

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: SB 2454

INTRODUCER: Senator Negron

SUBJECT: Sales and Use Tax/Boat Sales

DATE: March 23, 2010 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	Favorable
2.	_____	_____	FT	_____
3.	_____	_____	WPSC	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

SB 2454 is titled the “Florida Maritime Full Employment Act.”

The bill creates a \$18,000 cap on the amount of sales and use tax that may be levied against each sale of a boat in Florida.

This bill amends s. 212.05, F.S.

II. Present Situation:

Chapter 212, F.S., contains the state’s statutory provisions authorizing the levying and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. The statutes currently provide more than 200 different exemptions.

Section 212.05(1), F.S., imposes a 6 percent tax on tangible personal property sold, used, consumed, distributed, stored for use or consumption, rented, or leased in Florida. Section 212.06, F.S., imposes a 6 percent use tax on tangible personal property imported or caused to be imported into Florida for use, consumption, distribution, or storage.¹ Generally, in lieu of any other facts which may indicate commingling, any boat which remains in Florida for more than an

¹ Section 212.06(8)(a), F.S.

aggregate of 183 days in any 1-year period will be presumed to be commingled with the general mass of property of this state.²

Exemption when Purchased

Purchase of a boat can be exempt from state and local sales and use taxes when:³

- The purchaser is a nonresident of Florida who is not engaged in Florida in carrying on any employment, trade, business, or profession in which the boat will be used;⁴ and
- Either:
 - The nonqualifying boat leaves Florida within 10 days of its purchase;
 - The nonqualifying boat leaves Florida within 20 days after the completion of repairs or alterations; or
 - The qualifying boat leaves Florida within the same time periods, unless the nonresident purchaser receives a decal from the registered dealer which allows the qualifying boat to remain for 90 days after the date of purchase.⁵ The nonresident purchaser may apply for an extension decal that authorizes the boat to stay in Florida for an additional 90 days, but cannot stay for longer than 180 days after purchase.

The nonresident purchaser, in order to qualify for the exemption, is required to provide the Department of Revenue (DOR) with written proof, within 30 days of the date of departure, that the boat was licensed, registered, titled, or documented outside of the state, or that the purchaser has applied for such documentation. Within 10 days of removing the boat from Florida, the nonresident purchaser must provide DOR with certain documentation that identifies the aircraft or boat, including receipts for fuel, dockage, or slippage from outside of Florida. Within 5 days of the date of sale, the registered dealer must provide DOR with a copy of the sales invoice and affidavit that the purchaser has read this applicable section of law.

Any purchaser who fails to remove the boat within the proper time period, returns to Florida within 6 months after the date of departure, or does not submit correct information to DOR, must pay the use tax on the cost of the boat and a mandatory penalty equal to the tax payable. Any purchaser who submits fraudulent information to avoid tax liability is subject to payment of the tax due, a mandatory penalty of 200 percent of the tax, and a fine of up to \$5,000 and/or imprisonment for up to 5 years.

Exemption for Boats Used Outside of Florida

It is presumed that tangible property (such as boats) used in another state, territory of the United States, or in the District of Columbia for 6 months or longer before being brought into Florida was not purchased for use in Florida.⁶

² This does not apply to boats that have been used outside of Florida for 6 months or longer, or boats temporarily docked in Florida, as discussed below.

³ Section 212.05(1)(a)2., F.S.

⁴ Or the purchaser may be a corporation with no officers or directors who are residents of Florida, or a non-corporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs that is a resident of Florida.

⁵ A "qualified boat" is a boat of 5 net tons of admeasurement or larger. See s. 212.05(1)(a)2.f., F.S.

⁶ Section 212.06(8), F.S. This applies unless the boat is used for noncommercial saltwater fishing, pursuant to s. 379.354(7), F.S. The amount of sales tax applied depends on the length of time that has passed since the purchase date of the boat.

Exemption for Boats Temporarily Docked in Florida

A boat will remain exempt if it enters and remains in the state for a total of 20 days or less in a calendar year, calculated by the dates of dockage or slippage at a registered facility in the state. This time can be tolled once if repairs, alterations, refitting, or modifications are made at a repair facility that is given physical care, custody, and control of the boat; it may only be tolled again in a calendar year upon approval by DOR. This does not apply to mere storage of a boat at a repair facility.⁷

Exemption for Sales of Boats to Veterans

Any amount paid directly to the dealer by the Veterans Administration, pursuant to 38 U.S.C. s. 3902(a), is not taxable. Any portion of the purchase price paid by the veteran to the dealer directly is taxable.⁸

Partial Exemption

The sale or use of vessels engaged in interstate or foreign commerce is partially exempt from state and local taxes. The tax on these boats is a ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's vessels which were used in interstate or foreign commerce and which had at least some Florida mileage during the previous fiscal year.

Other Exemptions

Currently exempt from Florida taxes are:

- Charter fishing vessels – Charges for chartering any boat or vessel solely for the purpose of fishing with a crew, is exempt from sales or admissions tax. This exemption does not apply to any charge to enter or stay upon any “head-boat,” party boat, or other boat or vessel.⁹
- Promotional, demonstration, or testing vessels – Vessels registered under s. 328.52, F.S., by a vessel dealer or manufacturer and used solely for demonstration, sales promotion, or testing purposes is exempt from state and local taxes.¹⁰
- Imported vessels for sale at retail by yacht brokers or dealers – Any vessel imported into Florida for the sole purpose of being offered for sale at retail by a yacht broker or dealer registered in this state is exempt from state and local tax if the vessel remains under the care, custody, and control of the registered broker or dealer and the owner of the vessel does not make personal use of the vessel during that time.¹¹
- Certain boats used as business property in an enterprise zone – Boats that are business property and used exclusively in licensed commercial fishing, fishing guides, or ecotourism guides are eligible for exemption if specific requirements are met. This exemption does not apply to the purchase of a vessel or boat.¹²

⁷ Section 212.08(7)(t), F.S.

⁸ Section 212.08(7)(nn), F.S.

⁹ Section 212.08(7)(y), F.S.

¹⁰ Section 212.06(1)(e)1., F.S.

¹¹ Section 212.06(1)(e)3., F.S.

¹² Section 212.08(7)(h), F.S.

III. Effect of Proposed Changes:

Section 1 states that this act may be cited as the “Florida Maritime Full Employment Act.”

Section 2 creates s. 212.05(5), F.S., to create a \$18,000 cap on the amount of sales and use tax that may be levied against each sale of a boat in Florida.

Besides the traditional idea that a “sale” means a transfer of title or possession (or both), the term “sale” is defined in Florida Statutes to also include any exchange, barter, license, lease, or rental, conditional or otherwise.¹³

Section 3 provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18 of the Florida Constitution, excuses counties and municipalities from complying with laws requiring them to spend funds or to take an action unless certain conditions are met.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from this prohibition. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.88 million for FY 2010-11), are exempt.

The Revenue Estimating Conference estimated that this tax cap will have a \$200,000 negative fiscal impact on local governments in FY 2010-11, and \$1.1 million annual recurring negative fiscal impact. Consequently, it is exempt from the mandates restriction due to its insignificant fiscal impact.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹³ Section 212.02(15)(a), F.S.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference met on March 12, 2010, and made the following assessment of the impact of this tax cap:

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
General Revenue	(1.5)	(1.5)	(1.6)	(1.7)
State Trust	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total State Impact	(1.5)	(1.5)	(1.6)	(1.7)

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Revenue Sharing	(Insignificant)	(0.1)	(0.1)	(0.1)
Local Gov't Half Cent	(0.2)	(0.2)	(0.2)	(0.2)
Local Option	(Insignificant)	(Insignificant)	(Insignificant)	(Insignificant)
Total Local Impact	(0.2)	(0.3)	(0.3)	(0.3)

	FY 2010-2011	FY 2011-2012	FY 2012-2013	FY 2013-2014
Total Impact	(1.7)	(1.8)	(1.9)	(2.0)

B. Private Sector Impact:

Certain individuals will pay less in sales and use tax: individuals who purchase or lease a boat in Florida subject to sales and use tax greater than \$18,000, and the purchase does not meet any of the exemptions of ch. 212, F.S.

C. Government Sector Impact:

DOR may incur insignificant expenses administering the program, including rulemaking and the issuance of a Tax Information Publication.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
