

By Senator Altman

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1 A bill to be entitled
2 An act relating to criminal penalties for violations
3 of tax statutes; amending s. 212.07, F.S.; conforming
4 a cross-reference; imposing criminal penalties on a
5 dealer who willfully fails to collect certain taxes or
6 fees after notice of a duty to collect the taxes or
7 fees by the Department of Revenue; defining the term
8 "willful"; specifying authorized means of notice;
9 amending s. 212.12, F.S.; revising provisions imposing
10 criminal penalties on a person who makes a false or
11 fraudulent return with a willful intent to evade
12 payment of taxes or fees; deleting provisions relating
13 to criminal penalties for failing to register as a
14 dealer or to collect tax after notice from the
15 Department of Revenue; amending s. 212.18, F.S.;
16 providing criminal penalties for willfully failing to
17 register as a dealer after notice from the Department
18 of Revenue; defining the term "willful"; requiring the
19 department to send written notice of the duty to
20 register by certain specified means; providing an
21 effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsections (1) and (3) of section 212.07,
26 Florida Statutes, are amended to read:

27 212.07 Sales, storage, use tax; tax added to purchase
28 price; dealer not to absorb; liability of purchasers who cannot
29 prove payment of the tax; penalties; general exemptions.—

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30 (1) (a) The privilege tax herein levied measured by retail
31 sales shall be collected by the dealers from the purchaser or
32 consumer.

33 (b) A resale must be in strict compliance with s. 212.18
34 and the rules and regulations, and any dealer who makes a sale
35 for resale which is not in strict compliance with s. 212.18 and
36 the rules and regulations shall himself or herself be liable for
37 and pay the tax. Any dealer who makes a sale for resale shall
38 document the exempt nature of the transaction, as established by
39 rules promulgated by the department, by retaining a copy of the
40 purchaser's resale certificate. In lieu of maintaining a copy of
41 the certificate, a dealer may document, prior to the time of
42 sale, an authorization number provided telephonically or
43 electronically by the department, or by such other means
44 established by rule of the department. The dealer may rely on a
45 resale certificate issued pursuant to s. 212.18(3)(d) ~~s.~~
46 ~~212.18(3)(e)~~, valid at the time of receipt from the purchaser,
47 without seeking annual verification of the resale certificate if
48 the dealer makes recurring sales to a purchaser in the normal
49 course of business on a continual basis. For purposes of this
50 paragraph, "recurring sales to a purchaser in the normal course
51 of business" refers to a sale in which the dealer extends credit
52 to the purchaser and records the debt as an account receivable,
53 or in which the dealer sells to a purchaser who has an
54 established cash or C.O.D. account, similar to an open credit
55 account. For purposes of this paragraph, purchases are made from
56 a selling dealer on a continual basis if the selling dealer
57 makes, in the normal course of business, sales to the purchaser
58 no less frequently than once in every 12-month period. A dealer

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59 may, through the informal protest provided for in s. 213.21 and
60 the rules of the Department of Revenue, provide the department
61 with evidence of the exempt status of a sale. Consumer
62 certificates of exemption executed by those exempt entities that
63 were registered with the department at the time of sale, resale
64 certificates provided by purchasers who were active dealers at
65 the time of sale, and verification by the department of a
66 purchaser's active dealer status at the time of sale in lieu of
67 a resale certificate shall be accepted by the department when
68 submitted during the protest period, but may not be accepted in
69 any proceeding under chapter 120 or any circuit court action
70 instituted under chapter 72.

71 (c) Unless the purchaser of tangible personal property that
72 is incorporated into tangible personal property manufactured,
73 produced, compounded, processed, or fabricated for one's own use
74 and subject to the tax imposed under s. 212.06(1)(b) or is
75 purchased for export under s. 212.06(5)(a)1. extends a
76 certificate in compliance with the rules of the department, the
77 dealer shall himself or herself be liable for and pay the tax.

78 (3) (a) A ~~Any~~ dealer who fails, neglects, or refuses to
79 collect the tax or fees imposed under this chapter ~~herein~~
80 ~~provided, either~~ by himself or herself or through the dealer's
81 agents or employees, ~~is~~, in addition to ~~the penalty of~~ being
82 liable for and paying the tax ~~himself or herself~~, commits guilty
83 ~~of~~ a misdemeanor of the first degree, punishable as provided in
84 s. 775.082 or s. 775.083.

85 (b) A dealer who willfully fails to collect a tax or fee
86 after the department provides notice of the duty to collect the
87 tax or fee is liable for a specific penalty of 100 percent of

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88 the uncollected tax or fee. This penalty is in addition to any
89 other penalty that may be imposed by law. A dealer who willfully
90 fails to collect taxes or fees totaling:

91 1. Less than \$300:

92 a. For a first offense, commits a misdemeanor of the second
93 degree, punishable as provided in s. 775.082 or s. 775.083.

94 b. For a second offense, commits a misdemeanor of the first
95 degree, punishable as provided in s. 775.082 or s. 775.083.

96 c. For a third or subsequent offense, commits a felony of
97 the third degree, punishable as provided in s. 775.082, s.
98 775.083, or s. 775.084.

99 2. Three hundred dollars or more, but less than \$20,000,
100 commits a felony of the third degree, punishable as provided in
101 s. 775.082, s. 775.083, or s. 775.084.

102 3. Twenty thousand dollars or more, but less than \$100,000,
103 commits a felony of the second degree, punishable as provided in
104 s. 775.082, s. 775.083, or s. 775.084.

105 4. One hundred thousand dollars or more commits a felony of
106 the first degree, punishable as provided in s. 775.082, s.
107 775.083, or s. 775.084.

108 (c) As used in this subsection, the term "willful" means a
109 voluntary and intentional violation of a known legal duty.

110 (d) The department shall give written notice of the duty to
111 collect taxes or fees to the dealer by personal service, by
112 sending notice to the dealer's last known address by registered
113 mail, or by both personal service and mail.

114 Section 2. Paragraph (d) of subsection (2) of section
115 212.12, Florida Statutes, is amended to read:

116 212.12 Dealer's credit for collecting tax; penalties for

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117 noncompliance; powers of Department of Revenue in dealing with
118 delinquents; brackets applicable to taxable transactions;
119 records required.-

120 (2)

121 (d) A ~~Any~~ person who makes a false or fraudulent return
122 with a willful intent to evade payment of any tax or fee imposed
123 under this chapter is; ~~any person who, after the department's~~
124 ~~delivery of a written notice to the person's last known address~~
125 ~~specifically alerting the person of the requirement to register~~
126 ~~the person's business as a dealer, intentionally fails to~~
127 ~~register the business; and any person who, after the~~
128 ~~department's delivery of a written notice to the person's last~~
129 ~~known address specifically alerting the person of the~~
130 ~~requirement to collect tax on specific transactions,~~
131 ~~intentionally fails to collect such tax, shall, in addition to~~
132 ~~the other penalties provided by law, be liable for a specific~~
133 ~~penalty of 100 percent of any unreported or any uncollected tax~~
134 ~~or fee. This penalty is in addition to any other penalty~~
135 provided by law. A person who makes a false or fraudulent return
136 with a willful intent to evade payment of taxes or fees
137 totaling:

138 1. Less than \$300:

139 a. For a first offense, commits a misdemeanor of the second
140 degree, punishable as provided in s. 775.082 or s. 775.083.

141 b. For a second offense, commits a misdemeanor of the first
142 degree, punishable as provided in s. 775.082 or s. 775.083.

143 c. For a third or subsequent offense, commits a felony of
144 the third degree, punishable as provided in s. 775.082, s.
145 775.083, or s. 775.084.

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146 2. Three hundred dollars or more, but less than \$20,000,
147 commits a felony of the third degree, punishable as provided in
148 s. 775.082, s. 775.083, or s. 775.084.

149 3. Twenty thousand dollars or more, but less than \$100,000,
150 commits a felony of the second degree, punishable as provided in
151 s. 775.082, s. 775.083, or s. 775.084.

152 4. One hundred thousand dollars or more commits a felony of
153 the first degree, punishable as provided in s. 775.082, s.
154 775.083, or s. 775.084. and, upon conviction, for fine and
155 punishment as provided in s. 775.082, s. 775.083, or s. 775.084.
156 Delivery of written notice may be made by certified mail, or by
157 the use of such other method as is documented as being necessary
158 and reasonable under the circumstances. The civil and criminal
159 penalties imposed herein for failure to comply with a written
160 notice alerting the person of the requirement to register the
161 person's business as a dealer or to collect tax on specific
162 transactions shall not apply if the person timely files a
163 written challenge to such notice in accordance with procedures
164 established by the department by rule or the notice fails to
165 clearly advise that failure to comply with or timely challenge
166 the notice will result in the imposition of the civil and
167 criminal penalties imposed herein.

168 ~~1. If the total amount of unreported or uncollected taxes~~
169 ~~or fees is less than \$300, the first offense resulting in~~
170 ~~conviction is a misdemeanor of the second degree, the second~~
171 ~~offense resulting in conviction is a misdemeanor of the first~~
172 ~~degree, and the third and all subsequent offenses resulting in~~
173 ~~conviction is a misdemeanor of the first degree, and the third~~
174 ~~and all subsequent offenses resulting in conviction are felonies~~

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175 ~~of the third degree.~~

176 ~~2. If the total amount of unreported or uncollected taxes~~
177 ~~or fees is \$300 or more but less than \$20,000, the offense is a~~
178 ~~felony of the third degree.~~

179 ~~3. If the total amount of unreported or uncollected taxes~~
180 ~~or fees is \$20,000 or more but less than \$100,000, the offense~~
181 ~~is a felony of the second degree.~~

182 ~~4. If the total amount of unreported or uncollected taxes~~
183 ~~or fees is \$100,000 or more, the offense is a felony of the~~
184 ~~first degree.~~

185 Section 3. Subsection (3) of section 212.18, Florida
186 Statutes, is amended to read:

187 212.18 Administration of law; registration of dealers;
188 rules.-

189 (3) (a) Every person desiring to engage in or conduct
190 business in this state as a dealer, ~~as defined in this chapter,~~
191 or to lease, rent, or let or grant licenses in living quarters
192 or sleeping or housekeeping accommodations in hotels, apartment
193 houses, roominghouses, or tourist or trailer camps that are
194 subject to tax under s. 212.03, or to lease, rent, or let or
195 grant licenses in real property, ~~as defined in this chapter,~~ and
196 every person who sells or receives anything of value by way of
197 admissions, must file with the department an application for a
198 certificate of registration for each place of business. The
199 application must include, ~~showing~~ the names of the persons who
200 have interests in the ~~such~~ business and their residences, the
201 address of the business, and ~~such~~ other data reasonably required
202 by ~~as~~ the department ~~may reasonably require~~. However, owners and
203 operators of vending machines or newspaper rack machines are

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204 required to obtain only one certificate of registration for each
205 county in which such machines are located. The department, by
206 rule, may authorize a dealer that uses independent sellers to
207 sell its merchandise to remit tax on the retail sales price
208 charged to the ultimate consumer in lieu of having the
209 independent seller register as a dealer and remit the tax. The
210 department may appoint the county tax collector as the
211 department's agent to accept applications for registrations. The
212 application must be made to the department before the person,
213 firm, copartnership, or corporation may engage in such business,
214 and it must be accompanied by a registration fee of \$5. However,
215 a registration fee is not required to accompany an application
216 to engage in or conduct business to make mail order sales. The
217 department may waive the registration fee for applications
218 submitted through the department's Internet registration
219 process.

220 (b) The department, upon receipt of such application, shall
221 ~~will~~ grant to the applicant a separate certificate of
222 registration for each place of business, which certificate may
223 be canceled by the department or its designated assistants for
224 any failure by the certificateholder to comply with any of the
225 provisions of this chapter. The certificate is not assignable
226 and is valid only for the person, firm, copartnership, or
227 corporation to which issued. The certificate must be placed in a
228 conspicuous place in the business or businesses for which it is
229 issued and must be displayed at all times. Except as provided in
230 this subsection, a no person may not ~~shall~~ engage in business as
231 a dealer or in leasing, renting, or letting of or granting
232 licenses in living quarters or sleeping or housekeeping

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233 accommodations in hotels, apartment houses, roominghouses,
 234 tourist or trailer camps, or real property or ~~as hereinbefore~~
 235 ~~defined, nor shall any person~~ sell or receive anything of value
 236 by way of admissions, without a valid ~~first having obtained such~~
 237 ~~a certificate. A~~ or after such certificate has been canceled; ~~no~~
 238 person may not ~~shall~~ receive a any license from any authority
 239 within the state to engage in any such business without a valid
 240 ~~first having obtained such a certificate or after such~~
 241 ~~certificate has been canceled. A person may not engage~~ The
 242 ~~engaging~~ in the business of selling or leasing tangible personal
 243 property or services or as a dealer; engage, ~~as defined in this~~
 244 ~~chapter, or the engaging~~ in leasing, renting, or letting of or
 245 granting licenses in living quarters or sleeping or housekeeping
 246 accommodations in hotels, apartment houses, roominghouses, or
 247 tourist or trailer camps that are taxable under this chapter, or
 248 real property; ~~or engage~~ the engaging in the business of
 249 selling or receiving anything of value by way of admissions,
 250 without a valid ~~such certificate first being obtained or after~~
 251 ~~such certificate has been canceled by the department, is~~
 252 ~~prohibited.~~

253 (c)1. A ~~The failure or refusal of any person who engages in~~
 254 acts requiring a certificate of registration under this
 255 subsection and who fails or refuses to register, commits, ~~firm,~~
 256 ~~copartnership, or corporation to so qualify when required~~
 257 ~~hereunder is~~ a misdemeanor of the first degree, punishable as
 258 provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject
 259 to injunctive proceedings as provided by law. A person who
 260 engages in acts requiring a certificate of registration and who
 261 fails or refuses to register is also subject ~~Such failure or~~

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262 ~~refusal also subjects the offender~~ to a \$100 initial
263 registration fee in lieu of the \$5 registration fee required by
264 ~~authorized in~~ paragraph (a). However, the department may waive
265 the increase in the registration fee if it finds ~~is determined~~
266 ~~by the department~~ that the failure to register was due to
267 reasonable cause and not to willful negligence, willful neglect,
268 or fraud.

269 2. A person who willfully fails to register after the
270 department provides notice of the duty to register as a dealer
271 commits a felony of the third degree, punishable as provided in
272 s. 775.082, s. 775.083, or s. 775.084.

273 a. As used in this subsection, the term "willful" means a
274 voluntary and intentional violation of a known legal duty.

275 b. The department shall give written notice of the duty to
276 register to the person by personal service, by sending notice by
277 registered mail to the person's last known address, or by both
278 personal service and mail.

279 (d) ~~(e)~~ In addition to the certificate of registration, the
280 department shall provide to each newly registered dealer an
281 initial resale certificate that will be valid for the remainder
282 of the period of issuance. The department shall provide each
283 active dealer with an annual resale certificate. For purposes of
284 this section, "active dealer" means a person who is currently
285 registered with the department and who is required to file at
286 least once during each applicable reporting period.

287 (e) ~~(d)~~ The department may revoke a ~~any~~ dealer's certificate
288 of registration if ~~when~~ the dealer fails to comply with this
289 chapter. Prior to revocation of a dealer's certificate of
290 registration, the department must schedule an informal

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291 conference at which the dealer may present evidence regarding
292 the department's intended revocation or enter into a compliance
293 agreement with the department. The department must notify the
294 dealer of its intended action and the time, place, and date of
295 the scheduled informal conference by written notification sent
296 by United States mail to the dealer's last known address of
297 record furnished by the dealer on a form prescribed by the
298 department. The dealer is required to attend the informal
299 conference and present evidence refuting the department's
300 intended revocation or enter into a compliance agreement with
301 the department which resolves the dealer's failure to comply
302 with this chapter. The department shall issue an administrative
303 complaint under s. 120.60 if the dealer fails to attend the
304 department's informal conference, fails to enter into a
305 compliance agreement with the department resolving the dealer's
306 noncompliance with this chapter, or fails to comply with the
307 executed compliance agreement.

308 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"
309 means a person who enters into an agreement authorizing the
310 display of tangible personal property or services at a
311 convention or a trade show. The following provisions apply to
312 the registration of exhibitors as dealers under this chapter:

- 313 1. An exhibitor whose agreement prohibits the sale of
314 tangible personal property or services subject to the tax
315 imposed in this chapter is not required to register as a dealer.
- 316 2. An exhibitor whose agreement provides for the sale at
317 wholesale only of tangible personal property or services subject
318 to the tax imposed in this chapter must obtain a resale
319 certificate from the purchasing dealer but is not required to

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320 register as a dealer.

321 3. An exhibitor whose agreement authorizes the retail sale
322 of tangible personal property or services subject to the tax
323 imposed in this chapter must register as a dealer and collect
324 the tax imposed under this chapter on such sales.

325 4. Any exhibitor who makes a mail order sale pursuant to s.
326 212.0596 must register as a dealer.

327

328 Any person who conducts a convention or a trade show must make
329 their exhibitor's agreements available to the department for
330 inspection and copying.

331 Section 4. This act shall take effect upon becoming a law.