

REVENUE ESTIMATING CONFERENCE

Tax: Reemployment Tax

Issue: Marketplace Contractors

Bill Number(s): Proposed Amendment

Entire Bill

Partial Bill:

Sponsor(s):

Month/Year Impact Begins: July 1, 2018

Date of Analysis: March 3, 2018

Section 1: Narrative

a. Current Law: There is no Chapter 451 in Florida Statutes.

b. Proposed Change: Creates Chapter 451, Florida Statutes, to read:

CHAPTER 451

MARKETPLACE CONTRACTORS

451.01. Definitions. —For purposes of this chapter, the term:

(1) "Household services" means:

- (a) furniture assembly;
- (b) interior painting;
- (c) television mounting;
- (d) local moving help, such as packing, lifting, loading, and rearranging household items, but excluding transporting items;
- (e) hanging pictures, mirrors, curtains, blinds, and shelves;
- (f) home cleaning;
- (g) installation of in home technology;
- (h) installing or replacing door hardware;

(2) "Marketplace contractor" or "contractor" means any individual or entity that:

- (a) Enters into an agreement with a marketplace platform to use the platform's technology application to receive connections to third-party individuals or entities seeking temporary household services; and
- (b) In return for compensation, offers or provides services to third-party individuals or entities through the marketplace platform's technology application.

(3) "Marketplace platform" or "platform" means an entity operating in this state that:

- (a) Offers an online-enabled technology application service, website, or system that enables marketplace contractors to provide services to third-party individuals or entities seeking such temporary household services;
- (b) Accepts service requests from the public only through its online-enabled technology application service, website, or system.

451.02 Marketplace contractors.—

(1) A marketplace contractor shall be treated as an independent contractor, and not an employee, of the marketplace platform for all purposes under state and local laws, regulations, and ordinances, including, but not limited to, chapters 440 and 443, if all of the following conditions are met:

- (a) The marketplace platform does not unilaterally prescribe specific hours during which the marketplace contractor must be available to accept service requests from third-party individuals or entities submitted through the platform.
- (b) The marketplace platform does not prohibit the marketplace contractor from using the technology application offered by other marketplace platforms.
- (c) The marketplace platform does not restrict the contractor from engaging in any other occupation or business.
- (d) The marketplace platform and marketplace contractor agree in writing that the contractor is an independent contractor with respect to the marketplace platform.
- (e) The marketplace contractor bears all or substantially all of the marketplace contractor's expenses incurred by the marketplace contractor in performing the services.
- (f) The marketplace contractor is responsible for the taxes on the marketplace contractor's income.

(2) The provisions of subsection (1) apply to services performed by a marketplace contractor before July 1, 2018, if the conditions set forth in subsection (1) were satisfied during the period when the services were performed.

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(3) Compliance with this section is not mandatory to establish the existence of an independent contractor relationship. The exclusion of any contractor or digital platform from this section does not create any presumption and is not admissible to deny the existence of an independent contractor relationship.

(4) This section does not apply to:

(a) Services performed in the employ of the state, a political subdivision of the state, an Indian tribe, an instrumentality of a state, or any political subdivision of a state or an Indian tribe that is wholly owned by one or more states, political subdivisions, or Indian tribes, respectively, provided that such service is excluded from employment as defined in ss. 3301 and 3306 of the Federal Unemployment Tax Act.

(b) Services performed in the employ of a religious, charitable, educational, or other organization that is excluded from employment as defined in ss. 3301 through 3311 of the Federal Unemployment Tax Act, solely by reason of s. 3306(c)(8) of the act.

**Section 2: Description of Data and Sources**

2016-17 Reemployment Tax data

Long-Term Revenue Analysis Fall 2017 Volume 33

North American Industrial Classification System (NAICS)

**Section 3: Methodology (Include Assumptions and Attach Details)**

Identified those NAICS codes most likely to include the activities that are specified in the proposed language. The template was constructed by estimating the percent of reemployment taxes paid at the 4 digit NAICS code level during State Fiscal Year 2016-17. The template is structured to provide the impact of a percentage of any given 4 digit NAICS code migrating to the Marketplace Platform/ Contractor model.

To demonstrate possible magnitudes, the analyst simulated a migration across those identified NAICS codes for the low. Where there appeared to be more activities that might be able to avail themselves of the proposed language, the percentage was set slightly higher. The low was doubled for the middle, and the middle was doubled for the high. Growth throughout the forecast period was modeled using the rate of growth in the forecast for the Reemployment tax receipts from the Long-Term Revenue Analysis - Fall 2017 Volume 33

**Section 4: Proposed Fiscal Impact**

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	(\$10.6 M)	(\$10.6 M)	(\$5.3 M)	(\$5.3 M)	(\$2.6 M)	(\$2.6 M)
2019-20	(\$10.8 M)	(\$10.8 M)	(\$5.4 M)	(\$5.4 M)	(\$2.7 M)	(\$2.7 M)
2020-21	(\$10.9 M)	(\$10.9 M)	(\$5.5 M)	(\$5.5 M)	(\$2.7 M)	(\$2.7 M)
2021-22	(\$11.1 M)	(\$11.1 M)	(\$5.6 M)	(\$5.6 M)	(\$2.8 M)	(\$2.8 M)
2022-23	(\$11.3 M)	(\$11.3 M)	(\$5.7 M)	(\$5.7 M)	(\$2.8 M)	(\$2.8 M)

**List of affected Trust Funds:**

Reemployment Group

**Section 5: Consensus Estimate (Adopted: 03/05/2018): The Conference adopted the low estimate.**

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2018-19	0.0	0.0	0.0	0.0	(2.6)	(2.6)	(2.6)	(2.6)
2019-20	0.0	0.0	0.0	0.0	(2.7)	(2.7)	(2.7)	(2.7)
2020-21	0.0	0.0	0.0	0.0	(2.7)	(2.7)	(2.7)	(2.7)
2021-22	0.0	0.0	0.0	0.0	(2.8)	(2.8)	(2.8)	(2.8)
2022-23	0.0	0.0	0.0	0.0	(2.8)	(2.8)	(2.8)	(2.8)

Proposed Amendment- Marketplace Contractors

	A	B	C	D	E	F	G
1	rr			Reemployment tax Receipts Forecast			
2				Long Term Revenue Analysis			
3				2018-19	733.1		
4				2019-20	746.6	1.84%	
5				2020-21	759.7	1.75%	
6				2021-22	772.5	1.68%	
7				2022-23	784.8	1.59%	
8							
9							
10	Impact						
11			High	Middle	Low		
12		2018-19	\$10,564,029	\$5,282,015	\$2,641,007		
13		2019-20	\$10,758,566	\$5,379,283	\$2,689,641		
14		2020-21	\$10,947,338	\$5,473,669	\$2,736,834		
15		2021-22	\$11,131,787	\$5,565,893	\$2,782,947		
16		2022-23	\$11,309,031	\$5,654,515	\$2,827,258		

	A	B	C	D	E	F	G
1	Total Reemployment Taxes			\$733,100,000			
2							
						Assumed Percent of Taxable Activity that converts to	
						Marketplace Platform/Contractor Model	Impact at 4 digit NAICS level
3	2 Digit Group Description	NAICS_4_ Digit	NAICS 4 Digit Description	Percent of Taxes	Implied Taxes by 4 digit NAICS		
37	Construction	2381	Foundation, Structure, and Building Exterior Contractors	0.950%	\$6,967,344	1.0%	\$69,673
38	Construction	2382	Building Equipment Contractors	2.550%	\$18,694,521	3.0%	\$560,836
39	Construction	2383	Building Finishing Contractors	0.861%	\$6,310,477	3.0%	\$189,314
40	Construction	2389	Other Specialty Trade Contractors	0.506%	\$3,711,266	3.0%	\$111,338
149	Retail Trade	4421	Furniture Stores	0.329%	\$2,408,591	3.0%	\$72,258
150	Retail Trade	4422	Home Furnishings Stores	0.145%	\$1,061,818	3.0%	\$31,855
151	Retail Trade	4431	Electronics and Appliance Stores	0.648%	\$4,748,741	3.0%	\$142,462
179	Transportation	4842	Specialized Freight Trucking	0.240%	\$1,761,423	3.0%	\$52,843
197	Transportation	4889	Other Support Activities for Transportation	0.036%	\$263,094	2.0%	\$5,262
249	Administrative and Support	5617	Services to Buildings and Dwellings	1.870%	\$13,708,977	10.0%	\$1,370,898
295	Other Services	8112	Electronic and Precision Equipment Repair and Maintenance	0.161%	\$1,181,363	1.0%	\$11,814
297	Other Services	8114	Personal and Household Goods Repair and Maintenance	0.102%	\$748,520	3.0%	\$22,456
317							\$2,641,007

Proposed Amendment - Marketplace Contractors

	A	B
2	6 Digit NAICS	Description
3		238150 Glass Installation
4		238150 Window Pane or Sheet Installation
5		238150 Mirror Installation
6		238210 Audio Equipment Installation (except Automotive) Contractors
7		238210 Intercommunication (intercom) system installation
8		238210 Fiber optic cable (except transmission lines) <b>installation</b>
9		238210 Alarm system (e.g., fire, burglar), electric, <b>installation</b> only
10		238210 Telephone <b>installation</b> contractors
11		238210 Control system (e.g., environmental, humidity, temperature) <b>installation</b>
12		238210 Smoke detection system, <b>installation</b> only
13		238210 Environmental control system <b>installation</b>
14		238210 Humidity control system <b>installation</b>
15		238210 Computer and network cable <b>installation</b>
16		238210 Telecommunications equipment and wiring (except transmission line) <b>installation</b> contractors
17		238210 Home theater <b>installation</b>
18		238210 Sound equipment <b>installation</b>
19		238220 Water meter <b>installation</b>
20		238220 Solar heating equipment <b>installation</b>
21		238220 Lawn sprinkler system <b>installation</b>
22		238220 Air-conditioning system (except window) <b>installation</b>
23		238230 Painting (except Roof) Contractors
24		238230 House Painting
25		238230 Painting and Wallpapering
26		238290 Satellite dish, household-type, <b>installation</b>
27		238290 Antenna, household-type, <b>installation</b>
28		238290 Garage door, commercial- or industrial-type, <b>installation</b>
29		238290 Automatic gate (e.g., garage, parking lot) <b>installation</b>
30		238290 Vacuum cleaning system, built-in, <b>installation</b>
31		238350 Door and window, prefabricated, <b>installation</b>
32		238350 Window and door (residential-type) of any material, prefabricated, <b>installation</b>
33		238390 Window shade and blind <b>installation</b>
34		238390 Closet organizer system <b>installation</b>
35		238390 Ventilated wire shelving (i.e., closet organizing-type) <b>installation</b>
36		238390 Modular furniture system attachment and <b>installation</b>
37		484210 Van Lines, Moving and Storage Services
38		484210 Used Household and Office Goods Moving
39		484210 Furniture Moving, Used
40		488991 Preparing goods for transportation
41		488991 Packing and preparing goods for Shipping
42		561720 Residential Cleaning Services
43		561720 Cleaning Homes
44		561720 Maid services
45		561720 Venetian Blind Cleaning Services
46		561720 Housekeeping Services
47		561740 Carpet Cleaning Services
48		561740 Furniture Cleaning Services
49		811211 Television repair services without retailing new televisions
50		811490 Venetian Blind Repair Shops without retailing new Venetian blinds
51		811490 Window shade repair and maintenance shops