

By the Committee on Commerce and Economic Opportunities and  
Senator Ostalkiewicz

310-1753-98

1                                   A bill to be entitled  
2           An act relating to taxation; amending s.  
3           95.091, F.S.; revising certain statutes of  
4           limitation; eliminating the tolling of the  
5           statute of limitations for specified causes;  
6           prescribing circumstances for the tolling of  
7           the statute of limitations as a result of  
8           administrative or judicial proceedings;  
9           limiting the period for which additional  
10          penalties and interest may be imposed;  
11          requiring a final order to be issued within a  
12          certain period after an administrative appeal  
13          is filed; requiring reasonable compensation to  
14          a taxpayer for resubmission of information or  
15          documents; requiring the application of tax  
16          overpayments to tax underpayments prior to  
17          imposition of a penalty; amending s. 213.015,  
18          F.S.; providing additional rights to taxpayers  
19          regarding interest paid on delinquent taxes and  
20          interest received on delinquent refunds,  
21          freedom from being reaudited, rights of appeal,  
22          rights to obtain reimbursement of certain fees  
23          on favorable appeals, the right to compensation  
24          for providing certain information or documents  
25          to the department, freedom from commissioned  
26          auditors, statutes of limitation, the time  
27          permitted to file for refunds, and the right to  
28          apply overpayments to the payment of other  
29          taxes due; creating s. 213.235, F.S.; providing  
30          for determination of the annual rate of  
31          interest applicable to certain tax payment

1 deficiencies; creating s. 213.255, F.S.;

2 providing for payment of interest on

3 overpayments of taxes, payment of taxes not

4 due, or taxes paid in error with respect to

5 taxes administered by the Department of Revenue

6 if refund is not made within a specified

7 period; providing requirements for refund

8 applications; requiring a bond or other

9 security under certain conditions; providing

10 for application; amending s. 213.34, F.S.;

11 prescribing conditions under which the

12 Department of Revenue may not re-audit a

13 taxpayer; providing conditions under which the

14 Department of Revenue may be liable for

15 accountant's and attorney's fees incurred by a

16 taxpayer as the result of an audit; amending s.

17 215.26, F.S.; revising the period during which

18 a taxpayer must file a refund application;

19 providing an effective date.

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21 Be It Enacted by the Legislature of the State of Florida:

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23 Section 1. Subsections (3) and (4) of section 95.091,

24 Florida Statutes, are amended to read:

25 95.091 Limitation on actions to collect taxes.--

26 (3)(a)1. With the exception of taxes levied under

27 chapter 198 and tax adjustments made pursuant to s. 220.23,

28 the Department of Revenue may determine and assess the amount

29 of any tax, penalty, or interest due under any tax enumerated

30 in s. 72.011 which it has authority to administer and the

31 Department of Business and Professional Regulation may

1 determine and assess the amount of any tax, penalty, or  
2 interest due under any tax enumerated in s. 72.011 which it  
3 has authority to administer:

4 a. For taxes due before July 1, 1998, within 5 years  
5 after the date the tax is due, any return with respect to the  
6 tax is due, or such return is filed, whichever occurs later;  
7 for taxes due before July 1, 1998, and for which the  
8 department has not initiated an audit with respect to such  
9 taxes by July 1, 1998, within 2 years after the date the tax  
10 is due, any return with respect to the tax is due, or such  
11 return is filed, whichever occurs later; and for taxes due on  
12 or after July 1, 1998, within 2 years after the date the tax  
13 is due, any return with respect to the tax is due, or such  
14 return is filed, whichever occurs later;

15 b. For taxes due before July 1, 1998, within 6 years  
16 after the date the taxpayer either makes a substantial  
17 underpayment of tax, or files a substantially incorrect  
18 return;

19 c. At any time while the right to a refund or credit  
20 of the tax is available to the taxpayer;

21 d. For taxes due before July 1, 1998, at any time  
22 after the taxpayer has filed a grossly false return;

23 ~~e.d.~~ At any time after the taxpayer has failed to make  
24 any required payment of the tax, has failed to file a required  
25 return, or has filed a ~~grossly false or~~ fraudulent return,  
26 except that for taxes due on or after July 1, 1998, the  
27 limitation prescribed in sub-subparagraph a. applies if the  
28 taxpayer has disclosed in writing the tax liability to the  
29 department before the department has given the taxpayer notice  
30 of that liability; or

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1            ~~f.e.~~ In any case in which there has been a refund of  
2 tax erroneously made for any reason:

3            (I) For taxes due before July 1, 1998, within 5 years  
4 after making such refund; and

5            (II) For taxes due on or after July 1, 1998, within 2  
6 years after making such refund,

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8 or at any time after making such refund if it appears that any  
9 part of the refund was induced by fraud or the  
10 misrepresentation of a material fact.

11            2. For the purpose of this paragraph, a tax return  
12 filed before the last day prescribed by law, including any  
13 extension thereof, shall be deemed to have been filed on such  
14 last day, and payments made prior to the last day prescribed  
15 by law shall be deemed to have been paid on such last day.

16            (b) The limitations in this subsection shall be tolled  
17 for a period of 2 years with respect to taxes due before July  
18 1, 1998, if the Department of Revenue has issued a notice of  
19 intent to conduct an audit or investigation of the taxpayer's  
20 account within the applicable period of time as specified in  
21 this subsection. The department shall commence an audit  
22 within 120 days after it issues a notice of intent to conduct  
23 an audit, unless the taxpayer requests a delay. If the  
24 taxpayer does not request a delay and the department does not  
25 begin the audit within 120 days after issuing the notice, the  
26 tolling period shall terminate.

27            (4) If administrative or judicial proceedings for  
28 review of the tax assessment or collection are initiated by a  
29 taxpayer begun within the a period of limitation prescribed in  
30 this section, the running of the period shall be tolled during  
31 the pendency of the proceeding. Administrative proceedings

1 shall include taxpayer protest proceedings initiated under s.  
2 213.21 and department rules. No additional interest or penalty  
3 may be imposed for any tax liability for any period occurring  
4 after the expiration of the time limitation prescribed in this  
5 section except for the period during which the liability is  
6 the subject of a proceeding under chapter 72.

7 Section 2. Notwithstanding any other provision of law:

8 (1) A taxpayer may appeal all tax assessments and  
9 penalties to an administrative hearing officer prior to paying  
10 the contested amount. The department must issue a final order  
11 within 90 days after the appeal is filed.

12 (2) If a taxpayer provides information or documents to  
13 the Department of Revenue and the department subsequently  
14 requests the taxpayer to provide the same information or  
15 documents, the department must pay reasonable compensation to  
16 the taxpayer for providing such information or documents.

17 (3) If a taxpayer overpays a tax liability and  
18 underpays another tax liability and notifies the Department of  
19 Revenue of the overpayment, the department must apply the  
20 overpayment to the underpaid tax liability before imposing a  
21 penalty against the taxpayer for the underpayment.

22 Section 3. Subsections (8), (12), and (14) of section  
23 213.015, Florida Statutes, are amended and subsections (16),  
24 (17), (18), and (19) are added to that section, to read:

25 213.015 Taxpayer rights.--There is created a Florida  
26 Taxpayer's Bill of Rights to guarantee that the rights,  
27 privacy, and property of Florida taxpayers are adequately  
28 safeguarded and protected during tax assessment, collection,  
29 and enforcement processes administered under the revenue laws  
30 of this state. The Taxpayer's Bill of Rights compiles, in one  
31 document, brief but comprehensive statements which explain, in

1 simple, nontechnical terms, the rights and obligations of the  
2 Department of Revenue and taxpayers. The rights afforded  
3 taxpayers to assure that their privacy and property are  
4 safeguarded and protected during tax assessment and collection  
5 are available only insofar as they are implemented in other  
6 parts of the Florida Statutes or rules of the Department of  
7 Revenue. The rights so guaranteed Florida taxpayers in the  
8 Florida Statutes and the departmental rules are:

9 (8) The right to seek review, through formal or  
10 informal proceedings, of any adverse decisions relating to  
11 determinations in the audit or collections processes and the  
12 right to seek a reasonable administrative stay of enforcement  
13 actions while the taxpayer pursues other administrative  
14 remedies available under Florida law (see ss. 120.80(14)(b),  
15 213.21(1), 220.717, and 220.719(2)). Such remedies include the  
16 right to appeal all assessments and penalties to an  
17 administrative hearing officer prior to paying the contested  
18 amount and the right to have a final order issued within 90  
19 days after the appeal is filed.

20 (12) The right to procedures that ~~which~~ assure that  
21 the individual employees of the department or outside auditors  
22 retained by the department are not paid, evaluated, or  
23 promoted on the basis of the amount of assessments or  
24 collections from taxpayers (see ss. 213.30(2) and 213.28(3)~~s.~~  
25 ~~213.30(2)~~).

26 (14)(a) The right of the taxpayer or the department,  
27 as the prevailing party in a judicial or administrative action  
28 brought or maintained without the support of justiciable  
29 issues of fact or law, to recover all costs of the  
30 administrative or judicial action, including reasonable  
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1 attorney's fees, and of the department and taxpayer to settle  
2 such claims through negotiations (see ss. 57.105 and 57.111).

3 (b) The right of a taxpayer to recover reasonable  
4 accountant's fees and attorney's fees incurred in an audit, if  
5 the taxpayer appeals a department ruling and the appeal  
6 results in a finding in favor of the taxpayer (see  
7 s.213.34(6)).

8 (16)(a) The right to receive interest at a market rate  
9 on a refund that is not paid within 90 days after filing a  
10 completed application for refund of overpayments, payment of  
11 taxes not due, or taxes paid in error (see ss. 213.255 and  
12 220.723).

13 (b) The right to be charged interest on delinquent  
14 taxes at a market rate (see ss. 213.235, 220.807, and  
15 220.809).

16 (17) The right to have returns audited within 2 years  
17 after they are filed; and the right to file for a refund  
18 within 3 years after the tax was paid and to not be reaudited  
19 for the same time period, unless fraud is suspected (see ss.  
20 95.091, 213.34(5), and 215.26).

21 (18) The right to reasonable compensation for the  
22 resubmission of information or documents to the department.

23 (19) The right to have any overpayments of taxes  
24 applied to separate underpayments of other tax liabilities  
25 before penalties are imposed for the underpayments.

26 Section 4. Section 213.235, Florida Statutes, is  
27 created to read:

28 213.235 Determination of interest on deficiencies.--

29 (1) Notwithstanding any other provision of law, the  
30 annual rate of interest applicable to tax payment deficiencies  
31 that arise on or after July 1, 1998, shall be the adjusted

1 rate established by the executive director of the department  
2 under subsection (2), unless a lower rate for the particular  
3 tax is specifically provided for in law, in which case the  
4 lower rate shall apply. This annual rate of interest is  
5 applicable to all taxes enumerated in s. 213.05.

6 (2) If the adjusted prime rate charged by banks,  
7 rounded to the nearest full percent, during either:

8 (a) The 6-month period ending on September 30 of any  
9 calendar year; or

10 (b) The 6-month period ending on March 31 of any  
11 calendar year,

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13 differs from the interest rate in effect on such date, the  
14 executive director of the department shall, within 20 days,  
15 establish an adjusted rate of interest equal to such adjusted  
16 prime rate.

17 (3) An adjusted rate of interest established under  
18 this section shall become effective:

19 (a) On January 1 of the succeeding year, if based upon  
20 the adjusted prime rate for the 6-month period ending on  
21 September 30; or

22 (b) On July 1 of the same calendar year, if based upon  
23 the adjusted prime rate for the 6-month period ending on March  
24 31.

25 (4) For the purposes of this section, "adjusted prime  
26 rate charged by banks" means the average predominant prime  
27 rate quoted by commercial banks to large businesses, as  
28 determined by the Board of Governors of the Federal Reserve  
29 System.

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1           (5) Once established, an adjusted rate of interest  
2 shall remain in effect until an adjustment is made under  
3 subsection (2).

4           Section 5. Section 213.255, Florida Statutes, is  
5 created to read:

6           213.255 Interest.--Interest shall be paid on  
7 overpayments of taxes, payment of taxes not due, or taxes paid  
8 in error, subject to the following conditions:

9           (1) A refund application must be filed with the  
10 department within the time specified by s. 215.26.

11           (2) A refund application shall not be processed until  
12 it is determined complete. A refund application is complete  
13 if it is filed on a permitted form and contains:

14           (a) The taxpayer's name, address, identifying number,  
15 and signature.

16           (b) Sufficient information, whether on the application  
17 or attachments, to permit mathematical verification of the  
18 amount of the refund.

19           (c) The amount claimed.

20           (d) The specific grounds upon which the refund is  
21 claimed.

22           (e) The taxable years or periods involved.

23           (f) A completed audit, if an audit is required by the  
24 department.

25           (3) If the refund application is not complete, the  
26 department shall return the application to the taxpayer with  
27 instructions to include any documents needed to complete the  
28 application.

29           (4) Interest shall not commence until 90 days after a  
30 complete refund application has been filed and the amount of  
31 overpayment has not been refunded to the taxpayer or applied

1 as a credit to the taxpayer's account. If the department and  
2 the taxpayer mutually agree that an audit of the claim is  
3 necessary, interest shall not commence until the audit of the  
4 claim is final.

5 (5) If a tax is adjudicated unconstitutional and  
6 refunds are ordered by the court, interest shall not commence  
7 on complete applications until 90 days after the adjudication  
8 becomes final and unappealable or 90 days after a complete  
9 application has been filed, whichever is later.

10 (6) Interest shall be paid until a date determined by  
11 the department which shall be no more than 7 days prior to the  
12 date of the issuance of the refund warrant by the Comptroller.

13 (7) No interest shall be paid if the department has  
14 reasonable cause to believe that it could not recover the  
15 amount of any refund paid in error from the person claiming  
16 the refund, unless such person files a cash bond or a surety  
17 bond in the amount of the refund claimed or such person makes  
18 other security arrangements satisfactory to the department.  
19 The cash or surety bond shall be endorsed by a surety company  
20 authorized to do business in this state and shall be  
21 conditioned upon payment in full of the amount of any refund  
22 paid in error for any reason. The department shall provide a  
23 written notice of its determination that a cash or surety bond  
24 is required, in which event interest shall not commence until  
25 the person filing the claim satisfies this requirement.

26 (8) The rate of interest shall be the adjusted rate  
27 established pursuant to s. 213.235. This annual rate of  
28 interest shall be applied to all refunds of taxes administered  
29 by the department except for corporate income taxes and  
30 emergency excise taxes governed by ss. 220.721 and 220.723.

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1           (9) This section shall apply to eligible refunds based  
2 on tax payments made on or after July 1, 1998.

3           Section 6. Subsections (5) and (6) are added to  
4 section 213.34, Florida Statutes, to read:

5           213.34 Authority to audit.--

6           (5) If a return is audited, the department may not  
7 reaudit the taxpayer for the same time period and the same  
8 tax, unless fraud is suspected.

9           (6) If a taxpayer appeals the results of an audit and  
10 the appeal results in a finding in favor of the taxpayer, the  
11 department is liable for reasonable accountant's fees and  
12 attorney's fees incurred by the taxpayer as a result of the  
13 audit.

14           Section 7. Subsection (2) of section 215.26, Florida  
15 Statutes, is amended to read:

16           215.26 Repayment of funds paid into State Treasury  
17 through error.--

18           (2) Application for refunds as provided by this  
19 section must be filed with the Comptroller, except as  
20 otherwise provided in this subsection, within 3 years after  
21 the right to the refund has accrued or else the right is  
22 barred. Except as provided in chapter 198 and s. 220.23, an  
23 application for a refund of a tax enumerated in s. 72.011,  
24 which tax was paid after September 30, 1994, and before July  
25 1, 1998, must be filed with the Comptroller within 5 years  
26 after the date the tax is paid. Except as provided in chapter  
27 198 and s. 220.23, an application for a refund of a tax  
28 enumerated in s. 72.011, which tax was paid on or after July  
29 1, 1998, must be filed with the Comptroller within 3 years  
30 after the date the tax is paid.The Comptroller may delegate  
31 the authority to accept an application for refund to any state

1 agency, or the judicial branch, vested by law with the  
2 responsibility for the collection of any tax, license, or  
3 account due. The application for refund must be on a form  
4 approved by the Comptroller and must be supplemented with  
5 additional proof the Comptroller deems necessary to establish  
6 the claim; provided, the claim is not otherwise barred under  
7 the laws of this state. Upon receipt of an application for  
8 refund, the judicial branch or the state agency to which the  
9 funds were paid shall make a determination of the amount due.  
10 If an application for refund is denied, in whole or in part,  
11 the judicial branch or such state agency shall notify the  
12 applicant stating the reasons therefor. Upon approval of an  
13 application for refund, the judicial branch or such state  
14 agency shall furnish the Comptroller with a properly executed  
15 voucher authorizing payment.

16 Section 8. This act shall take effect July 1, 1998.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 322

4 The committee substitute differs from Senate Bill 322  
5 principally by:

6 -- Providing that a two-year statute of limitations on  
7 assessment of taxes, penalty, or interest applies to  
8 taxes due on or after July 1, 1998, as well as to taxes  
9 due before July 1, 1998, if the Department of Revenue has  
10 not initiated an audit by that date; and providing that  
11 existing statutes of limitation otherwise apply to taxes  
12 due before July 1, 1998;

13 -- Providing that, for taxes due on or after July 1, 1998, if  
14 a taxpayer files a fraudulent return but discloses the  
15 liability to the department before the department gives  
16 the taxpayer notice of the liability, then a two-year  
17 statute of limitations shall apply to assessment of  
18 taxes, penalty, or interest;

19 -- Providing that the authority to toll the statute of  
20 limitations on tax assessments when the department issues  
21 a notice of intent to audit applies solely to taxes due  
22 before July 1, 1998; and specifying that the authority to  
23 toll the limitations period in the event of a judicial or  
24 administrative review applies to reviews initiated by the  
25 taxpayer;

26 -- Providing for the establishment of an adjusted rate of  
27 interest, based on the adjusted prime rate, on tax  
28 payment deficiencies that arise on or after July 1, 1998,  
29 unless a lower rate is provided in law;

30 -- Providing for the establishment of an adjusted rate of  
31 interest, based on the adjusted prime rate, on refunds  
for tax payments made on or after July 1, 1998; and

-- Providing that the department, rather than a hearing  
officer, must issue a final order within 90 days after an  
appeal to a hearing officer is filed by a taxpayer on an  
assessment or penalty.

24 In addition, although the bill prescribes certain taxpayer  
25 rights in an as yet unnumbered section of the Florida  
26 Statutes, the committee substitute, in several instances,  
27 amends existing sections of the Florida Statutes or creates  
28 new sections in order to codify such rights. Both the bill and  
29 the committee substitute incorporate these rights into the  
30 statutory Taxpayer's Bill of Rights.