

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 Commerce and Tourism

BILL: SB 508

INTRODUCER: Senator Baxley

SUBJECT: Sales Tax Absorption

DATE: November 8, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 508 allows businesses to advertise that they will pay or refund some or all of the tax due on behalf of their customers. A business that absorbs its customers' tax must provide an invoice or similar document that (1) expresses that the business will pay the tax imposed by ch. 212, F.S., and (2) states the amount of tax due on the sale.

Florida businesses are currently prohibited from absorbing, paying, or refunding their customers' tax, and a business that advertises or actually absorbs the tax is subject to penalties ranging from a second-degree misdemeanor for a first offense, to a first-degree misdemeanor for any subsequent offense.

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 that authorize the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax receipts are estimated to account for 77 percent of the state's General Revenue Fund in the 2018-2019 fiscal year.⁴

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

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, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202.”⁵ 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. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.⁶

Florida businesses that sell taxable goods and services must register as a dealer with the Department of Revenue (department).⁷ A dealer must add sales tax to the price of the taxable good or service and collect the tax from a purchaser at the time of sale.⁸ Tax is considered state property at the time the dealer collects it.⁹ Therefore, a dealer who fails to remit the tax to the department is guilty of theft, punishable by up to a first-degree felony, depending on the amount stolen and prior occurrences.¹⁰

A dealer must also provide a purchaser with an invoice at the time of the sale that separately states the amount of sales tax charged, unless it is impracticable to do so.¹¹ If a typical dealer fails to state the tax charged separately on the invoice, it is subject to a second-degree misdemeanor.¹² However, invoices are not required to be provided in the following types of sales because the department has determined that doing so is impracticable:

- Amusement Machines;¹³
- Concession Stands;¹⁴
- Vending Machines;¹⁵ and
- Alcoholic and malt beverage sales.¹⁶

⁵ Section 212.054, F.S.

⁶ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 219-226 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

⁷ Florida Dep't. of Revenue, *Business Owner's Guide for Sales and Use Tax* at 4 (Jul. 2019), available at https://floridarevenue.com/Forms_library/current/gt300015.pdf (last visited Nov. 8, 2019).

⁸ Florida Dep't. of Revenue, *Florida Sales and Use Tax*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019). Sections 212.06(1)(a) and 212.07(2), F.S.

⁹ Sections 212.15(1) and 213.756 F.S. *See also, Blackshears II Aluminum, Inc. v. Dept. of Revenue*, 641 So. 2d 928 (Fla. Dist. Ct. App. 1994).

¹⁰ Section 212.15(2), F.S.

¹¹ Section 212.07(2), F.S. Florida Dep't. of Revenue, *Florida Sales and Use Tax: How Tax is Calculated*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019).

¹² Section 212.07(4), F.S. If a dealer has committed the same violation previously, he or she is subject to a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to 1 year of imprisonment and a \$1,000 fine; a second-degree misdemeanor is punishable by up to 60 days of imprisonment and a \$500 fine. Sections 775.083 and 772.082(4), F.S.

¹³ Florida Dep't. of Revenue, *Sales and Use Tax on Amusement Machines, Form GT-800020* (Sept. 2019), available at https://floridarevenue.com/Forms_library/current/gt800020.pdf (last visited Nov. 8, 2019).

¹⁴ Florida Dep't. of Revenue, *Sales and Use Tax on Concession Sales, Form GT-800003* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800003.pdf (last visited Nov. 8, 2019).

¹⁵ Florida Dep't. of Revenue, *Sales and Use Tax on Vending Machines, Form GT-800041* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800041.pdf (last visited Nov. 8, 2019).

¹⁶ Florida Dep't. of Revenue, *Sales and Use Tax on Alcoholic Beverages, Form GT-800046* (Dec. 2018), available at https://floridarevenue.com/Forms_library/current/gt800046.pdf (last visited Nov. 8, 2019).

A business uses its receipts to calculate its tax due, but by virtue of these industries' non-use of receipts, the department allows them to calculate their taxes using effective tax rates and divisors set by the department.¹⁷ For example, dealers who sell alcoholic beverages may either calculate their state tax obligation as an additional percentage of their individual sales (as evidenced on individuals receipts), or as a percentage of their total receipts (in which case the tax rate varies depending on whether the business posts notice that sales tax is included in the price of the beverage).¹⁸ Similarly, specific concession stands may charge an even dollar amount and then calculate the amount of tax due using a divisor rate set by department rule.¹⁹ Dealers who operate vending machines and amusement machines are also subject to a divisor rate set by the department.²⁰

Sales Tax Absorption

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, pay, or refund a purchaser all or part of the sales tax due on a sale. A Florida dealer who violates this prohibition, whether by advertising or refunding, is guilty of a second-degree misdemeanor.²¹

Several states, including Arizona,²² California,²³ Kentucky,²⁴ and Nevada²⁵ have similar laws that prohibit dealers from absorbing or refunding taxes to a purchaser.²⁶ However, a growing number of states permit tax absorption, including Wisconsin,²⁷ Pennsylvania,²⁸ and Georgia.²⁹

¹⁷ Florida Dep't. of Revenue, *Florida Sales and Use Tax*, https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Nov. 8, 2019).

¹⁸ See Rule 12A-1.057, F.A.C.

¹⁹ Rule 12A-1.080, F.A.C.

²⁰ Rule 12A-15.011, F.A.C.

²¹ *Supra* note 12.

²² AR Rev. Stat. § 42-5165, available at <https://www.azleg.gov/viewdocument/?docName=http%3A%2F%2Fwww.azleg.gov%2Fars%2F42%2F05165.htm> (last visited Nov. 8, 2019).

²³ CA Rev. & Tax Code § 6205 (2018), available at <https://www.cdtfa.ca.gov/lawguides/vol1/sutl/6205.html> (last visited Nov. 8, 2019).

²⁴ KY Rev. Stat. § 139.220 (2011), available at <https://law.justia.com/codes/kentucky/2011/139-00/139-220> (last visited Nov. 8, 2019).

²⁵ NV Rev. Stat. § 372.115, available at <https://www.leg.state.nv.us/nrs/NRS-372.html#NRS372Sec115> (last visited Nov. 8, 2019).

²⁶ Gail Cole, *Absorbing Sales Tax* (Jul. 22, 2019), <https://www.avalara.com/us/en/blog/2015/11/absorbing-sales-tax-wacky-tax-wednesday.html> (last visited Nov. 8, 2019).

²⁷ WI Dep't. of Revenue, *Sales and Use Tax Report at 2* (Jul. 2011), available at <https://www.revenue.wi.gov/SalesUseTaxReport/11-2.pdf> (last visited Nov. 8, 2019).

²⁸ PA Act 2019-13 § 7 (eff. Jul. 1, 2019). See also, Pa. Dep't. of Revenue, *State Tax Summary* (Jul. 2019), available at https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxSummaries/Documents/2019_tax_summary.pdf (last visited Nov. 8, 2019).

²⁹ GA Code. § 48-8-36 (2015), available at <https://law.justia.com/codes/georgia/2015/title-48/chapter-8/article-1/part-2/section-48-8-36/> (last visited Nov. 8, 2019).

Businesses cite various reasons for seeking to absorb sales tax, ranging from quickly moving customers through their lines,³⁰ to preventing confusion during state sales tax holidays when certain items are exempt from sales tax—but others are not.³¹

III. Effect of Proposed Changes:

The bill amends s. 212.07(4), F.S., to remove the prohibition on dealer tax absorption and similar activities. The bill allows a dealer to advertise that it will absorb all or part of the tax due under ch. 212, F.S., and to pay for or give a refund to the purchaser for the tax obligation on a sale. To do so, however, the dealer must provide the customer with an invoice or similar document that (1) expresses that the business will pay the tax imposed by ch. 212, F.S., and (2) states the amount of tax due on the sale. If a dealer violates this provision, he or she is guilty of a second-degree misdemeanor.³²

The bill also amends s. 212.15, F.S., to expand the criminal offense for failure to remit both collected *and absorbed* taxes to the department. Depending on the amount of revenue stolen, and whether the dealer has prior offenses, he or she is subject penalties ranging from a second-degree misdemeanor to a first-degree felony.

The bill takes effect on July 1, 2020.

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.

³⁰ *MJR Group, LLC v. Mich. Dep't. of Treasury*, No. 329119, 2016 WL 7611479 (Mich. Ct. App. Dec. 29, 2016), available at <http://www.michbar.org/file/opinions/appeals/2014/022514/56543.pdf> (last visited Nov. 8, 2019).

³¹ Slim Smith, *Statewide 'Sales Tax Holiday' set for July 31-Aug. 1* (Jul. 22, 2015), <https://www.washingtontimes.com/news/2015/jul/22/statewide-sales-tax-holiday-set-for-july-31-aug-1/> (last visited Nov. 8, 2019).

³² A dealer who commits a subsequent violation of s. 212.07(4), F.S., is subject to a first-degree misdemeanor. *Supra* note 12.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

Businesses may now absorb their customers' state taxes, and advertise their ability to do so. This may incentivize customers to shop at those businesses that absorb the state tax over those that do not. Consumers may pay fewer state taxes on their purchases.

C. Government Sector Impact:

The Department may be required to update administrative rules to reflect specific industries' abilities to absorb state tax.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following 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.)

None.

B. Amendments:

None.