

**2005**  
**LEGISLATIVE POLICY STATEMENTS**



**FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION**

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# Florida Government Finance Officers Association 2005 Legislative Committee

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# **EXECUTIVE SUMMARY OF RECOMMENDATIONS**



**FLORIDA GOVERNMENT FINANCE OFFICERS ASSOCIATION**

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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 legislators to take action. Detailed information on each legislative issue is provided in the accompanying Policy Statements.

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

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

- **Equitable Funding of State Court System (Article V)**  
The FGFOA supports a collaborative approach between the Legislature and the counties to address glitches in Article V to provide adequate funding for Article V costs.
- **Communications Services Tax Amendments**  
The FGFOA opposes the Communications Services Tax law exemption of providers' Zip+4 databases from certification for accuracy.
- **Florida Single Audit Act Revision**  
The FGFOA supports an amendment to the Florida Single Audit Act to improve cooperation and coordination between State awarding agencies and recipients of State financial assistance by establishing cognizant agencies; requiring designation of an organizational unit within each State awarding agency for review of financial reporting packages; and requiring the State awarding agency to fund required audits that do not meet the audit threshold.
- **Collection of Sales Tax on Internet Transactions**  
The FGFOA supports the State of Florida's adoption of the Streamlined Sales and Use Tax Agreement.

Other issues of interest include the following:

- Require an actuarial study of any proposed legislative changes to public employee pension benefits be completed at least 90 days prior to formal consideration by the Legislature, and provide a State revenue source to be remitted to local governments to pay for any legislatively enacted benefits.
- Provide authorization for 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 an economic impact analysis to show 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 (all items).
- 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 adopt State legislation that will permit local governments to deduct credit card usage fees from taxes owed.
- Amend the Prompt Payment Act such that payment requirements are the same for both construction and non-construction services, and that the interest rate per the Act corresponds with the rate set by the Florida Department of Financial Services.
- Clarify that bed taxes are based on the room rate paid by the patron for lodging; not the block rate paid by the Internet booking service.

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



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# **EQUITABLE FUNDING OF STATE COURT SYSTEM (ARTICLE V)**

## **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. During the 2003 legislative session, State legislators adopted HB 113A to address the funding of Article V costs, and the law was further refined in the 2004 session with the adoption of SB 2962. Implementation of these new laws has begun, and it is expected that there will be a number of areas where the provisions may not work as well as expected, and the existence of glitches and oversights will become evident. In reviewing SB2962 there are many areas where the law is not clear concerning the authority of Court Clerk's. It is too soon to identify many of these issues, but the Legislature should evaluate the implementation process, get input from the stakeholders in this issue, and address problems and glitches as soon as possible to ensure that the courts and the support mechanisms for court operations are able to function as well as possible.

## **ANALYSIS:**

There are some areas where the new provisions in the law fall short of their intended goal. There are other provisions that are unworkable or costs to implement are too great, and there are some provisions that are not consistent with the intent of the original Constitutional Revision.

SB 2962 created a new funding source to support the operations of law libraries, youth programs, legal aid, and other local requirements of the court system. Generally speaking, this new funding source does not provide sufficient revenue to replace the previously dedicated funding sources for teen courts and law libraries. Additionally, there is not enough information available yet from around the state to determine whether the other programs for which the new source is dedicated can be adequately funded. At the same time that these potential funding shortfalls could be affecting local programs, it appears that the State was able to implement all of its required funding changes without taking on any additional financial burden because the cost of the State's additional responsibilities was covered by taking revenue away from counties and increasing fees.

There are provisions in SB 2962 that arbitrarily limit future increases in budgets for Clerks' court support functions, and other provisions that arbitrarily require counties to spend progressively greater amounts of money on court support mandates each year, even if those mandates can be met less expensively by improving efficiency or implementing cost saving measures. These provisions will be virtually impossible to administer, and the statute does not provide any process for dispute resolution.

There are requirements for Clerks to oversee indigency determinations and collections functions, which may be unworkable, or may not be cost effective to implement.

There are mandates in the new laws that are not consistent with the intent of the Constitutional Revision. For instance, counties are mandated to fund an alternative sanctions coordinator. However, if this is an essential element of the court system, and it must be if every county needs one, then the Constitutional Revision requires that the State fund the alternative sanctions coordinators.

# **EQUITABLE FUNDING OF STATE COURT SYSTEM (ARTICLE V)**

(Continued)

## **RECOMMENDATIONS:**

The State Legislature should:

- (1) Work with counties, Clerks, and the courts to evaluate the viability of the new laws and make adjustments where the new laws do not work or are not cost effective to implement. Provisions in the laws that attempt to micromanage the responsibilities of the counties and the Clerks should be eliminated.
- (2) Evaluate dedicated revenue sources to ensure they are sufficient to achieve their stated purpose, and if not, then provide other State funding.
- (3) Review the new laws for consistency with the intent of the original Constitutional Revision, and delete or change those that are inconsistent.

# **COMMUNICATIONS SERVICES TAX AMENDMENTS**

## **ISSUE:**

The Department of Revenue (DOR) provides a database of jurisdictional assignments of property addresses that 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 are: (1) the Department of Revenue may 'take back' the revenue from one jurisdiction and send it to the other or, (2) 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 that, and a fundamental right to have, their local option tax dollars benefit their own jurisdiction and to be taxed at the legislatively authorized rate. Under the CST adjacent jurisdictions may have significantly different tax rates. Because of errors in the provider's jurisdictional database, a communications customer is often billed at and pays an incorrect tax rate that then is distributed to and benefits the incorrect local or county government. The DOR has recognized and acknowledged this problem and has partially addressed it by imposing penalties on providers who are not timely in their responses to the DOR's requests for information. However, the fundamental problem of incorrect situsing must be addressed and corrected in the legislative provisions for assigning addresses to jurisdictions properly.

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 various other databases for situsing of communication tax revenues to jurisdictions. To be held harmless for errors in assigning service addresses to jurisdictions and to be granted the maximum collection allowance, providers currently are required to: (1) use the Department's Statewide database, (2) have their database certified for accuracy by the Department, or (3) they may use a Zip+4 database from the United States Postal Service (USPS), (4) the Census Bureau, or (5) a third-party vendor.

The majority of providers use Zip+4 databases from third-party vendors. Therefore, most of the CST revenue is distributed without benefit of accuracy checks. Further, 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 a 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.

# **COMMUNICATIONS SERVICES TAX AMENDMENTS**

(Continued)

The DOR has discovered such a significant degree of revenue distribution errors that it has initiated numerous audits of communications providers and has sought authorization to impose severe penalties on providers who do not co-operate 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 a significant revenue shortfall in that jurisdiction and windfall in the correct 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 State Legislature should:

- (1) Amend 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), and (3) require that all databases used to assign service addresses be certified by the Department of Revenue by January 1, 2006 (or within 120 days for vendors registered as providers after that date).
- (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:*  
*A database provided by the Department*
  - i. *A database certified by the Department under subsection (3) or*
  - ii. *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.*"

# **FLORIDA SINGLE AUDIT ACT REVISION**

## **ISSUE:**

The Florida Single Audit Act (Section 215.97, Florida Statutes) was enacted in 1998 to, among other purposes, establish uniform State audit requirements for State financial assistance provided by State agencies to nonstate entities to carry out State projects and promote improved coordination and cooperation within and between affected State agencies and nonstate entities. While the Florida Single Audit Act provides for uniform audit requirements for State financial assistance, improved coordination and cooperation could be accomplished by amendments to the Act.

## **ANALYSIS:**

The provisions of the Florida Single Audit Act were patterned after the already existing Federal Single Audit Act; however, there are differences for which adjustments to the Florida Single Audit Act should be considered: Specifically:

- (1) Unlike the Federal Single Audit Act, the Florida Single Audit Act does not establish a cognizant agency to provide each State financial assistance recipient with a single agency to coordinate with regarding the review of the recipient's financial reporting package and assessment of the appropriateness of corrective actions.
- (2) The Florida Single Audit Act does not require State awarding agencies to designate an organizational unit within the agency that is responsible for reviewing financial reporting packages.
- (3) When a State awarding agency or a nonstate entity conducts or arranges an audit of State financial assistance of a nonstate entity that does not meet the audit threshold requirement, the Florida Single Audit Act does not clearly compel the State awarding agency or non-state entity requiring the audit to fund the cost of the audit.

## **RECOMMENDATION:**

The State Legislature should amend the Florida Single Audit Act to establish a cognizant agency for each recipient of State financial assistance and to require each awarding agency to designate an organizational unit within the agency to be responsible for reviewing financial reporting packages submitted by recipients. Also, the Legislature should require the awarding agency to fund audits of State financial assistance of non-State entities that do not meet the threshold requirement.

# COLLECTION OF SALES TAX ON INTERNET TRANSACTIONS

## ISSUE:

The National Governors' Association estimates that \$200 billion in taxable retail goods will be sold over the Internet by 2004 and within the next 10 years, that figure will rise to over \$1 trillion annually. That represents billions of dollars in lost sales tax revenue to governments nationally. 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, the 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 107<sup>th</sup> Congress, legislators proposed “no new Internet access or multiple and discriminatory taxes on the Internet until October 21, 2004.” 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.

To overcome the sticking point in the *Bellas Hess* and *Quill* decisions, i.e., the compliance burden on vendors due to the complexity of various state and local sales taxes, 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 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.

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

# **COLLECTION OF SALES TAX ON INTERNET TRANSACTIONS**

(Continued)

- 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.

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.

Recently, 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 State Legislature should now adopt the Streamlined Sales and Use Tax Agreement.

# 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 for any legislatively enacted benefits.

# **NATURAL GAS PUBLIC SERVICE TAX REVISION**

## **ISSUE:**

With the deregulation of the natural gas industry, municipalities are experiencing a loss of utility taxes from natural gas sales. Large users of natural gas are able to purchase directly from the wellhead at out-of-state locations. Because title to the natural gas passes to the purchaser at this point, the sale is deemed to take place out-of-state, not in local municipalities. Consequently, no utility tax is paid in the jurisdiction where consumption actually takes place. In addition, local natural gas providers are facing unfair competition from untaxed sellers.

## **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, in the same manner as most goods and services.

This could be accomplished with a tax assessed 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 the sale of natural gas. The tax code on the sale of natural gas should be consumption-based, taxed at the point of delivery for consumption, to generate revenues comparable to current receipts.

## **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 more than 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 (or Interim Improvement Surcharges as they were titled in last year 's CS for SB 320) 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.

## **ECONOMIC 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 State Legislature should adopt legislation to ensure that all sales tax exemptions, except food and medicine, are required to produce 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 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, 1<sup>st</sup> Local Option, and 2<sup>nd</sup> 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, ten 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 a "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), F.S. (the Florida Public Records Act), passed in 1995, 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 the early 1980's, the federal government passed the Freedom of Information Act. Included in the Freedom of Information Act was the stipulation that employee information of any nature would be available to the public upon request. Four to five years later, the Federal Privacy Act was passed to address the abuses that resulted from making personal employee information available. For example, criminals used the Freedom of Information Act to obtain information about FBI staffs' families. By enacting the Federal Privacy Act, information considered to be personal in nature, such as, social security numbers, names of family members, home addresses, phone numbers, personal banking information, and dependent and beneficiary information was no longer available to the public for any reason for any federal employee. This is information that is not necessary to properly provide government services and has no bearing on an employee's job duties or job performance.

In Florida, the Public Records Act was passed, mirroring the Freedom of Information Act, except in the case of public safety officers. It was felt, at that time, that this class of public employees, by the nature of their profession, required greater privacy than other public employees. This Act was further amended to include positions such as judges, revenue collectors, and code enforcement officers.

All Florida public employees have the right to expect protection from harassment stemming from workplace situations. 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. Under the current language of the 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 Information Act to retaliate against public employees involved in terminating services. Criminals can get banking information and commit forgeries. Dissatisfied co-workers can harass one another. 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.

## **RECOMMENDATION:**

The State Legislature should amend that 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 surcharges and usage fees to cardholders. At the State level, legislation is needed to allow local governments to deduct surcharges 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. 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. The most frequent uses are for fines, motor vehicle fees, recreation services, and parking fees. Some jurisdictions also accept credit cards for tax payments. A provision of the Taxpayer Relief Act of 1997 (P.L. 105-34) authorizes payment of federal income taxes by credit card, but prohibits the federal government from paying fees or surcharges.

Section 215.322 (5), Florida Statutes authorizes local governments in Florida to accept payments by credit cards and to surcharge the user 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 taxes owed as a cost of collection.

As a matter of policy, the major credit card companies do not allow governments or businesses to pass on the usage fees imposed by credit card vendors, normally between 1.5% and 2% of the amount charged, to citizens and customers utilizing this payment option. State and local governments, however, are responsible for the collection of taxes, fines, forfeitures, and other involuntary assessments and, unlike businesses, are unable to adjust their "pricing" to cover the costs of collection. Florida law does not permit local governments to deduct such usage fees from the amount of taxes owed.

State and local governments have responded to these prohibitions on collecting surcharges in a number of ways. Some use outside vendors to process credit card transactions, and the credit card companies have generally not opposed passing on the fees in this case. Some continue to pass on surcharges until the credit card operators discover this and clamp down on the jurisdiction. Many use their compensating balances at the financial institution processing the transactions to pay for the fees. Other jurisdictions have simply ceased use of credit cards altogether.

The credit card companies have granted a number of exceptions (referred to as "unique transactions") from their general prohibition on collection of surcharges. Some of these have been granted on an *ad hoc* basis, but others are specifically enumerated. Among these exceptions are transactions at gambling casinos and truck stops. Payment of taxes has also been identified as a 'unique transaction', but surcharges for this purpose have not been permitted. All that is required is that card users be notified in advance that the fee

## **CREDIT CARD FEES AND SURCHARGES**

(Continued)

will be included in the total transaction amount.

State and local governments have questioned the criteria used in granting exemptions at these establishments while essentially denying users of governmental services the same opportunity. Since the option of payment by credit card is essentially a convenience to the government's customer and a user-specific fee, it is unfair to pass those costs on to other taxpayers. Finally, the resulting cost savings do not offset the transaction fee imposed.

### **RECOMMENDATION:**

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

## **FLORIDA PROMPT PAYMENT ACT ISSUES**

### **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 non-construction services 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.

### **ANALYSIS:**

The Act currently provides for non-construction payments to be made within 45 calendar days from the date an invoice is received by the chief disbursement officer. From the date an invoice is received, construction services payments must be made within 25 business days if there is an agent (outside project architect or engineer) to approve the invoice or 20 business days, if there is no agent. Interest begins to accrue on late non-construction 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 non-construction services for ease of administration and cost efficiency.

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 (FDFS) established interest rate of 7% for 2004. The interest rate for late payments should be no higher than the FDFS established rate, which changes with the market.

### **RECOMMENDATION:**

The State Legislature should 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.

## **BED TAX ON INTERNET SALES OF LODGING**

### **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 regarding the various hotel and motels offering their 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-based providers may or may not be collecting taxes charged at the increased rate. The taxes are currently being submitted to the hotels and motels at the block rate so the differential between that rate and the actual rate to the consumer is untaxed.

### **RECOMMENDATION:**

The State Legislature should amend the current laws on bed taxes clarifying that the taxable amount is the room rate paid by the patron for lodging; not the block rate paid by the Internet booking service.