

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: April 15, 1998 Revised: _____

Subject: Revenue Laws/Administration

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Keating</u>	<u>Smith</u>	<u>WM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill makes numerous changes to the revenue laws administered by the Department of Revenue. The bill:

- 1) Amends the False Claims Act to exempt matters related to taxes administered by the Department of Revenue;
- 2) Provides an effective date to amendments made in 1997 to s. 192.001, F.S., involving the ad valorem taxation of computer software;
- 3) Requires certain financial institutions to file intangible tax returns on machine-sensible media;
- 4) Provides that shop supplies purchased by motor vehicle, airplane, or boat repair facilities, which are incorporated into the repair, shall be deemed to be purchased for resale by the facility and not subject to sales or use tax;
- 5) Deletes an unnecessary report required of persons who sell to vending machine operators;
- 6) Provides that changes to discretionary sales surtaxes must take effect on January 1;
- 7) Authorize a county to use an amount not to exceed 30 percent of the local option sales surtax proceeds for deposit to a trust fund within the county's accounts created for the purpose of economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development.;
- 8) Provides that a motor vehicle dealer who loans a vehicle to a person at no charge shall accrue use tax based on the annual lease value as determined by US IRS Automobile Annual Lease Value Table;
- 9) Provides that no sales or use tax and no rental car surcharge shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired by the entity providing the replacement vehicle;
- 10) Corrects the definition of "new business" for the Urban-Rural Area Job Tax Credit Program;

- 11) Updates and clarifies the requirements for the filing of tax returns and the making of tax payments using electronic funds transfers and electronic data interchange;
- 12) Updates the confidentiality laws pertaining to taxpayer records by deleting obsolete references and adding taxes and fees administered by the Department of Revenue;
- 13) Provides that participants in the RISE program may provide information quarterly rather than monthly under certain circumstances;
- 14) Increases the compromise authority of the Executive Director of the Department of Revenue and allows the compromise of penalty and interest for a taxpayer who voluntarily self-discloses a tax liability;
- 15) Removes an unnecessary requirement for the contract audit program;
- 16) Expands the Department of Revenue's authority to freeze assets prior to garnishment proceedings and provides enforcement measures for failure to comply with a freeze notice; and
- 17) "piggy backs" the Internal Revenue Code into Florida law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 68.082, 123.2801, 192.001, 199.052, 212.02, 212.0515, 12.054, 212.055, 212.0601, 212.097, 212.098, 212.11, 212.12, 212.17, 213.053, 213.0535, 213.21, 213.28, 213.67, 213.755, and 220.03.

II. Present Situation:

See Effect of Proposed Changes

III. Effect of Proposed Changes:

Section 1. False Claims Act:

Present Situation:

The Federal False Claims Act, 31 U.S.C. s. 3279 et seq., provides that a civil action may be brought by any person for himself and for the government, to recover losses sustained as a result of fraud against the government. Specifically exempted from the federal act are matters arising under the Internal Revenue Code, which are left to the IRS and the Justice Department to enforce. The Florida False Claims Act, ss. 68.081 - 68.09, F.S., was intentionally patterned after the federal act, and is nearly identical. The Florida Act contains no similar exception for tax matters.

The purpose of both acts is to deter persons from knowingly causing the government to pay claims that are false. To that end, a successful prosecution of an action under the Florida Act will result in a penalty against the defendant of at least \$5,000 and not more than \$10,000, together with a treble damage award for the damages sustained by the relevant agency. The person who brings the suit is then entitled to a portion of the proceeds recovered under the suit, of at least 15% but not more than 25%, depending on the extent to which the person contributed to the

prosecution of the action. The Department of Legal Affairs is authorized to intervene in the suit if it so elects, or the plaintiff may conduct the suit himself or herself.

The Department of Revenue has an existing program to compensate persons who provide information leading to the punishment of, or the collection of taxes, penalties or interest from, any person with respect to the taxes administered by the Department. This program is authorized by s. 213.30, F.S., and implemented by Rule Ch.12-18, F.A.C. By statute, the compensation may not exceed 10% of any tax, penalties or interest collected as a result of the information provided.

Effect of Proposed Changes:

Amends s. 68.082, F.S., to exempt matters related to taxes administered by the Department of Revenue, bringing the Florida False Claims Act in line with federal provisions.

Section 3. Computer Software - Application Provisions:

Present Situation:

Article VII, section 4, Florida Constitution, provides that by general law, regulations shall be prescribed that secure a just valuation of all property for ad valorem taxation. However, agricultural land, land producing high water recharge to Florida's aquifers and land used for recreation may be classified and assessed on the basis of use. Inventory and livestock may be assessed at a specified percentage of its value or exempted. Also, increases in the value of homestead property are subject to limitations.

Section 192.042, F.S., states that all property shall be assessed for ad valorem taxes according to its just value as follows:

- (1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 are not assessed.
- (2) Tangible personal property, on January 1 of each year, except construction work in progress until it is substantially completed.

Chapter 97-294, s. 1, Laws of Florida amended s. 192.001, F.S., to define computer software to include among other things operating and application programs and all related documentation. Computer software constitutes personal property only to the extent of the value of the unmounted or uninstalled medium on or in which the information, program, or routine is stored or transmitted. After installation or mounting, computer software does not increase the value of the computer or computer-related equipment. The statute effectively removes from ad valorem taxation the value of software, except for the value of the diskette or other medium on which the information is stored.

Chapter 97-294, Laws of Florida, took effect upon becoming law and applied to all periods open for additional assessment or refund under applicable law.

Effect of Proposed Changes:

Section 192.001(19), F.S., the definition of “computer software,” is amended to state that, “Notwithstanding any other provision of law, this subsection applies to the 1997 and subsequent tax rolls and to any assessment in an administrative or judicial action pending on July 1, 1997.”

Section 4. Machine-Sensible Media:

Present Situation:

Individuals and entities who owe intangible personal property tax pursuant to Part I of Chapter 199, F. S., must file an annual tax return. Under s. 199.202, F. S., the Department has provided a procedure and forms for a bank to file and pay intangible tax for multiple trust accounts they administer. The form, called a master file, lists the name, account number and tax amount due for each trust account. The tax amounts shown on the bank master file must balance to the combined total of taxes due for each of the individual trust accounts represented. The payment is remitted with the bank master file in a single payment using the federal employer identification number of the bank. Each file normally contains about 500 individual accounts but occasionally will include as many as 6000.

Currently 182 banks submit bank master files, but only 11 provide the return information by machine-sensible media. The term “machine sensible media” includes magnetic media, electronic data exchange, or other similar systems. The eleven machine-sensible filings can be processed by the Department of Revenue and a reconciled report produced more efficiently than is possible using manual data entry of the return information. For the 171 banks not submitting machine-sensible media, the Department of Revenue had to manually enter the data for each trust account return for tax year 1997, represent 62,000 paper returns. The Department of Revenue presently has no authority to require machine sensible media filings.

Effect of Proposed Changes:

The bill amends s. 199.052, F.S., requiring banks or other financial organizations who file annual intangible tax returns on behalf of their customers to file return information for taxes due January 1, 1999, and thereafter, using machine-sensible media. The Department of Revenue will prescribe rules to implement this requirement. If an institution can demonstrate to the Department that this requirement presents a hardship, it will not be required to submit the information using machine-sensible media.

Section 5. Sale for Resale of Motor Vehicle, Airplane or Boat Repair Facilities Shop Supplies:**Present Situation:**

Section 212.02(14)(a), F.S., defines “retail sale” or “sale at retail” to mean a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter. Items purchased by repair shop facilities which are to be used as component parts of the repair and which are individually listed on the repair order are considered a sale for resale and not subject to sales or use tax. Supplies that are a part of the repair, such as solvents, cleaners, abrasives, masking tape and rags, but are not listed individually on the repair order are subject to the use tax.

Effect of Proposed Changes:

The bill amends s. 212.02(21), F.S., modifying the definition of use tax. The amendment provides that the purchase of shop supplies by motor vehicle, airplane, or boat repair facilities, which are incorporated into the repair, shall be deemed to be purchased for resale by such facility. This will enable such repair shop facilities to purchase items such as rags, solvents, and masking tape tax exempt as a sale for resale.

Section 6. Vending Machine Wholesaler Quarterly Report:**Present Situation:**

Section 212.0515, F. S., requires any person who sells food or beverages to an operator for resale through vending machines to submit to the department on or before the 20th day of the month following the close of each calendar quarter a report which:

- 1) identifies by dealer registration number each vending machine operator who has purchased such items from the seller;
- 2) states the net dollar amount of purchases made by each operator; and
- 3) includes the purchaser's name, dealer registration number, and sales price for any tax-free sale for resale of canned soft drinks of 25 cases or more.

A penalty of \$250 is imposed on any person who is required to file the quarterly report and who fails to do so or who files false information.

Chapter 97-244, Laws of Florida, repealed a similar report required to be filed by vending machine operators. Since the repeal of the report required to be filed by vending machine operators, the report required by persons who sell to vending machine operators is no longer needed or of any use.

Effect of Proposed Changes:

Section 212.0515(5), F.S., is amended to delete the reporting requirement by persons who sell to vending machine operators. The penalty for not reporting also is deleted.

Sections 2, 7 and 8. Discretionary Sales Surtaxes:**Present Situation:**

The general rule in s. 212.054(5), F.S., is that the imposition of a discretionary surtax is to be effective January 1. In the case of five of the seven surtaxes now authorized, special overriding provisions in s. 212.055, F.S., permit an effective date of the first day of any month. These surtaxes include: 1) Charter County Transit System Surtax; 2) Local Government Infrastructure Surtax; 3) Small County Surtax; 4) Indigent Care Surtax; 5) County Public Hospital Surtax; 6) Small County Indigent Care Surtax; and 7) School Capital Outlay Surtax. Pursuant to s. 212.054., F.S., surtax terminations must occur on the last day of a quarter.

Because a dealer must collect the surtax based on the rate of the county where property or services are delivered, a dealer must be aware of all surtax rates for all counties. The Department of Revenue prints and mails over 600,000 new coupon books to all registered Florida sales tax dealers every January. Each coupon book is imprinted with information specific to the dealer to which it is mailed and includes a chart of all county surtax rates. When a county imposes or terminates a surtax or changes the rate during the year, the Department must print and mail new coupons to all dealers in the county. Current law provides a delay of up to 15 months in imposition of the change for out-of-county transactions where delivery is made into the county with the changed rate. Where there is a termination or decrease, the dealers in other counties may collect taxes that are no longer in effect in the county of delivery.

Effect of Proposed Changes:

Section 212.054(5), F.S., is amended to state that no discretionary sales surtax or increase or decrease in the rate of any discretionary sales surtax shall take effect on a date other than January 1. Additionally, no discretionary sales surtax shall terminate on a day other than December 31. All exceptions to the effective date requirement are repealed. Section 212.054(7), F.S., is created to require the entity levying a surtax to notify the Department within 10 days after the final adoption by ordinance or referendum on an imposition, termination, or rate change of a surtax. Additionally, the notice must be no later than November 16 prior to the effective date of the surtax. The notice must specify the time period during which the surtax will be in effect and the rate and must include a copy of the ordinance. Failure to timely provide such a notification to the Department shall result in the delay of the effective date of the surtax for a period of one year. The entity imposing the surtax must notify the Department by October 1 if the referendum or consideration of the ordinance that would result in imposition, termination, or rate change of the surtax is scheduled to occur on or after October 1 of that year. Failure to timely provide such a

notification to the Department shall result in the delay of the effective date of the surtax for a period of 1 year. The bill amends s. 123.2801, F.S., to correct a cross reference.

Section 212.055, F.S., is amended to eliminate the special overriding provisions which permit an effective date of the 1st day of any month. Subsection (2) is amended to authorize a county to use an amount not to exceed 30 percent of the local option sales surtax proceeds for deposit to a trust fund within the county's accounts created for the purpose of economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development.

Section 125.2801, F.S., is amended to correct a cross reference.

Section 9. Motor Vehicles Loaned at No Charge:

Present Situation:

Section 212.0601(1), F.S., provides that each motor vehicle dealer who is required to be licensed by s. 320.08(12) to purchase one or more dealer license plates must pay an annual use tax of \$27 for each dealer license plate purchased, in addition to the license tax imposed by s. 320.08(12).

Section 212.0606, F.S., imposes a rental car surcharge of \$2.00 per day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers. The surcharge applies to only the first 30 days of the term of any lease or rental.

Effect of Proposed Changes:

The bill amends s. 212.0601, F.S., providing that a motor vehicle dealer who loans a vehicle to any person at no charge shall accrue use tax based on the annual lease value as determined by the United States Internal Revenue Service Automobile Annual Lease Value Table.

The bill also provides that notwithstanding the provisions of a motor vehicle rental agreement, no sales or use tax and no rental car surcharge pursuant to s. 212.0606, shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Sections 10 and 11. Urban and Rural Job Tax Credits - Definition Correction:

Present Situation:

Chapter 97-50, Laws of Florida, created ss. 212.097, 212.098 and 220.1895, F.S., the Urban High-Crime Area Job Tax Credit Program and the Rural Job Tax Credit Program. These programs provide tax credits to be applied toward the state's sales or corporate taxes to businesses which locate in a high-crime area or a rural area. The bill provides for the amount of the tax credits based on the number of employees that are employed by the business and the ranking of the area where the business is located. The bill also provides for additional credits if the

business employs WAGES Program participants. The bill further provides that the Office of Tourism, Trade, and Economic Development may approve a maximum of \$5 million for each credit program in 1 calendar year.

The last sentence of ss. 212.097(2)(c) and 212.098(2)(d), F.S., which defines a “new business,” states that a business which qualifies as a “new business” cannot have operated in an eligible high-crime or rural area within the last 48 months before the application date. Sections 212.097(3) and 212.098(3), F.S., state that new eligible businesses may apply for these credits at any time during their first year of operation. If a business operating within a high-crime or rural area within the last 48 months is not considered to be a new business, but new businesses must apply for the credits within their first year of operation, it appears that there are no new businesses. This conflict in the statutory language creates confusion relative to the requirements for applying for these credits as a new business.

Effect of Proposed Changes:

Sections 212.097(2)(c) and 212.098(2)(d), F.S., are amended to clarify that a business entity that operated an eligible business within a qualified high-crime area or in a qualified rural job credit county during the 48 months before the period provided for application by subsection (3) is not considered a new business.

Sections 12, 13, 14 and 20. Filing and Tax Returns Relating to Electronic Funds Transfers:

Present Situation:

Section 213.755, F. S., gives the executive director of the Department of Revenue authority to require a taxpayer to remit taxes by electronic funds transfer (EFT) where the taxpayer has paid that tax in the prior state fiscal year in an amount of \$50,000 or more. The Department has implemented the electronic funds payment requirements. Taxpayers who are required to remit taxes by EFT are required to initiate their tax return through an electronic data interchange (EDI). The acceptable method of transfer, giving due regard to developing uniform standards for formats as adopted by the American National Standards Institute, and the means, if any, by which taxpayers will be provided with acknowledgments, will be prescribed by the department.

The requirement to file via electronic data interchange may be waived by the department if the taxpayer can demonstrate in writing that its computer capabilities, data systems changes, or operating procedures create a problem in filing electronically.

Present Situation Section 12:

Section 212.11 sets out due dates and requirements for sales tax returns including penalties for failure to comply. Presently, this section does not address taxpayers who are required to pay through EFT and EDI. No procedures to enforce electronic payment or filing requirements are set

forth. Industry is rapidly moving into electronic commerce and more payments of sales tax are being made by EFT and EDI.

Effect of Proposed Changes Section 12:

The bill amends s. 212.11, F. S., to clarify that a dealer must file a return as well as remit the tax due to a date certain to avoid penalties for late payment. The bill also makes the filing and remittance requirements applicable to those dealers who use EFT and EDI. The proposed changes to section 212.12, F. S., make the requirements for those who use EFT and EDI conform to the requirements of those who use paper returns and traditional payments.

Present Situation Section 13:

Section 212.12, F. S., allows dealers a monthly collection allowance of 2.5 percent of the sales tax collected for taxes up to \$1,200. The collection allowance is to compensate the dealer “for the keeping of prescribed records and the proper accounting and remitting of taxes.”

The Department of Revenue may reduce the collection allowance by 10 percent or \$50, whichever is less, if a taxpayer files an incomplete return. The Department may deny the entire collection allowance if the payment of the tax is delinquent.

The Department of Revenue is directed to adopt rules requiring such information as it may deem necessary to ensure that the tax levied under Chapter 212 is properly collected, reviewed, compiled, and enforced.

Effect of Proposed Changes Section 13:

The bill amends s. 212.12, F.S, in order to add to the services for which dealers are granted a collection allowance, the filing of timely tax returns.

The Department will be able to deny a dealer the entire collection allowance for a delinquent tax payment as well as for a late filed or incomplete return.

The Department of Revenue is directed to adopt rules requiring such information as it may deem necessary to ensure that the tax levied under Chapter 212 is properly reported.

Present Situation Section 14:

Section 212.17, F.S., directs the Department of Revenue to design, prepare, print, and furnish to all dealers, all necessary forms for filing returns. Presently there is no statutory direction to the Department of Revenue to prescribe the format and instructions necessary for filing returns that are initiated through an electronic data interchange.

Effect of Proposed Changes Section 14:

The bill amends s. 212.17, F.S., authorizing The Department of Revenue to prescribe the format and instructions necessary for filing returns that are initiated through an electronic data interchange.

Present Situation Section 20:

The Florida Statutes do not contain a definition of “payment” or “return” relating to the revenue laws administered by the Department of Revenue.

Effect of Proposed Changes Section 20:

Section 231.755, F. S., is amended to add the following definitions:

(a) “Payment” means any payment or remittance required to be made or paid within a prescribed period or on or before a prescribed date under the authority of any provision of a revenue law which the department has the responsibility for regulating, controlling, and administering. The term does not include any remittance unless the amount of the remittance is actually received by the department.

(b) “Return” means any report, claim, statement, notice, application, affidavit, or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of a revenue law which the department has the responsibility for regulation, controlling, and administering.

The proposed changes are to facilitate the enforcement of electronic payment and filing requirements. Presently, the revenue laws generally do not take into account today’s electronic environment.

Section 15. Confidentiality of Information:**Present Situation:**

Section 213.053(2), F.S., provides that except under the stated exceptions, all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from the provisions of s. 119.07(1). Any officer or employee, or former officer or employee, of the department who divulges any such information in any manner, except for such official purposes, commits a misdemeanor of the first degree.

This confidentiality provision applies to the following taxes and other assessments administered by the Department of Revenue: s. 125.0104, county government; s. 125.0108, tourist impact tax;

chapter 198, estate taxes; chapter 199, intangible personal property taxes; chapter 201, excise tax on documents; chapter 203, gross receipts taxes; chapter 211, tax on severance and production of minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; chapter 221, emergency excise tax; s. 370.07(3), Apalachicola Bay oyster surcharge; chapter 376, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s. 403.7195, waste newsprint disposal fees; s. 403.7197, advance disposal fees; s. 538.09, registration of secondhand dealers; s. 538.25, registration of secondary metals recyclers; ss. 624.509 - 624.514, insurance code: administration and general provisions; s. 681.117, motor vehicle warranty enforcement; and s. 896.102, reports of financial transactions in trade or business.

Presently the statute does not list certain taxes and fees administered by the Department of Revenue. These taxes and fees are: chapter 175, Municipal Firefighter's Pension Trust Fund assessment; chapter 185, Municipal Police Officers' Retirement Trust Fund assessment; s. 252.372, emergency management, preparedness, and assistance surcharge; s. 624.501, filing, license, appointment, and miscellaneous fees for insurers; and, s. 624.515, State Fire Marshall regulatory assessment and surcharge.

Effect of Proposed Changes:

Effective July 1, 1999, s. 213.053(1), F.S., is amended to add to the confidentiality of information provisions of s. 213.053, F.S., chapter 175, Municipal Firefighter's Pension Trust Fund assessment; chapter 185, Municipal Police Officers' Retirement Trust Fund assessment; s. 252.372, emergency management, preparedness, and assistance surcharge; s. 624.501, filing, license, appointment, and miscellaneous fees for insurers; and, s. 624.515, State Fire Marshall regulatory assessment and surcharge. Additionally, s. 403.7197, the Advanced Disposal Fee, has been repealed, so reference to the fee is deleted from s. 213.053, F.S.

Section 16. Registration Information Sharing and Exchange Program

Present Situation:

Section 213.0535, F.S., creates the Registration Information Sharing and Exchange Program, or "RISE." The program requires the Department of Revenue and certain local governments to share tax administration information such as the registrant's, licensee's, or taxpayer's name, mailing address, business location, and federal employer identification number or social security number; any applicable business type code; any applicable county code; and such other tax registration information as the department prescribes. Participants include state or local governments responsible for administering one or more of the following:

1. The sales and use tax imposed under chapter 212.
2. The tourist development tax imposed under s. 125.0104.

3. The tourist impact tax imposed under s. 125.0108.
4. Local occupational license taxes imposed under chapter 205.
5. Convention development taxes imposed under s. 212.0305.
6. Public lodging and food service establishment licenses issued pursuant to chapter 509.
7. Beverage law licenses issued pursuant to chapter 561.

These participants are considered “level one” participants and are required to exchange monthly the data described above.

Some local governments find this monthly exchange of information overly burdensome.

Effect of Proposed Changes:

Effective October 1, 1998, s. 213.0535(4)(a), F.S., is amended to allow level one participants to exchange data quarterly after a joint determination with the participant and the Department of Revenue.

Section 17. Compromises to Tax, Interest, and Penalties

Present Situation:

The executive director of the Department of Revenue is authorized to enter into a written closing agreement with a taxpayer settling or compromising the taxpayer’s liability for tax, penalty, or interest. The executive director’s authority to settle or compromise is limited to \$100,000 or less in tax. Amounts of more than \$100,000 must be compromised by the Governor and Cabinet.

When a taxpayer approaches the Department with a voluntary self-disclosure of liability, the taxpayer is required to pay the amount of tax plus applicable interest due for the period of time the taxpayer was subject to tax in Florida that is within the statute of limitations provision of s. 95.091(3)(a)l.d., F. S.

Effect of Proposed Changes:

The bill amends s. 213.21(2)(a), F.S., raising the settlement and compromise authority of the executive director of the Department of Revenue to \$250,000. According to the Department of Revenue, inflation and other factors have steadily increased the average amount of assessments. The executive director is unable to enter into compromises of large assessments even where the terms of the settlement are in the best interest of the state. In these cases taxpayers must bring their case before the Governor and Cabinet or file administrative petitions or judicial complaints.

In addition, the bill creates s. 213.21(7), F.S., providing that when a taxpayer voluntarily self-discloses, the department will be able to compromise the tax and interest due to amounts due for the five years immediately preceding the date the taxpayer initially contacted the department. If a self-disclosing taxpayer meets certain equitable requirements, the department would be able to further compromise tax and interest. When making this determination the department shall consider, but is not limited to considering, the following:

1. The amount of tax and interest that will be collected and compromised under the voluntary self-disclosure.
2. The financial ability of the taxpayer and the future outlook of the taxpayer's business and the industry involved.
3. Whether the taxpayer has paid or will be paying other taxes to the state.
4. The future voluntary compliance of the taxpayer.
5. Any other factor the department determines to be relevant to making this determination.

A taxpayer who collected, but did not remit, tax would not be eligible for a settlement or compromise under this subsection.

Section 18. Contract Audits:

Present Situation:

Pursuant to s. 213.28, F.S., the Department of Revenue has authority to enter into contracts with certified public accountants to audit taxpayer accounts. These contracts are to supplement, rather than replace, existing staff resources. Among the other requirements of the program, CPA's entering into contracts must be in good standing under the laws of the state in which they are licensed and in which the work is performed.

A recent audit finding by the Office of the Auditor General recommended to the Department of Revenue that the requirement that the CPA be in good standing in the state where the work is performed be removed from the statute. The requirement was considered neither cost beneficial nor practical. Under current law, CPA's applying for contracts are required to disclose in which states the firm is licensed to practice. Before entering into any contracts, the department verifies with the appropriate state board that the firm does in fact have a valid license and that the firm has not received any disciplinary action within the past 3 years. It is sometimes not known prior to entering into a contract each state in which state a CPA may have to perform audit tasks; therefore, the Department of Revenue cannot make such a confirmation.

Effect of Proposed Changes:

The bill amends s. 213.28, F.S., deleting the requirement that the department verify that a CPA is in good standing in the state where the work is to be performed.

Section 19. Garnishments:**Present Situation:**

Pursuant to s. 213.67, F.S., when the Department of Revenue initiates a garnishment proceeding to recover delinquent taxes, penalties and interest, the Department may freeze the assets of the garnishee (up to the amount of the debt) that are in the possession of a third party at the time the third party receives the notice. The freeze is valid for 60 days or until released by the executive director, whichever comes first. The notice of the freeze is renewable by the Department. New assets that come into the possession of the third party during the freeze period are not subject to the freeze unless a new notice is issued.

The present statute does not subject the garnishee to any liability if property subject to the freeze is transferred without authorization. There is no provision in s. 213.67, F.S., to protect financial institutions where a debt card encumbers an account prior to receipt of a freeze notice from the Department of Revenue.

During the last 30 days of the 60-day freeze, the executive director or his or her designee may levy upon such credits, other personal property, or debts. The levy must be accomplished by delivery of a notice of levy, upon receipt of which the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the delinquent taxpayer. The statute contains no direction on how the notice of levy is to be delivered.

Effect of Proposed Changes:

The bill amends s. 213.67, F.S., providing that the Department of Revenue would not have to renew the freeze every 60 days if the taxpayer contests the intended levy. The freeze would remain in effect until the resolution of the action. Since presently, the Department can renew the freeze every 60 days, this change would only eliminate the need to process new paperwork every 60 days. Under the bill additional assets that come into the hands of the third party during the freeze would also be subject to the freeze up to the amount of the debt.

Any financial institution receiving a notice would have a right of set off for any transaction involving a debit card occurring on or before the date of the receipt of the notice.

If any person makes a transfer during the period of the notice of assets required to be held, that person is liable to the state for any indebtedness owed to the department by the person with respect to whose obligation the notice was given to the extent of the value of the property

transferred, if solely because of the transfer, the state is unable to recover the indebtedness from the delinquent taxpayer. The Department would be able to bring an action in circuit court for an order compelling compliance with any notice issued under s. 213.67, F.S.

The Department would have to deliver the levy by registered mail.

Section 21. Corporate Income Tax Update:

Present Situation:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida corporate income tax. Section 220.03, Florida Statutes, defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 1997.

Effect of Proposed Changes:

Since Congress makes changes to the Internal Revenue Code each year, the Florida Legislature must update the Florida Corporate Income Tax Code to include those changes. The definition of "Internal Revenue Code" is updated to include those provisions of the 1986 Code, as amended, in effect on January 1, 1998. This definition provides for "piggybacking" each change made during 1997 in the Internal Revenue Code. This section operates retroactively to January 1, 1998.

Section 22. Provides that the amendments to s. 220.03, F.S., made by section 21 of the bill shall take effect upon becoming a law, and shall operate retroactively to January 1, 1998.

The bill also provides that amendments to section 68.082, F.S., made by section 1 of the bill are intended to be a remedial clarification of the Legislature's intent upon the original enactment of section 68.082, F.S., and shall take effect upon becoming a law and operate retroactively to July 1, 1994.

Section 23. Except as otherwise expressly provided by the bill, the bill shall take effect July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The bill gives the Department of Revenue the authority to compromise penalty and interest in exchange for voluntary disclosure of a tax liability. While some interest may be lost due to this provision, this compromise authority may cause additional taxpayers to come forward. This would have an indeterminate fiscal impact.

The purchase of shop supplies by motor vehicle, airplane, or boat repair facilities which are incorporated into the repair will be considered purchases for resale by this bill and exempt from the sales and use tax. This is estimated to result in an insignificant loss of state and local sales tax revenue.

A motor vehicle dealer who loans a vehicle to a person at no charge will be allowed to accrue use tax based on the annual lease value as determined by the US IRS Automobile Annual Lease Value Table instead of at the actual value of an annual lease or at a percentage of the sale price of the motor vehicle. The fiscal impact of this provision could result in either an increase or decrease in use tax collections and is indeterminate.

The fiscal impact of exempting from sales and use tax and the rental car surcharge, the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired by the entity providing the replacement vehicle, is estimated to result in a total recurring loss of \$.5 million, \$.3 million in sales and use tax and \$.2 million in rental car surcharge.

The amendment to s. 192.001(19), F.S., limiting the time for application for refund of real property taxes paid on computer software, has an indeterminate nonrecurring positive impact on local governments. The Department of Revenue surveyed all 67 counties to determine the taxable value of computer software per year for 1994 through 1996. Twenty-eight counties responded to the survey reporting the annual taxable value of computer software to be \$750 million. The results of the survey indicated that to the extent every person eligible for a refund in all 67 counties applied for such refund and based on the average millage rate of 22 mills, local governments could realize a nonrecurring reduction in property tax refunds of about \$16.5 million for each year, or about \$50 million for the three years currently open for refunds.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
1. Compromise Tax	**	**	**	**	**	**	**	**
2. Shop Supplies	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)
3. UseTax/MV Dealers	+/-	+/-	+/-	+/-	+/-	+/-	+/-	+/-
4. MV Loaned at no charge: Sales Tax	(0.3)	(0.3)	(*)	(*)	(*)	(*)	(0.3)	(0.3)
Rental Car Surcharge	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
5. Computer Software	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>0.0</u>	<u>**</u>	<u>**</u>	<u>**</u>	<u>**</u>
Total	(0.5)	(0.5)	**	**	**	**	(0.5)	(0.5)

* Insignificant
 ** Indeterminate

Certain provisions in the bill will have a positive impact on certain taxpayers. Persons who sell to vending machine operators will no longer have to file unnecessary quarterly reports and taxpayers owing up to \$250,000 in tax will have more flexibility in settling and compromising their tax liability.

The bill insures that corporations which are subject to Florida corporate income tax can base their calculations on current IRS rules.

The bill will require financial institutions to file intangible tax returns on machine-sensible media.

Motor vehicle, airplane or boat repair facilities will not have to pay sales tax on the purchase of their shop supplies which are incorporated into the repair of such motor vehicle, airplane or boat.

A motor vehicle dealer who loans a vehicle to a person at no charge will be allowed to accrue use tax based on the annual lease value as determined by the US IRS Automobile Annual Lease Value Table instead of at the actual value of an annual lease or at a percentage of the sale price of the motor vehicle.

Auto dealerships that provide the use of a replacement vehicle at no charge to a person whose motor vehicle is being repaired by the dealership will not have to pay the rental car surcharge on the replacement vehicle.

The amendment to s. 192.001(19), F.S., limiting the time for application for refund of real property taxes paid on computer software, will result in the inability of taxpayers who did not

seek a refund prior to July 1, 1997, to file for a refund of real property taxes paid on qualified computer software between the years 1994 and 1996.

C. Government Sector Impact:

The administrative changes provided for in the bill will enable the Department of Revenue to more effectively and efficiently administer the revenue laws of the state.

The bill places restrictions on the levy of discretionary sales surtaxes by local governments. Local governments adopting a discretionary sales surtax or increasing or decreasing the rate of an existing surtax are restricted to an effective date of January 1 and no discretionary sales surtax may be terminated by a local government on a day other than December 31.

VI. Technical Deficiencies:

The amendment to s. 212.02(21), F.S., modifying the definition to “use tax” to define shop supplies purchased by by motor vehicle, airplane, or boat facilities, which are incorporated into the repair, as purchases for resale, was drawn to the wrong subsection. Subsection (14) of s. 212.02, defining “retail sale” is the correct subsection.

VII. Related Issues:

HB 4413 is similar to SB 1952.

VIII. Amendments:

None.