

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.)

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: CS/SB 1304

INTRODUCER: Budget Subcommittee on Finance and Tax

SUBJECT: Tax Administration

DATE: January 19, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Diez-Arguelles	BFT	Fav/CS
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 1304 (the bill) comprises changes in tax administration that were recommended by the Department of Revenue and approved by the Governor and Cabinet and other changes to improve tax administration. It clarifies the statute that provides for taxation of storage fees for towed vehicles, unless the vehicles were impounded by a law enforcement agency, clearly establishes the department’s authority to require security for certain individuals seeking to register new businesses, bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions, corrects an error in the definition of “qualified capital expenditures” for purposes of apportionment by sales factor, 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 reduces the interest rate imposed on unemployment tax deficiencies.

The bill substantially amends the following sections of the Florida Statutes: 212.07, 212.12, 212.14, 212.18, 213.13, 213.925, 322.142, 443.131, and 443.141.

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

Present Situation: Storage fees for towed vehicles are taxable under current law, unless the vehicles were impounded by a law enforcement agency, but the statute does not mention these fees explicitly and the department's rule on the issue has created confusion for some operators of storage lots.

Proposed Change: This section clarifies current law on the storage of towed vehicles.

Sections 2, 3 and 5

Present situation: Sections 212.07, 212.12, and 212.18, F.S., contain redundant and potentially confusing language concerning criminal penalties.

Proposed change: These sections are amended to clarify the criminal penalties imposed on a person who:

- Willfully fails to register after receiving notice of the duty to collect a tax or fee.
- Makes a false or fraudulent return with a willful intent to evade payment of taxes or fees.
- Willfully fails to register after the department provides notice of the duty to register.

No new penalties are being created by this language; the language is intended to clarify existing statutory penalties. These sections take effect upon becoming a law.

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 businesses 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 6

Present situation: Ch. 2010-162, L.O.F., changed the remittance date for funds collected by the Clerks of the Court from the 20th day to the 10th day of the month immediately after the month in which the funds are collected. Section 213.13, F.S., which governs the electronic remittance and distribution of funds by the Clerks of the Court, was not amended to conform to the change.

Proposed change: Section 213.13, F.S., is amended to conform to changes made by ch. 2010-162, L.O.F. This section takes effect upon becoming a law.

Section 7

Present situation: Automated sales suppression devices or “zappers” are software programs that falsify the records of electronic cash registers and other point-of-sale systems. These devices alter sales records to reduce the value of sales that are reported for tax purposes in order to evade state and federal taxes. In the case of sales tax the use of these devices results in the theft of taxes that have been collected from a business’s customers.

Proposed change: The bill creates s. 213.295, F.S., which makes an automated sales suppression device a contraband article under ss. 932.701-932.706, F.S., and makes it unlawful to willfully and knowingly sell, purchase, install, transfer, or possess in this state any automated sales suppression device, zipper, or phantom-ware. Any person convicted of violating this law is guilty of a third degree felony and is liable for all taxes, fees, penalties and interest due the state as a result of the use of the device and shall forfeit to the state as an additional penalty all profits associated with the sale or use of the device. The bill provides definitions for “automated sales suppression device,” “zipper,” “electronic cash register,” “phantom-ware,” “transaction data,” and “transaction report.” This section takes effect upon becoming a law.

Section 8

Corrects a glitch in language that was enacted last year in s. 220.153(1)(b), F.S., which provides a definition of “qualified capital expenditure” for purposes of apportionment by sales factor.

Section 9

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 10

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 11

Present situation: Unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month, an effective annual rate of 12 percent. Other taxes that are administered by the department have an interest rate of prime plus 4 percent, not to exceed an effective rate of 1 percent per month. The interest rate is adjusted twice yearly.

Proposed change: Section 443.141, F.S. is amended to change the interest rate imposed on unemployment compensation tax deficiencies to prime plus 4 percent, not to exceed 1 percent per month, beginning January 1, 2013. This is the rate applied to other taxes administered by the Department of Revenue.

Section 12 provides that except as otherwise expressly provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2012.

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:

- Banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions, should improve the department's ability to collect and enforce the sales tax statutes.

- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability.

The Revenue Estimating Conference has determined that decreasing the interest rate on unpaid unemployment taxes will reduce state trust fund revenue by \$.1 million in 2012-13 and recurring. Other provisions of the bill are expected to have an indeterminate positive impact on state and local revenue. The Revenue Estimating conference has not analyzed the impact of sections 1 or 8, which relate to storage fees for towed vehicles and the definition of "qualified capital expenditure."

B. Private Sector Impact:

This bill has the following effects on the private sector:

- It clarifies that storage fees for towed vehicles are subject to sales tax.
- 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 bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions.
- 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.
- It reduces the interest rate imposed on unemployment tax deficiencies.

C. Government Sector Impact:

The bill is expected to improve tax administration by banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions; by providing a means by which department staff can verify the identity of business owners prior to visiting the business during audits; and by improving compliance with requests for information from employers for unemployment tax purposes.

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.)

CS by Budget Subcommittee on Finance and Tax on January 24, 2012:

The CS clarifies the statute that provides for taxation of storage fees for towed vehicles, unless the vehicles were impounded by a law enforcement agency, and corrects an error in the definition of “qualified capital expenditures” for purposes of apportionment by sales factor.

- B. **Amendments:**

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.
