

Special Report

March 2002



Carefully Overhauling Florida's Tax System Over the Long Haul

"This is not the end. It is not even the beginning of the end. But it is, perhaps, the end of the beginning."

*Winston Churchill at the Lord Mayor's Luncheon
Mansion House, London, November 10, 1942.*

With the passage of HJR 833 by the 2002 Florida Legislature on March 22, a major departure from Senate President John McKay's original vision of a tax overhaul was granted permission to inch its way toward the proverbial finish line, subject to voter approval of a constitutional amendment in November 2002. But the race is never won until it's over. The new plan has several major hurdles in its way before its proponents can claim victory. Even should they persevere, the debate over how to best modernize Florida's tax system will be unending because Florida's economy and business climate must be in sync with the ever-shifting demands and uncertainties of the new global economy.

Florida TaxWatch met with Senator McKay as early as November 2001 and commended him for his vision and courage in proposing to modernize Florida's tax system. As will be discussed below, TaxWatch is very supportive of modernizing Florida's tax system, but only if this is done comprehensively, with due diligence and in accordance with what is best for Florida, its citizens, businesses and the economy. Unfortunately, HJR 833, not unlike the original McKay plan, is problematic on a number of grounds. ¹

It is a far cry from McKay's original concept, which among other things, purported to be revenue neutral in its first year. Revenue neutrality ostensibly was to be achieved by reducing the sales and use tax rate from 6 to 4.5 percent (originally 4.p percent) while levying an alleged \$4.2 billion of new taxes on previously tax exempt goods and services. ²

By not including an offsetting sales and use sales tax rate reduction, the new plan effectively amounts to an inherent set of tax increases-but only if voters decide to approve it as a constitutional amendment in November 2002. It remains to be seen whether Florida taxpayers will vote to increase taxes. Opposition to the amendment already is forming and likely will mount as the November 2002 elections draw closer.

HJR 833 would create a Joint Legislative Committee comprised of six members from each house,

appointed by the presiding officers of each house and charged with reviewing all exclusions from the tax on sales, use and other transactions. If a majority of the Committee elects to repeal an exemption, it has until no later than March 1 of 2004, 2005 and 2006 to submit its findings and recommendations to the Legislature. If the Legislature does not act to rescind the Committee's deauthorization on or before July 1 following the second regular session occurring after the deauthorization's submission, it becomes law.

Florida TaxWatch has a long and consistent history of opposing attempts to legislate by constitutional amendment, especially when the state constitution already allows the statutory enactment of such a proposal. Using Florida's Constitution as the vehicle for major tax reform, as HJR 833 does, is simply wrong and ties the hands of future legislators.

A thoughtful, comprehensive reform of Florida's tax structure calls for more than just the hasty "rearranging of the attic." HJR 833 was hastily crafted as the Legislature was winding down in its final hours. As a result, the summary ballot language it requires is troublesome and does not accurately or clearly instruct Florida voters. It likely will be challenged constitutionally on several fronts.

Could the courts find under the Federal separation of powers doctrine that the amendment accumulates power in the hands of too few because Florida legislators effectively voted to abdicate their constitutional law-making authority to the discretion of just 12 of their members? Another constitutional challenge might be raised as to whether the HJR 833 provides proper checks and balances because the Governor would have no authority in the matter, and the ballot language does not so advise Florida voters.

Stringing out the exemption deauthorization process over from multiple years of delay invites legislative equivocation (if not errant mischief) in the proceedings and places the state's economy and business climate in a disquieted state of limbo, and "business uncertainty." This is contrary to achieving the plan's professed goal of tax system stability and is unhealthy for Florida citizens, employees, businesses and the state's economy. It also could impair the state's ability to attract new businesses that otherwise would consider expanding or relocating to Florida.

Undaunted by these recent developments, Florida TaxWatch shall continue on the course it set upon this past August 2002 when it commissioned an independent review and comprehensive analysis of Florida's tax system by its Center for a Competitive Florida. Enlisting the best coalition of minds, professional expertise and experience from senior TaxWatch staff and the public and private sectors, the Center's Advisory Committee will meet four to five times, beginning in June 2002. Its charge is to study how to best promote, through fair, efficient, stable and accountable tax policy, Florida's ability to adapt competitively to the dynamics of the new economy and the needs of the people and Florida businesses. The Center already has released five *Special Reports* in an ongoing series on *Modernizing Florida's Tax System*.³

The Center study will take into account a variety of interlocking variables: capital formation in current and emerging markets, the distribution and increasing fluidity of factors of production, e-commerce, the geographic mobility of firms and interjurisdictional tax competition, the taxation of remote sales over the

Internet, the deregulation of telecommunications, the deregulation of electricity and gas, the declining production of tangible goods relative to services, tort reform, etc. All current and potential sources of revenue are on the table for the Center to comprehensively review and analyze: the sales and use tax, corporate income tax, personal income tax, other state taxes, nontax revenue sources, and currently exempted or untaxed goods and services.

Any responsible and nurturing modernization of Florida's tax system requires the nonpartisan, independent assessment being done by the Center for a Competitive Florida. The study will determine through fact-based research, rather than by innuendo, how Florida, its citizens, and the state's business climate will fair once modernized and over the long haul. It will assess the particular combination of tax system factors that work best toward achieving tax fairness among Florida households and businesses.

Florida needs a tax system that is fair and understandable, will promote tax compliance, be inexpensive to operate, and foster a healthy, strong and diversified economy for all Floridians. Absent such a system, Florida risks not being able to effectively compete in the emerging global, substate-regional and interstate markets and having a business climate that will attract and retain the high-value jobs Florida residents, businesses and the recipients of government services deserve.

Modernizing Florida's tax system is no small task and requires more than a hastily drawn, one-dimensional, peripatetic "fix." Whether the Legislature's most recent iteration of tax reform crosses the finish line in November 2002 or not, the debate over how best to equip Florida's tax system to meet the shifting challenges of the 21st Century is probably just at the "end of its beginning" rather than at its end. The evolving, unrequited requirements of the new global economy will perpetually challenge the system's resiliency, necessitating unending adjustments and debate.

ENDNOTES

1. See Florida TaxWatch's *Special Report*, February 2002, "Florida TaxWatch Position Paper: Modernizing Florida's Tax System" at www.floridataxwatch.org.
2. Florida TaxWatch takes issue with the original Senate plan's claim of revenue neutrality. See Florida TaxWatch *Special Report*, February 2002, "Tax Reform Proposal's Claims Questionable: Revenue Neutrality - Just an Illusion?" at www.floridataxwatch.org.
3. The Center's ongoing series of *Special Reports on Modernizing Florida's Tax System* may be found on Florida TaxWatch's Website at www.floridataxwatch.org.

The Sixth in a series of *Special Reports* on Modernizing Florida's Tax System
By
The Center for a Competitive Florida

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