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.)

Prepared By: Government Efficiency Appropriations Committee

BILL:	SB 2032
SPONSOR:	Senator Atwater
SUBJECT:	Tax Administration
DATE:	April 5, 2005
REVISED:	3/23/05

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating & Fournier	Johansen	GE	**Favorable/4 amendments**
2.	Gordon	Cooper	CM	**Favorable**
3.			CJ	
4.			GA	
5.			WM	
6.				

Please see last section for Summary of Amendments

- [X] Technical amendments were recommended
- [ ] Amendments were recommended
- [ ] Significant amendments were recommended

I. Summary:

The bill makes the following changes to current tax administration and taxes that are administered by the Department of Revenue:

- Allows an estate that is not required to file a federal tax return to file with the clerk of the court an affidavit attesting that no Florida estate tax is due, regardless of the decedent's date of death.
- Provides special provisions for the imposition of the nonrecurring intangibles tax on the sale of a timeshare interest in a timeshare plan.
- Provides special provisions for the imposition of the documentary stamp tax on deeds or other instruments relating to real property or interests in real property on the sale of a timeshare interest in a timeshare plan.
- Provides an additional definition of the term "service address" for the purposes of the tax on communications services.
- Provides that penalties relating to fuel taxes shall be deposited into the Fuel Tax Collection Trust Fund and allocated pursuant to s. 206.875, F.S.

- Clarifies the tax treatment for nonresident purchasers of airplanes.

- Clarifies that no tax shall be imposed on any vessel imported into Florida for the sole purpose of being offered for sale at retail by a yacht broker or dealer registered in Florida, provided the vessel remains under the care, custody, and control of the registered broker or dealer and the owner makes no personal use of the vessel during that time.

- Includes in the definition of "tax fraud," willful attempts to evade a tax, surcharge, or fee imposed by ch. 212, F.S..

- Authorizes the expanded sharing of confidential information between the Department of Revenue and the Department of Agriculture and Consumer Services for the Bill of Lading Program.

- Retroactive to July 1, 2003, the bill specifies which taxes qualify for the automatic penalty compromise or settlement of liability provided in s. 213.21(10), F.S. – tourist development taxes, the tourist impact tax, and all taxes imposed under ch. 212 F.S., except for the rental car surcharge.

- Clarifies that the notification by the Department of Revenue to the taxpayer that the taxpayer's account is being referred to a debt collection agency must be made at least 30 days before the referral.

- Authorizes the Florida Surplus Lines Service Office to collect the Emergency Management, Preparedness, and Assistance Trust Fund surcharge and deposit the proceeds into the trust fund.

- Requires employers who transfer their business to a related entity to retain their unemployment experience history unless the successor was already an employer and the transfer was not solely or primarily for the purpose of obtaining a lower tax rate.

- Authorizes the Department of Revenue to send to employers by registered mail, notices of unemployment tax assessments and notices of the filing of liens.

- Creating a statute of limitations for assessments of the insurance premium tax if the amount of corporate income tax or a workers' compensation administrative assessment paid by the insurer is adjusted through an amended return or refund.

- Reenacts s. 213.21, F.S., scheduled to be repealed on October 1, 2005, relating to informal conference procedures within the Department of Revenue.

This bill substantially amends the following sections of the Florida Statutes: 95.091, 198.32, 199.135, 201.02, 201.08, 202.11, 206.09, 206.095, 206.14, 206.27, 206.485, 212.05, 212.06, 212.12, 213.053, 213.21, 213.27, 215.26, 252.372, 443.131, 443.141, and 624.50921.

II. Present Situation:

See "EFFECT OF PROPOSED CHANGES:" section of this staff analysis.

III. EFFECT OF PROPOSED CHANGES:

INSURANCE PREMIUM TAX/STATUTE OF LIMITATIONS
(Section 1)

PRESENT SITUATION:

Section 95.091(3), F.S., provides the statute of limitations for assessment for the taxes that are administered by the Department of Revenue (DOR). Except for the taxes levied under ch. 198, F.S. (Estate Taxes), and tax adjustments made pursuant to s. 220.23, F.S. (amended federal income tax returns requiring amended Florida income tax returns), DOR may assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011, F.S.:

- Within 3 years after the date the tax is due or such return is filed, whichever is later;
- For taxes due before July 1, 1999, within 6 years after the date the taxpayer either makes a substantial underpayment of tax, or files a substantially incorrect return;
- At any time while the right to a refund or credit of the tax is available to the taxpayer;
- At any time after the taxpayer has failed to make any required payment of tax, has failed to file a required return, or has filed a fraudulent return, except that for taxes due on or after July 1, 1999, the 3-year limitation applies if the taxpayer has disclosed in writing the tax liability to DOR before DOR has contacted the taxpayer; or
- For refunds of tax made erroneously by DOR, within 3 years of making such refund, or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

A tax return filed before the last day prescribed by law, including any extensions, prescribed by law, shall be deemed to have been paid on such last day.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 95.091(3), F.S., so that an additional exception from the normal statute of limitations for assessment is provided for s. 624.50921, F.S., in addition to exceptions for Ch. 198, F.S. (Estate Taxes), and tax adjustments made pursuant to s. 220.23, F.S. (amended federal income tax returns requiring amended Florida income tax returns).

ESTATE TAX/ELIMINATING FILING REQUIREMENTS FOR DR-301
(Section 2)

PRESENT SITUATION:

Section 198.32 (2), F.S., provides that estates that are not required to file the Federal Estate Tax Return, Form 706 or 706NA, may obtain an Affidavit of No Florida Estate Tax Due, using Form DR-312, which is filed directly with the clerk of court. This process is only available for estates of decedents dying on or after January 1, 2000. Form DR-312 takes the place of the Preliminary Notice and Report, Form DR-301, which was required prior to a statute change in 1999. However, Form DR-301 is still required to be filed for decedents dying before January 1, 2000. The 1999 law change eliminated the majority of the DR-301s filed; however, 400 to 500 DR-301 forms are still being received and processed on a monthly basis.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 198.32 (2), F.S., authorizing all estates, including those with decedents dying prior to January 1, 2000, and that are not required to file a federal estate tax return, to file an Affidavit of No Florida Estate Tax Due (Form DR-312).

INTANGIBLE TAX/DUE DATE AND PAYMENT OF NONRECURRING TAX
(Section 3)

PRESENT SITUATION:

Section 199.135, F.S., provides for the due date and payment of nonrecurring intangible tax. If a mortgage or lien is recorded, the tax is due at the time of the recordation of the mortgage or lien and is to be paid to the clerk of the circuit court. If no mortgage or lien is recorded, the tax is due within 30 days of the creation of the obligation and is to be paid directly to DOR. No language exists that provides for a different due date or payment option for taxes due on obligations and mortgages or other liens executed in conjunction with the sale by a developer of a timeshare interest.

EFFECT OF PROPOSED CHANGES:

The bill adds subsection (5) to s.199.135, F.S., providing that the nonrecurring intangible tax due on a note or other obligation secured by a mortgage or other lien upon real property situated in this state executed in conjunction with the sale by a developer of a timeshare interest in a timeshare plan is due on the earlier of the date the mortgage or other lien is recorded or by the 20^{th} day of the month following the month in which all of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c), F.S., have been complied with.

If tax was paid prior to the recordation of the mortgage or lien, then a notation providing such information must be made on the mortgage or other lien prior to recordation. The bill also provides that, where moneys are designated on a closing statement as taxes collected from the

purchaser and there is no recorded mortgage or lien, the tax moneys shall be paid to DOR 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 bill provides that DOR may adopt rules to implement the method for reporting taxes due.

DOCUMENTARY STAMP TAX/ TAX ON DEEDS AND OTHER INSTRUMENTS RELATING TO REAL PROPERTY OR INTERESTS IN REAL PROPERTY
(Section 4)

PRESENT SITUATION:

Section 201.02(1), F.S., provides for the imposition of documentary stamp tax on deeds or other instruments that convey an interest in Florida real property. Sections 201.02(6) through 201.02 (9), F.S., provide for certain exemptions and limitations to the documentary stamp tax imposed under s. 201.02(1), F.S.

EFFECT OF PROPOSED CHANGES:

The bill adds subsection (10) to s. 201.02, F.S., providing that the documentary stamp tax imposed on a deed or other instrument conveying interest in Florida real property which is executed in conjunction with the sale by a developer of a timeshare interest in a timeshare plan is due on the earlier of the date the deed or other instrument is recorded or by the 20th day of the month following the month in which all of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c), F.S., have been complied with.

If tax was paid prior to the recordation of the deed or other instrument, then a notation providing such information must be made on the deed or other instrument prior to recordation. The bill also provides that, where moneys are designated on a closing statement as taxes collected from the purchaser and there is no recorded or delivered deed or other instrument, the tax moneys shall be paid to DOR 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 bill authorizes DOR to adopt rules to implement the method for reporting taxes due.

DOCUMENTARY STAMP TAX ON PROMISSORY OR NONNEGOTIABLE NOTES, WRITTEN OBLIGATIONS TO PAY MONEY, OR ASSIGNMENTS OF WAGES OR OTHER COMPENSATION
(Section 5)

PRESENT SITUATION:

Section 201.08(1), F.S., provides for the imposition of documentary stamp tax on notes and other written obligations to pay money executed, signed, or delivered in Florida and on mortgages, liens, or other evidences of indebtedness filed or recorded in Florida. Sections 201.08(2) through 201.08(7), F.S., provide for certain exemptions and limitations to the documentary stamp tax imposed under s. 201.08(1), F.S.

EFFECT OF PROPOSED CHANGES:

The bill adds subsection (8) to s. 201.08, F.S., providing that the documentary stamp tax imposed on a note or other written obligation and a mortgage or other evidence of indebtedness that is executed in conjunction with the sale by a developer of a timeshare interest in a timeshare plan is due on the earlier of the date the mortgage or other evidence of indebtedness is recorded or by the 20th day of the month following the month in which all of the conditions precedent to the release of the purchaser's escrowed funds or other property pursuant to s. 721.08(2)(c), F.S., have been complied with. If tax was paid prior to the recordation of the mortgage or other evidence of indebtedness, then a notation providing such information must be made on the mortgage or other evidence of indebtedness prior to recordation. The bill also provides that, where moneys are designated on a closing statement as taxes collected from the purchaser and there is no recorded mortgage or other evidence of indebtedness, the tax moneys shall be paid to DOR 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 bill authorizes DOR to adopt rules to implement the method for reporting taxes due.

COMMUNICATIONS SERVICES TAX/ SERVICE ADDRESS DEFINITION
(Section 6)

PRESENT SITUATION:

Section 202.11 (15), F.S., provides a definition for the term "service address," which is used to "source" or "situs" taxable communications services. Special definitions are provided for cable and direct-to-home satellite services and for mobile communications services. All communications services are situsedbased on the location of the equipment, central telephone office location, or the customer's "place of primary use."

Due to an amendment regarding another issue addressed by the 2003 Legislature, the current definition of "service address" does not provide guidance for sourcing or situsing communications services when a credit or payment mechanism that is unrelated to a service address is not used and the location of the equipment from which the communications services originate or at which communications services are received by the customer is not known. Given the broad definition of communications services in s. 202.11(3), F.S., it is nearly certain that there will be instances where communications services will be sold in this state with no clear statutory guidance for establishing a service address. An example of this would be satellite radio in a vehicle that may cross many jurisdictional lines while receiving the radio signal. Because of the "portable" nature of the communications equipment (satellite radio) that receives the radio signals, a situation exists where the current definition of the term "service address" is not adequate for establishing a service address, because the location of the communications equipment can not be determined for purposes of establishing an origination or termination point.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 202.11(15)(a), F.S., amending the definition for the term "service address" to include a customer's street address as the location of the service address for communications services when the location of the equipment from which communications services originate or at which communications services are received by the customer is not known. This definition is patterned on the special definition for mobile services, which also contemplates situations where the location of the customer's equipment is unknown.

FUEL TAX/DISTRIBUTION OF PENALTIES
(Sections 7, 8, 9, and 11)

PRESENT SITUATION:

Current fuel tax law imposes penalties for incomplete informational returns, for not filing returns in the manner required 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.

EFFECT OF PROPOSED CHANGES:

The bill amends ss. 206.09, 206.095, 206.14, and 206.485, F.S., providing that all moneys derived from penalties shall be deposited into the Fuel Tax Collection Trust Fund, and allocated in the same manner as provided by s. 206.875, F.S., for diesel fuel.

FUEL TAX/NOTIFICATION TO FUEL SUPPLIERS
(Section 10)

PRESENT SITUATION:

Section 206.27(1), F.S., requires DOR to prepare a list each month of all current licensed terminal suppliers, importers, exporters, and wholesalers. The list includes all new licenses issued and all licenses canceled during the past 12 months. A copy of this list is required to be mailed to each licensee. The list is be used to verify license numbers of purchasers issuing exemption certificates or affidavits.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 206.27(1), F.S., giving DOR the option of posting the list of new and canceled licenses on DOR’s web site or mailing it to licensees who wish to continue to receive hard copy each month.

SALES AND USE TAX/AIRPLANE STATUTE CORRECTION
(Section 12)

PRESENT SITUATION:

Section 212.05(1)(a)2., F.S., provides an exemption to nonresident purchasers of boats and airplanes by or through a registered dealer if the nonresident does not make his or her permanent place of abode in this state and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat will be used in this state.

In 1995, the 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" were left out in the second reference after the word "boat." There have been no administrative or enforcement problems with this technical error in the law.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 2l2.05(1)(a)2., F.S., clarifying the tax treatment for nonresident purchasers of airplanes.

SALES AND USE TAX/ VESSELS IMPORTED FOR SALE
(Section 13)

PRESENT SITUATION:

Section 212.06., F.S., is silent whether use tax is due on a vessel imported into Florida for sale at retail by a registered boat broker. DOR has issued a Technical Assistance Advisement (TAA 03A-051) confirming this interpretation of the law. However, due to an older informal opinion (LTA) issued by DOR, the yacht broker industry is concerned that the law needs to be clarified.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.06(1)(e), F.S., clarifying current law that tax is not 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 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 14)

PRESENT SITUATION:

Based on the current statutory definitions of tax fraud in s. 212.12(2), F.S., that limits fraud to specific acts and the elimination of the phrase, "or willfully attempt to evade the payment of such a tax or fee," that was formerly found in s. 212.12(2)(a), F.S. (1997), DOR is constrained in its efforts to enforce tax fraud violations that are beyond the scope of s. 212.12(2)(b) and (c), F.S. Tax fraud offenders are escaping punishment because the statutes do not effectively reach all tax fraud offenders who voluntarily and intentionally violate known legal duties by evading taxes or fees. Future violations of the same nature are not being effectively deterred.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.12(2), F.S., amending the definition of fraud to include willful attempts in any manner to evade any tax, surcharge, or fee imposed by ch. 212. The change includes, in addition to all other penalties provided by law, a specific penalty of 100 percent of the tax bill or fee. Offenses committed under this section are classified as a felony of the third degree and punishable under the provisions of ss. 775.082, 775.083, and 775.084, F.S.

SALES AND USE TAX /CONFIDENTIAL INFORMATION SHARED WITH THE DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES
(Section 15)

PRESENT SITUATION:

Section 213.053(7)(l) F.S., authorizes DOR to disclose sales and use tax information to the Office of Agriculture Law Enforcement of the Department of Agriculture and Consumer Services (DACS). When trucks enter Florida, 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.

EFFECT OF PROPOSED CHANGES:

The 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 would still be required, and restrictions on the use of the information would remain.

TIERED PENALTY
(Sections 16 and 17)

PRESENT SITUATION:

When certain conditions are met, s. 213.21(10), F.S. provides for a compromise or settlement of a liability for penalty for the taxes imposed by ch. 212, F.S. Some questions have been asked on whether this compromise or settlement also applies to other taxes and fees that are not imposed under ch. 212, F.S., but are administered under the provisions of ch. 212, F.S., and included on a sales tax return. Questions have also been asked on whether this compromise or settlement applies to surcharges that are imposed under ch. 212, F.S., but are remitted on the Solid Waste and Surcharge Return, form DR-15SW.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.21(10), F.S., clarifying which taxes and fees qualify for the automatic penalty compromise or settlement. These are taxes imposed by s. 125.0104, Tourist Development Tax; s. 125.0108, F.S., Tourist Impact Tax; and ch. 212, except for s. 212.0606, F.S., Rental Car Surcharge. This clarification of which taxes and fees qualify for automatic penalty compromise or settlement operates retroactively to July 1, 2003.

CLARIFICATION OF TIME FRAME FOR COLLECTION AGENCY REFERRALS
(Section 18)

PRESENT SITUATION:

Section 213.27, F.S., authorizes DOR to contract with any debt collection agency to collect any delinquent taxes due from a taxpayer. Current law states "the taxpayer must be notified by mail by DOR 30 days prior to the DOR assigning the collection of any taxes to a debt collection agency." It is unclear if this means DOR must do the notification by exactly 30 days prior to the referral or if it is intended for the notification to be "at least" 30 days prior to the referral. It is not always possible or practical to send the notification exactly on the 30 day mark.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.27, F.S., clarifying that the notification by DOR to the taxpayer must be "at least" 30 days prior to the referral of the taxpayer's account to a debt collection agency.

INSURANCE PREMIUM TAX/STATUTE OF LIMITATIONS
(Section 19)

PRESENT SITUATION:

Section 215.26(2), F.S., provides the statute of limitations for taxpayers to request refunds for the taxes that are administered by DOR. In general, applications for refund must be filed within 3

years after the right to the refund has accrued or else the right is barred. Except as provided in ch.198, F.S., (Estate Taxes), and s. 220.23, F.S. (amended federal income tax returns requiring amended Florida income tax returns), an application for refund of a tax enumerated in s. 72.011, F.S., which was paid:

- After September 30, 1994, and before July 1, 1999, must be filed within 5 years after the date the tax is paid; and

- On or after July 1, 1999, must be filed within 3 years after the date the tax was paid.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 215.26(2), F.S., providing an additional exception from the normal statute of limitations for a refund provided for in s. 624.50921, F.S., in addition to exceptions for Chapter 198, F.S. (Estate Taxes), and tax adjustments made pursuant to s. 220.23, F.S. (amended federal income tax returns requiring amended Florida income tax returns). *See Section 23 of the bill which creates s. 624.50921, F.S.*.

SURCHARGE FOR EMERGENCY MANAGEMENT. PREPAREDNESS AND ASSISTANCE TRUST FUND
(Section 20)

PRESENT SITUATION:

Section 252.372, F.S., imposes an annual $2 surcharge per policy on every Florida homeowner's, mobile home owner's, tenant homeowner's, and condominium unit owner's policy at the time each policy is issued or renewed. Section 252.372, F.S., also imposes an annual $4 surcharge per policy on every Florida commercial fire, commercial multiple peril, and business owner's property insurance policy at the time each policy is issued or renewed. These surcharges are paid by the policyholder to the insurance company, or to the insurance company agent in the case of surplus lines policies. The insurance company, or insurance agent in the case of surplus lines policies, remits the surcharges it collects to DOR. DOR deposits the collected surcharges into the Emergency Management, Preparedness, and Assistance Trust Fund (EMPATF).

In addition to the insurance companies who remit the surcharge on applicable regular insurance policies, and surplus lines agents who remit the surcharge on applicable surplus lines policies, individuals who self procure policies from insurance companies that are not authorized to do business in Florida are also required to remit the appropriate surcharge to DOR.

Surplus lines agents required to remit the $2 and $4 surcharges on surplus lines policies for the EMPATF have a burden of filing and paying a surplus lines tax and the .3 percent service fee to the Florida Surplus Lines Office and then also filing and paying the EMPATF surcharge with DOR. The surcharge is remitted by the surplus lines agent, and the surplus lines agent is primarily responsible for collecting and remitting the EMPATF surcharge to DOR. However, DOR has administratively allowed a surplus lines insurer to remit the surcharges on behalf of its surplus lines agents for the policies it insures.

Taxpayers required to remit the $2 and $4 surcharges on independently procured policies for the EMPATF surcharge have a burden of logging onto the Surplus Lines Service Office's website, completing a form, printing out two bills, and sending one bill for the surplus lines tax to the Office of Insurance Regulation and the other to the Surplus Lines Service Office for the .3 percent service fee. The individual taxpayer is then required to remit the applicable EMPATF surcharge ($2 or $4), if any, to DOR.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 252.372, F.S., authorizing the Surplus Lines Service Office, instead of DOR, to collect the EMPATF surcharge on surplus lines policies and independently procured policies on which it collects the Surplus Lines Tax, effective with policies issued or renewed on or after January 1, 2006. The Surplus Lines Service Office would deposit the surcharges it collects into the EMPATF. DOR would still be responsible for the collection of the EMPATF surcharge from insurers licensed to do business in Florida (i.e., non-surplus lines policies and non- independently procured policies).

UNEMPLOYMENT TAX/SUTA DUMPING
(Section 21)

PRESENT SITUATION:

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 its 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 (State Unemployment Tax Act) Dumping." Public Law 108-295, the "SUTA Dumping Prevention Act of 2004," was signed by President Bush 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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 443.131(3), F.S., effective January 1, 2006, to comply with the following federal requirements:

- Requiring employers who transfer their business to a related entity to retain their unemployment experience history; and

- Not allowing the employment 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. An employer who knowingly violates or attempts to violate these provisions, and a person who knowingly advises another to violate the law, would be subject to the highest unemployment tax rate or a penalty of 2 percent of its taxable wages for the violation year plus the next 3 years. If the advisor is not an employer, the advisor would be subject to a penalty of not more than $5,000. Also the bill 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
(Section 22)

PRESENT SITUATION:

Section 443.141(2) and (3), F.S., require that 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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 443.141 (2) and (3), F.S., allowing DOR to send notices of assessments and notices of the filing of liens by regular mail.

INSURANCE PREMIUM TAX/STATUTE OF LIMITATIONS
(Section 23)

PRESENT SITUATION:

Section 624.50921, F.S., does not currently exist.

EFFECT OF PROPOSED CHANGES:

The bill creates s. 624.50921, F.S. In the event a taxpayer is required to amend its corporate income tax liability under ch. 220, F.S., or a taxpayer received a refund of its workers compensation administrative assessment paid under ch. 440, F.S., the taxpayer is required to file an amended insurance premium tax return within 60 days of the refund of the workers compensation administrative assessment or within 60 days of the requirement to file an amended corporate income tax return.

Notwithstanding the provisions of s. 95.091(3), F.S., DOR may issue a notice of deficiency at any time within 3 years after the date the amended insurance premium tax return is filed or at any time after the taxpayer fails to file a required amended insurance premium tax return. The amount of any proposed assessment under this section is limited to the amount of insurance premium tax deficiency or retaliatory tax deficiency for the taxable year after giving effect to only the change in corporate income tax paid or workers' compensation administrative assessment paid. Interest is due on such assessment from the original due date of the insurance

premium tax return that is affected by such workers compensation administrative assessment refunds or amended corporate income tax return.

Notwithstanding the provisions of s. 215.26, F.S., a claim for refund may be filed within 2 years after the date on which an amended insurance premium tax return is due under this section. However, the amount recoverable pursuant to a refund claim is limited to the amount of any overpayment resulting from re-computation of the taxpayer's insurance premium tax and retaliatory tax after giving effect to only the change in corporate income tax paid or the change in the amount of the workers' compensation administrative assessment paid.

REENACT COMPROMISE AUTHORITY
(Section 24)

PRESENT SITUATION:

DOR is authorized by law to establish procedures to settle or compromise unpaid liabilities owed by taxpayers. The statutes include provisions governing the establishment of closing agreements documenting a settlement or compromise, as well as guidelines for determining if there is doubt as to the liability of a taxpayer or doubt as to collectability of the unpaid liability.

Section 3 of ch. 2000-312, L.O.F (SB 509), amended s. 213.21(2) and (3), F.S., effective October 1, 2000, authorizing DOR to compromise the tax or interest owed by a taxpayer in cases where the taxpayer raises doubt as to liability for such tax or interest, based on the taxpayer's reasonable reliance on a written determination issued by DOR. A taxpayer who establishes reasonable reliance on written advice issued by DOR is deemed to have shown reasonable cause for noncompliance.

Circumstances that justify a taxpayer raising the issue of doubt as to liability concerning tax and interest owed, based on the taxpayer's reasonable reliance on a written determination by DOR, include:

- Audit work papers clearly show the same issue was considered in a prior audit of the taxpayer on behalf of or by DOR, and no assessment was made;

- The same issue was raised and assessed in a prior audit of the taxpayer, but during informal protest procedures, DOR issued a notice of decision withdrawing the proposed assessment on the issue; and

- The taxpayer received a Technical Assistance Advisement concerning the issue.

Taxpayers will not be deemed to have reasonably relied on a written determination of DOR under the following circumstances:

- The taxpayer misrepresented material facts at the time DOR's written determination was issued;

- The taxpayer did not fully disclose material facts to DOR at the time DOR's written determination was issued;

- The specific facts on which the DOR based its written determination have changed in such a material manner that the written determination no longer applies;

- The statutes, rules, or case law precedent has changed in a material way; or,

- DOR has notified the taxpayer in writing that the previously-issued determination no longer applies.

Section 11 of ch. 2000-312, L.O.F. (SB 509), provides a sunset clause which requires the entire act to be reviewed by the Legislature prior to October 1, 2005, at which time the act expires.

EFFECT OF PROPOSED CHANGES:

The bill re-enacts subsections (2) and (3) of s. 213.21, F.S., which continue to authorize DOR to compromise the tax, penalty, and interest under specified circumstance when a taxpayer reasonably relies on a written determination issued by DOR.

Section 25. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2005.

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:

None.

B. Private Sector Impact:

Employers who transfer their business to a related entity must retain their unemployment experience history for purposes of the unemployment compensation tax rate unless the

successor was already an employer and the transfer was not solely or primarily for the purpose of obtaining a lower tax rate.

Individuals who self procure insurance policies from insurance companies that are not authorized to do business in Florida will no longer have to separately remit the $2 and $4 Emergency Management, Preparedness, and Assistance surcharge directly to DOR instead they can remit the tax to Surplus Lines Service Office at the same time they remit their surplus lines tax.

C. Government Sector Impact:

Authorization for DOR to send notices of unemployment compensation tax assessments and notices to employers of the filing of liens by regular mail instead of certified or registered mail will result in cost savings to DOR.

VI. Technical Deficiencies:

Section 12 of the bill which clarifies the tax treatment of nonresident purchases of airplanes needs to be amended to change the word “airplane” to “aircraft.”

VII. Related Issues:

None.

VIII. Summary of Amendments:

Barcode 722474 by Government Efficiency Appropriations:
Technical amendment replacing the word “airplane” with the word “aircraft” for the purpose of the tax treatment of nonresident purchases of aircraft.

Barcode 921942 by Government Efficiency Appropriations:
Technical amendment replacing the word “airplane” with the word “aircraft” for the purpose of the tax treatment of nonresident purchases of aircraft.

Barcode 332008 by Government Efficiency Appropriations:
The amendment corrects a cross reference concerning persons eligible for the salary credit against the insurance premium tax.

Barcode 624948 by Government Efficiency Appropriations:
The amendment makes additional technical changes to s. 443.131(3), F.S., Variation of Contribution Rates Based on Benefit Experience, to comply with the provisions of Public Law 108-295, the State Unemployment Tax Act (SUTA) Dumping Prevention Act of 2004.