HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1813 PCB FT 05-05 DOR/GTA
SPONSOR(S): Finance & Tax Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2032

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Finance & Tax Committee	8 Y, 0 N, w/CS	Levin	Diez-Arguelles
1) Fiscal Council			
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill is the Department of Revenue's annual General Tax Administration package. It enacts changes in the administration of tax laws and makes other changes to tax laws.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House principles.

B. EFFECT OF PROPOSED CHANGES:

Tax Adjustments

Currently s. 95.091 (3)(a) F.S., provides an exception from the statute of limitations in actions to collect taxes for tax adjustments made pursuant to s.220.23. The bill will allow adjustments made under new s. 624.50921 to be treated similarly. See Insurance Premium Tax – Statute of Limitations below.

Estate Tax

Florida's estate tax is equal to the federal credit allowed for state death taxes paid. Every personal representative is required to give notice to the Department of Revenue ("DOR") of the decedent's death on a form specified by the DOR. If the estate is required to file a federal estate tax return, the estate must also file a Florida estate tax return.

Prior to January 1, 2000, estates that did not have to file a federal return still had to file a form with the DOR indicating that "no tax is due." When the DOR received the form indicating "no tax is due", it issued a certificate to the estate stating that "no tax is due." The estate then filed the certificate with the Clerk of the Court.

In 1999, s. 198.32, F.S. was amended to allow the estates of decedents who died on or after January 1, 2000, that are not required to file a federal return, to file an "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court and not have to obtain a nontaxable certificate from DOR. However, the estates for decedents who died prior to January 1, 2000, are still required to file the form with the DOR in order to obtain a nontaxable certificate. The DOR reports that 400-500 of these forms are received and processed monthly.

The bill amends s. 198.32, F.S. to allow all estates that are not required to file a federal tax return to file an "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court regardless of the decedent's date of death.

Documentary Stamp Tax and Non-recurring Intangible Tax – Timeshares

Section 721.08, F.S., imposes special escrow requirements on purchaser's funds to protect consumers who purchase timeshare interests. The law is intended to protect the purchaser's funds prior to closing and allows release of funds from escrow only upon cancellation or noncompliance with the provisions of the statute.

Section 213.756, F.S., provides that certain monies collected from a purchaser under the representation that the funds are taxes are state funds from the moment of collection and are not subject to refund absent proof that such funds have been refunded previously to the purchaser.

The deeds and mortgages executed in conjunction with the sale of a timeshare interest in real property are subject to documentary stamp tax (Chapter 201) and non-recurring intangible tax (Chapter 199). The DOR has taken the position that taxes must be remitted when they become due pursuant to Chapters 201 and 199. The timeshare industry believes that remitting taxes prior to the release of funds from escrow would violate the provisions of s. 721.08, F.S.

The bill recognizes the special escrow requirements that apply to sales of timeshare interests and provides that taxes on notes or other obligations and mortgages or other liens executed in conjunction with the sale by a developer of a timeshare interest in a timeshare plan are due on the earlier of the date on which:

1. The mortgage or other lien is recorded; or
2. All of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c) have been complied with, regardless of whether the developer has posted an alternative assurance.

If moneys are designated on a closing statement as taxes collected from the purchaser, but the mortgage or other lien with respect to which the tax was collected is never recorded, the tax moneys shall be paid to the department on or before the 20th day of the month following the month in which the funds are available for release from escrow, unless the moneys are refunded to the purchaser before that date.

The DOR is granted authority to adopt rules.

Communication Services Tax – Service Address Definition

The current definition of “service address” in s. 202.11, F.S., does not provide guidance for sourcing or situsing communications services where a credit or payment mechanism not related to a service address is used and the location of the equipment from which the communication services originate or are received by the customer are not known. An example of this would be satellite radio in a vehicle that may cross many jurisdictional lines while receiving the radio signal making the determination of the appropriate tax rates extremely difficult, if not impossible, to determine.

The bill amends the definition of service address in s. 202.011(15)(a), F.S., to include a customer’s street address as the location of the service address for communication services where the location of the equipment from which the services originate or are received by the customer is unknown.

Fuel Tax – Distribution of penalties

Current fuel tax law imposes penalties for incomplete informational returns, not filing the returns in the manner requested by DOR and for not providing information in a timely fashion. These penalties are not associated with the assessment of a tax liability for a specific fuel type and so funds have to be held in the Fuel Tax Collection Trust Fund. This bill provides for distribution of these penalties in the same manner as in current law under s. 206.875, F.S. for diesel fuel.

Fuel Suppliers – Notification Requirement

The bill allows the DOR to post the required monthly "Active & Cancelled Fuel License List" on its website or to continue to mail it to those who wish to receive a hard copy each month.

Airplanes – Technical Correction

In 1995, DOR worked with the marine industry to develop language concerning the tax status of boats purchased in Florida by nonresidents that would not be used or kept in Florida. Legislation was passed that allowed an exemption for a boat or airplane to remain in Florida as long as it was removed from the state not more than 90 days after the purchase. There is a technical error in the law where the words "or airplane" was left out in the second reference after the word "boat" was made. There have been no administrative or enforcement problems with this technical error in the law. The bill amends s.212.05 (1) (a) 2, F.S. to clarify the tax treatment for nonresident purchasers of airplanes.

Sales Tax on Vessels

Presently no sales or use tax is imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered yacht broker/dealer. The DOR has issued a formal opinion confirming that this is the DOR's interpretation of the law. See Technical Assistance Advisement 03A-051. However, due to an older, informal opinion of the DOR, the yacht broker industry is concerned that the law needs to be clarified.

The bill claries present law that no sales or use tax shall be imposed on a vessel imported into Florida for the sole purpose of being offered for sale by a registered Florida yacht broker/dealer, provided the vessel remains under the care, custody and control of the registered Florida yacht broker/dealer and the owner of the vessel makes no personal use of the vessel during that time.

Sales and Use Tax – Fraud Definition

Section 212.12(2), F.S., provides specific penalties for a taxpayer who:

- fails to timely file a return or timely remit tax;
- fails to disclose a tax or fee due with a return;
- knowingly and with a willful intent to evade tax fails to file six consecutive returns (criminal penalty);
- makes a false or fraudulent return with a willful intent to evade payment (criminal penalty);
- fails to timely remit the proper estimated payment; or
- fails to timely remit the proper estimated payment with a consolidated return.

Presently there is no specific penalty for willfully attempting to evade a tax or fee imposed under Chapter 212. This bill would make willfully attempting to evade a tax a third degree felony, punishable as provided in ss. 775.082, 775.083, or 775.04, F.S.

Bill of Lading Program – Information Sharing

When trucks enter Florida, Department of Agriculture and Consumer Services (DACS) officers electronically image bills of lading for DOR to check for sales and use tax compliance. An inter-agency

agreement is in place for this program. Existing statutory requirements limit the amount of information DOR is allowed to share with DACS officers which inhibits some of the training or guidance DOR is able to provide to DACS officers. This results in non-productive or duplicative information being captured.

This bill amends s. 213.053(7) (l), F.S., to expand sharing of confidential information between DOR and DACS for the Bill of Lading Program. An inter-agency agreement will still be required and restrictions on the use of the information will remain.

Tiered Penalty Compromise Clarification

Chapter 2002-213, Laws of Florida, amended s. 213.21(10), F.S., to allow the Department to automatically waive penalties for taxes under Chapter 212 for a one-time noncompliant tax return for an otherwise compliant taxpayer. Previously, such a taxpayer would have had to request the penalty waiver in writing. The question has arisen whether this compromise authority applies to other taxes and fees that are not imposed under Chapter 212, F.S., but are administered under provisions found in Chapter 212, F.S.

The bill amends s 213.21(10), F.S., to specify and clarify that all taxes administered under Chapter 212 qualify for the automatic penalty compromise or settlement. Specific reference is made to the tourist development tax and the tourist impact tax that are imposed in Chapter 125, but administered under Chapter 212. This section of the bill takes effect upon becoming a law, and will operate retroactively to July 1, 2003.

Collection Agency Referrals - Notice Clarification

Current law states “the taxpayer must be notified by mail by the Department 30 days prior to the department assigning the collection of any taxes to a debt collection agency.” It is unclear if this means the DOR must do the notification by exactly 30 days prior to the referral or if it is intended for the notification is to be “at least” 30 prior to the referral. It is not always possible or practical to send the notification exactly on the 30 day mark.

The bill amends section 213.27, F.S., to clarify that the notification by the department to the taxpayer must be “at least” 30 days prior to the referral of their account to a debt collection agency.

Repayment of funds paid erroneously into the State Treasury

In general, s. 215.26 (2), F.S., permits applications for tax refunds within 3 years after the tax was paid. An exception to this limitation exists for taxes paid pursuant to chapter 198 and s. 220.23, F.S. The bill expands the exception to include new s. 624.50921, F.S.

The new section is needed because the Department of Financial Services issues refunds to insurance companies for the workers compensation administrative assessment (WCAA) that the insurers previously paid. These refunds are made without consideration of the relationship of the WCAA to the insurance premium tax or the corporate income tax. If the insurance premium tax is out of statutory assessment by DOR, the insurance company may receive a windfall because it already received a benefit for paying the WCAA in the form of a reduced tax liability.

The new statute of limitations in s. 624.50921, F.S., allows for the assessment of the insurance premium tax for those situations where the amount of corporate income tax or WCAA paid by the insurer is adjusted through an amended return or refund.

Please also see Insurance Premium Tax – Statute of Limitations below.

Emergency Management Surcharge

There is a surcharge of $2 and $4 on residential and commercial insurance policies in Florida with the proceeds going to the Emergency Management, Preparedness and Assistance Trust Fund (EMPATF). In the case of surplus lines policies, individuals who take out the policies have to separately remit these funds directly to DOR. DOR currently receives around 100 filings each year from those who have purchased surplus lines policies. In 1997, the Florida Surplus Lines Service Office was established and it collects the surplus lines tax. The bill amends s. 252.372, F.S., to allow the Florida Surplus Lines Service Office to collect the $2 and $4 EMPATF surcharge and deposit the proceeds into the trust fund.

SUTA Dumping (State Unemployment Tax Act)

Some employers and financial advisors have found ways to manipulate state experience rating systems so that they pay lower state unemployment compensation taxes than their unemployment experience would otherwise allow. Most frequently, it involves an employer that transfers their business to a related company that has a lower tax rate to avoid its unemployment experience history. This practice has been identified by the United Stated Department of Labor as "SUTA dumping." (State Unemployment Tax Act) Public Law 108-295, the "SUTA Dumping Prevention Act of 2004," was signed by the President on August 9, 2004 and requires states to amend their state laws to conform to the new legislation designed to prevent this activity. Currently it is a third degree felony to knowingly make a false statement or intentionally omit a material fact to avoid or lower an employer's unemployment compensation tax.

This bill creates s. 443.131(3) (g), F.S. to comply with the federal requirements by requiring employers who transfer their business to a related entity to retain their unemployment experience history and also to not allow the history to be transferred unless the successor was already an employer and the transfer was not solely or primarily for the purpose of obtaining a lower tax rate. In addition, the federal law requires states to adopt meaningful civil and criminal penalties. The proposed change would make it a third degree felony to attempt to violate or advise another person to attempt to violate this prohibition against SUTA dumping.

Unemployment Tax – Notices by Regular Mail

Currently, notices to employers of unemployment tax assessments must be sent by certified or registered mail and notices to employers of the filing of liens must be sent by registered mail. The proposed change would allow these letters to be sent by first class mail.

Insurance Premium Tax – Statute of Limitations

The Department of Financial Services issues refunds to insurance companies for the workers compensation administrative assessment (WCAA) that the insurers had previously paid. These refunds are made without consideration of the relationship of the WCAA to the insurance premium tax or corporate income tax. If the insurance premium tax is out of statute for assessment by DOR, the insurance company may receive a windfall because it already received a benefit for paying the WCAA in the form of a reduced insurance premium tax liability.

The bill would create a new s. 624.50921, F.S., which creates a statute of limitations for assessment of the insurance premium tax for those situations where the amount of corporate income tax or WCAA paid by the insurer is adjusted through an amended return or refund.

Reenact Compromise Authority

In Chapter 2000-312, Laws of Florida, language was added to establish grounds for "doubt as to liability" concerning DOR's authority in informal conferences and compromises with taxpayers. These changes provided a framework for compromises of tax and interest in a fair and consistent manner. The 2000 legislation requires the legislature to review, and if appropriate, reenact this provision of the bill by October 1, 2005. The bill reenacts s. 213.21, F.S.

C. SECTION DIRECTORY

Section 1. Adds a cross reference in s. 95.091, F.S., which concerns the limitation on actions to collect taxes, to s. 624.50921, F.S., which will be a new statute of limitations for insurance premium taxes.

Section 2. Amends s. 198.32, F.S., to allow all estates that are not required to file a federal tax return to file an "Affidavit of No Florida Estate Tax Due" directly with the Clerk of the Court and not the Department of Revenue, regardless of the decedent's date of death.

Sections 3, 4, and 5. Amend ss.199.135 (5)(a), 201.02 (10), and 201.08 (8) F.S., to limit the application of the documentary stamp tax and intangible personal property tax for timeshares to those documents that are recorded or to those existing where the conditions precedent to the release of the purchaser's funds or properties have been met.

Section 6. Amends s. 202.011(15)(a), F.S., to include a customer's street address as the location of the service address for communication services where the location of the equipment from which the services originate or are received by the customer is unknown.

Section 7, 8, 9, and 11. Create ss. 206.09 (6), 206.095(4), 206.14(6), and 206.485 (3) F.S., to provide that the penalties from reports of carriers transporting motor fuel, reports of terminal operators, and inspection of certain records are to be deposited into the Fuel Tax Collection Trust Fund, where the penalties for diesel fuel are already deposited.

Section 10. Amends s. 206.27, F.S., to allow DOR the option of posting the Active and Cancelled Fuel License List on the DOR web site each month instead of mailing it to all licensees.

Section 12. Amends s. 212.05(1), F.S., to clarify the tax treatment for nonresident purchasers of airplanes.

Section 13. Amends s. 212.06, F.S., to clarify the tax treatment of vessels imported into Florida solely for the purpose of retail sale.

Section 14. Amends s. 212.11 (4) (e), F.S., to correct a reference.

Section 15. Amends s. 212.12, F.S., to change current statute to include willful attempts in any manner to evade any tax, surcharge or fee imposed by Chapter 212, F.S. The offense would be classified as a felony of the third degree, punishable as provided in ss. 775.082, 775.083 or 775.04, F.S.

Section 16. Amends s. 213.053(7) (l), F.S., to expand sharing of confidential information between DOR and DACS for the Bill of Lading Program. An inter-agency agreement would still be required and restrictions on the use of the information would remain.

Section 17. Amends s. 213.21(10), F.S., to specify and clarify which taxes qualify for the automatic penalty compromise or settlement.

Section 18. Clarifies that the amendment to s. 213.21(10), F.S., operates retroactively to July 1, 2003.

Section 19. Amends s. 213.27, F.S., to clarify that the notification by the department to the taxpayer must be "at least" 30 days prior to the referral of their account to a debt collection agency.

Section 20. Amends s. 215.26, F.S., to provide for tax refunds for corporate income tax adjustments.

Section 21. Amends s. 252.372, F.S., to allow the Florida Surplus Lines Service Office to collect the $2 and $4 Emergency Management, Preparedness, and Assistance Trust Fund (EMPATF) surcharge and deposit the proceeds into the trust fund.

Section 22. Adds s. 443.131 (3) (g), F.S., to comply with federal law by requiring employers who transfer their business to a related entity to retain their unemployment experience history and also not allow the history to be transferred unless the successor was already an employer and the transfer was not solely or primarily for the purpose of obtaining a lower tax rate. In addition, the federal law requires states to adopt meaningful civil and criminal penalties. The proposed change would make it a third degree felony to attempt to violate or advise another person to attempt to violate this prohibition against SUTA Dumping (State Unemployment Tax Act).

Section 23. Amends s. 443.141, F.S. to allow the DOR to send notices of assessments and notices of filing of liens by regular mail.

Section 24. Creates s. 624.50921, F.S., which is a new statute of limitations for assessment of the insurance premium tax for those situations where the amount of corporate income tax or WCAA paid by the insurer is adjusted through an amended return or refund.

Section 25. Section 11 of Ch. 2000-312, LOF, required s. 213.21 to be repealed on October 1, 2005 unless subsequently reenacted. This section is the reenactment.

Section 26. Unless otherwise expressly provided, the bill will take effect July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   This bill has not yet been considered by the Revenue Impact Conference, but the fiscal impact is expected to be minimal.

2. Expenditures:

   The fiscal impact to state agencies is expected to be minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision is not applicable because it does not: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenue in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

B. RULE-MAKING AUTHORITY:

The DOR is given rule making authority for those sections of the bill which concern documentary stamp taxes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DOR has noticed that the words “airplanes” and “aircraft” are used in the GTA bill. The DOR is requesting that these references be made consistent and that the word “aircraft” be used.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Committee on Finance and Tax adopted 1 amendment which clarifies that adjusters, managing general agents and service representatives are considered employees for purposes of the salary credit provided for in s. 626.509, F.S.