

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 7099	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Appropriations Committee, Finance & Tax Committee, and Grant	97 Y's	16 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/HB 1399, CS/CS/SB 1304, and CS/CS/SB 1866	<b>GOVERNOR'S ACTION:</b>	Pending

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**SUMMARY ANALYSIS**

CS/HB 7099 passed the House on February 23, 2012. The bill was amended by the Senate on May 9, 2012, and subsequently passed the House on March 9, 2012. This bill contains the Department of Revenue's (Department) recommendations for general tax administration improvements. The bill includes numerous statutory changes that will reduce the burden on taxpayers, reduce the Department's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill:

- Clarifies that the storage of towed vehicles resulting from a "lawful impoundment" by a law enforcement agency are not taxable.
- Clarifies the application of current criminal penalties regarding any person who willfully fails to collect a tax or fee, who makes a false or fraudulent return with willful intent, or who engages in acts that require a certificate of registration and "fails or refuses" to register or willfully fails to register after the Department provides notice.
- Provides that the Department can require individuals and entities seeking to obtain a dealer's certificate of registration to post a cash deposit, bond, or other security if that business will be operated at an identical location of a previous business that would have been required to post such security. This requirement can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated.
- Clarifies a provision requiring the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected to conform to a similar law changes made by the Legislature in 2010.
- Provides definitions for "automated sales suppression device" or "zappers" and "phantom-ware", and criminalizes the knowing sale, purchase, installation, transfer, or possession of such software or software devices that can be used to falsify the records of electronic cash registers and other point-of-sale systems.
- Provides an absolute defense to sales tax dealers in lawsuits brought by taxpayers if the amount of tax was collected on delivery charges and related tax liability issues are resolved in accordance with an agreement with the Department.
- Clarifies the definition of "qualified capital expenditure" related to use in single sales factor apportionment.
- Revises the local enactment deadline for changes in the local option fuel taxes each year from July 1 to October 1.
- Provides the Department can use driver's license images for use in establishing positive identification for tax administration purposes.
- Establishes a requirement for employers to comply with all work records requested during an audit as a prerequisite to earn the lower, unemployment tax contribution rate. The bills further standardizes the interest rate provisions for unemployment tax and make them the same rate as is applied to other taxes administered by the Department.

The bill also provides a \$5 million annual sales tax distribution to the Florida Institute of Technology for the purpose of operating a space exploration research institute, beginning July 1, 2013.

The 2012 Revenue Estimating Conference (REC) has not reviewed all of the provisions in this bill. Several provisions estimated by the REC have a positive, but indeterminate state and local revenue impacts. One provision is estimated by the REC to have a -\$0.1 million recurring impact on the Unemployment Compensation Trust Fund beginning in FY 2012-13. Staff estimates that the distribution to the Florida Institute of Technology will have a recurring annual negative \$5 million impact on General Revenue, beginning July 1, 2013.

Subject to the Governor's veto powers, the effective date of this bill is July 1, 2012, except as expressly provided within the bill.

## I. SUBSTANTIVE INFORMATION

### A. EFFECT OF CHANGES:

#### **Section 1. Storage of Towed Vehicles**

##### Present situation

Section 212.03(6), F.S., provides that every person engaging in a lease or rental of parking or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage space for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports, shall be taxed at the rate of 6 percent on the total rental charged.

##### Proposed change

The bill adds s. 212.03(6)(b), F.S., that the storage of towed vehicles from a "lawful impoundment" by a law enforcement agency is not taxable. The bill further provides that "lawful impoundment" means the storing of or having custody over an aircraft, boat, or motor vehicle by, or at the direction of, a local, state, or federal law enforcement agency which the owner or the owner's representative is not authorized to enter upon, have access to, or remove without the consent of the law enforcement agency.

#### **Section 2. Failure to Collect; Penalties**

##### Present situation

Provisions in s. 212.07(1)(b), F.S., provide that a resale must be in strict compliance with s. 212.18, F.S., and the rules and regulations of the Department. A dealer who makes a sale for resale that is not in strict compliance with 212.18, F.S., shall himself or herself be liable for and pay the tax due. Dealer guidelines for sales for resale are established and supported by rules of the Department. Section 212.07(3), F.S., establishes that any dealer who fails, neglects, or refuses to collect the tax is guilty of a first degree misdemeanor.

##### Proposed change

This bill amends s. 212.07(3), F.S., to clarify that a dealer who willfully fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected tax or fee and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This section also provides that the Department may contact the dealer in violation by personal service, registered mail, or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 3 & 5. This bill also corrects a cross reference in s. 212.07(1).

### **Section 3. Failure to Collect; Penalties**

#### Present situation

Provisions in s. 212.12, F.S., establish rules regarding a person (dealer) who makes false or fraudulent returns and/or fails to register as a dealer. The Department will contact a person by written notice with a “failure to register” letter followed, if needed, by an intentional failure to collect letter. The provisions cited under s. 775.082, s. 775.083, and s. 775.084, F.S., provide the civil and criminal penalties imposed upon these violators.

#### Proposed change

This bill amends s. 212.12(2)(d), F.S., to provide that a person who makes a false or fraudulent return with willful intent is liable for the uncollected taxes or fees and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This amended section is related to similar changes made in sections 2 & 5. This section will become effective upon becoming a law.

### **Section 4. Security Requirements for New Registrations**

#### Present situation

Section 212.14(4), F.S., authorizes the Department to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a dealer’s certificate of registration. Despite this requirement, some delinquent sales tax dealers are able to close down their businesses with outstanding tax liabilities and reopen under a new name, allowing the dealers to repeatedly fail to remit sales and use tax for successive businesses. Delinquent dealers can engage in this activity because the current provisions in s. 212.14(4), F.S., do not clearly apply to all of the individuals who were operating, or all who had an ownership interest in, the prior businesses.

#### Proposed change

This bill amends s. 212.14(4), F.S., to define which individuals or entities the Department can require to produce a cash deposit, bond, or other security. Included in this list of individuals and entities are not only those who had an ownership interest or a controlling interests in a business that would otherwise be liable for posting a cash deposit, bond, or other security, but those individuals and entities seeking to obtain a dealer’s certificate of registration for a business that will be operated at an identical location of a previous business that would have otherwise been liable for posting a cash deposit, bond, or other security. These requirements can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated. The bill further allows the Department to adopt rules necessary to administer this subsection.

### **Section 5. Failure to Collect; Penalties**

#### Present situation

In s. 212.18(3), F.S., guidelines are provided for persons who want to engage in and conduct business within the state as a dealer. The Department also grants certificates of registration for each place of business. The failure or refusal of any person, firm, co-partnership, or corporation to follow these rules is a first degree misdemeanor and is subject to injunctive proceedings as provided by law.

#### Proposed change

This bill amends s. 212.18(3)(c), F.S., to clarify that any person that engages in acts that require a certificate of registration and “fails or refuses” to register, commits a misdemeanor of the first degree. This bill also adds s. 212.18(3)(c)2., F.S., to provide that a person who willfully fails to register after the Department provides notice, commits a felony of the third degree, punishable as proscribed in law. This section further provides that the Department shall give written notice of the duty to register to the person through registered mail, personal service or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 2 & 3.

## **Section 6. Sales Tax Distribution**

The bill amends s. 212.20(6)(d), F.S., providing a \$5 million annual sales tax distribution to the Florida Institute of Technology for the purpose of operating a space exploration research institute, beginning July 1, 2013. The Florida Institute of Technology will develop a plan for the space exploration research institute in conjunction with Space Florida. The Department of Economic Opportunity (DEO) will be responsible for the final approval of the plan for the space exploration research institute.

## **Section 7. Electronic Remittance and Distribution of Funds by the Clerk of Courts**

### Present situation

In 2010, the Legislature passed ch. 2010-162, L.O.F., that changed the remittance date for funds collected by the clerks of the court from the 20th to the 10th day of the month immediately following the month in which the funds are collected. A conforming provision in s. 213.13, F.S., regarding electronic remittance was not updated after the law change.

### Proposed change

This bill amends s. 213.13(5), F.S., to require the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected. This section is effective upon becoming a law and will apply retroactively to July 1, 2010.

## **Section 8. Automated Sales Suppression Devices or “Zappers”**

### Present situation

The Department has identified a practice of retailers using automated sales suppression software programs (“zappers”) and/or “phantom-ware” to falsify the records of electronic cash registers and other point-of-sale systems. In effect, the technologies allow dealers to create a fraudulent, virtual second set of books by which the dealers are able to evade sales taxes.

### Proposed change

The bill creates s. 213.295, F.S., defines zappers and phantom-ware, and criminalizes the knowing sale, purchase, installation, transfer, or possession of phantom-ware in this state. This section provides that any person in violation of this section shall be guilty of a felony of the third degree and shall be liable for all taxes, fees, penalties, and interest due to the state; the dealer shall also forfeit to the state all profits associated with the sale or use of the zappers or phantom-ware. Finally, the bill classifies zappers and phantom-ware as contraband articles under s. 932.701-932.706, F.S., the Florida Contraband Forfeiture Act. This section will become effective upon becoming a law.

## **Section 9. Actions against a Dealer’s Collection of Taxes, Fees, and Delivery Charges from a Purchaser**

### Present situation

Section 213.756(2), F.S, provides for actions against a dealer for the collection of taxes, fees, and surcharges from a purchaser, in any action to obtain a refund or recover the taxes, fees, and surcharges collected by the dealer.

### Proposed change

The bill adds s. 213.756(2)(a)4., F.S., to provide that it is an absolute defense to any action by a purchaser if the retailer, dealer, or vendor collected tax on delivery charges and resolved any tax liability at issue in accordance with an agreement entered into with the Department.

## **Section 10. Single Sales Factor Apportionment**

### Present situation

In 2011, the Legislature passed ch. 2011-76, L.O.F., which provided that corporations making \$250 million of qualified capital expenditures in Florida within a two year period may apply to DEO (formerly the Office of Tourism, Trade, & Economic Development) for approval to use single sales factor apportionment for corporate income tax purposes.

Currently, s. 220.153(1), F.S., defines “qualified capital expenditures” as expenditures in this state for purposes substantially related to a business's production or sale of goods or services for funding the acquisition of additional real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility.

However, expenditures for passive investment are excluded from this definition. The current language regarding this exclusion also refers to “investment intended for the accumulation of reserves or the realization of profit for distribution to any person holding an ownership interest in the business.” This language is unclear as to its meaning. If read literally it could be interpreted to exclude any investment made for “the realization of profit for distribution to any person holding an ownership interest in the business,” which appears contrary to the purpose of most businesses and of the tax code, which is directed at taxable, for-profit entities.

### Proposed change

The bill amends 220.153(1), F.S., to remove the unclear and seemingly contradictory language related to the definition of “qualified capital expenditure” related to use in single sales factor apportionment.

## **Section 11. Identity Confirmation; Interagency Agreements**

### Present situation

Currently, Department staff during an audit does not have a way to verify the identity of a business owner prior to visiting a business. In some cases, Department staff cannot be sure that the person with whom they are working during a field visit is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles (DHSMV) maintains a file of the digital images and signatures of driver's license holders. Currently, these DHSMV records can be shared with the Department through an interagency agreement for child support enforcement purposes but not for other uses.

### Proposed change

The bill amends s. 322.142, F.S., to allow the Department to use driver's license images for use in establishing positive identification for tax administration purposes.

## **Section 12. Local Option Fuel Tax**

### Present situation

Sections 206.41(1)(d), 206.87(1)(b), and 336.021, F.S., authorize the ninth-cent fuel tax, which is a one-cent tax on every net gallon of motor and diesel fuel sold within a county. The tax is authorized either by ordinance adopted by an extraordinary vote of the governing body or approved by voters in a countywide referendum. All impositions of this tax must be levied before July 1 to be effective on January 1 of the following year.

### Proposed change

The bill amends s 336.021(5), F.S., changing the imposition deadline of the ninth-cent fuel tax from July 1 to October 1 in order to coincide with local government budget years.

## **Section 13. Local Option Fuel Tax**

### Present situation

Sections 206.41(1)(e), 206.87(1)(c), and 336.025(1)(a) and 336.025(1)(b), F.S., authorize local governments to levy a tax of 1 to 6 cents and 1 to 5 cents on every net gallon of motor fuel sold in the county. The tax is authorized either by ordinance adopted by an extraordinary vote of the governing body or approved by voters in a countywide referendum. All impositions of these taxes must be levied before July 1 to be effective on January 1 of the following year.

### Proposed change

The bill amends s. 336.025(1)(a), F.S., changing the imposition deadline of the 1 to 6 cents and 1 to 5 cents local option fuel tax from July 1 to October 1 to coincide with local government budget years.

## **Section 14. Standard Rate for Non-Compliance with Audit Record Requests; Unemployment Tax**

### Present situation

Florida law provides a standard unemployment tax rate, and allows many employers to earn a lower rate if they meet certain compliance conditions set forth in s. 443.131(3)(h), F.S. However, under the current requirements to meet the compliance standards, it does not explicitly state that the taxpayer must comply with records requests to qualify for the reduced tax rate pursuant to s. 443.171(5), F.S.

### Proposed change

This bill amends s. 443.131, F.S., to require an employer to comply with records requests as a prerequisite for that employer to earn the lower, unemployment tax contribution rate. In order to receive the lower contribution rate, the employer must produce all work records requested during an audit by the DEO or the state agency providing tax collection services pursuant to s. 443.171(5), F.S. This section will become effective upon becoming a law.

## **Section 15. Floating Interest Rate; Unemployment Tax**

### Present situation

Section 443.141(1)(a), F.S., states that unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent annually). Other payment deficiencies on taxes that the Department administers have an interest rate of prime plus 4 percent but not to exceed an effective rate of 1 percent per month, adjusted twice per year.

### Proposed change

This bill amends s. 443.141(1)(a), F.S., to adjust the interest rate applied to contributions or reimbursements unpaid on the date due. The current interest rate of 1 percent will carry on through December 31, 2012. Beginning January 1, 2013, the interest rate shall be calculated in accordance with s. 213.235, F.S., except that the rate of interest shall never be greater than 1 percent per month. This bill would reduce the interest rate provisions for unemployment tax and make them the same rate as is applied to other taxes administered by the Department. This section will become effective January 1, 2013.

## **Section 16. Effective Date**

This act shall take effect July 1, 2012, except as expressly provided within the bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

See FISCAL COMMENTS.

#### 2. Expenditures:

See FISCAL COMMENTS.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

See FISCAL COMMENTS.

#### 2. Expenditures:

See FISCAL COMMENTS.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce taxpayer expenses. These savings will be generated by reducing the interest rate applied to taxpayer unemployment tax contributions or reimbursements that go unpaid on the date they are due and makes it uniform to the interest rate that applied to other taxes administered by the Department.

The bill will also provide economic development and job creation opportunities through the Florida Institute of Technology, working in conjunction with Space Florida, in the development and operation of the space exploration research institute.

### D. FISCAL COMMENTS:

The 2012 Revenue Estimating Conference (REC) has not reviewed all of the provisions in this bill. Several provisions estimated by the REC have a positive, but indeterminate state and local revenue impacts. One provision is estimated by the REC to have a -\$0.1 million recurring impact on the Unemployment Compensation Trust Fund beginning in FY 2012-13. Staff estimates that the sales tax distribution to the Florida Institute of Technology will have a recurring negative \$5 million impact on General Revenue, beginning July 1, 2013.