

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1059

Exemptions from the Tax on Sales, Use, and Other Transactions

SPONSOR(S): Llorente

TIED BILLS:

IDEN./SIM. BILLS: CS/SB 1962

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------------|-----------------------------------|----------------|
| 1) <u>Committee on Health Innovation</u> | <u>5 Y, 0 N</u> | <u>Quinn-Gato</u> | <u>Calamas</u> |
| 2) <u>Healthcare Council</u> | <u></u> | <u>Quinn-Gato/ Massengale</u> | <u>Gormley</u> |
| 3) <u>Policy & Budget Council</u> | <u></u> | <u></u> | <u></u> |
| 4) <u></u> | <u></u> | <u></u> | <u></u> |
| 5) <u></u> | <u></u> | <u></u> | <u></u> |

SUMMARY ANALYSIS

House Bill 1059 amends s. 212.08, F.S., by allowing nonprofit cooperative hospital laundries to provide limited laundry supplies and services to entities that are not members of the cooperative pursuant to a written emergency plan of operation without invalidating or causing a consumer's certificate of exemption to be denied.

The bill further provides that any member that changes its Internal Revenue Code s. 501(c)(3) status must divest all interest or participation in the nonprofit cooperative hospital laundry within 30 days after the change in status.

The bill does not have a fiscal impact on state or local revenues or expenditures.

The bill is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited government – this bill reduces government burden on the private sector by allowing entities to retain sales tax exemptions under certain limited circumstances.

B. EFFECT OF PROPOSED CHANGES:

Background

Cooperatives Generally

A cooperative is a business entity that is owned and controlled by its own members who purchase the cooperative's supplies, goods or services and are governed by select a board of directors from within.¹ Cooperatives exist to serve their members' needs for affordable goods and services, and any surplus revenues are returned to members in an amount proportional to their use of, not investment in, the cooperative.² Cooperatives pay taxes on the income that is maintained within the cooperative for investment and reserves, while members pay taxes on income received from any surplus revenues generated by the cooperative.³

Cooperatives may be organized to provide a number of specific goods and services. According to the National Cooperative Business Association, cooperatives follow seven principles regardless of the goods or services provided: (1) voluntary and open membership; (2) democratic member control; (3) autonomy and independence; (4) education, training and information; (5) cooperation among cooperatives; (6) concern for the community; and (7) member economic participation.⁴

Hospital Cooperatives

There are a number of cooperative types that may occur in the health care sector, including consumer cooperatives, purchasing cooperatives, and worker-owned cooperatives.⁵ A hospital cooperative is a type of purchasing cooperative that may be used by community-owned non-profit hospitals, university hospitals, and others for the group purchasing of medical devices or equipment and other supplies.⁶ Because hospital cooperatives are owned and governed by hospital members, members receive the benefit of lower costs so as to ensure they can compete with investor-owned hospitals in providing quality health care services at low prices.⁷

Florida Sales Tax Exemption for Nonprofit Cooperative Hospital Laundries

Chapter 212, Florida Statutes, governs Florida's tax on sales, use, and other transactions. Unless an exemption applies, Florida taxes are applied at the point of sale, use, consumption, distribution, rental, and storage transactions. Section 212.08, F.S., provides specified exemptions for such taxation. One exemption is for nonprofit cooperative hospital laundries that are incorporated under chapter 617, F.S.⁸, are treated as a cooperative under subchapter T of the Internal Revenue Code for federal tax

¹ See "About Cooperatives," National Cooperative Business Association; located on March 14, 2008 at http://www.ncba.coop/abcoop_health.cfm.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ Chapter 617, Florida Statutes, pertains to not-for-profit corporations in Florida.

purposes⁹, operate solely to offer laundry supplies and services to its members, and all the members of which are exempt from federal income tax pursuant to 501(c)(3) of the Internal Revenue Code.¹⁰

Nonprofit cooperative hospital laundries meeting this requirement must obtain a Florida Consumer's Certificate of Exemption from the Department of Revenue, and are subject to limitations on tax exemption when any payment is made for transactions otherwise taxable under chapter 212 by a representative or employee of the entity, even if the entity reimburses the representative or employee. According to the Florida Department of Revenue "less than four" entities in the State currently hold Certificates of Exemption issued by the Department of Revenue pursuant to s. 212.08(7)(ii), F.S.¹¹ If one member of the cooperative loses its 501(c)(3) status pursuant to a change in ownership or other situation, then the cooperative loses its Certificate of Exemption and transactions will be subject to taxation.

The tax-exempt status nonprofit cooperative hospital laundries depends on meeting the requirements set forth above, including the requirement to operate solely to offer laundry supplies and services to its members. A cooperative providing such services to a nonmember, even in response to emergency situations, likely puts its tax exempt status at risk.

Effect of Proposed Changes

House Bill 1059 amends provisions related to tax exemptions available to nonprofit cooperative hospital laundries by providing that the provision of limited laundry supplies and services to nonmembers pursuant to a written emergency plan of operation shall not invalidate or cause the denial of a consumer's certificate of exemption. The bill does not define "limited laundry supplies and services" or "written emergency plan of operation."

The bill also requires that any member that changes its 501(c)(3) status or ownership status divest all interest or participation in the nonprofit cooperative hospital laundry within 30 days of such change.

The bill is effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 212.08(7)(ii); relating to miscellaneous tax exemptions for nonprofit cooperative hospital laundries.

Section 2. Provides that the bill shall take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

⁹ Title 21, Subpart T, Part I of the Internal Revenue Code governs tax treatment of cooperatives.

¹⁰ 212.08(7)(ii), F.S.

¹¹ Information obtained from the Department by telephone on March 14, 2008.

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

A nonprofit hospital laundry cooperative would be able to retain its sales tax exemption under the circumstances provided for in the bill.

D. FISCAL COMMENTS:

The Revenue Estimating Conference met March 14, 2008 to determine the fiscal impact of HB 1059/SB 1962. The conference adopted an estimate of zero, that is, the impact of providing laundry services and supplies to non-members is zero. The conference also concluded that a member loss of tax exemption status would be positive to the state, but insignificant.

According to the Department of Revenue, the department would need to update Form DR-5, Application for Consumer's Certificate of Exemption, to implement the provisions of the bill. The form changes would need to be adopted, by reference, through the rulemaking process. These costs would be insignificant, and could be absorbed within current resources.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue noted in its bill analysis that the term "written plan of operation" should be defined in the bill and that the time period for which the cooperative would be able to operate pursuant to that emergency plan should be designated in the bill.¹²

D. STATEMENT OF THE SPONSOR

No statement provided.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 18, 2008, the Health Innovation Committee adopted one strike-all amendment to the bill. This amendment substantially conforms HB 1059 to CS/SB 1962. In doing so, the amendment:

¹² Department of Revenue 2008 Bill Analysis.

- Deletes unnecessary language.
- Clarifies references related to the requirement that all members of the nonprofit cooperative hospital laundry must be exempt from federal income tax pursuant to s. 501(c)(3) of the IRS Code.
- Requires that a member divest its “participation” in the nonprofit cooperative hospital laundry within 90 days after its IRS 501(c)(3) status changes.
- Allows a nonhospital cooperative hospital laundry to obtain and/or maintain its certificate of exemption if it provides services to a non-member pursuant to a declaration of emergency under s. 252.36(2) and a written emergency plan of operation executed by the members of the cooperative.

The bill as reported favorably with one strike-all amendment.