

Bill No. CS for SB 2032

Barcode 193262

CHAMBER ACTION

Senate

House

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Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 24, line 9, through
page 26, line 3, delete those lines

and insert:

Section 17. Paragraph (b) of subsection (5) of section
212.13, Florida Statutes, is amended to read:

212.13 Records required to be kept; power to inspect;
audit procedure.--

(5)

(b) Such written notification shall contain:

1. The approximate date on which the auditor is
scheduled to begin the audit.

2. A reminder that all of the records, receipts,
invoices, resale certificates, and related documentation of
the taxpayer must be made available to the auditor.

3. A notification of the availability of having the
audit conducted pursuant to s. 213.285 by a qualified
practitioner instead of the department.

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1 ~~4.3.~~ Any other requests or suggestions the department
2 may deem necessary.

3 Section 18. Subsection (8) of section 213.21, Florida
4 Statutes, is amended, present subsection (9) of that section
5 is redesignated as subsection (10), present subsection (10) of
6 that section is redesignated as subsection (11) and amended,
7 and a new subsection (9) is added to that section, to read:

8 213.21 Informal conferences; compromises.--

9 (8) In order to determine whether certified audits are
10 an effective tool in the overall state tax collection effort,
11 the executive director of the department or the executive
12 director's designee shall settle or compromise penalty
13 liabilities of taxpayers who participate in the certified
14 audits project before the department issues a notice of intent
15 to audit. As further incentive for participating in the
16 program before the department issues a notice of intent to
17 audit, the department shall abate the first \$25,000 of any
18 interest liability and 25 percent of any interest due in
19 excess of the first \$25,000. A settlement or compromise of
20 penalties or interest pursuant to this subsection shall not be
21 subject to the provisions of paragraph (3)(a), except for the
22 requirement relating to confidentiality of records. The
23 department may consider an additional compromise of tax or
24 interest pursuant to the provisions of paragraph (3)(a). This
25 subsection does not apply to any liability related to taxes
26 collected but not remitted to the department.

27 (9) For taxpayers that participate in the certified
28 audit program after a written notification of intent to audit
29 has been issued by the department, the department shall
30 compromise the penalty based only upon reasonable cause
31 pursuant to s. 213.21, and shall abate the first \$10,000 of

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1 any interest liability and 10 percent of any interest due in
2 excess of the first \$10,000.

3 (11)(10)(a) ~~Effective July 1, 2003,~~ Notwithstanding
4 any other provision of law and solely for the purpose of
5 administering the taxes ~~tax~~ imposed by ss. 125.0104 and
6 125.0108, and chapter 212, except s. 212.0606, under the
7 circumstances set forth in this subsection, the department
8 shall settle or compromise a taxpayer's liability for penalty
9 without requiring the taxpayer to submit a written request for
10 compromise or settlement.

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

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

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

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

26 2. If a taxpayer has two or more noncompliant filing
27 events in the immediately preceding 12-month period, the
28 taxpayer shall be liable, absent a showing by the taxpayer
29 that the noncompliant filing event was due to extraordinary
30 circumstances, for the penalties provided in s. 125.0104 or s.
31 125.0108 and s. 212.12, including loss of collection

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1 allowance, and shall be reported to a credit bureau.

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

9 (d) For purposes of this subsection:

10 1. "Noncompliant filing event" means a failure to
11 timely file a complete and accurate return required under s.
12 125.0104, s. 125.0108, or chapter 212 or a failure to timely
13 pay the amount of tax reported on a return required by s.
14 125.0104, s. 125.0108, or chapter 212.

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

26 Section 19. Paragraph (d) of subsection (1) and
27 subsections (2), (4), and (7) of section 213.285, Florida
28 Statutes, are amended to read:

29 213.285 Certified audits.--

30 (1) As used in this section, the term:

31 (d) "Qualified practitioner" means a certified public

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1 accountant who is licensed to practice in Florida and who has
 2 completed the certification program. For certified audits
 3 entered into after the department issues a notice of intent to
 4 audit, a qualified practitioner may not have performed
 5 accounting, auditing, management consulting, or tax services
 6 for the taxpayer or person that is a subsidiary, parent,
 7 sister, or other affiliate of the taxpayer during the 60-month
 8 period immediately preceding the written notice of intent to
 9 conduct an audit. Furthermore, the qualified practitioner must
 10 not perform accounting, auditing, management consulting, or
 11 tax services for any taxpayer or person that is a subsidiary,
 12 parent, sister, or other affiliate of the taxpayer for a
 13 period of 36 months following the department's approval of the
 14 certified audit report.

15 (2)(a) The department is authorized to initiate a
 16 certified audits project to further enhance tax compliance
 17 reviews performed by qualified practitioners and to encourage
 18 taxpayers to hire qualified practitioners at their own expense
 19 to review and report on their tax compliance. The nature of
 20 certified audit work performed by qualified practitioners
 21 shall be agreed-upon procedures in which the department is the
 22 specified user of the resulting report.

23 (b)1. As an incentive for taxpayers to incur the costs
 24 of a certified audit, the department shall compromise
 25 penalties and abate interest due on any tax liabilities
 26 revealed by a certified audit as provided in s. 213.21. This
 27 authority to compromise penalties or abate interest shall not
 28 apply to any liability for taxes that were collected by the
 29 participating taxpayer but that were not remitted to the
 30 department.

31 2. If the taxpayer's request to participate in the

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1 certified audit program is submitted after the taxpayer has
2 been issued a written notice of intent to conduct an audit,
3 the department shall compromise penalties on any tax
4 liabilities revealed by a certified audit as provided in s.
5 213.21. This authority to compromise penalties does not apply
6 to any liability for taxes that were collected by the
7 participating taxpayer but were not remitted to the
8 department.

9 (4)(a) The qualified practitioner shall notify the
10 department of an engagement to perform a certified audit and
11 shall provide the department with the information the
12 department deems necessary to identify the taxpayer, to
13 confirm that the taxpayer is not already under audit by the
14 department, and to establish the basic nature of the
15 taxpayer's business and the taxpayer's potential exposure to
16 Florida revenue laws. The information provided in the
17 notification shall include the taxpayer's name, federal
18 employer identification number or social security number,
19 state tax account number, mailing address, business location,
20 and the specific taxes and period proposed to be covered by
21 the engagement for the certified audit. In addition, the
22 notice shall include the name, address, identification number,
23 contact person, and telephone number of the engaged firm.

24 (b)1. If the taxpayer has not been issued a written
25 notice of intent to conduct an audit, the taxpayer shall be a
26 participating taxpayer and the department shall so advise the
27 qualified practitioner in writing within 10 days after receipt
28 of the engagement notice. However, the department may exclude
29 a taxpayer from a certified audit or may limit the taxes or
30 periods subject to the certified audit on the basis that the
31 department has previously conducted an audit, that it is in

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1 the process of conducting an investigation or other
2 examination of the taxpayer's records, or for just cause
3 determined solely by the department.

4 2. If the taxpayer has been issued a written notice of
5 intent to conduct an audit and the department has not begun
6 its field audit work, the taxpayer may be a participating
7 taxpayer, and the department shall so advise the qualified
8 practitioner in writing within 10 days after receipt of the
9 engagement notice. An engagement notice must be submitted
10 within 45 days after the written notice of intent to conduct
11 an audit.

12 (c)1. Notice of the qualification of a taxpayer for a
13 certified audit shall toll the statute of limitations provided
14 in s. 95.091 with respect to the taxpayer for the tax and
15 periods covered by the engagement.

16 2. If the taxpayer's request to participate in the
17 certified audit program is submitted after the taxpayer has
18 been issued a written notice of intent to conduct an audit,
19 the written notice of intent to conduct an audit issued by the
20 department shall toll the statute of limitations provided in
21 s. 95.091.

22 (d) Within 30 days after receipt of the notice of
23 qualification from the department, the qualified practitioner
24 shall contact the department and submit a proposed audit plan
25 and procedures for review and agreement by the department.
26 The department may extend the time for submission of the plan
27 and procedures for reasonable cause. The qualified
28 practitioner shall initiate action to advise the department
29 that amendment or modification of the plan and procedures is
30 necessary in the event that the qualified practitioner's
31 inspection reveals that the taxpayer's circumstances or

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1 exposure to the revenue laws is substantially different than
2 as described in the engagement notice.

3 (7) To implement the certified audits project, the
4 department shall have authority to adopt rules relating to:

5 (a) The availability of the certification program
6 required for participation in the project;

7 (b) The requirements and basis for establishing just
8 cause for approval or rejection of participation by taxpayers;

9 (c) The requirements and basis for establishing just
10 cause for suspension, rejection, or cancellation of the
11 department's certification of a qualified practitioner.

12 (d)(c) Procedures for assessment, collection, and
13 payment of liabilities or refund of overpayments and
14 provisions for taxpayers to obtain informal and formal review
15 of certified audit results;

16 (e)(d) The nature, frequency, and basis for the
17 department's review of certified audits conducted by qualified
18 practitioners, including the requirements for documentation,
19 work-paper retention and access, and reporting; and

20 (f)(e) Requirements for conducting certified audits
21 and for review of agreed-upon procedures.

22 (g) Requirements to prevent the qualified practitioner
23 who conducted the certified audit after the department issued
24 a notice of intent to audit from representing the taxpayer in
25 the informal conference procedures provided in s. 213.21.

26
27 (Redesignate subsequent sections.)

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30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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On page 2, lines 21-24, delete those lines

and insert:

of Lading Program; amending s. 212.13, F.S.;
 requiring taxpayer notification of the
 availability of having an audit conducted by a
 qualified practitioner instead of the
 Department of Revenue under certain
 circumstances; amending s. 213.21, F.S.;
 providing for the compromise of penalty and
 interest for taxpayers participating in the
 certified audit program after a written
 notification of intent to audit has been issued
 by the Department of Revenue; specifying which
 taxes qualify for the automatic penalty
 compromise or settlement of liability; amending
 s. 213.285, F.S.; expanding the definition of
 the term "qualified practitioner" for purposes
 of certified audits entered into after the
 Department of Revenue issues a notice of intent
 to audit; providing for compromise of
 penalties; authorizing a taxpayer to be a
 participating taxpayer in an audit under
 certain circumstances; providing for written
 notice by the Department of Revenue and
 submission of an engagement notice; providing
 that the statute of limitations shall be tolled
 under certain circumstances; providing for
 retroactivity;