

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Community Affairs Committee

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BILL: SB 2044

INTRODUCER: Budget Subcommittee on Finance and Tax

SUBJECT: Tax Administration

DATE: March 22, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	<b>Pre-meeting</b>
2.			BC	
3.				
4.				
5.				
6.				

**I. Summary:**

This bill clarifies the tax treatment of tax liabilities when a business or its inventory are sold and repeals obsolete sections relating to the sale of a business. It clearly establishes the department's authority to require security for certain individuals seeking to register new businesses, imposes a reporting requirement on wholesalers and distributors of alcoholic beverages and tobacco products, allows department staff to verify the identity of business owners by using driver's license photos, provides an incentive for businesses to comply with requests for records for audit purposes, and authorizes payroll service providers to file a memorandum of understanding with the department if they provide service for at least 100 employees, instead of 500, as required under current law.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 202.31, 212.10, 212.12, 212.131, 212.14, 213.053, 213.758, 322.142, and 443.131.

**II. Present Situation:**

The Department of Revenue (department) is charged with ensuring that the taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

(See section-by-section analysis below.)

### III. Effect of Proposed Changes:

**Section 1** repeals ss. 202.31 and 212.10, F.S., relating to liability for taxes following the sale of a business. These sections are no longer needed since s. 213.758, F.S., was created in ch. 2010-166, Laws of Florida.

#### **Section 2**

Present situation: Section 212.12(2)(d)1, F.S., contains redundant and potentially confusing language concerning the criminal penalty for failing to collect sales and use tax.

Proposed change: This bill deletes the redundant and confusing language and clarifies that a person who willfully fails to register after receiving notice commits a felony in the third degree. No new penalties are created in the bill. This section takes effect upon the act becoming a law.

#### **Section 3**

Present situation: The Department of Revenue has recognized that there are recurring tax law compliance problems in retail businesses with substantial alcohol and tobacco sales. The department periodically requests third-party information from wholesalers that sell these products to retail businesses in an effort to improve compliance, and some wholesalers and distributors provide the information voluntarily. Others, however, require the department to resort to expensive and cumbersome legal processes to obtain the information.

Proposed change: The bill creates s. 212.131, F.S., which requires alcohol and tobacco wholesalers to provide annual sales information to the department upon request. The report is due each July 1 for the preceding July 1 through June 30 period and is delinquent if not received by the department by September 30. The information report must be filed electronically through the department's specified data file format to ensure that the information is kept confidential. The electronic filing requirement may be waived if the seller demonstrates it causes problems for the seller, and any seller who fails to provide the information report timely is subject to a penalty of \$1,000 for every month the report is not provided, up to a maximum amount of \$10,000.

#### **Section 4**

Present situation: Section 212.14(4), F.S., authorizes the Department of Revenue to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's registration. Despite this requirement delinquent sales tax dealers are able to close down their business with tax liabilities, and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when they seek to register new businesses.

Proposed change: The bill revises s. 212.14(4) to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses.

**Section 5** authorizes the department to adopt emergency rules to administer the provisions of sections 3 and 4 of this act.

**Section 6**

Present situation: Payroll service providers (agents) that represent clients on unemployment tax matters before the department must file a power of attorney for each of their clients. If the provider represents at least 500 clients, s. 213.053(4), F.S., permits the provider to file a single memorandum of understanding with the department in lieu of the 500 individual powers of attorney.

Proposed change: The bill amends s. 213.053(4), F.S., to allow payroll service providers to file a memorandum of understanding with the department if they represent at least 100 clients. This reduces the administrative burden on the service provider and the department, and matches a similar provision in s. 442.163, F.S., which requires a person who prepared and filed employment reports for 100 or more employers in any quarter during the previous year to file by approved electronic means.

**Section 7**

Present situation: Section 213.758, F.S., which clarifies the transfer of tax liabilities when a business or its inventory is sold, was created last year. Since it was enacted, the business community has identified issues with this section that require additional clarification.

Proposed change: Section 213.758, F.S., is amended by the addition of definitions for “business,” “financial institution,” “insider,” “stock of goods,” and “tax.” The existing definition of “transfer” is expanded. The description of a taxpayer’s liability for taxes if he or she quits a business without transferring the business or its assets is also expanded. A transferee’s responsibilities for unpaid taxes of a transferor are explicitly identified.

**Section 8**

Present situation: The Department of Revenue staff does not have a way to verify the identity of business owners prior to visiting businesses during audits and cannot be sure that the person with whom they are working during field visits is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles maintains a file of the digital image and signatures of drivers’ license holders. These records may be shared with the Department of Revenue for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the Department of Revenue to use drivers’ license images to establish positive identification for tax administration purposes.

**Section 9**

Present situation: Florida law provides a standard unemployment tax rate, and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard unemployment tax rate. The condition is that the employer has produced records requested by AWI or the department for audit purposes. This section takes effect upon the bill becoming a law.

**Section 10** provides that except as otherwise expressly provided in this act (see sections 2 and 9), and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2011.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

The department anticipates that some provisions of this bill will improve enforcement and collection of state tax laws:

- Information provided by tobacco products and alcoholic beverage wholesalers is expected to improve sales tax compliance among retailers.
- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability

The Revenue Estimating Conference has not completed a fiscal impact analysis of these provisions.

The Revenue Estimating Conference has determined the impact of changes in the statute governing transfer of tax liabilities to be negative but indeterminate.

B. Private Sector Impact:

This bill has the following effects on the private sector:

- It requires alcoholic beverage and tobacco products manufacturers and wholesalers to file annual reports with the department of sales of these products to any retailer in the state.
- It authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales and use tax dealer's certificate of registration.
- It allows a payroll service provider that provides services for more than 100 employers to enter into a memorandum of understanding with the department, reducing administrative costs for the service provider.

- It clarifies the conditions under which a transferee may be liable for unpaid tax of a transferor.
- It provides that an employer may not qualify for a reduced unemployment tax rate unless the employer has produced all records that were requested by the department or the Agency for Workforce Innovation.

**C. Government Sector Impact:**

The bill is expected to improve tax administration by providing additional information about sales of alcoholic beverages and tobacco products, improving compliance with requests for information from employers for unemployment tax purposes, and reducing administrative costs for payroll service provider accounts.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. Amendments:**

None.