

2004

Legislative Policy Statements



FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION

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Florida Government Finance Officers Association 2004 Legislative Committee

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2004 Legislative Policy Statements

The Florida Government Finance Officers Association (FGFOA) is pleased to present its Legislative Policy Statements for the 2004 Legislative Session. One of FGFOA 's roles is to educate interested parties on issues of interest to local governments, which will improve local government 's service delivery to the public. The enclosed recommendations, covering a variety of concerns, are prepared as a guide to assist the organization in having a unified effort to get legislation passed on these important issues.

The first section of the Legislative Policy Statement is an executive summary, which contains a condensed list of FGFOA 's legislative recommendations. The second section explains each of the issues in greater detail and provides the background leading to each recommendation.

These Legislative Policy Statements were developed by the 2004 Legislative Committee, which represents a variety of local governments including counties, municipalities and special districts. These Committee members are all finance professionals who strive to efficiently manage and operate local government.

We sincerely appreciate the opportunity to outline the FGFOA 's positions. If you have any questions about the issues, please call Jeannie Hagan, FGFOA Director of Administrative Services, at (850) 222-9684.

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EXECUTIVE SUMMARY OF RECOMMENDATIONS



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EXECUTIVE SUMMARY OF RECOMMENDATIONS

This executive summary lists the recommendations of the Florida Government Finance Officers Association (FGFOA) regarding issues of concern to its membership. The FGFOA encourages its members to utilize resources available to them to persuade the State Legislature to take action.

The FGFOA Board of Directors has designated the following four issues as the target issues for the upcoming legislative session. The FGFOA has taken a position on each issue, will carefully track their status during the session, and will notify the membership of action that can be taken.

- **Equitable Funding of the State Court System**

The FGFOA advocates an equitable funding structure for the State Court System that does not put an undo burden on the counties.

- **Prompt Payment**

The FGFOA opposes the proposed State requirements that would limit the authority of the local governmental entity to enforce contractual obligations by reducing the amount of retainage held back for contract performance.

- **Local Government Accountability**

The FGFOA supports SB 708 and HB 547 with the exception of the provision authorizing the State to withhold revenues for failure of local governments to provide required actuarial information and the provision requiring municipalities and special districts to amend their budgets within 60 days of their fiscal year end.

- **Tangible Personal Property**

The FGFOA supports the increase in the threshold for recording tangible personal property owned by counties and special taxing districts from \$750 to \$1,000.

Other issues of interest in the upcoming session include the following:

- Require an actuarial study of any proposed changes to public employee pension benefits to be completed at least 90 days prior to formal consideration by the Legislature.
- Provide for the equitable distribution of insurance premium taxes to fire and police pension plans.
- Develop a sound method for identifying the geographic location of communications services to ensure taxes are credited to the appropriate local jurisdiction.
- Support the collection of sales taxes on Internet transactions by adopting the Streamlined Sales Tax and Use Agreement.

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“Executive Summary of Recommendations – Continued”

- Clarify that bed taxes are based on the room rate paid by the patron; not the block rate paid by an Internet booking service.
- Eliminate outdated and antiquated laws applicable to county clerks.
- Authorize local governments to collect Interim Service Fees.
- Revise the public service (utility) tax on natural gas so that it is taxed at the point of consumption.
- Require a study showing the measurable economic benefits for all sales tax exemption proposals, except for food and medicine.
- Repeal the exemption for fuel adjustment charges from the public service (utility) tax.
- Index local government taxes on motor fuel based on changes in the Consumer Price Index.
- Amend the Florida Public Records Act to protect personal information of all public employees.
- Support federal legislation allowing state and local governments to charge surcharges on credit cards and adopting State legislation that will permit local governments to deduct credit card usage fees from the amount of taxes owed.

**TARGET ISSUES FOR CONSIDERATION IN THE UPCOMING
LEGISLATIVE SESSION**



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EQUITABLE FUNDING OF THE STATE COURT SYSTEM

ISSUE:

When Article V of the Florida Constitution was passed in 1972, citizens were told that there would be a unified, State-funded court system. Nearly 30 years later, local tax dollars fund more than half of the cost of the State Court System. The increase in costs of operating the courts represents an unfunded State mandate for counties. In 1998, voters approved amendments to Article V to modify the method of funding the court system. Chapter 2000–237, Laws of Florida, established a time schedule for implementation of the revised funding method, and established an Article V Financial Accountability and Efficiency Workgroup to collect information on court costs and to recommend alternative structures for budgeting and fiscal management of the court system. During the 2003 legislative session, state legislators adopted HB113A to address the funding of Article V costs. In reviewing this bill there are many areas where the law is not clear concerning the authority of the Court Clerk. This lack of clarity creates uncertainty about the adequacy of funding available to the courts. The glitches in HB 113A should be amended to ensure adequate funding for the courts.

ANALYSIS:

Since the 1972 Constitutional revision of the State Court System, State funding has not kept pace with the tremendous demands borne by counties due to statewide growth and criminal activity. Since 1972, many of the court-related programs funded by counties (e.g., witness coordination offices and general masters) were developed in an effort to ensure cost-effectiveness and to improve the administration of justice. Programs such as these were nonexistent in 1972, and, thus, the funding for such has been thrust upon county government. Pursuant to the 1998 amendment to Article V and the provisions of Chapter 2000–237, Laws of Florida, all funding for the court-related functions of the offices of the clerks of the circuit and county courts shall be provided by adequate and appropriate filing fees and service charges, except that counties will be required to fund certain costs such as communication services and facilities.

Local tax dollars currently fund more than half of the State Court System, at a time when roughly one third of Florida's counties are at or approaching the ten-mill property tax cap. Because the State Court System is not properly funded, counties use their *ad valorem* tax revenue to keep the Court System running smoothly. Counties used to receive partial reimbursement from the State; however, that funding was gradually phased out during the early 1990's.

“Continued on next page”

“Equitable Funding of the State Court System – Continued”

ANALYSIS:

The workgroup established by the Legislature to gather court cost information and suggest a funding structure made its recommendations that were incorporated into HB 113A. Although HB 113A was developed to provide a funding mechanism for Court Clerk to fund the courts, the glitches in the bill create uncertainty as to the availability of adequate funding. Items in the bill requiring clarification include, but are not limited to, the following areas:

- **Budget/Finance-** Clarification of the perceived conflict between Sections 28.36(2) and 28.37(3) Florida Statutes to clarify what is meant by sending excess fees to the State that arise from a balanced budget.
- **Collections-** Clarification on the ability to accept partial payments in various court divisions.
- **Conference-** Provide a mechanism in Section 28.362, Florida Statutes, by which the Clerks Operating Conference could deal with budget deficits occurring during the year due to some unforeseen event.
- **Court Costs-** Clarify that the monies identified in Section 382.023, Florida Statutes that as being kept by the court are in fact retained by the clerk and align language with Section 28.101, Florida Statutes.
- **Other areas -** relates to copies, fees/service charges, fine and forfeiture funds, indigency, operations, public defender, and reporting.

RECOMMENDATION:

The Legislature should work with the counties to establish an equitable funding structure for the State Court System. It is unlikely that the court system can be fully funded through filing fees and service charges, while at the same time assuring full access to the court system for all persons. The funding structure should be designed to assure that the burden on the counties to fund the court system is limited to those costs defined in law, and that the funding of any shortfalls be the responsibility of the State. Input should be sought from all local officials involved in the Court System, including Clerks and Boards of County Commissioners, on how to accomplish this goal.

FLORIDA PROMPT PAYMENT ACT

ISSUE:

Chapter 218, Part VII, Florida Statutes (known as the “Florida Prompt Payment Act”) initially established payment due dates and interest grace periods for payments to vendors by local governments. The Act was subsequently amended to provide different payment due dates and interest grace periods for payments for construction services. Having different requirements for construction versus nonconstruction services payments is confusing as well as difficult and costly to administer. In addition, the Act requires interest to be paid at the rate of 1% per month (12% per annum), which is substantially higher than current market rates.

Senate Bill 544, filed for the 2004 Legislature, reduces the amount of retainage local governments may withhold on major construction projects. This proposed legislation puts local taxpayers at risk regarding the incentives for contractors to complete major construction projects.

ANALYSIS:

The Act currently provides for nonconstruction services payments to be made within 45 calendar days from the date an invoice is received by the chief disbursement officer. Construction services payments must be made within 25 business days if an agent (outside project architect or engineer) must approve the invoice or 20 business days if there is no agent from the date the invoice is received. Interest begins to accrue on late nonconstruction services payments after a 30-day grace period, whereas interest begins to accrue on late construction services payments immediately after the deadline with no grace period. Payment requirements for construction services should be the same as those for nonconstruction services for ease of administration and cost efficiency purposes.

The interest rate of 1% per month (12% per annum) is much higher than current market rates. This rate is nearly double the current Florida Department of Financial Services established interest rate of 7% for 2004. The interest rate for late payments should be no higher than the Florida Department of Financial Services established rate, which changes with the market.

Senate Bill 544 limits the amount of retainage a local government may withhold to 10% and also requires local government to reduce retainage withheld to 5% once a project has reached 50% completion. The proposed legislation establishes a 90 day deadline for development of a final “punch list” for construction projects that exceed \$10 million and a 30 day deadline for projects that are less than \$10 million. It also limits the amount local governments can withhold on incomplete items to 150% of the costs to complete the items. Further, this proposed legislation limits the benefits, leverage, and safeguards associated with having adequate retainage withheld on major construction projects for the necessary protection of taxpayers. It also represents further intrusion by the State into the financial affairs of local governments.

“Issue continued on next page”

”Florida Prompt Payment Act – Continued”

RECOMMENDATION:

Legislation should be enacted to revise the Florida Prompt Payment Act such that payment requirements for construction services are the same as those for nonconstruction services (i.e., 45 calendar days from the date an invoice is received by the chief disbursement officer, with interest beginning to accrue after a 30-day grace period). In addition, the interest rate per the Act should be changed to correspond with the rate set by the Florida Department of Financial Services. Moreover, Senate Bill 544 should **not** be supported so that local governments can continue to withhold sufficient retainage to protect the interest of taxpayers.

LOCAL GOVERNMENT ACCOUNTABILITY

ISSUE:

Senate Bill 708 and its companion bill, House Bill 547, address several local government accountability issues based on the Auditor General's performance audit of the Local Government Financial Reporting System or recommendations from State agencies and local governments. Proposed statutory changes include the following:

- Amends the Local Government Financial Emergencies Act to reflect the revised reporting format under GASB 34; to revise the financial emergency reporting process to minimize the reporting of technical, but not true, financial emergencies; and to clarify applicability to district school boards.
- Clarifies and consolidates statutory requirements for the issuance of bonds to eliminate unnecessary, conflicting, or redundant provisions, particularly with regard to refunding issues and the filing of validation complaints.
- Amends the Florida Single Audit Act to add or clarify certain definitions, revise and transfer certain responsibilities of various State agencies with Florida Single Audit Act responsibilities; and requires state agencies to pay for audits not required by the Act.
- Clarifies the authority of special districts to provide group health insurance for employees and officers.
- Authorizes the State to withhold revenues, other than those pledged for bond debt service, for failure of local governments to provide required actuarial information.
- Authorizes municipalities and special districts to amend their budget up to 60 days after the end of the fiscal year.
- Amends and clarifies procedures for dissolving municipalities and special districts.
- Authorizes, rather than requires, counties to report missing county officer fee reports to match current practice.
- Requires the submission of information to the Department of Community Affairs to clarify the classification of special districts.

“Issue continued on next page”

“Local Government Accountability - Continued”

THE FGFOA SUPPORTS:

- The amendments to the Local Government Financial Emergencies Act.
- The clarification and consolidation of the statutory requirements for issuance of bonds.
- The amendments to the Florida Single Audit Act.
- Clarification of the authority of special districts to provide group health insurance for employees and officers.
- Making the reporting of missing county officer fee reports elective.
- Amending and clarifying procedures for dissolving municipalities and special districts.
- Requiring the submission of information to the Department of Community Affairs to clarify the classification of special districts.

THE FGFOA DOES NOT SUPPORT:

- Authorizing the State to withhold revenues for failure of local governments to provide actuarial information.
- Limiting the ability of special districts and municipalities to amend their budget to 60 days after the end of the fiscal year.

RECOMMENDATION:

The FGFOA supports SB 708 and HB 547 with the exception of the provision authorizing the State to withhold revenues for failure of local governments to provide actuarial information and the provision requiring municipalities and special districts to amend their budgets within 60 days of their fiscal year end.

THRESHOLD FOR RECORDING AND INVENTORY OF TANGIBLE PERSONAL PROPERTY

ISSUE:

To record and inventory tangible personal property with a value of \$750 creates a burdensome requirement for counties and special taxing districts. In 1999, the Legislature established a \$1,000 threshold recording and inventory of State owned tangible personal property with a useful life of one year or more. Establishing a \$1,000 threshold for tangible personal property of counties and special taxing districts will reduce administrative costs.

ANALYSIS:

Section 274.02, Florida Statutes, contains a provision establishing a \$750 threshold for recording and inventory of tangible personal property owned by counties and special taxing districts. This threshold was last increased in 1996, while the threshold for State-owned tangible personal property was increased in 1999 to \$1,000. Raising the county and special taxing districts threshold to \$1,000 will bring local governments to the same standard as for State government. The benefits from this change include reduced costs associated with recording and inventory of tangible personal property.

RECOMMENDATION:

The Legislature should adopt Senate Bill 424 modifying Section 274.02, Florida Statutes, to increase the threshold for recording and inventory of county and special taxing districts tangible personal property from \$750 to \$1,000.

OTHER ISSUES



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PUBLIC EMPLOYEE PENSION BENEFITS

ISSUE:

Many proposed changes to employee pension laws have a significant financial impact affecting the local government that sponsors the retirement plan. The actuarial costs of such legislation must be assessed before the legislation is considered to determine its impact upon local governments and local taxpayers. In addition, mandating additional benefits upon local governments by the Legislature circumvents the normal collective bargaining process.

ANALYSIS:

State law requires a governmental unit to conduct an actuarial analysis of any proposed pension benefit revisions **prior to the governing body voting on the changes**. This lets the local officials know, before they vote, the true impact upon their taxpayers and constituents. The State Legislature should have the same benefit of knowing the true cost of the legislation upon which they are being requested to act. An actuarial study should be conducted to determine the fiscal impact across the State prior to the formal consideration of a bill proposing pension benefit changes.

Another area of concern is the circumvention of the normal collective bargaining process. Pension benefit changes should be negotiated through collective bargaining between the local government and the appropriate bargaining unit. Local governments are closer to the issue and are better able to negotiate benefits, which will be paid, from local budgets. If the State feels it must mandate additional benefits, then a revenue source should be provided by the State to fund the mandated benefit.

RECOMMENDATION:

The State Legislature should enact legislation requiring an actuarial study of any proposed legislative changes to all public employee pension benefits to be completed at least 90 days prior to formal consideration by the Legislature. Any additional benefit mandated by the Legislature should also provide a new State revenue source to be remitted to local government to pay the mandated benefit.

EQUITABLE DISTRIBUTION OF INSURANCE PREMIUM TAXES

TO FIRE AND POLICE PENSION PLANS

ISSUE:

The State of Florida does not distribute insurance premium taxes benefiting local Firefighter and Police Pension Funds in an equitable manner. As a result, there has been an inequitable and incorrect distribution of taxes. In addition, for those jurisdictions that have increased benefits to police and firefighters based upon previous distributions, legislative corrective actions could adversely affect a jurisdiction's ability to continue benefits negotiated and provided in good faith.

ANALYSIS:

All insurance companies that are licensed to write property and casualty insurance policies in Florida are subject to a statewide excise or license tax (referred to as the premium tax) under Chapter 624, F.S. and are required to report applicable premium amounts to the State of Florida Department of Revenue. When the Legislature enacted laws to assist cities and fire districts in funding pension benefits for their police officers and firefighters, it was done on the basis of these premium tax revenues, as reported by the insurance companies on policies covering property located within the corporate or fire district boundaries of any city or district choosing to participate under Chapter 175 and/or 185, F.S. Each year on March 1, insurance companies are required by Section 185.09, F.S., to report the tax premiums for casualty insurance policies insuring any property located within the corporate limits of each participating municipality. These tax proceeds are placed in trust for Police Pension Funds in accordance with Chapter 185, F.S. In a like manner Section 175.11, F.S., requires premiums based on property insurance policies be allocated to municipal and fire district Firefighters' Pension Trust Funds.

Due to general lack of knowledge by the insurance agents that sell the policies, many property locations and, thus, tax collections are credited to the wrong jurisdiction. Many agents simply rely on each ZIP code to identify the location of tax collections. The U.S. Postal Service has repeatedly advised municipalities that the naming of its ZIP codes does not correspond to municipal boundaries contained within or among ZIP codes. As a result, taxes are being distributed based primarily on ZIP code designations that are not related to jurisdictional boundaries, preventing some police and fire employees from benefiting from the pension funds they deserve.

When the Legislature acts to correct the inaccurate distributions, several large jurisdictions will be adversely affected. They will be faced with reduced tax revenues and without replacement revenues to continue previously negotiated and provided pension benefits. The Legislature should seek to identify solutions that do not immediately and significantly adversely affect those jurisdictions' financial ability to continue to provide benefits.

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”Equitable Distribution - Continued”

RECOMMENDATION:

The Legislature should review the distribution of insurance premium taxes among local and Chapter Fire and Police Pension Plans to ascertain and implement a more equitable basis for returning the tax revenue to the jurisdiction in which the revenue is collected. The State of Florida should implement the same equitable database as is recommended for the communications services tax in order to automatically distribute insurance premium taxes based upon the policyholder 's address within governmental corporate limits. When implementing this corrected distribution, the Legislature should ensure that no jurisdiction receives less revenue from this source than in the immediately preceding year.

COMMUNICATIONS SERVICES TAX AMENDMENTS

ISSUE:

The Department of Revenue (DOR) provides a database of jurisdictional assignments of property addresses, which is freely accessible by communications providers for situsing of Communications Services Tax (CST) revenues. However, current law grants providers hold-harmless protection against penalties for database errors that cause inaccurate distribution of this tax revenue if the provider uses a zip+4 methodology for situsing. Most providers use this method of linking the customer to a taxing jurisdiction, resulting in many jurisdictions experiencing a significant loss of tax revenue that is misdirected to neighboring county or local governments. Moreover, because of local CST tax rate variations the public is often over- or under-taxed because of these jurisdictional assignment errors and, compounding the problem, their tax dollars do not benefit their 'home' jurisdiction. Presently, the only remedies for revenue distribution errors that are discovered is for the Department of Revenue to 'take back' the revenue from one jurisdiction and send it to the other or, when there is a dispute between the jurisdictions as to the proper situsing, the jurisdictions must either negotiate between themselves or revert to legal action.

ANALYSIS:

Taxpayers have an expectation and a fundamental right to have their local option tax dollars benefit their own city and to be taxed at the legislatively authorized rate. Under the CST adjacent cities may have significantly different tax rates but, because of errors in the provider's jurisdictional database, a communications customer is often billed at and pays an incorrect tax rate which then is distributed to and benefits the incorrect local or county government.

The distribution of the local option portion of CST revenues is based on the service address, typically the home or business address of the customer. Service providers have the option of using the statewide database provided by DOR or any other database for situsing of communication tax revenues to jurisdictions. To be held harmless for errors in situsing and to be granted the maximum collection allowance, providers currently are required to either use the Department's statewide database, have their database certified for accuracy by the Department, or they may use a Zip+4 database from the United States Postal Service (USPS), the Census Bureau, or a third-party vendor.

The majority of providers use Zip+4 databases from third-party vendors so most of the CST revenue is distributed without benefit of accuracy checks. The USPS Zip+4 is structured according to the Postal Service's carrier collection routes, not the geographical boundaries of jurisdictions. Cities of all sizes, including some of the State's largest, have identified significant number of errors in the assignment of addresses to jurisdictions by the USPS. Additionally, postal addresses in unincorporated areas frequently are assigned to a nearby city based on the location of the closest post office branch and those addresses are linked to the local city; not the county government. Current law also allows providers to use the Census Bureau database to assign taxing jurisdictions, but that database is not updated for jurisdictional changes and is not intended to define jurisdictional boundaries.

“Issue continued on next page”

”Communications Services Tax Amendments - Continued”

The DOR has discovered such a significant rate of revenue distribution errors that it has initiated numerous audits of communications providers and has sought legislation to impose severe penalties on providers who do not cooperate in correcting their errors or who fail to properly report on the taxes collected. As a result of DOR’s efforts to redistribute revenues it identifies as misdirected, local governments are faced with repaying revenue out of current year collections resulting in significant revenue shortfalls in that jurisdiction and a windfall in the neighboring jurisdiction. Given the budgetary reliance on accurate revenue projections, this potential revenue volatility places an operational burden on cities and their taxpayers yet there is no corresponding penalty to the providers.

RECOMMENDATION:

The Legislature should:

1. Make changes in the Communications Services Tax laws to provide hold-harmless protection and the maximum collection allowance to a service provider only if: (1) the database used to assign a taxing jurisdiction to a service address is certified by the Department of Revenue according to the certification procedures already contained in the law, and (2) the provider uses due diligence to ensure that errors identified to the provider are corrected in the database within 90 days after the provider discovers or is advised of the error(s).
2. Delete the entire paragraph at F.S. 202.22(1)(c) beginning with “*Employing enhanced zip codes to assign each street address....*” and ending with “*(4) The United States Census Bureau or the United States Postal Service*”. Replace with F.S. 202.22(1) “*(c) If a service address is in a rural area or a location without postal delivery, the dealer of communications services or its database vendor shall assign the affected service address(es) to one specific local taxing jurisdiction based on any one of the following methodologies:*
 1. *A database provided by the Department*
 2. *A database certified by the Department under subsection (3) or*
 3. *Responsible representatives of the relevant local taxing jurisdictions.*”
3. Change the language of F.S. 202.22 (4)(b)1 to delete the sentence “*However, the employment of enhanced zip codes pursuant to paragraph (1) (c) satisfies the requirements of this paragraph;*.”

COLLECT SALES TAX ON INTERNET TRANSACTIONS

ISSUE:

William Fox and Donald Bruce of the University of Tennessee estimate that without the ability to collect sales taxes on Internet purchases, state and local governments across the country could lose \$45 billion per year by 2006. According to the U.S. Department of Commerce, online sales grew 22 percent between 2000 and 2001, an astonishing rate considering that total retail sales grew only 3 percent during the same period. There is no doubt that this trend will continue as more citizens integrate the World Wide Web into their daily activities. With nearly every state and local government facing budget shortfalls, the urgency to collect taxes on remote sales has never been greater.

ANALYSIS:

To date, Congress and the Supreme Court have prevented state and local governments from collecting taxes on goods purchased via Internet, catalog, telephone, or other non-physical media. In *National Bellas Hess v. Illinois* (1967) and again in *Quill v. North Dakota* (1992), the Supreme Court ruled that states cannot require vendors to collect and remit taxes on purchases made in states in which the vendors do not have a physical presence, or nexus. The basis for these decisions is that requiring businesses to collect taxes on such purchases would impose an undue burden because of the complexity of and variations in state and local government sales tax rates and structures. Although these court decisions were based on catalog sales and were handed down before the emergence of the Internet and ecommerce, the rulings extend to all remote sales—including those made over the Internet. During the first session of the 107th Congress, legislators proposed “no new Internet access or multiple and discriminatory taxes on the Internet until October 21, 2003.” To the detriment of state and local governments, this moratorium legislation was enacted into law, while lawmakers defeated legislation that would have muted the *Bellas Hess* and *Quill* decisions by allowing states to require retailers to collect and remit taxes on remote sales.

“Issue continued on next page”

“Collect Sales Tax on Internet Transactions – Continued”

To overcome the sticking point in the *Bellas Hess* and *Quill* decisions and the compliance burden on vendors a group of public and private entities formed the Streamlined Sales Tax Project, or SSTP, in March 2000 with the goal of simplifying state and local tax systems. More than 40 states joined the SSTP, along with state and local government associations, retailers, and retail associations. The participants developed a set of recommendations for the terms of an agreement that would simplify the myriad tax systems across the country and create equity in business practices between “bricks and mortar” vendors and remote vendors. The first step in moving the agreement forward was to establish a group of implementing states—Streamlined Sales Tax Implementing States, or SSTIS. Of the 45 states that impose a sales and use tax, 34 joined the SSTIS through either legislative enactment or executive order. The District of Columbia is also a member of the SSTIS. Throughout 2002, the SSTIS met and reviewed proposals developed by the SSTP in consultation with the business community. On November 12, 2002, the SSTIS officially approved the provisions of an agreement outlining a uniform system for the administration and collection of sales taxes.

ANALYSIS

The Streamlined Sales and Use Tax Agreement includes the following provisions:

- Centralized state administration of sales tax collection and the distribution thereof to local jurisdictions
- An electronic registration system for all vendors
- State and local governments limited to a single general sales tax rate for Internet sales
- State creation and upkeep of a database of correct tax rate information for all taxing jurisdictions
- Hiring of certified service providers to ensure that vendors integrate correct sales tax data into their systems
- Protection of the states’ right to exempt any item or service from taxation (e.g., prepared food)
- Uniform definition of goods (e.g., if a state chooses to tax “candy,” then it must adopt the SSTIS’s definition of “candy”)
- Uniform sourcing for all taxable transactions
- Standardization of tax holidays
- Uniform rounding rules
- Protection of consumer privacy
- The purchaser’s billing address is considered the point of taxation

With the Streamlined Sales and Use Tax Agreement finally in place and being adopted in states across the nation, many believe that Congress is more likely than ever before to open the door for state and local government collection of taxes on remote sales. The agreement will not take effect until at least 10 states, representing 20 percent of the total population of all states imposing a state sales tax, have adopted the conforming legislation.

“Issue continued on next page”

“Collect Sales Tax on Internet Transactions – Continued”

A governing board comprised of representatives of each member state was established to interpret the agreement, amend the agreement, and resolve issues such as binding dates, provisions for state participation and non-participation, cost of collection studies, the appointment of advisory boards, and the certification of automated systems and service providers.

In February, a group of retailers, including Target, ToysRUs, and Wal-Mart, voluntarily started collecting taxes on Internet sales and remitting these taxes to the states. While there are still bugs in this system, it is a positive step forward, and one that demonstrates that vendors have the technology to decipher, collect, and distribute taxes on remote sales. One of the most compelling reasons for this voluntary initiative was to meet the needs of customers who may purchase items over the Internet, yet want to be able to return or exchange them at a physical store

RECOMMENDATION:

The Streamlined Sales and Use Tax Agreement should be adopted by the Florida Legislature.

BED TAX ON INTERNET SALES

ISSUE:

Florida Statutes allow local governments to impose a bed tax on hotel and motel rooms. The law needs to be clarified to ensure that Internet providers of rooms remit the tax collected on amounts paid by patrons versus the flat fee amounts paid to get the rights to offer the rooms.

ANALYSIS:

The law is clear to the various hotel and motels offering services directly to patrons for use of their facilities. The confusion comes; however, when providers of rooms to patrons through the Internet pay the hotels and motels a flat rate for rooms purchased in a block and subsequently mark the price up when patrons actually pay for the room. The Internet providers may or may not be collecting taxes charged at the increased rate. The taxes are currently being submitted to the hotels and motels based on the block rate.

RECOMMENDATION:

The Florida Legislature is encouraged to amend the current laws clarifying that the liability relating to the collection of bed taxes is on the room rate paid by the patron; not the block rate paid by the Internet booking service.

ELIMINATE OUTDATED AND ANTIQUATED LAWS

ISSUE:

The Florida Statutes functionally list various duties of County Clerks. Over time some of these laws have become obsolete and are no longer functional, yet most counties are required to follow these laws.

ANALYSIS:

At times, counties are placed in the position of either being inefficient or ignoring various laws due to the fact that some laws have become antiquated and outdated. Finance officers should have laws that provide strong guidelines to operate a finance office while promoting efficiencies.

The following laws are recommended for revision.

- Counties are required by Section 136.06, Florida Statutes to have their warrants approved by the County Commission. This procedure may have been useful in the distant past but modern disbursement systems provide strong internal controls over disbursements without this step. Technology, along with managerial advancements, has made this law ineffective. For example, most if not all payments for payroll (including tax, insurance, and pension payments), and debt service payments are performed electronically. Additionally this law does not make any provision for emergency payments that can occur from time to time. Most counties go through the exercise of adopting expenditures either retroactively or retrospectively and some times both.
- Section 28.244, Florida Statutes requires counties to automatically refund any overpayments of \$5 or greater. The expense for processing a refund check is greater than \$5. The law should be amended or deleted to allow counties to adopt policies consistent with the economic times.

RECOMMENDATION:

These outdated and unnecessary laws should be repealed or revised to reflect current practice.

INTERIM SERVICE FEES

ISSUE:

Newly developed properties often are not charged their fair share of the cost of government services. There may be a delay of almost two years between the time that a newly constructed building is occupied and the time that property taxes on the improved property are due and payable. During this time, the occupants of the property receive services from local governments and school districts (at the expense of other taxpayers) and only pay taxes based on the value of their property before improvements. Florida law does not authorize local governments to address this inequity. Interim Service Fees have been enacted locally in an effort to assess a fair charge on new buildings, but the Florida Supreme Court struck down such fees because there is no specific statutory authority to enact the fees.

ANALYSIS:

Sound estimates of the cost of the services that governments and schools must provide to occupants of newly constructed buildings before property taxes are paid on the improvements are not available, but the cost could exceed \$100 million annually. This issue should not be confused with impact fees, which are for capital improvements. Interim Service Fees would be levied primarily to offset the cost of recurring operating expenses, such as police and fire protection, streets maintenance, and recreation programs.

RECOMMENDATION:

The State Legislature should enact legislation authorizing local governments to implement Interim Service Fees.

NATURAL GAS PUBLIC SERVICE TAX REVISION

ISSUE:

With the deregulation of the natural gas industry, municipalities are experiencing a loss of utility taxes from gas sales. Large users of gas are able to purchase directly from the wellhead at out-of-state locations. Because title to the gas passes to the purchaser at this point, the sale is deemed to take place out of state, not in the municipality. Consequently, no utility tax is paid. In addition, local gas providers are losing sales and are forced to distribute their out-of-state competitors' gas to the end user.

ANALYSIS:

The existing tax structure for natural gas has been in place for many years. With the segregation of the purchase, transmission, and distribution functions for large users, this structure has become outdated and inequitable. The method of taxation should be changed to allow the tax to be levied in the jurisdiction where it is consumed.

This could be accomplished with a consumption-based tax at the point of delivery for consumption. The rate of tax should be the same statewide for every jurisdiction wishing to levy it, and should be set to raise no more or no less revenue than a like sale under the current method. The current fuel adjustment exemption should be eliminated, because it is an outdated concept. If the rate is set correctly, no increase in tax will be assessed on the industry.

RECOMMENDATION:

The State Legislature should enact legislation that would restructure the public service (utility) tax levied on natural gas. The new tax should be consumption-based, taxed at the point of delivery for consumption, and generate revenues comparable to current tax receipts.

ECONOMIC DEVELOPMENT CRITERIA FOR SALES TAX

EXEMPTIONS

ISSUE:

During each legislative session, numerous special interest groups have bills filed to grant sales tax exemptions to a wide range of goods and services, claiming that positive results will occur if the Legislature will grant their particular group tax-exempt status. The vast majority of these bills claim that such exemptions will assist in Florida 's economic development efforts by stimulating the economy.

ANALYSIS:

Numerous bills to change the tax status of various groups are submitted to the Legislature each year. While many of these bills are not passed, there are no requirements in place to evaluate the effects of proposed exemptions prior to the bills being acted upon. Currently, post-legislative analysis is not performed after exemptions are granted to determine if any economic development results actually occurred; only a post-session estimate of passed bills is made.

RECOMMENDATION:

The Legislature should adopt legislation to ensure that all sales tax exemption proposals, except food and medicine, are required to provide a study showing the measurable economic development benefits of the exemptions concurrent with the legislation. In addition, all tax exemptions other than for food and medicine should be subject to a periodic sunset review.

PUBLIC SERVICE TAX— REPEAL OF FUEL ADJUSTMENT CHARGE EXEMPTION

ISSUE:

Chapter 166.231, Florida Statutes authorizes municipalities to levy a public service tax (utility tax) of up to 10% on electricity; however, fuel adjustment charges are exempt from the tax.

ANALYSIS:

Fuel adjustment charges were added to electric bills to identify the increased costs of providing electricity associated with the oil embargo in the 1970 's. These fuel adjustment charges were exempt from revenues subject to the public service tax. There is no longer a need for this exemption because the fuel adjustment charge has long ago been assimilated into the economy.

RECOMMENDATION:

The State Legislature should enact legislation repealing the exemption for fuel adjustment charges from the public service tax.

INDEXING MOTOR FUEL RATES

ISSUE:

Since all municipal and county fuel taxes are established as a fixed amount per gallon, as the cost of providing transportation related services increases due to inflation, the corresponding funding source—fuel taxes—remains flat. The shortfall in revenue growth has caused cities and counties to continually add additional fuel taxes to meet their transportation funding needs.

ANALYSIS:

The State of Florida imposes a three-cents per gallon tax on motor fuel for counties (Constitutional Gas Tax and County Gas Tax) and a one-cent per gallon fuel tax for municipalities (Municipal Gas Tax). Counties may levy an additional one-cent to 12-cents per gallon fuel tax to be shared with municipalities within their jurisdiction (Ninth Cent, 1st Local Option, and 2nd Local Option). The fuel tax revenues are used to fund transportation related expenditures such as the purchase of transportation facilities, road and street rights-of-way, construction, reconstruction, maintenance of roads and streets, and transportation-related public safety activities. Currently, 11 counties are levying the maximum optional fuel tax of 12-cents per gallon.

In 1983, the State recognized this problem as it relates to the funding of State transportation projects and converted the State fuel tax from a fixed amount per gallon to a percentage of sales (sales tax method). The fuel tax was initially applied at the State's general sales tax rate of 5% and later increased to 6%. Over the succeeding years, the State Legislature has modified the sales tax rate to meet changes in fuel prices and to better respond to the State's escalating transportation costs. Currently, the State converts the sales tax rate to "floor tax" rate as an amount per gallon of fuel sold, which is indexed to all items of the consumer price index (CPI).

The ability to index local government fuel tax rates to the CPI is needed to generate additional revenues to keep up with the increased costs of providing the services for which the tax was originally levied.

RECOMMENDATION:

The State Legislature should provide for indexing local government fuel taxes levied per gallon based on changes in the CPI (all items). As the tax rate increases or decreases based on the change in the CPI, the actual tax levied should be adjusted as the tax reaches half-cent intervals.

FLORIDA PUBLIC RECORDS ACT
PUBLIC EMPLOYEES' PRIVACY RIGHTS

ISSUE:

Section 119.07 (3)(i), Florida Statutes (the Florida Public Records Act) exempts personal information about public safety officers, judges, revenue collectors, code enforcement officers, and certain other positions from being available to the general public. This is personal information that is not necessary to provide government services. Because all local government employees' personal information is not exempt from being available to the public, they are not afforded the same protection.

ANALYSIS:

In 1966, the federal government enacted the Freedom of Information Act which stipulated that employee information of any nature would be available to the public upon request. In 1974, the Federal Privacy Act was passed in part to address abuses that resulted from making personal employee information available. For example, criminals used the Freedom of Information Act to obtain information about the families of FBI employees. By enacting the Federal Privacy Act, information considered to be personal in nature, such as social security numbers, names of family members, home addresses, telephone numbers, personal banking information, and dependent and beneficiary information was no longer available to the public for any reason for all federal employees.

In 1967, the Florida Public Records Act was enacted which mirrored the Freedom of Information Act, except in the case of law enforcement officers. It was felt, at that time, that this class of public employees, by the very nature of their profession, required greater privacy than other public employees. The Public Records Act has subsequently been amended to include judges, state attorneys, firefighters, revenue collectors, code enforcement officers and human resource managers. However, all Florida public employees should have the same protection from intrusion by the public in their personal lives with regard to personal information that has no bearing on their job performance. Personal information includes, but is not limited to, names of family members, home addresses, home telephone numbers, and dependent and beneficiary information.

All Florida public employees have the right to protection from harassment stemming from workplace situations. Under the current law, employees terminated for cause have the ability to use the Public Records Act to obtain personal information about the persons involved in their termination. Delinquent customers can use the Public Records Act to retaliate against public employees involved in terminating services. Dissatisfied employees can harass their co-workers. All of these situations can occur because the Public Records Act allows access to personal information that has nothing to do with the performance of an employee in their position.

“Issue continued on next page”

”Florida Public Records Act - Continued”

RECOMMENDATION:

The Florida Legislature should amend the Florida Public Records Act to provide the same protection to all public employees’ personnel records with regard to information that is considered personal in nature.

CREDIT CARD FEES AND SURCHARGES

ISSUE:

The use of credit cards for payment of state and local government taxes, fines, and other charges is a convenient payment option for citizens and is a means of accelerating payment to these governments. Currently, major credit card companies do not allow state and local governments to collect usage fees for involuntary assessments paid by credit cards. Federal legislation is required to permit state and local governments to pass on to card users surcharge and usage fees. At the State level, legislation is needed to allow local governments to deduct surcharge and usage fees from the amount of taxes owed.

ANALYSIS:

To maximize revenues, state and local governments are continually looking for new ways to cut the cost of collecting and processing payments from citizens and to expedite deposit of these payments into their accounts. In addition, many citizens are requesting the convenience and flexibility that the use of credit cards permits for payment of government-related expenses.

Many states have passed legislation authorizing the acceptance of credit cards for government payments, with the most frequent uses being for fines, motor vehicle fees, recreation services, and parking fees. Some jurisdictions also accept credit cards for tax payments. However, as a matter of policy, the major credit card companies do not allow governments to pass on the usage fees imposed by them (normally between 1.5% and 2% of the amount charged) to citizens utilizing this payment option. Moreover, state and local governments generally are not permitted to deduct such usage fees from the amount of taxes owed.

In past years, Congress considered legislation to require that surcharge prohibitions be removed for governmental agencies. Under those proposals, surcharges could have been passed on for those charges that are inherently governmental (including taxes, fines, motor vehicle fees), up to the amount imposed by the card issuer. However, new legislation addressing surcharge prohibitions has not been introduced to Congress in recent years.

Section 215.322 (5), Florida Statutes authorizes local governments in Florida to accept payments by use of credit cards and to surcharge the person who uses a credit card an amount sufficient to pay the service fee charges of the credit card company. The major credit card companies prohibit such a practice. Also, local governments in Florida are not permitted to deduct credit card usage fees from the amount of taxes owed. Local governments should have the option of deducting credit card usage fees from tax amounts owed because this is a cost of collection.

RECOMMENDATION:

Federal legislation should be enacted that will allow state and local governments to charge surcharges on credit cards. In addition, the Florida Legislature should enact laws that will permit local governments in Florida to deduct credit card usage fees from the amount of taxes owed.