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HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
GOVERNMENTAL OPERATIONS
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 477

RELATING TO: Tax Administration/DOR/DBPR

SPONSOR(S): Representative Logan

STATUTE(S) AFFECTED: ss. 95.091, 213.015, 213.235, 213.255, 213.34, 215.26, 197.172, 193.1145, 198.18, 199.282, 201.17, 203.06, 206.44, 207.007, 211.076, 211.33, 212.12, 220.807, and 624.5092, F.S.

COMPANION BILL(S): SB 506(c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 7 NAYS 0
(2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
(3) FINANCE AND TAXATION
(4) GENERAL GOVERNMENT APPROPRIATIONS
(5)

I. SUMMARY:

The 1989 Legislature created a Taxpayers' Bill of Rights Task Force and charged it with drafting proposed legislation for a Florida Taxpayers' Bill of Rights. In November 1992, Florida voters approved Constitutional amendment #5 which called for a taxpayer bill of rights. The 1992 Legislature enacted s. 213.015, F.S., creating a taxpayer bill of rights containing 15 separate rights. The Legislature adopted most of the Task Force language but omitted some recommendations including the payment of interest on late refunds, the same 5-year statute of limitations for refunds and assessments, and the assurance that auditors are not compensated based on the amount of tax assessed or collected.

This bill reduces the statute of limitations for both tax assessments and tax refunds from five to three years. The statute of limitations for an assessment would be four years if the taxpayer makes a substantial underpayment or files a substantially incorrect return.

This bill provides that interest shall be paid on refunds of tax overpayments, taxes paid in error, or payment of taxes not due when those refunds have not been paid. Interest shall not commence until 90 days after a complete refund application has been filed. If an audit of the claim is necessary, interest shall not commence until that audit is final. The rate of interest will be the same as the rate currently paid on corporate income tax refunds except that the rate shall not exceed 11%.

This bill provides that the interest applicable to most tax payment deficiencies will be calculated the same way the interest rate applied to corporate income tax delinquencies is currently calculated. This will be the adjusted prime rate, and the rate is to be adjusted every six months. Finally, this bill provides that no part of the compensation of any employee or agent of the state performing a tax audit shall be based on the amount of tax assessed or collected as a result of the audit.

The Revenue Estimating Conference concluded that this bill will have a negative fiscal impact on tax revenues of $14.8 M in the 6 months of FY 1998-99 and annualized loss of $72.5 M thereafter.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The 1989 Legislature created a Taxpayers' Bill of Rights Task Force and charged it with drafting proposed legislation for a Florida Taxpayers' Bill of Rights. The Task Force issued its report in May 1990. In November 1992, Florida voters approved Constitutional amendment #5 -- proposed by the Taxation and Budget Reform Commission -- which called for a taxpayer bill of rights to set forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers.

The 1992 Legislature enacted s. 213.015, F.S., creating a taxpayer bill of rights containing 15 separate rights. The Legislature adopted most of the Task Force language but omitted some recommendations including the payment of interest on late refunds, the same 5-year statute of limitations for refunds and assessments, and the assurance that auditors are not compensated based on the amount of tax assessed or collected.

Statute of limitations. The statute of limitations for both assessments and refunds is currently five years. Prior to the passage of the sales tax on services and a tax amnesty program in 1987, Florida law contained the same three-year statute of limitations for both audits and refunds. At that time, the limitation for assessments was increased to 5 years while the statute of limitations for refunds remained at three years. The 1994 Legislature increased the limitation on refunds to five years.

Interest on late refunds. Florida taxpayers must pay interest on delinquent tax payments. There is no provision requiring the state to pay taxpayers interest on refunds owed to them that are late, except corporate income taxpayers. The federal government pays interest on late refunds (*see* Internal Revenue Code § 6611).

Interest rates on delinquent taxes. Interest of 1% a month or 12% a year is applied to most delinquent taxes. The interest rate applied to corporate income taxes is a floating rated tied to the prime rate offered by banks.

B. EFFECT OF PROPOSED CHANGES:

This bill adds four rights to the Taxpayers' Bill of Rights. HB 477 provides that a taxpayer has the right to the following: (1) assurance that no government tax auditor will be paid based on the amount of tax assessed or collected; (2) receive interest when a tax refund is not paid within 90 days; (3) receive market interest rates on delinquent taxes; and (4) face the same statute of limitations on both assessments and refunds.

HB 477 also implements these new taxpayer rights in several ways (*see* Section -By-Section Analysis and Comments).

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?

No.

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

No.

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

Yes. This bill increases the entitlement to interest on late tax refunds to include all taxpayers, whereas the current law only grants such interest to corporate taxpayers.

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?

Yes.

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?

No.

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, *in a broad sense, but not in a specific sense.*

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?

No.

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. SECTION-BY-SECTION ANALYSIS:

<u>Section 1.</u> Amends s. 95.091(3)(a), F.S., to reduce the statue of limitations on tax assessments from five years to three years. The Department of Revenue and the Department of Business and Professional Regulation would only be able to assess the amount of a tax within three years after the tax is due or within 4 years if the taxpayer makes a substantial underpayment or files a substantially incorrect return.

<u>Section 2.</u> Amends s. 213.105, F.S., to add four rights to the Taxpayers' Bill of Rights:

(16) Assurance that no government tax auditor will be paid based on the amount of tax assessed or collected;

(17) Right to receive interest when a tax refund is not paid within 90 days;

(18) Right to receive market interest rates on delinquent taxes; and

(19) Right to the same statute of limitations on assessments and refunds.

The other sections of this bill implement these four rights.

Section 3. Creates s. 213.235, F.S., to set the interest rate applicable to tax payment deficiencies at the adjusted prime rate. The rate is to be adjusted every six months. This change extends the same interest rate currently paid on corporate income tax deficiencies to all taxes enumerated in s. 213.05, F.S. Currently, except for the corporate income tax, most taxes carry an interest rate of 1% per month or 12% annually.

Section 4. Creates s. 213.255, F.S., to provide that interest shall be paid on refunds of tax overpayments, taxes paid in error, or payment of taxes not due when those refunds have not been paid. Interest shall not commence until 90 days after a complete refund application has been filed. This section lists the requirements of a complete application. If an audit of the claim is necessary, interest shall not commence until that audit is final. The rate of interest will be the same as the rate paid on delinquent taxes (under Section 3), except that the rate shall not exceed 11%.

Section 5. Effective July 1, 1997, amends s. 213.34(1), F.S., to provide that no part of the compensation of any employee or agent of the state performing a tax audit shall be based on the amount of tax assessed or collected as a result of the audit.

Section 6. Amends s. 215.26(2), F.S., to reduce the statute of limitations for application for tax refunds from five years to three years. This section, along with Section 1, will equalize the statute of limitations for both assessments and refunds at three years. This was the case prior to 1987.

Sections 7-12, 14, 23-26, and 31. Amend various sections to provide that the interest due on delinquent taxes be accrued at the rate set forth in s. 213.235.

Sections 13, 15-22, and 27-29. Reenact several sections for technical purposes.

Section 30. Amends s. 220.807, F.S., to provide that the interest rate applicable to delinquent corporate income taxes shall be calculated pursuant to s. 213.235, F.S. This does not change the way interest on corporate income tax delinquencies is calculated, it moves the language from the corporate income tax chapter (220) to the general taxation chapter (213).

Section 32. Effective July 1, 1997, provides that the Department of Revenue shall report to the Legislature by January 1, 1998, with recommendations for the efficient implementation of this act and methods to minimize its fiscal impact.

Section 33. Except as otherwise provided, provides an effective date of January 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues:	*1998-1999	1999-2000
Department of Revenue		
Other Trust Funds	(2.2 M)	(5.6 M)
General Revenue Trust Fund	(11.4 M)	(61.0 M)
Total State Impact	(13.6)	(66.6 M)

*This bill is effective one-half of the year

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

Revenues:	*1998-1999	1999-2000
Department of Revenue		
Other Trust Funds	(2. 2 M)	(5.6 M)
General Revenue Trust Fund	(11.4 M)	(61.0 M)
Total State Impact	(13. 6 M)	(66.6 M)

*This bill is effective one-half of the year

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Revenues:	1997-1998	1998-1999
Tax Collector	(1.2M)	(5.9 M)

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   None.

2. Direct Private Sector Benefits:

   Individuals will receive or retain certain monies that the government would have assessed as taxes.

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

   None.

D. FISCAL COMMENTS:

   None.

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.

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:

Comments by the Committee on Governmental Operations:

HB 477 Reduces the Statute of Limitations on both Assessments and Taxpayer Refunds -- HB 477 provides a 3-year statute of limitations beyond which the Department of Revenue (“DOR”) or the Department of Business and Professional Regulation (“DBPR”) may not determine and assess a tax. Also, under this bill, if a taxpayer makes a substantial underpayment or files a substantially incorrect return, the DOR or the DBPR has 4 years (instead of 6) within which to determine and assess the tax. This arrangement would significantly change existing law for both the government and taxpayers.

Section 95.091(3)(a), F.S., currently imposes detailed time limits on all tax determinations and assessments except for those concerning estate taxes (ch. 198, F.S.) and certain tax adjustments. It permits the DOR or DBPR to determine and assess a tax within 5 years after the tax is due or the return is filed, whichever occurs later. However, s. 95.091(3)(a), F.S., also provides a number of exceptions. For example, the DOR or DBPR can determine and assess a tax "at any time after the taxpayer has failed to make a required payment of the tax, has failed to file a required return, or has filed a grossly false or fraudulent return." Also, s. 95.091(3)(b), F.S., allows the DOR to toll the statute of limitations under certain circumstances. HB 477 would significantly reduce the time frame during which the DOR or DBPR could determine and assess most taxes.

From a public policy standpoint, this change would produce three benefits. First, it would reduce the invasiveness of DOR or DBPR determinations and assessments (such as audits). Second, it would decrease the amount of paperwork that taxpayers are required to retain. Third, it would increase the stability of taxpayer finances, because generally taxpayers would not have to concern themselves with tax assessments reaching more than three years back.

However, this change would also generate three undesirable results. First, the authority of the DOR and DBPR to recover unpaid or delinquent taxes is reduced. Second, if the DOR and DBPR were to retain present staffing levels, their auditors would be forced to concentrate their efforts on a narrow spectrum of returns. This arrangement could lead to frequent audits and could prove more intrusive than the current scheme. Third, unscrupulous taxpayers may find it easier to evade taxes by disguising tax liabilities for the shorter three-year period.

In equalizing the statutes of limitations on assessments and refunds, HB 477 may introduce a slight negative affect to taxpayers.

HB 477 requires taxpayers to file for a refund within 3 years. This provision echoes the first part of s. 215.26(2), F.S., which states that "[a]pplication for refunds as provided by this section must be filed with the Comptroller . . . within 3 years after the right to the refund has accrued or else the right is barred." However, as previously mentioned, s. 215.26(2), F.S., contains a key exception. It states that "an application for a refund of a tax enumerated in s. 72.011, F.S., which tax was paid after September 30, 1994, must be filed with the Comptroller within 5 years after the tax is paid." Section 72.011, F.S., lists numerous taxes including estate taxes, intangible personal property taxes, excise taxes, gross receipts taxes, sales taxes, income taxes, and others. Thus, for most taxes, the taxpayer is currently allowed to file for a refund any time within 5 years after the tax was paid. HB 477 would reduce this filing deadline to 3 years, resulting in a substantial disadvantage to the taxpayer.

Section 215.26(2), F.S., contains two exceptions to this 5-year limitation for estate taxes and federal returns. But, even ch. 198, F.S., which relates to estate taxes, provides a more lenient filing deadline than HB 477. Section 198.29, F.S., states that "no refund of estate tax shall be made . . . after the expiration of 4 years from the date of payment of the tax to be refunded." HB 477 would reduce this 4-year deadline to 3 years.

Taxpayers who are owed a tax refund would be more likely to miss the shorter refund filing deadlines imposed by HB 477. Consequently, this provision could slightly increase state revenues, partially offsetting reductions caused by other provisions of the bill.

Note: All uncited references in this analysis may be verified with staff of the Committee on Business Regulation and Consumer Affairs.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

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