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:	SB 2218
SPONSOR:	Senator Margolis
SUBJECT:	Tax Administration
DATE:	March 29, 2004 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Lang	JU	Favorable
2.			CP	
3.			FT	
4.			AGG	
5.			AP	
6.				

I. Summary:

Senate Bill 2218 amends several sections of law regulating the administration of taxes due to the Department of Revenue (department). Specifically, the bill:

- Permits a personal representative of any estate regardless of the date of death of the decedent to execute an affidavit attesting that the estate is not taxable;
- Specifies dates that taxes resulting from the sale of timeshares are due to the department;
- Provides another method to determine the service address of a communication service;
- Authorizes the imposition of civil and criminal penalties on a person who willfully attempts to evade or defeat a tax or fee imposed under ch. 212, F.S.;
- Authorizes the department to compromise tax liability for taxes administered under ch. 212, F.S., in addition to taxes imposed under ch. 212, F.S.; and
- Provides a procedure for the department to dispose of unclaimed personal property obtained during an investigation or legal proceeding.

This bill substantially amends the following sections of the Florida Statutes: 198.32, 199.35, 201.02, 201.08, 201.11, 212.12, 213.21. The bill also creates section 213.758, Florida Statutes.

II. Present Situation:

Estate Tax

Under s. 198.32(1), F.S., the estate of a decedent whose property is subject to the laws of Florida is presumed liable for estate taxes until all applicable taxes are paid. Under s. 198.32(2), F.S., this presumption of liability for estate taxes is eliminated when the personal representative of an estate files an affidavit attesting that the estate is not taxable. However, under s. 7, ch. 99-208, L.O.F., the authority for a personal representative to eliminate the presumption of liability for estate taxes only applies to personal representatives of estates of decedents who died on or after January 1, 2000.

Nonrecurring Tax

The nonrecurring tax is a one-time tax of 2 mills in each dollar of just valuation of all notes, bonds, and other obligations for payment of money which are secured by mortgage, deed of trust, or other lien upon real property situated in Florida.[1] Nonrecurring taxes must be paid the earlier of the date the written instrument creating the obligation is recorded by a clerk of a circuit court or 30 days after the creation of the obligation.

Tax on Deeds and Other Instruments Relating to Real Property

Section 201.02, F.S., imposes an excise tax in the amount of 70 cents for each $100 of consideration for deeds, instruments, or writings whereby lands, tenements, or other real property, or any interest therein, are granted, assigned, transferred, or vested in a person.

Tax on Promissory Notes or Other Obligations to Pay Money

Section 201.08, F.S., imposes an excise tax in the amount of 35 cents for $100 of a promissory note, nonnegotiable note, written obligation to pay money, or assignment of compensation, delivered, sold, transferred or assigned in this state. The amount of the tax may not exceed $2,450, except on mortgages, trust deeds, security agreements, or other evidences of indebtedness filed or recorded in this state.

Communication Services Tax

Chapter 202, F.S., imposes a communications services tax at the rate of 6.8 percent on the sales price of certain communication services and 10.8 percent on the sale of home satellite service. The term "service address" in ch. 202, F.S., is used to determine which local taxing jurisdictions may add additional taxes to a communications service.

Tax on Sales Use and Other Transactions

Chapter 212, F.S., establishes the state sales tax rate of 6 percent on the retail sale of tangible personal property. Sales taxes must typically be collected by a dealer and submitted to the department with a return. Civil and criminal penalties may be imposed upon a person who fails to pay or fails to timely pay sales taxes due to the department.[2]

[1] Section 199.133(1), F.S.
[2] Section 212.12(2), F.S.

Procedures to Compromise Tax Liability

Section 213.21(10), F.S., provides procedures for the department to compromise a taxpayer's liability "solely for the purpose of administering the tax imposed by chapter 212." Taxes such as the tourist impact tax imposed under ss. 125.0108 and 125.0104, F.S., however, are administered under ch. 212, F.S.,

III. Effect of Proposed Changes:

This bill makes several changes to the administration of taxes by the Department of Revenue (department).

Estate Tax

The bill enables the personal representative of any estate, regardless of the date of death of the decedent, to eliminate the presumption that an estate owes taxes by executing an affidavit attesting that the estate is not taxable.

Nonrecurring Tax

The bill, in recognition of special escrow requirements that apply to the sale of time shares, provides due dates for taxes on notes or other obligations and mortgages or other liens which are executed in conjunction with the sale of a timeshare by a developer. These taxes are due on the earlier of the following dates: the date the mortgage or lien is recorded or the 20th day of the month following the month in which the conditions precedent to the release of all of a purchaser's escrowed funds have been satisfied. In the event that no mortgage or lien is recorded, taxes are due on the 20th of the month following the month in which the time share purchaser's funds are available for release from escrow.

The bill authorizes the department to adopt rules to implement the method for reporting these nonrecurring taxes.

Tax on Deeds and Other Instruments Relating to Real Property

The bill, in recognition of special escrow requirements that apply to the sale of time shares, provides due dates for taxes on deeds and other instruments which are executed in conjunction with the sale of a timeshare by a developer. These taxes are due on the earlier of the following dates: the date the deed or instrument conveying the timeshare interest is recorded or the 20th day of the month following the month in which the conditions precedent to the release of all of a purchaser's escrowed funds have been satisfied. In the event that no deed or other instrument conveying a timeshare instrument is recorded or delivered to a purchaser, taxes are due on the 20th of the month following the month in which the time share purchaser's funds are available for release from escrow.

The bill authorizes the department to adopt rules to implement the method for reporting these taxes on deeds and other instruments.

Tax on Promissory Notes or Other Obligations to Pay Money

The bill, in recognition of special escrow requirements that apply to the sale of time shares, provides due dates for taxes on mortgages or other evidences of indebtedness which are executed in conjunction with the sale of a timeshare by a developer. These taxes are due on the earlier of the following dates: the date the mortgage or other evidence of indebtedness is recorded or the 20th day of the month following the month in which the conditions precedent to the release of all of a purchaser's escrowed funds have been satisfied. In the event that no mortgage or evidence of indebtedness is recorded, taxes are due on the 20th of the month following the month in which the time share purchaser's funds are available for release from escrow.

The bill authorizes the department to adopt rules to implement the method for reporting these taxes on mortgages or evidences of indebtedness.

Communication Services Tax

The bill provides an additional method to determine a service address of a communications service subject to the communication services tax. If the service address cannot be determined under the existing methods, the bill provides that the service address is the residential or business address of the customer. This new method is effective July 1, 2004. According to the department, the method provided by the bill to determine a service address is necessary to determine the service address of mobile communications equipment such as satellite radios that travel across multiple taxing jurisdictions.

Tax on Sales Use and Other Transactions

Effective July 1, 2004, a "person who willfully attempts" to "evade or defeat" a tax imposed under ch. 212, F.S., commits a felony of the third degree and may be punished by the imposition of the following penalties:

- A penalty of 100 percent of the tax bill;
- A fine of up to $5,000;
- Imprisonment of up to 5 years; or
- Imprisonment of up to 10 years if the person is a habitual felony offender.

Procedures to Compromise Tax Liability

Section 213.21(10), F.S., authorizes the department to compromise tax liability for taxes imposed under ch. 212, F.S. The bill authorizes the department to also compromise tax liability for taxes administered under ch. 212, F.S., and makes this authority retroactive to July 1, 2003.

Procedure Regarding Unclaimed Evidence

The bill authorizes the department to retain title to property that it has seized pursuant to an investigation or obtained for use as evidence in a legal proceeding that remains unclaimed by the owner for 60 days or more after the conclusion of a proceeding. The bill authorizes the department to retain the property or transfer it to another state agency. If the property has little to no value the department may destroy it.

The bill authorizes the department to adopt rules governing its handling of unclaimed property.

This provision of the bill is important to the department because of the increasing costs of storing unclaimed evidence.

Except as otherwise provide in the bill, the bill takes effect upon becoming a law.

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 timing of the receipt of taxes in conjunction with the sale of timeshares will change slightly.

B. Private Sector Impact:

The bill will enable a person to compromise taxes administered but not imposed under ch. 212, F.S.

C. Government Sector Impact:

The bill clarifies provisions of law related to the administration of taxes. As a result, the Department of Revenue may be able to collect taxes due more efficiently. The bill also clarifies which local taxing jurisdictions may tax a particular communications service.

VI. Technical Deficiencies:

The Department of Revenue in its analysis of this bill has recommended that technical amendments be made to this bill to clarify when certain taxes that arise from the sale of a timeshare are due.

VII. Related Issues:

None.

VIII. Amendments: