

**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 Appropriations

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BILL: SB 7068

INTRODUCER: Finance and Tax Committee

SUBJECT: Tax Administration

DATE: April 16, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bruno</u>	<u>Babin</u>	<u>AP</u>	<b>FT Submitted as Comm. Bill/Fav</b>
	<u>Bruno</u>	<u>Sadberry</u>		<b>Pre-meeting</b>

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**I. Summary:**

SB 7068 includes several issues regarding tax administration. The bill:

- Removes the penalty for taxpayers who opt to prepay their property taxes in installments but submit their first payment after the due date.
- Provides an alternate method of determining the severance tax rate for titanium dioxide when the current price index cannot be used.
- Creates a process to allow freight forwarding agents to receive a Certificate of Freight Forwarding Agent Address which can be used to avoid payment of sales tax on tangible personal property to be exported.
- Requires dealers to provide records in an electronic format when the dealer currently maintains those records in an electronic format.
- Allows the aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes.

The Revenue Estimating Conference determined that the bill will reduce local revenues by zero or an insignificant amount every year beginning in Fiscal Year 2022-2023.

The bill has an effective date of January 1, 2022, except as provided otherwise.

**II. Present Situation:**

The present situation for each issue is described below in Section III, Effect of Proposed Changes.

### **III. Effect of Proposed Changes:**

#### **Section 1 – Prepayment of Property Tax by Installment Method**

##### *Present Situation*

Taxpayers are generally allowed to prepay property taxes in installments and to receive discounts on the first three of those payments. If the taxpayer elects to prepay his or her taxes, but is late with the first payment, the tax collector may either accept or not accept the first installment of the prepayment if made prior to July 31. If the tax collector chooses to accept the first installment then the discount is lost and the payment must be accompanied by a 5 percent penalty. If the tax collector chooses not to accept the late first installment, the taxpayer is not eligible to participate in the prepayment program for that tax year.

##### *Proposed Change*

The bill amends s. 197.222, F.S., to specify that tax collectors must accept late payments of a first installment if made prior to July 31 and removes the 5 percent penalty.

#### **Section 2 – Titanium Dioxide Severance Tax Rate**

##### *Present Situation*

Florida imposes a tax on the severance of heavy minerals from the soils or waters of this state for commercial use. The heavy minerals tax rate is calculated each year based on the producer price index for titanium dioxide published by the U.S. Bureau of Labor Statistics. Due to a lack of data, this index is no longer created.<sup>1</sup> The Department of Revenue (department) is permitted to adopt a comparable index by rule. However, the department is unable to identify a comparable index.

##### *Proposed Change*

The bill amends s. 211.3106, F.S., to specify that if the producer price index is discontinued or cannot be calculated and if there is no comparable index, then the tax rate from the immediately preceding year must be used.

#### **Section 3 – Certificate of Forwarding Agent Address**

##### *Present Situation*

Tangible personal property delivered by the seller to a licensed exporter or common carrier for export outside Florida is not subject to sales tax.<sup>2</sup>

Certain forwarding agents receive tangible personal property at their place of business within Florida, consolidate the property for shipment, and deliver the property to a common carrier for shipment outside Florida. These transactions are exempt from sales tax under current law.

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<sup>1</sup> U.S. Bureau of Labor Statistics, *Producer Price Index by Industry: Synthetic Dye and Pigment Manufacturing: Titanium Dioxide, Composite and Pure (DISCONTINUED) [PCU32513032513011]*, retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/PCU32513032513011> (last visited April 14, 2021).

<sup>2</sup> Section 212.06(5)(a)1., F.S.

However, the original vendor of the tangible personal property delivering said property to the Florida address of the forwarding agent that is consolidating the property for export frequently charges tax for these purchases as verifying the tax-exempt status can be difficult.

### ***Proposed Change***

Generally, the bill amends s. 212.13, F.S., to create a process that allows forwarding agents to receive a certificate that can be provided to vendors to document the exempt nature of sales for export.

The bill defines the following terms:

- “Certificate” means a Florida Certificate of Forwarding Agent Address.
- “Facilitating” means preparation for or arranging for export.
- “Forwarding agent” means a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons.
- “NAICS” means those classifications contained in the North American Industry Classification System as published in 2007 by the Office of Management and Budget, Executive Office of the President.

A forwarding agent engaged in international export may apply to the department for a Certificate of Forwarding Agent address (certificate). The application must include specified information concerning the forwarding agent’s location and export activities. Each certificate expires five years after issue, and provides for an ongoing duty of the forwarding agent to disclose material changes to the information contained in the application.

The bill amends s. 212.06, F.S. to add a forwarding agent who has received a Certificate of Forwarding Agent Address as a defined “dealer”.

The bill lists the records that must be kept, and that those records must be stored in an electronic format. The records must be made available for the department’s review pursuant to current law.

The bill directs the department to verify that forwarding agents who possess a certificate are actively engaged in facilitating export of property. The bill also provides that the certificate cannot be used to fraudulently avoid sales tax and gives the department the authority to revoke certificates. The bill further provides that fraudulent activity is subject to liability for the tax and civil and criminal penalties.

The bill provides that a certificate may be accepted by a dealer in lieu of collecting and remitting sales tax. It further directs the department to create an online system for verification of certificates. Finally, it outlines the records which need to be kept by a selling dealer to avoid liability for tax.

## **Section 4 – Electronic Records/Sales Tax Audit**

### ***Present Situation***

Sales and use tax dealers are required to maintain certain records and make those records available to the department for inspection during reasonable hours at the dealer’s place of

business.<sup>3</sup> Many dealers maintain records in an electronic format. However, the department has encountered dealers who refuse to share their records without a physical visit. Due to the pandemic, physical visits are limited.

It is unknown how many dealers keep their records in an electronic format. However, the department provided that approximately 85 percent of dealers file their taxes electronically.

### ***Proposed Change***

The bill amends s. 212.13(2), F.S., to require dealers to provide electronic records, when requested by the department, if the dealer already maintains the records in an electronic format. The bill removes language referencing a physical visit requirement from s. 212.13(2), F.S.

## **Section 5 – Theft of State Funds**

### ***Present Situation***

When a dealer collects sales tax from customers, but fails to remit those tax dollars to the state, the dealer can be prosecuted for theft of sales tax.<sup>4</sup> These prosecutions often involve multiple collection periods for which the dealer has collected but failed to remit taxes. Aggregation of collection periods is not specifically provided for in sales tax law. However, the general theft statute in Florida does allow the aggregation of amounts stolen from a similar course of conduct.<sup>5</sup>

### ***Proposed Change***

The bill amends s. 212.15(2), F.S., providing specific authority for aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes, mirroring the construction of the general theft statute.

**Section 6** amends s. 213.053, F.S., to exempt the newly created verification database of freight forwarding addresses in section 3 of the bill from the department’s confidentiality requirements.

**Section 7** reenacts s. 212.13, F.S., to conform to changes made by the bill.

**Section 8** provides emergency rule making authority to the department for the implementation of the bill and provides a sunset date of January 1, 2025, for this authority.

**Section 9** provides that the bill is effective January 1, 2022.

## **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 or limits their ability to raise revenue or receive state tax revenue.

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<sup>3</sup> Section 212.13(2), F.S.

<sup>4</sup> Section 212.15(2), F.S.

<sup>5</sup> Section 812.012(10)(c), F.S.

Subsection (b) of Article VII, s. 18 of the Florida Constitution provides that, except upon approval by each house of the Legislature by two-thirds vote of its 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. However, the mandates requirements do not apply to laws having an insignificant fiscal impact<sup>6, 7</sup> which for Fiscal Year 2021-2022, is forecast at \$2.2 million or less.<sup>8</sup>

The Revenue Estimating Conference determined that this bill will have an insignificant negative impact to local revenues on a recurring basis. Therefore, the mandates provision will likely not apply.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

The bill does not create or raise state taxes or fees. Therefore, the requirements of Art. VII, s. 19 of the State Constitution do not apply

**E. Other Constitutional Issues:**

None identified.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

The Revenue Estimating Conference determined that the bill will reduce local revenues by zero or an insignificant amount every year beginning in Fiscal Year 2022-2023.

**B. Private Sector Impact:**

Taxpayers who elect the installment method of payment of property tax but are delinquent with their first payment will not have a pay a penalty on that payment.

<sup>6</sup> FLA. CONST. art. VII, s. 18(d).

<sup>7</sup> 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 at p. 1, (September 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited April 14, 2021).

<sup>8</sup> Based on the Demographic Estimating Conference's April 1, 2021, estimated population, adopted on March 3, 2021. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited April 14, 2021).

Businesses that keep electronic records will be required to provide statutorily mandated records to the department in that format.

Dealers who do not remit sales tax collections to the state can have the amount aggregated in determining the level of offense.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 197.222, 211.3106, 212.06, 213.053, 212.13, and 212.15.

The bill reenacts the following sections of the Florida Statutes: 192.0105, 212.07, and 212.08.

**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.