

By Senator Margolis

35-1473-04

1 A bill to be entitled
2 An act relating to tax administration; amending
3 s. 198.32, F.S.; allowing the personal
4 representative of an estate that is not subject
5 to tax under ch. 198, F.S., to execute an
6 affidavit attesting that the estate is not
7 taxable; amending s. 199.135, F.S.; providing
8 for taxation of sales of timeshare interests in
9 timeshare plans; amending s. 201.02, F.S.;
10 providing special provisions for the tax on
11 deeds and other instruments relating to real
12 property or interests in real property as
13 applied to the sales of timeshare interests in
14 timeshare plans; amending s. 201.08, F.S.;
15 providing special provisions for the tax on
16 notes as applied to the sales of timeshare
17 interests in timeshare plans; amending s.
18 202.11, F.S.; expanding the definition of the
19 term "service address"; amending s. 212.12,
20 F.S.; providing that a person who willfully
21 attempts in any manner to evade or defeat a tax
22 or fee imposed under ch. 212, F.S., commits a
23 felony of the third degree; providing an
24 additional penalty; amending s. 213.21, F.S.;
25 providing that taxes imposed under ss. 124.0104
26 and 125.0108, F.S., qualify for the automatic
27 penalty compromise or settlement provided for
28 in that section; providing an exception;
29 providing for retroactivity; creating s.
30 213.758, F.S.; providing the Department of
31 Revenue direction for the retention and

1 destruction of unclaimed evidence; providing
2 for rulemaking; providing effective dates.

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4 Be It Enacted by the Legislature of the State of Florida:

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6 Section 1. Subsection (2) of section 198.32, Florida
7 Statutes, is amended to read:

8 198.32 Prima facie liability for tax.--

9 (2) Whenever an estate is not subject to tax under
10 this chapter and is not required to file a return, the
11 personal representative may execute an affidavit attesting
12 that the estate is not taxable. The form of the affidavit
13 shall be prescribed by the department, and shall include, but
14 not be limited to, statements regarding the decedent's
15 domicile and whether a federal estate tax return will be
16 filed, and acknowledgment of the personal representative's
17 personal liability under s. 198.23. This affidavit shall be
18 subject to record and admissible in evidence to show
19 nonliability for tax. This subsection applies to all estates,
20 regardless of the date of death of the decedent.

21 Section 2. Subsection (5) is added to section 199.135,
22 Florida Statutes, to read:

23 199.135 Due date and payment of nonrecurring tax.--The
24 nonrecurring tax imposed on notes, bonds, and other
25 obligations for payment of money secured by a mortgage, deed
26 of trust, or other lien evidenced by a written instrument
27 presented for recordation shall be due and payable when the
28 instrument is presented for recordation. If there is no
29 written instrument or if it is not so presented within 30 days
30 following creation of the obligation, then the tax shall be

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1 due and payable within 30 days following creation of the
2 obligation.

3 (5)(a) In recognition of the special escrow
4 requirements that apply to sales of timeshare interests in
5 timeshare plans pursuant to s. 721.08, taxes on notes or other
6 obligations and mortgages or other liens executed in
7 conjunction with the sale by a developer of a timeshare
8 interest in a timeshare plan are due on the earlier of the
9 date on which:

10 1. The mortgage or other lien is recorded; or
11 2. All of the conditions precedent to the release of
12 the purchaser's escrowed funds or other property pursuant to
13 s. 721.08(2)(c) have been complied with, regardless of whether
14 the developer has posted an alternative assurance. Taxes due
15 under this subparagraph shall be paid on or before the 20th
16 day of the month following the month in which they become due.

17 (b)1. If tax has been paid to the department by the
18 taxpayer under subparagraph (a)2., and the mortgage or other
19 lien with respect to which the tax is remitted is subsequently
20 recorded, a notation reflecting the prior payment of the tax
21 must be made upon the mortgage.

22 2. Notwithstanding paragraph (a), if moneys are
23 designated on a closing statement as taxes collected from the
24 purchaser, but the mortgage or other lien with respect to
25 which the tax was collected is never recorded, the tax moneys
26 shall be paid to the department on or before the 20th day of
27 the month following the month in which the funds are available
28 for release from escrow, unless the moneys are refunded to the
29 purchaser before that date.

30 3. The department may adopt rules to implement the
31 method for reporting taxes due under this subsection.

1 Section 3. Subsection (10) is added to section 201.02,
2 Florida Statutes, to read:

3 201.02 Tax on deeds and other instruments relating to
4 real property or interests in real property.--

5 (10)(a) In recognition of the special escrow
6 requirements that apply to sales of timeshare interests in
7 timeshare plans pursuant to s. 721.08, taxes on deeds or other
8 instruments conveying interest in Florida real property which
9 are executed in conjunction with the sale by a developer of a
10 timeshare interest in a timeshare plan shall be due on the
11 earlier of the date on which:

12 1. The deed or other instrument conveying interest in
13 Florida real property is recorded; or

14 2. All of the conditions precedent to the release of
15 the purchaser's escrowed funds or other property pursuant to
16 the requirements of s. 721.08(2)(c) have been complied with,
17 regardless of whether the developer has posted an alternative
18 assurance. Taxes due under this subparagraph shall be paid on
19 or before the 20th day of the month following the month in
20 which they become due.

21 (b)1. If tax has been paid to the department pursuant
22 to subparagraph (a)2., and the deed or other instrument
23 conveying interest in Florida real property with respect to
24 which the tax was remitted is subsequently recorded, a
25 notation reflecting the prior payment of the tax must be made
26 upon the deed or other instrument conveying interest in
27 Florida real property moneys.

28 2. Notwithstanding paragraph (a), if moneys are
29 designated on a closing statement as taxes collected from the
30 purchaser, but a default or cancellation occurs and no deed or
31 other instrument conveying interest in Florida real property

1 is ever recorded or delivered to the purchaser, the tax moneys
2 shall be paid to the department on or before the 20th day of
3 the month following the month in which such funds are
4 available for release from escrow pursuant to s. 721.08(2)(a)
5 or s. 721.08(b), unless such moneys are refunded to the
6 purchaser before that date.

7 3. The department may adopt rules to implement the
8 method for reporting taxes due pursuant to this subsection.

9 Section 4. Subsection (8) is added to section 201.08,
10 Florida Statutes, to read:

11 201.08 Tax on promissory or nonnegotiable notes,
12 written obligations to pay money, or assignments of wages or
13 other compensation; exception.--

14 (8)(a) In recognition of the special escrow
15 requirements that apply to sales of timeshare interests in
16 timeshare plans pursuant to s. 721.08, taxes on notes or other
17 written obligations and mortgages or other evidences of
18 indebtedness executed in conjunction with the sale by a
19 developer of a timeshare interest in a timeshare plan shall be
20 due on the earlier of the date on which:

21 1. The mortgage or other evidence of indebtedness is
22 recorded; or

23 2. All of the conditions precedent to the release of
24 the purchaser's escrowed funds or other property pursuant to
25 the requirements of s. 721.08(2)(c) have been complied with,
26 regardless of whether the developer has posted an alternative
27 assurance. Taxes due pursuant to this subparagraph shall be
28 paid on or before the 20th day of the month following the
29 month in which they become due.

30 (b)1. If tax has been paid to the department pursuant
31 to subparagraph (a)2., and the mortgage or other evidence of

1 indebtedness with respect to which the tax was remitted is
2 subsequently recorded, a notation reflecting the prior payment
3 of the tax must be made upon the mortgage.

4 2. Notwithstanding paragraph (a), if moneys are
5 designated on a closing statement as taxes collected from the
6 purchaser, but the mortgage or other evidence of indebtedness
7 with respect to which the tax is collected is never recorded,
8 the tax moneys shall be paid to the department on or before
9 the 20th day of the month following the month in which the
10 funds are available for release from escrow, unless the moneys
11 are refunded to the purchaser before that date.

12 3. The department may adopt rules to implement the
13 method for reporting taxes due pursuant to this subsection.

14 Section 5. Effective July 1, 2004, paragraph (a) of
15 subsection (15) of section 202.11, Florida Statutes, is
16 amended to read:

17 202.11 Definitions.--As used in this chapter:

18 (15) "Service address" means:

19 (a) Except as otherwise provided in this section:⁷

20 1. The location of the communications equipment from
21 which communications services originate or at which
22 communications services are received by the customer.

23 2. In the case of a communications service paid
24 through a credit or payment mechanism that does not relate to
25 a service address, such as a bank, travel, debit, or credit
26 card, and in the case of third-number and calling-card calls,
27 the service address is the address of the central office, as
28 determined by the area code and the first three digits of the
29 seven-digit originating telephone number.

30 3. If the location of the equipment applicant
31 described in subparagraph 1. is not known and if subparagraph

1 2. does not apply, the service address is the location of the
2 customer's primary use of the communications service. For
3 purposes of this subparagraph, the location of the customer's
4 primary use of a communications service is the residential
5 street address or the business street address of the customer.

6 Section 6. Effective July 1, 2004, subsection (2) of
7 section 212.12, Florida Statutes, is amended to read:

8 212.12 Dealer's credit for collecting tax; penalties
9 for noncompliance; powers of Department of Revenue in dealing
10 with delinquents; brackets applicable to taxable transactions;
11 records required.--

12 (2)(a) When any person required hereunder to make any
13 return or to pay any tax or fee imposed by this chapter either
14 fails to timely file such return or fails to pay the tax or
15 fee shown due on the return within the time required
16 hereunder, in addition to all other penalties provided herein
17 and by the laws of this state in respect to such taxes or
18 fees, a specific penalty shall be added to the tax or fee in
19 the amount of 10 percent of either the tax or fee shown on the
20 return that is not timely filed or any tax or fee not paid
21 timely. The penalty may not be less than \$50 for failure to
22 timely file a tax return required by s. 212.11(1) or timely
23 pay the tax or fee shown due on the return except as provided
24 in s. 213.21(10). If a person fails to timely file a return
25 required by s. 212.11(1) and to timely pay the tax or fee
26 shown due on the return, only one penalty of 10 percent, which
27 may not be less than \$50, shall be imposed.

28 (b) When any person required under this section to
29 make a return or to pay a tax or fee imposed by this chapter
30 fails to disclose the tax or fee on the return within the time
31 required, excluding a noncompliant filing event generated by

1 situations covered in paragraph (a), in addition to all other
2 penalties provided in this section and by the laws of this
3 state in respect to such taxes or fees, a specific penalty
4 shall be added to the additional tax or fee owed in the amount
5 of 10 percent of any such unpaid tax or fee not paid timely if
6 the failure is for not more than 30 days, with an additional
7 10 percent of any such unpaid tax or fee for each additional
8 30 days, or fraction thereof, while the failure continues, not
9 to exceed a total penalty of 50 percent, in the aggregate, of
10 any unpaid tax or fee.

11 (c) Any person who knowingly and with a willful intent
12 to evade any tax imposed under this chapter fails to file six
13 consecutive returns as required by law commits a felony of the
14 third degree, punishable as provided in s. 775.082 or s.
15 775.083.

16 (d) Any person who makes a false or fraudulent return
17 with a willful intent to evade payment of any tax or fee
18 imposed under this chapter shall, in addition to the other
19 penalties provided by law, be liable for a specific penalty of
20 100 percent of the tax bill or fee and, upon conviction, for
21 fine and punishment as provided in s. 775.082, s. 775.083, or
22 s. 775.084.

23 1. If the total amount of unreported taxes or fees is
24 less than \$300, the first offense resulting in conviction is a
25 misdemeanor of the second degree, the second offense resulting
26 in conviction is a misdemeanor of the first degree, and the
27 third and all subsequent offenses resulting in conviction is a
28 misdemeanor of the first degree, and the third and all
29 subsequent offenses resulting in conviction are felonies of
30 the third degree.

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1 2. If the total amount of unreported taxes or fees is
2 \$300 or more but less than \$20,000, the offense is a felony of
3 the third degree.

4 3. If the total amount of unreported taxes or fees is
5 \$20,000 or more but less than \$100,000, the offense is a
6 felony of the second degree.

7 4. If the total amount of unreported taxes or fees is
8 \$100,000 or more, the offense is a felony of the first degree.

9 (e) A person who willfully attempts in any manner to
10 evade or defeat any tax or fee imposed under this chapter or
11 the payment thereof commits a felony of the third degree and,
12 in addition to other penalties provided by law, is liable for
13 a specific penalty of 100 percent of the tax bill or fee and,
14 upon conviction, for fine and punishment as provided in s.
15 775.082, s. 775.083, or s. 775.084.

16 (f)~~(e)~~ When any person, firm, or corporation fails to
17 timely remit the proper estimated payment required under s.
18 212.11, a specific penalty shall be added in an amount equal
19 to 10 percent of any unpaid estimated tax. Beginning with
20 January 1, 1985, returns, the department, upon a showing of
21 reasonable cause, is authorized to waive or compromise
22 penalties imposed by this paragraph. However, other penalties
23 and interest shall be due and payable if the return on which
24 the estimated payment was due was not timely or properly
25 filed.

26 (g)~~(f)~~ Dealers filing a consolidated return pursuant
27 to s. 212.11(1)(e) shall be subject to the penalty established
28 in paragraph (e) unless the dealer has paid the required
29 estimated tax for his or her consolidated return as a whole
30 without regard to each location. If the dealer fails to pay
31 the required estimated tax for his or her consolidated return

1 as a whole, each filing location shall stand on its own with
2 respect to calculating penalties pursuant to paragraph (e).

3 Section 7. Subsection (10) of section 213.21, Florida
4 Statutes, is amended to read:

5 213.21 Informal conferences; compromises.--

6 (10)(a) ~~Effective July 1, 2003,~~Notwithstanding any
7 other provision of law and solely for the purpose of
8 administering the taxes tax imposed by ss. 125.0104 and
9 125.0108 and chapter 212, except s. 212.0606,under the
10 circumstances set forth in this subsection, the department
11 shall settle or compromise a taxpayer's liability for penalty
12 without requiring the taxpayer to submit a written request for
13 compromise or settlement.

14 (b) For taxpayers who file returns and remit tax on a
15 monthly basis:

16 1. Any penalty related to a noncompliant filing event
17 shall be settled or compromised if the taxpayer has:

18 a. No noncompliant filing event in the immediately
19 preceding 12-month period and no unresolved ~~chapter 212~~
20 liability under s. 125.0104, s. 125.0108, or chapter 212
21 resulting from a noncompliant filing event; or

22 b. One noncompliant filing event in the immediately
23 preceding 12-month period, resolution of the current
24 noncompliant filing event through payment of tax and interest
25 and the filing of a return within 30 days after notification
26 by the department, and no unresolved ~~chapter 212~~ liability
27 under s. 125.0104, s. 125.0108, or chapter 212 resulting from
28 a noncompliant filing event.

29 2. If a taxpayer has two or more noncompliant filing
30 events in the immediately preceding 12-month period, the
31 taxpayer shall be liable, absent a showing by the taxpayer

1 that the noncompliant filing event was due to extraordinary
2 circumstances, for the penalties provided in s. 125.0104 or s.
3 125.0108 and s. 212.12, including loss of collection
4 allowance, and shall be reported to a credit bureau.

5 (c) For taxpayers who file returns and remit tax on a
6 quarterly basis, any penalty related to a noncompliant filing
7 event shall be settled or compromised if the taxpayer has no
8 noncompliant filing event in the immediately preceding
9 12-month period and no unresolved ~~chapter 212~~ liability under
10 s. 125.0104, s. 125.0108, or chapter 212 resulting from a
11 noncompliant filing event.

12 (d) For purposes of this subsection:

13 1. "Noncompliant filing event" means a failure to
14 timely file a complete and accurate return required under s.
15 125.0104, s. 125.0108, or chapter 212 or a failure to timely
16 pay the amount of tax reported on a return required by s.
17 125.0104, s. 125.0108, or chapter 212.

18 2. "Extraordinary circumstances" means the occurrence
19 of events beyond the control of the taxpayer, such as, but not
20 limited to, the death of the taxpayer, acts of war or
21 terrorism, natural disasters, fire, or other casualty, or the
22 nonfeasance or misfeasance of the taxpayer's employees or
23 representatives responsible for compliance with s. 125.0104,
24 s. 125.0108, or ~~the provisions of~~ chapter 212. With respect to
25 the acts of an employee or representative, the taxpayer must
26 show that the principals of the business lacked actual
27 knowledge of the noncompliance and that the noncompliance was
28 resolved within 30 days after actual knowledge.

29 Section 8. Section 7 of this act, which amends section
30 213.21, Florida Statutes, shall operate retroactively to July
31 1, 2003.

1 Section 9. Effective July 1, 2004, section 213.758,
2 Florida Statutes, is created to read:

3 213.758 Procedure regarding unclaimed evidence.--

4 (1) Title to unclaimed evidence or unclaimed tangible
5 personal property lawfully seized pursuant to an
6 investigation, obtained for use as evidence in a proceeding,
7 or held as evidence by the department shall vest permanently
8 in the department 60 days after the conclusion of the related
9 legal proceeding.

10 (a) If the property is of appreciable value, the
11 department may elect to:

12 1. Retain the property for the department's own use;
13 or

14 2. Transfer the property to another unit of state or
15 local government.

16 (b) If the property is not of appreciable value, the
17 agency may elect to destroy it.

18 (2) The department shall prescribe by rule procedures
19 to be followed when transferring title or record of ownership
20 of property of appreciable value or when destroying property
21 not of appreciable value. The rule must also set forth
22 criteria regarding treatment of unclaimed evidence or
23 unclaimed tangible personal property, including, but not
24 limited to, notice and timing requirements.

25 (3) This section applies to all unclaimed evidence or
26 unclaimed tangible personal property possessed by the
27 department on the date this section takes effect.

28 Section 10. Except as otherwise expressly provided in
29 this act, this act shall take effect upon becoming a law.

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SENATE SUMMARY

Amends provisions relating to tax administration. Allows the personal representative of an estate that is not subject to tax under ch. 198, F.S., to execute an affidavit attesting that the estate is not taxable. Provides for taxation of sales of timeshare interests in timeshare plans. Provides special provisions for the tax on deeds and other instruments relating to real property or interests in real property as applied to the sales of timeshare interests in timeshare plans. Provides special provisions for the tax on notes as applied to the sales of timeshare interests in timeshare plans. Expands the definition of the term "service address." Provides that a person who willfully attempts in any manner to evade or defeat a tax or fee imposed under ch. 212, F.S., commits a felony of the third degree. Provides an additional penalty. Provides that taxes imposed under ss. 124.0104 and 125.0108, F.S., qualify for the automatic penalty compromise or settlement provided for in s. 213.21, F.S. Provides an exception. Provides for retroactivity. Provides the Department of Revenue direction for the retention and destruction of unclaimed evidence. Provides for rulemaking.