HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for CS/HB 15 Taxation
SPONSOR(S): Commerce Committee
TIED BILLS: **IDEN./SIM. BILLS:** CS/CS/SB 50

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Commerce Committee		Willson	Hamon

SUMMARY ANALYSIS

The PCS for CS/HB 15 requires marketplace providers and out-of-state retailers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the marketplace provider or out-of-state retailer makes a substantial number of sales into Florida. A substantial number of remote sales means conducting any number of taxable retail sales in an amount exceeding $100,000 during the previous calendar year. The PCS makes conforming changes to ensure consistent administration of the new provisions.

The PCS also requires marketplace providers to collect and remit three fees related to the sales tax (the waste tire fee, lead-acid battery fee, and E911 prepaid wireless fee), beginning April 1, 2022, and provides a safe harbor for businesses who failed to collect the sales tax prior to July 1, 2021, as long as they register with the Department of Revenue prior to October 1, 2021.

The PCS removes the requirement that dealers use a bracket system to calculate the applicable sales tax on transactions, and replaces it with a rounding system.

To avoid a significant, unexpected increase in reemployment assistance tax rates on Florida employers, the PCS temporarily directs the Department of Revenue to calculate applicable rates without respect to pandemic effects until such time as the Unemployment Compensation Trust Fund has been replenished to a pre-pandemic level. The PCS also directs $973.6 million (FY 2021-22), increasing to $1.08 billion (FY 2022-23 forward), to be distributed from sales tax collections to the Unemployment Compensation Trust Fund each year, until such time as the trust fund reaches its pre-pandemic balance ($4,071,519,600).

The Revenue Estimating Conference (REC) estimated that the sales tax collection provisions of the PCS will have a positive revenue impact in FY 2021-22 totaling $1,203.4 million ($1,337.0 million recurring) of which $973.6 million ($1,079.7 million recurring) is on General Revenue, $0.3 million ($3.6 million recurring) is on state trust fund revenues, and $229.5 million ($253.7 million recurring) is on local government revenues.

The PCS provides that the act may be cited as the "Park Randall 'Randy' Miller Act."

Except as otherwise provided, the PCS takes effect July 1, 2021.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current 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, admissions,[1] transient rentals,[2] rental of commercial real estate,[3] and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the sales price of the taxable good or service and is collected from the purchaser at the time of sale.[4]

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local discretionary sales surtaxes. 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."[5] 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. Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2.5 percent.[6]

When calculating the tax due, s. 212.12, F.S., provides a bracket system to determine the applicable tax based on the total sales price of a transaction.[7]

Electronic Filing and Payment Requirements

Florida law authorizes the Department of Revenue (Department) to require taxpayers who remitted $20,000 or more in tax payments during the previous state fiscal year to file returns and remit taxes electronically.[8] In some instances, a dealer[9] must file returns and remit taxes electronically irrespective of how much tax is remitted. For example, consolidated filers,[10] dealers who operate two or more places of business and maintain records in a central office, or a dealer claiming a tax credit on behalf of a tenant who donated to an eligible scholarship organization must file returns and remit tax electronically.[11]

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[1] S. 212.04, F.S.
[2] S. 212.03, F.S.
[3] S. 212.031, F.S.
[4] S. 212.07(2), F.S., and s. 212.06(3)(a), F.S.
[5] S. 212.054, F.S.
[6] Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 2020 Local Discretionary Sales Surtax Rates in Florida's Counties, 231-232 (20), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited March 9, 2021).
[7] Section 212.12(9)-(11), F.S., provides brackets, or for the provision of brackets, for all transaction amounts ending in specified cents, under the 6% state tax, a 7% tax consisting of the 6% state and 1% discretionary sales surtax, and for combined rates for other than 6% or 7%. The Department of Revenue provides these brackets on their website at https://floridarevenue.com/taxes/taxesfees/Pages/tax_interest_rates.aspx#sales (last visited March 24, 2021).
[8] S. 213.755, F.S.
[9] Section 212.06(2)(a), F.S., defines "dealer" as every person, who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in Florida.
[10] S. 213.755(5), F.S.
[11] S. 212.099, F.S.

Registration Requirements

A person desiring to engage in or conduct business in this state as a dealer must file with the Department an application for a certificate of registration. The application must be submitted to the Department before the person engages in taxable activity. The Department, upon receipt of such application, shall grant to the applicant a certificate of registration and an annual resale certificate, which provides a dealer the necessary documentation to purchase goods for resale exempt from tax.[12]

Remote Sales Tax Collection

As discussed above, sales tax is added to the price of taxable goods and the selling dealer is required to collect the tax from the purchaser at the time of sale.[13] A dealer then remits the collected taxes to the Department.[14]

For items sold by an out-of-state dealer and delivered to the in-state purchaser via mail (mail-order sales), states have depended on their use taxes. Florida imposes a use tax that applies in these situations;[15] however, use tax compliance is notably low.

Having an out-of-state dealer collect the state's sales tax at the time of sale and remit those taxes to the state is simpler for consumers than compliance with a state's use tax laws. However, the U.S. Supreme Court interpreted the Commerce Clause of the U.S. Constitution to require that a dealer have a "substantial nexus" with the taxing state before the taxing state may require the out-of-state dealer to collect its sales taxes.[16] For decades, the U.S. Supreme Court has interpreted this substantial nexus requirement to mean the dealer must have a physical presence (people or property) within the taxing state in order for that state to be able to compel the dealer to collect its sales tax.[17] The Court reasoned that to allow a taxing state to require a dealer located outside the taxing state (without a physical presence) to collect sales tax on behalf of the taxing state was an undue burden on interstate commerce.[18]

Under the "physical presence" standard, Florida, in 1987, adopted its "mail order sales statute," which defines a mail order sale to be the sale of tangible personal property, ordered from a dealer who receives the order in another state and then causes the property to be transported to a person in this state.[19] Although the statute describes dealers who "receive [orders] in another state," application of the statute was still limited by the U.S. Supreme Court's physical presence standard. In fact, much of the statute is written in terms of being physically present within Florida.[20]

Taxation of Mail Order Sales

Section 212.0596, F.S., establishes when a dealer who makes a mail-order sale is subject to the powers of this state to levy and collect Florida's sales tax. A "mail-order sale" is a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported to a person in Florida.[21]

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[12] S. 212.18(3), F.S.
[13] Florida Dept. of Revenue, *Who must pay tax? Partial list of taxable business activities, available at* https://floridarevenue.com/taxes/taxesfees/Pages/sales_tax.aspx (last visited March 9, 2021).
[14] S. 212.15, F.S.
[15] *See* s. 212.06, F.S.
[16] *See Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977).
[17] *National Bellas Hess, Inc., v. Illinois*, 386 U.S. 753 (1967); *Quill Corporation v. North Dakota,* 504 U.S. 298 (1992).
[18] *Quill Corporation v. North Dakota,* at 314-315.
[19] *See* s. 212.0596(1), F.S.
[20] *See* s. 212.0596(2)(j), F.S. (requiring dealers to collect tax on mail order sales if the dealer owns real property or tangible personal property that is physically in this state…).
[21] S. 212.0596(1), F.S.

Pursuant to s. 212.0596(2), F.S., a dealer who makes a mail-order sale is subject to the power of this state to levy and collect the tax imposed by ch. 212, F.S., under any of the following circumstances:

- The dealer is a corporation doing business under the laws of this state or is a person domiciled in, a resident of, or a citizen of, this state.
- The dealer maintains retail establishments or offices in this state.
- The dealer has agents in this state who solicit business or transact business on behalf of the dealer.
- The property was delivered in this state in fulfillment of a sales contract that was entered into in this state when a person in this state accepted an offer by ordering the property.
- The dealer, by purposefully or systematically exploiting the market provided by this state by any media-assisted, media-facilitated, or media-solicited means, creates nexus with this state.
- Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this state's taxing power.
- The dealer consents, expressly or by implication, to the imposition of the tax imposed by ch. 212, F.S.
- The dealer is subject to service of process under s. 48.181, F.S.
- The dealer's mail order sales are subject to the power of this state to tax sales or to require the dealer to collect use taxes under a statute or statutes of the United States.
- The dealer owns real property or tangible personal property that is physically in this state.
- The dealer is a corporation that is a member of an affiliated group of corporations and whose members are eligible to file a consolidated tax return for federal corporate income tax purposes and any parent or subsidiary corporation in the affiliated group has nexus with this state.
- The dealer or the dealer's activities have sufficient connection with or relationship to this state or its residents of some type, other than those described above, to create nexus empowering this state to tax its mail order sales or to require the dealer to collect sales tax or accrue use tax.[22]

A dealer who makes a mail order sale into this state is exempt from collecting and remitting any local option surtax on the sale, except under certain circumstances.[23] The Department may establish by rule procedures for collecting the use tax from unregistered persons who but for their remote purchases would not be required to remit sales or use tax directly to the Department.[24]

Currently, a purchaser who remits use tax on an item imported into Florida for use or consumption is not required to include in the remittance any local discretionary sales surtax.[25]

The Wayfair Decision

On June 21, 2018, the U.S. Supreme Court decided *South Dakota v. Wayfair*.[26] *Wayfair* involved a new South Dakota sales tax collection statute and Wayfair, Inc., a large online retailer with no physical presence in South Dakota that sells and ships tangible personal property to customers all over the United States.

The *Wayfair* decision overturned the "physical presence" substantial nexus test under the Commerce Clause of the U.S. Constitution. The removal of the physical presence test expanded states' ability to collect sales taxes; however, the foundational constitutional requirement that state laws may not place an undue burden upon interstate commerce remains.

The facts involved in *Wayfair* provide guidance for states in determining the structure of a state requirement for a remote seller without physical presence in the taxing state to collect and remit that state's sales and use tax:

- The South Dakota law requires only remote sellers with $100,000 of sales or 200 individual transactions into South Dakota to collect its sales tax. The law effectively has a "small seller

[22] S. 212.0596(2), F.S.
[23] S. 212.0596(6), F.S.
[24] S. 212.0596(7), F.S. DOR has adopted Rule 12A-1.091, F.A.C. to, in part, address this issue.
[25] See Rule 12A-1.091(14)(d), F.A.C.
[26] *South Dakota v. Wayfair, Inc.,* 138 S. Ct. 2080 (2018).

exception" allowing small retailers—theoretically, the ones most burdened by remote sales tax collection—to avoid collection responsibilities.
- The South Dakota law did not apply retroactively.
- South Dakota is a member of the Streamlined Sales and Use Tax Agreement, which provides a simplified registration process, as well as free software to assist with collection and reporting.

State Reactions to Wayfair

In response to the *Wayfair* decision, 43 states and the District of Columbia have enacted provisions requiring remote sellers to collect sales tax, and 42 states and the District of Columbia have enacted provisions requiring a marketplace provider/facilitator to collect sales tax.[27]

Fees Related to Sales of Certain Items

Enhanced 911 Fee

The Emergency Communications Number E911 Act established a comprehensive statewide emergency telecommunications number system to provide users of voice communications services within this state rapid direct access to public safety agencies by accessing the telephone number "911." To accomplish this purpose, the Legislature authorized the levy of a reasonable fee on users of voice communications services. With respect to wireless communications services, the fee is bifurcated by non-prepaid wireless service[28] and prepaid wireless service.[29]

The fee imposed on prepaid wireless services is currently 40 cents and is collected by a seller for remittance to the Department. Revenues derived from the fees levied on prepaid wireless services, less the costs of administration, are deposited by the Department into the Emergency Communications Number E911 System Fund[30] and then distributed, in part, to the various counties for specific purposes and costs attributable to providing E911 service.[31] In Local Fiscal Year 2019-20 counties received approximately $15 million of prepaid wireless services fees.[32]

Fees for Waste Tires and Lead-acid Batteries

Waste tires and lead-acid batteries are considered "special wastes" that require special handling and management[33] and must be disposed of accordingly.[34] Each new tire sold at retail is subject to a $1 waste tire fee[35] and each new or remanufactured lead-acid battery is subject to a $1.50 lead-acid battery fee.[36]

The proceeds from the waste tire fee are deposited into the Solid Waste Management Trust Fund and a portion is used to fund the waste tire abatement program.[37] The proceeds from the lead-acid battery fee are deposited into the Water Quality Assurance Trust Fund.[38]

Effect of Proposed Changes

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[27] Economic Nexus State Guide by the Sales Tax Institute, available at https://www.salestaxinstitute.com/resources/economic-nexus-state-guide (last visited March 9, 2021).
[28] S. 365.172(8), F.S.
[29] S. 365.172(9), F.S.
[30] S. 365.173(1)(b), F.S.
[31] S. 365.173(2), F.S. and s. 365.172(10), F.S.
[32] EDR, *Enhance 911 Fee (Data Source: DMS), County Distributions: LFY 2014-2020* (Oct. 22, 2020), *available at* http://edr.state.fl.us/Content/local-government/data/data-a-to-z/a-f.cfm (last visited Feb. 15, 2021).
[33] S. 403.703(40), F.S.
[34] *See* s. 403.717, F.S., and s. 403.708(12), F.S., encouraging "all persons who sell lead-acid batteries at retail" to "accept used lead-acid batteries as trade-ins for new lead-acid batteries."
[35] S. 403.718, F.S.
[36] S. 403.7185, F.S.
[37] *See* s. 403.7095, F.S.
[38] S. 403.7185, F.S.

Taxation of Remote Sales and Marketplace Sales

The PCS requires out-of-state retailers and marketplace providers with no physical presence in Florida to collect Florida's sales tax on sales of taxable items delivered to purchasers in Florida if the out-of-state retailer or marketplace provider makes a substantial number of sales into Florida.

Remote Sellers

The PCS substantially amends s. 212.0596, F.S. It changes the catch line to refer to the taxation of remote sales, removes references or requirements related to a "mail order sale," and provides that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S.

The PCS defines:

- "Remote sale" to mean a retail sale of tangible personal property, ordered by mail, telephone, the Internet, or other means of communication, from a dealer who receives the order outside of this state and transports the property or causes the property to be transported from any jurisdiction, including this state, to a person in this state, including the person who ordered the property.
- "Making a substantial number of remote sales" to mean conducting any number of taxable remote sales of tangible personal property in the prior calendar year to be delivered in Florida, if the total sales exceed $100,000.

The PCS also inserts an express provision in s. 212.0596, F.S., requiring out-of-state retailers and marketplace providers to collect surtax when a taxable item is delivered into a county that imposes a surtax.

Marketplace Provisions

The PCS creates s. 212.05965, F.S., to provide that each marketplace provider that has a physical presence in Florida or that makes or facilitates a substantial number of remote sales in Florida, is a dealer, and is subject to the requirements in ch. 212, F.S., relating to registration and the collection and remittance of tax.

The PCS defines:

- "Marketplace" to mean any physical place or electronic medium through which tangible personal property is offered for sale.
- "Marketplace provider" to mean a person who facilitates a retail sale by a marketplace seller by listing or advertising for sale by the marketplace seller tangible personal property in a marketplace, and who directly, or indirectly through agreements or arrangements with third parties, collects payment from the customer and transmits all or a part of the payment to the marketplace seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for its services.
- Excluded from the definition of marketplace provider is (1) any person who solely provides travel agency services, (2) a delivery network company, unless the delivery network company is a registered dealer that notifies all local merchants that sell through the delivery company's website or mobile application that the delivery network company must remit taxes in the same way as a marketplace provider, or (3) a payment processor business whose sole activity with respect to marketplace sales is to handle payment transactions between two parties..
- "Marketplace seller" to mean a person who has an agreement with a marketplace provider and who makes retail sales of tangible personal property through a marketplace owned, operated, or controlled by the marketplace provider.

Marketplace providers with a physical presence in Florida, or those making or facilitating a substantial number of remote sales into this state, are subject to the requirements imposed on dealers by ch. 212, F.S., for registering, collecting and remitting sales tax. A marketplace provider must certify to its marketplace sellers that it will collect and remit the sales tax to the Department. A marketplace seller may not collect and remit sales tax on transactions facilitated through the marketplace when the

marketplace provider certifies that it will collect and remit the tax. A marketplace seller must exclude sales made through the marketplace from its tax return. A marketplace seller with a physical presence in Florida, or that makes a substantial number of remote sales must register, collect, and remit sales tax on taxable sales made outside of the marketplace.

A marketplace provider must allow the Department to examine and audit its books and records. The marketplace provider is relieved of liability for the tax, and the marketplace seller or customer is liable for the tax imposed under this chapter if the marketplace provider demonstrates that it made a reasonable effort to obtain accurate information related to the retail sales facilitated through the marketplace from the marketplace seller, but the failure to collect and pay the correct amount of tax imposed under this chapter was due to incorrect or incomplete information provided by the marketplace seller to the marketplace provider.

The PCS makes conforming statutory changes to reflect that references to "mail order sales" are now to "remote sales."

The PCS defines:

- "Delivery network company" as a person who maintains a website or mobile application used to facilitate delivery services, the sale of local products, or both.
- "Delivery network courier" as an individual who provides delivery services through a delivery network company website or mobile application using a personal means of transportation, such as a motor vehicle as defined in s. 320.01(1), F.S., bicycle, scooter, or other similar means of transportation; using public transportation; or by walking.
- "Delivery services" as the pickup and delivery by a delivery network courier of one or more local products from a local merchant to a customer, which may include the selection, collection, and purchase of the local product in connection with the delivery. The term does not include any delivery requiring more than 75 miles of travel from the local merchant to the customer.
- "Local merchant" as a kitchen, restaurant, or a third-party merchant, including a grocery store, retail store, convenience store, or business of another type, which is not under common ownership or control of the delivery network company.
- "Local product" as any tangible personal property, including food, but excluding freight, mail, or a package to which postage has been affixed.

The PCS, effective April 1, 2022, amends s. 212.05965, F.S., to allow a marketplace provider and a qualifying marketplace seller to agree contractually to have the marketplace seller collect and remit the taxes for sales on the marketplace. To qualify for this treatment a marketplace seller must have annual U.S. gross sales of more than $1 billion, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

Other fees

The PCS also requires, effective April 1, 2022, a marketplace provider, at the time of sale, to collect and remit the prepaid wireless E911 fee,[39] the waste tire fee,[40] and the lead-acid battery fee, [41] on applicable sales.

Rounding

The PCS removes the bracket system found in s. 212.12, F.S., and replaces it with a rounding algorithm for calculation of tax due. It provides that a seller may elect to compute tax on a per-item basis or on a per-invoice basis. The tax amount must be carried to the third decimal place when it is computed. If the third decimal place is greater than four, the tax shall be rounded to the next whole cent. Dealers have the option to use the traditional bracket system or the rounding system on

[39] S. 365.172, F.S.
[40] S. 403.718, F.S.
[41] S. 403.7185, F.S.

transactions between July 1, 2021, and September 31, 2021. Conforming changes are made in other statutes to change "bracket" to "algorithm."

Administrative and Conforming Changes Related to Sales Tax Collection

The PCS makes conforming changes related to the removal of "mail order sales" and addition of "remote sales." It clarifies that the act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020. A marketplace seller should only consider those sales made outside of a marketplace to determine whether it made a substantial number of remote sales in calendar year 2020.

The PCS grants relief of liability for tax, penalty, and interest to the following persons upon registration with the Department by October 1, 2021: any person who conducted remote sales prior to the effective date of the act; a marketplace seller for those remote sales made before the effective date of the act; and a marketplace provider with a physical presence in this state (relief of liability is limited to those sales the marketplace provider facilitated on behalf of marketplace sellers).

Additionally, the Department may not use data received from registered marketplace providers or persons making remote sales to identify use tax liabilities if the person with the use tax liability is not registered with the Department, is not required to register with the Department, and his or her use tax liability was created before July 1, 2021.

The relief provided to the persons outlined above does not apply if an assessment has been made, an audit commenced, a bill was issued, or court proceedings began before July 1, 2021.

This relief does not establish a right to a refund or credit of taxes already paid.

The PCS provides emergency rulemaking authority to the Department.

Current Situation

Reemployment Assistance Tax

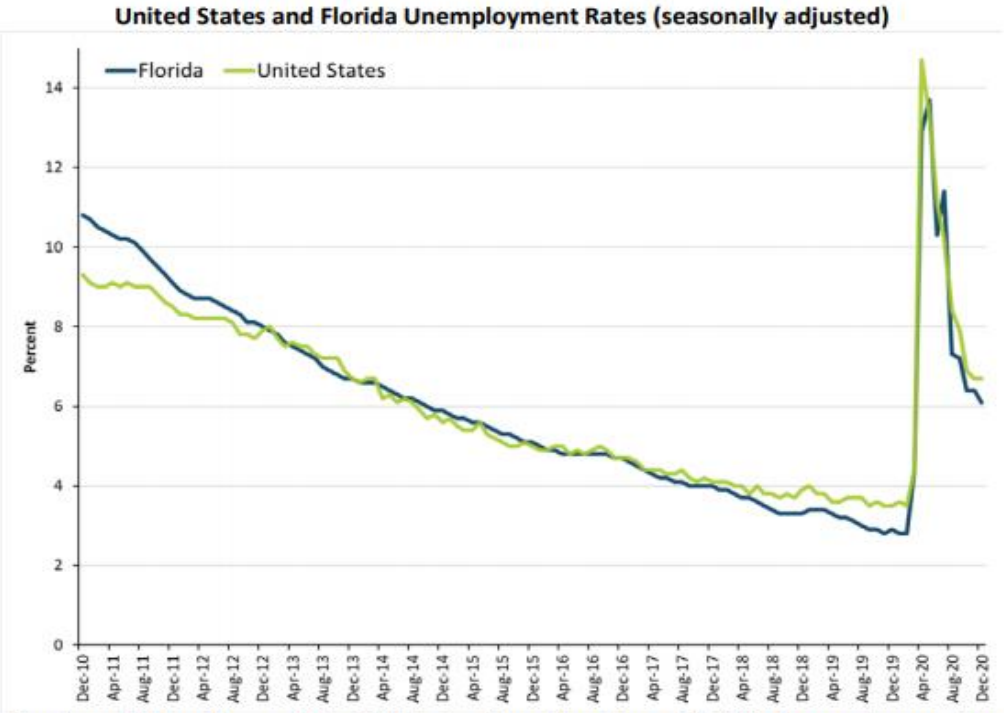
Florida employers pay a state reemployment assistance (RA) tax, the proceeds of which are deposited in the state Unemployment Compensation Trust Fund (UCTF) to pay benefits to unemployed Floridians.[42] In the six months before the COVID-19 pandemic, the average unemployment benefits paid out by the state were $27.2 million per month. Benefit payments for April 2020 were $220.3 million, for May 2020 were $772.1 million, for June 2020 were $761.1 million, and for July 2020 were $810.8 million, before falling to an average of approximately $252 million per month for the rest of the year.[43]

Generally speaking, the cost of RA benefits paid to each unemployed individual are factored in to the rate paid by each employer, because the benefits are either "charged" to the individual's prior employer or are shared among all employers (if certain conditions are met). The rates employers pay are therefore tied directly or indirectly to the number of unemployed people in Florida and the benefits that have been paid out.

From December 2015 through March 2020, the unemployment rate in Florida was less than 5%. The February 2020 rate was a historic low of 2.8%. The March unemployment rate increased to 4.4%. Due

[42] Florida Reemployment Tax, available on the DOR website at https://floridarevenue.com/taxes/taxesfees/Pages/reemployment.aspx (last visited March 15, 2021).
[43] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 13, 2021).

to the COVID-19 pandemic, that rate increased dramatically to 14.7% in April 2020, before slowly coming back down to 6.1% in December 2020.[44]



Source: U.S. Department of Labor, Bureau of Labor Statistics, Local Area Unemployment Statistics Program, in cooperation with the Florida Department of Economic Opportunity, Bureau of Workforce Statistics and Economic Research.

Generally speaking, the RA tax rate for employers is structured so that it will automatically increase when more benefits are paid out and the trust fund balance decreases. As such, under current law, Florida's employers are subject to unexpectedly large increases in their Reemployment tax liabilities due to the effects of the COVID-19 pandemic. Businesses were mailed rate increase notices in January 2021 for wages paid in calendar year 2021. Taxes are paid quarterly, and the report and tax due for the first quarter must be postmarked by April 30.[45] Because taxes are paid only on the first $7,000 of an employee's wages each year, most of these annual taxes are due in the first quarter of the year, and are payable by April 30th.

The ending balance of the UCTF in December 2019 was $4,071,519,600. Payments made through the end of 2020 brought the balance down to $866.1 million at the end of the year, a decrease of nearly 79%.[46] In January 2021, the Revenue Estimating Conference (REC) estimated that the balance of the UCTF by the end of March 2021 would be $517.9 million. The UCTF balance was $400.4 million as of March 12, 2021.

Tax Liability Calculation[47]

An employer's state tax liability is calculated by multiplying the employer's state-assigned tax rate by taxable wages paid to employees. The Department annually recalculates and assigns employer tax

[44] Florida Department of Economic Opportunity, *Florida's December Employment Figures Released*, available at http://lmsresources.labormarketinfo.com/library/press/release.pdf (last visited March 13, 2021).
[45] Reemployment Tax Report and Payment Information, available at https://floridarevenue.com/taxes/taxesfees/Pages/rt_return_pay.aspx (last visited March 15, 2021).
[46] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 13, 2021).
[47] General information available from: Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, Reemployment Assistance Tax, 154-156 (20), *available at* http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2020.pdf (last visited March 12, 2021).

rates. Additionally, the federal government levies an annual payroll tax under the Federal Unemployment Tax Act (FUTA).

In general, an employer's state RA tax rate is determined using three factors: the fund size factor; the non-charges and excess payments factor; and a variable factor based on each employer's unemployment experience.[48] The fund size factor is based upon the amount in the UCTF. Non-charges are the result, for instance, of an employee working for less than 90 days and being laid off. The employer is not charged for that separation of employment but the cost is spread among all employers. Excess payments occur when a business that is paying the maximum rate has unemployment experience greater than the business is paying in taxes, so that all persons separated from employment from that business are not covered by the RA tax payments from that business. Those costs are also spread across all employers. The variable factor is generally based upon an employer's unemployment compensation experience. These factors combined are used in calculating an employer's RA tax rate. Generally, the maximum tax rate is 5.4%, regardless of what would otherwise be dictated by the three factors.

Taxable wages include all remuneration for employment, including commissions, bonuses, and back pay awards. However, remuneration to an individual during a calendar year in excess of the first $7,000 paid is exempt.

The FUTA tax rate levied by the federal government is 6.0%. However, employers in Florida currently receive a 5.4% credit against that tax, resulting in an effective federal tax rate of 0.6% applied to taxable wages.

Expected Tax Payments

Under current law, the REC forecasts total RA tax payments of $963 million in Fiscal Year (FY) 2020-21, roughly $1.4 billion in tax payments in FYs 2021-22 and 2022-23, and tax payments of $1.1 billion in FY 2023-24.[49]

[48] Section 443.131, F.S.

[49] Unemployment Compensation Trust Fund Forecast Adopted January 5, 2021, available on the EDR website at http://edr.state.fl.us/Content/revenues/reports/unemployment-compensation-trust-fund/January2021ForecastSummary.pdf (last visited March 12, 2021).

Effect of Proposed Changes

Reemployment Assistance Tax Provisions

The PCS provides for annual transfers to the UCTF in the amount of the expected first-year recurring revenue ($1.08 billion) from adopting remote seller and marketplace provider sales tax collection provisions except for FY 2021-2022, when the transfer will be the first-year cash revenue from those provisions ($973.6 million).[50] It does so by requiring transfers to the UCTF of $324.5 million on or before July 25, August 25, and September 25, 2021, and by requiring transfers of $90 million each month beginning in July 2022. These distributions of $1.08 billion per year will be used to replenish the UCTF, which is significantly depleted due to the COVID-19 pandemic's effects in Florida. Distributions will automatically end when the Office of Economic and Demographic Research notifies the Department that the UCTF reaches the pre-pandemic balance from December 31, 2019, or December 31, 2025, whichever is earlier. At that point, those collections will instead go to General Revenue.

The RA tax calculation provisions are temporarily amended by the PCS to disallow adjustments that are related to the pandemic and to further adjust rates as needed to ensure pandemic-related effects are not adversely affecting employers in the coming years. These changes are retroactive to June 29, 2020, and will require the Department to notify employers of any changes to their RA tax rate as a result of the adjustments in the PCS. For any 2021 RA tax payments that are made based on the existing calculation, the PCS requires the Department to issue refunds for the difference between the old and new RA tax liabilities. Certain rate adjustments will continue until the pandemic period is no longer included in the calculation (e.g., provisions that completely remove all benefits paid from April 1, 2020, through December 31, 2020, from the calculation). Other adjustment factors (e.g., a provision that prevents the tax rate from being increased if the trust fund balance is too low) will revert to the standard calculation once the Office of Economic and Demographic Research notifies the Department that as of the end of the fiscal year, the UCTF has reached the balance from December 31, 2019. The goal of these changes is to prevent any increase to an employer's rates due to the effects of the pandemic, but to retain the integrity of the RA rate calculation which, per federal requirements, is normally based on the employer's actual employment history.

To ensure the balance of the UCTF stays positive throughout 2021, any refunds issued before August 31, 2021, will be paid from General Revenue. Distributions to the UCTF in July, August, and September 2021, will be reduced by the amount of any refunds paid from General Revenue.

The Department is authorized to contract with a qualified vendor without using a competitive solicitation process to ensure programming is completed in a timely manner, and is appropriated $353,000 in nonrecurring funds from General Revenue to provide revised RA rate notices for 2021 to Florida employers.

The PCS takes effect on July 1, 2021, except as otherwise provided.

[50] The Marketplace provision has an estimated first year recurring impact of $968.5 million (Adopted impact by the Revenue Estimating Impact Conference is available on the EDR website at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page22-25.pdf (last visited March 15, 2021), and the Remote Sellers provision has an estimated first year recurring impact of $111.2 (Adopted impact by the Revenue Estimating Impact Conference is available on the EDR website at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2021/_pdf/page26-33.pdf (last visited March 15, 2021).

B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Park Randall 'Randy' Miller Act."

Section 2 amends the definition of "retail sale" in s. 212.02, F.S., to include a remote sale and a sale facilitated through a marketplace.

Section 3 amends s. 212.05, F.S., to amend legislative intent to apply the sales and use tax to remote sales.

Section 4 amends s. 212.054, F.S., to distribute the proceeds of the discretionary surtax remitted by out-of-state retailers and marketplace providers to counties that impose a surtax.

Section 5 substantially amends s. 212.0596, F.S. This section changes the catch line to refer to the taxation of remote sales, removes references or requirements related to a "mail order sale," and provides that a person who makes a substantial number of remote sales is a dealer for purposes of ch. 212, F.S.

Section 6 creates s. 212.05965, F.S., which provides for the taxation of sales through marketplace providers.

Section 7 effective April 1, 2022, amends s. 212.05965, F.S., to allow a marketplace provider and a qualifying marketplace seller to agree contractually to have the marketplace seller collect and remit the taxes for sales on the marketplace. To qualify for this treatment a marketplace seller must have annual U.S. gross sales of more than $1 billion, including the gross sales of any related entities, and in the case of franchised entities, including the combined sales of all franchisees of a single franchisor.

This section also requires, effective April 1, 2022, a marketplace provider, at the time of sale, to collect and remit the prepaid wireless E911 fee, the waste tire fee, and the lead-acid battery fee, on applicable sales.

Section 8 amends s. 212.06, F.S., to specify that the term "dealer" includes a retailer who transacts a substantial number of remote sales or is a marketplace provider.

Section 9 amends s. 212.07, F.S., to make conforming changes.

Section 10 amends s. 212.11, F.S., to require remote sellers and marketplace providers to file returns and remit taxes electronically.

Section 11 amends s. 212.12, F.S., to (1) remove the authority given to the executive director of the Department to negotiate a collection allowance with a dealer who makes mail order sales, (2) remove language requiring the use of brackets when calculating tax and replacing it with a rounding algorithm, and (3) delete language that kept dealers who made mail order sales from participating in the state's 2.5 percent collection allowance.

Section 12 makes conforming changes to s. 212.18 F.S., to change the term "mail order sale" to "remote sale" and clarify that remote sellers and marketplace providers must register electronically.

Section 13 amends s. 212.20(4), F.S., to include sales taxes collected as provided in s. 212.05965, F.S., as a tax for which if found unconstitutional requires the Department to issue a refund to any person who paid such tax in the amount of tax paid.

This section also amends s. 212.20(6), F.S., to provide for transfers to the Unemployment Compensation Trust Fund until the balance of that fund reaches the balance from December 31, 2019, or December 31, 2025, whichever is earlier.

Section 14 amends s. 443.1216, F.S., to correct a cross-reference.

Section 15 amends s. 443.131, F.S., to provide for an alternative calculation of an employer's applicable rate for reemployment taxes during certain years. This provision is retroactive to June 29, 2020.

Section 16 amends s. 443.191. F.S., to allow for transfers to the Unemployment Compensation Trust Fund.

Section 17 amends s. 212.04, F.S., to make a conforming change related to rounding.

Section 18 amends s. 212.0506, F.S., to make a conforming change related to rounding.

Section 19 amends s. 213.015, F.S., to correct a cross-reference.

Section 20 provides that taxpayers can calculate tax using either the bracket system or the rounding algorithm for transactions between July 1, 2021, and September 30, 2021.

Section 21 makes conforming changes to s. 213.27(5), F.S., to clarify that s. 213.27(5), F.S., regarding contract auditing, applies to a person making or facilitating remote sales under s. 212.0596, F.S. or s. 212.05965, F.S.

Section 22 reenacts s. 212.055(2)(c), (3)(c), (8)(c), and (9)(c), F.S., to incorporate changes made by the PCS.

Section 23 provides that this act first applies to remote sales made or facilitated on or after July 1, 2021, by a person who made or facilitated a substantial number of remote sales in calendar year 2020.

Section 24 grants relief of liability for tax, penalty, and interest to certain persons upon registration with the Department by October 1, 2021.

Section 25 authorizes the Department to adopt emergency rules to implement the PCS. The emergency rulemaking grant is authorized upon the act becoming law and expires July 1, 2022.

Section 26 provides that the Department is authorized to contract with a qualified vendor without using a competitive solicitation process for purposes of administering this act.

Section 27 provides an appropriation to the Department of $353,000 in nonrecurring funds for FY 2020-2021.

Section 28 provides that, if any provision of the act is found to be invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of the act are severable.

Section 29 provides that this section takes effect upon becoming law, and, except as otherwise provided, the PCS takes effect July 1, 2021.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   The PCS provides a one-time appropriation of $353,000 to the Department of Revenue for FY 2020-21.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   See FISCAL COMMENTS section.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS will prevent substantial increases in reemployment assistance taxes facing most Florida businesses under current law. The PCS will also address a competitive disadvantage Florida businesses currently face when competing against out-of-state businesses that do not collect Florida sales tax on sales they make into Florida.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) estimated that the sales tax collection provisions of the PCS will have a positive revenue impact in FY 2021-22 totaling $1,203.4 million ($1,337.0 million recurring) of which $973.6 million ($1,079.7 million recurring) is on General Revenue, $0.3 million ($3.6 million recurring) is on state trust funds, and $229.5 million ($253.7 million recurring) is on local government. The PCS also provides that beginning in FY 2021-22, $973.6 million a year (increasing to $1.080 million in FY 2022-23 and thereafter) will be transferred to the Unemployment Compensation Trust Fund until such time as the trust fund reaches its pre-pandemic balance ($4,071,519,600).

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This PCS does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The PCS provides emergency rulemaking authority to the Department of Revenue.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES