

1 A bill to be entitled
 2 An act relating to the certified audit program;
 3 amending s. 213.21, F.S.; revising the amounts of
 4 interest liability that the Department of Revenue may
 5 abate for taxpayers participating in the certified
 6 audit program; authorizing a taxpayer to participate
 7 in the certified audit program after the department
 8 has issued notice of intent to conduct an audit of the
 9 taxpayer; amending s. 213.285, F.S.; conforming
 10 provisions; revising procedures, deadlines, and notice
 11 requirements for certified audits; authorizing the
 12 department to adopt rules prohibiting a qualified
 13 practitioner from representing a taxpayer in informal
 14 conference procedures under certain circumstances;
 15 amending s. 213.053, F.S.; conforming terminology;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Subsection (8) of section 213.21, Florida
 21 Statutes, is amended to read:

22 213.21 Informal conferences; compromises.—

23 (8) In order to determine whether certified audits are an
 24 effective tool in the overall state tax collection effort, the
 25 executive director of the department or the executive director's
 26 designee shall settle or compromise penalty liabilities of
 27 taxpayers who participate in the certified audit program ~~audits~~
 28 ~~project~~. As further incentive for participating in the program,

29 | the department shall:

30 | (a) For a taxpayer who requests to participate in the
 31 | program before the department has issued the taxpayer a written
 32 | notice of intent to conduct an audit, abate the first \$50,000 of
 33 | any interest liability and 50 percent of any interest due in
 34 | excess of the first \$50,000; or

35 | (b) For a taxpayer who requests to participate in the
 36 | program after the department has issued the taxpayer a written
 37 | notice of intent to conduct an audit, abate the first \$25,000 of
 38 | any interest liability and 25 percent of any interest due in
 39 | excess of the first \$25,000.

40 |
 41 | A settlement or compromise of penalties or interest pursuant to
 42 | this subsection shall not be subject to ~~the provisions of~~
 43 | paragraph (3) (a), except for the requirement relating to
 44 | confidentiality of records. The department may consider an
 45 | additional compromise of tax or interest pursuant to ~~the~~
 46 | ~~provisions of~~ paragraph (3) (a). This subsection does not apply
 47 | to any liability related to taxes collected but not remitted to
 48 | the department.

49 | Section 2. Section 213.285, Florida Statutes, is amended
 50 | to read:

51 | 213.285 Certified audits.—

52 | (1) As used in this section, the term:

53 | (a) "Certification program" means an instructional
 54 | curriculum, examination, and process for certification,
 55 | recertification, and revocation of certification of certified
 56 | public accountants that ~~which~~ is administered by an independent

57 provider and that ~~which~~ is officially approved by the department
 58 to ensure that a certified public accountant possesses the
 59 necessary skills and abilities to successfully perform an
 60 attestation engagement for tax compliance review in the a
 61 certified audit program audits ~~project~~.

62 (b) "Department" means the Department of Revenue.

63 (c) "Participating taxpayer" means any person subject to
 64 the revenue laws administered by the department who enters into
 65 an engagement with a qualified practitioner for tax compliance
 66 review and who is approved by the department under the certified
 67 audit program audits ~~project~~.

68 (d) "Qualified practitioner" means a certified public
 69 accountant who is licensed to practice in Florida and who has
 70 completed the certification program.

71 (2) (a) The department may ~~is authorized to~~ initiate a
 72 certified audit program audits ~~project~~ to further enhance tax
 73 compliance reviews performed by qualified practitioners and ~~to~~
 74 encourage taxpayers to hire qualified practitioners at their own
 75 expense to review and report on their tax compliance. The nature
 76 of certified audit work performed by qualified practitioners
 77 shall be agreed-upon procedures in which the department is the
 78 specified user of the resulting report.

79 (b) As an incentive for taxpayers to incur the costs of a
 80 certified audit, the department shall compromise penalties and
 81 abate interest due on any tax liabilities revealed by the a
 82 certified audit:

83 1. For a taxpayer who requests to participate in the
 84 certified audit program before the department has issued the

85 taxpayer a written notice of intent to conduct an audit, as
 86 provided in s. 213.21(8)(a); or

87 2. For a taxpayer who requests to participate in the
 88 certified audit program after the department has issued the
 89 taxpayer a written notice of intent to conduct an audit, as
 90 provided in s. 213.21(8)(b) ~~213.21~~.

91
 92 The ~~This~~ authority to compromise penalties or abate interest
 93 under this paragraph does ~~shall~~ not apply to any liability for
 94 taxes ~~that were~~ collected by the participating taxpayer but ~~that~~
 95 ~~were~~ not remitted to the department.

96 (3) Any practitioner responsible for planning, directing,
 97 or conducting a certified audit or reporting on a participating
 98 taxpayer's tax compliance in a certified audit must be a
 99 qualified practitioner. For the purposes of this subsection, a
 100 practitioner is considered responsible for:

101 (a) "Planning" in a certified audit when performing work
 102 that involves determining the objectives, scope, and methodology
 103 of the certified audit, when establishing criteria to evaluate
 104 matters subject to the review as part of the certified audit,
 105 when gathering information used in planning the certified audit,
 106 or when coordinating the certified audit with the department.

107 (b) "Directing" in a certified audit when the work
 108 involves supervising the efforts of others who are involved or
 109 when reviewing the work to determine whether it is properly
 110 accomplished and complete.

111 (c) "Conducting" a certified audit when performing tests
 112 and procedures or field audit work necessary to accomplish the

113 | audit objectives in accordance with applicable standards.

114 | (d) "Reporting" on a participating taxpayer's tax
 115 | compliance in a certified audit when determining report contents
 116 | and substance or reviewing reports for technical content and
 117 | substance before ~~prior to~~ issuance.

118 | (4) (a) A ~~The~~ qualified practitioner shall notify the
 119 | department of an engagement to perform a certified audit and
 120 | shall provide the department with the information that the
 121 | department deems necessary to identify the taxpayer, to confirm
 122 | whether ~~that~~ the taxpayer is ~~not~~ already under audit by the
 123 | department, and to establish the basic nature of the taxpayer's
 124 | business and the taxpayer's potential exposure to the Florida
 125 | revenue laws administered by the department. Once the department
 126 | has issued a taxpayer a written notice of intent to conduct an
 127 | audit, if the taxpayer requests to participate in the certified
 128 | audit program, the qualified practitioner or the taxpayer,
 129 | within 30 days after the notice of intent to conduct the audit
 130 | was issued to the taxpayer, must notify the department of the
 131 | engagement to perform the certified audit.

132 | (b) The information provided in the notification shall
 133 | include the taxpayer's name, federal employer identification
 134 | number or social security number, state tax account number,
 135 | mailing address, and business location, and the specific taxes
 136 | and period proposed to be covered by the engagement for the
 137 | certified audit. In addition, the notice shall include the name,
 138 | address, identification number, contact person, e-mail address,
 139 | and telephone number of the engaged firm.

140 | (c) ~~(b)~~ Upon the department's receipt of the engagement ~~if~~

141 ~~the taxpayer has not been issued a written notice of intent to~~
 142 ~~conduct an audit,~~ the taxpayer becomes ~~shall be~~ a participating
 143 taxpayer, and the department shall so advise the qualified
 144 practitioner in writing within 10 days after receipt of the
 145 engagement notice. However, the department may exclude a
 146 taxpayer from a certified audit or may limit the taxes or
 147 periods subject to the certified audit on the basis that the
 148 department has previously conducted an audit or, ~~that it~~ is in
 149 the process of conducting an investigation or other examination
 150 of the taxpayer's records, ~~or for just cause determined solely~~
 151 by the department.

152 (d) ~~(e)~~ Notice of the qualification of a taxpayer for a
 153 certified audit shall toll the statute of limitations provided
 154 in s. 95.091 with respect to the taxpayer for the tax and
 155 periods covered by the engagement.

156 (e) ~~(d)~~ ~~Within 30 days after receipt of the notice of~~
 157 ~~qualification from the department,~~ The qualified practitioner
 158 shall contact the department and, within the following periods,
 159 shall submit a proposed audit plan and procedures for review and
 160 agreement by the department:

161 1. For a taxpayer who requests to participate in the
 162 certified audit program before the department has issued the
 163 taxpayer a written notice of intent to conduct an audit, within
 164 30 days after receipt of the notice of qualification from the
 165 department; or

166 2. For a taxpayer who requests to participate in the
 167 certified audit program after the department has issued the
 168 taxpayer a written notice of intent to conduct an audit, within

169 60 days after the department issued the taxpayer the notice of
170 intent to conduct the audit.

171
172 The department may extend the time for submission of the plan
173 and procedures for reasonable cause. The qualified practitioner
174 shall initiate action to advise the department that amendment or
175 modification of the plan and procedures is necessary in the
176 event that the qualified practitioner's inspection reveals that
177 the taxpayer's circumstances or exposure to the revenue laws is
178 substantially different than as described in the engagement
179 notice.

180 (f) If the taxpayer has been issued a written notice of
181 intent to conduct an audit but submits a proposed audit plan and
182 procedures in accordance with subparagraph (e)2., within 70 days
183 after the notice of intent to conduct the audit was issued to
184 the taxpayer, the department shall designate the agreed-upon
185 procedures to be followed by the qualified practitioner in the
186 certified audit.

187 (5) Upon the department's designation of the agreed-upon
188 procedures to be followed by the practitioner in the certified
189 audit, the qualified practitioner shall perform the engagement
190 and shall timely submit a completed report to the department.
191 The report shall affirm completion of the agreed-upon procedures
192 and shall provide any required disclosures. For a certified
193 audit completed pursuant to agreed-upon procedures designated by
194 the department under paragraph (4)(f), the completed report is
195 considered timely only if submitted to the department within 285
196 days after the notice of intent to conduct the audit was issued

197 | to the taxpayer.

198 | (6) The department shall review the report of the
 199 | certified audit and shall accept it when it is determined to be
 200 | complete. Once the report is accepted by the department, the
 201 | department shall issue a notice of proposed assessment
 202 | reflecting the determination of any additional liability
 203 | reflected in the report and shall provide the taxpayer with all
 204 | the normal payment, protest, and appeal rights with respect to
 205 | the liability. In cases where the report indicates an
 206 | overpayment has been made, the taxpayer shall submit a properly
 207 | executed application for refund to the department. Otherwise,
 208 | the certified audit report is a final and conclusive
 209 | determination with respect to the tax and period covered. An ~~No~~
 210 | additional assessment may not be made by the department for the
 211 | specific taxes and period referenced in the report, except upon
 212 | a showing of fraud or misrepresentation of material facts and
 213 | except for adjustments made under s. 198.16 or s. 220.23. This
 214 | determination does ~~shall~~ not prevent the department from
 215 | collecting liabilities not covered by the report or from
 216 | conducting an audit or investigation and making an assessment
 217 | for additional tax, penalty, or interest for any tax or period
 218 | not covered by the report.

219 | (7) To implement the certified audit program ~~audits~~
 220 | ~~project~~, the department may ~~shall have authority to~~ adopt rules
 221 | relating to:

222 | (a) The availability of the certification program required
 223 | for participation in the certified audit program ~~project~~;

224 | (b) The requirements and basis for establishing just cause

225 | for approval or rejection of participation by taxpayers;

226 | (c) Procedures for assessment, collection, and payment of
 227 | liabilities or refund of overpayments and provisions for
 228 | taxpayers to obtain informal and formal review of certified
 229 | audit results;

230 | (d) The nature, frequency, and basis for the department's
 231 | review of certified audits conducted by qualified practitioners,
 232 | including the requirements for documentation, work-paper
 233 | retention and access, and reporting; ~~and~~

234 | (e) Requirements for conducting certified audits and for
 235 | review of agreed-upon procedures; and

236 | (f) Circumstances under which a qualified practitioner who
 237 | conducts a certified audit for a taxpayer after the department
 238 | has issued the taxpayer a written notice of intent to conduct
 239 | the audit is prohibited from representing the taxpayer in
 240 | informal conference procedures established pursuant to s.
 241 | 213.21.

242 | Section 3. Paragraph (m) of subsection (8) of section
 243 | 213.053, Florida Statutes, is amended to read:

244 | 213.053 Confidentiality and information sharing.—

245 | (8) Notwithstanding any other provision of this section,
 246 | the department may provide:

247 | (m) Information contained in returns, reports, accounts,
 248 | or declarations to the Board of Accountancy in connection with a
 249 | disciplinary proceeding conducted pursuant to chapter 473 when
 250 | related to a certified public accountant participating in the
 251 | certified audit program ~~audits project~~, or to the court in
 252 | connection with a civil proceeding brought by the department

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253 relating to a claim for recovery of taxes due to negligence on
254 the part of a certified public accountant participating in the
255 certified audit program ~~audits project~~. In any judicial
256 proceeding brought by the department, upon motion for protective
257 order, the court shall limit disclosure of tax information when
258 necessary to effectuate the purposes of this section.

259
260 Disclosure of information under this subsection shall be
261 pursuant to a written agreement between the executive director
262 and the agency. Such agencies, governmental or nongovernmental,
263 shall be bound by the same requirements of confidentiality as
264 the Department of Revenue. Breach of confidentiality is a
265 misdemeanor of the first degree, punishable as provided by s.
266 775.082 or s. 775.083.

267 Section 4. This act shall take effect July 1, 2013.