STORAGE NAME: h4567.ft
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HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 4567

RELATING TO: Taxation

SPONSOR(S): Representative Arnall

COMPANION BILL(S): Similar to CS/SB 322

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCE AND TAXATION
(2) GENERAL GOVERNMENT APPROPRIATIONS
(3)
(4)
(5)

I. SUMMARY:

The 1989 Legislature created a Taxpayers' Bill of Rights Task Force and charged it with drafting proposed legislation for a Florida Taxpayers' Bill of Rights. In November 1992, Florida voters approved Constitutional amendment #5 which called for a taxpayer bill of rights. The 1992 Legislature enacted s. 213.015, F.S., creating a taxpayer bill of rights containing 15 separate rights. The Legislature adopted most of the Task Force language but omitted some recommendations including the payment of interest on late refunds, the same 5-year statute of limitations for refunds and assessments, and the assurance that auditors are not compensated based on the amount of tax assessed or collected.

This bill reduces the statute of limitations for both tax assessments of taxes due and tax refunds from five to three years. There would be no time limit on any assessment if the taxpayer files a grossly false return before July 1, 1998. The three year limitation would also be in effect for any taxpayer who has failed to make any tax payment, filed a required return, or filed a fraudulent return for any taxes due on or after July 1, 1998, provided that the taxpayer has disclosed in writing the tax liability to the Department of Revenue before the department has contacted the taxpayer.

The tolling period for all audits noticed after July, 1, 1998 is reduced to 1 year.

The bill reduces the penalties for nonpayment or under payment of intangibles taxes, documentary stamp taxes, sales taxes, and corporate income taxes by fifty percent.

This bill provides that interest shall be paid on refunds of tax overpayments, taxes paid in error, or payment of taxes not due when those refunds have not been paid. Interest shall not commence until 90 days after a complete refund application has been filed. If an audit of the claim is necessary, interest shall not commence until that audit is final. The rate of interest will be the same as the adjusted prime rate charged by banks.

The fiscal impact of the bill is ($51.0M) for FY 1998-1999; the fiscal impact for FY 1999-2000 is ($78.1M).

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The 1989 Legislature created a Taxpayers' Bill of Rights Task Force and charged it with drafting proposed legislation for a Florida Taxpayers' Bill of Rights. The Task Force issued its report in May 1990. In November 1992, Florida voters approved Constitutional amendment #5 -- proposed by the Taxation and Budget Reform Commission -- which called for a taxpayer bill of rights to set forth taxpayers' rights and responsibilities and government's responsibilities to deal fairly with taxpayers.

The 1992 Legislature enacted s. 213.015, F.S., creating a taxpayer bill of rights containing 15 separate rights. The Legislature adopted most of the Task Force language but omitted some recommendations including the payment of interest on late refunds, the same 5-year statute of limitations for refunds and assessments, and the assurance that auditors are not compensated based on the amount of tax assessed or collected.

Statute of limitations. The statute of limitations for both assessments and refunds is currently five years. Prior to the passage of the sales tax on services and a tax amnesty program in 1987, Florida law contained the same three-year statute of limitations for both audits and refunds. At that time, the limitation for assessments was increased to 5 years while the statute of limitations for refunds remained at three years. The 1994 Legislature increased the limitation on refunds to five years. The current tolling period for audits is two years from the time the department issues a notice of intent to conduct an audit.

Penalties. Florida taxpayers must pay a penalty when taxes are not remitted in a timely manner. Currently the penalties addressed in the bill are as follows:

1) *Intangible taxes* - ten percent of the delinquent tax each calendar month up to a limit of fifty percent of the total tax not timely paid; a specific penalty of thirty percent of the tax attributable for each item that is undervalued or omitted from a filed return;
2) *Documentary stamp taxes* - ten percent of the delinquent tax per month or part of a month if the failure to pay is less than thirty days, with an additional ten percent of any unpaid tax for each additional thirty days, up to a limit of fifty percent of the total tax not timely paid; the minimum penalty is ten dollars;
3) *Sales taxes* - ten percent of the delinquent tax per month or part of a month if the failure to pay is less than thirty days, with an additional ten percent of any unpaid tax for each additional thirty days, up to a limit of fifty percent of the total tax not timely paid; the minimum penalty is ten dollars;
4) *Corporate income taxes* - unless no tax is determined to be due, the penalty is three hundred dollars or ten percent of the final determination, whichever is greater, up to a limit of ten thousand dollars.

Interest rates on delinquent taxes. Interest of 1% a month or 12% a year is applied to most delinquent taxes. The interest rate applied to corporate income taxes is a floating rated tied to the prime rate offered by banks.

Interest on late refunds. Florida taxpayers must pay interest on delinquent tax payments. There is no provision requiring the state to pay taxpayers interest on refunds owed to them that are late, except corporate income taxpayers. The federal government pays interest on late refunds (*see* Internal Revenue Code § 6611).

B. EFFECT OF PROPOSED CHANGES:

Statute of limitations. HB 4567 reduces the statute of limitations for both tax assessments of taxes due and tax refunds on or after July 1, 1998 from five to three years. There would continue to be no time limitation on any assessment if the taxpayer files a grossly false return before July 1, 1998. The three year limitation would also be in effect for any taxpayer who has failed to make any tax payment, filed a required return, or filed a fraudulent return for any taxes due on or after July 1, 1998, provided that the taxpayer has disclosed in writing the tax liability to the Department of Revenue before the department has contacted the taxpayer. The two year tolling period for audits would be reduced to 1 year for all audits noticed after July 1, 1998.

Penalties. The bill reduces the penalties for non payment or under payment of intangibles taxes, documentary stamp taxes, sales taxes, and corporate income taxes as follows:

1) *Intangible taxes* - five percent of the delinquent tax each calendar month up to a limit of twenty-five percent of the total tax not timely paid; a specific penalty of fifteen percent of the tax attributable for each item that is undervalued or omitted from a filed return;
2) *Documentary stamp taxes* - five percent of the delinquent tax per month or part of a month up to a limit of twenty-five percent of the total tax not timely paid; the minimum penalty remains ten dollars;
3) *Sales taxes* - five percent of the delinquent tax per month or part of a month up to a limit of twenty-five percent of the total tax not timely paid; the minimum penalty remains ten dollars;
4) *Corporate income taxes* - unless no tax is determined to be due, the penalty is five percent per month, not to exceed ten percent of the final determination, up to a limit of ten thousand dollars; however, the taxpayer is exempt from this penalty if a penalty is assessed under s. 220.801 for an untimely filed return.

Interest rates on delinquent taxes. This bill provides that the interest charged on delinquent taxes shall be the same as the adjusted prime rate charged by banks and set by the executive director of DOR on March 31 and September 30 each year, as necessary. The rate adjustment will be effective for a six month period beginning July 1, if adjusted in March, or January 1, if adjusted in September.

Interest on late refunds. This bill provides that interest shall be paid on refunds of tax overpayments, payment of taxes not due, or taxes paid in error when those refunds have not been paid. Interest shall not commence until 90 days after a complete refund application has been filed. If an audit of the claim is necessary, interest shall not commence until that audit is final. The rate of interest will be the same as the adjusted prime rate charged by banks and set by the executive director of DOR on March 31 and September 30 each year, as necessary. The rate adjustment will be effective for a six month period beginning July 1, if adjusted in March, or January 1, if adjusted in September.

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 bill reduces the statute of limitations and penalties that may be assessed in conjunction with delinquent taxes.

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

The executive director of DOR is directed to set the interest rate used in the calculations regarding refunds and delinquencies.

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

N/A

b. If an agency or program is 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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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?

N/A

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

N/A

5. Family Empowerment:

a. If the bill purports 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?

N/A

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amending s. 95.091, s. 199.282, s. 201.17, s. 212.12, s. 215.26, and s. 220.211; creating s. 213.235 and 213.255, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. amending s 95.091, F.S.; reducing the statute of limitations for both tax assessments of taxes due on or after July 1, 1998 from five to three years; there would continue to be no time limitation on any assessment if the taxpayer files a grossly false return before July 1, 1998; providing that the three year limitation would apply for any taxpayer who has failed to make any tax payment, filed a required return, or filed a fraudulent return for any taxes due on or after July 1, 1998, provided that the taxpayer has disclosed in writing the tax liability to the Department of Revenue before the department has contacted the taxpayer; providing that the two year tolling period for audits would be reduced to 1 year for all audits noticed after July 1, 1998.

Section 2. amending s. 199.282, F.S.; reducing intangibles tax penalties to five percent of the delinquent tax each calendar month up to a limit of twenty-five percent of the total tax not timely paid; a specific penalty of fifteen percent of the tax attributable for each item that is undervalued or omitted from a filed return.

Section 3. amending s. 201.17, F.S.; reducing documentary stamp tax penalties to five percent of the delinquent tax per month or part of a month up to a limit of twenty-five percent of the total tax not timely paid.

Section 4. amending s. 212.12, F.S.; reducing sales tax penalties to five percent of the delinquent tax per month or part of a month up to a limit of twenty-five percent of the total tax not timely paid; the minimum penalty remains ten dollars;

Section 5. creating s. 213.235, F.S.; providing that the interest charged on delinquent taxes shall be the same as the adjusted prime rate charged by banks and set by the executive director of DOR on March 31 and September 30 each year, as necessary. The rate adjustment will be effective for a six month period beginning July 1, if adjusted in March, or January 1, if adjusted in September.

Section 6. creating s. 213.255, F.S.; providing that interest shall be paid on refunds of tax overpayments, payment of taxes not due, or taxes paid in error when those refunds have not been paid; providing that interest shall not commence until 90 days after a complete refund application has been filed; if an audit of the claim is necessary, interest shall not commence until that audit is final; providing that the rate of interest will be the same as the adjusted prime rate charged by banks and set by the executive director of DOR on March 31 and September 30 each year, as necessary; the rate adjustment will be effective for a six month period beginning July 1, if adjusted in March, or January 1, if adjusted in September; providing that this section shall apply to refunds on tax payments made on or after July 1, 1998.

Section 7. amending s. 215.26, F.S.; providing the three year limitations shall apply to refunds on taxes paid on or after July 1, 1998.

Section 8. Amending s. 220.211. F.S.; reducing the corporate income tax penalties to five percent per month, not to exceed ten percent of the final determination, up to a limit of ten thousand dollars; however, the taxpayer is exempt from this penalty if a penalty is assessed under s. 220.801 for an untimely filed return.

Section 9. providing an effective date of July 1 of the year enacted.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

General Revenue Impacts	1998-1999	1999-2000
Interest rate set @ prime for delinquent taxes	($10.7M)	($16.3M)
Interest rates set @ prime for refunds	($2.2M)	($3.5M)
Penalty reductions	($30.1M)	($46.0M)

Trust Fund Impacts	1998-1999	1999-2000
Interest rate set @ prime for delinquent taxes	($1.4M)	($2.1M)
Interest rates set @ prime for refunds	($.8M)	($1.2M)
Penalty reductions	($.1M)	($.1M)

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

General Revenue Impacts	1998-1999	1999-2000
Totals	($43.0M)	($65.8M)

Trust Fund Impacts	1998-1999	1999-2000
Totals	($2.3M)	($3.4M)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

Local Impacts	1998-1999	1999-2000
Interest rate set @ prime for delinquent taxes	($1.9M)	($2.9M)
Interest rates set @ prime for refunds	($.2M)	($.3M)
Penalty reductions	($3.7M)	($5.7M)
Totals	($5.8M)	($8.9M)

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:

Time limits for audits and penalties would be reduced at a benefit to taxpayers. Additionally, interest rates on refunds would be increased.

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

N/A

D. FISCAL COMMENTS:

The recurring impact in regards to shortening the statute of limitations to three years does not occur until FY 2000-2001. At that time the total recurring estimated impact would be approximately ($51.6M).

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The mandates provision would not apply.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

There would be no reduction of revenue raising authority.

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

There is a reduction of state revenue shared, but there is not a reduction in the percentage of state revenue shared.

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

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