HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 14-05 Relating to Economic Development
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee	16 Y, 2 N	Flieger	Langston

SUMMARY ANALYSIS

The proposed committee bill provides a broad range of tax cuts and spending aimed at either directly or indirectly encouraging economic development.

Included in the bill are:

- Four temporary “tax holiday” periods where sales of certain goods will be exempt from the sales tax. The sales tax holidays will be:
  - Three days in August on clothes and shoes priced at $100 or less, school supplies priced at $15 or less, and the first $750 of price on computers and certain accessories,
  - Twelve days in June on certain hurricane preparedness supplies,
  - Three days in September on the first $1,500 of sales price of certain energy and water efficient appliances, and
  - Seven days in September on physical fitness facility memberships.
- The addition of cement mixing drums to an existing temporary sales tax exemption for manufacturing machinery and equipment, which will expire in 2017.
- Permanent sales tax exemptions for child restraint systems and booster seats for use in motor vehicles, and for bicycle helmets marketed for use by youth.
- An increase in the exemption for corporate income tax from the first $50,000 of income to the first $75,000 of income for each corporate income taxpayer.
- Expansion, from $178.8 million to $227.55 million, of the credits available under the New Markets Tax Credit program, which directs investment into low income communities.
- A one year, $14 million extension of the sunset date of the Community Contributions Tax Credit program.
- Creation of a new qualified television revolving loan program, seeded with $20 million in nonrecurring General Revenue, to assist television production companies in acquiring the financing they need to encourage the production of television programs in Florida.
- Modernization of the statutory definition of “prepaid calling arrangement” to clarify that certain prepaid mobile communications services are to be subject to state and local sales taxes instead of state and local communications services taxes.
- Redirection of sales tax collections on sales of electricity to the Gross Receipts Tax on utilities, thereby increasing revenues for public education capital outlay. The current 7% sales tax rate on electricity purchases by most businesses would be reduced to 4% and the gross receipts tax on electricity would be increased by like amount.
- Redirection of $100 million in sales tax revenue annually to the State Transportation Trust Fund to be used for statewide strategic and regionally significant projects.

The estimated impact of the bill in fiscal year 2014-2015 is -$328.8 million (-$302.2 million recurring) on General Revenue, is +$272.1 million (+$282.0 million recurring) on state trust funds, and is -$29.3 million (-$32.6 million recurring) on local government. The total cash impact in fiscal year 2014-2015 is -$86.0 million (-$52.8 million recurring). The non-recurring cash impact in fiscal year 2015-2016 attributable to the extension of the Community Contribution Tax Credits adds a further -$12.6 million impact to General Revenue, -$1.4 million to local governments, and brings the total cash impact of the bill to -$100.0 million.

Portions of this bill may be county or municipality mandates 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:

Sales Tax Holidays

The state of Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions, rentals of transient accommodations, rental of commercial real estate, and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy 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. There are currently more than 200 different exemptions.[1] Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by ch. 212, F.S., and on communications services as defined in ch. 202, F.S.[2] The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state sales and use tax of 6 percent.

Back to School Sales Tax Holidays
Since 1998, the Legislature has enacted twelve temporary periods (commonly called "sales tax holidays") during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear have always been exempted at various thresholds, most recently $75. Books valued at $50 or less were exempted in five periods. School supplies have been included starting in 2001, with the value threshold increasing from $10 to $15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of $750 or less were exempted. The following table describes the history of back to school sales tax holidays in Florida:

Dates	Length	TAX EXEMPTION THRESHOLDS				
		Clothing/ Footwear	Wallets/ Bags	Books	Computers	School Supplies
August 15-21, 1998	7 days	$50 or less	N/A	N/A	N/A	N/A
July 31-August 8, 1999	9 days	$100 or less	$100 or less	N/A	N/A	N/A
July 29-August 6, 2000	9 days	$100 or less	$100 or less	N/A	N/A	N/A
July 28-August 5, 2001	9 days	$50 or less	$50 or less	N/A	N/A	$10 or less
July 24-August 1, 2004	9 days	$50 or less	$50 or less	$50 or less	N/A	$10 or less
July 23-31, 2005	9 days	$50 or less	$50 or less	$50 or less	N/A	$10 or less
July 22-30, 2006	9 days	$50 or less	$50 or less	$50 or less	N/A	$10 or less
August 4-13, 2007	10 days	$50 or less	$50 or less	$50 or less	N/A	$10 or less
August 13-15, 2010	3 days	$50 or less	$50 or less	$50 or less	N/A	$10 or less

[1] For a list of exemptions and history, see REC, 2013 Florida Tax Handbook. Exemptions are estimated to total about $10 billion.
[2] The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

August 12-14, 2011	3 days	$75 or less	$75 or less	N/A	N/A	$15 or less
August 3-5, 2012	3 days	$75 or less	$75 or less	N/A	N/A	$15 or less
August 2-4, 2013	3 days	$75 or less	$75 or less	N/A	$750 or less	$15 or less

Hurricane Preparedness Holidays

Florida has also enacted sales tax holidays for certain hurricane preparedness items in the past. In 2005, 2006, and 2007 the state established 12 day periods where items below certain thresholds were exempt from tax. Items included in all three holidays were:

- Portable self-powered light sources selling for $20 or less,
- Portable self-powered radios, two-way radios, or weather band radios selling for $50 or less,
- Tarpaulins or other flexible waterproof sheeting selling for $50 or less,
- Self-contained first-aid kits selling for $30 or less,
- Ground anchor systems or tie-down kits selling for $50 or less,
- Gas or diesel fuel tanks selling for $25 or less,
- Packages of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less, and
- Nonelectric food storage coolers selling for $30 or less.

In 2005, portable generators selling for $750 or less were exempted. In 2006 and 2007, the threshold for generators was increased to $1,000, and several additional items were added:

- Reusable ice or items sold as artificial ice selling for $10 or less,
- Cell phone chargers selling for $40 or less,
- Cell phone batteries selling for $60 or less, and
- Storm shutter devices selling for $1,000 or less.

In 2005 and 2007 the hurricane preparedness holidays ran from June 1 through June 12, in 2006 the Holiday was from May 21 through June 1.

Energy Efficient Appliance Holidays

From October 5 through October 11, 2006, Florida exempted energy-efficient products priced under $1,500 and that met or exceeded the requirements of the federal ENERGY STAR program[3]. The following items were exempted:

- Refrigerators,
- Dishwashers,
- Clothes washers,
- Air conditioners,
- Ceiling fans,
- Light bulbs,
- Dehumidifiers, and
- Thermostats.

Proposed Changes

The proposed committee bill would establish four sales tax holidays during the 2014-2015 calendar year:

[3] ENERGY STAR products must meet energy efficiency standards established by the U.S. Environmental Protection Agency.

Back to School
The bill provides for a 3 day sales tax holiday beginning August 1, 2014, and ending August 3, 2013. During the holiday, the following items that cost $100 or less are exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The bill also exempts "school supplies" that cost $15 or less per item. Also exempt will be the first $750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

Hurricane Preparedness
The bill proposes a sales tax exemption for the following items related to hurricane preparedness for the period beginning on June 1, 2014, and ending on June 12, 2014:

- A portable self-powered light source selling for $20 or less,
- A portable self-powered radio, two-way radio, or weather band radio selling for $50 or less,
- A tarpaulin or other flexible waterproof sheeting selling for $50 or less,
- A self-contained first-aid kit selling for $30 or less,
- A ground anchor system or tie-down kit selling for $50 or less,
- A gas or diesel fuel tank selling for $25 or less,
- A package of AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for $30 or less,
- A nonelectric food storage cooler selling for $30 or less,
- A portable generator selling for $750 or less, and
- Reusable ice selling for $10 or less.

Energy Efficient Appliances
The bill provides that no sales tax will be collected on the first $1,500 of the sales price for a new ENERGY STAR product or WaterSense product[4] during the period beginning on September 19, 2014, and ending on September 21, 2014.

ENERGY STAR products eligible for this holiday are:

- Room air conditioners,
- Air purifiers,
- Ceiling fans,
- Clothes washers,
- Clothes dryers,
- Dehumidifiers,
- Dishwashers,
- Freezers,
- Refrigerators,
- Water heaters,
- Swimming pool pumps, and
- Light bulbs.

WaterSense products eligible for this holiday are:

- Bathroom sink faucets,

[4] WaterSense labeled products and meet the US Environmental Protection Agency specifications for water efficiency and performance.

- Faucet accessories,
- High-efficiency toilets and urinals,
- Showerheads, and
- Weather or sensor-based irrigation controllers.

A person is limited to a single purchase for each specific type of item listed above with a sales price over $500 during the holiday, and a second purchase of the same type of product will be subject to tax on the entire price.

Physical Fitness Memberships
The bill provides that the sales and use tax levied on admissions will not be collected during the period beginning September 1, 2014, and ending September 8, 2014, on the sale of athletic, exercise, and physical fitness facility memberships. To participate in the holiday, a facility must be registered as a health studio with the Department of Agriculture and Consumer Services under ss. 501.012 through 501.019, F.S.

Sales Tax Exemptions

As noted above, ch. 212, F.S., establishes a 6 percent state sales and use tax which applies to sales and rentals of most tangible personal property, while s. 212.08, F.S., provides a variety of exemptions from that tax. In 2013, the legislature passed an exemption for machinery and equipment used at a fixed location within Florida to manufacture, process, compound, or produce tangible goods for sale. This sales tax exemption is available for 3 years, from April 30, 2014 until April 30, 2017[5].

Proposed Changes

Child Car Seats
The bill will add a permanent exemption for sales of child restraint systems and booster seats for use in motor vehicles.

Youth Bicycle Helmets
The bill will add a permanent exemption for sales of bicycle helmets marketed for use by youth.

Cement Mixers
The bill will add cement mixer drums that are affixed to mixer trucks, as well as the parts and labor necessary to affix those drums to trucks, to the sales tax exemption for manufacturing machinery and equipment that will sunset on April 20, 2017.

Tax on Sales of Electricity

The sale of electric power or energy by an electric utility is subject to the state sales tax at the rate of 7 percent,[6] subject to numerous exemptions. The exemptions include sales for use in residential households, sales for certain agricultural purposes, sales for use in operating manufacturing machinery and equipment in a fixed location, and sales in enterprise zones. The distribution for sales and use tax receipts is governed by s. 212.20, F.S., with roughly 89% of the proceeds being deposited in the General Revenue Fund, and most of the remainder shared with counties and municipalities.

Chapter 203 imposes, at the rate of 2.5 percent, a tax on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida. All revenue received pursuant to this tax goes to the Public Education Capital Outlay and Debt Service ("PECO") Trust Fund. The use of such funds is limited to paying the principal or interest on bonds to finance capital projects for institutions of higher learning, community colleges, vocational technical schools, or public schools, or direct payment of the cost of any public educational facility capital project.

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[5] Chapter 2013-39, L.O.F.
[6] S. 212.05(1)(e)1.c., F.S.

Proposed Change

The bill proposes to decrease the sales tax rate on sales of electricity from 7 to 4 percent and increase the gross receipts tax rate on electrical power or energy delivered to a retail consumer by the same amount. The new gross receipts tax additional rate will incorporate the existing exemptions from the sales tax to make this change revenue neutral to both the state and to taxpayers. The result is to increase the bondable revenue flow to the PECO trust fund.

Corporate Income Tax Exemption

Florida levies a corporate income tax of 5.5 percent on:

- Corporations as defined by s. 220.03, F.S.[7] and
- Banks and savings associations as defined in s. 220.62, F.S.[8]

If the taxpayer is subject to the federal alternative minimum tax (AMT), then the taxpayer could be subject to Florida's 3.3 percent AMT.[9] When a taxpayer is subject to AMT, the taxpayer must pay the greater of the 5.5 percent tax or the 3.3 percent AMT.[10]

Florida's corporate income tax is imposed on a taxpayer's net income. Net income is calculated by starting with the federal taxable income, making certain statutory adjustments, apportioning income attributable to Florida, and applying any exemptions. Article VII, s. 5 of the Florida Constitution provides an exemption of not less than $5,000. Until 2011, the statutory exemption was $5,000. Beginning in the 2012 tax year, the exemption was increased to $25,000.[11] In 2012, the exemption was increased again to $50,000 for the 2013 tax year.[12]

Proposed Change

The bill will increase the amount of exempted income from $50,000 to $75,000.

Qualified Television Loan Program

Current Situation

Television Production

Television shows are typically created by production companies and pitched to networks. If the network opts to pick the show up, they will enter into a license agreement with the production company. This agreement grants the network exclusive rights to air the show for some specified period of time, in exchange for a license fee that usually covers 70-80% of the budget to produce the show. The production company must raise funds to cover the deficit that remains. In addition, the license fee is not paid until the show is completed and delivered to the studio, so the production company has to come up with the cash to fund the production.

There are a variety of ways that companies attempt to secure this funding. They can give up equity in the production, take out loans from banks, or borrow against tax credits where available. They can also eventually sell syndication rights, DVD/Blu-Ray rights, foreign broadcast rights, etc, and can borrow against these future sales. Shows are not always able to attain sufficient funding, however.

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[7] This component of the tax is imposed by s. 220.11(1), F.S. Only a fraction of total Florida businesses are considered "corporations" subject to the Florida corporate income tax. Sole proprietorships, partnerships, limited liability companies, and S corporations are not subject to the tax except under limited circumstances. See s. 220.03(1)(e), F.S.

[8] This is the "franchise tax" imposed under s. 220.63, F.S.

[9] More information about the AMT for corporations is available from many sources, but a concise explanation was prepared by the nonpartisan Tax Policy Center, an affiliate of The Brookings Institute. The article is available at http://www.taxpolicycenter.org/publications/url.cfm?ID=1000515. (Last visited February 6, 2014.)

[10] See s. 220.11(4), F.S. Although the AMT is a lower nominal rate compared to the 5.5 percent tax, the AMT can result in a higher tax due because it uses a different definition of "taxable income."

[11] Chapter 2011-229, L.O.F. (HB 7185).

[12] Chapter 2012-32, L.O.F. (HB 7087).

Proposed Changes

The bill would create the Qualified Television Loan Fund (QTV fund) within the Department of Economic Opportunity. It would appropriate $20 million to the department to place in the revolving loan fund. These funds would be lent to production companies to incentivize the production of television shows in the state. As the loans are repaid, the money shall be returned to the fund in order to be reinvested in additional television shows.

The department would be required to contract with a private fund administrator to invest the fund. The administrator will be selected based on the following:

- Track record of managing private sector equity or debt funds in the entertainment industry;
- Ability to demonstrate a partnership in place with a qualified lending partner;
- Experience managing economic development or job creation-related funds; and
- Preference for applicants based in Florida.

The administrator would be charged with finding at least one “qualified lending partner,” a financial institution that would co-invest with the QTV fund, providing at least 2.5 times the amount appropriated to the QTV fund (e.g. $50 million) in the form of senior debt. The fund administrator may also partner with other companies who provide equity financing, mezzanine financing, or other types of financing for the production of television shows. And funds provided by private entities, including the qualified lending partner, would be required to be kept in separate accounts, and such entities would be responsible for paying their own management fees.

The fund and qualified lending partner would make joint loans to production companies that meet certain criteria in order to fund production or improve the credit profile of the production’s structured financial transactions. The fund administrator would be required to evaluate loan applications based on:

- Eligible collateral;
- The project’s creditworthiness;
- The producer’s track record;
- The possibility that the project will encourage economic benefits; and
- The extent to which the loan would attract private debt or equity investment.

All loans made by the QTV fund must be secured. They may be secured against domestic and international broadcaster license agreements, tax credits, or other revenues. Such loans may not exceed 30% of the total production budget for the project. The term of the loan may not exceed 36 months unless the fund administrator approves a longer period. Additionally, each project must be bonded and secured by an industry-approved completion guarantor if the production cost per episode exceeds $1 million. With the exception of appropriated funds, the credit of the state may not be pledged. The state is not liable or obligated in any way for claims against the QTV fund or against the qualified lending partner.

The production companies would be required to have an agreement with a major network (including streaming services such as Netflix) to air at least 13 episodes of the show to be produced (made-for-TV movies would also qualify), and at least 80% of the production budget would need to be spent in Florida. The debt issued by the qualified lending partner, which would make up a much larger portion of the total loan than QTV funds, would hold a senior position to the debt issued by the QTV fund. The terms given to the financial institution or any other lenders could be no better than those given to the QTV fund.

Each year by February 28, the fund administrator will be required to submit audited financial statements to the department, along with an annual report on the fund. The annual report must detail, for each loan:

- The name of the television program;
- The counties in which production occurred;
- The number of jobs created or retained because of the production;
- The loan amounts (including private loans made in association with the QTV loan);

- The loan repayment status;
- Details on any past due loans;
- Details on any loans in default;
- A description of assets securing the loans; and
- Any other information required by the department.

The fund administrator would be paid a fee equal to 5% of the assets under management for the first 5 years, and 3% of assets under management every year thereafter until the end of the contract. After the first year this fee may not exceed the investment proceeds earned from the fund's completed loans. Additionally, the fund administrator may receive 20% of the fund's net income on an annual basis. This may not be paid from the fund's principal.

The program would expire on December 31, 2024, and all funds remaining in the QTV fund at that point will revert to the General Revenue Fund.

These changes would have no effect on Florida's current tax credit-funded Entertainment Industry Financial Incentive Program.

New Markets Tax Credit Program

Current Situation

Federal New Markets Tax Credit[13]

Created by Congress in 2000, the Federal New Markets Tax Credit (NMTC) Program[14] permits taxpayers to receive a credit against federal income taxes for making qualified equity investments in designated Community Development Entities (CDEs). The CDE must in turn invest the qualified equity investments in businesses in low-income communities. The credit provided to the investor totals 39 percent of the cost of the qualified equity investment and is claimed over a seven-year period. In each of the first three years, the investor receives a tax credit equal to five percent of the total amount paid for the stock or capital interest at the time of purchase. For the final four years, the value of the credit is six percent annually. Investors may not redeem their investments in CDEs prior to the conclusion of the seven-year period.

An organization wishing to receive allocations under the federal NMTC Program must be certified as a CDE by the U. S. Department of Treasury.[15] To qualify as a CDE, an organization must:

- Be a domestic corporation or partnership at the time of the certification application,
- Demonstrate a primary mission of serving, or providing investment capital for low-income communities or low-income persons, and
- Maintain accountability to residents of low-income communities through representation on a governing board of or advisory board to the entity.

Since the Federal NMTC Program's inception, the CDFI Fund has made 664 awards allocating a total of $33 billion in tax credit authority to CDEs through a competitive application process.[16]

Florida's New Markets Development Program

Modeled after the federal program, Florida's New Markets Development Program, established by the Legislature in 2009,[17] encourages "capital investment in rural and urban low-income communities by

[13] Federal New Markets Tax Credit Program, Overview, http://cdfifund.gov/what_we_do/programs_id.asp?programID=5 (last visited February 14, 2013).
[14] The Federal New Markets Tax Credit Program was enacted as P.L. 106-554, Community Tax Relief Act of 2000 and signed into law on December 21, 2000.
[15] The Community Development Financial Institutions Fund is the entity within the U.S. Department of Treasury that administers the federal New Markets Tax Credit Program. The CDFI Fund was created for the purpose of promoting economic development through investment in and assistance to community development financial institutions. U.S. Department of Treasury, Community Development Financial Institutions Fund, About the CDFI Fund, http://cdfifund.gov/who_we_are/about_us.asp (last visited February 14, 2013).
[16] *See supra* note 1.

allowing taxpayers to earn credits against specified taxes by investing in qualified community development entities that invest in qualified active low-income community businesses to create and retain jobs."[18]

Under the program, federally-certified Community Development Entities (CDEs), which have entered into allocation agreements with the U.S. Department of Treasury, have the ability to apply to the Department of Economic Opportunity (DEO) for a certification of Florida tax credits. The CDE must show that it is prepared to invest capital into qualified businesses in Florida's low-income communities. The certification process includes proof of the CDE's eligibility, identification of its investors, description of the investments to be raised by the CDE, information regarding how the investments will be used, and a description of the CDE's efforts to partner with local community-based groups.

DEO is also authorized to request additional information needed to verify continued certification. DEO certifies qualified applications on a first-come, first-served basis. Once DEO certifies a CDE's qualified equity investment, the CDE has 30 days to raise its investment capital (the qualified equity investment) and then 12 months to invest a minimum of 85 percent of the purchase price in qualified low-income investments. Thereafter, the CDE must annually report to DEO information including:[19]

- Audited financial statements,
- The industries for the investments,
- The counties investments were made in,
- The number of jobs created, and
- Verification that the average wages paid are at least equal to 115 percent of the federal poverty income guidelines for a family of four.

Any failure by a CDE to follow either Florida or federal law may result in the state recapturing tax credits claimed, together with interest and penalties.[20]

Florida Tax Credits
Florida's New Markets Tax Credit Program allows a tax credit to be taken against the corporate income tax found in s. 220.11, F. S. or the insurance premium tax found in s. 624.509, F.S. This credit may be claimed after the investment in the CDE has been made. No credit can be claimed in the first two years after investment in the CDE. In year three after the investment the credit is worth seven percent of the qualified investment, and from the fourth year through the seventh year the credit is worth eight percent.

As in the federal program, over seven years this credit totals 39 percent of the total qualified investment in the CDE. Therefore, a qualified taxpayer with a qualified investment approved for both the federal and state program could receive 78 percent of the purchase price of the investment in tax credits over seven years. In addition to the tax credits that are received, the investor also has the potential to receive benefit from the results of the investment and eventual return of their principal.

Any unused portion of the tax credit may be carried forward for future tax years; however, all tax credits expire on December 31, 2022.[21] The program has a cap of $178.8 million on the total of tax credits allowed to be allocated to all investments or $36.6 million in tax credits in a single state fiscal year.[22] The transfer or sale of tax credits is not permitted; however, a tax credit may travel with the purchase of a business to a new owner.[23]

Proposed Change

The bill increases the total amount of tax credits available to be allocated for the New Markets Development Program from $178.8 million to $227.55 million.

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[17] Chapter 2009-50, L.O.F.
[18] Section 288.9912, F.S.
[19] Section 288.9918, F.S.
[20] Section 288.9920, F.S.
[21] Section 15, ch. 2009-50, L.O.F.
[22] Section 288.914(3)(c), F.S. *See* s. 16, ch. 2012-32, L.O.F.
[23] Section 288.9916(2), F.S.

Community Contributions Tax Credit

The Community Contribution Tax Credit Program provides a credit or refund in the amount of 50 percent of eligible donations by Florida businesses that make qualifying donations toward community development and housing projects for low-income persons sponsored by organizations that have been approved by the Department of Economic Opportunity to participate in the program.

A business that makes a donation to an eligible sponsor will then apply for a tax credit during the first 10 business days of the fiscal year after the donation is made. Each corporation is eligible to receive credits of up to a maximum of $200,000 per tax year.

Businesses may take the credit against corporate income tax pursuant to s. 220.183, F.S., insurance premium tax pursuant to s. 624.5105, F.S., or as a refund on sales tax collected pursuant to s. 212.08(5)(p), F.S. A total of $14 million in tax credits may be awarded annually by the Department of Economic Opportunity. If requests for tax credits within the first 10 business days of a fiscal year exceed the tax credit allocation, tax credit applications will be approved on a pro rata basis. If they do not exceed that allocation, they will be approved on a first-come, first-served basis.

The Community Contribution Tax Credit Program expires on June 30, 2015.

Proposed Change

The bill extends the expiration date of the program by one year to June 30, 2016.

State Transportation Trust Fund

The State Transportation Trust Fund (STTF) is currently funded by a variety of tax sources, including portions of the revenue received from tax on motor and aviation fuels imposed by ch. 206, F.S., motor vehicle fees imposed by ch. 320, F.S., the rental car surcharge imposed by s. 212.0606, F.S., and the documentary stamp tax imposed by ch. 201, F.S. The funds deposited are used by the Florida Department of Transportation to provide a safe, viable, and balanced state transportation system serving all regions of the state.

Proposed Change

The bill will redirect to the STTF $100 million annually from sales and use tax that would otherwise be deposited into the General Revenue Fund. Newly created s. 339.0803, F.S., directs that, of those funds, $85 million would be used annually for transportation projects that connect major markets within this state or between this state and other states, and which increase Florida's viability in national and global markets. The remaining $15 million would be used annually for regionally-significant transportation projects that provide connectivity to and through rural areas. To be eligible for the regional funding, projects must be production ready in the 5-year work program. State funds can be used to provide up to 75 percent of project costs. Preference will be given to projects identified as regionally significant, according to current law, and that have an increased level of non-state match.

Communications Services Taxation: Prepaid Calling Arrangements

Under current law, "prepaid calling arrangements" as defined by s. 212.05(1)(e), F.S., are subject to the sales tax of 6 percent (plus any applicable local option sales and use taxes). Other communications services, including postpaid mobile communications services, are subject to state and local communications services tax under ch. 202, F.S., and the gross receipts tax on communications services imposed by ch. 203, F.S. While local rates vary widely, the statewide average combined state and local tax rate on the sale of postpaid mobile communications is roughly 14%.

The current statutory definition of "prepaid calling arrangement" is narrowly drafted to include only, "retail sale by advance payment of communications services that consist exclusively of telephone calls… that are sold in predetermined units or dollars whose number declines with use in a known amount." However, the telecommunications industry has developed over the past decade to offer more prepaid plans compatible with the texting, data, video, and other capabilities of today's modern smartphones. This has led to increased utilization of prepaid mobile services, 32% of all smartphones sold in Q1 2013 were sold with prepaid plans.[24] As markets and technology have evolved, the statutory definition has become increasingly incompatible and inconsistent with industry practice and ability to collect communications services taxes.

Proposed Change

The bill modernizes the definition of "prepaid calling arrangement" to include the sale of mobile communications services that satisfy all the below requirements:

- Must be paid for in advance.
- Sold in predetermined units that expire or decrease according to a predetermined basis.
- Cannot be used if the predetermined units have expired or been exhausted.
- Are not subject to any requirement to purchase additional units in the future.
- Units cannot be used to obtain communications services other than mobile communications services unless those services are provided by or through the same handset.

Products that meet that definition will therefore be taxed at the state and local sales tax rates instead of the state and local communications services tax rates.

These changes are remedial in nature and apply retroactively, but do not create the right to a refund or credit of any tax paid.

Appropriations

The bill contains the following nonrecurring appropriations from General Revenue:

- $280,912 to implement the Hurricane Preparedness Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15),
- $223,048 to implement the Back to School Sales Tax Holiday (this appropriation occurs during the 2013-14 fiscal year and carries forward into 2014-15),
- $43,941 to implement the Energy Efficient Appliances Sales Tax Holiday, and

The bill also appropriates $20 million in nonrecurring General Revenue to the Department of Economic Opportunity to fund the Qualified Television Loan Fund program.

B. SECTION DIRECTORY:

Section 1. Amending s. 202.11, F.S., revising the definition of prepaid calling arrangement.

Section 2. Providing for retroactive application of the change in prepaid calling arrangement definition.

Section 3. Amending s. 203.01, F.S., imposing an additional Gross Receipts Tax rate and providing exemptions.

[24] https://www.npd.com/wps/portal/npd/us/news/press-releases/the-npd-group-nearly-one-third-of-all-smartphones-sold-in-the-u-s-are-prepaid/ (last visited 3/18/14)

Section 4.	Amending s. 212.05, F.S., revising the definition of prepaid calling arrangement, and reducing the tax rate on electricity.
Section 5.	Providing for retroactive application of the change in the definition of prepaid calling arrangement.
Section 6.	Amending s. 212.08, F.S., revising the repeal date for community contribution tax credits, and providing exemptions for cement mixer drums and motor vehicle child restraint devices.
Section 7.	Amending s. 212.12, F.S., conforming a reference.
Section 8.	Amending s. 212.20, F.S., providing a distribution from the Sales and Use Tax to the State Transportation Trust Fund.
Section 9.	Amending s. 220.14, F.S., increasing the income exempted from the Corporate Income Tax.
Section 10.	Clarifying the application of the Corporate Income Tax exemption increase.
Section 11.	Amending s. 220.183, F.S., revising the repeal date for community contribution tax credits.
Section 12.	Amending s. 220.63, F.S., increasing the income exempted from the Corporate Income Tax paid by banks and savings associations.
Section 13.	Clarifying the application of the Corporate Income Tax exemption increase for banks and savings associations.
Section 14.	Creating s. 288.127, F.S., creating the Qualified Television Loan Fund.
Section 15.	Amending s. 288.9914, F.S., revising New Markets tax credit amount.
Section 16.	Creating s. 339.0803, F.S., directing how certain projects will be funded from funds transferred from the Sales and Use Tax to the State Transportation Trust Fund.
Section 17.	Amending s. 624.5105, F.S., revising the repeal date for community contribution tax credits.
Section 18.	Creating a period where certain energy and water efficient items are exempt from sales tax.
Section 19.	Creating a period where certain physical fitness memberships are exempt from admissions tax.
Section 20.	Creating a period where certain clothing, school supplies and computer items are exempt from sales tax.
Section 21.	Creating a period where certain items related to hurricane preparedness are exempt from sales tax.
Section 22.	Providing appropriations.
Section 23.	Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See *Fiscal Comments* below.

2. Expenditures:

   The bill appropriates $547,901 to the Department of Revenue and $20 million to the Department of Economic Opportunity. Of the appropriations to the Department of Revenue, $503,960 is for the 2013-14 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See *Fiscal Comments* below.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides a broad and varied approach of tax cuts and economic development funding to encourage numerous industries within the private sector.

Based on 2011 tax return data (most recent available) staff estimates that the increase in the income exempt amount for the Corporate Income Tax will reduce the amount of corporate income taxpayers with tax liability from roughly 11,500 to roughly 9,400.

D. FISCAL COMMENTS:

The estimates in the table below are provided in part by the Revenue Estimating Conference and in part by staff. The impact of the bill in fiscal year 2014-2015 is -$328.8 million (-$302.2 million recurring) on General Revenue, is +$272.1 million (+$282.0 million recurring) on state trust funds, and is -$29.3 million (-$32.6 million recurring) on local government. The total cash impact in fiscal year 2014-2015 is -$86.0 million (-$52.8 million recurring). The non-recurring cash impact in fiscal year 2015-2016 attributable to the extension of the Community Contribution Tax Credits adds a further -$12.6 million impact to General Revenue, -$1.4 million to local governments, and brings the total cash impact of the bill to -$100.0 million.

Fiscal Year 2014-2015 Estimated Fiscal Impacts (millions of $)								
	General Revenue		State Trust Funds		Local		Total	
Issue	**Cash**	**Recur.**	**Cash**	**Recur.**	**Cash**	**Recur.**	**Cash**	**Recur.**
Sales Tax: Physical Fitness Holiday (ss. 19, 22)	(4.1)	-	(*)	-	(0.9)	-	(5.0)	0.0
Sales Tax: Back to School Holiday (ss. 20, 22)	(32.3)	-	(*)	-	(7.3)	-	(39.6)	0.0
Sales Tax: Energy Efficient Holiday (ss. 18, 22)	(1.7)	-	(*)	-	(0.3)	-	(2.0)	0.0
Sales Tax: Hurricane Prep. Holiday (ss. 21 22)	(3.0)	-	(*)	-	(0.7)	-	(3.7)	0.0
Sales Tax: Car Seats (s. 6)	(2.0)	(2.2)	(*)	(*)	(0.5)	(0.5)	(2.5)	(2.7)
Sales Tax: Youth Bicycle Helmets (s. 6)	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
Sales Tax: Cement Mixers (s. 6)	(3.3)	-	(*)	-	(0.4)	-	(3.7)	0.0
Sales Tax/Gross Receipts: Electricity (ss. 3, 4)	(152.9)	(166.8)	172.1	187.7	(19.2)	(20.9)	0.0	0.0
Corp Income Tax: Income Exemption (ss. 9, 12)	(8.8)	(21.6)	-	-	-	-	(8.8)	(21.6)
QTV Fund (ss. 14, 22)	(20.0)	-	--	-	-	-	(20.0)	0.0
New Markets Credits (s. 15)	-	(10.0)	-	-	-	-	0.0	(10.0)
Transportation Funding (ss. 8,16)	(100.0)	(100.0)	100.0	100.0	-	-	0.0	0.0
Prepaid Calling Definition** (ss. 1, 4)	-	(1.4)	-	(5.7)	-	(11.2)	0.0	(18.3)
Tax Holiday Appropriations***	(0.54)	-	-	-	-	-	(0.54)	0.0
FY 2014-15 Total	**(328.8)**	**(302.2)**	**272.1**	**282.0**	**(29.3)**	**(32.6)**	**(86.0)**	**(52.8)**
Community Contribution Tax Credits (ss. 6, 11, 17) **(FY 2015-16)**	(12.6)	-	(*)	-	(1.4)	-	(14.0)	0.0
Bill Total	**(341.4)**	**(302.2)**	**272.1**	**282.0**	**(30.7)**	**(32.6)**	**(100.0)**	**(52.8)**

**** Estimates reflect minimums. Potential indeterminate impacts range up to $8 million for General Revenue, $65 million for Gross Receipts Tax, and $127 million for local option taxes.**

***** The appropriations for the Hurricane Preparedness and Back-to-School Holidays are for FY 2013-2014, with carry over into 2014-15.**

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because certain provisions of this bill have a negative impact on local option sales taxes and communications services taxes. If those provisions do not qualify under any exemption or exception and the provisions 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:

Emergency rule making authority is granted to the Department of Revenue to administer the sales tax holidays and rule making authority is granted to the Department of Economic Opportunity to administer the Qualified Television Loan Fund.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 26, 2014, the Finance and Tax Subcommittee passed three amendments making technical and conforming changes to the bill as well as adjusting the appropriations for the Department of Revenue. This analysis is written to the bill as amended.