

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: March 15, 1998 Revised: _____

Subject: Taxation

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Maclure</u>	<u>Austin</u>	<u>CM</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>WM</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute specifies certain rights and safeguards afforded to taxpayers in the administration of the revenue laws of the state, and it incorporates such provisions into the Taxpayer’s Bill of Rights contained in the Florida Statutes. Among other elements, the measure reduces the time period during which the Department of Revenue may assess a tax, penalty, or interest; reduces the time period during which a taxpayer may apply for a refund after a tax is paid; limits the ability of the department to re-audit a taxpayer after a return is audited; provides for the payment of interest at a market rate on late refunds; provides for the payment of interest at a market rate on delinquent taxes; authorizes a taxpayer to recover reasonable accountant’s and attorney’s fees incurred in an audit under certain conditions; and entitles a taxpayer to reasonable compensation for having to resubmit information or documents to the department.

This committee substitute substantially amends the following sections the Florida Statutes: 95.091, 213.015, 213.34, and 215.26. This committee substitute creates the following sections of the Florida Statutes: 213.235 and 213.255.

II. Present Situation:

Taxpayer’s Bill of Rights

In 1992, the Taxation and Budget Reform Commission proposed, and Florida voters subsequently adopted, an amendment to the state constitution calling for a Taxpayer’s Bill of Rights. The constitutional provision directs the Legislature to prescribe by general law, in clear and concise language, “taxpayers’ rights and responsibilities and government’s responsibilities to deal fairly with taxpayers under the laws of this state” (s. 25, Art. I, Florida Constitution).

Codified in s. 213.015, F.S., the “Florida Taxpayer’s Bill of Rights” is designed “to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state.” That section currently contains 15 rights, ranging from the right to prompt and accurate tax assistance (s. 213.015(1), F.S.), to the right have the Department of Revenue begin and complete tax audits expeditiously after notifying the taxpayer of the intent to audit (s. 213.015(15), F.S.). The Taxpayer’s Bill of Rights specifies that the rights afforded to taxpayers to assure their privacy and property are safeguarded are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the department. Consequently, in several places, in addition to describing a right, the Taxpayer’s Bill of Rights cross-references specific statutory sections applicable to that right.

Taxpayer Audits/Assessments

The department is authorized to audit and examine taxpayers’ records to determine the correctness of any return filed or payment made, as well as in cases in which a taxpayer fails to submit a tax return altogether (s. 213.34(1), F.S.). In carrying out this function, the department is authorized to contract with certified public accountants; however, the fee for such audit contracts shall not be based on the amount of tax assessed or collected as a result of the audit (s. 213.28, F.S.). Further, there is a five-year statute of limitations on the assessment of taxes by the department, with limited exceptions (s. 95.091(3), F.S.). If the taxpayer makes a substantial underpayment or files a substantially incorrect return, the limit is six years, and there is no limit if a taxpayer files a grossly false or fraudulent return. If the department has issued notice of intent to conduct an audit, the limit is tolled for two years. The limit is also tolled during any administrative or judicial proceeding for review of the tax assessment (*id.* and s. 95.091(4), F.S.).

When a taxpayer has a refund or credit due for an overpayment of assessed taxes, the department is authorized to reduce the refund or credit to the extent of certain unprotested billings for the same or other taxes owed by the same taxpayer (s. 213.25, F.S.). In addition, the department is required to offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty, or interest determined to be due during the same audit period (s. 213.34(4), F.S.). The department has adopted an administrative rule prescribing the manner in which such overpayments are to be applied to underpayments. (See rule 12-26.009, F.A.C.)

Taxpayer Refunds

Section 215.26, F.S., authorizes the Comptroller to refund moneys paid into the State Treasury that represent an overpayment of any tax, a payment where no tax was due, or a payment made in error. An application for a refund of tax that was paid after September 30, 1994, generally must be filed with the Comptroller within five years after the tax is paid. For a payment made on or before this date, the applicable limitation is three years after the right to a refund has accrued (s. 215.26(2), F.S.). Section 213.34(3), F.S., provides that the department may correct by credit or refund an overpayment revealed by an audit.

Interest on Tax Delinquencies & Refunds

For most taxes, the interest rate charged on delinquencies is a fixed rate. For example, under the intangible personal property tax and the documentary stamp tax statutes, the interest rate on unpaid taxes is 12 percent per year and runs from the due date until paid (ss. 199.282(2) and 201.17(2), F.S.). The corporate income tax code provides for an adjusted interest rate on unpaid taxes, with such rate established by the department's executive director based upon monitoring of the adjusted prime rate charged by banks (ss. 220.807(2) and 220.809(1), F.S.).

Except in the case of corporate income taxes, there are currently no statutory provisions requiring the state to pay interest on refunds of tax overpayments, tax payments that were not due, or tax payments made in error. The corporate income tax code provides for the payment of interest on any overpayment of tax -- if the overpayment is not refunded or credited within three months after the taxpayer notifies the department in writing of the overpayment (s. 220.723(1), F.S.). As with deficiencies, the annual rate of such interest is an adjusted rate tied to the adjusted prime rate charged by banks (s. 220.807(2), F.S.).

Taxpayer Appeal of Assessments

Currently, a taxpayer may appeal the legality of any assessment or denial of refund by filing an action in circuit court or by filing a petition under the Administrative Procedure Act (APA) (s. 72.011(1)(a), F.S.). Under the APA, a final order generally must be issued by an agency within 90 days after a hearing is conducted, if it is conducted by the agency; after a recommended order is submitted to the agency, if a hearing is conducted by an administrative law judge; or after the agency receives authorized written and oral material, if there has been no hearing (s. 120.569(2)(j), F.S.). Before filing a petition under the APA, a taxpayer must pay the uncontested portion of any taxes, penalty, and accrued interest. The prevailing party in such an administrative proceeding may recover legal costs, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response (s. 120.80(14), F.S.). In addition, the existing Taxpayer's Bill of Rights ensures the right of the prevailing party, in a judicial or administrative action brought or maintained without the support of justiciable issues of law or fact, to recover all costs of the action, including reasonable attorney's fees (s. 213.015(14), F.S.).

III. Effect of Proposed Changes:

This committee substitute prescribes certain new rights and standards to be afforded to taxpayers by the Department of Revenue in the administration of the revenue laws of the state, and the measure incorporates such provisions into the Taxpayer's Bill of Rights codified in the Florida Statutes. Among the rights and standards are: the payment of a market rate of interest on certain tax delinquencies; entitlement to interest at a market rate on certain tax refunds; a reduced period of time open for assessment of taxes; a reduced period of time in which to claim a tax refund; restrictions on the ability to re-audit a taxpayer in certain circumstances; compensation for

resubmission of information or documents to the Department of Revenue; and the ability to recover accountant and attorney costs resulting from an audit under certain circumstances.

Following is a section-by-section analysis of the measure.

Section 1 amends s. 95.091, F.S., relating to statutes of limitation on actions to collect taxes, to provide that for taxes due on or after July 1, 1998, there shall be a two-year statute of limitations on the ability of the Department of Revenue to assess an amount of taxes, penalty, or interest due, with limited exceptions.

- The department could make such an assessment at any time after the taxpayer failed to make any required payment of the tax, failed to file a required return, or filed a fraudulent return. If, however, the taxpayer has disclosed the tax liability in writing to the department before the department gives the taxpayer notice of the liability, then the two-year period would apply.
- The department could make such an assessment at any time after making a refund of tax if it appears that any part of the refund was induced by fraud or misrepresentation.

For taxes due before July 1, 1998, the measure specifies that the current five-year statute of limitations shall apply, unless the department has not already initiated an audit, in which case a two-year limit shall apply. In addition, the current statutory exceptions to the general five-year statute of limitations shall continue to apply to taxes due before July 1, 1998.

The committee substitute also revises the conditions under which the limitations period shall be tolled. The measure specifies that the current statutory authority to toll the limitations period when the department issues a notice of intent to audit shall apply solely to taxes due before July 1, 1998. In addition, the committee substitute specifies that the tolling of the limitations period during an administrative or judicial proceeding for review of the tax assessment shall apply solely when such review is initiated by a taxpayer. When the limitations period is tolled during such a review proceeding, no additional interest or penalty may be imposed for the tax liability after the expiration of the time limitation prescribed in the statute, except for the period during which the liability is the subject of a proceeding under ch. 72, F.S.

Section 2:

- Authorizes a taxpayer to appeal all tax assessments and penalties to an administrative hearing officer prior to paying the contested amount, and specifies that the department must issue a final order within 90 days after the appeal is filed.
- Requires the department to pay reasonable compensation to a taxpayer when it requests the submission of the same information or documents previously provided by the taxpayer.

- Provides that when a taxpayer overpays one tax liability and underpays another and so notifies the department, the department must apply the overpayment to the underpayment before imposing a penalty for the underpayment.

Section 3 amends s. 213.015, F.S., which contains the “Florida Taxpayer’s Bill of Rights,” to incorporate the various rights and standards created elsewhere in the committee substitute. This measure also incorporates into the bill of rights the current statutory prohibition contained in s. 213.28(3), F.S., against private auditors hired by the department receiving fees based on the amount of tax assessed or collected as a result of the audit.

Section 4 creates s. 213.235, F.S., providing for the payment of an adjusted rate of interest on tax deficiencies that arise on or after July 1, 1998. The committee substitute specifies, however, that if a lower rate of interest for the tax is specifically provided for in law, the lower rate shall apply. The adjusted rate of interest is based upon the adjusted prime rate charged by banks. The adjusted rate of interest is applicable to taxes enumerated in s. 213.05, F.S.

Section 5 creates s. 213.255, F.S., providing for the payment of interest on overpayments of taxes, payment of taxes not due, or taxes paid in error. The committee substitute specifies that this provision applies to eligible refunds based on tax payments made on or after July 1, 1998. The interest rate is the adjusted rate established under s. 213.235, F.S. (See **Section 4** above.)

Under the measure, interest does not commence until 90 days after a completed application is filed with the department and the amount of overpayment has not been refunded or applied as a credit. In the event of a court-ordered refund based upon the unconstitutionality of a tax, interest shall not commence until 90 days after the adjudication becomes final and unappealable or 90 days after a complete application is filed, whichever is later. If the department has reasonable cause to believe that it could not recover a refund paid in error from the person claiming the refund, no interest shall be required unless the person files a cash bond or a surety bond or makes other security arrangements.

Section 6 amends s. 213.34, F.S., relating to the department’s authority to audit, to provide that if a return is audited, the department may not re-audit the taxpayer for the same period unless fraud is suspected, and to provide that if a taxpayer’s appeal of an audit results in a finding in favor of the taxpayer, the department is liable for reasonable accountant’s fees and attorney’s fees incurred by the taxpayer as a result of the audit.

Section 7 amends s. 215.26, F.S., relating to the statute of limitations on applications for tax refunds, to specify that an application for a refund of taxes that were paid on or after July 1, 1998, must be filed within three years after the date the tax is paid. The current five-year period for such refund applications would apply to taxes paid after September 30, 1994, but before July 1, 1998.

Section 8 provides an effective date of July 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 25, Art. I, of the Florida Constitution requires the Legislature to adopt, in clear and concise language, a Taxpayer’s Bill of Rights, setting forth the rights and responsibilities of taxpayers and the responsibilities of government. This committee substitute amends Florida’s existing statutory Taxpayer’s Bill of Rights, which is codified in s. 213.015, F.S., and is consistent with the constitutional provision.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This committee substitute has not been reviewed by the Revenue Impact Conference. Provisions comparable to some of those contained in this committee substitute were reviewed during the 1997 session, and such review may provide a reference point for considering the potential impact of this committee substitute. However, significant differences in the substance and scope of the provisions are likely to affect the actual impact of the current measure.

SB 322 Provision	Comparable/Similar Provision in 1997 Legislation	Estimated Annualized Impact of Provision in 1997 Legislation
Market interest rate paid on late refunds	Adjusted interest rate, based on prime rate, paid on late refunds	(\$5.9) million
Market interest rate paid on delinquent taxes	Adjusted interest rate, based on prime rate, paid on delinquent taxes	(\$21.3) million
Two-year statute of limitations on Department of Revenue audits	Two-year statute of limitations on Department of Revenue audits	(\$76.2) million

B. Private Sector Impact:

The committee substitute codifies a variety of new rights and standards that may accrue to the benefit of a taxpayer, including for example: the payment of a market rate, rather than fixed rate, of interest on tax delinquencies; entitlement to interest at a market rate on certain tax refunds; a reduced period of time open for assessment of tax, penalty, or interest in the case of taxes due on or after July 1, 1998; restrictions on the ability to re-audit a taxpayer in certain circumstances; compensation for resubmission of information or documents to the Department of Revenue; and the ability to recover accountant and attorney costs resulting from an audit under certain circumstances. The committee substitute also affects taxpayers by reducing the period of time open for seeking a tax refund, from five years to three years, in the case of taxes paid on or after July 1, 1998.

C. Government Sector Impact:

The Department of Revenue has anticipated the need for additional revenues as a result of this measure, with such resources dedicated principally to addressing the committee substitute's provision that refunds must be paid within 90 days or must include interest and the committee substitute's provision reducing the statute of limitations for audits to three years from five years.

VI. Technical Deficiencies:

None.

VII. Related Issues:

- The committee substitute specifies that a taxpayer may appeal an assessment or penalty to an administrative hearing officer and the Department of Revenue must issue a final order within 90 days *after the appeal is filed*. Under the Administrative Procedure Act, however, an agency typically has 90 days to issue a final order after receiving a recommended order from an administrative law judge, rather than 90 days from the date the appeal is first filed. (See e.g., s. 120.569(2)(j), F.S.) The shortened time-frame envisioned by the committee substitute may pose administrative difficulties.
- The committee substitute directs the department to apply overpayments of a tax liability to underpayments of another tax liability before imposing a penalty for the underpayment. Section 213.25, F.S., currently provides that when a taxpayer has a refund or credit due for an overpayment of assessed taxes, the department is authorized to reduce the refund or credit to the extent of certain unprotested billings for the same or other taxes owed by the same taxpayer. In addition, s. 213.34(4), F.S., requires the department to offset the overpayment of any tax during an audit period against a deficiency of any tax, penalty, or interest determined to be due during the same audit period. The relationship between the provision proposed in the committee substitute and the provisions in current law is not immediately clear.

- Section 1 of the committee substitute amends s. 95.091, F.S., to provide for a 2-year statute of limitations on assessments related to taxes due on or after July 1, 1998. Section 7 of the measure amends s. 215.26, F.S., to provide for a 3-year statute of limitations on applications for refunds of taxes paid on or after July 1, 1998. The committee substitute, however, leaves in place language providing that the department make an assessment “[a]t any time while the right to a refund or credit of the tax is available to the taxpayer.” (See s. 95.091(3)(a)1.c., F.S.) Under current law, the limitations period generally is five years for both assessments and refunds. This language appears to conflict with the disparate limitations periods established by the committee substitute for assessments and for refunds. The Legislature may want to clarify that this language applies to taxes due before July 1, 1998.
- The Department of Revenue recommended that, in order to avoid potential difficulties in the administration of this committee substitute, the Legislature may want to consider providing additional guidance on the compensation due taxpayers for the resubmission of information or documents.

VIII. Amendments:

None.