

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1443 Tax on Sales, Use, and Other Transactions

SPONSOR(S): Finance & Tax Council; Ambler and others

TIED BILLS: **IDEN./SIM. BILLS:** SB 2552

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council	13 Y, 0 N, As CS	Wilson	Langston
2)	Policy Council			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

SUMMARY ANALYSIS

Although Florida law requires direct payment of use tax if a sales tax was not otherwise collected or remitted by the seller, buyers may not comply. Many of these purchasers are unaware of their responsibility to remit use tax under current Florida law. The Department of Revenue's (Department) ability to enforce the use tax for online purchases is limited because purchases by individuals are difficult and expensive to track. Some online purchases by businesses can be discovered during routine audits; however the Department can audit a fraction of the businesses in the State.

This bill creates s. 213.758, F.S., establishing a system for sales and use tax collection and administration by private or public vendors for transactions conducted by Florida households and businesses. The Department is authorized to enter into contracts with vendors to develop and implement the Internet Sales Tax Automated Revenue Tracking program or iSTART. This system, at a minimum, will be capable of determining the taxability of a transaction, the appropriate tax rates including local sales tax, and reporting and remitting the taxes collected to the Department. The intellectual property rights of this program will be retained by the State of Florida.

Any contract is subject to legislative approval prior to execution.

This bill will provide for an annual report to the Governor and Cabinet, Speaker of the House, and President of the Senate, by the Department, related to the sales tax collection program. This report will include the number of vendors participating in the program, the amount of sales and use tax collected by the vendors, and the amount of compensation paid to each vendor.

This bill also provides that disclosure of information related to s. 213.758, F.S., will be prescribed in a written agreement between the Department's Executive Director and the participating program vendors. Any violation of the agreement is a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083, F.S.

Finally, the bill provides that when total sales and use tax collections through iSTART are certified by the Department to be at least \$5 billion, the legislature shall consider reducing the applicable sales and use tax rate by 1 percentage point.

The 2010 Revenue Estimating Conference has not adopted an impact for HB 1443.

This bill shall take effect July 1, 2010.

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

Under Florida law, the Department of Revenue (Department) is responsible for the administration, collection, and enforcement of all sales and use tax due to the State. Current state sales tax is a 6 percent levy on retail sale of most tangible personal property, admissions, transient lodgings, commercial real estate rentals, and motor vehicles, unless the transaction is exempt. Chapter 212, F.S., provides that all dealers in this State are required to collect and remit sales tax on all taxable sales. Purchasers remain liable for any sales tax not remitted or collected by a dealer. This chapter also provides that any person that has made a taxable purchase for use or consumption in Florida where sales tax was not collected, is liable for use tax, and is required by law to file an Out-of-State Purchase Return (Form DR-15MO)¹ that remits the use tax directly to the Department. This includes, but is not limited to, mail order sales² and online purchases. The Department has statutory authority to audit and assess all registered dealers for unpaid taxes. The Department also conducts special programs to locate and assess taxable transactions entered into by persons not registered as dealers.

Although Florida law requires direct payment of use tax if a sales tax was not otherwise collected or remitted by the seller, buyers may not comply. Many of these purchasers are unaware of their responsibility to remit use tax to the State. The Department's ability to enforce the use tax for online purchases is limited because purchases by individuals are difficult and expensive to track. Some online purchases by businesses can be discovered during routine audits; however the Department can only audit a fraction of the businesses in the State.

Effect of Proposed Changes

This bill creates s. 213.758, F.S., establishing a system for sales and use tax collection and administration by private or public vendors for transactions conducted by Florida households and businesses. This bill authorizes the Department to enter into contracts with vendors to develop and implement the Internet Sales Tax Automated Revenue Tracking program or iSTART. This system, at a minimum, will be capable of determining the taxability of transaction, the appropriate tax rates including

¹ Section 212.06(8), F.S.

² Section 212.0596, F.S., defines "mail order sale" as a sale of tangible personal property, ordered by mail or other means of communication, from a dealer in another state, to be delivered to a person in this state, including the person who ordered the property.

local sales tax, and reporting and remitting the taxes collected to the Department. The intellectual property rights of this program will be retained by the State of Florida. Any vendor contract negotiated in 213.758(1), F.S., will require the approval of the legislature prior to its execution.

This bill will provide for an annual report to the Governor and Cabinet, Speaker of the House, and President of the Senate, by the Department, related to the sales tax collection program. This report will include the number of vendors participating in the program, the amount of sales and use tax collected by the vendors, and the amount of compensation paid to each vendor.

This bill also provides that disclosure of information related to s. 213.758, F.S., will be prescribed in a written agreement between the Department's Executive Director and the participating program vendors. Any violation of the agreement is a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083, F.S.

Finally, the bill provides that when total sales and use tax collections by iSTART are certified by the Department to be at least \$5 billion, the legislature shall consider reducing the state sales and use tax rate by 1 percentage point.

B. SECTION DIRECTORY:

Section 1: Creates s. 213.758, F.S., providing for the development, implementation, and administration of the Internet Sales Tax Automated Revenue Tracking program or iSTART. Creates an annual report for the Department related to the program. Reduces the state sales tax when iSTART certified sales and use tax collections reach at least \$5 billion.

Section 2: Provides this bill shall take effect in July 1, 2010

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL NOTES.

2. Expenditures:

See FISCAL NOTES.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL NOTES.

2. Expenditures:

See FISCAL NOTES.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If an iSTART system is successfully created and contracted then additional taxpayers could be brought into compliance with the revenue laws of the state.

D. FISCAL COMMENTS:

The 2010 Revenue Estimating Conference has not adopted an impact for HB 1443. Any eventual revenue impacts arising from the bill will depend on the whether or not an iSTART system can be successfully designed and contracted. The specific provisions of the contract, such as vendor compensation, will also affect any eventual revenue impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On March 25, 2010, the Finance and Tax Council adopted an amendment to section 1 that provides that any vendor contract negotiated in 213.758(1), F.S., must be approved by the legislature prior to its execution. This amendment also adds in s. 213.758(5), F.S. that the legislature shall consider reducing the applicable sales and use tax rate by 1 percentage point, when the iSTART sales and use tax certified collections reach at least \$5 billion.

The analysis has been updated to reflect these changes.