

By Senator Horne

6-694-00

See HB

1 A bill to be entitled
2 An act relating to tax administration; amending
3 s. 95.091, F.S.; specifying the time period
4 within which the Department of Revenue and
5 Department of Business and Professional
6 Regulation may determine and assess the amount
7 of certain taxes, penalties, or interest due
8 beginning July 1, 2002; conforming a
9 cross-reference; amending s. 106.265, F.S.;
10 providing that the Florida Elections
11 Commission, rather than the Department of
12 Revenue, shall have responsibility for
13 collecting civil penalties for violation of ch.
14 104 or ch. 106, F.S.; amending ss. 175.111,
15 185.09, F.S.; removing a requirement that
16 insurers subject to a premium tax for a
17 municipal or special district firefighter
18 pension plan or a municipal police pension plan
19 file an annual premium receipt report with the
20 Division of Retirement; amending s. 213.053,
21 F.S.; authorizing the Department of Revenue to
22 share information regarding such reports with
23 the Department of Management Services and to
24 share certain identifying information with the
25 Department of Highway Safety and Motor
26 Vehicles; amending s. 203.01, F.S.; authorizing
27 the Department of Revenue to require quarterly,
28 semiannual, or annual returns for the tax on
29 gross receipts for utility services under
30 certain conditions; amending ss. 206.09,
31 206.095, F.S.; authorizing the department to

1 suspend a requirement for certain reports from
2 carriers transporting, or terminal operators
3 handling, motor fuel and similar products,
4 under certain conditions; amending s. 212.06,
5 F.S.; clarifying the exemption from the indexed
6 tax on manufactured asphalt for asphalt used
7 for government public works projects;
8 specifying that the exemption includes federal
9 projects; repealing s. 213.235(6), F.S., which
10 relates to application of the annual rate of
11 interest applicable to tax payment deficiencies
12 as determined under that section; amending s.
13 213.27, F.S.; authorizing the department to
14 contract with public or private vendors to
15 develop and implement a voluntary system for
16 sales and use tax collection and
17 administration; providing for compensation;
18 requiring reports; providing for application of
19 provisions of ch. 212, F.S., to system users;
20 providing for maintenance of confidentiality of
21 certain information; providing a penalty;
22 providing effective dates.

23

24 Be It Enacted by the Legislature of the State of Florida:

25

26 Section 1. Paragraph (a) of subsection (3) of section
27 95.091, Florida Statutes, is amended to read:

28 95.091 Limitation on actions to collect taxes.--

29 (3)(a) With the exception of taxes levied under
30 chapter 198 and tax adjustments made pursuant to s. 220.23,
31 the Department of Revenue may determine and assess the amount

1 of any tax, penalty, or interest due under any tax enumerated
2 in s. 72.011 which it has authority to administer and the
3 Department of Business and Professional Regulation may
4 determine and assess the amount of any tax, penalty, or
5 interest due under any tax enumerated in s. 72.011 which it
6 has authority to administer:

7 1.a. For taxes due before July 1, 1999, within 5 years
8 after the date the tax is due, any return with respect to the
9 tax is due, or such return is filed, whichever occurs later;
10 and for taxes due on or after July 1, 1999, within 3 years
11 after the date the tax is due, any return with respect to the
12 tax is due, or such return is filed, whichever occurs later;

13 b. Effective July 1, 2002, notwithstanding
14 sub-subparagraph a., within 3 years after the date the tax is
15 due, any return with respect to the tax is due, or such return
16 is filed, whichever occurs later;

17 2. For taxes due before July 1, 1999, within 6 years
18 after the date the taxpayer either makes a substantial
19 underpayment of tax, or files a substantially incorrect
20 return;

21 3. At any time while the right to a refund or credit
22 of the tax is available to the taxpayer;

23 4. For taxes due before July 1, 1999, at any time
24 after the taxpayer has filed a grossly false return;

25 5. At any time after the taxpayer has failed to make
26 any required payment of the tax, has failed to file a required
27 return, or has filed a fraudulent return, except that for
28 taxes due on or after July 1, 1999, the limitation prescribed
29 in subparagraph 1.~~sub-subparagraph a.~~ applies if the taxpayer
30 has disclosed in writing the tax liability to the department
31 before the department has contacted the taxpayer; or

1 6. In any case in which there has been a refund of tax
2 erroneously made for any reason:

3 a. For refunds made before July 1, 1999, within 5
4 years after making such refund; and

5 b. For refunds made on or after July 1, 1999, within 3
6 years after making such refund,

7
8 or at any time after making such refund if it appears that any
9 part of the refund was induced by fraud or the
10 misrepresentation of a material fact.

11 Section 2. Subsection (2) of section 106.265, Florida
12 Statutes, is amended to read:

13 106.265 Civil penalties.--

14 (2) If any person, political committee, committee of
15 continuous existence, or political party fails or refuses to
16 pay to the commission any civil penalties assessed pursuant to
17 the provisions of this section, the commission ~~Department of~~
18 ~~Revenue~~ shall be responsible for collecting the civil
19 penalties resulting from such action.

20 Section 3. Section 175.111, Florida Statutes, is
21 amended to read:

22 175.111 Certified copy of ordinance or resolution
23 filed; insurance companies' annual report of premiums;
24 duplicate files; book of accounts.--For any municipality,
25 special fire control district, chapter plan, local law
26 municipality, local law special fire control district, or
27 local law plan under this chapter, whenever any municipality
28 passes an ordinance or whenever any special fire control
29 district passes a resolution establishing a chapter plan or
30 local law plan assessing and imposing the taxes authorized in
31 s. 175.101, a certified copy of such ordinance or resolution

1 shall be deposited with the division. Thereafter every
2 insurance company, association, corporation, or other insurer
3 carrying on the business of property insurance on real or
4 personal property, on or before the succeeding March 1 after
5 date of the passage of the ordinance or resolution, shall
6 report fully in writing and under oath to the division and the
7 Department of Revenue a just and true account of all premiums
8 by such insurer received for property insurance policies
9 covering or insuring any real or personal property located
10 within the corporate limits of each such municipality or
11 special fire control district during the period of time
12 elapsing between the date of the passage of the ordinance or
13 resolution and the end of the calendar year. The report shall
14 include the code designation as prescribed by the division for
15 each piece of insured property, real or personal, located
16 within the corporate limits of each municipality and within
17 the legally defined boundaries of each special fire control
18 district. The aforesaid insurer shall annually thereafter, on
19 March 1, file with ~~the division and~~ the Department of Revenue
20 a similar report covering the preceding year's premium
21 receipts, and every such insurer at the same time of making
22 such reports shall pay to the Department of Revenue the amount
23 of the tax hereinbefore mentioned. Every insurer engaged in
24 carrying on such insurance business in the state shall keep
25 accurate books of accounts of all such business done by it
26 within the corporate limits of each such municipality and
27 within the legally defined boundaries of each such special
28 fire control district, and in such manner as to be able to
29 comply with the provisions of this chapter. Based on the
30 insurers' reports of premium receipts, the division shall
31 prepare a consolidated premium report and shall furnish to any

1 municipality or special fire control district requesting the
2 same a copy of the relevant section of that report.

3 Section 4. Section 185.09, Florida Statutes, is
4 amended to read:

5 185.09 Report of premiums paid; date tax payable.--For
6 any municipality, chapter plan, local law municipality, or
7 local law plan under this chapter, whenever any municipality
8 passes an ordinance establishing a chapter plan or local law
9 plan and assessing and imposing the tax authorized in s.
10 185.08, a certified copy of such ordinance shall be deposited
11 with the division; and thereafter every insurance company,
12 corporation, or other insurer carrying on the business of
13 casualty insuring, on or before the succeeding March 1 after
14 date of the passage of the ordinance, shall report fully in
15 writing to the division and the Department of Revenue a just
16 and true account of all premiums received by such insurer for
17 casualty insurance policies covering or insuring any property
18 located within the corporate limits of such municipality
19 during the period of time elapsing between the date of the
20 passage of the ordinance and the end of the calendar year. The
21 aforesaid insurer shall annually thereafter, on March 1, file
22 with ~~the division and~~ the Department of Revenue a similar
23 report covering the preceding year's premium receipts. Every
24 such insurer shall, at the time of making such report, pay to
25 the Department of Revenue the amount of the tax heretofore
26 mentioned. Every insurer engaged in carrying on a general
27 casualty insurance business in the state shall keep accurate
28 books of account of all such business done by it within the
29 limits of such incorporated municipality in such a manner as
30 to be able to comply with the provisions of this chapter.
31 Based on the insurers' reports of premium receipts, the

1 division shall prepare a consolidated premium report and shall
2 furnish to any municipality requesting the same a copy of the
3 relevant section of that report.

4 Section 5. Paragraphs (r) and (s) are added to
5 subsection (7) of section 213.053, Florida Statutes, to read:

6 213.053 Confidentiality and information sharing.--

7 (7) Notwithstanding any other provision of this
8 section, the department may provide:

9 (r) Information relative to the returns required by
10 ss. 175.111 and 185.09 to the Department of Management
11 Services in the conduct of its official duties.

12 (s) Names, addresses, and federal employer
13 identification numbers, or similar identifiers, to the
14 Department of Highway Safety and Motor Vehicles for use in the
15 conduct of its official duties.

16
17 Disclosure of information under this subsection shall be
18 pursuant to a written agreement between the executive director
19 and the agency. Such agencies, governmental or
20 nongovernmental, shall be bound by the same requirements of
21 confidentiality as the Department of Revenue. Breach of
22 confidentiality is a misdemeanor of the first degree,
23 punishable as provided by s. 775.082 or s. 775.083.

24 Section 6. Effective January 1, 2001, (1) of section
25 203.01, Florida Statutes, is amended to read:

26 203.01 Tax on gross receipts for utility services.--

27 (1)(a) Every person that receives payment for any
28 utility service shall report by the last day of each month to
29 the Department of Revenue, under oath of the secretary or some
30 other officer of such person, the total amount of gross
31 receipts derived from business done within this state, or

1 between points within this state, for the preceding month and,
2 at the same time, shall pay into the State Treasury an amount
3 equal to a percentage of such gross receipts at the rate set
4 forth in paragraph (b). Such collections shall be certified
5 by the Comptroller upon the request of the State Board of
6 Education.

7 (b) Beginning July 1, 1992, and thereafter, the rate
8 shall be 2.5 percent.

9 (c) Any person who purchases, installs, rents, or
10 leases a telephone system or telecommunication system for his
11 or her own use to provide that person with telephone service
12 or telecommunication service which is a substitute for any
13 telephone company switched service or a substitute for any
14 dedicated facility by which a telephone company provides a
15 communication path shall register with the Department of
16 Revenue and pay into the State Treasury a yearly amount equal
17 to a percentage of the actual cost of operating such system at
18 the rate set forth in paragraph (b). "Actual cost" includes,
19 but is not limited to, depreciation, interest, maintenance,
20 repair, and other expenses directly attributable to the
21 operation of such system. For purposes of this paragraph, the
22 depreciation expense to be included in actual cost shall be
23 the depreciation expense claimed for federal income tax
24 purposes. The total amount of any payment required by a lease
25 or rental contract or agreement shall be included within the
26 actual cost. The provisions of this paragraph do not apply to
27 the use by any local telephone company or any
28 telecommunication carrier of its own telephone system or
29 telecommunication system to conduct a telecommunication
30 service for hire or to the use of any radio system operated by
31 any county or municipality or by the state or any political

1 subdivision thereof. If a system described in this paragraph
2 is located in more than one state, the actual cost of such
3 system for purposes of this paragraph shall be the actual cost
4 of the system's equipment located in Florida. The term
5 "telecommunications carrier" specifically includes cellular
6 telephone carriers and other radio common carriers.

7 (d) Electricity produced by cogeneration or by small
8 power producers which is transmitted and distributed by a
9 public utility between two locations of a customer of the
10 utility pursuant to s. 366.051 is subject to the tax imposed
11 by this section. The tax shall be applied to the cost price
12 of such electricity as provided in s. 212.02(4) and shall be
13 paid each month by the producer of such electricity.

14 (e) Electricity produced by cogeneration or by small
15 power producers during the 12-month period ending June 30 of
16 each year which is in excess of nontaxable electricity
17 produced during the 12-month period ending June 30, 1990, is
18 subject to the tax imposed by this section. The tax shall be
19 applied to the cost price of such electricity as provided in
20 s. 212.02(4) and shall be paid each month, beginning with the
21 month in which total production exceeds the production of
22 nontaxable electricity for the 12-month period ending June 30,
23 1990. For purposes of this paragraph, "nontaxable
24 electricity" means electricity produced by cogeneration or by
25 small power producers which is not subject to tax under
26 paragraph (d). Taxes paid pursuant to paragraph (d) may be
27 credited against taxes due under this paragraph. Electricity
28 generated as part of an industrial manufacturing process which
29 manufactures products from phosphate rock, raw wood fiber,
30 paper, citrus or any agricultural product shall not be subject
31 to the tax imposed by this paragraph. "Industrial

1 manufacturing process" means the entire process conducted at
2 the location where the process takes place.

3 (f) Any person other than a cogenerator or small power
4 producer described in paragraph (e) who produces for his or
5 her own use electrical energy which is a substitute for
6 electrical energy produced by an electric utility as defined
7 in s. 366.02 is subject to the tax imposed by this section.
8 The tax shall be applied to the cost price of such electrical
9 energy as provided in s. 212.02(4) and shall be paid each
10 month. The provisions of this paragraph do not apply to any
11 electrical energy produced and used by an electric utility.

12 (g) Notwithstanding any other provision of this
13 chapter, with the exception of a telephone or
14 telecommunication system described in paragraph (c), the
15 department may require:

16 1. A quarterly return and payment when the tax
17 remitted for the preceding four calendar quarters did not
18 exceed \$1,000;

19 2. A semiannual return and payment when the tax
20 remitted for the preceding four calendar quarters did not
21 exceed \$500; or

22 3. An annual return and payment when the tax remitted
23 for the preceding four calendar quarters did not exceed \$100.

24 Section 7. Effective July 1, 2000, section 206.09,
25 Florida Statutes, is amended to read:

26 206.09 Reports from carriers transporting motor fuel
27 or similar products.--

28 (1) Every railroad company, pipeline company, water
29 transportation company, private carrier, and common carrier
30 transporting motor fuel, casinghead gasoline, natural
31 gasoline, naphtha, or diesel fuel distillate, either in

1 interstate or intrastate or foreign commerce, to points within
2 Florida, and every person transporting motor fuel, casinghead
3 gasoline, natural gasoline, naphtha, or diesel fuel
4 distillate, by whatever manner, to a point in Florida from any
5 point outside of said state, shall file monthly returns
6 setting forth:

7 (a) The name under which such person is transacting
8 business within the state.

9 (b) The location with street number address of such
10 person's principal office or place of business within the
11 state.

12 (c) The name, federal employer identification number
13 or, if such number is not available, the social security
14 number, and business address of the owner or the names and
15 addresses of the partners, if such person is a partnership, or
16 the principal officers, if such person is a corporation or
17 association.

18 (2) Such person or company shall report under oath to
19 the department on forms prescribed by the department all
20 deliveries of motor fuel, casinghead gasoline, natural
21 gasoline, naphtha, or diesel fuel distillate so made to points
22 within the state.

23 (3) Such reports shall cover monthly periods and be
24 submitted within 20 days after the close of the month covered
25 by the report and shall show:

26 (a) The name, federal employer identification number
27 or, if such number is not available, the social security
28 number, and complete business address of the person to whom
29 the deliveries of motor fuel, casinghead gasoline, natural
30 gasoline, naphtha, or diesel fuel distillate have actually and
31 in fact been made;

1 (b) The name, federal employer identification number
2 or, if such number is not available, the social security
3 number, and complete business address of the originally named
4 consignee, if motor fuel, casinghead gasoline, natural
5 gasoline, naphtha, or diesel fuel distillate has been
6 delivered to any person other than the originally named
7 consignee;

8 (c) The municipality and state of origin, the
9 municipality, county, and state of delivery, the date of
10 delivery, and the number and initials of each tank car and the
11 number of gallons contained therein, if shipped by rail;

12 (d) The name of the boat, barge, or vessel and the
13 number of gallons contained therein, if shipped by water;

14 (e) The company unit number of each tank truck and the
15 number of gallons contained therein, if transported by motor
16 truck;

17 (f) If delivered by other means, the manner in which
18 such delivery is made; and

19 (g) Such other additional information relative to
20 shipments of motor fuel as the department may require.

21 (4) The department may suspend the reporting
22 requirements of this section if substantially the same data is
23 filed with the Internal Revenue Service and provided to the
24 department through a national information reporting system.

25 ~~(5)(4)~~ If any such person or company required to file
26 under this section fails to make a complete report, the
27 department shall impose, in addition to any other penalty or
28 interest due, a penalty in the amount of \$200.

29 Section 8. Effective July 1, 2000, section 206.095,
30 Florida Statutes, is amended to read:

31 206.095 Reports from terminal operators.--

1 (1) Every terminal operator who stores, handles, or
2 transfers motor fuel, casinghead gasoline, natural gasoline,
3 naphtha, diesel fuel, kerosene, or other middle distillates
4 shall file a report on forms prescribed by the department.
5 The report shall be filed on a monthly basis within 20 days
6 after the close of the month covered by the report and shall
7 show:

8 (a) The name, address, and license number of the
9 terminal supplier, importer, or exporter storing or
10 transferring such product.

11 (b) The name of the boat, barge, or vessel
12 transporting the product to the terminal.

13 (c) The number of gallons and type of product which is
14 being stored.

15 (d) Such other additional information relative to
16 shipments and storage of products as the department may
17 require.

18 (2) The department may suspend the reporting
19 requirements of this section if substantially the same data is
20 filed with the Internal Revenue Service and provided to the
21 department through a national information reporting system.

22 ~~(3)~~(2) If any terminal operator fails to make a
23 complete report, the department shall impose, in addition to
24 any other penalty and interest due, a penalty in the amount of
25 \$100.

26 Section 9. Paragraph (c) of subsection (1) of section
27 212.06, Florida Statutes, is amended to read:

28 212.06 Sales, storage, use tax; collectible from
29 dealers; "dealer" defined; dealers to collect from purchasers;
30 legislative intent as to scope of tax.--

31 (1)

1 (c)1. Notwithstanding the provisions of paragraph (b),
2 the use tax on asphalt manufactured for one's own use shall be
3 calculated with respect to paragraph (b) only upon the cost of
4 materials which become a component part or which are an
5 ingredient of the finished asphalt and upon the cost of the
6 transportation of such components and ingredients. In
7 addition, an indexed tax of 38 cents per ton of such
8 manufactured asphalt shall be due at the same time and in the
9 same manner as taxes due pursuant to paragraph (b). Beginning
10 July 1, 1989, the indexed tax shall be adjusted each July 1 to
11 an amount, rounded to the nearest cent, equal to the product
12 of 38 cents multiplied by a fraction, the numerator of which
13 is the annual average of the "materials and components for
14 construction" series of the producer price index, as
15 calculated and published by the United States Department of
16 Labor, Bureau of Statistics, for the previous calendar year,
17 and the denominator of which is the annual average of said
18 series for calendar year 1988.

19 2. Beginning July 1, 1999,the indexed tax imposed by
20 this paragraph ~~on shall not apply to~~ manufactured asphalt
21 which is used for any federal, state, or local government
22 public works project shall be reduced by 20 percent. ~~Beginning~~
23 ~~July 1, 1999, 20 percent of such amount is exempt.~~

24 Section 10. It is the intent of the Legislature that
25 the amendment to section 212.06(1)(c), Florida Statutes, made
26 by this act is remedial in nature and merely clarifies
27 existing law.

28 Section 11. Subsection (6) of section 213.235, Florida
29 Statutes, is repealed.

30 Section 12. Subsection (9) is added to section 213.27,
31 Florida Statutes, to read:

1 213.27 Contracts with debt collection agencies and
2 certain vendors.--

3 (9)(a) The department may enter into contracts with
4 public or private vendors to develop and implement a voluntary
5 system for sales and use tax collection and administration.
6 The amount of compensation paid to vendors shall be
7 established by the executive director of the department and
8 shall be based upon a percentage of the sales and use tax
9 collections made through the system or on a per transaction
10 basis; however, if the amount of compensation is based upon a
11 percentage of the sales and use tax collections made through
12 the system, the percentage shall not exceed the negotiated
13 percentage provided in s. 212.12(1). The department shall
14 provide quarterly reports to the Speaker of the House of
15 Representatives, Minority Leader of the House of
16 Representatives, President of the Senate, and Minority Leader
17 of the Senate on the amount of compensation paid pursuant to
18 these contracts. The system shall have the capability to
19 determine the taxability of a transaction, the appropriate tax
20 rate to be applied to a taxable transaction, and the total tax
21 due on a transaction, and shall provide a method for remitting
22 the tax to the department. The department shall be responsible
23 for testing and certifying the accuracy of the system.

24 (b) A seller of goods or services subject to sales and
25 use tax who utilizes the system for purposes of computation
26 and remittance of sales and use tax shall not be subject to
27 the reporting and remittance requirements of ss. 212.11 and
28 212.15(1) for those transactions handled through the system
29 and shall not be entitled to the credit provided in s.
30 212.12(1). A seller of goods or services subject to sales and
31 use tax who utilizes the system for purposes of computation

1 and remittance of sales and use tax shall not be subject to
2 audit for those transactions handled through the system,
3 unless there are indicia that fraud has been committed by the
4 seller.

5 (c) Disclosure of information necessary under this
6 subsection shall be pursuant to a written agreement between
7 the executive director of the department and the vendor. The
8 vendor shall be bound by the same requirements of
9 confidentiality as the department. Breach of confidentiality
10 is a misdemeanor of the first degree, punishable as provided
11 in s. 775.082 or s. 775.083.

12 (d) On or before January 1 annually, the department
13 shall provide recommendations to the Speaker of the House of
14 Representatives, Minority Leader of the House of
15 Representatives, President of the Senate, and Minority Leader
16 of the Senate for provisions to be adopted for inclusion
17 within the system that will make sales and use tax collection
18 and administration simplified and uniform.

19 Section 13. Except as otherwise expressly provided in
20 this act, this act shall take effect upon becoming a law.
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LEGISLATIVE SUMMARY

Specifies a 3-year time period within which the Department of Revenue and Department of Business and Professional Regulation may determine and assess the amount of certain taxes, penalties, or interest due, beginning July 1, 2002.

Provides that the Florida Elections Commission, rather than the Department of Revenue, shall have responsibility for collecting civil penalties for violation of ch. 104 or ch. 106, F.S.

Removes a requirement that insurers subject to a premium tax for a municipal or special district firefighter pension plan or a municipal police pension plan file an annual premium receipt report with the Division of Retirement, in addition to filing with the Department of Revenue. Authorizes the department to share information regarding such reports with the Department of Management Services and to share certain identifying information with the Department of Highway Safety and Motor Vehicles.

Authorizes the Department of Revenue to require quarterly, semiannual, or annual returns for the tax on gross receipts for utility services under certain conditions.

Authorizes the department to suspend a requirement for certain reports from carriers transporting, or terminal operators handling, motor fuel and similar products, under certain conditions.

Clarifies language with respect to the exemption from the indexed tax on manufactured asphalt for asphalt used for government public works projects, and specifies that the exemption includes federal projects.

Repeals provisions that relate to application of the annual rate of interest applicable to tax payment deficiencies.

Authorizes the department to contract with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration.