

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1241 Tax Administration
SPONSOR(S): Appropriations Committee, Stevenson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Ways & Means Committee	16 Y, 0 N	Curry	Aldridge
2) Appropriations Committee	27 Y, 0 N, As CS	Lee	Pridgeon

SUMMARY ANALYSIS

The bill provides for several tax administration related provisions and modifications which include the following:

- Allows all taxpayers on a property tax installment payment plan to pay the first installment of property taxes by July 31 without penalty.
- Authorizes the Department of Revenue (DOR) to use the prior year's tax rate to determine the heavy minerals tax rate if the current producer price index can no longer be calculated and there is no comparable index.
- Creates an efficient, consistent method for forwarding agents to apply for and receive a Florida Certificate of Forwarding Agent Address from DOR to prove the tax-free status of purchases delivered for export and authorizes DOR to publish a list on its website of forwarding agents who have received a certificate, including the forwarding agent's entity name, address, and certificate expiration date to allow vendors to verify tax-free status.
- Removes the current requirement for auditors to physically visit dealers for sales tax audits and requires dealers to provide electronic records when the dealer currently maintains the records in an electronic format.
- Clarifies language to specify that aggregation of collection periods is permitted to determine the degree of criminal offense for failure to remit taxes.

The Revenue Estimating Impact Conference, on February 26, 2021, estimated that the bill would have a zero or insignificant negative impact on local government revenues.

The bill will have a minimal negative fiscal impact on DOR due to costs related to modifications that are required to the System for Unified Tax (SUNTAX) to implement the bill. DOR estimates the total nonrecurring cost to be \$19,716, which can be absorbed within existing appropriations.

The bill has a minimal positive direct impact on private sector taxpayers by requiring tax collectors to accept a late payment of the first installment payment through July 31 without the 5 percent penalty.

The bill provides an effective date of January 1, 2022, unless otherwise expressly provided.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Installment Payments

Current Situation

Section 197.222, F.S., allows a taxpayer to prepay estimated property taxes by making quarterly installment payments and receive a specified percentage discount.¹ A taxpayer who elects to pay taxes by the installment method must make payments based upon an estimated tax which is equal to the actual taxes levied upon the property in the preceding year. To participate in the installment plan, the taxpayer's estimated taxes must be more than \$100.

The first installment payment is due June 30. Tax collectors may choose to accept late payments on the first installment through July 31. However, the 6 percent discount is lost and a 5 percent penalty is assessed on the amount of the installment payment. There is a lack of uniformity among tax collectors regarding the acceptance of the late payment. As a result, taxpayers may be treated differently statewide depending on the acceptance of late payments by individual tax collectors.

Effect of Proposed Changes

The bill creates consistent treatment of taxpayers statewide by requiring tax collectors to accept a late payment of the first installment payment through July 31 without the 5 percent penalty. However, taxpayers who pay the first installment payment after June 30 will continue to lose the 6 percent discount.

Heavy Minerals Tax Rate

Current Situation

Under current law, an excise tax is levied upon those who engage in the business of severing heavy minerals from the soils or waters of this state for commercial use. The heavy minerals tax rate is to be calculated each year based on the annual producer price index (PPI) for titanium dioxide published by the U.S. Bureau of Labor Statistics (BLS).² However, due to a lack of data, BLS has ceased posting the PPI for titanium dioxide. In the event that the PPI for titanium dioxide is discontinued, current law authorizes the Department of Revenue (DOR) to adopt a tax rate by rule based on a comparable index.³ However, DOR has been unable to identify an appropriate comparable index.

Effect of Proposed Changes

The bill amends s. 211.3106, F.S., to require DOR to use the tax rate for the immediately preceding year when the statutory rate cannot be calculated and there is no comparable index. The current rate reflects the 2020 tax rate calculation that followed the statutory formula when the PPI for titanium dioxide was last published by the Bureau of Labor Statistics.⁴ This section takes effect upon becoming a law.

¹ Section 197.222(1), F.S., provides for a 6 percent discount applied to the first installment payment, a 4.5 percent discount for the second installment payment, and a 3 percent discount for the third payment. No discount is provided for the fourth installment payment.

² Section 211.3106(3)(a), F.S.

³ Section 211.3106(3)(e), F.S.

⁴ Section 211.3106(3)(c), F.S., requires DOR to provide the base rate, the base rate adjustment, and the resulting tax rate by written notice by April 15 of the current year.

Forwarding Agent Certificate

Current Situation

Generally speaking, Florida sales and use tax does not apply to tangible personal property imported, produced, or manufactured in Florida for export.⁵ Therefore, the sale of items deemed committed to the export process that are purchased by a vendor and shipped directly to a licensed exporter or forwarding agent in Florida are exempt from sales tax. There are transportation and logistics businesses located in Florida that specialize in global package delivery. The business model of these businesses is designed to facilitate a foreign consumer's purchase of merchandise originating with an American vendor and the delivery of such merchandise to the foreign consumer, with no intervening use in the United States. These businesses are sometimes referred to as forwarding agents. There is no current statutory mechanism whereby a forwarding agent can provide documentation to sellers that indicates that purchases of otherwise taxable items, when delivered to the forwarding agent for export, are not taxable.

Effect of Proposed Changes

The bill defines the term "forwarding agent" to mean a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons. The bill amends section 212.06, F.S., to revise the term "dealer" to include forwarding agents. The bill creates a process that allows forwarding agents to apply for and receive, upon approval and verification, a Florida Certificate of Forwarding Agent Address (certificate) from DOR. Each certificate expires 5 years after the issuance date. A forwarding agent that applies for and receives a certificate must register as a dealer with DOR. The certificate can be provided to vendors to evidence to the vendor the tax-free status of purchases directly delivered to the forwarding agent's address for export. The bill requires forwarding agents to maintain certain documentation, including copies of sales invoices or receipts or federally required export documentation in order to evidence the value of the purchase. These records must be kept in an electronic format and made available for DOR's review.

The bill requires DOR to publish a list on its website of forwarding agents who have received a certificate, including the forwarding agent's entity name, address, and certificate expiration date. A dealer may accept a copy of the forwarding agent's certificate or rely on the list of forwarding agents' names and addresses published on DOR's website to verify the tax-free status of a purchase.

The bill provides DOR rulemaking authority to administer the procedures, application and eligibility requirements, and forms related to the forwarding agent provisions of the bill.

Electronic Records/Sales Tax Audit

Current Situation

Sales and use tax statutes specify the records dealers are required to maintain and make available to DOR for inspection during reasonable hours at the dealer's place of business⁶. As technology has advanced, many dealers maintain their records in an electronic format that can be shared with DOR. However, current law does not clearly require dealers to make their records available for inspection without a physical visit and does not require the records be provided electronically if so kept by the dealer.

Effect of Proposed Changes

Section 212.13(2), F.S., is amended to require dealers to provide electronic records when the dealer currently maintains the records in an electronic format and to remove language that references a physical visit requirement.

⁵ Section 212.06(5)(a)1, F.S.

⁶ Section 212.13, F.S.

Theft of State Funds

Current Situation

Under current law, a person commits theft of state funds when he or she fails to remit taxes with the intent to unlawfully deprive or defraud the state of its money or the use or benefit thereof.⁷ When a dealer collects sales tax from customers but fails to remit those tax dollars to the state, DOR may pursue criminal prosecution through local state attorney offices⁸. These prosecutions often involve multiple collection periods where the dealer has collected but failed to remit taxes.⁹ Current sales tax law does not specifically provide for the aggregation of collection periods in determining the grade of criminal offense.

Effect of Proposed Changes

The bill amends section 212.15, F.S., to provide specific authority to allow for the aggregation of collection reporting periods to determine the degree of criminal offense for the prosecution of failure to remit taxes.

B. SECTION DIRECTORY:

- Section 1. Amends s. 197.222, F.S., to require the tax collector to accept late payments on the first installment of prepaid property taxes; and removes the late payment penalty.
- Section 2. Amends s. 211.3106, F.S., to allow DOR to use the prior year's tax rate to determine the severance tax rate for heavy minerals when the statutory rate cannot be calculated and there is no comparable index; and provide an effective date upon becoming a law.
- Section 3. Amends s. 212.06, F.S., to define the term forwarding agent and revise the definition of the term "dealer" to include forwarding agents; creates a process allowing forwarding agents to apply for and receive a Florida Certificate of Forwarding Agent Address from DOR; and to require DOR to publish a list on its website of forwarding agents that have received a certificate.
- Section 4. Amends s. 212.13(2), F.S., to require dealers to provide electronic records to DOR.
- Section 5. Amends s. 212.15, F.S., to provide specific authority to allow aggregation of collection reporting periods to determine the degree of criminal offense for failure to remit taxes.
- Section 6. Amends s. 212.053, F.S., to authorize DOR to publish a list on the department's website of forwarding agents, including their address, entity name, and certificate expiration date.
- Section 7. Reenacts s. 192.015(3)(a), F.S., taxpayer rights, to incorporate amendments made to s. 197.222, F.S., in reference thereto.
- Section 8. Reenacts s. 212.07(1)(c), F.S., relating to sales, storage, and use tax, to incorporate amendments made to s. 212.06, F.S., in reference thereto.
- Section 9. Reenacts s. 212.08(18)(f), F.S., relating to the sales, rental, use, consumption, distribution, and storage tax, to incorporate the amendments made to s. 212.13, F.S., in reference thereto.

⁷ Section 212.15(2), F.S.

⁸ Section 212.15(2) and (3), F.S.

⁹ Pursuant to s. 212.15(1), F.S., taxes imposed under chapter 212, F.S., become state funds when collected. The collections are due on the first day of the succeeding month and are delinquent on the 21st day of such month. As a result, there may be multiple collection periods where the dealer has collected but failed to remit taxes.

Section 10. Provides DOR with emergency rulemaking authority for the purpose of implementing changes made to s. 212.06, F.S., and specifies the expiration of that authority.

Section 11. Provides effective dates.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill has a minimal negative fiscal impact on the Department of Revenue due to modifications to the System for Unified Tax (SUNTAX) required to implement the bill. DOR estimates the total nonrecurring contracted services cost to be \$19,716, which can be absorbed within existing appropriations.¹⁰

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Impact Conference, on February 26, 2021, estimated that the bill would have a zero or insignificant negative impact on local government revenue.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers on the installment payment plan will be permitted to pay the first installment of property taxes by July 31 without penalty.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

Section 10 of the bill provides DOR with emergency rulemaking authority to implement the changes pertaining to s. 212.06, F.S. The emergency rulemaking authority expires January 1, 2025. Section 3 of the bill also provides DOR general rulemaking authority to administer certain provisions in s. 212.06(5), F.S.

¹⁰ Florida Department of Revenue (DOR), Agency Analysis of 2021 House Bill 1241, pp. 7-9 (Mar. 10, 2021).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2021, the Appropriations Committee considered four amendments, which were adopted, and reported the bill favorably as a committee substitute. The committee substitute makes the following changes to the bill:

- Provides an earlier effective date for the changes to the Heavy Minerals tax rate calculation in s. 211.3106, F.S.
- Clarifies the records a forwarding agent must maintain to include either copies of the vendor's sales invoice or receipts between the vendor and consumer or federally required export documentation in order to evidence the value of the goods.
- Clarifies the process for dealers to verify and document the tax-free status of a transaction by allowing them to either accept a copy of the forwarding agent's certificate or rely on DOR's website that will list the eligible forwarding agent names and addresses.
- Replaces language that required DOR to establish an online system for verification of valid certificates on the department's website with a provision that requires DOR to provide a list on its website of forwarding agents that have applied for and received a Florida Certificate of Forwarding Agent Address from DOR.
- Authorizes DOR to publish on its website a list of forwarding agents who have received a Florida Certificate of Forwarding Agent Address, including the forwarding agent's entity name, address, and certificate expiration date.

The staff analysis has been updated to reflect the committee substitute.