

1 A bill to be entitled  
2 An act relating to the federal taxation; creating s.  
3 17.45, F.S.; providing definitions; authorizing the  
4 Chief Financial Officer to reimburse an owner of a  
5 small business attorney fees and costs from the  
6 Internal Revenue Service Civil Liability Trust Fund  
7 under certain conditions; requiring the Department of  
8 Financial Services to certify certain information  
9 before such reimbursement; providing that the identity  
10 of a small business is not affected by certain  
11 changes; requiring the department to adopt rules;  
12 creating s. 72.042, F.S.; providing for an action in  
13 circuit court for an award of attorney fees and costs,  
14 actual damages, and punitive damages when the Internal  
15 Revenue Service is found to have committed certain  
16 violations; requiring an action brought in circuit  
17 court to be filed within a specified period; amending  
18 s. 212.134, F.S.; providing definitions; providing  
19 that a payment settlement entity is only required to  
20 issue a return to certain participating payees;  
21 requiring a payment settlement entity to create and  
22 maintain certain records; amending s. 655.045, F.S.;  
23 requiring a report submitted by a financial  
24 institution to the Financial Services Commission to  
25 include certain information received from the Internal

26 Revenue Service; requiring the Office of Financial  
 27 Regulation to submit an annual report to the  
 28 commission and Legislature by a specified date;  
 29 providing an effective date.

30  
 31 Be It Enacted by the Legislature of the State of Florida:

32  
 33 Section 1. Section 17.45, Florida Statutes, is created to  
 34 read:

35 17.45 Reimbursement for retaliatory taxation proceedings.-

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

37 (a) "Domiciled in this state" means authorized to do  
 38 business in this state and located in this state.

39 (b) "Retaliatory" means any proceeding initiated in part  
 40 to discriminate against or target a taxpayer on the basis of his  
 41 or her political affiliation, ideology, or beliefs, as  
 42 determined by the department.

43 (c) "Small business" means any business entity, regardless  
 44 of corporate structure, that is domiciled in this state, that  
 45 employs 50 or fewer employees, and that generated an average  
 46 annual gross revenue of \$4 million or less per year for the  
 47 preceding 2 years.

48 (d) "Trust fund" means The Internal Revenue Service Civil  
 49 Liability Trust Fund created under s. 17.44.

50 (2) Any owner of a small business against which the

51 Internal Revenue Service initiates proceedings in the United  
52 States Tax Court may submit an application to the department for  
53 reimbursement of reasonable attorney fees and costs necessarily  
54 incurred in the proceedings, provided that all of the following  
55 criteria have been satisfied:

56 (a) The small business owner is the prevailing party in a  
57 proceeding before the United States Tax Court.

58 (b) The attorney representing the small business owner  
59 before the United States Tax Court certifies, in writing, that  
60 there is a good faith belief that the proceedings were  
61 retaliatory.

62 (c) The application is accompanied by a copy of the  
63 attorney's retainer agreement and fee or billing statements for  
64 the entire period of representation in the proceedings before  
65 the United States Tax Court.

66 (d) The application and accompanying documentation is  
67 submitted to the department within 90 days after receipt of a  
68 final order or other pleading concluding the proceedings before  
69 the United States Tax Court.

70 (e) The small business owner has not been previously  
71 awarded attorney fees or costs related to the proceedings before  
72 the United States Tax Court.

73 (3) If the criteria in subsection (2) are met, the  
74 department shall certify the amount of the reimbursement and the  
75 name of the applicant to the Chief Financial Officer, who shall

76 reimburse the applicant from the trust fund.

77 (4) For purposes of this section, the identity of a small  
 78 business is not affected by a change in name or by a change in  
 79 personnel.

80 (5) The department shall adopt rules to implement this  
 81 section.

82 Section 2. Section 72.042, Florida Statutes, is created to  
 83 read:

84 72.042 Tax liabilities arising under federal law;  
 85 jurisdiction of circuit courts.-

86 (1) If, in connection with the collection of federal taxes  
 87 concerning a taxpayer domiciled in this state, an action is  
 88 brought in a federal district court of competent jurisdiction  
 89 against any officer or employee of the Internal Revenue Service,  
 90 or any independent contractor employed by the Internal Revenue  
 91 Service, for a violation of:

92 (a) Title VI of the Civil Rights Act of 1964;

93 (b) Title VII of the Civil Rights Act of 1964;

94 (c) Title 26 of the Internal Revenue Code of 1986, as  
 95 amended;

96 (d) The First Amendment to the United States Constitution;

97 (e) The Fourth Amendment to the United States

98 Constitution; or

99 (f) The Fifth Amendment to the United States Constitution,

100

101 the taxpayer may bring an action in circuit court pursuant to  
102 subsection (2) or subsection (3).

103 (2) In any action brought in a federal district court of  
104 competent jurisdiction pursuant to paragraph (1) (a), paragraph  
105 (1) (b), or paragraph (1) (c), upon a finding by the federal  
106 district court that a violation has occurred, the circuit court  
107 may award:

108 (a) Actual damages sustained by the taxpayer, which, but  
109 for the actions of the Internal Revenue Service, would not have  
110 been sustained.

111 (b) Attorney fees and costs.

112 (3) In any action brought in a federal district court of  
113 competent jurisdiction pursuant to paragraph (1) (d), paragraph  
114 (1) (e), or paragraph (1) (f), upon a finding by the federal  
115 district court that a violation has occurred, the circuit court  
116 may award:

117 (a) Actual damages sustained by the taxpayer, which, but  
118 for the actions of the Internal Revenue Service, would not have  
119 been sustained.

120 (b) Punitive damages, provided that the provisions of s.  
121 768.72 are met.

122 (c) Attorney fees and costs.

123 (4) Notwithstanding any other provision of law, an action  
124 filed in circuit court pursuant to this section must be filed  
125 within 2 years after the date the cause of action accrues.

126 Section 3. Subsections (1) through (4) of section 212.134,  
127 Florida Statutes, are renumbered as subsections (2) through (5),  
128 respectively, present subsections (1) and (2) are amended, and  
129 new subsections (1) and (6) are added to that section, to read:

130 212.134 Information returns relating to payment-card and  
131 third-party network transactions.—

132 (1) For purposes of this section, the term:

133 (a) "Participating payee" has the same meaning as in s.  
134 6050W of the Internal Revenue Code.

135 (b) "Payment settlement entity" has the same meaning as in  
136 s. 6050W of the Internal Revenue Code.

137 (c) "Return" or "information return" means IRS Form 1099-K  
138 required under s. 6050W of the Internal Revenue Code.

139 (d) "Third-party network transactions" has the same  
140 meaning as in s. 6050W of the Internal Revenue Code.

141 (2)~~(1)~~ For each year in which a payment settlement entity,  
142 an electronic payment facilitator, or other third party  
143 contracted with the payment settlement entity to make payments  
144 to settle reportable payment transactions on behalf of the  
145 payment settlement entity must file a return pursuant to s.  
146 6050W of the Internal Revenue Code, the entity, the facilitator,  
147 or the third party must submit the information in the return to  
148 the department by the 30th day after filing the ~~federal~~ return.  
149 The format of the information returns required must be either a  
150 copy of such information returns or a copy of such information

151 returns related to participating payees with an address in the  
152 state. For purposes of complying with s. 6050W of the Internal  
153 Revenue Code, a payment settlement entity is only required to  
154 issue a return to those participating payees with an address in  
155 the state whose aggregate transactions for goods and services  
156 exceed \$600. For purposes of this subsection, the term "payment  
157 settlement entity" has the same meaning as provided in s. 6050W  
158 of the Internal Revenue Code.

159 (3)-(2) All returns ~~reports~~ submitted to the department  
160 under this section must be in an electronic format.

161 (6) A payment settlement entity participating in a third-  
162 party network transaction involving a participating payee with  
163 an address in the state must create and maintain records that  
164 clearly identify whether a transaction is a transaction for  
165 goods or services, or both, if applicable.

166 Section 4. Subsections (3) and (4) of section 655.045,  
167 Florida Statutes, are renumbered as subsections (4) and (5),  
168 respectively, subsection (2) is amended, and a new subsection  
169 (3) is added to that section, to read:

170 655.045 Examinations, reports, and internal audits;  
171 penalty.—

172 (2)(a) Each state financial institution, subsidiary, or  
173 service corporation shall submit a report, at least four times  
174 each calendar year, as of such dates as the commission or office  
175 determines. The report must include:

176        1. The number of inquiries, requests, summons, subpoenas,  
 177 or other requests for information or records received from the  
 178 Internal Revenue Service concerning any account holder domiciled  
 179 in this state.

180        2. Such other information as the commission by rule  
 181 requires for that type of institution.

182        ~~(b)(a)~~ The office shall levy an administrative fine of up  
 183 to \$100 per day for each day the report is past due, unless it  
 184 is excused for good cause.

185        ~~(c)(b)~~ For an intentional late filing of the report, the  
 186 office shall levy an administrative fine of up to \$1,000 per day  
 187 for each day the report is past due.

188        (3) By January 30 of each year, the office shall submit a  
 189 report that contains the information from the quarterly reports  
 190 required under subsection (2) to the commission, the President  
 191 of the Senate, and the Speaker of the House of Representatives.

192        Section 5. This act shall take effect on the same date  
 193 that HB 509 or similar legislation takes effect, if such  
 194 legislation is adopted in the same legislative session or an  
 195 extension thereof and becomes a law.