

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Finance and Tax

BILL: CS/SB 1112

INTRODUCER: Senators Gruters, Gainer, and others

SUBJECT: Taxation

DATE: April 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Gross</u>	<u>Diez-Arguelles</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1112 contains changes to Florida's tax statutes. The bill:

- Exempts from ad valorem taxation certain heavy equipment rented by a dealer.
- Increases a property tax discount from 50 percent to 100 percent for certain multifamily projects that provide affordable housing to low-income families.
- Reduces the state tax rate on the rental, lease, or license to use commercial real property from 5.7 percent to 3.5 percent.
- Requires retailers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if they make a substantial number of sales into Florida.
- Provides for the taxation of sales facilitated through marketplace providers.
- Creates a sales tax refund for job training organizations, up to \$2 million, annually.
- Allows projects that create intellectual property to qualify for the Capital Investment Tax Credit.
- Creates a tax credit for insurers and health maintenance organizations that cover telehealth services.

The fiscal impact of the bill is estimated to decrease General Revenue Fund receipts by \$20.2 million (\$104.9 million recurring) in Fiscal Year 2019-2020 and increase local government revenue by \$41.8 million (\$17.6 million recurring). See Section V., Fiscal Impact Statement.

The provisions in the bill that require retailers and marketplace providers with no physical presence in the state to collect Florida sales tax take effect October 1, 2019.

Except as otherwise provided, the bill takes effect upon becoming law

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵ The just valuation standard generally requires the property appraiser to consider the highest and best use of property.⁶

Inventory

The Florida Constitution allows the Legislature to exempt from ad valorem taxation taxable personal property held for sale as stock in trade.⁷

Current law exempts from ad valorem taxation all items of inventory.⁸ “Inventory” is defined as chattels consisting of items commonly referred to as goods, wares, and merchandise (as well as inventory) which are held for sale or lease to customers in the ordinary course of business. Supplies and raw materials are considered to be inventory only to the extent that they are acquired for sale or lease to customers in the ordinary course of business or will physically become a part of merchandise intended for sale or lease to customers in the ordinary course of business. Partially finished products which when completed will be held for sale or lease to customers in the ordinary course of business are deemed items of inventory. All livestock is

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(c).

⁸ Section 196.185, F.S.

considered inventory. Items of inventory held for lease to customers in the ordinary course of business, rather than for sale, shall be deemed inventory only prior to the initial lease of such items.⁹

Affordable Housing

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.¹⁰

In 1999, the Legislature authorized a property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption.¹¹ The property must be owned entirely by a not-for-profit corporation, used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.¹² In order to qualify for the exemption, the property must comply with s. 196.195, F.S., for determining non-profit status of the property owner and s. 196.196, F.S., for determining exempt status of the use of the property.

In 2017, the Legislature provided that property used as affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount if the property:

- Provides affordable housing to natural persons or families meeting the extremely-low, very-low, or low-income limits specified in s. 420.0004, F.S.
- Provides housing in a multifamily project in which at least 70 units are provided to the above group.
- Is subject to an agreement with the Florida Housing Finance Corporation to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.¹³

The discount begins on January 1 of the year following the 15th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount terminates when the property is no longer serving extremely-low, very-low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities and tax rates being set in the annual local government budgeting process.

⁹ Section 192.001(11)(c), F.S.

¹⁰ FLA. CONST. art. VII, s. 3.

¹¹ Chapter 99-378, s. 15, Laws of Fla. (creating s. 196.1978, F.S, effective July 1, 1999).

¹² The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) (“charitable purposes” include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

¹³ Chapter 2017-36, s. 6, Laws of Fla.

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,¹⁴ transient rentals,¹⁵ rental of commercial real estate,¹⁶ and a limited number of services. Chapter 212, F.S., contains statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.¹⁷ Sales tax receipts are estimated to account for 77 percent of the state's General Revenue Fund in Fiscal Year 2018-2019.¹⁸

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202"¹⁹ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.²⁰

Sales Tax on Commercial Rent

Since 1969, Florida has imposed a sales tax on the total rent charged for the rental, lease, or license to use commercial real property.²¹ Sales tax is due at the rate of 5.7 percent on the total rent paid²² and local discretionary sales surtaxes may apply.²³ If the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.²⁴

Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It also includes the granting of a license to use real property for placement of vending, amusement, or newspaper machines. However, there are several commercial rentals that are not subject to tax, including:

- Rentals of real property assessed as agricultural.

¹⁴ Section 212.04, F.S.

¹⁵ Section 212.03, F.S.

¹⁶ Section 212.031, F.S.

¹⁷ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited March 8, 2019).

¹⁸ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, Sources of General Revenue, 16 (2019), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited April 3, 2019).

¹⁹ Section 212.054, F.S.

²⁰ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook*, 2018 Local Discretionary Sales Surtax Rates in Florida's Counties, 224-225 (2018), available at <http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2018.pdf> (last visited March 8, 2019).

²¹ Chapter 1969-222, Laws of Fla.

²² Section 212.031, F.S.

²³ Section 212.055, F.S.

²⁴ Rule 12A-1.070, F.A.C.

- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption.
- Rentals to federal, state, county, or city government agencies.
- Properties used exclusively as dwelling units.
- Public streets or roads used for transportation purposes.²⁵

Qualified Job Training Organizations Program

Section 288.1097, F.S., allows a “qualified job training organization” to receive grant funding from the Department of Economic Opportunity (DEO).

To be eligible, a job training organization must:

- Be exempt under s. 501(c)(3) or (4) of the Internal Revenue Code.
- Provide job training and employment services to individuals who have workplace disadvantages or disabilities.
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities.
- Collect Florida sales tax.
- Specialize in the retail sale of donated items.
- Operate statewide through more than 100 locations.
- Use a majority of its revenues for job training and placement programs that create jobs and foster economic development.
- Be certified by the DEO that the organization meets the requirements described above.

The DEO is permitted to release funds to the organization pursuant to a contract with the organization. The contract must require the organization to meet certain performance conditions in order to receive the grant funds. The performance conditions must include “net new employment in the state, the methodology for validating performance, the schedule of payments, and sanctions for failure to meet the performance requirements including any provisions for repayment of awards” and that salaries paid to officers and employees of the organization meet the requirements of s. 4958 of the Internal Revenue Code.²⁶

The organization must use the grant funds “solely to encourage and provide economic development through capital construction, improvements, or the purchase of equipment that will result in expanded employment opportunities.” The statute also requires the organization to meet certain results within a 10-year period.²⁷

No funds have been appropriated to this program.

Corporate Income Tax Credit—Intellectual Property

The Capital Investment Tax Credit (CITC) is an incentive used to attract and grow capital-intensive industries in Florida. It is an annual credit, provided for up to 20 years, against corporate income tax or insurance premium tax liabilities generated by or arising out of the qualifying project.

²⁵ See s. 212.031(1)(a)1.-13., F.S.

²⁶ Section 288.1097(2), F.S.

²⁷ See section 288.1097(3), F.S.

The CITC defines the projects that are eligible for the program. They include:

- A new or expanded facility in a designated high-impact portion of the following sectors: clean energy, biomedical technology, financial services, information technology, silicon technology, transportation equipment manufacturing, or a corporate headquarters facility.
- A new or expanded facility which is engaged in a target industry designated pursuant to the procedure specified in s. 288.106(2)(t), F.S., and which is induced by this credit to create or retain at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and results in a cumulative capital investment of at least \$100 million.
- A new or expanded headquarters facility which locates in an enterprise zone and brownfield area and is induced by this credit to create at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage, and which new or expanded headquarters facility makes a cumulative capital investment in this state of at least \$250 million. Headquarters projects can also qualify with a capital investment as low as \$15 million.²⁸

The tax credits are determined by a project's eligible capital costs.²⁹ Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.³⁰ Taxpayers are generally allowed an annual credit equal to 5 percent of the project's eligible capital costs, for 20 years.³¹

The annual tax credit may not exceed the following percentages of the annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a qualifying project:

- 100 percent for a qualifying project which results in a cumulative capital investment of at least \$100 million.
- 75 percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million.
- 50 percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.³²

Telehealth

Under current law, Florida does not offer a credit that may be taken against insurance premium tax or corporate income tax paid by health insurers or Health Maintenance Organizations that provide health care services using telecommunications technology.

²⁸ See s. 220.191(3)(a), F.S.

²⁹ See s. 220.191(2)(a), F.S.

³⁰ Section 220.191(1)(c), F.S.

³¹ Section 220.191(2)(a), F.S.

³² Section 220.191(2)(a), F.S.

Remote Sales Tax Collection and the Wayfair Decision

As discussed above, sales tax is added to the price of taxable goods and the selling dealer is required to collect the tax from the purchaser at the time of sale.³³ Dealers then remit the collected taxes to the Department of Revenue (department).³⁴

For items sold by an out-of-state dealer and delivered to the in-state purchaser via mail (mail-order sales), states have depended on their use taxes. Florida imposes a use tax that applies in these situations;³⁵ however, use tax compliance is notoriously low.

States would much prefer to have the out-of-state dealer collect the state's sales tax at the time of sale and remit those taxes to the state; however, the U.S. Supreme Court has interpreted the Commerce Clause of the U.S. Constitution to require that a dealer have a "substantial nexus" with the taxing state before the taxing state may require the dealer to collect its sales taxes.³⁶ For decades, the U.S. Supreme Court has interpreted the substantial nexus requirement to require that the dealer have a physical presence (people or property) within the taxing state.³⁷ The Court reasoned that to allow a taxing state to require a dealer located outside the taxing state to collect tax on behalf of the taxing state was an undue burden on interstate commerce.³⁸

Under the "physical presence" standard, Florida, in 1987, adopted s. 212.0596, F.S., Florida's "mail order sales statute," which defines a mail order sale to be the sale of tangible personal property, ordered from a dealer who receives the order in another state and then causes the property to be transported to a person in this state.³⁹ Section 212.0596, F.S., is described below. Although the statute describes dealers who "receive [orders] in another state," application of the statute was still limited by the U.S. Supreme Court's physical presence standard. In fact, much of the statute is written in terms of being physically present within Florida.⁴⁰

On June 21, 2018, the U.S. Supreme Court decided *South Dakota v. Wayfair*.⁴¹ *Wayfair* involved a new South Dakota sales tax collection statute and Wayfair, Inc., a large online retailer that sells and ships tangible personal property to customers all over the United States. Wayfair, Inc., has no physical presence in South Dakota.

The *Wayfair* decision overturned the "physical presence test." The removal of the physical presence test will expand states' ability to collect sales taxes; however, the foundational constitutional requirement (substantial nexus) remains in place, and thus, the extent of states' authority is largely unknown at this time.

³³ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://dor.myflorida.com/dor/taxes/sales_tax.html (last visited March 8, 2019).

³⁴ Section 212.15, F.S.

³⁵ See s. 212.06, F.S.

³⁶ See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

³⁷ *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

³⁸ *Quill Corporation v. North Dakota*, at 314-315.

³⁹ See s. 212.0596(1), F.S.

⁴⁰ See s. 212.0596(2)(j), F.S. (requiring dealers to collect tax on mail order sales if the dealer owns real property or tangible personal property that is physically in this state...).

⁴¹ *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

The facts involved in *Wayfair* provide the only situation currently known to satisfy all constitutional requirements for a remote seller without physical presence in the taxing state to collect and remit a states' sales and use tax.

For example:

- The South Dakota law only requires remote sellers with \$100,000 of sales or 200 individual transactions into South Dakota to collect tax. The law effectively has a “small seller exception” allowing small retailers—theoretically the ones most burdened by remote sales tax collection—to avoid collection responsibilities.
- The South Dakota law does not apply retroactively.
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement.

Taxation of Mail Order Sales

Section 212.0596, F.S., establishes when a dealer who makes a mail order sales is subject to the power of this state to levy and collect Florida's sales tax. A “mail-order sale” is a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States or other area under the jurisdiction of the United States, and transports or causes the property to be transported to a person in Florida.

Every dealer as defined in s. 212.06(2)(c), F.S., who makes a mail-order sale is subject to the power of this state to levy and collect the tax imposed by this ch. 212, F.S., when:

- The dealer is a corporation doing business under the laws of this state or a person domiciled in, a resident of, or a citizen of, this state.
- The dealer maintains retail establishments or offices in this state.
- The dealer has agents in this state who solicit business or transact business on behalf of the dealer.
- The property was delivered in this state in fulfillment of a sales contract that was entered into in this state when a person in this state accepted an offer by ordering the property.
- The dealer, by purposefully or systematically exploiting the market provided by Florida by any media-assisted, media-facilitated, or media-solicited means, creates nexus with Florida.
- Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of Florida's taxing power.
- The dealer consents, expressly or by implication, to the imposition of the tax imposed by ch. 212, F.S.
- The dealer is subject to service of process under s. 48.181, F.S.
- The dealer's mail order sales are subject to the power of Florida to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States.
- The dealer owns real property or tangible personal property that is physically in this state.
- The dealer is a corporation that is a member of an affiliated group of corporations and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or subsidiary corporation in the affiliated group has nexus with this state.
- The dealer or the dealer's activities have sufficient connection with or relationship to this state or its residents of some type other than those described above to create nexus

empowering this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax.⁴²

Section 212.0956, F.S., also imposes a duty on dealers to cooperate in the collection of taxes, requires the department to enforce these provisions in other jurisdictions when the other jurisdiction consents, and specifies that sales tax required under this section to be collected and any amount unreturned to a purchaser that is not tax but was collected from the purchaser under the representation that it was tax constitute funds of the State of Florida from the moment of collection.

A dealer who makes a mail-order sale into this state is exempt from collecting and remitting any local option surtax on the sale, except under certain circumstances.⁴³ The department may establish by rule procedures for collecting the use tax from unregistered persons who but for their mail order purchases would not be required to remit sales or use tax directly to the department.⁴⁴

Currently, a purchaser who remits use tax on an item imported into this state for use or consumption is not required to include in the remittance any local discretionary sales surtax.⁴⁵

III. Effect of Proposed Changes:

Exemption of Certain Heavy Equipment from Ad Valorem Taxation

Section 1 amends the definition of “inventory” in s. 192.001(11), F.S., to include, for all levies other than school district levies, construction equipment owned by a heavy equipment rental dealer for sale or short-term rental in the normal course of business on the annual assessment date. The bill defines the term “heavy equipment rental dealer” as a person or entity principally engaged in the business of short-term rental and sale of equipment described under the North American Industrial Classification System,⁴⁶ including attachments for the equipment or other ancillary equipment. The term “short-term rental” means the rental of a dealer’s heavy equipment rental property for a period of less than 365 days, under an open-ended contract, or under a contract with unlimited terms. The prior short-term rental of any construction or industrial equipment does not disqualify such property from qualifying as inventory under this paragraph following the term of such rental. This exemption does not apply to equipment rented with an operator.

The effect of this change will be to exempt the listed equipment from ad valorem taxation.

⁴² Section 212.0596(2), F.S.

⁴³ Section 212.0596(6), F.S.

⁴⁴ Section 212.0596(7), F.S.

⁴⁵ *Id.*

⁴⁶ 2017 NAICS Definition, 532412, Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing

Affordable Housing

Section 2 amends s. 196.1978(2), F.S., to increase the ad valorem tax discount from 50 percent to 100 percent on multifamily projects that provide housing to extremely-low-income, very-low-income, or low-income families.

Sales Tax on Commercial Rent

Section 4 amends s. 212.031, F.S., to reduce the state tax rate on the rental, lease, or license to use commercial real property from 5.7 percent to 3.5 percent, beginning January 1, 2019.

Job Training Organization

Section 9 creates a sales tax refund for eligible job training organizations and requires the organization to use the refund for specific purposes.

To be eligible for the refund, a job training organization must:

- Be exempt under s. 501(c)(3) of the Internal Revenue Code.
- Provide job training and employment services to low-income persons,⁴⁷ individuals who have workplace disadvantages, or individuals with barriers to employment.
- Be accredited by the Commission on Accreditation of Rehabilitation Facilities.

The bill also specifies that an eligible job training organization consisting of commonly owned and controlled entities is deemed to be a single organization.

An eligible job training organization is entitled to a refund equal to 10 percent of the sales tax remitted to the Department of Revenue (department) during the prior state fiscal year on the organization's sales of goods donated to the organization. The total amount of sales tax refunds issued to eligible job training organizations may not exceed \$2 million in any state fiscal year. Refunds are granted on a first-come, first-served basis.

The organization must use the refund for any of the following purposes:

- Growth in employment hours.⁴⁸
- Job training and employment services⁴⁹ to low-income persons, individuals who have workplace disadvantages, or individuals with barriers to employment.
- Job training and employment services for veterans.

⁴⁷ "Low-income persons" means one or more natural persons or a family, the total annual adjusted gross household income of which does not exceed 80 percent of the median annual adjusted gross income for households within the state, or 80 percent of the median annual adjusted gross income for households within the metropolitan statistical area (MSA) or, if not within an MSA, within the county in which the person or family resides, whichever is greater. Section 420.0004(11), F.S.

⁴⁸ "Growth in employment hours" is defined by the bill as "the growth in the number of hours worked by employees at an eligible job training organization in the most recently completed state fiscal year, compared to the number of hours worked by employees at the eligible job training organization in the state fiscal year immediately prior to the most recently completed state fiscal year."

⁴⁹ "Job training and employment services" is defined by the bill as "programs and services that improve job readiness, to assist workers in gaining employment and adapting to the changing labor market, and to help workers achieve employment success through self-sufficiency."

An organization seeking a refund must first submit an application to the Department of Economic Opportunity (DEO) by July 15. The application must establish that the organization meets the eligibility requirements and ensure that the refund will be used exclusively for the purposes listed above. The application must also include any supporting information set forth by the DEO in rule. The DEO is required to verify the application and notify the organization of the DEO's determination within 15 days of receiving a complete application. The bill authorizes the DEO to adopt rules necessary to administer the sales tax refund, including rules for the approval and disapproval of applications by organizations.

For approved applications, the DEO must send the eligible job training organization a notice that includes a certification that the organization is eligible to receive the sales tax refund. The decision of the DEO must be in writing, or in e-mail if agreed to by the organization. The DEO must send a copy of the notice and the certification, if applicable, to the department. The DEO's issuance of a certification remains in effect as long as the eligible job training organization remains in compliance with the requirements of the law.

An eligible job training organization that is certified by the DEO must then apply to the department between August 1 and August 31 of each year that the organization seeks a refund. The first application for a refund submitted to the department must include a copy of the DEO certification. An application must also include any information required by the department.

By August 1 following each state fiscal year that an eligible job training organization received a refund, the organization is required to provide a report to the DEO describing the use of the refund. The report must include the following:

- The amount of the refund used to create growth in employment hours.
- The total growth in employment hours.
- The amount of the refund used for job training and employment services.
- The number of individuals who participated in job training and employment services at the eligible job training organization.
- A statement declaring that the organization continues to meet the necessary requirements to remain eligible for the sales tax refund.

If the DEO determines that a job training organization no longer qualifies for the refund, the DEO must notify the department by August 31. The department is prohibited from issuing a refund after receiving such notification.

The overpayment of a refund or a refund issued to an ineligible job training organization is subject to repayment and interest at the rate calculated pursuant to s. 213.235, F.S.

Corporate Income Tax—Intellectual Property

Section 12 expands the list of property that qualify as capital investment for purposes of the Capital Investment Tax Credit to include intellectual property. Intellectual property includes copyrightable projects for the development of computer software.

For intellectual property projects, the eligible capital costs include wages, salaries, or other compensation paid to legal residents of Florida, as well as the cost of newly purchased software

and hardware that are located in and exclusively used in Florida. The annual average wage of project jobs must be at least 150 percent of the average private sector wage in the area. For intellectual property projects, the qualifying project can be made up of one or more projects with different start and completion dates.

Qualifying intellectual property projects are granted a tax credit equal to 5 percent of the project's eligible capital costs, for a period of up to 5 years, beginning on the start date of the project. The project is allowed to offset 100 percent of its corporate income tax liability if its capital investment is at least \$50 million per year for 4 years. If multiple projects are being used to meet the requirements of a qualifying project, each individual project must have capital investment of at least \$3.75 million.

Taxpayers that are unable to use tax credits due to insufficient tax liability may use any unused amount beginning in the sixth year after completion of the project through the 15th year after completion of the project. Additionally, the taxpayer may elect to transfer unused credits in any year; receiving businesses must use the credit in the year received.

Telehealth

Sections 13 and 14 create a telehealth tax credit for any health insurer or health maintenance organization (HMO) that covers services provided by telehealth.

The bill defines:

- “Health insurer” to mean an authorized insurer offering health insurance as defined in s. 624.603, F.S.⁵⁰
- “Health maintenance organization” to have the same meaning as provided in s. 641.19, F.S.
- “Telehealth” to mean the use of synchronous or asynchronous telecommunications technology by a health care provider to provide health care services, including but not limited to, patient assessment, diagnosis, consultation, treatment, and monitoring; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

For tax years beginning on or after January 1, 2020, and before January 1, 2023, the tax credit may be taken against insurance premium tax (IPT) liability incurred by a health insurer or HMO or, if an insufficient IPT liability exists, a health insurer or HMO may take the credit against their corporate income tax liability.

The tax credit is one tenth of one percent of the total insurance premiums received on accident or health insurance policy or plans issued in Florida that provide medical, major medical, or similar comprehensive coverage. The Office of Insurance Regulation (OIR) must confirm the coverage

⁵⁰ Section 624.603, F.S., defines “health insurance,” also known as “disability insurance,” as insurance of human beings against bodily injury, disablement, or death by accident or accidental means, or the expense thereof, or against disablement or expense resulting from sickness, and every insurance appertaining thereto. Health insurance does not include workers’ compensation coverages, except as provided in s. 624.406(4), F.S.

to the department. The bill authorizes an unused tax credit or portion thereof to be carried forward for a period not to exceed five years.

The bill authorizes the department, in addition to its existing audit and investigation authority, additional authority to perform financial and technical audits and investigations to verify eligibility for the telehealth tax credit. Such audits and investigations may include examining the accounts, books, and records of the health insurer or HMO. The bill also directs OIR to provide technical assistance upon request by the department on any audits or investigations it performs. If the department discovers that a health insurer or health maintenance organization received a telehealth tax credit for which it was not entitled, the department is authorized to pursue recovery of the funds in accordance to the law.

The bill authorizes a health insurer or HMO to transfer a telehealth tax credit in whole or in part to another taxpayer by written agreement. To perfect the transfer, the transferor must provide a written statement to the department that states:

- The transferor's intent to transfer the tax credit to the transferee.
- The date the transfer is effective.
- The transferee's name, address, and federal taxpayer identification number.
- The tax period.
- The amount the tax credit to be transferred.

Upon receipt of the transfer statement, the department will issue a certificate reflecting the transferred credit amount, a copy of which must be attached to each tax return for which the transferee seeks to apply the credit.

An insurer that claims the telehealth tax credit is not required to pay any additional retaliatory tax, as a result of claiming such a credit.

The department and OIR are authorized to adopt rules to administer the telehealth tax credit, including rules regarding implementation and administration of the tax credit and forms needed to claim the telehealth tax credit.

Taxation of Remote Sales and Marketplace Sales

Section 3 amends the definition of "retail sale" in s. 212.02, F.S., to include a remote sale and a sale facilitated by a marketplace.

Section 5 amends s. 212.05, F.S., to apply the sales and use tax to remote sales.

Section 6 amends s. 212.0596, F.S., to change the phrase "mail order sale" to "remote sale" and to provide that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S. The term, "making a substantial number of remote sales" is defined to mean:

- In the previous calendar year, conducting 200 or more retail sales of tangible personal property to be delivered to a location within Florida; or
- In the previous calendar year, conducting any number of retail sales of tangible personal property to be delivered to a location within Florida, in an amount exceeding \$100,000

The bill also deletes a provision that exempts an out-of-state dealer who makes retail sales into this state from collecting and remitting any local option surtax.

Section 7 creates s. 212.05965, F.S., providing for the taxation of marketplace sales.

The bill defines:

- “Marketplace” to mean any physical place or electronic medium through which tangible personal property is offered for sale.
- “Marketplace provider” to mean any person who:
 - Facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace; and
 - Directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.

The term does not include any person who solely provides handling or transportation services not subject to tax under ch. 212, F.S., or travel agency services. The term “travel agency services” means arranging, booking, or otherwise facilitating, for a commission, fee, or other consideration, vacation or travel packages, a rental car, or other travel reservations; tickets for domestic or foreign travel by air, rail, ship, bus, or other medium of transportation; or hotel or other lodging accommodations.

- “Marketplace seller” to mean a person who has an agreement with a marketplace provider and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by a marketplace provider.

Every marketplace provider with a physical presence in Florida, or that is making or facilitating through a marketplace a substantial number of remote sales, is subject to the requirements imposed on dealers by ch. 212, F.S., for registration and for the collection and remittance of taxes. A marketplace provider must certify to its marketplace sellers that it will collect and remit the tax imposed on taxable retail sales made through the marketplace.

A marketplace seller may not collect and remit the sales tax on a taxable retail sale when the sale is made through the marketplace and the marketplace provider certifies that it will collect and remit the tax. A marketplace seller must exclude sales made through the marketplace from the marketplace seller’s tax return. A marketplace seller with a physical presence in this state, or making a substantial number of remote sales, must register, collect, and remit the sales tax on all taxable sales made outside of the marketplace.

A marketplace provider must allow the department to examine and audit its books and records. If the department audits a marketplace provider, the department may not propose a tax assessment on the marketplace seller for the same retail sales unless the marketplace seller provides incorrect or incomplete information to the marketplace provider.

With certain exceptions, the marketplace provider is relieved of liability for the tax, and the marketplace seller or customer is liable for the tax imposed under this chapter if:

- The marketplace provider demonstrates that it made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but the failure to collect and pay the correct amount of tax imposed under this chapter was due to incorrect or incomplete information provided by the marketplace seller to the marketplace provider; or
- The marketplace seller or the customer has already remitted the tax.

Consistent with s. 213.21, F.S., the department may compromise any tax, interest, or penalty assessed on retail sales conducted through a marketplace.

Section 8 amends s. 212.06, F.S., to specify that the term “dealer” includes a retailer who transacts a remote sale and a marketplace provider who facilitates a retail sale through a marketplace.

Sections 10 and 11 amend ss. 212.12 and 212.18 F.S., respectively, to reflect the change from “mail order” to “remote” sales.

The provisions in the bill that require retailers and marketplace providers with no physical presence in the state to collect Florida sales tax take effect October 1, 2019.

Reenactment

Section 15 reenacts s. 212.20(4), F.S., in order to incorporate the amendment made by this bill to s. 212.0596, F.S.

Emergency Rules

Section 16 authorizes the department to adopt emergency rules to implement the bill. The rulemaking grant is authorized upon the act becoming law, and expires July 1, 2020.

Severability

Section 17 provides that if any provision of the bill is found to be invalid, that invalidity does not affect the ability of the other provisions of the bill to go into effect. If that provision is severed, the other provisions of the bill can be given effect.

Effective date

Section 18 makes the act take effect upon becoming law, except as otherwise provided in the bill.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not require counties and municipalities to spend funds or limit their ability to raise revenue or reduce the percentage of a state tax shared with them.⁵¹ Therefore, the mandates provision does not apply.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The facts involved in *Wayfair* provide the only situation currently known to satisfy all constitutional requirements for a remote seller without physical presence in the taxing state to collect and remit a states’ sales and use tax. The court did not decide the constitutionality of marketplace providers to collect and remit a states’ sales and use tax on behalf of retailers who sell on the marketplace.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The fiscal impact of the bill is estimated to decrease General Revenue Fund receipts by \$20.2million (\$104.9 million recurring) and increase local government revenue by \$41.8million (\$17.6 million recurring) in Fiscal Year 2019-2020. See the table below:

Issues	GR		Trust		Local		Total	
	1st-year	Recurring	1st-year	Recurring	1st-year	Recurring	1st-year	Recurring
Ad Valorem: Construction Equipment Rental-Inventory	-	-	-	-	-	(18.1)	-	(18.1)
Ad Valorem: Affordable Housing (1)	-	-	-	-	-	(30.8)	-	(30.8)
Sales Tax: Remote Sales (Oct. 1 Effective)	59.6	125.1	-	-	36.4	61.9	96.0	187.0
Sales Tax: Marketplace Sales (Oct. 1 Effective)	222.6	429.3	-	-	44.8	86.4	267.4	515.7
Sales Tax: Business Rent Tax/5.7 to 3.5	(300.8)	(627.6)	(*)	(*)	(39.0)	(81.4)	(339.8)	(709.0)
Sales Tax: Job Training Organizations	(1.6)	(1.6)	(*)	(*)	(0.4)	(0.4)	(2.0)	(2.0)
Insurance Premium Tax: Telehealth Tax Credit	-	(30.1)	-	-	-	-	-	(30.1)
Corporate Income Tax: CITC-Intellectual Property (2)	(**)	(**)	-	-	-	-	(**)	(**)
Total	(20.2)	(104.9)	-	-	41.8	17.6	21.6	(87.3)

(1) The estimate comes from the Revenue Estimating Conference’s adopted impact for HB 7109 (2017) for FY 2019-20, which provided a 50 percent discount.

⁵¹ FLA. CONST. art. VII, s. 18.

B. Private Sector Impact:

More remote sellers will have to collect and remit Florida's sales tax pursuant to the provisions relating to remote sales and marketplace sales.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 192.001, 212.02, 212.031, 212.05, 212.0596, 212.05965, 212.06, 212.12, 212.18, and 212.20.

This bill creates section 212.05965 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 16, 2019:

The CS makes changes to the following provisions, which were in the original bill:

- **Remote Sellers** – The CS updates Florida law to require retailers with no physical presence in Florida to collect Florida sales tax on sales of taxable items delivered to purchasers in Florida. The CS applies this requirement to retailers who make at least \$100,000 in total sales or 200 sales.
- **Marketplace Providers** – The CS requires marketplace providers, such as Amazon or EBay, who facilitate \$100,000 in sales or 200 sales by marketplace sellers to purchasers within Florida to collect and remit Florida sales tax on behalf of the marketplace seller.
- **Commercial Rent** – The CS reduces Florida's sales tax on the rental of commercial real property from 5.7 percent to 3.5 percent.
- **Inventory** – The CS adds to the definition of "inventory" construction equipment held for sale or short-term rental by a heavy equipment rental dealer and thereby exempts the heavy equipment from property tax.

The CS adds the following provisions to the bill:

- **Capital Investment Tax Credit – Intellectual Property** – The CS allows projects that create intellectual property to qualify for the Capital Investment Tax Credit.

- **Affordable Housing** – The CS increases the discount to multifamily project property from 50 percent of the property’s value to 100 percent of the property’s value.
- **Job Training Organizations** – The CS creates a sales tax refund for job training organizations, up to \$2 million, annually.
- **Telehealth** – The CS creates a tax credit to insurers and HMOs that cover telehealth services.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
