

By Senator Abruzzo

25-00609B-13

2013866__

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:

25-00609B-13

2013866

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 is ~~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 to
50 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 which is administered by an independent
57 provider and ~~which~~ is officially approved by the department to
58 ensure that a certified public accountant possesses the

25-00609B-13

2013866__

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

25-00609B-13

2013866

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 involves
108 supervising the efforts of others who are involved or when
109 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

25-00609B-13

2013866

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 must ~~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 must ~~shall~~ include the
138 name, address, identification number, contact person, email
139 address, 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

25-00609B-13

2013866

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 tolls ~~shall toll~~ the statute of limitations
154 provided in s. 95.091 with respect to the taxpayer for the tax
155 and 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

25-00609B-13

2013866

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 90 days
183 after the notice of intent was issued to the taxpayer, the
184 department shall designate the agreed upon procedures to be
185 followed by the qualified practitioner in the certified audit.

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

197 (6) The department shall review the report of the certified
198 audit and shall accept it when it is determined to be complete.
199 Once the report is accepted by the department, the department
200 shall issue a notice of proposed assessment reflecting the
201 determination of any additional liability reflected in the
202 report and shall provide the taxpayer with all the normal
203 payment, protest, and appeal rights with respect to the

25-00609B-13

2013866

204 liability. In cases where the report indicates an overpayment
205 has been made, the taxpayer shall submit a properly executed
206 application for refund to the department. Otherwise, the
207 certified audit report is a final and conclusive determination
208 with respect to the tax and period covered. An ~~No~~ additional
209 assessment may not be made by the department for the specific
210 taxes and period referenced in the report, except upon a showing
211 of fraud or misrepresentation of material facts and except for
212 adjustments made under s. 198.16 or s. 220.23. This
213 determination does ~~shall~~ not prevent the department from
214 collecting liabilities not covered by the report or from
215 conducting an audit or investigation and making an assessment
216 for additional tax, penalty, or interest for any tax or period
217 not covered by the report.

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

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

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

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

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

25-00609B-13

2013866

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

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

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

243 213.053 Confidentiality and information sharing.—

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

246 (m) Information contained in returns, reports, accounts, or
247 declarations to the Board of Accountancy in connection with a
248 disciplinary proceeding conducted pursuant to chapter 473 when
249 related to a certified public accountant participating in the
250 certified audit program ~~audits project~~, or to the court in
251 connection with a civil proceeding brought by the department
252 relating to a claim for recovery of taxes due to negligence on
253 the part of a certified public accountant participating in the
254 certified audit program ~~audits project~~. In any judicial
255 proceeding brought by the department, upon motion for protective
256 order, the court shall limit disclosure of tax information when
257 necessary to effectuate the purposes of this section.

258
259 Disclosure of information under this subsection shall be
260 pursuant to a written agreement between the executive director
261 and the agency. Such agencies, governmental or nongovernmental,

25-00609B-13

2013866__

262 shall be bound by the same requirements of confidentiality as
263 the Department of Revenue. Breach of confidentiality is a
264 misdemeanor of the first degree, punishable as provided by s.
265 775.082 or s. 775.083.

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