

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: SB 508

INTRODUCER: Senator Baxley

SUBJECT: Sales Tax Absorption

DATE: February 12, 2020

REVISED: _____

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

I. Summary:

SB 508 allows businesses to advertise that they will pay or refund some or all of the sales tax due on behalf of their customers. A business that absorbs its customers' tax must provide an invoice or similar document that (1) states that the business will pay the tax and (2) separately states the amount of tax due on the sale.

Florida businesses are currently prohibited from absorbing, paying, or refunding their customers' tax, and a business that advertises or absorbs the tax is subject to penalties ranging from a second-degree misdemeanor for a first offense, to a first-degree misdemeanor for any subsequent offense.

The Revenue Estimating Conference determined that a similar proposal will reduce General Revenue Fund receipts and local government revenues in Fiscal Year 2020-2021 and each year thereafter by an indeterminate amount.

The bill takes effect July 1, 2020.

II. Present 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 that authorize the levy and collection

¹ Section 212.04, F.S.

² Section 212.03, F.S.

³ Section 212.031, F.S.

of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances.

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."⁴ 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.⁵

Florida businesses that sell taxable goods and services must register as a dealer with the Department of Revenue (department).⁶ A dealer must add sales tax to the price of the taxable good or service and collect the tax from a purchaser at the time of sale.⁷ The tax is considered state property at the time the dealer collects it.⁸ A dealer who fails to remit the tax to the department is guilty of theft, punishable by up to a first-degree felony, depending on the amount stolen and prior occurrences.⁹

A dealer must also provide a purchaser with an invoice at the time of the sale that separately states the amount of sales tax charged, unless it is impracticable to do so.¹⁰ If a dealer fails to state the tax charged separately on the invoice, it is subject to a second-degree misdemeanor.¹¹

Sales Tax Absorption

Section 212.07(4), F.S., prohibits dealers from advertising, directly or indirectly, that they will absorb, or refund to a purchaser all or part of the sales tax due on a sale. A dealer who violates this prohibition, whether by advertising or refunding, is guilty of a second-degree misdemeanor.¹²

⁴ Section 212.054, F.S.

⁵ Florida Legislature, Office of Economic and Demographic Research, *Florida Tax Handbook, Including Fiscal Impact of Potential Changes*, 219-226 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Nov. 8, 2019).

⁶ Florida Dep't. of Revenue, *Business Owner's Guide for Sales and Use Tax* at 4 (Jul. 2019), available at https://floridarevenue.com/Forms_library/current/gt300015.pdf (last visited Nov. 8, 2019).

⁷ Sections 212.06(3)(a) and 212.07(2), F.S.

⁸ Sections 212.15(1) and 213.756 F.S.

⁹ Section 212.15(2), F.S.

¹⁰ Section 212.07(2), F.S.

¹¹ Section 212.07(4), F.S. If a dealer has committed the same violation previously, he or she is subject to a first-degree misdemeanor. A first-degree misdemeanor is punishable by up to 1 year of imprisonment and a \$1,000 fine; a second-degree misdemeanor is punishable by up to 60 days of imprisonment and a \$500 fine. Sections 775.083 and 772.082(4), F.S.

¹² *Id.*

Several states, including Arizona,¹³ California,¹⁴ Kentucky,¹⁵ and have similar laws that prohibit dealers from absorbing or refunding taxes to a purchaser.¹⁶ However, a growing number of states permit tax absorption, including Wisconsin,¹⁷ Pennsylvania,¹⁸ and Georgia.¹⁹

Businesses cite various reasons for seeking to absorb sales tax, ranging from quickly moving customers through their lines,²⁰ to preventing confusion during state sales tax holidays when certain items are exempt from sales tax but others are not.²¹

III. Effect of Proposed Changes:

The bill amends s. 212.07(4), F.S., to allow a dealer the option to advertise that it will absorb all or part of the sales tax due or refund any part of the sales tax due to the purchaser. To do so, however, the dealer must provide the customer with an invoice or similar document that (1) states that the business will pay the sales tax owed, and (2) separately states the amount of tax due on the sale. If a dealer violates this provision, he or she is guilty of a second-degree misdemeanor.²²

The bill also amends s. 212.15, F.S., to expand the criminal offense of failure to remit collected taxes to the department to include taxes absorbed by the dealer. Depending on the amount of revenue stolen, and whether the dealer has prior offenses, he or she is subject penalties ranging from a second-degree misdemeanor to a first-degree felony.

The bill takes effect on July 1, 2020.

¹³ AZ Rev. Stat. § 42-5165, available at

<https://www.azleg.gov/viewdocument/?docName=http%3A%2F%2Fwww.azleg.gov%2Fars%2F42%2F05165.htm> (last visited Jan. 6, 2020).

¹⁴ CA Rev. & Tax Code § 6205 (2018), available at <https://www.cdtfa.ca.gov/lawguides/vol1/sutl/6205.html> (last visited Jan. 6, 2020).

¹⁵ KY Rev. Stat. §139.220 (2011), available at <https://law.justia.com/codes/kentucky/2011/139-00/139-220> (last visited Jan. 6, 2020).

¹⁶ Gail Cole, *Absorbing Sales Tax* (Jul. 22, 2019), <https://www.avalara.com/us/en/blog/2015/11/absorbing-sales-tax-wacky-tax-wednesday.html> (last visited Jan. 6, 2020).

¹⁷ WI Dep't. of Revenue, *Sales and Use Tax Report* at 2 (Jul. 2011), available at <https://www.revenue.wi.gov/SalesUseTaxReport/11-2.pdf> (last visited Jan. 6, 2020).

¹⁸ PA Act 2019-13 §7 (eff. Jul. 1, 2019). See also, Pa. Dep't. of Revenue, *State Tax Summary* (Jul. 2019), available at https://www.revenue.pa.gov/GeneralTaxInformation/TaxLawPoliciesBulletinsNotices/TaxSummaries/Documents/2019_tax_summary.pdf (last visited Jan. 6, 2020).

¹⁹ GA Code. §48-8-36 (2015), available at <https://law.justia.com/codes/georgia/2015/title-48/chapter-8/article-1/part-2/section-48-8-36/> (last visited Jan. 6, 2020).

²⁰ *MJR Group, LLC v. Mich. Dep't. of Treasury*, No. 329119, 2016 WL 7611479 (Mich. Ct. App. Dec. 29, 2016), available at <https://law.justia.com/cases/michigan/court-of-appeals-unpublished/2016/329119.html> (last visited Jan. 6, 2020).

²¹ Slim Smith, *Statewide 'Sales Tax Holiday' set for July 31-Aug. 1* (Jul. 22, 2015), <https://www.washingtontimes.com/news/2015/jul/22/statewide-sales-tax-holiday-set-for-july-31-aug-1/> (last visited Jan. 6, 2020).

²² A dealer who commits a subsequent violation of s. 212.07(4), F.S., is subject to a first-degree misdemeanor. *Supra* note 12.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution governs laws that require counties and municipalities to spend funds, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. However, the mandates requirements do not apply to laws having an insignificant impact,^{23, 24} which is \$2.2 million or less for Fiscal Year 2020-2021.²⁵

The Revenue Estimating Conference determined that this bill will reduce the authority that counties have to raise revenue from the local options sales tax by an indeterminate amount.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

²³ FLA. CONST. art. VII, s. 18(d).

²⁴ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 09, 2020).

²⁵ Based on the Demographic Estimating Conference's April 1, 2020, estimated population adopted on Dec. 3, 2019. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Dec. 12, 2019).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference determined that a substantially similar proposal will reduce General Revenue Fund receipts and local government revenues in Fiscal Year 2020-2021 and each year thereafter by an indeterminate amount. Additionally, local government revenues are estimated to decrease by an indeterminate amount in Fiscal Year 2020-2021 and each year thereafter.²⁶

B. Private Sector Impact:

Businesses will be able to absorb their customers' sales tax obligation, and advertise their ability to do so.

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: 212.07 and 212.15.

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.

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

²⁶ Florida Legislature, Office of Economic and Demographic Research, Revenue Estimating Conference, *Tax Absorption, SB 508-Proposed Amendment*, Dec. 20, 2019, available at: <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/pdf/page177-180.pdf> (last visited Feb. 10, 2020).