

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7125 PCB FTC 10-05 Criminal Penalties for Violations of Tax Statutes

SPONSOR(S): Finance & Tax Council; Fresen

TIED BILLS: **IDEN./SIM. BILLS:** SB 1978

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	<u>Finance & Tax Council</u>	<u>14 Y, 0 N</u>	<u>Wilson</u>	<u>Langston</u>
1)	<u>Criminal & Civil Justice Policy Council</u>	<u>15 Y, 0 N</u>	<u>Billmeier</u>	<u>Havlicak</u>
2)	<u></u>	<u></u>	<u></u>	<u></u>
3)	<u></u>	<u></u>	<u></u>	<u></u>
4)	<u></u>	<u></u>	<u></u>	<u></u>
5)	<u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

Chapter 212, F.S., provides that businesses are required to collect and remit sales tax to the Department of Revenue (Department). The failure of a business to register with the Department or collect and remit sales tax, after written notification from the Department, may result in civil and criminal penalties. Persons that provide false or fraudulent tax returns, with the willful intent to evade the payment of taxes, are also subject to similar penalties. Some of the penalty provisions in current law are unclear.

This bill clarifies the criminal penalties for violations of the tax statutes related to dealers who intentionally fail to register or collect and remit taxes and fees or persons who fraudulently file returns with the intent to evade the payment of taxes and fees. The bill provides for misdemeanor penalties for first offenses and for offenses that involve smaller amounts of money. Felony penalties are provided for offenders who commit multiple violations and for offenses that involve larger amounts of money. The bill moves provisions related to failure to file a registration to a different section of statute to clarify current law and provides that a willful failure to register is third degree felony.

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

The Criminal Justice Impact Conference has not considered the prison bed impact of this bill. However, to the extent that this bill creates or enhances felony offenses, there could be a prison bed impact. Additionally, to the extent that this bill creates or enhances misdemeanor offenses, there could be a jail bed impact on local governments.

The bill takes effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Businesses Must Register with the Department of Revenue

Current Law

Any person engaging in or conducting business in Florida must register with the Department of Revenue (Department), pursuant to s. 212.18, F.S. Section 212.18(3)(a), F.S., requires persons desiring to conduct business to file an application for a certificate of registration for each place of business. The Department must grant a certificate if the appropriate information is supplied. See s. 212.18(3)(b), F.S. A person must obtain the certificate prior to engaging in business. Id. A person who engages in business without a certificate commits a first degree misdemeanor¹ and is subject to an additional \$100 registration fee. Id.

Section 212.12(2)(d), F.S., provides penalties for failing to register after being notified by the Department of the failure to register. Section 212.12(2)(d), F.S., provides, in relevant part:

Any person... who, after the department'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... 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 herein 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 department 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 herein.

This provision cites statutes related to criminal punishment but does not provide a level of offense. It is unclear how such a case would be prosecuted.

¹ First degree misdemeanors are punishable by up to 1 year in jail and a \$1,000 fine. See ss. 775.082 and 775.083, F.S.

Effect of the Bill

The bill removes provisions related to penalties for failing to register from s. 212.12(2)(d), F.S., and places them in the section related to registration, s. 212.18, F.S. The bill provides that a person who willfully fails to register after the Department provides notice of the duty to register commits a third degree felony.² This addresses the confusion caused by current law's failure to create the level of offense for failure to register a business. Notice can be given by registered mail to the person's last known address, personal service, or both. The bill defines "willful" as "a voluntary and intentional violation of a known legal duty."

The bill removes the provision that permits a business to challenge the Department's notice that it is required to register with the Department. Businesses are already provided a mechanism to challenge the Department's notice that the business must register under s. 213.21, F.S.

Penalties for Failure to Collect a Tax After Notice from the Department

Current Law

Current law provides penalties for failure to collect a tax after notice from the Department that collection is required. Section 212.12(2)(d), F.S., provides, in relevant part:

Any person... who, after the department'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, 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 herein for failure to comply with a written notice alerting the person of the requirement... 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 department 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 herein.

1. If the total amount of unreported or uncollected taxes or fees is less than \$300, the first offense resulting in conviction is a misdemeanor of the second degree, the second offense resulting in conviction is a misdemeanor of the first degree, **and the third and all subsequent offenses resulting in conviction is a misdemeanor of the first degree, and the third and all subsequent offenses resulting in conviction are felonies of the third degree.**
2. If the total amount of unreported or uncollected taxes or fees is \$300 or more but less than \$20,000, the offense is a felony of the third degree.
3. 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 felony of the second degree.
4. If the total amount of unreported or uncollected taxes or fees is \$100,000 or more, the offense is a felony of the first degree. (emphasis added).

² Third degree felonies are punishable by up to five years in prison and a \$5,000 fine. See ss. 775.082, 775.083, F.S.

Current law is unclear whether misdemeanor or felony offenses apply for a third or subsequent conviction. It is also unclear which level of offense applies to various criminal acts.

Effect of the Bill

The bill strikes the unclear penalty provisions in s. 212.12(2)(d), F.S. Under the bill, a dealer who willfully fails to collect a tax or fee after the Department provides notice is liable for a penalty of 100% of the uncollected tax or fee.³ The Department is required to provide notice by personal service, sending notice by registered mail, or both. In addition, a dealer who willfully⁴ fails to collect taxes or fees is subject to the following penalties:

- For uncollected taxes or fees less than \$300 – The first offense is a second degree misdemeanor,⁵ the second offense is a first degree misdemeanor, and the third and all subsequent offenses are third degree felonies.
- For uncollected taxes and fees between \$300 and \$20,000 – The offense is a third degree felony.
- For uncollected taxes and fees between \$20,000 and \$100,000 – The offense is a second degree felony.⁶
- For uncollected taxes and fees of \$100,000 or more – The offense is a first degree felony.⁷

The bill removes the provision that permits a business to challenge the Department's notice that it is required to collect a specified tax. Businesses are already provided a mechanism to challenge the Department's notice that the business must register under s. 213.21, F.S.

Penalties for Filing a False or Fraudulent Return

Current Law

Section 212.12(2)(d), F.S., provides that any person who provides a false or fraudulent return, with the willful intent to evade the payment of any tax or fee, is subject to an additional penalty of 100% of any unreported tax or fee and is subject to a fine and punishment as follows:

1. If the total amount of unreported or uncollected taxes or fees is less than \$300, the first offense resulting in conviction is a misdemeanor of the second degree, the second offense resulting in conviction is a misdemeanor of the first degree, **and the third and all subsequent offenses resulting in conviction is a misdemeanor of the first degree, and the third and all subsequent offenses resulting in conviction are felonies of the third degree.**
2. If the total amount of unreported or uncollected taxes or fees is \$300 or more but less than \$20,000, the offense is a felony of the third degree.
3. 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 felony of the second degree.
4. If the total amount of unreported or uncollected taxes or fees is \$100,000 or more, the offense is a felony of the first degree. (emphasis added).

Current law is unclear whether misdemeanor or felony offenses apply for a third or subsequent conviction.

³ This does not change current law but the bill moves the provision to a different statutory subsection.

⁴ The bill defines "willful" as "a voluntary and intentional violation of a known legal duty."

⁵ Second degree misdemeanors are punishable by up to 60 days in jail and a \$500 fine. See ss. 775.082, 775.083, F.S.

⁶ Second degree felonies are punishable by up to 15 years in prison and a \$10,000 fine. See ss. 775.082, 775.083, F.S.

⁷ First degree felonies are punishable by up to 30 years in prison and a \$10,000 fine. See ss. 775.082, 775.083, F.S.

Effect of the Bill

The bill strikes the unclear penalty provisions in s. 212.12(2)(d), F.S. Under the bill, a person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee is liable for a penalty of 100% of the uncollected tax or fee.⁸ In addition, the person is subject to the following penalties:

- For false or fraudulent returns with a willful intent to evade taxes and fees totaling less than \$300 – The first offense is a second degree misdemeanor, the second offense is a first degree misdemeanor, and the third and all subsequent offenses are third degree felonies.
- For uncollected taxes and fees between \$300 and \$20,000 – The offense is a third degree felony.
- For uncollected taxes and fees between \$20,000 and \$100,000 – The offense is a second degree felony.
- For uncollected taxes and fees of \$100,000 or more – The offense is a first degree felony.

B. SECTION DIRECTORY:

Section 1: 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; general exemptions.

Section 2: Amends s. 212.12, F.S., relating to dealer's credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.

Section 3: Amends s. 212.18, F.S., relating to administration of law; registration of dealers; rules.

Section 4: This bill takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

See FISCAL COMMENTS.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

⁸ This does not change current law but the bill moves the provision to a different statutory subsection.

D. FISCAL COMMENTS:

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

The Criminal Justice Impact Conference has not yet met to consider the prison bed impact of this bill. However, to the extent that this bill creates or enhances felony offenses, there could be a prison bed impact. Additionally, to the extent that this bill creates or enhances misdemeanor offenses, there could be a jail bed impact on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This 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.

2. Other

None.

B. RULE-MAKING AUTHORITY:

The bill removes a requirement that the Department establish rules relating to certain notices.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES