

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Prepared By: Government Efficiency Appropriations Committee

BILL: SB 2500

SPONSOR: Senator Rich

SUBJECT: Taxes/Dealer Collection Allowance

DATE: April 18, 2005

REVISED: 04/21/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Johansen</u>	<u>GE</u>	Fav/1 amendment
2.	<u> </u>	<u> </u>	<u>CM</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>WM</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

Effective January 1, 2006, sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount deposited into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 212.12.

II. Present Situation:

Chapter 212, F.S., levies a 6 percent sales and use tax on most sales of tangible personal property and a limited number of services. Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions “subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions” by chapter 212, F.S. and on communications services by chapter 202, F.S. Section 212.0305, F.S., authorizes the levy

of the local option Convention Development Tax at the rate of 3 percent in Miami-Dade County, and at the rate of 2 percent in Duval County and Volusia County.

Section 212.12, F.S., provides sales and use tax dealers a collection allowance of 2.5 percent of the amount of the tax due for the purpose of compensating dealers for the keeping of prescribed records, filing timely returns, and proper accounting and remitting of taxes. No collection allowance is allowed on tax collected and remitted in excess of \$1,200 per month, resulting in a maximum collection allowance of \$30 per month for the majority of dealers. The dealer's collection allowance does not apply to the rental car surcharge¹, the waste tire fee², the lead-acid battery fee³, or the motor vehicle warranty fee⁴.

Article X, Sec. 15, of the State Constitution, provides for a state operated lottery. Chapter 24, F.S., provides the statutory authority for the state lottery. Section 24.121(2), F.S., provides that for each fiscal year, at least 39 percent of the gross revenue from the sale of on-line lottery tickets, variable percentages of the gross revenue from the sale of instant lottery tickets and other earned revenue, shall be deposited into the Educational Enhancement Trust Fund to be administered by the Department of Education. Funds from the Educational Enhancement Trust Fund shall be used to the benefit of public education as provided for in s. 24.121, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 212.12(1), F.S., creating paragraph (c), providing that sales tax dealers entitled to a collection allowance pursuant to s. 212.12, F.S., may elect to forego the collection allowance and direct that it be deposited into the Educational Enhancement Trust Fund. The election must be made with the timely filing of a return and cannot be rescinded once made. If a dealer making the election files a delinquent return, underpays the tax, or files an incomplete return, the amount deposited into the Educational Enhancement Trust Fund shall be the collection allowance remaining after resolution of liability for all tax, interest, and penalty due. The bill provides that the election to forego the collection allowance will not apply to s. 212.0305, F.S., the Convention Development Tax or to any other tax, fee, or levy administered, collected, and enforced by chapter 212.

Section 2 provides that notwithstanding the provisions of chapter 120, F. S., to the contrary, the Department of Revenue may adopt rules to carry out the amendments made by this act to s. 212.12, F.S.

Section 3 appropriates the sum of \$236,465 from the General Revenue Fund to the Department of Revenue fro the purpose of administrating the amendments to s. 212.12, F.S., made by this act.

Section 4 requires the Department of Revenue to retain all of the dealer collection allowance revenues directed to be deposited into the Educational Enhancement Trust Fund until the

¹ Section 212.0606, F.S.

² Section 403.718, F.S.

³ Section 403.7185, F.S.

⁴ Section 681.117, F.S.

\$236,465 General Revenue Appropriation is recovered. The \$236,465 retained by the department shall be transferred to the General Revenue Fund.

Section 5 provides that this act shall take effect January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sales and use tax dealers may elect to donate their collection allowance to the Educational Enhancement Trust Fund. By doing this, such dealers will forgo a maximum dealer collection allowance of \$30 a month, which is deducted from the total of all taxes collected and remitted on Form DR-15, Sales and Use Tax Return.

C. Government Sector Impact:

To the degree that sales tax dealers donate their collection allowance to the Educational Enhancement Trust Fund, such trust fund will realize an increase in revenues to the benefit of public education. The increase to the trust fund can not be determined.

VI. Technical Deficiencies:

The bill allows sales and use tax dealers to elect to donate their collection allowance to the Educational Enhancement Trust Fund. The collection allowance is deducted from the total of all taxes collected and remitted on Form DR-15, including sales taxes, discretionary sales surtaxes, and any local option convention development, tourist development, or tourist impact tax that is paid directly to the Department of Revenue. The bill provides that the collection allowance election does not apply to the convention development tax or any other tax, fee, or levy that is administered, collected, and enforced pursuant to the procedures under chapter 212. Because it is not feasible to identify the portion of the collection allowance allocable to the various taxes

remitted on the DR-15, the bill needs to be amended to provide that the collection allowance election applies to all taxes, surtaxes, and any local option taxes remitted to the department.

The local option convention development, tourist development, and tourist impact taxes may be collected and self-administered by counties who have elected that option. When tax is collected and administered at the local level, the dealer's collection allowance applies. It appears that it is the intent of the bill not to apply the collection allowance election to these locally administered taxes. If this is the intent, the bill should be amended to clarify that the provisions of SB 2500 do not apply to any locally imposed and self-administered tourist taxes.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

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The amendment provides that the collection allowance election shall apply to all taxes, surtaxes, and any local option taxes remitted to the Department of Revenue; provides that the provisions of the bill do not apply to any locally imposed and self-administered tourist taxes; and reduces the General Revenue appropriation to the Department of Revenue from \$236,465 to \$36,465.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
