

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 888

SPONSOR: Commerce and Economic Opportunities Committee, Fiscal Resource Committee and Senator Horne

SUBJECT: Tax Administration

DATE: March 5, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable/CS</u>
2.	<u>Olafson</u>	<u>Maclure</u>	<u>CM</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill amends provisions relating to tax administration. Specifically, the bill repeals provisions requiring small estates to file a report when no estate tax is due. Grants credits against the intangibles tax and against the documentary stamp tax for an identical tax paid in another state. Amends the definition of “retail sales” with respect to materials that are incorporated into repaired motor vehicles, airplanes, or boats. Adds language revising the statute governing sales tax on motor vehicles sold to a resident of another state, increasing the number of days a non-resident has to license in his or her home state a vehicle bought in Florida and providing construction regarding removal of such vehicle from Florida. Increases the criminal penalties for willful violations of certain tax provisions. Clarifies the exemption for electricity and steam used for manufacturing. Authorizes the Department of Revenue (DOR) to enter into contracts with private vendors to develop an automated case-tracking system. Authorizes the DOR to reduce the amount of an administrative garnishment which is subject to a freeze. Authorizes the DOR to accept electronic or telephonic corporate income tax returns in lieu of written paper returns. Provides detailed procedures for purchasers seeking a refund or credit of public service taxes paid in error.

The bill substantially amends the following sections of the Florida Statutes: 198.13, 198.23, 198.26, 198.32, 198.33, 198.39, 199.106, 212.02, 212.04, 212.08, 212.11, 212.12, 213.27, 213.67, 220.151, 220.21, 220.221, and 220.222. The bill creates ss. 166.235, 201.165, and 213.757, F.S., and it repeals s. 198.12, F.S.

II. Present Situation:

Estate Tax

Chapter 198, F.S., imposes an estate tax on the estate for the privilege of transferring property at death. It is limited to the amount allowable as a credit against federal estate tax for state death

taxes paid, and does not increase the total amount of tax paid by the estate. Small estates must send the Department of Revenue (DOR) "Preliminary Notice of Reports" telling the DOR "no tax is due" on the estate. DOR then issues to the estate a "non-taxable certificate" confirming that no tax is due. The estate then records that document with the clerk of the court stating that "no tax is due." Such filing of the "non-taxable certificate" with the clerk is unnecessary and adds no value.

Like Tax Credit

Section 199.032, F.S., imposes tax on all intangible personal property that has taxable situs in Florida. Section 199.175, F.S., attributes situs to intangible personal property that is owned, managed, or controlled by a person domiciled in Florida, or a person transacting business in Florida, resulting in the possibility of tax being due in Florida and in another state. Section 199.106, F.S., provides a limited credit for a "like tax" paid to another state. The credit, however, does not apply to natural persons.

Chapter 201, F.S., imposes a documentary stamp tax on written obligations to pay money that are made, executed, delivered, sold, transferred, or assigned in this state, and for each renewal of the same. It also imposes tax on mortgages and on documents that convey any interest in real property. It is possible that a document can be subject to tax in Florida and in another state.

Definition of "Retail Sales"

Section 212.02(14)(c), F.S., states that the terms "retail sales," "sale at retail," "use," "storage," and "consumption," do not include the sale, use, storage, or consumption of materials for use in repairing a motor vehicle, airplane, or boat, when such materials are incorporated into the repaired vehicle. The law does not require that such materials be sold to a registered repair dealer in order to qualify for the exemption, nor does the law state that the materials must be incorporated and sold as part of the repaired vehicle.

Criminal Penalties

The penalty for filing a false or fraudulent return, failure to maintain records, or failure to file returns is a misdemeanor conviction which generally is a lesser offense than theft of tax funds. This provides tax cheats with an incentive to destroy records which generally results in misdemeanor probation which provides little, if any, deterrent effect on potentially large tax fraud cases. Except in the case of corporate income tax, there presently exists no enhanced penalties for theft or "failure to pay over" funds committed by a third-party agent. This results in no protection for the taxpayer or the state when records and payments are delivered to a third-party agent and the payments are not properly remitted to the state.

Sales Tax Exemption for Electricity and Steam Used for Manufacturing

Section 212.08(7)(ii), F.S., was enacted in 1996 to provide an exemption for electricity for certain manufacturing businesses. As originally enacted, the exemption was limited to 50 percent of the electricity used unless separately metered. In 1998, the statute was amended to eliminate the metering requirement. The intent was to provide a 100 percent exemption for plants that use at least 75 percent of the total plant usage for qualifying machinery and equipment. Plants with

qualified usage of at least 50 percent but less than 75 percent of total usage were to receive a 50 percent exemption for all charges for the plant. Plants with less than 50 percent would no longer receive any exemption. The revised statute does not clearly state that taxpayers with 75 percent or more exempt usage gets a 100 percent exemption. Also in 1998, charges for steam were added to the exemption, but the statute does not apply the percentage thresholds to steam.

Partial Sales Tax Exemption for Motor Vehicles Sold to a Resident of Another State

Section 212.08(10), F.S., provides that the tax collected on the sale of a new or used motor vehicle in this state to a resident of another state shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state of which the purchaser is a resident, except that such tax shall not exceed the tax that would be imposed in Florida. At the time of the sale, the purchaser is required to execute a notarized statement of his or her intent to license the vehicle in the state of which the purchaser is a resident within 10 days of the sale and of the fact of the payment to the State of Florida of a sales tax in an amount equivalent to the sales tax of his or her state of residence. At present, dealers have been experiencing difficulty processing the licensing paperwork within the 10-day period because of delays by out-of-state filing agencies. In addition, non-residents who buy vehicles in Florida and license the vehicles in their home states have experienced problems with Florida Department of Revenue employees who have interpreted s. 212.08(10), F.S., as requiring the removal of such vehicles from Florida within 10 days of the purchase. Problems have generally arisen when a non-resident purchases a recreational vehicles (RV) in Florida and intends to remain in Florida for a period of months following his or her purchase.

Automated Case Tracking System

In order to maintain a high level of voluntary compliance and a level playing field for businesses, the Department of Revenue maintains an ongoing audit and enforcement program. The current case selection system and methods for identifying potential issues and areas of non-compliance are antiquated and inefficient, relying on aging technology and static data. The Department of Revenue does not have the resources or funding necessary to design and develop an automated case tracking system.

Administrative Garnishment

For administrative garnishments, current law provides that all credits or personal property, exclusive of wages, of the taxpayer, held by the custodian, or debts owed by the custodian to the taxpayer are subject to a Notice of Freeze, even if the value of such property is in excess of the amount of the delinquency.

Reinsurance Policies/Apportionment Method

In s. 220.151, F.S., insurers are given two apportionment methods to determine the amount of corporate income tax due the State of Florida with respect to reinsurance policies. The first method conceptually follows that used by other businesses in Florida, while the second method is virtually impossible to calculate, determine, audit, or administrate as it relies upon an apportion

factor from an unrelated party to be used as the basis for the apportionment of the insurer's Florida income tax.

Telephonic and Electronic Returns

Although the current technology and accepted filing standards now make electronic and telephonic filing practical and cost effective, corporate income tax statutory filing requirements specify that taxpayers must file written declarations and requests.

Public Service Tax Refund Procedures

Section 166.231, F.S., authorizes municipalities to levy a public service tax. Subsection (1) of s. 166.231, F.S., specifically authorizes municipalities to levy a tax on the purchase of electricity, metered or bottled gas, and water service within the municipality not to exceed 10 percent of the payment amount received for the service.

Section 166.231(9), F.S., authorizes a public services tax on telecommunications services as defined in s. 203.012, F.S. The municipality is required to elect one of two alternative methods of levying the telecommunications tax and to provide a telecommunications provider with an alphabetical listing of street names and numbers within the municipality for use in administering the tax. In instances where the location cannot be determined, the source of the tax may be ascribed to the municipality on the basis of the telephone number, billing address, or service address which is used by the seller. The municipality is authorized to audit the records of any taxable telecommunications service provider; however, the information received is exempt from the public records requirements in s. 119.07(1), F.S.

The Florida Supreme Court has determined that charter counties have the right to levy any tax that municipalities may levy, including the public service tax. Charter counties, however, may only levy the tax in unincorporated areas of the county.

For taxing purposes, a municipality must compile a list containing each street name, known street name aliases, street address number ranges, applicable directionals, all post office box number ranges where applicable, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. The lists may be printed or available in another medium. The lists must be updated as changes occur and must specify the effective date, which must be the next ensuing quarterly effective date -- i.e., January 1, April 1, July 1, or October 1. The sellers are responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality.

Due to the complexity of the assignment of purchasers to the correct municipality or charter county for the purposes of payment of the public service tax authorized in s. 166.231, F.S., errors in such assignments have been made by both municipalities and sellers of taxable services. Current statutes do not provide purchasers with a clear procedure to follow when seeking a refund or credit for public service taxes paid in error.

III. Effect of Proposed Changes:

Estate Tax (Sections 1, 2, 3, 4, 5, 6, and 7)

Effective January 1, 2000, the bill repeals s. 198.12, F.S., and amends ss. 198.13, 198.23, 198.26, 198.32, 198.33, and 198.39, F.S., repealing provisions requiring small estates to file a report and pay a \$5.00 fee when no tax is due, allowing recording of an affidavit stating no tax is due, and providing that the department charge \$5.00 when issuing a certificate indicating no tax is due.

The amendments to ch. 198, F.S., apply to taxes with respect to estates of decedents who have passed away after December 31, 1999, and the law in effect before January 1, 2000, shall apply to estates of decedents who have passed away before such date.

Like Tax Credit (Sections 8 and 9)

The bill amends s. 199.106, F.S., deleting the words “other than a natural person,” eliminating the possibility of multiple taxation of the intangible personal property tax.

The bill creates s. 201.165, F.S., providing a documentary stamp tax credit for like tax paid to another state, eliminating the possibility of multiple taxation.

Definition of “Retail Sales” (Section 10)

The bill amends s. 212.02(14)(c), F.S., clarifying that the sale of materials to a registered repair facility is not subject to sales and use tax when the materials become a component of a motor vehicle, airplane, or boat being repaired. Such a sale is to be considered a sale for resale by the repair facility.

Criminal Penalties (Sections 11, 13, 14, and 17)

Effective January 1, 2000, the bill amends ss. 212.04 and 212.12, F.S., increasing the criminal penalties for certain tax crimes, upon conviction for willful violation, from misdemeanors to felonies. The bill also creates s. 213.757, F.S., providing that the willful failure to pay over funds due to the Department of Revenue or the destruction of records by any person acting as a taxpayer’s agent is a felony in the third degree. The bill amends s. 212.11, F.S., conforming a cross reference regarding criminal tax penalties.

Sales Tax Exemption for Electricity and Steam Used for Manufacturing and Partial Sales Tax Exemption for Motor Vehicles Sold to a Resident of Another State (Section 12)

The bill amends s. 212.08(7)(ii), F.S., rewording the statute to clearly set forth the intent of the 1998 legislation, as to how the exemption applies to those manufacturers using 75 percent or more electricity or steam, those using 50 percent but less than 75 percent electricity or steam, and those using less than 50 percent electricity or steam.

The bill amends s. 212.08(10), F.S., allowing a non-resident 45 days (rather than 10) to actually license the vehicle in the purchaser’s state of residence. The bill also clarifies that a non-resident

who buys a vehicle in Florida and, at the time of purchase, files a notarized statement indicating payment of taxes and intent to license the vehicle in his or her home state, is not required to remove the vehicle from Florida, provided that the vehicle becomes licensed in the purchaser's home state within 45 days of the sale.

Automated Case Tracking System (Section 15)

The bill amends s. 213.27, F.S., adding subsection (8), allowing the Department of Revenue to enter into a benefits-funded contract with a private vendor to replace the current case selection system.

Administrative Garnishment (Section 16)

The bill amends s. 213.67(1), F.S., authorizing the Department of Revenue to reduce the garnishment freeze to an amount equal to the delinquency stipulated in the Notice of Freeze when the taxpayer does not have a prior history of delinquencies.

Reinsurance Policies/Appportionment Method (Section 18)

The bill amends s. 220.151, F.S., repealing the second apportionment method for insurance companies with respect to reinsurance policies.

Telephonic and Electronic Returns (Sections 19, 20, and 21)

The bill amends ss. 220.21, 220.221(3), and 220.222(2), F.S., allowing the Department of Revenue to accept electronic or telephonic corporate income tax returns in lieu of a "written" paper return, provided that national standards for taxpayer authentication are used. The bill removes the requirement that a taxpayer's request for an extension of time within which to file a tax return be in writing, thus allowing for the employment of electronic or telephonic means.

Public Service Tax Refund Procedures (sections 22 and 23)

The bill creates s. 166.235, F.S., to provide purchasers with a structured procedure in which to follow when seeking a refund or credit for public service taxes that they believe were erroneously charged to them. The purchaser must make a written request to the service provider or seller. This request must include the purchaser's name, address, account number, and amount of tax paid, along with the reason the purchaser believes the public service tax was applied in error.

Upon receipt of the claim, the seller has 30 days to examine the request and determine whether the information provided by lists available pursuant to s. 166.233(3), F.S., support the purchaser's claim. Taxes collected solely as a result of the seller's error must be refunded or credited to the purchaser within 45 days following a self determination of the seller's error. Within 30 days of receipt, all claims which the seller determines are not its fault must be forwarded to the appropriate municipality.

Each municipality has 30 days upon receipt in which to provide written notification to the seller indicating whether it approves all or a portion of the claim. Upon receipt of the municipality's

consent to issue a refund or credit, the seller has 45 days in which to provide such refund or credit to the purchaser. The seller must give a written accounting indicating the portion of the purchaser's claim that is being refunded or credited and the portion of the claim denied. The seller must also inform the purchaser of the reason or reasons any portion of the purchaser's request was denied. Reasons for denial include untimely submission, a finding that the seller never collected such tax, the absence of a municipal approval to issue a refund or credit, prior refunding of the requested tax to the purchaser, and failure to provide information required to properly examine the request. The seller must also send the purchaser a copy of the municipality's response to the purchaser's request for refund or credit. With respect to any portion of the request which is granted, the response must be issued at the time of refund or credit to purchaser's account. With respect to any portion of the request which is denied, the response shall be issued within 90 days of receipt.

Section 166.235, F.S., provides a judicial remedy for noncompliance with the act and also prescribes various defenses for sellers and municipalities. Prior refund of the tax is a defense available to the seller and the municipality, and reliance upon information from the municipality is a defense available to the seller. Relief for the purchaser is limited to the refund or credit of public service taxes collected but not due. The act provides that s. 166.235, F.S., is remedial in nature and applies to all claims asserted by purchasers prior to the effective date, including pending litigation, but excluding claims that have been finally resolved by judgment, settlement, or the issuance of refunds or credits prior to the effective date of the act.

Effective Date (Section 24)

Except as otherwise expressly provided in the bill, the act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

The provisions of CS/CS/SB 888 do not directly affect revenue collections.

B. Private Sector Impact:

The tax administration changes proposed by the Department of Revenue should ease taxpayer burden. The language creating s. 166.235, F.S. may provide guidance for persons desiring a refund or credit for public service taxes paid in error.

C. Government Sector Impact:

The Department of Revenue should be able to administrate Florida's tax laws more efficiently and effectively as a result of this legislation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.