

By the Committee on Commerce and Tourism; and Senators Baxley and Diaz

577-03170-19

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1 A bill to be entitled

2 An act relating to sales tax absorption; amending s.
3 212.07, F.S.; deleting prohibitions against a dealer
4 advertising or holding out to the public that he or
5 she will absorb all or part of the sales and use tax
6 or will relieve the purchaser of all or part of the
7 tax; authorizing dealers, subject to specified
8 conditions, to advertise or hold out to the public
9 that they will absorb all or part of the tax or refund
10 any part thereof to the purchaser; providing that such
11 dealers are solely responsible and liable for the tax;
12 revising a criminal penalty; amending s. 212.15, F.S.;
13 providing a criminal penalty for the failure to remit
14 absorbed sales taxes with certain intent; providing an
15 effective date.

16
17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Subsection (4) of section 212.07, Florida
20 Statutes, is amended, and subsection (2) of that section is
21 republished, to read:

22 212.07 Sales, storage, use tax; tax added to purchase
23 price; tax absorption ~~dealer not to absorb~~; liability of
24 purchasers who cannot prove payment of the tax; penalties;
25 general exemptions.—

26 (2) A dealer shall, as far as practicable, add the amount
27 of the tax imposed under this chapter to the sale price, and the
28 amount of the tax shall be separately stated as Florida tax on
29 any charge ticket, sales slip, invoice, or other tangible

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30 evidence of sale. Such tax shall constitute a part of such
31 price, charge, or proof of sale which shall be a debt from the
32 purchaser or consumer to the dealer, until paid, and shall be
33 recoverable at law in the same manner as other debts. Where it
34 is impracticable, due to the nature of the business practices
35 within an industry, to separately state Florida tax on any
36 charge ticket, sales slip, invoice, or other tangible evidence
37 of sale, the department may establish an effective tax rate for
38 such industry. The department may also amend this effective tax
39 rate as the industry's pricing or practices change. Except as
40 otherwise specifically provided, any dealer who neglects, fails,
41 or refuses to collect the tax herein provided upon any, every,
42 and all retail sales made by the dealer or the dealer's agents
43 or employees of tangible personal property or services which are
44 subject to the tax imposed by this chapter shall be liable for
45 and pay the tax himself or herself.

46 (4) (a) A dealer engaged in any business taxable under this
47 chapter may not advertise or hold out to the public, in any
48 manner, directly or indirectly, that ~~he or she will absorb all~~
49 ~~or any part of the tax, or that he or she will relieve the~~
50 ~~purchaser of the payment of all or any part of the tax, or that~~
51 ~~the tax will not be added to the selling price of the property~~
52 ~~or services sold or released.~~ However, such dealer may advertise
53 or hold out to the public, directly or indirectly ~~or, when~~
54 ~~added,~~ that he or she will absorb all or any part of such tax or
55 that it or any part thereof will be refunded to the purchaser,
56 either directly or indirectly, subject to both of the following
57 conditions:

58 1. In so advertising or holding out to the public, the

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59 dealer shall expressly state on any charge ticket, sales slip,
60 invoice, or other tangible evidence of sale given to the
61 purchaser that such dealer will pay the tax imposed by this
62 chapter to the state. The dealer may not indicate or imply that
63 the transaction is exempt or excluded from the tax imposed by
64 this chapter.

65 2. A charge ticket, sales slip, invoice, or other tangible
66 evidence of sale given to the purchaser must separately state
67 the amount of such tax in accordance with subsection (2).

68 (b) Notwithstanding any law to the contrary, if a dealer
69 directly or indirectly advertises or holds out to the public
70 that the dealer will pay the tax to the purchaser subject to the
71 conditions in subparagraphs (a)1. and 2., the dealer is solely
72 responsible and liable for any tax imposed by this chapter
73 ~~either directly or indirectly by any method whatsoever.~~

74 (c) A person who violates this subsection ~~provision~~ with
75 respect to failing to add the tax to the selling price
76 ~~advertising or refund~~ is guilty of a misdemeanor of the second
77 degree, punishable as provided in s. 775.082 or s. 775.083. A
78 second or subsequent offense constitutes a misdemeanor of the
79 first degree, punishable as provided in s. 775.082 or s.
80 775.083.

81 Section 2. Subsection (2) of section 212.15, Florida
82 Statutes, is amended to read:

83 212.15 Taxes declared state funds; penalties for failure to
84 remit taxes; due and delinquent dates; judicial review.—

85 (2) Any person who, with intent to unlawfully deprive or
86 defraud the state of its moneys or the use or benefit thereof,
87 fails to remit taxes collected or absorbed under this chapter is

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88 guilty of theft of state funds, punishable as follows:

89 (a) If the total amount of stolen revenue is less than
90 \$300, the offense is a misdemeanor of the second degree,
91 punishable as provided in s. 775.082 or s. 775.083. Upon a
92 second conviction, the offender is guilty of a misdemeanor of
93 the first degree, punishable as provided in s. 775.082 or s.
94 775.083. Upon a third or subsequent conviction, the offender is
95 guilty of a felony of the third degree, punishable as provided
96 in s. 775.082, s. 775.083, or s. 775.084.

97 (b) If the total amount of stolen revenue is \$300 or more,
98 but less than \$20,000, the offense is a felony of the third
99 degree, punishable as provided in s. 775.082, s. 775.083, or s.
100 775.084.

101 (c) If the total amount of stolen revenue is \$20,000 or
102 more, but less than \$100,000, the offense is a felony of the
103 second degree, punishable as provided in s. 775.082, s. 775.083,
104 or s. 775.084.

105 (d) If the total amount of stolen revenue is \$100,000 or
106 more, the offense is a felony of the first degree, punishable as
107 provided in s. 775.082, s. 775.083, or s. 775.084.

108 Section 3. This act shall take effect July 1, 2019.