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Fiscal impact estimates were not available at time of publication.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with counties or municipalities.

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V. COMMENTS:

The following are issues of concern expressed to the Committee on Governmental Rules and Regulations by the Department of Revenue:

The definition of "scholarship fund" may present interpretation and compliance problems. With only 10 days in which to respond to an application, it is not feasible for the department to investigate each fund listed in an application. Funds set up by private entities could be limited to entities recognized as tax-exempt nonprofit organizations for income tax purposes under s. 501(c)(3) of the Internal Revenue Code or for sales tax purposes under s. 212.08(7), F.S. This would assure that the fund is bona fide and has been reviewed by a governmental body at some time.

In addition, it is unclear whether a fund must be established solely for students from Florida resident families or it is sufficient that some of the scholarships or grants from a fund go to Florida students. Conditioning the credit on use of the contributions for Florida students would avoid this question.

The bill leaves it to the department to set forth guidelines on how to determine both the business and the fund that will qualify by rule. Under current rulemaking guidelines, it is questionable whether the department is able to define terms and provide criteria without more explicit statutory language.

The bill provides no time limit within which a business must apply for the credit after making the contribution.

The Department of Revenue suggests that the effective date of this bill be changed to January 1, 2000. A July 1, 1999, effective date does not give the department a sufficient time frame to adequately implement this law. The department must identify affected taxpayers and possibly create new forms, change internal processes, draft and promulgate rule amendments, prepare a Taxpayer Information Publication (TIP) for release to affected parties, and otherwise notify the public on how to comply with the new tax law.

3AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:N/A

VI. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

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