

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

**BILL:** CS/SB 2578

**INTRODUCER:** Finance and Tax Committee and Senator Altman

**SUBJECT:** Department of Revenue

**DATE:** April 20, 2009                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	McKee	FT	Fav/CS
2.			CJ	
3.			GA	
4.			WPSC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

This bill includes several statutory changes that will reduce the burden on taxpayers, reduce Department of Revenue costs and increase efficiency, improve tax administration, and improve enforcement of tax laws. The improved enforcement and tax administration provisions of this bill are expected to have a positive but indeterminate impact on state revenue.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 55.204, 72.011, 95.091, 195.095, 202.125, 212.08, 213.053, 213.0532, 213.054, 213.25, 213.50, 213.67, 213.691, 213.692, 213.758, 220.192, 336.021, 443.036, 443.1215, 443.1316, 443.141, 443.163.

**II. Present Situation:**

The Department of Revenue (department) is charged with ensuring that the taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on

taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

(See section-by-section analysis below.)

### III. **Effect of Proposed Changes:**

This bill includes several statutory changes proposed by the department that will reduce the burden on taxpayers, reduce its costs and increase efficiency, improve tax administration, and improve enforcement of tax laws. These statutory changes are based on legislative concepts approved by the Governor and Cabinet, who serve as the head of the department.

#### **Section-by-section analysis:**

##### **Section 1**

This section amends s. 55.204, F.S., to conform to changes made in section 22 concerning liens securing the payment of unemployment taxes.

##### **Section 2**

**Present situation:** A taxpayer may contest an assessment pursuant to Chapter 120, F.S., if the Department receives the taxpayer's petition prior to a specific statutory deadline. Taxpayers sometimes mail petitions before the statutory deadline, but because of a delay in the mail, the Department receives the petition after the deadline has expired. The law does not permit the Department to accept these petitions. So, in order to avoid petitioning late, taxpayers must estimate how long the mail process will take to actually deliver the petition to the Department.

Generally speaking, taxpayers must pay into the registry of the court or file a cash bond or surety for the amount of contested assessments when it brings an action contesting an assessment in Circuit Court. The Department may waive these requirements, but there is no clear, express authority for the Department to implement, interpret or prescribe this waiver authority through a rule.

**Proposed change:** This section amends s. 72.011, F.S., to provide that a taxpayer's petition is timely if postmarked timely, and to give the Department clear authority to adopt procedures for taxpayer to follow to have bond requirements waived when they are planning to file a complaint in Circuit Court.

##### **Section 3**

This section amends s. 95.091, F.S., to conform to changes made in section 22 concerning liens securing the payment of unemployment taxes.

##### **Section 4**

**Present situation:** Chapter 202, F.S., contains an exemption for the state portion of communication services tax (6.8%) on certain communications services sold to residential households (such as local phone service). The exemption does not apply to any residence that is a "public lodging establishment" under Chapter 509, F.S. It appears that the legislative intent behind this exemption was to allow persons to enjoy the exemption for certain communications

services purchased at their residence, and the Department has administered the law in this manner. However, Chapter 2008-240, L.O.F., changed the definition of “public lodging establishment” under Chapter 509, F.S., and created separate designations for “transient” and “nontransient” public lodging establishments. This change has created some uncertainty for the exemption on sales of communications services made to persons living in “nontransient” public lodging establishments such as apartment complexes, etc.

**Proposed change:** This section amends s. 202.125, F.S., to clarify that the legislative intent is to continue this partial exemption from communications services tax on sales made to residential households in facilities such as apartment complexes.

### Section 5

This section amends several parts of s. 212.08, F.S.

**Present situation:** Certain food products are exempt from sales tax. Taxation of taxable items and non-taxable items sold together for a single price has been governed for 20 years by a department rule that provides that when the nontaxable item is food, if value of the taxable item does not exceed 25% of the value of the complete package, the entire sale is exempt. The Joint Administrative Procedures Committee has questioned whether there is sufficient statutory authority for this rule and the department agreed to seek legislative clarification.

**Proposed change:** The bill amends s. 212.08(1), F.S., to provide clear authority for the department’s rule.

**Present situation:** Florida exempts building materials by refund from sales tax when the materials are used to rehabilitate real property located in an enterprise zone. This program has grown significantly, creating several administrative issues. First, when the real property is being developed and then later sold, it is unclear whether the developer or the ultimate property owner is the taxpayer that qualifies for the exemption. Second, the growth of the condominium housing market has resulted in numerous applications being required for a single development. Finally, the statute requires the taxpayer to provide building permits as documentation of rehabilitation, but on some projects full building permits are not required.

**Proposed change:** This bill clarifies that the owner of the property at the time the improvements are made is the owner entitled to the exemption, that only one application is needed to request exemption for multiple properties within a development, and that any permit issued by a local government building department will satisfy the permit requirement.

### Sections 6 and 13

**Present situation:** In 2008, the Legislature transferred certain duties of the Department of Environmental Protection to the newly created Florida Energy and Climate Commission for the Renewable Energy Technologies Investment Tax Credit, but certain responsibilities for this credit were not transferred. Additionally, references regarding the disclosure of confidential information by the Department of Revenue also need to be updated and changed to the Florida Energy and Climate Commission.

**Proposed change:** The bill updates the statutes to reflect current roles and responsibilities, and applies retroactively to July 1, 2008.

**Section 7**

This section amends several parts of s. 213.053, F.S.

**Present situation:** Current law does not specifically authorize the department to send general information to taxpayers through regular electronic systems. General information includes items such as Taxpayer Information Publications, due date reminders or other general notices.

**Proposed change:** This bill clearly authorizes the department to send general information to taxpayers using regular electronic systems. The information could be sent by telephone, electronic mail, facsimile or similar electronic means. Services could be expanded through ongoing development of our internet e-portal site. This change would enhance and improve communication with taxpayers.

**Present situation:** Florida's corporate income tax permits a deduction for international banking facilities. Since 1981, the Department has been required to report the names and addresses of banks that take the deduction. However, the report was not regularly submitted until recently. Currently, this report is kept confidential by both the Department and the Chief Financial Officer as it contains taxpayer information that may not be disclosed to other parties. All affected agencies concur that the report is unnecessary.

**Proposed change:** The bill repeals this annual report, and this section is amended to delete the provision that allows the department to share information regarding taxpayers who have claimed a deduction with the Chief Financial Officer.

**Present situation:** The 2007 Legislature directed the department to conduct a pilot program to match electronic data from financial institutions with public records to recover delinquent tax liabilities. The department conducted the pilot program with a financial institution and identified accounts for 5% of the 39,000 delinquent taxpayers submitted for the match. However, the department was not allowed to take action against taxpayer accounts during the pilot program.

**Proposed Change:** The bill allows the department to provide taxpayer names and identification numbers for the purposes of information-sharing agreements with financial institutions. The information-sharing agreements are authorized in section 12 of the bill.

**Present situation:** The department is not permitted to disclose taxpayer information, unless specifically allowed by law. The department is currently permitted to disclose names, addresses and sales tax registration information to the Division of Hotels and Restaurants within the Department of Business and Professional Regulation, but may not disclose other sales and use tax information to the division. The division does not have authority to take action against a licensee for violation of sales and use tax laws.

**Proposed change:** The bill allows the department to share and provide information regarding outstanding sales and use tax warrants with the Division of Hotels & Restaurants. It also provides that the division may not grant a request for the renewal of a license if the licensee has an outstanding sales and use tax warrant for more than 3 consecutive months.

**Present situation:** Due to restrictions regarding confidential taxpayer information, the Department is not permitted to publish the names of taxpayers on whom the department has filed tax warrants. However, this information can currently be found in the public records in county courthouses and on the Department of State's website where judgment lien certificates are in a searchable database.

**Proposed change:** The bill provides tax information to the public by permitting publication on the department's Internet website the name, amount of liability, and other publicly available information of taxpayers that the department has filed tax warrants against and has recorded a tax lien. The information would be provided in list format and would be updated no less than monthly. The department will work with our state and federal partners to assure that any confidentiality restrictions are not violated by this publication.

### **Section 8**

**Present situation:** The 2007 Legislature directed the department to conduct a pilot program to match electronic data from financial institutions with public records to recover delinquent tax liabilities. The department conducted the pilot program with a financial institution and identified accounts for 5% of the 39,000 delinquent taxpayers submitted for the match. However, the department was not allowed to take action against taxpayer accounts during the pilot program.

**Proposed change:** The creates s. 213.0532, F.S., which makes the information-sharing program permanent and allow the department to take action to collect these outstanding tax liabilities.

### **Section 9**

**Present situation:** Section 213.25, F. S., permits the department to reduce a taxpayer's refund or credit by the amount of other taxes that the taxpayer owes. In 2007, this offset authority was added to Chapter 443, the unemployment compensation chapter. The Agency for Workforce Innovation, which administers Florida's unemployment compensation program, has requested Chapter 443 be specifically cited in s. 213.25, F.S.

**Proposed change:** This section clarifies that the department's authority to reduce a taxpayer's refunds or credits by the amount of any other taxes owed applies to unemployment compensation tax.

### **Section 10**

**Present situation:** The Department of Business and Professional Regulation may revoke the corporate charter of a corporation that has an outstanding tax warrant that has existed for more than 3 consecutive months, but it does not have authority to take action against a licensee for violation of sales and use tax laws.

**Proposed change:** This section amends s. 213.50, F.S., to provide that the Department of Business and Professional Regulation may revoke, or refuse a request for the renewal of, a license if the licensee has an outstanding sales and use tax warrant for more than 3 consecutive months.

**Section 11** amends s. 213.67, F.S., to conform to changes made in section 2 providing that a taxpayer's petition is timely filed if it is postmarked timely.

**Section 12**

**Present situation:** Currently, Florida does not have a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred. Rather, each tax either contains a narrow provision or no specific provision. Moreover, the current provisions do not apply to situations where business assets are transferred, rather than being purchased. Finally, current provisions do not specify the new owner's liability when the purchaser or transferee does not acquire equity in the business.

**Proposed change:** The bill creates s. 213.758, F.S., a comprehensive statute governing the transfer of a business's tax liability to future owners of the business or business assets. It clarifies that new owners can be liable even if the business or business assets were transferred to the new owner but were not purchased, and that the transferee becomes liable only for voluntary transfers, and only for the fair market value or the purchase price of the property transferred, whichever is higher. It specifies that the seller remains liable for the debt, and allows the department to obtain an injunction against the transferee if the acquired liability is not paid.

**Section 13** updates references to the Florida Energy and Climate Commission, as described with section 6, above.

**Section 14**

**Present situation:** Under s. 336.021, F.S., the ninth cent and local option fuel tax are distributed to counties in three "tiers." The second tier is a "special" distribution currently made to Gadsden and Walton Counties because they have met certain statutory requirements. The law generally requires the distributions to be in order. However, due to the increased volume of fuel being sold in Florida, the department has the ability to make "tier three" distributions before the data is received to make the "tier two" distribution.

**Proposed change:** This section amends s. 336.021, F.S., to adjust the tier distribution system to more accurately reflect current fuel market conditions and allow the "tier three" distributions to local governments to occur before the "tier two" distribution. There would be no impact to the "tier two" counties with this proposal.

**Section 15**

**Present situation:** For state unemployment tax purposes, limited liability companies (LLC) are treated as they are classified for federal income tax purposes. A single member LLC may designate either the LLC or the owner as the employer. New Internal Revenue Service regulations change how single member LLC's report for federal employment tax purposes and require the LLC to be treated as the employer.

**Proposed change:** This section amends s. 443.036, F.S., to specify that a single member LLC shall be treated as the employer for state unemployment tax purposes, consistent with IRS regulations.

**Section 16**

**Present situation:** When Chapter 443, F.S., was rewritten in 2002, a reference dealing with agricultural employers was incorrectly cited. Section 443.1215(2)(b) refers to "subsection (1)"

when the correct reference should be “paragraph (1)(a)”. The current reference allows an agricultural employer to be automatically considered a domestic employer when they have not met the necessary criteria.

**Proposed change:** This section amends s. 443.1215, F.S., to correct the citation.

### **Section 17**

**Present situation:** The Department of Revenue administers the unemployment tax under contract with the Agency for Workforce Innovation through an interagency agreement.

**Proposed change:** This section updates cross-references to statutes governing the Department of Revenue, to provide that they also apply to collection of unemployment contributions.

### **Section 18**

**Present situation:** Employers are required to pay unemployment compensation tax and file quarterly wage reports. If these reports are not correct and complete they may delay the payment of unemployment benefits to unemployed workers, delay the completion of certain federal administration requirements, and impair the efforts of numerous agencies such as the U.S. Department of Homeland Security, Immigration and Customs Enforcement, the Social Security Administration, and Florida’s child support enforcement program that use information in the database to conduct their respective duties. The department frequently receives erroneous, incorrect or insufficient reports and efforts to enforce the reporting requirements have been unsuccessful.

Florida does not specifically identify the statute of limitations period for unemployment tax liens. Historically, the State has asserted that the lien is valid for 10 years, but taxpayers have recently challenged that position. These taxpayers have argued that the lien is only effective for 5 years. Enforcement of these liens often occurs when the property is sold, and thus, 5 years is not sufficient time to ensure proper enforcement.

**Proposed change:** This section amends s. 441.141, F.S., to impose a penalty of \$50 or 10 percent of the tax due, not to exceed \$300, for erroneous, incomplete or insufficient tax/wage reports. The department would waive the penalty if an accurate and complete report is filed within 30 days of the penalty notice. An automatic penalty waiver would be permitted once during a 12 month period or, as with other penalties imposed under Chapter 443, F.S., waived if imposition is inequitable. Employers would not be penalized for erroneous information supplied by employees if the employer was not aware of the inaccuracy. It also clarifies that unemployment tax liens are in effect for 10 years, which mirrors federal unemployment tax liens and provides additional time for collection activities.

### **Section 19**

**Present situation:** Section 443.163(2) requires certain employers and preparers to file quarterly wage reports electronically, and allows a minimal penalty of \$10 to be assessed for noncompliance. This has not proven to be a deterrent to noncompliance, and critical wage information is unavailable for administering the unemployment program unless the department uses its limited resources to manually key in the returns and wage information, which sometimes delays the processing of unemployment compensation benefits to affected workers. Under

current law employers may obtain a waiver from the electronic filing requirement if they are unable to comply despite good faith efforts.

**Proposed change:** This bill increases the penalty to \$50 per report and \$1 per employee when the required data is not submitted electronically to encourage more employers and preparers to comply with current law.

#### **Section 20**

**Present situation:** Section 443.163(3), F.S., contains a reference to telefile but telefile no longer exists for unemployment tax.

**Proposed change:** This bill deletes the obsolete terminology.

#### **Section 21**

**Present situation:** The department is nearing completion of implementation of an integrated tax accounting system (SUNTAX). Using a single business identifier, department employees are able to provide taxpayer assistance and collection services in a multiple tax environment. However, filing of tax warrants remains segregated by tax.

**Proposed change:** The bill creates s. 213.691, F.S., to allow the filing of one consolidated tax warrant covering multiple taxes. This would improve compliance with and administration of Florida tax laws.

#### **Section 22**

**Present situation:** Florida law permits the department to revoke a dealer's sales tax registration when the dealer fails to pay its sales tax liability. However, the department does not have the authority to revoke sales tax registrations of taxpayers delinquent in other taxes.

**Proposed change:** The bill creates s. 213.692, F.S., to allow the department to revoke a taxpayer's certificate(s) of registration for any tax when the taxpayer owes any tax liability where a tax warrant has been issued.

**Section 23** authorizes the department to adopt emergency rules to administer s. 213.692, F.S.

#### **Section 24**

**Present situation:** The department must maintain, and county officials are required to use, an Approved State Bidder List that contains a list of approved vendors for property assessment services or assessment related technologies. The department is also required to promulgate a standard contract that contains the minimum requirements for all contracts. The requirement to provide this list and contract were created in the 1970s prior to counties purchasing computer assisted mass appraisal systems when some counties lacked the expertise in this area. Currently there are approximately 110 vendors on the list.

**Proposed change:** The proposal will repeal the requirement to provide the Approved State Bidder List as counties have developed the expertise to engage these services without assistance from the department.



**Section 25**

**Present situation:** Florida's corporate income tax permits a deduction for international banking facilities. Since 1981, the Department has been required to report the names and addresses of banks that take the deduction. However, the report was not regularly submitted until recently. Currently, this report is kept confidential by both the Department and the Chief Financial Officer as it contains taxpayer information that may not be disclosed to other parties. All affected agencies concur that the report is unnecessary.

**Proposed change:** This proposal would repeal s. 213.054, which requires this annual report.

**Section 26** provides that except as otherwise provided, this bill takes effect upon becoming a law.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

This bill has not been analyzed by the Revenue Estimating Conference, but the improved enforcement and tax administration provisions of this bill are expected to have a positive but indeterminate impact on state revenue.

**B. Private Sector Impact:**

This bill reduces taxpayer burdens by:

- providing that petitions are timely filed if they are mailed (but not necessarily received) within 60 days of when the assessment becomes final
- allowing the department to waive bond requirements under certain conditions
- ensuring the residential exemption for communications services made to residential households in apartment complexes
- codifying the department's treatment of bundled food and non-food items for sales tax purposes
- correcting an erroneous statutory citation for agricultural employers
- allowing the department to provide general information to taxpayers by email, and

- allowing a single application for enterprise zone tax refunds for multi-unit developments and clarifying other aspects of the application process

**C. Government Sector Impact:**

This bill improves tax administration and enforcement by:

- providing for integrated filing of tax warrants
- repealing an obsolete report on international banking facilities
- correcting the timing of the distribution of the tax on diesel
- correcting an erroneous citation for renewable energy investment tax credits
- clarifying the statute of limitations on unemployment compensation tax liens
- including unemployment taxes among those taxes for which an overpayments or credit due may be used to offset taxes owed by the same taxpayer
- making permanent a pilot program for matching financial information data with financial institutions to recover delinquent tax liabilities
- codifying the transfer of tax liabilities when businesses or business assets are transferred
- allowing the department to revoke a taxpayers certificates of registration for any tax when the taxpayer owes any tax liability for which a tax warrant has been issued.
- allowing the department to publish information that is already publicly available about taxpayers against whom a tax lien has been recorded
- allowing the department to share information about outstanding sales and use tax warrants with the Division of Hotels and Restaurants, and providing that the division shall not renew licenses if the licensee has an outstanding warrant for more than 3 consecutive months
- increasing the penalty for erroneous or incomplete unemployment compensation tax reports; allowing for an automatic waiver under certain conditions
- increasing the penalty for failure to comply with electronic filing requirements for unemployment compensation tax, and
- conforming treatment of single member LLCs to federal practices.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Finance and Tax on April 20, 2009:**

The committee substitute changes the language in the bill relating to the exchange of data

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between the department and financial institutions to address concerns raised by the industry. It also removes sections relating to criminal penalties for failure to register as a dealer and failure to collect taxes. These sections did not create new penalties, but merely reorganized the statutes relating to these penalties.

**B. Amendments:**

None.