

STORAGE NAME: h0545s1.brc

DATE: March 21, 2000

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

BILL #: CS/HB 545

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

SPONSOR(S): Committee on Business Regulation & Consumer Affairs, Representative Wiles and others

TIED BILL(S): None

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

- (1) BUSINESS REGULATION & CONSUMER AFFAIRS YEAS 8 NAYS 0
 - (2) FINANCE & TAXATION
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

The committee substitute amends statute to require the Department of Revenue to apply the provisions of the statute and the committee substitute whenever auditing less than the entire sales tax record of a business. It requires the Department of Revenue to estimate the amount of overpayment of sales tax paid for the period when auditing sales tax records. Currently, the Department of Revenue only estimates sales tax underpayments. When estimated overpayments exceed estimated underpayments, it also requires the Department of Revenue to refund that amount of net overpayment instead of the current practice of allowing a credit to the business that collected the sales tax.

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. However, the DOR indicates that the term "statistically" does not accurately reflect the operating practices of the DOR. A statistical sample is a term of art that indicates a particular sampling technique. The DOR's actual practice has been explained to staff of the Committee on Business Regulation & Consumer Affairs as judgmental sampling.

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, accomadation is made only for each substantiated 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 committee substitute amends s. 212.12(6)(c), F.S., removing the word "statistically." The provisions of that section and the committee substitute will apply whenever the DOR examines less than the entire sales tax record. This comports with the operating practices of the DOR in that the DOR's auditing practice is not "statistical" sampling. Also, the DOR will be required to project sales tax overpayments over the entire audit period and refund net overpayments. Since the committee substitute requires offset or refund of overpayments, individual substantiation is not required for the estimated overpayments.

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.

D. SECTION-BY-SECTION ANALYSIS:

N/A

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.

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:

When conducting post-audits, the Comptroller indicates that they will review the DOR's sampling procedure in addition to examining the audit record.

The Department of Revenue is currently able to provide a credit against a sales tax dealer's future obligations for overpayment of sales tax. However, the committee substitute requires that net overpayments found by the audit to be refunded.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 21, 2000, the Committee on Business Regulation & Consumer Affairs adopted a strike everything amendment and, upon motion, made it a Committee Substitute. The committee substitute differentiates from HB 545 in that the word "statistically" is removed from s. 212.12(6)(c), F.S., to conform the statute to the practices of the DOR. Also, technical changes are made to conform the proposed language to terms commonly associated with auditing practices of the DOR.

VII. SIGNATURES:

COMMITTEE ON BUSINESS REGULATION & CONSUMER AFFAIRS:

Prepared by:

Staff Director:

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