

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 659 CS

Limitations on Claims for Refund of Corporate Income Tax

SPONSOR(S): Domino

TIED BILLS:

IDEN./SIM. BILLS: SB 1300

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u>15 Y, 0 N</u>	<u>Sheheane</u>	<u>Carlson</u>
2) <u>Finance & Tax Committee</u>	<u>9 Y, 0 N, w/CS</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
3) <u>Commerce Council</u>	<u>7 Y, 0 N</u>	<u>Sheheane</u>	<u>Bohannon</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

Section 220.727, F.S., provides the rule for determining when payments of estimated income tax are deemed to be made for purposes of the statute of limitations governing refunds. Currently, payments of estimated tax are deemed paid either at the time the taxpayer files the return or at the time the return is required to be filed, determined without regard to any extension thereof, whichever occurs first.

The bill provides that payments of estimated tax are deemed paid at the time the return is required to be filed with regard to any extensions of time allowed to the taxpayer, and not an earlier time when the estimated tax payments were actually made.

This act will take effect July 1, 2005.

The fiscal impact of the bill is estimated to be negative \$3.4 million in state revenues during FY's 2005-2006 and 2006-2007. There is a negative fiscal impact as a result of taxpayers receiving a longer period of time in which to claim a refund.

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:

Current Situation

Section 220.727(1), F.S., provides the rule for determining when payments of estimated corporate income tax are deemed to be made for purposes of the statute of limitations governing refunds. Although the actual payments of estimated tax are made earlier, for purposes of the refund statute they are deemed to be paid:

- on the date the return is filed by the taxpayer; or
- on the original due date of the return, whichever is earlier.

Section 215.26, F.S., provides that the CFO may refund any moneys paid to the State Treasury which constitute: an overpayment of any tax, license, or account due; a payment where no tax license or account is due, and; any payment made to the State Treasury in error. An application for refunds must be filed with the CFO within three years after the right to the refund has accrued or else the right is barred.¹

Therefore, the three-year statute of limitations for obtaining a refund of estimated tax will begin to run no later than the original due date of the return.

Proposed Changes

The bill amends s. 220.727(1), F.S., to provide that payments of estimated tax are deemed to have been paid on the date the return is required to be filed with regard to any extensions of time allowed the taxpayer under s. 213.055(2) or s. 220.222, F.S. This change is retroactive to tax years beginning on or after January 1, 2001.

The three-year statute of limitations for obtaining a refund of estimated tax will not start to run until such time as the return is due, with regard to extensions allowed to the taxpayer. The bill changes the date estimated taxes are deemed to be paid, thus changing the statute of limitations for refunds of corporate income taxes.

C. SECTION DIRECTORY:

Section 1: Amends s. 220.727, F.S.

Section 2: Provides an effective date of July 1, 2005.

¹ See s. 215.26(2)

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

There will be a negative fiscal impact as a result of taxpayers receiving a longer period of time in which to claim a refund.

	<u>FY 2005 – 2006</u>	<u>FY 2006 – 2007</u>
General Revenue	(\$3.4 m)	(\$3.4 m)
Total State Impact	(\$3.4 m)	(\$3.4 m)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not authorize or require any rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue provided the following comments to the original bill:

The bill creates an unlimited statute of limitations for filing a claim for refund under s. 215.26(2), F.S. because the three-year statute of limitations for a refund of estimated corporate income taxes will not start to run until the return is filed. According to the department, this will limit the incentive for a taxpayer to file the return, and prevent the department from having a return which it may audit. If there is no underpayment of tax, the maximum penalty for failure to file is \$300.

Another concern is that it is very difficult and costly to trace estimated corporate income tax payments over a long period of time. According to the department, it is quite common for taxpayers to apply estimated tax payments to tax years other than the tax year for which payments were made and for taxpayers to transfer estimated tax payments from one entity to another.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 12, 2005 the Finance and Tax Committee adopted a strike all amendment to the bill which provides estimated tax payments are deemed paid on the date the return is required to be filed with regard to any extensions of time allowed to the taxpayer under s. 213.055(2) or s.220.222, F.S. The amendment is to be applied retroactively to tax years beginning on or after January 1, 2001.