

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; authorizing the department to initiate a  
 11          certified audit program for specified taxes  
 12          administered by the department; revising procedures,  
 13          deadlines, and notice requirements for certified  
 14          audits; authorizing the department to adopt rules  
 15          prohibiting a qualified practitioner from representing  
 16          a taxpayer in informal conference procedures under  
 17          certain circumstances; amending s. 213.053, F.S.;  
 18          conforming terminology; providing an effective date.

19  
 20 Be It Enacted by the Legislature of the State of Florida:

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 22           Section 1. Subsection (8) of section 213.21, Florida  
 23 Statutes, is amended to read:

24           213.21 Informal conferences; compromises.—

25           (8) In order to determine whether certified audits are an  
 26 effective tool in the overall state tax collection effort, the  
 27 executive director of the department or the executive director's  
 28 designee shall settle or compromise penalty liabilities of

29 taxpayers who participate in the certified audit program ~~audits~~  
 30 ~~project~~. As further incentive for participating in the program,  
 31 the department shall:

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

37 (b) For a taxpayer who requests to participate in the  
 38 program after the department has issued the taxpayer a written  
 39 notice of intent to conduct an audit, abate the first \$15,000  
 40 ~~\$25,000~~ of any interest liability and 15 ~~25~~ percent of any  
 41 interest due in excess of the first \$15,000 ~~\$25,000~~.

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

51 Section 2. Section 213.285, Florida Statutes, is amended  
 52 to read:

53 213.285 Certified audits.—

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

55 (a) "Certification program" means an instructional  
 56 curriculum, examination, and process for certification,

57 | recertification, and revocation of certification of certified  
58 | public accountants that ~~which~~ is administered by an independent  
59 | provider and that ~~which~~ is officially approved by the department  
60 | to ensure that a certified public accountant possesses the  
61 | necessary skills and abilities to successfully perform an  
62 | attestation engagement for tax compliance review in the a  
63 | certified audit program ~~audits project~~.

64 | (b) "Department" means the Department of Revenue.

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

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

73 | (2) (a) The department may ~~is authorized to~~ initiate a  
74 | certified audit program for sales and use taxes imposed under  
75 | chapter 212 and local option taxes imposed under ss. 125.0104  
76 | and 125.0108 and administered by the department ~~audits project~~  
77 | to further enhance tax compliance reviews performed by qualified  
78 | practitioners and ~~to~~ encourage taxpayers to hire qualified  
79 | practitioners at their own expense to review and report on their  
80 | tax compliance. The nature of certified audit work performed by  
81 | qualified practitioners shall be agreed-upon procedures in which  
82 | the department is the specified user of the resulting report.

83 | (b) As an incentive for taxpayers to incur the costs of a  
84 | certified audit, the department shall compromise penalties and

85 abate interest due on any tax liabilities revealed by the a  
 86 certified audit:

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

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

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

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

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

111 (b) "Directing" in a certified audit when the work  
 112 involves supervising the efforts of others who are involved or

113 when reviewing the work to determine whether it is properly  
 114 accomplished and complete.

115 (c) "Conducting" a certified audit when performing tests  
 116 and procedures or field audit work necessary to accomplish the  
 117 audit objectives in accordance with applicable standards.

118 (d) "Reporting" on a participating taxpayer's tax  
 119 compliance in a certified audit when determining report contents  
 120 and substance or reviewing reports for technical content and  
 121 substance before ~~prior to~~ issuance.

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

136 (b) The information provided in the notification shall  
 137 include the taxpayer's name, federal employer identification  
 138 number or social security number, state tax account number,  
 139 mailing address, and business location~~7~~ and the specific taxes  
 140 and period proposed to be covered by the engagement for the

141 certified audit. In addition, the notice shall include the name,  
 142 address, identification number, contact person, e-mail address,  
 143 and telephone number of the engaged firm.

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

156 ~~(d)-(e)~~ Notice of the qualification of a taxpayer for a  
 157 certified audit shall toll the statute of limitations provided  
 158 in s. 95.091 with respect to the taxpayer for the tax and  
 159 periods covered by the engagement.

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

- 165 1. For a taxpayer who requests to participate in the  
 166 certified audit program before the department has issued the  
 167 taxpayer a written notice of intent to conduct an audit, within  
 168 30 days after receipt of the notice of qualification from the

169 department; or

170 2. For a taxpayer who requests to participate in the  
171 certified audit program after the department has issued the  
172 taxpayer a written notice of intent to conduct an audit, within  
173 60 days after the department issued the taxpayer the notice of  
174 intent to conduct the audit.

175

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

184 (f) If the taxpayer has been issued a written notice of  
185 intent to conduct an audit but submits a proposed audit plan and  
186 procedures in accordance with subparagraph (e)2., within 90 days  
187 after the notice of intent to conduct the audit was issued to  
188 the taxpayer, the department shall designate the agreed-upon  
189 procedures to be followed by the qualified practitioner in the  
190 certified audit.

191 (5) Upon the department's designation of the agreed-upon  
192 procedures to be followed by the practitioner in the certified  
193 audit, the qualified practitioner shall perform the engagement  
194 and shall timely submit a completed report to the department.  
195 The report shall affirm completion of the agreed-upon procedures  
196 and shall provide any required disclosures. For a certified

197 audit completed pursuant to agreed-upon procedures designated by  
198 the department under paragraph (4)(f), the completed report is  
199 considered timely only if submitted to the department within 285  
200 days after the notice of intent to conduct the audit was issued  
201 to the taxpayer.

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

223 (7) To implement the certified audit program ~~audits~~  
224 ~~project~~, the department may ~~shall have authority to~~ adopt rules



225 relating to:

226 (a) The availability of the certification program required  
 227 for participation in the certified audit program ~~project~~;

228 (b) The requirements and basis for establishing just cause  
 229 for approval or rejection of participation by taxpayers;

230 (c) Procedures for assessment, collection, and payment of  
 231 liabilities or refund of overpayments and provisions for  
 232 taxpayers to obtain informal and formal review of certified  
 233 audit results;

234 (d) The nature, frequency, and basis for the department's  
 235 review of certified audits conducted by qualified practitioners,  
 236 including the requirements for documentation, work-paper  
 237 retention and access, and reporting; ~~and~~

238 (e) Requirements for conducting certified audits and for  
 239 review of agreed-upon procedures; and

240 (f) Circumstances under which a qualified practitioner who  
 241 conducts a certified audit for a taxpayer after the department  
 242 has issued the taxpayer a written notice of intent to conduct  
 243 the audit is prohibited from representing the taxpayer in  
 244 informal conference procedures established pursuant to s.  
 245 213.21.

246 Section 3. Paragraph (m) of subsection (8) of section  
 247 213.053, Florida Statutes, is amended to read:

248 213.053 Confidentiality and information sharing.—

249 (8) Notwithstanding any other provision of this section,  
 250 the department may provide:

251 (m) Information contained in returns, reports, accounts,  
 252 or declarations to the Board of Accountancy in connection with a

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253 disciplinary proceeding conducted pursuant to chapter 473 when  
254 related to a certified public accountant participating in the  
255 certified audit program ~~audits project~~, or to the court in  
256 connection with a civil proceeding brought by the department  
257 relating to a claim for recovery of taxes due to negligence on  
258 the part of a certified public accountant participating in the  
259 certified audit program ~~audits project~~. In any judicial  
260 proceeding brought by the department, upon motion for protective  
261 order, the court shall limit disclosure of tax information when  
262 necessary to effectuate the purposes of this section.

263

264 Disclosure of information under this subsection shall be  
265 pursuant to a written agreement between the executive director  
266 and the agency. Such agencies, governmental or nongovernmental,  
267 shall be bound by the same requirements of confidentiality as  
268 the Department of Revenue. Breach of confidentiality is a  
269 misdemeanor of the first degree, punishable as provided by s.  
270 775.082 or s. 775.083.

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