

HB 311

2011

1                   A bill to be entitled  
2       An act relating to local business taxes; amending s.  
3       205.022, F.S.; defining the term "independent contractor";  
4       creating s. 205.066, F.S.; exempting an individual  
5       engaging in or managing a business in an individual  
6       capacity as an employee from requirements related to local  
7       business taxes; specifying that an independent contractor  
8       is not an employee; prohibiting a local governing  
9       authority from holding an exempt employee liable for the  
10      failure of a principal or employer to comply with certain  
11      obligations related to a local business tax or requiring  
12      an exempt employee to take certain actions related to a  
13      local business tax; prohibiting a local governing  
14      authority from requiring a principal or employer to  
15      provide personal or contact information for exempt  
16      individuals in order to obtain a local business tax  
17      receipt; amending s. 205.194, F.S.; deleting obsolete  
18      language; deleting a requirement that the Department of  
19      Business and Professional Regulation provide certain  
20      professional regulation information to local officials who  
21      issue business tax receipts; deleting a provision  
22      prohibiting a local official who issues business tax  
23      receipts from renewing a license under certain  
24      circumstances; providing an effective date.

25  
26   Be It Enacted by the Legislature of the State of Florida:  
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28       Section 1. Subsection (9) is added to section 205.022,  
29 Florida Statutes, to read:

30       205.022 Definitions.—When used in this chapter, the  
31 following terms and phrases shall have the meanings ascribed to  
32 them in this section, except when the context clearly indicates  
33 a different meaning:

34       (9) (a) "Independent contractor" means a person who meets  
35 at least four of the following criteria:

36       1. The independent contractor maintains a separate  
37 business with his or her own work facility, truck, equipment,  
38 materials, or similar accommodations;

39       2. The independent contractor holds or has applied for a  
40 federal employer identification number, unless the independent  
41 contractor is a sole proprietor who is not required to obtain a  
42 federal employer identification number under state or federal  
43 regulations;

44       3. The independent contractor receives compensation for  
45 services rendered or work performed and such compensation is  
46 paid to a business rather than to an individual;

47       4. The independent contractor holds one or more bank  
48 accounts in the name of the business entity for purposes of  
49 paying business expenses or other expenses related to services  
50 rendered or work performed for compensation;

51       5. The independent contractor performs work or is able to  
52 perform work for any entity in addition to or besides the  
53 employer at his or her own election without the necessity of  
54 completing an employment application or process; or

55       6. The independent contractor receives compensation for

56 work or services rendered on a competitive-bid basis or  
57 completion of a task or a set of tasks as defined by a  
58 contractual agreement, unless such contractual agreement  
59 expressly states that an employment relationship exists.

60 (b) If four of the criteria listed in paragraph (a) are  
61 not met, an individual may still be presumed to be an  
62 independent contractor based on full consideration of the nature  
63 of the individual situation with regard to satisfying any of the  
64 following conditions:

65 1. The independent contractor performs or agrees to  
66 perform specific services or work for a specific amount of money  
67 and controls the means of performing the services or work.

68 2. The independent contractor incurs the principal  
69 expenses related to the service or work that he or she performs  
70 or agrees to perform.

71 3. The independent contractor is responsible for the  
72 satisfactory completion of the work or services that he or she  
73 performs or agrees to perform.

74 4. The independent contractor receives compensation for  
75 work or services performed for a commission or on a per-job  
76 basis and not on any other basis.

77 5. The independent contractor may realize a profit or  
78 suffer a loss in connection with performing work or services.

79 6. The independent contractor has continuing or recurring  
80 business liabilities or obligations.

81 7. The success or failure of the independent contractor's  
82 business depends on the relationship of business receipts to  
83 expenditures.

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84           Section 2. Section 205.066, Florida Statutes, is created  
85 to read:

86           205.066 Exemptions; employees acting in an individual  
87 capacity.—

88           (1) An individual who engages in or manages a business,  
89 profession, or occupation in an individual capacity as an  
90 employee of another person is not required to apply for an  
91 exemption from a local business tax, pay a local business tax,  
92 or obtain a local business tax receipt. An individual acting in  
93 the capacity of an independent contractor is not an employee.

94           (2) An employee may not be held liable by any local  
95 governing authority for the failure of a principal or employer  
96 to apply for an exemption from a local business tax, pay a local  
97 business tax, or obtain a local business tax receipt. An  
98 individual exempt under this section may not be required by any  
99 local governing authority to apply for an exemption from a local  
100 business tax, otherwise prove his or her exempt status, or pay  
101 any tax or fee related to a local business tax.

102           (3) A principal or employer who is required to obtain a  
103 local business tax receipt may not be required by a local  
104 governing authority to provide personal or contact information  
105 for individuals exempt under this section in order to obtain a  
106 local business tax receipt.

107           Section 3. Section 205.194, Florida Statutes, is amended  
108 to read:

109           205.194 Prohibition of local business tax receipt without  
110 exhibition of state license or registration.—

111           (1) Any person applying for or renewing a local business

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112 tax receipt ~~for the period beginning October 1, 1985,~~ to  
113 practice any profession regulated by the Department of Business  
114 and Professional Regulation, or any board or commission thereof,  
115 must exhibit an active state certificate, registration, or  
116 license, or proof of copy of the same, before such local receipt  
117 may be issued. ~~Thereafter, only persons applying for the first~~  
118 ~~time for a receipt must exhibit such certification,~~  
119 ~~registration, or license.~~

120 ~~(2) The Department of Business and Professional Regulation~~  
121 ~~shall, by August 1 of each year, supply to the local official~~  
122 ~~who issues local business tax receipts a current list of~~  
123 ~~professions it regulates and information regarding those persons~~  
124 ~~for whom receipts should not be renewed due to the suspension,~~  
125 ~~revocation, or inactivation of such person's state license,~~  
126 ~~certificate, or registration. The official who issues local~~  
127 ~~business tax receipts shall not renew such license unless such~~  
128 ~~person can exhibit an active state certificate, registration, or~~  
129 ~~license.~~

130 ~~(2)(3)~~ This section shall not apply to s. 489.113, s.  
131 489.117, s. 489.119, s. 489.131, s. 489.511, s. 489.513, s.  
132 489.521, or s. 489.537.

133 Section 4. This act shall take effect July 1, 2011.