

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: SPB 7126

INTRODUCER: For consideration by the Appropriations Committee

SUBJECT: Tax Administration

DATE: March 26, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Hansen		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

SPB 7126 contains changes in tax administration that were recommended by the Department of Revenue and approved by the Governor and Cabinet. It deletes an unneeded estate tax filing requirement; 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; 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; allows department staff to verify the identity of business owners by using driver’s license photos; provides an incentive for businesses to comply with requests for records for audit purposes; and reduces the interest rate imposed on reemployment tax deficiencies.

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.

This bill substantially amends the following sections of the Florida Statutes: 198.13, 212.07, 212.12, 212.14, 212.18, 212.20, 213.13, 213.21, 213.925, 322.142, 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: 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.

Sections 2, 3 and 5

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 language is intended to clarify existing statutory penalties. These sections take effect upon becoming a law.

Section 4

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 6

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 7

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. This section takes effect upon becoming a law.

Section 8

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 9

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 10

Present situation: The department’s 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 for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the department to use drivers’ license images to establish positive identification for tax administration purposes. This section takes effect July 1, 2013.

Section 11

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. This section takes effect upon the bill becoming a law.

Section 12

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 13

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 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 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 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.

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.)

None.

B. Amendments:

None.