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1 A bill to be entitled

2 An act relating to tax administration; directing the
3 Department of Revenue to develop and implement an amnesty
4 program for taxpayers subject to the state and local taxes
5 imposed by chapters 125, 198, 199, 201, 202, 203, 206,
6 211, 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and
7 681, F.S.; providing time periods; providing program
8 guidelines; providing for eligible participants; providing
9 for waiver of penalties and interest under specified
10 circumstances; providing for emergency rules; amending ss.
11 213.235 and 220.807, F.S.; providing that the interest
12 rate on certain tax deficiencies shall be an adjusted
13 prime rate plus 4 percentage points; providing maximum
14 limitations on certain annual interest rates; providing
15 application of certain adjustments; requiring the
16 Department of Revenue to use certain adjusted prime rates
17 in certain calculations; providing legislative intent;
18 amending s. 202.35, F.S.; limiting certain annual rates of
19 interest; providing an appropriation; providing for
20 reversion and reappropriation of certain amounts under
21 certain circumstances; providing for construction of the
22 act in pari materia with laws enacted during the 2003
23 Regular Session of the Legislature; providing effective
24 dates.

25
26 WHEREAS, state government should undertake all reasonable
27 efforts to ensure uniform compliance with the existing state
28 revenue laws across the state, and

29 WHEREAS, the Department of Revenue has implemented an
30 integrated tax-administration information system (SUNTAX) that



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31 will provide the department with better information on taxpayer
 32 compliance, and

33 WHEREAS, the SUNTAX system provides the department with
 34 additional capabilities to discover unregistered and
 35 noncompliant taxpayers, and

36 WHEREAS, the department is currently using the SUNTAX
 37 system to identify areas of noncompliance and to help taxpayers
 38 come into full compliance with the law, and

39 WHEREAS, the department expects SUNTAX to be of substantial
 40 further benefit in helping to ensure that all taxpayers bear
 41 their fair share of the state's tax burden, and

42 WHEREAS, taxpayers that are not in full compliance with tax
 43 laws may be unaware of some aspects of their obligations under
 44 Florida law, and

45 WHEREAS, it is the intent of this state to assist taxpayers
 46 in fully understanding their tax obligations and in complying
 47 with those obligations in ways that place the lowest possible
 48 burden on taxpayers, and

49 WHEREAS, the department is aware of circumstances in which
 50 taxpayers, often without their knowledge, are not in compliance
 51 with the tax laws of the state, and

52 WHEREAS, the Legislature finds and declares that taxpayers
 53 should be given an opportunity to come into voluntary compliance
 54 before the department undertakes further steps to identify
 55 taxpayers that are in noncompliance, and

56 WHEREAS, the Legislature finds and declares that a public
 57 purpose is served by the waiver of tax penalties and interest in
 58 return for the immediate reporting and payment of previously
 59 underreported, unreported, or unpaid tax liabilities, and

60 WHEREAS, the Legislature further finds and declares that



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61 among the benefits gained through an amnesty program are
 62 increased collection of currently owed taxes and permanently
 63 bringing into the tax system taxpayers that have been unaware of
 64 or have not been fulfilling their tax obligations, and

65 WHEREAS, to encourage the full payment of taxes owed to the
 66 State of Florida, NOW, THEREFORE,

67
 68 Be It Enacted by the Legislature of the State of Florida:
 69

70 Section 1. (1) No later than July 1, 2003, the Department
 71 of Revenue shall develop and implement an amnesty program for
 72 taxpayers subject to the state and local taxes imposed by
 73 chapters 125, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221,
 74 336, 370, 376, 403, 538, 624, 627, and 681, Florida Statutes.

75 (2) The amnesty program shall be a one-time opportunity
 76 for eligible taxpayers to satisfy their tax liabilities under
 77 the revenue laws of this state and thereby avoid criminal
 78 prosecution, penalties, and interest as provided in subsections
 79 (4), (5), and (6). Any taxpayer that has entered into a
 80 settlement of liability for state or local option taxes before
 81 July 1, 2003, whether or not full and complete payment of the
 82 settlement amount has been made, shall not be eligible to
 83 participate in the amnesty program.

84 (3) The amnesty program shall be in effect for a 4-month
 85 period beginning on July 1, 2003, and ending on October 31,
 86 2003. The amnesty program shall apply only to tax liabilities
 87 due prior to July 1, 2003. In order to participate in the
 88 amnesty program, eligible taxpayers must file the forms and
 89 other documentation specified by the department, including, but
 90 not limited to, returns and amended returns, must make full



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91 payment of tax due, and must make payment of the interest due as
92 provided in subsections (4) and (5).

93 (4) A taxpayer may participate in the amnesty program
94 whether or not the taxpayer is under audit, inquiry,
95 examination, or civil investigation initiated by the department,
96 regardless of whether the amount due is included in a proposed
97 assessment or an assessment, bill, notice, or demand for payment
98 issued by the department, and without regard to whether the
99 amount due is subject to a pending administrative or judicial
100 proceeding. If any of the circumstances set forth in this
101 subsection apply, the taxpayer shall be required to pay the full
102 amount of the tax due and 75 percent of the amount of interest
103 due. When the department has issued a notice of intent to
104 conduct an audit to a taxpayer but has not commenced the audit,
105 the taxpayer may apply to the department during the amnesty
106 program for approval to have the audit converted to the
107 certified audits program authorized by s. 213.285, Florida
108 Statutes. When a taxpayer has been approved during the amnesty
109 program to have an audit converted to the certified audits
110 program, payment of any liability determined as a result of this
111 participation in the certified audits program must be made
112 during the period the amnesty program is in effect. A taxpayer
113 that is participating in the certified audits program shall be
114 eligible for the interest and penalty compromises authorized by
115 either the amnesty program or the certified audits program, but
116 not both.

117 (5) If the circumstances set forth in subsection (4) do
118 not apply and the initial contact with the department is made by
119 the taxpayer pursuant to the amnesty program, the taxpayer shall
120 be required to pay the full amount of the tax due and 50 percent



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121 of the amount of interest due.

122 (6) No penalties shall be imposed on any tax paid pursuant
123 to the amnesty program, and the department shall not initiate a
124 criminal investigation against or refer for prosecution any
125 taxpayer participating in the amnesty program with respect to
126 the failure to timely pay the tax disclosed in the amnesty
127 program.

128 (7) Participation in the amnesty program shall be
129 conditioned upon the taxpayer's express waiver of rights to
130 contest taxes being reported pursuant to the amnesty program. If
131 the taxes reported pursuant to the amnesty program are the
132 subject of a pending informal protest under s. 213.21, Florida
133 Statutes, or of administrative or judicial proceedings that have
134 not become final as of the date payment of the taxes is made
135 pursuant to the amnesty program, participation in the amnesty
136 program is conditioned upon the taxpayer's withdrawal of such
137 informal protest or dismissal of such administrative or judicial
138 proceeding. Participation in the amnesty program shall also be
139 conditioned upon the taxpayer's express agreement to waive any
140 right to claim a refund or to protest or initiate an
141 administrative or judicial proceeding to review any denial of a
142 refund claim for any refund of tax or interest paid under the
143 amnesty program except as provided in this subsection. No refund
144 may be made of any penalty or interest paid prior to July 1,
145 2003. Any credit or refund of tax or interest paid as a result
146 of participation in the amnesty program shall be strictly
147 limited to amounts determined by the department to have been
148 paid in error.

149 (8) A taxpayer under criminal investigation, indictment,
150 information, or prosecution regarding a revenue law of this



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151 state shall not be eligible to participate in the amnesty
152 program. A taxpayer that has been convicted of a crime regarding
153 a revenue law of this state shall not be eligible to participate
154 in the amnesty program.

155 (9) With or without an audit, the department is authorized
156 to issue a notice or demand for payment with respect to any tax
157 or interest that it determines to be due with any return filed
158 under the tax amnesty program, and such notice and demand shall
159 be prima facie correct in any administrative, judicial, or
160 quasi-judicial proceeding.

161 (10) The department may rescind, on the basis of fraud,
162 misrepresentation, or mutual mistake of fact, a grant of
163 amnesty, including any amnesty granted as a result of
164 participation in the certified audit program during the period
165 the amnesty program is in effect. Any taxpayer that files under
166 the amnesty program false or fraudulent returns, forms, or
167 documentation or that attempts in any manner to defeat or evade
168 a tax is subject to applicable penalties and criminal
169 prosecution.

170 (11) Any local option tax administered by a local
171 government that imposed the tax pursuant to a statute permitting
172 self-administration is excluded from the amnesty program unless
173 the local government notifies the department by June 10, 2003,
174 that it chooses to participate in the amnesty program.

175 (12) The executive director of the department is
176 authorized to adopt emergency rules under ss. 120.536(1) and
177 120.54(4), Florida Statutes, to implement the amnesty program.
178 Such rules may provide forms, procedures, terms, conditions, and
179 methods of payment appropriate for fair and effective
180 administration of the amnesty program and to ensure the



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181 taxpayer's ongoing commitment to proper remittance of taxes to
182 the state. Notwithstanding any other law, the emergency rules
183 shall remain in effect until the later of the date that is 6
184 months after the date of adoption of the rule or the date of
185 final resolution of all amnesty applications filed pursuant to
186 this section.

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

189 213.235 Determination of interest on deficiencies.--

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

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

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

197
198 differs from the interest rate in effect on either such date,
199 the executive director of the department shall, within 20 days,
200 establish an adjusted rate of interest equal to such adjusted
201 prime rate plus 4 percentage points.

202 (3) An adjusted rate of interest established under this
203 section becomes effective:

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

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



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210 Section 3. Amendments made by this act to s. 213.235(2)
 211 and (3), Florida Statutes, apply to interest due on tax payment
 212 deficiencies that arise on or after November 1, 2003, and also
 213 apply to interest due on tax payment deficiencies that arose on
 214 or after January 1, 2000, but remain unpaid as of November 1,
 215 2003. When calculating the rate that takes effect on November 1,
 216 2003, the department shall use in making that calculation the
 217 adjusted prime rate charged by banks, rounded to the nearest
 218 full percent, during the 6-month period ending on March 31,
 219 2003.

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

223 220.807 Determination of rate of interest.--

224 (1) The annual rate of interest applicable to this chapter
 225 shall be the adjusted rate established by the executive director
 226 of the Department of Revenue under subsection (2), except the
 227 annual rate of interest shall never be greater than 12 percent.

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

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

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

235
 236 differs from the interest rate in effect on either such date,
 237 the executive director of the Department of Revenue shall,
 238 within 20 days, establish an adjusted rate of interest equal to
 239 such adjusted prime rate plus 4 percentage points.



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

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

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

248 Section 5. Amendments made by this act to s. 220.807(1),
249 (2), and (3), Florida Statutes, apply to interest due on tax
250 payment deficiencies that arise on or after November 1, 2003,
251 and also apply to interest due on tax payment deficiencies that
252 arose before January 1, 2003, but remain unpaid as of November
253 1, 2003. When calculating the rate that takes effect on November
254 1, 2003, the department shall use in making that calculation the
255 adjusted prime rate charged by banks, rounded to the nearest
256 full percent, during the 6-month period ending on March 31,
257 2003.

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

260 202.35 Powers of department in dealing with delinquents;
261 tax to be separately stated.--

262 (1) If any dealer or other person fails to remit the tax,
263 or any portion thereof, on or before the day when the tax is
264 required by law to be paid, there will be added to the amount
265 due interest at the rate calculated pursuant to s. 213.235 of
266 the amount due from the date due until paid, except the annual
267 rate of interest shall never be greater than 12 percent.

268 Interest on the delinquent tax is to be calculated beginning on



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269 the 21st day of the month following the month for which the tax
270 is due, except as otherwise provided in this chapter.

271 Section 7. The sum of \$610,000 is appropriated from the
272 General Revenue Fund to the Department of Revenue for the
273 purpose of administering the amnesty program created by this
274 act. Funds remaining unexpended or unencumbered from this
275 appropriation as of June 30, 2003, shall revert and be
276 reappropriated for the same purposes in fiscal year 2003-2004.

277 Section 8. If any law amended by this act was also amended
278 by a law enacted at the 2003 Regular Session of the Legislature,
279 such laws shall be construed as if they had been enacted at the
280 same session of the Legislature, and full effect shall be given
281 to each if possible.

282 Section 9. Except as otherwise provided herein, this act
283 shall take effect upon becoming a law.