

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB EAC 12-04 Exemptions from Local Business Taxes

**SPONSOR(S):** Economic Affairs Committee

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Economic Affairs Committee		Creamer	Tinker

### SUMMARY ANALYSIS

The bill exempts any individual who is licensed and operating as a real estate sales or broker associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. They are not required to apply for this exemption.

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of \$3.8 million beginning in FY 2012-13. There is no fiscal impact on state funds.

The effective date of this bill is October 1, 2012.

**This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.**

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Current Situation**

##### *Background*

The local business tax, authorized in ch. 205, F.S., represents the fees charged and the method by which a local government authority grants the privilege of engaging in or managing any business, profession, or occupation within its jurisdiction. Counties and municipalities may levy a business tax, and the tax proceeds are considered general revenue for the local government.<sup>1</sup> This tax does not refer to any regulatory fees or licenses paid to any board, commission, or officer for permits, registration, examination, or inspection.<sup>2</sup>

Prior to 1972, the state imposed an occupational license tax and shared the revenues with the counties. Municipalities levied their own occupational license taxes pursuant to local ordinance or resolution. Counties had no authority to levy an occupational license tax until October 1, 1972, when ch. 72-306, L.O.F., repealed the state tax and authorized both counties and cities to impose an occupational tax at the state or city rate then in effect. In 1980, the legislature authorized counties and municipalities to increase rates by a specified percentage based upon the rates then in effect.<sup>3</sup> In 1986, the Legislature authorized Miami-Dade, Broward, Monroe and Collier counties to increase their rates by an additional 50 percent, with the proceeds being dedicated to specified economic development activities.<sup>4</sup>

Effective January 1, 2007, the legislature changed the name of the Local Occupational License Tax to the Local Business Tax.<sup>5</sup> This was done in response to some individuals representing that the fact that they had obtained an “occupational license” under ch. 205, F.S., conferred upon them some type of official proof of their competency to perform various repairs and services. The name change was intended to clarify that the payments made under ch. 205, F.S., were taxes and not some type of regulatory fee.

##### *Exemptions*

Chapter 205, F.S., provides several exemptions and exclusions from local business taxes. Customary religious, charitable, or educational activities of nonprofit religious, nonprofit charitable, and nonprofit educational institutions are excluded from the definition of “business,” “profession,” and “occupation” and are thereby excluded from paying local business taxes.<sup>6</sup> There is an optional partial exemption for businesses located in enterprise zones.<sup>7</sup> The delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service.<sup>8</sup> There are also exemptions for persons engaged in specified farming activities,<sup>9</sup> certain nonresident persons regulated by the Department of Professional Regulation,<sup>10</sup> certain employees of businesses that are required to pay a local business tax,<sup>11</sup> certain disabled persons, the aged, and widows with minor dependents,<sup>12</sup> disabled veterans of

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<sup>1</sup> Sections 205.033 and 205.042, F.S.

<sup>2</sup> Section 205.022(5), F.S.

<sup>3</sup> Chapter 80-274, L.O.F.

<sup>4</sup> Chapter 86-298, L.O.F.

<sup>5</sup> Chapter 2006-152, L.O.F.

<sup>6</sup> Section 205.022(1), F.S.

<sup>7</sup> Section 205.054, F.S.

<sup>8</sup> Section 205.063, F.S.

<sup>9</sup> Section 205.064, F.S.

<sup>10</sup> Section 205.065, F.S.

<sup>11</sup> Section 205.066, F.S.

<sup>12</sup> Section 205.162, F.S.

any war or their unremarried spouses,<sup>13</sup> and certain mobile home setup operations.<sup>14</sup> Charitable, religious, fraternal, youth, civic, service, or other similar organization that make occasional sales or engage in fundraising projects that are performed exclusively by the members where the proceeds derived from the activities are used exclusively in the charitable, religious, fraternal, youth, civic and service activities of the organization are also exempt.<sup>15</sup> While real estate sales associates and broker associates licensed under ch. 475, F.S., are included in the exemption for employees provided by s. 205.066, F.S., the employee exemption does not apply to any municipality or county which imposes a business tax on individual employees that was adopted by that municipality or county prior to October 13, 2010.<sup>16</sup>

#### *Distribution of Revenues*

The revenues derived from the business tax imposed by county governments, exclusive of the costs of collection and any credit given for municipal business taxes, are apportioned between the county's unincorporated area and the incorporated municipalities located within the county by a ratio derived by dividing their respective populations by the county's total population.<sup>17</sup> Within 15 days following the month of receipt, the apportioned revenues are sent to each governing authority; however, this provision does not apply to counties that have established a new rate structure pursuant to s. 205.0535, F.S.<sup>18</sup>

#### *Authorized Uses of Revenues*

The tax proceeds are considered general revenue for the county or municipality. Additionally, the county business tax proceeds may be used for overseeing and implementing a comprehensive economic development strategy through advertising, promotional activities and other sales and marketing techniques.<sup>19</sup> The proceeds of the additional county business tax imposed pursuant to s. 205.033(6), F.S., are distributed by the county's governing body to a designated organization or agency for the purpose of implementing a comprehensive economic development strategy through advertising, promotional activities, and other sales and marketing techniques.<sup>20</sup>

#### *Real Estate Sales and Broker Associates*

Chapter 475, F.S., provides for the licensure of real estate brokers and sales associates. Section 475.01, F.S., defines "broker associate" as a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another. "Sales associate" means a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person.

### **Proposed Changes**

#### *Real Estate Sales and Broker Associates Exemption*

The bill creates s. 205.067, F.S., which excludes any individual who is licensed and operating as a real estate broker associate or sales associate under ch. 475, F.S., from having to pay a local business tax or obtain a local business tax receipt. They are not required to apply for this exemption.

No local governing authority may hold the individual sales associate or broker associate liable for the failure of his employer to pay local business tax, obtain a local business tax receipt, or apply for an exemption from the local business tax. An employer who is required to obtain a local business tax

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<sup>13</sup> Section 205.171, F.S.

<sup>14</sup> Section 205.193, F.S.

<sup>15</sup> Section 205.192, F.S.

<sup>16</sup> Section 205.066(4), F.S.

<sup>17</sup> Section 205.033(4), F.S.

<sup>18</sup> Section 205.033(5), F.S.

<sup>19</sup> Section 205.033(7), F.S.

<sup>20</sup> Section 205.033(6)(b), F.S.

receipt may not be required by a local governing authority to provide contact information to that authority for his or her sales associates and broker associates.

**B. SECTION DIRECTORY:**

Section 1 creates s. 205.067, F.S., excluding real estate sales and broker associates from the local business tax.

Section 2 amends s. 205.066, F.S., striking a portion of the employee exemption that the bill makes redundant.

Section 3 provides an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimates that this bill will have a negative recurring impact to local governments of \$3.8 million beginning in FY 2012-13.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Real estate sales and broker associates who are in a local governing authority that adopted a local business tax imposed upon employees prior to October 13, 2010, will no longer have to pay that tax. The reduction in business taxes paid to local governments is estimated to be \$3.8 million.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The local government mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill excludes currently taxable employees from the local business tax. This bill does not

appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**