

By Senator Sullivan

22-376-98

See HB 3167

1                                   A bill to be entitled

2           An act relating to tax administration; creating

3           s. 213.285, F.S.; authorizing the Department of

4           Revenue to initiate a certified audits project

5           under which taxpayers may hire qualified

6           practitioners to review and report on their tax

7           compliance; providing definitions; providing

8           requirements for participation by such

9           practitioners and taxpayers; providing

10          requirements for the conduct of certified

11          audits; providing status of the audit report;

12          amending s. 213.053, F.S.; authorizing the

13          department to provide certain information to

14          the Board of Accountancy or to a court with

15          respect to a certified public accountant

16          participating in the project; amending s.

17          213.21, F.S.; authorizing settlement or

18          compromise of penalties and abatement of

19          interest for taxpayers who participate in the

20          project; providing for repeal of the certified

21          audits project; providing an appropriation and

22          authorizing positions within the department;

23          providing an effective date.

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

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27           Section 1. Section 213.285, Florida Statutes, is

28 created to read:

29           213.285 Certified audits.--

30           (1) As used in this section, the term:

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1           (a) "Certification program" means an instructional  
2 curriculum and examination for professional development of  
3 certified public accountants which is administered by an  
4 independent provider and which is officially approved by the  
5 department to ensure that a certified public accountant  
6 possesses the necessary skills and abilities to successfully  
7 perform an attestation engagement for tax compliance review in  
8 a certified audits project.

9           (b) "Department" means the Department of Revenue.

10           (c) "Participating taxpayer" means any person subject  
11 to the revenue laws administered by the department who enters  
12 into an engagement with a qualified practitioner for tax  
13 compliance review and who is approved by the department under  
14 the certified audits project.

15           (d) "Qualified practitioner" means a certified public  
16 accountant who is licensed to practice in Florida and who has  
17 completed the certification program.

18           (2)(a) The department is authorized to initiate a  
19 certified audits project to further enhance tax compliance  
20 reviews performed by qualified practitioners and to encourage  
21 taxpayers to hire qualified practitioners at their own expense  
22 to review and report on their tax compliance. The nature of  
23 certified audit work performed by qualified practitioners  
24 shall be agreed-upon procedures in which the department is the  
25 specified user of the resulting report.

26           (b) The department is authorized to adopt rules  
27 necessary to implement a certified audits project.

28           (c) As an incentive for taxpayers to incur the costs  
29 of a certified audit, the department shall compromise  
30 penalties and abate interest due on any tax liabilities  
31 revealed by a certified audit as provided in s. 213.21. This

1 authority to compromise penalties or abate interest shall not  
2 apply to any liability for taxes that were collected by the  
3 participating taxpayer but that were not remitted to the  
4 department.

5 (d) The certified audits project is repealed on July  
6 1, 2002, or upon completion of the project as determined by  
7 the department, whichever occurs first.

8 (3) Any practitioner responsible for planning,  
9 directing, or conducting a certified audit or reporting on a  
10 participating taxpayer's tax compliance in a certified audit  
11 must be a qualified practitioner. For the purposes of this  
12 subsection, a practitioner is considered responsible for:

13 (a) "Planning" in a certified audit when performing  
14 work that involves determining the objectives, scope, and  
15 methodology of the certified audit, when establishing criteria  
16 to evaluate matters subject to the review as part of the  
17 certified audit, when gathering information used in planning  
18 the certified audit, or when coordinating the certified audit  
19 with the department.

20 (b) "Directing" in a certified audit when the work  
21 involves supervising the efforts of others who are involved or  
22 when reviewing the work to determine whether it is properly  
23 accomplished and complete.

24 (c) "Conducting" a certified audit when performing  
25 tests and procedures or field audit work necessary to  
26 accomplish the audit objectives in accordance with applicable  
27 standards.

28 (d) "Reporting" on a participating taxpayer's tax  
29 compliance in a certified audit when determining report  
30 contents and substance or reviewing reports for technical  
31 content and substance prior to issuance.

1           (4)(a) The qualified practitioner shall notify the  
2 department of an engagement to perform a certified audit and  
3 shall provide the department with the information the  
4 department deems necessary to identify the taxpayer, to  
5 confirm that the taxpayer is not already under audit by the  
6 department, and to establish the basic nature of the  
7 taxpayer's business and the taxpayer's potential exposure to  
8 Florida revenue laws. The information provided in the  
9 notification shall include the taxpayer's name, federal  
10 employer identification number or social security number,  
11 state tax account number, mailing address, business location,  
12 and the specific taxes and period proposed to be covered by  
13 the engagement for the certified audit. In addition, the  
14 notice shall include the name, address, identification number,  
15 contact person, and telephone number of the engaged firm.

16           (b) If the taxpayer has not been issued a written  
17 notice of intent to conduct an audit, the taxpayer shall be a  
18 participating taxpayer and the department shall so advise the  
19 qualified practitioner in writing within 10 days after receipt  
20 of the engagement notice. However, the department may exclude  
21 a taxpayer from a certified audit or may limit the taxes or  
22 periods subject to the certified audit on the basis that the  
23 department has previously conducted an audit, that it is in  
24 the process of conducting an investigation or other  
25 examination of the taxpayer's records, or for just cause  
26 determined solely by the department.

27           (c) Notice of the qualification of a taxpayer for a  
28 certified audit shall toll the statute of limitations provided  
29 in s. 95.091 with respect to the taxpayer for the tax and  
30 periods covered by the engagement.

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1           (d) Within 30 days after receipt of the notice of  
2 qualification from the department, the qualified practitioner  
3 shall contact the department and submit a proposed audit plan  
4 and procedures for review and agreement by the department.  
5 The department may extend the time for submission of the plan  
6 and procedures for reasonable cause. The qualified  
7 practitioner shall initiate action to advise the department  
8 that amendment or modification of the plan and procedures is  
9 necessary in the event that the qualified practitioner's  
10 inspection reveals that the taxpayer's circumstances or  
11 exposure to the revenue laws is substantially different than  
12 as described in the engagement notice.

13           (5) Upon the department's designation of the  
14 agreed-upon procedures to be followed by the practitioner in  
15 the certified audit, the qualified practitioner shall perform  
16 the engagement and shall timely submit a completed report to  
17 the department. The report shall affirm completion of the  
18 agreed-upon procedures and shall provide any required  
19 disclosures.

20           (6) The department shall review the report of the  
21 certified audit and shall accept it when it is determined to  
22 be complete. Once the report is accepted by the department,  
23 the department shall issue a notice of proposed assessment  
24 reflecting the determination of any additional liability  
25 reflected in the report and shall provide the taxpayer with  
26 all the normal payment, protest, and appeal rights with  
27 respect to the liability. In cases where the report indicates  
28 an overpayment has been made, the taxpayer shall submit a  
29 properly executed application for refund to the department.  
30 Otherwise, the certified audit report is a final and  
31 conclusive determination with respect to the tax and period

1 covered. No additional assessment may be made by the  
2 department for the specific taxes and period referenced in the  
3 report, except upon a showing of fraud or misrepresentation of  
4 material facts and except for adjustments made under s. 220.23  
5 or s. 198.16. This determination shall not prevent the  
6 department from collecting liabilities not covered by the  
7 report or from conducting an audit or investigation and making  
8 an assessment for additional tax, penalty, or interest for any  
9 tax or period not covered by the report.

10 Section 2. Paragraph (o) is added to subsection (7) of  
11 section 213.053, Florida Statutes, to read:

12 213.053 Confidentiality and information sharing.--

13 (7) Notwithstanding any other provision of this  
14 section, the department may provide:

15 (o) Information contained in returns, reports,  
16 accounts, or declarations to the Board of Accountancy in  
17 connection with a disciplinary proceeding conducted pursuant  
18 to chapter 473 when related to a certified public accountant  
19 participating in the certified audits project, or to the court  
20 in connection with a civil proceeding brought by the  
21 department relating to a claim for recovery of taxes due to  
22 negligence on the part of a certified public accountant  
23 participating in the certified audits project. In any  
24 judicial proceeding brought by the department, upon motion for  
25 protective order, the court shall limit disclosure of tax  
26 information when necessary to effectuate the purposes of this  
27 section. This paragraph is repealed on July 1, 2002.

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29 Disclosure of information under this subsection shall be  
30 pursuant to a written agreement between the executive director  
31 and the agency. Such agencies, governmental or

1 nongovernmental, shall be bound by the same requirements of  
2 confidentiality as the Department of Revenue. Breach of  
3 confidentiality is a misdemeanor of the first degree,  
4 punishable as provided by s. 775.082 or s. 775.083.

5 Section 3. Subsection (7) is added to section 213.21,  
6 Florida Statutes, to read:

7 213.21 Informal conferences; compromises.--

8 (7) In order to determine whether certified audits are  
9 an effective tool in the overall state tax collection effort,  
10 the executive director of the department or the executive  
11 director's designee shall settle or compromise penalty  
12 liabilities of taxpayers who participate in the certified  
13 audits project. As further incentive for participating in the  
14 program, the department shall abate the first \$25,000 of any  
15 interest liability and 25 percent of any interest due in  
16 excess of the first \$25,000. A settlement or compromise of  
17 penalties or interest pursuant to this subsection shall not be  
18 subject to the provisions of paragraph (3)(a), except for the  
19 requirement relating to confidentiality of records. The  
20 department may consider an additional compromise of tax or  
21 interest pursuant to the provisions of paragraph (3)(a). This  
22 subsection does not apply to any liability related to taxes  
23 collected but not remitted to the department. This subsection  
24 is repealed on July 1, 2002.

25 Section 4. The sum of \$264,798 is appropriated from  
26 the General Revenue Fund to the Department of Revenue, and two  
27 positions are established within the department, for the  
28 purpose of implementing the provisions of this act. To  
29 expedite the implementation of the program, the Department of  
30 Revenue shall contract with the Florida Institute of Certified  
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1 Public Accountants for instructional curriculum and  
2 examinations for the purposes of this act.

3 Section 5. This act shall take effect July 1 of the  
4 year in which it is enacted.

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7 LEGISLATIVE SUMMARY

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9 Authorizes the Department of Revenue to initiate a  
10 certified audits project under which taxpayers may hire  
11 qualified practitioners to review and report on their tax  
12 compliance. Authorizes the department to provide certain  
13 information to the Board of Accountancy or to a court  
14 with respect to a certified public accountant  
15 participating in the project. Authorizes settlement or  
16 compromise of penalties and abatement of interest for the  
17 taxpayers who participate in the project. Provides for  
18 repeal of the project. Provides an appropriation and  
19 authorizes positions within the department to implement  
20 the act.  
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