

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7081 PCB FTSC 14-01 Tax Administration

SPONSOR(S): Appropriations, Finance & Tax Subcommittee, Caldwell

TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1654

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---------------------|----------|--|
| Orig. Comm.: Finance & Tax Subcommittee | 17 Y, 0 N | Wolfgang | Langston |
| 1) Appropriations Committee | 23 Y, 0 N, As CS | Hawkins | Leznoff |

SUMMARY ANALYSIS

This bill contains recommendations for general tax administration improvements, primarily consisting of legislative concepts submitted by the Department of Revenue (Department). The bill includes numerous statutory changes that may reduce the burden on taxpayers, reduce the Department's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill:

- Revises the procedures local governments may use to authorize ad valorem exemptions for economic development.
- Clarifies that charges for the storage of towed vehicles resulting from a "lawful impoundment" by a law enforcement agency are not taxable.
- Clarifies and reorganizes the statutes pertaining to the application of current criminal penalties regarding any person who willfully fails to collect a tax or fee, who makes a false or fraudulent return with willful intent, or who engages in acts that require a certificate of registration and "fails or refuses" to register or willfully fails to register after the Department provides notice.
- Provides that the Department can require certain individuals and entities seeking to obtain a dealer's certificate of registration to post a cash deposit, bond, or other security if that business will be operated at an identical location of a previous business that would have been required to post such security. This requirement can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated.
- Clarifies a provision requiring the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected to conform to a similar law changes made by the Legislature in 2010.
- Permits certain local government entities to publish aggregate data on certain tourism taxes.
- Increases the authority of the Executive Director of the Department of Revenue to compromise tax assessed from \$250,000 up to \$500,000 when there is doubt as to liability or collectability.
- Provides definitions for "automated sales suppression device" or "zappers" and "phantom-ware", and criminalizes the knowing sale, purchase, installation, transfer, or possession of such software or software devices that can be used to falsify records of cash registers and other point-of-sale systems.
- Establishes a requirement for employers to comply with requests for all work records during an audit as prerequisite to earn a lower, unemployment tax contribution rate instead of the "standard rate" at 5.4%. The bill further standardizes the interest rate provisions for unemployment tax to make them the same rate as is applied to other taxes administered by the Department.

The Revenue Estimating Conference has determined that several provisions of the bill will have positive indeterminate impacts on state and local revenues. Also, the increase in compromise authority will have an indeterminate impact of unknown direction on state and local revenues. The change in interest rates applicable to late reemployment assistance tax remittances will have an insignificant impact on General Revenue and a -\$0.6 million impact on state trust funds in 2014-15 (-\$0.2 million recurring).

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h7081a.APC

DATE: 3/21/2014

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Motion or Resolution Authorizing Economic Development Ad Valorem Tax Exemption

Present situation

Section 196.1995, F.S., allows cities and counties to grant up to a 100 percent exemption from city or county ad valorem taxation for improvements to real property and tangible personal property for a new business. Initially, the city or county calls for a referendum within its total jurisdiction to determine whether the jurisdiction may grant economic development ad valorem exemptions under s. 3, Art. VII of the State Constitution. Once the referendum measure is approved, specific exemptions are effectuated by enactment of an ordinance. To qualify for the exemption, the improvements must be made or the tangible personal property added after the adoption of the ordinance. Businesses seeking to take advantage of the exemption must file a written application with the city or county in the year the exemption is desired to take effect to request the adoption of the ordinance and provide supporting information.

Proposed change

Real property improvements and tangible personal property could be exempted by a local government if purchased or added after receiving approval by a local motion or resolution but before the ordinance enacting the exemption. Section 14 of the bill states that an ordinance in existence prior to the effective date of this act will not be invalidated simply because the improvements to real property were made or the tangible personal property was added or increased prior to the day such ordinance was adopted as long as the local governing body acted substantially in accordance with the law as amended by the bill.

Section 2. Storage of Towed Vehicles

Present situation

Section 212.03(6), F.S., provides that every person engaging in a lease or rental of parking or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage space for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports, shall be taxed at the rate of 6 percent on the total rental charged. Current administration of this statute treats storage facilities for towed vehicles as "parking lots and garages" for purposes of application of the tax.

Proposed change

The bill explicitly states in statute that storage facilities for towed vehicles are included in "parking lots and garages" for purposes of applying the tax. The bill also adds s. 212.03(6)(b), F.S., stating that the storage of towed vehicles from a "lawful impoundment" by a law enforcement agency is not taxable. The bill further provides that "lawful impoundment" means the storing of or having custody over an aircraft, boat, or motor vehicle by, or at the direction of, a local, state, or federal law enforcement agency which the owner or the owner's representative is not authorized to enter upon, have access to, or remove without the consent of the law enforcement agency.

Section 3. Failure to Collect; Penalties

Present situation

Provisions in s. 212.07(1)(b), F.S., provide that a resale must be in strict compliance with s. 212.18, F.S., and the rules and regulations of the Department. A dealer who makes a sale for resale that is not in strict compliance with 212.18, F.S., shall himself or herself be liable for and pay the tax due. Dealer guidelines for sales for resale are established and supported by rules of the Department. Section 212.07(3), F.S., establishes that any dealer who fails, neglects, or refuses to collect the tax is guilty of a first degree misdemeanor.

Proposed change

This bill amends s. 212.07(3), F.S., to clarify that a dealer who willfully fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected tax or fee and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This section also provides that the Department may contact the dealer in violation by personal service, registered mail, or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 5 & 7. This bill also corrects a cross reference in s. 212.07(1).

Section 4. False or Fraudulent Return; Penalties

Present situation

Provisions in s. 212.12, F.S., establish rules regarding a person (dealer) who makes false or fraudulent returns and/or fails to register as a dealer. The Department will contact a person by written notice with a "failure to register" letter followed, if needed, by an intentional failure to collect letter. The provisions cited under s. 775.082, s. 775.083, and s. 775.084, F.S., provide the civil and criminal penalties imposed upon these violators.

Proposed change

This bill amends s. 212.12(2)(d), F.S., to provide that a person who makes a false or fraudulent return with willful intent is liable for the uncollected taxes or fees and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This amended section is related to similar changes made in sections 4 & 7. This section will become effective upon becoming a law.

Section 5. Security Requirements for New Registrations

Present situation

Section 212.14(4), F.S., authorizes the Department, where necessary to ensure compliance with the Sales and Use Tax, to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer's certificate of registration. Despite this requirement, some delinquent sales tax dealers are able to close down their businesses with outstanding tax liabilities and reopen under a new name, allowing the dealers to repeatedly fail to remit sales and use tax for successive businesses. Delinquent dealers can engage in this activity because the current provisions in s. 212.14(4), F.S., do not clearly apply to all of the individuals who were operating, or all who had an ownership interest in, the prior businesses.

Proposed change

This bill amends s. 212.14(4), F.S., to define which individuals or entities the Department can require to produce a cash deposit, bond, or other security. Included in this list of individuals and entities are not only those who had an ownership interest or a controlling interest in a business that would otherwise be liable for posting a cash deposit, bond, or other security, but those individuals and entities seeking to obtain a dealer's certificate of registration for a business that will be operated at an identical location of a previous business that would have otherwise been liable for posting a cash deposit, bond, or other security. These requirements can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated. The bill further allows the Department to adopt rules necessary to administer this subsection. The bill expressly authorizes the Department to adopt rules necessary to administer this subsection.

Section 6. Failure to Register; Penalties

Present situation

In s. 212.18(3), F.S., guidelines are provided for persons who want to engage in and conduct business within the state as a dealer. The Department also grants certificates of registration for each place of

business. The failure or refusal of any person, firm, co-partnership, or corporation to follow these rules is a first degree misdemeanor and is subject to injunctive proceedings as provided by law.

Proposed change

This bill amends s. 212.18(3)(c), F.S., to clarify that any person that engages in acts that require a certificate of registration and “fails or refuses” to register, commits a misdemeanor of the first degree. This bill also adds s. 212.18(3)(c)2., F.S., to provide that a person who willfully fails to register after the Department provides notice, commits a felony of the third degree, punishable as proscribed in law. This section further provides that the Department shall give written notice of the duty to register to the person through registered mail, personal service or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 4 & 5.

Section 7. Republishes s. 212.20, F.S., which contains a reference to s. 212.18(3).

Section 8. Registration Information Sharing and Exchange Program

Present situation

Section 213.0535, F.S., creates the Registration Information Sharing and Exchange Program and permits the sharing of tax administration information between different specified local government entities. “Level-two” participants include local officials responsible for collecting tourism taxes; these participants are permitted to share information between each other but not with other related entities.

Proposed changes

The bill permits a level-two participant to publish aggregate statistics on tourism taxes as long as the data does not pertain to fewer than three taxpayers or the data is prepared for geographic areas below the county level and does not pertain to fewer than ten taxpayers. Statistics published may only relate to the taxes imposed under ss. 125.0104, 125.0108, 212.0305, F.S., and ch. 67-930, L.O.F.

Section 9. Electronic Remittance and Distribution of Funds by the Clerk of Courts

Present situation

In 2010, the Legislature passed ch. 2010-162, L.O.F., that changed the remittance date for funds collected by the clerks of the court from the 20th to the 10th day of the month immediately following the month in which the funds are collected. A conforming provision in s. 213.13, F.S., regarding electronic remittance was not updated after the law change.

Proposed change

This bill amends s. 213.13(5), F.S., to require the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected.

Section 10. Informal Conferences; Compromises

Present situation

Section 213.21, F.S., allows the Executive Director of the Department of Revenue to enter into an agreement to accept less than the tax allegedly owed if there is a doubt as to liability or collectability of the tax assessed. The statute limits the Executive Director’s compromise authority to reduce tax to no more than \$250,000.

Proposed changes

The bill increases the Executive Director’s compromise limit from \$250,000 to \$500,000.

Section 11. Automated Sales Suppression Devices or “Zappers”

Present situation

The Department has identified a practice of retailers using automated sales suppression software programs (“zappers”) and/or “phantom-ware” to falsify the records of electronic cash registers and other point-of-sale systems. In effect, the technologies allow dealers to create a fraudulent, virtual second set of books by which the dealers are able to evade sales taxes.

Proposed change

The bill creates s. 213.295, F.S., defines zappers and phantom-ware, and criminalizes the knowing sale, purchase, installation, transfer, or possession of phantom-ware in this state. This section provides that any person in violation of this section shall be guilty of a felony of the third degree and shall be liable for all taxes, fees, penalties, and interest due to the state; the dealer shall also forfeit to the state all profits associated with the sale or use of the zappers or phantom-ware. Finally, the bill classifies zappers and phantom-ware as contraband articles under s. 932.701-932.706, F.S., the Florida Contraband Forfeiture Act. This section will become effective upon becoming a law.

Section 12. Standard Rate for Non-Compliance with Audit Record Requests; Reemployment Tax

Present situation

Florida law provides a standard reemployment tax rate, and allows many employers to earn a lower rate if they meet certain compliance conditions set forth in s. 443.131(3)(h), F.S. However, under the current requirements to meet the compliance standards, it does not explicitly state that the taxpayer must comply with records requests to qualify for the reduced tax rate pursuant to s. 443.171(5), F.S.

Proposed change

This bill amends s. 443.131, F.S., to require an employer to comply with records requests as a prerequisite for that employer to earn the lower, reemployment tax contribution rate. In order to receive the lower contribution rate, the employer must produce all work records requested during an audit by the DEO or the state agency providing tax collection services pursuant to s. 443.171(5), F.S. This section will become effective upon becoming a law.

Section 13. Floating Interest Rate; Reemployment Tax

Present situation

Section 443.141(1)(a), F.S., states that reemployment assistance tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent annually). Other payment deficiencies on taxes that the Department administers have an interest rate of prime plus 4 percent but not to exceed an effective rate of 1 percent per month, adjusted twice per year.

Proposed change

This bill amends s. 443.141(1)(a), F.S., to adjust the interest rate applied to contributions or reimbursements unpaid on the date due. The current interest rate of 1 percent will carry on through December 31, 2014. Beginning January 1, 2015, the interest rate shall be calculated in accordance with s. 213.235, F.S., except that the rate of interest shall never be greater than 1 percent per month. This bill would reduce the interest rate provisions for reemployment tax and make them the same rate as is applied to other taxes administered by the Department. This section provides a 20-day protest period for reemployment tax assessments (extended from 15 days), which is the assessment period allowed for other reemployment tax actions.

Section 14.

Related to the provisions in section 2, the bill states that an ordinance in existence prior to the effective date of this act will not be invalidated simply because the improvements to real property were made or the tangible personal property was added or increased prior to the day such ordinance was adopted as long as the local governing body acted substantially in accordance with the law as amended by the bill.

Section 15. Effective Date

This act shall take effect upon becoming law, except as expressly provided within the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on January 17, 2014, and made the following estimates with respect to state revenues and trust funds:

- The provision relating to security requirements for sales tax dealers is expected to be zero or positive indeterminate.
- The standard reemployment tax rate for failure to provide records and criminalization of “zappers,” will have positive, indeterminate impacts on state general revenues and trust fund revenues.
- The provision relating to the Department’s compromise authority will have an indeterminate impact of unknown direction on state general revenues and trust fund revenues.
- The provision relating to the interest rate on late reemployment tax remittances will have a negative insignificant general revenue impact in FY2014-2015 and a -\$0.6 million FY 2014-15 impact on the Special Employment Security Administration Trust Fund (-\$0.2 million recurring).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on January 17, 2014, and estimated if the Department ceases to review assessments for agricultural properties in counties that have 5% or more land classified as agricultural property for ad valorem purposes, there would be an indeterminate impact of unknown direction. The provision relating to security requirements for sales tax dealers is expected to be zero or a positive indeterminate. Criminalization of “zappers,” will have positive, indeterminate impacts on local revenues. The provision relating to the Department’s compromise authority will have an indeterminate impact of unknown direction on local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the interest paid by some taxpayers who remit their reemployment tax payments late.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue authority to adopt rules to administer their ability to require cash bonds from some sales tax dealers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 20, 2014, the House Appropriations Committee adopted the following two amendments to the bill:

- Amendment #1 removed Section 1 of the bill. This section had amended section 195.096, F.S., to remove the requirement that the Department of Revenue conduct in-depth reviews of the level of assessment for agricultural and other use-valued properties in its reviews of county assessment rolls.
- Amendment #2 added a new Section to the bill amending section 213.0535, F.S., to permit a level-two participant to publish aggregate data on taxes imposed under sections. 125.0104, 125.0108, 212.0305, F.S., and chapter. 67-930, L.O.F.