

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 1978

SPONSOR: Senator Carlton

SUBJECT: Tax Administration

DATE: April 3, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Maclure	CM	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides for the following tax administration changes:

- Repeals the issuance of temporary exemption certificates.
- Eliminates the specific exemption for crime prevention, drunk-driving prevention, and juvenile delinquency groups.
- Reinstates the exemption for parent-teacher organizations and parent-teacher associations that were inadvertently affected due to a change in the definition of “educational institution.”
- Clarifies whether organizations are entitled to a refund for tax paid on items purchased by qualifying s. 501(c)(3), Internal Revenue Code, organizations prior to receiving a consumer certificate of exemption.
- Eliminates the obsolete reference to the Work and Gain Economic Self-sufficiency (WAGES) registration requirement for manufacturers to qualify for the electricity and steam exemption.
- Requires the purchaser of machinery and equipment necessary for the production of electrical or steam energy to file an affidavit stating the exempt nature of the purchase with the selling vendor instead of the Department of Revenue.

- Replaces the current definition of “Section 38 property” for certain machinery and equipment with a definition that is consistent with the past federal explanation of the term.
- Modifies the law to impose certain requirements on the removal of motor vehicles from the state, similar to those in place for the purchase of boats and aircraft.
- Eliminates reference to the undefined term “trade fixtures,” in order to clarify the definition of “fixtures.”
- Provides consistent treatment among vessels, railroads, and motor vehicles engaged in interstate or foreign commerce.
- Reduces the burden on Florida corporate income taxpayers by eliminating the initial-year information return.
- Eliminates the exemption from the insurance premium tax for insurers who write monoline flood insurance policies.
- Extends the certified audit program for four additional years.
- Clarifies that the “Rewards Program” is the only means available to obtain compensation for information regarding another person’s failure to comply with the state’s tax laws.
- Provides that certain general provisions and tools utilized by the Department of Revenue in general tax administration would be applicable to the collection of unemployment tax.
- Revives and readopts the 0.3 percent General Revenue Service Charge.
- Repeals the repeal of the sales tax exemption for Citizen Support Organizations and the Florida Folk Festival.

This bill substantially amends the following sections of the Florida Statutes: 212.08, 212.06, 220.22, 213.285, 213.30, 45.031, 69.041, 213.053, and 215.20. This bill repeals the following subsections of the Florida Statutes: 212.084(6) and 624.509(10).

II. Present Situation:

See “Effect of Proposed Changes” section of this staff analysis.

III. Effect of Proposed Changes:TEMPORARY EXEMPTION CERTIFICATES

(Section 1)

PRESENT SITUATION:

Section 212.084(6), F.S., authorizes the Department of Revenue (department) to issue temporary exemption certificates to newly organized charitable entities applying for exempt status as nonprofit “charitable institutions” pursuant to s. 212.08(7)(p), F.S., when a lack of historical information prevents the applicant from qualifying immediately for an exemption certificate.

EFFECT OF PROPOSED CHANGES:

The bill repeals subsection (6) of s. 212.084, F.S., providing for the issuance of temporary exemption certificates. The amendment to s. 212.08(7)(p), F.S., found in section 2 of the bill, providing for a refund of tax paid on items purchased by qualifying s. 501(c)(3) organizations prior to receiving a consumer certificate of exemption, renders subsection (6) of s. 212.084, F.S., unnecessary.

SALES AND USE TAX EXEMPTIONSRETROACTIVE APPLICATION

(Sections 2 & 3)

PRESENT SITUATION:

In ch. 2000-228, L.O.F., the Legislature revised the sales and use tax law to extend exempt status to all entities that are exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. This change in the law made other specific exemptions unnecessary and such exemptions were deleted from s. 212.08(7), F.S.

Electricity and steam used in manufacturing are exempt from sales tax, contingent upon the manufacturer registering with the Work and Gain Economic Self-Sufficiency (WAGES) Program. In 2000, legislation was passed that eliminated maintenance of the WAGES business registry making the registration requirement obsolete.

EFFECT OF PROPOSED CHANGES:

Section 2 of the bill corrects several problems identified as a result of the changes made by ch. 2000-228, L.O.F., to s. 212.08(7), F.S. These changes are:

- Eliminates the specific exemption for crime prevention, drunk-driving prevention, and juvenile delinquency groups.

- Reinstates the exemption for parent-teacher organizations and parent-teacher associations that were inadvertently affected due to a change in the definition of “educational institution.” This change applies retroactively to July 1, 2000.
- Clarifies whether organizations are entitled to a refund for tax paid on items purchased by qualifying s. 501(c)(3), Internal Revenue Code, organizations prior to receiving a consumer certificate of exemption. These changes are made to clarify rather than change existing law, and apply retroactively to January 1, 2001.

Section 2 also eliminates the obsolete reference to the WAGES registration requirement for manufacturers to qualify for the electricity and steam exemption. This change applies retroactively to July 1, 2000.

Section 2 moves a provision in subsection (7) of s. 212.08, F.S., from flush-left at the end of the subsection, to the beginning of the subsection. The provision provides that exemptions provided to any entity by subsection (7) shall not inure to any transaction otherwise taxable under ch. 212, F.S., when payment is made by a representative or employee of such entity by any means, including, but not limited to, cash, check, or credit card even when that representative or employee is subsequently reimbursed by such entity. This change is made to clarify rather than change existing law, and these amendments apply retroactively to January 1, 2001.

SALES TAX EXEMPTION
ELECTRICITY AND STEAM – AFFIDAVITS FILED WITH VENDORS
(Section 4)

PRESENT SITUATION:

Section 212.08(5)(c), F.S., provides a sales and use tax exemption for machinery and equipment used in the production of electrical or steam energy, if the energy produced is the result of burning boiler fuels, other than residual oil, or the energy resulting from the burning of residual fuel accounts for less than 5 percent of the total energy. If a facility burns both residual oil and non-residual oil fuels and the energy resulting from the burning of residual fuels accounts for more than 15 percent of the total energy, the exemption is prorated. Purchasers are required to file an affidavit with the department stating that the item or items purchased are for an exempt purpose.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(c), F.S. In order to more appropriately document the exempt nature of the purchase, the bill requires the purchasers of machinery and equipment necessary for the production of electrical or steam energy to file the affidavit stating the exempt nature of the purchase with the selling vendor instead of the department. This amendment is effective upon becoming a law and applies retroactively to July 1, 1996.

MACHINERY & EQUIPMENT – SECTION 38 PROPERTY
(Section 5)

PRESENT SITUATION:

Section 212.08(5)(b), (d), and (f), F.S., exempts from sales and use tax purchases of:

- Machinery and equipment used to increase productive output;
- Machinery and equipment used under federal procurement contracts;
- Motion picture and video equipment used in motion picture or television activities; and
- Sound recording equipment used in the production of master tapes and master records.

The machinery and equipment used in these exempt activities is known as “Section 38 property,” as defined in a former provision of the Internal Revenue Code. According to the department, the definition of “Section 38 property” is no longer in the Internal Revenue Code and reference material regarding what items the definition covers is becoming more difficult to obtain, causing confusion and uncertainty for taxpayers.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(b), (d), and (f), F.S., replacing the current definition of “Section 38 property” for machinery and equipment used to increase productive output; for machinery and equipment used under federal procurement contract; and for motion picture, video, and sound recording equipment used in production, with an express definition of such equipment that is consistent with the past federal explanation of that term. “Industrial machinery and equipment” is defined as tangible personal property, or other property, that has a depreciable life of 3 years or more, that qualifies as an eligible cost under federal procurement regulations, and that is used as an integral part of the process of production of tangible personal property. These changes take effect July 1, 2001.

SALES OF MOTOR VEHICLES TO NON-RESIDENTS
(Section 6)

PRESENT SITUATION:

The 1999 Legislature modified the sales and use tax law to allow a non-resident 45 days to register in his or her home state a motor vehicle purchased in Florida and qualify for a reduced tax rate equal to the sales tax rate in his or her home state. Additionally, the requirement that the motor vehicle be removed from Florida was eliminated. In what appears to be an unintended consequence of these changes, the department has identified numerous purchases of recreational vehicles using limited liability companies established in Montana by Florida residents. There is no sales tax in Montana, thus allowing Florida residents to purchase and use recreational vehicles in Florida tax-free.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(10), F.S., to modify the law to impose certain requirements on the removal of motor vehicles from the state, similar to those currently in place for the purchase of boats and aircraft. Specifically, a vehicle is subject to Florida's sales tax when the vehicle is purchased by a nonresident corporation or partnership and:

- An officer of the corporation is a resident of Florida;
- A stockholder of the corporation who owns at least 10 percent of the corporation is a resident of Florida; or
- A partner in the partnership who has at least 10 percent ownership is a resident of Florida.

However, if the vehicle is removed from Florida within 45 days after purchase and remains outside Florida for a minimum of 180 days, the vehicle may qualify for the partial exemption. This language takes effect July 1, 2001.

MACHINERY AND EQUIPMENT EXCLUSION – FIXTURES
(Sections 7 & 8)

PRESENT SITUATION:

Section 212.06(14)(b), F.S., defines "fixtures" as items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. According to the department, this definition was intended to provide statutory guidance to specifically address the real property versus tangible personal property determinations that contractors and the department must make. The statute provides that "machinery and equipment" and "trade fixtures" never become a fixture of real property no matter how permanently they are attached. This definition has resulted in the unintentional reclassification of some types of property that has historically been treated as real property for taxation purposes.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.06(14)(b), F.S., to eliminate reference to the undefined term "trade fixtures," in order to clarify the definition of "fixtures." The amendment is designed to give guidance on the treatment of industrial machinery and equipment that is used in the manufacturing, processing, compounding or production of tangible personal property. This section takes effect July 1, 2001, and is remedial in nature and merely clarifies existing law.

SALES TAX EXEMPTIONS – VESSELS AND VEHICLES ENGAGED IN INTERSTATE
COMMERCE
(Section 9)

PRESENT SITUATION:

Subsections 212.08(8) and (9), F.S., provide that vessels, railroads, and motor vehicles engaged in interstate or foreign commerce are allowed to prorate their purchases to determine tax due on such purchases. The basis of the tax is the ratio of the intrastate mileage to interstate or foreign mileage traveled during the previous fiscal year, if the carrier had at least some Florida mileage. Once calculated for vessels, the ratio is applied against the vessel's Florida taxable purchases, and for railroads and motor vehicles, the ratio is applied against the carrier's total taxable purchases. There is no provision for prorating the tax if the carrier has been operating for less than one fiscal year. Statutory reference to the "Interstate Commerce Commission" is obsolete.

EFFECT OF PROPOSED CHANGES:

The bill amends subsections (8) and (9) of s. 212.08, F.S., to provide consistent treatment among vessels, railroads, and motor vehicles by applying the tax to Florida taxable purchases and by providing that the tax would apply even if the vessel, railroad, or motor vehicle has operated for less than one fiscal year. During the fiscal year in which the vessel, railroad, or motor vehicle begins its initial operations in Florida, the mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in Florida to anticipated total miles for that year. Either additional taxes must be paid or a refund may be applied for on the basis of the actual ratio of miles in Florida to total miles. The bill changes the reference to the Interstate Commerce Commission to the Surface Transportation Board. This section takes effect upon becoming a law.

CORPORATE INCOME TAX RETURNS
(Section 10)

PRESENT SITUATION:

Section 220.22, F.S., provides that unless specifically exempt, corporations are required to file corporate income tax returns for every year the corporation is either liable for Florida income tax or is required to make a federal income tax return. The entities already exempt from filing are generally only required to file a Florida corporate income tax return for the first year they exist or do business in Florida, and they only have to answer information questions on the return.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 220.22(4), F.S., reducing the burden on Florida corporate income taxpayers by eliminating the initial year information return. These entities could be added to the department's database when, and if, they owe Florida corporate income tax based on information that the Department receives from the Internal Revenue Service. This section takes effect July 1, 2001.

INSURANCE PREMIUM TAX – FLOOD INSURANCE POLICIES
(Section 11)

PRESENT SITUATION:

Section 624.509(10), F.S., exempts from the insurance premium tax, premiums written by insurers who write monoline insurance policies for flood insurance not subsidized by the federal government. At the request of the U.S. Justice Department, the Federal Emergency Management Agency (FEMA) contacted the Department of Revenue to determine how many insurers were using this exemption. As it turned out, there were no insurers using this exemption. It appears that only surplus lines insurers are writing non-federally subsidized flood insurance in Florida, and they are not entitled to the exemption. The federal government has expressed an intent to challenge the exemption on the basis that it discriminates between monoline and surplus line insurers.

EFFECT OF PROPOSED CHANGES:

The bill repeals subsection (10) of s. 624.509, F.S., eliminating the exemption from the insurance premium tax for insurers who write monoline flood insurance policies, thereby eliminating any alleged discrimination. This section takes effect July 1, 2001.

EXTENSION OF THE CERTIFIED AUDIT PROJECT
(Section 12)

PRESENT SITUATION:

Section 213.285, F.S., created the Certified Audit Project in 1998. The legislation creating the program provided for a July 1, 2002, sunset provision, or upon completion of the project as determined by the department, whichever occurs first. The Certified Audit Project allows a taxpayer to hire a private Certified Public Accountant (CPA) firm to perform a compliance audit. Taxpayers reporting a liability under this program receive a waiver of penalties and the first \$25,000 in interest in excess of \$25,000. There are currently 53 taxpayers in the program. Based on results to date, it is anticipated that the program will earn a positive return on investment. While a number of CPA's and taxpayers have expressed an interest in the program, the department is only beginning to see significant use of the program and would like to extend the life of the project past July 1, 2002.

EFFECT OF PROPOSED CHANGES:

The bill amends paragraph (2)(c) of s. 213.285, F.S., to extend the certified audit program sunset provision by four years, from July 1, 2002, to July 1, 2006. This section takes effect upon becoming a law.

COMPENSATION FOR INFORMATION RELATING TO VIOLATION OF THE TAX LAWS
(Sections 13 & 14)

PRESENT SITUATION:

The 1987 Legislature created s. 213.30, F.S., the “Rewards” statute, as a way to encourage public participation in ensuring compliance with the tax laws. Individuals can earn a “reward” of up to 10 percent of the amount of tax, penalty, or interest that is recovered by the state as a result of their information. Some individuals have sought ways to circumvent the legal cap on the rewards program through the use of other statutes not specifically intended to address tax enforcement issues. These efforts are creating confusion, encouraging litigation, and causing taxpayers who may have inadvertently failed to comply with the law to incur substantial costs.

EFFECT OF PROPOSED CHANGES:

Amends s. 213.30, F.S., by adding subsection (3), which clarifies that the “Rewards Program” is the only means available to obtain compensation for information regarding another person’s failure to comply with the state’s tax laws. This section takes effect upon becoming a law.

The amendment to s. 213.30, F.S., made by this bill does not apply to any case in litigation or under seal on the effective date of this act.

UNEMPLOYMENT COMPENSATION TAX ADMINISTRATION
(Sections 15, 16, 17, & 18)

PRESENT SITUATION:

Chapter 2000-165, L.O.F., requires the Agency for Workforce Innovation (AWI) to contract with the Department of Revenue to provide unemployment tax collection services. The department has identified procedures currently used by the department when collecting other taxes, which would be helpful in fulfilling this contractual obligation.

EFFECT OF PROPOSED CHANGES:

Section 15 of the bill amends s. 11 of ch. 2000-165, L.O.F., and states that the department is administering a state revenue law when it provides unemployment compensation tax collection services to AWI, pursuant to the contractual agreement between the department and AWI. The bill specifies that statutory provisions in ch. 213, F.S., apply to the department’s administration of the unemployment compensation tax.

Section 16 of the bill amends s. 45.031(7), F.S., directing the Clerks of the Court to notify the department if there are surplus proceeds resulting from a sale of real or personal property pursuant to an unemployment compensation tax lien.

Section 17 of the bill amends s. 69.041(4)(a), F.S., authorizing the department to participate in the disbursement of any funds remaining in the registry of the court after the distribution of sale

proceeds pursuant to s. 45.031, F.S., if the department has an interest in an unemployment compensation lien.

Section 18 amends s. 213.053(1), F.S., ensuring that the confidentiality and information sharing provisions of s. 213.053, F.S., apply to the unemployment compensation tax collection services the department provides to AWI. The bill further provides that the exceptions to the confidentiality provisions that are contained in ss. 443.171(7) and 443.1715, F.S., continue to apply.

Sections 15, 16, 17 and 18 take effect upon becoming a law.

SUNSET OF THE 0.3 PERCENT GENERAL REVENUE SERVICE CHARGE
(Section 19)

PRESENT SITUATION:

Subsection (3) of s. 215.20, F.S., imposes a general revenue service charge of 0.3 percent on the income of a revenue nature deposited in certain trust funds. Chapter 90-110, L.O.F., provided that the 0.3 percent general revenue service charge is to expire October 1, 2001, and is subject to legislative review. The 0.3 percent general revenue service charge is expected to generate \$7.8 million to the General Revenue Fund in F.Y. 2000-01 and \$6.7 million in F.Y. 2001-02. The 0.3 percent general revenue service charge was reviewed by the Senate Fiscal Resource Committee and recommended for continuation. (*See* Senate Interim Project Report 2001-039.)

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2001, the bill provides that subsection (3) of s. 215.20, F.S., shall not expire on October 1, 2001, as scheduled by s. 10 of ch. 90-110, L.O.F., but subsection (3) of s. 215.20, F.S., is revived and readopted.

SALES AND USE TAX EXEMPTION FOR CITIZEN SUPPORT ORGANIZATIONS AND
THE FLORIDA FOLK FESTIVAL
(Section 20)

PRESENT SITUATION:

In 1996, the Legislature granted an exemption from the sales and use tax to the Florida Folk Festival and to Citizen Support Organizations. Section 212.08(7)(ii), F.S., provides a sales and use tax exemption to nonprofit organizations that have been designated as citizen support organizations in support of state-funded environmental programs or the management of state-owned lands, or to support one or more state parks. The exemption expires July 1, 2001.

Section 212.08(7)(jj), F.S., exempts from the sales tax income of a revenue nature received from admissions to the Florida Folk Festival held pursuant to s. 267.16, F.S., at the Steven Foster State Folk Culture Center. The exemption expires June 1, 2001.

Prior to the expiration , the economic benefits of each exemption must be reviewed and quantified by the Legislature, pursuant to s. 4 of ch. 96-395, L.O.F. Both exemptions were reviewed by the Senate Fiscal Resource Committee and recommended for continuation. (*See* Senate Interim Project Report 2001-040.)

EFFECT OF PROPOSED CHANGES:

Effective upon becoming a law, and applying retroactively to June 1, 2001, if this act does not become law by that date, s. 4 of ch. 96-395, L.O.F., is repealed. This repeal continues the sales and use tax exemption for both the Citizen Support Organizations and the Florida Folk Festival.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Section 2 of the bill entitling s. 501(c)(3), Internal Revenue Code, organizations to a refund for tax paid on items purchased by the organization prior to receiving a consumer certificate of exemption is estimated by the Revenue Estimating Conference to result in a recurring loss of General Revenue of \$3.3 million, with a loss of local revenue of \$0.6 million.

B. Private Sector Impact:

Replacing the current definition of “Section 38 property” with an express definition that is consistent with the past federal explanation of such property will eliminate confusion and uncertainty for taxpayers.

Vessels, railroads, and motor vehicles engaged in interstate or foreign commerce that have been operating for less than one year will be able to prorate their purchases to determine tax due on such purchases under the provisions of this bill.

The bill reduces the burden on Florida corporate income taxpayers by eliminating the initial-year information return.

The four-year extension of the certified audit program will give taxpayers interested in the program four additional years to participate. Based on the results to date, the department anticipates that the program will earn a positive return to both the taxpayer and the department.

C. Government Sector Impact:

The bill provides that certain general provisions and tools utilized by the Department of Revenue in general tax administration would be applicable to the collection of unemployment tax. This will provide for reduced burdens and savings by the department and taxpayers as common procedures will be followed for collection of unemployment tax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
