

By the Committee on Appropriations

576-02230-14

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1 A bill to be entitled
2 An act relating to tax administration; amending s.
3 212.03, F.S.; providing that charges for the storage
4 of towed vehicles that are impounded by a local,
5 state, or federal law enforcement agency are not
6 taxable; amending s. 212.07, F.S.; conforming a cross-
7 reference to changes made by the act; providing
8 monetary and criminal penalties for a dealer's willful
9 failure to collect certain taxes or fees after
10 receiving notice of such duty to collect from the
11 Department of Revenue; amending s. 212.12, F.S.;
12 deleting provisions relating to the imposition of
13 criminal penalties after Department of Revenue notice
14 of requirements to register as a dealer or to collect
15 taxes; making technical and grammatical changes to
16 provisions specifying penalties for making a false or
17 fraudulent return with the intent to evade payment of
18 a tax or fee; amending s. 212.14, F.S.; modifying the
19 definition of the term "person"; authorizing the
20 department to adopt rules relating to requirements for
21 a person to deposit cash, a bond, or other security
22 with the department in order to ensure compliance with
23 sales tax laws; making technical and grammatical
24 changes; amending s. 212.18, F.S.; providing criminal
25 penalties for a person who willfully fails to register
26 as a dealer after receiving notice of such duty by the
27 department; making technical and grammatical changes;
28 reenacting s. 212.20, F.S., relating to the
29 disposition of funds collected, to incorporate changes

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30 made by the act; amending s. 213.13, F.S.; revising
31 the date for transmitting funds collected by the
32 clerks of court to the department; amending s. 213.21,
33 F.S.; increasing the compromise authority for closing
34 agreements with taxpayers which can be delegated to
35 and approved by the executive director; creating s.
36 213.295, F.S., relating to automated sales suppression
37 devices; defining terms; subjecting a person to
38 criminal penalties and monetary penalties for
39 knowingly selling or engaging in certain other actions
40 involving a sales suppression device or phantom-ware;
41 providing that sales suppression devices and phantom-
42 ware are contraband articles under the Florida
43 Contraband Forfeiture Act; amending s. 443.131, F.S.;
44 imposing a requirement on employers to produce records
45 for the Department of Economic Opportunity or its tax
46 collection service provider as a prerequisite for a
47 reduction in the rate of reemployment tax; amending s.
48 443.141, F.S.; providing a method to calculate the
49 interest rate for past due employer contributions and
50 reimbursements, and delinquent, erroneous, incomplete,
51 or insufficient reports; increasing the number of days
52 for an employer to protest an assessment; providing
53 effective dates.

54
55 Be It Enacted by the Legislature of the State of Florida:
56

57 Section 1. Subsection (6) of section 212.03, Florida
58 Statutes, is amended to read:

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59 212.03 Transient rentals tax; rate, procedure, enforcement,
60 exemptions.—

61 (6) It is the legislative intent that a every person is
62 engaging in a taxable privilege who leases or rents parking or
63 storage spaces for motor vehicles in parking lots or garages,
64 including storage facilities for towed vehicles, who leases or
65 rents docking or storage spaces for boats in boat docks or
66 marinas, or who leases or rents tie-down or storage space for
67 aircraft at airports.

68 (a) For the exercise of this privilege, a tax is hereby
69 levied at the rate of 6 percent on the total rental charged.

70 (b) Charges for parking, docking, tie-down, or storage
71 arising from a lawful impoundment are not taxable. As used in
72 this paragraph, the term "lawful impoundment" means the storing
73 of or having custody over an aircraft, boat, or motor vehicle
74 by, or at the direction of, a local, state, or federal law
75 enforcement agency which the owner or the owner's representative
76 is not authorized to enter upon, have access to, or remove
77 without the consent of the law enforcement agency.

78 Section 2. Effective July 1, 2014, paragraph (b) of
79 subsection (1) and subsection (3) of section 212.07, Florida
80 Statutes, are amended to read:

81 212.07 Sales, storage, use tax; tax added to purchase
82 price; dealer not to absorb; liability of purchasers who cannot
83 prove payment of the tax; penalties; general exemptions.—

84 (1)

85 (b) A resale must be in strict compliance with s. 212.18
86 and the rules and regulations, and any dealer who makes a sale
87 for resale which is not in strict compliance is ~~with s. 212.18~~

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88 ~~and the rules and regulations shall himself or herself be liable~~
89 for and must pay the tax. Any dealer who makes a sale for resale
90 shall document the exempt nature of the transaction, as
91 established by rules adopted ~~promulgated~~ by the department, by
92 retaining a copy of the purchaser's resale certificate. In lieu
93 of maintaining a copy of the certificate, a dealer may document,
94 before ~~prior to~~ the time of sale, an authorization number
95 provided telephonically or electronically by the department, or
96 by such other means established by rule of the department. The
97 dealer may rely on a resale certificate issued pursuant to s.
98 212.18(3)(d) ~~s. 212.18(3)(e)~~, valid at the time of receipt from
99 the purchaser, without seeking annual verification of the resale
100 certificate if the dealer makes recurring sales to a purchaser
101 in the normal course of business on a continual basis. For
102 purposes of this paragraph, "recurring sales to a purchaser in
103 the normal course of business" refers to a sale in which the
104 dealer extends credit to the purchaser and records the debt as
105 an account receivable, or in which the dealer sells to a
106 purchaser who has an established cash or C.O.D. account, similar
107 to an open credit account. For purposes of this paragraph,
108 purchases are made from a selling dealer on a continual basis if
109 the selling dealer makes, in the normal course of business,
110 sales to the purchaser at least ~~no less frequently than~~ once in
111 every 12-month period. A dealer may, through the informal
112 protest provided for in s. 213.21 and the rules of the
113 department ~~of Revenue~~, provide the department with evidence of
114 the exempt status of a sale. Consumer certificates of exemption
115 executed by those exempt entities that were registered with the
116 department at the time of sale, resale certificates provided by

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117 purchasers who were active dealers at the time of sale, and
118 verification by the department of a purchaser's active dealer
119 status at the time of sale in lieu of a resale certificate shall
120 be accepted by the department when submitted during the protest
121 period, but may not be accepted in any proceeding under chapter
122 120 or any circuit court action instituted under chapter 72.

123 (3) (a) A ~~Any~~ dealer who fails, neglects, or refuses to
124 collect the tax or fees imposed under this chapter herein
125 ~~provided, either~~ by himself or herself or through the dealer's
126 agents or employees, ~~is,~~ in addition to the penalty of being
127 liable for ~~and~~ paying the tax or fee himself or herself, commits
128 ~~guilty of~~ a misdemeanor of the first degree, punishable as
129 provided in s. 775.082 or s. 775.083.

130 (b) A dealer who willfully fails to collect a tax or fee
131 after the department provides notice of the duty to collect the
132 tax or fee is liable for a specific penalty of 100 percent of
133 the uncollected tax or fee. This penalty is in addition to any
134 other penalty that may be imposed by law. A dealer who willfully
135 fails to collect taxes or fees totaling:

136 1. Less than \$300:

137 a. For a first offense, commits a misdemeanor of the second
138 degree, punishable as provided in s. 775.082 or s. 775.083.

139 b. For a second offense, commits a misdemeanor of the first
140 degree, punishable as provided in s. 775.082 or s. 775.083.

141 c. For a third or subsequent offense, commits a felony of
142 the third degree, punishable as provided in s. 775.082, s.
143 775.083, or s. 775.084.

144 2. An amount equal to \$300 or more, but less than \$20,000,
145 commits a felony of the third degree, punishable as provided in

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146 s. 775.082, s. 775.083, or s. 775.084.

147 3. An amount equal to \$20,000 or more, but less than
148 \$100,000, commits a felony of the second degree, punishable as
149 provided in s. 775.082, s. 775.083, or s. 775.084.

150 4. An amount equal to \$100,000 or more, commits a felony of
151 the first degree, punishable as provided in s. 775.082, s.
152 775.083, or s. 775.084.

153 (c) The department shall give written notice of the duty to
154 collect taxes or fees to the dealer by personal service, by
155 sending notice to the dealer's last known address by registered
156 mail, or both.

157 Section 3. effective July 1, 2014, paragraph (d) of
158 subsection (2) of section 212.12, Florida Statutes, is amended
159 to read:

160 212.12 Dealer's credit for collecting tax; penalties for
161 noncompliance; powers of Department of Revenue in dealing with
162 delinquents; brackets applicable to taxable transactions;
163 records required.—

164 (2)

165 (d) A ~~Any~~ person who makes a false or fraudulent return and
166 who has ~~with~~ a willful intent to evade payment of any tax or fee
167 imposed under this chapter is; ~~any person who, after the~~
168 ~~department's delivery of a written notice to the person's last~~
169 ~~known address specifically alerting the person of the~~
170 ~~requirement to register the person's business as a dealer,~~
171 ~~intentionally fails to register the business; and any person~~
172 ~~who, after the department's delivery of a written notice to the~~
173 ~~person's last known address specifically alerting the person of~~
174 ~~the requirement to collect tax on specific transactions,~~

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175 ~~intentionally fails to collect such tax, shall, in addition to~~
176 ~~the other penalties provided by law, be liable for a specific~~
177 ~~penalty of 100 percent of any unreported or any uncollected tax~~
178 ~~or fee. This penalty is in addition to any other penalty~~
179 provided by law. A person who makes a false or fraudulent return
180 with a willful intent to evade payment of taxes or fees
181 totaling:

182 1. Less than \$300:

183 a. For a first offense, commits a misdemeanor of the second
184 degree, punishable as provided in s. 775.082 or s. 775.083.

185 b. For a second offense, commits a misdemeanor of the first
186 degree, punishable as provided in s. 775.082 or s. 775.083.

187 c. For a third or subsequent offense, commits a felony of
188 the third degree, punishable as provided in s. 775.082, s.
189 775.083, or s. 775.084.

190 2. An amount equal to \$300 or more, but less than \$20,000,
191 commits a felony of the third degree, punishable as provided in
192 s. 775.082, s. 775.083, or s. 775.084.

193 3. An amount equal to \$20,000 or more, but less than
194 \$100,000, commits a felony of the second degree, punishable as
195 provided in s. 775.082, s. 775.083, or s. 775.084.

196 4. An amount equal to \$100,000 or more, commits a felony of
197 the first degree, punishable and, upon conviction, for fine and
198 punishment as provided in s. 775.082, s. 775.083, or s. 775.084.
199 ~~Delivery of written notice may be made by certified mail, or by~~
200 ~~the use of such other method as is documented as being necessary~~
201 ~~and reasonable under the circumstances. The civil and criminal~~
202 ~~penalties imposed herein for failure to comply with a written~~
203 ~~notice alerting the person of the requirement to register the~~

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204 ~~person's business as a dealer or to collect tax on specific~~
205 ~~transactions shall not apply if the person timely files a~~
206 ~~written challenge to such notice in accordance with procedures~~
207 ~~established by the department by rule or the notice fails to~~
208 ~~clearly advise that failure to comply with or timely challenge~~
209 ~~the notice will result in the imposition of the civil and~~
210 ~~criminal penalties imposed herein.~~

211 ~~1. If the total amount of unreported or uncollected taxes~~
212 ~~or fees is less than \$300, the first offense resulting in~~
213 ~~conviction is a misdemeanor of the second degree, the second~~
214 ~~offense resulting in conviction is a misdemeanor of the first~~
215 ~~degree, and the third and all subsequent offenses resulting in~~
216 ~~conviction is a misdemeanor of the first degree, and the third~~
217 ~~and all subsequent offenses resulting in conviction are felonies~~
218 ~~of the third degree.~~

219 ~~2. If the total amount of unreported or uncollected taxes~~
220 ~~or fees is \$300 or more but less than \$20,000, the offense is a~~
221 ~~felony of the third degree.~~

222 ~~3. If the total amount of unreported or uncollected taxes~~
223 ~~or fees is \$20,000 or more but less than \$100,000, the offense~~
224 ~~is a felony of the second degree.~~

225 ~~4. If the total amount of unreported or uncollected taxes~~
226 ~~or fees is \$100,000 or more, the offense is a felony of the~~
227 ~~first degree.~~

228 Section 4. Effective July 1, 2014, subsection (4) of
229 section 212.14, Florida Statutes, is amended to read:

230 212.14 Departmental powers; hearings; distress warrants;
231 bonds; subpoenas and subpoenas duces tecum.—

232 (4) In all cases where it is necessary to ensure compliance

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233 with ~~the provisions of~~ this chapter, the department shall
234 require a cash deposit, bond, or other security as a condition
235 to a person obtaining or retaining a dealer's certificate of
236 registration under this chapter. Such bond must ~~shall~~ be in the
237 form and ~~such~~ amount ~~as~~ the department deems appropriate under
238 the particular circumstances. A ~~Every~~ person failing to produce
239 such cash deposit, bond, or other security is ~~as provided for~~
240 ~~herein shall~~ not be entitled to obtain or retain a dealer's
241 certificate of registration under this chapter, and the
242 Department of Legal Affairs is hereby authorized to proceed by
243 injunction, if ~~when so~~ requested by the Department of Revenue,
244 to prevent such person from doing business subject to ~~the~~
245 ~~provisions of~~ this chapter until such cash deposit, bond, or
246 other security is posted with the department, and any temporary
247 injunction for this purpose may be granted by any judge or
248 chancellor authorized by law to grant injunctions. Any security
249 required to be deposited may be sold by the department at public
250 sale if ~~it becomes~~ necessary ~~so to do~~ in order to recover any
251 tax, interest, or penalty due. Notice of such sale may be served
252 personally or by mail upon the person who deposited the ~~such~~
253 security. If by mail, notice sent to the last known address as
254 it ~~the same~~ appears on the records of the department is ~~shall be~~
255 sufficient for the purpose of this requirement. Upon such sale,
256 the surplus, if any, above the amount due under this chapter
257 shall be returned to the person who deposited the security. The
258 department may adopt rules necessary to administer this
259 subsection. For the purpose of the cash deposit, bond, or other
260 security required by this subsection, the term "person" includes
261 those entities defined in s. 212.02(12), as well as:

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262 (a) An individual or entity owning a controlling interest
263 in a business;

264 (b) An individual or entity that acquired an ownership
265 interest or a controlling interest in a business that would
266 otherwise be liable for posting a cash deposit, bond, or other
267 security, unless the department has determined that the
268 individual or entity is not liable for the taxes, interest, or
269 penalties described in s. 213.758; or

270 (c) An individual or entity seeking to obtain a dealer's
271 certificate of registration for a business that will be operated
272 at the same location as a previous business that would otherwise
273 have been liable for posting a cash deposit, bond, or other
274 security, if the individual or entity fails to provide evidence
275 that the business was acquired for consideration in an arms-
276 length transaction.

277 Section 5. Effective July 1, 2014, subsection (3) of
278 section 212.18, Florida Statutes, is amended to read:

279 212.18 Administration of law; registration of dealers;
280 rules.—

281 (3) (a) A ~~Every~~ person desiring to engage in or conduct
282 business in this state as a dealer, ~~as defined in this chapter,~~
283 or to lease, rent, or let or grant licenses in living quarters
284 or sleeping or housekeeping accommodations in hotels, apartment
285 houses, roominghouses, or tourist or trailer camps that are
286 subject to tax under s. 212.03, or to lease, rent, or let or
287 grant licenses in real property, ~~as defined in this chapter,~~ and
288 a every person who sells or receives anything of value by way of
289 admissions, must file with the department an application for a
290 certificate of registration for each place of business. The

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291 application must include, ~~showing~~ the names of the persons who
292 have interests in such business and their residences, the
293 address of the business, and ~~such~~ other data reasonably required
294 by ~~as~~ the department ~~may reasonably require~~. However, owners and
295 operators of vending machines or newspaper rack machines are
296 required to obtain only one certificate of registration for each
297 county in which such machines are located. The department, by
298 rule, may authorize a dealer that uses independent sellers to
299 sell its merchandise to remit tax on the retail sales price
300 charged to the ultimate consumer in lieu of having the
301 independent seller register as a dealer and remit the tax. The
302 department may appoint the county tax collector as the
303 department's agent to accept applications for registrations. The
304 application must be submitted ~~made~~ to the department before the
305 person, firm, copartnership, or corporation may engage in such
306 business, and it must be accompanied by a registration fee of
307 \$5. However, a registration fee is not required to accompany an
308 application to engage in or conduct business to make mail order
309 sales. The department may waive the registration fee for
310 applications submitted through the department's Internet
311 registration process.

312 (b) The department, upon receipt of such application, shall
313 ~~will~~ grant to the applicant a separate certificate of
314 registration for each place of business, which certificate may
315 be canceled by the department or its designated assistants for
316 any failure by the certificateholder to comply with ~~any of the~~
317 ~~provisions of~~ this chapter. The certificate is not assignable
318 and is valid only for the person, firm, copartnership, or
319 corporation to which issued. The certificate must be placed in a

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320 conspicuous place in the business or businesses for which it is
321 issued and must be displayed at all times. Except as provided in
322 this subsection, a ne person may not ~~shall~~ engage in business as
323 a dealer or in leasing, renting, or letting of or granting
324 licenses in living quarters or sleeping or housekeeping
325 accommodations in hotels, apartment houses, roominghouses,
326 tourist or trailer camps, or real property, or as hereinbefore
327 ~~defined, nor shall any person~~ sell or receive anything of value
328 by way of admissions, without a valid ~~first having obtained such~~
329 ~~a certificate. A or after such certificate has been canceled; no~~
330 ~~person may not shall~~ receive a any license from any authority
331 within the state to engage in any such business without a valid
332 certificate ~~first having obtained such a certificate or after~~
333 ~~such certificate has been canceled. A person may not engage~~ The
334 ~~engaging~~ in the business of selling or leasing tangible personal
335 property or services ~~or as a dealer; engage,~~ engage, ~~as defined in this~~
336 ~~chapter, or the engaging~~ in leasing, renting, or letting of or
337 granting licenses in living quarters or sleeping or housekeeping
338 accommodations in hotels, apartment houses, roominghouses, or
339 tourist or trailer camps that are taxable under this chapter, or
340 real property; ~~r~~ or engage ~~the engaging~~ in the business of
341 selling or receiving anything of value by way of admissions, ~~r~~
342 without a valid ~~such certificate first being obtained or after~~
343 ~~such certificate has been canceled by the department, is~~
344 ~~prohibited.~~

345 (c)1. A The failure or refusal of any person who engages in
346 acts requiring a certificate of registration under this
347 subsection and who fails or refuses to register commits, firm,
348 copartnership, or corporation to so qualify when required

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349 ~~hereunder is~~ a misdemeanor of the first degree, punishable as
350 provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject
351 to injunctive proceedings as provided by law. A person who
352 engages in acts requiring a certificate of registration and who
353 fails or refuses to register is also subject ~~Such failure or~~
354 ~~refusal also subjects the offender~~ to a \$100 initial
355 registration fee in lieu of the \$5 registration fee required by
356 ~~authorized in~~ paragraph (a). However, the department may waive
357 the increase in the registration fee if it finds ~~is determined~~
358 ~~by the department~~ that the failure to register was due to
359 reasonable cause and not to willful negligence, willful neglect,
360 or fraud.

361 2.a. A person who willfully fails to register after the
362 department provides notice of the duty to register as a dealer
363 commits a felony of the third degree, punishable as provided in
364 s. 775.082, s. 775.083, or s. 775.084.

365 b. The department shall provide written notice of the duty
366 to register to the person by personal service, by sending notice
367 by registered mail to the person's last known address, or both.

368 (d) ~~(e)~~ In addition to the certificate of registration, the
369 department shall provide to each newly registered dealer an
370 initial resale certificate that will be valid for the remainder
371 of the period of issuance. The department shall provide each
372 active dealer with an annual resale certificate. For purposes of
373 this section, the term "active dealer" means a person who is
374 currently registered with the department and who is required to
375 file at least once during each applicable reporting period.

376 (e) ~~(d)~~ The department may revoke a ~~any~~ dealer's certificate
377 of registration if ~~when~~ the dealer fails to comply with this

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378 chapter. Before ~~Prior to~~ revocation of a dealer's certificate of
379 registration, the department must schedule an informal
380 conference at which the dealer may present evidence regarding
381 the department's intended revocation or enter into a compliance
382 agreement with the department. The department must notify the
383 dealer of its intended action and the time, place, and date of
384 the scheduled informal conference by written notification sent
385 by United States mail to the dealer's last known address of
386 record furnished by the dealer on a form prescribed by the
387 department. The dealer is required to attend the informal
388 conference and present evidence refuting the department's
389 intended revocation or enter into a compliance agreement with
390 the department which resolves the dealer's failure to comply
391 with this chapter. The department shall issue an administrative
392 complaint under s. 120.60 if the dealer fails to attend the
393 department's informal conference, fails to enter into a
394 compliance agreement with the department resolving the dealer's
395 noncompliance with this chapter, or fails to comply with the
396 executed compliance agreement.

397 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"
398 means a person who enters into an agreement authorizing the
399 display of tangible personal property or services at a
400 convention or a trade show. The following provisions apply to
401 the registration of exhibitors as dealers under this chapter:
402 1. An exhibitor whose agreement prohibits the sale of
403 tangible personal property or services subject to the tax
404 imposed in this chapter is not required to register as a dealer.
405 2. An exhibitor whose agreement provides for the sale at
406 wholesale only of tangible personal property or services subject

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407 to the tax imposed under ~~in~~ this chapter must obtain a resale
408 certificate from the purchasing dealer but is not required to
409 register as a dealer.

410 3. An exhibitor whose agreement authorizes the retail sale
411 of tangible personal property or services subject to the tax
412 imposed under ~~in~~ this chapter must register as a dealer and
413 collect the tax ~~imposed under this chapter~~ on such sales.

414 4. An ~~Any~~ exhibitor who makes a mail order sale pursuant to
415 s. 212.0596 must register as a dealer.

416

417 A ~~Any~~ person who conducts a convention or a trade show must make
418 his or her ~~their~~ exhibitor's agreements available to the
419 department for inspection and copying.

420 Section 6. Effective July 1, 2014, for the purpose of
421 incorporating the amendment made by this act to subsection (3)
422 of section 212.18, Florida Statutes, in a reference thereto,
423 paragraph (c) of subsection (6) of section 212.20, Florida
424 Statutes, is reenacted to read:

425 212.20 Funds collected, disposition; additional powers of
426 department; operational expense; refund of taxes adjudicated
427 unconstitutionally collected.—

428 (6) Distribution of all proceeds under this chapter and s.
429 202.18(1)(b) and (2)(b) shall be as follows:

430 (c) Proceeds from the fees imposed under ss. 212.05(1)(h)3.
431 and 212.18(3) shall remain with the General Revenue Fund.

432 Section 7. Subsection (5) of section 213.13, Florida
433 Statutes, is amended to read:

434 213.13 Electronic remittance and distribution of funds
435 collected by clerks of the court.—

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436 (5) All court-related collections, including fees, fines,
437 reimbursements, court costs, and other court-related funds that
438 the clerks must remit to the state pursuant to law, must be
439 transmitted electronically by the 10th ~~20th~~ day of the month
440 immediately following the month in which the funds are
441 collected.

442 Section 8. Paragraph (a) of subsection (2) of section
443 213.21, Florida Statutes, is amended to read:

444 213.21 Informal conferences; compromises.-

445 (2) (a) The executive director of the department or his or
446 her designee is authorized to enter into closing agreements with
447 any taxpayer settling or compromising the taxpayer's liability
448 for any tax, interest, or penalty assessed under any of the
449 chapters specified in s. 72.011(1). Such agreements must ~~shall~~
450 be in writing if ~~when~~ the amount of tax, penalty, or interest
451 compromised exceeds \$30,000, or for lesser amounts, if ~~when~~ the
452 department deems it appropriate or if ~~when~~ requested by the
453 taxpayer. When a written closing agreement has been approved by
454 the department and signed by the executive director or his or
455 her designee and the taxpayer, it shall be final and conclusive;
456 and, except upon a showing of fraud or misrepresentation of
457 material fact or except as to adjustments pursuant to ss. 198.16
458 and 220.23, no additional assessment may be made by the
459 department against the taxpayer for the tax, interest, or
460 penalty specified in the closing agreement for the time period
461 specified in the closing agreement, and the taxpayer is ~~shall~~
462 not ~~be~~ entitled to institute any judicial or administrative
463 proceeding to recover any tax, interest, or penalty paid
464 pursuant to the closing agreement. The department is authorized

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465 to delegate to the executive director the authority to approve
466 any such closing agreement resulting in a tax reduction of
467 \$500,000 ~~\$250,000~~ or less.

468 Section 9. Effective July 1, 2014, section 213.295, Florida
469 Statutes, is created to read:

470 213.295 Automated sales suppression devices.—

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

472 (a) "Automated sales suppression device" or "zapper" means
473 a software program that falsifies the electronic records of
474 electronic cash registers or other point-of-sale systems,
475 including, but not limited to, transaction data and transaction
476 reports. The term includes the software program, any device that
477 carries the software program, or an Internet link to the
478 software program.

479 (b) "Electronic cash register" means a device that keeps a
480 register or supporting documents through the use of an
481 electronic device or computer system designed to record
482 transaction data for the purpose of computing, compiling, or
483 processing retail sales transaction data in whatever manner.

484 (c) "Phantom-ware" means a hidden programming option
485 embedded in the operating system of an electronic cash register
486 or hardwired into the electronic cash register which may be used
487 to create a second set of records or eliminate or manipulate
488 transaction records, which may or may not be preserved in
489 digital formats, to represent the true or manipulated record of
490 transactions in the electronic cash register.

491 (d) "Transaction data" includes the identification of items
492 purchased by a customer; the price for each item; a taxability
493 determination for each item; a segregated tax amount for each of

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494 the taxed items; the amount of cash or credit tendered; the net
495 amount returned to the customer in change; the date and time of
496 the purchase; the name, address, and identification number of
497 the vendor; and the receipt or invoice number of the
498 transaction.

499 (e) "Transaction report" means a report that documents, but
500 is not limited to documenting, the sales, taxes, or fees
501 collected, media totals, and discount voids at an electronic
502 cash register and is printed on a cash register tape at the end
503 of a day or a shift, or a report that documents every action at
504 an electronic cash register and is stored electronically.

505 (2) A person may not knowingly sell, purchase, install,
506 transfer, possess, use, or access an automated sales suppression
507 device, a zapper, or phantom-ware.

508 (3) A person who violates this section:

509 (a) Commits a felony of the third degree, punishable as
510 provided in s. 775.082, s. 775.083, or s. 775.084.

511 (b) Is liable for all taxes, fees, penalties, and interest
512 due the state which result from the use of an automated sales
513 suppression device, a zapper, or phantom-ware and shall forfeit
514 to the state as an additional penalty all profits associated
515 with the sale or use of an automated sales suppression device, a
516 zapper, or phantom-ware.

517 (4) An automated sales suppression device, a zapper,
518 phantom-ware, or any device containing such device or software
519 is a contraband article under ss. 932.701-932.706, the Florida
520 Contraband Forfeiture Act.

521 Section 10. Paragraph (h) of subsection (3) of section
522 443.131, Florida Statutes, is amended to read:

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523 443.131 Contributions.—

524 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
525 EXPERIENCE.—

526 (h) *Additional conditions for variation from the standard*
527 *rate.*—An employer's contribution rate may not be reduced below
528 the standard rate under this section unless:

529 1. All contributions, reimbursements, interest, and
530 penalties incurred by the employer for wages paid by him or her
531 in all previous calendar quarters, except the 4 calendar
532 quarters immediately preceding the calendar quarter or calendar
533 year for which the benefit ratio is computed, are paid; ~~and~~

534 2. The employer has produced for inspection and copying all
535 work records in his or her possession, custody, or control which
536 were requested by the Department of Economic Opportunity or its
537 tax collection service provider pursuant to s. 443.171(5). An
538 employer shall have at least 60 days to provide the requested
539 work records before the employer is assigned the standard rate;
540 and

541 ~~3.2.~~ The employer entitled to a rate reduction must have at
542 least one annual payroll as defined in subparagraph (b)1. unless
543 the employer is eligible for additional credit under the Federal
544 Unemployment Tax Act. If the Federal Unemployment Tax Act is
545 amended or repealed in a manner affecting credit under the
546 federal act, this section applies only to the extent that
547 additional credit is allowed against the payment of the tax
548 imposed by the ~~Federal Unemployment Tax~~ act.

549

550 The tax collection service provider shall assign an earned
551 contribution rate to an employer for ~~under subparagraph 1.~~ the

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552 quarter immediately after the quarter in which all
553 contributions, reimbursements, interest, and penalties are paid
554 in full and all work records requested pursuant to s. 443.171(5)
555 have been produced for inspection and copying by the Department
556 of Economic Opportunity or the tax collection service provider.

557 Section 11. Effective January 1, 2015, paragraph (a) of
558 subsection (1) and paragraph (b) of subsection (2) of section
559 443.141, Florida Statutes, are amended to read:

560 443.141 Collection of contributions and reimbursements.—

561 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
562 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

563 (a) *Interest.*—Contributions or reimbursements unpaid on the
564 date due bear interest at the rate of 1 percent per month
565 through December 31, 2014. Beginning January 1, 2015, the
566 interest rate shall be calculated in accordance with s. 213.235,
567 except that the rate of interest may not exceed 1 percent per
568 month from and after the ~~that~~ date due until payment plus
569 accrued interest is received by the tax collection service
570 provider, unless the service provider finds that the employing
571 unit has good reason for failing to pay the contributions or
572 reimbursements when due. Interest collected under this
573 subsection must be paid into the Special Employment Security
574 Administration Trust Fund.

575 (2) REPORTS, CONTRIBUTIONS, APPEALS.—

576 (b) *Hearings.*—The determination and assessment are final 20
577 15 days after the date the assessment is mailed unless the
578 employer files with the tax collection service provider within
579 the 20 ~~15~~ days a written protest and petition for hearing
580 specifying the objections ~~thereto~~. The tax collection service

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581 provider shall promptly review each petition and may reconsider
582 its determination and assessment in order to resolve the
583 petitioner's objections. The tax collection service provider
584 shall forward each unresolved petition ~~remaining unresolved~~ to
585 the department for a hearing on the objections. Upon receipt of
586 a petition, the department shall schedule a hearing and notify
587 the petitioner of the time and place of the hearing. The
588 department may appoint special deputies to conduct hearings who
589 shall ~~and to~~ submit their findings together with a transcript of
590 the proceedings before them and their recommendations to the
591 department for its final order. Special deputies are subject to
592 the prohibition against ex parte communications in s. 120.66. At
593 any hearing conducted by the department or its special deputy,
594 evidence may be offered to support the determination and
595 assessment or to prove it is incorrect. In order to prevail,
596 however, the petitioner must ~~either~~ prove that the determination
597 and assessment are incorrect or file full and complete corrected
598 reports. Evidence may also be submitted ~~at the hearing~~ to rebut
599 the determination by the tax collection service provider that
600 the petitioner is an employer under this chapter. Upon evidence
601 taken before it or upon the transcript submitted to it with the
602 findings and recommendation of its special deputy, the
603 department shall ~~either~~ set aside the tax collection service
604 provider's determination that the petitioner is an employer
605 under this chapter or reaffirm the determination. The amounts
606 assessed under the final order, together with interest and
607 penalties, must be paid within 15 days after notice of the final
608 order is mailed to the employer, unless judicial review is
609 instituted in a case of status determination. Amounts due when

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610 the status of the employer is in dispute are payable within 15
611 days after the entry of an order by the court affirming the
612 determination. However, a ~~any~~ determination that an employing
613 unit is not an employer under this chapter does not affect the
614 benefit rights of an ~~any~~ individual as determined by an appeals
615 referee or the commission unless:

616 1. The individual is made a party to the proceedings before
617 the special deputy; or

618 2. The decision of the appeals referee or the commission
619 has not become final or the employing unit and the department
620 were not made parties to the proceedings before the appeals
621 referee or the commission.

622 Section 12. Except as otherwise expressly provided in this
623 act, this act shall take effect upon becoming a law.

624