

STORAGE NAME: h2089.ft

DATE: March 30, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: HB 2089 (PCB FT 99-01B)

RELATING TO: Tax Administration

SPONSOR(S): Committee on Finance and Taxation and Representative Albright

COMPANION BILL(S): Compare SB 888

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

(1) FINANCE AND TAXATION YEAS 15 NAYS 0

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I.

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

- establishes a procedure for a purchaser to obtain a refund or credit from a seller for municipal utility taxes that were collected in error;
- provides that a small estate may file an affidavit of nonliability for estate tax rather than obtaining a certificate of nonliability for tax from the Department;
- provides an intangible tax credit for a "like tax" paid to another state on the same property as taxed by Florida;
- provides a documentary stamp tax credit for a "like tax" paid to another state on the same property as taxed by Florida;
- clarifies the conditions under which the tax on sales, use, and other transactions does not apply to the sale of materials used in repairing a motor vehicle, airplane, or boat;
- increases the penalties for a person who willfully and with the intent to evade taxation files a false or fraudulent return, fails to maintain records, or fails to file returns;
- revises the provisions relating to the sales tax exemption for charges for electricity or steam used to operate machinery and equipment under specified conditions and provides that it is the intent of the Legislature that the amendments are remedial in nature and merely clarify existing law;
- provides that a nonresident purchaser of a motor vehicle must license the vehicle in his or her home state within 45 days of the purchase to qualify for the partial exemption from sales tax;
- authorizes the executive director of the department to enter into a contract with a private vendor to develop and implement a system to enhance tax collections where compensation to the vendor is funded through increased tax collections;
- restricts the amount of assets subject to a Notice of Freeze in an administrative garnishment to those that do not exceed the delinquency amount of the taxpayer unless the taxpayer has a prior history of tax delinquencies;
- incorporates the most recent changes to the Internal Revenue Code into Florida law for Florida corporate income tax purposes;
- deletes a method for apportioning corporate income tax for an insurance company whose principal source of premiums is from reinsurance policies;
- allows a taxpayer to elect to file a corporate or intangible tax return in a form initiated through an electronic data interchange. The bill allows a property appraiser to elect to allow a taxpayer to file a tangible personal property tax return in a form initiated through an electronic data interchange. The bill allows an employer to file a report with the Division of Unemployment Compensation in a form initiated through an electronic data interchange; and

STORAGE NAME: h2089.ft

DATE: March 30, 1999

PAGE 2

- provides that sales tax resale certificates must be renewed annually to active accounts and directs the Department of Revenue to provide additional taxpayer information and education on the proper use of resale certificates;

Except as otherwise provided, the effective date of this act is upon becoming law.

The total estimated fiscal impact upon General Revenue is 8.0 million for FY 99-2000 and 19.2 million for FY 2000-2001. There will be an insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is 1.3 million for FY 1999-2000 and 3.0 for FY2000-2001. The total estimated fiscal impact for this bill is 9.3 million for FY 1999-2000 and 22.2 million for FY 2000-2001.

The positive fiscal impact of this bill is not due to the increase of any tax, fee, or other assessment. The revisions to the statutes concerning resale certificates are anticipated to reduce taxpayer fraud and errors thereby increasing revenue collects for funds already owed to the state.

II. SUBSTANTIVE ANALYSIS:

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.

MUNICIPAL PUBLIC SERVICE TAX - REFUND PROCEDURES
(Section 1)

PRESENT SITUATION:

Section 166.231, F.S., authorizes municipalities to levy a public service tax. Subsection (1) of section 166.231, F.S., specifically authorizes municipalities to levy a tax on the purchase of electricity, metered or bottled gas, and water service within the municipality not to exceed 10 percent of the payment amount received for the service. Municipalities must notify sellers in writing of any change in municipal boundaries or in the rate of taxation.

Section 166.231(9), F.S., authorizes a public services tax on telecommunications services as defined in section 203.012, F.S. The municipality is required to elect one of two alternative methods of levying the telecommunications tax and to provide a telecommunications provider with an alphabetical listing of street names and numbers within the municipality for use in calculating the tax. In instances where the location cannot be determined, the source of the tax may be ascribed to the municipality on the basis of the telephone number, billing address, or service address which is used by the seller. The municipality is authorized to audit the records of any taxable telecommunications service provider; however, the information received is exempt from the open public records requirements in section 119.07(1), F.S.

Although section 166.231, F.S., only grants the authority to levy public service taxes to municipalities, charter counties are also authorized to levy these taxes. Charter counties may only levy the tax in unincorporated areas of the county.

For taxing purposes, a municipality must compile a list containing each street name, known street name aliases, street address number ranges, applicable directionals, all post office box number ranges where applicable, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. The lists may be printed or available in another medium. The sellers are only responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality. Service providers are only liable for collecting and remitting the taxes due to the extent that the address information received is accurate.

A seller may apply for a refund or credit for any overpayment of tax, including interest and penalties, within three years of the remittance by the seller. The municipality must refund or allow a credit for those overpayments. If the seller has refunded or credited the purchaser for the overpayment, the seller may apply within the above three years or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

A municipality must offset a seller's overpayment of tax, including interest and penalties against any deficiency of tax, interest or penalty during the same audit period and the offset must be reflected in any proposed assessment. If the overpayments exceed the deficiency, then the municipality must refund the amount the aggregate overpayments exceed the total deficiency. The audit methodology is presumed to be correct absent proof to the contrary. "Overpayment" is defined as "all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality."

A purchaser of a service may request a refund or credit from the seller of the tax collected based on the tax not being due the municipality. The seller would be required to refund or credit the amount if the request is made within three years following the collection of the tax from the purchaser. If the seller determines that the amount of taxes collected from the purchaser within the preceding three years were not due to the municipality, the seller must refund or credit the purchaser within 45 days of that determination.

EFFECT OF PROPOSED CHANGES:

Section 166.235, F.S., would be created to establish procedures for a purchaser obtaining a refund or credit from a seller for municipal utility taxes that were collected in error. A purchaser would submit a written request to the seller within three years of the collection of the disputed taxes. The written request must be signed and include the following information: purchaser's name, mailing address, account number, disputed amounts, the collection time frame for the disputed amounts, and the reason for the claim that the amounts should not be due.

If any portion of the taxes timely claimed were collected through the seller's error, but not due to any municipality, the seller would be required to issue a refund or credit within 45 days of the determination of error.

In regard to any amount that is timely claimed, but no determination has been made, the seller would have to submit a copy of the claim within 30 days to each municipality to which taxes claimed were remitted, as well as each municipality which has asserted in writing the right to impose a tax in an area that would include the purchaser's billing or service address. The municipality would have 30 days to notify the seller in writing that a refund or credit should be issued to the purchaser.

After all municipalities have notified the seller of the appropriate amounts to be refunded to the purchaser, the seller would have 45 days to issue a refund or credit to the purchaser. The seller would only be obligated to refund those amounts approved by the municipality, and would be entitled to a corresponding refund from the municipality.

The seller would be required to issue a written response regarding the disposition of the purchaser's claim, specifying portions of the taxes refunded and reasons for any

portions of tax claims that are denied. A copy of each municipalities response to the claim would have to accompany the seller's response.

This procedure would represent the sole course of remedy for any purchaser who claims that a seller has collected municipal public services taxes that were not due. No action arising as a result of the claimed collection of taxes that were not due could be commenced against a seller or municipality unless the purchaser proves that he has exhausted the remedies provided by the established procedures of the bill and the defendant has failed to comply with the established procedures.

The seller or municipality could claim a complete defense if the seller or municipality has refunded the taxes claimed. If such action arises, the seller's complete defense would be that the tax collected was done so upon written information from the municipality. Any action not taken within 180 days following the purchaser's submission of a completed request would be barred. Relief would be limited to a refund or credit of taxes claimed.

AD VALOREM TAX - NONPROFIT HOMES FOR THE AGED
(Section 2)

PRESENT SITUATION:

Pursuant to s. 196.1975, F.S., nonprofit homes for the aged are exempt from ad valorem tax when the home is a corporation not for profit that has been exempt as of January 1 of the year for which exemption from ad valorem property taxes is requested from federal income taxation by having qualified as an exempt charitable organization under the provisions of s. 501(c)(3) of the Internal Revenue Code of 1954 or of the corresponding section of a subsequently enacted federal revenue act. A corporation will not be disqualified under this subsection if, for purposes of allocating tax credits, under s. 42(h)(5) of the Internal Revenue Code of 1986, by the Florida Housing Finance Agency as defined by s. 420.0004(4), the property is leased to a Florida limited partnership, the sole general partner of which is the nonprofit corporation, and the home for the aged was in existence or under construction on or before April 1, 1995.

EFFECT OF PROPOSED CHANGES:

The bill would repeal the following language in s. 196.1975, F.S.: A corporation will not be disqualified under this subsection if, for purposes of allocating tax credits, under s. 42(h)(5) of the Internal Revenue Code of 1986, by the Florida Housing Finance Agency as defined by s. 420.0004(4), the property is leased to a Florida limited partnership, the sole general partner of which is the nonprofit corporation, and the home for the aged was in existence or under construction on or before April 1, 1995.

ESTATE TAX - AFFIDAVIT OF NONLIABILITY FOR ESTATE TAX
(Sections 3-9)

PRESENT SITUATION:

Florida's estate tax is equal to the credit given for state tax under federal law. Under present law, every personal representative is required to give notice to the Department

of the decedent's death on a form specified by the Department. If the estate is required to file a federal estate tax return, then the estate must also file a Florida estate tax return. Smaller estates, who are not required to file a federal or Florida tax return, must file a form with the Department indicating that "no tax is due." When the Department receives the form indicating "no tax is due", it issues a certificate to the estate stating that "no tax is due." The estate must then file the certificate with the Clerk of the Court. The Department charges a \$5 fee for the certificate.

Since the Department is relying on information from the estate, the current statutory scheme does not benefit either the State or the estate. The procedure adds unnecessary delays to the closing of small estates. The department issues approximately 60,000 certificates annually.

EFFECT OF PROPOSED CHANGES:

Section 198.12, F.S., would be repealed so that personal representatives no longer have to file a form notifying the Department of the decedent's death. An estate that files a return with the Department, but owes no Florida estate tax, would be able to get a certificate of nonliability for tax. The Department would continue to charge a \$5 fee for the certificate.

If the estate is not required to file a Florida or federal tax return, then in lieu of the certificate of nonliability for tax, the personal representative would be able to issue an affidavit of nonliability for tax. The affidavit shall be subject to record and admissible in evidence to show nonliability for tax. Making of false affidavit would be punishable as a misdemeanor of the first degree and the personal representative could be held liable for any tax due.

LIKE TAX CREDIT - INTANGIBLE TAX

(Section 10)

PRESENT SITUATION:

Florida's intangible tax is a tax on "all personal property which is not in itself intrinsically valuable, but which derives its chief value from that which it represents." §199.023, F.S. Taxable intangible personal property includes, among other things, stocks, bonds, notes, other obligations to pay money, and accounts receivable. §199.023, F.S. Certain intangible personal property is exempt from the tax. Examples of exempt property include money, franchises, general partnership interests and retirement accounts. §199.185, F.S.

The tax is paid by all "persons" which includes any individual, firm, partnership, joint adventure, syndicate, or other group or combination acting as a unit, association, corporation, estate, trust, business trust, trustee, personal representative, receiver, or other fiduciary unless such persons are exempted from the tax. §199.023(3), F.S. An annual tax of 2 mills is imposed on the value of intangible personal property which has a taxable situs in Florida. §199.032, F.S. Intangible personal property has a taxable situs in Florida if the property is owned, controlled, or managed by any person domiciled in Florida. §199.175, F.S. Accordingly, the property could be owned, controlled, or managed by a person resident in Florida, but be physically located in another state. Tax

could be imposed on the same property by Florida and by another state in which the property is located.

Presently, a taxpayer, other than a natural person, is allowed a credit for an amount equal to a like tax lawfully imposed and paid by that taxpayer on the same property in another state or taxing authority when the taxing authority is also claiming taxable situs under provisions similar or identical to Florida's intangible tax. The credit for the tax may not exceed the Florida intangible tax imposed on the property.

EFFECT OF PROPOSED CHANGES:

The credit for an amount equal to a like tax lawfully imposed and paid by that taxpayer on the same property in another state or taxing authority would be extended to include taxpayers who are natural persons. The possibility of multiple taxation of the same property would be eliminated for natural persons.

LIKE TAX CREDIT -DOCUMENTARY STAMP TAX
(Section 11)

PRESENT SITUATION:

Chapter 201, F.S., imposes a documentary stamp tax on written obligations to pay money that are made, executed, delivered, sold, transferred, or assigned in Florida. The renewal of such documents is also subject to documentary stamp tax. Mortgages and documents that convey any interest in real property are also subject to documentary stamp tax. Documents subject to documentary stamp tax in Florida could be subject to a similar tax in another state.

Presently there is no credit for documentary stamp tax if a similar tax is imposed on the same document in another state.

EFFECT OF PROPOSED CHANGES:

Section 201.165, F.S., would be created to provide a credit against documentary stamp tax if an amount equal to that tax is lawfully imposed by another taxing jurisdiction. The tax imposed by another taxing jurisdiction must be in substance identical to Florida's documentary stamp tax. The possibility of multiple taxation of the same document would be eliminated. The Department would be authorized to adopt rules to implement the credit and designate forms that establish what proof is required. The credit would apply retroactively to the extent that the period for nonclaim is not reopened.

"RETAIL SALE" - CLARIFICATION OF DEFINITION
(Section 12)

PRESENT SITUATION:

In the 1998 Legislative Session an amendment was offered by Senator Burt in the Ways and Means Committee meeting to CS/SB 1952, the Senate companion to CS/HB 4413. The amendment was to clarify the sales tax treatment of motor vehicle, airplane and boat repair parts purchased by repair facilities and incorporated into the repair. Such parts can normally be purchased tax free as a sale for resale because of the ultimate

charges for the repair are subject to sales tax. Since this amendment was intended to clarify, rather than change, current law, the Revenue Estimating Conference put a zero fiscal impact on the amendment. The amendment was subsequently incorporated into CS/HB 4413 which became law. See Ch. 98-341, L.O.F.

Current law states that the terms "retail sales," "sale at retail," "use," "storage," and "consumption," do not include the sale, use, storage, or consumption of material for use in repairing a motor vehicle, airplane, or boat, when such material is incorporated into the repaired vehicle. Even though the title of CS/HB 4413 states that the bill is "amending s. 212.02, F.S.; excluding materials purchased by certain repair facilities which are incorporated in the repair from the definition of the term 'retail sales'", the law does not require that the material be sold to a registered repair dealer in order to qualify for the exemption. The law does not state that the materials must be incorporated and sold as part of the repaired vehicle. There is concern that the present language could be misconstrued to grant a broader exemption than intended.

EFFECT OF PROPOSED CHANGES:

Section 212.02 (14)(c), F.S. (1998 Supp.), would be revised to state that the terms "retail sales," "sale at retail," "use," "storage," and "consumption," do not include the sale of materials to a registered repair facility for use in repairing a motor vehicle, airplane, or boat, when such materials are incorporated into and sold as part of the repair. Such a sale shall be deemed a purchase for resale by the repair facility, even though every material is not separately stated or separately priced on the repair invoice. The revised language more clearly states the intent of the law.

CRIMINAL PENALTIES FOR TAX CRIMES (Sections 13 - 17)

PRESENT SITUATION:

Section 212.15, F.S. provides that any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit sales and use tax is guilty of theft of state funds, punishable as follows:

- (a) If the total amount of stolen revenue is less than \$300, the offense is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. Upon a second conviction, the offender is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. Upon a third or subsequent conviction, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (b) If the total amount of stolen revenue is \$300 or more, but less than \$20,000, the offense is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.
- (c) If the total amount of stolen revenue is \$20,000 or more, but less than \$100,000, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(d) If the total amount of stolen revenue is \$100,000 or more, the offense is a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The penalty for filing a false or fraudulent return, failure to maintain records, or failure to file returns, is a misdemeanor which is generally a lesser offense than theft of tax funds. See, §212.12(2)(a), F.S. (1998 Supp.), §212.13(1) and (2), F.S.

The differing penalties results in an incentive for tax criminals to destroy records or file false returns. For example, a criminal who steals \$100,000 in tax revenue could destroy or alter his tax records and only face a misdemeanor conviction. Since the record evidence of the theft has been destroyed or altered, the Department may not be able to get a conviction of tax theft.

Presently, for corporate income tax only, any person who accepts money due to the department as an agent for the taxpayer and fails to pay the money to the department is guilty of a felony. For others taxes, there is no protection for the taxpayer or the state when records and payments are delivered to a third-party agent and the payments are not properly remitted.

EFFECT OF PROPOSED CHANGES:

The bill would increase the penalties for a person who willfully and with the intent to evade taxation files a false or fraudulent return, fails to maintain records, or fails to file returns.

Section §212.12, F.S. (1998 Supp.) would be amended to state that any person who knowingly and with a willful intent to evade any sales tax fails to file six consecutive returns as required by law commits a felony of the third degree. Any person who makes a false or fraudulent return with a willful intent to evade payment of any tax or fee imposed under this chapter shall, in addition to the other penalties provided by law, be liable for a specific penalty of 100 percent of the tax bill or fee and, upon conviction, for fine and punishment as provided in s. 775.082, s. 775.083, or s. 775.084.

1. If the total amount of unreported taxes or fees is less than \$300, the first offense resulting in conviction is a misdemeanor of the second degree, the second offense resulting in conviction is a misdemeanor of the first degree, and the third and all subsequent offenses resulting in conviction are felonies of the third degree.
2. If the total amount of unreported taxes or fees is \$300 or more but less than \$20,000, the offense is a felony of the third degree.
3. If the total amount of unreported taxes or fees is \$20,000 or more but less than \$100,000, the offense is a felony of the second degree.
4. If the total amount of unreported taxes or fees is \$100,000 or more, the offense is a felony of the first degree.

Sections 212.12 and 212.13, F.S., would be amended to increase the penalty for failure to produce taxpayer records when the taxpayer intentionally destroys records with an intent to evade payment. Such destruction of records would be a felony of the third degree.

Section 213.757, F.S., would be created. Any person who accepts money from a taxpayer that is due to the department, for the purpose of acting as the taxpayer's agent to make the payment to the department, but who willfully fails to remit such payment to the department when due, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who has possession as a taxpayer's agent of the taxpayer's records that are required to be maintained under the revenue laws of this state and who intentionally destroys those records with the intent of depriving the state of tax revenues commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

All of the proposed changes have an effective date of January 1, 2000.

RESALE CERTIFICATES
(Sections 18-24)

PRESENT SITUATION:

Every person who desires to engage in business in Florida and who will be conducting transactions taxable under Chapter 212, must first register as a "dealer" with the Department of Revenue. §212.18, F.S. (1998 Supp.) If tangible personal property is purchased for resale, no sales tax is due on the purchase. Sales tax is due when the property is sold to the ultimate customer--the retail sale. A resale must be "in strict compliance with the rules and regulations" of the Department, and any dealer who makes a resale which is not in strict compliance shall be liable for the tax. §212.07(1)(b), F.S. (1998 Supp.) The rules for resale are found in 12A-1.038, Florida Administrative Code.

Under the statutes and rules, any person who is registered as a dealer may make tax-free sales by presenting a resale certificate at the time of purchase. Purchases that are made which are not actually for resale are fraudulent. Under the present statutory system neither the Department nor the seller has any way of knowing whether purchases were fraudulent. Also, once an individual or business has been issued an exemption certificate, there is no renewal needed. The certificate is valid indefinitely.

A Department study of nine types of businesses estimated lost revenue from these nine business types alone were approximately 35 million dollars annually. Analysis showed that the percentage estimates of root causes are: deliberate fraud: 68%; ignorance of the law: 32%. According the Department's study, the most common types of resale certificate abuse are:

Sellers:

1. Keeping tax money collected on taxable sales by writing false certificates to cover the fictitious "tax exempt" sales, or designating taxable sales made to one customer as exempt under the account of other exempt customers;
2. Preparing false certificates for tax-free sales, usually upon audit, because the dealer did not obtain a properly completed certificate from the purchaser;
3. Dealers allowing their customers to avoid paying the tax on nonexempt purchases in order to gain a "competitive edge."

Buyers:

1. Use of certificates with false numbers or someone else's number;
2. Dealer using a certificate for purchase of items not resold; either for business use (e.g., hardware dealer taking a hammer off inventory to use for store repairs) or for personal use (e.g., convenience store owner buying tires for the owner's car tax exempt);
3. Use of certificate after dealer registration has expired (e.g, the dealer is no longer in business, but still making purchases);
4. Application for dealer registration with no valid business in order to have a number to put on the resale certificate.

EFFECT OF PROPOSED CHANGES:

The bill would require the annual issuance of resale certificates to active accounts. Section 212.18(3), F.S. (1998 Supp.) would be amended to require the Department to provide every newly registered and previously registered active dealer with a resale certificate. The resale certificates would be valid for one year.

Section 212.07, F.S. (1998 Supp.), would be amended to required the seller to retain a copy of the buyer's resale certificate when a tax exempt purchase is made. In lieu of maintaining a copy of the certificate, a seller may document, prior to the time of sale, an authorization number provided by the Department by telephone or other reasonable means. Additionally, a seller may rely on the resale certificate issued by the Department from a buyer who regularly purchases on account without seeking annual verification of the resale certificate.

These provisions would become effective February 1, 2000, and the Department would be authorized to adopt rules to implement the provisions.

The Department would establish a toll-free number for verification of valid registration numbers and resale certificates. The system must be sufficient to guarantee a low busy rate and must respond to keypad inquiries, and data must be updated daily.

The Department would establish a system for receiving information from dealers regarding certificate numbers of those seeking to make purchases for resale. The department must provide such dealers with verification of those numbers which are canceled or invalid. This information must be provided by the department free of charge.

These provisions would be effective January 1, 2000.

ELECTRICITY AND STEAM SALES TAX EXEMPTION (Section 25)

Section 212.08(7)(ii), F.S., was enacted in 1996 to provide an exemption for charges for electricity used to operate certain machinery and equipment used in certain manufacturing businesses. The exemption was to be phased in over a 5 year period. As ordinarily enacted, the exemption was limited to 50% of the charges for electricity unless a meter or submeter measured only the electricity used to operate the qualifying machinery and equipment. The metering requirement led to numerous issues for the

industry and the Department regarding what uses would qualify and how the submetering had to be done.

In 1998, the statute was amended to eliminate the submetering requirement. Chapter 98-318, Laws of Florida. The intent was to provide a complete exemption for manufacturing plants that use at least 75% of the total plant usage for qualifying machinery and equipment. Plants with qualified usage of at least 50% but less than 75% of the total usage receive a 50% exemption for all charges to the plant. No submetering is required, and taxpayers can establish their use percentages using any reasonable means available.

The present statute does not clearly state that taxpayers with 75% or more exempt usage get a 100% exemption. Additionally, charges for steam used in manufacturing were added to the exemption, but the statute does not apply the 50%/75% threshold tests to the steam charges.

EFFECT OF PROPOSED CHANGES:

The bill would not change the law, but would reword the statute to clearly set forth the intent as to how the exemption applies to those using differing amounts of electricity or steam in qualified manufacturing. The statute would clearly state that it applies to both steam and electricity. Section 212.08(7)(ii) would state:

Subject to the provisions of subparagraph 4., charges for electricity or steam used to operate machinery and equipment at a fixed location in this state when such machinery and equipment is used to manufacture, process, compound, produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations are exempt to the extent provided in this paragraph. If 75 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 100 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 75 percent but 50 percent or more of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, 50 percent of the charges for electricity or steam used at the fixed location are exempt. If less than 50 percent of the electricity or steam used at the fixed location is used to operate qualifying machinery or equipment, none of the charges for electricity or steam used at the fixed location are exempt.

PARTIAL SALES TAX EXEMPTION FOR MOTOR VEHICLES (Section 25)

PRESENT SITUATION:

When a resident of another state purchases a motor vehicle in Florida with the intent to register the vehicle in his or her home state, the purchaser can qualify for a partial exemption from Florida sales tax. The purchaser will be charged sales tax at the rate of his or her home state provided that the rate is less than or equal to Florida's sales tax rate. To qualify for the partial exemption, the purchaser must execute a notarized statement of his or her intent to license the vehicle in his or her resident state within 10 days of the sale.

Since the purchaser is in Florida, ten days often is not enough time to apply for a license in his or her home state.

EFFECT OF PROPOSED CHANGES:

Section 212.08(10), F.S. (1998 Supp.), would be amended to allow the nonresident purchaser 45 days to license the motor vehicle in his or her home state. The purchaser would have 45 days to file all the necessary paper work in his or her home state to obtain a license for the motor vehicle. Additionally, the statute would clarify that if the purchaser otherwise complies with the statute, he or she does not have to remove the vehicle from Florida to be entitled to the partial exemption from sales tax.

PRIVATE VENDOR - AUTOMATED CASE TRACKING SYSTEM
(Section 26)

PRESENT SITUATION:

The Department has an ongoing audit and enforcement program. According to the Department its current audit case selection system and methods for identifying potential issues and areas of non-compliance by taxpayers are antiquated and inefficient. The Department must rely on aging technology and static data.

The Department does not have the resources or funding necessary to design and develop an automated case tracking system, and many times technology projects such as this are considered to be high-risk. The Department is requesting the authority to develop a benefits-funded approach to develop an automated case tracking system. The approach would be a risk sharing arrangement with a private vendor for development and production costs. The vendor would agree to fund all of the development and implementation costs and would not be paid until the project is successfully implemented. The vendor would then be paid a previously agreed to percentage on the increased revenues, up to the maximum cost stated in the contract. According to the Department, several other states including California, Kansas, Texas, and Virginia, utilize the benefits-funded approach for technology development such as case selection systems.

EFFECT OF PROPOSED CHANGES:

Section 212.27(8), F.S., would be amended to authorize the executive director of the department to enter into contracts with private vendors to develop and implement a system to enhance tax collections where compensation to the vendors is funded through increased tax collections. The amount of compensation paid to a vendor would be based on a percentage of increased tax collections attributable to the system after all administrative and judicial appeals are exhausted. The total amount of compensation paid to a vendor would not exceed the maximum amount stated in the contract. The vendor would not be given any of the powers of the Department, except the vendor would be an agent of the department for the purposes of developing and implementing a system to enhance tax collection. The vendor would be bound by the same confidentiality requirements as the Department.

The Department anticipates entering into a benefits-funded contract with a private vendor to replace the current case selection system. Technology is available which would improve the

Department's ability to analyze compliance, through the use of tools such as data-mining, information warehousing, decision support tools, and sophisticated statistical modeling.

ADMINISTRATIVE GARNISHMENT
(Section 27)

PRESENT SITUATION:

Under current law, when a taxpayer is delinquent in paying tax, penalty, and interest owed to the Department, the Department may begin administrative garnishment proceedings against the taxpayer by freezing the assets of the taxpayer which are in the hands of a third party. §213.67, F.S. (1998 Supp.) Presently, all assets held by the third party are subject to the Notice of Freeze by the Department even if the amount of the assets exceeds the liability. Section 206.18 (Motor Fuel) and §212.10 (Sales and Use Tax) contain similar provisions that allow for the freezing of assets in court ordered garnishments. Under these provisions, the amount subject to the freeze is limited to the amount of the delinquency unless the taxpayer has a history of delinquencies.

EFFECT OF PROPOSED CHANGES:

Subsection (1) of §213.67, F.S. (1998 Supp.), would be amended to restrict the amount of assets subject to a Notice of Freeze to those that do not exceed the delinquency amount of the taxpayer unless the taxpayer has a prior history of tax delinquencies.

CORPORATE INCOME TAX - FEDERAL "PIGGY BACK"
(Section 28)

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, 1998.

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, 1999. This definition provides for "piggybacking" each change made during 1998 in the Internal Revenue Code.

CORPORATE INCOME TAX - REINSURER APPORTIONMENT
(Section 29)

PRESENT SITUATION:

For corporate income tax purposes, businesses generally use a three-factor formula to apportion their income to Florida: property, payroll, and sales. §220.15, F.S. Certain

industries use different apportionment formulas. Insurers must use a single factor formula based upon premiums and reinsurance. §220.151, F.S. If the principal source of premiums

written by an insurer consist of premiums from reinsurance accepted, then the insurer is given two methods to determine the amount of business to allocate to Florida. The first method provides a formula in which the insurers's tax base is multiplied by a fraction. If the insurer has 50% or more of its business in reinsurance the numerator of the fraction to be used consists of the premiums of both direct premiums and reinsurance covering risks in Florida. The denominator consists of the sum of direct premiums written for insurance every where plus premiums written for reinsurance written with respect to risks everywhere. This methodology closely resembles the concepts generally used by other Florida businesses. According to the Department, the alternate method is extremely difficult for it to administer and for insurers to apply. The apportionment is not based upon an insurers own factual circumstance, but is based on an approximation provided by various ceding insurers which must be combined to arrive at a single apportionment factor.

EFFECT OF PROPOSED CHANGES:

Section 220.151, F.S., would be amended to remove the alternate apportionment factor for insurers.

ELECTRONIC DATA INTERCHANGE - TAX RETURNS

(Sections 30-35)

PRESENT SITUATION:

Florida's corporate income tax code requires that taxpayers file written returns, declarations and requests. Sections 220.221, 220.222, F.S. These statutory requirements were enacted prior to the availability and widespread use of current technology. Now there is technology and accepted filing standards which make electronic and telephonic filing practical and cost effective.

Presently there is no authority for the Department to accept intangible tax returns in a form initiated through an electronic data interchange. There is no authority for property appraisers to accept tangible personal property tax returns in a form initiated through an electronic data interchange. There is no authority for the Division of Unemployment Compensation to accept reports in a form initiated through an electronic data interchange.

EFFECT OF PROPOSED CHANGES:

Sections 220.21, 220.221, and 220.222, F.S., would be amended to allow a taxpayer to file electronic or telephonic corporate income tax returns, declarations, and requests, in a form initiated through an electronic data interchange.

Section 193.052(7), F.S., would be amended to allow a property appraiser to accept a tangible personal property tax return in a form initiated through an electronic data interchange.

Section 199.052(16), F.S. (1998 Supp.) would be amended to allow a taxpayer to file an intangible personal property return in a form initiated through an electronic data interchange.

Section 443.163, F.S., would be amended to allow an employer to file a report in a form initiated through an electronic data interchange.

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?

Yes; see, Like Tax Credit - Documentary Stamp Tax and Electronic Data Interchange.

(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:

(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?
No.
- 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?
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:

Sections 166.235; 193.052; 196.1975; 198.12; 198.13; 198.23; 198.26; 198.32; 198.33; 198.39; 199.052; 199.106; 201.165; 212.02; 212.04; 212.07; 212.08; 212.11; 212.12; 212.13; 212.18; 213.053; 213.27; 213.67; 213.757; 220.03; 220.151; 220.21; 220.221; 220.222; 443.163

E. SECTION-BY-SECTION ANALYSIS:

Section 1 creates §166.235 which establishes a procedure for a purchaser to obtain a refund or credit from a seller for municipal utility taxes that were collected in error.

Section 2

Section 3 repeals §198.12, F.S. which requires the personal representative to notify the department of a decedent's death. The repeal would be effective January 1, 2000 and shall apply with respect to decedents whose death occurs on or after that date.

Section 4 adds a new subsection (2) to §198.13, F.S., to state that when an estate files a tax return and no tax is due, for a fee of \$5, the department will issue a certificate subject to record and admissible in evidence that no tax is due. The section is effective January 1, 2000, and shall apply with respect to decedents whose death occurs on or after that date.

Section 5 amends §198.23, F.S., to state that a personal representative shall be personally liable for unpaid tax if he or she does not obtain release of estate property from lien either by a certificate from the Department or filing an affidavit. The section is effective January 1, 2000, and shall apply with respect to decedents whose death occurs on or after that date.

Section 6 amends §198.26, F.S., to state that for purposes of discharging the personal representative, in the case of a nontaxable estate, the court may consider the affidavit of no tax by the personal representative as evidence of the nonliability of the estate for tax. The section is effective January 1, 2000 and shall apply with respect to decedents whose death occurs on or after that date.

Section 7 amends §198.32, F.S., to delete the requirement that the Department issue a certificate on nonliability for tax for all estates not subject to tax and adds that when an estate is not subject to estate tax and is not required to file a return, the personal representative may execute an affidavit attesting that the estate is not taxable. The section is effective January 1, 2000, and shall apply with respect to decedents whose death occurs on or after that date.

Section 8 amends subsection (1) of §198.33, F.S., to conform provisions relating to when an estate is deemed discharged of liability for estate taxes. The section is effective January 1, 2000, and shall apply with respect to decedents whose death occurs on or after that date.

Section 9 amends §198.39, F.S., to provide that knowingly making any false statement in an affidavit of nonliability is a misdemeanor of the first degree. The section is effective January 1, 2000, and shall apply with respect to decedents whose death occurs on or after that date.

Section 10 amends subsections (2) and (3) of §199.106, F. S. Subsection (2) is amended to delete the phrase "other than a natural person", so the like tax credit for intangible tax is extended to natural persons. Subsection (3) is amended to correct an obsolete reference.

Section 11 creates §201.165, F.S., to provide a credit against documentary stamp tax if an amount equal to that tax is lawfully imposed by another taxing jurisdiction. The tax imposed by another taxing jurisdiction must be in substance identical to Florida's documentary stamp tax. The Department is authorized to adopt rules to implement the credit and designate forms that establish what proof is required. The credit applies retroactively to the extent that the period for nonclaim is not reopened.

Section 12 amends paragraph (c) of subsection (14) of §212.02, F.S. (1998 Supp.) to revise the provisions relating to the conditions under which the tax on sales, use, and other transactions does not apply to the sale of materials used in repairing a motor vehicle, airplane, or boat.

Section 13 amends subsections (4) and (5) of §212.04, F.S. (1998 Supp.), to provide that the sellers of admissions are subject to the same penalties as dealers in tangible personal property for the failure to file returns, pay taxes or maintain or produce records.

Section 14 amends subsection (2) of § 212.12, F.S. (1998 Supp.), to revise the penalties for failure to file returns and for filing false or fraudulent returns under Chapter 212 (Sales and Use Tax). Subsection (13) of § 212.12, F.S. (1998 Supp.), is amended to provide additional penalties for subsequent offenses involving destruction of records with an intent to evade payment of tax. The section is effective January 1, 2000.

Section 15 amends paragraph (e) of subsection (4) of §212.11, F.S. (1998 Supp.), to update a reference. The section is effective January 1, 2000.

Section 16 amends subsections (1) and (2) of §212.13, F.S., to provide additional penalties for subsequent offenses involving destruction of records with an intent to evade payment of tax. The section is effective January 1, 2000.

Section 17 creates §213.757, F.S., which states that any person who accepts money from a taxpayer that is due to the Department, for the purpose of acting as the taxpayer's agent to make the payment to the Department, but who willfully fails to remit such payment to the Department when due, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Any person who has possession as a taxpayer's agent of the taxpayer's records that are required to be maintained under the revenue laws of this state and who intentionally destroys those records with the intent of depriving the state of tax revenues commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The section is effective January 1, 2000.

Section 18 amends paragraph (b) of subsection (1) of §212.07 F.S. (1998 Supp.) to provide requirements for sales for resale.

Section 19 amends subsection (3) of §212.18, F. S. (1998 Supp.) to provide for the issuance of initial and annual resale certificates to active sales tax dealers.

Section 20 amends subsection (10) of section 213.053, F.S. (1998 Supp.) to authorize the Department to disclose information whether a specified resale certificate number has been canceled or is inactive or invalid.

Section 21 provides that effective January 1, 2000 the Department shall establish a toll-free number for verification of valid registration numbers and resale certificates. The

system must be sufficient to guarantee a low busy rate and must respond to keypad inquiries, and data must be updated daily.

Section 22 provides that effective January 1, 2000 the Department shall establish a system for receiving information from dealers regarding certificate numbers of those seeking to make purchases for resale. The department must provide such dealers with verification of those numbers which are canceled or invalid. This information must be provided by the department free of charge.

Section 23 provides that effective July 1, 1999, the Department of Revenue shall expand its dealer education program regarding the proper use of resale certificates. The expansion shall include, but not be limited to, revision of the registration application for clarity, development of industry-specific brochures, development of a media campaign to heighten awareness of resale fraud and its consequences, outreach to business and professional organizations, and creation of seminars and continuing education programs for taxpayers and licensed professionals.

Section 24 provides an appropriation of \$211,065 to be used for salaries, benefits, and expenses and \$23,455 to be used for operating capital outlay from the General Revenue Fund to the Department of Revenue, and 1.5 FTEs would be authorized to implement the resale certificate provisions of the bill.

Section 25 amends paragraph (ii) of subsection (7) of §212.08, F.S. (1998 Supp.) to revise the provisions relating to the sales tax exemption for charges for electricity or steam used to operate machinery and equipment under specified conditions. The section also provides that it is the intent of the Legislature that the amendments to §212.08(7)(ii) are remedial in nature and merely clarify existing law. The section also amends subsection (10) of §212.08, F.S. (1998 Supp.), to revise provisions which provide a partial exemption from sales tax on the sale of a motor vehicle to a resident of another state. The buyer shall have 45 days to license the motor vehicle in the buyer's home state. The buyer will not have to remove the motor vehicle from Florida.

Section 26 adds subsection (8) to §213.27, F.S., which authorizes the executive director of the Department of Revenue to contract with vendors to develop and implement a system to enhance tax collections where compensation to the vendor is funded through increased tax collections and provides for the application of confidentiality requirements to the vendors.

Section 27 amends subsection (1) of §213.67, F.S. (1998 Supp.), to specify the amount of credits, other personal property, or debts of a delinquent taxpayer held by another person which are subject to garnishment when the taxpayer has no prior tax delinquencies.

Section 28 amends paragraph (n) of subsection (1) and paragraph (c) of subsection (2) of §220.03, F.S. (1998 Supp.), to update references to the Internal Revenue Code for corporate income tax purposes.

Section 29 amends paragraph (b) of subsection (1) of §220.151, F.S. to delete a method for apportioning to Florida for corporate income tax the tax base of an insurance company whose principal source of premiums is from reinsurance policies. The section is effective January 1, 2000.

Section 30 amends §220.21, F.S., to allow a taxpayer to choose to file a corporate income tax return in a form initiated through a telephonic or electronic data interchange. The department shall prescribe by rule the format and instructions necessary for such filing.

Section 31 amends subsection (3) of §220.221, F.S., to remove the word “written.”

Section 32 amends paragraphs (a) and (b) of subsection (2) of §220.222, F.S., to remove the word “written.”

Section 33 adds subsection (7) to §193.052, F.S., to state that a property appraiser may accept a tangible personal property tax return in a form initiated through an electronic data interchange. The department shall prescribe by rule the format and instructions necessary for such filing.

Section 34 amends subsection (16) of §199.052, F.S. (1998 Supp.), to allow a taxpayer to choose to file a intangible tax return in a form initiated through an electronic data interchange. The department shall prescribe by rule the format and instructions necessary for such filing.

Section 35 Section 443.163, F.S., is created to allow an employer to choose to file unemployment compensation reports in a form initiated through an electronic data interchange. The Division of Unemployment Compensation shall prescribe by rule the format and instructions necessary for such filing.

Section 36 provides that except as otherwise stated in the bill, the act shall take effect upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Resale Certificates

General Revenue
Trust Fund
Local Government

FY 99-2000 FY 2000-01

8.0M	19.2M
*	*
1.3	3.0

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See III.A.2..

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

See III. A. 2.

3. Long Run Effects Other Than Normal Growth:

None.

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:

The positive fiscal impact of this bill is not due to the increase of any tax, fee, or other assessment. The revisions to the statutes concerning resale certificates are anticipated to reduce taxpayer fraud and errors thereby increasing revenue collects for funds already owed to the state. For further details, see the discussion above.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

Alan Johansen