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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/10/2022	.	
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The Committee on Finance and Tax (Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (c) is added to subsection (1) of
section 72.011, Florida Statutes, to read:

72.011 Jurisdiction of circuit courts in specific tax
matters; administrative hearings and appeals; time for
commencing action; parties; deposits.—

(1)



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11 (c) A taxpayer may not submit records pertaining to an
12 assessment or refund claim as evidence in any proceeding under
13 this section if those records were available to, or required to
14 be kept by, the taxpayer and were not timely provided to the
15 Department of Revenue after a written request for the records
16 during the audit or protest period and before submission of a
17 petition for hearing pursuant to chapter 120 or the filing of an
18 action under paragraph (a), unless the taxpayer demonstrates to
19 the court or presiding officer good cause for its failure to
20 previously provide such records to the department.

21 Section 2. Paragraph (b) of subsection (14) of section
22 120.80, Florida Statutes, is amended to read:

23 120.80 Exceptions and special requirements; agencies.—

24 (14) DEPARTMENT OF REVENUE.—

25 (b) *Taxpayer contest proceedings.*—

26 1. In any administrative proceeding brought pursuant to
27 this chapter as authorized by s. 72.011(1), the taxpayer shall
28 be designated the "petitioner" and the Department of Revenue
29 shall be designated the "respondent," except that for actions
30 contesting an assessment or denial of refund under chapter 207,
31 the Department of Highway Safety and Motor Vehicles shall be
32 designated the "respondent," and for actions contesting an
33 assessment or denial of refund under chapters 210, 550, 561,
34 562, 563, 564, and 565, the Department of Business and
35 Professional Regulation shall be designated the "respondent."

36 2. In any such administrative proceeding, the applicable
37 department's burden of proof, except as otherwise specifically
38 provided by general law, shall be limited to a showing that an
39 assessment has been made against the taxpayer and the factual



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40 and legal grounds upon which the applicable department made the
41 assessment.

42 3.a. Before ~~Prior to~~ filing a petition under this chapter,
43 the taxpayer shall pay to the applicable department the amount
44 of taxes, penalties, and accrued interest assessed by that
45 department which are not being contested by the taxpayer.
46 Failure to pay the uncontested amount shall result in the
47 dismissal of the action and imposition of an additional penalty
48 of 25 percent of the amount taxed.

49 b. The requirements of s. 72.011(2) and (3)(a) are
50 jurisdictional for any action under this chapter to contest an
51 assessment or denial of refund by the Department of Revenue, the
52 Department of Highway Safety and Motor Vehicles, or the
53 Department of Business and Professional Regulation.

54 4. Except as provided in s. 220.719, further collection and
55 enforcement of the contested amount of an assessment for
56 nonpayment or underpayment of any tax, interest, or penalty
57 shall be stayed beginning on the date a petition is filed. Upon
58 entry of a final order, an agency may resume collection and
59 enforcement action.

60 5. The prevailing party, in a proceeding under ss. 120.569
61 and 120.57 authorized by s. 72.011(1), may recover all legal
62 costs incurred in such proceeding, including reasonable attorney
63 ~~attorney's~~ fees, if the losing party fails to raise a
64 justiciable issue of law or fact in its petition or response.

65 6. Upon review pursuant to s. 120.68 of final agency action
66 concerning an assessment of tax, penalty, or interest with
67 respect to a tax imposed under chapter 212, or the denial of a
68 refund of any tax imposed under chapter 212, if the court finds



69 that the Department of Revenue improperly rejected or modified a
70 conclusion of law, the court may award reasonable attorney
71 attorney's fees and reasonable costs of the appeal to the
72 prevailing appellant.

73 7. A taxpayer may not submit records pertaining to an
74 assessment or refund claim as evidence in any proceeding brought
75 pursuant to this chapter as authorized by s. 72.011(1) if those
76 records were available to, or required to be kept by, the
77 taxpayer and were not timely provided to the Department of
78 Revenue after a written request for the records during the audit
79 or protest period and before submission of a petition for
80 hearing under this chapter, unless the taxpayer demonstrates
81 good cause to the presiding officer for its failure to
82 previously provide such records to the department.

83 Section 3. Paragraph (f) is added to subsection (4) of
84 section 202.34, Florida Statutes, and subsection (6) is added to
85 that section, to read:

86 202.34 Records required to be kept; power to inspect; audit
87 procedure.—

88 (4)

89 (f) Once the notification required by paragraph (a) is
90 issued, the department, at any time, may respond to contact
91 initiated by a taxpayer to discuss the audit, and the taxpayer
92 may provide records or other information, electronically or
93 otherwise, to the department. The department may examine, at any
94 time, documentation and other information voluntarily provided
95 by the taxpayer, its representative, or other parties;
96 information already in the department's possession; or publicly
97 available information. The department's examination of such



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98 information does not mean an audit has commenced if the review
99 takes place within 60 days after the notice of intent to conduct
100 an audit. The requirement in paragraph (a) does not limit the
101 department in making initial contact with the taxpayer to
102 confirm receipt of the notification or to confirm the date that
103 the audit will begin. If the taxpayer has not previously waived
104 the 60-day notice period and believes the department commenced
105 the audit prior to the 61st day, the taxpayer must object in
106 writing to the department before the issuance of an assessment
107 or the objection is waived. If the objection is not waived and
108 it is determined that the audit was commenced before the 61st
109 day after the issuance of the notice of intent to audit, the
110 tolling period provided for in s. 213.345 is considered lifted
111 for the number of days equal to the difference between the date
112 the audit commenced and the 61st day after the date of the
113 department's notice of intent to audit.

114 (6) The department may adopt rules to administer this
115 section.

116 Section 4. Paragraph (a) of subsection (4) of section
117 202.36, Florida Statutes, is amended to read:

118 202.36 Departmental powers; hearings; distress warrants;
119 bonds; subpoenas and subpoenas duces tecum.—

120 (4) (a) The department may issue subpoenas or subpoenas
121 duces tecum compelling the attendance and testimony of witnesses
122 and the production of books, records, written materials, and
123 electronically recorded information. Subpoenas must be issued
124 with the written and signed approval of the executive director
125 or his or her designee on a written and sworn application by any
126 employee of the department. The application must set forth the



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127 reason for the application, the name of the person subpoenaed,
128 the time and place of appearance of the witness, and a
129 description of any books, records, or electronically recorded
130 information to be produced, together with a statement by the
131 applicant that the department has unsuccessfully attempted other
132 reasonable means of securing information and that the testimony
133 of the witness or the written or electronically recorded
134 materials sought in the subpoena are necessary for the
135 collection of taxes, penalty, or interest or the enforcement of
136 the taxes levied or administered under this chapter. A subpoena
137 shall be served in the manner provided by law and by the Florida
138 Rules of Civil Procedure and shall be returnable only during
139 regular business hours and at least 20 calendar days after the
140 date of service of the subpoena. Any subpoena to which this
141 subsection applies must identify the taxpayer to whom the
142 subpoena relates and to whom the records pertain and must
143 provide other information to enable the person subpoenaed to
144 locate the records required under the subpoena. The department
145 shall give notice to the taxpayer to whom the subpoena relates
146 within 3 days after the day on which the service of the subpoena
147 is made. Within 14 days after service of the subpoena, the
148 person to whom the subpoena is directed may serve written
149 objection to the inspection or copying of any of the designated
150 materials. If objection is made, the department may not inspect
151 or copy the materials, except pursuant to an order of the
152 circuit court. If an objection is made, the department may
153 petition any circuit court for an order to comply with the
154 subpoena. The subpoena must contain a written notice of the
155 right to object to the subpoena. Every subpoena served upon the



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156 witness or custodian of records must be accompanied by a copy of
157 ~~the provisions of~~ this subsection. If a person refuses to obey a
158 subpoena or subpoena duces tecum, the department may apply to
159 any circuit court of this state to enforce compliance with the
160 subpoena. Witnesses are entitled to be paid a mileage allowance
161 and witness fees as authorized for witnesses in civil cases. The
162 failure of a taxpayer to provide documents available to, or
163 required to be kept by, the taxpayer and requested by a subpoena
164 issued under this section creates a rebuttable presumption that
165 the resulting proposed final agency action by the department, as
166 to the requested documents, is correct and that the requested
167 documents not produced by the taxpayer would be adverse to the
168 taxpayer's position as to the proposed final agency action. If a
169 taxpayer fails to provide documents requested by a subpoena
170 issued under this section, the department may make an assessment
171 from an estimate based upon the best information then available
172 to it for the taxable period of retail sales of the taxpayer,
173 together with any accrued interest and penalties. The department
174 shall inform the taxpayer of the reason for the estimate and the
175 information and methodology used to derive the estimate. Such
176 assessment shall be deemed prima facie correct, and the burden
177 to show the contrary rests upon the dealer or other person. The
178 presumption and authority to use estimates for the purpose of
179 assessment under this paragraph do not apply solely because a
180 taxpayer or its representative requests a conference to
181 negotiate the production of a sample of records demanded by a
182 subpoena.

183 Section 5. Subsection (4) of section 206.14, Florida
184 Statutes, is amended to read:



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185 206.14 Inspection of records; audits; hearings; forms;
186 rules and regulations.—

187 (4) If any person unreasonably refuses access to such
188 records, books, papers or other documents, or equipment, or if
189 any person fails or refuses to obey such subpoenas duces tecum
190 or to testify, except for lawful reasons, before the department
191 or any of its authorized agents, the department shall certify
192 the names and facts to the clerk of the circuit court of any
193 county; and the circuit court shall enter such order against
194 such person in the premises as the enforcement of this law and
195 justice requires. The failure of a taxpayer to provide documents
196 available to, or required to be kept by, the taxpayer and
197 requested by a subpoena issued under this section creates a
198 rebuttable presumption that the resulting proposed final agency
199 action by the department, as to the requested documents, is
200 correct and that the requested documents not produced by the
201 taxpayer would be adverse to the taxpayer's position as to the
202 proposed final agency action. If a taxpayer fails to provide
203 documents requested by a subpoena issued under this section, the
204 department may make an assessment from an estimate of the
205 taxpayer's liability based upon the best information then
206 available to it. The department shall inform the taxpayer of the
207 reason for the estimate and the information and methodology used
208 to derive the estimate. Such assessment shall be deemed prima
209 facie correct, and the burden to show the contrary rests upon
210 the dealer or other person. The presumption and authority to use
211 estimates for the purpose of assessment under this paragraph do
212 not apply solely because a taxpayer or its representative
213 requests a conference to negotiate the production of a sample of



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214 records demanded by a subpoena.

215 Section 6. Subsection (1) of section 206.9931, Florida
216 Statutes, is amended to read:

217 206.9931 Administrative provisions.—

218 (1) Any person producing in, importing into, or causing to
219 be imported into this state taxable pollutants for sale, use, or
220 otherwise and who is not registered or licensed pursuant to
221 other parts of this chapter is hereby required to register and
222 become licensed for the purposes of this part. Such person shall
223 register as either a producer or importer of pollutants and
224 shall be subject to all applicable registration and licensing
225 provisions of this chapter, as if fully set out in this part and
226 made expressly applicable to the taxes imposed herein,
227 including, but not limited to, ss. 206.02, 206.021, 206.022,
228 206.025, 206.03, 206.04, and 206.05. For the purposes of this
229 section, registrations required exclusively for this part shall
230 be made within 90 days of July 1, 1986, for existing businesses,
231 or before ~~prior to~~ the first production or importation of
232 pollutants for businesses created after July 1, 1986. ~~The fee~~
233 ~~for registration shall be \$30.~~ Failure to timely register is a
234 misdemeanor of the first degree, punishable as provided in s.
235 775.082 or s. 775.083.

236 Section 7. Paragraph (b) of subsection (3) of section
237 211.125, Florida Statutes, is amended to read:

238 211.125 Administration of law; books and records; powers of
239 the department; refunds; enforcement provisions;
240 confidentiality.—

241 (3)

242 (b) The department may ~~shall have the power to~~ inspect or



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243 examine the books, records, or papers of any operator, producer,
244 purchaser, royalty interest owner, taxpayer, or transporter of
245 taxable products which are reasonably required for the purposes
246 of this part and may require such person to testify under oath
247 or affirmation or to answer competent questions touching upon
248 such person's business or production of taxable products in this
249 ~~the~~ state.

250 1. The department may issue subpoenas to compel third
251 parties to testify or to produce records or other evidence held
252 by them.

253 2. Any duly authorized representative of the department may
254 administer an oath or affirmation.

255 3. If any person fails to comply with a request of the
256 department for the inspection of records, fails to give
257 testimony or respond to competent questions, or fails to comply
258 with a subpoena, a circuit court having jurisdiction over such
259 person may, upon application by the department, issue orders
260 necessary to secure compliance. The failure of a taxpayer to
261 provide documents available to, or required to be kept by, the
262 taxpayer and requested by a subpoena issued under this section
263 creates a rebuttable presumption that the resulting proposed
264 final agency action by the department, as to the requested
265 documents, is correct and that the requested documents not
266 produced by the taxpayer would be adverse to the taxpayer's
267 position as to the proposed final agency action. If a taxpayer
268 fails to provide documents requested by a subpoena issued under
269 this section, the department may make an assessment from an
270 estimate based upon the best information then available to it.
271 The department shall inform the taxpayer of the reason for the



272 estimate and the information and methodology used to derive the
273 estimate. Such assessment shall be considered prima facie
274 correct, and the taxpayer shall have the burden of showing any
275 error in it.

276 Section 8. Paragraph (a) of subsection (1) of section
277 212.05, Florida Statutes, is amended to read:

278 212.05 Sales, storage, use tax.—It is hereby declared to be
279 the legislative intent that every person is exercising a taxable
280 privilege who engages in the business of selling tangible
281 personal property at retail in this state, including the
282 business of making or facilitating remote sales; who rents or
283 furnishes any of the things or services taxable under this
284 chapter; or who stores for use or consumption in this state any
285 item or article of tangible personal property as defined herein
286 and who leases or rents such property within the state.

287 (1) For the exercise of such privilege, a tax is levied on
288 each taxable transaction or incident, which tax is due and
289 payable as follows:

290 (a)1.a. At the rate of 6 percent of the sales price of each
291 item or article of tangible personal property when sold at
292 retail in this state, computed on each taxable sale for the
293 purpose of remitting the amount of tax due the state, and
294 including each and every retail sale.

295 b. Each occasional or isolated sale of an aircraft, boat,
296 mobile home, or motor vehicle of a class or type which is
297 required to be registered, licensed, titled, or documented in
298 this state or by the United States Government is ~~shall be~~
299 subject to tax at the rate provided in this paragraph. The
300 department shall by rule adopt any nationally recognized



301 publication for valuation of used motor vehicles as the
302 reference price list for any used motor vehicle which is
303 required to be licensed pursuant to s. 320.08(1), (2), (3)(a),
304 (b), (c), or (e), or (9). If any party to an occasional or
305 isolated sale of such a vehicle reports to the tax collector a
306 sales price which is less than 80 percent of the average loan
307 price for the specified model and year of such vehicle as listed
308 in the most recent reference price list, the tax levied under
309 this paragraph shall be computed by the department on such
310 average loan price unless the parties to the sale have provided
311 to the tax collector an affidavit signed by each party, or other
312 substantial proof, stating the actual sales price. Any party to
313 such sale who reports a sales price less than the actual sales
314 price is guilty of a misdemeanor of the first degree, punishable
315 as provided in s. 775.082 or s. 775.083. The department shall
316 collect or attempt to collect from such party any delinquent
317 sales taxes. In addition, such party shall pay any tax due and
318 any penalty and interest assessed plus a penalty equal to twice
319 the amount of the additional tax owed. Notwithstanding any other
320 provision of law, the Department of Revenue may waive or
321 compromise any penalty imposed pursuant to this subparagraph.

322 2. This paragraph does not apply to the sale of a boat or
323 aircraft by or through a registered dealer under this chapter to
324 a purchaser who, at the time of taking delivery, is a
325 nonresident of this state, does not make his or her permanent
326 place of abode in this state, and is not engaged in carrying on
327 in this state any employment, trade, business, or profession in
328 which the boat or aircraft will be used in this state, or is a
329 corporation none of the officers or directors of which is a



330 resident of, or makes his or her permanent place of abode in,
331 this state, or is a noncorporate entity that has no individual
332 vested with authority to participate in the management,
333 direction, or control of the entity's affairs who is a resident
334 of, or makes his or her permanent abode in, this state. For
335 purposes of this exemption, either a registered dealer acting on
336 his or her own behalf as seller, a registered dealer acting as
337 broker on behalf of a seller, or a registered dealer acting as
338 broker on behalf of the nonresident purchaser may be deemed to
339 be the selling dealer. This exemption is ~~shall~~ not ~~be~~ allowed
340 unless:

341 a. The nonresident purchaser removes a qualifying boat, as
342 described in sub-subparagraph f., from this ~~the~~ state within 90
343 days after the date of purchase or extension, or the nonresident
344 purchaser removes a nonqualifying boat or an aircraft from this
345 state within 10 days after the date of purchase or, when the
346 boat or aircraft is repaired or altered, within 20 days after
347 completion of the repairs or alterations; or if the aircraft
348 will be registered in a foreign jurisdiction and:

349 (I) Application for the aircraft's registration is properly
350 filed with a civil airworthiness authority of a foreign
351 jurisdiction within 10 days after the date of purchase;

352 (II) The nonresident purchaser removes the aircraft from
353 this ~~the~~ state to a foreign jurisdiction within 10 days after
354 the date the aircraft is registered by the applicable foreign
355 airworthiness authority; and

356 (III) The aircraft is operated in this ~~the~~ state solely to
357 remove it from this ~~the~~ state to a foreign jurisdiction.
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359 For purposes of this sub-subparagraph, the term "foreign
360 jurisdiction" means any jurisdiction outside of the United
361 States or any of its territories;

362 b. The nonresident purchaser, within 90 days after ~~from~~ the
363 date of departure, provides the department with written proof
364 that the nonresident purchaser licensed, registered, titled, or
365 documented the boat or aircraft outside this ~~the~~ state. If such
366 written proof is unavailable, within 90 days the nonresident
367 purchaser must ~~shall~~ provide proof that the nonresident
368 purchaser applied for such license, title, registration, or
369 documentation. The nonresident purchaser shall forward to the
370 department proof of title, license, registration, or
371 documentation upon receipt;

372 c. The nonresident purchaser, within 30 days after removing
373 the boat or aircraft from this state ~~Florida~~, furnishes the
374 department with proof of removal in the form of receipts for
375 fuel, dockage, slippage, tie-down, or hangaring from outside of
376 this state ~~Florida~~. The information so provided must clearly and
377 specifically identify the boat or aircraft;

378 d. The selling dealer, within 30 days after the date of
379 sale, provides to the department a copy of the sales invoice,
380 closing statement, bills of sale, and the original affidavit
381 signed by the nonresident purchaser affirming that the
382 nonresident purchaser qualifies for exemption from sales tax
383 pursuant to this subparagraph and attesting that the nonresident
384 purchaser will provide the documentation required to
385 substantiate the exemption claimed under this subparagraph
386 ~~attesting that he or she has read the provisions of this~~
387 ~~section;~~



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388 e. The seller makes a copy of the affidavit a part of his
389 or her record for as long as required by s. 213.35; and

390 f. Unless the nonresident purchaser of a boat of 5 net tons
391 of admeasurement or larger intends to remove the boat from this
392 state within 10 days after the date of purchase or when the boat
393 is repaired or altered, within 20 days after completion of the
394 repairs or alterations, the nonresident purchaser applies to the
395 selling dealer for a decal which authorizes 90 days after the
396 date of purchase for removal of the boat. The nonresident
397 purchaser of a qualifying boat may apply to the selling dealer
398 within 60 days after the date of purchase for an extension decal
399 that authorizes the boat to remain in this state for an
400 additional 90 days, but not more than a total of 180 days,
401 before the nonresident purchaser is required to pay the tax
402 imposed by this chapter. The department is authorized to issue
403 decals in advance to dealers. The number of decals issued in
404 advance to a dealer shall be consistent with the volume of the
405 dealer's past sales of boats which qualify under this sub-
406 subparagraph. The selling dealer or his or her agent shall mark
407 and affix the decals to qualifying boats in the manner
408 prescribed by the department, before delivery of the boat.

409 (I) The department is hereby authorized to charge dealers a
410 fee sufficient to recover the costs of decals issued, except the
411 extension decal shall cost \$425.

412 (II) The proceeds from the sale of decals will be deposited
413 into the administrative trust fund.

414 (III) Decals shall display information to identify the boat
415 as a qualifying boat under this sub-subparagraph, including, but
416 not limited to, the decal's date of expiration.



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417 (IV) The department is authorized to require dealers who
418 purchase decals to file reports with the department and may
419 prescribe all necessary records by rule. All such records are
420 subject to inspection by the department.

421 (V) Any dealer or his or her agent who issues a decal
422 falsely, fails to affix a decal, mismarks the expiration date of
423 a decal, or fails to properly account for decals will be
424 considered prima facie to have committed a fraudulent act to
425 evade the tax and will be liable for payment of the tax plus a
426 mandatory penalty of 200 percent of the tax, and shall be liable
427 for fine and punishment as provided by law for a conviction of a
428 misdemeanor of the first degree, as provided in s. 775.082 or s.
429 775.083.

430 (VI) Any nonresident purchaser of a boat who removes a
431 decal before permanently removing the boat from this ~~the~~ state,
432 or defaces, changes, modifies, or alters a decal in a manner
433 affecting its expiration date before its expiration, or who
434 causes or allows the same to be done by another, will be
435 considered prima facie to have committed a fraudulent act to
436 evade the tax and will be liable for payment of the tax plus a
437 mandatory penalty of 200 percent of the tax, and shall be liable
438 for fine and punishment as provided by law for a conviction of a
439 misdemeanor of the first degree, as provided in s. 775.082 or s.
440 775.083.

441 (VII) The department is authorized to adopt rules necessary
442 to administer and enforce this subparagraph and to publish the
443 necessary forms and instructions.

444 (VIII) The department is hereby authorized to adopt
445 emergency rules pursuant to s. 120.54(4) to administer and



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446 enforce ~~the provisions of~~ this subparagraph.

447

448 If the nonresident purchaser fails to remove the qualifying boat
449 from this state within the maximum 180 days after purchase or a
450 nonqualifying boat or an aircraft from this state within 10 days
451 after purchase or, when the boat or aircraft is repaired or
452 altered, within 20 days after completion of such repairs or
453 alterations, or permits the boat or aircraft to return to this
454 state within 6 months after ~~from~~ the date of departure, except
455 as provided in s. 212.08(7)(fff), or if the nonresident
456 purchaser fails to furnish the department with any of the
457 documentation required by this subparagraph within the
458 prescribed time period, the nonresident purchaser is ~~shall be~~
459 liable for use tax on the cost price of the boat or aircraft
460 and, in addition thereto, payment of a penalty to the Department
461 of Revenue equal to the tax payable. This penalty shall be in
462 lieu of the penalty imposed by s. 212.12(2). The maximum 180-day
463 period following the sale of a qualifying boat tax-exempt to a
464 nonresident may not be tolled for any reason.

465 Section 9. Subsections (2) and (5) of section 212.13,
466 Florida Statutes, are amended, and subsection (7) is added to
467 that section, to read:

468 212.13 Records required to be kept; power to inspect; audit
469 procedure.—

470 (2) (a) Each dealer, as defined in this chapter, shall
471 secure, maintain, and keep as long as required by s. 213.35 a
472 complete record of tangible personal property or services
473 received, used, sold at retail, distributed or stored, leased or
474 rented by said dealer, together with invoices, bills of lading,



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475 gross receipts from such sales, and other pertinent records and
476 papers as may be required by the department for the reasonable
477 administration of this chapter. All such records must be made
478 available to the department at reasonable times and places and
479 by reasonable means, including in an electronic format when so
480 kept by the dealer. Any dealer subject to this chapter who
481 violates this subsection commits a misdemeanor of the first
482 degree, punishable as provided in s. 775.082 or s. 775.083. If,
483 however, any subsequent offense involves intentional destruction
484 of such records with an intent to evade payment of or deprive
485 the state of any tax revenues, such subsequent offense is a
486 felony of the third degree, punishable as provided in s. 775.082
487 or s. 775.083.

488 (b)1. As used in this paragraph, the term:

489 a. "Dealer" means a dealer, as defined in s. 212.06, which
490 is licensed under chapter 561.

491 b. "Division" means the Division of Alcoholic Beverages and
492 Tobacco of the Department of Business and Professional
493 Regulation.

494 c. "Transferor" means an entity or person, licensed under
495 chapter 561, who sells and delivers alcoholic beverages to a
496 dealer for purposes of resale.

497 2. Dealers shall maintain records of all monthly sales and
498 all monthly purchases of alcoholic beverages and produce such
499 records for inspection by the department. During the course of
500 an audit, if the department has made a formal demand for such
501 records and a dealer has failed to comply with such a demand,
502 the department may issue a written request for such records to
503 the dealer, allowing the dealer an additional 20 days to provide



504 the requested records or show reasonable cause why the records
505 cannot be produced. If the dealer fails to produce the requested
506 records or show reasonable cause why the records cannot be
507 produced, the department shall issue a notice of intent to
508 suspend the dealer's resale certificate. The dealer shall then
509 have 20 days to file a petition with the department challenging
510 the proposed action pursuant to s. 120.569. If the dealer fails
511 to timely file a petition or the department prevails in a
512 proceeding challenging the notice, the department shall suspend
513 the resale certificate. The failure of a dealer to comply with
514 such a request is also deemed sufficient cause under s.
515 561.29(1)(a), and the department shall promptly notify the
516 division and the dealer of such failure for further appropriate
517 action by the division.

518 3. The department shall notify the division when a dealer's
519 resale certificate is suspended, and shall publish a list of
520 dealers whose resale certificates have been suspended as
521 permitted by s. 213.053(21). The division shall include notice
522 of such suspension in its license verification database, or
523 provide a link to the department's published list from the
524 division's license verification page.

525 4. A transferor is allowed 7 days, inclusive of any
526 Saturday, Sunday, or legal holiday, after the date of
527 publication to the department's list that the resale certificate
528 of a dealer has been suspended to discontinue accepting orders
529 from and delivering alcohol beverages to the dealer.

530 5. A transferor who sells alcoholic beverages to a dealer
531 whose resale certificate has been suspended is not responsible
532 for any tax, penalty, or interest due if the alcoholic beverages



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533 are delivered no more than 7 days, inclusive of any Saturday,
534 Sunday, or legal holiday, after the date of publication of the
535 suspension.

536 6. The department may adopt rules to implement this
537 paragraph.

538 (5) (a) The department shall send written notification at
539 least 60 days before ~~prior to~~ the date an auditor is scheduled
540 to begin an audit, informing the taxpayer of the audit. The
541 department is not required to give 60 days' prior notification
542 of a forthcoming audit in any instance in which the taxpayer
543 requests an emergency audit.

544 (b) Such written notification must ~~shall~~ contain:

545 1. The approximate date on which the auditor is scheduled
546 to begin the audit.

547 2. A reminder that all of the records, receipts, invoices,
548 resale certificates, and related documentation of the taxpayer
549 must be made available to the auditor.

550 3. Any other requests or suggestions the department may
551 deem necessary.

552 (c) Only records, receipts, invoices, resale certificates,
553 and related documentation that ~~which~~ are available to the
554 auditor when such audit begins are ~~shall be~~ deemed acceptable
555 for the purposes of conducting such audit. A resale certificate
556 containing a date before ~~prior to~~ the date the audit commences
557 is ~~shall be~~ deemed acceptable documentation of the specific
558 transaction or transactions which occurred in the past, for the
559 purpose of conducting an audit.

560 (d) The provisions of this chapter concerning fraudulent or
561 improper records, receipts, invoices, resale certificates, and



562 related documentation ~~shall~~ apply when conducting any audit.

563 (e) The requirement in paragraph (a) of 60 days' written
564 notification does not apply to the distress or jeopardy
565 situations referred to in s. 212.14 or s. 212.15.

566 (f) Once the notification required by paragraph (a) is
567 issued, the department, at any time, may respond to contact
568 initiated by a taxpayer to discuss the audit, and the taxpayer
569 may provide documentation or other information, electronically
570 or otherwise, to the department. The department may examine, at
571 any time, documentation and other information voluntarily
572 provided by the taxpayer, its representative, or other parties;
573 information already in the department's possession; or publicly
574 available information. The department's examination of such
575 information does not mean an audit has commenced if the review
576 takes place within 60 days after the notice of intent to conduct
577 an audit. The requirement in paragraph (a) does not limit the
578 department in making initial contact with the taxpayer to
579 confirm receipt of the notification or to confirm the date that
580 the audit will begin. If the taxpayer has not previously waived
581 the 60-day notice period and believes the department commenced
582 the audit prior to the 61st day, the taxpayer must object in
583 writing to the department before the issuance of an assessment
584 or else the objection is waived. If the objection is not waived
585 and it is determined that the audit was commenced before the
586 61st day after the issuance of the notice of intent to audit,
587 the tolling period provided for in s. 213.345 is considered
588 lifted for the number of days equal to the difference between
589 the date the audit commenced and the 61st day after the date of
590 the department's notice of intent to audit.



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591 (7) The department may adopt rules to administer this
592 section.

593 Section 10. Paragraph (a) of subsection (7) of section
594 212.14, Florida Statutes, is amended to read:

595 212.14 Departmental powers; hearings; distress warrants;
596 bonds; subpoenas and subpoenas duces tecum.—

597 (7) (a) For purposes of collection and enforcement of taxes,
598 penalties, and interest levied under this chapter, the
599 department may issue subpoenas or subpoenas duces tecum
600 compelling the attendance and testimony of witnesses and the
601 production of books, records, written materials, and
602 electronically recorded information. Subpoenas shall be issued
603 with the written and signed approval of the executive director
604 or his or her designee on written and sworn application by any
605 employee of the department. The application must set forth the
606 reason for the application, the name of the person subpoenaed,
607 the time and place of appearance of the witness, and a
608 description of any books, records, or electronically recorded
609 information to be produced, together with a statement by the
610 applicant that the department has unsuccessfully attempted other
611 reasonable means of securing information and that the testimony
612 of the witness or the written or electronically recorded
613 materials sought in the subpoena are necessary for the
614 collection of taxes, penalty, or interest or the enforcement of
615 the taxes levied under this chapter. A subpoena must ~~shall~~ be
616 served in the manner provided by law and by the Florida Rules of
617 Civil Procedure and is ~~shall be~~ returnable only during regular
618 business hours and at least 20 calendar days after the date of
619 service of the subpoena. Any subpoena to which this subsection



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620 applies must ~~shall~~ identify the taxpayer to whom the subpoena
621 relates and to whom the records pertain and must ~~shall~~ provide
622 other information to enable the person subpoenaed to locate the
623 records required under the subpoena. The department shall give
624 notice to the taxpayer to whom the subpoena relates within 3
625 days after ~~of~~ the day on which the service of the subpoena is
626 made. Within 14 days after service of the subpoena, the person
627 to whom the subpoena is directed may serve written objection to
628 inspection or copying of any of the designated materials. If
629 objection is made, the department is ~~shall~~ not ~~be~~ entitled to
630 inspect and copy the materials, except pursuant to an order of
631 the circuit court. If an objection is made, the department may
632 petition any circuit court for an order to comply with the
633 subpoena. The subpoena must ~~shall~~ contain a written notice of
634 the right to object to the subpoena. Every subpoena served upon
635 the witness or records custodian must be accompanied by a copy
636 of ~~the provisions of~~ this subsection. If a person refuses to
637 obey a subpoena or subpoena duces tecum, the department may
638 apply to any circuit court of this state to enforce compliance
639 with the subpoena. Witnesses must ~~shall~~ be paid mileage and
640 witness fees as authorized for witnesses in civil cases. The
641 failure of a taxpayer to provide documents available to, or
642 required to be kept by, the taxpayer and requested by a subpoena
643 issued under this section creates a rebuttable presumption that
644 the resulting proposed final agency action by the department, as
645 to the requested documents, is correct and that the requested
646 documents not produced by the taxpayer would be adverse to the
647 taxpayer's position as to the proposed final agency action. If a
648 taxpayer fails to provide documents requested by a subpoena



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649 issued under this section, the department may make an assessment
650 from an estimate based upon the best information then available
651 to it for the taxable period of retail sales of the taxpayer,
652 together with any accrued interest and penalties. The department
653 shall inform the taxpayer of the reason for the estimate and the
654 information and methodology used to derive the estimate. Such
655 assessment shall be deemed prima facie correct, and the burden
656 to show the contrary rests upon the dealer or other person. The
657 presumption and authority to use estimates for the purpose of
658 assessment under this paragraph do not apply solely because a
659 taxpayer or its representative requests a conference to
660 negotiate the production of a sample of records demanded by a
661 subpoena.

662 Section 11. Section 213.051, Florida Statutes, is amended
663 to read:

664 213.051 Service of subpoenas.—

665 (1) For the purpose of administering and enforcing ~~the~~
666 ~~provisions of~~ the revenue laws of this state, the executive
667 director of the Department of Revenue, or any of his or her
668 assistants designated in writing by the executive director, may
669 ~~shall be authorized to~~ serve subpoenas and subpoenas duces tecum
670 issued by the state attorney relating to investigations
671 concerning the taxes enumerated in s. 213.05.

672 (2) In addition to the procedures for service prescribed by
673 chapter 48, the department may serve subpoenas it issues
674 pursuant to ss. 202.36, 206.14, 211.125, 212.14, and 220.735
675 upon any business registered with the department at the address
676 on file with the department if it received correspondence from
677 the business from that address within 30 days after issuance of



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678 the subpoena or if the address is listed with the Department of
679 State Division of Corporations as a principal or business
680 address. If a business' address is not in this state, service is
681 made upon proof of delivery by certified mail or under the
682 notice provisions of s. 213.0537.

683 Section 12. Present subsections (21) and (22) of section
684 213.053, Florida Statutes, are redesignated as subsections (22)
685 and (23), respectively, and a new subsection (21) is added to
686 that section, to read:

687 213.053 Confidentiality and information sharing.—

688 (21) (a) The department may publish a list of dealers whose
689 resale certificates have been suspended pursuant to s.
690 212.13(2) (b). The list may contain the name of the dealer,
691 including the name under which the dealer does business; the
692 address of the dealer; the dealer's employer identification
693 number or other taxpayer identification number; and the date on
694 which the dealer was added to the list.

695 (b) The department shall update the list daily as needed to
696 reflect additions to and deletions from the list.

697 (c) The department may adopt rules to administer this
698 subsection.

699 Section 13. Section 213.06, Florida Statutes, is amended,
700 to read:

701 213.06 Rules of department; circumstances requiring
702 emergency rules.—

703 (1) The Department of Revenue may ~~has the authority to~~
704 adopt rules pursuant to ss. 120.536(1) and 120.54 to implement
705 provisions of the revenue laws.

706 (2) The executive director of the department may adopt



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707 emergency rules pursuant to s. 120.54 on behalf of the
708 department when the effective date of a legislative change
709 occurs sooner than 120 ~~60~~ days after the close of a legislative
710 session in which enacted or after the Governor approves or fails
711 to veto the legislative change, whichever is later, and the
712 change affects a tax rate or a collection or reporting procedure
713 which affects a substantial number of dealers or persons subject
714 to the tax change or procedure. The Legislature finds that such
715 circumstances qualify as an exception to the prerequisite of a
716 finding of immediate danger to the public health, safety, or
717 welfare as set forth in s. 120.54(4)(a) and qualify as
718 circumstances requiring an emergency rule. Emergency rules
719 adopted under this subsection are exempt from s. 120.54(4)(c),
720 remain in effect for 6 months or until replaced by rules adopted
721 under the nonemergency rulemaking procedures of the
722 Administrative Procedure Act, and may be renewed for no more
723 than 3 additional 6-month periods during the pendency of
724 procedures to adopt permanent rules addressing the subject of
725 the emergency rules.

726 (3) The grants of rulemaking authority in subsections (1)
727 and (2) are sufficient to allow the department to adopt rules
728 implementing all revenue laws administered by the department.
729 Each revenue law administered by the department is an enabling
730 statute authorizing the department to implement it, regardless
731 of whether the enabling statute contains its own grant of
732 rulemaking authority.

733 Section 14. Paragraph (b) of subsection (1) and paragraph
734 (a) of subsection (3) of section 213.21, Florida Statutes, are
735 amended, and subsections (11) and (12) are added to that



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736 section, to read:

737 213.21 Informal conferences; compromises.—

738 (1)

739 (b) The statute of limitations upon the issuance of ~~final~~
740 assessments and the period for filing a claim for refund as
741 required by s. 215.26(2) for any transactions occurring during
742 the audit period shall be tolled during the period in which the
743 taxpayer is engaged in a procedure under this section.

744 (3) (a) A taxpayer's liability for any tax or interest
745 specified in s. 72.011(1) may be compromised by the department
746 upon the grounds of doubt as to liability for or collectibility
747 of such tax or interest. A taxpayer's liability for interest
748 under any of the chapters specified in s. 72.011(1) shall be
749 settled or compromised in whole or in part whenever or to the
750 extent that the department determines that the delay in the
751 determination of the amount due is attributable to the action or
752 inaction of the department. A taxpayer's liability for penalties
753 under any of the chapters specified in s. 72.011(1) greater than
754 25 percent of the tax must ~~may~~ be settled or compromised if ~~it~~
755 ~~is determined by~~ the department determines that the
756 noncompliance is not due to ~~reasonable cause and not to~~ willful
757 negligence, willful neglect, or fraud. In addition, a taxpayer's
758 liability for penalties under any of the chapters specified in
759 s. 72.011(1) up to and including 25 percent of the tax may be
760 settled or compromised if the department determines that
761 reasonable cause exists and the penalties greater than 25
762 percent of the tax were compromised because the noncompliance is
763 not due to willful negligence, willful neglect, or fraud. There
764 is a rebuttable presumption that a taxpayer's noncompliance is



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765 due to willful negligence, willful neglect, or fraud when
766 adequate records as requested by the department are not provided
767 to the department before the issuance of an assessment. The
768 presumption may be rebutted by a showing of reasonable cause why
769 adequate records as requested were not provided or were
770 unavailable to the taxpayer. The facts and circumstances are
771 subject to de novo review ~~to determine the existence of~~
772 ~~reasonable cause~~ in any administrative proceeding or judicial
773 action challenging an assessment of penalty under any of the
774 chapters specified in s. 72.011(1). A taxpayer who establishes
775 reasonable reliance on the written advice issued by the
776 department to the taxpayer is ~~will be~~ deemed to have shown
777 reasonable cause for the noncompliance. ~~In addition, a~~
778 ~~taxpayer's liability for penalties under any of the chapters~~
779 ~~specified in s. 72.011(1) in excess of 25 percent of the tax~~
780 ~~shall be settled or compromised if the department determines~~
781 ~~that the noncompliance is due to reasonable cause and not to~~
782 ~~willful negligence, willful neglect, or fraud.~~ The department
783 shall maintain records of all compromises, and the records shall
784 state the basis for the compromise. The records of compromise
785 under this paragraph are ~~shall not be~~ subject to disclosure
786 pursuant to s. 119.07(1) and are ~~shall be~~ considered
787 confidential information governed by ~~the provisions of~~ s.
788 213.053.

789 (11) Following the expiration of time for a taxpayer to
790 challenge an assessment or a denial of a refund as provided in
791 s. 72.011, the department may consider a request to settle or
792 compromise any tax, interest, penalty, or other liability under
793 this section if the taxpayer demonstrates that the failure to



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794 initiate a timely challenge was due to a qualified event that
795 directly impacted compliance with that section. For purposes of
796 this subsection, a qualified event is limited to the occurrence
797 of events during an audit or the expired protest period which
798 were beyond the control of the taxpayer, including the death or
799 life-threatening injury or illness of the taxpayer or an
800 immediate family member of the taxpayer; the death or life-
801 threatening injury or illness of the responsible party that
802 controlled, managed, or directed the affected business entity;
803 acts of war or terrorism; natural disasters; fire; or other
804 catastrophic loss. The department may not consider a request
805 received more than 180 days after the expiration of time allowed
806 under s. 72.011.

807 (12) Any decision by the department regarding a taxpayer's
808 request to compromise or settle a liability under this section
809 is not a final order subject to review under chapter 120.

810 Section 15. Section 213.34, Florida Statutes, is amended to
811 read:

812 213.34 Authority to audit.-

813 (1) The Department of Revenue ~~may shall have the authority~~
814 ~~to~~ audit and examine the accounts, books, or records of all
815 persons ~~who are~~ subject to a revenue law made applicable to this
816 chapter, or otherwise placed under the control and
817 administration of the department, for the purpose of
818 ascertaining the correctness of any return which has been filed
819 or payment which has been made, or for the purpose of making a
820 return where none has been made.

821 (2) The department, or its duly authorized agents, may
822 inspect such books and records necessary to ascertain a



823 taxpayer's compliance with the revenue laws of this state,
824 provided that the department's power to make an assessment or
825 grant a refund has not terminated under s. 95.091(3).

826 (a) During the course of an audit, but before the issuance
827 of an assessment other than a jeopardy assessment, the
828 department shall issue to the taxpayer a notice explaining the
829 audit findings. No later than 30 days after the issuance of the
830 notice, the taxpayer may request in writing an exit conference
831 at a mutually agreeable date and time with the department's
832 audit staff to discuss the audit findings. The exit conference
833 must be conducted no later than 30 days after a request for the
834 conference, unless the taxpayer and the department enter into an
835 agreement to extend the audit tolling period pursuant to s.
836 213.23. The taxpayer shall be given an opportunity at or before
837 the exit conference to provide additional information and
838 documents to the department to rebut the audit findings. Upon
839 the mutual written agreement between the department and the
840 taxpayer to extend the audit tolling period pursuant to s.
841 213.23, the exit conference may be continued to allow the
842 taxpayer additional time to provide information and documents to
843 the department. The department shall review any information
844 provided by the taxpayer and, if the department revises the
845 audit findings, a copy of the revised audit findings must be
846 provided to the taxpayer. Such revision of the audit findings
847 does not provide a right to any additional conference.

848 (b) If an exit conference is timely requested in writing,
849 the limitations in s. 95.091(3) are tolled an additional 60
850 days. If the department fails to offer a taxpayer the
851 opportunity to hold an exit conference despite a timely written



852 request, the limitations period in s. 95.091(3) may not be
853 tolled for the additional 60 days. If the assessment is issued
854 outside of the limitations period, the assessment must be
855 reduced by the amount of those taxes, penalties, and interest
856 for reporting periods outside of the limitations period, as
857 modified by any other tolling or extension provisions.

858 (c) If a request for an exit conference is not timely made,
859 the right to a conference is waived. A taxpayer may also
860 affirmatively waive its right to an exit conference. Failure to
861 hold an exit conference does not preclude the department from
862 issuing an assessment.

863 (d) The department may adopt rules to implement this
864 subsection.

865 (3) The department may correct by credit or refund any
866 overpayment of tax, penalty, or interest revealed by an audit
867 and shall make assessment of any deficiency in tax, penalty, or
868 interest determined to be due.

869 (4) Notwithstanding ~~the provisions of~~ s. 215.26, the
870 department shall offset the overpayment of any tax during an
871 audit period against a deficiency of any tax, penalty, or
872 interest determined to be due during the same audit period.

873 (5) After the application of subsection (4), if the
874 department's audit finds that the tax paid is more than the
875 correct amount, the department must refund the overpayment that
876 is within the applicable period provided by s. 215.26. Such
877 action by the department does not prevent a taxpayer from
878 challenging the amount of the refund pursuant to chapters 72 and
879 120 or applying for a refund of additional tax within the
880 applicable period.



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881 Section 16. Section 213.345, Florida Statutes, is amended
882 to read:

883 213.345 Tolling of periods during an audit.—The limitations
884 in s. 95.091(3) and the period for filing a claim for refund as
885 required by s. 215.26(2) are shall be tolled for a period of 1
886 year if the Department of Revenue has, on or after July 1, 1999,
887 issued a notice of intent to conduct an audit or investigation
888 of the taxpayer's account within the applicable period of time.
889 The 1-year period is tolled upon receipt of written objections
890 to the subpoena and for the entire pendency of any action that
891 seeks an order to enforce compliance with or to challenge any
892 subpoena issued by the department compelling the attendance and
893 testimony of witnesses and the production of books, records,
894 written materials, and electronically recorded information. The
895 department must commence an audit within 120 days after it
896 issues a notice of intent to conduct an audit, unless the
897 taxpayer requests a delay. If the taxpayer does not request a
898 delay and the department does not begin the audit within 120
899 days after issuing the notice, the tolling period terminates
900 ~~shall terminate~~ unless the taxpayer and the department enter
901 into an agreement to extend the period pursuant to s. 213.23. If
902 the department issues a notice explaining its audit findings
903 under s. 213.34(2) (a) based on an estimate because the taxpayer
904 has failed or refuses to provide records, the audit will be
905 deemed to have commenced for purposes of this section. In the
906 event the department issues an assessment beyond the tolling
907 period, the assessment will be considered late and the
908 assessment shall be reduced by the amount of those taxes,
909 penalties, and interest for reporting periods outside of the



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910 limitations period, as modified by any other tolling or
911 extension provisions.

912 Section 17. Subsections (1), (3), and (6) of section
913 213.67, Florida Statutes, are amended to read:

914 213.67 Garnishment.—

915 (1) If a person is delinquent in the payment of any taxes,
916 penalties, and interest, additional daily accrued interest,
917 costs, and fees owed to the department, the executive director
918 or his or her designee may give notice of the amount of such
919 delinquency by registered mail, by personal service, or by
920 electronic means, including, but not limited to, facsimile
921 transmissions, electronic data interchange, or use of the
922 Internet, to all persons having in their possession or under
923 their control any credits or personal property, exclusive of
924 wages, belonging to the delinquent taxpayer, or owing any debts
925 to such delinquent taxpayer at the time of receipt by them of
926 such notice. Thereafter, any person ~~who has been~~ notified may
927 not transfer or make any other disposition of such credits,
928 other personal property, or debts until the executive director
929 or his or her designee consents to a transfer or disposition or
930 until 60 days after the receipt of such notice. However, the
931 credits, other personal property, or debts that exceed the
932 delinquent amount stipulated in the notice are not subject to
933 this section, wherever held, if the taxpayer does not have a
934 prior history of tax delinquencies. If during the effective
935 period of the notice to withhold, any person so notified makes
936 any transfer or disposition of the property or debts required to
937 be withheld under this section, he or she is liable to the state
938 for any indebtedness owed to the department by the person with



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939 respect to whose obligation the notice was given to the extent
940 of the value of the property or the amount of the debts thus
941 transferred or paid if, solely by reason of such transfer or
942 disposition, the state is unable to recover the indebtedness of
943 the person with respect to whose obligation the notice was
944 given. If the delinquent taxpayer contests the intended levy in
945 circuit court or under chapter 120, the notice under this
946 section remains effective until that final resolution of the
947 contest. Any financial institution receiving such notice
948 maintains ~~will maintain~~ a right of setoff for any transaction
949 involving a debit card occurring on or before the date of
950 receipt of such notice.

951 (3) During the last 30 days of the 60-day period set forth
952 in subsection (1), the executive director or his or her designee
953 may levy upon such credits, other personal property, or debts.
954 The levy must be accomplished by delivery of a notice of levy by
955 registered mail, by personal service, or by electronic means,
956 including, but not limited to, facsimile transmission or
957 electronic data exchange. Upon receipt of the notice of levy,
958 ~~which~~ the person possessing the credits, other personal
959 property, or debts shall transfer them to the department or pay
960 to the department the amount owed to the delinquent taxpayer.

961 (6) (a) Levy may be made under subsection (3) upon credits,
962 other personal property, or debt of any person with respect to
963 any unpaid tax, penalties, ~~and~~ interest, additional daily
964 accrued interest, costs, and fees only after the executive
965 director or his or her designee has notified such person in
966 writing of the intention to make such levy.

967 (b) No less than 30 days before the day of the levy, the



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968 notice of intent to levy required under paragraph (a) must ~~shall~~
969 be given in person or sent by certified or registered mail to
970 the person's last known address.

971 (c) The notice required in paragraph (a) must include a
972 brief statement that sets forth in simple and nontechnical
973 terms:

974 1. The provisions of this section relating to levy and sale
975 of property;

976 2. The procedures applicable to the levy under this
977 section;

978 3. The administrative and judicial appeals available to the
979 taxpayer with respect to such levy and sale, and the procedures
980 relating to such appeals; and

981 4. Any ~~The alternatives, if any,~~ available to taxpayers
982 which could prevent levy on the property.

983 Section 18. Section 220.42, Florida Statutes, is amended to
984 read:

985 220.42 Methods of accounting.—

986 (1) For purposes of this code, a taxpayer's method of
987 accounting must ~~shall~~ be the same as such taxpayer's method of
988 accounting for federal income tax purposes, ~~except as provided~~
989 ~~in subsection (3)~~. If no method of accounting has been regularly
990 used by a taxpayer, net income for purposes of this code must
991 ~~shall~~ be computed by the such method that as in the opinion of
992 the department determines most fairly reflects income.

993 (2) If a taxpayer's method of accounting is changed for
994 federal income tax purposes, the taxpayer's method of accounting
995 for purposes of this code must ~~shall~~ be similarly changed.

996 ~~(3) Any taxpayer which has elected for federal income tax~~



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997 ~~purposes to report any portion of its income on the completed~~
998 ~~contract method of accounting under Treasury Regulation 1.451-~~
999 ~~3(b)(2) may elect to return the income so reported on the~~
1000 ~~percentage of completion method of accounting under Treasury~~
1001 ~~Regulation 1.451-3(b)(1), provided the taxpayer regularly~~
1002 ~~maintains its books of account and reports to its shareholders~~
1003 ~~on the percentage of completion method. The election provided by~~
1004 ~~this subsection shall be allowed only if it is made, in such~~
1005 ~~manner as the department may prescribe, not later than the due~~
1006 ~~date, including any extensions thereof, for filing a return for~~
1007 ~~the taxpayer's first taxable year under this code in which a~~
1008 ~~portion of its income is returned on the completed contract~~
1009 ~~method of accounting for federal tax purposes. An election made~~
1010 ~~pursuant to this subsection shall apply to all subsequent~~
1011 ~~taxable years of the taxpayers unless the department consents in~~
1012 ~~writing to its revocation.~~

1013 Section 19. Subsection (4) is added to section 220.735,
1014 Florida Statutes, to read:

1015 220.735 Production of witnesses and records.—

1016 (4) The failure of a taxpayer to provide documents
1017 available to, or required to be kept by, the taxpayer and
1018 requested by a subpoena issued under this section creates a
1019 rebuttable presumption that the resulting proposed final agency
1020 action by the department, as to the requested documents, is
1021 correct and that the requested documents not produced by the
1022 taxpayer would be adverse to the taxpayer's position as to the
1023 proposed final agency action. If a taxpayer fails to provide
1024 documents requested by a subpoena issued under this section, the
1025 department may determine the amount of tax due according to its



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1026 best judgement and may issue a notice of deficiency to the
1027 taxpayer, setting forth the amount of tax, interest, and any
1028 penalties proposed to be assessed. The department shall inform
1029 the taxpayer of the reason for the estimate and the information
1030 and methodology used to derive the estimate. Such assessment
1031 shall be prima facie correct, and the burden to show the
1032 contrary rests upon the taxpayer.

1033 Section 20. Paragraph (e) of subsection (3) of section
1034 443.131, Florida Statutes, is amended to read:

1035 443.131 Contributions.—

1036 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
1037 EXPERIENCE.—

1038 (e) *Assignment of variations from the standard rate.*—

1039 1. As used in this paragraph, the terms “total benefit
1040 payments,” “benefits paid to an individual,” and “benefits
1041 charged to the employment record of an employer” mean the amount
1042 of benefits paid to individuals multiplied by:

1043 a. For benefits paid before ~~prior to~~ July 1, 2007, 1.

1044 b. For benefits paid during the period beginning on July 1,
1045 2007, and ending March 31, 2011, 0.90.

1046 c. For benefits paid after March 31, 2011, 1.

1047 d. For benefits paid during the period beginning April 1,
1048 2020, and ending December 31, 2020, 0.

1049 e. For benefits paid during the period beginning January 1,
1050 2021, and ending June 30, 2021, 1, except as otherwise adjusted
1051 in accordance with paragraph (f).

1052 2. For the calculation of contribution rates effective
1053 January 1, 2012, and thereafter:

1054 a. The tax collection service provider shall assign a



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1055 variation from the standard rate of contributions for each
1056 calendar year to each eligible employer. In determining the
1057 contribution rate, varying from the standard rate to be assigned
1058 each employer, adjustment factors computed under sub-sub-
1059 subparagraphs (I)-(IV) are added to the benefit ratio. This
1060 addition shall be accomplished in two steps by adding a variable
1061 adjustment factor and a final adjustment factor. The sum of
1062 these adjustment factors computed under sub-sub-subparagraphs
1063 (I)-(IV) shall first be algebraically summed. The sum of these
1064 adjustment factors shall next be divided by a gross benefit
1065 ratio determined as follows: Total benefit payments for the 3-
1066 year period described in subparagraph (b)3. are charged to
1067 employers eligible for a variation from the standard rate, minus
1068 excess payments for the same period, divided by taxable payroll
1069 entering into the computation of individual benefit ratios for
1070 the calendar year for which the contribution rate is being
1071 computed. The ratio of the sum of the adjustment factors
1072 computed under sub-sub-subparagraphs (I)-(IV) to the gross
1073 benefit ratio is multiplied by each individual benefit ratio
1074 that is less than the maximum contribution rate to obtain
1075 variable adjustment factors; except that if the sum of an
1076 employer's individual benefit ratio and variable adjustment
1077 factor exceeds the maximum contribution rate, the variable
1078 adjustment factor is reduced in order for the sum to equal the
1079 maximum contribution rate. The variable adjustment factor for
1080 each of these employers is multiplied by his or her taxable
1081 payroll entering into the computation of his or her benefit
1082 ratio. The sum of these products is divided by the taxable
1083 payroll of the employers who entered into the computation of



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1084 their benefit ratios. The resulting ratio is subtracted from the
1085 sum of the adjustment factors computed under sub-sub-
1086 subparagraphs (I)-(IV) to obtain the final adjustment factor.
1087 The variable adjustment factors and the final adjustment factor
1088 must be computed to five decimal places and rounded to the
1089 fourth decimal place. This final adjustment factor is added to
1090 the variable adjustment factor and benefit ratio of each
1091 employer to obtain each employer's contribution rate. An
1092 employer's contribution rate may not, however, be rounded to
1093 less than 0.1 percent. In determining the contribution rate,
1094 varying from the standard rate to be assigned, the computation
1095 shall exclude any benefit that is excluded by the multipliers
1096 under subparagraph (b)2. and subparagraph 1. for rates effective
1097 January 1, 2021, through December 31, 2025, notwithstanding the
1098 repeal of subparagraph 5. as provided in chapter 2021-2, Laws of
1099 Florida. The computation of the contribution rate, varying from
1100 the standard rate to be assigned, shall also exclude any benefit
1101 paid as a result of a governmental order related to COVID-19 to
1102 close or reduce capacity of a business. In addition, the
1103 contribution rate for the 2021 and 2022 calendar years shall be
1104 calculated without the application of the positive adjustment
1105 factor in sub-sub-subparagraph (III).

1106 (I) An adjustment factor for noncharge benefits is computed
1107 to the fifth decimal place and rounded to the fourth decimal
1108 place by dividing the amount of noncharge benefits during the 3-
1109 year period described in subparagraph (b)3. by the taxable
1110 payroll of employers eligible for a variation from the standard
1111 rate who have a benefit ratio for the current year which is less
1112 than the maximum contribution rate. For purposes of computing



1113 this adjustment factor, the taxable payroll of these employers
1114 is the taxable payrolls for the 3 years ending June 30 of the
1115 current calendar year as reported to the tax collection service
1116 provider by September 30 of the same calendar year. As used in
1117 this sub-sub-subparagraph, the term "noncharge benefits" means
1118 benefits paid to an individual, as adjusted pursuant to
1119 subparagraph (b)2. and subparagraph 1., from the Unemployment
1120 Compensation Trust Fund which were not charged to the employment
1121 record of any employer, but excluding any benefit paid as a
1122 result of a governmental order related to COVID-19 to close or
1123 reduce capacity of a business.

1124 (II) An adjustment factor for excess payments is computed
1125 to the fifth decimal place, and rounded to the fourth decimal
1126 place by dividing the total excess payments during the 3-year
1127 period described in subparagraph (b)3. by the taxable payroll of
1128 employers eligible for a variation from the standard rate who
1129 have a benefit ratio for the current year which is less than the
1130 maximum contribution rate. For purposes of computing this
1131 adjustment factor, the taxable payroll of these employers is the
1132 same figure used to compute the adjustment factor for noncharge
1133 benefits under sub-sub-subparagraph (I). As used in this sub-
1134 subparagraph, the term "excess payments" means the amount of
1135 benefits charged to the employment record of an employer, as
1136 adjusted pursuant to subparagraph (b)2. and subparagraph 1.,
1137 during the 3-year period described in subparagraph (b)3., but
1138 excluding any benefit paid as a result of a governmental order
1139 related to COVID-19 to close or reduce capacity of a business,
1140 less the product of the maximum contribution rate and the
1141 employer's taxable payroll for the 3 years ending June 30 of the



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1142 current calendar year as reported to the tax collection service
1143 provider by September 30 of the same calendar year. As used in
1144 this sub-sub-subparagraph, the term "total excess payments"
1145 means the sum of the individual employer excess payments for
1146 those employers that were eligible for assignment of a
1147 contribution rate different from the standard rate.

1148 (III) With respect to computing a positive adjustment
1149 factor:

1150 (A) Beginning January 1, 2012, if the balance of the
1151 Unemployment Compensation Trust Fund on September 30 of the
1152 calendar year immediately preceding the calendar year for which
1153 the contribution rate is being computed is less than 4 percent
1154 of the taxable payrolls for the year ending June 30 as reported
1155 to the tax collection service provider by September 30 of that
1156 calendar year, a positive adjustment factor shall be computed.
1157 The positive adjustment factor is computed annually to the fifth
1158 decimal place and rounded to the fourth decimal place by
1159 dividing the sum of the total taxable payrolls for the year
1160 ending June 30 of the current calendar year as reported to the
1161 tax collection service provider by September 30 of that calendar
1162 year into a sum equal to one-fifth of the difference between the
1163 balance of the fund as of September 30 of that calendar year and
1164 the sum of 5 percent of the total taxable payrolls for that
1165 year. The positive adjustment factor remains in effect for
1166 subsequent years until the balance of the Unemployment
1167 Compensation Trust Fund as of September 30 of the year
1168 immediately preceding the effective date of the contribution
1169 rate equals or exceeds 4 percent of the taxable payrolls for the
1170 year ending June 30 of the current calendar year as reported to



1171 the tax collection service provider by September 30 of that
1172 calendar year.

1173 (B) Beginning January 1, 2018, and for each year
1174 thereafter, the positive adjustment shall be computed by
1175 dividing the sum of the total taxable payrolls for the year
1176 ending June 30 of the current calendar year as reported to the
1177 tax collection service provider by September 30 of that calendar
1178 year into a sum equal to one-fourth of the difference between
1179 the balance of the fund as of September 30 of that calendar year
1180 and the sum of 5 percent of the total taxable payrolls for that
1181 year. The positive adjustment factor remains in effect for
1182 subsequent years until the balance of the Unemployment
1183 Compensation Trust Fund as of September 30 of the year
1184 immediately preceding the effective date of the contribution
1185 rate equals or exceeds 4 percent of the taxable payrolls for the
1186 year ending June 30 of the current calendar year as reported to
1187 the tax collection service provider by September 30 of that
1188 calendar year.

1189 (IV) If, beginning January 1, 2015, and each year
1190 thereafter, the balance of the Unemployment Compensation Trust
1191 Fund as of September 30 of the year immediately preceding the
1192 calendar year for which the contribution rate is being computed
1193 exceeds 5 percent of the taxable payrolls for the year ending
1194 June 30 of the current calendar year as reported to the tax
1195 collection service provider by September 30 of that calendar
1196 year, a negative adjustment factor must be computed. The
1197 negative adjustment factor shall be computed annually beginning
1198 on January 1, 2015, and each year thereafter, to the fifth
1199 decimal place and rounded to the fourth decimal place by



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1200 dividing the sum of the total taxable payrolls for the year
1201 ending June 30 of the current calendar year as reported to the
1202 tax collection service provider by September 30 of the calendar
1203 year into a sum equal to one-fourth of the difference between
1204 the balance of the fund as of September 30 of the current
1205 calendar year and 5 percent of the total taxable payrolls of
1206 that year. The negative adjustment factor remains in effect for
1207 subsequent years until the balance of the Unemployment
1208 Compensation Trust Fund as of September 30 of the year
1209 immediately preceding the effective date of the contribution
1210 rate is less than 5 percent, but more than 4 percent of the
1211 taxable payrolls for the year ending June 30 of the current
1212 calendar year as reported to the tax collection service provider
1213 by September 30 of that calendar year. The negative adjustment
1214 authorized by this section is suspended in any calendar year in
1215 which repayment of the principal amount of an advance received
1216 from the federal Unemployment Compensation Trust Fund under 42
1217 U.S.C. s. 1321 is due to the Federal Government.

1218 (V) The maximum contribution rate that may be assigned to
1219 an employer is 5.4 percent, except employers participating in an
1220 approved short-time compensation plan may be assigned a maximum
1221 contribution rate that is 1 percent greater than the maximum
1222 contribution rate for other employers in any calendar year in
1223 which short-time compensation benefits are charged to the
1224 employer's employment record.

1225 (VI) As used in this subsection, "taxable payroll" shall be
1226 determined by excluding any part of the remuneration paid to an
1227 individual by an employer for employment during a calendar year
1228 in excess of the first \$7,000. Beginning January 1, 2012,



1229 "taxable payroll" shall be determined by excluding any part of
1230 the remuneration paid to an individual by an employer for
1231 employment during a calendar year as described in s.
1232 443.1217(2). For the purposes of the employer rate calculation
1233 that will take effect in January 1, 2012, and in January 1,
1234 2013, the tax collection service provider shall use the data
1235 available for taxable payroll from 2009 based on excluding any
1236 part of the remuneration paid to an individual by an employer
1237 for employment during a calendar year in excess of the first
1238 \$7,000, and from 2010 and 2011, the data available for taxable
1239 payroll based on excluding any part of the remuneration paid to
1240 an individual by an employer for employment during a calendar
1241 year in excess of the first \$8,500.

1242 b. If the transfer of an employer's employment record to an
1243 employing unit under paragraph (g) which, before the transfer,
1244 was an employer, the tax collection service provider shall
1245 recompute a benefit ratio for the successor employer based on
1246 the combined employment records and reassign an appropriate
1247 contribution rate to the successor employer effective on the
1248 first day of the calendar quarter immediately after the
1249 effective date of the transfer.

1250 3. The tax collection service provider shall reissue rates
1251 for the 2021 calendar year. However, an employer shall continue
1252 to timely file its employer's quarterly reports and pay the
1253 contributions due in a timely manner in accordance with the
1254 rules of the Department of Economic Opportunity. The Department
1255 of Revenue shall post the revised rates on its website to enable
1256 employers to securely review the revised rates. For
1257 contributions for the first quarter of the 2021 calendar year,



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1258 if any employer remits to the tax collection service provider an
1259 amount in excess of the amount that would be due as calculated
1260 pursuant to this paragraph, the tax collection service provider
1261 shall refund the excess amount from the amount erroneously
1262 collected. Notwithstanding s. 443.141(6), refunds issued through
1263 August 31, 2021, for first quarter 2021 contributions must be
1264 paid from the General Revenue Fund.

1265 4. The tax collection service provider shall calculate and
1266 assign contribution rates effective January 1, 2022, through
1267 December 31, 2022, excluding any benefit charge that is excluded
1268 by the multipliers under subparagraph (b)2. and subparagraph 1.;
1269 without the application of the positive adjustment factor in
1270 sub-sub-subparagraph 2.a.(III); and without the inclusion of any
1271 benefit charge directly related to COVID-19 as a result of a
1272 governmental order to close or reduce capacity of a business, as
1273 determined by the Department of Economic Opportunity, for each
1274 employer ~~who is~~ eligible for a variation from the standard rate
1275 pursuant to paragraph (d). The Department of Economic
1276 Opportunity shall provide the tax collection service provider
1277 with all necessary benefit charge information by August 1, 2021,
1278 including specific information for adjustments related to COVID-
1279 19 charges resulting from a governmental order to close or
1280 reduce capacity of a business, to enable the tax collection
1281 service provider to calculate and issue tax rates effective
1282 January 1, 2022. The tax collection service provider shall
1283 calculate and post rates for the 2022 calendar year by March 1,
1284 2022.

1285 5. Subject to subparagraph 6., the tax collection service
1286 provider shall calculate and assign contribution rates effective



1287 January 1, 2023, through December 31, 2025, excluding any
1288 benefit charge that is excluded by the multipliers under
1289 subparagraph (b)2. and subparagraph 1.; without the application
1290 of the positive adjustment factor in sub-sub-subparagraph
1291 2.a.(III); and without the inclusion of any benefit charge
1292 directly related to COVID-19 as a result of a governmental order
1293 to close or reduce capacity of a business, as determined by the
1294 Department of Economic Opportunity, for each employer ~~who is~~
1295 eligible for a variation from the standard rate pursuant to
1296 paragraph (d). The Department of Economic Opportunity shall
1297 provide the tax collection service provider with all necessary
1298 benefit charge information by August 1 of each year, including
1299 specific information for adjustments related to COVID-19 charges
1300 resulting from a governmental order to close or reduce capacity
1301 of a business, to enable the tax collection service provider to
1302 calculate and issue tax rates effective the following January.

1303 6. If the balance of the Unemployment Compensation Trust
1304 Fund on June 30 of any year exceeds \$4,071,519,600, subparagraph
1305 5. is repealed for rates effective the following years. The
1306 Office of Economic and Demographic Research shall advise the tax
1307 collection service provider of the balance of the trust fund on
1308 June 30 by August 1 of that year. After the repeal of
1309 subparagraph 5. and notwithstanding the dates specified in that
1310 subparagraph, the tax collection service provider shall
1311 calculate and assign contribution rates for each subsequent
1312 calendar year as otherwise provided in this section.

1313 Section 21. Paragraph (a) of subsection (9) of section
1314 443.171, Florida Statutes, is amended to read:

1315 443.171 Department of Economic Opportunity and commission;



1316 powers and duties; records and reports; proceedings; state-
1317 federal cooperation.—

1318 (9) STATE-FEDERAL COOPERATION.—

1319 (a)1. In the administration of this chapter, the Department
1320 of Economic Opportunity and its tax collection service provider
1321 shall cooperate with the United States Department of Labor to
1322 the fullest extent consistent with this chapter and shall take
1323 those actions, through the adoption of appropriate rules,
1324 administrative methods, and standards, necessary to secure for
1325 this state all advantages available under the provisions of
1326 federal law relating to reemployment assistance.

1327 2. In the administration of the provisions in s. 443.1115,
1328 which are enacted to conform with the Federal-State Extended
1329 Unemployment Compensation Act of 1970, the department shall take
1330 those actions necessary to ensure that those provisions are
1331 interpreted and applied to meet the requirements of the federal
1332 act as interpreted by the United States Department of Labor and
1333 to secure for this state the full reimbursement of the federal
1334 share of extended benefits paid under this chapter which is
1335 reimbursable under the federal act.

1336 3. The department and its tax collection service provider
1337 shall comply with the regulations of the United States
1338 Department of Labor relating to the receipt or expenditure by
1339 this state of funds granted under federal law; shall submit the
1340 reports in the form and containing the information the United
1341 States Department of Labor requires; and shall comply with
1342 directions of the United States Department of Labor necessary to
1343 assure the correctness and verification of these reports.

1344 4. The department and its tax collection service provider



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1345 shall comply with the requirements of the federal Treasury
1346 Offset Program as it pertains to the recovery of unemployment
1347 compensation debts as required by the United States Department
1348 of Labor pursuant to 26 U.S.C. s. 6402. The department or the
1349 tax collection service provider may adopt rules to implement
1350 this subparagraph.

1351 Section 22. This act shall take effect July 1, 2022.

1352

1353 ===== T I T L E A M E N D M E N T =====

1354 And the title is amended as follows:

1355 Delete everything before the enacting clause

1356 and insert:

1357

A bill to be entitled

1358 An act relating to tax administration; amending s.
1359 72.011, F.S.; prohibiting taxpayers from submitting
1360 certain records in tax proceedings under certain
1361 circumstances; amending s. 120.80, F.S.; prohibiting
1362 taxpayers from submitting certain records in tax
1363 proceedings under certain circumstances; amending s.
1364 202.34, F.S.; authorizing the Department of Revenue to
1365 respond to contact initiated by taxpayers to discuss
1366 audits; authorizing taxpayers to provide records and
1367 other information to the department; authorizing the
1368 department to examine documentation and other
1369 information; providing construction; requiring
1370 taxpayers to object to premature audits within a
1371 certain timeframe; providing that a tolling period is
1372 considered lifted under certain circumstances;
1373 authorizing the department to adopt rules; amending



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1374 ss. 202.36, 206.14, 211.125, 212.14, and 220.735,
1375 F.S.; creating rebuttable presumptions regarding
1376 proposed final agency action by the department;
1377 authorizing the department to make assessments and
1378 determine taxes using specified methods under certain
1379 circumstances; requiring the department to inform the
1380 taxpayer of certain information; providing
1381 construction; amending s. 206.9931, F.S.; deleting
1382 obsolete language; amending s. 212.05, F.S.;
1383 clarifying conditions for application of an exemption
1384 for sales taxes for certain nonresident purchasers of
1385 boats or aircraft; revising requirements for an
1386 affidavit; amending s. 212.13, F.S.; defining the
1387 terms "dealer," "division," and "transferor";
1388 requiring dealers to maintain specified records;
1389 authorizing the department to issue written requests
1390 for such records under certain circumstances;
1391 authorizing the department to suspend resale
1392 certificates issued to dealers under certain
1393 circumstances; specifying procedures for suspension of
1394 resale certificates; providing construction; requiring
1395 the department to notify the Division of Alcoholic
1396 Beverages and Tobacco of the Department of Business
1397 and Professional Regulation and dealers upon dealers'
1398 failure to comply with department requests for
1399 records; requiring the department to publish certain
1400 information regarding dealers with suspended resale
1401 certificates; authorizing transferors to discontinue
1402 accepting orders from dealers with suspended resale



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1403 certificates within a specified timeframe; providing
1404 construction; authorizing the department to adopt
1405 rules; authorizing the department to respond to
1406 contact initiated by taxpayers to discuss audits;
1407 authorizing taxpayers to provide records and other
1408 information; authorizing the department to examine
1409 documentation and other information; providing
1410 construction; requiring taxpayers to object in writing
1411 to premature audits within a certain timeframe;
1412 providing that a tolling period is considered lifted
1413 under certain circumstances; authorizing the
1414 department to adopt rules; amending s. 213.051, F.S.;
1415 authorizing the department to serve subpoenas on
1416 businesses registered with the department; providing
1417 construction; amending s. 215.053, F.S.; authorizing
1418 the department to publish certain information
1419 regarding dealers with suspended resale certificates;
1420 requiring the department to update such information;
1421 authorizing the department to adopt rules; amending s.
1422 213.06, F.S.; revising the period in which, and
1423 conditions under which, the executive director of the
1424 department may adopt emergency rules; providing for an
1425 exemption from the Administrative Procedure Act for
1426 any such emergency rules; specifying conditions
1427 regarding the effectiveness and the renewal of
1428 emergency rules; providing construction; amending s.
1429 213.21, F.S.; providing for tolling of the statute of
1430 limitations upon the issuance of assessments, rather
1431 than final assessments; authorizing a taxpayer's



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1432 liability to be settled or compromised under certain
1433 circumstances; creating a rebuttable presumption;
1434 conforming a provision to changes made by the act;
1435 specifying the conditions for the department to
1436 consider requests to settle or compromise any tax,
1437 interest, penalty, or other liability; providing
1438 construction; amending s. 213.34, F.S.; revising audit
1439 procedures of the department; authorizing the
1440 department to adopt rules; requiring the department to
1441 refund any overpayments; amending s. 213.345, F.S.;
1442 specifying conditions under which a period is tolled
1443 during an audit; providing construction; amending s.
1444 213.67, F.S.; authorizing the executive director of
1445 the department or his or her designee to include
1446 additional daily accrued interest, costs, and fees in
1447 a garnishment levy notice; revising methods for
1448 delivery of levy notices; amending s. 220.42, F.S.;
1449 deleting obsolete language; amending s. 443.131, F.S.;
1450 excluding certain benefit charges from the employer
1451 reemployment assistance contribution rate calculation;
1452 amending s. 443.171, F.S.; requiring the department
1453 and its tax collection service provider to comply with
1454 requirements of the federal Treasury Offset Program;
1455 authorizing the department or the tax collection
1456 service provider to adopt rules; providing an
1457 effective date.