

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 Committee on Appropriations

BILL: CS/SB 1828

INTRODUCER: Appropriations Committee

SUBJECT: Tax Administration

DATE: April 22, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Hansen		AP SPB 7126 as introduced
2.	Fournier	Hansen	AP	Fav/CS
3.				
4.				
5.				
6.				

I. Summary:

CS/SB 1828 contains changes in tax administration, some of which were recommended by the Department of Revenue (department) and approved by the Governor and Cabinet.

Several sections of this bill have a positive but indeterminate impact on state revenue. Section 11, which reduces the interest rate charged on delinquent reemployment taxes, will reduce revenue to the Special Employment Security Administration Trust Fund by \$0.6 million in Fiscal Year 2013-14 and by \$1.3 million on a recurring basis.

The bill:

- Authorizes certain coastal counties to use tourist development tax revenue to fund beach safety personnel and lifeguard operational activities;
- Authorizes a county that self-administers the tourist development tax or convention development tax to require additional information on tax returns;
- Deletes an unneeded estate tax filing requirement;
- Expands the definition of “phosphate-related expenses” for the purpose of distributing phosphate tax proceeds;
- Clarifies that storage charges for towed vehicles are taxable unless the storage is a “lawful impoundment;”
- Clarifies provisions pertaining to criminal penalties for failing to collect a tax or fee, making a false or fraudulent return, or failing to register with the department;
- Clearly establishes the department’s authority to require security for certain individuals seeking to register new businesses;

- Corrects the statute governing electronic remittances to the state by the clerks of court to say that these remittances must be made by the 10th day of the month, as required elsewhere in statute;
- Increases the authority of the department's Executive Director to compromise taxes;
- 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 incentive for businesses to comply with requests for records for audit purposes; and
- Reduces the interest rate imposed on reemployment tax deficiencies.

This bill substantially amends the following sections of the Florida Statutes: 125.0104, 198.13, 211.3103, 212.03, 212.0305, 212.07, 212.12, 212.14, 212.18, 212.20, 213.13, 213.21, 213.925, 443.131, and 443.141.

II. Present Situation:

The department is responsible for 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 proposes changes in tax administration laws 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 125.0104, F.S., authorizes counties to levy various tourist development taxes on transient rentals. Revenues received by a county from a tax levied under s. 125.0104(3)(c) and (d), F.S., must be used for purposes listed in subsection (5) of this section. These are:

- The acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum that is publicly owned and operated or owned and operated by a not-for-profit organization, or promotion of a zoo.
- Promotion and advertising of tourism in the state.
- Funding of convention bureaus, tourist bureaus, tourist information centers, and news bureaus as county agencies, or by contract with chambers of commerce or similar associations in the county.
- Financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control, limited to 10 percent of tourist development tax revenues in counties of less than 100,000 population.
- In counties of less than 750,000 population, tourist development tax revenue may be used for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement, maintenance, operation, or promotion of zoos, fishing piers, or nature centers which are

publicly owned and operated or owned and operated by a not-for-profit organization and open to the public.

- Securing revenue bonds issued by the county for the acquisition, construction, extension, enlargement, remodeling, repair, or improvement of a publicly owned and operated convention center, sports stadium, sports arena, coliseum, auditorium, aquarium, or a museum or financing beach park facilities or beach improvement, maintenance, renourishment, restoration, and erosion control.

Use of tourist development tax revenue for any purpose not expressly authorized is prohibited.

Section 125.0104(10), F.S., authorizes a county levying a tax under this section to self-administer the tax, if the county adopts an ordinance providing for the local collection and administration of the tax. A county that chooses to self-administer the tax must choose whether to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to the Department of Revenue.

Proposed change: A coastal county with population less than 225,000 and at least 9 municipalities is authorized to use its tourist development tax revenue to fund beach safety personnel and lifeguard operational activities.

A county that self-administers the tourist development tax may require additional information on tax returns including, for each rental property, the names of the owners; the address of the property, including the unit number; the number of days rented; the taxable rent; and the amount of tax payable.

Section 2

Present situation: Ch. 198, F.S., imposes a tax on estates for the privilege of transferring property at death. The tax is limited to the amount allowable as a credit against federal estate tax for state death taxes paid. As a result of changes in federal law that eliminated the credit for state taxes, the Florida estate tax has not been applicable since 2008. On January 1, 2013, the federal Growth and Tax Relief Reconciliation Act of 2001 sunset provisions would have restored the Florida estate tax, but the passage of the American Taxpayer Relief Act in January 2013 preempted that outcome. Section 198.13, F.S., requires the estates of person who die after January 1, 2013 to file certain documents with the department which are unnecessary because of American Taxpayer Relief Act.

Proposed change: Section 198.13, F.S., is amended to remove filing requirements for estates of people who die on or after January 1, 2013. This section applies retroactively to January 1, 2013.

Present situation: Section 211.3103, F.S., levies an excise tax of \$1.61 per ton on phosphate rock mining operations. This revenue is distributed as follows:

- 25.5 percent to the Conservation and Recreation Lands Trust Fund;
- 35.7 percent to the General Revenue Fund;

- 12.8 percent to counties where the phosphate rock is produced, to be used for phosphate related expenses;
- 10.0 percent to counties designated as a rural area of critical economic concern, in proportion to the amount of phosphate rock mined in the county, or to a local authority to promote and direct the economic development of such a county, if the Legislature has created such an authority;
- 6.2 percent to the Nonmandatory Land Reclamation Trust Fund;
- 6.2 percent to the Phosphate Research Trust fund in the Division of Universities of the Department of Education; and
- 3.6 percent to the Minerals Trust Fund.

“Phosphate-related expenses” are defined as those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the phosphate industry.

Proposed change: The definition of “phosphate-related expenses” is expanded to include environmental education, maintenance and restoration of reclaimed lands and county-owned environmental lands that were formerly phosphate lands, and community infrastructure located on county-owned environmental lands that were formerly phosphate lands.

Section 4

Present situation: Section 212.03(6), F.S., provides that every person engaging in a lease or rental of parking or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage space for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports, shall be taxed at the rate of 6 percent on the total rental charged.

Proposed change: The bill adds s. 212.03(6)(b), F.S., providing that the storage of towed vehicles from a "lawful impoundment" by a law enforcement agency is not taxable. The bill further provides that “lawful impoundment” means the storing of or having custody over an aircraft, boat, or motor vehicle by, or at the direction of, a local, state, or federal law enforcement agency which the owner or the owner’s representative is not authorized to enter upon, have access to, or remove without the consent of the law enforcement agency.

Section 5

Present situation: Section 212.0305, F.S., authorizes 5 separate convention development taxes on transient rental transactions in Duval, Miami-Dade and 3 taxing districts of Volusia counties, respectively. The levies may be authorized by adoption of an ordinance by the county’s governing body. Revenues may generally be used for capital construction of convention centers and other tourist-related facilities as well as tourism promotion.¹ Section 212.0305(5), F.S., authorizes a county levying a tax under this section to self-administer the tax, if the county

¹ Office of Economic and Demographic Research, *2012 Local Government Financial Information Handbook*, (October 2012), available at: <http://edr.state.fl.us/Content/local-government/reports/lgfih12.pdf>, (last visited on January 28, 2013).

adopts an ordinance providing for the local collection and administration of the tax. A county that chooses to self-administer the tax must choose whether to assume all responsibility for auditing the records and accounts of dealers and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate this authority to the Department of Revenue.

Proposed change: A county that self-administers the convention development tax may require additional information on tax returns including, for each rental property, the names of the owners; the address of the property, including the unit number; the number of days rented; the taxable rent; and the amount of tax payable.

Sections 6, 7, and 9

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

Proposed change: The bill amends these sections to clarify the criminal penalties imposed on a person who:

- Willfully fails 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.

The bill creates no new penalties; the changes are intended to clarify existing statutory penalties. These sections take effect upon becoming a law.

Section 8

Present situation: Section 212.14(4), F.S., authorizes the department 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 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), F.S., to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses. This section takes effect July 1, 2013.

Section 10

This section republishes s. 212.20(6)(c), F.S., for the purpose of incorporating this bill's amendment to s. 212.18(3), F.S.

Section 11

Present situation: Ch. 2010-162, L.O.F., changed the remittance date for funds state collected by the Clerks of the Court from the 20th day to the 10th 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..

Section 12

Present situation: Section 213.21, F.S., allows the department's Executive Director to enter into an agreement with a taxpayer that compromises the taxpayer's liability if there is a "doubt as to liability" or "doubt as to collectability" of the tax assessed. The statute limits this compromise authority to a reduction of \$250,000 or less.

Proposed change: The bill increases the Executive Director's authority to compromise taxes to a reduction of \$500,000 or less.

Section 13

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. While evading state taxes is illegal under current law, the sale, purchase, installation, use, or possession of the devices themselves is not illegal *per se*.

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 must 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 14

Present situation: Florida law provides a standard reemployment 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 reemployment tax rate. The condition is that the employer has

produced records requested by the Department of Economic Opportunity or the department for audit purposes. An employer must have at least 60 days to provide the requested work records before the standard rate is assigned. This section takes effect upon the bill becoming a law.

Section 15

Present situation: Reemployment 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 reemployment compensation tax deficiencies to prime plus 4 percent, not to exceed 1 percent per month, beginning January 1, 2014. This is the rate applied to other taxes administered by the department.

Section 16

This section provides that except as otherwise expressly provided, this act shall take effect shall take 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:

The department anticipates that the following provisions of CS/SB 1828 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 reemployment tax reporting is expected to improve the department's audit capability.

The Revenue Estimating Conference has determined that decreasing the interest rate on unpaid reemployment taxes will reduce state trust fund revenue by \$0.6 million in Fiscal Year 2013-2014 and by \$1.3 million on a recurring basis. Other provisions of the bill are expected to have an indeterminate positive impact on state and local revenue.

B. Private Sector Impact:

This bill:

- Relieves estates of people who die on or after January 1, 2013, from filing estate tax documents with the department;
- Authorizes local governments that self-administer the tourist development tax or convention development tax to require additional information on tax returns;
- 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;
- Increases the Executive Director's authority to compromise taxes;
- Prohibits the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and specifies criminal penalties for these actions;
- Provides that an employer may not qualify for a reduced reemployment tax rate unless the employer has produced all records that were requested by the department or the Department of Economic Opportunity; and
- Reduces the interest rate imposed on reemployment 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 reemployment tax purposes. The bill also expands permissible uses of counties' phosphate tax revenue and allows certain counties to use tourist development tax revenue to pay for beach safety personnel and lifeguard operational activities. Local governments that self-administer the tourist development tax or convention development tax may be able to improve enforcement of these taxes by requiring additional information on tax returns.

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 Appropriations on April 18, 2013:**

The committee substitute:

- Clarifies that storage charges for towed vehicles are taxable unless the storage is a “lawful impoundment.
- Authorizes certain coastal counties to use tourist development tax revenue to fund beach safety personnel and lifeguard operational activities.
- Authorizes a county that self-administers the tourist development tax or convention development tax to require additional information on tax returns.

B. Amendments:

None.