

**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 Criminal Justice Committee

BILL: SB 1978  
 INTRODUCER: Senator Altman  
 SUBJECT: Violations of Tax Statutes/Criminal Penalties  
 DATE: April 12, 2010      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Cannon	CJ	<b>Favorable</b>
2.			FT	
3.			WPSC	
4.				
5.				
6.				

**I. Summary:**

Florida law requires any person desiring to engage in or conduct business in Florida to register with the Department of Revenue (DOR), as provided in s. 212.18, F.S. Sales tax dealers are required to collect sales tax and to report the tax to the DOR. In addition to other penalties, civil and criminal penalties are imposed for unlawful acts relating to registration, collection, and reporting of taxes, surtaxes, surcharges, and fees imposed or administered under ch. 212, F.S.

The bill moves current registration and tax/fee collection violations relating to dealers from s. 212.12, F.S., to different statutory sections, while retaining in s. 212.12, F.S., the offense of making a false or fraudulent return with a willful intent to evade payment of a tax or fee. This offense and willful failure to collect a tax or fee after the DOR provides notice of the duty to collect are subject to penalties similar to those currently provided in s. 212.12, F.S., which escalate based on number of offenses for which there is a conviction or the total amount unreported or uncollected. However, the bill clarifies some confusing language regarding a third or subsequent offense (taxes or fees total less than \$300) in the penalty provisions to clearly indicate that this offense is a third degree felony. The bill also provides that the willful failure to register after the DOR provides notice of the duty to register is a third degree felony.

This bill substantially amends the following sections of the Florida Statutes: 212.07; 212.12; and 212.18.

**II. Present Situation:**

Florida law requires any person desiring to engage in or conduct business in Florida to register with the Department of Revenue (DOR), as provided in s. 212.18, F.S. Sales tax dealers are

required to collect sales tax and to report the tax to the DOR. In addition to other penalties, civil and criminal penalties are imposed for unlawful acts relating to registration, collection, and reporting of taxes, surtaxes, surcharges, and fees imposed or administered under ch. 212, F.S.

Section 212.07(3)(a), F.S. provides that any dealer who fails, neglects, or refuses to collect the tax by himself or herself or through the dealer's agent or employees is, in addition to the penalty of being liable for and paying the tax himself or herself, guilty of a first degree misdemeanor.<sup>1</sup>

Section 212.12(2)(d), F.S., applies to the following persons:

- Any person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee imposed under ch. 212, F.S.
- Any person who, after the DOR's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to register the person's business as a dealer, intentionally fails to register the business.
- Any person who, after the DOR's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to collect tax on specific transactions, intentionally fails to collect such tax.

These persons shall, in addition to the other penalties provided by law, be liable for a specific penalty of 100 percent of any unreported or any uncollected tax or fee and, upon conviction, for fine and punishment as provided in s. 775.082, s. 775.083, or s. 775.084.

Delivery of written notice may be made by certified mail, or by the use of such other method as is documented as being necessary and reasonable under the circumstances. The civil and criminal penalties imposed in s. 212.12(2)(d), F.S., for failure to comply with a written notice alerting the person of the requirement to register the person's business as a dealer or to collect tax on specific transactions shall not apply if the person timely files a written challenge to such notice in accordance with procedures established by the DOR by rule or the notice fails to clearly advise that failure to comply with or timely challenge the notice will result in the imposition of the civil and criminal penalties imposed in s. 212.12(2)(d), F.S.

The following criminal penalties apply to these persons:

- If the total amount of unreported or uncollected taxes or fees is less than \$300:
  - The first offense resulting in conviction is a second degree misdemeanor.<sup>2</sup>
  - The second offense resulting in conviction is a first degree misdemeanor.
  - The third and all subsequent offenses resulting in conviction is *a first degree misdemeanor AND a third degree felony*.<sup>3</sup>

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<sup>1</sup> A first degree misdemeanor is punishable by up to one year in jail, a fine of up to \$1,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

<sup>2</sup> A second degree misdemeanor is punishable by up to 60 days in jail, a fine of up to \$500, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

<sup>3</sup> A third degree felony is punishable by up to 5 years in state prison, a fine of up to \$5,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

- If the total amount of unreported or uncollected taxes or fees is \$300 or more but less than \$20,000, the offense is a third degree felony.
- If the total amount of unreported or uncollected taxes or fees is \$20,000 or more but less than \$100,000, the offense is a second degree felony.<sup>4</sup>
- If the total amount of unreported or uncollected taxes or fees is \$100,000 or more, the offense is a first degree felony.<sup>5</sup>

Section 212.18(3), F.S., provides, in part, that the failure or refusal of any person, firm, copartnership, or corporation to qualify as a dealer when required is a first degree misdemeanor.

### III. Effect of Proposed Changes:

Section 1 of the bill amends s. 212.07, F.S., relating to sales, storage, use tax; tax added to purchase price; dealer not to absorb; liability of purchasers who cannot prove payment of the tax; penalties; and general exemptions. The current misdemeanor offense under s. 212.07(3), F.S., is amended to specify that it also applies to a dealer's failure, neglect, or refusal to collect fees imposed under ch. 212, F.S. Subsection (3) is also amended to provide that it is unlawful for a dealer to willfully fail to collect a tax or fee after the DOR provides notice of the duty to collect. (Section 2 of the bill moves this offense and the penalties provided from s. 212.12(2)(d), F.S., to s. 212.07(3), F.S. The penalty provisions are slightly modified to correct some confusing language relating to third or subsequent offenses in which taxes or fees total less than \$300.) As a result of these changes, a dealer who willfully fails to collect taxes or fees totaling:

- Less than \$300:
  - For a first offense, commits a second degree misdemeanor.
  - For a second offense, commits a first degree misdemeanor.
  - For a third or subsequent offense, commits a third degree felony.
- Three hundred dollars or more, but less than \$20,000, commits a third degree felony.
- Twenty thousand dollars or more, but less than \$100,000, commits a second degree felony.
- One hundred thousand dollars or more commits a first degree felony.

The term 'willful' is defined as a voluntary and intentional violation of a known legal duty.

The DOR must give written notice of the duty to collect taxes or fees to the dealer by:

- Personal service;
- Sending notice to the dealer's last known address by registered mail; or
- Both personal service and mail.

**Section 2** of the bill amends s. 212.12, F.S., relating to dealer's credit for collecting tax; penalties for noncompliance; DOR powers in dealing with delinquents; brackets applicable to taxable

<sup>4</sup> A second degree felony is punishable by up to 15 years in state prison, a fine of up to \$10,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

<sup>5</sup> A first degree felony is generally punishable by up to 30 years in state prison, a fine of up to \$10,000, or both imprisonment and a fine. ss. 775.082 and 775.083, F.S.

transactions; and records required. Section 212.12(2)(d), F.S., is amended to remove the criminal offense and penalties for:

- The intentional failure to collect taxes after written notice by DOR.
- The intentional failure to register after written notice by the DOR.

These offenses are added, respectively, to s. 212.07(3), F.S. (Section 1 of the bill) and s. 212.18(3), F.S. (Section 3 of the bill). The bill retains in s. 212.12(2)(d), F.S., the offense of making a false or fraudulent return with willful intent to evade payment of any tax or fee imposed under ch. 212, F.S. The penalties provided for this offense are identical to those described for the offense pertaining to a dealer willfully failing to collect a tax or fee after the DOR provides notice of the duty to collect. (See analysis of Section 1 of the bill.)

The bill removes a provision that civil and criminal penalties do not apply if the person timely files a written challenge to such notice in accordance with procedures established by the DOR by rule or the notice fails to clearly advise that failure to comply with or timely challenge the notice will result in the imposition of the civil and criminal penalties. This provision is currently of relevance to the offense retained in s. 212.12(2)(d), F.S., by this section of the bill as well as the offenses removed from s. 212.12(2)(d), F.S., and moved to s. 212.07(3), F.S. (Section 1 of the bill) and s. 212.18(3), F.S. (Section 3 of the bill).

Information communicated by DOR staff to professional staff of the Committee of Criminal Justice is that this provision is redundant. An administrative appeals avenue is available pursuant to s. 213.21, F.S. This section sets forth a non-exhaustive list of circumstances in which doubt as to a taxpayer's liability for any tax or interest specified in s. 72.011(1), F.S., may exist. Section 72.011(1), F.S., specifies, in part, that a taxpayer may contest the legality of any assessment of tax, fee, surcharge, permit, interest, or penalty provided under ch. 212, F.S. Section 213.31, F.S., further provides circumstances under which a taxpayer shall not be deemed to have reasonably relied on a written determination of the DOR. The DOR is required under this section to establish by rule guidelines and procedures for implementation of this section.

**Section 3** of the bill amends s. 212.18, F.S., relating to administration of law; registration of dealers; and rules. Section 212.18(3), F.S., is amended to modify wording in the current first degree misdemeanor offense relating to the failure or refusal of any person, firm, etc., to qualify as a dealer when required so that the unlawful conduct involves a person who engages in any acts requiring a certificate of registration under s. 212.18(3), F.S., and who fails or refuses to register. Additionally, the bill punishes as a third degree felony the willful failure to register after DOR provides notice of the duty to register. This offense, which was removed from s. 212.12(2)(d), F.S. (Section 2 of the bill), is added to s. 212.18(3), F.S.

The bill also provides the same definition of the term 'willful' as provided in Section 1 of the bill and requires the DOR to give written notice of the duty to register to the person in the same manner the DOR gives written notice of the duty to collect taxes or fees to the dealer (Section 1 of the bill).

**Section 4** of the bill provides that the bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The DOR does not indicate that the bill will have any significant impact on its operations.<sup>6</sup>

The bill has not been analyzed by the 2010 Revenue Impact Estimating Conference, though a request has been made to review the bill. It is possible that the bill may have a positive, though indeterminate, impact on revenues if the provisions of the bill enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

For the most part, the bill simply moves some existing criminal offenses and penalties to different statutory sections. However, current law is confusing as to whether a third or subsequent offense (taxes or fees total less than \$300) is a first degree misdemeanor or third degree felony. The bill makes it clear it is a third degree felony. Additionally, the bill makes willful failure to register after the DOR provides notice of the duty to register a third degree felony. In contrast, current law provides for a variety of penalties for making a false or fraudulent return with a willful intent to evade payment of any tax or

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<sup>6</sup> Analysis of SB 1978, Florida Department of Revenue, dated March 3, 2010 (on file with Senate Committee on Criminal Justice).

fee imposed under ch. 212, F.S., based on the number of offenses resulting in a conviction or the total amount of unreported or uncollected taxes or fees.

The Criminal Justice Impact Conference (CJIC), which provides the final, official estimate of the state prison bed impact, if any, of legislation, has determined that the bill will have an insignificant prison bed impact. Jail bed impact, if any, is unknown.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

None.

**B. Amendments:**

None.