SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1978

SPONSOR: Finance and Taxation and Senator Carlton

SUBJECT: Tax Administration

DATE: April 24, 2001 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Maclure	CM	Favorable
2.	Keating	Johansen	FT	Favorable/CS
3.				
4.				
5.				
6.				

I. Summary:

The bill provides for the following tax administration changes:

- Repeals the issuance of temporary exemption certificates.
- Eliminates the specific exemption for crime prevention, drunk-driving prevention, and juvenile delinquency groups.
- Reinstates the exemption for parent-teacher organizations and parent-teacher associations that were inadvertently affected due to a change in the definition of "educational institution."
- Eliminates the obsolete reference to the Work and Gain Economic Self-sufficiency (WAGES) registration requirement for manufacturers to qualify for the electricity and steam exemption.
- Requires the purchaser of machinery and equipment necessary for the production of electrical or steam energy to file an affidavit stating the exempt nature of the purchase with the selling vendor instead of the Department of Revenue.
- Replaces the current definition of "Section 38 property" for certain machinery and equipment with a definition that is consistent with the past federal explanation of the term.
- Modifies the law to impose certain requirements on the removal of motor vehicles from the state, similar to those in place for the purchase of boats and aircraft.
- Eliminates reference to the undefined term "trade fixtures," in order to clarify the definition of "fixtures."

- Provides consistent treatment among vessels, railroads, and motor vehicles engaged in interstate or foreign commerce.
- Reduces the burden on Florida corporate income taxpayers by eliminating the initial-year information return.
- Eliminates the exemption from the insurance premium tax for insurers who write monoline flood insurance policies.
- Extends the certified audit program for four additional years.
- Clarifies that the "Rewards Program" is the only means available to obtain compensation for information regarding another person's failure to comply with the state's tax laws.
- Provides that certain general provisions and tools utilized by the Department of Revenue in general tax administration would be applicable to the collection of unemployment tax.
- Revives and readopts the 0.3 percent General Revenue Service Charge.
- Repeals the repeal of the sales tax exemption for Citizen Support Organizations and the Florida Folk Festival.
- Provides that the sale of drinking water to which minerals have been added at a water treatment facility regulated by the Department of Health, is exempt from sales tax. Also provides that water that has been "enhanced" by the addition of minerals is exempt, if such water does not contain any added carbonation or flavorings.
- Cleans-up language to the Revenue Sharing provisions of ss. 212.20 and 218.21, as a result of the changes made by ch. 2000-260, L.O.F.
- Amends onto the bill, the Simplified Sales and Use Tax Administration Act which provides that the state may enter into agreement with other states to simplify and modernize the collection of sales tax.
- Provides that Indian Tribes can elect to be assigned a tax rate under the states general experience rating provisions or they can elect to reimburse the state Unemployment Compensation Fund for specific benefits to former employees
- Provides an exemption from taxation for the transfer or lease of certain property to a regional transmission organization as a result of a public utility's compliance with an order of the Federal Energy Regulatory Commission regarding high-voltage bulk transmission facilities.
- Reduces from 5% to 4.7% the upper threshold that triggers a downward tax rate adjustment due to excessive Unemployment Compensation Trust Fund balances. It reduces from 4% to 3.7% the lower threshold that triggers an upward tax rate adjustment due to low Unemployment Compensation Trust Fund balanced.

- Requires dealers that claim tax credits which are granted under certain programs, such as enterprise zones, to submit to the DOR with the sales tax return on which such credits are claimed, a report which provides information and documentation required to verify the dealer's entitlement to the credit.

- Caps the amount of documentary stamp tax on notes at $2450.

- Provides an exemption from the alcoholic beverage surcharge to s. 501(c)(2) & (10) nonprofit organizations, which includes ethnic mutual aid societies, social clubs and fraternal organizations.

- Extends for four years, the scheduled repeal of the exemption from the confidentiality statutes for information generated during certified audits found in s. 213.053, F.S..

- Extends for four years, the repeal of the special certified audit-related penalty and interest provisions in s. 213.21, F.S.

This bill substantially amends the following sections of the Florida Statutes: 201.02, 201.08, 212.02, 212.031, 212.08, 212.06, 212.20, 218.21, 220.22, 213.053, 213.21, 213.285, 213.30, 45.031, 69.041, 213.053, 215.20, 443.131, and 561.501 .

This bill creates the following sections of the Florida Statutes: 213.256 and 443.1315.

This bill repeals the following sections of the Florida Statutes: 212.084(6), 213.27(9), and 624.509(10).

II. Present Situation:

See "Effect of Proposed Changes" section of this staff analysis.

III. Effect of Proposed Changes:

TEMPORARY EXEMPTION CERTIFICATES
(Section 1)

PRESENT SITUATION:

Section 212.084(6), F.S., authorizes the Department of Revenue (department) to issue temporary exemption certificates to newly organized charitable entities applying for exempt status as nonprofit "charitable institutions" pursuant to s. 212.08(7)(p), F.S., when a lack of historical information prevents the applicant from qualifying immediately for an exemption certificate.

EFFECT OF PROPOSED CHANGES:

The bill repeals subsection (6) of s. 212.084, F.S., providing for the issuance of temporary exemption certificates. The amendment to s. 212.08(7)(p), F.S., found in section 2 of the bill, providing for a refund of tax paid on items purchased by qualifying s. 501(c)(3) organizations prior to receiving a consumer certificate of exemption, renders subsection (6) of s. 212.084, F.S., unnecessary.

SALES AND USE TAX EXEMPTIONS
(Sections 2 & 3)

PRESENT SITUATION:

The sale of drinking water in bottles, cans, or other containers, including water that contains minerals in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection (DEP), is exempt. This exemption does not apply, however, to the sale of drinking water in bottles, cans, or other containers if minerals have been added at any place other than a water treatment facility regulated by the DEP.

In ch. 2000-228, L.O.F., the Legislature revised the sales and use tax law to extend exempt status to all entities that are exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code. This change in the law made other specific exemptions unnecessary and such exemptions were deleted from s. 212.08(7), F.S.

Electricity and steam used in manufacturing are exempt from sales tax, contingent upon the manufacturer registering with the Work and Gain Economic Self-Sufficiency (WAGES) Program. In 2000, legislation was passed that eliminated maintenance of the WAGES business registry making the registration requirement obsolete.

EFFECT OF PROPOSED CHANGES:

Section 2 of the bill amends subparagraph (4)(a)1 of s. 212.08, F.S., providing that the sale of drinking water to which minerals have been added at a water treatment facility regulated by the Department of Health (not just DEP), is exempt. Also provides that water that has been "enhanced" by the addition of minerals is exempt, if such water does not contain any added carbonation or flavorings.

In addition, Section 2 corrects several problems identified as a result of the changes made by ch. 2000-228, L.O.F., to s. 212.08(7), F.S. These changes are:

- Eliminates the specific exemption for crime prevention, drunk-driving prevention, and juvenile delinquency groups.
- Reinstates the exemption for parent-teacher organizations and parent-teacher associations that were inadvertently affected due to a change in the definition of "educational institution." This change applies retroactively to July 1, 2000.

Section 2 also eliminates the obsolete reference to the WAGES registration requirement for manufacturers to qualify for the electricity and steam exemption. This change applies retroactively to July 1, 2000.

Section 2 moves a provision in subsection (7) of s. 212.08, F.S., from flush-left at the end of the subsection, to the beginning of the subsection. The provision provides that exemptions provided to any entity by subsection (7) shall not inure to any transaction otherwise taxable under ch. 212, F.S., when payment is made by a representative or employee of such entity by any means, including, but not limited to, cash, check, or credit card even when that representative or employee is subsequently reimbursed by such entity. This change is made to clarify rather than change existing law, and these amendments apply retroactively to January 1, 2001.

Section 2 takes effect July 1, 2001.

SALES TAX EXEMPTION
ELECTRICITY AND STEAM – AFFIDAVITS FILED WITH VENDORS
(Section 4)

PRESENT SITUATION:

Section 212.08(5)(c), F.S., provides a sales and use tax exemption for machinery and equipment used in the production of electrical or steam energy, if the energy produced is the result of burning boiler fuels, other than residual oil, or the energy resulting from the burning of residual fuel accounts for less than 5 percent of the total energy. If a facility burns both residual oil and non-residual oil fuels and the energy resulting from the burning of residual fuels accounts for more than 15 percent of the total energy, the exemption is prorated. Purchasers are required to file an affidavit with the department stating that the item or items purchased are for an exempt purpose.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(c), F.S. In order to more appropriately document the exempt nature of the purchase, the bill requires the purchasers of machinery and equipment necessary for the production of electrical or steam energy to file the affidavit stating the exempt nature of the purchase with the selling vendor instead of the department. This amendment is effective upon becoming a law and applies retroactively to July 1, 1996.

MACHINERY & EQUIPMENT – SECTION 38 PROPERTY
(Section 5 & 6)

PRESENT SITUATION:

Section 212.08(5)(b), (d), and (f), F.S., exempts from sales and use tax purchases of:

- Machinery and equipment used to increase productive output;
- Machinery and equipment used under federal procurement contracts;

- Motion picture and video equipment used in motion picture or television activities; and
- Sound recording equipment used in the production of master tapes and master records.

The machinery and equipment used in these exempt activities is known as “Section 38 property,” as defined in a former provision of the Internal Revenue Code. According to the department, the definition of “Section 38 property” is no longer in the Internal Revenue Code and reference material regarding what items the definition covers is becoming more difficult to obtain, causing confusion and uncertainty for taxpayers.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(b), (d), and (f), F.S., replacing the current definition of “Section 38 property” for machinery and equipment used to increase productive output; for machinery and equipment used under federal procurement contract; and for motion picture, video, and sound recording equipment used in production, with an express definition of such equipment that is consistent with the past federal explanation of that term. “Industrial machinery and equipment” is defined as tangible personal property, or other property, that has a depreciable life of 3 years or more, that qualifies as an eligible cost under federal procurement regulations, and that is used as an integral part of the process of production of tangible personal property. These changes take effect July 1, 2001.

The bill states that it is the Legislature's intent to provide guidance concerning Florida laws that reference the obsolete Internal Revenue Code language on "Section 38 property." The bill also clarifies that the new language proposed in Section 5 has the same meaning (without limitation) as the former IRC provisions concerning Section 38 property.

<u>SALES OF MOTOR VEHICLES TO NON-RESIDENTS</u>
(Section 7)

PRESENT SITUATION:

The 1999 Legislature modified the sales and use tax law to allow a non-resident 45 days to register in his or her home state a motor vehicle purchased in Florida and qualify for a reduced tax rate equal to the sales tax rate in his or her home state. Additionally, the requirement that the motor vehicle be removed from Florida was eliminated. In what appears to be an unintended consequence of these changes, the department has identified numerous purchases of recreational vehicles using limited liability companies established in Montana by Florida residents. There is no sales tax in Montana, thus allowing Florida residents to purchase and use recreational vehicles in Florida tax-free.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(10), F.S., to modify the law to impose certain requirements on the removal of motor vehicles from the state, similar to those currently in place for the purchase of boats and aircraft. Specifically, a vehicle is subject to Florida’s sales tax when the vehicle is purchased by a nonresident corporation or partnership and:

- An officer of the corporation is a resident of Florida;
- A stockholder of the corporation who owns at least 10 percent of the corporation is a resident of Florida; or
- A partner in the partnership who has at least 10 percent ownership is a resident of Florida.

However, if the vehicle is removed from Florida within 45 days after purchase and remains outside Florida for a minimum of 180 days, the vehicle may qualify for the partial exemption. This language takes effect July 1, 2001.

MACHINERY AND EQUIPMENT EXCLUSION – FIXTURES
(Sections 8 & 9)

PRESENT SITUATION:

Section 212.06(14)(b), F.S., defines "fixtures" as items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. According to the department, this definition was intended to provide statutory guidance to specifically address the real property versus tangible personal property determinations that contractors and the department must make. The statute provides that "machinery and equipment" and "trade fixtures" never become a fixture of real property no matter how permanently they are attached. This definition has resulted in the unintentional reclassification of some types of property that has historically been treated as real property for taxation purposes.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.06(14)(b), F.S., to eliminate reference to the undefined term "trade fixtures," in order to clarify the definition of "fixtures." The amendment is designed to give guidance on the treatment of industrial machinery and equipment that is used in the manufacturing, processing, compounding or production of tangible personal property. This section takes effect July 1, 2001, and is remedial in nature and merely clarifies existing law.

SALES TAX EXEMPTIONS – VESSELS AND VEHICLES ENGAGED IN INTERSTATE COMMERCE
(Section 10)

PRESENT SITUATION:

Subsections 212.08(8) and (9), F.S., provide that vessels, railroads, and motor vehicles engaged in interstate or foreign commerce are allowed to prorate their purchases to determine tax due on such purchases. The basis of the tax is the ratio of the intrastate mileage to interstate or foreign mileage traveled during the previous fiscal year, if the carrier had at least some Florida mileage. Once calculated for vessels, the ratio is applied against the vessel's Florida taxable purchases, and for railroads and motor vehicles, the ratio is applied against the carrier's total taxable purchases. There is no provision for prorating the tax if the carrier has been operating for less than one fiscal year. Statutory reference to the "Interstate Commerce Commission" is obsolete.

EFFECT OF PROPOSED CHANGES:

The bill amends subsections (8) and (9) of s. 212.08, F.S., to provide consistent treatment among vessels, railroads, and motor vehicles by applying the tax to Florida taxable purchases and by providing that the tax would apply even if the vessel, railroad, or motor vehicle has operated for less than one fiscal year. During the fiscal year in which the vessel, railroad, or motor vehicle begins its initial operations in Florida, the mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in Florida to anticipated total miles for that year. Either additional taxes must be paid or a refund may be applied for on the basis of the actual ratio of miles in Florida to total miles. The bill changes the reference to the Interstate Commerce Commission to the Surface Transportation Board. This section takes effect upon becoming a law.

<u>SALES AND USE TAX RETURNS</u>
(Section 11)

PRESENT SITUATION:

Section 212.11, F.S., outlines the process by which sales tax dealers are to remit their monthly sales tax returns.

EFFECT OF PROPOSED CHANGES:

The bill adds a new subsection (5) to s. 212.11, F.S., requiring dealers that claim tax credits which are granted by reasons of the dealer's hiring employees, purchasing property, improving property, paying increased ad valorem taxes, operating a business, or otherwise engaging in activity in an urban high-crime area, an enterprise zone, an empowerment zone, a Front Porch Community, a designated brownfield area, or an urban infill area, to submit to the Department of Revenue with the sales tax return on which such credits are claimed, a report which provides information and documentation required to verify the dealer's entitlement to the credit.

<u>REVENUE SHARING</u>
(Sections 12, 13 & 14)

PRESENT SITUATION:

The 2000 Legislature changed the sources of shared revenues significantly. Ch. 2000-173, L.O.F., repealed the sharing of intangibles tax revenues with counties and provided for a distribution from sales and use tax . Specifically, s. 212.20(6)(e)5., F.S., provides that after July 1, 2000, 2.25 percent of the available sales and use tax proceeds shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

Ch. 2000-355, L.O.F., restructured the Revenue Sharing Trust Fund for Municipalities, transferring the portion of cigarette tax that previously funded these to the General Revenue Fund, and providing a distribution from the sales and use tax. Specifically, s. 212.20(6)(e)6., F.S., provides that after July 1, 2000, 1.0715 percent of the available sales and use tax proceeds

shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215.

Subparagraphs 6.b. provides that if the total revenue to be distributed is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the trust funds in state fiscal year 1999-2000.

Subparagraph 6.d. provides that if the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

There are no provisions in s. 212.20(6)(e), F.S., for newly incorporated municipalities to receive funds from the Revenue Sharing Trust Fund for Municipalities or the Municipal Financial Assistance Trust Fund.

Part II of Chapter 218 is the Revenue Sharing Act of 1972. Section 218.21(6)(b), F.S., provides that a county exercising powers under s. 6(f), Art. VIII of the State Constitution, (Dade County) may not receive less than the aggregate amount it received from the Revenue Sharing Trust Fund for Municipalities in the preceding fiscal year, plus a percentage increase in such amount equal to the percentage increase of the Revenue Sharing Trust Fund for Municipalities for the preceding fiscal year.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.20(6)(e)6.,F.S., to add sub-subparagraph d., providing that each newly incorporated municipality that meets the eligibility requirements established in s. 218.23 or in the local act establishing the municipality is eligible to receive a share of revenue sharing funds under s. 218.245. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in the 1999-2000 fiscal year, plus the share for any new municipalities, each municipality shall receive a proportionate amount.

The bill also amends s. 218.21(6)(b), F.S., providing that the distributions made to Dade County during the 2001-2002 fiscal year, the percentage increase shall be calculated as the revenues from the Revenue Sharing Trust Fund for Municipalities for the 2001-2002 fiscal year, divided by the sum of the revenues from the Revenue Sharing Trust Fund for Municipalities for the 1999-2000 fiscal year and the revenues from the Municipal Financial Assistance Trust Fund for the 1999-2000 fiscal year, minus one.

<u>CORPORATE INCOME TAX RETURNS</u>
(Section 15)

PRESENT SITUATION:

Section 220.22, F.S., provides that unless specifically exempt, corporations are required to file corporate income tax returns for every year the corporation is either liable for Florida income tax or is required to make a federal income tax return. The entities already exempt from filing are generally only required to file a Florida corporate income tax return for the first year they exist or do business in Florida, and they only have to answer information questions on the return.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 220.22(4), F.S., reducing the burden on Florida corporate income taxpayers by eliminating the initial year information return. These entities could be added to the department's database when, and if, they owe Florida corporate income tax based on information that the Department receives from the Internal Revenue Service. This section takes effect July 1, 2001.

INSURANCE PREMIUM TAX – FLOOD INSURANCE POLICIES
(Section 16)

PRESENT SITUATION:

Section 624.509(10), F.S., exempts from the insurance premium tax, premiums written by insurers who write monoline insurance policies for flood insurance not subsidized by the federal government. At the request of the U.S. Justice Department, the Federal Emergency Management Agency (FEMA) contacted the Department of Revenue to determine how many insurers were using this exemption. As it turned out, there were no insurers using this exemption. It appears that only surplus lines insurers are writing non-federally subsidized flood insurance in Florida, and they are not entitled to the exemption. The federal government has expressed an intent to challenge the exemption on the basis that it discriminates between monoline and surplus line insurers.

EFFECT OF PROPOSED CHANGES:

The bill repeals subsection (10) of s. 624.509, F.S., eliminating the exemption from the insurance premium tax for insurers who write monoline flood insurance policies, thereby eliminating any alleged discrimination. This section takes effect July 1, 2001.

SIMPLIFIED SALES AND USE TAX ADMINISTRATION ACT
(Sections 17 & 18)

PRESENT SITUATION:

The National Conference of State Legislatures (NCSL) in coordinated efforts with governors and tax administrators, formed the Streamlined Sales Tax Project. The goal of the streamlined project is to design and implement a simplified sales tax collection system that can be used by

traditional brick-and-motor vendors and vendors involved in e-commerce. Twenty-six states are participants and thirteen states are observers in the streamlined project.

On January 27, 2001, the NCSL Executive Committee unanimously endorsed the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement, as amended and approved by the Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. States that adopt the Uniform Sales and Use Tax Administration Act will be authorized to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes

EFFECT OF PROPOSED CHANGES:

The bill creates s. 213.256, F.S., the "Simplified Sales and Use Tax Administration Act", authorizing Florida to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes. The act:

- Clarifies certain terms used throughout the model legislation.
- Outlines the major simplifications to be adopted.
- Provides that Florida will have three representatives at the multi-state discussions of the next phase of the Streamline Sales Tax Project.
- Clarifies that the Agreement cannot preempt, amend or modify any provision of Florida law.
- Maintains that any relationship between states in furtherance of streamlining their sales and use tax collections systems is voluntary for each state.
- Ensures that if Florida complies with the provisions of the Agreement, the Agreement cannot be used to challenge existing state laws or statutes.

EXTENSION OF THE CERTIFIED AUDIT PROJECT
(Section 19)

PRESENT SITUATION:

Section 213.285, F.S., created the Certified Audit Project in 1998. The legislation creating the program provided for a July 1, 2002, sunset provision, or upon completion of the project as determined by the department, whichever occurs first. The Certified Audit Project allows a taxpayer to hire a private Certified Public Accountant (CPA) firm to perform a compliance audit. Taxpayers reporting a liability under this program receive a waiver of penalties and the first $25,000 in interest in excess of $25,000. There are currently 53 taxpayers in the program. Based on results to date, it is anticipated that the program will earn a positive return on investment. While a number of CPA's and taxpayers have expressed an interest in the program, the department is only beginning to see significant use of the program and would like to extend the life of the project past July 1, 2002.

EFFECT OF PROPOSED CHANGES:

The bill amends paragraph (2)(c) of s. 213.285, F.S., to extend the certified audit program sunset provision by four years, from July 1, 2002, to July 1, 2006. This section takes effect upon becoming a law.

CONFIDENTIALITY OF INFORMATION SHARING
AND INFORMAL CONFERENCES AND COMPROMISES
(Sections 20 & 21)

PRESENT SITUATION:

Information generated during certified audits is statutorily designated as confidential, unless requested by the State Board of Accountancy for a disciplinary proceeding related to certified public accountants who perform certified audits. Such information can also be disclosed during a judicial proceeding brought by DOR. This exemption from the confidentiality statutes is scheduled for repeal on July 1, 2002.

The statutes authorize DOR to compromise penalties imposed pursuant the identification of an unpaid tax liability during a certified audit. In addition, DOR is allowed to abate the first $25,000 of interest due on such unpaid liability, as well as 25 percent of all interest owed above $25,000. These special certified audit-related penalty and interest provisions are scheduled for repeal on July 1, 2002.

EFFECT OF PROPOSED CHANGES:

Amends paragraph (7)(n) of s. 213.053, F.S., and subsection (8) of s. 213.21, F.S., extending the scheduled repeal of these two certified audit program provisions from July 1, 2002 to July 1, 2006.

COMPENSATION FOR INFORMATION RELATING TO VIOLATION OF THE TAX LAWS
(Sections 22 & 23)

PRESENT SITUATION:

The 1987 Legislature created s. 213.30, F.S., the “Rewards” statute, as a way to encourage public participation in ensuring compliance with the tax laws. Individuals can earn a “reward” of up to 10 percent of the amount of tax, penalty, or interest that is recovered by the state as a result of their information. Some individuals have sought ways to circumvent the legal cap on the rewards program through the use of other statutes not specifically intended to address tax enforcement issues. These efforts are creating confusion, encouraging litigation, and causing taxpayers who may have inadvertently failed to comply with the law to incur substantial costs.

EFFECT OF PROPOSED CHANGES:

Amends s. 213.30, F.S., by adding subsection (3), which clarifies that the "Rewards Program" is the only means available to obtain compensation for information regarding another person's failure to comply with the state's tax laws. This section takes effect upon becoming a law.

The amendment to s. 213.30, F.S., made by this bill does not apply to any case in litigation or under seal on the effective date of this act.

UNEMPLOYMENT COMPENSATION TAX ADMINISTRATION
(Sections 24, 25, 26 & 27)

PRESENT SITUATION:

Chapter 2000-165, L.O.F., requires the Agency for Workforce Innovation (AWI) to contract with the Department of Revenue to provide unemployment tax collection services. The department has identified procedures currently used by the department when collecting other taxes, which would be helpful in fulfilling this contractual obligation.

EFFECT OF PROPOSED CHANGES:

Section 24 of the bill amends s. 11 of ch. 2000-165, L.O.F., and states that the department is administering a state revenue law when it provides unemployment compensation tax collection services to AWI, pursuant to the contractual agreement between the department and AWI. The bill specifies that statutory provisions in ch. 213, F.S., apply to the department's administration of the unemployment compensation tax.

Section 25 of the bill amends s. 45.031(7), F.S., directing the Clerks of the Court to notify the department if there are surplus proceeds resulting from a sale of real or personal property pursuant to an unemployment compensation tax lien.

Section 26 of the bill amends s. 69.041(4)(a), F.S., authorizing the department to participate in the disbursement of any funds remaining in the registry of the court after the distribution of sale proceeds pursuant to s. 45.031, F.S., if the department has an interest in an unemployment compensation lien.

Section 27 amends s. 213.053(1), F.S., ensuring that the confidentiality and information sharing provisions of s. 213.053, F.S., apply to the unemployment compensation tax collection services the department provides to AWI. The bill further provides that the exceptions to the confidentiality provisions that are contained in ss. 443.171(7) and 443.1715, F.S., continue to apply.

Sections 24, 25, 26 and 27 take effect upon becoming a law.

SUNSET OF THE 0.3 PERCENT GENERAL REVENUE SERVICE CHARGE

(Section 28)

PRESENT SITUATION:

Subsection (3) of s. 215.20, F.S., imposes a general revenue service charge of 0.3 percent on the income of a revenue nature deposited in certain trust funds. Chapter 90-110, L.O.F., provided that the 0.3 percent general revenue service charge is to expire October 1, 2001, and is subject to legislative review. The 0.3 percent general revenue service charge is expected to generate $7.8 million to the General Revenue Fund in F.Y. 2000-01 and $6.7 million in F.Y. 2001-02. The 0.3 percent general revenue service charge was reviewed by the Senate Fiscal Resource Committee and recommended for continuation. (*See* Senate Interim Project Report 2001-039.)

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2001, the bill provides that subsection (3) of s. 215.20, F.S., shall not expire on October 1, 2001, as scheduled by s. 10 of ch. 90-110, L.O.F., but subsection (3) of s. 215.20, F.S., is revived and readopted.

SALES AND USE TAX EXEMPTION FOR CITIZEN SUPPORT ORGANIZATIONS AND THE FLORIDA FOLK FESTIVAL
(Section 29)

PRESENT SITUATION:

In 1996, the Legislature granted an exemption from the sales and use tax to the Florida Folk Festival and to Citizen Support Organizations. Section 212.08(7)(ii), F.S., provides a sales and use tax exemption to nonprofit organizations that have been designated as citizen support organizations in support of state-funded environmental programs or the management of state-owned lands, or to support one or more state parks. The exemption expires July 1, 2001.

Section 212.08(7)(jj), F.S., exempts from the sales tax income of a revenue nature received from admissions to the Florida Folk Festival held pursuant to s. 267.16, F.S., at the Steven Foster State Folk Culture Center. The exemption expires June 1, 2001.

Prior to the expiration , the economic benefits of each exemption must be reviewed and quantified by the Legislature, pursuant to s. 4 of ch. 96-395, L.O.F. Both exemptions were reviewed by the Senate Fiscal Resource Committee and recommended for continuation. (*See* Senate Interim Project Report 2001-040.)

EFFECT OF PROPOSED CHANGES:

Effective upon becoming a law, and applying retroactively to June 1, 2001, if this act does not become law by that date, s. 4 of ch. 96-395, L.O.F., is repealed. This repeal continues the sales and use tax exemption for both the Citizen Support Organizations and the Florida Folk Festival.

REGIONAL TRANSMISSION ORGANIZATION

(Sections 30, 31, 32 & 33)

PRESENT SITUATION:

Under the documentary stamp tax statutes, tax is imposed on deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, is granted, assigned, transferred or otherwise conveyed to the purchaser, based on the consideration paid. Transfers of real property between public utilities are not exempt.

The United States Interstate Commerce Commission no longer exists. However, several provisions in the statutes still refer to the Commission.

Section 212.02, F.S., contains definitions applicable to the sales and use tax statutes. Subsection (10) defines the terms “lease,” “let,” and “rental,” and paragraph (g) of that subsection provides that certain transactions are excluded from those terms. Among those exclusions are certain charges paid by reason of the presence of another person’s railroad cars on the tracks of the taxpayer to the extent those charges are subject to regulation by the United State Interstate Commerce Commission (“ICC”).

Section 212.031, F.S., imposes tax on the renting, leasing, letting, or licensing of real property unless the property is described as excluded in paragraph (1)(a) of that section. One of the categories of property that is exempted is streets, rights-of-way, and specified items used on such streets or rights-of-way by a utility. For purposes of the exemption, “utility” is defined as a person providing utility services as defined in s. 203.012, F.S.

EFFECT OF PROPOSED CHANGES:

Section 30 adds subsection (9) to s. 201.02, F.S., which provides an exemption from documentary stamp tax on deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, is granted, assigned, transferred or otherwise conveyed from an electric utility to a regional transmission organization under the jurisdiction of the Federal Energy Regulatory Commission.

Section 31 amends paragraph (10)(g) of s. 212.02, F.S., which replaces the reference to the ICC with a reference to the Surface Transportation Board. This change reflects the abolition of the ICC and transfer of its responsibilities pursuant to federal statute.

Section 32 also adds a provision to s. 212.02(10(g), F.S., excluding from the terms “lease,” “let,” “rental,” and “license” payments by a regional transmission organization (“RTO”) operating under the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) to an electric utility in connection with the RTO’s use or control of the utility’s high-voltage bulk transmission facilities.

Section 33 amends paragraph (1)(a) of s. 212.031, F.S., which provides that the term “utility” includes an RTO operating under the jurisdiction of FERC. Section 32 of the bill is drafted to amend the statute as of the effective date of the bill. Section 33 is drafted to preserve the new

provision by amending the statute effective July 1, 2003, the date on which Chapter 2000-345, L.O.F., will automatically amend the statute to repeal portions unrelated to the RTO exemption.

DOCUMENTARY STAMP TAX
(Section 34)

PRESENT SITUATION:

The documentary stamp tax is actually two taxes imposed on different bases at different tax rates. Deeds and other documents related to real property are taxed at the rate of 70 cents per $100. (s. 201.02, F.S.) New or renewed promissory notes, nonnegotiable notes, written obligations to pay money, and other compensation made, executed, delivered, sold, transferred, or assigned in the state are taxed at 35 cents per $100. (s. 201.08, F.S.) Revenue from documentary stamps is divided between the General Revenue Fund and various trust funds used to acquire public lands or support affordable housing.

Taxes on documentation of the recording or transfer of certain intangibles are levied by 39 states and the District of Columbia. Although most of these states levy document-recording taxes only on real estate, many, including Florida, have a more general tax levied on the transfer of deeds. In many states the rates vary as a result of surtaxes or increased rates intended to pick up expiring federal taxes. In other states, county and municipal governments were allowed to pick up the expiring federal taxes.

Florida residents and companies can execute, outside of the state of Florida, promissory notes, nonnegotiable notes, and other unsecured obligations to pay money. When executed outside of Florida, these instruments are not subject to the state's documentary stamp tax. When the amount of tax that would be due on a Florida transaction is significantly greater than the cost of closing a business transaction outside of Florida, the parties to the transaction sometimes leave the state to conduct the transaction.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 201.08(1) and (2), F.S., to provide that the documentary stamp tax shall not exceed $2,450 on new or renewed promissory notes, nonnegotiable notes, written obligations to pay money, or assignments of salaries, wages, or other compensation made, which are executed, delivered, sold, transferred, or assigned in the state, including those documents relating to sales made under retail charge account services, incident to sales which are not conditional in character and which are not secured by mortgage or other pledge of purchaser. Under present law, $2,450 is the amount of documentary stamp tax that would be due on a promissory note or other unsecured obligation in the amount of $700,000.

UNEMPLOYMENT COMPENSATION TAX
(Sections 35 & 36)

PRESENT SITUATION:

Indian tribes are not considered governmental entities and therefore they are not allowed to be treated as "reimbursable" employers for unemployment compensation tax (UT) purposes. A reimbursable employer only pays in taxes the amount of unemployment benefits actually paid out to its ex-employees, while a "contributory" employer pays a portion of its payroll in taxes every quarter. On December 21, 2000 the President signed the Consolidated Appropriations Act, which amended the way Indian tribes are treated under federal law. This law requires that states treat Indian tribes like governmental entities for UT. Since the act applies to services performed on or after the date of enactment, the Federal Department of Labor is requiring states to enact this law immediately and retroactive to December 21, 2000.

Section 443.131, F.S., provides for the following unemployment tax triggers: 5% as the upper threshold that triggers a downward tax rate adjustment due to excessive unemployment compensation trust fund balances; and 4% as the lower threshold that triggers an upward tax rate adjustment due to low unemployment compensation trust fund balances; these percentages reflect the trust fund balance as a ratio of taxable wages.

EFFECT OF PROPOSED CHANGES:

Section 35 creates s. 443.1315, F.S., which grants Indian tribes the right to be treated as a reimbursable employer for unemployment tax purposes. According to the Federal Register, the Seminole Tribe of Florida and the Miccosukee Tribe of Indians of Florida are the only two Indian tribes in Florida that qualify under this law.

Section 36 amends s. 443.131, F.S., reducing from 5% to 4.7% the upper threshold that triggers a downward tax rate adjustment due to excessive unemployment compensation trust fund balances and reduces from 4% to 3.7% the lower threshold that triggers an upward tax rate adjustment due to low unemployment compensation trust fund balances. These percentages reflect the trust fund balance as a ratio of taxable wages.

ALCOHOLIC BEVERAGE SURCHARGE
(Section 37)

PRESENT SITUATION:

In 1990, the Legislature created s. 561.501, F.S., which imposed a surcharge on all alcoholic beverages sold by the drink for consumption on a retailer=s licensed premises. The current surcharge rate is 3.34 cents on each ounce of liquor or four ounces of wine, two cents on each 12 ounces of cider, and 1.34 cents on each 12 ounces of beer.

Chapter 2000-354, L.O.F., exempted certain nonprofit organizations from collecting and remitting the surcharge. Specifically, the surcharge need not be paid by an organization that is licensed by the Division of Alcoholic Beverages and Tobacco under s. 565.02(4) or s. 561.422,

F.S., and that is determined by the Internal Revenue Service to be currently exempt from federal income tax under s. 501(c)(3), (4), (5), (6), (7), (8), or (19) of the Internal Revenue Code of 1986, as amended.

EFFECT OF PROPOSED CHANGES:

This bill amends s. 561.501, F.S., to expand the types of organizations exempt from the surcharge on alcoholic beverages sold at retail for consumption on the premises. This expansion includes s. 501(c)(2) organizations, which are corporations organized for the exclusive purpose of holding title to property, collecting income there from, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt under s. 501(c); and s. 501(c)(10) organizations, which are domestic fraternal societies, orders, or associations operating under the lodge system, are also exempted.

In addition, this bill deletes the condition that exempt s. 501(c) organizations also be licensed by the Division of Alcoholic Beverages and Tobacco under s. 565.02(4), F.S.

Section 38. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The following issues in the bill have a fiscal impact:

	General Revenue		State Trust		Local Trust		Total	
Issue	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr**
Bottled Water	(0.1)	(0.3)	(*)	(*)	(*)	(*)	(0.1)	(0.3)
Doc. Stamp Tax								
Alcoh. Bev. Surcharge	(0.1)	(0.2)	(0.2)	(*)	0.0	0.0	(0.3)	(0.2)
Total (millions)	**(0.2)**	**(0.5)**	**(0.2)**	**(*)**	**(*)**	**(*)**	**(0.4)**	**(0.5)**

The Revenue Estimating Conference estimates that the provision in the bill that provides that the documentary stamp tax shall not exceed $2,450 on certain new or renewed promissory notes and other unsecured obligations will be revenue neutral because the cap-related loss of revenue from individual transactions will be offset by the revenue generated by transactions that previously would have been conducted outside of the state.

The 0.3 percent general revenue service charge is expected to generate $7.8 million to the General Revenue Fund in fiscal year 2000-01 and $6.7 million in fiscal year 2001-02. If the 0.3 percent service charge is not readopted, there will be an estimated $6.7 million reduction in the General Revenue Fund for fiscal year 2001-2002.

B. Private Sector Impact:

Replacing the current definition of "Section 38 property" with an express definition that is consistent with the past federal explanation of such property will eliminate confusion and uncertainty for taxpayers.

Vessels, railroads, and motor vehicles engaged in interstate or foreign commerce that have been operating for less than one year will be able to prorate their purchases to determine tax due on such purchases under the provisions of this bill.

The bill reduces the burden on Florida corporate income taxpayers by eliminating the initial-year information return.

The four-year extension of the certified audit program will give taxpayers interested in the program four additional years to participate. Based on the results to date, the department anticipates that the program will earn a positive return to both the taxpayer and the department.

This bill provides that the documentary stamp tax shall not exceed $2,450 on certain new or renewed promissory notes and other unsecured obligations. With regard to the impact on the private sector, the Department of Revenue notes:

> Little data exists on the number of unsecured notes closed out-of-state or even on such notes closed in-state. One source of data is the DR-228 forms filed by unregistered taxpayers. Unregistered taxpayers cannot have more than four taxable transactions per month. While tax on stock certificates and some transfers of real property and unrecorded deeds is paid on this form, the great majority of tax is evidently from unsecured notes. Tax on unsecured notes is also paid by registered taxpayers, but on a different form with insufficient detail to isolate the unsecured notes. In fiscal 1999-00, $1.1 million was collected from unregistered taxpayers on 3,224 transactions. Of these forms, all but 80 were for tax amounts less than $2,450. However, the 80 transactions paying over $2,450 remitted just under $500,000. As stated above, it is not certain all these monies came from unsecured loans.

To the extent that additional non-profit organizations qualify for the exemption, they will not be required to remit the surcharge.

C. Government Sector Impact:

The bill provides that certain general provisions and tools utilized by the Department of Revenue in general tax administration would be applicable to the collection of unemployment tax. This will provide for reduced burdens and savings by the department and taxpayers as common procedures will be followed for collection of unemployment tax.

The fund balance in the Unemployment Compensation Trust Fund for fiscal year 2001 is $4.04 million, so the unemployment compensation tax trigger will not have an impact on the trust fund in the near future. The future impact is in determinant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.