

STORAGE NAME: h0545.brc

DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
BUSINESS REGULATION & CONSUMER AFFAIRS
ANALYSIS**

BILL #: HB 545

RELATING TO: Sales Tax/Dealer's Records/Liability

SPONSOR(S): Representative Wiles

TIED BILL(S): None

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS
 - (2) FINANCE & TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The Department of Revenue is required to project sales tax overpayments for the entire period audited when auditing voluminous sales tax records pursuant to statute. The projected overpayment will offset projected underpayments and projected net overpayments are refunded.

The bill has an insignificant fiscal impact on state and local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

The Department of Revenue (DOR) is permitted to statistically sample voluminous sales tax records¹ and project net underpayment of sales tax obligations for the entire period being audited. When overpayments are found by the audit, however, an offset², credit, or refund³ is given for actual overpayments only. Overpayments are not projected because the DOR lacks specific statutory authority to project sales tax overpayments, therefore, individual substantiation is required for each overpayment.

The Department of Banking and Finance (the Comptroller) does not pre-audit applications for sales tax refund. The Comptroller post-audits some applications for sales tax refund by examining the DOR's records regarding the refund.

C. EFFECT OF PROPOSED CHANGES:

The DOR will be required to project sales tax overpayments over the entire audit period and refund net overpayments. When conducting post-audits, the Comptroller indicates that they will review the DOR's sampling procedure in addition to examining the audit record.

D. SECTION-BY-SECTION ANALYSIS:

N/A

¹S. 212.12(6), F.S., relates to required records and auditing. This subsection also requires the DOR to attempt to negotiate with the dealer in good faith to establish an agreement regarding the auditing practices.

²Rule 12-26.009, F.A.C., provides the DOR's offset procedures within audits.

³S. 215.26, F.S., allows the Comptroller to create a form for applications for refunds and establish the proof necessary to establish a refund claim. The Comptroller provides for application for refund by Rule 3A-44.020, F.A.C., and delegates authority to receive and review applications to the state entity that initially collected the tax.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments below.

2. Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments below.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

While the actual impact on revenues is unknown, there will be some reduction in sales tax revenues. Presently, dealers only receive offset or refund for sales tax overpayments substantiated by the records audited. Dealers will now have those overpayments projected over the entire audit period, thereby, further reducing their sales tax obligations and reducing collections made pursuant to the audit or resulting in refunds for projected net overpayments.

The DOR's fiscal analysis indicates no fiscal impact on the DOR to administer the provisions of the bill.

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 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.

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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:

A. CONSTITUTIONAL ISSUES:

None

B. RULE-MAKING AUTHORITY:

None

C. OTHER COMMENTS:

The Department of Revenue has indicated an interest in striking the word "statistically" as it appears in the current s. 212.12(6)(c), F.S. The term "statistically" may not reflect the operating practices of the department.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

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