

**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.)

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

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BILL: SB 1112

INTRODUCER: Senators Gruters and Gainer

SUBJECT: Taxation

DATE: April 15, 2019

REVISED: \_\_\_\_\_

|    | ANALYST      | STAFF DIRECTOR        | REFERENCE | ACTION             |
|----|--------------|-----------------------|-----------|--------------------|
| 1. | <u>McKay</u> | <u>McKay</u>          | <u>CM</u> | <b>Favorable</b>   |
| 2. | <u>Gross</u> | <u>Diez-Arguelles</u> | <u>FT</u> | <b>Pre-meeting</b> |
| 3. | _____        | _____                 | <u>AP</u> | _____              |

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**I. Summary:**

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

- Exempts certain heavy equipment rented by a dealer from ad valorem taxation.
- Reduces the state tax rate on the rental, lease, or license to use commercial real property from 5.7 percent to 4.2 percent.
- Creates a 14-day sales tax holiday for specified disaster preparedness supplies from June 1, 2019, through June 14, 2019.
- Amends current law to require retailers who are not physically present in the state who deliver tangible personal property into the state to collect and remit sales tax if they make a substantial number of sales into Florida.
- Provides for the taxation of sales facilitated through marketplace providers.

The total impact of the bill is estimated to increase General Revenue Fund receipts by \$81.0 million (\$126.5 million recurring) in Fiscal Year 2019-2020 and increase local government revenue by \$62.5 million (\$92.8 million recurring). See Section V. Fiscal Impact Statement.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the sales tax holiday for disaster preparedness supplies.

The bill takes effect July 1, 2019, except for the provisions creating the sales tax holiday and granting emergency rulemaking authority to the Department of Revenue, both of which take 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.<sup>1</sup> The property appraiser annually determines the “just value”<sup>2</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”<sup>3</sup> 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 taxes<sup>4</sup> and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.<sup>5</sup> The just valuation standard generally requires the property appraiser to consider the highest and best use of property.<sup>6</sup>

### Inventory

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

Current law exempts from ad valorem taxation all items of inventory.<sup>8</sup> “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 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.<sup>9</sup>

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<sup>1</sup> 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.

<sup>2</sup> 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).

<sup>3</sup> *See* s. 192.001(2) and (16), F.S.

<sup>4</sup> FLA. CONST. art. VII, s. 1(a).

<sup>5</sup> *See* FLA. CONST. art. VII, s. 4.

<sup>6</sup> Section 193.011(2), F.S.

<sup>7</sup> FLA. CONST. art. VII, s. 4(c).

<sup>8</sup> Section 196.185, F.S.

<sup>9</sup> Section 192.001(11)(c), F.S.

## 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,<sup>10</sup> transient rentals,<sup>11</sup> rental of commercial real estate,<sup>12</sup> 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.<sup>13</sup> Sales tax receipts accounted for 77 percent of the state's General Revenue Fund in Fiscal Year 2018-2019.<sup>14</sup>

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"<sup>15</sup> 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.<sup>16</sup>

### *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.<sup>17</sup> Sales tax is due at the rate of 5.7 percent on the total rent paid<sup>18</sup> and local discretionary sales surtaxes may apply.<sup>19</sup> 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.<sup>20</sup>

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.
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption.

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<sup>10</sup> Section 212.04, F.S.

<sup>11</sup> Section 212.03, F.S.

<sup>12</sup> Section 212.031, F.S.

<sup>13</sup> 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](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited March 8, 2019).

<sup>14</sup> 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).

<sup>15</sup> Section 212.054, F.S.

<sup>16</sup> 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).

<sup>17</sup> Chapter 1969-222, Laws of Fla.

<sup>18</sup> Section 212.031, F.S.

<sup>19</sup> Section 212.055, F.S.

<sup>20</sup> Rule 12A-1.070, F.A.C.

- Rentals to federal, state, county, or city government agencies.
- Properties used exclusively as dwelling units.
- Public streets or roads used for transportation purposes.<sup>21</sup>

### ***Disaster Preparedness***

Previous legislatures have approved sales tax exemptions for specified items in preparation for the Atlantic Hurricane Season, which begins on June 1<sup>st</sup> of each year.<sup>22</sup>

The Florida Division of Emergency Management recommends having a plan and preparing property to prevent damage. Additionally, the Division of Emergency Management recommends having a disaster supply kit with items such as a battery-operated radio, flashlight, batteries, and first-aid kit.<sup>23</sup>

The Federal Emergency Management Agency (FEMA) educates Americans on how to prepare for emergencies through Ready, a public service advertising campaign.<sup>24</sup> In addition to the items listed in the paragraph above, FEMA recommends cell phone chargers, inverters, or solar chargers as items to include in an emergency preparedness supply kit.<sup>25</sup>

### ***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.<sup>26</sup> Dealers then remit the collected taxes to the Department of Revenue (department).<sup>27</sup>

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;<sup>28</sup> 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.<sup>29</sup> 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.<sup>30</sup> The Court

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<sup>21</sup> See s. 212.031(1)(a)1.-13., F.S.

<sup>22</sup> National Oceanic and Atmospheric Administration, *Frequently Asked Questions*, available at, <http://www.aoml.noaa.gov/hrd/tcfaq/G1.html> (last visited March 8, 2019).

<sup>23</sup> Florida Division of Emergency Management, *Disaster Supply Kit*, available at, <https://floridadisaster.org/planprepare/disaster-supply-kit/> (last visited March 8, 2019).

<sup>24</sup> Federal Emergency Management Agency, *Ready.gov*, available at, <http://www.ready.gov> (last visited March 8, 2019).

<sup>25</sup> Federal Emergency Management Agency, *Build A Kit*, available at, <https://www.ready.gov/build-a-kit> (last visited March 8, 2019).

<sup>26</sup> 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](http://dor.myflorida.com/dor/taxes/sales_tax.html) (last visited March 8, 2019).

<sup>27</sup> Section 212.15, F.S.

<sup>28</sup> See s. 212.06, F.S.

<sup>29</sup> See *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274 (1977).

<sup>30</sup> *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota*, 504 U.S. 298 (1992).

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.<sup>31</sup>

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.<sup>32</sup> 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.<sup>33</sup>

On June 21, 2018, the U.S. Supreme Court decided *South Dakota v. Wayfair*.<sup>34</sup> *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.

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., specifies the requirements for the taxation of out-of-state mail order sales by Florida. 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.

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<sup>31</sup> *Quill Corporation v. North Dakota*, at 314-315.

<sup>32</sup> See s. 212.0596(1), F.S.

<sup>33</sup> 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...).

<sup>34</sup> *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080 (2018).

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; or
- 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.<sup>35</sup>

This section 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.<sup>36</sup> 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.<sup>37</sup>

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<sup>35</sup> Section 212.0596(2), F.S.

<sup>36</sup> Section 212.0596(6), F.S.

<sup>37</sup> Section 212.0596(7), F.S.

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.<sup>38</sup>

### 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 any construction equipment, earthmoving equipment, or industrial equipment that is mobile and rented by a dealer of heavy equipment rental property, including attachments for the equipment or other ancillary equipment or tools. Qualified heavy equipment property is mobile if it is not permanently affixed to real property and is moved among worksites. The bill defines the term “dealer of heavy equipment rental property” as a person or entity principally engaged in the business of short-term rental of property as described under the North American Industrial Classification System.<sup>39</sup> The term “short-term rental” means the rental of a dealer’s heavy equipment rental property for a period of less than 1 year, for an undefined period, or under a contract with unlimited terms.

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

#### Sales Tax on Commercial Rent

**Section 3** 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 4.2 percent, beginning July 1, 2019.

#### Sales Tax Holiday for Disaster Preparedness Supplies

**Section 8** establishes a 14-day period, from June 1 through June 14, 2019, during which items purchased for disaster preparedness and protection are exempt from the sales and use tax and local discretionary sales surtaxes. The following items are exempt:

- A portable self-powered light source selling for \$20 or less.
- A portable self-powered radio, two-way radio, or weather band radio selling for \$50 or less.
- A tarpaulin or other flexible waterproof sheeting selling for \$50 or less.
- An item typically sold or advertised as a ground anchor system or tie-down kit selling for \$50 or less.
- A gas or diesel fuel tank selling for \$25 or less.
- A package of AAA-cell, AA-cell, C-cell, D-cell, 6-volt, or 9-volt batteries, excluding automobile and boat batteries, selling for \$30 or less.
- A non-electric food storage cooler selling for \$30 or less.
- A portable generator used to provide light or communications or preserve food in the event of a power outage selling for \$750 or less.
- Reusable ice selling for \$10 or less.
- Impact-resistant windows, when sold in units of 20 or fewer.
- Impact-resistant doors, when sold in units of 10 or fewer.

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<sup>38</sup> *Id.*

<sup>39</sup> 2017 NAICS Definition, 532412, Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing

The exemptions for the impact-resistant windows and doors apply to purchases made by an owner of residential real property where such products will be installed.

Sales within public lodging establishments,<sup>40</sup> theme parks or entertainment complexes,<sup>41</sup> or airports<sup>42</sup> are not exempt from taxes under this bill.

The bill authorizes the department to adopt emergency rules in order to implement the sales tax exemption.

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer this sales tax holiday.

### **Taxation of Remote Sales and Marketplace Sales**

**Section 2** 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 4** amends s. 212.05, F.S., to apply the sales and use tax to remote sales.

**Section 5** 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:

- Conducting 200 or more separate retail sales of tangible personal property or services taxable under ch. 212, F.S., in the previous calendar year to be delivered to a location within Florida; or
- Conducting any number of retail sales of tangible personal property or services taxable under this ch. 212, F.S., in an amount exceeding \$100,000 in the previous calendar year to be delivered to a location within Florida.

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.
- Deletes a provision granting rulemaking authority to the department to establish procedures for the collection of tax from unregistered persons. The procedures may provide for a waiver of registration, irregular remittance of tax, elimination of the collection allowance, and an exemption from remitting the local option surtaxes.

**Section 6** 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 or services taxable under this chapter are offered for sale.

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<sup>40</sup> Section 509.013(4), F.S.

<sup>41</sup> Section 509.013(9), F.S.

<sup>42</sup> Section 330.27(2), F.S.

- “Marketplace provider” to mean any person who facilitates through a marketplace a retail sale by a marketplace seller and engages:
  - Directly or indirectly, including through one or more members of an affiliated group as defined in s. 1504(a) of the Internal Revenue Code of 1986, in any of the following:
    1. Transmitting or otherwise communicating the offer or acceptance between the buyer and seller.
    2. Owning or operating the infrastructure, whether electronic or physical, or the technology that brings buyers and sellers together.
    3. Providing a virtual currency that buyers are allowed or required to use to purchase products from the seller.
    4. Software development or research and development activities related to any of the activities described below, if such activities are directly related to a marketplace operated by the person or by an affiliated group; and
  - In any of the following activities with respect to the seller’s products:
    1. Providing payment processing services.
    2. Providing fulfillment or storage services.
    3. Listing products for sale.
    4. Setting prices.
    5. Branding sales as those of the marketplace provider.
    6. Taking orders.
    7. Advertising or promoting.
    8. Providing customer service or accepting or assisting with returns or exchanges.
- “Marketplace seller” to mean a person who has an agreement with a marketplace provider and makes retail sales of tangible personal property or services taxable under this chapter through a marketplace owned, operated, or controlled by a marketplace provider.

Every marketplace provider that is physically located in Florida, or that is making or facilitating through a marketplace a substantial number of remote sales, is subject to the sales tax 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 physically located 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 7** amends s. 212.06, F.S., to specify that “dealer” includes a retailer who transacts a remote sale and a marketplace provider.

**Sections 9 and 10** amend ss. 212.12 and 212.18 F.S., respectively, to reflect the change from “mail order” to “remote” sales.

### **Reenactment**

**Section 11** 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 12** 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 13** 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 14** provides an effective date of July 1, 2019, except for creating the sales tax holiday for disaster preparedness supplies, and granting emergency rulemaking authority, which both take effect upon becoming law.

## **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.<sup>43</sup> Therefore, the mandates provision does not apply.

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<sup>43</sup> FLA. CONST. art. VII, s. 18.

**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:**

Except for the fiscal impact of the Disaster Preparedness Holiday, the Revenue Estimating Conference (REC) has not developed impacts for this bill. The other fiscal impacts shown below were developed by committee staff from estimates adopted by the REC for similar proposals.

The total impact of the bill is estimated to increase General Revenue Fund receipts by \$81.0 million (\$126.5 million recurring) in Fiscal Year 2019-2020 and increase local government revenue by \$62.5 million (\$92.8 million recurring). See the table below:

| Issues  | 2019-20         |              |             |          |             |             |              |              |
|---|-----------------|--------------|-------------|----------|-------------|-------------|--------------|--------------|
|   | General Revenue |              | State Trust |          | Local/Other |             | Total        |              |
|   | Cash            | Recurr       | Cash        | Recurr   | Cash        | Recurr      | Cash         | Recurr       |
| <u>Ad Valorem</u> : Heavy Equipment-Inventory (1)         | -               | -            | -           | -        | -           | (**)        | -            | (**)         |
| <u>Sales Tax</u> : Disaster Preparedness Holiday (14-day) | (18.4)          | -            | (*)         | -        | (5.8)       | -           | (24.2)       | -            |
| <u>Sales Tax</u> : Remote Sales                           | 81.9            | 125.1        | -           | -        | 50.1        | 61.9        | 132.0        | 187.0        |
| <u>Sales Tax</u> : Marketplace Sales                      | 222.6           | 429.3        | -           | -        | 44.8        | 86.4        | 267.4        | 515.7        |
| <u>Sales Tax</u> : Commercial Rent Rate (5.7 to 4.2)      | (205.1)         | (427.9)      | (*)         | (*)      | (26.6)      | (55.5)      | (231.7)      | (483.4)      |
| <b>Total</b>  | <b>81.0</b>     | <b>126.5</b> | <b>-</b>    | <b>-</b> | <b>62.5</b> | <b>92.8</b> | <b>143.5</b> | <b>219.3</b> |

(1) The estimated reduction to local government revenue from exempting certain heavy equipment from ad valorem taxation is at least \$25 million recurring in Fiscal Year 2019-2020.

**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:**

The bill appropriates \$70,072 in nonrecurring funds from the General Revenue Fund to the Department of Revenue in Fiscal Year 2018-2019 to administer the sales tax holiday for disaster preparedness supplies.

**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.)

None.

**B. Amendments:**

None.