

By the Committee on Ways and Means and Senators Sullivan, Latvala, Brown-Waite, Dudley, Grant, Casas, Kirkpatrick, Bronson, Dyer, Thomas, Kurth, Harris and Ostalkiewicz

301-2019-98

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 providing rulemaking authority for the
13 Department of Revenue; amending s. 213.053,
14 F.S.; authorizing the department to provide
15 certain information to the Board of Accountancy
16 or to a court with respect to a certified
17 public accountant participating in the project;
18 amending s. 213.21, F.S.; authorizing
19 settlement or compromise of penalties and
20 abatement of interest for taxpayers who
21 participate in the project; providing for
22 repeal of the certified audits project;
23 providing an appropriation and authorizing
24 positions within the department; providing an
25 effective date.

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

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29 Section 1. Section 213.285, Florida Statutes, is
30 created to read:

31 213.285 Certified audits.--

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

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

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

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

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

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

28 (b) 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 (c) 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 (7) To implement the certified audits project, the
11 department shall have authority to adopt rules relating to:

12 (a) The availability of the certification program
13 required for participation in the project;

14 (b) The requirements and basis for establishing just
15 cause for approval or rejection of participation by taxpayers;

16 (c) Procedures for assessment, collection, and payment
17 of liabilities or refund of overpayments and provisions for
18 taxpayers to obtain informal and formal review of certified
19 audit results;

20 (d) The nature, frequency, and basis for the
21 department's review of certified audits conducted by qualified
22 practitioners, including the requirements for documentation,
23 work-paper retention and access, and reporting; and

24 (e) Requirements for conducting certified audits and
25 for review of agreed-upon procedures.

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

28 213.053 Confidentiality and information sharing.--

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

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1 (o) Information contained in returns, reports,
2 accounts, or declarations to the Board of Accountancy in
3 connection with a disciplinary proceeding conducted pursuant
4 to chapter 473 when related to a certified public accountant
5 participating in the certified audits project, or to the court
6 in connection with a civil proceeding brought by the
7 department relating to a claim for recovery of taxes due to
8 negligence on the part of a certified public accountant
9 participating in the certified audits project. In any
10 judicial proceeding brought by the department, upon motion for
11 protective order, the court shall limit disclosure of tax
12 information when necessary to effectuate the purposes of this
13 section. This paragraph is repealed on July 1, 2002.

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15 Disclosure of information under this subsection shall be
16 pursuant to a written agreement between the executive director
17 and the agency. Such agencies, governmental or
18 nongovernmental, shall be bound by the same requirements of
19 confidentiality as the Department of Revenue. Breach of
20 confidentiality is a misdemeanor of the first degree,
21 punishable as provided by s. 775.082 or s. 775.083.

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

24 213.21 Informal conferences; compromises.--

25 (7) In order to determine whether certified audits are
26 an effective tool in the overall state tax collection effort,
27 the executive director of the department or the executive
28 director's designee shall settle or compromise penalty
29 liabilities of taxpayers who participate in the certified
30 audits project. As further incentive for participating in the
31 program, the department shall abate the first \$25,000 of any

1 interest liability and 25 percent of any interest due in
2 excess of the first \$25,000. A settlement or compromise of
3 penalties or interest pursuant to this subsection shall not be
4 subject to the provisions of paragraph (3)(a), except for the
5 requirement relating to confidentiality of records. The
6 department may consider an additional compromise of tax or
7 interest pursuant to the provisions of paragraph (3)(a). This
8 subsection does not apply to any liability related to taxes
9 collected but not remitted to the department. This subsection
10 is repealed on July 1, 2002.

11 Section 4. The sum of \$264,798 is appropriated from
12 the General Revenue Fund to the Department of Revenue, and two
13 positions are established within the department, for the
14 purpose of implementing the provisions of this act. To
15 expedite the implementation of the program, the Department of
16 Revenue shall contract with the Florida Institute of Certified
17 Public Accountants for instructional curriculum and
18 examinations for the purposes of this act.

19 Section 5. This act shall take effect July 1, 1998.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
SB 498

The committee substitute for SB 498 gives the Department of Revenue authority to adopt rules relating to:

the availability of the certification program required for participation in the certified audit project;

the requirements and basis for establishing just cause for approval or rejection of participation by taxpayers;

procedures for assessment, collection, and payment of liabilities or refund of overpayments and provisions for taxpayers to obtain informal and formal review of certified audit results;

the nature, frequency and basis for the department's review of certified audits conducted by qualified practitioners, including the requirement for documentations, work paper retention and access, and reporting; and

requirements for conducting certified audits and for review of agreed upon procedures.