

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7155 PCB FTC 09-03 Taxation

SPONSOR(S): Finance & Tax Council; Fresen

TIED BILLS: _____ **IDEN./SIM. BILLS:** _____

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	14 Y, 0 N	Wilson	Langston
1)	_____	_____	_____	_____
2)	_____	_____	_____	_____
3)	_____	_____	_____	_____
4)	_____	_____	_____	_____
5)	_____	_____	_____	_____

SUMMARY ANALYSIS

This bill primarily contains the Department of Revenue's (Department) recommendations for general tax administration improvements. The bill includes numerous statutory changes that will reduce the burden on taxpayers, reduce the Department's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill also makes changes to the allowable interest rate on delinquent taxes on real property prior to the sale of tax certificates. Charter counties, by local option, will be allowed to charge an annual interest rate of 18 percent (compounded daily) on delinquent taxes prior to sale of tax certificates. These same counties, by local option, can also have their tax collectors accept three or six equal payments on unpaid taxes specified in a tax notice after the date of delinquency. This bill also clarifies ad valorem tax exemptions for educational institutions in section 2 of Chapter 2008-193, that amends s.196.192, F.S., to operate retroactively to January 1, 2005.

This bill has not been analyzed by the 2009 Revenue Impact Estimating Conference. However, staff estimates the bill to have a positive but indeterminate impact on state revenues.

The bill shall take effect upon becoming a law, except as otherwise provided in the bill.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Liens for unemployment tax obligations

Present situation:

Section 55.204, F.S. provides that liens securing the payment of child support or tax obligations as provided in s. 95.091(1)(b), F.S., shall not lapse until 20 years after the date of the original filing of the warrant or other document required by law to establish a lien.

Proposed change:

This section amends s. 55.204(2), F.S. to provided that liens securing the payment of unemployment tax obligations lapse 10 years after the date of the original filing of the notice of the lien. This section is related to changes made in section 22 concerning unemployment taxes.

Section 2. Taxpayer Petition and Wavier

Present situation:

Under the provisions in Chapter 120, F.S., a taxpayer may contest an assessment if the Department of Revenue (Department) receives a taxpayer's petition prior to a specified statutory deadline. Section 72.011(2)(a), F.S., provides that a taxpayer has no more than 60 days to file an action to contest an assessment or denial of a refund of any tax, interest, or penalty paid after it becomes final. A taxpayer may mail a petition to the Department before the statutory deadline. However, due to delays in the mail, the Department may receive the petition after the deadline has expired. Currently, the law does not allow the Department to accept these petitions.

Also, section 72.011(3) requires the taxpayer to pay with the complaint, the amount of the contested assessment filed in circuit court. The Department may waive these requirements if stated in writing by the executive director of the applicable department. However, there is no clear, express authority for the Department to interpret or prescribe this waiver authority through a rule.

Proposed change:

This section amends 72.011(2)(a) to provide that a taxpayer's petition is timely if the action to contest is postmarked or filed within the 60 days after the date the assessment or the denial becomes final. This section also amends 72.011, F.S. to authorize the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation to adopt rules

for the taxpayer to follow in order to request a bond waiver when planning to file a complaint in circuit court.

Section 3. Unemployment Tax Liens

Present situation:

In section 95.091(1)(a), F.S. except in the case of taxes for which certificates have been sold, taxes stated in section 72.011, F.S. or tax liens issued under section 196.161, F.S., any tax lien will expire 5 years after the tax is assessed or becomes delinquent, whichever is later.

Proposed change:

This section amends 95.091(1)(a), F.S., to add s. 443.141, F.S., related to unemployment taxes to the exception from the 5 year limitation on tax liens. This section is related to changes made in section 21 concerning unemployment taxes.

Section 4. Delinquent Tax Interest Rates'

Present situation:

Under section 197.172, F.S., the interest rate for delinquent tax on real property is 18 percent per year from the date of delinquency until a tax certificate is sold. However, there is an exception that the minimum charge for delinquent taxes paid prior to the sale of a tax certificate is 3 percent.

Proposed change:

This bill amends s.197.172, F.S., to allow by local option, charter counties to collect 18 percent annual interest on the portion of real property taxes that is unpaid by the deadline specified in the delinquent tax notice. Interest on these unpaid taxes will accrue daily. In all other counties, the interest rate for delinquent tax on real property will continue to follow current law.

Section 5. Payments of Delinquent Tax

Present situation:

Provisions in s. 197.373, F.S., state that a tax collector is authorized to allow the payment of a part of a tax notice when the part to be paid can be: ascertained by legal description, the part is under a contract for sale or has been transferred to a new owner, and the request is by a person purchasing the property or the new owner or someone acting on behalf of the purchaser or owner. These payment request must be made 15 days prior to a sale of a tax certificate. The property appraiser must within 10 days of the requests apportion the property into parts to be paid or redeemed. These provisions do not apply to assessments and collections made to fee timeshare real property.

Proposed change:

This bill will creates s. 197.373(2), F.S., to allow by local option, charter county tax collectors to accept three or six equal payments that add up to the total amount of taxes specified in the tax notice after the date of delinquency.

Section 6. Exemptions from Ad Valorem Taxation

Present situation:

Currently, educational institutions are exempt from ad valorem taxation. In 2008, the Legislature passed section 2 of Chapter 2008-193, L.O.F., that amended s. 196.192, F.S., related to educational institutions exemptions from ad valorem taxation. The term "educational institution" was added to existing language in order to clarify that a percentage of a property is exempt from ad valorem taxation if predominantly used by an educational institution. The bill was intended to clarify existing law. However, some property appraisers thought this provision only applied moving forward from 2008.

Proposed change:

This bill makes the amendment to s. 196.192, F.S., made by section 2 of Chapter 2008-193, makes the 2008 changes retroactive to 2005.

Section 7. Communication Services Tax

Present situation:

In section 202.124(1), F.S., an exemption from the tax imposed by s. 212.12, F.S., exists for separately stated sales prices of communications services sold to residential households. This exemption does not apply to any residence that is a “public lodging establishment” as defined in Chapter 509, F.S. However, Chapter 2008-240, L.O.F., changed the definition of “public lodging establishment under Chapter 509, F.S., and created separate definitions for “transient” and “nontransient” public lodging establishments. This change has created uncertainty regarding the Department’s administration of the sale of communication services sold to “nontransient” public lodging establishments that include residential units such as apartment complexes.

Proposed change:

This section amends s. 202.125, F.S., to clarify that the Department will not exempt the tax imposed by s. 212.12, F.S., from the sale of communication services sold explicitly to “transient” public lodging establishments.

Section 8. Tax Exemptions

Present situation:

The State of Florida exempts from sales tax various products and materials in section 212.08, F.S. Particularly, this bill speaks to various subsections in s. 212.08, F.S, including groceries and building materials

Certain food products are exempt from taxes provided in s. 212.08, F.S., while many general groceries are not. In some cases, taxable and non-taxable items are packaged and sold together, and no specific provision administers the application of tax on these bundled goods. The Department’s rule 12A-1.011, F.A.C., states that the entire sale is exempt, if the value of the taxable item(s) does not exceed 25% of the value of the complete packet. The sale of taxable and non-taxable items in a package has been questioned on whether there is sufficient statutory authority for the Department provided by this rule.

In regards to s. 212.08(5)(g), building materials used in the rehabilitation of real property located in an enterprise zone are exempt from sales and use tax. The exemption is only available through a refund of previously paid taxes on materials used in these zones. As the enterprise zone program has grown, various administrative questions have been raised regarding owner tax credit qualification, tax credit applications required for numerous properties, and permit requirements.

Proposed change:

This section amends s. 212.08, F.S., clarifying the department’s rules to provided that if the cost of a taxable food item with a non-taxable food item exceeds 25% of the cost, then the entire sales prices is subject to tax. On the other hand, if the non-taxable food item is more than 25% of the cost, then the entire sales price is not subject to tax.

This section also amends s. 212.08(5)(g), F.S., clarifying that the owner of a property within an enterprise zone at the time improvements are made, is the only entity entitled to receive a refund of previously paid taxes. It also provides that an owner only has to file a single application for refund, on multiple properties within a development. It also amends an application requirement allowing a permit issued by a local government building department to satisfy the permit requirement.

Section 9. Department of Environmental Protection; Florida Energy and Climate Commission

Present situation:

The Department is authorized to provide information related to the exemption for equipment, machinery, and other materials related to renewable energy technologies to the Department of Environmental Protection (DEP). Information regarding the renewable energy technologies investment tax credit is also shared. Recent legislation in Chapter 2008-227, L.O.F., transferred these duties from

DEP to the Florida Energy and Climate Commission in regards to the renewable energy technologies tax credit. However, certain responsibilities for this credit were not transferred.

Proposed change:

The bill amends s. 213.053(8)(y), retroactively to July 1, 2008, to authorize these responsibilities to the Florida Energy and Climate Commission. This amended section conforms to similar changes in Section 16.

Section 10. Confidentiality and Information Sharing; Department of Business and Professional Regulation's Division of Hotels and Restaurants

This section amends various subsections found in 213.053, F.S.

Present situation:

In section 213.053, the Department is authorized to send general information to taxpayers, however it does not clearly specify through electronic means. Such information would be general tax law changes and reminders regarding tax due dates. This section also allows for the disclosure of taxpayer information to the Chief Financial Officer for exemptions claimed for international banking facilities in an annual report.

Unless specified by law, the Department is not permitted to disclose taxpayer information. The Department is currently permitted to disclose names, addresses, and sales tax registration with the Department of Business and Professional Regulation's Division of Hotels and Restaurants, but is unable to provide other sales and use tax information for conducting its official duties.

Current restrictions regarding confidential taxpayer information does not permit the Department to publish names of taxpayers who have current tax warrants. This information can be found in the public records in a County Courthouse or on the Department of State's website within a judgment lien searchable database.

Proposed change:

This bill amends s. 213.053, F.S., authorizing the Department to send taxpayers information and respond to taxpayer inquiries using telephones, faxes, and particularly electronic mail if authorized by the taxpayer.

This section also deletes the provision in 213.053(5)(b)4, F.S., that allows the Department to share information regarding taxpayers who have claimed an international banking facilities exemption with the Chief Financial Officer. This provision further repeals the annual report required, which has been deemed to be unnecessary.

The bill authorizes the Department to share and provide information regarding the outstanding sales and use tax warrants or judgment liens with the Department of Business and Professional Regulation's Division of Hotels and Restaurants. Furthermore, the Department is also authorized to provide names and identification numbers for the purposes of information-sharing agreements. These information-sharing agreements are authorized in section 11.

The Department may also publish a list of taxpayers who have current warrants and judgment lien certificates. This list is permitted to be publicized on the Department's internet website that includes the name, address, type of delinquent tax, penalty and the employer or other identification number. This list shall be updated at least monthly.

Section 11. Information-Sharing Agreements with Financial Institutions

Present situation:

In 2007, the Legislature passed Chapter 2007-106, L.O.F., that authorized the Department to conduct a pilot project with financial institutions in Florida, to match data with public records to recover delinquent tax liabilities. The project identified accounts for 5% of the delinquent taxpayers submitted for match.

The Department, however, was not authorized to take action against taxpayer accounts during the program.

Proposed change:

This bill creates s. 213.0532, F.S.s which enables the Department to enter into information-sharing agreements with financial institutions in order to make the program permanent. The Department is authorized to take action to collect outstanding taxes liabilities. The bill sets guidelines for both the Department and financial institutions in regards to the development and operation of the data match program.

Section 12. Department Refunds & Credits; Unemployment Compensation Tax

Present situation:

Section 213.25, F. S., allows 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:

The bill amends s. 213.25, F.S. to clarify the Department's authority to reduce a taxpayer's refund or credit by the amount of any billings for unemployment compensation tax.

Section 13. Revocation of Corporate Charter or Hotel or Restaurant License; Refusal to Reinstate Charter or Hotel or Restaurant License

Present situation:

The Department of Business and Professional Regulation (DBPR) in s. 213.50, F.S., currently does not have power to revoke or deny the application to renew a license of a hotel or restaurant license on the grounds of unpaid taxes.

Proposed change:

This bill adds section 213.50(3) and 213.50(4), F.S., providing DBPR may revoke and deny an application to renew a licenseholder if a tax warrant has been outstanding for more than 3 consecutive months.

Section 14. Garnishment

Present situation:

In section 213.67(8),F.S., an action may not be brought to contest a notice of intent to levy under Chapter 120, F.S., or in circuit court, later than 21 days after the date of receipt of the notice of intent to levy.

Proposed change:

The bill amends this section related to the changes made in section 2, providing that a taxpayers notice of intent to contest is postmarked timely.

Section 15. Transfer of Tax Liabilities

Present situation:

Current law does not provide a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred.

Proposed change:

This bill creates s. 213.758, F.S., a comprehensive statute governing the transfer of tax liabilities to future owners of a business and/or business assets. This section clarifies that new owners can be liable even if the business or business assets were transferred to the new owner but were not purchased.

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 16. Renewable Energy Technologies Investment Tax Credit

Present situation:

The Department of Environmental Protection (DEP) is responsible for the application and administration of the renewable energy investment tax credit. Recent legislation in Chapter 2008-227, L.O.F., transferred these duties from DEP to the Florida Energy and Climate Commission in regards to the these credits. However, certain responsibilities for this credit were not transferred.

Proposed change:

The bill amends s. 220.192, F.S., retroactively to July 1, 2008, to authorize these responsibilities to the Florida Energy and Climate Commission. This amended section is related to similar changes made in section 10.

Section 17. Levy of Ninth-Cent Fuel Tax on Motor Fuel and Diesel Fuel; Distributions

Present situation:

Section 336.021, F.S., establishes the distribution of local option fuel taxes collected on the sales or use of diesel fuel throughout the State. These distributions are made monthly to each county based on three "tiers". The law generally requires these distribution "tiers" to be paid out in sequential order. The first "tier" distribution is made to counties based on the number of gallons sold, minus administrative charges and special allowances. The second "tier" distribution is made available to counties with qualified new retail stations. These retail stations have diesel sales exceeding 50 percent of the diesel sold in the county in which it was located in FY 1995-1996¹. Currently, Gadsden and Walton Counties are the only counties that qualify for this distribution. The third "tier" distribution is based on additional taxes available for vehicular diesel storage capacities. Due to the growth in the fuel tax base, the Department has sufficient revenues to make third "tier" distributions before it receives data from second "tier" qualified counties.

Proposed change:

The bill amends s. 336.021, F.S., providing that the "tier" distributions of local option fuel taxes more accurately reflect the current fuel market. This section clarifies that third "tier" distributions that occur before second "tier" distribution data is available, will not affect the amounts provided for second "tier" qualified counties.

Section 18. Tax Treatment of a Limited Liability Corporation (LLC)

Present situation:

In s. 442.036(20), F.S., a limited liability company (LLC) is treated, for state unemployment tax purposes, as they are classified for federal income tax purposes. A single-member LLC may designate either the LLC or the owner as the employer.

Proposed change:

The bill amends s. 442.036(20), F.S, to required that a single-member LLC be treated as the employer, as stated under new federal IRS regulations.

Section 19. Employers

Present situation:

¹ Section 336.021(1)(c)1, F.S.

Section 443.1215(2)(b), F.S, incorrectly cites guidelines dealing with agricultural employers. Currently, the statute allows an agricultural employer to be considered a domestic employer without meeting the proper criteria.

Proposed change:

The bill amends 442.1215(2)(b), F.S. to correct the citation.

Section 20. Unemployment Tax Collection Services

Present situation:

Section 443.1316(2), F.S., establishes the provisions that apply to the collection of unemployment contributions and reimbursements by the Department.

Proposed change:

This amends s. 443.1316, F.S., to also apply to new provisions created by this bill related to; information-sharing agreements with financial institutions, integrated warrants and judgment lien certificates, integrated enforcement authority, and transfer of tax liabilities. This section is related to changes in sections 12, 16, 25, & 26.

Section 21. Collection of Contributions and Reimbursements; Unemployment Compensation Tax

Present situation:

In section 443.141(1)(b), F.S, employers are required to pay unemployment compensation tax and file quarterly wage reports. If these wage reports are not done correctly or are incomplete, there may be a delay in the payment of unemployment benefits to unemployed workers. This section establishes penalties and the appeals process, in regards to delinquent tax reports and non-payment of contributions. Lien provisions for the payment of contributions or reimbursement are also established. The statute of limitations for unemployment tax liens is unclear. The State has asserted that the lien is valid for 10 years, but taxpayers have recently challenged the position. The Department needs further clarification in order to ensure proper enforcement of unemployment tax liens.

Proposed change:

This bill amends s. 441.141, F.S., to include erroneous, incomplete or insufficient reports in the penalty provisions that will result in a fine of \$50 or 10% of the tax due on wage reports. The Department will be able to waive the penalty if a corrected report is filed within 30 days of the penalty notice. The penalty will not be waived more than once during a 12-month period. Employers would also not be penalized for erroneous information supplied by employees, if the employer was unaware of the inaccuracy. This section also clarifies that unemployment liens expire 10 years after the filing of the notice with the clerk of court, which provides for extended enforcement efforts.

Section 22. Electronic Reporting and Remitting of Contributions and Reimbursements

Present situation:

Section 443.163(2), F.S, requires certain employers to file the Employer's Quarterly Wage Report (UCT-6) electronically. If this report is not filed electronically, a penalty of \$10 will be assessed to the employer per report. These same provisions apply to a person who files a quarterly wage report for 100 or more employers. In both cases, current law allows for a waiver of the electronic filing requirement if they are unable to comply despite good faith efforts. This penalty has not proven to be a deterrent from noncompliance.

Proposed change:

Section 443.163(2) increases the penalty to \$50 per report and \$1 per employee when the required information is not provided by approved electronic means.

Section 23. Electronic Reporting and Remitting of Contributions and Reimbursements

Present situation:

Section 443.163(3), F.S., references that a “tefile” would need to be used when applying for a waiver from electronic filing with Agency for Workforce Innovation. However, “tefile” are no longer utilized.

Proposed change:

This bill completely removes obsolete provisions regarding telefiles.

Section 24. Integrated Warrant and Judgment Lien Certificates

Present situation:

The Department is completing the implementation of an integrated tax accounting system called SUNTAX. This multilayer system allows the Department to connect multiple tax liabilities to a single entity. In Chapter 213, F.S., the Department currently does not have an integrated law for the enforcement of each tax, fee or surcharge that may be in connected to individual entities.

Proposed change:

This bill creates s. 213.691, F.S., to authorize the Department to issue a single warrant and file a judgment lien certificate regarding a taxpayer’s total liability for all taxes, fees, or surcharges administered. The Department will itemize each warrant and judgment lien certificate to the total amount due from the taxpayer, including penalties and interest.

Section 25. Integrated Enforcement Authority

Present situation:

Current law permits the Department to revoke a taxpayer’s sales tax registration when they fail to pay their sales tax liability. The Department, however, does not have the authority to revoke a sales tax registration from the same taxpayer who is delinquent in other tax liabilities owed to the State.

Proposed change:

This bill creates s. 213.692, F.S., to establish integrated enforcement authority for the Department in order to revoke a taxpayer’s certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant has been issued.

Section 26. Emergency Rules for Integrated Enforcement Authority

Proposed change:

This bill authorizes the department to adopt emergency rules to administer s. 213. 692, F.S.

Section 27. Repeal

Present situation:

Under section 195.095, F.S., the Department is required to maintain an Approved State Bidder List of vendors for property assessment services. Local county officials are required to use the list provided by the Department. The Department is also required to promulgate a standard contract that contains a minimum requirement for all contracts with these approved bidders.

Under section 213.054, F.S., the Department is required to report the names of the banks that take a deduction for international banking facilities on their corporate income tax return. This confidential report is kept both by the Chief Financial Officer and the Department. This report has been deemed unnecessary.

Proposed change:

The bill repeals section 195.095 and 213.054, F.S., effective July 1, 2009.

Section 28. Effective Date

This bill shall take effect upon becoming a law, except as otherwise expressly provided in this bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 55.204(2), F.S. provides liens securing the payment of unemployment tax obligations.

Section 2: Amends 72.011(2)(a) provides that a taxpayer's petition is timely if the action to contest is postmarked timely. Amends 72.011, F.S. to adopt rules to request a bond waiver in circuit court.

Section 3: Amends 95.091(1)(a), F.S. to add s. 443.141, F.S., clarifying unemployment liens expire 10 years after the filing of the notice with the clerk of court.

Section 4: Amends s.197.172, F.S., relating to interest payments on delinquent taxes.

Section 5: Creates s. 197.373(2), F.S., relating to installment payments of property taxes.

Section 6: Makes changes to s. 196.192, F.S., that were made by section 2 of Chapter 2008-193, operate retroactively to January 1, 2005.

Section 7: Amends s. 202.125, F.S., clarifies that the Department will not exempt the tax imposed by s. 212.12 from the sale of communication services sold explicitly to "transient" public lodging establishments.

Section 8: Amends s. 212.08, F.S. clarifies the department's rules regarding the cost of a taxable food item sold with non-taxable food item exceeding 25%. Amends s. 2212.08(5)(g) clarifying enterprise zone tax refunds and application requirements.

Section 9: Amends s. 213.053(8)(y), F.S., clarifies the responsibilities of the Florida Energy and Climate Commission.

Section 10: Amends s. 213.053, F.S. authorizes the Department to send taxpayers information by electronic mail, share information regarding the outstanding sale and use tax warrants or judgment liens with the Division of Hotels and Restaurants, provide data for the purposes of information-sharing agreements, publish a list of taxpayers who have current warrants and judgment lien certificates on the Department's website. This section also deletes provision 213.053(5)(b)4 regarding taxpayers who have claimed an international banking facilities exemption with the Chief Financial Officer.

Section 11: Creates s. 213.0532, F.S., which enables the Department to enter into information-sharing agreements with financial institutions.

Section 12: Amends s. 213.25, F.S., authorizing the Department to reduce a taxpayer's refund or credit by the amount of any billings for unemployment compensation tax.

Section 13: Creates s. 213.50(3) and 213.50(4), F.S. providing DBPR may revoke and deny an application to renew a license holder if a tax warrant is outstanding for more than 3 months.

Section 14: Amends s 213.67(8), F.S., providing that a taxpayer's petition is timely if the action to contest is postmarked timely.

Section 15: Creates s. 213.758, F.S., providing comprehensive statute governing the transfer of tax liabilities to future owners of a business and/or business assets.

Section 16: Amends s. 220.192, F.S., to clarify the responsibilities of the Florida Energy and Climate Commission.

Section 17: Amends s. 336.021, F.S., to clarify the distributions of local option fuel taxes to counties

Section 18: Amends s. 442.036(20), F.S., to require that a single-member LLC be treated as the employer.

Section 19: Amends 442.1215(2)(b), F.S. to correct a citation.

Section 20: Amends s. 443.1316, F.S., to include new bill provisions related to unemployment contributions and reimbursements.

Section 21: Amends s. 441.141, F.S., clarifies and increases penalties for inaccurate or incomplete wage reports and expiration of unemployment tax liens.

Section 22: Amends section 443.163(2) increasing the penalty when the required information is not provided by approved electronic means.

Section 23: Amends s. 443.163(3) removing obsolete provisions regarding telefile.

Section 24: Creates s. 213.691, F.S., authorizing the Department to issue a single warrant regarding a taxpayer's total liability for all taxes fees, or surcharges administered.

Section 25: Creates s. 213.692, F.S., to establish integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration.

Section 26: Authorizes the department to adopt emergency rules to administer s. 213. 692, F.S.

Section 27: repeals section 195.095 and 213.054, F.S., effective July 1, 2009.

Section 28: Provides an effective date upon becoming a law, except as otherwise expressly provided in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comment.

2. Expenditures:

See Fiscal Comment.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See Fiscal Comment.

2. Expenditures:

See Fiscal Comment.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce various taxpayer expenses. These reductions will be generated by the following provisions:

- Provides that a taxpayer's petition that is timely postmarked, but may have been delayed in the mail, will be accepted by the Department in order to contest an assessment.
- Taxpayers may have their bond requirements waived by the Department in order to file a complaint in circuit court.

- Provides that the residential exemption for communications services taxes is made to residents of certain apartment complexes.
- Codifies the Department's rules regarding the cost of a taxable food item sold with a non-taxable food item exceeding 25% for sales tax collections.
- Allows an owner, within an enterprise zone to file a single tax refund application for multiple unit developments.
- Taxpayers will be able to receive tax notices and publications through electronic mail from the Department, allowing for greater efficiency in communication and response time.

D. FISCAL COMMENTS:

The 2009 Consensus Revenue Estimating Conference has not analyzed this bill. However, statutory changes provided are expected to have a positive indeterminate impact on both state and local government revenues. These revenues will be generated from reduction in Department's costs, increase efficiency in tax administration, and improved enforcement of current tax laws.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

Section 2. The Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation may adopt rules pursuant s. 72.011(3)(b)2, F.S., that governs the manner and form in which a plaintiff (taxpayer) may request a waiver from the respective agency on a contested assessment including penalties and accrued interest.

Section 10. The Department may adopt rules to administer 213.053(19), F.S., related to the publishing of taxpayers against who it has filed a warrant or judgment lien certificate. These names will be published on the Department's website and updated at least monthly to reflect updates and changes to the list.

Section 11. The Department may adopt rules to establish the procedures and requirements for conducting automated data matches with the financial institution pursuant to s. 213.0532, F.S.

Section 15. The Department may adopt rules necessary to administer and enforce s. 213.758, F.S., related to the transfer of tax liabilities.

Section 21. The Agency for Workforce Innovation and the state agency providing unemployment tax collection services may adopt rules to administer provisions pursuant to s. 443.141, F.S., relating to past due contributions and reimbursements, and delinquent, incomplete, or insufficient reports

Section 25. The Department may adopt rules to administer integrated enforcement authority pursuant to s. 213.692, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

The Finance and Tax Council adopted 6 amendments to this bill.

- The first amendment removed section 5, adding new language in s. 212.07(3), F.S., that a dealer who fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected taxes along with criminal penalties that are graduated based on the number of offenses and amount of tax that goes uncollected.
- The second amendment removed section 7, adding new language in s. 212.12(d), F.S., that a dealer who willfully makes a false or fraudulent return is liable for the uncollected taxes along with criminal penalties that are graduated based on the number of offenses and amount of tax that goes uncollected. This amendment also removes section 8, adding new language in section 212.18, F.S., that a dealer who willfully fails to register after the Department provides notice commits a felony of the third degree.
- The third amendment changes the definition of “obligor” to mean any person *against* whose property the department has issued a warrant or filed a judgment lien certificate.
- The fourth amendment changes the word *date* to *data* on line 829 of s. 213.0532(2)(b)5, F.S.
- The fifth amendment changes section s. 213.0532(2), F.S., clarifying that a financial institution must provide account holder information requested by the Department of Revenue, to the extent allowable by law.
- The sixth amendment changes s.197.172, F.S., to allow by local option, that charter counties can collect 18 percent interest (annual) on the portion of real property taxes that is unpaid by the deadline specified in the delinquent tax notice. This amendment also creates s. 197.373(2), F.S., to allow by local option, charter county tax collectors to accept three or six equal payments that add up to the total amount of taxes specified in the tax notice after the date of delinquency. Also this amendment clarifies that the amendment to s. 196.192, F.S., made by section 2 of Chapter 2008-193, is retroactive to 2005 regarding ad valorem tax exemption for educational institutions.