

**STORAGE NAME:** h1549.rs

**DATE:** March 22, 1999

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
REGULATED SERVICES  
ANALYSIS**

**BILL #:** HB 1549

**RELATING TO:** The State Lotteries

**SPONSOR(S):** Representatives Bense and Others

**COMPANION BILL(S):** SB 1816(S) by Senator Thomas

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

- (1) REGULATED SERVICES
  - (2) JUDICIARY
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill will allow a lottery prize winner to voluntarily assign all or part of that person's prize award pursuant to a court order subject to certain conditions. Such assignment could not include money subject to attachment for delinquent or defaulted child support payments or payment for debts owed to the state unless appropriate provision is made in the court order to satisfy the obligation. The Department of the Lottery is authorized to establish a reasonable fee to defray the costs of administering and processing such assignments. The bill provides that, if such assignments affect the federal tax situation of all prize winners, then such assignments are prohibited.

The fiscal impact to state revenue is indeterminate but is anticipated to be insignificant.

The bill will take effect on July 1, 1999.

## II. SUBSTANTIVE ANALYSIS:

### A. PRESENT SITUATION:

Section 24.115, Florida Statutes, provides that a person's right to a prize is not assignable. It may, however, be paid to the estate of a deceased prize winner or to a person designated by a court order. When Chapter 24, implementing the state lottery, was first enacted, it allowed a winner to assign up to 50% of the winner's prize to a bank. This provision was amended in 1988 to prohibit assignments altogether following an Internal Revenue Service ruling which held that the right of assignment in the statute would cause all lottery winners to be in "constructive receipt" of 50% of the present value of their deferred lottery winnings.

#### Doctrine of Constructive Receipt

Taxation of the value of an annuitized lottery prize in the year the prize is won requires application of one of three tax doctrines: constructive receipt, economic benefit, or cash equivalence. Although there are distinct criteria for application of each of these doctrines, they are often referred to collectively as *constructive receipt*.

Lottery winners are generally classified as "cash basis" taxpayers for federal income tax purposes. Section 1.446-1 of the Internal Revenue Code provides all items which constitute gross income, whether in the form of cash, property, or services, are to be included for the taxable year in which actually or constructively received.

Section 1.451-2(a) of the Internal Revenue Code provides:

"Income although not actually reduced to a taxpayer's possession is constructively received by him in the taxable year during which *it is credited to his account, set apart for him, or otherwise made available so that he may draw upon it at any time, or so that he could have drawn upon it during the taxable year if notice of intention to withdraw had been given. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.*" [Emphasis supplied.]

The doctrine of "economic benefit" is established in case law and requires a determination that the actual receipt of property or the right to receive property in the future confers a current economic benefit on the recipient. [*Sproull v. Commissioner*, 16 T. C. 244 (1951), *aff'd per curiam*, 195 F. 2d 541 (6th Cir. 1952); Rev. Rul. 60-31, 1960-1 C.B. 174 (Situation 4)] Lotteries that purchase annuity contracts, invest in Treasury securities or strips of Treasury securities to fund prize payments, avoid application of the economic benefit doctrine by naming the lottery rather than the winner as the owner and beneficiary of the annuity or securities. The lotteries then use the payments received under the annuity contracts or proceeds of maturing securities to fund payments to the lottery winners.

The doctrine of "cash equivalency" is not defined in the IRS Code. Under the cash equivalency doctrine a taxpayer is treated as having income when the taxpayer receives property that is the equivalent of cash. The Internal Revenue Service reports that decisions concerning this doctrine are based on a case-by-case basis based upon the individual circumstances.

#### Assignment of Lottery Winnings in Other States

Fourteen other states [Arizona, California, Colorado, Connecticut, New York, Iowa, Maine, Michigan, Montana, New Hampshire, Oregon, Pennsylvania, Vermont and Washington] and the District of Columbia allow the assignment of lottery prize winnings.

Two of those states, Colorado and Washington, requested and received private letter rulings from the Internal Revenue Service in 1996. According to industry representatives, the remaining states did not request private letter rulings prior to the enactment of legislation which allows voluntary assignments of lottery prize winnings. The private letter rulings received by these two states determined that the state could allow the voluntary assignment of a lottery winner's future payments without adversely impacting the tax status of other lottery winners who prefer to receive annual installments.

Section 6110(j)(3) of the Internal Revenue Code prohibits the use of individual private letter rulings to be used or cited as precedent. Therefore, the experience of these two states should not be relied upon as indicative of the response which might be received by the State of Florida upon request for a private letter ruling.

**B. EFFECT OF PROPOSED CHANGES:**

The bill creates s. 24.1153, Florida Statutes, and will allow a lottery prize winner to voluntarily assign all or part of that person's prize award. Such assignment must be made pursuant to a court order, either from the jurisdiction of the person's residence or that of the Lottery Department's headquarters. The court order may be issued if, and only if, the court finds that all of the following conditions have been met:

- (a) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of this state; and
- (b) The purchase price being paid for the payments being assigned represents a present value of the payments being assigned discounted at an annual rate that does not exceed the state's usury limit for loans.
- (c) The assignor provides a sworn affidavit attesting that he or she:
  - Is of sound mind, is in full command of his or her faculties, and is not acting under duress;
  - Has been advised regarding the assignment by his or her own independent legal counsel who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates and has received independent financial or tax advice from a lawyer or other professional who is unrelated to and is not being compensated by the assignee or any of the assignee's affiliates concerning the effects of the assignment;
  - Understands that he or she will not receive all or part of the prize payments pursuant to the assignment agreement;
  - Understands and agrees that, with regard to the assigned payments, the department, and its respective officials and employees, will have no further liability or responsibility to make the assigned payments to him or her;
  - Has been provided with a one-page written disclosure statement setting forth, in bold type of not less than 14-points, the payments being assigned, by amounts and payment dates; the purchase price being paid; the rate of discount to present value, assuming daily compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to him or her; and
  - Was advised, in writing, regarding the right to cancel the contract, without any further obligation, within three business days following the date on which the contract was signed.
- (d) Written notice of the proposed assignment and any court hearing concerning the proposed assignment must be provided to the Lottery's counsel at least 10 days prior to any court hearing. The Lottery shall not be required to appear in or be named as a party to any such action seeking judicial confirmation of an assignment under this section, but may intervene as of right in any such proceeding.

A voluntary assignment may not include or cover payments that are subject to offset on account of a defaulted or delinquent child support obligation or on account of a debt owed to a state agency unless appropriate provisions are made pursuant to the court order to satisfy the obligation giving rise to the offset.

The department, and its respective officials and employees, shall be discharged of all liability upon payment of an assigned prize.

The department is authorized to establish a reasonable fee to defray the costs of administering and processing such assignments.

The bill provides that, if the Internal Revenue Service or the courts ever declare and issue a determination letter, revenue ruling, other public ruling of the Internal Revenue Service, or published decision to any state lottery or prize winner of any state lottery that the voluntary assignment of prizes will affect the federal income tax treatment of prize winners who do not assign their prizes, that the secretary of the department shall immediately file a copy of that letter, ruling, or published decision with the Secretary of State and the Office of the State Courts Administrator. After such filing, no court may authorize a voluntary assignment under this section.

The bill amends s. 24.118, F.S., to provide an exception to the crimes of inducing another person to assign or transfer the "right to claim" a prize and offering for sale a person's "right to claim" a prize. Section 24.118, F.S., does not apply to a person who has already claimed a prize and may wish to assign the benefits and, therefore, does not apply to the situation addressed in this legislation. The bill also amends s. 24.115, F.S., to conform to the provisions of the newly created section.

The act will take effect on July 1, 1999.

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?

The department is authorized to establish reasonable fees to defray the costs of administering and processing such assignments and will, therefore, be required to promulgate rules to address the imposition of those fees.

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

N/A

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

N/A

b. If an agency or program is eliminated or reduced:

This bill does not reduce or eliminate an agency or program.

(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?

This bill allows the Department of Lottery to establish a reasonable fee to defray any administrative expenses associated with assignments.

- c. Does the bill reduce total taxes, both rates and revenues?

No

- 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?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

Yes. They would be charged a reasonable fee to defray the administrative costs associated with assignment of prize payments.

4. Individual Freedom:

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

The bill would allow a lottery prize winner to voluntarily assign all or part of his or her winnings to another person or entity in return for a lump sum payment. Prize winners would then be allowed to invest, or otherwise dispose of, the prize winnings in a manner which the prize winner deems appropriate.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

This bill does not purport to provide services to families or children.

- 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:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 24.1153, F.S., is created and ss. 24.115 and 24.118, F.S., are amended.

E. SECTION-BY-SECTION ANALYSIS:

**Section 1.** Creates s. 24.1153, Florida Statutes, to set forth the authority for a lottery prize winner to voluntarily assign all or a portion of the winner's prize and provides specific conditions and requirements for that assignment.

**Section 2.** Amends s. 24.115, Florida Statutes, to provide that a lottery prize is assignable pursuant to an appropriate court order as set forth in s. 24.1153, Florida Statutes.

**Section 3.** Amends s. 24.118, Florida Statutes, to provide an exception [the right to assign a prize] to the prohibition of inducing another person to assign or transfer the person's "right to claim a prize."

**Section 4.** Provides that the act will take effect July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of the Lottery [DOL] anticipates the need to revise certain internal program operations to accommodate this change. The cost for these revisions is indeterminate.

2. Recurring Effects:

Indeterminate. The department's costs would be dependent upon the number of persons electing to exercise the option to assign prize winnings, however, the department is authorized to charge a reasonable fee to defray administrative expenses.

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

A lottery prize winner who receives annual installments would have the option to assign all or a portion of their winnings to another person or entity and receive a lump sum cash payment. This option is particularly desirable to elderly winners who would often prefer to receive a lump sum payment in lieu of installments over a period of 20 or 30 years. Additionally, many lottery prize winners may prefer to receive a lump sum payment which can be invested, or otherwise used or disposed of, in a manner which the prize winner deems appropriate.

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

The ability of lottery prize winners to assign their lottery winnings may create increased opportunities for lending institutions which, in turn, may have a positive impact on competition, private enterprise and employment markets in the state.

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:

The amendment to s. 24.118, F.S., found in Section 3 of the bill appears to be unnecessary. The amendment provides an exception to the crimes of inducing another person to assign or transfer the "right to claim" a prize and offering for sale a person's "right to claim" a prize. Section 24.118, F.S., does not apply to a person who has already claimed a prize and may wish to assign the benefits and, therefore, does not apply to the situation addressed in the bill.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

Prepared by:

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