

STORAGE NAME: h1549s1.rs

DATE: March 30, 1999

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

BILL #: CS/HB 1549

RELATING TO: The State Lotteries

SPONSOR(S): Committee on Regulated Services, Representatives Bense and Others

COMPANION BILL(S): SB 1816 by Senator Thomas

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

- (1) REGULATED SERVICES YEAS 7 NAYS 0
 - (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 requires the Department of the Lottery to request a private letter ruling from the Internal Revenue Service concerning the tax treatment of other prize winners. If the IRS determines that such assignments will affect the federal tax situation of other prize winners, then assignments will be prohibited.

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

The bill contains a contingent effective date, and provides that the act will take effect upon becoming law, except that the right to assign a prize will take effect September 1, 1999 or upon receipt of a favorable private letter ruling, whichever occurs earlier. If, however, an unfavorable private letter ruling is received prior to September 1, 1999, the department is required to file a copy of the ruling with the Secretary of State and the State Courts Administrator and the courts would be prohibited from issuing an order authorizing a voluntary assignment after that date. Similarly, if the act takes effect September 1, 1999 and an unfavorable private letter ruling is received after that date, the bill requires the same procedure to take place.

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. The 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 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.

The bill requires a certified copy of the court order to be provided to the department no later than 14 days in advance of the date on which the payment is to be made. The bill requires the court order to provide that any delinquent child-support obligation or debt to the state, as of the date of the court order, be offset by the department first against remaining payments due to the prize winner and then against payments due the assignee. 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. Additionally, 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. Further, the bill requires the department to seek a private letter ruling from the Internal Revenue Service declaring that the assignment option provided in CS/HB 1549 will not affect the federal income tax status of other prize winners who receive annual installments.

The bill also amends s. 24.115, F.S., to conform to the provisions of the newly created section.

The bill contains a contingent effective date, and provides that the act will take effect upon becoming law, except that the right to assign a prize will take effect September 1, 1999 or upon receipt of a favorable private letter ruling, whichever occurs earlier. If, however, an unfavorable private letter ruling is received prior to September 1, 1999, the department is required to file a copy of the ruling with the Secretary of State and the State Courts Administrator and the courts would be prohibited from issuing an order authorizing a voluntary assignment after that date. Similarly, if the act takes effect September 1, 1999 and an unfavorable private letter ruling is received after that date, the bill requires the same procedure to take place.

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 s. 24.115, F.S., is 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. Requires the department to seek a determination letter or revenue ruling declaring that the voluntary assignment of prizes as provided in this bill will not affect the federal income tax treatment of other prize winners who do not assign their prizes.

Section 4. Provides a contingent effective date.

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:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Regulated Services considered this legislation on March 29, 1999 and the bill passed the committee unanimously as a committee substitute.

Major Differences between HB 1549 and the CS/HB 1549:

- 1) The committee substitute requires a certified copy of a court order approving a voluntary assignment to be provided to the department no later than 14 days before the date on which the payment is to be made.
- 2) The committee substitute requires the court order to provide that any delinquent child-support obligation or debt to the state, as of the date of the court order, be offset by the DOL first against remaining payments due to the prize winner and then against payments due the assignee.
- 3) The committee substitute creates a new Section 3. to require the DOL to seek a private letter ruling from the IRS declaring that the assignment option provided in HB 1549 will not affect the federal income tax status of other prize winners who receive annual installments.
- 4) The committee substitute creates a contingent effective date, and provides that the act will take effect upon becoming law, except that the right to assign a prize will take effect September 1, 1999 or upon receipt of a favorable private letter ruling, whichever occurs earlier. If, however, an unfavorable private letter ruling is received prior to September 1, 1999, the department is required to file a copy of the ruling with the Secretary of State and the State Courts Administrator and the courts would be prohibited from issuing an order authorizing a voluntary assignment after that date. Similarly, if the act takes effect September 1, 1999 and an unfavorable private letter ruling is received after that date, the bill requires the same procedure to take place.

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VII. SIGNATURES:

COMMITTEE ON REGULATED SERVICES:

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