

HB 7125

2010

1 A bill to be entitled  
2 An act relating to criminal penalties for violations of  
3 tax statutes; amending s. 212.07, F.S.; conforming a  
4 cross-reference to changes made by the act; imposing an  
5 additional monetary penalty on a dealer for willfully  
6 failing to collect certain taxes or fees after notice of a  
7 duty to collect the taxes or fees by the Department of  
8 Revenue; specifying a schedule of criminal penalties  
9 relating to amounts not collected; defining the term  
10 "willful"; requiring the department to send written notice  
11 of the duty to register by certain specified means;  
12 amending s. 212.12, F.S.; revising provisions imposing an  
13 additional monetary penalty on persons making false or  
14 fraudulent returns with a willful intent to evade payment  
15 of taxes or fees; specifying a schedule of criminal  
16 penalties relating to amounts not paid; deleting  
17 provisions relating to criminal penalties for failing to  
18 register as a dealer or to collect tax after notice from  
19 the Department of Revenue; amending s. 212.18, F.S.;  
20 revising requirements for registration of dealers;  
21 revising penalties for failing or refusing to register as  
22 a dealer; providing a criminal penalty for willfully  
23 failing to register as a dealer after notice by the  
24 Department of Revenue; defining the term "willful";  
25 requiring the department to send written notice of the  
26 duty to register by certain specified means; providing an  
27 effective date.  
28

HB 7125

2010

29 Be It Enacted by the Legislature of the State of Florida:

30

31 Section 1. Subsections (1) and (3) of section 212.07,  
 32 Florida Statutes, are amended to read:

33 212.07 Sales, storage, use tax; tax added to purchase  
 34 price; dealer not to absorb; liability of purchasers who cannot  
 35 prove payment of the tax; penalties; general exemptions.—

36 (1) (a) The privilege tax herein levied measured by retail  
 37 sales shall be collected by the dealers from the purchaser or  
 38 consumer.

39 (b) A resale must be in strict compliance with s. 212.18  
 40 and the rules and regulations, and any dealer who makes a sale  
 41 for resale which is not in strict compliance with s. 212.18 and  
 42 the rules and regulations shall himself or herself be liable for  
 43 and pay the tax. Any dealer who makes a sale for resale shall  
 44 document the exempt nature of the transaction, as established by  
 45 rules promulgated by the department, by retaining a copy of the  
 46 purchaser's resale certificate. In lieu of maintaining a copy of  
 47 the certificate, a dealer may document, prior to the time of  
 48 sale, an authorization number provided telephonically or  
 49 electronically by the department, or by such other means  
 50 established by rule of the department. The dealer may rely on a  
 51 resale certificate issued pursuant to s. 212.18(3) (d)~~(e)~~, valid  
 52 at the time of receipt from the purchaser, without seeking  
 53 annual verification of the resale certificate if the dealer  
 54 makes recurring sales to a purchaser in the normal course of  
 55 business on a continual basis. For purposes of this paragraph,  
 56 "recurring sales to a purchaser in the normal course of

HB 7125

2010

57 business" refers to a sale in which the dealer extends credit to  
58 the purchaser and records the debt as an account receivable, or  
59 in which the dealer sells to a purchaser who has an established  
60 cash or C.O.D. account, similar to an open credit account. For  
61 purposes of this paragraph, purchases are made from a selling  
62 dealer on a continual basis if the selling dealer makes, in the  
63 normal course of business, sales to the purchaser no less  
64 frequently than once in every 12-month period. A dealer may,  
65 through the informal protest provided for in s. 213.21 and the  
66 rules of the Department of Revenue, provide the department with  
67 evidence of the exempt status of a sale. Consumer certificates  
68 of exemption executed by those exempt entities that were  
69 registered with the department at the time of sale, resale  
70 certificates provided by purchasers who were active dealers at  
71 the time of sale, and verification by the department of a  
72 purchaser's active dealer status at the time of sale in lieu of  
73 a resale certificate shall be accepted by the department when  
74 submitted during the protest period, but may not be accepted in  
75 any proceeding under chapter 120 or any circuit court action  
76 instituted under chapter 72.

77 (c) Unless the purchaser of tangible personal property  
78 that is incorporated into tangible personal property  
79 manufactured, produced, compounded, processed, or fabricated for  
80 one's own use and subject to the tax imposed under s.  
81 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1.  
82 extends a certificate in compliance with the rules of the  
83 department, the dealer shall himself or herself be liable for  
84 and pay the tax.

85           (3) (a) A ~~Any~~ dealer who fails, neglects, or refuses to  
 86 collect the tax or fees imposed under this chapter herein  
 87 ~~provided, either~~ by himself or herself or through the dealer's  
 88 agents or employees, ~~is,~~ in addition to ~~the penalty of~~ being  
 89 liable for and paying the tax ~~himself or herself,~~ commits guilty  
 90 ~~of~~ a misdemeanor of the first degree, punishable as provided in  
 91 s. 775.082 or s. 775.083.

92           (b) A dealer who willfully fails to collect a tax or fee  
 93 after the department provides notice of the duty to collect the  
 94 tax or fee is liable for a specific penalty of 100 percent of  
 95 the uncollected tax or fee. This penalty is in addition to any  
 96 other penalty that may be imposed by law. A dealer who willfully  
 97 fails to collect taxes or fees totaling:

98           1. Less than \$300:

99           a. For a first offense, commits a misdemeanor of the  
 100 second degree, punishable as provided in s. 775.082 or s.  
 101 775.083.

102           b. For a second offense, commits a misdemeanor of the  
 103 first degree, punishable as provided in s. 775.082 or s.  
 104 775.083.

105           c. For a third or subsequent offense, commits a felony of  
 106 the third degree, punishable as provided in s. 775.082, s.  
 107 775.083, or s. 775.084.

108           2. An amount equal to \$300 or more, but less than \$20,000,  
 109 commits a felony of the third degree, punishable as provided in  
 110 s. 775.082, s. 775.083, or s. 775.084.

111           3. An amount equal to \$20,000 or more, but less than  
 112 \$100,000, commits a felony of the second degree, punishable as

HB 7125

2010

113 provided in s. 775.082, s. 775.083, or s. 775.084.

114 4. An amount equal to \$100,000 or more, commits a felony  
 115 of the first degree, punishable as provided in s. 775.082, s.  
 116 775.083, or s. 775.084.

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

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

123 Section 2. Paragraph (d) of subsection (2) of section  
 124 212.12, Florida Statutes, is amended to read:

125 212.12 Dealer's credit for collecting tax; penalties for  
 126 noncompliance; powers of Department of Revenue in dealing with  
 127 delinquents; brackets applicable to taxable transactions;  
 128 records required.-

129 (2)

130 (d) A ~~Any~~ person who makes a false or fraudulent return  
 131 with a willful intent to evade payment of any tax or fee imposed  
 132 under this chapter is; ~~any person who, after the department's~~  
 133 ~~delivery of a written notice to the person's last known address~~  
 134 ~~specifically alerting the person of the requirement to register~~  
 135 ~~the person's business as a dealer, intentionally fails to~~  
 136 ~~register the business; and any person who, after the~~  
 137 ~~department's delivery of a written notice to the person's last~~  
 138 ~~known address specifically alerting the person of the~~  
 139 ~~requirement to collect tax on specific transactions,~~  
 140 ~~intentionally fails to collect such tax, shall, in addition to~~

HB 7125

2010

141 ~~the other penalties provided by law, be liable for a specific~~  
142 ~~penalty of 100 percent of any unreported or any uncollected tax~~  
143 ~~or fee. This penalty is in addition to any other penalty~~  
144 ~~provided by law. A person who makes a false or fraudulent return~~  
145 ~~with a willful intent to evade payment of taxes or fees~~  
146 ~~totaling:~~

147 1. Less than \$300:

148 a. For a first offense, commits a misdemeanor of the  
149 second degree, punishable as provided in s. 775.082 or s.  
150 775.083.

151 b. For a second offense, commits a misdemeanor of the  
152 first degree, punishable as provided in s. 775.082 or s.  
153 775.083.

154 c. For a third or subsequent offense, commits a felony of  
155 the third degree, punishable as provided in s. 775.082, s.  
156 775.083, or s. 775.084.

157 2. An amount equal to \$300 or more, but less than \$20,000,  
158 commits a felony of the third degree, punishable as provided in  
159 s. 775.082, s. 775.083, or s. 775.084.

160 3. An amount equal to \$20,000 or more, but less than  
161 \$100,000, commits a felony of the second degree, punishable as  
162 provided in s. 775.082, s. 775.083, or s. 775.084.

163 4. An amount equal to \$100,000 or more, commits a felony  
164 of the first degree, punishable and, upon conviction, for fine  
165 and punishment as provided in s. 775.082, s. 775.083, or s.  
166 775.084. Delivery of written notice may be made by certified  
167 mail, or by the use of such other method as is documented as  
168 being necessary and reasonable under the circumstances. The

HB 7125

2010

169 ~~civil and criminal penalties imposed herein for failure to~~  
170 ~~comply with a written notice alerting the person of the~~  
171 ~~requirement to register the person's business as a dealer or to~~  
172 ~~collect tax on specific transactions shall not apply if the~~  
173 ~~person timely files a written challenge to such notice in~~  
174 ~~accordance with procedures established by the department by rule~~  
175 ~~or the notice fails to clearly advise that failure to comply~~  
176 ~~with or timely challenge the notice will result in the~~  
177 ~~imposition of the civil and criminal penalties imposed herein.~~

178 ~~1. If the total amount of unreported or uncollected taxes~~  
179 ~~or fees is less than \$300, the first offense resulting in~~  
180 ~~conviction is a misdemeanor of the second degree, the second~~  
181 ~~offense resulting in conviction is a misdemeanor of the first~~  
182 ~~degree, and the third and all subsequent offenses resulting in~~  
183 ~~conviction is a misdemeanor of the first degree, and the third~~  
184 ~~and all subsequent offenses resulting in conviction are felonies~~  
185 ~~of the third degree.~~

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

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

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

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

197           212.18 Administration of law; registration of dealers;  
 198 rules.—  
 199           (3) (a) Every person desiring to engage in or conduct  
 200 business in this state as a dealer, ~~as defined in this chapter,~~  
 201 or to lease, rent, or let or grant licenses in living quarters  
 202 or sleeping or housekeeping accommodations in hotels, apartment  
 203 houses, roominghouses, or tourist or trailer camps that are  
 204 subject to tax under s. 212.03, or to lease, rent, or let or  
 205 grant licenses in real property, ~~as defined in this chapter,~~ and  
 206 every person who sells or receives anything of value by way of  
 207 admissions, must file with the department an application for a  
 208 certificate of registration for each place of business. The  
 209 application must include, ~~showing~~ the names of the persons who  
 210 have interests in the ~~such~~ business and their residences, the  
 211 address of the business, and ~~such~~ other data reasonably required  
 212 by ~~as~~ the department ~~may reasonably require~~. However, owners and  
 213 operators of vending machines or newspaper rack machines are  
 214 required to obtain only one certificate of registration for each  
 215 county in which such machines are located. The department, by  
 216 rule, may authorize a dealer that uses independent sellers to  
 217 sell its merchandise to remit tax on the retail sales price  
 218 charged to the ultimate consumer in lieu of having the  
 219 independent seller register as a dealer and remit the tax. The  
 220 department may appoint the county tax collector as the  
 221 department's agent to accept applications for registrations. The  
 222 application must be made to the department before the person,  
 223 firm, copartnership, or corporation may engage in such business,  
 224 and it must be accompanied by a registration fee of \$5. However,



HB 7125

2010

225 a registration fee is not required to accompany an application  
 226 to engage in or conduct business to make mail order sales. The  
 227 department may waive the registration fee for applications  
 228 submitted through the department's Internet registration  
 229 process.

230 (b) The department, upon receipt of such application,  
 231 shall ~~will~~ grant to the applicant a separate certificate of  
 232 registration for each place of business, which certificate may  
 233 be canceled by the department or its designated assistants for  
 234 any failure by the certificateholder to comply with any of the  
 235 provisions of this chapter. The certificate is not assignable  
 236 and is valid only for the person, firm, copartnership, or  
 237 corporation to which issued. The certificate must be placed in a  
 238 conspicuous place in the business or businesses for which it is  
 239 issued and must be displayed at all times. Except as provided in  
 240 this subsection, a no person may not ~~shall~~ engage in business as  
 241 a dealer or in leasing, renting, or letting of or granting  
 242 licenses in living quarters or sleeping or housekeeping  
 243 accommodations in hotels, apartment houses, roominghouses,  
 244 tourist or trailer camps, or real property or ~~as hereinbefore~~  
 245 ~~defined, nor shall any person~~ sell or receive anything of value  
 246 by way of admissions, without a valid ~~first having obtained such~~  
 247 ~~a certificate. A or after such certificate has been canceled; no~~  
 248 ~~person~~ may not ~~shall~~ receive a any license from any authority  
 249 within the state to engage in any such business without a valid  
 250 ~~first having obtained such a certificate or after such~~  
 251 ~~certificate has been canceled. A person may not engage~~ The  
 252 ~~engaging~~ in the business of selling or leasing tangible personal

HB 7125

2010

253 | property or services or as a dealer; engage, ~~as defined in this~~  
 254 | ~~chapter, or the engaging~~ in leasing, renting, or letting of or  
 255 | granting licenses in living quarters or sleeping or housekeeping  
 256 | accommodations in hotels, apartment houses, roominghouses, or  
 257 | tourist or trailer camps that are taxable under this chapter, or  
 258 | real property; or engage ~~the engaging~~ in the business of  
 259 | selling or receiving anything of value by way of admissions,  
 260 | without a valid ~~such~~ certificate ~~first being obtained or after~~  
 261 | ~~such certificate has been canceled by the department, is~~  
 262 | prohibited.

263 |       (c)1. A ~~The failure or refusal of any person who engages~~  
 264 | in acts requiring a certificate of registration under this  
 265 | subsection and who fails or refuses to register, commits, firm,  
 266 | ~~copartnership, or corporation to so qualify when required~~  
 267 | ~~hereunder is~~ a misdemeanor of the first degree, punishable as  
 268 | provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject  
 269 | to injunctive proceedings as provided by law. A person who  
 270 | engages in acts requiring a certificate of registration and who  
 271 | fails or refuses to register is also subject ~~Such failure or~~  
 272 | ~~refusal also subjects the offender~~ to a \$100 initial  
 273 | registration fee in lieu of the \$5 registration fee required by  
 274 | ~~authorized in~~ paragraph (a). However, the department may waive  
 275 | the increase in the registration fee if it finds ~~is determined~~  
 276 | ~~by the department~~ that the failure to register was due to  
 277 | reasonable cause and not to willful negligence, willful neglect,  
 278 | or fraud.

279 |       2. A person who willfully fails to register after the  
 280 | department provides notice of the duty to register as a dealer

HB 7125

2010

281 commits a felony of the third degree, punishable as provided in  
282 s. 775.082, s. 775.083, or s. 775.084.

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

285 b. The department shall give written notice of the duty to  
286 register to the person by personal service, by sending notice by  
287 registered mail to the person's last known address, or by both  
288 personal service and mail.

289 (d)-(e) In addition to the certificate of registration, the  
290 department shall provide to each newly registered dealer an  
291 initial resale certificate that will be valid for the remainder  
292 of the period of issuance. The department shall provide each  
293 active dealer with an annual resale certificate. For purposes of  
294 this section, "active dealer" means a person who is currently  
295 registered with the department and who is required to file at  
296 least once during each applicable reporting period.

297 (e)-(d) The department may revoke a ~~any~~ dealer's  
298 certificate of registration if ~~when~~ the dealer fails to comply  
299 with this chapter. Prior to revocation of a dealer's certificate  
300 of registration, the department must schedule an informal  
301 conference at which the dealer may present evidence regarding  
302 the department's intended revocation or enter into a compliance  
303 agreement with the department. The department must notify the  
304 dealer of its intended action and the time, place, and date of  
305 the scheduled informal conference by written notification sent  
306 by United States mail to the dealer's last known address of  
307 record furnished by the dealer on a form prescribed by the  
308 department. The dealer is required to attend the informal

HB 7125

2010

309 conference and present evidence refuting the department's  
310 intended revocation or enter into a compliance agreement with  
311 the department which resolves the dealer's failure to comply  
312 with this chapter. The department shall issue an administrative  
313 complaint under s. 120.60 if the dealer fails to attend the  
314 department's informal conference, fails to enter into a  
315 compliance agreement with the department resolving the dealer's  
316 noncompliance with this chapter, or fails to comply with the  
317 executed compliance agreement.

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

323 1. An exhibitor whose agreement prohibits the sale of  
324 tangible personal property or services subject to the tax  
325 imposed in this chapter is not required to register as a dealer.

326 2. An exhibitor whose agreement provides for the sale at  
327 wholesale only of tangible personal property or services subject  
328 to the tax imposed in this chapter must obtain a resale  
329 certificate from the purchasing dealer but is not required to  
330 register as a dealer.

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

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

HB 7125

2010

337  
338 Any person who conducts a convention or a trade show must make  
339 their exhibitor's agreements available to the department for  
340 inspection and copying.

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