

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTC 10-05 Criminal Penalties for Violations of Tax Statutes

SPONSOR(S): Finance & Tax Council

TIED BILLS: **IDEN./SIM. BILLS:**

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------|-----------------------|--------|---------|----------------|
| Orig. Comm.: | Finance & Tax Council | | Wilson | Langston |
| 1) | | | | |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Chapter 212, F.S., provides that sales tax dealers are required to collect and remit sales tax back to the Department of Revenue (Department). The failure of a dealer to register with the State or collect and remit sales tax, after written notification from the Department, may result in civil and criminal penalties provided in s. 212.12(2), F.S. Dealer's that provide false or fraudulent tax returns, with the willful intent to evade the payment of taxes, are also subject to similar penalties.

The Department has determined that the criminal penalties provisions in s. 212.12, F.S, may be unclear, due to the current grouping of various violations in s. 212.12(d), F.S. Furthermore, the Department has also identified that the levels of offenses provided within this section may lack the detail needed for proper enforcement.

This bill contains recommendations of the Department that clarify the criminal penalties provisions found within s. 212.12(d), F.S., providing for violations of the tax statutes related to dealers who intentionally fail to register and/or collect and remit taxes and fees, or any person who fraudulently files returns with the intent to evade the payment of taxes and fees owed to the State.

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida's tax code.

The bill shall take effect upon becoming a law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present situation:

Florida law requires any person engaging in or conducting business in Florida to register with the Department of Revenue (Department), pursuant to s. 212.18, F.S. Chapter 212, F.S., provides that sales tax dealers are required to collect and remit sales tax to the Department. In addition to penalties prescribed in s. 212.12(2), F.S, various civil and criminal penalties are imposed on registration, collection, and reporting violations of taxes, surcharges, and fees.

Under s. 212.12(2), F.S., any person who intentionally fails to register, after the Department has provided written notice of the requirement to register, is subject to an additional penalty of 100% of any unreported tax or fee and is subject to a fine and punishment. The Department is also required to adopt a rule providing procedures on how a person may challenge the requirement to register with the Department.

Also, under s. 212.12(2), F.S., any person who intentionally fails to collect tax, after the Department has provided written notice of the requirement to collect tax on specified transactions, is subject to an additional penalty of 100% of any uncollected tax or fee and is subject to a fine and punishment. The Department is again required to adopt a rule providing procedures on how a person may challenge the requirement to register with the Department.

Lastly, under s. 212.12(2), F.S., any person who provides a false or fraudulent return, with the willful intent to evade the payment of any tax or fee, is subject to an additional penalty of 100% of any unreported tax or fee and is subject to a fine and punishment.

Section 212.12(2)(d), F.S., provides that the levels of various offenses subject to fines and punishments pursuant to s. 775.082, s.775.083, and s.775.084, F.S.,¹ for each of these violations are as follows:

¹ Sections 775.082, 775.083, and 775.084, F.S., provide for general criminal penalties, fines, and the treatment of habitual felony offenders.

- For uncollected taxes or fees less than \$300 – The first offense is a misdemeanor of the second degree, the second offense is a misdemeanor in the first degree, and the third and all subsequent offenses are felonies in the third degree.
- For uncollected taxes and fees between \$300 and \$20,000 – The offense is a felony of the third degree.
- For uncollected taxes and fees between \$20,000 and \$100,000 – The offense is a felony of the second degree.
- For uncollected taxes and fees of \$100,000 or more – The offense is a felony of the first degree.

However, the Department has determined that the criminal penalties provisions in s. 212.12, F.S., may be unclear, due to the statutory placement of the various violations in s. 212.12(2), F.S. The Department has also identified that the levels of offenses provided within this section may lack the detail needed for proper enforcement.

Proposed changes:

This bill will clarify current statutory language provided in s. 212.12(2), F.S., transferring certain criminal penalties provisions, in this chapter, to sections that deal directly with the respective violations. This bill will also provide greater detail for the penalties incurred.

This bill amends s. 212.07, F.S., simplifying the graduated penalties imposed for the intentional failure to collect tax currently in s. 212.12(2), F.S., and placing them in 212.07(3), F.S. The penalties will be imposed on any person who “willfully” fails to collect taxes or fees imposed under Chapter 212, F.S., after the Department has provided written notice. Section 212.07(3)(d), F.S. is created to require the Department to provide written notice of the duty to collect taxes or fees to the dealer by personal service, registered mail, or by both personal service and mail.

This bill also amends s. 212.12(2)(d), F.S., simplifying the graduated penalties currently imposed for any person who makes a false or fraudulent tax return with the “willful” intent to evade the payment of taxes or fees. The bill removes from s. 212.12(2)(d), F.S., provisions for both the failure to collect tax and the intentional failure to register with the Department, after written notice,

This bill amends s. 212.18, F.S., clarifying penalty provisions imposed for the intentional failure to register, after written notice with the Department, in s. 212.12(2), F.S., and placing them in 212.18(3), F.S. The bill creates s. 212.18(3)(c)2., F.S., providing that any person who “willfully” fails to register as dealer, after the Department provides written notice, commits a felony of the third degree, punishable under s. 775.082, s. 775.083, or s. 775.084, F.S. This bill creates s. 212.18(3)(c)2.b., F.S., requiring the Department to provide written notice of the duty to collect taxes or fees to the dealer by personal service, registered mail, or by both personal service and mail.

The bill establishes a definition for the term “willful”, meaning a voluntary and intentional violation of a known legal duty, in both s. 212.07 and s. 212.18, F.S.

B. SECTION DIRECTORY:

Section 1: Amends s. 212.07(3), F.S., simplifying the graduated penalties for the failure to collect tax or fees. Creates s. 212.07(3)(d), F.S., providing for written notice by personal service and/or registered mail. This section also provides for the definition of “willful”.

Section 2: Amends s. 212.12(2)(d), F.S., simplifying the graduated penalties for making a false or fraudulent tax return.

Section 3: Amends s. 212.18(3), F.S., clarifying penalty provisions for failure to register. Creates s. 212.18(3)(c)2., F.S., provides penalties for the failure to register as a dealer, after notice from the Department. Creates s. 212.18(3)(c)2.b., F.S., providing for written notice by personal service and/or registered mail. This section also provides for the definition of “willful”.

Section 4: This bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on revenues due to stricter provisions that will enable increased enforcement and encourage higher levels of voluntary compliance with Florida’s tax code.

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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other

B. RULE-MAKING AUTHORITY:

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES