

By the Committee on Banking and Insurance; and Senator Abruzzo

597-02820-13

2013866c1

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; reducing the amount of interest that may be
10 abated for a taxpayer requesting to participate in the
11 program; amending s. 213.285, F.S.; conforming
12 provisions; specifying the tax programs to be audited;
13 revising procedures, deadlines, and notice
14 requirements for certified audits; authorizing the
15 department to adopt rules prohibiting a qualified
16 practitioner from representing a taxpayer in informal
17 conference procedures under certain circumstances;
18 amending s. 213.053, F.S.; conforming terminology;
19 providing an effective date.

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

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

25 213.21 Informal conferences; compromises.—

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

597-02820-13

2013866c1

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

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

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

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

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

54 213.285 Certified audits.—

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

56 (a) "Certification program" means an instructional
57 curriculum, examination, and process for certification,
58 recertification, and revocation of certification of certified

597-02820-13

2013866c1

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

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

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

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

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

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

597-02820-13

2013866c1

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

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

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

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

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

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

116 (c) "Conducting" a certified audit when performing tests

597-02820-13

2013866c1

117 and procedures or field audit work necessary to accomplish the
118 audit objectives in accordance with applicable standards.

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

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

137 (b) The information provided in the notification must ~~shall~~
138 include the taxpayer's name, federal employer identification
139 number or social security number, state tax account number,
140 mailing address, and business location, and the specific taxes
141 and period proposed to be covered by the engagement for the
142 certified audit. In addition, the notice must ~~shall~~ include the
143 name, address, identification number, contact person, email
144 address, and telephone number of the engaged firm.

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

597-02820-13

2013866c1

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

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

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

166 1. For a taxpayer who requests to participate in the
167 certified audit program before the department has issued the
168 taxpayer a written notice of intent to conduct an audit, within
169 30 days after receipt of the notice of qualification from the
170 department; or

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

597-02820-13

2013866c1

175 intent to conduct the audit.

176

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

185 (f) If the taxpayer has been issued a written notice of
186 intent to conduct an audit but submits a proposed audit plan and
187 procedures in accordance with subparagraph (e)2. within 90 days
188 after the notice of intent was issued to the taxpayer, the
189 department shall designate the agreed upon procedures to be
190 followed by the qualified practitioner in the 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 must ~~shall~~ affirm completion of the agreed-upon
196 procedures and ~~shall~~ provide ~~any~~ required disclosures. For a
197 certified audit completed pursuant to agreed-upon procedures
198 designated by the department under paragraph (4) (f), the
199 completed report is considered timely only if submitted to the
200 department within 285 days after the notice of intent to conduct
201 the audit was issued to the taxpayer.

202 (6) The department shall review the report of the certified
203 audit and shall accept it when it is determined to be complete.

597-02820-13

2013866c1

204 Once the report is accepted by the department, the department
205 shall issue a notice of proposed assessment reflecting the
206 determination of any additional liability reflected in the
207 report and shall provide the taxpayer with all the normal
208 payment, protest, and appeal rights with respect to the
209 liability. In cases where the report indicates an overpayment
210 has been made, the taxpayer shall submit a properly executed
211 application for refund to the department. Otherwise, the
212 certified audit report is a final and conclusive determination
213 with respect to the tax and period covered. An ~~No~~ additional
214 assessment may not be made by the department for the specific
215 taxes and period referenced in the report, except upon a showing
216 of fraud or misrepresentation of material facts and except for
217 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

597-02820-13

2013866c1

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, or
252 declarations to the Board of Accountancy in connection with a
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

597-02820-13

2013866c1

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.