

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 205 Tax Exemption for Charges for Private Investigations

**SPONSOR(S):** Ways & Means Committee, Gossett-Seidman and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 116

<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR or BUDGET/POLICY CHIEF</b>
1) Ways & Means Committee	20 Y, 0 N, As CS	LaTorre	Aldridge
2) Regulatory Reform & Economic Development Subcommittee			
3) Commerce Committee			

**SUMMARY ANALYSIS**

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property, admissions, transient rentals, and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida’s sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.

Currently, charges for certain detective, burglar protection, and other protection services listed under specific North American Industry Classification System (NAICS) numbers, including investigative services, security guards and patrol services, armored car services, and security systems services, except locksmiths, are subject to sales and use tax.

The bill exempts charges for private investigative services provided by a small private investigative agency from the sales and use tax.

The bill defines the term "small private investigative agency" as a licensed private investigator that employs three or fewer full-time or part-time employees and, during the previous calendar year, performed private investigation services in which the charges for the services performed were less than \$150,000.

The Revenue Estimating Conference estimated that for FY 2023-24, the provisions of the bill would have -\$1.2 million cash and a -\$1.3 million recurring impact on General Revenue; an insignificant negative impact on state trust funds; and a -\$0.3 million cash and -\$0.3 million recurring impact on local government revenues.

The bill provides emergency rulemaking authority for the Department of Revenue.

The effective date of the bill is July 1, 2023.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation

##### Florida Sales and Use Tax

Florida levies a six percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax and provides the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>4</sup>

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.<sup>5</sup> A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202, F.S."<sup>6</sup> The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently being levied vary by county in a range of 0.5 to 1.5 percent.<sup>7</sup>

Currently, charges for detective, burglar protection, and other protection services listed under the North American Industry Classification System (NAICS) National Numbers 561611 (investigative services), 561612 (security guards and patrol services), 561613 (armored car services), and 561621 (security systems services, except locksmiths) are subject to the 6 percent sales and use tax.<sup>8</sup> Fingerprint services required under s. 790.06, F.S., or s. 790.062, F.S., are not subject to the tax.

Law enforcement<sup>9</sup> and public safety services are not subject to tax irrespective of whether the duty is characterized as "extra duty," "off-duty," or "secondary employment," and irrespective of whether the officer is paid directly or through the officer's agency by an outside source.

Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.<sup>10</sup>

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

<sup>2</sup> S. 212.04(1)(b), F.S.

<sup>3</sup> S. 212.03(1)(a), F.S.

<sup>4</sup> S. 212.07(2), F.S.

<sup>5</sup> S. 212.055, F.S.

<sup>6</sup> Section 212.054(2)(a), F.S.

<sup>7</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 231-232 (2022), <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2022.pdf> (last visited Jan. 30, 2023).

<sup>8</sup> S. 212.05(1)(i)1., F.S.

<sup>9</sup> S. 943.10(1), F.S., defines "law enforcement officer" as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

<sup>10</sup> S. 212.05(1)(i)3., F.S.

## Private Investigative Services

The Division of Licensing within the Department of Agriculture and Consumer Services (DACS) oversees the regulation of licensing of private investigative services.<sup>11</sup> As of December 31, 2022, the Division has issued 2,689 private investigative agency licenses and 7,136 private investigator licenses.<sup>12</sup>

A “private investigator” is defined as any individual who, for consideration, advertises as providing or performs private investigations.<sup>13</sup> A “private investigative agency” means any person who, for consideration, advertises as providing or is engaged in the business of furnishing private investigations.<sup>14</sup> “Private investigation” is defined as an investigation to obtain information on any of the following matters:

- Crime or wrongs done or threatened against the United States or any state or territory of the United States, when operating under express written authority of the governmental official responsible for authorizing such investigation.
- The identity, habits, conduct, movements, whereabouts, affiliations, associations, transactions, reputation, or character of any society, person, or group of persons.
- The credibility of witnesses or other persons.
- The whereabouts of missing persons, owners of unclaimed property or escheated property, or heirs to estates.
- The location or recovery of lost or stolen property.
- The causes and origin of, or responsibility for, fires, libels, slanders, losses, accidents, damage, or injuries to real or personal property.
- The business of securing evidence to be used before investigating committees or boards of award or arbitration or in the trial of civil or criminal cases and the preparation thereof.<sup>15</sup>

Applicants for licensure as a private investigator must complete and submit an application to DACS and meet certain requirements. An applicant must:

- Be at least 18 years old;
- Be one of the following:
  - A United States citizen,
  - A permanent legal resident, or
  - A holder of a work visa from the United States Citizenship and Immigration Service;
- Have no disqualifying criminal history;
- Be of good moral character;
- Have no history of:
  - Mental illness,
  - Alcohol abuse, or
  - Substance abuse; and
- Submit an application with certain identifying information;<sup>16</sup> and
- Complete 40 hours of required training and submit proof thereof to DACS.<sup>17</sup>

Any person, firm, company, partnership, or corporation which engages in business as a private investigative agency shall have a Class “A” license.<sup>18</sup> To become a private investigator in Florida, a Class “C” Private Investigator license is required.<sup>19</sup> An applicant for the Class “C” Private Investigator license must have two years of lawfully gained, verifiable, full-time experience to qualify for the

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<sup>11</sup> Ch. 493, F.S.

<sup>12</sup> Department of Agriculture and Consumer Services, *Division of Licensing Statistical Reports* (as of December 31, 2022), available at <https://www.fdacs.gov/Divisions-Offices/Licensing/Statistical-Reports> (last visited Jan. 28, 2023).

<sup>13</sup> S. 493.6101(16), F.S.

<sup>14</sup> S. 493.6101(15), F.S.

<sup>15</sup> S. 493.6101(17), F.S.

<sup>16</sup> S. 493.6105, F.S.

<sup>17</sup> S. 493.6303(4)(a), F.S.

<sup>18</sup> S. 493.6201(1), F.S.

<sup>19</sup> S. 493.6201(5), F.S.

license.<sup>20</sup> In order to carry a firearm in the course of performing such duties, the licensee must also obtain a Class “G” Statewide Firearm license in addition to the Class “C” Private Investigator license.<sup>21</sup>

### **Effect of Proposed Changes**

The bill exempts charges for investigative services provided by a “small private investigative agency” from the sales and use tax.

The bill defines the term "small private investigative agency" as:

A private investigator licensed as under s. 493.6201, F.S., that:

- Employs three or fewer full-time or part-time employees, including those performing services pursuant to an employment leasing arrangement as defined in s. 468.520(4), F.S., and
- During the previous calendar year, performed private investigation services otherwise taxable under ch. 212, F.S., in which the charges for the services performed were less than \$150,000 for all its businesses related through common ownership.

The exemption does not apply in the first calendar year that an agency conducts sales of services taxable under ch. 212, F.S.

The bill grants emergency rulemaking authority to the Department of Revenue.

The bill takes effect July 1, 2023.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 212.08, F.S., to exempt private investigative services provided by a small private investigative agency.

**Section 2:** Provides emergency rulemaking authority for the Department of Revenue.

**Section 3:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The Revenue Estimating Conference estimated that for FY 2023-24, the provisions of the bill would have -\$1.2 million cash and a -\$1.3 million recurring impact on General Revenue and an insignificant negative impact on state trust funds.

##### **2. Expenditures:**

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The Revenue Estimating Conference estimated that for FY 2023-24, the bill would have a -\$0.3 million cash and -\$0.3 million recurring impact on local government revenues.

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<sup>20</sup> S. 493.6203, F.S.

<sup>21</sup> S. 493.6115(2), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Charges for private investigations provided by small private investigative agencies will be exempt from sales tax.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Department of Revenue emergency rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 30, 2023, the Ways & Means Committee adopted one amendment and reported the bill favorably as a committee substitute. The committee substitute differs from HB 205 by clarifying that a private investigative agency is not permanently exempted from the sales tax because it qualified for the tax exemption in the previous year. The committee substitute also provides that a business is not exempt the first calendar year the agency conducts sales of services taxable.

The analysis is drafted to the committee substitute as passed by the Ways & Means Committee.