

**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 Budget Committee

**BILL:** CS/CS/SB 1304

**INTRODUCER:** Budget Subcommittee on Finance and Tax; and Budget Subcommittee on Finance and Tax

**SUBJECT:** Tax Administration

**DATE:** February 29, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Diez-Arguelles	BFT	Fav/CS
2.	Fournier	Rhodes	BC	Fav/CS
3.				
4.				
5.				
6.				

<b>Please see Section VIII. for Additional Information:</b>	
A. COMMITTEE SUBSTITUTE.....	<input checked="" type="checkbox"/> Statement of Substantial Changes
B. AMENDMENTS.....	<input type="checkbox"/> Technical amendments were recommended
	<input type="checkbox"/> Amendments were recommended
	<input type="checkbox"/> Significant amendments were recommended

**I. Summary:**

CS/CS/SB 1304 (the bill) includes changes in tax administration that were recommended by the Department of Revenue and approved by the Governor and Cabinet and other changes in tax administration. It removes the statutory formula for the Department of Revenue to calculate the severance tax rate on phosphate rock and replaces it with a flat rate of \$1.61 per ton except for the period from January 1, 2015 through December 31, 2022, when it will be \$1.80 per ton. It clarifies the statute that provides for taxation of storage fees for towed vehicles, unless the vehicles were impounded by a law enforcement agency; clearly establishes the department’s authority to require security for certain individuals seeking to register new businesses; provides a sales tax exemption for handicapped-accessible taxicabs, and other vehicles for hire or for conversion of such a vehicle to accessibility; bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions; provides an absolute defense to a claim for a refund if the retailer, dealer, or vendor collected and remitted the tax pursuant to an agreement with the Department of Revenue; corrects an error in the definition of “qualified capital expenditures” for purposes of apportionment by sales factor; allows department staff to verify the identity of business owners by using driver’s license photos; allows local option fuel taxes to be levied by

October 1 instead of July 1; provides an incentive for businesses to comply with requests for records for audit purposes; and reduces the interest rate imposed on unemployment tax deficiencies.

The bill substantially amends the following sections of the Florida Statutes: 211.3103, 212.03, 212.07, 212.08, 212.12, 212.14, 212.18, 213.13, 213.295, 213.756, 322.142, 336.021, 336.025, 443.131, and 443.141.

## **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:**

### **Section 1**

Present situation: Section 211.3103, F.S., provides that the severance tax rate on phosphate rock will increase from \$1.61 per ton to \$2.54 per ton starting in FY2015-16.

Proposed change: This section lowers the tax rate to \$1.80 per ton for the time period from January 1, 2015 until December 31, 2022. After that period, the rate will go back to the current rate of \$1.61 per ton. Revenue raised by the rate adjustment will be used to fund outstanding land reclamation projects while maintaining current revenues for all other trust fund distributions.

### **Section 2**

Present Situation: Storage fees for towed vehicles are taxable under current law, unless the vehicles were impounded by a law enforcement agency, but the statute does not mention these fees explicitly and the department's rule on the issue has created confusion for some operators of storage lots.

Proposed Change: This section clarifies current law on the storage of towed vehicles, and provides a definition of "lawful impoundment."

### **Sections 3, 5 and 7**

Present situation: Sections 212.07, 212.12, and 212.18, F.S., contain redundant and potentially confusing language concerning criminal penalties.

Proposed change: These sections are amended to clarify the criminal penalties imposed on a person who:

- Willfully fails to register after receiving notice of the duty to collect a tax or fee.
- Makes a false or fraudulent return with a willful intent to evade payment of taxes or fees.
- Willfully fails to register after the department provides notice of the duty to register.

No new penalties are being created by this language; the language is intended to clarify existing statutory penalties. These sections take effect upon becoming a law.

#### **Section 4**

Present situation: Currently, there is no sales tax exemption for accessible taxicabs

Proposed change: This section amends s. 212.08, F.S., to add an exemption for the sale or lease of an accessible taxicab, provided that, should the accessible taxicab be an aftermarket conversion, only the price of the conversion is exempt from the tax. "Accessible taxicab" means a chauffeur driven taxi, limousine, sedan, van, or other passenger vehicle where the operator and the motor vehicle are hired and used for the transportation of persons for compensation, and which transports eight passengers or fewer and is equipped with a lift or ramp designed specifically to transport physically disabled persons, including persons who use wheelchairs, motorized wheelchairs, or similar mobility aids. The accessible taxicabs must comply with ADA accessibility requirements.

#### **Section 6**

Present situation: Section 212.14(4), F.S., authorizes the Department of Revenue to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's registration. Despite this requirement delinquent sales tax dealers are able to close down their businesses with tax liabilities, and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when they seek to register new businesses.

Proposed change: The bill revises s. 212.14(4) to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses.

#### **Section 8**

Present situation: Ch. 2010-162, L.O.F., changed the remittance date for funds collected by the Clerks of the Court from the 20<sup>th</sup> day to the 10<sup>th</sup> day of the month immediately after the month in which the funds are collected. Section 213.13, F.S., which governs the electronic remittance and distribution of funds by the Clerks of the Court, was not amended to conform to the change.

Proposed change: Section 213.13, F.S., is amended to conform to changes made by ch. 2010-162, L.O.F. This section takes effect upon becoming a law.

#### **Section 9**

Present situation: Section 213.756, F.S., provides that if a purchaser takes action to obtain a refund of taxes, fees, or surcharges collected by the retailer, the purchaser has the burden of proving its claim by clear and convincing evidence. The purchaser's sole remedy is damages measured by the difference between what the retailer collected as a tax, fee, or surcharge and what the retailer paid to the taxing authority, plus any discount or collection allowance taken by

the retailer. It is an affirmative defense to the action if the retailer remitted the amount collected from the purchaser to the taxing authority, less any discount or dealer collection allowance.

Proposed change: The bill amends this section to provide that it is an absolute defense to any claim for a refund if the retailer collected the amount pursuant to an agreement with the Department of Revenue and remitted the amount collected to the taxing authority, less any discount or dealer collection allowance.

### **Section 10**

Present situation: Automated sales suppression devices or “zappers” are software programs that falsify the records of electronic cash registers and other point-of-sale systems. These devices alter sales records to reduce the value of sales that are reported for tax purposes in order to evade state and federal taxes. In the case of sales tax the use of these devices results in the theft of taxes that have been collected from a business’s customers.

Proposed change: The bill creates s. 213.295, F.S., which makes an automated sales suppression device a contraband article under ss. 932.701-932.706, F.S., and makes it unlawful to willfully and knowingly sell, purchase, install, transfer, or possess in this state any automated sales suppression device, zapper, or phantom-ware. Any person convicted of violating this law is guilty of a third degree felony and is liable for all taxes, fees, penalties and interest due the state as a result of the use of the device and shall forfeit to the state as an additional penalty all profits associated with the sale or use of the device. The bill provides definitions for “automated sales suppression device,” “zapper,” “electronic cash register,” “phantom-ware,” “transaction data,” and “transaction report.” This section takes effect upon becoming a law.

### **Section 11**

Corrects a glitch in language that was enacted last year in s. 220.153(1)(b), F.S., which provides a definition of “qualified capital expenditure” for purposes of apportionment by sales factor.

### **Section 12**

Present situation: The Department of Revenue staff does not have a way to verify the identity of business owners prior to visiting businesses during audits and cannot be sure that the person with whom they are working during field visits is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles maintains a file of the digital image and signatures of drivers’ license holders. These records may be shared with the Department of Revenue for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the Department of Revenue to use drivers’ license images to establish positive identification for tax administration purposes.

### **Sections 13 and 14**

Present situation: Section 336.021, F.S. requires that the ninth-cent fuel tax on motor fuel and diesel fuel be levied by a county before July 1 of each year to be effective January 1 of the following year. Section 336.025 F.S., requires that the local option fuel tax on motor fuel and diesel fuel be levied before July 1 to be effective on January 1 of the following year.

Proposed change: The bill provides that these taxes must be levied before October 1 to be effective on January 1 of the following year.

**Section 15**

Present situation: Florida law provides a standard unemployment tax rate, and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard unemployment tax rate. The condition is that the employer has produced records requested by AWI or the department for audit purposes. This section takes effect upon the bill becoming a law.

**Section 16**

Present situation: Unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month, an effective annual rate of 12 percent. Other taxes that are administered by the department have an interest rate of prime plus 4 percent, not to exceed an effective rate of 1 percent per month. The interest rate is adjusted twice yearly.

Proposed change: Section 443.141, F.S. is amended to change the interest rate imposed on unemployment compensation tax deficiencies to prime plus 4 percent, not to exceed 1 percent per month, beginning January 1, 2013. This is the rate applied to other taxes administered by the Department of Revenue.

**Section 17** provides that except as otherwise expressly provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2012.

**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:**

The department anticipates that some provisions of this bill will improve enforcement and collection of state tax laws:

- Banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions, should improve the department's ability to collect and enforce the sales tax statutes.
- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability.

The Revenue Estimating Conference has determined that:

- decreasing the interest rate on unpaid unemployment taxes will reduce state trust fund revenue by \$0.1 million in 2012-13 and recurring,
- reducing the severance tax on phosphate will have no cash impact in FY20112-13 but will reduce recurring General Revenue by \$5.6 million, recurring state trust revenue by \$3.4 million, and local revenue by \$3.6 million,
- a sales tax exemption for accessible vehicles for hire will reduce General Revenue by \$0.2 million in FY 2012-13 and recurring.

Other provisions of the bill are expected to have an indeterminate positive impact on state and local revenue.

#### B. Private Sector Impact:

This bill has the following effects on the private sector:

- It reduces the tax rate for phosphate mining.
- It clarifies that storage fees for towed vehicles are subject to sales tax. It provides a sales tax exemption for accessible vehicles for hire
- It authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales and use tax dealer's certificate of registration.
- It bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions.
- It provides that an employer may not qualify for a reduced unemployment tax rate unless the employer has produced all records that were requested by the department or the Agency for Workforce Innovation.
- It reduces the interest rate imposed on unemployment tax deficiencies.

#### C. Government Sector Impact:

The bill is expected to improve tax administration by banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions; by providing a means by which department staff can verify the identity of business owners prior to visiting the business during audits; and by improving compliance with requests for information from

employers for unemployment tax purposes. It also allows counties additional time to levy local option fuel taxes.

**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/CS by Budget Committee on February 29, 2012:**

**The CS:**

- reduces the tax rate beginning in 1015-16 and changes the distribution of the severance tax on phosphate,
- provides a definition of “lawful impoundment” for purposes of determining whether storage fees are taxable,
- provides a sales tax exemption for accessible vehicles for hire,
- provides an absolute defense to a claim for a refund if the retailer, dealer, or vendor collected and remitted the tax pursuant to an agreement with the Department of Revenue, and
- allows local option fuel taxes to be levied by October 1 instead of July 1. The new tax rates will still take effect January 1.

**CS by Budget Subcommittee on Finance and Tax on January 24, 2012:**

The CS clarifies the statute that provides for taxation of storage fees for towed vehicles, unless the vehicles were impounded by a law enforcement agency, and corrects an error in the definition of “qualified capital expenditures” for purposes of apportionment by sales factor.

- B. **Amendments:**

None.