

By Representative Weissman

1 A bill to be entitled
 2 An act relating to taxation; amending s.
 3 72.011, F.S.; revising provisions relating to
 4 the venue of taxpayer actions in circuit court;
 5 revising provisions which specify the
 6 requirements of said section which are
 7 jurisdictional; amending s. 212.12, F.S.;
 8 providing the methods by which a taxpayer is
 9 entitled to establish the amount of an
 10 overpayment of the tax on sales, use, and other
 11 transactions under certain conditions; amending
 12 s. 213.21, F.S.; providing for review of the
 13 facts and circumstances to determine the
 14 existence of reasonable cause in connection
 15 with the assessment of a penalty against a
 16 taxpayer; amending s. 220.03, F.S.; providing
 17 for the tax classification of entities under
 18 the Florida Income Tax Code; amending s.
 19 608.471, F.S.; providing for the treatment of
 20 single member limited liability companies and
 21 other entities that are disregarded for federal
 22 income tax purposes; providing an effective
 23 date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

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 27 Section 1. Paragraph (a) of subsection (4) and
 28 subsection (5) of section 72.011, Florida Statutes, are
 29 amended to read:

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 31

1 72.011 Jurisdiction of circuit courts in specific tax
2 matters; administrative hearings and appeals; time for
3 commencing action; parties; deposits.--

4 (1)(a) A taxpayer may contest the legality of any
5 assessment or denial of refund of tax, fee, surcharge, permit,
6 interest, or penalty provided for under s. 125.0104, s.
7 125.0108, chapter 198, chapter 199, chapter 201, chapter 202,
8 chapter 203, chapter 206, chapter 207, chapter 210, chapter
9 211, chapter 212, chapter 213, chapter 220, chapter 221, s.
10 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185,
11 s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562,
12 chapter 563, chapter 564, chapter 565, chapter 624, or s.
13 681.117 by filing an action in circuit court; or,
14 alternatively, the taxpayer may file a petition under the
15 applicable provisions of chapter 120. However, once an action
16 has been initiated under s. 120.56, s. 120.565, s. 120.569, s.
17 120.57, or s. 120.80(14)(b), no action relating to the same
18 subject matter may be filed by the taxpayer in circuit court,
19 and judicial review shall be exclusively limited to appellate
20 review pursuant to s. 120.68; and once an action has been
21 initiated in circuit court, no action may be brought under
22 chapter 120.

23 (b) A taxpayer may not file an action under paragraph
24 (a) to contest an assessment or a denial of refund of any tax,
25 fee, surcharge, permit, interest, or penalty relating to the
26 statutes listed in paragraph (a) until the taxpayer complies
27 with the applicable registration requirements contained in
28 those statutes which apply to the tax for which the action is
29 filed.

30 (2)(a) An action may not be brought to contest an
31 assessment of any tax, interest, or penalty assessed under a

1 section or chapter specified in subsection (1) more than 60
2 days after the date the assessment becomes final. An action
3 may not be brought to contest a denial of refund of any tax,
4 interest, or penalty paid under a section or chapter specified
5 in subsection (1) more than 60 days after the date the denial
6 becomes final.

7 (b) The date on which an assessment or a denial of
8 refund becomes final and procedures by which a taxpayer must
9 be notified of the assessment or of the denial of refund must
10 be established:

- 11 1. By rule adopted by the Department of Revenue;
- 12 2. With respect to assessments or refund denials under
13 chapter 207, by rule adopted by the Department of Highway
14 Safety and Motor Vehicles;
- 15 3. With respect to assessments or refund denials under
16 chapters 210, 550, 561, 562, 563, 564, and 565, by rule
17 adopted by the Department of Business and Professional
18 Regulation; or
- 19 4. With respect to taxes that a county collects or
20 enforces under s. 125.0104(10) or s. 212.0305(5), by an
21 ordinance that may additionally provide for informal dispute
22 resolution procedures in accordance with s. 213.21.

23 (c) The applicable department or county need not file
24 or docket an assessment or a refund denial with the agency
25 clerk or county official designated by ordinance in order for
26 the assessment or refund denial to become final for purposes
27 of an action initiated under this chapter or chapter 120.

28 (3) In any action filed in circuit court contesting
29 the legality of any tax, interest, or penalty assessed under a
30 section or chapter specified in subsection (1), the plaintiff
31 must:

1 (a) Pay to the applicable department or county the
2 amount of the tax, penalty, and accrued interest assessed by
3 the department or county which is not being contested by the
4 taxpayer; and either

5 (b)1. Tender into the registry of the court with the
6 complaint the amount of the contested assessment complained
7 of, including penalties and accrued interest, unless this
8 requirement is waived in writing by the executive director of
9 the applicable department or by the county official designated
10 by ordinance; or

11 2. File with the complaint a cash bond or a surety
12 bond for the amount of the contested assessment endorsed by a
13 surety company authorized to do business in this state, or by
14 any other security arrangement as may be approved by the
15 court, and conditioned upon payment in full of the judgment,
16 including the taxes, costs, penalties, and interest, unless
17 this requirement is waived in writing by the executive
18 director of the applicable department or by the county
19 official designated by ordinance.

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21 Failure to pay the uncontested amount as required in paragraph
22 (a) shall result in the dismissal of the action and imposition
23 of an additional penalty in the amount of 25 percent of the
24 tax assessed. Provided, however, that if, at any point in the
25 action, it is determined or discovered that a plaintiff, due
26 to a good faith de minimis error, failed to comply with any of
27 the requirements of paragraph (a) or paragraph (b), the
28 plaintiff shall be given a reasonable time within which to
29 comply before the action is dismissed. For purposes of this
30 subsection, there shall be a rebuttable presumption that if
31 the error involves an amount equal to or less than 5 percent

1 of the total assessment the error is de minimis and that if
2 the error is more than 5 percent of the total assessment the
3 error is not de minimis.

4 (4)(a) Except as provided in paragraph (b), an action
5 initiated in circuit court pursuant to subsection (1) shall be
6 filed in the Second Judicial Circuit Court in and for Leon
7 County or in the circuit court in the county where the
8 taxpayer resides, or maintains its principal commercial
9 domicile in this state, or regularly maintains its books and
10 records in this state.

11 (b) Venue in an action initiated in circuit court
12 pursuant to subsection (1) by a taxpayer that is not a
13 resident of this state or that does not maintain a commercial
14 domicile in this state shall be in Leon County. Venue in an
15 action contesting the legality of an assessment or refund
16 denial arising under chapter 198 shall be in the circuit court
17 having jurisdiction over the administration of the estate.

18 (5) The requirements of subsections (1), (2), and (3)
19 ~~this section~~ are jurisdictional.

20 (6) Any action brought under this chapter is not
21 subject to the provisions of chapter 45 as amended by chapter
22 87-249, Laws of Florida, relating to offers of settlement.

23 Section 2. Paragraph (d) is added to subsection (6) of
24 section 212.12, Florida Statutes, to read:

25 212.12 Dealer's credit for collecting tax; penalties
26 for noncompliance; powers of Department of Revenue in dealing
27 with delinquents; brackets applicable to taxable transactions;
28 records required.--

29 (6)

30 (d) A taxpayer is entitled, both in connection with an
31 audit and in connection with an application for refund filed

1 independently of any audit, to establish the amount of an
2 overpayment through statistical sampling when the taxpayer's
3 records, other than those regarding fixed assets, are adequate
4 but voluminous. Alternatively, a taxpayer is entitled to
5 establish an overpayment through any other sampling method
6 agreed upon by the taxpayer and the department when the
7 taxpayer's records, other than those regarding fixed assets,
8 are adequate but voluminous.

9 Section 3. Paragraph (a) of subsection (3) of section
10 213.21, Florida Statutes, is amended to read:

11 213.21 Informal conferences; compromises.--

12 (3)(a) A taxpayer's liability for any tax or interest
13 specified in s. 72.011(1) may be compromised by the department
14 upon the grounds of doubt as to liability for or
15 collectibility of such tax or interest. A taxpayer's liability
16 for penalties under any of the chapters specified in s.
17 72.011(1) may be settled or compromised if it is determined by
18 the department that the noncompliance is due to reasonable
19 cause and not to willful negligence, willful neglect, or
20 fraud. The facts and circumstances are subject to de novo
21 review to determine the existence of reasonable cause in any
22 administrative proceeding or judicial action challenging an
23 assessment of penalty under any of the chapters specified in
24 s. 72.011(1).A taxpayer who establishes reasonable reliance
25 on the written advice issued by the department to the taxpayer
26 will be deemed to have shown reasonable cause for the
27 noncompliance. In addition, a taxpayer's liability for
28 penalties under any of the chapters specified in s. 72.011(1)
29 in excess of 25 percent of the tax shall be settled or
30 compromised if the department determines that the
31 noncompliance is due to reasonable cause and not to willful

1 negligence, willful neglect, or fraud. The department shall
2 maintain records of all compromises, and the records shall
3 state the basis for the compromise. The records of compromise
4 under this paragraph shall not be subject to disclosure
5 pursuant to s. 119.07(1) and shall be considered confidential
6 information governed by the provisions of s. 213.053.

7 Section 4. Subsection (2) of section 220.03, Florida
8 Statutes, is amended to read:

9 220.03 Definitions.--

10 (2) DEFINITIONAL RULES.--When used in this code and
11 neither otherwise distinctly expressed nor manifestly
12 incompatible with the intent thereof:

13 (a) The word "corporation" or "taxpayer" shall be
14 deemed to include the words "and its successors and assigns"
15 as if these words, or words of similar import, were
16 expressed.†

17 (b) Any term used in any section of this code with
18 respect to the application of, or in connection with, the
19 provisions of any other section of this code shall have the
20 same meaning as in such other section.†~~and~~

21 (c) Any term used in this code shall have the same
22 meaning as when used in a comparable context in the Internal
23 Revenue Code and other statutes of the United States relating
24 to federal income taxes, as such code and statutes are in
25 effect on January 1, 2001. However, if subsection (3) is
26 implemented, the meaning of any term shall be taken at the
27 time the term is applied under this code.

28 (d) Notwithstanding any other provision of this
29 chapter, the tax classification of an entity, including a
30 single member entity, as determined under ss. 7701 and 7704 of
31 the Internal Revenue Code and the Treasury Regulations

1 promulgated thereunder, is determinative of the entity's
2 classification under this chapter.

3 Section 5. Subsection (3) is added to section 608.471,
4 Florida Statutes, to read:

5 608.471 Tax exemption on income of certain limited
6 liability companies.--

7 (3) Single member limited liability companies and
8 other entities that are disregarded for federal income tax
9 purposes must be treated as separate legal entities for all
10 non-income-tax purposes. The Department of Revenue shall adopt
11 rules to take into account that single member disregarded
12 entities such as limited liability companies and qualified
13 subchapter S corporations may be disregarded as separate
14 entities for federal tax purposes and therefore may report and
15 account for income, employment, and other taxes under the
16 taxpayer identification number of the owner of the single
17 member entity.

18 Section 6. This act shall take effect July 1, 2002.

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21 HOUSE SUMMARY

22 Revises provisions relating to tax administration in the
23 following areas:

24 1. Taxpayer actions in circuit court and the venue
25 thereof.

26 2. Methods for establishing the amount of an
27 overpayment of sales tax.

28 3. Determining existence of reasonable cause in
29 connection with assessment of a penalty against a
30 taxpayer.

31 4. Classification of entities under the Florida
Income Tax Code.

5. Treatment of certain entities that are
disregarded for federal income tax purposes.