

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 18A

SPONSOR: Finance and Taxation Committee and Senator Campbell

SUBJECT: Taxation

DATE: May 14, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill creates an amnesty program for a four-month period beginning on July 1, 2003, and ending on October 31, 2003, for taxpayers subject to taxes administered by the Department of Revenue. Under the program eligible taxpayers who pay delinquent taxes will not have to pay any penalties, will not be subject to criminal prosecution, and will receive an interest waiver of 25 percent or 50 percent, depending on the circumstances.

The bill also increases the interest rate on tax delinquencies from the prime rate to prime plus 4 percentage points.

The bill provides an appropriation of \$610,000 from the General Revenue Fund to the Department of Revenue to implement the amnesty program.

The bill also changes the distribution of taxes collected on premiums for surplus lines insurance and independently procured coverage. The proposed change reduces the distribution of tax deposited to the Insurance Commissioner's Regulatory Trust Fund and increases the distribution of tax deposited to the General Revenue Fund.

This bill also makes a technical modification changing the name of the Insurance Commissioner's Regulatory Trust Fund, FLAIR 46-2-393, to the Insurance Regulatory Trust Fund. This change is in accordance with provisions of SB 1712, implementing the CFO provisions of Article IV, section 4 of the State Constitution.

This bill substantially amends the following sections of the Florida Statutes: ss. 213.235, 220.807, 202.35, 626.932, and 626.938.

II. Present Situation:

Amnesty Program

The Department of Revenue administers the following taxes and fees:

- Local Option Surtaxes – Chapter 125
- Estate Tax – Chapter 198
- Intangible Personal Property Taxes – Chapter 199
- Documentary Stamp Tax – Chapter 201
- Communications Services Tax – Chapter 202
- Gross Receipts Taxes – Chapter 203
- Motor Fuel Taxes – Chapter 206
- Severance Tax – Chapter 211
- Sales and Use Tax – Chapter 212
- Corporate Income Tax – Chapter 220
- Emergency Excise Tax – Chapter 221
- Local Option Fuel Taxes – Chapter 336
- Apalachicola Bay Oyster Surcharge – Chapter 370
- Pollutant Taxes – Chapter 376
- Waste Tires and Lead-acid Batteries Fees – Chapter 403
- Secondhand Dealers and Secondary Metals Recyclers Fees – Chapter 538
- Insurance Premiums Taxes – Chapters 624 and 627
- Motor Vehicle Warranty Trust Fund Fee – Chapter 681

Taxpayers who fail to timely and correctly pay taxes are subject to penalties for non-compliance. For example, a sales tax dealer who fails to timely file a return and pay the tax due, is subject to a penalty of 10 percent of the unpaid tax if not more than 30 days late, with an additional 10 percent for each additional 30 day, up to the maximum penalty of 50 percent of the unpaid tax. The minimum penalty is \$10. A taxpayer is also charged interest on tax delinquencies. (See Interest Rates for Tax Delinquencies below.) Additionally, a taxpayer may be subject to criminal proceedings for certain willful or fraudulent acts. For example, a fraudulent claim of exemption carries a penalty of 200 percent of the tax and is a first degree misdemeanor.

Florida last offered a general tax amnesty program in 1987. (Ch. 87-6, Laws of Florida)

Interest Rates for Tax Delinquencies

From September 1986 through January 1, 2000, the interest rate for most tax delinquencies was fixed at 12 percent. In 1996, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) studied Florida's interest provisions for tax delinquencies. (OPPAGA Report No. 96-13, November 4, 1996) OPPAGA concluded that a fixed interest rate could at times be substantially higher than commercial borrowing rates and therefore act as an additional penalty. At other times, the fixed interest rate could be lower than commercial borrowing rates and therefore could encourage late payment of taxes. OPPAGA issued a report recommending adoption of a variable interest rate that would be higher than commercial borrowing rates. Commercial borrowing rates are normally a few points higher than the prime

rate. OPPAGA recommended that the interest rate be set at prime plus 3 percent or 4 percent . Effective January 1, 2000, a variable interest rate was adopted by the Legislature that is based solely upon the prime rate, without additional percentage points.

In its 1999 progress report, OPPAGA noted that failure to add percentage points to the prime rate could create a disincentive for prompt payment by some taxpayers. (OPPAGA Report No. 98-85, June, 1999)

Tax on Surplus Lines Insurance and Independently Procured Coverages

Surplus lines insurance refers to a high risk category for which there is no market available through standard insurance carriers. Typical categories of this nature are homeowners' insurance in hurricane prone regions, commercial aircraft, and some sea vessels. Florida law provides stringent qualifications for those agents who insure surplus lines and those agents must be registered with the Department of Financial Services.

Currently, there is a 5 percent tax on premiums for surplus lines and independently procured coverages. The proceeds of the tax are distributed to the Insurance Commissioner's Regulatory Trust Fund (55 percent) and to the General Revenue Fund (45 percent). The Insurance Commissioner's Regulatory Trust Fund provides partial funding to the Department for its administrative and regulatory functions.

III. Effect of Proposed Changes:

Amnesty Program: Important Provisions

- The amnesty program will be in effect for a four-month period beginning on July 1, 2003 and ending on October 31, 2003.
- A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue.
- A taxpayer that is under *criminal* investigation, or is under indictment, information, or prosecution regarding a revenue law of this state shall not be eligible to participate in the amnesty program. A taxpayer that has been convicted of a crime regarding state tax laws is not eligible to participate in the amnesty program.
- A taxpayer who initiates contact with the Department pays no penalties, is not subject to criminal prosecution, and receives a 50 percent reduction in interest.
- A taxpayer who is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue pays no penalties, is not subject to criminal prosecution, and receives a 25 percent reduction in interest.
- The taxpayer must pay all taxes and interest due, may not apply for a refund, and must stop all legal challenges to any assessment subject to the amnesty program.
- Any local option tax that is being administered by a local government is excluded from the amnesty program, unless the local government notifies the Department of Revenue by June 1, 2003, that it chooses to participate in the amnesty program.

Interest Rate for Tax Delinquencies

The bill amends s. 213.235, F.S., and s. 220.807, F.S. to provide that the interest rate on tax delinquencies is the prime rate plus 4 percentage points. Section 213.235, F.S., applies to all taxes, except corporate income tax. Section 220.807, F.S., applies to corporate income tax. The new interest rate in s. 213.235, F.S., will apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and will also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003. The new interest rate in s. 220.807, F.S., will apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and will also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003.

The bill provides an appropriation of \$610,000 from the General Revenue Fund to the Department of Revenue to implement the amnesty program.

Tax on Surplus Lines Insurance and Independently Procured Coverages

SB 18A reallocates the percentage distribution of taxes collected pursuant to ss. 626.932 and 626.938, F.S. The proposed legislation modifies the percentage distribution to the Insurance Regulatory Trust Fund (formerly the Insurance Commissioner's Regulatory Trust Fund) to 24.3 percent and the percentage distribution to the General Revenue Fund to 75.7 percent. It is estimated that the new distribution formula will deposit an additional \$35 million for FY 2003-04 into the General Revenue Fund.

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 tax amnesty program is expected to increase state revenue by encouraging the payment of outstanding tax liabilities, and adding taxpayers to the tax rolls. The increase in interest rates on tax deficiencies will provide additional recurring revenue. The

revenue impact of these changes is shown below, along with the shift of premium tax revenue from the Insurance Commissioner’s Regulatory Trust Fund to General Revenue.

FY 2003-04

Issue	<u>General Revenue</u>		<u>State Trust</u>		<u>Local Trust</u>		<u>Total</u>	
	Cash	Recurr	Cash	Recurr	Cash	Recurr	Cash	Recurr
Tax Amnesty	66.6	22.2	0.1	*	8.6	2.9	75.3	25.1
Deficiencies-- Interest rate prime + 4	15.6	15.6	*	*	2	2	17.6	17.6
Tax on Surplus Lines	35.0	35.0	(35.0)	(35.0)	0	0	0	0
Total	117.2	72.8	(34.9)	(35.0)	10.6	4.9	92.9	42.7

B. Private Sector Impact:

The tax amnesty program will give taxpayers an opportunity to pay delinquent taxes without payment of penalty or fear of prosecution. This is expected to bring onto the tax rolls additional taxpayers who may have been unaware of their obligations, or who feared prosecution for their delinquencies.

The increase in the interest rate on tax delinquencies will provide an incentive for prompt payment of taxes, and will put tax obligations on a more equal footing with taxpayers’ other debts.

C. Government Sector Impact:

This bill shifts revenue from the Insurance Commissioner’s Regulatory Trust Fund to General Revenue, and provides an appropriation of \$610,000 to the Department of Revenue to carry out the tax amnesty.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.