

By Representative Brummer

1                                   A bill to be entitled  
2           An act relating to taxation; amending ss.  
3           95.091, 212.07, 212.18, 213.053, 215.26, F.S.;  
4           creating ss. 213.235, 213.255, F.S.; amending  
5           certain statutes of limitation; reducing the  
6           period for tolling of the statute of  
7           limitations; prescribing circumstances for the  
8           tolling of the statute of limitations as a  
9           result of administrative or judicial  
10          proceedings; providing for the annual issuance  
11          of resale certificates to active accounts;  
12          authorizing the Department of Revenue to  
13          disclose to a dealer or taxpayer whether a  
14          specified certificate is active, canceled,  
15          inactive, or invalid; providing for periodic  
16          adjustment of the rate of interest to be  
17          charged on certain tax deficiencies; providing  
18          circumstances under which the Department of  
19          Revenue is to pay interest to the taxpayer;  
20          specifying when applications for refunds must  
21          be filed; directing the Department of Revenue  
22          to establish a toll-free number for the  
23          verification of valid registration numbers and  
24          resale certificates; directing the Department  
25          of Revenue to establish a system for receiving  
26          information from dealers regarding certificate  
27          numbers; directing the Department of Revenue to  
28          expand its dealer education program regarding  
29          the proper use of resale certificates;  
30          providing appropriations; providing effective  
31          dates.

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

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

5 95.091 Limitation on actions to collect taxes.--

6 (3)(a)1. With the exception of taxes levied under  
7 chapter 198 and tax adjustments made pursuant to s. 220.23,  
8 the Department of Revenue may determine and assess the amount  
9 of any tax, penalty, or interest due under any tax enumerated  
10 in s. 72.011 which it has authority to administer and the  
11 Department of Business and Professional Regulation may  
12 determine and assess the amount of any tax, penalty, or  
13 interest due under any tax enumerated in s. 72.011 which it  
14 has authority to administer:

15 a. For taxes due before July 1, 1999, within 5 years  
16 after the date the tax is due, any return with respect to the  
17 tax is due, or such return is filed, whichever occurs later;  
18 and for taxes due on or after July 1, 1999, within 3 years  
19 after the date the tax is due, any return with respect to the  
20 tax is due, or such return is filed, whichever occurs later;

21 b. For taxes due before July 1, 1999, within 6 years  
22 after the date the taxpayer either makes a substantial  
23 underpayment of tax, or files a substantially incorrect  
24 return;

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

27 d. For taxes due before July 1, 1999, at any time  
28 after the taxpayer has filed a grossly false return;

29 ~~e.d.~~ At any time after the taxpayer has failed to make  
30 any required payment of the tax, has failed to file a required  
31 return, or has filed a ~~grossly false or~~ fraudulent return,

1 except that for taxes due on or after July 1, 1999, the  
2 limitation prescribed in sub-subparagraph a. applies if the  
3 taxpayer has disclosed in writing the tax liability to the  
4 department before the department has contacted the taxpayer;

5 or

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

8 (I) For refunds made before July 1, 1999, within 5  
9 years after making such refund; and

10 (II) For refunds made on or after July 1, 1999, within  
11 3 years after making such refund,

12  
13 or at any time after making such refund if it appears that any  
14 part of the refund was induced by fraud or the  
15 misrepresentation of a material fact.

16 2. For the purpose of this paragraph, a tax return  
17 filed before the last day prescribed by law, including any  
18 extension thereof, shall be deemed to have been filed on such  
19 last day, and payments made prior to the last day prescribed  
20 by law shall be deemed to have been paid on such last day.

21 (b)1. The limitations in this subsection shall be  
22 tolled for a period of 2 years with respect to audits in which  
23 the notice of intent to conduct the audit was issued before  
24 July 1, 1999, if the Department of Revenue has issued a notice  
25 of intent to conduct an audit or investigation of the  
26 taxpayer's account within the applicable period of time as  
27 specified in this subsection. The department shall commence  
28 an audit within 120 days after it issues a notice of intent to  
29 conduct an audit, unless the taxpayer requests a delay. If  
30 the taxpayer does not request a delay and the department does

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1 not begin the audit within 120 days after issuing the notice,  
2 the tolling period shall terminate.

3 2. For audits in which the notice of intent to conduct  
4 the audit was issued on or after July 1, 1999, the limitation  
5 period shall be tolled for 1 year after issuing the notice. If  
6 the taxpayer does not enter into an agreement to extend the  
7 period pursuant to s. 213.23, the tolling period shall  
8 terminate after 1 year.

9 (4) If administrative or judicial proceedings for  
10 review of the tax assessment or collection are initiated by a  
11 taxpayer begun within the a period of limitation prescribed in  
12 this section, the running of the period shall be tolled during  
13 the pendency of the proceeding. Administrative proceedings  
14 shall include taxpayer protest proceedings initiated under s.  
15 213.21 and department rules.

16 Section 2. Effective February 1, 2000, paragraph (b)  
17 of subsection (1) of section 212.07, Florida Statutes, 1998  
18 Supplement, is amended to read:

19 212.07 Sales, storage, use tax; tax added to purchase  
20 price; dealer not to absorb; liability of purchasers who  
21 cannot prove payment of the tax; penalties; general  
22 exemptions.--

23 (1)

24 (b) A resale must be in strict compliance with s.  
25 212.18 and the rules and regulations, and any dealer who makes  
26 a sale for resale which is not in strict compliance with s.  
27 212.18 and the rules and regulations shall himself or herself  
28 be liable for and pay the tax. A dealer who makes a sale for  
29 resale shall document the exempt status of the transaction, as  
30 established by rules adopted by the department, by retaining a  
31 copy of the purchaser's resale certificate. In lieu of

1 maintaining a copy of the certificate, a dealer may document,  
2 before the sale, an authorization number provided by the  
3 department electronically or by telephone, or by other means  
4 established by the department by rule. The department shall  
5 adopt rules that provide that, for purchasers who continually  
6 purchase on account from a dealer, the dealer may rely on a  
7 resale certificate issued under s. 212.18(3)(c) which is valid  
8 at the time of receipt from the purchaser, without seeking  
9 annual verification of the resale certificate.A dealer may,  
10 through the informal protest provided for in s. 213.21 and the  
11 rules of the Department of Revenue, provide the department  
12 with evidence of the exempt status of a sale. ~~The Department~~  
13 ~~of Revenue shall adopt rules which provide that valid resale~~  
14 ~~certificates and~~ Consumer certificates of exemption executed  
15 by those ~~dealers or~~ exempt entities that ~~which~~ were registered  
16 with the department at the time of sale, resale certificates  
17 provided by purchasers who were active dealers at the time of  
18 sale, and verification by the department of a purchaser's  
19 active dealer status at the time of sale in lieu of a resale  
20 certificate shall be accepted by the department when submitted  
21 during the protest period,but may not be accepted in any  
22 proceeding under chapter 120 or any circuit court action  
23 instituted under chapter 72.

24 Section 3. Effective January 1, 2000, subsection (3)  
25 of section 212.18, Florida Statutes, 1998 Supplement, is  
26 amended to read:

27 212.18 Administration of law; registration of dealers;  
28 rules.--

29 (3)(a) Every person desiring to engage in or conduct  
30 business in this state as a dealer, as defined in this  
31 chapter, or to lease, rent, or let or grant licenses in living

1 quarters or sleeping or housekeeping accommodations in hotels,  
2 apartment houses, roominghouses, or tourist or trailer camps  
3 that are subject to tax under s. 212.03, or to lease, rent, or  
4 let or grant licenses in real property, as defined in this  
5 chapter, and every person who sells or receives anything of  
6 value by way of admissions, must file with the department an  
7 application for a certificate of registration for each place  
8 of business, showing the names of the persons who have  
9 interests in such business and their residences, the address  
10 of the business, and such other data as the department may  
11 reasonably require. However, owners and operators of vending  
12 machines or newspaper rack machines are required to obtain  
13 only one certificate of registration for each county in which  
14 such machines are located. The department, by rule, may  
15 authorize a dealer that uses independent sellers to sell its  
16 merchandise to remit tax on the retail sales price charged to  
17 the ultimate consumer in lieu of having the independent seller  
18 register as a dealer and remit the tax. The department may  
19 appoint the county tax collector as the department's agent to  
20 accept applications for registrations. The application must be  
21 made to the department before the person, firm, copartnership,  
22 or corporation may engage in such business, and it must be  
23 accompanied by a registration fee of \$5. However, a  
24 registration fee is not required to accompany an application  
25 to engage in or conduct business to make mail order sales.

26 (b) The department, upon receipt of such application,  
27 will grant to the applicant a separate certificate of  
28 registration for each place of business, which certificate may  
29 be canceled by the department or its designated assistants for  
30 any failure by the certificateholder to comply with any of the  
31 provisions of this chapter. The certificate is not assignable

1 and is valid only for the person, firm, copartnership, or  
2 corporation to which issued. The certificate must be placed in  
3 a conspicuous place in the business or businesses for which it  
4 is issued and must be displayed at all times. Except as  
5 provided in this subsection ~~paragraph~~, no person shall engage  
6 in business as a dealer or in leasing, renting, or letting of  
7 or granting licenses in living quarters or sleeping or  
8 housekeeping accommodations in hotels, apartment houses,  
9 roominghouses, tourist or trailer camps, or real property as  
10 hereinbefore defined, nor shall any person sell or receive  
11 anything of value by way of admissions, without first having  
12 obtained such a certificate or after such certificate has been  
13 canceled; no person shall receive any license from any  
14 authority within the state to engage in any such business  
15 without first having obtained such a certificate or after such  
16 certificate has been canceled. The engaging in the business of  
17 selling or leasing tangible personal property or services or  
18 as a dealer, as defined in this chapter, or the engaging in  
19 leasing, renting, or letting of or granting licenses in living  
20 quarters or sleeping or housekeeping accommodations in hotels,  
21 apartment houses, roominghouses, or tourist or trailer camps  
22 that are taxable under this chapter, or real property, or the  
23 engaging in the business of selling or receiving anything of  
24 value by way of admissions, without such certificate first  
25 being obtained or after such certificate has been canceled by  
26 the department, is prohibited. The failure or refusal of any  
27 person, firm, copartnership, or corporation to so qualify when  
28 required hereunder is a misdemeanor of the first degree,  
29 punishable as provided in s. 775.082 or s. 775.083, or subject  
30 to injunctive proceedings as provided by law. Such failure or  
31 refusal also subjects the offender to a \$100 initial

1 registration fee in lieu of the \$5 registration fee authorized  
2 in ~~this~~ paragraph(a). However, the department may waive the  
3 increase in the registration fee if it is determined by the  
4 department that the failure to register was due to reasonable  
5 cause and not to willful negligence, willful neglect, or  
6 fraud.

7 (c) In addition to the certificate of registration,  
8 the department shall provide to each newly registered dealer  
9 an initial resale certificate that is valid for the remainder  
10 of the period of issuance. The department shall provide each  
11 active dealer with an annual resale certificate. As used in  
12 this section, the term "active dealer" means a person who is  
13 currently registered with the department and who complies with  
14 the requirement to file at least once during each applicable  
15 reporting period.

16 (d)(b) The department may revoke any dealer's  
17 certificate of registration when the dealer fails to comply  
18 with this chapter. Prior to revocation of a dealer's  
19 certificate of registration, the department must schedule an  
20 informal conference at which the dealer may present evidence  
21 regarding the department's intended revocation or enter into a  
22 compliance agreement with the department. The department must  
23 notify the dealer of its intended action and the time, place,  
24 and date of the scheduled informal conference by written  
25 notification sent by United States mail to the dealer's last  
26 known address of record furnished by the dealer on a form  
27 prescribed by the department. The dealer is required to attend  
28 the informal conference and present evidence refuting the  
29 department's intended revocation or enter into a compliance  
30 agreement with the department which resolves the dealer's  
31 failure to comply with this chapter. The department shall



1 issue an administrative complaint under s. 120.60 if the  
2 dealer fails to attend the department's informal conference,  
3 fails to enter into a compliance agreement with the department  
4 resolving the dealer's noncompliance with this chapter, or  
5 fails to comply with the executed compliance agreement.

6 (e)~~(c)~~ As used in this paragraph, the term "exhibitor"  
7 means a person who enters into an agreement authorizing the  
8 display of tangible personal property or services at a  
9 convention or a trade show. The following provisions apply to  
10 the registration of exhibitors as dealers under this chapter:

11 1. An exhibitor whose agreement prohibits the sale of  
12 tangible personal property or services subject to the tax  
13 imposed in this chapter is not required to register as a  
14 dealer.

15 2. An exhibitor whose agreement provides for the sale  
16 at wholesale only of tangible personal property or services  
17 subject to the tax imposed in this chapter must obtain a  
18 resale certificate from the purchasing dealer but is not  
19 required to register as a dealer.

20 3. An exhibitor whose agreement authorizes the retail  
21 sale of tangible personal property or services subject to the  
22 tax imposed in this chapter must register as a dealer and  
23 collect the tax imposed under this chapter on such sales.

24 4. Any exhibitor who makes a mail order sale pursuant  
25 to s. 212.0596 must register as a dealer.

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27 Any person who conducts a convention or a trade show must make  
28 their exhibitor's agreements available to the department for  
29 inspection and copying.

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1           Section 4. Effective January 1, 2000, subsection (10)  
2 of section 213.053, Florida Statutes, 1998 Supplement, is  
3 amended to read:

4           213.053 Confidentiality and information sharing.--

5           (10) Notwithstanding any other provision of this  
6 section, with respect to a request for verification of a  
7 certificate of registration issued pursuant to s. 212.18 to a  
8 specified dealer or taxpayer or with respect to a request by a  
9 law enforcement officer for verification of a certificate of  
10 registration issued pursuant to s. 538.09 to a specified  
11 secondhand dealer or pursuant to s. 538.25 to a specified  
12 secondary metals recycler, the department may disclose whether  
13 the specified person holds a valid certificate or whether a  
14 specified certificate number is valid, canceled, inactive, or  
15 invalid and the name of the holder of the ~~such~~ certificate.  
16 This subsection shall not be construed to create a duty to  
17 request verification of any certificate of registration.

18           Section 5. Section 213.235, Florida Statutes, is  
19 created to read:

20           213.235 Determination of interest on deficiencies.--

21           (1) Notwithstanding any other provision of law, the  
22 annual rate of interest applicable to tax payment deficiencies  
23 that arise on or after July 1, 1999, shall be the adjusted  
24 rate established by the executive director of the department  
25 under subsection (2), unless a lower rate for the particular  
26 tax is specifically provided for in law, in which case the  
27 lower rate applies. This annual rate of interest applies to  
28 all taxes enumerated in s. 213.05.

29           (2) If the adjusted prime rate charged by banks,  
30 rounded to the nearest full percent, during either:  
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1       (a) The 6-month period ending on September 30 of any  
2 calendar year, or

3       (b) The 6-month period ending on March 31 of any  
4 calendar year

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6 differs from the interest rate in effect on such date, the  
7 executive director of the department shall, within 20 days,  
8 establish an adjusted rate of interest equal to such adjusted  
9 prime rate.

10       (3) An adjusted rate of interest established under  
11 this section becomes effective:

12       (a) On January 1 of the succeeding year, if based upon  
13 the adjusted prime rate for the 6-month period ending on  
14 September 30; or

15       (b) On July 1 of the same calendar year, if based upon  
16 the adjusted prime rate for the 6-month period ending on March  
17 31.

18       (4) As used in this section, the term "adjusted prime  
19 rate charged by banks" means the average predominant prime  
20 rate quoted by commercial banks to large businesses, as  
21 determined by the Board of Governors of the Federal Reserve  
22 System.

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

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

27       213.255 Interest.--Interest shall be paid on  
28 overpayments of taxes, payment of taxes not due, or taxes paid  
29 in error, subject to the following conditions:

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

1       (2) A refund application may not be processed until it  
2 is complete. A refund application is complete if it is filed  
3 on a permitted form and contains:

4           (a) The taxpayer's name, address, identifying numbers,  
5 and signature;

6           (b) Sufficient information, whether on the application  
7 or attachments, to permit mathematical verification of the  
8 amount of the refund;

9           (c) The amount claimed;

10          (d) The specific grounds upon which the refund is  
11 claimed;

12          (e) The taxable years or periods involved; and

13          (f) A completed audit, if an audit is required by the  
14 department.

15       (3) If the refund application is not complete, the  
16 department shall notify the taxpayer of the inadequacy and  
17 instruct the applicant of what is needed to complete the  
18 application.

19       (4) Interest shall not begin to accrue until 90 days  
20 after a complete refund application has been filed and the  
21 amount of overpayment has not been refunded to the taxpayer or  
22 applied as a credit to the taxpayer's account. If the  
23 department and the taxpayer mutually agree that an audit of  
24 the claim is necessary, interest shall not begin to accrue  
25 until the audit of the claim is final or until 90 days after  
26 the date the complete refund application has been filed,  
27 whichever is later.

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

3 (6) Interest shall be paid until a date determined by  
4 the department which must be no earlier than 7 days before the  
5 date on which the Comptroller issues the refund warrant.

6 (7) Interest shall not be paid if the department has  
7 reasonable cause to believe that it could not recover the  
8 amount of any refund paid in error from the person claiming  
9 the refund, unless the person files a cash bond or a surety  
10 bond in the amount of the refund claimed or the person makes  
11 other security arrangements satisfactory to the department.  
12 The cash or surety bond must be endorsed by the surety company  
13 authorized to do business in this state and must be  
14 conditioned upon payment in full of the amount of any refund  
15 paid in error for any reason. The department shall provide  
16 written notice of its determination that a cash or surety bond  
17 is required, in which event interest shall not commence until  
18 the person filing the claim satisfies this requirement.

19 (8) The rate of interest shall be the adjusted rate  
20 established under s. 213.235. This annual rate of interest  
21 shall be applied to all refunds of taxes administered by the  
22 department.

23 (9) Interest that is paid pursuant to this section  
24 shall be paid proportionately from the funds or sources into  
25 which the tax that is refunded was or should have been  
26 disbursed or distributed after the tax was collected.

27 (10) This section applies to eligible refunds based on  
28 tax payments made on or after July 1, 1999.

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

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1           215.26 Repayment of funds paid into State Treasury  
2 through error.--

3           (2) Application for refunds as provided by this  
4 section must be filed with the Comptroller, except as  
5 otherwise provided in this subsection, within 3 years after  
6 the right to the refund has accrued or else the right is  
7 barred. Except as provided in chapter 198 and s. 220.23, an  
8 application for a refund of a tax enumerated in s. 72.011,  
9 which tax was paid after September 30, 1994, and before July  
10 1, 1999, must be filed with the Comptroller within 5 years  
11 after the date the tax is paid, and within 3 years after the  
12 date the tax was paid for taxes paid on or after July 1, 1999.

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

30           Section 8. Effective January 1, 2000, the Department  
31 of Revenue shall establish a toll-free number for the

1 verification of valid registration numbers and resale  
2 certificates. The system must be adequate to guarantee a low  
3 busy rate, must respond to keypad inquiries, and must provide  
4 data that is updated daily.

5       Section 9. The Department of Revenue shall establish a  
6 system, effective January 1, 2000, for receiving information  
7 from dealers regarding certificate numbers of those who are  
8 seeking to make purchases for resale. The department must  
9 provide such dealers, free of charge, with verification of  
10 those numbers that are canceled or invalid.

11       Section 10. Effective July 1, 1999, the Department of  
12 Revenue shall expand its dealer education program regarding  
13 the proper use of resale certificates. The expansion must  
14 include, but need not be limited to, revision of the  
15 registration application for clarity, development of  
16 industry-specific brochures, development of a media campaign  
17 to heighten awareness of resale fraud and its consequences,  
18 outreach to business and professional organizations, and  
19 creation of seminars and continuing-education programs for  
20 taxpayers and licensed professionals.

21       Section 11. (1) There is appropriated from the  
22 General Revenue Fund to the Department of Revenue in fiscal  
23 year 1999-2000, to be used in implementing the changes to the  
24 resale certificate and related provisions of this act:

25       (2) One and one-half full-time-equivalent positions  
26 and the sum of \$211,065 to be used for salaries, benefits, and  
27 expenses; and

28       (3) The sum of \$23,455 to be used for operating  
29 capital outlay.

30       Section 12. Except as otherwise expressly provided in  
31 this act, this act shall take effect July 1, 1999.

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HOUSE SUMMARY

Revises the 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.

Provides that the annual rate of interest on tax payment deficiencies shall be a floating rate based on the prime rate.

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.

Provides requirements with respect to sales for resale and documentation thereof, and provides for issuance of initial and annual resale certificates to active sales tax dealers. Authorizes the department to disclose certain information regarding registration certificate numbers. Directs the department to establish a toll-free number for verification of registration numbers and resale certificates and a system to receive information from dealers regarding purchasers for resale, and to expand its dealer education program regarding resale certificates. Provides an appropriation.