

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: CS/SB 1030

INTRODUCER: Finance and Tax Committee and Senator Rodriguez

SUBJECT: Taxation

DATE: February 15, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>Byrd</u>	<u>Khan</u>	<u>FT</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1030 makes various changes to statutes relating to the Department of Revenue (department). The bill:

- Deletes obsolete language referring to pollutants tax registration fees;
- Revises the administration of certain taxes related to the purchase of boats, trailers, and aircrafts;
- Revises provisions on forwarding agents applications. Requires the department to add a statement or notification in its electronic database for each certified address with a unique street address or zip code. Specifies that certain dealers may not collect sales and use tax on tangible personal property shipped to a certified address. A dealer is not liable for the tax if the dealer relies on the electronic database to ship to a certified address.
- Allows the department to reopen a final assessment for the purpose of adjusting tax liability under certain circumstances;
- Allows the department to include all taxes, penalties, interest, costs, surcharges, and fees authorized by law in a garnishment or levy;
- Increases the threshold for underpayment penalties on corporate income tax and provides applicability; and
- Provides rulemaking and emergency rulemaking authority.
- The bill also permits counties and school boards to forego imposing local discretionary sales surtaxes on commercial rent.

The Revenue Estimating Conference determined that the bill may increase or decrease General Revenue receipts, trust fund receipts, and local government receipts by an indeterminate amount for the various provisions in the bill. **See Section V. Fiscal Impact Statement for additional information.**

The bill takes effect July 1, 2024.

II. Present Situation:

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

III. Effect of Proposed Changes:

Pollutants Tax Registration Fees

Current Situation: Any entity intending to produce or import pollutants, which include liquid commodities made from petroleum products, pesticides, ammonia, chlorine, perchloroethylene, or solvents,¹ must register and become licensed to do so.² Statute provides that an entity must pay a \$30 registration fee when requesting a pollutants tax license.³ However, these registration fees were previously repealed beginning January 1, 2018.⁴

Proposed Changes: **Section 1** amends s. 206.9931, F.S., to remove obsolete language related to pollutants tax registration fees.

Local Discretionary Sales Surtax on Commercial Rentals

Present Situation: Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,⁵ admissions,⁶ transient rentals,⁷ and a limited number of services. Additionally, Florida levies a 4.5 percent sales and use tax on the rental of commercial real estate.⁸ In 2021, the Legislature approved a reduction to the sales and use tax rate on the rental of commercial real estate to 2% after the balance in the Unemployment Compensation Trust Fund reaches \$4.07 billion, which is expected to occur in March 2024.⁹ As a result, the tax rate is expected to decrease to 2% beginning June 1, 2024.

Commercial real estate subject to tax includes land, buildings, office or retail space, and convention or meeting rooms. It also includes the granting of a license to use real property for

¹ Florida Dept. of Revenue, Pollutants Tax, available at <https://floridarevenue.com/taxes/taxesfees/Pages/pollutants.aspx> (last visited Jan. 10, 2024).

² Section 206.9931, F.S.

³ *Id.*

⁴ Chapter 2017-36 s.17, L.O.F.

⁵ Section 212.05(1)(a)1.a., F.S.

⁶ Section 212.04(1)(b), F.S.

⁷ Section 212.03(1)(a), F.S.

⁸ Section 212.031, F.S.

⁹ The Office of Economic & Demographic Research, Unemployment Compensation Trust Fund Forecast, available at <http://edr.state.fl.us/Content/conferences/unemployment-compensation-trust-fund/January2024ForecastSummary.pdf> (last visited Feb. 12, 2024).

placement of vending, amusement, or newspaper machines.¹⁰ Additionally, if the tenant makes payments such as mortgage, ad valorem taxes, or insurance on behalf of the property owner, such payments are also classified as rent and are subject to the tax.¹¹ However, there are several commercial rentals that are not subject to tax, including:

- Rentals of real properties assessed as agricultural.¹²
- Rentals to nonprofit organizations that hold a current Florida consumer's certificate of exemption.¹³
- Rentals to federal, state, county, or city government agencies.¹⁴
- Properties used exclusively as dwelling units.
- Public streets or roads used for transportation purposes.¹⁵

Counties¹⁶ and schools boards¹⁷ are authorized to impose local discretionary sales surtaxes in addition to the state sales tax. 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”¹⁸ 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. In counties that levy the discretionary sales surtax, the rate varies in a range of 0.5 to 1.5 percent.^{19, 20}

Proposed Changes: **Section 2** amends s. 212.031, F.S., to provide that a county or school board imposing a discretionary sales surtax may exclude rent or license fees on commercial real estate from discretionary sales surtaxes. The exclusion must be approved by majority vote of the members of the board of county commissioners or school board, and does not require referendum approval. The county or school board must notify the department by September 1 of the year the decision is approved and the exclusion must be initiated on January 1 of the year following approval.

Affidavit for Non-Resident Purchasers of Boats and Aircrafts

Current Situation: Nonresident purchasers of boats and aircraft are exempt from paying the sales tax. Among other requirements relating to the purchase and subsequent removal from the state of the boat or aircraft, such purchasers must sign an affidavit attesting that they have read the provisions of s. 212.05, F.S., in its entirety, in order to claim the exemption. Section 212.05, F.S.,

¹⁰ Rule 12A-1.070, F.A.C.

¹¹ *Id.*

¹² See s. 212.031(1)(a)1.-13., F.S.

¹³ Section 212.08(7)(p), F.S.

¹⁴ Section 212.08(6), F.S.

¹⁵ See s. 212.031(1)(a)1.-13., F.S.

¹⁶ Section 212.055, F.S. authorizes counties to impose different types of local discretionary sales surtaxes including the Charter County and Regional Transportation System Surtax, the Local Government Infrastructure Surtax, the Small County Surtax, the Indigent Care and Trauma Center Surtax, the County Public Hospital Surtax, the Voter-Approved Indigent Care Surtax, the Emergency Fire Rescue Services and Facilities Surtax, and the Pension Liability Surtax.

¹⁷ Section 212.055(6) authorizes school boards in each county to levy the School Capital Outlay Surtax.

¹⁸ Section 212.054, F.S.

¹⁹ Florida Dept. of Revenue, *Discretionary Sales Surtax Information for Calendar Year 2024*, available at https://floridarevenue.com/Forms_library/current/dr15dss_24.pdf (last visited Jan. 16, 2024).

²⁰ This range is inclusive of the surtax that may be levied by school districts.

is lengthy and includes many provisions that are not applicable to the purchaser of a boat or aircraft.

Proposed Changes: **Section 3** amends s. 212.05(1)(a)2.d., F.S., to remove the requirement that a purchaser attests to having read statutory provisions and replaces that language with the requirement that a nonresident purchaser complete an affidavit that affirms that the nonresident purchaser qualifies for exemption from the sales tax pursuant to law and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption.

Imposition of Surtax Limitation on the Purchase of Boats and Trailers

Present Situation: Local discretionary sales surtaxes may only be charged on the first \$5,000 of the sales amount of any item of tangible personal property.²¹ If two or more taxable items are sold to the same purchaser at the same time and would generally be sold in bulk or comprise pieces of a unit, such items must be considered a single item.²²

Additionally, the location for where the surtax is applied differs for boats and trailers. For the sale of a boat, the surtax is based on the county where the boat is delivered to the purchaser.²³ For a trailer, the surtax is based on the residence address of the purchaser as identified on the registration or title document of the trailer.²⁴

Proposed Changes: **Section 4** amends s. 212.054, F.S., to require that the sale of a boat and corresponding boat trailer must be taxed as a single item when sold to the same purchaser, at the same time, and in the same invoice. Additionally, the bill requires the surtax to be imposed based on the county where the purchaser resides.

Forwarding Agents

Current Situation: A forwarding agent is a person or business whose principal business activity is facilitating for compensation the export of property owned by other persons. A forwarding agent engaged in international export may apply to the department for a Florida Certificate of Forwarding Agent Address. The application must include information about the forwarding agent's location and export activities, including designation of an address. Each certificate expires five years after issue and requires the forwarding agent to update the application if material changes occur regarding the information in the application.²⁵

The law defines a forwarding agent as a dealer,²⁶ which makes a forwarding agent subject to the provisions governing all sales tax dealers in the state. In general, a person desiring to engage in

²¹ Section 212.054(2)(b)1., F.S.

²² *Id.*

²³ Section 212.054(3)(d)1., F.S.

²⁴ Section 212.054(3)(a)2., F.S.

²⁵ Section 212.06(5), F.S.

²⁶ Section 212.06, F.S.

or conduct business in this state must register as a dealer²⁷ and must file with the department an application for a certificate of registration, which is a Florida Business Tax Application.²⁸

Tangible personal property delivered by a dealer to a licensed exporter or common carrier for export outside Florida is not subject to sales tax.²⁹ A dealer may accept the forwarding agent's certificate or rely on the list of forwarding agents' names and addresses on the department's website in lieu of collecting sales tax. A dealer who accepts a certificate or relies on the list in good faith and ships purchased tangible personal property to the address on the certificate is relieved from tax liability for any tax due on sales made during the effective dates indicated on the certificate.³⁰ As of February 13, 2024, there are 253 unique combinations of certified forwarding agent names and addresses on the list.³¹

Additionally, the department maintains an electronic database, referred to as Florida's Address/Jurisdiction Database.³² This electronic database allows users to find tax rates by county or for any Florida address.³³

Proposed Changes: **Section 5** of the bill makes changes related to forwarding agent applications. A forwarding agent already registered as a dealer with the department is no longer required to resubmit an application to register as a dealer when applying for a certificate or renewal of a forwarding agent certificate. The bill requires a forwarding agent to update its application information when:

- the forwarding agent ceases to do business,
- the forwarding agent changes addresses,
- the forwarding agent's principal business activity changes to something other than facilitating the international export of property owned by other persons, or
- the certified address ceases to be used for export under this paragraph.

Additionally, the bill defines an "electronic database" to mean the database created and maintained by the department pursuant to section 202.22(2), Florida Statutes. The department must incorporate a statement or notification in its electronic database for each certified address with a unique street address or zip code. However, this requirement does not apply for a certified address approved by the department with a unique suite address or secondary address.

Additionally, the bill requires that a dealer, other than a forwarding agent that is required to remit sales and use tax, may not collect the tax on tangible personal property shipped to a certified address. The bill also relieves dealers relying on the electronic database to ship to a certified address from sales tax liability.

²⁷ Section 212.18(3), F.S.

²⁸ Florida Dep't of Revenue, General Tax, Florida Sales and Use Tax, *Registration and Accounts* https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Feb. 13, 2024).

²⁹ Section 212.06(5)(a)1., F.S.

³⁰ Section 212.06(5)(b)11., F.S.

³¹ See Florida Dep't of Revenue's List of Approved Forwarding Agents available at: https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited Feb. 13, 2024).

³² Section 202.22, F.S.

³³ See <https://pointmatch.floridarevenue.com/Default.aspx>

Event Impacting Timely Challenges

Current Situation: Current law provides guidelines for the department to establish informal conference procedures for the resolution of disputes relating to assessment of taxes, interest, and penalties, and the denial of refunds.³⁴ However, the department does not have the authority to reopen a final assessment for purposes of adjusting or compromising the liability, other than to resolve the outstanding liability for collectability.³⁵

Current law also specifies a process and timeframe for a taxpayer to challenge a final assessment. A taxpayer may contest the legality of any assessment or denial of refund of taxes and fees.³⁶ Such contest may be filed by circuit court action or by petition under administrative law.³⁷ No action may be brought more than 60 days after the date the assessment becomes final.³⁸

Proposed Changes: **Section 6** creates s. 213.21(11), F.S., to provide that, following the expiration of time for a taxpayer to challenge an assessment or a denial of a refund issued by the department, the department may consider a request to settle or compromise any tax, interest, penalty, or other liability under s. 213.21, F.S., if the taxpayer demonstrates that the failure to initiate a timely challenge was due to:

- The death or life-threatening injury or illness of the taxpayer or an immediate family member of the taxpayer;
- The death or life-threatening injury or illness of an individual with substantial responsibility for the management or control of the taxpayer;
- Acts of war or terrorism; or
- Natural disasters, fire, or other catastrophic loss.

The department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011, F.S. Any decision by the department regarding a taxpayer's request to compromise or settle a liability under this subsection is not a final order subject to review under ch. 120, F.S.

Garnishment

Present Situation: The department has the authority to issue a levy upon credits, other personal property, or debts belonging to a delinquent taxpayer. The department is not authorized to include as a part of such levy costs, surcharges, and fees (i.e., administrative collection processing fee, warrant filing fees, or any other fee or cost that might be enacted into the Florida Statutes) or additional daily accrued interest.³⁹ As a result, the department typically continues with collection efforts for costs, surcharges, fees, and interest after the initial levy is complete.⁴⁰

³⁴ Section 213.21, F.S.

³⁵ Florida Dept. of Revenue, *2024 Agency Legislative Bill Analysis for SB 1030* (on file with the Senate Committee on Finance and Tax).

³⁶ Section 72.011, F.S.

³⁷ *Id.*

³⁸ Section 72.011(2)(a), F.S.³⁹ Section 213.67, F.S.

³⁹ Section 213.67, F.S.

⁴⁰ Florida Dept. of Revenue, *2024 Agency Legislative Bill Analysis for SB 1030* (on file with the Senate Committee on Finance and Tax).

Additionally, there are notice requirements for a levy.

- **Notice of the amount of delinquency:** This notice may be given to a person who is in possession or control of any credits or personal property, excluding wages, belonging to the delinquent taxpayer. Notice may be made by registered mail, by personal service, or by electronic means, such as facsimile or the use of the internet.⁴¹
- **Notice of levy:** When the department levies such property, the department must notify the person in possession of such property. Notice may be made only by registered mail.⁴²

Proposed Changes: **Section 7** amends s. 213.67, F.S., to authorize the department to include all taxes, penalties, interest, costs, surcharges, and fees authorized by law to be included in a garnishment or levy, which has the effect of avoiding multiple collection efforts for additional amounts. The bill also allows the department to deliver its notices of levy by personal service or electronic means.

Corporate Income Tax Underpayment Threshold

Present Situation: Florida levies a 5.5 percent tax on certain income of corporations and financial institutions doing business in Florida.⁴³ Taxpayers may be granted up to 6 months of extensions of time within which to file corporate tax returns, provided they have filed a tentative tax return and paid the amount estimated to be the proper tax balance.⁴⁴ If tentative tax is underpaid by more than the greater of \$2,000 or 30 percent of the tax shown on the return when filed, such extensions are invalidated, and the taxpayer may be liable for penalties due to late payment.⁴⁵

Proposed Changes: **Section 8** raises the dollar threshold for underpayment following extension of time to file from \$2,000 to \$6,000. **Section 9** states that changes made under the bill to section 220.222, Florida Statutes, apply to taxable years ending on or after December 31, 2024.

Section 10 provides that the department shall have emergency rulemaking authority to implement this act.

Section 11 provides an effective date of July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(b) of the Florida Constitution provides that except upon the approval of each house of the Legislature by a 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. The mandate requirement

⁴¹ Section 213.67(1), F.S.

⁴² Section 213.67(3), F.S.

⁴³ Section 220.11(2), F.S.

⁴⁴ Sections 220.222(2) and 220.32, F.S.

⁴⁵ Section 220.222(2)(c), F.S.

does not apply to laws having an insignificant impact,⁴⁶ which for Fiscal Year 2024-2025 is forecast at approximately \$2.3 million.⁴⁷

The Revenue Estimating Conference determined that the bill will increase or decrease local government revenue by an indeterminate amount greater than \$100,000. Should the decrease in the authority to raise revenue result in an amount that surpasses \$2.3 million, this bill may be a mandate subject to approval of each house of the Legislature by a two-thirds vote of the membership.

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 a state tax or fee. Therefore, the requirements of Art. VII, s. 19 of the Florida 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 increase or decrease General Revenue, Trust Funds, and local government revenue by an indeterminate amount greater than \$100,000. The table below displays the results for provisions in the bill affecting revenue:

Provision	General Revenue		Trust Funds		Local/Other		Total	
	Cash	Recur.	Cash	Recur.	Cash	Recur.	Cash	Recur.
Underpayment Threshold Increase	(**)	(**)	0.0	0.0	0.0	0.0	(**)	(**)
Reopen Final Tax Assessment under Certain Circumstances	(**)	(**)	(**)	(**)	(**)	(**)	(**)	(**)
Garnishment/Levy Bundling	0/**	0/**	0/**	0/**	0/**	0/**	0/**	0/**
Imposition of Surtax Limitation: Boats and Trailers	0.0	0.0	0.0	0.0	(**)	(**)	(**)	(**)

⁴⁶ FLA. CONST. art. VII, s. 18(d). An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See FLA. SENATE COMM. ON CMTY. AFFAIRS, Interim Report 2012-115: Insignificant Impact (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Jan. 19, 2024).

⁴⁷ Based on the Demographic Estimating Conference’s estimated population adopted on July 11, 2023, available at <http://edr.state.fl.us/Content/conferences/population/archives/230711demographic.pdf> (last visited Jan. 19, 2024).

Local Discretionary Sales Tax on Commercial Rent	0.0	0.0	0.0	0.0	(0/**)	(0/**)	(0/**)	(0/**)
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B. Private Sector Impact:

The bill provides that the sale of a boat and trailer together will be treated as a single purchase, which may benefit taxpayers to the extent it changes administration of those taxes.

The bill allows the department to reopen final assessments under certain circumstances to consider settlement, and raises the threshold before corporate taxpayers may face certain penalties. These provisions may benefit taxpayers.

C. Government Sector Impact:

The bill may enhance the administration of the state’s tax laws.

The bill requires the department to provide an indicator on the department’s Address/Jurisdiction Database to identify an address that has received a Florida Certificate of Forwarding Agent Address, which requires a rewrite of the database. The rewrite of the department’s online address and jurisdiction database is estimated to require over 20,000 hours to complete. The department estimates that it will cost \$2,164,153 in Fiscal Year 2023-2024 to update the database.⁴⁸

Additionally, the department estimates that it will cost \$1,889 in FY 2023-24 to revise tax forms and notify boat and aircraft dealers of changes under SB 1030 as originally filed. The department noted that this cost will be absorbed by the department using existing resources. The department also estimates that it will cost \$35,048 in FY 2024-25 to implement SB 1030 as originally filed. These funds will be used to update the state tax software system.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

The department notes that, due to the required hours to update the department’s Address/Jurisdiction Database with a statement or notification for each certified address with a unique street address or zip code, the effective date of July 1, 2024 could not be met with current resources.

⁴⁸ Florida Dept. of Revenue, 2024 Agency Legislative Bill Analysis for SB 508 (on file with the Senate Committee on Finance and Tax).

⁴⁹ Florida Dept. of Revenue, 2024 Agency Legislative Bill Analysis for SB 1030 (on file with the Senate Committee on Finance and Tax).

VIII. Statutes Affected:

The bill substantially amends sections 206.9931, 212.031, 212.05, 212.054, 213.21, 213.67, and 220.222 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on February 13, 2024:

The committee substitute makes several changes.

- Revises provisions on forwarding agents applications. Requires the department to add a statement or notification in its electronic database for each certified address with a unique street address or zip code. Specifies that certain dealers may not collect sales and use tax on tangible personal property shipped to a certified address. A dealer is not liable for the tax if the dealer relies on the electronic database to ship to a certified address.
- Changes a circumstance that allows DOR to reopen a final assessment. Prior to the amendment, the death or life-threatening illness of “the responsible party that controlled, managed, or directed the affected business entity” would have allowed DOR to reopen a final assessment. The amendment changes the entity to “an individual with substantial responsibility for the management or control of the taxpayer.”
- Changes the method of delivery for garnishment notices. For a notice of the amount of delinquency, deletes the language that would have allowed the notice to be sent by regular or certified mail. For the notice of levy, deletes the language that would have allowed the notice to be sent by certified mail.
- Adds a new provision stating that the changes made to the threshold for underpayment penalties on corporate income tax, under s. 220.222, apply to taxable years ending on or after December 31, 2024.

- B. **Amendments:**

None.