

STORAGE NAME: h1113a.brc

DATE: March 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION AND CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 1113

RELATING TO: Taxation

SPONSOR(S): Representatives Brummer and Arnall

COMPANION BILL(S): CS/SB 172 (s), HB 65 (c), and HB 693 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS REGULATION AND CONSUMER AFFAIRS YEAS 9 NAYS 0
 - (2) FINANCE & TAXATION
 - (3) GENERAL APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The bill addresses several provisions in various chapters relating to the administration of the tax code by the Department of Revenue (DOR). The bill provides for: the payment of a market rate of interest, rather than a fixed rate, on tax deficiencies; an entitlement to interest at market rate on certain tax refunds; a reduced period of time for assessment of tax, penalty, or interest for taxes due on or after July 1, 1999; a reduced period of time for seeking a tax refund, from five years to three years, for taxes paid on or after July 1, 1999; and an increase in the threshold above which estimated taxes must be paid, thus reducing the number of estimated tax filers.

The bill further provides that the DOR: establish a toll-free number for validating dealer registration numbers and resale certificates; offer a means of processing information from dealers regarding certificate numbers of those dealers seeking to make purchases of goods for resale; and expand the department's dealer education program regarding the use of resale certificates.

Fiscal impact: the bill appropriates from the General Revenue Fund to the DOR in fiscal year 1999-00 one and one-half FTE positions and \$211,065 for salaries and expenses, as well as, \$23,455 for operating capital outlay.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The bill amends various provisions of the current tax laws.

Statute of Limitations

Currently, with limited exemptions, s. 95.091, F.S., provides for a five year statute of limitations for collection of taxes by the DOR. The limit is six years if the taxpayer makes a substantial underpayment or files a substantially incorrect tax return. There is no statute of limitation if a taxpayer fails to file a return or files "a grossly false or fraudulent return". These limitations are tolled for two years if the DOR issues a notice of intent to conduct an audit. The limits are also tolled during any administrative or judicial proceeding.

Resale Certificates

Current provisions of s. 212.07, F.S., allow an individual or business operating as a dealer to purchase items without being subject to the state sales tax. The transaction may be considered a "sale for resale" where the purchaser can claim exempt status from the sales tax which may otherwise be due. The purchase must take place in order for the item to be resold and the tax then becomes due. A study committee was formed to review these procedures and make "recommendations for revising the sale for resale exemption system....in order to eliminate the improper use of the resale exemption and provide for more effective administration and enforcement."

Interest Payments

Currently, the interest rate charged on tax payments which are delinquent, for most taxes, is a fixed rate. Under the intangible personal property tax and the documentary stamp tax statutes, the interest rate on unpaid taxes is 12 percent per year and runs from the due date until paid (ss. 199.282(2) and 201.17(2), F.S.). The corporate income tax code provides for an adjusted interest rate on unpaid taxes, with the rate established by the DOR's executive director based upon monitoring of the adjusted prime rate charged by banks (ss. 220.807(2) and 220.809(1), F.S.).

There are currently no statutory provisions requiring the state to pay interest on refunds of tax overpayments, tax payments that were not due, or tax payments made in error except in the case of corporate income taxes. The corporate income tax code provides for the payment of interest on any overpayment of tax if the overpayment is not refunded or credited within three months after the taxpayer notifies the department in writing of the overpayment (s. 220.723(1), F.S.). As with deficiencies, the annual rate of interest is an adjusted rate tied to the adjusted prime rate charged by banks (s. 220.807(2), F.S.).

Tax Refunds

Section 215.26, F.S., authorizes the Comptroller to refund moneys paid into the State Treasury that represent an overpayment of any tax, a payment where no tax was due, or a payment made in error. An application for a refund of tax that was paid after September 30, 1994, generally must be filed with the Comptroller within five years after the tax is paid. For a payment made on or before this date, the applicable limitation is three years after the right to a refund has accrued (s. 215.26(2), F.S.). Section 213.34(3), F.S., provides that the department may correct by credit or refund an overpayment revealed by an audit.

B. EFFECT OF PROPOSED CHANGES:

Statute of Limitations

The bill addresses the statute of limitations on actions to collect taxes, tax penalties or interest by DOR and the Department of Business and Professional Regulation (DBPR)(re: tobacco and alcohol taxes) by reducing the time period from five years to three years for taxes due on or after July 1,

1999. The current statutory exceptions to the general five-year statute of limitations continue to apply to taxes due before July 1, 1999.

The bill specifies that the current two year tolling period when the department issues a notice of intent to audit would apply to taxes due before July 1, 1999, after which the tolling period would be one year.

Resale Certificates

The bill provides for the annual issuance of resale certificates to “active dealers” (defined by the bill to mean “ a person who is currently registered with the DOR and who complies with the requirement to file at least once during each applicable reporting period”).

A dealer who makes a sale for resale would be required to document the exempt status of the transaction by either retaining a copy of the purchaser’s resale certificate or by documenting, before the sale, an authorization number provided by the DOR. Annually, the DOR would be required to provide each active dealer with a new annual resale certificate. New dealers would receive a certificate upon registration.

Interest Payments

The bill provides for the payment of an adjusted rate of interest on tax deficiencies that arise on or after July 1, 1999. The amendment specifies, however, that if a lower rate of interest for the tax is specifically provided for in law, the lower rate shall apply. The adjusted rate of interest is based upon the adjusted prime rate charged by banks. The adjusted rate of interest is applicable to taxes enumerated in s. 213.05, F.S.

The bill also provides for the payment of the adjusted rate of interest on overpayments of taxes, payment of taxes not due, or taxes paid in error. The bill specifies that this provision applies to eligible refunds based on tax payments made on or after July 1, 1999.

Tax Refunds

The bill addresses provisions relating to the statute of limitations on applications for tax refunds, to specify that an application for a refund of taxes that were paid on or after July 1, 1999, must be filed within three years after the date the tax is paid. The current five-year period for such refund applications would apply to taxes paid after September 30, 1994, but before July 1, 1999.

DOR Services

DOR would be required to: establish a toll-free number for validating dealer registration numbers and resale certificates; offer a means of processing information from dealers regarding certificate numbers of those dealers seeking to make purchases of goods for resale; and expand the department’s dealer education program regarding the use of resale certificates.

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?

The bill requires that the DOR address three specific programs for purposes of making information available to taxpayers.

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

As noted in (2) above, certain services by the DOR are mandated by the bill.

The bill increases the entitlement to interest on late tax refunds to all taxpayers. 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?

None.

- (2) what is the cost of such responsibility at the new level/agency?

None.

- (3) how is the new agency accountable to the people governed?

None.

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?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- 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?

N/A

- 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. STATUTE(S) AFFECTED:

Amends ss. 95.091, 212.07, 212.18, 213.053, and 215.26 and creates ss. 213.235 and 213.255, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 95.091, F.S., to provide for a three year statute of limitation on the ability of DOR to assess taxes, penalties or interest which may be due, with limited exemptions.

Section 2. Amends s. 212.07, F.S., to provide for annual issuance of resale certificates to active dealers and require documentation of the transaction.

Section 3. Amends s. 212.18, F.S., to require the DOR to issue an annual resale certificate to dealers. New dealers would receive a certificate upon registration.

Section 4. Amends s. 213.053, F.S., to authorize the DOR to verify whether a specific resale certificate is valid, canceled or inactive.

Section 5. Creates s. 213.235, F.S., to provide for the payment of an adjusted rate of interest on tax deficiencies that arise on or after July 1, 1999. Specifies that if a lower rate of interest for the tax is specifically provided for in the law then the lower rate would apply. Specifies that the adjusted rate of interest would be based on the adjusted prime rate charged by banks.

Section 6. Creates s. 213.255, F.S., to also provide for the payment of interest on overpayments of taxes, payment of taxes not due, or taxes paid in error, made on or after July 1, 1999. The rate would be the adjusted rate of interest.

Section 7. Amends s. 215.26, F.S., relating to the statute of limitations on applications for tax refund, to specify that an application for a refund of taxes that were paid on or after July 1, 1999, must be filed within three years after the date the tax is paid. The current five year period for refund applications would apply to taxes paid after September 30, 1994, but before July 1, 1999.

Section 8. Provides that the DOR establish a toll-free number for verification of dealer registration numbers and resale certificates.

Section 9. Provides that the DOR establish a system for validating listings of vendor resale and exemption certificate numbers.

Section 10. Requires the DOR to expand the dealer education program on proper usage of resale certificates.

Section 11. Appropriates from the General Revenue Fund to the DOR in fiscal year 1999-00 \$211,065 along with one and one-half FTE positions and \$23,455 of operating capital outlay.

Section 12. Provides that the act shall take effect July 1, 1999, except the provisions for resale certificates shall go into effect January 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

See fiscal comments below.

2. Recurring Effects:

See fiscal comments below.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments below.

4. Total Revenues and Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

See fiscal comments below.

2. Recurring Effects:

See fiscal comments below.

3. Long Run Effects Other Than Normal Growth:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None noted.

2. Direct Private Sector Benefits:

Individuals will receive or retain certain monies that the government would have assessed as taxes. Also, increasing the dollar threshold for businesses that pay estimated sales tax reduces a financial and administrative burden of about 50% (6,000 out of 12,000) for these businesses.

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

Unknown.

D. FISCAL COMMENTS:

The Department of Revenue has failed to provide fiscal data, as requested by staff. The following impacts are estimated based on information available.

Revenue impacts of this amendment in fiscal year 1999-00 are estimated to be:

Issue/Fund	<u>General Revenue</u>		<u>Trust</u>		<u>Total</u>	
	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Interest on Delinquent Taxes at Prime Rate	(\$11.4)	(\$10.9)	(\$0.6)	(\$0.6)	(\$12.0)	(\$11.5)
Refund Interest	(\$2.0)	(\$3.0)	(\$1.0)	(\$1.5)	(\$3.0)	(\$4.5)
Statute of Limitations, Tolling Reduced	0.0	(\$48.6)	0.0	(\$2.0)	0.0	(\$50.6)

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Annual Renewal of Resale Certificates	0.0	\$19.2	0.0	*	0.0	\$19.2
Total	(\$13.4)	(\$43.3)	(\$1.6)	(\$4.1)	(\$15.0)	(\$47.4)

* Insignificant

Issue/Fund	<u>Local</u>	
	1st Year	Recurring
Interest on Delinquent Taxes at Prime Rate	(\$2.8)	(\$2.6)
Refund Interest	(\$0.4)	(\$0.5)
Statute of Limitations, Tolling Reduced	0.0	(\$9.4)
Annual Renewal of Resale Certificates	0.0	\$3.0
Total	(\$3.2)	(\$9.5)

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION AND CONSUMER AFFAIRS:

Prepared by:

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