

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 495 Certified Audit Program  
**SPONSOR(S):** Finance & Tax Subcommittee; Raulerson  
**TIED BILLS:** **IDEN./SIM. BILLS:** CS/SB 866

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee	15 Y, 0 N, As CS	Flieger	Langston
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	White	Topp
3) Appropriations Committee	26 Y, 0 N	White	Leznoff

### SUMMARY ANALYSIS

Section 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between the Department of Revenue and the Florida Institute of Certified Public Accountants. The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 if that audit reveals additional liability.

A taxpayer may not currently participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit.

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit. The amount of interest abated for such taxpayers is reduced to the first \$15,000 and 15 percent of any amount over \$15,000. It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit to an abatement of the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$2.4 million to the state and a recurring impact of -\$0.5 million to local governments. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

The effective date is July 1, 2013.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Present Situation**

The Department of Revenue (“DOR”) routinely audits businesses in this state to determine if state taxes were collected, reported, and paid correctly. DOR begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records (“notice of intent”).<sup>1</sup> This notice identifies the audit period and taxes to be examined. The types of records needed may include, but are not limited to: federal income tax returns, Florida tax returns, depreciation schedules, general ledgers and journals, property records, cash receipt and disbursement journals, purchase and sales journals, sales tax exemption or resale certificates, and documentation to verify amounts entered on tax returns. An audit may extend back three years.<sup>2</sup>

To encourage voluntarily compliance, s. 213.285, Florida Statutes, F.S., establishes a Certified Audit Program as a cooperative effort between DOR and the Florida Institute of Certified Public Accountants (“FICPA”). The program allows taxpayers to hire qualified CPA firms to review their tax compliance for the tourist development taxes imposed by ss. 125.0104 and 125.0108, F.S, and the sales and use tax imposed by ch. 212, F.S.<sup>3</sup>

To encourage participation in the program, taxpayers who undergo a certified audit receive a statutorily guaranteed waiver of all penalties, abatement of the first \$25,000 of interest, and an additional 25 percent of any interest liability in excess of the first \$25,000 in cases where the audit reveals additional liability.<sup>4</sup> These incentives are not available where tax was collected but not remitted to the state. Additionally, except in cases of fraud or misrepresentation, DOR will not audit a taxpayer who uses the program for the same tax years that the certified audit reviewed.

A taxpayer may not participate in the certified audit program if they are currently under audit or have received a written notice of intent to audit from DOR.

To conduct a certified audit a CPA must possess an active Florida CPA license, attend a 2.5-day training seminar, and pass an examination to be certified. For a firm to be eligible to conduct certified audits, several additional requirements must be met. The firm must be a licensed audit firm with the Florida Board of Accountancy, have received a timely on-site peer review, and must conduct the audits using agreed-upon procedures. A staff member of the firm must have completed DOR-provided training on Florida multi-tax software.<sup>5</sup>

To be eligible to provide a certified audit service to a taxpayer, the qualified CPA firm must also be independent with respect to that taxpayer, pursuant to the guidelines established by Florida Board of Accountancy.<sup>6</sup>

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002. This was subsequently extended to July 1, 2006,<sup>7</sup> and then repealed entirely.<sup>8</sup>

#### **Proposed Changes**

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<sup>1</sup> Form DR-840 or CA-I

<sup>2</sup> Section 95.091, F.S.

<sup>3</sup> Rule 12-25.0305, F.A.C.

<sup>4</sup> Section 213.21(8), F.S.

<sup>5</sup> Rule 12-25.033, F.A.C.

<sup>6</sup> <http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx> (last accessed 3/15/13)

<sup>7</sup> Section 36, ch. 2002-218, L.O.F.

<sup>8</sup> Section 40, ch. 2003-254, L.O.F.

The bill allows taxpayers to participate in the certified audit program after they have received a notice of intent to audit from DOR. The time limits for administering a certified audit in that situation are modified, giving the taxpayer an additional 30 days to submit a proposed audit plan. Within 90 days after the proposed audit plan, the department shall designate the agreed-upon procedures for that audit. The certified auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

The amount of interest that is abated for such taxpayers is \$15,000 plus 15 percent of any amount over \$15,000.

It also increases the amount of interest that is abated for participating taxpayers who have not received a notice of intent to audit, increasing the abatement to the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

The bill codifies into statute the current rule<sup>9</sup> that the certified audit program only applies to the sales and use tax and the tourist development tax.

## B. SECTION DIRECTORY:

Section 1. Amends s. 213.21, F.S., to adjust the amount of interest abated.

Section 2. Amends s. 213.285, F.S., to allow taxpayers who have received a notice of intent to audit to participate in the certified audit program, providing procedures for such participation, codifying the applicable taxes.

Section 3. Amends s. 213.053, F.S., conforming changes.

Section 4. Providing an effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$2.4 million to the state. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

#### 2. Expenditures:

See Fiscal Comments.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

On March 16, 2013, the Revenue Estimating Conference estimated that allowing taxpayers to enter the certified audit program after receiving a notice of intent to audit would have a recurring impact of -\$0.5 million to local governments. Impacts will not begin until FY 2014-15. The interest abatement changes for the current program will have an indeterminate negative fiscal impact.

#### 2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers who take advantage of the certified audit program may see their tax liability decrease due to the abatement of interest and waiver of penalties. CPAs who are certified by DOR to conduct such audits will see additional demand for their services should the expanded eligibility lead to more participation.

D. FISCAL COMMENTS:

Increased participation in the certified audit program should free up resources to allow DOR to conduct more audits and collect additional taxes from noncompliant taxpayers whose liability would have otherwise gone undetected.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may cause local governments to receive lower collections from local option sales taxes; however the impact should be below the threshold for an insignificant impact exemption.

2. Other:

None

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2013, the Finance and Tax Subcommittee adopted three amendments. The above analysis reflects these changes:

- Added language that codifies a currently existing rule limiting the eligible taxes
- Reduced interest abatement for taxpayers who had received a notice of intent
- Extended deadline for DOR to agree to procedures for a certified audit