STORAGE NAME: h4413s1z.ft ****FINAL ACTION****
DATE: June 8, 1998 ****SEE FINAL ACTION STATUS SECTION****

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
FINAL BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 4413, First Engrossed

RELATING TO: Administration of Revenue Laws

SPONSOR(S): Committees on General Government Appropriations (FRC) and Finance and Taxation, and Representative Starks

COMPANION BILL(S): CS/SB 1952 (s), HB 2035 (c), 2ND ENG/CS/CS/SB 760 (c), SB 1252 (c), CS/SB 1698 (c)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE AND TAXATION YEAS 15 NAYS 0
(2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
(3) GENERAL GOVERNMENT APPROPRIATIONS YEAS 8 NAYS 0
(4)
(5)

I. FINAL ACTION STATUS:

The bill became law without the Governor's signature on May 30, 1998. (Chapter 98-342, Laws of Florida. See also CS/SB 608 (Ch. 98-100), SB 704 (Ch. 98-101))

II. SUMMARY:

This bill makes the following changes to the administration of revenue laws:

- provides an effect date to amendments made in 1997 to s. 199.001, F.S., involving the ad valorem taxation of computer software;
- requires certain financial institutions to file intangible tax returns on machine-sensible media;
- clairfies that certain materials purchased by certain repair facilities which are incorporated in repairs are excluded from the defintion of the term "retail sales";
- provides sales, use and rental car surchage exemptions for loaner vehicles
- deletes a reporting requirement for persons who sell to vending machine operators;
- provides that changes to discretionary sales surtaxes must take effect on January 1;
- provides for the use of local government infrastructure surtax for economic development under specified circumstances;
- corrects the definition of "new business" for the Urban-Rural Area Job Tax Credit Program;
- updates the confidentiality provision pertaining to taxpayer records by deleting obsolete references and updating cross-references;
- provides that participants in the RISE program may provide information quarterly rather than monthly under certain circumstances;
- increases the compromise authority of the Executive Director of the Department of Revenue and allows the compromise of penalty and interest for a taxpayer who voluntarily self-discloses a tax liability;
- removes an unnecessary requirement for the contract audit program;
- expands the Department of Revenue's authority to freeze assets prior to garnishment proceedings and provides enforcement measures for failure to comply with a freeze notice;
- incorporates the Internal Revenue Code into Florida law;
- provides that a "qualified subchapter S subsidiary," as defined by the Internal Revenue Service Code, shall not be treated as a separate corporation or entity from the S

corporation parent to which the subsidiary's assets, liabilities, income, deductions, and credits are attributed;
- requires qualified subchapter S subsidiaries to file an information return with the Department of Revenue; and
- provides authorization for certain administrative rules of the Department of Revenue.

Except as otherwise provided, the effective date of this bill is July 1 of the year in which enacted.

See section VI for estimated fiscal impact.

III. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

See II. B. below.

B. EFFECT OF PROPOSED CHANGES:

The substantive analysis is broken down by topic with a present situation and effect of proposed changes for each topic. The section-by-section analysis provides a reference as to which statutes have been amended and the effect of the amendment.

COMPUTER SOFTWARE - APPLICATION PROVISIONS
(Section 2)

PRESENT SITUATION:

Article VII, section 4, Florida Constitution, provides that by general law, regulations shall be prescribed that secure a just valuation of all property for ad valorem taxation. However, agricultural land, land producing high water recharge to Florida's aquifers and land used for recreation may be classified and assessed on the basis of use. Inventory and livestock may be assessed at a specified percentage of its value or exempted. Also, increases in the value of homestead property are subject to limitations.

Section 192.042, F.S., states that all property shall be assessed for ad valorem taxes according to its just value as follows:

(1) Real property, on January 1 of each year. Improvements or portions not substantially completed on January 1 are not assessed.

(2) Tangible personal property, on January 1 of each year, except construction work in progress until it is substantially completed.

Chapter 97-294, s. 1, Laws of Florida, amended s. 192.001, F.S., to define computer software to include among other things operating and application programs and all related documentation. Computer software constitutes personal property only to the extent of the value of the unmounted or uninstalled medium on or in which the information, program, or routine is stored or transmitted. After installation or mounting, computer software does not increase the value of the computer or computer-related equipment. The statute effectively removes from ad valorem taxation the value of software, except for the value of the diskette or other medium on which the information is stored.

Chapter 97-294, Laws of Florida, took effect upon becoming law and applied to all periods open for additional assessment or refund under applicable law.

EFFECT OF PROPOSED CHANGES:

The definition of "computer software," is amended to state that, "Notwithstanding any other provision of law, this subsection applies to the 1997 and subsequent tax rolls and to any assessment in an administrative or judicial action pending on July 1, 1997."

MACHINE-SENSIBLE MEDIA
(Section 3)

PRESENT SITUATION:

Individuals and entities who owe intangible personal property tax pursuant to Part I of Chapter 199, F.S., must file an annual tax return. Under s. 199.202, F.S., the department has provided a procedure and forms for a bank to file and pay intangible tax for multiple trust accounts they administer. The form, called a master file, lists the name, account number and tax amount due for each trust account. The tax amounts shown on the bank master file must balance to the combined total of taxes due for each of the individual trust accounts represented. The payment is remitted with the bank master file in a single payment using the federal employer identification number of the bank. Each file normally contains about 500 individual accounts but occasionally will include as many as 6000.

Currently 182 banks submit bank master files, but only 11 provide the return information by machine-sensible media. The return "machine sensible media" includes magnetic media, electronic data exchange, or other similar systems. The eleven machine-sensible filings can be processed by the Department of Revenue and a reconciled report produced more efficiently than is possible using manual data entry of the return information. For the 171 banks not submitting machine-sensible media, the Department of Revenue had to manually enter the data for each trust account return for tax year 1997, represent 62,000 paper returns. The Department of Revenue presently has no authority to require machine sensible media filings.

EFFECT OF PROPOSED CHANGES:

Banks or other financial organizations who file annual intangible tax returns on behalf of their customers will be required to file return information using machine-sensible media. The Department of Revenue will prescribe rules to implement this requirement. If an institution can demonstrate to the department that this requirement presents a hardship, it will not be required to submit the information using machine-sensible media.

CLARIFICATION - SALES & USE TAX ON BULK PARTS
(Section 4)

PRESENT SITUATION:

Property purchased for resale is not subject to sales and use tax. When bulk parts such as screws, nails, glue, and similar items are purchased by repair facilities to repair a motor vehicle, airplane, or boat, and such items are used in taxable repairs and become a part of the repaired vehicle, such items are not subject to sales or use tax when purchased by the repair facility. Rags, sandpaper, shop tools, and similar items that are not incorporated into a repaired vehicle, but are used by the repair facility, are subject to sales and use tax.

Repair facilities often do not list on their invoices small items such as screws, nails, glue, and similar items. Additionally, such items are often purchased in bulk and keeping track of the small items used in individual jobs can be burdensome.

EFFECT OF PROPOSED CHANGES:

The definitions of “retail sales,” “sale at retail, “use,” “storage,” and “consumption” is amended to state that such definitions do not include the sale, use, storage, or consumption of materials for use in repairing a motor vehicle, airplane, or boat, when such materials are incorporated into the repaired vehicle, airplane, or boat. This language does not change existing law, but clarifies that when repair facilities purchase materials for use in repairing vehicles and the materials become part of the repaired vehicle, then the purchase is not considered a “retail sales,” “sale at retail, “use,” “storage,” or “consumption.” Consequently, such purchases are not subject to sales or use tax.

Since this section is a clarification of existing law, it is anticipated to have no fiscal impact.

MOTOR VEHICLES LOANED AT NO CHARGE
(Section 5 and 6)

PRESENT SITUATION:

Section 212.0601(1), F.S., provides that each motor vehicle dealer who is required to be licensed by s. 320.08(12) to purchase one or more dealer license plates must pay an annual use tax of $27 for each dealer license plate purchased, in addition to the license tax imposed by s. 320.08(12).

Section 212.0606, F.S., imposes a rental car surcharge of $2.00 per day upon the lease or rental of a motor vehicle licensed for hire and designed to carry less than nine passengers. The surcharge applies to only the first 30 days of the term of any lease or rental.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.0601, F.S., providing that a motor vehicle dealer who loans a vehicle to any person at no charge shall accrue use tax based on the annual lease value as determined by the United States Internal Revenue Service Automobile Annual Lease Value Table.

The bill also provides that notwithstanding the provisions of a motor vehicle rental agreement, no sales or use tax and no rental car surcharge pursuant to s. 212.0606, shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

VENDING MACHINE WHOLESALER QUARTERLY REPORT
(Section 7)

PRESENT SITUATION:

Section 212.0515, F.S., requires any person who sells food or beverages to an operator for resale through vending machines shall submit to the department on or before the 20th day of the month following the close of each calendar quarter a report which:

1) identifies by dealer registration number each vending machine operator who has purchased such items from the seller;

2) states the net dollar amount of purchases made by each operator; and

3) includes the purchaser's name, dealer registration number, and sales price for any tax-free sale for resale of canned soft drinks of 25 cases or more.

A penalty of $250 is imposed on any person who is required to file the quarterly report and who fails to do so or who files false information.

Chapter 97-244, Laws of Florida, repealed a similar quarterly report required to be filed by vending machine operators. Accordingly, the report required by persons who sell to vending machine operators is no longer needed.

EFFECT OF PROPOSED CHANGES:

Section 212.0515(5), F.S., is amended to delete the reporting requirement by persons who sell to vending machine operators. The penalty for not reporting also is deleted.

DISCRETIONARY SALES SURTAXES
(Sections 1, 8 and 9)

PRESENT SITUATION:

The general rule in s. 212.054(5), F.S., is that the imposition of a discretionary surtax is to be effective January 1. In the case of five of the seven surtaxes now authorized, special overriding provisions in s. 212.055, F.S., permit an effective date of the first day of any month. These surtaxes include: 1) Charter County Transit System Surtax; 2) Local Government Infrastructure Surtax; 3) Small County Surtax; 4) Indigent Care Surtax; 5) County Public Hospital Surtax; 6) Small County Indigent Care Surtax; and 7) School Capital Outlay Surtax. Pursuant to s. 212.054., F.S., surtax terminations must occur on the last day of a quarter.

Because a dealer must collect the surtax based on the rate of the county where property or services are delivered, a dealer must be aware of all surtax rates for all counties. The Department of Revenue prints and mails over 600,000 new coupon books to all registered Florida sales tax dealers every January. Each coupon book is imprinted with information specific to the dealer to which it is mailed and includes a chart of all county surtax rates. When a county imposes or terminates a surtax or changes the rate during the year the department must print and mail new coupons to all dealers in the county. Current law provides a delay of up to 15 months in imposition of the change for out-of-county transactions where delivery is made into the county with the changed rate.

Where there is a termination or decrease, the dealers in other counties may collect taxes that are no longer in effect in the county of delivery.

EFFECT OF PROPOSED CHANGES:

Section 212.054(5), F.S., is amended to state that no discretionary sales surtax or increase or decrease in the rate of any discretionary sales surtax shall take effect on a date other than January 1. Additionally, no discretionary sales surtax shall terminate on a day other than December 31. All exceptions to the effective date requirement are repealed. Section 212.054(7), F.S., is created to require the entity levying the surtax to notify the department within 10 days after the final adoption by ordinance or referendum of an imposition, termination, or rate change of a surtax, but such notice can occur no later than November 16 prior to the effective date of the surtax. The notice must specify the time period during which the surtax will be in effect and the rate and must include a copy of the ordinance. Failure to timely provide such a notification to the department shall result in the delay of the effective date of the surtax for a period of one year. The entity imposing the surtax must notify the department by October 1 if the referendum or consideration of the ordinance that would result in imposition, termination, or rate change of the surtax is scheduled to occur on or after October 1 of that year. Failure to timely provide such a notification to the department shall result in the delay of the effective date of the surtax for a period of one year.

Section 212.055, F.S., is amended to eliminate the special overriding provisions which permit an effective date of the 1st day of any month. Subsection (2) is amended to authorize a county to use an amount not to exceed 30 percent of the local option sales surtax proceeds for deposit to a trust fund within the county's accounts created for the purpose of economic development projects of a general public purpose targeted to improve local economies, including the funding of operational costs and incentives related to such economic development.

The bill amends s. 123.2801, F.S., to correct a cross reference.

URBAN - RURAL TAX JOB TAX CREDIT - DEFINITION CORRECTION
(Sections 10-11)

PRESENT SITUATION:

Chapter 97-50, Laws of Florida, created the Urban High-Crime Area Job Tax Credit Program and the Rural Job Tax Credit Program. (ss. 212.097, 212.098 and 220.189, F.S.) These programs provide tax credits to be applied toward the state's sales or corporate taxes to businesses which locate in a high-crime area or a rural area. Chapter 97-50, Laws of Florida, provides for the amount of the tax credits based on the number of employees that are employed by the business and the ranking of the area where the business is located. It also provides for additional credits if the business employs WAGES Program participants, and provides that the Office of Tourism, Trade, and Economic Development may approve a maximum of $5 million for each credit program in one calendar year.

The last sentence of ss. 212.097(2)(c) and 212.098(2)(d), F.S., which defines a "new business," states that a business which qualifies as a "new business" cannot have operated in an eligible high-crime or rural area within the last 48 months before the

application date. Sections 212.097(3) and 212.098(3), F.S., state that new eligible businesses may apply for these credits at any time during their first year of operation. If a business operating within a high-crime or rural area within the last 48 months is not considered to be a new business, yet new businesses must apply for the credits within their first year of operation, it appears that there are no new businesses. This conflict in the statutory language creates confusion relative to the requirements for applying for these credits as a new business.

EFFECT OF PROPOSED CHANGES:

The last sentences of ss. 212.097(2)(c) and 212.098(2)(d), F.S., are amended to read: A business entity that operated an eligible business within a qualified high-crime area (county) within 48 months before the period provided for application by subsection (3) is not considered a new business.

FILING AND TAX RETURNS RELATING TO ELECTRONIC FUNDS TRANSFERS
(Sections 12, 13, 14 and 20)

PRESENT SITUATION: Section 12

Section 213.755, F.S., gives the executive director of the Department of Revenue authority to require a taxpayer to remit taxes by electronic funds transfer (EFT) where the taxpayer has paid that tax in the prior state fiscal year in an amount of $50,000 or more. The department has implemented the electronic funds payment requirements. Taxpayers who are required to remit taxes by EFT are required to initiate their tax return through an electronic data interchange (EDI). The acceptable method of transfer, giving due regard to developing uniform standards for formats as adopted by the American National Standards Institute, and the means, if any, by which taxpayers will be provided with acknowledgments, will be prescribed by the department.

The requirement to file via electronic data interchange may be waived by the department if the taxpayer can demonstrate in writing that its computer capabilities, data systems changes, or operating procedures create a problem in filing electronically.

Section 212.11, F.S., sets out due dates and requirements for sales tax returns including penalties for failure to comply. Presently, this section does not address taxpayers who are required to pay through EFT and EDI. No procedures to enforce electronic payment or filing requirements are set forth.

EFFECT OF PROPOSED CHANGE:

Industry is rapidly moving into electronic commerce and more payments of sales tax are being made by EFT and EDI. This bill updates s. 212.11, F.S., to clarify that a dealer must file a return as well as remit the tax due by a date certain to avoid penalties for late payment. This bill also makes the filing and remittance requirements applicable to those dealers who use EFT and EDI. The proposed changes to s. 212.12, F.S., make the requirements for those who use EFT and EDI conform to the requirements of those who use paper returns and traditional payments.

PRESENT SITUATION: Section 13

Section 212.12, F.S., allows dealers a collection allowance of 2.5 % of the sales tax collected for taxes up to $1,200. The collection allowance is to compensate the dealer "for the keeping of prescribed records and the proper accounting and remitting of taxes."

The Department of Revenue may reduce the collection allowance by 10 percent or $50, whichever is less, if a taxpayer files an incomplete return. The department may deny the entire collection allowance if the payment of the tax is delinquent.

The Department of Revenue is directed to adopt rules requiring such information as it may deem necessary to ensure that the tax levied under Chapter 212 is properly collected, reviewed, compiled, and enforced.

EFFECT OF PROPOSED CHANGE:

"[T]he filing of timely tax returns" is added to the services for which dealers are granted a collection allowance.

The department will be able to deny a dealer the entire collection allowance for a delinquent tax payment as well as for a late filed or incomplete return.

The Department of Revenue is directed to adopt rules requiring such information as it may deem necessary to ensure that the tax levied under Chapter 212, F.S., is properly reported.

PRESENT SITUATION: Section 14

Presently there is no statutory direction to the Department of Revenue to prescribe the format and instructions necessary for filing returns that are initiated through an electronic data interchange.

EFFECT OF PROPOSED CHANGE:

The Department of Revenue is directed to prescribe the format and instructions necessary for filing returns that are initiated through an electronic data interchange.

PRESENT SITUATION: Section20

The Florida Statutes do not contain a definition of "payment" or "return" relating to the revenue laws administered by the Department of Revenue.

EFFECT OF PROPOSED CHANGE:

Section 213.755, F.S., is amended to add the following definitions:

(a) "Payment" means any payment or remittance required to be made or paid within a prescribed period or on or before a prescribed date under the authority of any provision of a revenue law which the department has the responsibility for regulating, controlling,

and administering. The term does not include any remittance unless the amount of the remittance is actually received by the department.

(b) "Return" means any report, claim, statement, notice, application, affidavit, or other document required to be filed within a prescribed period or on or before a prescribed date under the authority of any provision of a revenue law which the department has the responsibility of regulating, controlling, and administering.

The proposed changes are to facilitate the enforcement of electronic payment and filing requirements. Presently, the revenue laws generally do not take into account today's electronic environment.

CONFIDENTIALITY UPDATE
(Section 15)

PRESENT SITUATION:

Section 213.053(2), F.S., provides that except under the stated exceptions, all information contained in returns, reports, accounts, or declarations received by the Department of Revenue, including investigative reports and information and including letters of technical advice, is confidential except for official purposes and is exempt from the provisions of s. 119.07(1). Any officer or employee, or former officer or employee, of the department who divulges any such information in any manner, except for such official purposes, commits a misdemeanor of the first degree. This confidentiality provision applies to the following taxes and other assessments administered by the Department of Revenue: s. 125.0104, county government; s. 125.0108, tourist impact tax; chapter 198, estate taxes; chapter 199, intangible personal property taxes; chapter 201, excise tax on documents; chapter 203, gross receipts taxes; chapter 211, tax on severance and production of minerals; chapter 212, tax on sales, use, and other transactions; chapter 220, income tax code; chapter 221, emergency excise tax; s. 370.07(3), Apalachicola Bay oyster surcharge; chapter 376, pollutant spill prevention and control; s. 403.718, waste tire fees; s. 403.7185, lead-acid battery fees; s. 403.7195, waste newsprint disposal fees; s. 403.7197, advance disposal fees; s. 538.09, registration of secondhand dealers; s. 538.25, registration of secondary metals recyclers; ss. 624.509-624.514, insurance code: administration and general provisions; s. 681.117, motor vehicle warranty enforcement; and s. 896.102, reports of financial transactions in trade or business.

Currently the statute does not list certain taxes and fees administered by the Department of Revenue. These taxes and fees are: chapter 175, Municipal Firefighter's Pension Trust Fund assessment; chapter 185, Municipal Police Officers' Retirement Trust Fund Assessment; s. 252.372, emergency management, preparedness, and assistance surcharge; s. 624.501, filing, license, appointment, and miscellaneous fees for insurers; and, s. 624.515, State Fire Marshall regulatory assessment and surcharge.

EFFECT OF PROPOSED CHANGES:

Section 213.053, F.S., is amended to cross-reference the taxes and fees discussed above that are currently administered by the Department of Revenue. (See s. 175.101, F.S., regarding municipal firefighters' trust fund, is tied to s. 624.5092, F.S., which is

currently listed in s. 213.053(1), F.S., regarding the applicability of the confidentiality provisions. Sections 252.372 and 185.08, F.S., are also tied to s. 624.5092, F.S.) Finally, because s. 403.7197, F.S., the Advanced Disposal Fee, has been repealed, the reference to the fee is deleted from s. 213.053, F.S.

REGISTRATION INFORMATION SHARING AND EXCHANGE PROGRAM
(Section 16)

PRESENT SITUATION:

Section 213.0535, F.S., creates the Registration Information Sharing and Exchange Program, or “RISE.” The program requires the Department of Revenue and certain local governments to share tax administration information such as the registrant's, licensee's, or taxpayer's name, mailing address, business location, and federal employer identification number or social security number; any applicable business type code; any applicable county code; and such other tax registration information as the department prescribes. Participants include state or local governments responsible for administering one or more of the following:

1. The sales and use tax imposed under chapter 212.
2. The tourist development tax imposed under s. 125.0104.
3. The tourist impact tax imposed under s. 125.0108.
4. Local occupational license taxes imposed under chapter 205.
5. Convention development taxes imposed under s. 212.0305.
6. Public lodging and food service establishment licenses issued pursuant to chapter 509.
7. Beverage law licenses issued pursuant to chapter 561.

These participants are considered “level one” participants and are required to exchange monthly the data described above.

Some local governments find this monthly exchange of information overly burdensome.

EFFECT OF PROPOSED CHANGES:

Section 213.0535(4)(a), F.S., is amended to allow level one participants, to exchange data quarterly after a joint determination with the participant and the Department of Revenue.

COMPROMISES TO TAX, INTEREST AND PENALTIES
(Section 17)

PRESENT SITUATION:

The executive director of the Department of Revenue is authorized to enter into a written closing agreement with a taxpayer settling or compromising the taxpayer's liability for tax, penalty, or interest. The executive director's authority to settle or compromise is limited to $100,000 or less in tax. Amounts of more than $100,000 must be compromised by the Governor and Cabinet.

When a taxpayer approaches the department with a voluntary self-disclosure of liability, the taxpayer is required to pay the amount of tax plus applicable interest due for the period of time the taxpayer was subject to tax in Florida that is within the statute of limitations provision of s. 95.091(3)(a)1.d., F.S. For example, a self-disclosing taxpayer who never filed Florida tax returns would be required to pay amounts due back to June of 1984 for Sales/Use Tax and back to 1972 for Corporate Income Tax.

EFFECT OF PROPOSED CHANGE:

The proposed bill would raise the settlement and compromise authority of the executive director to $250,000. According to the Department of Revenue, inflation and other factors have steadily increased the average amount of assessments. The executive director is unable to enter into compromises of large assessments even where the terms of the settlement are in the best interest of the state. In these cases taxpayers must bring their case before the Governor and Cabinet or file administrative petitions or judicial complaints.

When a taxpayer voluntarily self-discloses, the department would be able to compromise the tax and interest due to amounts due for the five years immediately preceding the date the taxpayer initially contacted the department. If a self-disclosing taxpayer met certain equitable requirements, the department would be able to further compromise tax and interest. When making this determination the department shall consider, but is not limited to considering, the following:

1. The amount of tax and interest that will be collected and compromised under the voluntary self-disclosure.

2. The financial ability of the taxpayer and the future outlook of the taxpayer's business and the industry involved.

3. Whether the taxpayer has paid or will be paying other taxes to the state.

4. The future voluntary compliance of the taxpayer.

5. Any other factor the department determines to be relevant to making this determination.

A taxpayer who collected, but did not remit, tax would not be eligible for a settlement or compromise under this subsection.

CONTRACT AUDITS
(Section 18)

PRESENT SITUATION:

Pursuant to s. 213.28, F.S., the Department of Revenue has authority to enter into contracts with certified public accountants (CPAs) to audit taxpayer accounts. These contracts are to supplement, rather than replace, existing staff resources. Among the other requirements of the program, CPAs entering into contracts must be in good standing under the laws of the state in which they are licensed and in which the work is performed.

A recent audit finding by the Office of the Auditor General recommended to the Department of Revenue that the requirement that the CPA be in good standing in the state where the work is preformed be removed from the statute. The requirement was considered neither cost beneficial nor practical. Under current law, CPAs applying for contracts are required to disclose in which states the firm is licensed to practice. Before entering into any contracts, the department verifies with the appropriate state board that the firm does in fact have a valid license and that the firm has not received any disciplinary action within the past 3 years. It is sometimes not known prior to entering into a contract each state in which a CPA may have to perform audit tasks; therefore, the department cannot make such a confirmation.

EFFECT OF PROPOSED CHANGES:

The requirement that the department verify that a CPA is in good standing in the state where the work is to be preformed is repealed.

GARNISHMENTS
(Section 19)

PRESENT SITUATION:

Pursuant to s. 213.67, F.S., when the Department of Revenue initiates a garnishment proceeding to recover delinquent taxes, penalties and interest, the department may freeze the assets of the garnishee (up to the amount of the debt) that are in the possession of a third party at the time the third party receives the notice. The freeze is valid for 60 days or until released by the executive director, whichever comes first. The notice of the freeze is renewable by the department. New assets that come into the possession of the third party during the freeze period are not subject to the freeze unless a new notice is issued.

The present statute does not subject the garnishee to any liability if property subject to the freeze is transferred without authorization. There is no provision in s. 213.67, F.S., to protect financial institutions where a debt card encumbers an account prior to receipt of a freeze notice from the Department of Revenue.

During the last 30 days of the 60-day freeze, the executive director or his or her designee may levy upon such credits, other personal property, or debts. The levy must be accomplished by delivery of a notice of levy, upon receipt of which the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the delinquent taxpayer. The statute contains no direction on how the notice of levy is to be delivered.

EFFECT OF PROPOSED CHANGES:

The department would not have to renew the freeze every 60 days if the taxpayer contests the intended levy. The freeze would remain in effect until the resolution of the action. Since the department can currently renew the freeze every 60 days, this change would only eliminate the need to process new paperwork every 60 days. Under the bill additional assets that come into the hands of the third party during the freeze would also be subject to the freeze up to the amount of the debt.

Any financial institution receiving a notice would have a right of set off for any transaction involving a debit card occurring on or before the date of the receipt of the notice.

If any person makes a transfer during the period of the notice of assets required to be held, that person is liable to the state for any indebtedness owed to the department by the person with respect to whose obligation the notice was given to the extent of the value of the property transferred, if solely because of the transfer, the state is unable to recover the indebtedness from the delinquent taxpayer. The department would be able to bring an action in circuit court for an order compelling compliance with any notice issued under s. 213.67, F.S.

The department would have to deliver the levy by registered mail.

CORPORATE INCOME TAX
(Sections 21 and 22)

PRESENT SITUATION:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida income tax. Section 220.03, F.S., defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended, in effect on January 1, 1997.

EFFECT OF PROPOSED CHANGES:

Since Congress makes changes to the Internal Revenue Code each year, the Florida Legislature must update the Florida Corporate Code to include those changes. The definition of "Internal Revenue Code" is updated to include those provisions of the 1986 Code, as amended, and in effect on January 1, 1998. This definition provides for "piggybacking" each change made during 1997 in the Internal Revenue Code.

Also, the bill provides legislative intent stating that a “qualified subchapter S subsidiary,” as defined by the Internal Revenue Service Code, shall not be treated as a separate corporation or entity from the S corporation parent to which the subsidiary’s assets, liabilities, income, deductions, and credits are attributed.

Finally, qualified subchapter S subsidiaries are required by the bill to file an information return with the Department of Revenue.

DIESEL FUEL TAXES STUDY

(Section 23)

PRESENT SITUATION:

The Department of Revenue is not presently directed to conduct the study described below.

EFFECT OF PROPOSED CHANGES:

The Department of Revenue, in consultation with the Division of Economic and Demographic Research, shall conduct a study on the equity of the refund provisions for diesel fuel taxes pursuant to section 206.8745, F.S., with regard to their applicability to commercial carriers using fuel in a similar manner. The department shall issue a report on its findings to the President of the Senate and the Speaker of the House of Representatives before December 31, 1998.

DEPARTMENT OF REVENUE RULES AUTHORIZATION
(Sections 25, 26, 27, 28 and 29)

During the 1996 Legislative Session a comprehensive rewrite of the Florida Administrative Procedures Act was adopted as CS/SBs 2290 and 2288. Among many other changes, the revised APA modified the standards which authorize rulemaking and included provision for periodic review of rules by agencies with rulemaking authority.

In the past, a number of court decisions held that a rule did not exceed the legislative grant of rulemaking authority if it was reasonably related to the stated purpose of the enabling legislation. Additionally, it was accepted that a rule was valid when it implemented general legislative intent or policy. Agencies had wide discretion to adopt rules whether the statutory basis for a rule was clearly conferred or implied from the enabling statute.

Section 120.536, F.S., effectively overturned this line of cases and imposed a much stricter standard for rulemaking authority. Under the new APA, existing rules and proposed rules must **implement, interpret, or make specific** the particular powers and duties granted by the enabling statute. It is important to note that the revised APA is not intended to eliminate administrative rules or even to discourage rulemaking, but to ensure that administrative rules are no broader than the enabling statute. A grant of rulemaking authority by the Legislature is necessary but not enough by itself to allow an agency to adopt a rule. Likewise, agencies need more than a statement of general legislative intent for implementing a rule. Rules must be based on specific grants of powers and not address subjects on which the Legislature was silent.

In order to temporarily shield a rule or portion of a rule from challenge under the new provisions, agencies were to report rules which they believed did not meet the new criteria by October 1, 1997.

The Joint Administrative Procedures Committee (JAPC) reports that some 5,850 rules or portions of rules were reported as exceeding the agency' s rulemaking authority under s. 120.536(1), F.S. Of these, 3,610 rules were identified by various local school boards, whose rules are not contained in the FAC. However, 2,240 rules contained in the FAC

were reported by various agencies as exceeding statutory authority for rulemaking under s. 120.536, F.S.

Section 120.536(2), F.S., also lays out the second step in the process, that of legislative review. The subsection provides:

> The Legislature shall, at the 1998 Regular Session, consider whether specific legislation authorizing the identified rules, or portions thereof, should be enacted. By January 1, 1999, each agency shall initiate proceedings pursuant to s. 120.54 to repeal each rule, or portion thereof, identified as exceeding the rulemaking authority permitted by this section for which authorizing legislation does not exist.

Thus, during the 1998 Legislative Session, each agency has the responsibility to bring forward legislative proposals, as appropriate, which will provide statutory authorization for existing rules or portions thereof which the agency deems necessary but which currently exceed the agencies' rulemaking authority. The Legislature is directed to consider whether such legislation authorizing the identified rules should be enacted.

According to the Joint Administrative Procedures Committee (JAPC), there are 3500-3600 grants of rulemaking authority contained in the Florida Statutes falling roughly into two categories: specific grants and general grants. Most of them are specific grants of authority, that is, the grant of authority is found coupled in a sentence with a specific power or duty of the agency. General grants of rulemaking authority authorize rulemaking in the context of the agency's mission or as it pertains to the stated purpose of the enabling legislation. Most agencies have a general grant of rulemaking authority and numerous specific grants of rulemaking authority. In most cases, it appears that existing rules exceed statutory authority because a "specific law to be implemented" is missing from the statute, not a legislative grant of rulemaking authority.

In response to the requirements of s. 120.536, F.S., the Department of Revenue identified 78 rules or portions of rules which they found exceeded their rulemaking authority and for which they recommended that the Legislature grant such authority. This bill addresses a number of these issues. The current situation and the effect of the changes proposed by this bill are detailed in the following section.

Rules 12--26.005 and 26.006 Denial of Refunds (Sections 24 and 26)

PRESENT SITUATION:

Rules 12--26.005 and 26.006 provide for informal conferences for dispute resolution dealing with refund denials. (Such informal conferences are specifically allowed by current law in disputes involving assessments, penalties, and interest.) The Department of Revenue has identified parts of these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend them if no authorizing legislation is enacted by January 1, 1999. If authorizing legislation is not passed, conferences could still be conducted, but they would not stay time periods for circuit court filings.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 72.011, F.S., to provide for informal conferences for dispute resolution dealing with refund denials. It also amends s. 213.21, F.S., allowing the Department of Revenue to adopt rules for informal conferences relating to the denial of refunds.

RULE 12C--2.006 INTANGIBLES TAX SITUS (SECTION 25)

PRESENT SITUATION:

Rule 12C--2.006 provides that a trust with a majority of the trustees out of state is not subject to intangibles tax. A trust with 50 percent of the trustees in Florida is 50 percent taxable. A trust with a majority of trustees in Florida is fully taxable. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, any trust with at least one Florida trustee will be fully taxable.

EFFECT OF PROPOSED CHANGES:

SB 1698 amends s. 199.052, F.S., to provide that a trust with a majority of the trustees out of state is not subject to intangibles tax; a trust with 50 percent of the trustees in Florida is 50 percent taxable; and a trust with a majority of trustees in Florida is fully taxable. The bill also goes beyond the current rule to provide that the annual tax is not levied on the assets of a trust if the settlor is not a Florida resident.

RULE 12-13.009 INFORMAL CLOSING AGREEMENTS (SECTION 26)

PRESENT SITUATION:

Rule 12-13.009 provides that compromises of taxes related to audit assessments or billing less than $30,000 do not require a written closing agreement. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, all compromises of tax will require formal written closing agreements.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 213.21, F.S., to provide that compromises of taxes related to audit assessments or billing less than $30,000 do not require a written closing agreement unless deemed appropriate by the department or requested by the taxpayer.

RULE 12C--1.0222 UNDERPAYMENT OF CORPORATE INCOME TAX (SECTION 27)

PRESENT SITUATION:

Rule 12C--1.0222 provides that if a taxpayer underpays his or her tentative estimated tax by $500 or 10 percent of the tax shown on the return, whichever is greater, the taxpayer is not eligible for an extension. The Department of Revenue has identified parts of this rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted

by January 1, 1999. Unless authorizing legislation is passed, if a taxpayer underpays his or her tentative tax by any amount he or she is not eligible for an extension.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 220.222, F.S., to provide that if a taxpayer underpays his or her tentative estimated tax by $2,000 or 30 percent of the tax shown on the return, whichever is greater, the taxpayer is not eligible for an extension. These limits exceed those provided currently in rule.

RULE 12B--8.006 STATE FIRE MARSHALL REGULATORY ASSESSMENT AND SURCHARGE (SECTION 28)

PRESENT SITUATION:

Rule 12B--8.006 sets the State Fire Marshall Regulatory Assessment at a fixed percentage of certain kinds of insurance coverage that include fire coverage and other kinds of insurance coverage. The Department of Revenue has identified parts of this rule as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to amend it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, there will be no guidance for insurers in determining what a one percent assessment on fire coverage actually amounts to when policies are written for multiple perils.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 624.515, F.S., to allow the Department of Revenue to determine by rule the percentage of fire insurance contained within multiple-peril insurance coverage, and to amend the percentages in response to industry changes.

RULE 12--19.001 THROUGH 19.006 LARGE CURRENCY TRANSACTIONS (SECTION 29.)

PRESENT SITUATION:

Rule 12--19.001 through 19.006 prescribe procedures by which large currency transactions must be reported to the Department of Revenue as required under s. 896.102, F.S. The Department of Revenue has identified these rules as not meeting the criteria set forth in s. 120.536, F.S., and will initiate proceedings pursuant to that statute to repeal it if no authorizing legislation is enacted by January 1, 1999. Unless authorizing legislation is passed, the law will require transactions to be reported to the department but the department will have no authority to prescribe how such reports are to be filed.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 896.102, F.S., to authorize the Department of Revenue to promulgate rules to administer and enforce reporting requirements.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

The department is given rulemaking authority. See Section II.B. above.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No

(3) any entitlement to a government service or benefit?

No

b. If an agency or program is eliminated or reduced:

An agency or program is not eliminated or reduced.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No

b. Does the bill require or authorize an increase in any fees?

No

c. Does the bill reduce total taxes, both rates and revenues?

Yes. See section III. B. above.

d. Does the bill reduce total fees, both rates and revenues?

No

e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 72.011; 125.2801; 192.001; 199.052; 212.02; 212.0515; 212.054; 212.0601; 212.0606; 212.097; 212.098; 212.11; 212.12; 212.17; 213.053; 213.21; 213.28; 213.67; 213.755; 220.02; 220.03; 220.222, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 Conforms a cross reference in s. 123.2801, F.S.,

Section 2 Amends s. 192.001(19), F.S., to add to the definition of "Computer software": "Notwithstanding any other provision of law, this subsection applies to the 1997 and subsequent tax rolls and to any assessment in an administrative or judicial action pending on July 1, 1997." This section is effective upon the act becoming law.

Section 3 Adds a new subsection (15) to s. 199.052, F.S. The new subsection requires a bank or other financial organization filing annual intangible tax returns for its customers for taxes due January 1, 1999, and thereafter to file the return information using machine-sensible media. A bank or financial organization that demonstrates a hardship is not required to use machine-sensible media. The Department of Revenue is directed to prescribe necessary rules.

Section 4 Amends paragraph (c) of subsection (14) of section 212.02, F.S., to clarify the definition of "retail sales," "sale at retail," "use," "storage," and "consumption."

Section 5 Adds new subsection (3) and (4) to section 212.0601, F.S. Subsection (3) provides that a motor vehicle dealer who loans a vehicle to any person at no charge shall accrue use tax based on the annual lease value as determined by the United States Internal Revenue Service Automobile Annual Lease Value Table. Subsection (4) provides that that notwithstanding the provisions of a motor vehicle rental agreement, no sales or use tax, shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 6 Subsection (4) is added to section 212.0606 providing the rental car surcharge shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle.

Section 7 Repeals paragraphs (a) of subjection (5) of s. 212.0515, F.S., regarding quarterly reports to the department by persons selling food or beverages to an operator for resale through vending machines, and repeals the applicable provision in s. 212.0515(5)(c), F.S., regarding the $250 penalty for not filing the quarterly report.

Section 8 Repeals s. 212.054(3)(a)2., F.S., which states:

> However, a dealer selling tangible personal property, or delivering a service or tangible personal property representing a service, into a county which, before November 9 of any year, adopts or revises any surtax authorized in s. 212.055, from outside such a county, is not required to collect the surtax at the new or revised rate on such transaction until February 1 of the year following the year of the adoption or revision of the surtax. However, if the surtax is

adopted or revised between November 9 and December 31 of any year, such dealer is not required to collect such surtax at the new or revised rate until February 1 of the year after the subsequent year. The department shall notify all dealers of all surtax rates in effect on November 9 no later than February 1 of the subsequent year.

Section 212.054(5), F.S., is amended to require that no discretionary sales surtax or increase or decrease in rate of any discretionary sales surtax shall take effect on a date other than January 1. No discretionary sales surtax shall terminate on a day other than December 31. Section 212.054(6), F.S., is amended to delete language no longer needed due to other amendments to the section. Section 212.054(7), F.S., is created and provides:

(a) The governing body of any county levying a discretionary sales surtax or the school board of any county levying the school capital outlay surtax authorized by s. 212.055(7) shall notify the department within 10 days after final adoption by ordinance or referendum of an imposition, termination, or rate change of the surtax, but no later than November 16 prior to the effective date of the surtax. The notice must specify the time period during which the surtax will be in effect and the rate and must include a copy of the ordinance and such other information as the department requires by rule. Failure to timely provide such notification to the department shall result in the delay of the effective date of the surtax for a period of 1 year.

(b) In addition to the notification required by paragraph (a), the governing body of any county proposing to levy a discretionary sales surtax or the school board of any county provisions to levy the school capital outlay surtax authorized by s. 212.055(7) shall notify the department by October 1 if the referendum or consideration of the ordinance that would result in the imposition, termination, or rate change of the surtax is scheduled to occur on or after October 1 of that year. Failure to timely provide such notification to the department shall result in the delay of the effective date of the surtax for a period of 1 year.

Section 9 Repeals the exceptions to s. 212.054(5), F.S., regarding the effective and termination dates of sales surtaxes, found in ss. 212.055(2)(g); (3)(f); (4)(c); (6)(b); (7)(c).

Section 10 Amends s. 212.097, F.S., to add language to the definition of “new business.”

Section 11 Amends s. 212.098, F.S., to add language to the definition of “new business.”

Section 12 Amends subsection (1) of s. 212.11, F.S., as follows:

Subsection (1)(b) is amended to add that a taxpayer must file and remit the tax before a date certain, in a format prescribed by the Department of Revenue.

Subsection (1)(e) makes an exception to the requirements of the subsection for those returns required to be initiated through an electronic data interchange.

Subsection (f)(1) adds time parameters for an electronic return to be considered timely initiated and accepted.

Section 13 Amends subsection (1) of s. 212.12, F.S., to add "the filing of timely tax returns" as an obligation of a dealer in exchange for the collection allowance. The Department of Revenue is allowed to deny a collection allowance if the tax return is not timely filed and the tax is not timely paid. The definition of "incomplete return" is amended. The department is allowed to adopt rules requiring such information as it may deem necessary to ensure that the tax levied is properly reported.

Section 14 Amends subsection (4) of s. 212.17, F.S., to exempt dealers who file though an electronic data interchange from the requirement of filing paper returns. Directs the department to prescribe the format and instructions for filing though an electronic data interchange.

Section 15 Amends subsection (1) of s. 213.053, F.S., to remove repealed statutory cross-references and to currently applicable references.

Section 16 Amends s. 212.0535(4)(a), F.S., to allow RISE participants to exchange data on a quarterly basis as determined jointly by each participant and the department. This section is effective October 1, 1998.

Section 17 Amends paragraph (a) of subsection (2) of s. 213.21, F.S., and adds subsection (7).

Subsection (2)(a) is amended to increase the executive director's compromise authority from $100,000 to $250,000.

Subsection (7) allows the Department of Revenue to compromise tax, penalty, and interest when a taxpayer voluntarily self-discloses a liability for tax.

Section 18 Amends subsection (6) of s. 213.28, F.S., to delete the requirement that a CPA entering into private audit contracts with the Department of Revenue be in good standing under the laws in the state in which the work is preformed, but retains the good standing requirement with regard to the state where the CPA is licensed.

Section 19 Amends subsections (1) and (2) of s. 213.67, F.S., and creates subsection (10).

Subsection (1) adds assets acquired after the notice of freeze to the list of assets that the Department of Revenue can freeze in garnishment proceeding. Subsection (1) also clarifies that assets in excess of the amount stated in the notice of freeze are not subject to the freeze. Additionally, any financial institution receiving such notice shall maintain a right of set off for any transaction involving a debit card occurring on or before the date of receipt of such notice.

Subsection (2) places additional requirements upon the recipient of a notice from the Department of Revenue.

Section 20 Amends s. 213.755, F.S., to include a definition of "return" and "payment."

Section 21 Amends paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of s. 220.03, F.S., to refer to the Internal Revenue Code of 1998. Provides that the section shall take effect upon becoming law and operate retroactively to January 1, 1998.

Section 22 Adds subsection (11) to section 220.02, F.S., to provide legislative intent stating that a "qualified subchapter S subsidiary," as defined by the Internal Revenue Service Code, shall not be treated as a separate corporation or entity from the S corporation parent to which the subsidiary's assets, liabilities, income, deductions, and credits are attributed.

Section 23 Directs the Department of Revenue to conduct a study and report its findings.

Section 24 Amends paragraph (b) of sbusection (2) of section 72.011, F.S., to change the word "proceduce" to "procedures."

Section 25 Amends subsection (5) of section 199.052, F.S., to state when a trust has a Florida situs.

Section 26 Amends paragraph (a) of subsection (1) and paragraph (a) of subsection (2) of 213.21, F.S., to provide that the Department of Revenue may adopt rules regarding the denial of refunds and provides that compromises of taxes related to audit assessments or billing less than $30,000 do not require a written closing agreement unless deemed appropriate by the department or requested by the taxpayer.

Section 27 Amends paragaph (c) to add subection (2) of section 220.222, F.S., to provide that if a taxpayer underpays his or her tentative estimated tax by $2,000 or 30 percent of the tax shown on the return, whichever is greater, the taxpayer is not eligible for an extension. These limits exceed those provided currently in rule.

Section 28 Amends subsection (1) of section 624.515, F.S., to allow the Department of Revenue to determine by rule the percentage of fire insurance contained within multiple-peril insurance coverage, and to amend the percentages in response to industry changes.

Section 29 Adends subsection (3) of 896.102, F.S., to authorize the Department of Revenue to promulgate rules to administer and enforce reporting requirements.

Section 30 Provides that except as provided, the act shall take effect July 1 of the year in which enacted.

IV. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None

2. Recurring Effects:

Loaned vehicles - no charge	FY 98-99	FY 99-00
General Revenue	(*)	(*)
Trust Fund	(*)	(*)
Local Government	(*)	(*)

Loaned vehicles - during repairs (sales tax)	FY 98-99	FY 99-00
General Revenue	($0.3)	($0.3M)
Trust Fund	(*)	(*)
Local Government	(*)	(*)

Loaned vehicles - during repairs (rental surcharge)	FY 98-99	FY 99-00
General Revenue	(*)	(*)
Trust Fund	($0.2M)	($0.2M)
Local Government	$0	$0

Qaulified subchapter s subsidiaries	FY 98-99	FY 99-00
General Revenue	($0.6)	($0.3M)
Trust Fund	$0	$0
Local Government	$0	$0

3. Long Run Effects Other Than Normal Growth:

None

4. Total Revenues and Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

The amendment to s. 192.001(19), F.S., limiting the time for application for refund of real property taxes paid on computer software, has an indeterminate nonrecurring positive impact on local governments. The Department of Revenue surveyed all 67 counties to determine the taxable value of computer software per year for 1994 through 1996. Twenty-eight counties responded to the survey reporting the annual taxable value of computer software to be $750 million. The results of the survey indicated that to the extent every person eligible for a refund in all 67 counties applied for such refund and based on the average millage rate of 22 mills, local governments could realize a nonrecurring reduction in property tax refunds of about $16.5 million for each year, or about $50 million for the three years currently open for refunds.

2. Recurring Effects:

See III. A. 2.

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None

V. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt form the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill will reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

VI. COMMENTS:

None

VII. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 21, 1998, the House Committee on Governmental Operations adopted 8 amendments to HB 4413.

- The first amendment provides that the purchase of shop supplies by motor vehicle, airplane, or boat repair facilities, which are incorporated into the repair, will be considered purchases for resale and exempt from the sales and use tax. This is estimated to result in an insignificant loss of state and local sales tax revenue. *See* Senate Ways and Means Committee Staff Analysis and Economic Impact Statement, April 15, 21998, at 16-17.

- The second amendment provides that

  -- a motor vehicle dealer who loans a vehicle to a person at no charge will be allowed to accrue use tax based on the annual lease value as determined by the U.S. Internal Revenue Service Automobile Annual Lease Value Table instead of at the actual value of an annual lease or at a percentage of the sale price of the motor vehicle. The fiscal impact of this provision could result in either an increase or decrease in use tax collections and is thus indeterminate. *Id.*

  -- no sales or use tax and no rental car surcharge pursuant to s. 212.060, F.S., shall accrue to the use of a motor vehicle provided at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by the entity providing the replacement motor vehicle. The fiscal impact of this provision is estimated to be a total recurring loss of $.5 million -- $.3 million in sales and use tax and $.2 million in rental car surcharge. *Id.*

-- no additional tax shall be imposed on a vehicle used by an employee, when a motor vehicle dealer requires that employee to use a motor vehicle from the dealer's inventory as a condition of employment. Although an consensus estimating conference has not addressed the fiscal impact of this provision, due to its narrow scope of impact, the fiscal impact should not be significant.

- The third amendment provides that "[a]ny note or other obligation taken by a motor vehicle dealer as part of a deferred down payment for the purchase of a motor vehicle, if the note or other obligation is due and payable within 10 days after issuance, and the tax imposed under chapter 212 is paid on that purchase, shall be exempt from the tax imposed by this section [s. 201.08, F.S.]." The fiscal impact of this provision has not yet been determined.

- The fourth amendment makes retroactive to July 1, 1994, the provision that makes the False Claims Act inapplicable to the claims received by the Department of Revenue. Millions of dollars are currently at issue with regard to existing litigation under the False Claims Act involving alleged false claims to the department. If this amendment becomes law, whether the retroactive application of this provision is constitutional, will, more likely than not, become a subject of litigation between the current party litigants.

- The fifth amendment provides that for purposes of chapter 212, F.S., charges by the operator of a vessel that is used *primarily* to transport passengers to foreign ports will be considered to be charges for transportation services rather than admissions charges. [Admission charges are taxed, s. 212.04, F.S.; transportation charges are not subject to sales tax.] "Primarily" means 65 percent or more, calculated on the basis of vessel mileage. Qualification for this treatment shall be determined for each month based on the vessel's mileage for the 12-month period immediately preceding the date on which the return for that month is due. This provision is also made retroactive to any transaction occurring after June 30, 1992, on which tax was not collected or remitted. It is unknown as to whether there is any pending litigation that would be affected by this retroactive provision.

  A consensus estimating conference report indicates that the total fiscal impact statewide for 1998-99 would be between $3.8 million (low) and $5.1 million (high). *See* Tax: Admissions Tax on Cruises-to-Nowhere, Amendment, April 3, 1997.

- The sixth amendment amends s. 212.08, F.S., to provide that "[t]he government shall not impose taxes or regulatory constraints on religious institutions or their affiliates that are not also imposed on other organizations of a similar size." It is uncertain whether this language only applies to the Department of Revenue, as a result of its placement in chapter 212, F.S., or whether it applies to any governmental entity. Additionally, the provision extends beyond the taxing provisions to regulatory constraints.

- The seventh amendment also amends s. 212.08, F.S., and provides a tax exemption for the "sale to or use in this state of any work of art by any person if it was purchased or imported exclusively for the purpose of being donated to any educational institution". The fiscal impact of this provision, if any, has not yet been determined.

- The eighth amendment amends s. 212.03, F.S., dealing with "[t]ransient rentals tax; rate, procedure, enforcement, exemptions", to provide that "[t]he tax levied by this section shall not apply to, be imposed upon, or be collected from any person who has entered

into a bona fide written lease for longer than 6 months in duration for the lease or rental of docking space for the purpose of docking a boat used as a principal or permanent place of residence."

The consensus estimating conference report estimates that the total, statewide 1998-99 annualized fiscal impact ranges from a low of $.6 million to a high of $6.4 million (range 98-99, cash is from $.6 million to $5.9 million). *See* Tax: Sales and use; Issue: Long-term rentals of boat docking slips; Bill Number(s): SB 1650; Date of Analysis: 3/19/98.

On April 23, 1998, the House Committee on General Government Appropriations adopted a "strike everything" amendment to HB 4413 and made the bill a committee substitute. CS/HB 4413 removed all eight amendments placed on the bill by the House Committee on Governmental Operations; removed section 1 from the bill; and added sections 19 and 20 to the bill. Except for the compromise authority given the Executive Director of the Department of Revenue, which has an indeterminate fiscal impact, CS/HB 4413 is anticipated to have no fiscal impact.

On April 29, 1998, the Senate adopted a "strike everything" amend to CS/HB 4413. The amendment added the following sections to the bill: 4, 5, 6, and 23-29.

VIII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Legislative Research Director:
Lynne Overton	Keith G. Baker, Ph.D.

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:	Legislative Research Director:
J. Marleen Ahearn, Ph.D., J.D.	Jimmy O. Helms

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:	Legislative Research Director:
Jenny Underwood Dietzel	Cynthia P. Kelly

FINAL RESEARCH PREPARED BY COMMITTEE ON FINANCE AND TAXATION:

Prepared by:	Legislative Research Director:
Lynne Overton	Keith G. Baker, Ph.D.