

By Senator Campbell

32-2569B-03

1 A bill to be entitled
2 An act relating to taxation; directing the
3 Department of Revenue to develop and implement
4 an amnesty program for taxpayers subject to the
5 state and local taxes imposed by chapters 125,
6 198, 199, 201, 202, 203, 206, 211, 212, 220,
7 221, 336, 370, 376, 403, 538, 624, 627, and
8 681, F.S.; providing time periods; providing
9 program guidelines; providing for eligible
10 participants; providing for waiver of penalties
11 and interest under specified circumstances;
12 providing for emergency rules; amending ss.
13 213.235, 220.807, F.S.; providing that the
14 interest rate on certain tax deficiencies shall
15 be an adjusted prime rate plus 4 percentage
16 points; providing a maximum rate; providing
17 legislative intent; providing an appropriation;
18 amending s. 202.35, F.S.; providing a maximum
19 interest rate on delinquent taxes; amending s.
20 626.932, F.S.; changing the distribution of the
21 surplus lines tax; amending s. 626.938, F.S.;
22 changing the distribution of the tax on
23 independently procured coverages; providing for
24 construction of the act in pari materia with
25 laws enacted during the Regular Session of the
26 Legislature; providing effective dates.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. (1) No later than July 1, 2003, the
31 Department of Revenue shall develop and implement an amnesty

1 program for taxpayers subject to the state and local taxes
2 imposed by chapters 125, 198, 199, 201, 202, 203, 206, 211,
3 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and 681,
4 Florida Statutes.

5 (2) The amnesty program shall be a one-time
6 opportunity for eligible taxpayers to satisfy their tax
7 liabilities under the revenue laws of this state and thereby
8 avoid criminal prosecution, penalties, and interest as
9 provided in subsections (4), (5), and (6). Any taxpayer that
10 has entered into a settlement of liability for state or local
11 option taxes before July 1, 2003, whether or not full and
12 complete payment has been made of the settlement amount, shall
13 not be eligible to participate in the amnesty program.

14 (3) The amnesty program shall be in effect for a
15 4-month period beginning on July 1, 2003, and ending on
16 October 31, 2003. The amnesty program shall apply only to tax
17 liabilities due prior to July 1, 2003. In order to
18 participate in the amnesty program, eligible taxpayers must
19 file the forms and other documentation specified by the
20 Department of Revenue, including, but not limited to, returns
21 and amended returns, must make full payment of tax due, and
22 must make payment of the interest due as provided in
23 subsections (4) and (5).

24 (4) A taxpayer may participate in the amnesty program
25 whether or not the taxpayer is under audit, inquiry,
26 examination, or civil investigation initiated by the
27 Department of Revenue, regardless of whether the amount due is
28 included in a proposed assessment or an assessment, bill,
29 notice, or demand for payment issued by the Department of
30 Revenue, and without regard to whether the amount due is
31 subject to a pending administrative or judicial

1 proceeding. If any of the circumstances set forth in this
2 subsection apply, the taxpayer shall be required to pay the
3 full amount of the tax due and 75 percent of the amount of
4 interest due. When the department has issued a notice of
5 intent to conduct an audit to a taxpayer but has not commenced
6 the audit, the taxpayer may apply to the department during the
7 amnesty program for approval to have the audit converted to
8 the certified audits program authorized by section 213.285,
9 Florida Statutes. When a taxpayer has been approved during the
10 amnesty program to have an audit converted to the certified
11 audits program, payment of any liability determined as a
12 result of this participation in the certified audits program
13 must be made during the period the amnesty program is in
14 effect. A taxpayer that is participating in the certified
15 audits program authorized by section 213.285, Florida
16 Statutes, shall be eligible for the interest and penalty
17 compromises authorized by either the amnesty program or the
18 certified audits program, but not both.

19 (5) If the circumstances set forth in subsection (4)
20 do not apply and the initial contact with the Department of
21 Revenue is made by the taxpayer pursuant to the amnesty
22 program, the taxpayer shall be required to pay the full amount
23 of the tax due and 50 percent of the amount of interest due.

24 (6) No penalties shall be imposed on any tax paid
25 pursuant to the amnesty program, and the Department of Revenue
26 shall not initiate a criminal investigation against or refer
27 for prosecution any taxpayer participating in the amnesty
28 program with respect to the failure to timely pay the tax
29 disclosed in the amnesty program.

30 (7) Participation in the amnesty program shall be
31 conditioned upon the taxpayer's express waiver of rights to

1 contest taxes being reported pursuant to the amnesty program.
2 If the taxes reported pursuant to the amnesty program are the
3 subject of a pending informal protest under section 213.21,
4 Florida Statutes, or of administrative or judicial proceedings
5 that have not become final as of the date payment of the taxes
6 is made pursuant to the amnesty program, participation in the
7 amnesty program is conditioned upon the taxpayer's withdrawal
8 of such informal protest or dismissal of such administrative
9 or judicial proceeding. Participation in the amnesty program
10 shall also be conditioned upon the taxpayer's express
11 agreement to waive any right to claim a refund or to protest
12 or initiate an administrative or judicial proceeding to review
13 any denial of a refund claim for any refund of tax or interest
14 paid under the amnesty program except as provided in this
15 subsection. No refund may be made of any penalty or interest
16 paid prior to July 1, 2003. Any credit or refund of tax or
17 interest paid as a result of participation in the amnesty
18 program shall be strictly limited to amounts determined by the
19 Department of Revenue to have been paid in error.

20 (8) A taxpayer under criminal investigation,
21 indictment, information, or prosecution regarding a revenue
22 law of this state shall not be eligible to participate in the
23 amnesty program. A taxpayer that has been convicted of a crime
24 regarding a revenue law of this state shall not be eligible to
25 participate in the amnesty program.

26 (9) With or without an audit, the Department of
27 Revenue is authorized to issue a notice or demand for payment
28 with respect to any tax or interest that it determines to be
29 due with any return filed under the tax amnesty program, and
30 such notice and demand shall be prima facie correct in any
31 administrative, judicial, or quasi-judicial proceeding.

1 (10) The Department of Revenue may, on the basis of
2 fraud, misrepresentation, or mutual mistake of fact, rescind a
3 grant of amnesty, including any amnesty granted as a result of
4 participation in the certified audit program during the period
5 the amnesty program is in effect. Any taxpayer that files
6 under the amnesty program false or fraudulent returns, forms,
7 or documentation or attempts in any manner to defeat or evade
8 a tax is subject to applicable penalties and criminal
9 prosecution.

10 (11) Any local option tax administered by a local
11 government that imposed the tax pursuant to a statute
12 permitting self-administration is excluded from the amnesty
13 program unless the local government notifies the Department of
14 Revenue by June 1, 2003, that it chooses to participate in the
15 amnesty program.

16 (12) The executive director of the Department of
17 Revenue is authorized to adopt emergency rules under sections
18 120.536(1) and 120.54(4), Florida Statutes, to implement the
19 amnesty program. Such rules may provide forms, procedures,
20 terms, conditions, and methods of payment appropriate for fair
21 and effective administration of the amnesty program and to
22 ensure the taxpayer's ongoing commitment to proper remittance
23 of taxes to the state. Notwithstanding any other law, the
24 emergency rules shall remain in effect until the later of the
25 date that is 6 months after the date of adoption of the rule
26 or the date of final resolution of all amnesty applications
27 filed pursuant to this section.

28 Section 2. Effective November 1, 2003, subsections (2)
29 and (3) of section 213.235, Florida Statutes, are amended to
30 read:

31 213.235 Determination of interest on deficiencies.--

1 (2) If the adjusted prime rate charged by banks,
2 rounded to the nearest full percent, plus 4 percentage points,
3 during either:

4 (a) The 6-month period ending on September 30 of any
5 calendar year, or

6 (b) The 6-month period ending on March 31 of any
7 calendar year

8
9 differs from the interest rate in effect on either such date,
10 the executive director of the department shall, within 20
11 days, establish an adjusted rate of interest equal to such
12 adjusted prime rate plus 4 percentage points.

13 (3) An adjusted rate of interest established under
14 this section becomes effective:

15 (a) On January 1 of the succeeding year, if based upon
16 the adjusted prime rate plus 4 percentage points for the
17 6-month period ending on September 30; or

18 (b) On July 1 of the same calendar year, if based upon
19 the adjusted prime rate plus 4 percentage points for the
20 6-month period ending on March 31.

21 Section 3. Amendments made by this act to section
22 213.235(2) and (3), Florida Statutes, apply to interest due on
23 tax payment deficiencies that arise on or after November 1,
24 2003, and also apply to interest due on tax payment
25 deficiencies that arose on or after January 1, 2000, but
26 remain unpaid as of November 1, 2003. When calculating the
27 rate that takes effect on November 1, 2003, the department
28 shall use in making that calculation the adjusted prime rate
29 charged by banks, rounded to the nearest full percent, during
30 the 6-month period ending on March 31, 2003.

31

1 Section 4. Effective November 1, 2003, subsections
2 (1), (2), and (3) of section 220.807, Florida Statutes, are
3 amended to read:

4 220.807 Determination of rate of interest.--

5 (1) The annual rate of interest applicable to this
6 chapter shall be the adjusted rate established by the
7 executive director of the Department of Revenue under
8 subsection (2), except that the annual rate of interest shall
9 never be greater than 12 percent.

10 (2) If the adjusted prime rate charged by banks,
11 rounded to the nearest full percent, plus 4 percentage points,
12 during either:

13 (a) The 6-month period ending on September 30 of any
14 calendar year; or

15 (b) The 6-month period ending on March 31 of any
16 calendar year,

17
18 differs from the interest rate in effect on either such date,
19 the executive director of the Department of Revenue shall,
20 within 20 days, establish an adjusted rate of interest equal
21 to such adjusted prime rate plus 4 percentage points.

22 (3) An adjusted rate of interest established under
23 this section shall become effective:

24 (a) On January 1 of the succeeding year, if based upon
25 the adjusted prime rate plus 4 percentage points for the
26 6-month period ending on September 30; or

27 (b) On July 1 of the same calendar year, if based upon
28 the adjusted prime rate plus 4 percentage points for the
29 6-month period ending on March 31.

30 Section 5. Amendments made by this act to section
31 220.807(1), (2), and (3), Florida Statutes, apply to interest

1 due on tax payment deficiencies that arise on or after
2 November 1, 2003, and also apply to interest due on tax
3 payment deficiencies that arose before January 1, 2003, but
4 remain unpaid as of November 1, 2003. When calculating the
5 rate that takes effect on November 1, 2003, the department
6 shall use in making that calculation the adjusted prime rate
7 charged by banks, rounded to the nearest full percent, during
8 the 6-month period ending on March 31, 2003.

9 Section 6. Effective November 1, 2003, subsection (1)
10 of section 202.35, Florida Statutes, is amended to read:

11 202.35 Powers of department in dealing with
12 delinquents; tax to be separately stated.--

13 (1) If any dealer or other person fails to remit the
14 tax, or any portion thereof, on or before the day when the tax
15 is required by law to be paid, there will be added to the
16 amount due interest at the rate calculated pursuant to s.
17 213.235 of the amount due from the date due until paid, except
18 that the annual rate of interest shall never be greater than
19 12 percent. Interest on the delinquent tax is to be calculated
20 beginning on the 21st day of the month following the month for
21 which the tax is due, except as otherwise provided in this
22 chapter.

23 Section 7. The sum of \$610,000 is appropriated from
24 the General Revenue Fund to the Department of Revenue for the
25 purpose of administering the amnesty program created by this
26 act. Funds remaining unexpended or unencumbered from this
27 appropriation as of June 30, 2003, shall revert and be
28 reappropriated for the same purpose in fiscal year 2003-2004.

29 Section 8. Subsection (5) of section 626.932, Florida
30 Statutes, is amended to read:

31 626.932 Surplus lines tax.--

