

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 Banking and Insurance

BILL: CS/SB 866

INTRODUCER: Banking and Insurance Committee and Senator Abruzzo

SUBJECT: Certified Audit Program

DATE: March 21, 2013 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Burgess	BI	Fav/CS
2.			AFT	
3.			AP	
4.				
5.				
6.				

I. Summary:

CS/SB 866 expands the Certified Audit Program to allow participation by taxpayers after they have been selected for an audit by the Department of Revenue. The CS also increases the amount of interest that is abated for participating taxpayers who have not been selected for audit to an abatement of the first \$50,000 of interest plus 50 percent of any amount over \$50,000.

The Revenue Estimating Conference estimates that this bill will have a negative but indeterminate impact on state and local revenues.

This CS substantially amends the following sections of the Florida Statutes: 213.21, 213.285, and 213.053.

II. Present Situation:

The Department of Revenue (department) is required to regularly audit businesses to determine compliance with Florida's tax laws.¹ The department begins the audit process by mailing a taxpayer a Notification of Intent to Audit Books and Records (notice of intent).² This notice identifies the audit period and taxes to be examined. Generally, Florida has a 3-year statute of limitations for assessments of unpaid taxes.³ Thus, an audit generally is concerned with a business's books and records for the prior 3 years.

¹ Section 20.21(2)(c), F.S.

² Form DR-840 or CA-I

³ Section 95.091(3)(a)1.b., F.S.

In order to enhance the review of tax compliance, the department conducts the Certified Audit Program⁴, a cooperative effort between the department and the Florida Institute of Certified Public Accountants. The Certified Audit Program allows a taxpayer to hire a certified public accountant to conduct a tax audit. A taxpayer may not participate in the certified audit program if the taxpayer is currently under audit or has received a written notice of intent from the department.

As an incentive to participate in the program, taxpayers receive a waiver of all penalties, abatement of the first \$25,000 of interest, and abatement of 25 percent of any additional interest liability in excess of \$25,000.⁵

After being hired to conduct a certified audit, the qualified auditor is required to notify the department.⁶ Once the status of the taxpayer is reviewed, the department will send a notice of qualification to participate in the certified audit program.⁷ Thereafter, the qualified auditor has 30 days in which to submit a proposed audit plan for review by the department.

Once the audit is complete, the auditor will submit a report to the department and the department will make any required assessments.⁸ Except in cases of fraud or misrepresentation, the results of a certified audit are considered final and the report closes the examined period for further assessment.⁹

To conduct a certified audit, the certified public auditor must possess an active Florida Certified Public Auditor license, attend a 2.5-day training seminar, and pass an examination. 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 department-provided training on Florida multi-tax software.¹⁰

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 the Florida Board of Accountancy.¹¹

When the certified audit project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002.¹² The sunset was subsequently extended to July 1, 2006,¹³ and then it was repealed entirely.¹⁴

⁴ Section 213.285, F.S.

⁵ Section 213.21(8), F.S. However, waiver and abatement are not permitted where taxes have been collected but not remitted.

⁶ Section 213.285(4)(a), F.S.

⁷ Section 213.285(4)(c), F.S.

⁸ Section 213.285(6), F.S.

⁹ Section 213.285(6), F.S.

¹⁰ Rule 12-25.0305, F.A.C.

¹¹ <http://www.ficpa.org/Content/CPAResources/Professional/Audit/Issues.aspx> (last reviewed March 17, 2013).

¹² Section 1, Chapter 98-95, Laws of Florida

¹³ Section 36, ch. 2002-218, Laws of Florida

¹⁴ Section 40, ch. 2003-254, Laws of Florida

III. Effect of Proposed Changes:

The CS amends the certified audit program to limit audits to sales and use tax, tourist development tax and tourist impact tax. The program is amended to allow participation by a taxpayer, regardless of whether the taxpayer has received a notice of intent. For taxpayers who participate prior to receiving a notice of intent, the CS amends the interest abatement to allow abatement of the first \$50,000 of interest and 50 percent of the remaining interest. These taxpayers retain their 30-day period after a notice of qualification for submitting a proposed audit plan to the department.

For taxpayers who participate in the program after receiving a notice of intent, the CS provides for interest abatement equal to the first \$15,000 and 15 percent of remaining interest. The time period for submitting a proposed audit plan for taxpayers that have received a notice of intent is modified, giving the taxpayer 60 days to submit a proposed audit plan.

Within 90 days after the notice of intent was issued, the department shall designate the agreed-upon procedures for that audit. The auditor has 285 days from the date of the notice of intent to audit to timely complete the audit.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Legislature may not enact, amend, or repeal a general law if the anticipated effect of doing so would be to reduce the authority of counties or municipalities to raise revenues in the aggregate, as such authority existed on February 1, 1989, except by a two-thirds vote of the membership of each chamber.¹⁵ However, laws that have an “insignificant fiscal impact,” which for fiscal year 2012-13 is \$1.9 million, do not need a two-thirds vote.¹⁶

The Revenue Estimating Conference estimates that this bill will reduce local government revenues by a total of \$0.8 million. Since the CS is expected to reduce local revenues by less than \$1.9 million, a two-thirds vote is not required.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁵ Fla. Const. Art. VII, s. 18(b)

¹⁶ Fla. Const. Art. VII, s. 18(d)

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

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.

C. Government Sector Impact:

The Revenue Estimating Conference estimates that this bill will have a negative but indeterminate impact on state and local revenues. Total local revenue is estimated to decrease by \$0.8 million.

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 Banking and Insurance on March 20, 2013:

The CS makes the following changes:

- Taxpayers who request to participate in the certified audit program after the department selects the taxpayer for audit will receive interest abatement equal to the first \$15,000 of interest and 15 percent of any additional interest liability, and
- The certified audit program is limited to audits of sales and use tax, tourist development tax, and tourist impact tax.

B. Amendments:

None.