

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 16-04 Tax Package

**SPONSOR(S):** Finance & Tax Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Committee		Aldridge	Langston

### SUMMARY ANALYSIS

The bill provides for a wide range of tax reductions and modifications designed to directly impact both households and businesses, and to improve tax administration.

The bill permanently reduces the state sales tax rate on rental of commercial real estate (business rent tax) from 6% to 5%, beginning January 1, 2017, with an additional one percentage point reduction (to 4%) in calendar year 2018 only. The bill includes new, extended or expanded sales tax exemptions for: machinery and equipment for certain manufacturing, agricultural postharvest activities, and metals recycling; sales at school book fairs for one year; sales of college textbooks and instructional materials for one year; building materials, pest control, and rental of tangible personal property used in new construction in rural areas of opportunity; certain equipment, electricity and building materials used by certain new or expanding Florida datacenters; sales of food and drink by military veterans service organizations to their members, and certain resales of admissions for three years. The bill also clarifies requirements for the current exemption on sales of aircraft that will be registered in a foreign jurisdiction. The bill includes the following sales tax holidays: a ten-day "back-to-school" holiday for clothing, footwear, school supplies, and computers; a one-day "technology" holiday on sales of computers and related accessories; a one-day "small business" holiday, for sales by certain small businesses; and a one day "hunting and fishing" holiday for certain hunting firearms, ammunition, camping tents, and fishing supplies.

For property taxes, the bill: clarifies that for a limited period, economic development tax exemptions can be granted in areas which were designated enterprise zones as of December 30, 2015; expands the homestead exemption available for the surviving spouses of totally and permanently disabled veterans; creates a property tax discount on certain property used for affordable housing; and allows a midyear transfer of the disabled veteran homestead exemption.

For corporate income tax, the bill: temporarily increases total tax credits available for voluntary brownfields clean-up, research and development tax credits, and renewable energy technology and production tax credits. The bill also creates a new tax credit as part of a plastic bag reduction pilot program. The bill adopts the Internal Revenue Code as in effect on January 1, 2016, but decouples from certain federal bonus depreciation provisions and changes certain filing dates to conform with federal filing date changes.

Further changes in the bill include: equalization of the tax rates on apple and pear cider; changes to allowable and required uses of tourist development taxes; elimination of a current exemption from and a reduction of the aviation fuel tax rate; clarification of administration of the tax on other tobacco products; clarification of documentary stamp tax treatment of certain housing authority notes; requiring at least 5% of community redevelopment agency revenues be spent on youth centers in certain circumstances; and replacement of the current tax calculation on liquor and tobacco sold on cruise ships with a simpler, revenue neutral calculation.

The total of -\$991.7 million in tax reductions proposed by the bill is the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The bill also includes nonrecurring General Revenue appropriations of \$762,154. Also see FISCAL COMMENTS section.

**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:

##### **Sales Tax**

Florida's sales and use tax is a 6 percent levy on retail sales of a wide array of tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles, unless expressly exempted. In addition, Florida authorizes several local option sales taxes that are levied at the county level on transactions that are subject to the state sales tax. Generally, the sales tax is added to the price of a taxable good and collected from the purchaser at the time of sale. Sales tax represents the majority of Florida's general revenue stream (77.0 percent for FY 2015-2016<sup>1</sup>) and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

##### **Sales Tax on Rental of Commercial Real Estate (Business Rent Tax)**

###### *Current Situation*

Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease of real property.<sup>2</sup> Sales tax is due at the rate of 6 percent on the total rent paid for the right to use or occupy commercial real property and county sales surtax can also be levied on total rent.<sup>3</sup> If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are numerous commercial rentals that are not subject to sales tax, including:

- Rentals of real property assessed as agricultural;
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption;
- Rentals to federal, state, county, or city government agencies;
- Properties used exclusively as dwelling units; and
- Public streets or roads used for transportation purposes.

Florida is the only state to charge sales tax on commercial rentals of real property. The Legislature's Office of Economic and Demographic Research reviewed and issued a report on the business rent tax in 2014.<sup>4</sup>

###### *Proposed Changes*

The bill reduces the business rent tax from 6 percent to 5 percent, effective January 1, 2017 and further reduces the tax rate to 4 percent for a one-year period, beginning January 1, 2018 and ending December 31, 2018.

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<sup>1</sup> FLORIDA REVENUE ESTIMATING CONFERENCE, [2016 FLORIDA TAX HANDBOOK \(2016\)](#).

<sup>2</sup> Ch. 1969-222, Laws of Fla.

<sup>3</sup> Section 212.031, F.S., and Rule 12A-1.070, F.A.C.

<sup>4</sup> Office of Economic and Demographic Research, [Economic Impact: Sales Tax on the Rental of Real Property](#) (Nov. 15, 2014).

## Industrial Manufacturing and Equipment Sales Tax Exemption

### *Current Situation*

Since April 30, 2014<sup>5</sup>, state law<sup>6</sup> exempts from sales and use tax purchases of industrial machinery and equipment used at a fixed location in Florida by an eligible manufacturing business that will manufacture, process, compound, or produce items of tangible personal property. The exemption also includes parts and accessories for the industrial machinery and equipment if they are purchased before the date the machinery and equipment are placed in service.

An "eligible manufacturing business" means any business whose primary business activity at the location where the industrial machinery and equipment are located is within the industries classified under manufacturing North American Industry Classification System<sup>7</sup> (NAICS) codes 31, 32, and 33<sup>8</sup>. The primary business activity of an eligible business is that activity which represents more than 50 percent of the activities conducted at the location where the industrial machinery and equipment are located. Examples of types of manufacturing establishments represented by the applicable NAICS codes include, but are not limited to, food, apparel, wood, paper, printing, chemical, pharmaceutical, plastic, rubber, metal, transportation, and furniture.

The selling dealer (vendor) is required to obtain a signed certificate from the purchaser certifying the purchaser's entitlement to the tax exemption. The signed certificate will relieve the selling dealer of any potential tax liability on nonqualifying purchases.

Also included in the exemption are mixer drums affixed to mixer trucks which are used to mix, agitate, and transport freshly mixed concrete in a plastic state for the manufacture, processing, compounding, or production of items of tangible personal property for sale. Parts and labor required to affix a mixer drum to a mixer truck are also exempt.

The exemption expires on April 30, 2017.

### *Proposed Changes*

The bill amends s. 212.08, F.S., to make permanent the sales and use tax exemption for certain industrial machinery and equipment purchased by eligible manufacturing businesses. The bill also adds to the list of eligible manufacturing businesses, those whose primary activity at the location where the industrial machinery and equipment is located is classified under NAICS code 423930<sup>9</sup> (metals recyclers).

The bill also adds an exemption for certain "postharvest machinery and equipment" for eligible businesses whose primary business activity at the location where the postharvest machinery and equipment is located is within NAICS code 115114.<sup>10</sup> Postharvest machinery is defined as tangible personal property or other property that has a depreciable life of 3 years or more and that is used primarily for postharvest activities, and includes repair parts, materials and labor.

The bill retains the repeal date of April 30, 2017, for the sales and use tax exemption for a mixer drum affixed to a mixer truck and the parts and labor required to affix the drum to the truck.

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<sup>5</sup> Ch. 2013-39, Laws of Fla

<sup>6</sup> Section 212.08(7)(kkk), F.S.

<sup>7</sup> North American Industry Classification System, NAICS Code Description available at <http://www.naics.com/naics-code-description/?code=31> (last visited January 21, 2016).

<sup>8</sup> NAICS codes 31-33 pertain to manufacturing businesses. A more detailed description of the specific types of businesses included in NAICS codes 31-33 is available at: <http://www.naics.com/six-digit-naics/?code=3133>; (last visited January 21, 2016).

<sup>9</sup> NAICS code 423930 pertains to recyclable material merchant wholesalers. This industry comprises establishments primarily engaged in the merchant wholesale distribution of automotive scrap, industrial scrap, and other recyclable materials. A more detailed description of the specific types of businesses included in NAICS code 423930 is available at: <http://www.naics.com/naics-code-description/?code=423930> (last visited January 21, 2016)

<sup>10</sup> NAICS code 115114 pertains to establishments primarily engaged in performing services on crops, subsequent to their harvest, with the intent of preparing them for market or further processing. See: <http://www.naics.com/naics-code-description/?code=115114>

## Veterans' Organizations

### *Current Situation*

There is a sales tax exemption for sales or leases of tangible personal property to qualified veterans' organizations and their auxiliaries when used in carrying on their customary veteran's organization activities.<sup>11</sup> Veterans' organizations are defined as nationally chartered organizations which hold certain exemptions from federal income tax, including, but not limited to Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., and the Disabled American Veterans, Department of Florida, Inc.<sup>12</sup>

### *Proposed Changes*

The bill adds to the current sales tax exemption sales of food or drinks by qualified veterans' organizations in connection with customary veterans' organization activities to members of qualified veterans' organizations. The bill also explicitly lists the American Legion and Veterans of Foreign Wars of the United States, as qualified veterans' organizations.

## Datacenters

### *Current Situation*

There is no current provision or program that specifically provides sales tax exemptions for purchases of equipment, electricity and building materials for datacenters.

### *Proposed Changes*

The bill establishes a program that would allow certain qualifying datacenters to apply for certification with the Department of Economic Opportunity (DEO) that one or more of the datacenter's owners, operators, users, or tenants, individually, has or will make a cumulative capital investment of at least \$75,000,000 during a five-year period. Such expenditure does not include replacement of equipment that has reached its useful life, or the purchase of existing datacenters. Once certified, a business would have a sales tax exemption on the purchase of datacenter equipment, electricity for a datacenter and building materials for the construction or expansion of a datacenter.

The bill provides for the process which by which a business may apply for and receive certification for the sales tax exemptions described above. The bill provides definitions of "datacenter," "datacenter equipment," "qualifying datacenter," "cumulative capital investment," and "eligible costs." The bill tolls the statute of limitations on DOR's authority to audit from the time a business receives an exemption certificate until the time that DEO makes a final certification determination. The bill allows DEO to revoke a business' certification under specified circumstances and allows for the recovery of funds for which a determination is made by DOR that a certified business was not entitled to the certification.

## Sales Tax on Admissions

### *Current Situation*

Section 212.04, F.S., governs the state sales tax on admissions. Sales tax is levied at the rate of 6 percent of sales price or the actual value received from admissions. Admissions are defined as the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any:

- Place of amusement, sport, or recreation including, but not limited to, theaters, shows, exhibitions, games, races;
- Place where charge is made by way of sale of tickets, gate charges, and similar fees or charges;

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<sup>11</sup> Section 212.08(7)(n)1., F.S.

<sup>12</sup> Section 212.08(7)(n)2., F.S.

- Receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation; and
- All dues and fees paid to private clubs and membership clubs providing recreational or physical fitness facilities, including, but not limited to, golf, tennis, swimming, yachting, boating, athletic, exercise, and fitness facilities.

Several exceptions and exemptions exist, such as:

- Memberships for physical fitness facilities owned or operated by any hospital;
- Admissions to athletic or other events sponsored by a school;
- Fees or charges imposed by certain not-for-profits;
- Events sponsored by a governmental entity, nonprofit sports authority, or nonprofit sports commission under certain circumstances;
- Certain admissions to professional sports championship games;
- Entry fees for freshwater fishing tournaments;
- Participation or entry fees charged to participants in a game, race, or other sport or recreational event if spectators are charged a taxable admission to such event;
- Admissions to any postseason collegiate football game sanctioned by the National Collegiate Athletic Association.

Generally speaking, sales of tangible personal property made for resale are exempt from sales tax.<sup>13</sup> This treatment does not apply to sales of taxable admissions.<sup>14</sup>

### *Proposed Changes*

The bill provides an exemption for certain resales of admissions to a purchaser that is eligible for an exemption from sales tax. The bill allows a person who has purchased a taxable admission and resells that admission to an entity with a valid exemption certificate from DOR to seek a refund or credit of the tax paid on its initial purchase of the admission from the vendor of the initial sale. The vendor may then seek a refund or credit of the tax from DOR. This exemption is scheduled to repeal on July 1, 2019.

### College or University Textbooks Sales Tax Exemption

#### *Current Situation*

In 2015, the Legislature created a one-year sales tax exemption<sup>15</sup> for textbooks, and printed and digital materials required or recommended for a course offered by a public postsecondary educational institution or a nonpublic postsecondary educational institution that is eligible to participate in the tuition assistance programs.

To obtain the tax exemption, a student must provide either a physical or an electronic copy of the following to the vendor:

- His or her student identification number; and
- Either an applicable course syllabus or list of required and recommended textbooks and instructional materials.

The vendor must maintain proper documentation, as prescribed by rule, to identify either complete transactions or the portion of a transaction which involves the sale of tax-exempted textbooks.

<sup>13</sup> See the definition of “retail sale” in s. 212.02(14), F.S. Also see s. 212.07, F.S.

<sup>14</sup> Section 212.04(1)(c), F.S.

<sup>15</sup> Section 29, ch. 2015-221, L.O.F.

### *Proposed Changes*

The bill would extend the exemption on college textbooks through June 30, 2017.

### Book Fairs Sales Tax Exemption

#### *Current Situation*

Books sold at a book fair on the premises of K through 12 schools are currently subject to sales tax.

#### *Proposed Changes*

The bill creates a one-year exemption on the sale of books and other reading materials at book fairs on the premises of K through 12 schools. If the sales are made by a third-party vendor, the vendor must commit all or some of the profit from the book fair to be used for the benefit of the school.

### Aircraft Registered in a Foreign Jurisdiction

#### *Current Situation*

Generally speaking, sales of tangible personal property for export are not subject to tax in Florida. The legal rules governing taxability in the context of an export of tangible personal property can be complex, as can be the documentation requirements. Rule 12-1.007(10)(d)1., F.A.C., provides that:

Aircraft being exported under their own power to a destination outside the continental limits of the United States are subject to tax, unless the purchaser furnishes the dealer a duly signed and validated United States Customs declaration, showing the departure of the aircraft from the continental United States and the canceled United States registry of said aircraft. The burden of obtaining the evidential matter to establish the exemption rests with the selling dealer, who must retain the proper documentation to support the exemption.

Other provisions of Florida law may be implicated in this type of transaction.

#### *Proposed Changes*

The bill clarifies the requirements for the exemption from tax on certain sales of aircraft that will be registered in a foreign jurisdiction. The bill specifies that an exemption applies on the purchase of an aircraft in Florida for aircraft that will be registered in a foreign jurisdiction, if:

- Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days from the date of purchase,
- The purchaser removes the aircraft from Florida to a foreign jurisdiction within 10 days from the date the aircraft is registered by the applicable foreign airworthiness authority, and
- The aircraft is operated in Florida solely for the removal from the state to a foreign jurisdiction

### Sales Tax Holidays

#### *Current Situation*

Since 1998, the Legislature has enacted 19 temporary periods (commonly called "sales tax holidays") during which certain household items, household appliances, clothing, footwear, books, and/or school supply items were exempted from the state sales tax and county discretionary sales surtaxes.

*Back-to-School Holidays*--Florida has enacted a "back to school" sales tax holiday 14 times since 1998. The length of the exemption periods has varied from three 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 \$100. Books valued at \$50 or less were exempted in six 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. In 2014, the first \$750 of the sales price of personal computers and related accessories purchased for noncommercial home or personal use 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
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
August 1-3, 2014	3 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less
August 7 - 16, 2015	10 days	\$100 or less	\$100 or less	N/A	First \$750 of the sales price	\$15 or less

*Small Business Saturday*--In 2010, American Express instituted a “Small Business Saturday” incentive for their cardholders who shopped at small, independent business on the Saturday after “Black Friday.”<sup>16</sup> It is estimated that consumers spent \$5.5 billion at small, independent businesses on Small Business Saturday in 2012, with pre-holiday surveys estimated at \$5.3 billion.<sup>17</sup>

*Outdoor Recreation in Florida*--According to the Florida Fish and Wildlife Conservation Commission, recreational fishing, hunting and wildlife-viewing in Florida generate an economic impact of \$10.1 billion annually.<sup>18</sup> Florida has one of the largest public-hunting systems in the country, and there are approximately 242,000 hunters in the state.<sup>19</sup> Florida leads all states in economic impacts for its marine recreational fisheries,<sup>20</sup> and there are over two million Florida residents who are angler fisherman.<sup>21</sup>

<sup>16</sup> American Express, *Small Business Saturday*, available at: <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shops-small-homepage-about> (last visited January 23, 2016).

<sup>17</sup> *Small Business Saturday® Results: Shoppers Provide Encouraging Start to the Holiday Shopping Season*, November 30, 2015, available at <http://www.businesswire.com/news/home/20151130005359/en/Small-Business-Saturday%C2%AE-Results-Shoppers-Provide-Encouraging> (last visited January 23, 2016).

<sup>18</sup> Florida Fish and Wildlife Conservation Commission (FWC), *Economic Impact of Outdoor Recreation*, available at: <http://myfwc.com/conservation/value/outdoor-recreation> (last visited January 23, 2016).

<sup>19</sup> FWC, *Overview – Fast Facts*, available at: <http://myfwc.com/about/overview> (last visited January 23, 2016).

<sup>20</sup> FWC, *Economic Impact of Outdoor Recreation*, available at: <http://myfwc.com/conservation/value/outdoor-recreation/> (last visited January 23, 2016)

<sup>21</sup> FWC, *Overview – Fast Facts*, available at: <http://myfwc.com/about/overview/>(last visited January 23, 2016).

## *Proposed Changes*

The bill establishes four sales tax holidays during the 2016-2017 fiscal year. DOR may adopt emergency rules to implement the provisions of each holiday.

*Back-to-School Holiday*--The bill provides for a ten-day sales tax holiday from August 5, 2016, through August 14, 2016. 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 during the holiday.

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.

*Hunting and Fishing Sales Tax Holiday*--The bill provides for a one day sales tax holiday on August 20th, 2016, for certain firearms, ammunition, camping tents, and fishing supplies. During the holiday, the following items are exempt from the state sales tax and county discretionary sales surtaxes:

- Firearms (defined as rifles, shotguns, spearguns, crossbows, and bows);
- Ammunition for rifles, shotguns, spearguns, crossbows, and bows;
- Camping tents; and
- Fishing supplies (defined as non-commercial rods, reels, bait, and fishing tackle).

*Technology Sales Tax Holiday*--The bill provides a one-day sales tax holiday on April 22, 2017. During the holiday, the first \$1,000 of the sales price of the following items is exempt from the state sales tax and county discretionary sales surtaxes:

- Personal Computers (includes electronic book readers, laptops, desktops, handhelds, tablets, cellular telephones, or tower computers); and
- "Personal computer-related accessories" (includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and nonrecreational software).

The “back to school,” “hunting and fishing” and “technology” sales tax holidays do not apply to the following sales:

- Sales within a theme park or entertainment complex, as defined in s. 509.013(9), F.S.;
- Sales within a public lodging establishment, as defined in s. 509.013(4), F.S.; and
- Sales within an airport, as defined in s. 330.27(2), F.S.

*Small Business Saturday Tax Holiday*--The bill provides for a one day sales tax holiday on November 26, 2016. During the holiday, items priced \$1,000 or less that are sold by certain “small businesses” are exempt from the state sales tax and county discretionary sales surtaxes.

The bill defines “small business” as a dealer, as defined in s. 212.06, F.S., that registered with the DOR and began operation no later than January 11, 2016, and that owed and remitted less than \$200,000 in sales tax to the DOR during the one-year period ending September 30, 2016. If the business has not been in operation for a complete year as of September 30, 2016, the business may qualify if it owed and remitted less than \$200,000 in sales tax from the first day of operation until September 30, 2016.



If the business is eligible to file a consolidated return (e.g., has multiple places of business), the total sales tax owed and remitted by the business' locations must be less than \$200,000 during the applicable period ending September 30, 2016.

## Rural Areas of Opportunity

### *Current Situation*

Florida's Rural Economic Development Initiative (REDI), housed within DEO, is a multi-agency endeavor that coordinates the efforts of regional, state, and federal agencies to the address the issues that affect the fiscal, economic and community viability of the state's economically distressed rural communities. REDI works with local governments, community-based organizations, and private entities that have an interest in the growth and development of these communities to find ways to balance environmental and growth management issues with local needs and economic development. A number of agencies and organizations are directed to designate a staff person to serve as REDI representatives.<sup>22</sup>

A Rural Area of Opportunity (RAO) is a rural community, or a region comprised of rural communities, designated by the Governor, that has been adversely affected by an extraordinary economic event, a natural disaster, or severe or chronic distress. The area may also be classified as a RAO if it presents a unique economic development opportunity of regional impact.<sup>23</sup>

The Governor may designate up to three RAO areas for five-year periods upon recommendation by REDI. This allows these areas to receive priority assignments for REDI, and allows the Governor, acting through REDI, to waive certain criteria or requirements of any economic development incentives.<sup>24</sup> Currently, there are three designated RAO areas:

- North West RAO – Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla and Washington Counties, and the City of Freeport in Walton County.
- South Central RAO – DeSoto, Glades, Hardee, Hendry, Highlands and Okeechobee Counties, the Cities of Pahokee, Belle Glade and South Bay in Palm Beach County, and a portion of the Immokalee area in Collier County.
- North Central RAO – Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor and Union Counties.

## Sales & Use Tax on Building Materials, Rental of Tangible Personal Property, and Pest Control Services

Sales and use tax are currently levied on the purchase of building materials, pest control services, and the rental of tangible personal property used in the construction of improvements to real property in Rural Areas of Economic Opportunity. The tax is collected at a state rate of 6% and a local rate which varies from 0% to 1.5% depending on the county.

### *Proposed Changes*

The bill creates an exemption from sales and use tax for the purchase of building materials, pest control services, and the rental of tangible personal property used in new construction in Rural Areas of Opportunity. The exemption is provided in the form of a refund of taxes paid, and is capped at \$10,000 per parcel. The bill provides for a procedure by which taxpayers submit an application to REDI. Within 10 days of receipt of a completed application, REDI must review the application and, if it meets the requirements of the bill, certify to DOR that a refund is to be issued.

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<sup>22</sup> Section 288.0656(6)(a), F.S.

<sup>23</sup> Section 288.0656(2)(d), F.S.

<sup>24</sup> Section 288.0656(7)(1), F.S.

## Corporate Income Tax

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.<sup>25</sup> The calculation of Florida corporate income tax starts with a corporation's federal taxable income.<sup>26</sup> After certain addbacks and subtractions to federal taxable income required by chapter 220, F.S., the amount of adjusted federal income attributable to Florida is determined by the application of an apportionment formula.<sup>27</sup> The Florida corporate income tax uses a three-factor apportionment formula consisting of property, payroll, and sales (which is double-weighted) to measure the portion of a multistate corporation's business activities attributable to Florida.<sup>28</sup> Income that is apportioned to Florida using this formula is then subject to the Florida income tax. The first \$50,000 of net income is exempt.<sup>29</sup>

### Voluntary Cleanup Tax Credit Program - Brownfields Tax Credit

#### *Current Situation*

In 1998, the Legislature provided the Department of Environmental Protection (DEP) the direction and authority to issue tax credits as an additional incentive to encourage site rehabilitation in brownfield areas and to encourage voluntary cleanup of certain other types of contaminated sites. This corporate income tax credit may be taken in the amount of 50 percent of the costs of voluntary cleanup activity that is integral to site rehabilitation at the following sites:

- A site eligible for state-funded cleanup under the Drycleaning Solvent Cleanup Program (DSCP);<sup>30</sup>
- A drycleaning solvent contaminated site at which the real property owner undertakes voluntary cleanup, provided that the real property owner has never been the owner or operator of the drycleaning facility; or
- A brownfield site in a designated brownfield area.<sup>31</sup>

Eligible tax credit applicants may receive up to \$500,000 per site per year in tax credits. Due to concern that some participants in a voluntary cleanup might only conduct enough work to eliminate or minimize their exposure to third party lawsuits, the VCTC statute also provides a completion incentive in the form of an additional 25 percent supplemental tax credit for those applicants that completed site rehabilitation and received a Site Rehabilitation Completion Order from the DEP. This additional supplemental credit has a \$500,000 cap. Businesses are also allowed a one-time application for an additional 25 percent of the total site rehabilitation costs, up to \$500,000, for brownfield sites at which the land use is restricted to affordable housing. They may also submit a one-time application claiming 50 percent of the costs, up to \$500,000, for removal, transportation and disposal of solid waste at a brownfield site.

Site rehabilitation tax credit applications must be complete and submitted by January 31 of each year. The total amount of tax credits for all sites that may be granted by the DEP is \$5 million annually. In the event that approved tax credit applications exceed the \$5 million annual authorization, the statute provides for remaining applications to roll over into the next fiscal year to receive tax credits in first come, first served order from the next year's authorization. These tax credits may be applied toward corporate income tax in Florida. The tax credits may be transferred one time, although they may succeed to a surviving or acquiring entity after merger or acquisition.

The Legislature increased the annual amount of credits that could be awarded from \$5 million to \$21.6 million for fiscal year 2015-2016.<sup>32</sup>

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<sup>25</sup> Section 220.11, F.S.

<sup>26</sup> Section 220.12, F.S.

<sup>27</sup> Section 220.15, F.S.

<sup>28</sup> Section 220.15, F.S.

<sup>29</sup> Section 220.14, F.S.

<sup>30</sup> Section 376.30781, F.S.

<sup>31</sup> Section 220.1845, F.S.

<sup>32</sup> Ch. 2015-221, Laws of Fla (HB 33A)

## *Proposed Changes*

The bill increases the amount of credits that may be awarded from \$5 million to \$8 million in fiscal year 2016-17.

### Florida Renewable Energy Production Credit

#### *Current Situation*

In 2006,<sup>33</sup> the Legislature created the Florida Renewable Energy Production Credit under s. 220.193, F.S., which was designed to encourage the development and expansion of facilities that produce renewable energy in Florida. In 2012,<sup>34</sup> the Legislature modified the Florida Renewable Energy Production Credit for electricity produced and sold on or after January 1, 2013.

Under current law, the credit is available to new renewable energy facilities that were operationally placed in service after May 1, 2006,<sup>35</sup> or expanded renewable energy facilities that increased electrical production and sale by more than five percent over what they had produced during 2011.<sup>36</sup> The tax credit is based on the taxpayer's production and sale of electricity, and equals \$0.01 for each kilowatt-hour of electricity produced and sold or used during a given tax year.<sup>37</sup>

The combined total amount of tax credits which may be granted for all taxpayers was limited to \$5 million in state fiscal year 2012-13 and \$10 million per state fiscal year in state fiscal years 2013-14 through 2016-17.<sup>38</sup> If the annual tax credit authorization amount is not exhausted by allocations of credits within that particular state fiscal year, any authorized but unallocated credit amounts may be used to grant credits that were earned pursuant to s. 220.192<sup>39</sup> but unallocated due to a lack of authorized funds.

Credits may not be granted beyond state fiscal year 2016-17.<sup>40</sup>

#### *Proposed Changes*

The bill proposes to extend the Florida Renewable Energy Production Credit through state fiscal year 2017-18. The bill sets the combined total amount of tax credits which may be granted for all taxpayers in state fiscal years 2016-2017 through 2017-18 at \$10 million per state fiscal year. The bill also adds to the list of "new facilities" that may receive the credit, certain nonpublic waste-to-energy facilities sited pursuant to ss. 403.501 – 403.518, F.S.

### Florida Renewable Energy Technology Credit

#### *Current Situation*

In 2006,<sup>41</sup> the Legislature created the Florida Renewable Energy Technology Credit under s. 220.192, F.S., which was designed to encourage the development and expansion of facilities that produce renewable energy in Florida. In 2012,<sup>42</sup> the Legislature modified the Florida Renewable Energy

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<sup>33</sup> Ch. 2006-230, Laws of Fla. (SB 888)

<sup>34</sup> Ch. 2012-117, Laws of Fla. (HB 7117)

<sup>35</sup> Section 220.193(1)(e), F.S. The term includes a Florida renewable energy facility that has had an expansion operationally placed in service after May 1, 2006, and whose cost exceeded 50 percent of the assessed value of the facility immediately before the expansion.

<sup>36</sup> Section 220.193(1)(c), F.S.

<sup>37</sup> Section 220.193(3), F.S.

<sup>38</sup> Section 220.193(3)(g), F.S.

<sup>39</sup> Renewable energy technologies investment tax credit.

<sup>40</sup> Section 220.193(3)(g), F.S.

<sup>41</sup> Ch. 2006-230, Laws of Fla. (SB 888)

<sup>42</sup> Ch. 2012-117, Laws of Fla. (HB 7117)

Technology Credit by expanding it to include materials used in the distribution of other renewable fuels, and extending the program, in effect, through state fiscal year 2016-17.

Under current law, The Renewable Energy Technologies Investment Tax Credit program provides an annual corporate tax credit equal to 75 percent of all capital costs, operation and maintenance costs, and research and development costs in connection with an investment in the production, storage, and distribution of biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuel in the state. Eligible costs must be incurred between July 1, 2012, and June 30, 2016, and may not exceed \$1 million per state fiscal year for each taxpayer with a limit of \$10 million per state fiscal year. If the annual tax credit authorization amount is not exhausted by allocations of credits within that particular state fiscal year, any authorized but unallocated credit amounts may be used to grant credits that were earned pursuant to s. 220.193<sup>43</sup> but unallocated due to a lack of authorized funds.

In effect, the program will expire after fiscal year 2016-17.<sup>44</sup>

### *Proposed Changes*

The bill extends the Florida Renewable Energy Technology Credit through FY 2017-18. The bill sets the combined total amount of tax credits which may be granted for all taxpayers in state fiscal years 2016-2017 through 2017-18 at \$10 million per state fiscal year.

### Research and Development Credits

#### *Current Situation*

*Federal Tax Credit*--The "U.S. Research and Experimentation Tax Credit" was created in 1981 as part of the Economic Recovery Tax Act, a comprehensive package of initiatives designed to boost U.S. business competitiveness and encourage investment and savings by American taxpayers during a period of economic recession.<sup>45</sup> For the 2012 federal tax year, 15,873 companies claimed \$10.8 billion in R&D tax credits, including \$168.9 million claimed via "pass-through" entities.<sup>46</sup> At \$6.6 billion, manufacturing companies claimed the largest portion of research tax credits.<sup>47</sup>

*Florida Tax Credit*--Section 220.196, F.S., authorizes an R&D tax credit against state corporate income taxes for certain businesses with qualified research expenses that received the federal credit. The tax credit is 10 percent of the difference between the current tax year's research and development expenditures in Florida and the average of R&D expenditures over the previous four tax years. However, if the business has existed fewer than four years, then the credit amount is reduced by 25 percent for each year the business or predecessor corporation did not exist.

The state tax credit taken in any taxable year may not exceed 50 percent of the company's remaining net corporate income tax liability under ch. 220, F.S., after all other credits to which the business is entitled have been applied. Any unused credits may be carried forward by the business that originally earned them for up to 5 years following the year in which the qualified research expenses were incurred.

The maximum amount of research and development credits that may be approved by DOR during any calendar year is \$9 million, except for calendar year 2016 which has a cap of \$23 million. Applications may be filed with DOR between March 20th and March 27 for qualified research expenses incurred

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<sup>43</sup> Renewable energy production tax credit.

<sup>44</sup> Section 220.192(1)(c), and (2), F.S.

<sup>45</sup> "The U.S. Research and Experimentation Tax Credit in the 1990s" by Francisco Moris. National Science Foundation Report #NSF05-316 published July 2005. Retrieved at <http://www.nsf.gov/statistics/infbrief/nsf05316/> and "The Prospects for Economic Recovery," prepared by the Congressional Budget Office. Published February 1982. Pertinent information on pages 87-93. Retrieved at <http://www.cbo.gov/ftpdocs/51xx/doc5135/doc03b-Part8.pdf>. (last visited on January 25, 2016)

<sup>46</sup> Internal Revenue Service, Statistics of Income Division. Retrievable at <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>. (last visited January 25, 2016)

<sup>47</sup> Ibid.

within the preceding calendar year. If the total amount of credits applied for exceeds the annual cap, credits are distributed on a prorated basis.

During the application period beginning in 2015, when credits were distributed on a first-come first-served basis instead of prorated, the DOR received a total of 81 applications for \$24 million worth of credits. Of these, 20 received full funding, 1 received partial funding, 59 were denied due to the cap having exceeded, and 1 was denied because it was a duplicate. All of the applications which received funding were filed within 6 minutes of the application window opening.<sup>48</sup>

### *Proposed Changes*

The bill increases from \$9 million to \$15 million the maximum amount of credits that may be approved in calendar year 2017.

## Plastic Bags

### *Current Situation*

Most retail establishments provide a complimentary bag to its customers at the point of sale, which are commonly made of paper or plastic. Nationwide estimates indicate Americans used almost 90 billion retail bags in 2003, and only a relatively small percentage are reused or recycled (12 percent of plastic bags and 37 percent of paper bags).<sup>49</sup>

Numerous jurisdictions throughout the country have proposed or adopted fees, bans, or other programs to discourage the use of disposable bags or to promote bag recycling. Regulating bags can mitigate harmful impacts to oceans, rivers, lakes, and the wildlife that inhabit them. In March 2007, San Francisco became the first city in the United States to ban non-biodegradable bags from large grocery stores and pharmacies. As of 2014, six states and Washington D.C. have enacted legislation related to the use of plastic bags.<sup>50</sup>

As part of the Energy, Climate Change, and Economic Security Act of 2008, the Florida Legislature directed the Department of Environmental Protection (FDEP) to undertake an analysis of the need for new or different regulation of auxiliary containers, wrapping, or disposable plastic bags used by consumers to carry products from retail establishments. On February 1, 2010 the FDEP published the Retail Bags Report, which yielded 12 options to be considered by the Legislature.

Pursuant to Florida law, no state or local retail bag regulations can be enacted until the Florida Legislature takes action on the recommendations provided in FDEP's Retail Bag report.<sup>51</sup>

### *Proposed Changes*

The bill creates a pilot program to incentivize Florida businesses to reduce the amount of plastic bags provided to customers. The Department of Revenue will administer the program and provide corporate income tax credits to eligible businesses located in coastal counties with a population greater than one million.

Businesses that wish to participate in pilot program must apply to the Department of Revenue between March 20 and March 27 of calendar year 2019.

A business is eligible to receive the tax credit if it:

- Is located in a coastal county,

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<sup>48</sup> DOR Research & Development Tax Credit Allocation Report. Retrievable at [http://dor.myflorida.com/dor/taxes/documents/rd\\_credit.pdf](http://dor.myflorida.com/dor/taxes/documents/rd_credit.pdf) (last visited January 25, 2016).

<sup>49</sup> Florida Department of Environmental Protection, Retail Bags Report, February 1, 2010.

<sup>50</sup> National Conference of State Legislatures, State Plastic and Paper Bag Legislation, January 22, 2015.

<sup>51</sup> Section 403.7033, F.S.

- Has a base amount of at least 500,000 plastic bags for locations in coastal counties in calendar year 2016, and
- Demonstrates a reduction of at least 5 percent from the base amount at locations in a coastal county as of the end of calendar year 2018.

Each business's credit will be based on the business's reduction in plastic bags, measured from calendar year 2016 to 2018. The credit for an eligible applicant will be equal to the applicant's share of the total reduction in bag usage of all qualified applicants, multiplied by \$5 million. The pilot program will provide tax credits one time (in calendar year 2019) before it is set to expire in calendar year 2020, unless reviewed and reauthorized by the Legislature.

The Department of Revenue may adopt rules to administer the program.

### Federal Tax Code Conformance--"Piggyback"

#### *Current Situation*

Florida imposes a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.<sup>52</sup> The determination of taxable income for Florida tax purposes begins with the taxable income determined for federal income tax purposes.<sup>53</sup> This means that a corporation paying taxes in Florida receives the same treatment in Florida as is allowed in determining its federal taxable income.

Florida maintains its relationship with the federal Internal Revenue Code by each year adopting the federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income.

#### Tax Calculation

On December 18, 2015, the federal government passed the Consolidated Appropriations Act, 2016,<sup>54</sup> which contains several significant amendments to the Internal Revenue Code.

Generally, the Internal Revenue Code allows a taxpayer to deduct the cost of capital assets by deducting a portion of the cost over the useful life of the property (depreciation).<sup>55</sup> Additionally, the Internal Revenue Code allows a taxpayer to treat a certain amount of the cost of capital assets as a business expense that can be taken entirely in the year of purchase (expensing).<sup>56</sup> Prior to the Consolidated Appropriations Act, 2016, the amount that could be expensed was limited to \$25,000.

Federal legislation during the past several years<sup>57</sup> granted accelerated depreciation deductions (bonus depreciation) and increases in the expensing limitation on a temporary basis. However, the Consolidated Appropriations Act, 2016 permanently increased the expensing limitation from \$25,000 to \$500,000 for property placed in service in 2015 and thereafter. In addition, the Consolidated Appropriations Act, 2016 extended for five years the first-year bonus depreciation amount of 50 percent of the cost of the property placed in service during 2015. The percentage is 50 percent for property placed in service during 2015, 2016, and 2017, but then phases down to 40 percent in 2018 and 30 percent in 2019.<sup>58</sup> The estimated impact if Florida were to accept all of these changes in its tax code for fiscal years 2015-16 and 2016-17 combined is -\$396.6 million.<sup>59</sup>

<sup>52</sup> Section 220.11(2), F.S.

<sup>53</sup> Section 220.12, F.S.

<sup>54</sup> Pub. L. No. 114-113, Division Q, s. 143, H.R. 2029, 114th Cong. (December 18, 2015).

<sup>55</sup> See generally 26 U.S.C. §§ 167 and 168.

<sup>56</sup> See generally 26 U.S.C. § 179.

<sup>57</sup> The Economic Stimulus Act of 2008, the American Recovery and Reinvestment Act of 2009, the Small Business Jobs Act of 2010, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, and the American Taxpayer Relief Act of 2012.

<sup>58</sup> The bonus depreciation amount begins in 2019 for certain longer-lived and transportation property.

<sup>59</sup> Revenue Estimating Conference, January 20, 2016.

## Corporate Income Tax Returns

On July 31, 2015, the federal government passed the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015,<sup>60</sup> which contains amendments to the Internal Revenue Code regarding the due date for federal corporate income tax returns. For federal income tax return purposes, the following changes apply for tax years beginning after 2015 (unless otherwise specified):

<b>Return Type</b>	<b>Due Date Under Prior Law (extension due date in parentheses)</b>	<b>Due Date Under New Law (extension due date in parentheses)</b>	<b>Comments</b>
Partnership (calendar year)	April 15 (September 15)	March 15 (September 15)	
Partnership (fiscal year)	15th day of 4th month after the year-end  (15th day of 10th month)	15th day of 3rd month after the year-end  (15th day of 9th month)	
C-corporation (calendar year)	March 15  (September 15)	April 15  (September 15)	For tax years after December 31, 2025, the extension due date is changed to October 15
C-corporation (fiscal year ending June 30)	September 15  (March 15)	September 15  (April 15)	
C-corporation (fiscal year ending other than June 30 or December 31)	15th day of 3rd month after year-end  (15th day of 9th month after year-end)	15th day of 4th month after year-end  (15th day of 10th month after year-end)	For tax years after December 31, 2025, the return due date is changed to October 15

Under Florida law, the due dates to file several tax returns related to corporate income tax are tied to the federal law. Florida corporations must file income tax returns on or before the 4th month following the close of the tax year or the 15th day following the federal due date (on or before the 5th month for partnership informational returns).<sup>61</sup>

When a Florida corporation or partnership is granted an extension of time to file its federal return, the taxpayer may file an extension of time to file its Florida return;<sup>62</sup> if granted, the extended Florida due date will be the 15th day after the expiration of the federal extension, or until the expiration of 6 months from the original due date, whichever occurs first.<sup>63</sup> If a taxpayer extends the time to file its Florida return, Florida law requires the taxpayer to file a tentative tax return, which is due on or before the federal due date.<sup>64</sup>

Florida law requires every taxpayer to make a declaration of estimated tax each tax year, which is due before the 1st day of the 5th month of each tax year.<sup>65</sup> However, if a taxpayer reasonably expects to first meet the minimum tax requirement of \$2,500 in corporate income tax:

<sup>60</sup> Pub.L. No. 114-41, H.R. 3236 (July 31, 2015).

<sup>61</sup> Section 220.222(1), F.S.

<sup>62</sup> If a taxpayer extends the time to file its Florida return, the taxpayer must file a tentative tax return pursuant to s. 220.32, F.S.

<sup>63</sup> Section 220.222(2), F.S.

<sup>64</sup> Section 220.32, F.S.

<sup>65</sup> Sections 220.24 and 220.241, F.S.

- after the 3rd month and before the 6th month of the tax year the declaration is due before the 1st day of the 7th month;
- after the 5th month and before the 9th month of the tax year the declaration is due before the 1st day of the 10th month; or
- after the 8th month and before the 12th month of the tax year the declaration is due before the 1st day of the succeeding taxable year.<sup>66</sup>

### *Proposed Changes*

#### Tax Calculation

The bill updates the Florida tax code to reflect changes in the federal Internal Revenue Code enacted by Congress.

The bill adopts the permanent increase in the expensing limitation from \$25,000 to \$500,000. However, in order to mitigate the Fiscal Year 2016-17 impact of the accelerated federal depreciation deductions on Florida, the bill requires taxpayers, for Florida tax purposes only, to spread the effect of this deduction over seven taxable years. The bill accomplishes this by requiring taxpayers to “add-back” the bonus depreciation deduction. The taxpayer is then permitted to subtract from income one-seventh (1/7) of the “add-back” for the current taxable year and the following six taxable years. This mechanism was used to address the impacts of similar federal legislation in 2009, 2011, 2013, and 2015.<sup>67</sup>

#### Corporate Income Tax Returns

The bill also adjusts several Florida tax return due dates to reflect the federal due date changes. Upon this bill becoming law, the following due dates will apply:

- For tax years 2016 through 2025:
  - Due Date
    - All partnership returns must be filed on or before the 4th month after the year-end
    - All C-corporation returns must be filed on or before the 5th month after the year-end, or the 15th day following the federal due date
  - Extension Due Date
    - If the taxpayer received a federal extension, the Florida due date is:
      - the expiration of 7 months from the original due date for June 30 year-end taxpayers
      - the expiration of 5 months from the original due date for all taxpayers (except June 30 year-end taxpayers)
  - Estimated Tax Due Date
    - All June 30 year-end taxpayers must file a declaration of estimated tax before the 1st day of the 5th month of each tax year, unless required to file later pursuant to s. 220.241(1).
    - All taxpayers (except June 30 year-end taxpayers) must file a declaration of estimated tax before the 1st day of the 6th month of each tax year, unless required to file later pursuant to s. 220.241(1).

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<sup>66</sup> *Id.*

<sup>67</sup> Chs. 2009-132, 2011-229 and 2013-40, Laws of Fla.



- For tax years 2026 and beyond:
  - Due Date
    - All partnership returns (except June 30 year-end taxpayers) must be filed on or before the 4th month after the year-end
    - All C-corporation returns (except June 30 year-end taxpayers) must be filed on or before the 5th month after the year-end, or the 15th day following the federal due date
    - All June 30 year-end taxpayer returns must be filed on or before the 1st day of the 4th month after the year-end, or the 15th day following the federal due date
  - Extension Due Date
    - If the taxpayer received a federal extension, the Florida due date is the expiration of 6 months from the original due date.
  - Estimated Tax Due Date
    - All taxpayers must file a declaration of estimated tax before the 1st day of the 6th month of each tax year, unless required to file later pursuant to s. 220.241(1).

The following chart summarizes the changes to the Florida due dates (and extension due dates) for C-corporations under current law and upon this bill becoming law.

<b>Florida Due Dates</b>			
<b>Tax Year End</b>	<b>Current Law (extension due date in parentheses)</b>	<b>Upon Bill Becoming Law (tax year 2016- 2025) (extension due date in parentheses)</b>	<b>Upon Bill Becoming Law (tax years 2026- beyond) (extension due date in parentheses)</b>
January 31	May 1 (November 1)	June 1 (November 1)	June 1 (November 1)
February 28	June 1 (December 1)	July 1 (December 1)	July 1 (December 1)
March 31	July 1 (January 1)	August 1 (January 1)	August 1 (January 1)
April 30	August 1 (February 1)	September 1 (February 1)	September 1 (February 1)
May 31	September 1 (March 1)	October 1 (March 1)	October 1 (March 1)
June 30 <sup>68</sup>	October 1 (April 1)	October 1 (May 1)	October 1 (April 1)
July 31	November 1 (May 1)	December 1 (May 1)	December 1 (May 1)
August 31	December 1 (June 1)	January 1 (June 1)	January 1 (June 1)
September 30	January 1 (July 1)	February 1 (July 1)	February 1 (July 1)
October 31	February 1 (August 1)	March 1 (August 1)	March 1 (August 1)
November 30	March 1 (September 1)	April 1 (September 1)	April 1 (September 1)
December 31 <sup>69</sup>	April 1 (October 1)	May 1 (October 1)	May 1 (October 1)

## **Documentary Stamp Tax**

### **Affordable Housing**

#### *Current Situation*

Each county in Florida may create by ordinance a Housing Finance Authority (HFA) of the county to carry out the powers granted by the Florida Housing Finance Authority Law.<sup>70</sup> An HFA is composed of

<sup>68</sup> 3.3 percent of return filers in Florida use a December 31 year –end, which represents 3.6 percent of the corporate income tax liability.

<sup>69</sup> 84 percent of return filers in Florida use a December 31 year –end, which represents 74.5 percent of the corporate income tax liability.

<sup>70</sup> Section 159.604, F.S.

not less than five uncompensated members appointed by the governing body of the county.<sup>71</sup> The powers of a HFA are vested in the members and include the power to loan funds to persons purchasing homes and to developers engaged in qualifying housing developments. HFAs may also issue revenue bonds and refunding bonds in order to finance activities allowed under statute. Persons are eligible for loans if their annual income does not exceed 80 percent of the median income for the county. The sale price on new or existing single-family homes shall not exceed 90 percent of the median area purchase price in the area.<sup>72</sup>

Section 159.621, F.S., provides that the following are exempt from all taxation:

- Bonds issued by a housing finance authority pursuant to Part IV of Chapter 159, F.S.;
- All notes, mortgages, security agreements, letters of credit, or other instruments that arise out of, or are given to secure, the repayment of bonds issued in connection with the financing of any housing development under this part; and
- Interest thereon and the income therefrom.

The exemption is not applicable to any tax imposed by chapter 220 on interest, income or profits on debt obligations owned by corporations.

### *Proposed Changes*

The bill exempts from taxation any note or mortgage given with respect to a loan made by or on behalf of a housing finance authority pursuant to 159.608(8). It also adds that the exemption shall not apply to any deed granted in connection with property financed pursuant to Part IV of Chapter 159, F.S. The bill also requires certain documentation be recorded with the mortgages, affirming the exempt circumstances.

### Coverage of Debt Service

#### *Current Situation*

All documentary stamp tax revenues, except those which are transferred to the Land Acquisition Trust Fund in compliance with the Florida Constitution, are subject to an 8 percent service charge,<sup>73</sup> which is transferred to the General Revenue Fund.<sup>74</sup> Additionally, the Department of Revenue is permitted to deduct the amount necessary to pay for the cost it incurs in collecting the revenues (typically around \$9.8 million per year).

Section 201.15, F.S., provides, however, that all documentary stamp tax revenues collected, including the amounts which otherwise would make up the General Revenue service charge and the cost of collection, are pledged to pay debt service on bonds issued pursuant to ss. 215.618 and 215.619, or any other bonds issued on parity with such bonds. In the event that documentary stamp tax revenues are insufficient to pay for debt service, the cost of collection, and the General Revenue service charge, the funds which would make up the service charge and cost of collection are transferred as necessary to pay debt service. These provisions apply to bonds authorized before January 1, 2015 and secured by revenues collected pursuant to s. 201.15, F.S..

#### *Proposed Changes*

The bill provides that the funds which would otherwise be used for the General Revenue surcharge and cost of collection shall be made available under certain circumstances for payment of debt service on bonds authorized before January 1, 2017, instead of on bonds authorized before January 1, 2015, as under current law.

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<sup>71</sup> Section 159.605, F.S.

<sup>72</sup> Section 159.608, F.S.

<sup>73</sup> Section 201.15, F.S.

<sup>74</sup> Section 215.20(1), F.S.

## Aviation Fuel Taxes

### *Current Situation*

#### Aviation Fuel, Kerosene, and Aviation Gasoline Taxes

Florida law imposes an excise tax of 6.9 cents on every gallon of aviation fuel sold in the state or brought into the state for use and a tax of 6.9 cents on each gallon of kerosene and aviation gasoline sold or brought into the state for use in an aircraft.<sup>75</sup>

Florida law defines aviation fuel, kerosene, and aviation gasoline as follows:

- Aviation fuel means “fuel for use in aircraft, and includes aviation gasoline and aviation turbine fuels and kerosene, as determined by the American Society for Testing Materials specifications D-910 or D-1655 or current specifications.”<sup>76</sup>
- Kerosene means “all aviation turbine fuels and any distillate known as diesel #1, K-1, or any product suitable for use as a substitute for kerosene not taxed as a diesel fuel under Ch. 206, Part II, F.S. Any kerosene meeting the definition of diesel under s. 206.86(1) is taxed under Ch. 206, Part II, F.S.”<sup>77</sup> When kerosene is used for aviation fuel, it is awarded the same tax treatment as aviation fuel.<sup>78</sup>
- Aviation gasoline means “any motor fuel blended or produced specifically for use in aircraft which has been dyed in accordance with federal regulations. Aviation gasoline does not include any such fuel used in any manner other than being placed in the storage tank of an aircraft.”<sup>79</sup>

#### Florida Aviation Fuel Tax Exemption

Despite Florida’s tax on aviation fuel, Florida law also provides for a refund or credit of the aviation fuel tax paid as follows:

Any licensed wholesaler or terminal supplier that delivers aviation fuel to an air carrier offering transcontinental jet service and that, after January 1, 1996, increases the air carrier’s Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions may receive a credit or refund as the ultimate vendor of the aviation fuel for the 6.9 cents excise tax previously paid.<sup>80</sup>

Any employees that existed before January 1, 1996, are not counted toward reaching the employment threshold, and the wholesaler or terminal supplier can only receive the credit or refund if the air carrier has no facility for fueling highway vehicles from the tank in which the aviation fuel is stored.<sup>81</sup> Further, if before July 1, 2001, the number of full-time equivalent employee positions created or added to the air carrier’s Florida workforce fell below the additional 250, the exemption granted would cease to apply as long as the number of employees remains below the additional 250.<sup>82</sup>

Accordingly, any air carrier offering transcontinental jet service that is able to meet the employment and other criteria described above, is exempt from paying aviation fuel tax.<sup>83</sup> Such qualifying air carriers can purchase aviation fuel from a wholesaler or terminal supplier without having to pay the wholesaler or

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<sup>75</sup> See section 206.9825, F.S. (The administration of kerosene taxes and aviation gasoline taxes differ from aviation fuel. 206.9825(2)-(3), F.S.)

<sup>76</sup> Section 206.9815, F.S.

<sup>77</sup> *Id.*

<sup>78</sup> See s. 206.9825, F.S.

<sup>79</sup> Section 206.9815, F.S.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

terminal supplier tax on the fuel.<sup>84</sup> The wholesaler or terminal supplier, in turn, receives a credit or refund on the tax amount that it would otherwise have passed along to the air carrier as a result of its tax payment due on the sale of the fuel or tax amount previously paid.<sup>85</sup>

The Legislature first established the aviation fuel tax credit in 1996<sup>86</sup> to attract new airlines to Florida. The provisions of the original fuel tax credit expired on July 1, 2001; however, following the events of September 11, 2001, the 2002 Legislature decided to reenact the tax credit policy and did so without providing for an expiration date.<sup>87</sup>

The following chart illustrates data relating to the aviation fuel tax from June 2013, through July 2014.<sup>88</sup>

Sales of Aviation Fuel to Commercial Air Carriers (2014/2015)			
Carrier	Sum of Gallons	% of Total Sales	Tax Due (Includes Tax Exempt Disbursements)
American Airlines	298,649,092	33.42%	\$20,606,787.35
Delta Airlines, Inc.	129,635,299	14.51%	\$8,944,835.63
JetBlue Airways	113,293,136	12.68%	\$7,817,226.38
Southwest Airlines	108,026,647	12.09%	\$7,453,838.64
Continental Airlines, Inc.	72,505,569	8.11%	\$5,002,884.26
Allegiant Air LLC	49,966,012	5.59%	\$3,447,654.83
Spirit Airlines, Inc.	41,414,492	4.63%	\$2,857,599.95
US Airways, Inc.	34,688,081	3.88%	\$2,393,477.59
Federal Express	18,187,079	2.04%	\$1,254,908.45
Frontier Airlines	5,568,293	0.62%	\$384,212.22
Silver Airways Corp.	3,984,321	0.45%	\$274,918.15
DHL Express (USA)	3,578,371	0.40%	\$246,907.60
Virgin America, Inc.	3,425,117	0.38%	\$236,333.07
National Jets, Inc.	3,096,216	0.35%	\$213,638.90
United Parcel	2,725,184	0.30%	\$188,037.70
Envoy Air, Inc.	1,675,693	0.19%	\$115,622.82
AirTran Airways, Inc.	1,398,434	0.16%	\$96,491.95
Miami Air	1,038,493	0.12%	\$71,656.02
United Airlines, Inc.	343,751	0.04%	\$23,718.82
Atlas Air, Inc.	298,737	0.03%	\$20,612.85
ABX Air, Inc.	69,280	0.01%	\$4,780.32
TEM Enterprises, Inc.	57,719	0.01%	\$3,982.61
AmeriJet	53,518	0.01%	\$3,692.74

<sup>84</sup> *Id.*

<sup>85</sup> See s. 206.9825(1)(a), F.S.

<sup>86</sup> Section 21, Ch. 96-323, Laws of Fla

<sup>87</sup> See s. 5, Ch. 2002-2, Laws of Fla

<sup>88</sup> The Department of Revenue provided the data in this chart to the Economic Development and Tourism Subcommittee via e-mail on November 24, 2015 (which e-mail is on file with staff). The data does not include sales from fixed based operators or jobbers to commercial air carriers, fuel sold for export, or bulk sales in the terminal. Further, all returns have not been processed through June 2015, and sales reported on unworked returns are not included. Lastly, tax due does not include reduction due to collection allowance.

Presidential	14,277	0.00%	\$985.11
Reva, Inc.	10,337	0.00%	\$713.25
Professional	5,018	0.00%	\$346.24
<b>Grand Total</b>	<b>893,708,166</b>	<b>100.00%</b>	<b>\$61,665,863.45</b>

### *Proposed Changes*

First, the bill amends s. 206.9825, F.S., limiting carriers that qualify for the aviation fuel tax exemption to those that increased their Florida workforce by more than 1000 percent and by 250 or more full-time equivalent employee positions between January 1, 1996 and July 1, 2016.

Then, beginning July 1, 2019, the bill repeals the aviation fuel tax exemption altogether and reduces the aviation fuel, kerosene, and aviation gasoline tax rates from 6.9 cents per gallon to 4.27 cents per gallon. The combination of the exemption repeal and tax rate cut is expected to be neutral with respect to total aviation fuel tax collections on a recurring basis.

The bill provides an effective date of July 1, 2016. However, as stated above, the removal of the aviation fuel tax exemption and reduction in tax rates would not be effective until July 1, 2019.

## **Alcohol and Tobacco Related Taxes and Fees**

### Taxation of Wine and Cider

#### *Current Situation*

Chapter 564 of Florida Statute governs the regulation and taxation of wine and cider. Wine is defined as any beverage made from fresh fruits, berries, or grapes by natural fermentation, including sparkling wines, champagnes, vermouths, and wines fermented with brandy. Wine coolers and other similar beverages are also included.

The tax rates on wines are as follows:

- For wines, other than natural sparkling wines, cider, and malt beverages, containing between 0.5 and 17.259 percent alcohol by volume, \$2.25 per gallon;
- For wines other than natural sparkling wines containing greater than 17.259% alcohol by volume, \$3 per gallon;
- For natural sparkling wines, \$3.50 per gallon;
- For ciders, which are made from the fermentation of apples and contain between 0.5 and 7 percent alcohol by volume, \$0.89 per gallon; and
- For wine coolers and similar beverages, \$2.25 per gallon.

#### *Proposed Changes*

The bill amends the definition of cider to include cider made from pears. Consequently, cider made from pears would be taxed at a rate of \$0.89 per gallon as opposed to the current rate of \$2.25 per gallon.

### Cruise Lines

#### *Current Situation*

Cruise Lines must pay beverage tax and cigarette tax for products sold to passengers while in Florida – i.e. while the ship is at port and while the ship is in Florida waters.

Section 565.02, F.S., establishes requirements for licensing and selling alcoholic beverages for passenger vessels engaged exclusively in foreign commerce which have a cabin-berth capacity for at least 75 passengers. Passenger vessels may sell alcoholic beverages for consumption on board only:

- During a period not in excess of 24 hours prior to departure while the vessel is moored at a dock or wharf in a port in Florida;
- At any time while the vessel is located in Florida territorial waters and is in transit to or from international waters.

The permittee must pay to the state an excise tax for beverages sold pursuant to this section, if such excise tax has not previously been paid, in an amount equal to the tax which would be required to be paid on such sales by a licensed manufacturer or distributor.

The Department of Business & Professional Regulation (DBPR) has promulgated a rule applying this taxation framework to the sale of tobacco.<sup>89</sup>

Two percent of excise taxes on alcoholic beverages are deposited into the Alcoholic Beverage and Tobacco Trust Fund to fund the Department of Division of Alcoholic Beverage and Tobacco's operations. The remainder of the revenues are deposited into the General Revenue Fund.<sup>90</sup> Revenues collected from the surcharge on cigarettes are deposited into the Health Care Trust Fund in the Agency for Health Care Administration,<sup>91</sup> and are subject to an 8 percent General Revenue surcharge.<sup>92</sup> After deducting the 8 percent General Revenue surcharge and depositing 0.9 percent into the Alcoholic Beverage and Tobacco Trust Fund, remaining revenues collected from the excise tax on cigarettes are distributed as follows<sup>93</sup>:

- 2.9 percent to the Revenue Sharing Trust Fund for Counties;
- 29.3 percent to the Public Medical Assistance Trust Fund;
- 4.04 percent to the H. Lee Moffitt Cancer Center and Research Institute;
- 1 percent to the Biomedical Research Trust Fund; and
- The remainder to the General Revenue Fund

After deduction of the General Revenue Service Charge, revenues collected from the surcharge on other tobacco products are deposited into the Health Care Trust Fund.<sup>94</sup> The tax on other tobacco products is deposited into the General Revenue Fund.<sup>95</sup>

### *Proposed Changes*

The bill replaces the beverage and tobacco taxes that cruise lines currently pay with a new tax based on ship capacity and the number of times a ship embarks from Florida rather than volume of alcohol or tobacco sold at port.

Specifically, the excise tax due will be an amount equal to a base rate multiplied by the permittee's quarterly capacity during the calendar quarter. The base rate will be calculated by DBPR based on data provided by permit holders, and will be an amount equal to total alcoholic beverage and tobacco-related taxes and surcharges paid by all permit holders between January 1 and December 31, 2015, divided by the sum of the annual capacities of all permitted vessels. Annual capacity is an amount equal to the number of lower berths on a vessel multiplied by the number of embarkations of that vessel during a calendar year. The quarterly capacity is an amount equal to the number of lower berths on a vessel

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<sup>89</sup> 61A-10.010, F.A.C.

<sup>90</sup> Section 561.121, F.S.

<sup>91</sup> Section 210.011, F.S.

<sup>92</sup> Section 215.20, F.S.

<sup>93</sup> Section 210.20, F.S.

<sup>94</sup> Section 210.276, F.S.

<sup>95</sup> Section 210.70, F.S.

multiplied by the number of embarkations of that vessel during a calendar quarter. A lower berth is a bed which is:

- Affixed to a vessel;
- Not located above another bed in the same cabin; and
- Located in a cabin not in use by employees.

An embarkation is an instance where a vessel departs from a port in Florida.

The new tax will be paid quarterly by each permit holder, less any tax already paid by a licensed manufacturer or distributor pursuant to the Beverage Law or tobacco tax statutes. Each permit holder must report the annual capacity for each of its vessels to the DBPR by August 1, 2016. The department must calculate the base rate by September 1, 2016 and report it to each permit holder.

The revenues from the replacement tax will be distributed in the same manner as taxes on alcoholic beverages under current law.

## Other Tobacco Products

### *Current Situation*

Other Tobacco Products (OTP) are defined in s. 210.25(11), F.S., and include items such as pipe tobacco, chewing tobacco, hookah tobacco, and dipping tobacco. Wholesale sales price is defined in s. 210.25(13), F.S., as the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.

On several occasions in recent years, the department has been faced with litigation regarding the definition of wholesale sales price. For example, the wholesale sales price for the same product can vary depending on if an American manufacturer or an overseas manufacturer is selling the product to a distributor because the Federal Excise Tax is paid at different times during the process. The wholesale sales price for the transaction with the American manufacturer includes Federal Excise Tax, whereas the wholesale sales price for the overseas manufacturer does not.<sup>96</sup>

The OTP tax is 25% of the wholesale sales price and is deposited to General Revenue (GR). The OTP Surcharge is 60% of the wholesale sales price and is deposited to the Health Care Trust Fund, after deducting the 8% GR Service Charge.

### *Proposed Changes*

The bill amends s. 210.25, F.S., to clarify the definitions related to tobacco products other than cigarettes and cigars. In effect, the bill codifies the division's current administration of these laws with respect to domestically-manufactured products, and provides that the wholesale sales price for imported products must include the federal excise tax regardless of who first paid that excise tax.

The bill amends the definition of "tobacco products" to definitively include loose tobacco and all other kinds and forms of products made in whole or in part from tobacco leaves for use in chewing or sniffing.

The bill redefines "wholesale sales price" as the total amount paid by the distributor to obtain tobacco products. It is defined as the sum of:

- The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, cost of labor and service, charge for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the distributor, exclusive of any diminution by volume or other discounts, including a discount extended to a distributor by an affiliate; and

- The federal excise tax paid by the distributor on the tobacco products, if the excise tax is not included in the full price under paragraph (a).

The bill defines “affiliate” to mean “a manufacturer or other person that directly or indirectly, through one or more intermediaries, controls or is controlled by a distributor or that is under common control with a distributor.” This will ensure that the price on which the excise tax is based is not diminished by a discount resulting from an affiliation between the distributor and another entity.

### **Property Taxation in Florida**

Local governments, including counties, school districts, and municipalities have the constitutional ability to levy ad valorem taxes. Special districts may also be given this ability by law.<sup>97</sup> Ad valorem taxes are collected on the fair market value of the property, adjusting for any exclusions, differentials or exemptions.

All ad valorem taxation must be at a uniform rate within each taxing unit, subject to certain exceptions with respect to intangible personal property.<sup>98</sup> However, the Florida constitutional provision requiring that taxes be imposed at a uniform rate refers to the application of a common rate to all taxpayers within each taxing unit – not variations in rates between taxing units.<sup>99</sup>

Federal, state, and county governments are immune from taxation but municipalities are not subdivisions of the state and may be subject to taxation absent an express exemption.<sup>100</sup> The Florida Constitution grants property tax relief in the form of certain valuation differentials,<sup>101</sup> assessment limitations,<sup>102</sup> and exemptions,<sup>103</sup> including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

### **Disabled Veteran Exemption Transfer**

#### *Current Situation*

The ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based on the value of real and tangible personal property as of January 1 of each year.<sup>104</sup>

Article VII, section 6 of the Florida Constitution provides that every person who owns real estate with legal and equitable title and maintains their permanent residence, or the permanent residence of their dependent upon such real estate, is eligible for a homestead tax exemption.<sup>105</sup>

<sup>97</sup> FLA. CONST. art VII, s. 9,

<sup>98</sup> FLA. CONST. art VII, s. 2.

<sup>99</sup> See, for example, *Moore v. Palm Beach County*, 731 So. 2d 754 (Fla. 4th DCA 1999) citing *W. J. Howey Co. v. Williams*, 142 Fla. 415, 195 So. 181, 182 (1940).

<sup>100</sup> “Exemption” presupposes the existence of a power to tax, while “immunity” implies the absence of it. See *Turner v. Florida State Fair Authority*, 974 So. 2d 470 (Fla. 2d DCA 2008); *Dept. of Revenue v. Gainesville*, 918 So. 2d 250, 257-59 (Fla. 2005).

<sup>101</sup> FLA. CONST. art VII, s. 4, authorizes valuation differentials, which are based on character or use of property.

<sup>102</sup> FLA. CONST. art VII, s. 4(c), authorizes the “Save Our Homes” property assessment limitation, which limits the increase in assessment of homestead property to the lesser of 3 percent or the percentage change in the Consumer Price Index. S. 4(e) authorizes counties to provide for a reduction in the assessed value of homestead property to the extent of any increase in the assessed value of that property which results from the construction or reconstruction of the property for the purpose of providing living quarters for one or more natural or adoptive grandparents or parents of the owner of the property or of the owner's spouse if at least one of the grandparents or parents for whom the living quarters are provided is 62 years of age or older. This provision is known as the “Granny Flats” assessment limitation.

<sup>103</sup> FLA. CONST. art VII, s. 3, provides authority for the various property tax exemptions. The statutes also clarify or provide property tax exemptions for certain licensed child care facilities operating in an enterprise zone, properties used to provide affordable housing, educational facilities, charter schools, property owned and used by any labor organizations, community centers, space laboratories, and not-for-profit sewer and water companies.

<sup>104</sup> Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. The terms “land,” “real estate,” “realty,” and “real property” may be used interchangeably. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in article VII, section 1(b) of the Florida Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself.



Article VII, section 3(b) of the Florida Constitution provides for exemption from property taxes for persons who are totally and permanently disabled. The Legislature implemented this provision through various property tax exemptions in chapter 196, Florida Statutes, including s. 196.081(1)-(3), F.S.<sup>106</sup> These subsections provide a full exemption from ad valorem taxes on property that is owned and used as a homestead by an honorably discharged veteran with a service-connected total and permanent disability and is a permanent Florida resident on January 1 of the tax year for which the exemption is being claimed or in which the veteran died.<sup>107</sup>

Eligibility for all homestead exemptions, including the exemption in s. 196.081, is measured on January 1 of the applicable tax year.<sup>108</sup> If a property that received an exemption is sold after January 1, the exemption remains the property for the remainder of the year. In the subsequent year, any exemption will be based on the new owner's qualification on January 1 of that year.

### *Proposed Changes*

The bill provides that a veteran who received the s. 196.081 exemption but moves his or her homestead to another property after January 1 of the same year, may transfer the exemption to the new property if:

- The new property is owned and used as a homestead,
- The veteran files with the property appraiser an application for exemption of the new property within 30 days of acquisition of the new property, but no later than the 25th day following the mailing by the property appraiser of the TRIM notice, and
- The application must list and describe both the previous homestead and the new property, and certify under oath that the veteran:
  - is otherwise qualified to receive the exemption under s. 196.031,
  - holds legal title to the new property, and
  - intends to use the new property as his or her homestead.

The qualification deadline for all homestead exemptions, except applications for exemption under this proposal, will remain January 1.

If the exemption is granted on the new homestead, the previous homestead may not receive the exemption in that tax year, unless the subsequent owner of the previous homestead is qualified to receive the exemption.

### Exemptions for Surviving Spouses of Veterans

#### *Current Situation*

#### *Totally and Permanently Disabled Veterans/Surviving Spouses*

Article VII, section 3(b) of the Florida Constitution authorizes the Legislature by general law to provide, in part, a property tax exemption in an amount not less than \$500 for every widow or widower, and for persons who are permanently disabled. The Legislature implemented this provision through s. 196.081(1)-(3), F.S. These subsections currently provide a full exemption from ad valorem taxes on property that is owned and used as a homestead by an honorably discharged veteran with a service-connected total and permanent disability and is a permanent Florida resident on January 1 of the tax year for which the exemption is being claimed or in which the veteran died.<sup>109</sup> This exemption may be carried over to the benefit of the veteran's surviving spouse.<sup>110</sup> If the deceased veteran does not meet these criteria, the surviving spouse is not eligible for the carry-over of the homestead tax exemption.

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<sup>105</sup> An additional homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

<sup>106</sup> Ch. 2012-193, Laws of Fla.

<sup>107</sup> Section 196.081(1), F.S.

<sup>108</sup> Section 196.011(1)(a), F.S.; see also s. 196.031(1)(a), F.S.

<sup>109</sup> Section 196.081(1), F.S.

<sup>110</sup> Section 196.081(2) and (3), F.S.

If the surviving spouse sells the property, an exemption equal to the amount of the most recent exemption may be transferred to the new primary residence if the surviving spouse remains unmarried.<sup>111</sup>

### Veterans Who Died from Service-connected Causes While on Active duty/Surviving Spouses

Article VII, section 6(f) of the Florida Constitution authorizes the Legislature to provide ad valorem tax relief to the surviving spouse of a veteran who died from service-connected causes while on active duty as a member of the United States Armed Forces. The Legislature implemented this provision through s. 196.081(4), F.S.

This subsection provides a full property tax exemption on property that is owned and used as a homestead by the surviving spouse of veteran who died from service-connected causes while on active duty and is a permanent Florida resident on January 1 of the tax year for which the veteran died.<sup>112</sup> If the surviving spouse does not meet these criteria, the surviving spouse is not eligible to receive the homestead tax exemption.

If the surviving spouse sells the property, an exemption equal to the amount of the most recent exemption may be transferred to the new primary residence if the surviving spouse remains unmarried.<sup>113</sup>

### Portability

While current law allows the surviving spouse of a disabled veteran to transfer the veteran's disability exemption to a new property if they are moving within Florida, this portability is not available to a surviving spouse who is coming from another state. In other words, if a surviving spouse owned a permanent residence in another state and was receiving an exemption or similar benefit based on their veteran spouse's disability, they could not transfer that benefit to a new Florida residence. However, a similarly situated surviving spouse who was moving within Florida would be able to transfer their benefit.

### Proposed Changes

The bill expands the eligibility of surviving spouses of disabled veterans for the current law veteran homestead exemptions. Specifically, the bill amends s. 196.081(4), F.S., to allow the surviving spouse of a veteran who died from service-connected causes while on active duty to receive property tax relief in this state, regardless of the veteran's state of residence on January 1 of the year in which the veteran died.

In addition, the bill amends s. 196.081, F.S., to allow the surviving spouse of a veteran who had a service-related total and permanent disability at the time of death to receive property tax relief in this state, if at the time of the veteran's death, the veteran or the veteran's spouse owned the veteran's homestead property in another state and such property would have qualified as a homestead in Florida if located in this state on January 1 of the year the veteran died. To qualify for the tax exemption, after the veteran's death, the unremarried surviving spouse must hold the legal or beneficial title to homestead property in this state and permanently reside on the property<sup>114</sup> as of January 1 of the tax year for which the exemption is being claimed. Additionally, the surviving spouse must provide the county property appraiser with documentation that verifies the partial or full homestead exemption that applied to the veteran's property in the other state and any prima facie evidence that the surviving spouse is entitled to the exemption. The tax exemption may be transferred to a new residence, in an amount not to exceed the amount granted from the most recent ad valorem tax roll, as long as it is used as the surviving spouse's primary residence and he or she does not remarry.

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<sup>111</sup> Section 196.081(3), F.S.

<sup>112</sup> Section 196.081(4), F.S.

<sup>113</sup> Section 196.081(4)(b), F.S.

<sup>114</sup> See section 196.031, F.S.

## Ad Valorem: Affordable Housing Agreements

### *Current Situation*

The Florida Constitution requires that all property be assessed at just value for ad valorem tax purposes,<sup>115</sup> and it provides for specified assessment limitations, property classifications and exemptions.<sup>116</sup> Such exemptions include, but are not limited to, exemptions for such portions of property used predominately for educational, literary, scientific, religious or charitable purposes.<sup>117</sup> In 1999,<sup>118</sup> the Legislature authorized a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption. The property must be owned entirely by a not for profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.<sup>119</sup> In order to qualify for the exemption, the property must comply with ss. 196.195 for determining non-profit status of the property owner and s. 196.196 for determining exempt status of the use of the property. In determining whether an applicant is a nonprofit or profit-making venture, s. 196.195 outlines the statutory criteria that a property appraiser must consider.<sup>120</sup> The applicant must show that “no part of the subject property, or the proceeds of the sale, lease, or other disposition thereof, will inure to the benefit of its members, directors, or officers or any person or firm operating for profit or for a nonexempt purpose.”<sup>121</sup>

In determining whether the use of a property qualifies as charitable, s. 196.196 requires the property appraiser to consider the nature and extent of the qualifying activity compared to other activities performed by the organization owning the property, and the availability of the property for use by other qualifying entities.<sup>122</sup>

### *Proposed Changes*

The bill provides that certain property used to provide affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount, notwithstanding the requirements of ss. 196.195 and 196.196.

In order to qualify for the discount, the property must:

- be used to provide affordable housing to natural persons or families meeting the extremely low, very low, or low-income limits specified in s. 420.0004, F.S.;
- be in a multifamily project in which at least 70 units are providing affordable housing to the above group, and which is subject to an agreement with the Florida Housing Finance Corporation to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.

The discount will begin in the sixteenth year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount will terminate when the property is no longer serving extremely low, very low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

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<sup>115</sup> Fla. Const., art. VII, s. 4.

<sup>116</sup> Fla. Const., art. VII, ss. 3, 4, and 6.

<sup>117</sup> Fla. Const., art. VII, s. 3.

<sup>118</sup> Section 15, ch. 99-378, L.O.F., codified at s. 196.1978, F.S.

<sup>119</sup> The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) (“charitable purposes” include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

<sup>120</sup> s. 196.195, F.S.,

<sup>121</sup> s. 196.195(3), F.S.

<sup>122</sup> s. 196.196(1)(a)-(b), F.S.

## Economic Development Exemption

### *Current Situation*

Section 196.1995, F.S., allows cities and counties to grant up to a 100 percent exemption from city or county ad valorem taxation for improvements to real property and tangible personal property for a new business or expansion of an existing business. Initially, the city or county calls for a referendum within its total jurisdiction to determine whether the jurisdiction may grant economic development ad valorem exemptions under s. 3, Art. VII of the State Constitution. The referendum can take one of two forms, as selected by the local government conducting the referendum. It can either authorize the city or county to grant such exemptions anywhere within its jurisdiction, or only in areas designated as enterprise zones or brownfield areas. Once the referendum measure is approved, specific exemptions are effectuated by enactment of an ordinance. To qualify for the exemption, the improvements must be made or the tangible personal property added after approval by motion or resolution of the local governing body, subject to ordinance adoption, or on or after the adoption of the ordinance. Businesses seeking to take advantage of the exemption must file a written application with the city or county in the year the exemption is desired to take effect to request the adoption of the ordinance and provide supporting information. Once granted, the exemptions remain in effect for up to 10 years with respect to any particular facility, regardless of any change in the authority of the county or municipality to grant such exemption.

Section 196.012, F.S., provides definitions for use in the above exemption. “New business” may include any business or organization located in an enterprise zone or brownfield area that first begins operation there. “Expansion of an existing business” includes any business or organization located in an enterprise zone or brownfield area that increases operations there.

The enterprise zone program expired on December 31, 2015, causing some uncertainty about whether the exemption can be granted to a business in an expired enterprise zone area if the city or county began the process of seeking authorization prior to December 31, 2015, or if exemptions have already been granted within 10 years of the expiration of the enterprise zone program.

### *Proposed Changes*

The bill modifies the definitions of “new business” and “expansion of an existing business” and clarifies that the exemption may be granted to a new or expanding business located in an area which was designated as an enterprise zone as of December 30, 2015, but not a brownfield area, only if the new or expanding business was approved by motion or resolution of the local governing body, subject to ordinance adoption, or by ordinance prior to December 31, 2015. The bill also clarifies that exemptions already granted prior to expiration of the enterprise zone program may continue for up to 10 years regardless of expiration of the enterprise zone program.

## Aerial Photographs

### *Current Situation*

Under Florida law, local property appraisers are responsible for developing the assessment (tax) roll within their jurisdiction.<sup>123</sup> Property appraisers are required to physically inspect property in their jurisdiction at least once every five years, but they may use “image technology” in lieu of physical inspection to ensure that the tax roll meets all the requirements of law.<sup>124</sup> DOR is required to establish minimum standards for the use of image technology consistent with standards developed by professionally recognized sources for mass appraisal of real property.<sup>125</sup>

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<sup>123</sup> Sections 193.023(1) and 193.114, F.S.

<sup>124</sup> Section 193.023(2), F.S.

<sup>125</sup> *Id.*

DOR coordinates the capture and distribution of ortho-imagery<sup>126</sup> of approximately one-third of the state each year according to the provisions of ch. 195.022, F.S. The counties rely on the use of aerial photography for discovery, location, and identification of property characteristics. In order to meet the statutory obligation of providing these photographs for the counties, DOR contracts for aerial photography services for the counties each year. At least once every three years, or upon request of any property appraiser, DOR must furnish aerial photographs and nonproperty ownership maps to the property appraisers to ensure that all real property within the state is properly listed on the roll.<sup>127</sup>

DOR will pay for the cost of all photographs and maps to counties with populations lesser than 25,000; however, photographs and maps for counties with populations greater than 25,000 must be paid for at the property appraiser's expense.<sup>128</sup>

Prior to 2009, the cost of the photographs and maps was paid for by DOR. In 2008, DOR's financial responsibility to provide the photos and maps was limited to counties with a population less than 25,000.<sup>129</sup> Between 2009-2014, the Legislature provided funding for aerial photography for counties with a population of less than 50,000 via specific proviso language in the General Appropriations Act.

### *Proposed Changes*

The bill amends s. 195.022, F.S., to change the county population threshold that determines the governmental entity responsible for payment for aerial photographs and maps. Under the bill, DOR will pay for photographs and maps furnished to counties that meet the population thresholds of a rural community in s. 288.0656(2)(e), F.S. For counties that do not meet those population thresholds, DOR will furnish the items at the property appraiser's expense.

Section 288.0656(2)(e), F.S., states that "rural community" means a county with a population of 75,000 or fewer or a county that has a population of 125,000 or fewer and is contiguous to a county with a population of 75,000 or fewer.

## **Tourist Development Taxes**

### *Current Situation*

Section 125.0104, F.S., authorizes five taxes on transient rental transactions (e.g. bookings at hotels). Depending on a county's eligibility to levy, the maximum allowable tax rate varies from a four to six percent. One of the levies requires voter approval, others may be authorized by vote of the county's governing authority or referendum approval. The revenues generated by the tax may be used in various ways to promote tourism, including capital construction of tourism-related facilities. The authorized uses of each local option tax vary according to the particular levy.

The tourist development tax ("1 to 2 Percent Tax") may be levied at the rate of one or two percent. All 67 counties are eligible to levy this tax, and currently 62 levy this tax – all at two percent. Calhoun, Hardee, Lafayette, Liberty and Union counties do not levy any tourist development taxes. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

An additional tourist development tax of one percent ("Additional 1 Percent Tax") may be levied by counties who have previously levied a tourist development tax at the one or two percent rate for at least three years. Currently 45 counties levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used to service debt or refinance facilities receiving

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<sup>126</sup> According to DOR, an "orthophoto" is a photographic copy, prepared from a perspective photograph, in which displacements of images due to tilt and relief have been removed. See Department of Revenue, Aerial Photography Contract, available at <http://dor.myflorida.com/dor/property/gis/> (last viewed January 26, 2016).

<sup>127</sup> Section 195.022, F.S.

<sup>128</sup> *Id.*

<sup>129</sup> Ch. 2008-138, Laws of Fla. (HB 5061)

funding from a previously levied tourist development tax unless approved by an extraordinary vote of the governing board. This tax may be levied by either extraordinary vote of the county governing board or by approval by a majority of voters in a referendum.

The other taxes authorized by this section include the professional sports franchise facility tax, the additional professional sports franchise facility tax, and the high tourism impact tax. These taxes are applied to the same transactions as the tourist development taxes.

The 1 to 2 Percent Tax and the Additional 1 Percent taxes can be used to fund a wide variety of tourist-related facilities including convention centers, stadiums, aquariums, museums, zoos, tourist information centers & bureaus, and beach facilities and maintenance. Additionally all five taxes authorized by this section may be used to promote and advertise tourism in this state nationally and internationally. If revenues are expended for an activity, service, venue, or event it must have attraction of tourists as one of its main purposes, as evidenced by promotion of the activity, service, venue, or event to tourists. Because of the statutory location and phrasing of this requirement, it may allow for broad interpretation of allowable expenditures.

Prior to levying the tourist development tax, the county must establish a 9-member tourist development council. The council's responsibilities include advising the governing body of the county on effective use of tourist development tax revenues, proposing a plan for the use of such revenues, reviewing expenditures of the revenues and reporting any suspected unauthorized expenditures to the county governing board and the Department of Revenue.

### *Proposed Changes*

The bill requires that a minimum of 35% of tourist development tax revenues which are left over after making required bond payments be used to fund promotion and advertising of tourism in the state. It also allows, in coastal counties only, up to 10% of remaining tourist development tax revenues to be used to fund additional emergency medical and law enforcement services that are required as a result of tourism, as long as such funds are not used to supplant pre-existing expenditures on such services..

The bill adds a requirement that a written application must be submitted to the governing body of the county in order to propose an expenditure of tourist development tax revenues. Each governing body is allowed to determine the requirements for the application, but it must including a description of the proposed expenditure and estimate of the cost at a minimum. The bill requires that a return on investment analysis or cost-benefit analysis must be performed before a county may make any expenditure of tourist development tax revenues in excess of \$100,000. The analysis must be performed by an individual who has prior experience with input-output modelling, cost-benefit analysis or the application of economic multipliers such as the Regional Input-Output Modelling System created by the Bureau of Economic Analysis within the United States Department of Commerce. The cost of the analysis is to be paid from the tourist development tax revenues.

The bill creates an additional means of enforcing the allowed uses of tourist development tax. Any remitter of the tax, or any organization representing multiple remitters of the tax, in an action filed pursuant to Ch. 120, F.S., (The Administrative Procedure Act), may challenge a county's decision to devote such tax revenues to a particular use or uses that the challenger claims is contrary to uses allowed by law. During the pendency of the administrative proceeding and any resulting appeals, no tourist development tax revenues may be used to fund the challenged use or uses. No deference is to be afforded the county's interpretation of statute. A prevailing remitter or remitter organization shall be awarded the reasonable costs of the action plus reasonable attorney's fees.

## **Community Redevelopment Agencies**

### *Current Situation*

The Community Redevelopment Act of 1969, Ch. 163, Part II, F.S. (Act), was enacted to provide a mechanism to revitalize slum and blighted areas "which constitute a serious and growing menace,

injurious to the public health, safety, morals, and welfare of the residents of the state.” The Act authorizes each local government to establish one Community Redevelopment Agency (CRA) to revitalize designated slum and blighted areas upon a “finding of necessity” and a further finding of a “need for a CRA to carry out community redevelopment.” During the last two decades, municipalities, and to a lesser extent counties, have increasingly relied upon CRAs as a mechanism for community redevelopment.

CRAs are funded primarily through tax increment financing (TIF). As property tax values in the redevelopment area rise above property values in the base year the redevelopment area was created, increment revenues are generated by applying the current millage rate levied by each taxing authority in the area to the increase in value. Each non-exempt taxing authority that levies taxes on property within a community redevelopment area must annually appropriate the amount of increment revenues to the CRA trust fund. Expenditures are made pursuant to a community redevelopment plan approved by the governing body of the general purpose government that created the agency. Section 163.387(6), F.S., provides a list of allowable uses for funds from the Redevelopment Trust Fund, including administrative expenses, planning expenses, the purchase of real property, payment of bonds and other debt, redevelopment expenses, relocation of residents affected by redevelopment, development of affordable housing, and community policing expenses.

### *Proposed Changes*

The bill requires any CRA which serves an area where at least 50% of children aged 18 and younger live below the poverty line to spend at least 5% of Redevelopment Trust Fund revenues annually to support youth centers, if a youth center has submitted a written request for such support and the expenditure does not materially impair any bonds outstanding as of March 11, 2016. “Youth center” is defined as a facility owned and operated by a government entity or a corporation not for profit registered pursuant to chapter 617, F.S., the primary purpose of which is to provide educational programs, after school activities, counseling, and other services to children aged 5 to 18 years, and which has operated for a period no less than two years prior to requesting support from the community redevelopment agency. The term does not include public or private schools, child care facilities as defined in s. 402.302, F.S., or private prekindergarten providers as defined in s. 1002.51, F.S., but does include indoor recreational facilities as defined in s. 402.302, F.S. which are owned and operated by a government entity or corporation not for profit registered pursuant to chapter 617, F.S.

## B. SECTION DIRECTORY:

- Section 1. Amends ss. 125.0104(3) and (5), F.S., relating to tourist development taxes, to add new allowable and required uses, and new requirements for proposed expenditures, and provides a civil cause of action for unauthorized expenditures..
- Section 2. Amends s. 159.621, F.S., to add certain notes or mortgages to a documentary stamp tax exemption.
- Section 3. Amends s. 163.387(6), F.S., to add a new allowable use for redevelopment trust fund revenues and requires at least 5% of these revenues be spent on youth centers in certain circumstances.
- Section 4. Amends s. 195.022, F.S., changing population thresholds for certain required aerial photography.
- Section 5. Amends s. 196.011(1), F.S., to conform to changes made by section 6 of the bill.
- Section 6. Amends s. 196.012(14) and (15), F.S., to modify the definitions of “new business” and “expansion of an existing business” to include areas designated as enterprise zones as of December 30, 2015.
- Section 7. Amends s. 196.081(1), (4), (5), (6) and (7) F.S., to allow a midyear transfer of the disabled veteran homestead exemption.

- Section 8. Amends s. 196.1978, F.S., to create a property tax discount on certain property used for charitable affordable housing.
- Section 9. Amends s. 196.1995 F.S., to clarify that economic development ad valorem tax exemptions can be granted in areas which were designated enterprise zones as of December 30, 2015.
- Section 10. Amends s. 201.15, F.S., changing a date relating to debt service coverage for certain bonds secured by documentary stamp tax.
- Section 11. Amends s. 206.9825, F.S.; to end an aviation fuel tax credit for certain aviation fuels.
- Section 12. Amends s. 206.9825, F.S., to reduce the tax rate on aviation fuel to a rate designed to make the changes by section 11 of the bill revenue neutral.
- Section 13. Amends s. 210.13, F.S., to conform to changes made by section 34 of the bill.
- Section 14. Amends s. 210.25, F.S., to clarify definitions related to other tobacco products.
- Section 15. Amends s. 212.031, F.S., to permanently reduce the business rent tax from 6% to 5%, with an additional one percentage point reduction (to 4%) in calendar year 2018.
- Section 16. Amends s. 212.04, F.S., to provide an exemption for certain resales of taxable admissions.
- Section 17. Amends s. 212.05, F.S., to clarify the requirements for the exemption from tax on certain sales of aircraft that will be registered in a foreign jurisdiction
- Section 18. Amends s. 212.08(5) and (7), F.S., to provide sales tax exemptions for building materials, pest control, and rental of tangible personal property used in new construction in rural areas of opportunity; certain equipment, electricity and building materials used by datacenters, veterans' organizations, and certain industrial, postharvest activity and metal recycler machinery and equipment.
- Section 19. Amends s. 220.03, F.S., to conform dates to adopt the Internal Revenue Code in effect January 1, 2016.
- Section 20. Amends s. 220.13, F.S., to "decouple" from certain federal provisions relating to bonus depreciation.
- Section 21. Specifies that changes made by sections 19 and 20 of the bill are effective upon becoming law and operate retroactively to January 1, 2016.
- Section 22. Grants DOR emergency rulemaking authority to implement sections 19 and 20 of the bill.
- Section 23. Amends s. 220.1845, F.S., to increase the total amount of contaminated site rehabilitation tax credits for one year.
- Section 24. Amends s. 220.192, F.S., to extend the renewable energy technology tax credit for one year.
- Section 25. Amends s. 220.193, F.S., to extend the renewable energy production tax credit for one year.
- Section 26. Amends s. 220.196(2), F.S., to increase the total amount of research and development tax credits for one year.



- Section 27. Creates s. 220.197, F.S., to create a corporate income tax credit pilot program to incentivize the reduction of the use of plastic bags in this state, provides eligibility criteria and definitions.
- Section 28. Amends s. 220.222, F.S., to make changes to address certain federal date filing changes.
- Section 29. Amends s. 220.241, F.S., to make changes to address certain federal date filing changes.
- Section 30. Amends s. 220.33(1), F.S., to make changes to address certain federal date filing changes.
- Section 31. Amends s. 220.34(2), F.S., to make changes to address certain federal date filing changes.
- Section 32. Amends s. 376.30781(4), F.S., to increase the total amount of tax credits for the rehabilitation of drycleaning-solvent-contaminated sites and brownfield sites in designated brownfield areas for one year.
- Section 33. Amends s. 561.121, F.S., adding certain taxes to a distribution schedule.
- Section 34. Amends s. 564.06(4), F.S., to equalize the tax rates on apple and pear cider .
- Section 35. Amends s. 565.02(9), F.S., to replace the current tax calculation on liquor and tobacco sold on cruise ships with a simpler, revenue neutral calculation..
- Section 36. Amends s. 951.22(1), F.S., to conform a reference to changes made by section 12 of this bill.
- Section 37. Provides an exemption from the sales and use tax for the retail sale of certain clothes, school supplies, and personal computers and personal computer-related accessories during a specified period; provides emergency rulemaking authority; provides an appropriation.
- Section 38. Provides an exemption from the sales and use tax for the retail sale of certain items and articles of tangible person property by certain small businesses during a specified period; provides emergency rulemaking authority; provides an appropriation.
- Section 39. Provides an exemption from the sales and use tax on the retail sale of certain firearms, ammunition for firearms, camping tents, and fishing supplies during a specified period; provides emergency rulemaking authority; provides an appropriation.
- Section 40. Provides an exemption from the sales and use tax on the retail sale of certain personal computers and personal computer-related accessories during a specified period; provides emergency rulemaking authority; provides an appropriation.
- Section 41. Provides an exemption for the sale of books and other reading materials at school book fairs for one year.
- Section 42. Provides an exemption for the sale of college textbooks and instructional materials for one year.
- Section 43. Provides an appropriation to the Department of Revenue to implement the amendments to s. 212.031, F.S., made by the bill.

- Section 44. Provides an appropriation to the Department of Revenue to pay the costs of aerial photography created by section 4 of the bill.
- Section 45. Specifies that the changes made to ss. 196.012 and 196.1995, F.S., by the bill are remedial and apply retroactively to December 31, 2015.
- Section 46. Provides Legislative finding that the act fulfills an important state interest.
- Section 47. Provides effective dates.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS below.

2. Expenditures:

The bill appropriates \$762,154 in nonrecurring General Revenue to DOR for the 2016-17 fiscal year. Also see FISCAL COMMENTS below.

### 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 for a wide range of tax reductions and modifications designed to directly impact both households and businesses. Direct economic impacts on the private sector include:

- Reductions in the business rent tax that will provide tax relief to thousands of Florida businesses that rent real property in Florida.
- Manufacturers will be able to continue to enjoy the sales tax exemption on certain industrial machinery and equipment with the permanent extension of that exemption. Certain fruit and vegetable packinghouses and metals recyclers will also now be able to make use of this sales tax exemption.
- The back to school, hunting and fishing, small business and technology sales tax holidays will provide tax relief to Florida consumers. The college textbook and book fair exemptions in the bill will provide tax relief to students and their parents.
- Certain veterans and their spouses may realize property tax savings from the provisions of the bill, while members of veteran's service organizations will see elimination of sales taxes paid on certain food and drink.
- Administrative costs for Florida's cruise industry, associated with alcoholic beverage and tobacco-related taxes will be reduced.
- Private sector providers of affordable housing will see reduced property tax burdens as long as they continue to provide affordable housing.
- Participants in the brownfield cleanup tax credit program will see more resources available to undertake those activities.

#### D. FISCAL COMMENTS:

The total impact of the bill in fiscal year 2016-2017 is -\$352.0 million (-\$418.2 million recurring) of which -\$300.3 million (-\$329.6 million recurring) is on General Revenue, +\$1.2 million (+\$0.4 million recurring) is on state trust funds, and -\$52.9 million (-\$89.0 million recurring) is on local government (see table below). Several measures in the bill result in further, non-recurring revenue impacts in years beyond fiscal year 2016-17, totaling -\$354.2 million, of which -\$315.0 million is on General Revenue and -\$39.2 million is on local government. The table below indicates the impacts and the years during which those impacts will occur. The total tax reductions proposed by the bill are represented by the sum of the recurring impacts, reflecting the annual value of permanent tax cuts when fully implemented, and the pure nonrecurring impacts, reflecting temporary tax reductions. The total of -\$991.7 million in tax reductions proposed by the bill is the sum of -\$418.2 million (recurring), -\$219.3 million (pure nonrecurring in fiscal year 2016-17), and -\$354.2 million (pure nonrecurring after fiscal year 2016-17).

Also note that the distribution of revenues from the revised tax on alcoholic beverages and tobacco products applicable on certain cruise ships will result in an insignificant recurring gain to General Revenue and an insignificant reduction of the same amount to the Health Care Trust Fund and several other trust funds.

*Appropriations Detail*—The \$762,154 appropriated in the bill consists of the following: \$229,982 to implement the “back-to-school” sales tax holiday; and \$55,908 to implement the business rent tax rate changes; \$91,470 to implement the hunting and fishing sales tax holiday; \$104,937 to implement the technology sales tax holiday; and \$279,857 to pay additional costs associated with provision of aerial photography by DOR. The appropriations for the back-to-school holiday, the technology sales tax holiday, and the hunting and fishing tax holiday are to pay the cost of mailing a taxpayer information publication (TIP) to approximately 590,000, 290,000, and 264,900 sales tax dealers notifying them of the respective tax free periods. Of the appropriation for the business rent tax rate reduction, \$45,188 is for tax dealer notification and the remainder is for computer system reprogramming.

**Fiscal Year 2016-17 Estimated Fiscal Impacts (millions of \$)**

<b>Issue</b>	<b>General Revenue</b>		<b>State Trust Funds</b>		<b>Local</b>		<b>Total</b>	
	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>	<b>1st Yr</b>	<b>Recur.</b>
<u>Sales Tax</u> : Business Rent/1% Permanent/2% for 1 Yr	(106.8)	(256.4)	(*)	(*)	(13.8)	(33.1)	(120.6)	(289.5)
<u>Sales Tax</u> : Machinery/Equipment--Manufacturing Exemption Extension	-	(59.7)	-	(*)	-	(13.4)	-	(73.1)
<u>Sales Tax</u> : Machinery/Equipment--Fruit & Vegetable Packinghouses	(0.8)	(0.9)	(*)	(*)	(0.2)	(0.2)	(1.0)	(1.1)
<u>Sales Tax</u> : Machinery/Equipment--Metal Recyclers	(1.7)	(1.7)	(*)	(*)	(0.5)	(0.5)	(2.2)	(2.2)
<u>Sales Tax</u> : Tax Holiday/"Back-to-School"	(55.9)	-	(*)	-	(12.9)	-	(68.8)	-
<u>Sales Tax</u> : Tax Holiday/Small Business	(35.0)	-	(*)	-	(8.1)	-	(43.1)	-
<u>Sales Tax</u> : Tax Holiday/Technology	(22.8)	-	(*)	-	(5.3)	-	(28.1)	-
<u>Sales Tax</u> : Tax Holiday/Hunting and Fishing	(2.6)	-	(*)	-	(0.7)	-	(3.3)	-
<u>Sales Tax</u> : College Textbooks/1 Yr Extension	(33.3)	-	(*)	-	(7.6)	-	(40.9)	-
<u>Sales Tax</u> : Datacenters Exemption	(5.7)	(8.7)	(0.1)	(0.9)	(1.4)	(2.0)	(7.2)	(11.6)
<u>Sales Tax</u> : Admissions Resales (3 Yrs)	(1.5)	-	(*)	-	(0.4)	-	(1.9)	-
<u>Sales Tax</u> : Rural Areas of Opportunity/Bldg Materials	(3.2)	-	(*)	-	(1.3)	-	(4.5)	-
<u>Sales Tax</u> : School Book Fairs/1 Yr Exemption	(2.3)	-	(*)	-	(0.5)	-	(2.8)	-
<u>Sales Tax</u> : Veterans' Service Organizations/Food & Drink	(1.2)	(1.4)	(*)	(*)	(0.2)	(0.2)	(1.4)	(1.6)
<u>Corp Inc Tax</u> : Federal Code Conformance Issues	(20.0)	(1.5)	-	-	-	-	(20.0)	(1.5)
<u>Corp Inc Tax</u> : R&D Credits/1 Yr Increase @ 9m	(4.3)	-	-	-	-	-	(4.3)	-
<u>Corp Inc Tax</u> : Brownfield Credits/1 Yr Increase	(3.0)	-	-	-	-	-	(3.0)	-
<u>Corp Inc Tax</u> : Plastic Bag Reduction Pilot	-	-	-	-	-	-	-	-
<u>Corp Inc Tax</u> : Renewable Energy Prod Credits/ 1 Yr Extension	-	-	-	-	-	-	-	-
<u>Corp Inc Tax</u> : Renewable Energy Technology Credits/ 1 Yr Extension	-	-	-	-	-	-	-	-
<u>Ad Valorem</u> : Affordable Housing/Recorded Agreements (1)	-	-	-	-	-	(37.9)	-	(37.9)
<u>Ad Valorem</u> : Surviving Spouse/Disabled Veterans - Residency (1)	-	-	-	-	-	(1.7)	-	(1.7)
<u>Ad Valorem</u> : Disabled Vets Exemption Transferability	-	-	-	-	+/-	+/-	+/-	+/-
<u>Ad Valorem</u> : EDATE Clarification/Enterprise Zones	-	-	-	-	(**)	(**)	(**)	(**)
<u>Ad Valorem</u> : Aerial Photography (Appropriation)	(0.3)	-	-	-	-	-	(0.3)	-
<u>Aviation Fuel Tax</u> : Exemption Elimination/Rate Cut	-	-	-	-	-	-	-	-
<u>Bev Tax/Tobacco Tax</u> : Cruise Line Tax Simplification	(0.1)	*	(*)	(*)	-	-	(0.1)	-
<u>Bev Tax</u> : Pear Cider Rate Reduction	(0.1)	(0.1)	-	-	-	-	(0.1)	(0.1)
<u>Doc Stamp Tax</u> : Affordable Housing-related Notes	(0.1)	(0.1)	(0.2)	(0.2)	-	-	(0.3)	(0.3)
<u>Tobacco Tax</u> : Other Tob Prod/Definition Clarification	0.9	0.9	1.5	1.5	-	-	2.4	2.4
<u>Appropriations</u> : Tax Holidays & Admin	(0.5)	-	-	-	-	-	(0.5)	-
<b>FY 2016-17 Total</b>	<b>(300.3)</b>	<b>(329.6)</b>	<b>1.2</b>	<b>0.4</b>	<b>(52.9)</b>	<b>(89.0)</b>	<b>(352.0)</b>	<b>(418.2)</b>

<b>Non-recurring Impacts After FY 2016-17</b>	<b>Cash</b>	<b>Cash</b>	<b>Cash</b>	<b>Cash</b>
<u>Sales Tax</u> : Admissions Resales (17/18 & 18/19)	(3.5)	-	-	(1.0)
<u>Sales Tax</u> : Rural Areas of Opportunity/Bldg Materials	(7.2)	-	-	(2.7)
<u>Sales Tax</u> : Business Rent/1% for 1 yr (1/1/2018)	(274.8)	-	(*)	(35.5)
<u>Corp Inc Tax</u> : Federal Code Conformance Issues	(2.8)	-	-	-
<u>Corp Inc Tax</u> : Plastic Bag Reduction Pilot (18/19)	(5.0)	-	-	-
<u>Corp Inc Tax</u> : Renewable Energy Prod Credits (17/18)	(10.0)	-	-	-
<u>Corp Inc Tax</u> : Renewable Energy Technology Credits (17/18)	(10.0)	-	-	-
<u>Corp Inc Tax</u> : R&D Credits (17/18)	(1.7)	-	-	-
<b>Bill Total</b>	<b>(615.3)</b>	<b>(329.6)</b>	<b>1.2</b>	<b>(92.1)</b>

Recurring + Pure Nonrecurring (2) = **(991.7)**

(\*) Impact less than \$50,000; (\*\*) Impact is indeterminate.  
 (+/-) Indeterminate impact, direction can be positive or negative  
 (1) Ad valorem tax impacts assume current tax rates.  
 (2) Recurring total = -\$418.2 million; pure nonrecurring in FY 2016-17 = -\$223.4 million; pure nonrecurring after FY 2016-17 = -\$350.1 million.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18(b), of the Florida Constitution may apply because this bill, by expanding current ad valorem tax exemptions, may reduce county and municipal government authority to raise revenue. The bill does not appear to qualify under any exemption or exception. Additionally, the provision of Art. VII, section 18(a), of the Florida Constitution may apply because the bill, by requiring certain minimum expenditures of tourist development taxes and requiring the provision of return-on-investment or cost-benefit analysis under certain circumstances, may require counties or municipalities to expend funds. It is unclear whether or not such expenditures will be significant. 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:

DOR already has general rule-making authority to create rules governing the taxes it administers.<sup>130</sup> The bill authorizes DOR to adopt emergency rules to implement the changes in the bill related to adopting the internal revenue code and decoupling from federal bonus depreciation provisions and to administer the back to school sales tax holiday, the small business sales tax holiday, the hunting and fishing sales tax holiday and the technology sales tax holiday.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>130</sup> See ss. 212.17(6), 212.18(3), 213.06(1) F.S.