

A bill to be entitled

An act relating to the Department of Revenue's certified audit program; amending s. 213.21, F.S.; revising the amounts of interest liability that the department may abate for taxpayers participating in the certified audit program; authorizing a taxpayer to participate in the certified audit program after the department has issued notice of intent to conduct an audit of the taxpayer; reducing the amount of interest that may be abated for a taxpayer requesting to participate in the program; amending s. 213.285, F.S.; conforming provisions; specifying the tax programs to be audited; revising procedures, deadlines, and notice requirements for certified audits; authorizing the department to adopt rules prohibiting a qualified practitioner from representing a taxpayer in informal conference procedures under certain circumstances; amending s. 213.053, F.S.; conforming terminology; providing an effective date.

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

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

213.21 Informal conferences; compromises.—

(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
 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

53 to 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
 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 this state ~~Florida~~ and
 73 who has 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:

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) s. 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) A ~~Any~~ practitioner responsible for planning,
 102 directing, or conducting a certified audit or reporting on a
 103 participating taxpayer's tax compliance with ~~in~~ a certified
 104 audit must be a qualified practitioner. For the purposes of this

105 subsection, a 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
113 involves supervising the efforts of others who are involved or
114 ~~when~~ reviewing the work to determine whether it is properly
115 accomplished and complete.

116 (c) "Conducting" a certified audit when performing tests
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 the department
126 deems necessary to identify the taxpayer, to confirm whether
127 ~~that~~ the taxpayer is ~~not~~ already under audit by the department,
128 and to establish the basic nature of the taxpayer's business and
129 the taxpayer's potential exposure to the ~~Florida~~ revenue laws
130 administered by the department. Once the department has issued a

131 written notice of intent to conduct an audit to a taxpayer, and
132 if the taxpayer requests to participate in the certified audit
133 program, the qualified practitioner or the taxpayer must notify
134 the department of the engagement to perform the certified audit
135 within 30 days after the notice of intent to conduct the audit
136 was issued to the taxpayer.

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

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

157 the department.

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

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

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

172 2. For a taxpayer who requests to participate in the
 173 certified audit program after the department has issued the
 174 taxpayer a written notice of intent to conduct an audit, within
 175 60 days after the department issued the taxpayer the notice of
 176 intent to conduct the audit.

177
 178 The department may extend the time for submission of the plan
 179 and procedures for reasonable cause. The qualified practitioner
 180 shall initiate action to advise the department that amendment or
 181 modification of the plan and procedures is necessary if ~~in the~~
 182 ~~event that~~ the qualified practitioner's inspection reveals that

183 the taxpayer's circumstances or exposure to the revenue laws is
184 substantially different than as described in the engagement
185 notice.

186 (f) If the taxpayer has been issued a written notice of
187 intent to conduct an audit but submits a proposed audit plan and
188 procedures in accordance with subparagraph (e)2. within 90 days
189 after the notice of intent was issued to the taxpayer, the
190 department shall designate the agreed-upon procedures to be
191 followed by the qualified practitioner in the certified audit.

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

203 (6) The department shall review the report of the
204 certified audit and shall accept it when it is determined to be
205 complete. Once the report is accepted by the department, the
206 department shall issue a notice of proposed assessment
207 reflecting the determination of any additional liability
208 reflected in the report and shall provide the taxpayer with all

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

224 (7) To administer ~~implement~~ the certified audit program
 225 ~~audits project~~, the department may ~~shall have authority to~~ adopt
 226 rules relating to:

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

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

231 (c) Procedures for assessment, collection, and payment of
 232 liabilities or refund of overpayments and provisions for
 233 taxpayers to obtain informal and formal review of certified
 234 audit results;

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

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

241 (f) The circumstances under which a qualified practitioner
 242 who conducts a certified audit for a taxpayer after the
 243 department has issued the taxpayer a written notice of intent to
 244 conduct the audit is prohibited from representing the taxpayer
 245 in informal conference procedures established pursuant to s.
 246 213.21.

247 Section 3. Paragraph (m) of subsection (8) of section
 248 213.053, Florida Statutes, is amended to read:

249 213.053 Confidentiality and information sharing.—

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

252 (m) Information contained in returns, reports, accounts,
 253 or declarations to the Board of Accountancy in connection with a
 254 disciplinary proceeding conducted pursuant to chapter 473 when
 255 related to a certified public accountant participating in the
 256 certified audit program ~~audits project~~, or to the court in
 257 connection with a civil proceeding brought by the department
 258 relating to a claim for recovery of taxes due to negligence on
 259 the part of a certified public accountant participating in the
 260 certified audit program ~~audits project~~. In a ~~any~~ judicial

HB 943

2014

261 proceeding brought by the department, upon motion for protective
262 order, the court shall limit disclosure of tax information when
263 necessary to effectuate the purposes of this section.

264
265 Disclosure of information under this subsection shall be
266 pursuant to a written agreement between the executive director
267 and the agency. Such agencies, governmental or nongovernmental,
268 shall be bound by the same requirements of confidentiality as
269 the Department of Revenue. Breach of confidentiality is a
270 misdemeanor of the first degree, punishable as provided by s.
271 775.082 or s. 775.083.

272 Section 4. This act shall take effect July 1, 2014.