

STORAGE NAME: h3167s1.ft

DATE: March 11, 1998

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3167

RELATING TO: Tax Administration

SPONSOR(S): Committee on Finance and Taxation and Representative Ken Pruitt

COMPANION BILL(S): SB 498, HB 2035

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 4 NAYS 0
- (2) FINANCE AND TAXATION YEAS 11 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Current law authorizes the Department of Revenue to audit and examine the accounts, books and records of taxpayers to ascertain compliance with Florida revenue laws. The Department of Revenue is also permitted to contract with private certified public accountants to conduct certain audits. Such audits are intended to supplement rather than replace the audits performed by the Department of Revenue.

HB 3167 authorizes the Department of Revenue to establish a certified audit pilot program. Under this program, a certified public accountant (CPA), hired by the taxpayer and at the taxpayer's expense, may audit the taxpayer's books and records. The bill establishes a framework for the pilot program, including definitions, CPA training and qualifications, and conditions for taxpayer participation. The bill also authorizes the Department of Revenue to provide audit information to the Board of Accountancy or to a court with respect to practitioners participating in the program. As an incentive for taxpayer participation in the certified audit pilot program, the bill requires the Department of Revenue to settle or compromise penalties and abate the first \$25,000 of any interest liability and 25 percent of any interest due in excess of the first \$25,000. This provision shall not apply to taxes collected by the taxpayer but not remitted to the department.

A sum of \$264,798 is appropriated to the department from the General Revenue Fund to establish two positions and to contract with the Florida Institute of Certified Public Accountants for the development of instructional curriculum and examinations.

The bill provides that the certified audit pilot program is repealed on July 1, 2002 or upon completion of the project as determined by the department, whichever occurs first.

The bill is estimated to have a indeterminate fiscal impact for FY 98-99 and FY 99-2000.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 213.34, F.S., grants the Department of Revenue (the "department") the authority to audit and examine the accounts, books and records of taxpayers to ascertain compliance with state revenue laws. In addition, section 213.28, F.S., permits the department to contract with certified public accountants to perform audits of designated taxpayers. Such audits are intended to supplement rather than replace the audits performed by the department.

Section 213.21, F.S., authorizes the department's executive director to compromise tax of \$100,000 or less when there is doubt as to liability or collectibility. Guidelines for exercising this provision are contained in Chapters 12 and 13 of the Florida Administrative Code.

Section 213.053, F.S., restricts the disclosure of tax information to protect the confidentiality of taxpayers. Currently, the department is not authorized to disclose tax information to the Board of Accountancy.

The 1996-1997 General Appropriations Act contained proviso language that authorized the department to pilot an additional contract audit approach (referred to as a certified audit) to leverage resources by performing compliance reviews using private CPAs. From the funds provided in the 1996-1997 budget, the department was authorized to initiate a certified audit pilot program to enhance the concept of tax audits performed by CPAs.

However, the substantive language which provided the taxpayer participation incentives and the framework for the certified audit pilot program was contained in CS/SB 624, which passed the Legislature, but did not become law. The Governor objected to other provisions in the bill and vetoed the measure. Consequently, the department did not implement the certified audit pilot program.

During the 1997 legislative session, the certified audit pilot program proposal was included in CS/CS/SB 1660. This bill also passed the Legislature, but was vetoed by the Governor.

B. EFFECT OF PROPOSED CHANGES:

HB 3167 authorizes the department to establish a certified audit pilot program. The program is designed to encourage taxpayers to hire qualified practitioners at their own expense to review and report on their tax compliance. The nature of the work performed by the qualified practitioners shall be agreed-upon standards and procedures in which the department is the specified user of the resulting report.

The bill defines the term "qualified practitioner" to mean a CPA who is licensed to practice in the state of Florida and who has completed a certification program approved by the department.

Under the certified audit program, a qualified practitioner must notify the department of the intent to perform a certified audit at the request of a taxpayer. The qualified

practitioner must then provide the department with information necessary to identify the taxpayer, to confirm that the taxpayer is not already under audit by the department, and to establish the basic nature of the taxpayer's business and the taxpayer's potential exposure to Florida revenue laws.

If the department has not issued a written notice of intent to conduct an audit, the taxpayer will be deemed a participating taxpayer, and the department shall so advise the qualified practitioner in writing within 10 days of receiving the engagement notice. However, the department may reject a taxpayer from a certified audit or may restrict the taxes or periods subject to the certified audit:

- if the department has previously conducted an audit;
- if the department is in the process of conducting an investigation or other examination of the taxpayer's records; or
- for just cause determined solely by the department.

Within 30 days after receipt of the notice of qualification as a participating taxpayer, the qualified practitioner shall submit a certified audit plan to the department for review and approval. Upon consent of the department to proceed with the certified audit, the qualified practitioner shall perform the audit and submit a completed report to the department in a timely manner. The qualified practitioner is also required to report any circumstances or potential liabilities that are substantially different than what is described in the initial engagement notice.

As an incentive for taxpayer participation in a certified audit, the bill amends section 213.21, F.S., to require the department to compromise penalties and the first \$25,000 of interest, and 25% of interest thereafter, for taxes reported under the certified audit pilot program. This provision does not apply to any liability related to taxes collected by the taxpayer but not remitted to the department.

Once the department has reviewed the final report and determined it to be complete, the department shall issue a notice of proposed assessment and shall provide the taxpayer will all the normal payment, protest, and appeal rights with respect to liability.

The bill also amends the confidentiality provisions in section 213.053, F.S., authorizing the department to provide certain information to the Board of Accountancy or to the courts if the information is related to a disciplinary proceeding or civil proceeding concerning a CPA that participated in a certified audit project.

HB 3167 provides an appropriation of \$264,798 to the department from the General Revenue Fund to administer the certified audit pilot program. This appropriation provides for two positions within the department for implementation of the certified audit pilot program and for contracting with the Florida Institute of Certified Public Accountants for the development of a certification program.

Finally, the bill prescribes that the certified audit pilot program shall be repealed on July 1, 2002 or upon completion of the project as determined by the department, whichever occurs first. The bill also authorizes the department to adopt rules to implement the certified audits project.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill authorizes the department to adopt rules to implement the certified audit pilot program. The department is given specific authority to adopt rules relating to:

a) The availability of the certification program required for participation in the project.

b) The requirements and basis for establishing just cause for approval or rejection of participation by taxpayers.

c) Procedures for assessment, collection, and payment of liabilities or refund of overpayments and provisions for taxpayers to obtain informal and formal review of certified audit results.

d) The nature, frequency, and basis for the department's review of certified audits conducted by qualified practitioners, including the requirements for documentation, work paper retention and access, and reporting.

e) Requirements for conducting certified audits and for review of agreed upon procedures.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill allows taxpayers to hire qualified practitioners to review and report on their tax compliance. The bill also requires the settlement or compromise of penalties and abatement of interest for taxpayers who participate in the certified audit program.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

HB 3167 amends ss. 213.053 and 213.21, F.S., and creates s. 213.285, F.S.

E. SECTION-BY-SECTION RESEARCH:

See Effect of Proposed Changes Section.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

	<u>FY 98-99</u>	<u>FY 99-00</u>
General Revenue	+-	+-
Trust Fund	+-	+-
Local Government	+-	+-

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

Total for FY 98-99 is indeterminate. The total for FY 99-00 is indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

See Section III.A.2 above.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

The settlement of penalties and abatement of interest due will positively impact the private sector. Additionally, the FICPA will benefit as the provider of the instructional curriculum and examination which CPAs must complete to participate in the certified audit program.

3. Effects on Competition, Private Enterprise and Employment Markets:

Indeterminate. The bill is presumed to have a positive impact on competition, private enterprise and employment markets.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Governmental Rules and Regulations adopted one amendment to HB 3167, which is traveling with the bill. The amendment rescinds the Department of Revenue's general authority to adopt rules to implement the certified audits program.

The Committee on Finance and Taxation adopted two amendments to HB 3167. One amendment clarified the definition of "certification program" created by §213.285(1)(a), F.S. The second amendment added §213.285(7), F.S., to provide specific authority and guidelines for the Department of Revenue to make rules. See Section C.1.a.1. above. Governmental Rules and Regulations' amendment and both of Finance and Taxation's amendments were incorporated into the committee substitute.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

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