

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTC 15-05 Taxation

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

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

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

### SUMMARY ANALYSIS

The proposed committee bill (PCB) provides for a wide range of tax reductions designed to directly impact both households and businesses.

The PCB includes the following tax rate reductions: state communications services tax (CST) rate by 3.6 percentage points; state sales tax rate on rental of commercial real estate by 0.2 percentage points.

The PCB includes new or expanded sales tax exemptions for the following: agricultural items, including feed for aquatic organisms, irrigation equipment, costs of maintenance and repairs of irrigation and power farm equipment, stakes, and certain trailers; sales at school book fairs and K-12 school food and beverage concessions in support of extra-curricular activities; college textbooks and instructional materials; machinery and equipment used for metal recycling; gun club memberships or admissions; and motor vehicles brought to Florida by military servicemembers deployed outside of the U.S.

The PCB includes the following sales tax holidays: a three-day "back-to-school" holiday for clothing, footwear, school supplies, and computers; a one day tax free period on November 28, 2015, for sales of items priced at \$1,000 or less by certain small businesses; a one day tax free period on July 4, 2015, for certain firearms, ammunition, camping tents, and fishing supplies.

With respect to property taxes, the PCB: increases from \$500 to \$5,000 of value the longstanding exemption for widows, widowers, blind, or totally and permanently disabled persons; and updates and expands the current partial homestead exemption available to military servicemembers deployed overseas.

The PCB makes the following corporate income tax changes: temporarily increases total tax credits available for voluntary brownfields clean-up; creates a corporate income tax credit for federal defense contractors that hire Florida subcontractors; revises the distribution for the current research and development tax credit and temporarily increases the annual credits that can be awarded; extends the Community Contribution Tax Credit program with \$13.3 million in tax credits for one year (also taken against sales tax).

Other changes include: creation of an alternative process for retaining homestead status in certain circumstances; elimination of the obsolete Florida estate tax and \$5 permit fee to register certain vehicles to be used to transport alcoholic beverages; equalization of the tax rates applied to apple and pear cider; a one year extension of a current title insurance premiums tax reduction; an exemption from the aviation fuel tax for fuel used by certain Florida higher educational institutions; and clarification of CST dealer tax reporting period requirements and the sales tax exemption on prepaid college meal plans.

The total impact of the bill in fiscal year 2015-2016 is -\$642.5 million (-\$640.0 million recurring) of which -\$607.5 million (-\$576.0 million recurring) is on General Revenue, and -\$35.0 million (-\$64.0 million recurring) is on local government. Several measures in the bill result in further, non-recurring revenue impacts in years beyond fiscal year 2015-2016. Adding the nonrecurring cash impacts beyond fiscal year 2015-2016 to the first year impacts brings the total cash impact of the bill to -\$689.2 million, of which -\$652.8 million is on General Revenue, and -\$36.5 million is on local government.

**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:

##### **Communications Services Tax (CST) Rates and Distributions**

###### *Current Situation*

Chapter 202, F.S., imposes a tax on the sale of communication services, including telecommunications (both wireline and mobile), cable television, direct-to-home satellite television and other services. The CST includes a state tax rate of 6.65 percent and a state gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent. In addition, local governments may impose a local tax rate. The maximum rate for municipalities or charter counties is 5.1 percent or 4.98 percent, if the municipality or charter county levies certain permit fees. The maximum rate for non-charter counties is 1.6 percent. Add-ons of .12 percent or .24 percent are authorized under s. 337.401, F.S., and temporary emergency rates may exceed the statutory limits.

Direct-to-home satellite service is taxed at a higher state CST rate of 10.8 percent and is also subject to the 2.37 percent gross receipts tax for a combined rate of 13.17 percent. The local tax does not apply to these services.

Most of the state taxes collected, including taxes collected on direct-to-home satellite service, are deposited into the General Revenue Fund. However, a portion of the state tax is distributed to local governments. Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for funding public education system capital projects.

Communications services dealers are required to report and remit collections on a calendar month basis.<sup>1</sup> Dealer returns and remittances are late after the 20<sup>th</sup> day of the month following the month of collection.<sup>2</sup>

To compensate communications services dealers for keeping prescribed records, filing timely tax returns, and properly accounting and remitting taxes, dealers are allowed to deduct and retain 0.75 percent of the amount of tax due and timely reported and remitted.<sup>3</sup> The collection allowance is not allowed if the required tax return or tax is delinquent.<sup>4</sup>

###### *Proposed Changes*

The PCB reduces the state CST rate by 3.6 percentage points. The standard rate is reduced from 6.65 percent to 3.05 percent and the rate on direct-to-home satellite is reduced from 10.8 percent to 7.2 percent. These rate changes are made in several places in the PCB and distributions are revised to ensure that local governments continue to receive the same amount of distributions as they receive under current law. The gross receipts tax rate is not affected.

Section 202.27, F.S., is amended to authorize a communications services dealer to use a month-long period other than a calendar month to report its CST collections. Dealers who use an alternative month-long period will continue to remit collections by the 20<sup>th</sup> day of the subsequent calendar month. For payments where a percentage of the payment is delinquent, the PCB grants the authority to grant a collection allowance for the percentage of the tax due that was timely paid.

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<sup>1</sup> See s. 202.27, F.S. and rule 12A-19.020(1)(a)1., F.A.C. The Department of Revenue (DOR) is authorized to permit reporting periods longer than 1 month in certain situations. S. 202.27(2), F.S.

<sup>2</sup> See s. 202.27(1), F.S. and rule 12A-19.020(1)(a)3., F.A.C.

<sup>3</sup> s. 202.28(1), F.S. Dealers that do not use specified databases to determine the taxable situs of sales are subject to a reduced collection allowance of 0.25 percent. See s. 202.22(6)(b)1., F.S.

<sup>4</sup> s. 202.28(1)(a), F.S.

The PCB specifies that the changes apply to taxable transactions included on bills for communications services that are dated on or after July 1, 2015

## **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 explicitly 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 (75.7 percent for the 2014-2015 fiscal year<sup>5</sup>) and is administered by the Department of Revenue (DOR) under chapter 212, F.S.

### **Sales Tax Exemptions**

#### *Current Situation*

*Power Farm Equipment*--Florida exempts "power farm equipment" from sales tax when the equipment is used exclusively on a farm or in a forest for the agricultural production of crops or for fire prevention and suppression work with respect to such crops.<sup>6</sup> The exemption does not apply to the repair of power farm equipment.

"Power farm equipment" is moving or stationary equipment that contains within itself the means for its own propulsion or depends on an external power source to perform its functions.<sup>7</sup> Sales of component parts of power farm equipment are not exempt unless the component part is, by itself, power farm equipment.<sup>8</sup>

"Agricultural production" is limited to practices necessary to accomplish the production of plants and animals through the harvest phase.<sup>9</sup> Power farm equipment used in activities that occur after harvesting, such as processing or storage, is not exempt.

*Livestock*--Florida exempts the gross proceeds from the sale of livestock from sales tax provided such sales are made directly by the producers.<sup>10</sup> "Livestock" includes all animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals raised for commercial purposes, as well as fish raised for commercial purposes.<sup>11</sup> Florida also exempts feed for livestock from the sales tax.<sup>12</sup>

*Aquaculture*--The Department of Agriculture and Consumer Services (DACS) regulates aquaculture pursuant to chapter 597, F.S. DACS certifies aquaculture producers pursuant to s. 597.004, F.S. Section 597.0015, F.S., defines "aquaculture products" as "aquatic organisms and any product derived from aquatic organisms that are owned and propagated, grown, or produced under controlled conditions. Such products do not include organisms harvested from the wild for depuration, wet storage, or relay for purification."

*Schools Offering Grades K through 12*--The following types of sales are exempt for schools offering grades K through 12:<sup>13</sup>

- Books used in regularly prescribed courses of study;

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<sup>5</sup> FLORIDA REVENUE ESTIMATING CONFERENCE, 2015 FLORIDA TAX HANDBOOK (2015).

<sup>6</sup> s. 212.08(3), F.S.

<sup>7</sup> s. 212.02(30), F.S.

<sup>8</sup> See Rule 12A-1.087(3)(b), F.A.C.

<sup>9</sup> s. 212.02(32), F.S.

<sup>10</sup> s. 212.07(5)(a), F.S.

<sup>11</sup> s. 212.02(29), F.S.

<sup>12</sup> s. 212.08(7)(d), F.S.

<sup>13</sup> s. 212.08(7)(2), F.S.; rule 12A-1.0011, F.A.C.

- Yearbooks, magazines, newspapers, directories, bulletins, and similar publications; and
- School lunches.

Parent-teacher associations or parent-teacher organizations<sup>14</sup> whose primary purpose is to raise funds for such schools may pay tax to their suppliers on the cost price of items in lieu of registering as a dealer, obtaining a Consumer's Certificate of Exemption, or collecting tax on their sales of the following taxable items:

- School materials and supplies purchased, rented, or leased for resale or rental to students attending grades K through 12;
- Items sold for fund raising purposes, such as candy, photographs, greeting cards, wrapping paper, and similar fund raising items;
- Items sold through vending machines located on the school premises; and
- Food and beverages sold through vending machines located on school premises in locations other than the student lunchroom, student dining room, or other area specifically designated for student dining.

*College Prepaid Meal Plans*--Chapter 2014-38, L.O.F., amended s. 212.07(r), F.S., to create an exemption for prepaid meal plans, which reads:

[P]repaid meal plans purchased from a college or other institution of higher learning by students currently enrolled at that college or other institution of higher learning are exempt. As used in this paragraph, "prepaid meal plans" means payment in advance to a college or institution of higher learning for the provision of a defined quantity of units that must expire at the end of an academic term, cannot be refunded to the student upon expiration, and which may only be exchanged for food.

Feedback from colleges and universities identified a number of issues for clarification. Many colleges contract out their meal plan service to a third party provider. Some students purchase the meal plan before they are enrolled. Some students pay for the plans after the plan begins as a result of financial assistance. Additionally, institutions of higher learning were uncertain on the taxability of "flex" dollars that can be purchased with a meal plan but effectively act as cash equivalents rather than being restricted exclusively to meal plans.

*College or University Textbooks*--In 2008, the Legislature created a new section in law to address textbook affordability by: prohibiting employees of a Florida College System (FCS) institution or state university from receiving anything of value in exchange for requiring a student to purchase a specific textbook; requiring the FCS institutions and universities to provide specific information for textbooks to students prior to the first day of classes; and requiring the State Board of Education (SBE) and the Board of Governors (BOG) to adopt policies, procedures, and guidelines that would further efforts to minimize the cost of textbooks.<sup>15</sup>

State universities and FCS institutions are required to post on their websites, as early as is feasible, but not less than 30 days prior to the first day of class for each term, a list of each textbook required for each course for the term. The list must include the International Standard Book Number (ISBN) for each required textbook and, at a minimum, the following: the title; all authors listed; publishers, edition number, copyright date, published date, and other relevant information necessary to identify the specific textbook.<sup>16</sup>

<sup>14</sup> "Parent-Teacher Organizations (PTOs)" and "Parent-Teacher Associations (PTAs)" mean those nonprofit organizations associated with schools whose purpose is to raise funds for schools teaching grades K through 12. See rule 12A-1.0011, F.A.C.

<sup>15</sup> Ch. 2008-78, s. 1 Laws of Fla.

<sup>16</sup> s. 1004.085(3), F.S.

The SBE adopted Rule 6A-14.092, F.A.C.<sup>17</sup>, in January 2009, and the BOG adopted Regulation 8.003 in March 2009,<sup>18</sup> each in accordance with the following statutory requirements that:

- Textbook adoptions are made with sufficient lead time to bookstores in order to confirm availability of textbooks and ensure maximum availability of used books.
- The course instructor or academic department offering the course confirms that all items ordered, including individual items as part of a bundled package, are going to be used.
- The course instructor or academic department offering the course determines, before adoption of the textbook, that a new edition differs significantly and substantially enough from earlier versions that there is value in changing to the new edition.
- The policies shall address the availability of required textbooks to students otherwise unable to afford the cost.<sup>19</sup>

According to The College Board, the average annual cost for books and supplies is \$1,225 at four-year postsecondary institutions and \$1,328 at two-year postsecondary institutions. For full-time students (i.e., 30 credit hours or approximately 10 courses per year), this equates to approximately \$122.50 and \$132.80 per course for four-year and two-year institutions, respectively. Often, students try to purchase used textbooks (typically offered at a 25 percent price discount to new books) or they try to rent textbooks. The textbook rental market has expanded in recent years, offering students a variety of short-term, lower-cost rental options. Rented books are typically discounted between 14 percent and 60 percent of the retail price for new books.

At present, college and university textbooks are explicitly taxable.<sup>20</sup>

*Industrial Machinery and Equipment*--Permanent exemptions for machinery and equipment include:

- Section 212.08(5)(b), F.S., which exempts industrial machinery and equipment purchased and used exclusively for spaceport activities or to manufacture, process, compound, or produce for sale items of tangible personal property.<sup>21</sup> This exemption is limited to new or expanding businesses.<sup>22</sup> In order to receive the exemption, a business must apply to DOR to request the issuance of a temporary tax exemption permit.
- Section 212.08(5)(d), F.S., which exempts industrial machinery and equipment purchased by an expanding business, which manufactures tangible personal property in accordance with federal procurement regulations.<sup>23</sup> This exemption is limited to an expanding business that increases implicit productive output by at least ten percent.<sup>24</sup>

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<sup>17</sup> See <https://www.flrules.org/gateway/ruleNo.asp?id=6A-14.092>

<sup>18</sup> See [http://www.flbog.edu/documents\\_regulations/regulations/8\\_003\\_Textbook\\_Adoption.pdf](http://www.flbog.edu/documents_regulations/regulations/8_003_Textbook_Adoption.pdf)

<sup>19</sup> s. 1004.085(4), F.S. Note - The Legislature amended 1004.085, F.S. in 2011 to include the consideration of open-access textbooks within the policies and procedures. The SBE rule and BOG regulation have not been updated to include these provisions.

<sup>20</sup> s. 212.08(7)(r), F.S.

<sup>21</sup> "Industrial Machinery and Equipment" means tangible personal property or other property that has a depreciable life of 3 years or more and is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings, structural components, and heating and air-conditioning systems, generally do not meet the definition of industrial machinery and equipment unless closely related to the industrial machinery and equipment that it houses, supports, or such building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process. The term may include parts and accessories that are consistent with the exemption provided in s. 212.08, F.S. "Spaceport Activities" means activities directed or sponsored by Space Florida on spaceport territory pursuant to its powers and responsibilities under the Space Florida Act.

<sup>22</sup> This exemption does not apply to industrial machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

<sup>23</sup> Exempt purchases are limited to machinery and equipment as defined by s. 212.08(5)(d), F.S. This exemption does not apply to industrial machinery or equipment purchased or used by businesses listed in s. 212.08(5)(b)5., F.S., or any business that can measure an increase in productive output as provided in s. 212.08(5)(b)6., F.S.

<sup>24</sup> The percentage of increase is measured by calculating the deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production

- Section 212.08(5)(j), F.S., which exempts industrial machinery and equipment purchased and used to manufacture, process, compound or produce semiconductor, defense or space technology products for sale or for use by qualifying facilities.<sup>25</sup> A business certified to receive this exemption may elect to designate one or more state universities or community colleges as the recipients of the refund. In order to qualify, a business must submit an application to Enterprise Florida, receive a two-year certification issue by DEO, and receive a tax exemption permit issued by DOR. DOR may conduct audits to enforce exemption requirements.

In 2013, the Legislature passed a more general exemption for industrial machinery and equipment purchased and used to manufacture, process, compound, or produce items of tangible personal property for sale located in s. 212.08(7)(kkk), F.S. 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 NAICS<sup>26</sup> (North American Industry Classification System) codes 31, 32, and 33 published in 2007 by the Office of Management and Budget, Executive Office of the President. 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.<sup>27</sup> This exemption is scheduled for repeal effective April 30, 2017.

*Motor Vehicle Sales*--Generally, the six percent sales and use tax rate applies to the sale of motor vehicles in Florida; however, there are specific rules that apply to isolated sales<sup>28</sup> and the rental of motor vehicles,<sup>29</sup> including a rental car surcharge.<sup>30</sup>

Section 212.06(7), F.S., allows a credit to be given on tangible personal property, including motor vehicles, brought into Florida where a like tax has been lawfully imposed and paid in another state. If the amount paid is equal to or greater than the amount imposed by Florida, no additional tax is due.<sup>31</sup> If the amount is less than the amount imposed in Florida, only the difference between the two is due.<sup>32</sup> It is presumed that tangible personal property used in another state, territory of the U.S., or the District of Columbia for six months or longer before being brought into Florida was not purchased for use in Florida; and therefore, no Florida tax is due.<sup>33</sup>

No credit of Florida tax is given for use in or taxes paid in another country. Therefore, tax shall apply and be due on any motor vehicle imported or caused to be imported from a foreign country into Florida, even if the motor vehicle was used in another country for a period of six months or more prior to the time it is brought into Florida.<sup>34</sup> Furthermore, tax paid in another country will not be recognized by the

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utilizing such items is begun divided by the implicit productive output for the preceding calendar year. Commencement of production must begin no later than two years following completion of installation of the machinery or equipment.

<sup>25</sup> This exemption also applies to building materials purchased to manufacture or expand clean room facilities.

<sup>26</sup> (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy. See Introduction to NAICS at the Census Bureau, U.S. Department of Commerce, <http://www.census.gov/eos/www/naics/>, (last visited May March 21, 2015).

<sup>27</sup> See DOR, Tax Information Publication: Sales and Use Tax Exemption for Purchases of Industrial Machinery and Equipment (June 10 2013).

<sup>28</sup> s. 212.05(1)(a)(1)b., F.S.

<sup>29</sup> s. 212.05(1)(c), F.S.

<sup>30</sup> s. 212.0606, F.S.

<sup>31</sup> s. 212.06(7), F.S.

<sup>32</sup> s. 212.06(7), F.S.

<sup>33</sup> s. 212.06(8), F.S.

<sup>34</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

State of Florida when calculating the tax due.<sup>35</sup> The tax is calculated on the value of the vehicle at the time it is brought into Florida, not on the original purchase price.<sup>36</sup>

While a military servicemember is deployed overseas, he or she may purchase a motor vehicle for personal use. As of February 25, 2014, two states (North Dakota and Tennessee) do not levy a sales tax on motor vehicles purchases by certain military personnel residing in that state.<sup>37</sup>

### *Proposed Changes*

*Agricultural Exemptions*--The PCB amends s. 212.02, F.S., to redefine the term "livestock" to include all aquaculture products identified pursuant to s. 597.003, F.S., and raised for commercial purposes. The term "agricultural production" is also redefined to include the storage of raw products on a farm. The PCB goes on to exempt the following from sales tax:

- Irrigation equipment;
- Replacement parts and accessories for power farm equipment and irrigation equipment;
- Repairs of power farm equipment and irrigation equipment; and
- The sale price below \$20,000 of a trailer weighing 12,000 pounds or less and purchased by a farmer for exclusive use in agricultural production or to transport farm products from his or her farm to the place where the farmer transfers ownership of the farm product to another. The exemption is not forfeited by using a trailer to transport the farmer's farm equipment. The exemption does not apply to the lease or rental of a trailer.

*Schools Offering Grades K through 12*--The PCB creates an exemption for book fairs on the premises of a K through 12 school. 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.

The PCB also authorizes school support organizations to pay tax when they purchase food, drink, and supplies for resale, in lieu of registering as a dealer, obtaining a Consumer's Certificate of Exemption, or collecting tax from the purchaser. The PCB defines the term "school support organization" as an organization the sole purpose of which is to raise funds to support extracurricular activities at public, parochial, or nonprofit schools that teach grades K through 12.

*College Prepaid Meal Plans*--The PCB clarifies the exemption for prepaid meal plans to make it clear that: sales by meal plan service providers are exempt, students can purchase exempt meal plans prior to enrollment, meal plans may be purchased with financial aid, and "flex" dollars are to be taxed based on the purchase (essentially treating "flex" dollars like gift cards, which are taxed not at the point of sale but when they are used to make a taxable purchase).

*College or University Textbooks*--The PCB exempts textbooks, 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, the 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.

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<sup>35</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

<sup>36</sup> s. 212.05, F.S.; DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

<sup>37</sup> DOR, TIP # 14A01-01, February 25, 2014, available at: <http://dor.myflorida.com/dor/tips/tip14a01-01.html> (last visited March 21, 2015).

*Industrial Machinery and Equipment*--The PCB amends s. 212.08(kkk)2., F.S., to include in the current temporary exemption for industrial machinery and equipment tangible personal property or other property that has a depreciable life of 3 years or more that is used as an integral part in the recycling of metals for sale. The current repeal date of April 30, 2017 for this paragraph is retained.

*Motor Vehicle Sales*--The PCB provides a sales tax exemption for any motor vehicle purchased and used for six months or longer in a foreign country by an active member of the United States Armed Forces or that member's spouse. Proof of the active status of the member, and when applicable, proof of the spouse's relationship to the member, must be provided when the vehicle is titled and registered in this state.

## Sales Tax on Rental of Commercial Real Estate

### *Current Situation*

Since 1969, Florida has imposed a sales tax on the total rent charged under a commercial lease.<sup>38</sup> The administration of sales tax for commercial rentals is the same as the sales tax for tangible personal property. 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>39</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. The Legislature's Office of Program Policy Analysis and Government Accountability (OPPAGA) and the Office of Economic and Demographic Research (EDR) both reviewed and issued reports on the commercial rental tax in 2014.<sup>40</sup> These reports did not establish a direct link between the commercial rental tax and Florida's ability to compete with other states economically.

### *Proposed Changes*

The PCB reduces the state sales tax on commercial rentals from 6 percent to 5.8 percent, effective January 1, 2016.

## Sales Tax on Admissions

### *Current Situation*

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<sup>38</sup> Ch. 1969-222, Laws of Fla.

<sup>39</sup> s. 212.031, F.S., and rule 12A-1.070, F.A.C.

<sup>40</sup> Office of Program Policy Analysis and Government Accountability, OPPAGA Review of Sales Tax on the Rental of Real Property (Nov. 24, 2014); Office of Economic and Demographic Research, Economic Impact: Sales Tax on the Rental of Real Property (Nov. 15, 2014).

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 is 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;
- 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.

### *Proposed Changes*

The PCB exempts admissions and membership fees for gun clubs. The term "gun club" is defined as an organization whose primary purpose is to offer its members access to one or more shooting ranges for target or skeet shooting.

### 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 12 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 five periods. School supplies have been included starting in 2001, with the value threshold increasing from \$10 to \$15. In 2013, personal computers and related accessories purchased for noncommercial home or personal use with a sales price of \$750 or less were exempted. 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

*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>41</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>42</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>43</sup> Florida has one of the largest public-hunting systems in the country, and there are approximately 242,000 hunters in the state.<sup>44</sup> Florida leads all states in economic impacts for its marine recreational fisheries,<sup>45</sup> and there are over two million Florida residents who are angler fisherman.<sup>46</sup>

### *Proposed Changes*

The PCB establishes three sales tax holidays during the 2015-2016 fiscal year. The DOR may adopt emergency rules to implement the provisions of each holiday.

*Back-to-School Holiday*--The PCB provides for a three day sales tax holiday beginning July 31, 2015, and ending August 2, 2015. 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

<sup>41</sup> American Express, *Small Business Saturday*, available at: <https://www.americanexpress.com/us/content/small-business/shop-small/about/?linknav=us-open-shopsmall-homepage-about> (last visited March 13, 2015).

<sup>42</sup> Cynthia Magnuson-Allen, *U.S. Consumers Spent \$5.5 Billion ‘Shopping Small’ on Saturday*, November 27, 2012, available at <http://www.nfib.com/article/m-nfib-and-american-expres-61497/> (last visited March 13, 2015).

<sup>43</sup> Florida Fish and Wildlife Conservation Commission (FWC), *Economic Impact of Outdoor Recreation*, available at: <http://myfwc.com/conservation/value/outdoor-recreation/> (last visited March 20, 2015).

<sup>44</sup> FWC, *Overview – Fast Facts*, available at: <http://myfwc.com/about/overview/> (last visited March 20, 2015).

<sup>45</sup> FWC, *Economic Impact of Outdoor Recreation*, available at: <http://myfwc.com/conservation/value/outdoor-recreation/> (last visited March 20, 2015).

<sup>46</sup> FWC, *Overview – Fast Facts*, available at: <http://myfwc.com/about/overview/> (last visited March 20, 2015).

- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

The PCB also exempts “school supplies” that cost \$15 or less per item.

Also exempt will be the first \$750 of the sales price for personal computers and related accessories purchased for noncommercial home or personal use. This would include tablets, laptops, monitors, input devices, and non-recreational software. Cell phones, furniture and devices or software intended primarily for recreational use are not exempted.

The “back to school” sales tax holiday does 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 PCB provides for a one day sales tax holiday on November 28, 2015. 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 PCB 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 March 3, 2015, and that owed and remitted less than \$200,000 in sales tax to the DOR during the one-year period ending September 30, 2015. If the business has not been in operation for a complete year as of September 30, 2015, 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, 2015.

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, 2015.

*July 4<sup>th</sup> Tax Holiday*--The PCB provides for a one day sales tax holiday on July 4th, 2015, 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).

## **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>47</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>48</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>49</sup>

<sup>47</sup> FLA. CONST. art VII, s. 9,

<sup>48</sup> FLA. CONST. art VII, s. 2.

<sup>49</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).

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>50</sup> The Florida Constitution grants property tax relief in the form of certain valuation differentials,<sup>51</sup> assessment limitations,<sup>52</sup> and exemptions,<sup>53</sup> including the exemptions relating to municipalities and exemptions for educational, literary, scientific, religious or charitable purposes.

### Widows, Widowers, and Permanently Disabled Exemption

#### *Current Situation*

Since the 1968 revision of the Florida Constitution has been in place, it has contained a specific exemption to “every widow or widower or person who is blind or totally and permanently disabled, property to the value fixed by general law not less than five hundred dollars.”<sup>54</sup> This exemption is effectuated in s. 196.202, F.S., for every person who is a bona fide resident of this state.

#### *Proposed Changes*

The PCB increases from \$500 to \$5,000 the amount of value exempt from ad valorem taxation for residents who are widows, widowers, blind, or totally and permanently disabled. The PCB specifies that the increase applies to tax years beginning on or after January 1, 2016.

### Deployed Military Servicemember Additional Homestead Exemption

#### *Current Situation*

Section 196.173, F.S., provides an additional ad valorem tax exemption for homestead property owned by a servicemember<sup>55</sup> deployed outside of the continental United States, Alaska, or Hawaii in support of military operations designated by the Legislature.

In 2014, over 1,400 deployed service members were granted an additional property tax exemption in recognition of their service.<sup>56</sup> As of December 31, 2014, the number of deployed service members that identified Florida as their legal residence or home address was 6,996.<sup>57</sup>

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<sup>50</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>51</sup> FLA. CONST. art VII, s. 4,., authorizes valuation differentials, which are based on character or use of property.

<sup>52</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>53</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>54</sup> FLA. CONST. art VII, s. 3(b).

<sup>55</sup> s. 196.173(7), F.S. defines the term “servicemember” for purposes of this exemption to mean a member or former member of any branch of the United States military or military reserves, the United States Coast Guard or its reserves, or the Florida National Guard.

<sup>56</sup> Revenue Estimating Conference, *Deployed Service Members Exemptions, Proposed Language*. March 3, 2015.

<sup>57</sup> On file with the House Finance & Tax Committee.

Currently, the exemption is available to servicemembers who were deployed during the previous calendar year on active duty outside the continental United State, Alaska, or Hawaii in support of any of the following operations:<sup>58</sup>

- Operation Noble Eagle, which began on September 15, 2001;
- Operation Enduring Freedom which began on October 7, 2001;
- Operation Iraqi Freedom which began on March 19, 2003 and ended on August 31, 2010;
- Operation New Dawn which began September 1, 2010, and ended on December 15, 2011;
- Operation Odyssey Dawn, which began on March 19, 2011, and ended on October 31, 2011.

By January 15 of each year, the Department of Military Affairs (DMA) must submit to the President of the Senate, the Speaker of the House of Representatives, and the tax committees of each house of the Legislature a report of all known and unclassified military operations outside the continental United States, Alaska, or Hawaii for which servicemembers based in the continental United States have been deployed during the previous calendar year. To the extent possible, the report must include:<sup>59</sup>

- The official and common names of the military operations;
- The general location and purpose of each military operation;
- The number of service members deployed to each military operation;
- The number of service members deployed to each military operation who were based in this state at the time of deployment, including the number by county of residence or military base, if known;
- The date each military operation commenced;
- The date each military operation terminated, unless the operation is ongoing; and
- Any other relevant information.

The amount of the exemption is equal to the taxable value of the homestead of the servicemember on January 1 of the year in which the exemption is sought multiplied by the number of days that the servicemember was on a qualifying deployment in the preceding calendar year and divided by the number of days in that year.<sup>60</sup>

A servicemember who seeks to claim the additional tax exemption must file an application for exemption with the property appraiser on or before March 1 of the year following the year of the qualifying deployment.<sup>61</sup> The servicemember must provide:<sup>62</sup>

- Proof that the servicemember participated in a qualifying deployment;
- The dates of the qualifying deployment; and
- Other information necessary to verify eligibility for and the amount of the exemption.

In the event a servicemember is unable to personally submit the application, for reasons such as deployment, the following individuals may apply for the exemption on the servicemember's behalf.<sup>63</sup>

- A spouse who also owns the homestead as entires or jointly with the right of survivorship;
- An individual with the servicemember's power of attorney; or
- The personal representative of the servicemember's estate.

The property appraiser must consider a servicemember's application for the exemption within 30 days after receipt of the application, or within 30 days after receiving notice of the designation of qualifying deployments by the Legislature, whichever is later.<sup>64</sup> If a servicemember's application for the exemption is denied, the property appraiser must send a notice of disapproval no later than July 1, citing the reason for disapproval and advising the servicemember of the right to appeal the decision to the value adjustment board along with the procedures for filing such appeal.<sup>65</sup>

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<sup>58</sup> s. 196.173(2), F.S.

<sup>59</sup> s. 196.173(3), F.S.

<sup>60</sup> s. 196.173(4), F.S.

<sup>61</sup> s. 196.173(5)(a), F.S.

<sup>62</sup> s. 196.173(5)(a), F.S.

<sup>63</sup> s. 196.173(5)(b), F.S.

<sup>64</sup> s. 196.173(6), F.S.

<sup>65</sup> s. 194.015, F.S.

## *Proposed Changes*

The DMA has submitted the report required by s. 196.173(3), F.S., providing the names, dates, locations and general purposes of all known and unclassified military operations that occurred outside the continental United States in calendar year 2014.<sup>66</sup>

The PCB amends s. 196.173(2), F.S., to remove from the statutory list Operation Iraqi Freedom, which ended on August 31, 2010. The final year a servicemember could apply for an exemption under s. 196.173, F.S., for a deployment on Operation Iraqi Freedom was 2011. Further, any refund claim for ad valorem taxes paid must be made within four years after January 1 of the tax year for which the taxes were paid. For example, a servicemember who was deployed in 2010 and paid property taxes (and claimed the exemption) in 2011, must submit his or her refund claim before January 1, 2015.

The PCB also amends s. 196.173(2), F.S., to add to the statutory list the following 11 operations from the 2015 DMA report:

- Operation Joint Guardian;
- Operation Octave Shield;
- Operation Trans-Sahara Counterterrorism Partnership;
- Operation Nomad Shadow;
- Operation U.S. Airstrikes Al Qaeda in Somalia;
- Operation Objective Voice;
- Operation Georgia Deployment Program;
- Operation Copper Dune;
- Operation Observant Compass;
- Operation Juniper Shield; and
- Operation Inherent Resolve.

The PCB provides an exception to the March 1 application deadline in s. 196.173(5), F.S., for 2015 only, by establishing June 1, 2015, as the deadline for an eligible servicemember to file a claim for an additional tax exemption for qualifying deployment during the 2014 calendar year. Any applicant who fails to meet the June 1 deadline must subsequently submit an application to the property appraiser on or before the 25th day following the mailing by the property appraiser of the notices required under s.194.011(1), F.S. Upon receipt of the application, the property appraiser may grant the tax exemption if the property appraiser determines the applicant failed to meet the application deadline due to extenuating circumstances.

If the property appraiser determines that extenuating circumstances did not prevent an applicant from meeting the deadline and denies the application, the applicant may file a petition with the value adjustment board requesting that the exemption be granted. No filing fee is due for this petition. The value adjustment board may grant the exemption for the current year if the board determines that extenuating circumstances existed.

## Homestead Exemption

### *Current Situation*

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 \$25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional \$25,000 homestead exemption applies to homesteads that have an assessed value greater than \$50,000 and up to \$75,000, excluding school district levies.

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<sup>66</sup> On file with the House Finance & Tax Committee.  
**STORAGE NAME:** pcb05.FTC  
**DATE:** 3/29/2015

Intention to establish a permanent residence in Florida is a factual determination to be made by the property appraiser.<sup>67</sup> The following are relevant factors that may be considered by the property appraiser in making his or her determination as to the intent of a person claiming a homestead exemption to establish a permanent residence in this state:<sup>68</sup>

- A formal declaration of domicile by the applicant recorded in the public records of the county in which the exemption is being sought;
- Evidence of the location where the applicant's dependent children are registered for school;
- The place of employment of the applicant;
- The previous permanent residency by the applicant in a state other than Florida or in another country and the date non-Florida residency was terminated;
- Proof of voter registration in this state with the voter information card address of the applicant, or other official correspondence from the supervisor of elections providing proof of voter registration, matching the address of the physical location where the exemption is being sought;
- A valid Florida driver license issued under s. 322.18 or a valid Florida identification card issued under s. 322.051 and evidence of relinquishment of driver licenses from any other states;
- Issuance of a Florida license tag on any motor vehicle owned by the applicant;
- The address as listed on federal income tax returns filed by the applicant;
- The location where the applicant's bank statements and checking accounts are registered;
- Proof of payment for utilities at the property for which permanent residency is being claimed.

A person who receives a property tax benefit in another jurisdiction, based on his or her permanent residency in that other jurisdiction, cannot receive a homestead exemption in Florida.<sup>69</sup>

Section 196.161, F.S., provides that if a property appraiser determines a person received a homestead exemption but was not entitled to it, that person must repay the taxes, plus penalties and interest, which would have been due had the person not received a homestead exemption in Florida.

The property owner has 30 days to pay the taxes owed, plus penalties and interest, which would have been due if the property owner did not receive the homestead exemption in Florida.<sup>70</sup> If not paid within 30 days, the property appraiser may file a tax lien.<sup>71</sup> The tax lien remains on the property until the taxes, penalties, and interest are paid or the lien expires after 20 years.<sup>72</sup>

### *Proposed Changes*

The PCB provides an alternative to repayment to Florida of the exempted homestead benefit for a person who received a residency-based property tax benefit in another jurisdiction as well as a homestead exemption in Florida. Such person may maintain the homestead exemption in Florida if it is demonstrated to the property appraiser that such person:

- Is a bona fide resident of Florida; and
- Has repaid to the other jurisdiction any taxes, penalties, and interest that would have been paid if he or she had not received the residency-based property tax benefit in the other jurisdiction.

The property appraiser shall use the factors outlined in s. 196.015, F.S., to determine if the person is a bona fide resident of this state.

If the property owner is able to demonstrate that he or she is a bona fide resident and repaid the other jurisdiction within 30 days of notification of denial of the exemption, then the property appraiser shall maintain the exemption and assessment limitations that the property owner would have been entitled to if the property owner had never received exemptions or credits in another jurisdiction.

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<sup>67</sup> s. 196.015, F.S.

<sup>68</sup> s. 196.015, F.S.(1)-(10), F.S.

<sup>69</sup> s. 196.031(5), F.S.

<sup>70</sup> s. 196.161, F.S.

<sup>71</sup> s. 196.161, F.S.

<sup>72</sup> s. 95.091(1)(b), F.S.

## Corporate Income Tax Credits

Florida levies corporate income tax on corporations of 5.5 percent for income earned in Florida.<sup>73</sup> The calculation of Florida corporate income tax starts with a corporation's federal taxable income.<sup>74</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>75</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>76</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>77</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>78</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>79</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.

Total requests for tax credits have met or exceeded the annual authorization since 2006.<sup>80</sup> Between 2008 and 2013, 359 applications for credits were submitted, resulting in an average approved credit of

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<sup>73</sup> s. 220.11, F.S.

<sup>74</sup> s. 220.12, F.S.

<sup>75</sup> See s. 220.15, F.S.

<sup>76</sup> s. 220.15, F.S.

<sup>77</sup> s. 220.14, F.S.

<sup>78</sup> s. 376.30781, F.S.

<sup>79</sup> s. 220.1845, F.S.

<sup>80</sup> Department of Environmental Protection

approximately \$101,500 per application. All tax credit authorizations have been exhausted to date. The total current backlog of approved credits is \$11.9 million as of July, 2014.

### *Proposed Changes*

The PCB increases the amount of credits that may be awarded from \$5 million to \$17 million in fiscal year 2015-2016 in order to clear out the backlog.

### Community Contribution Tax Credit

#### *Current Situation*

In 1980, the Legislature established the Community Contribution Tax Credit Program (“CCTCP”) to encourage private sector participation in community revitalization and housing projects.<sup>81</sup> Broadly, the CCTCP offers tax credits to businesses or persons (“taxpayer”) anywhere in Florida that contribute<sup>82</sup> to certain projects undertaken by approved CCTCP sponsors.<sup>83</sup>

Eligible sponsors under the CCTCP include a wide variety of community organizations, housing organizations, historic preservation organizations, units of state and local government, and regional workforce boards.<sup>84</sup> As of January 1, 2015, the CCTCP had 126 approved sponsors.<sup>85</sup>

Eligible projects include activities undertaken by an eligible sponsor that are designed to accomplish one of the following purposes:

- To construct, improve, or substantially rehabilitate housing that is affordable to low-income households or very-low-income households as those terms are defined in s. 420.9071;
- To provide commercial, industrial, or public resources and facilities; or
- To improve entrepreneurial and job-development opportunities for low-income persons.<sup>86</sup>

In addition, eligible projects must be located in an area designated as an enterprise zone<sup>87</sup> or a Front Porch Florida Community, with two exceptions. First, any project designed to construct or rehabilitate housing for low-income households or very-low-income households as those terms are defined in s. 420.9071, F.S., is exempt from the area requirement.<sup>88</sup> Second, any project designed to provide increased access to high-speed broadband capabilities that includes coverage of a rural enterprise zone may locate the project’s infrastructure in any area of a rural county (inside or outside of the zone).<sup>89</sup>

The Department of Economic Opportunity (DEO) administers the CCTCP, and its responsibilities include reviewing sponsor project proposals and tax credit applications, periodically monitoring projects, and marketing the CCTCP in consultation with the Florida Housing Finance Corporation and other statewide and regional housing and financial intermediaries.<sup>90</sup> Once approved by DEO, the taxpayer must claim the community contribution tax credit from the DOR.

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<sup>81</sup> Ch. 80-249, Laws of Fla. The CCTCP is one of the state incentives available under the Florida Enterprise Zone Act, which is scheduled to be repealed on December 31, 2015. Sections 290.007(3) and 290.016, F.S.

<sup>82</sup> Sections 212.08(5)(p)2.a., 220.183(2)(a), and 624.5105(5)(a), F.S. require community contributions to be in the form of cash or other liquid assets, real property, goods or inventory, or other physical resources.

<sup>83</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>84</sup> See ss. 212.08(5)(p)2.c.; 220.183(2)(c); and 624.5105(2)(c), F.S.

<sup>85</sup> DEO, Division of Community Development, Email to House Economic Development & Tourism staff, Feb. 23, 2015. Email on file.

<sup>86</sup> ss. 212.08(5)(p)2.b.; 220.183(2)(d); 624.5105(2)(b); and 220.03(1)(t), F.S.

<sup>87</sup> The Florida Enterprise Zone Act is scheduled for repeal on December 31, 2015. Section 290.016, F.S.

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

<sup>90</sup> ss. 212.08(5)(p)4.; 220.183(4); and 624.5105(4), F.S.

The credit is calculated as 50 percent of the taxpayer's annual contribution, but a taxpayer may not receive more than \$200,000 in credits in any one year.<sup>91</sup> The taxpayer may use the credit against corporate income tax, insurance premium tax, or as a refund against sales tax.<sup>92</sup> Unused credits against corporate income taxes and insurance premium taxes may be carried forward for five years.<sup>93</sup> Unused credits against sales taxes may be carried forward for three years.<sup>94</sup>

DOR may approve a total of \$18.5 million annually in credits for projects that provide homeownership opportunities for low-income and very-low-income households and \$3.5 million in credits for all other projects.<sup>95</sup> During FY 2013-2014, DEO approved 328 tax credit applications submitted by 67 eligible sponsors for eligible projects located in 32 counties.<sup>96</sup> For FY 2014-2015, as of December 31, 2014, DEO has approved 383 tax credit applications.<sup>97</sup>

The Legislature extended the CCTCP in 1984, 1994, 2005, and 2014.<sup>98</sup> It has also amended the annual tax credit allocation of the CCTCP on numerous occasions.<sup>99</sup> The CCTCP cap, which started at \$3 million annually, is currently set at \$21.9 million. The cap has been reached every fiscal year since FY 2001-2002.

The CCTCP expires June 30, 2016.<sup>100</sup>

### *Proposed Changes*

The PCB extends the expiration date of the Community Contribution Tax Credit Program to June 30, 2017, and provides \$11.2 million in funding for projects that provide homeownership opportunities for low-income and very-low-income households and \$2.1 million for all other projects during fiscal year 2016-2017.

## Florida's Defense Industry

### *Current Situation*

Florida is home to three of ten unified combatant commands, two of only four Navy deep water ports in the country with adjacent airfields, the military's only space launch facility on the east coast, the Marine Corps' only maritime prepositioning facility, and one of only three Navy Fleet Readiness Centers. The state also hosts several critical research, development, testing and evaluation centers. In addition, the Joint Gulf Range Complex connects test and training ranges that extend from Key West to northwest Florida and across the eastern Gulf of Mexico, and encompasses 180,000 square miles of Department of Defense-controlled airspace.<sup>101</sup>

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<sup>91</sup> ss. 212.08(5)(p)1.; 220.183 (1)(a) and (b); and 624.5105(1), F.S.

<sup>92</sup> See ss. 212.08(5)(p); 220.183; and 624.5105, F.S.

<sup>93</sup> ss. 220.183(1)(e) and (g); and 624.5105, F.S.

<sup>94</sup> s. 212.08(5)(p)1.b. and f., F.S.

<sup>95</sup> ss. 212.08(5)(p)1.e.; 220.183(1)(c); and 624.5105(1)(c), F.S.

<sup>96</sup> See supra note 5.

<sup>97</sup> Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, Community Contribution Tax Credits Extension, HB 311/SB 302, p. 19, January 26, 2015 Revenue Impact Results, <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2015/pdf/impact0126.pdf>.

<sup>98</sup> Chs. 84-356, 94-136, 2005-282, and 2014-38, Laws of Fla.

<sup>99</sup> See Chs. 94-136, 98-219, 99-265, 2005-282, 2006-78, and 2008-153, Laws of Fla. In 2008, the Legislature raised the cap to \$16.5 million for FY 2008-2009. The cap reverted back to \$14 million for subsequent fiscal years. See Ch. 2008-153, s. 35, Laws of Fla.

<sup>100</sup> Ch. 2014-038, s. 15 Laws of Fla.

<sup>101</sup> Enterprise Florida, *Florida Defense Factbook*, January 2013; can be found at: <http://www.enterpriseflorida.com/wp-content/uploads/Factbook-20133.pdf>; (last accessed on Mar. 5, 2015)

In 2011, Florida businesses generated \$13.6 billion in U.S. Department of Defense (DOD) contract awards, ranking the state 5th in the nation. The state is home to many of the nation's leading defense contractors and a large pool of highly skilled workers and veterans.<sup>102</sup>

*Federal Contract Overview*--The typical federal procurement process involves an agency identifying the goods and services it needs, determining the most appropriate method for purchasing those items, and carrying out an acquisition process. Businesses may serve as subcontractors for other businesses awarded federal contracts, known as "prime contractors."

According to the federal government, 168,312 contracts have been awarded to prime contractors by DOD and the National Aeronautics and Space Administration (NASA) from federal fiscal year 2012 through the current federal fiscal year for projects located in Florida. Combined, these contracts have a total value of more than \$35.5 billion.

There have been 7,062 subcontracts awarded through those 168,312 prime contracts, valued at more than \$8.3 billion. Of those, 6,013 subcontracts, valued at over \$7 billion, have been awarded to businesses located in Florida, which accounts for 85.1 percent percent of all subcontracts awarded by prime contractors who have received federal contracts for work to be done in Florida by DOD and NASA.<sup>103</sup>

### *Proposed Changes*

The PCB creates s. 288.1046, F.S., the Defense Works in Florida Incentive, which encourages defense contractors receiving federal contracts to select Florida-based subcontractors. This incentive provides certified businesses a reduction in their corporate income tax. The PCB defines the following terms, among others:

- Florida Small Business Subcontractor – A business entity that maintains its primary place of business in the state; has 250 or fewer employees, at least 75 percent of which are Florida residents; is awarded a subcontract from a Florida prime contractor; and has no subsidiary or affiliate business relationship to the prime contractor making the award.
- Qualified Subcontract Award – Qualified defense work subcontracted from a Florida prime contractor to a Florida small business subcontractor, which is executed in the state and valued at more than \$250,000. The term does not include subcontracts executed before July 1, 2015.

The PCB allows Florida prime contractors awarded a prime contract for qualified defense work to reduce its computed adjusted federal income under s. 220.13, F.S., by an amount equal to four percent of any qualified subcontract award it grants a Florida small business subcontractor divided by the apportionment factor described in s. 220.15, F.S. This has the effect of reducing the prime contractor's Florida-apportioned income by four percent of the qualified subcontract award.

To qualify for the incentive, a Florida prime contractor must apply to DEO and be certified that it is subject to chapter 220, has been awarded qualified defense work, and has awarded a qualified subcontract award of at least \$250,000. A Florida prime contractor may claim the incentive only for taxable years beginning on or after January 1, 2015.

Within 10 days of certifying an application, DEO is required to supply the Florida prime contractor with a letter of certification for each certified application, as well as a copy of such letter to DOR. Following certification, a Florida prime contractor may claim the incentive by applying separately to DEO for each qualified subcontract award it has made to a Florida small business subcontractor. Each application should contain documentation including copies of contracts, tax records, or employment records. For a multiyear qualified subcontract award, DEO must certify the full amount of the award in the year it was awarded; however, the Florida prime contractor may only claim the incentive in the taxable year in which payment was made to the Florida small business subcontractor.

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<sup>102</sup> Enterprise Florida, *Defense and Homeland Security*, <http://www.enterpriseflorida.com/industries/defense-homeland-security/> (last accessed on Mar. 3, 2015).

<sup>103</sup> United States Office of Management and Budget, *USASpending.gov*, <http://usaspending.gov/> (last accessed on Mar. 5, 2015).

The DEO is permitted to certify up to \$250 million in aggregate qualified subcontract awards for a single Florida prime contractor per tax year, and no more than \$2.5 billion in aggregate qualified subcontract awards for all applicants.

The PCB also amends s. 220.13, F.S., to allow the incentive to be included among the list of adjusted federal income subtractions allowed under current law.

The DEO is authorized to establish application, approval, and accountability processes. Additionally, DEO may consult Enterprise Florida, Inc., and the Florida Defense Support Task Force to administer this incentive program.

## 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>104</sup>

The federal tax credit provides credit for three types of expenses: qualified research expenses; basic research payments; and payments to energy research consortiums.<sup>105</sup>

Under current federal law, "qualified research expenses" include wages paid to in-house research staff, supplies used in research activities (not including land, improvements to land or certain depreciable property), and up to 65 percent of funds paid to contracted personnel for qualified research.<sup>106</sup> "Qualified research" includes research undertaken to discover technological information that is intended to be useful in the development of a new or improved business process, product, software, formula, invention or other business component that will be used by the company or which the company intends to sell, license, or lease.<sup>107</sup>

The federal tax credit for qualified expenses is an incremental tax credit because a company is only rewarded if it increases its research & development (R&D) spending as compared to its spending during a predetermined base period. The amount of the federal tax credit can be determined by three different methods, depending in part on how long the company has been in business. Under the basic formula, the tax credit is equal to 20 percent of the current tax year's qualified R&D expenses over the base amount, which is calculated using a ratio of qualified R&D expenses and gross receipts during the period of 1984 through 1988.<sup>108</sup> Newer companies can use simpler formulas that still compare current year R&D spending with past years.

Business entities that do not pay federal corporate income tax, such as S corporations and partnerships, are allowed to "pass-through" their federal R&D credits to shareholders or partners, based on these individuals' shares in such business entities.<sup>109</sup>

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<sup>104</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 May 24, 2011)

<sup>105</sup> 26 USC § 41(a)(1)

<sup>106</sup> 26 USC § 41(b).

<sup>107</sup> 26 USC § 41(d).

<sup>108</sup> 26 USC § 41(c).

<sup>109</sup> 26 USC § 41 (g).

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>110</sup> At \$6.6 billion, manufacturing companies claimed the largest portion of research tax credits.<sup>111</sup>

*Florida Tax Credit*--Section 220.194, F.S., authorizes a R&D tax credit against state corporate income taxes for businesses meeting the definition of a Qualified Target Industry pursuant to s. 288.106, F.S.. 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 statute relies on the definition from the federal R&D tax credit for determining eligible expenses.

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. Applications may be filed with DOR on or after March 20th for qualified research expenses incurred within the preceding calendar year, and credits shall be granted in the order in which completed applications are received.

During the application period beginning in 2014, the DOR received a total of 70 applications for \$18.8 million worth of credits. Of these, 25 received funding and 45 were rejected due to the cap having exceeded. All of the applications which received funding were filed within 9 minutes of the application window opening.<sup>112</sup>

### *Proposed Change*

The PCB increases the total amount of credits that may be annually awarded from \$9 million to \$23 million during calendar years 2016, 2017, and 2018. It also provides that in the event applications for more than the annual cap are received, the credits shall be distributed on a pro rata basis rather than in the order applications are received.

Credit eligibility is also restricted to businesses to in the following Qualified Target Industries:

- Manufacturing;
- Life Sciences;
- Infotech;
- Aviation & Aerospace;
- Homeland Security & Defense;
- Cloud IT;
- Marine Sciences;
- Materials Science;
- Nanotechnology.

## **Alcohol Related Taxes and Fees**

### **Alcoholic Beverage Vehicle License Fee**

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<sup>110</sup> Internal Revenue Service, Statistics of Income Division. Retrievable at <http://www.irs.gov/uac/SOI-Tax-Stats-Corporation-Research-Credit>. (last visited March 20, 2015)

<sup>111</sup> Ibid.

<sup>112</sup> DOR Tax Information Publication 15C01-02.

### *Current Situation*

Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, distributor (wholesaler), and vendor (retailer). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state "sales tax" is collected at the retail level.

Subsection 561.57(1), F.S., specifies that vendors may make deliveries away from their places of business of sales actually made at the licensed place of business. Section 561.57(2), F.S., allows deliveries by a vendor away from his or her place of business to be made only in vehicles which are owned or leased by the licensee or by an individual named on the licensee's application and approved by the Department of Business and Professional Regulation.

Subsection 561.57(3), F.S., specifies that a retail vendor may transport alcoholic beverages that have been purchased from a distributor by the vendor from the place of business of the distributor to the vendor's licensed premises or the vendor's storage facility. A vehicle permit is required to be attached to the vendor's vehicle to authorize the use of the vehicle for transporting the beverages.

This subsection further specifies that by acceptance of an alcoholic beverage license and the use of the vendor's permitted vehicles, the licensee agrees that the vehicle may be inspected and searched without a search warrant, for the purpose of determining compliance with provisions of the alcoholic beverage laws. Warrantless searches are authorized for employees of the division and also by sheriffs, deputy sheriffs, and police officers during business hours or other times the vehicle is being used to transport or deliver alcoholic beverages.

The statute currently authorizes the division to issue vehicle permits upon payment of a \$5 fee by the retail vendor. Vehicle permit holders are required to keep the permits in their vehicles. A permit is valid and does not expire unless the vendor disposes of the vehicle, or the vendor's alcoholic beverage license is transferred, canceled, not renewed, or is revoked by the division.

### *Proposed Changes*

The PCB eliminates the \$5 fee associated with obtaining a permit for a vehicle used by a vendor to transport alcoholic beverages.

### 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 PCB 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.

## **Insurance Premiums Tax on Title Insurance**

### *Current Situation*

Florida imposes an annual tax on premiums collected by insurance companies doing business in the state.<sup>113</sup> This tax applies to life, health, property and casualty, title insurance, and most other types of policies at a rate of 1.75 percent, with deductions allowed for reinsurance accepted, return premiums and assessments.<sup>114</sup> It applies to self-insurance funds at a rate of 1.6 percent.<sup>115</sup> It applies to annuities at a rate of 1 percent.<sup>116</sup> It applies to wet marine and transportation insurance at a rate of 0.75% of gross underwriting profit, defined as net premiums minus net losses paid.<sup>117</sup>

There are a number of credits allowed against insurance premiums tax liability. These include:

- 100 percent of corporate income tax paid pursuant to chapter 220, F.S.;<sup>118</sup>
- 15 percent of salaries paid by the company to its Florida-based employees;<sup>119</sup>
- 50 percent of a community contribution made pursuant to the Community Contribution Tax Credit Program for enterprise zones;<sup>120</sup> and
- 100 percent of donations made to eligible scholarship funding organizations pursuant to s. 1002.395.<sup>121</sup>

The sum of the credits granted for corporate income tax and employee salaries may not exceed 65 percent of the insurer's premium tax liability.<sup>122</sup>

*Title Insurance*--Title insurance companies insure owners of real property and others with an interest in real property against loss due to encumbrance, defective titles, invalidity, or adverse claim to title.<sup>123</sup> The Financial Services Commission, consisting of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture and Consumer Services,<sup>124</sup> must adopt a rule setting the rates charged by title insurance companies and determining the minimum portion of those premiums retained by the title insurer.<sup>125</sup> This percentage varies depending on the total coverage of the policy, and ranges from 30 percent to 40 percent.<sup>126</sup> The portion not retained by the title insurer goes to the title insurance agent.

Insurance premiums tax may not be imposed on any portion of a title insurance premium retained by a title insurance agent or agency.<sup>127</sup> Title insurers are required to demonstrate to the DEO by July 1, 2016

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<sup>113</sup> s. 624.509, F.S.  
<sup>114</sup> s. 624.509(1)(a), F.S.  
<sup>115</sup> s. 624.4625(4), F.S.  
<sup>116</sup> s. 624.509(1)(b), F.S.  
<sup>117</sup> s. 624.510, F.S.  
<sup>118</sup> s. 624.509(4), F.S.  
<sup>119</sup> s. 624.509(5), F.S.  
<sup>120</sup> s. 624.5105, F.S.  
<sup>121</sup> s. 624.51055, F.S.  
<sup>122</sup> s. 624.509(6)(a), F.S.  
<sup>123</sup> s. 624.608, F.S.  
<sup>124</sup> s. 20.121(3), F.S.  
<sup>125</sup> s. 627.782, F.S.  
<sup>126</sup> Rule 69O-186, F.A.C.  
<sup>127</sup> s. 624.509(8)(a), F.S.  
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that in the aggregate they have added a minimum of 600 Florida-based employees since this exemption was put in place in 2014 to provide proof to the Legislature of the effectiveness of the exemption. This exemption will expire December 31, 2017 unless the Legislature reenacts it.

### *Proposed Changes*

The PCB revises the expiration date of the exemption for portions of title insurance premiums retained by agents or agencies from December 31, 2017 to December 31, 2018.

## **Aviation Fuel Tax – Higher Education Reduction**

### *Current Situation*

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.<sup>128</sup> However, Florida law also provides for a refund or credit of the aviation fuel tax paid on fuel delivered to certain air carriers that met and continued certain job creation criteria after January 1, 1996.<sup>129</sup>

*Aviation Accreditation Board International*--The Aviation Accreditation Board International (AABI) is recognized by the Council for Higher Education Accreditation for its degree programs in aviation offered by colleges and universities in the United States and throughout the world.<sup>130</sup> The goals of the AABI are to:<sup>131</sup>

- stimulate collegiate aviation program excellence and self-improvement;
- establish uniform minimum educational quality standards; and
- increase the credibility, integrity, and acceptance of collegiate aviation programs within institutions of higher education and all aspects of the aviation community, to include industry, government, and the public-at-large.

There are 37 higher education institutions in the world that are accredited by the AABI, four of which are located in Florida.<sup>132</sup>

*Economic Impact of Aviation*--In Fiscal Year 2013-14, there were over 900 million gallons of aviation fuel purchased in Florida, resulting in approximately \$62 million in aviation fuel tax due.<sup>133</sup> According to the Florida Department of Transportation, there are 19 commercial service airports, 102 public-use general aviation airports, and 11 military aviation facilities in Florida.

### *Proposed Changes*

The PCB amends s. 206.9855, F.S., to provide an aviation fuel tax credit or refund for any college based in this state that is tax exempt under s.501(c)(3) of the Internal Revenue Code or any university based in this state that is accredited or has applied for accreditation by the AABI and offers a graduate program in aeronautical or aerospace engineering or offers flight training through a school of aeronautics or college of aviation and uses tax-paid aviation fuel for flight training through a school of aeronautics or college of aviation.

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<sup>128</sup> s. 206.9825, F.S. (Such fuel is not subject to taxes imposed by ss. 206.41(1)(d), (e), and (f) or 206.87(1)(b), (c), and (d), F.S., relating to motor fuel and diesel fuel, respectively.)

<sup>129</sup> See s. 206.9825(1)(a), F.S.

<sup>130</sup> Council for Higher Education Accreditation (CHEA), Summary of Recognition Status, AABI, March 15, 2013. CHEA is a private, nonprofit national organization of 3,000 degree-granting colleges and universities that coordinates accreditation activity.

<sup>131</sup> Aviation Accreditation Board International (AABI), Goals, available at: <http://www.aabi.aero/goals.html> (last visited March 21, 2015).

<sup>132</sup> AABI, Accredited Programs, available at: <http://www.aabi.aero/programs.html> (last visited March 21, 2015).

<sup>133</sup> DOR, Collections data, on file with House Finance & Tax Committee.

The PCB also creates a new distribution from sales tax to offset the impact of the exemption on the State Transportation Trust Fund.

## **Estate Tax Repeal**

### *Current Situation*

The federal government imposes a tax on the estate of a decedent for the privilege of transferring property at death, known as the "estate tax."<sup>134</sup> In general, the tax is calculated by assessing the total fair market value of all property owned or controlled by the decedent at the time of death,<sup>135</sup> the "gross estate," and subtracting allowable deductions<sup>136</sup> to determine the "taxable estate." The value of lifetime taxable gifts is added to the "taxable estate" and the tax is computed based upon the combined amount, minus the applicable exclusion amount.<sup>137</sup>

Prior to 2005, Florida also imposed an estate tax "upon the transfer of the estate of every person who, at the time of death, was a resident of this state . . . ."<sup>138</sup> Florida also levied an estate tax on every person who at the time of death was not a resident of this state, but was a resident of the United States, for the transfer of property situated in Florida.<sup>139</sup> The Florida Constitution prescribes, in part, the parameters for the state's imposition of the estate tax, by prohibiting any estate tax upon Florida residents in excess of the amount that may be credited upon or deducted from the federal estate tax or another state's estate tax.<sup>140</sup> Thus the tax on the estate of a Florida decedent did not increase the overall estate tax, but instead apportioned the total estate tax between the federal government and the state. The Florida estate tax was known as a "pick-up" tax, which only "picks-up" taxes that would have otherwise been paid to the federal government.

While the Florida estate tax provisions are still set forth in the Florida statutes,<sup>141</sup> Florida does not currently have a state level estate tax. In 2001, Congress passed the Economic Growth and Tax Relief Reconciliation Act of 2001.<sup>142</sup> That federal legislation phased out over a five year period, starting in 2002, the credit for state death taxes. Because Florida's estate tax is coupled or tied to the federal estate tax, the change effectively eliminated the state estate tax. Unless Congress acts to reinstate the credit for state taxes or the Florida Constitution is amended to allow for imposition of the tax independently of the federal credit, Florida may not reinstate an estate tax.

Currently, there are limited situations where estate tax liability is still due in Florida, relating to estates that were taxable before the federal law changes took effect. The DOR has identified the following scenarios where estate tax liability may still be due in Florida:

- The decedent's estate entered into an installment agreement at the federal level;
- The estate is still in litigation;
- The decedent was not a resident of Florida but owned Florida property and never filed an estate tax return in Florida. Any future transfer of the Florida property would come up on the title search as taxes not paid;
- A Florida resident who marries a citizen of another country may create a Qualified Domestic Trust (QDOT) for estate planning purposes. If the non-citizen is the beneficiary of the QDOT,

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<sup>134</sup> I.R.C. §§ 2001-2801.

<sup>135</sup> The gross estate also includes certain life insurance proceeds, the value of certain annuities, the value of certain property transferred within three years of death, and trusts or other interests in which the decedent held certain powers.

<sup>136</sup> Allowable deductions include the marital deduction, charitable deduction, mortgages and debt, administration expenses of the estate, and losses during estate administration.

<sup>137</sup> The applicable exclusion amount for estates of decedents dying in 2015 is \$5,430,000.

<sup>138</sup> s. 198.02, F.S.

<sup>139</sup> s. 198.03, F.S.

<sup>140</sup> FLA. CONST. art. VII, s. 5(a).

<sup>141</sup> ch. 198, F.S.

<sup>142</sup> Pub. L. 107-16 (June 7, 2001); 115 Stat. 38.

any property held in the QDOT is not taxable until the property is distributed out of the trust or the beneficiary dies.

### *Proposed Changes*

The PCB repeals the estate tax from Florida law. The PCB provides that only current estate tax liabilities (pre-2005 decedents) will be collected, and an estate that overpaid estate taxes may make a refund claim, subject to current time limitations. As a conforming change, the proposal retains a requirement for circuit court judges to report the names of certain decedents to the Agency for Health Care Administration.

#### B. SECTION DIRECTORY:

- Section 1. Amending s. 196.161(1), F.S., to prohibit a lien from being filed against certain homestead properties under certain circumstances.
- Section 2. Amending s. 196.173(2), F.S., to authorize servicemembers who receive a homestead exemption and who are deployed in certain military operations to receive an additional ad valorem tax exemption.
- Section 3. Providing a deadline for claiming tax exemptions for qualifying military deployments during the 2014 calendar year.
- Section 4. Amending s. 196.202(1), F.S., to increase the property tax exemption for residents who are widows, widowers, blind, or totally and permanently disabled.
- Section 5. Amending s. 202.12(1), F.S., to reduce the tax rate applied to the sale of communications services.
- Section 6. Amending s. 202.12001, F.S., to make conforming changes as a result of the rate reductions in section 7 of this act.
- Section 7. Amending s. 202.18(2), F.S., to revise the allocation of tax revenues received from the communications services tax; provide an effective date.
- Section 8. Amending s. 202.27(1), F.S., to authorize dealers of communications services to use an alternative-period basis for filing and remitting taxes.
- Section 9. Amending s. 202.28, F.S.; to authorize the DOR to grant a portion of the collection allowance under specified circumstances.
- Section 10. Providing applicability of amendments to s. 202.27, F.S., and 202.28, F.S., authorizing CST dealers to use an alternative-period basis and allowing for a retention of a partial collections allowance.
- Section 11. Amending s. 203.001, F.S., to make conforming changes as a result of the rate reductions to CST.
- Section 12. Provides for the applicability of the CST rate reduction.
- Section 13. Amending s. 206.9855, F.S., to provide an excise tax exemption for aviation fuel delivered to certain universities that provide flight training and degrees in aviation.
- Section 14. Amending s. 212.20(6), F.S., to revise the distributions of tax revenues received from the sales and use tax, communications services tax, and gross receipts tax; provide an effective date.

- Section 15. Amending s. 212.02(29) and (32), F.S., to redefine the terms "livestock" and "agricultural production".
- Section 16. Amending s. 212.08(3), (5), (7), F.S., providing for sales tax exemptions relating to agricultural materials, community contributions, school concessions and book fairs, college textbooks, and machinery and equipment used by metal recyclers.
- Section 17. Authorizing the executive director of the DOR to adopt emergency rules to implement sales tax exemptions created in s. 212.08(7), F.S.
- Section 18. Amending s. 212.031(1), F.S., to reduce the tax levied on rental or license fees charged for the use of real property.
- Section 19. Amending s. 212.04(2), F.S., to exempt from the sales and use tax admissions and membership fees for gun clubs; provide definitions.
- Section 20. Repealing ch. 198, F.S., relating to estate taxes.
- Section 21. Amending s. 72.011, F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 22. Amending s. 95.091(3), F.S., to make conforming changes as a result of the repeal of ch. 198, F.S.
- Section 23. Amending s. 213.015(3), (6), and (11), F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 24. Amending s. 213.05, F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 25. Amending s. 213.053(1) and (8), F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 26. Amending s. 213.21(2), F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 27. Amending s. 213.285, F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 28. Amending s. 215.26(2), F.S., to make confirming changes as a result of the repeal of ch. 198, F.S.
- Section 29. Creating s. 733.7011, F.S., to require circuit judges to report monthly the names of certain decedents to the Agency for Health Care Administration.
- Section 30. Providing legislative intent with respect to the estates of certain decedents; provides applicability of sections related to the repeal of the estate tax.
- Section 31. Requiring the DOR to maintain certain estate tax forms for a specified period.
- Section 32. Creating s. 288.1046, F.S., establishing the Defense Works in Florida Incentive.
- Section 33. Amending s. 220.13(1), F.S., to revise the definition of the term "adjusted federal income" to provide for a reduction in taxable income equal to a specified amount of qualified subcontract awards certified by the DEO.
- Section 34. Amending s. 220.183(1) and (5), F.S., to extend the expiration date of the community contribution tax credit against the corporate income tax.

- Section 35. Amending s. 624.5105(1) and (6), F.S., to extend the expiration date of the community contribution tax credit against the insurance premium tax.
- Section 36. Reenacting s. 220.02(8), F.S., relating to legislative intent for the income tax code, to incorporate the amendment made to s. 220.183, F.S., in a reference thereto.
- Section 37. Reenacting s. 220.183(1)(g), F.S., relating to the community contribution tax credit, to incorporate the amendments made to ss. 212.08 and 624.5105, F.S., in references thereto.
- Section 38. Reenacting s. 377.809(4)(a), F.S., relating to the Energy Economic Zone Pilot Program, to incorporate the amendments made to ss. 212.08, 220.183, and 624.5105, F.S., in references thereto.
- Section 39. Amending s. 220.196(2), F.S., to increase the total amount of research and development tax credits.
- Section 40. Amending s. 220.1845(2), F.S., to increase the total amount of contaminated site rehabilitation tax credits for 1 year.
- Section 41. Amending s. 376.30781(4) and (5), 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; providing a conforming change.
- Section 42. Amending s. 564.06(4), F.S., to provide that cider may be made from pears for the purposes of taxation.
- Section 43. Providing 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; providing an appropriation.
- Section 44. Providing 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; providing an appropriation.
- Section 45. Providing 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; providing and appropriation.
- Section 46. Amending s. 624.509(8), F.S., to provide an exemption to the insurance premium tax on the portion of the title insurance premium retained by a title insurance agent or agency; providing expiration of the exemption.
- Section 47. Amending s. 561.56, F.S., to delete a vehicle fee for permits obtained by licensed vendors of alcoholic beverages.
- Section 48. Providing 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 \$568,185 in nonrecurring General Revenue to the Department of Revenue, of which \$356,410 is for the 2014-2014 fiscal year.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS below.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Most Florida citizens, both businesses and individuals, will see a reduction in their phone, cable, or satellite bills.

Reduction in commercial rental taxes will slightly reduce the cost of businesses renting property in Florida.

The agricultural sales tax exemption should reduce the cost of agricultural activities in Florida. Exemptions for concessions and school book fairs will have a positive impact on parents in Florida. The sales tax exemption for textbooks and instructional materials will provide cost savings for college and university students. The exemption for admissions to gun clubs will have a positive impact on gun clubs and gun club members.

Florida residents who are widows, widowers, blind, or totally and permanently disabled will likely pay less property tax.

Companies that make contributions to low-income housing and certain other projects, clean up and redevelop polluted lands, award subcontracts to Florida defense companies, and engage in research and development will pay less in corporate income and sales taxes.

Title insurance companies and insurance companies that make contributions to low-income housing and certain other projects will pay lower insurance premiums taxes.

Producers of pear cider will pay lower taxes, and may pass the savings on to consumers.

Individuals that participate in the tax holidays will benefit from no sales tax on purchases during those periods. Further, eligible small businesses may experience increased sales during the holiday.

Florida residents who utilize the alternative process for retaining homestead status will benefit from lower ad valorem taxes in Florida by maintaining their homestead exemption and assessment limitations.

Eligible deployed military servicemembers will save sales tax on certain motor vehicles and save ad valorem tax as a result of this bill.

Eligible higher educational institutions will see reduced costs for the aviation fuel that they use.

D. FISCAL COMMENTS:

The estimates in the table on the next page are provided in part by the Revenue Estimating Conference and in part by staff. The total impact of the bill in fiscal year 2015-2016 is -\$642.5 million (-\$640.0 million recurring) of which -\$607.5 million (-\$576.0 million recurring) is on General Revenue, and -\$35.0 million (-\$64.0 million recurring) is on local government. The impact on state trust funds is negative and insignificant. Several measures in the bill result in further, non-recurring revenue impacts in years beyond fiscal year 2015-2016. The table below indicates the total impacts and the years during which those impacts will occur. Adding nonrecurring cash impacts beyond fiscal year 2015-2016 to the first year impacts brings the total cash impact of the bill to -\$689.2 million, of which -\$652.8 million is on General Revenue, and -\$36.5 million is on local government.

**Fiscal Year 2015-16 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>Communication Serv Tax</u> : Rate Cut of 3.6%	(431.6)	(470.8)	-	-	0.3	0.3	(431.3)	(470.5)
<u>Sales Tax</u> : Agriculture-related Exemptions	(10.3)	(11.0)	(*)	(*)	(2.1)	(2.4)	(12.4)	(13.4)
<u>Sales Tax</u> : Back-to-School Holiday	(36.0)	-	(*)	-	(8.0)	-	(44.0)	-
<u>Sales Tax</u> : College Textbooks	(35.7)	(35.7)	(*)	(*)	(8.0)	(8.0)	(43.7)	(43.7)
<u>Sales Tax</u> : Commercial Rent Rate Cut of 0.2%	(19.6)	(47.0)	(*)	(*)	(2.5)	(6.1)	(22.1)	(53.1)
<u>Sales Tax</u> : Gun Club Membership Fees	(1.0)	(1.0)	(*)	(*)	(0.2)	(0.2)	(1.2)	(1.2)
<u>Sales Tax</u> : July 4th Holiday	(2.6)	-	(*)	-	(0.6)	-	(3.2)	-
<u>Sales Tax</u> : Motor Vehicles/Military Deployed Overseas	(0.7)	(0.7)	(*)	(*)	(0.1)	(0.1)	(0.8)	(0.8)
<u>Sales Tax</u> : Machinery/Equipment Used by Metal Recyclers	(0.7)	-	(*)	-	(0.2)	-	(0.9)	-
<u>Sales Tax</u> : Small Business Saturday Tax Holiday	(32.9)	-	(*)	-	(7.4)	-	(40.3)	-
<u>Sales Tax</u> : School Book Fairs	(2.3)	(2.3)	(*)	(*)	(0.5)	(0.5)	(2.8)	(2.8)
<u>Sales Tax</u> : School Concessions	(1.5)	(1.5)	(*)	(*)	(0.2)	(0.2)	(1.7)	(1.7)
<u>Corp Inc Tax</u> : Brownfield Credits	(12.0)	-	-	-	-	-	(12.0)	-
<u>Corp Inc Tax</u> : Defense Contractors/ Fla Subcontracts Credit	(5.5)	(5.5)	-	-	-	-	(5.5)	(5.5)
<u>Corp Inc Tax</u> : Research & Development Credits	(14.0)	-	-	-	-	-	(14.0)	-
<u>Ad Valorem</u> : Deployed Service Members/ Exemption Update	-	-	-	-	(0.2)	(0.2)	(0.2)	(0.2)
<u>Ad Valorem</u> : Widows/Disabled	-	-	-	-	-	(41.3)	-	(41.3)
<u>Ad Valorem</u> : Homestead Denial Alternative	-	-	-	-	(5.3)	(5.3)	(5.3)	(5.3)
<u>Aviation Fuel Tax</u> : Higher Ed Reduction	(0.2)	(0.2)	-	-	-	-	(0.2)	(0.2)
<u>Bev Tax</u> : Pear Cider Tax Rate Reduction	(0.3)	(0.3)	-	-	-	-	(0.3)	(0.3)
<u>Permit Fee</u> : Application Fee/Permit to Transport Alcohol	-	-	(*)	(*)	-	-	(*)	(*)
<u>Tax Holidays</u> : Appropriations(2)	(0.57)	-	-	-	-	-	(0.57)	-
<b>FY 2015-16 Total</b>	<b>(607.5)</b>	<b>(576.0)</b>	<b>-</b>	<b>-</b>	<b>(35.0)</b>	<b>(64.0)</b>	<b>(642.5)</b>	<b>(640.0)</b>
<b>Non-recurring Impacts After FY 2015-16</b>	<b>Cash</b>		<b>Cash</b>		<b>Cash</b>		<b>Cash</b>	
<u>Insurance Prem Tax</u> : Title Insurance (FYs 2018-19 and 2019-20)	(4.5)	-	-	-	-	-	(4.5)	-
<u>Sales/Corporate</u> : Community Contribution Tax Credits (FY 2016-17)	(12.0)	-	(*)	-	(1.3)	-	(13.3)	-
<u>Corp Inc Tax</u> : Research & Development Credits (FYs 2016-17 and 2017-18)	(28.0)	-	-	-	-	-	(28.0)	-
<u>Sales Tax</u> : Machinery/Equipment Used by Metal Recyclers (FY 2016-17)	(0.8)	-	-	-	(0.2)	-	(1.0)	-
<b>Bill Total</b>	<b>(652.8)</b>	<b>(576.0)</b>	<b>-</b>	<b>-</b>	<b>(36.5)</b>	<b>(64.0)</b>	<b>(689.2)</b>	<b>(640.0)</b>

\* Impact less than \$50,000.

(1) Ad valorem tax impacts assume current tax rates.

(2) The appropriations for the July 4th and Back-to-School Holidays are for FY 2014-2015, with carry over into 2015-16.

### 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 PCB, by expanding current ad valorem tax revenues, may reduce local government's authority to raise revenue. If the PCB does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

#### B. RULE-MAKING AUTHORITY:

DOR already has general rule-making authority to create rules governing the taxes and exemptions it administers.<sup>143</sup> The PCB authorizes DOR to adopt emergency rules to implement the changes to the sales tax exemptions in s. 212.08(7), F.S. The PCB specifies that emergency rules are effective for 6 months after adoption and may be renewed during pendency of procedures to adopt permanent rules. The section providing emergency rulemaking authority expires July 1, 2018.

DOR will make rules specifying the record-keeping requirements necessary for the textbook exemption.

DOR is given rule authority to administer the section creating a corporate income tax reduction for Florida Prime Contractors.

DOR is given emergency rule authority to administer the back to school sales tax holiday, the small business sales tax holiday, and the 4<sup>th</sup> of July sales tax holiday.

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

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>143</sup> See ss. 212.17(6), 212.18(3), 213.06(1) F.S.