

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 Community Affairs

BILL: SB 1030

INTRODUCER: Senator Rodriguez

SUBJECT: Taxation

DATE: January 12, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

SB 1030 makes various changes to statutes relating to the Department of Revenue (Department).

The bill:

- Deletes obsolete language referring to pollutants tax registration fees;
- Revises administration of certain taxes related to the purchase of boats, trailers, and aircrafts;
- Allows the Department to reopen a final assessment for the purpose of adjusting liability under certain circumstances;
- Allows the Department to include all taxes, penalties, interest, costs, and fees authorized by law in a garnishment or levy;
- Increases the threshold for underpayment penalties on corporate income tax; and
- Provides rulemaking and emergency rulemaking authority.

The bill also permits counties and school boards to forego imposing local discretionary sales surtaxes on commercial rent.

The bill takes effect July 1, 2024.

II. Present Situation:

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

III. Effect of Proposed Changes:

Pollutants Tax Registration Fees

Current Situation: Any entity intending to produce or import pollutants, liquid commodities made from petroleum products, pesticides, ammonia, chlorine, perchloroethylene, or solvents,¹ must register and become licensed to do so.² Statute provides that an entity must pay a \$30 registration fee when requesting a pollutants tax license.³ However, these registration fees were previously repealed.⁴

Proposed Changes: **Section 1** amends s. 206.9931, F.S., to remove obsolete language related to pollutants tax registration fees.

Local Discretionary Sales Surtax on Commercial Rentals

Present Situation: In addition to the state sales and use tax, s. 212.055, F.S., authorizes counties and school boards to impose nine local discretionary sales surtaxes.⁵ 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”⁶ 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.

Sales Tax on Commercial Rent

Since 1969, Florida has imposed a sales tax on the total rent charged for the rental, lease, or license to use commercial real property.⁷ Sales tax is due at the rate of 4.5 percent of the total rent paid⁸ and local discretionary sales surtaxes may apply.⁹ If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.¹⁰

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It also includes the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are several commercial rentals that are not subject to tax, including:

- Rentals of real property assessed as agricultural.

¹ Florida Dept. of Revenue, Pollutants Tax, available at <https://floridarevenue.com/taxes/taxesfees/Pages/pollutants.aspx> (last visited Jan. 10, 2024).

² Section 206.9931, F.S.

³ *Id.*

⁴ Chapter 2017-36 s.17, L.O.F.

⁵ These include the Charter County and Regional Transportation System Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, the County Public Hospital Surtax, the School Capital Outlay Surtax, the Voter-Approved Indigent Care Surtax, the Emergency Rescue Services and Facilities Surtax, and the Pension Liability Surtax. *See* section 212.055, F.S.

⁶ Section 212.054, F.S.

⁷ Chapter 1969-222, Laws of Fla.

⁸ Section 212.031, F.S. *See* Reviser’s note.

⁹ Section 212.055, F.S.

¹⁰ Rule 12A-1.070, F.A.C.

- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption.
- Rentals to federal, state, county, or city government agencies.
- Properties used exclusively as dwelling units.
- Public streets or roads used for transportation purposes.¹¹

Proposed Changes: **Section 2** amends s. 212.031, F.S., to provide that a county or school board imposing a discretionary sales surtax may exclude rent or license fees on commercial real property from discretionary sales surtaxes. The exclusion must be approved by majority vote of the members of the board of county commissioners or school board, and does not require referendum approval. The exemption must be initiated on the January 1 following such approval.

Affidavit for Non-Resident Purchasers of Boats and Aircrafts

Current Situation: Nonresident purchasers of boats and aircraft are exempt from paying state sales taxes. Among other requirements relating to the purchase and subsequent removal from the state of the boat or aircraft, such purchasers are required to sign an affidavit attesting that they have read the provisions of s. 212.05, F.S., in its entirety, in order to claim the exemption. Section 212.05, F.S., is lengthy and includes many provisions that are not applicable to the purchaser of a boat or aircraft.

Proposed Changes: **Section 3** amends s. 212.05(1)(a)2.d., F.S., by removing the requirement that a purchaser attests to having read statutory provisions and replacing that language with the requirement that the nonresident purchaser complete an affidavit that affirms that the nonresident purchaser qualifies for exemption from sales tax pursuant to s. 212.05(1)(a)2., F.S., and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption claimed under s. 212.05(1)(a)2., F.S.

Imposition of Surtax Limitation on the Purchase of Boats and Trailers

Present Situation: Local discretionary sales surtaxes may only be charged on the first \$5,000 of the sales amount of any item of tangible personal property.¹² If two or more taxable items are sold to the same purchaser at the same time and would generally be sold in bulk or compromise pieces of a unit, such items must be considered a single item.¹³

Proposed Changes: **Section 4** amends s. 212.054, F.S., to clarify that the sale of a boat and corresponding boat trailer must be taxed as a single item when sold to the same purchaser, at the same time, and in the same invoice.

¹¹ See s. 212.031(1)(a)1.-13., F.S.

¹² Section 212.054(2)(b)1., F.S.

¹³ *Id.*

Event Impacting Timely Audit Challenges

Current Situation: After a state audit¹⁴ reaches its conclusion, a taxpayer may contest the legality of any assessment or denial of refund of taxes and fees.¹⁵ Such contest may be filed by circuit court action or by petition under administrative law.¹⁶ No action may be brought more than 60 days after the date the assessment becomes final.¹⁷ Current law does not provide the Department with the authority to reopen a final assessment for purposes of adjusting or compromising the liability, other than to resolve the outstanding liability for collectability.¹⁸

Proposed Changes: **Section 5** creates s. 213.21(11), F.S., to provide that, following the expiration of time for a taxpayer to challenge an assessment or a denial of a refund issued by the Department, the Department may consider a request to settle or compromise any tax, interest, penalty, or other liability under s. 213.21, F.S., if the taxpayer demonstrates that the failure to initiate a timely challenge was due to:

- The death or life-threatening injury or illness of the taxpayer or an immediate family member of the taxpayer;
- The death or life-threatening injury or illness of the responsible party that controlled, managed, or directed the affected business entity;
- Acts of war or terrorism; or
- Natural disasters, fire, or other catastrophic loss.

The Department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011, F.S. Any decision by the Department regarding a taxpayer's request to compromise or settle a liability under this subsection is not a final order subject to review under ch. 120, F.S.

Garnishment

Present Situation: The Department has the authority to issue a levy upon credits, other personal property, or debts belonging to a delinquent taxpayer.¹⁹ The Department may levy for any taxes, penalties, and interest; however, the Department does not have the authority to levy for fees (e.g., administrative collection processing fee, warrant filing fees, or any other fee or cost that might be enacted into the Florida Statutes), additional daily accrued interest, or the authority to issue notices to levy (garnishments) by electronic means.²⁰ As a result, the Department typically continues with collection efforts for these additional fees after the initial levy is complete.

Proposed Changes: **Section 6** amends s. 213.67, F.S., to authorize the Department to include all taxes, penalties, interest, costs, and fees authorized by law to be included in a garnishment or levy, which has the effect of avoiding multiple collection efforts for additional amounts. The bill allows the executive director of the Department, or his or her designee, to give notice of the

¹⁴ Section 72.011(1), F.S., refers and applies to many types of audits which the state may conduct.

¹⁵ Section 72.011, F.S.

¹⁶ *Id.*

¹⁷ Section 72.011(2)(a), F.S.

¹⁸ Section 213.21, F.S.

¹⁹ Section 213.67, F.S.

²⁰ *Id.*

amount of such delinquency by certified mail. The bill also allows the Department to deliver its notices of levy by certified mail, personal service, or electronic means.

Corporate Income Tax Extension Threshold

Present Situation: Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida.²¹ Taxpayers may be granted up to 6 months of extensions of time within which to file corporate tax returns, provided they have filed a tentative tax return and paid the amount estimated to be the proper tax balance.²² If the payment of tentative tax underpays the actual balance due by more than the greater of \$2,000 or 30 percent of the total tax due, such extensions are invalidated, and the taxpayer may be liable for penalties due to late payment.²³

Proposed Changes: **Section 7** raises the dollar threshold for underpayment following extension of time to file from \$2,000 to \$6,000.

Section 8 provides that the Department shall have emergency rulemaking authority to implement this act.

Section 9 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The section of the bill regarding the combined sale of boats and trailers may have the effect in certain jurisdictions, depending on current administration of these provisions, of collapsing two sales into one, thus reducing discretionary sales surtax collections. The mandate requirement does not apply to laws having an insignificant impact,²⁴ which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.²⁵

The Revenue Estimating Conference has not reviewed the bill at this time.

B. Public Records/Open Meetings Issues:

None.

²¹ Section 220.11(2), F.S.

²² Sections 220.222(2) and 220.32, F.S.

²³ Section 220.222(2)(c), F.S.

²⁴ FLA. CONST. art. VII, s. 18(d).

²⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, *Interim Report 2012-115: Insignificant Impact* (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides that the sale of a boat and trailer together will be treated as a single purchase, which may benefit taxpayers to the extent it changes administration of those taxes.

The bill allows the Department to reopen audits under certain circumstances to consider settlement, and raises the threshold before corporate taxpayers may face certain penalties. These provisions may benefit taxpayers.

C. Government Sector Impact:

The provision related to the sale of a boat and trailer may reduce discretionary surtax revenues to the extent it changes administration of those taxes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends sections 206.9931, 212.031, 212.05, 212.054, 213.21, 213.67, and 220.222 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
