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# Finance and Tax Subcommittee

Wednesday, September 25, 2013

1:00 p.m.

Morris Hall

MEETING PACKET

# The Florida House of Representatives

## Finance and Tax Subcommittee



**Will Weatherford**  
**Speaker**

**Ritch Workman**  
**Chair**

### **AGENDA**

September 25, 2013

1:00 p.m.

Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. Review of the Local Business Tax
- IV. Review of Remote Commerce Taxation in Florida
- V. Closing Remarks and Adjournment



# **LOCAL BUSINESS TAXES - REVIEW OF STRUCTURE AND RECENT PROPOSED LEGISLATION**

Finance and Tax Subcommittee  
Florida House of Representatives  
Rep. Ritch Workman, Chair  
September 25, 2013

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# LOCAL BUSINESS TAXES: THE BASICS

- ✘ Local business taxes are *NOT* regulatory license fees
- ✘ Chapter 205, F.S., authorizes counties and municipalities to levy the tax
  - + Local option
  - + Self administered

# LOCAL BUSINESS TAXES: THE NUMBERS

- ✘ Who is levying?
  - + 30-40 counties
  - + 280-300 municipalities
  
- ✘ How much revenue (FY 2010-11)?
  - + Counties = \$33.5 million
  - + Municipalities = \$137.2 million

# LOCAL BUSINESS TAXES: USAGE

- ✘ A **general revenue source** for local governments
  - + May be used for any legitimate local government purpose
  - + Includes debt service/bonding of the revenue stream
  
- ✘ Use for economic development is expressly provided for

# LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Based upon “reasonable classifications.”
- ✘ Uniform throughout any class.
- ✘ Classification schemes and rates vary greatly across jurisdictions.



# LOCAL BUSINESS TAXES: EXAMPLES

	<u>Tallahassee</u>	<u>Monroe County</u>	<u>Escambia County</u>	<u>Palm Beach</u>	<u>Tampa</u>
<b># of Classifications:</b>	50	42	197	116	721
<b>Rates:</b>					
<b>Highest</b>	No flat cap- variable	\$812.50	\$26.25	\$1,264.00	\$2,170.53
<b>Lowest</b>	\$ 30.00	\$10.00	\$26.25	\$27.50	\$13.89
<b>Examples:</b>					
<b>Barber Shop</b>	\$9.45 per 1,000 sq. ft. plus \$3.68 per worker	\$225.00	\$26.25	\$139.50	\$115.76
<b>Retail Store</b>	\$9.45 per 1,000 sq. ft. plus \$0.74 per \$1,000 of inventory above \$5,000	\$30-\$500 based on # employees	\$26.25	\$365-\$1,264 based on sq. footage	varies- e.g. grocery stores \$115.76- \$2,170.53 based on sq. footage
<b>Professional Office/Business</b>	\$9.45 per 1,000 sq. ft. plus \$3.68 per nonprofessional worker	\$225.00	\$26.25	\$365.00	varies- e.g. administrative offices \$217.04-\$434.10 based on # of workers

# LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Jurisdictions have **limited ability to restructure** their tax
  - + 1972--State authorized counties and municipalities to levy a local business tax
  - + 1980--Certain rate increases permitted based upon the rates then in effect
  - + 1986--Miami-Dade, Broward, Monroe and Collier counties allowed to increase their rates by 50%
  - + 1993--Business reclassification and rate resets allowed following local equity study commissions. Completed by October 1, 1995. Subsequent rate increases were limited
  - + 2007--Certain municipalities allowed to restructure, if done by October 1, 2008

# LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Today, classification structures for existing taxes are locked in. Rate changes are restricted.
- ✘ Jurisdictions that underwent earlier reclassifications may, every other year, increase or decrease tax rates by up to 5 percent.
  - + Increases must be enacted by at least a majority plus one vote of the governing body.

# LOCAL BUSINESS TAXES: PARAMETERS

- ✘ Beginning October 1, 1995, a jurisdiction that has not adopted a local business tax is permitted to adopt one.
  
- ✘ Equity study commission required.
  
- ✘ Tax rate structure:
  - + Must be reasonable
  - + Based on structure in certain adjacent local governments

# LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Nonprofit, customary religious, charitable, or educational activities
- ✘ Optional partial exemption for businesses located in enterprise zones
- ✘ Certain employees of businesses that are required to pay a local business tax

# LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Delivery and transportation of tangible personal property by a business that is otherwise required to pay a local business tax may not be charged a separate local business tax for such delivery or transportation service
- ✘ Certain nonresident persons regulated by the Department of Professional Regulation
- ✘ Persons engaged in specified farming activities
- ✘ Certain disabled persons, the aged, and widows with minor dependents

# LOCAL BUSINESS TAXES: EXEMPTIONS

- ✘ Disabled veterans of any war or their un-remarried spouses
- ✘ Charitable, religious, fraternal, youth, civic, service, or other similar organization that makes occasional sales or engages in fundraising projects that are performed exclusively by the members
- ✘ Certain mobile home setup operations

# LOCAL BUSINESS TAXES: CONNECTION TO REGULATORY LICENSING REQUIREMENTS

- ✘ Any person applying for or renewing a local business tax receipt who is regulated by:
  - + The Department of Business and Professional Regulation
  - + The Florida Supreme Court, or
  - + Any other state regulatory agency, including any board or commission thereof,
  
- ✘ Must exhibit an active state certificate, registration, or license, before receiving a local business tax receipt.



# LOCAL BUSINESS TAXES: CONNECTION TO REGULATORY LICENSING REQUIREMENTS

- ✘ Similar requirements for:
  - + Pharmacies and pharmacists,
  - + Assisted living facilities,
  - + Pest control,
  - + Health studios,
  - + Sellers of travel, and
  - + Telemarketing businesses.

# **LOCAL BUSINESS TAXES: HB 1063 (2012)**

- ✘ Prohibited any increases in tax rates beginning in local FY 2012-13; and
- ✘ Phased out the tax over six years beginning in local FY 2013-14

# LOCAL BUSINESS TAXES: HB 1063 (2012)

## Grandfathering

- ✘ Option for certain governments to continue levying taxes, if local business taxes were at least 25% of their total tax revenue in FY 2012-13.
  - + Governments opting to continue levying could not increase their property tax rates above those levied in local FY 2012-13, unless they discontinued their local business tax.

# LOCAL BUSINESS TAXES: HB 1063 (2012)

## Debt Protection

- ✘ Certain governments who have expressly pledged their local business tax as security for debt may continue to levy their tax until such debt is paid off.
  - + The debt pledge must have been an express and separate pledge of local business taxes to qualify.

# LOCAL BUSINESS TAXES: HB 7109 (2013)

## Overarching purpose

- ✦ Replace the current local business tax structure in ch. 205, F.S., with a simplified version of the tax that is more consistent across various business types and among taxing jurisdictions. Key elements were:
  1. Uniform classification system.
  2. Flexible rate structure.
  3. Grandfathering certain local taxing jurisdictions under specified circumstances.
  4. No “overlap” of city and county taxes.
  5. Continuation of local administration of the tax.
  6. Transition to new structure October 1, 2014, allowing taxing jurisdictions to replace the revenues raised under the prior system.

# LOCAL BUSINESS TAXES: HB 7109 (2013)

## × Three Classifications:

- + Less than 2,500 square feet
- + Between 2,500 square feet and 10,000 square feet; and
- + More than 10,000 square feet

# LOCAL BUSINESS TAXES: HB 7109 (2013)

- ✘ Rate Structure would “link” classifications:
  - + Middle classification can have rate equal to, but no more than 3 times the small size classification.
  - + Large classification can have rate equal to, but no more than 3 times the middle size classification.
- ✘ Beginning in FY 2016-17, could raise rates every other year by up to 5 percent with 2/3 majority vote.
- ✘ Allowed for natural growth of revenue.

## LOCAL BUSINESS TAXES: HB 7109 (2013)

- ✘ Grandfathering Provisions:
  - + Outstanding Bonds or Certificates
  - + Jurisdictions with Extraordinary Reliance on the Tax



## **LOCAL BUSINESS TAXES: HB 7109 (2013)**

- ✘ County taxes could be levied only in unincorporated portions of the county.

# LOCAL BUSINESS TAXES: HB 7109 (2013)

- ✘ Most of the administrative processes in current law were retained.
- ✘ Exceptions:
  - + The tax initially and any future rate increases require two-thirds majority of the governing body of the taxing jurisdiction.
  - + City could no longer collect the tax on behalf of the county.

# LOCAL BUSINESS TAXES: CONCLUSION

Questions?





Finance & Tax Subcommittee  
Florida House of Representatives  
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**REMOTE COMMERCE TAXATION:  
THE ISSUE AND POSSIBLE RESPONSES**

# THE ISSUE

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- ✘ Taxable sales over the internet are growing rapidly
- ✘ Tax due under current law is often not collected
  - + If seller doesn't collect, buyer is legally obligated to remit
  - + Difficult to enforce against individuals
- ✘ **Several hundred million dollars** in lost tax revenue to Florida annually

# WHY AREN'T COLLECTIONS MADE?

## × Sellers

- + U.S. Supreme Court decisions prevent states from compelling many remote sellers to collect and remit

## × Florida Buyers

- + Don't know the law, or
- + No fear of being caught



# “PHYSICAL PRESENCE” AND NEXUS

- ✘ U.S. Supreme Court—1992 *Quill Corp v. North Dakota*
  - + Seller can't be compelled to collect unless it has **physical presence** within the state
    - ✘ This is the required connection to a state (“Nexus”)
  - + Absent nexus, requiring sellers to collect would unduly burden interstate commerce—**violating “Dormant” Commerce Clause of U.S. Constitution**
    - ✘ Regulation of interstate commerce is exclusive power of Congress
- ✘ U.S. Congress could change this if they so desire

# STATE RESPONSES

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- ✘ States have responded in several ways:
  - + Multi-state collective effort
  - + Individual approaches
  - + Trying to get Congress to act

# STREAMLINED SALES & USE TAX AGREEMENT (SSUTA)

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- ✘ Multistate Compact—Active since 2005
- ✘ Joining requires state to simplify sales tax code
  - + Subject to annual review/approval
- ✘ Retailers *volunteer* to remit on sales into member states
- ✘ 22 member states, 2 associate member states; over 1,800 dealers; annual collections through the compact = \$220 million (CY 2011).

# “CLICK-THROUGH” NEXUS LAWS

- ✘ Creates a presumption that an out-of-state retailer has nexus if:
  - + Third party in-state entities refer business to the out-of-state retailer
  - + Usually above a certain threshold of sales annually
- ✘ Websites based in Florida with links for customers to “click-through” to retailers
- ✘ Industry has often responded dramatically

## “CLICK-THROUGH” NEXUS LAWS (CONT.)

- ✘ In most states, retailers severed their relationships with affiliates
- ✘ In New York industry challenged the law in court while remitting tax
- ✘ New York Court of Appeals upheld the law. Amazon has appealed to U.S. Supreme Court
  - + Supreme Court scheduled to decide by October 23<sup>rd</sup> whether to hear the case

# SUBSIDIARY/AFFILIATE NEXUS LAWS

- ✘ Other variations try to establish nexus for remote sellers via their corporate relationships
  - + Same trademarks & similar names
  - + In-state agents advertising or assisting with sales
  - + Distribution facilities or warehouses
  - + Installation and repair agents
  - + Member of group of corporations, one member of which has nexus

# ENCOURAGING CONGRESS TO ACT

- ✘ U.S. Senate passed S. 743: *Marketplace Fairness Act of 2013* on May 6, 2013
  - + Referred to House Committee on the Judiciary, not scheduled for hearing
  - + House companion *H.R. 684* is also in House Judiciary
- ✘ Would allow states to compel remote sellers to collect ***if states first simplify their sales tax codes***
  - + Florida would need to enact legislative changes before beginning to collect
- ✘ Support has been growing, but the legislation remains contentious

# 2013 PROPOSED LEGISLATION IN FLORIDA

- ✘ HB 505 proposed to conform Florida's sales tax to the Streamline Sales and Use Tax Agreement standards for membership
- ✘ HM 1293 urged Congress to enact legislation allowing each state to collect sales tax from out of state dealers



# 2013 PROPOSED LEGISLATION IN FLORIDA

- ✘ HB 7097 established new nexus provisions following both the “click through” and corporate relationship ideas discussed earlier
  
- ✘ Revenue Neutral – New revenue collected would pay for:
  - + Sales Tax Holiday on clothing and school supplies (duration varies depending on revenue available)
  - + Permanent reduction in state sales tax rate (if new collections are large enough)

**THE END**

Questions?