SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 172

SPONSOR: Fiscal Resource

SUBJECT: Taxation

DATE: March 11, 1999 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Wood	FR	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

This committee substitute specifies certain rights and safeguards afforded to taxpayers in the administration of the revenue laws of the state. It reduces the time period during which the Department of Revenue may assess a tax, penalty, or interest; reduces the time period during which a taxpayer may apply for a refund after a tax is paid; extends the period in which the tangible personal property tax return must be filed: delays the date for paying estimated taxes and increases the threshold above which estimated taxes must be paid; provides for the payment of interest at a market rate on late refunds; provides for the payment of interest at a market rate on delinquent taxes. It also provides for annual renewal of resale certificates by which businesses make tax-exempt purchases of items for resale.

This committee substitute substantially amends the following sections the Florida Statutes: 95.091, 193.063, 212.07, 212.11, 212.12, 212.18, 213.053, and 215.26. It creates the following sections of the Florida Statutes: 213.235 and 213.255.

II. Present Situation:

Statute of Limitations

There is a five-year statute of limitations on the assessment of taxes by the department, with limited exceptions (s. 95.091(3), F.S.). If the taxpayer makes a substantial underpayment or files a substantially incorrect return, the limit is six years, and there is no limit if a taxpayer files a grossly false or fraudulent return. If the department has issued notice of intent to conduct an audit, the limit is tolled for two years. The limit is also tolled during any administrative or judicial proceeding for review of the tax assessment (*id.* and s. 95.091(4), F.S.).

Tangible Personal Property Tax Returns

Section 193.063, F.S., provides for a 45 day extension for filing tangible personal property tax returns, at the discretion of the property appraiser.

Resale Certificates

Pursuant to s. 212.07, Florida Statutes, any individual or business with a sales tax number can purchase items without paying state sales tax simply by claiming “sale for resale” status. Under the current system, neither the Department of Revenue (DOR) or the seller has any way of knowing whether purchases are really for resale. Also, once an individual or business has the exemption, there are no renewal provisions in the law. With the current system, neither the DOR or the seller has any way of knowing whether purchases are fraudulent. A committee created by the 1996 Legislature in SB 248, studied the problems related to the current sale for resale provisions and made recommendations.

Estimated Tax

Section 212.11, F.S., provides for filing and payment of sales and use tax returns. Paragraph (b) of subsection (1) prescribes a payment date of the 20th of the, or the next business day thereafter. Subsection (4) provides that any taxpayer who paid more than $100,000 in tax in the preceding year is required to make estimated tax payments for the current month.

Taxpayer Refunds

Section 215.26, F.S., authorizes the Comptroller to refund moneys paid into the State Treasury that represent an overpayment of any tax, a payment where no tax was due, or a payment made in error. An application for a refund of tax that was paid after September 30, 1994, generally must be filed with the Comptroller within five years after the tax is paid. For a payment made on or before this date, the applicable limitation is three years after the right to a refund has accrued (s. 215.26(2), F.S.). Section 213.34(3), F.S., provides that the department may correct by credit or refund an overpayment revealed by an audit.

Interest on Tax Delinquencies & Refunds

For most taxes, the interest rate charged on delinquencies is a fixed rate. For example, under the intangible personal property tax and the documentary stamp tax statutes, the interest rate on unpaid taxes is 12 percent per year and runs from the due date until paid (ss. 199.282(2) and 201.17(2), F.S.). The corporate income tax code provides for an adjusted interest rate on unpaid taxes, with such rate established by the department’s executive director based upon monitoring of the adjusted prime rate charged by banks (ss. 220.807(2) and 220.809(1), F.S.).

Except in the case of corporate income taxes, there are currently no statutory provisions requiring the state to pay interest on refunds of tax overpayments, tax payments that were not due, or tax payments made in error. The corporate income tax code provides for the payment of interest on any overpayment of tax -- if the overpayment is not refunded or credited within three months after the taxpayer notifies the department in writing of the overpayment (s. 220.723(1), F.S.). As with deficiencies, the annual rate of such interest is an adjusted rate tied to the adjusted prime rate charged by banks (s. 220.807(2), F.S.).

III. Effect of Proposed Changes:

This committee substitute prescribes certain new rights and standards to be afforded to taxpayers by the Department of Revenue in the administration of the revenue laws of the state. Among the rights and standards are: the payment of a market rate of interest on certain tax delinquencies; entitlement to interest at a market rate on certain tax refunds; a reduced period of time open for assessment of taxes; and a reduced period of time in which to claim a tax refund. It also provides for annual renewal of resale certificates by which businesses make tax-exempt purchases of items for resale.

Following is a section-by-section analysis of the bill:

Section 1 amends s. 95.091, F.S., relating to statutes of limitation on actions to collect taxes, to provide that for taxes due on or after July 1, 1999, there shall be a three-year statute of limitations on the ability of the Department of Revenue to assess an amount of taxes, penalty, or interest due, with limited exceptions.

- The department could make such an assessment at any time after the taxpayer failed to make any required payment of the tax, failed to file a required return, or filed a fraudulent return. If, however, the taxpayer has disclosed the tax liability in writing to the department before the department gives the taxpayer notice of the liability, then the three-year period would apply.

- The department could make such an assessment at any time after making a refund of tax if it appears that any part of the refund was induced by fraud or misrepresentation, otherwise the statute of limitations on refunds made in error is five years for taxes due before July 1, 1998, and three years for taxes due on or after July 1, 1999.

The current statutory exceptions to the general five-year statute of limitations shall continue to apply to taxes due before July 1, 1999.

The amendment also revises the conditions under which the limitations period shall be tolled. The measure specifies that the current statutory authority to toll the limitations period when the department issues a notice of intent to audit shall apply solely to taxes due before July 1, 1999, after which the tolling period shall be one year. In addition, the amendment specifies that the tolling of the limitations period during an administrative or judicial proceeding for review of the tax assessment shall apply solely when such review is initiated by a taxpayer. When the limitations period is tolled during such a review proceeding, no additional interest or penalty may be imposed for the tax liability after the expiration of the time limitation prescribed in the statute, except for the period during which the liability is the subject of a proceeding under ch. 72, F.S.

Section 2 amends s. 193.063, Florida Statutes, to require the property appraiser to grant a 30 day extension for filing tangible personal property tax returns, and allows the property appraiser to grant an additional 15 day extension.

Sections 3 and 4 amends ss. 212.07 and 212.18, Florida Statutes, providing for annual issuance of resale certificates to active accounts. Specifically, the bill provides the following:
- A dealer who makes a sale for resale must document the exempt status of the transaction by either retaining a copy of the purchaser's resale certificate or by documenting, before the sale, an authorization number provided by the DOR electronically or by telephone, or by other means established by the DOR by rule.
- Annually, the DOR will provide each active dealer with a new resale certificate, valid for twelve months. New dealers will receive a certificate upon registration.
- "Active dealer" is defined to mean a person who is currently registered with the DOR and who complies with the requirement to file at least once during each applicable reporting period.

Section 5 amends s. 212.11, Florida Statutes, to delay the date by which estimated taxes must be filed and paid to the 28th day of the month. The threshold for being required to pay estimated taxes is raised to $200,000 taxes paid in the previous year.

Section 6 amends s. 213.053, Florida Statutes, authorizing the DOR to verify whether a specific resale certificate number is canceled, inactive, or invalid.

Section 7 creates s. 213.235, F.S., providing for the payment of an adjusted rate of interest on tax deficiencies that arise on or after July 1, 1999. The amendment specifies, however, that if a lower rate of interest for the tax is specifically provided for in law, the lower rate shall apply. The adjusted rate of interest is based upon the adjusted prime rate charged by banks. The adjusted rate of interest is applicable to taxes enumerated in s. 213.05, F.S.

Section 8 creates s. 213.255, F.S., providing for the payment of interest on overpayments of taxes, payment of taxes not due, or taxes paid in error. The amendment specifies that this provision applies to eligible refunds based on tax payments made on or after July 1, 1999. The interest rate is the adjusted rate established under s. 213.235, F.S. (See **Section 5** above.)

Under the measure, interest does not commence until 90 days after a completed application is filed with the department and the amount of overpayment has not been refunded or applied as a credit. In the event of a court-ordered refund based upon the unconstitutionality of a tax, interest shall not commence until 90 days after the adjudication becomes final and unappealable or 90 days after a complete application is filed, whichever is later. If the department has reasonable cause to believe that it could not recover a refund paid in error from the person claiming the refund, no interest shall be required unless the person files a cash bond or a surety bond or makes other security arrangements.

Section 9 amends s. 215.26, F.S., relating to the statute of limitations on applications for tax refunds, to specify that an application for a refund of taxes that were paid on or after July 1, 1999, must be filed within three years after the date the tax is paid. The current five-year period for such refund applications would apply to taxes paid after September 30, 1994, but before July 1, 1999.

Section 10 provides that the DOR will establish a toll-free number for validation of valid registration numbers and resale certificates.

Section 10 provides that the DOR will offer validation of electronic listings of vendor resale and exemption certificate numbers.

Section 11 requires the DOR to expand its dealer education programs on proper usage of resale certificates.

Section 12 appropriates from the General Revenue Fund to the DOR in fiscal year 1999-00 $211,065 and one and one-half FTE positions to be used in implementing the changes to the resale certificate and $23,455 to be used for OCO.

Section 13 provides an effective date of July 1, 1999 except for changes to the resale certificate program and estimated taxes, which shall go into effect January 1, 2000.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill falls under subsection (b) of section 18 of Article VII, Florida Constitution. Subsection (b) requires a two-thirds vote of the membership of each house in order to enact a general law reducing the authority that municipalities and counties had on February 1, 1989, to raise revenues in the aggregate. By reducing the interest charged on delinquent taxes, reducing the statute of limitations for collecting delinquent taxes, and raising the threshold for payment of estimated taxes it reduces the authority of counties and municipalities to raise revenue in aggregate below the level that existed on February 1, 1989.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Revenue impacts of this amendment in fiscal year 1999-00 are estimated to be:

	General Revenue		Trust		Local		Total	
Issue/Fund	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring	1st Year	Recurring
Interest on Delinquent Taxes at Prime Rate	($11.4)	($10.9)	($0.6)	($0.6)	($2.8)	($2.6)	($14.8)	($14.1)
Refund Interest	($2.0)	($3.0)	($1.0)	($1.5)	($0.4)	($0.5)	($3.4)	($5.0)
Statute of Limitations, Tolling Reduced	0.0	($48.6)	0.0	($2.0)	0.0	($9.4)	0.0	($60.0)
Annual Renewal of Resale Certificates	0.0	$19.2	0.0	*	0.0	$3.0	0.0	$22.2
Estimated payments delay and threshold increase	($43.4)	($15.9)	($0.1)	(*)	($5.9)	($0.2)	($49.4)	($16.1)
Total	($56.8)	($59.2)	($1.7)	($4.1)	($9.1)	($9.7)	($67.6)	($73.0)

* Insignificant
** Indeterminate

B. Private Sector Impact:

The committee substitute codifies a variety of new rights and standards that will affect Florida taxpayers, including:

- the payment of a market rate, rather than fixed rate, of interest on tax delinquencies; entitlement to interest at a market rate on certain tax refunds;
- a reduced period of time open for assessment of tax, penalty, or interest in the case of taxes due on or after July 1, 1999
- a reduced period of time open for seeking a tax refund, from five years to three years, in the case of taxes paid on or after July 1, 1999. It also provides that resale certificates must be renewed annually, which will prevent some misuse of these certificates
- an automatic extension of time for filing tangible personal property tax returns
- a delay in the due date for estimated taxed from the 20th to the 28th day of the month
- an increase in the threshold above which extimated taxes must be paid, reducing the number of estimated tax filers from 12,000 to about 6,000.

C. Government Sector Impact:

The Department of Revenue has anticipated the need for additional resources as a result of this measure, with such resources dedicated principally to addressing the proposed committee substitute's provision that refunds must be paid within 90 days or must include interest and the provision reducing the statute of limitations for audits to three years from five years. The proposal provides additional resources for annual renewal of resale certificates.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.