

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 1070

SPONSOR: Fiscal Resource Committee and Senator Horne

SUBJECT: Tax Administration

DATE: March 8, 2000 REVISED: _____

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

I. Summary:

This bill makes the following changes to the administration of revenue laws:

- amends the statute of limitations for audit so that the effective July 1, 2002 the limitations period is three years for all open periods;
- transfers the responsibility for the collection of civil penalties assessed by the Elections Commission from the Department of Revenue to the Elections Commission;
- deletes a duplicate filing requirement for certain insurance companies;
- provides for the sharing of specified information by the Department of Revenue with the Department of Management Services and the Department of Highway Safety and Motor Vehicles;
- provides optional filing periods for certain entities required to pay gross receipts tax;
- allows the Department to suspend reporting requirements for terminal operators and bulk carriers when identical data becomes available to the Department from the Internal Revenue Service;
- clarifies the exemption from the indexed tax of 20 percent of the manufactured asphalt used for any government public works project;
- clarifies the manner in which interest is applied to tax deficiencies; and
- provides authority to the Department of Revenue to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration.

In addition, the bill does the following:

- adds to the sales tax exemption on equipment or machinery for pollution control, specialty chemical or bioaugmentation products.
- for the purpose of the sales tax exemption for machinery & equipment used in the production of electrical or steam energy, provides an exemption if 15% or less of all electrical or steam energy generated was produced by burning nonresidual fuel.

- adds SIC code 35 to the exemption for repair and labor charges. SIC code 35 was inadvertently left out of the bill last year. The Department of Revenue has implemented the law as if SIC code 35 were included.
- adds savings association holding companies to the list of entities exempt from the intangibles tax.
- provides a retroactive exemption for renewals of promissory notes for revolving obligations, if the renewal extends the existing agreement for certain term obligations.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 95.091; 106.265; 175.111; 185.09; 212.051; 212.08; 213.015; 213.21; 213.053; 203.01; 206.09; 206.095; 212.06; 213.015; 213.21; 213.235; 213.27; and 220.62.

II. Present Situation:

See Effects of Proposed Changes.

III. Effect of Proposed Changes:

The substantive analysis is broken down by topic with a present situation and effect of proposed changes for each topic.

STATUTE OF LIMITATIONS

(Section 1)

PRESENT SITUATION:

Since the passage of the sales tax on services and a tax amnesty program in 1987 the statute of limitations for tax assessments has been five years from the date the tax is due. Chapter 99- 239 L.O.F. changed the statute of limitations on taxes, tax penalties or interest collected by the Department of Revenue and the Department of Business and Professional Regulation (tobacco and alcohol taxes) by reducing the time period from five years to three years for taxes due on or after July 1, 1999. The five-year statute of limitations continues to apply to taxes due before July 1, 1999.

EFFECT OF PROPOSED CHANGES:

The bill amends paragraph (a) of subsection (3) of section 95.091, F.S., changing the statute of limitations to three years for audits conducted after July 1, 2002, to eliminate confusion.

COLLECTION OF FLORIDA ELECTIONS COMMISSIONS FINES

(Section 2)

PRESENT SITUATION:

Prior to January 1, 1998, the Florida Elections Commission had authority to bring a civil action to collect civil penalties assessed by the Elections Commission. Chapter 97-13, L.O.F., provided that effective January 1, 1998, the State Comptrollers Office was given the responsibility for

collecting civil penalties assessed by the Elections Commission. Chapter 98-129, L.O.F., provided that effective July 1, 1998, the responsibility for collection the civil penalties assessed by the Elections Commission was transferred to the Department of Revenue. The legislative history is silent as to why these transfers of authorities were made.

The Department of Revenue lacks the necessary personnel and expertise to efficiently prosecute these cases and to collect the fines. The Department has received 20 case files with fines ranging from \$25 to \$466,000. The Florida Elections Commission has indicated to the Department that it has the resources and expertise to effectively handle the collection of the civil penalties that it assesses.

EFFECT OF PROPOSED CHANGES:

Section 106.265(2), F.S., is amended to transfer the responsibility for the collection of civil penalties assessed by the Elections Commission from the Department of Revenue to the Elections Commission.

INFORMATION SHARING WITH THE DEPARTMENT OF MANAGEMENT
SERVICES AND THE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES

(Sections 3, 4, and 5)

PRESENT SITUATION:

Chapter 95-250, L.O.F. , provided that effective July 1, 1995, the administration of insurance premium taxes collected for the purposes of the Municipal Firefighters' Pension Trust Funds and the Municipal Police Officers' Pension Trust Funds was transferred from the Department of Insurance to the Division of Retirement in the Department of Management Services. The Department of Insurance has authority for information sharing with the Department of Revenue. The Department of Management Services does not have the authority for information sharing with the Department of Revenue.

Insurance companies writing property or casualty insurance for any property located in a municipality who imposes an insurance premium tax for the Municipal Firefighters' Pension Trust Funds and the Municipal Police Officers' Pension Trust Funds must file a duplicate annual report with the Department of Management Services and the Department of Revenue.

The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for collecting fuel tax under the International Fuel Tax Agreement. DHSMV also administers the motor vehicle registration licensing program. Under present law, the Department of Revenue has no authority to share information with DHSMV. DHSMV and the Department of Revenue believe, DHSMV could improve the efficiency of its collection activities under the International Fuel Tax Agreement and improve its administration of the motor vehicle dealer licensure program if it could receive federal employer identification numbers and other similar information from the Department of Revenue.

EFFECT OF PROPOSED CHANGES:

Sections 175.111 and 185.09, F.S., are amended to delete the filing of an annual report by an insurance company to the Department of Management Services Division of Retirement. The reporting requirement to the Department of Revenue is retained.

Section 213.053, F.S., is amended to allow the Department of Revenue to share the following:

(1) Information relative to the returns required by sections 175.111 (Municipal Firefighters' Pension Trust Funds) and 185.09 (Municipal Police Officers' Pension Trust Funds) to the Department of Management Services in the conduct of its official duties. and

(2) Names, addresses, and federal employer identification numbers, or similar identifiers, to the DHSMV for use in the conduct of its official duties.

Section 213.053, F.S., is also amended to allow the Department of Management Services to share information to a government agency as necessary in the administration of the Municipal Firefighters' Pension Trust Funds and the Municipal Police Officers Pension Trust Funds.

OPTIONAL FILING PERIODS FOR GROSS RECEIPTS TAX

(Section 6)

PRESENT SITUATION:

Florida imposes a gross receipts tax at the rate of 2.5% on the gross receipts of sellers of electricity, natural or manufactured gas, and telecommunications services. Businesses subject to the gross receipts tax must file a monthly return. The Department of Revenue states that approximately 3,500 taxpayers must pay the gross receipts tax each month. Of these taxpayers, about 2,000 remit less than \$1,000 per year. Filing monthly returns for these taxpayers can be an unnecessary administrative burden.

EFFECT OF PROPOSED CHANGES:

Paragraph (g) is added to subsection (1) of section 203.01, F.S., which allows the Department of Revenue to require:

(1) a quarterly return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$1,000;

(2) a semiannual return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$500; or

(3) an annual return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$100.

This section will take effect January 1, 2001.

REPORTING MOTOR FUEL DATA THROUGH THE "Ex-STARS" SYSTEM
(Section 7 and 8)

PRESENT SITUATION:

The Internal Revenue Service (IRS) is developing a national fuel tracking system in which terminal operators and bulk carriers will be required to file essentially the same data currently filed with the Department of Revenue. The system, known as the Excise Summary Terminal Activity Reporting System or "Ex-STARS", will be made available to the Department in an electronic form through an information sharing agreement with the IRS under current law. When the Department has access to the Ex-STARS data, terminal operators and bulk carriers will be required to file duplicate reports with the Department and the IRS.

EFFECT OF PROPOSED CHANGES:

Sections 206.09 and 206.095, F.S., are amended to allow the Department to suspend reporting requirements for terminal operators and bulk carriers when the Ex-STARS data becomes available to the Department.

These sections shall take effect July 1, 2000.

SALES TAX EXEMPTION FOR SPECIALTY CHEMICAL
OR BIOAUGMENTATION PRODUCTS
(Section 9)

PRESENT SITUATION:

Section 212.051, F.S., provides for a sales and use tax exemption for any facility, device, fixture, equipment, or machinery used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2000, section 212.051, F.S., is amended to add to the sales tax exemption on equipment or machinery for pollution control, specialty chemical or bioaugmentation products. The bill also provides the following definitions: "specialty chemicals" are those chemicals used to enhance or further treat waste water including, but not limited to, defoamers, nutrients, tertiary and color-polymers; "bioaugmentation products" means the micro-organisms used in waste treatment plants to break down solids and consume organic matter.

ASPHALT USED IN PUBLIC WORKS - SALES TAX EXEMPTION - CLARIFICATION
(Sections 10 & 11)

PRESENT SITUATION:

In 1988, the Legislature passed revisions to section 212.06, F.S., based on recommendations for a uniform, statewide manufacturer's use tax for asphalt. This section levies a 6 percent tax on the cost of materials that become a component part or ingredient of finished asphalt, and upon the cost of transportation of the components or ingredients.

Additionally, an indexed tax, imposed on costs associated with the manufacture of asphalt, was set at \$.38 per ton for the first year. The indexed tax is adjusted on July 1, of each year in conjunction with a formula tied to the Producer Price Index average of the "materials and components for construction" series calculated and published by the U.S. Department of Labor, Bureau of Statistics. Currently the indexed tax rate is \$.48 per ton.

In 1999 the Legislature passed ch. 99-344, L.O.F., which amended s. 212.06, F.S., providing an exemption from the indexed tax of 20 percent of the manufactured asphalt used for any state or local government public works project. Senate Bill 1296 originally exempted all manufactured asphalt used for any state or local government public works project from tax. The bill was amended by the Senate to exempt only 20 percent. When the bill was considered by the House, Representative George Albright, Chair of the House Finance and Taxation Committee, read the following statement into the Journal of the House:

Senate Bill 1296, as it arrived from the Senate, is somewhat ambiguous. The intent of this bill is to exempt 20 percent of the tax on asphalt used in the governmental public works projects. One possible reading of this language is that asphalt would be totally exempt. I want the record to clearly reflect that the bill should be read to exempt 20 percent of the tax. (Journal of the House, page 1740, April 29, 1999)

EFFECT OF PROPOSED CHANGES:

Section 212.06(1)(c), F.S., is amended to remove ambiguity and to clearly reflect the intent of the legislature. The bill states that the indexed tax on manufactured asphalt for use in public works projects is reduced by 20% and that the reduction applies to all public works projects, including federal.

Section 11. of the bill states that: It is the intent of the Legislature that the amendment to s. 212.06(1)(c), Florida Statutes, by this section is remedial in nature and merely clarifies existing law.

SALES TAX EXEMPTION FOR "DE MINIMUS" USE OF BOILER FUELS
AND SIC CODE 35
(Sections 12 & 13)

PRESENT SITUATION:

Paragraph (c) of subsection (5) of section 212.08, F.S., provides a sales and use tax exemption on the purchase of machinery and equipment for use at a fixed location which machinery and equipment are necessary in the production of electrical or steam energy resulting from the burning of boiler fuels other than residual oil.

Chapter 99-364, L.O.F., amended paragraph (eee) of subsection (7) of section 212.08, F.S., providing an exemption from the sales, use and storage tax for labor charges for the repair of, and parts and materials used in the repair of and incorporated into, industrial machinery and equipment which is used for the manufacture, processing, compounding, or production of items of tangible personal property at a fixed location within this state. This exemption applies to the following SIC Major Groups: 10 - Metal Mining; 12 - Coal Mining; 13 - Oil and Gas Extraction; 14 - Nonmetallic Materials, except fuels; 20 - Food and kindred products; 22 - Textile Mill Products; 23 - Apparel and other Textile Products; 24 - Lumber and Wood Products; 25 - Furniture and Fixtures; 26 - Paper and Allied Products; 27 - Printing and Publishing; 28 - Chemicals and Allied Products; 29 - Petroleum and Coal Products; 30 - Rubber and Misc. Plastics Products; 31 - Leather and Leather Products; 32 - Stone, Clay and Glass Products; 33 - Primary Metal Products; 34 - Fabricated Metal Products; 36 - Electronic and Other Electric Equipment; 37 - Transportation Equipment; 38 - Instruments and Related Products; 39 - Miscellaneous Manufacturing Industries; and 212 - Cigars. (See Standard Industrial Classification (SIC) Manual, 1987, published by the Office of Management and Budget, Executive Office of the President.)

SIC code 35, which includes machinery and equipment was inadvertently left out of the bill last year. The Department of Revenue has implemented the law as if SIC code 35 were included.

This tax exemption became effective beginning July 1, 1999, at a rate of 25 percent of such charges for repair parts and labor, and will increase at a rate of 25 percent until reaching 100 percent beginning July 1, 2002.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(c), F.S., provides a sales and use tax exemption if 15% or less of all electrical or steam energy generated was produced by burning nonresidual fuel.

The bill amends s. 212.08(eee), F.S., adding SIC code 35 to the exemption for repair and labor charges. This amendment is remedial in nature and shall have the force and effect as if SIC Code 35 had been included from July 1, 1999.

Section 13 of the bill shall take effect July 1, 2000.

TAXPAYER'S BILL OF RIGHTS; INFORMAL CONFERENCES; COMPROMISES

(Sections 14, 15 & 16)

PRESENT SITUATION:

Chapter 95-272, L.O.F., created s. 213.015, F.S., the Taxpayer's Bill of Rights, which was created to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of Florida.

Section 213.21, F.S., authorizes the executive director of the Department of Revenue or his or her designee to enter into closing agreements with any taxpayer settling or compromising the taxpayer's liability for any tax, interest, or penalty assessment.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2000, the bill amends s. 213.015, F.S., providing that the taxpayer has the right to be treated in a professional manner by Department of Revenue personnel and that the taxpayer has the right to obtain simple, nontechnical statements which explain the reason for audit selection.

Effective July 1, 2000, the bill amends subsections (2) & (3) of section 213.21, F.S., providing circumstances for when doubt as to liability of a taxpayer for tax and interest exists. A taxpayer who establishes reasonable reliance on the written determination issued by the Department of Revenue to the taxpayer will be deemed to have shown reasonable cause for noncompliance. The amendments to s. 213.21(2) and (3), F.S., made by the bill shall apply only to notices of intent to conduct an audit issued on or after October 1, 2000.

INTEREST RATE CLARIFICATION

(Section 17)

PRESENT SITUATION:

Prior to January 1, 2000, the interest applied to most delinquent taxes was 1% a month or 12% a year. In 1999, the legislature passed ch. 99-239, L.O.F., which created s. 213.235, F.S., to lower the interest rate for tax deficiencies. The new interest is a floating rate based on the adjusted prime rate charged by banks.

Sections 213.235(1)-(5), F.S., set out in detail how the interest rate shall be applied to deficiencies. Section 213.235(6), F.S., is redundant and has the potential to confuse taxpayers on how the floating rate of interest will be administrated.

EFFECT OF PROPOSED CHANGES:

Section 213.235(6) is repealed.

PRIVATE VENDORS - THIRD-PARTY SALES TAX COLLECTION
(Section 18)

PRESENT SITUATION:

The Department of Revenue reports that as part of a nationwide effort to resolve issues concerning sales and use tax obligations of remote (out-of-state) sellers, various concepts have been raised. The Department hopes to modernize and simplify existing sales and use tax systems in a manner that would reduce the burden for both remote and in-state sellers. The Department believes that in the near future private vendors will develop automated systems that have the potential to significantly reduce the burdens on both in-state and remote sellers in calculating and remitting sales tax. Such a system would allow a seller to contract with a third-party to collect sales tax on behalf of the seller and remit it to the State. Under this system, the seller would not be subject to audit or liable for miscalculated sales tax unless the seller committed fraud. The Department presently has no authority to enter into contracts for the use of such systems.

EFFECT OF PROPOSED CHANGES:

Section 213.27(9), F.S., is created to give the Department authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration. The amount of compensation paid to vendors shall be established by the executive director and shall be based upon a percentage of the sales and use tax collections made through the system or on a per transaction basis. The system shall have the capability to determine the taxability of a transaction, the appropriate tax rate to be applied to a taxable transaction, and the total tax due on a transaction, and shall provide a method for remitting the tax to the Department. The Department shall be responsible for testing and certifying the accuracy of the system.

A seller who utilizes the system for computation and remittance of sales and use tax shall not be responsible for the reporting or remittance of tax for those transactions handled through the system. A seller who utilizes this system shall not be subject to audit for those transactions handled through the system, unless there are indicia that fraud has been committed by the seller.

The Department shall provide quarterly reports to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate on the amount of compensation paid pursuant to these contracts.

On or before January 1 annually, the Department shall provide recommendations to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate for provisions to be adopted for inclusion within the system that will make sales and use tax collection and administration simplified and uniform.

INTANGIBLES TAX EXEMPTION
FOR SAVINGS ASSOCIATION HOLDING COMPANIES
(Section 19)

PRESENT SITUATION:

Entities listed in s. 220.62(1) through (4), F.S., are exempt from intangibles tax under s. 199.185(5), F.S. Savings Association holding companies are not included in the list of exempt entities.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 220.62(2), F.S., adding savings association holding companies to the list of entities exempt from the intangibles tax.

RETROACTIVE DOCUMENTARY STAMP TAX EXEMPTION
FOR TERM OBLIGATIONS
(Section 20)

PRESENT SITUATION:

Section 210.09, F.S., was amended by ch. 98-187, L.O.F., to provide that a renewal note evidencing a term obligation which increases the unpaid balance of the original contract and obligation but which otherwise meets the exemption criteria of this section is taxable only on the face amount of the increase. It provided a similar limitation on renewals of revolving obligations. Chapter 98-187, L.O.F., also provided a retroactive application to the renewal of any note evidencing a revolving application but did not provide a retroactive application for term obligations.

EFFECT OF PROPOSED CHANGES:

The bill provides a retroactive documentary stamp tax exemption for renewals of promissory notes for revolving obligations, if the renewal extends the existing agreement certain term obligations.

Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

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 Revenue Estimating Conference estimates that the total fiscal impact of the tax exemptions provided for in this bill is a recurring General Revenue loss of \$0.8 million, with a recurring loss to local governments of \$0.1 million.

Issue/Fund	General Revenue		Trust		Local		Total	
	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$	1st Year \$	Recurring \$
Specialty Chemical & Bioaugmentation Prod.	(0.2)	(0.2)	(*)	(*)	(*)	(*)	(0.2)	(0.2)
Boiler Fuel “de minimus use”	(0.4)	(0.4)	(*)	(*)	(*)	(*)	(0.4)	(0.4)
Intangibles Tax Exemp.	(0.2)	(0.2)	(*)	(*)	(0.1)	(0.1)	(0.3)	(0.3)
Doc. Stamp Tax Exemp	<u>(0.1)</u>	<u>0.0</u>	<u>(*)</u>	<u>0.0</u>	<u>(*)</u>	<u>0.0</u>	<u>(0.1)</u>	<u>0.0</u>
Total	(0.9)	(0.8)	(*)	(*)	(0.1)	(0.1)	(1.0)	(0.9)

* Insignificant
 ** Indeterminate

B. Private Sector Impact:

Entities that pay \$1,000 or less in gross receipts taxes annually will benefit from not having to file a tax return each month.

Entities qualifying for a tax exemption under this bill will save an estimated \$1 million in tax payments.

C. Government Sector Impact:

The changes made by this bill should allow the Department of Revenue to administer the tax laws more fairly and efficiently.

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.
