

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 979 Sales Tax Absorption
SPONSOR(S): Ways & Means Committee, Valdes and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1066

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	16 Y, 0 N, As CS	Berg	Langston
2) Business & Professions Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

HB 979 allows sales tax dealers to advertise the absorption of sales tax owed on the sale of property or services. Current law prohibits such a practice. The bill requires dealers who advertise tax absorption to show on invoices, charge tickets, or sales slips the amount of sales tax that was due and paid by the dealer. Dealers may not imply or indicate that a transaction is exempt from the state sales tax. A person who fails to add the tax to the selling price is guilty of a misdemeanor of the second degree, and the criminal penalty for failing to remit absorbed taxes is the same as the criminal penalty for failing to remit collected taxes.

The Revenue Estimating Conference has determined that the bill has no impact on state and local revenues.

The bill takes effect July 1, 2019.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

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,¹ transient rentals,² rental of commercial real estate,³ 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. There are currently more than 250 exemptions, exclusions, deductions, and credits from the sales and use tax.⁴ Sales tax receipts accounted for 77 percent of the state's General Revenue in Fiscal Year 2018-2019.⁵

Generally, sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁶ In limited circumstances where the Department has determined that it is impracticable for the dealer to separately state the tax on a charge ticket, dealers in specified industries have the option to calculate tax using divisors, instead of adding the tax to the selling price.⁷ For example, dealers who sell alcoholic beverages have the option to calculate sales tax based on their total receipts (the calculation will vary based on whether or not the business posted notice that the sales tax was included).⁸ This allows the dealers to charge a flat dollar amount for beverages, rather than collecting change on the transactions. Similarly, concessionaires at arenas, auditoriums, or other similar places of business may charge an even dollar amount and then calculate the amount of tax due using a divisor computed by the Department of Revenue.⁹ These options are limited to industries where the Department has established divisors by rule, and in these cases the tax is still paid by the customer, not the dealer.

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, rental, admissions, and other transactions by [ch. 212, F.S.], and on communications services as defined in ch. 202, F.S."¹⁰ 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 into. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 1.5 percent.¹¹

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

⁴ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 163-168 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited April 15, 2019).

⁵ Office of Economic and Demographic Research, Florida Legislature, *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 15, 2019).

⁶ Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities*, available at http://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited April 15, 2019).

⁷ Section 212.07(2), F.S.

⁸ See Rule 12A-1.057, F.A.C., for examples.

⁹ See Rule 12A-1.080, F.A.C.

¹⁰ Section 212.054, F.S.

¹¹ Office of Economic and Demographic Research, Florida Legislature, *Florida Tax Handbook*, 2019 Local Discretionary Sales Surtax Rates in Florida's Counties, 225-226 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited April 15, 2019).

Tax Absorption

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, pay, or refund the purchaser all or any part of the sales tax due with the sale of their property or services. A person who violates this provision, whether by advertising or refunding, is guilty of a misdemeanor of the second degree.¹² A subsequent offense constitutes a misdemeanor of the first degree.¹³

Proposed Changes

The bill amends s. 212.07(4), F.S., to remove the prohibition on a dealer advertising or holding out that the dealer will absorb sales tax or refund a purchaser of the payment of sales tax. The bill allows a dealer to advertise that the dealer will absorb applicable sales tax, or refund the sales tax for the purchaser, subject to the following conditions:

- First, the dealer must expressly state on any charge ticket, sales slip, invoice, or other tangible evidence of sale provided to the purchaser that the dealer will pay the tax imposed in ch. 212, F.S. The dealer must not imply or state that the sale is exempt from taxes imposed in ch. 212, F.S.; and
- Second, the dealer must provide the amount of tax that was due on the charge ticket, sales slip, invoice, or other tangible evidence of sale given to the purchaser.

If a dealer violates this provision, they are guilty of a misdemeanor of the second degree. A subsequent offense constitutes a misdemeanor of the first degree.

The bill also amends s. 212.15, F.S., stipulating that the failure to remit absorbed taxes has the same criminal penalties as the failure to remit collected taxes. If a dealer fails to remit absorbed taxes totaling less than \$300, the offense is a misdemeanor in the second degree.¹⁴ If the total amount of stolen revenue is \$300 or more but less than \$20,000, the offense is a felony of the third degree.¹⁵ If the total amount of stolen revenue is \$20,000 or greater but less than \$100,000, the offense is a felony of the second degree.¹⁶ If the amount of stolen revenue is \$100,000 or greater, the offense is a felony of the first degree.¹⁷

The bill has an effective date of July 1, 2019.

B. SECTION DIRECTORY:

Section 1. Amends s. 212.07(4), F.S., to allow dealers to absorb sales tax if certain conditions are met.

Section 2. Provides criminal penalties for failure to remit absorbed taxes.

Section 3. Provides an effective date.

¹² Section 775.082(4)(b), F.S., “For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days” and s. 775.083(1)(e), F.S., “\$500, when the conviction is of a misdemeanor of the second degree...”

¹³ Section 775.082(4)(a), F.S., “For a misdemeanor of the first degree, by a definite term of imprisonment not exceeding 1 year” and s. 775.083(1)(d), F.S., “\$1,000, when the conviction is of a misdemeanor of the first degree.”

¹⁴ Section 775.082(4)(b), F.S., “For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days” and s. 775.083(1)(e), F.S., “\$500, when the conviction is of a misdemeanor of the second degree...”

¹⁵ Section 775.082(3)(e), F.S., “For a felony of the third degree, by a term of imprisonment not exceeding 5 years” and s. 775.083(1)(c), F.S., “\$5,000, when the conviction is of a felony of the third degree.”

¹⁶ Section 775.082(3)(d), F.S., “For a felony of the second degree, by a term of imprisonment not exceeding 15 years” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

¹⁷ Section 775.082(3)(b)1, F.S., “For a felony of the first degree, by a term of imprisonment not exceeding 30 years or, when specifically provided by statute, by imprisonment for a term of years not exceeding life imprisonment” and s. 775.083(1)(b), F.S., “\$10,000, when the conviction is of a felony of the first or second degree.”

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has determined that the bill will have no impact on revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has determined that the bill will have no impact on revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Revenue has general rulemaking authority to create rules governing the taxes it administers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On April 17, 2019, the Ways and Means Committee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment clarifies the circumstances under which a dealer may absorb sales tax and clarifies liability provisions for absorbed sales tax. The amendment also provides penalty provisions for any person who fails to remit taxes that were absorbed.

This analysis is drafted to the committee substitute as approved by the Ways and Means Committee.