

# 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/SB 888

SPONSOR: Fiscal Resource Committee and Senator Horne

SUBJECT: Tax Administration

DATE: February 18, 1999 REVISED: \_\_\_\_\_

|    | ANALYST        | STAFF DIRECTOR | REFERENCE | ACTION              |
|----|----------------|----------------|-----------|---------------------|
| 1. | <u>Keating</u> | <u>Wood</u>    | <u>FR</u> | <u>Favorable/CS</u> |
| 2. | _____          | _____          | <u>CM</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. 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.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 198.12, 198.13, 198.23, 198.26, 198.32, 198.33, 198.39, 199.106, 201.165, 212.02, 212.04, 212.12, 212.13, 213.757, 212.08, 213.27, 213.67, 220.151, 220.21, 220.221, and 220.222.

## II. Present Situation:

### Estate Tax

Chapter 198 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, Florida Statutes, 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”, “sales 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% 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% exemption for plants that use at least 75% of the total plant usage for qualifying machinery and equipment. Plants with qualified usage of at least 50% but less than 75% of total usage were to receive a 50% exemption for all charges for the plant. Plants with less than 50% would no longer receive any exemption. The revised statute does not clearly state that taxpayers with 75% or more exempt usage gets a 100% exemption. Also in 1998, charges for steam were added to the exemption, but the statute does not apply the percentage thresholds to steam.

### 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/Appportionment 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.

## **III. Effect of Proposed Changes:**

### Estate Tax

Effective January 1, 2000, the bill amends ss. 198.12, 198.13, 198.23, 198.26, 198.32, 198.33, and 198.39, F.S., repealing provisions requiring small estates to file a report when no tax is due along with a \$5.00 fee and allows recording of an affidavit stating 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

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”

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

The bill amends ss. 212.04, 212.12, and 212.13, 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 for criminal penalties for the willful failure to pay over funds due to the Department of Revenue or for the destruction of records by any person acting as a taxpayer’s agent. Such person commits a felony of the third degree.

### Sales Tax Exemption for Electricity and Steam Used for Manufacturing

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% or more electricity or steam, those using 50% but less than 75% electricity or steam, and those using less than 50% electricity or steam.

### Automated Case Tracking System

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

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

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

The bill amends ss. 220.21, 220.221(1), 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.

Except as otherwise expressly provided in the bill, the bill 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/SB 888 do not directly effect revenue collections. The repeal of the \$5 “non-taxable certificate” fee should result in an insignificant revenue loss.

##### B. Private Sector Impact:

The tax administration changes proposed by the Department of Revenue should ease taxpayer burden.

##### 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.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---