

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 1066

INTRODUCER: Commerce and Tourism Committee and Senators Baxley and Diaz

SUBJECT: Sales Tax Absorption

DATE: March 18, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------|----------------|-----------|--------|
| 1. | Anderson | McKay | CM | Fav/CS |
| 2. | | | FT | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1066 allows dealers to advertise the absorption of sales tax owed on the sale of property or services, which current law prohibits. The bill requires dealers who advertise tax absorption to show on invoices, charge tickets, or sales slips the amount of sales tax that was due and paid by the dealer. Dealers may not imply or indicate that a transaction is exempt from the state sales tax. A person who fails to add the tax to the selling price is guilty of a misdemeanor of the second degree, and the criminal penalty for failing to remit absorbed taxes is the same as the criminal penalty for failing to remit collected taxes.

The bill takes effect July 1, 2019.

II. Present Situation:

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹ transient rentals,² rental of commercial real estate,³ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

uses under specified circumstances. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.⁴ Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵ Sales tax receipts accounted for 77 percent of the state's General Revenue in Fiscal Year 2017-2018.⁶

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 1.5 percent.⁸

Tax Absorption

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, pay, or refund the purchaser all or any part of the sales tax due with the sale of their property or services. A person who violates this provision, whether by advertising or refunding, is guilty of a misdemeanor of the second degree.⁹ A subsequent offense constitutes a misdemeanor of the first degree.¹⁰

III. Effect of Proposed Changes:

Section 1 amends s. 212.07(4), F.S., to remove the prohibition on a dealer advertising or holding out that the dealer will absorb sales tax or refund a purchaser of the payment of sales tax. The bill allows a dealer to advertise that the dealer will absorb applicable sales tax, or refund the sales tax for the purchaser, subject to the following conditions:

- First, the dealer must expressly state on any charge ticket, sales slip, invoice, or other tangible evidence of sale provided to the purchaser that the dealer will pay the tax imposed in ch. 212, F.S. The dealer must not imply or state that the sale is exempt from taxes imposed in ch. 212, F.S.; and
- Second, the dealer must provide the amount of tax that was due on the charge ticket, sales slip, invoice, or other tangible evidence of sale given to the purchaser.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 162-168 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

⁵ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited March 18, 2019).

⁶ Office of Economic and Demographic Research, Florida Legislature, *Florida Tax Handbook*, Sources of General Revenue, 16 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

⁷ Section 212.054, F.S.

⁸ Office of Economic and Demographic Research, Florida Legislature, *Florida Tax Handbook*, 2018 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 18, 2019).

⁹ Section 775.082(4)(b), F.S., "For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days" and s. 775.083(1)(e), F.S., "\$500, when the conviction is of a misdemeanor of the second degree..."

¹⁰ Section 775.082(4)(a), F.S., "For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year" and s. 775.083(1)(d), F.S., "\$1,000, when the conviction is of a misdemeanor of the first degree."

A dealer may not advertise that the sales tax will not be added to the sales price on a transaction. If a dealer fails to add the price of the tax to the selling price, they are guilty of a misdemeanor of the second degree. A subsequent offense constitutes a misdemeanor of the first degree.

Section 2 amends s. 212.15, F.S., stipulating that the failure to remit absorbed taxes has the same criminal penalties as the failure to remit collected taxes. If a dealer fails to remit absorbed taxes totaling less than \$300, the offense is a misdemeanor in the second degree.¹¹ If the total amount of stolen revenue is \$300 or more but less than \$20,000, the offense is a felony of the third degree.¹² If the total amount of stolen revenue is \$20,000 or greater but less than \$100,000, the offense is a felony of the second degree.¹³ If the amount of stolen revenue is \$100,000 or greater, the offense is a felony of the first degree.¹⁴

Section 3 provides an effective date of July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

¹¹ Section 775.082(4)(b), F.S., “For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days” and s. 775.083(1)(e), F.S., “\$500, when the conviction is of a misdemeanor of the second degree...”

¹² Section 775.082(3)(e), F.S., “For a felony of the third degree, by a term of imprisonment not exceeding 5 years” and s. 775.083(1)(c), F.S., “\$5,000, when the conviction is of a felony of the third degree.”

¹³ Section 775.082(3)(d), F.S., “For a felony of the second degree, by a term of imprisonment not exceeding 15 years” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

¹⁴ Section 775.082(3)(b)1, F.S., “For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends sections 212.07 and 212.15 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism Committee on March 18, 2019:

The committee substitute amends s. 212.15, F.S., to clarify that the failure to remit absorbed taxes has the same criminal penalties as the failure to remit collected taxes.

B. Amendments:

None.