

Descriptions of Florida's Attempt to Tax Services in 1987

I) Walter Hellerstein helped draft Florida's sales tax law and served as legal counsel to Florida's Department of Revenue. The discussion below is taken from his article "Florida's Sales Tax on Services," *National Tax Journal*, 1988, pp. 1-18.

1) Bob Martinez campaigned for Governor on an anti-tax platform, and was elected in 1986. However, as governor Martinez changed his position, and supported comprehensive extension of Florida's general sales and use taxes to services. In April 1987 Governor Martinez signed legislation extending the sales and use tax to services. The tax took effect July 1, 1987.

2) The Florida sales tax reform extended the sales and use tax to accounting, advertising, contracting, and legal services. In general, services were taxable if sold in Florida. The use of services was taxable if the services were sold outside the state, but used in state, and if the sale or use was not taxed in another state. Services performed in state for use outside the state were exempt. The sale or use of multi-state firm services used partly in Florida was apportioned. There were exemptions for agriculture, education, government, health, local and suburban personal transportation, occasional or isolated sales by persons not engaged in business, and sanitary, social, and religious services.

3) After the legislation passed, the sales tax extension became embroiled in controversy. Media groups claimed that taxing advertising services violated the First Amendment. Lawyers' associations argued that taxing legal services violated constitutional rights to assistance of counsel. "Out of state purchasers of services claimed that the tax violated the Due Process and Commerce Clauses." (page 10) National advertisers and advertising media launched a vigorous, well-financed, campaign against the tax. Large advertisers reduced advertising in Florida. And media trade associations canceled conventions there.

4) In December 1987 Florida's legislature repealed the tax, and Governor Martinez immediately signed the repeal.

II) James Francis, past Director of Research in Florida's Revenue Department, helped construct Florida's sales tax on services [I will bring a copy of Francis' article to the January 16 meeting].

1) Some quotes from Francis' article:

Page 130: "the concept and the execution of the [Florida sales] tax [on services] were basically sound. Of the three key mistakes that led to the downfall of the tax, none had to do with the working of the tax..." [According to Francis, the mistakes were: the governor's anti-tax campaign rhetoric, and post-election conversion; opposition by the media, aggravated by taxation of advertising services; and service tax supporters' ineffective response to critics.]

Page 132: "Antitax forces would have preferred an additive process requiring the legislature to vote to tax each activity on an individual basis. By casting a broad net and then discarding unwanted items, the legislature put itself in the advantageous role of giving rather than taking away.... "

Page 133 "above considerations suggest that the initial legislation define the tax base to include all services and at the same time provide exemptions..."

Page 135: to make input taxation the same for services and goods, the law said services purchased by business on behalf of third parties were exempt, but services "consumed" by the

business were taxable. For example, paint detailing purchased by a body shop repairing a customer's auto was exempt. Accounting services hired by the body shop were taxable.

Page 141: "it appears unlikely that multi-state corporate opposition per se was a critical element in the tax's downfall."

Page 143: "Unlike other service providers, the media (broadcasters and publishers) were in a position to voice their objections easily and effectively... public service messages wasted little time upon the substance of the tax.... Nowhere was there a discussion of public needs or alternatives.... In the face of this pressure, either one or both of two courses of action would have been prudent: a public information campaign to counter that of the broadcasters, and/or exemption of advertising services, at least until the political situation stabilized."

2) General statements from Francis' article:

A) When vigorous resistance arose, the most heavily criticized feature was the use tax on services. The real bone of contention for multi-state business was not the tax per se, but compliance costs. Services would be apportioned. This startled taxpayers accustomed to the all-or-nothing delivery rules for sales taxation of goods. And apportionment of the sales tax on business services may have implied a widening of "nexus" in some minds.

B) Francis concludes the tax eventually failed to stick for the following "logistical" reasons: First, the governor's campaign rhetoric handed opponents an anti-tax message. Second, the media was aggravated by inclusion of taxation of advertising services, and bombarded the public with that message (advertisers commissioned a study claiming sales tax extension would eliminate 46,000 jobs). Third, poorly conceived responses by leaders of both parties caused the reform coalition to dissolve.

B) As a result of the Florida experience, Francis offers the following advice:

i) Two ways to extend sales tax to more services are i) enumerate each specific service to be taxed, or ii) extend the sales tax comprehensively to all services, and enumerate services to be exempted from the tax. Francis argues that the first "piecemeal" approach does not work because the politically tough measures won't be taken.

ii) Reformers wishing to extend sales tax comprehensively to services should seek a way to make the media's self-serving anti-tax message be seen for what it is.

iii) The pro-reform coalition must proceed on a consensus basis before and after enactment.