

By Representative Arnall

1 A bill to be entitled
 2 An act relating to taxation; amending ss.
 3 95.091, 199.282, 201.17, 212.12, 215.26, and
 4 220.211, F.S.; creating ss. 213.235 and
 5 213.255, F.S.; amending certain statutes of
 6 limitation; reducing the period for tolling of
 7 the statute of limitations; prescribing
 8 circumstances for the tolling of the statute of
 9 limitations as a result of administrative or
 10 judicial proceedings; reducing the delinquency
 11 penalty for certain taxes; providing the rate
 12 of interest to be charged on certain tax
 13 deficiencies and providing for periodic
 14 readjustment thereof; providing circumstances
 15 under which the Department of Revenue is to pay
 16 interest to the taxpayer; specifying when
 17 applications for refunds must be filed;
 18 providing an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

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 22 Section 1. Subsections (3) and (4) of section 95.091,
 23 Florida Statutes, are amended to read:

24 95.091 Limitation on actions to collect taxes.--

25 (3)(a)1. With the exception of taxes levied under
 26 chapter 198 and tax adjustments made pursuant to s. 220.23,
 27 the Department of Revenue may determine and assess the amount
 28 of any tax, penalty, or interest due under any tax enumerated
 29 in s. 72.011 which it has authority to administer and the
 30 Department of Business and Professional Regulation may
 31 determine and assess the amount of any tax, penalty, or

1 interest due under any tax enumerated in s. 72.011 which it
2 has authority to administer:

3 a. For taxes due before July 1, 1998, within 5 years
4 after the date the tax is due, any return with respect to the
5 tax is due, or such return is filed, whichever occurs later;
6 and for taxes due on or after July 1, 1998, within 3 years
7 after the date the tax is due, any return with respect to the
8 tax is due, or such return is filed, whichever occurs later;

9 b. For taxes due before July 1, 1998, within 6 years
10 after the date the taxpayer either makes a substantial
11 underpayment of tax, or files a substantially incorrect
12 return;

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

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

17 ~~e.d.~~ At any time after the taxpayer has failed to make
18 any required payment of the tax, has failed to file a required
19 return, or has filed a ~~grossly false~~ or fraudulent return,
20 except that for taxes due on or after July 1, 1998, the
21 limitation prescribed in sub-subparagraph a. applies if the
22 taxpayer has disclosed in writing the tax liability to the
23 department before the department has contacted the taxpayer;
24 or

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

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

29 (II) For taxes due on or after July 1, 1998, within 3
30 years after making such refund,

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

4 2. For the purpose of this paragraph, a tax return
5 filed before the last day prescribed by law, including any
6 extension thereof, shall be deemed to have been filed on such
7 last day, and payments made prior to the last day prescribed
8 by law shall be deemed to have been paid on such last day.

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

21 2. For audits in which the notice of intent to conduct
22 the audit was issued on or after July 1, 1998, the limitation
23 period shall be tolled for 1 year after issuing the notice. If
24 the taxpayer does not enter into an agreement to extend the
25 period pursuant to s. 213.23, the tolling period shall
26 terminate after 1 year.

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.

3 Section 2. Paragraph (a) of subsection (3) and
4 subsection (4) of section 199.282, Florida Statutes, are
5 amended to read:

6 199.282 Penalties for violation of this chapter.--

7 (3)(a) If any annual or nonrecurring tax is not paid
8 by the due date, a delinquency penalty shall be charged. The
9 delinquency penalty shall be 5 ~~10~~ percent of the delinquent
10 tax for each calendar month or portion thereof from the due
11 date until paid, up to a limit of 25 ~~50~~ percent of the total
12 tax not timely paid.

13 (4) If an annual tax return is filed and property is
14 either omitted from it or undervalued, then a specific penalty
15 shall be charged. The specific penalty shall be 15 ~~30~~ percent
16 of the tax attributable to each omitted item or to each
17 undervaluation. No delinquency or late filing penalty shall be
18 charged with respect to any undervaluation.

19 Section 3. Section 201.17, Florida Statutes, is
20 amended to read:

21 201.17 Penalties for failure to pay tax required.--

22 (1) Whoever makes, signs, issues, or accepts, or
23 causes to be made, signed, issued, or accepted, any
24 instrument, document, or paper of any kind or description
25 whatsoever, without the full amount of the tax herein imposed
26 thereon being fully paid, or whoever makes use of any adhesive
27 stamp to denote any tax imposed by this chapter without
28 canceling or obliterating such stamps as herein provided, is
29 guilty of a misdemeanor of the first degree, punishable as
30 provided in s. 775.082 or s. 775.083.

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1 (2) If any document, instrument, or paper upon which
2 the tax under this chapter is imposed, upon audit or at time
3 of recordation, does not show the proper amount of tax paid,
4 or if the tax imposed by this chapter on any document,
5 instrument, or paper is not timely reported and paid as
6 required by s. 201.133, the person or persons liable for the
7 tax upon the document, instrument, or paper shall be subject
8 to:

9 (a) Payment of the tax not paid.

10 (b) A specific penalty added to the tax in the amount
11 of 5 ~~10~~ percent per month or part of a month of any unpaid tax
12 ~~if the failure is for not more than 30 days, with an~~
13 ~~additional 10 percent of any unpaid tax for each additional 30~~
14 ~~days, or fraction thereof, during the time which the failure~~
15 continues, not to exceed a total penalty of 25 ~~50~~ percent, in
16 the aggregate, of any unpaid tax. In no event shall the
17 penalty be less than \$10 for failure to timely file a tax
18 return required. If it is determined by clear and convincing
19 evidence that any part of a deficiency is due to fraud, there
20 shall be added to the tax as a civil penalty, in lieu of the
21 aforementioned penalty under this paragraph, an amount equal
22 to 200 percent of the deficiency. These penalties are to be
23 in addition to, and not in lieu of, any other penalties
24 imposed by law.

25 (c) Payment of interest to the Department of Revenue,
26 accruing from the date the tax is due until paid, at the rate
27 of 1 percent per month, based on the amount of tax not paid.

28 (3) The department may settle or compromise any
29 interest or penalties pursuant to s. 213.21.

30 Section 4. Paragraph (a) of subsection (2) of section
31 212.12, Florida Statutes, is amended to read:

1 212.12 Dealer's credit for collecting tax; penalties
2 for noncompliance; powers of Department of Revenue in dealing
3 with delinquents; brackets applicable to taxable transactions;
4 records required.--

5 (2)(a) When any person, firm, or corporation required
6 hereunder to make any return or to pay any tax or fee imposed
7 by this chapter fails to timely file such return or fails to
8 pay the tax or fee due within the time required hereunder, in
9 addition to all other penalties provided herein and by the
10 laws of this state in respect to such taxes or fees, a
11 specific penalty shall be added to the tax or fee in the
12 amount of 5 ~~10~~ percent per month or part of a month of any
13 unpaid tax or fee ~~if the failure is for not more than 30 days,~~
14 ~~with an additional 10 percent of any unpaid tax or fee for~~
15 ~~each additional 30 days, or fraction thereof,~~ during the time
16 which the failure continues, not to exceed a total penalty of
17 25 ~~50~~ percent, in the aggregate, of any unpaid tax or fee. ~~In~~
18 ~~no event may~~ The penalty may not be less than \$10 for failure
19 to timely file a tax return required by s. 212.11(1)(b) or \$5
20 for failure to timely file a tax return authorized by s.
21 212.11(1)(c) or (d). In the case of a false or fraudulent
22 return or a willful intent to evade payment of any tax or fee
23 imposed under this chapter, in addition to the other penalties
24 provided by law, the person making such false or fraudulent
25 return or willfully attempting to evade the payment of such a
26 tax or fee shall be liable for a specific penalty of 100
27 percent of the tax bill or fee and for fine and punishment as
28 provided by law for a conviction of a misdemeanor of the first
29 degree.

30 Section 5. Section 213.235, Florida Statutes, is
31 created to read:

1 213.235 Determination of interest on deficiencies.--
2 (1) Notwithstanding any other provision of law, the
3 annual rate of interest applicable to tax payment deficiencies
4 that arise on or after July 1, 1998, shall be the adjusted
5 rate established by the executive director of the department
6 under subsection (2), unless a lower rate for the particular
7 tax is specifically provided for in law, in which case the
8 lower rate applies. This annual rate of interest applies to
9 all taxes enumerated in s. 213.05 other than ad valorem taxes
10 levied on real or tangible personal property.
11 (2) If the adjusted prime rate charged by banks,
12 rounded to the nearest full percent, during either:
13 (a) The 6-month period ending on September 30 of any
14 calendar year; or
15 (b) The 6-month period ending on March 31 of any
16 calendar year,
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18 differs from the interest rate in effect on such date, the
19 executive director of the department shall, within 20 days,
20 establish an adjusted rate of interest equal to such adjusted
21 prime rate.
22 (3) An adjusted rate of interest established under
23 this section becomes effective:
24 (a) On January 1 of the succeeding year, if based upon
25 the adjusted prime rate for the 6-month period ending on
26 September 30; or
27 (b) On July 1 of the same calendar year, if based upon
28 the adjusted prime rate for the 6-month period ending on March
29 31.
30 (4) For the purposes of this section, the term
31 "adjusted prime rate charged by banks" means the average

1 predominant prime rate quoted by commercial banks to large
2 businesses, as determined by the Board of Governors of the
3 Federal Reserve System.

4 (5) Once established, an adjusted rate of interest
5 remains in effect until further adjusted under subsection (2).

6 Section 6. Section 213.255, Florida Statutes, is
7 created to read:

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

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

13 (2) A refund application may not be processed until it
14 is complete. A refund application is complete if it is filed
15 on a permitted form and:

16 (a) Contains the taxpayer's name, address, identifying
17 numbers, and signature;

18 (b) Provides sufficient information, whether on the
19 application or attachments, to permit mathematical
20 verification of the amount of the refund;

21 (c) Specifies the amount claimed, the specific grounds
22 upon which the refund is claimed, and the taxable years or
23 periods involved; and

24 (d) Includes a completed audit, if an audit is
25 required by the department.

26 (3) If the refund application is not complete, the
27 department shall notify the taxpayer of the inadequacy and
28 instruct the applicant of what is needed to complete the
29 application.

30 (4) Interest shall not begin to accrue until 90 days
31 after a complete refund application has been filed and the

1 amount of overpayment has not been refunded to the taxpayer or
2 applied as a credit to the taxpayer's account. If the
3 department and the taxpayer mutually agree that an audit of
4 the claim is necessary, interest shall not begin to accrue
5 until the audit of the claim is final or until 90 days after
6 the date the complete refund application has been filed,
7 whichever is later.

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

13 (6) Interest shall be paid until a date determined by
14 the department which must be no earlier than 7 days prior to
15 the date of the issuance of the refund warrant by the
16 Comptroller.

17 (7) Interest shall not be paid if the department has
18 reasonable cause to believe that it could not recover the
19 amount of any refund paid in error from the person claiming
20 the refund, unless such person files a cash bond or a surety
21 bond in the amount of the refund claimed or such person makes
22 other security arrangements satisfactory to the department.
23 The cash or surety bond must be endorsed by the surety company
24 authorized to do business in this state and must be
25 conditioned upon payment in full of the amount of any refund
26 paid in error for any reason. The department shall give
27 written notice of its determination that a cash or surety bond
28 is required, in which case interest shall not commence until
29 the person filing the claim satisfies this requirement.

30 (8) The rate of interest shall be the adjusted rate
31 established under s. 213.235. This annual rate of interest

1 shall be applied to all refunds of taxes administered by the
2 department.

3 (9) This section applies to eligible refunds based on
4 tax payments made on or after July 1, 1998.

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

7 215.26 Repayment of funds paid into State Treasury
8 through error.--

9 (2) Application for refunds as provided by this
10 section must be filed with the Comptroller, except as
11 otherwise provided in this subsection, within 3 years after
12 the right to the refund has accrued or else the right is
13 barred. Except as provided in chapter 198 and s. 220.23, an
14 application for a refund of a tax enumerated in s. 72.011,
15 which tax was paid after September 30, 1994, and before July
16 1, 1998, must be filed with the Comptroller within 5 years
17 after the date the tax is paid, and within 3 years after the
18 date the tax is paid for tax paid on or after July 1, 1998.

19 The Comptroller may delegate the authority to accept an
20 application for refund to any state agency, or the judicial
21 branch, vested by law with the responsibility for the
22 collection of any tax, license, or account due. The
23 application for refund must be on a form approved by the
24 Comptroller and must be supplemented with additional proof the
25 Comptroller deems necessary to establish the claim; provided,
26 the claim is not otherwise barred under the laws of this
27 state. Upon receipt of an application for refund, the judicial
28 branch or the state agency to which the funds were paid shall
29 make a determination of the amount due. If an application for
30 refund is denied, in whole or in part, the judicial branch or
31 such state agency shall notify the applicant stating the

1 reasons therefor. Upon approval of an application for refund,
2 the judicial branch or such state agency shall furnish the
3 Comptroller with a properly executed voucher authorizing
4 payment.

5 Section 8. Section 220.211, Florida Statutes, is
6 amended to read:

7 220.211 Penalties; incomplete return.--

8 (1) If ~~in the case where~~ an incomplete return is made,
9 unless notwithstanding that no tax is finally determined to be
10 due for the taxable year, there shall be added to the amount
11 of tax, penalty, and interest otherwise due a penalty in the
12 amount of 5 percent per month, not exceeding an aggregate of
13 ~~\$300 or 10 percent,~~ of the tax finally determined to be due,
14 ~~whichever is greater;~~ however, such a penalty must shall not
15 exceed \$10,000, and the taxpayer is exempt from this penalty
16 if a penalty is imposed on him or her under s. 220.801 with
17 respect to the same return. The department may settle or
18 compromise such penalties pursuant to s. 213.21.

19 (2) As used in ~~An "incomplete return" is, for the~~
20 ~~purposes of~~ this code, the term "incomplete return" means a
21 return that lacks ~~which is lacking~~ such uniformity,
22 completeness, and arrangement to the extent that physical
23 handling, verification, or review of the return may not be
24 readily accomplished.

25 Section 9. This act shall take effect July 1 of the
26 year in which enacted.

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HOUSE SUMMARY

Revises time periods within which the Department of Revenue and the Department of Business and Professional Regulation may determine and assess the amount of any tax, penalty, or interest due under taxes which they have authority to administer, and related provisions for tolling these periods.

Reduces delinquency penalties for certain taxes.

Provides that the annual rate of interest on certain tax payment deficiencies shall be a floating rate based on the prime rate, unless a lower rate is provided by law.

Provides for payment of interest on overpayments of taxes administered by the Department of Revenue if refund is not made within a specified period. Provides requirements for refund applications. Revises the time period within which a refund application must be made.