

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 Commerce and Tourism

BILL: SB 352

INTRODUCER: Senator Brodeur

SUBJECT: Virtual Currency Sales Tax Holiday

DATE: February 5, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Renner	McKay	CM	Pre-meeting
2.			FT	
3.			AP	

I. Summary:

The bill provides an exemption from sales tax for a two month period from June 1, 2025, through July 31, 2025, on the retail sale of tangible personal property and taxable services made by the following establishments *if* payment is made in virtual currency:

- Retail service stations that sells motor fuels or special fuels to the public;
- Food service establishments;
- Public food service establishments;
- Grocery stores;
- Convenience stores;
- Cosmetology salons or specialty salons;
- Spas;
- Barbershops; and
- Bars or nightclubs.

The Revenue Estimating Conference has not reviewed the bill.

The bill takes effect upon becoming a law.

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,¹ admissions,² transient rentals,³ and a limited number of services, and a 5.5 percent

¹ Section 212.05(1)(a)1.a., F.S.

² Section 212.04(1)(b), F.S.

³ Section 212.03(1)(a), F.S.

sales and use tax on the rental of commercial real estate.⁴ Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sale and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.⁵

Counties are authorized to impose local discretionary sales surtaxes in addition to the state sales tax.⁶ 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."⁷ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold or delivered. Discretionary sales surtax rates currently levied vary by county in a range of 0.0 to 1.5 percent.⁸

Virtual Currency

The term "currency" is defined in Florida law as the coin and paper money of the United States or of any other country which is designated as legal tender and which circulates and is customarily used and accepted as a medium of exchange in the country of issuance.⁹

The term "virtual currency" is defined as a medium of exchange in electronic or digital format that is not currency. The term does not include a medium of exchange in electronic or digital format that is:

- Issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform; or
- Used exclusively as part of a consumer affinity or rewards program and can be applied solely as payment for purchases with the issuer or other designated merchants but cannot be converted into or redeemed for currency or another medium of exchange.¹⁰

Some virtual currencies may be used to purchase goods and services in the real economy and can be converted into government-issued currencies through virtual currency exchanges. Virtual currency transactions can occur online through a network that can be accessed using wallet software. Other virtual currencies can only be used within virtual economies (e.g. within online role-playing games) and may not be readily exchanged for government-issued currencies.¹¹ According to the United States Government Accountability Office, the total market capitalization of all virtual currencies was about \$2.2 trillion in 2021.¹² Overall, 17 percent of United States

⁴ Section 212.031, F.S.

⁵ Section 212.07(2), F.S.

⁶ Section 212.055, F.S.

⁷ Section 212.054(2)(a), F.S.

⁸ Florida Department of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2024*, https://floridarevenue.com/Forms_library/current/dr15dss_24.pdf (last visited Feb. 5, 2024).

⁹ Section 560.103(12), F.S.

¹⁰ Section 560.103(36), F.S.

¹¹ United States Government Accountability Office, *Virtual Currencies* (December 2021), p. 9 <https://www.gao.gov/assets/gao-22-105462.pdf> (last visited Feb. 5, 2024).

¹² *Id* at p. 1

adults say they have ever invested in, traded, or used a cryptocurrency (a type of virtual currency).¹³

III. Effect of Proposed Changes:

The bill provides an exemption from sales tax for a two month period from June 1, 2025, through July 31, 2025, on the retail sale of tangible personal property and taxable services made by the following establishments if payment is made in virtual currency:

- Retail service stations that sells motor fuels or special fuels under NAICS code 457120;¹⁴
- Food service establishments permitted or licensed under ch. 500, F.S.;
- Public food service establishments licensed under ch. 509, F.S.;
- Grocery stores;
- Convenience stores;
- Cosmetology salons or specialty salons licensed under ch. 477, F.S.;
- Spas;
- Barbershops;¹⁵ and
- Bars or nightclubs.

The bill defines a “convenience store” as a business that is engaged primarily in the retail sale of groceries or motor fuels or special fuels and may offer food services to the public. The term includes businesses providing motor fuels or special fuels to the public, which also offer groceries or food service.

The bill defines the term “virtual currency” as having the same meaning as in s. 560.103, F.S.

The Department of Revenue is authorized to adopt emergency rules.

The bill takes effect upon becoming a law.

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.

¹³ Pew Research Center, *Majority of Americans Aren't Confident in the Safety and Reliability of Cryptocurrency* (April 10, 2023), <https://www.pewresearch.org/short-reads/2023/04/10/majority-of-americans-arent-confident-in-the-safety-and-reliability-of-cryptocurrency/> (last visited February 5, 2024).

¹⁴ NAICS code 457120 is comprised of establishments generally known as gasoline stations (except those with convenience stores) or truck stops primarily engaged in (1) retailing automotive fuels (e.g. gasoline, diesel fuel, gasohol, alternative fuels), or (2) retailing these fuels in combination with activities; such as providing repair services, selling automotive oils, replacement parts, and accessories; and/or providing food services. <https://usa.infocnae.com/codes/naics-457120/> (last visited Feb. 5, 2024).

¹⁵ A “barbershop” is defined as any place of business wherein the practice of barbering is carried on. Section 476.034(3), F.S.

Subsection (b) of Art. VII, s. 18 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,^{16,17} which is \$2.3 million or less for Fiscal Year 2024-2025.¹⁸

The Revenue Estimating Conference has not reviewed the bill.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

Section 19 of Article VII, Florida Constitution requires increased taxes or fees to be passed in a separate bill and by two-thirds vote of the membership of each house of the Legislature. This bill does not increase any taxes or fees; therefore, the increased tax or fee requirements do not apply.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed this bill.

B. Private Sector Impact:

The establishments listed in the bill will experience reduced costs associated with the retail sale of tangible personal property and taxable services if payments are made in virtual currency.

¹⁶ FLA. CONST. art. VII, s. 18(d).

¹⁷ 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), <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 5, 2024).

¹⁸ Based on the Demographic Estimating Conference's estimated population adopted on July 11, 2023, <http://edr.state.fl.us/Content/conferences/population/archives/230711demographic.pdf> (last visited Feb. 5, 2024).

C. **Government Sector Impact:**

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Revenue, virtual currency could include any payment by digital means, including a payment made with a credit or debit card.¹⁹

Additionally, the bill includes a spa as one of the establishments for which the sales tax exemption would apply. It is unclear what is meant by a spa as there is no specific licensing requirement or statutory definition for the term.

VIII. Statutes Affected:

None.

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.

¹⁹ Department of Revenue analysis for SB 352 (2024). On file with the Senate Commerce and Tourism Committee.