HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5801 PCB FTC 10-06 Taxation
SPONSOR(S): Finance & Tax Council; Bogdanoff
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	14 Y, 0 N	Wilson	Langston
1)	Full Appropriations Council on Education & Economic Development		Voyles	Voyles
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

This bill creates a structured state tax amnesty program to be administered by the Department of Revenue (Department). This amnesty program will provide Florida taxpayers the opportunity to pay overdue taxes without late penalties, with reduced interest charges and with avoidance of criminal prosecution for failure to timely pay tax. This amnesty program will be in effect for a 3-month period beginning on July 1, 2010 and ending on September 30, 2010.

The bill also provides the Department with additional tools to increase the effectiveness and efficiency of administration and enforcement of current tax laws when the amnesty program has ended. These new provisions are:

- Authorization to share and provide information regarding outstanding sales and use tax warrants or judgment liens of hotels and restaurants with the Department of Business and Professional Regulation (DBPR),
- Authorization to publish and disclose specified taxpayer's information that have current warrants and judgment lien certificates,
- Authorization for DBPR to revoke or deny a hotel or restaurant license, if a tax warrant has been outstanding for more than 3 consecutive months,
- Establishment of 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, notice of lien, or judgment lien certificate has been issued.
- Creation of comprehensive provisions that govern the transfer of tax liabilities; specifying when a transferor and/or transferee are liable for the tax liabilities transferred, and establishing that the Department can seek an injunction to prevent further business activity until all taxes, penalties and interest due have been paid.

This bill provides an appropriation of $1.234 million from the General Revenue Fund to the Department for the implementation and administration of the amnesty program.

This bill further provides an appropriation of $1.445 million recurring, and $96,925 nonrecurring funds, from the General Revenue Fund to the Department for the hiring of 25 audit and collection services staff.

The Revenue Estimating Conference estimates that new revenue collections to the state in FY 2010-11 will be $82.9 million in General Revenue, of which $8.0 million will be recurring. State trust funds will receive an estimated additional $0.7 million, of which $0.1 million will be recurring. New revenues to local governments in FY 2010-11 are estimated to be $7.1 million, of which $1.9 million will be recurring.

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:

CURRENT SITUATION

Amnesty

Under current law, the Department of Revenue (Department) is responsible for the assessment and collection of a majority of taxes owed to the State. Taxpayers who fail to timely and/or correctly pay the tax due may become subject to penalties, interest and fees administered by the Department. Civil and criminal proceedings may also be utilized in the enforcement of delinquent tax payments.

While most Florida taxpayers successfully and voluntarily comply with all revenue laws, sometimes tax obligations may be misunderstood or simply are just overlooked. In an effort to bring taxpayers into compliance with the law, the State can offer a tax amnesty program. These programs not only help provide a cost savings for current taxpayers, through reduced penalties and interest, but amnesties can also attract and identify new taxpayers that can be placed on the State tax rolls. Florida's last general tax amnesty program was offered in 2003.[1]

Enforcement of Current Tax Laws

Presently, there are numerous gaps in the enforcement tools available to the Department. For example:

- The Department is not permitted to share certain taxpayer information with other state agencies. The Department is currently permitted to disclose names, addresses, and sales tax registration with the Department of Business and Professional Regulation's (DBPR) Division of Hotels and Restaurants, but is unable to provide other sales and use tax information, such as the overdue taxes.

- Current restrictions regarding confidential taxpayer information do not permit the Department to publish names of taxpayers who have current tax warrants.

- The DBPR 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.

[1] Ch. 2003-395, Laws of Florida.

- Current law permits the Department to revoke a taxpayer's sales tax registration when they fail to pay their sales tax liability. However, the Department 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. Florida law does not provide a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred. This offers taxpayers the opportunity to avoid owed taxes under certain circumstances through ownership transfers of a business or a stock of goods.

EFFECT OF PROPOSED CHANGES

2010 State Tax Amnesty Program

The program will target taxpayers subject to the following taxes, fees, and surcharges:

- Certain Local Option Taxes – Chapter 125
- Firefighter and Police Excise Taxes- Chapter 175 & 185
- Estate Tax – Chapter 198
- Intangible Personal Property – Chapter 199
- Documentary Stamp Tax – Chapter 201
- Communications Services Tax – Chapter 202
- Gross Receipts Tax – Chapter 203
- Motor Fuel Taxes – Chapter 206
- Severance Tax – Chapter 211
- Sales and Use Tax – Chapter 212
- Corporate Income Tax – Chapter 220
- Emergency Excise Tax – Chapter 221
- Emergency Management Surcharge - Chapter 252
- Local Option Fuel Taxes – Chapter 336
- Pollutant Taxes – Chapter 376
- Waste Tires and Lead-acid Batteries Fees – Chapter 403
- Insurance Premiums Taxes – Chapters 624 and 627
- Reciprocal Insurers - Chapter 629
- Motor Vehicle Warranty Fees – Chapter 681

The provisions of this bill structure the amnesty program, as follows:

- The amnesty program will be in effect for a 3-month period beginning July 1, 2010 and ending September 30, 2010.
- A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation by the Department.
- A taxpayer may not participate if under criminal investigation, indictment, information, or prosecution regarding a Florida revenue law.
- A taxpayer who is currently under audit, inquiry, examination or civil investigation by the Department is responsible to pay the full amount of taxes due and receives a 25 percent reduction in interest due.
- A taxpayer who initiates contact with the Department is responsible to pay the full amount of taxes due and receives a 50 percent reduction in interest due.
- Late penalties are waived on any tax paid pursuant to the amnesty program. Furthermore, the Department will not initiate a criminal investigation against a participating taxpayer with respect to failure to timely pay a tax.
- A participating taxpayer must waive any right to claim a refund, protest, or initiate any administrative proceeding that challenges any assessment administered under the amnesty program. Preexisting protests or administrative or judicial proceedings must be dismissed.
- The Department is allowed to rescind a grant of amnesty on the basis of fraud, misrepresentation, or mutual mistake of fact.

- Any local option tax administered by a local government is not included in the amnesty program, unless the local government notifies the Department of Revenue by June 1, 2010, that it chooses to participate in the amnesty program.

The Department is authorized to adopt emergency rules to implement the amnesty program.

Increased Enforcement of Current Tax Laws

Tax Liability Confidentiality and Information Sharing

This bill amends s. 212.053(8)(d), F.S., authorizing the Department to share and provide information regarding outstanding sales and use tax warrants or judgment liens of hotels and restaurants with the Department of Business and Professional Regulation's (DBPR) Division of Hotels and Restaurants.

The bill creates s. 212.053(19), F.S., authorizing the Department to 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, amount of liability, and other publically available taxpayer information. This list shall be updated at least monthly. The Department is authorized to adopt rules for the administration of this provision.

Furthermore, this bill creates s. 212.053(20), F.S., authorizing the Department to disclose specified information related to taxpayers against whom the department has filed tax warrants, notice of liens, or judgment lien certificates.

Revocation or Refusal to Reinstate a License

This bill also creates s. 213.50(3) and 213.50(4), F.S., allowing DBPR to revoke a license or deny an application to renew a license of a license holder, if a tax warrant has been outstanding for more than 3 consecutive months.

Integrated Enforcement Authority

This bill also creates s. 213.692, F.S., allowing the Department to revoke a taxpayer's certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant, notice of lien, or judgment lien certificate has been issued. The Department must schedule an information conference with the taxpayer, before revocation, to allow the taxpayer to present evidence regarding the revocation action. The Department is also required to issue an administration complaint under Chapter 120, F.S., if the taxpayer fails to attend the informal conference or fails to comply with an executed compliance agreement.

The taxpayer whose certificates of registration, permits, or licenses have been revoked may not be issued a new one unless either the outstanding tax liabilities have been satisfied or the Department enters into a written agreement with the taxpayer regarding their liabilities. The Department must require a cash deposit, bond, or other security as a condition of issuing a new certificate of registration pursuant s. 212.14(4), F.S. The Department is authorized to adopt rules to administer the provisions of this section.

This bill also authorizes the Department to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority. These emergency rules will remain in effect for 6 months after their adoption and may be renewed when permanent rules are established.

Transfer of Tax Liabilities

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.

The bill provides that a taxpayer, who quits a business without benefit of a purchaser, successor or assignee, or without transferring the business or stock of goods to a transferee, must file a final return and make full payment of taxes owed, excluding corporate income tax, within 15 days after quitting the business. The bill also provides that a taxpayer, who transfers a business or stock of goods, must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer. The transferee of more than 50% of a business is liable for the tax, interest, or penalty owed by the transferor, unless the transferor provides the transferee a receipt or certificate from the Department showing that the transferor is not liable for taxes and the Department conducts an audit and finds that the transferor is not liable for taxes. The transferee may withhold a portion of consideration to pay the taxes, interest, and penalties owed from the operation of the business. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the remaining amount owed. 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 Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity until all taxes, penalties and interest due have been paid Transferees of more than 50 percent of a business or stock of goods are jointly and severally liable with the transferor for the payment of the taxes, interest, or penalties owed.

The maximum liability of the transferee is limited to the fair market value or the purchase price of the property transferred, whichever is higher. The Department is authorized to adopt rules in order to administer the provisions of this section.

B. SECTION DIRECTORY:

Section 1: Creates a state tax amnesty program to be administered by the Department, provides program time period, guidelines, eligible participants, wavier of penalties

Section 2: Appropriates $1.234 million in General Revenue Funding to the Department to administer the amnesty program.

Section 3: Amends s. 213.053, F.S., regarding information sharing information for outstanding sale and use tax warrants or judgment liens with DPBR. Creates s. 212.053(19) and s. 212.053(20), F.S., authorizing the disclosure and publication of specified information for taxpayers.

Section 4: Creates s. 213.50(3) and 213.50(4), F.S., providing DBPR may revoke and deny an application to renew a license holder for outstanding tax liabilities.

Section 5: Creates s. 213.692, F.S., establishing integrated enforcement authority for the Department, authorizing revocation of a taxpayer's certificate of registration under certain circumstances.

Section 6: Authorizes the Department to adopt emergency rules to administer s. 213.692, F.S.

Section 7: Creates s. 213.758, F.S., establishing a comprehensive statute governing the transfer of tax liabilities to future owner(s) of a business and/or business assets. This section also authorizes rule-making authority.

Section 8: Appropriates $1.445 million, in recurring, and $96,925, in non-recurring, General Revenue for 25 additional Department audit and tax collection services staff.

Section 9: This bill shall take effect on becoming a law, except as otherwise specifically provided in this bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference estimates that new revenue collections to the state in FY 2010-11 will be $82.9 million in General Revenue, of which $8.0 million will be recurring. State trust funds will receive an estimated additional $0.7 million, of which $0.1 million will be recurring.

   Further revenue effects that have not yet been estimated by the Revenue Estimating Conference are the non-recurring shifts in the timing of audit payments that would have been paid to the state in the absence of the amnesty program. The amnesty is expected to shift into FY 2010-11 audit payments that normally would have been paid in Fiscal Years 2009-10 and 2011-12. Also, the positive revenue impacts of additional auditors have not yet been estimated.

2. Expenditures:

   This bill provides an appropriation of $1.234 million in nonrecurring General Revenue funds to the Department for the implementation and administration of the amnesty program in FY 2009-10. Funds remaining unexpended from this appropriation as of June 30, 2010, will be reappropriated for the amnesty program in FY 2010-11.

   This bill also provides an appropriation of $1.445 million, in recurring, and $96,925, in nonrecurring General Revenue funds to the Department for the hiring of an additional 25 audit and collection services staff.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The Revenue Estimating Conference estimates that new revenue collections to local governments in FY 2010-11 will be $7.1 million, $1.9 million will be recurring.

   Further revenue effects that have not yet been estimated by the Revenue Estimating Conference are the non-recurring shifts in the timing of audit payments that would have been paid to the state in the absence of the amnesty program. The amnesty is expected to shift into FY 2010-11 audit payments that normally would have been paid in Fiscal Years 2009-10 and 2011-12. Also, the positive revenue impacts of additional auditors have not yet been estimated.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The state tax amnesty program will provide Florida taxpayers an opportunity to pay overdue taxes without late penalties, with reduced interest charges and avoidance of criminal prosecution. This program will provide a cost savings for both business and individual taxpayers, while bringing them into compliance with the law.

D. FISCAL COMMENTS:

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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:

B. RULE-MAKING AUTHORITY:

Section 1. The executive director of the Department is authorized to adopt emergency rules under s. 120.536(1) and s. 120.54(4), F.S., to implement the amnesty program.

Section 3. The Department is authorized to adopt rules to administer provisions in s. 212.053(19), F.S., related to publishing a list of taxpayers whom it has filed a warrant, notice of a lien, or judgment lien certificate.

Section 5. The Department is authorized to adopt rules to administer s. 213.692, F.S., establishing integrated enforcement authority.

Section 6. Effective July 1, 2010, the Department is authorized to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority.

Section 7. The Department is authorized to adopt rules necessary to administer and enforce s. 213.578, F.S., related to the transfer of tax liabilities.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES