

Florida Requires Sales Tax Collection on All In-Person and Online Sales, Effective July 1

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On April 19, Gov. DeSantis signed into law a sweeping tax package, [Senate Bill 50](#), that provides both temporary and long-term relief to Florida businesses. The new law requires the collection of sales taxes by online businesses and is projected to generate \$1 billion in annual tax revenue for the state. This will level the playing field for Florida brick and mortar businesses that are required to collect sales tax.

Florida businesses are facing two challenges, which this legislation addresses:

- (i) a significant increase in employer reemployment assistance tax premiums given the drawdown of funds in the Unemployment Compensation Fund as a result of the COVID-19 pandemic and
- (ii) the sales tax obligation for commercial leases, which is contributing to the inability of small businesses to operate profitably.

The new law directs the Department of Revenue to calculate reemployment assistance tax rates without respect to the effects of the pandemic and directs the revenue from the online sales tax to the Unemployment Compensation Trust Fund until the Fund reaches pre-pandemic levels (i.e., \$4,071,519,600). Once the fund reaches its pre-pandemic amount, those funds will be used to offset the commercial rent tax revenues, which rate will drop from 5.5% to 2% (plus local surtax).

Online Sales Tax

Ever since June 21, 2018, when the U.S. Supreme Court in *South Dakota v. Wayfair* overturned the “physical presence” requirement for states to be able to tax out-of-state businesses selling to buyers within a state, nearly all states have imposed sales tax on remote sales.

Florida currently taxes “mail-order” sales but requires that the seller have a physical presence in Florida. The new law expands the collection and remission of sales tax to encompass all

“Marketplace Providers” or marketplace sellers who made a substantial number of remote sales of personal property (i.e., those which, in the aggregate, exceed \$100,000) delivered to the state of Florida in the previous calendar year. It is these increased revenues that will be pledged to replenish the Unemployment Compensation Trust Fund and to pay for loss of revenues from the reduction of the sales tax rate applicable to commercial leases.

Under the new law, remote sellers and Marketplace Providers are deemed “dealers” for purposes of Florida sales tax administration and will be required to register with the Florida Department of Revenue, collect and remit taxes, and file returns. No collection allowance is permitted for Marketplace Providers.

The new law takes effect July 1, 2021. All tax, penalty, and interest due on remote sales that occurred before the effective date are waived if the person responsible for the remote sales registers before Oct. 1, 2021.

For these purposes, a “Marketplace Provider” means 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 who directly or indirectly collects payment from the customer and transmits all or part of the payment to the marketplace seller. If the marketplace seller does not use a Marketplace Provider but makes a substantial number of remote sales directly into the Florida market, then the marketplace seller will become a dealer and liable for the sales tax. A Marketplace Provider will not include travel agency services, delivery network companies, or payment processing businesses.

“Remote sales” is defined as a retail sale of tangible personal property ordered by mail, telephone, the internet, or other means of communication from a person who receives the order outside of this state and transports the property or causes the property to be transported from any jurisdiction, including Florida, to a location in Florida.

The new law also requires the Marketplace Provider or marketplace seller, as the case may be, to remit not only the state sales tax but also any surtax approved by the county in which a sale is made, as well as, after April 1, 2022, the wireless emergency 911 fee (pursuant to Section 365.172, FS) , the waste tire fee (pursuant to Section 403.718, FS), and the lead-acid battery fee (pursuant to Section 403.7185, FS).

Reemployment Assistance Tax

Florida employers are required to pay a reemployment assistance tax, the proceeds of which are deposited into the Unemployment Compensation Trust Fund, which pays benefits to unemployed Floridians. An employer’s reemployment tax rate is calculated annually by the Department of Revenue using three factors: Unemployment Compensation Trust Fund factor, the non-charges and excess payments factor, and a variable factor based on each employer’s unemployment experience. The reemployment assistance tax rate is structured so that it automatically increases when more benefits are paid out and the trust fund balance decreases. In January 2020, the Fund had a balance in excess of \$4 billion. As of mid-March 2021, the balance was just over \$400 million.

Commercial Business Rent Tax

Florida is the only state in the nation that taxes commercial rent at the state level. Since 1969, Florida

has imposed a sales tax on the total rent charged under a commercial lease of real property. Sales tax is due at the rate of 5.5% on the total rent paid for the right to use or occupy commercial real property. Local option sales surtaxes can also apply. 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. Commercial real property includes land, buildings, office or retail space, convention or meeting rooms, airport tie-downs, and parking and docking spaces. It may also involve the granting of a license to use real property for the placement of vending, amusement, or newspaper machines. The new law reduces the state-level rate of sales tax on commercial leases to 2%.

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