

STORAGE NAME: h1995.fpr.doc
DATE: March 4, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FISCAL POLICY & RESOURCES
ANALYSIS**

BILL #: HB 1995 (PCB FPR 02-03)

RELATING TO: Taxation

SPONSOR(S): Committee on Fiscal Policy & Resources and Representative Wallace

TIED BILL(S): none

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

- (1) FISCAL POLICY & RESOURCES YEAS 11 NAYS 0
 - (2) FISCAL RESPONSIBILITY COUNCIL
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

This bill (PCB FPR 02-03) implements the majority of legislative proposals from the Department of Revenue for general tax administration for 2002, several recommendations from the State Tax Reform Task Force, plus several other tax proposals. See SECTION-BY-SECTION ANALYSIS for details.

THIS DOCUMENT IS NOT INTENDED TO BE USED FOR THE PURPOSE OF CONSTRUING STATUTES, OR TO BE CONSTRUED AS AFFECTING, DEFINING, LIMITING, CONTROLLING, SPECIFYING, CLARIFYING, OR MODIFYING ANY LEGISLATION OR STATUTE.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

See section-by-section analysis for details.

C. EFFECT OF PROPOSED CHANGES:

Treatment of Native American Tribes (unemployment compensation tax):

PRESENT SITUATION AFFECTED

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.

CHANGES PROPOSED

Creates s. 443.1315, F.S. 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.

Unemployment Tax Collection Administration:

PRESENT SITUATION AFFECTED

Chapter 2000-165, Laws of Florida, requires the Agency for Workforce Innovation (AWI) to contract with the Department of Revenue (DOR) 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.

CHANGES PROPOSED

Amends subsection (7) of s. 45.031, F.S. Directs Clerks of the Court to notify DOR if there are surplus proceeds resulting from a sale of real or personal property pursuant to an unemployment compensation tax lien.

Amends paragraph (4)(a) of s. 69.041, F.S. Authorizes DOR 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 DOR has an interest in an unemployment compensation lien.

Amends subsection (1) of s. 213.053(1), F.S. Ensures that the confidentiality and information sharing provisions of this statute apply to the unemployment compensation tax collection services DOR provides to AWI. 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.

Amends s. 11 of chapter 2000, 165, Laws of Florida. States that DOR is administering a state revenue law when it provides unemployment compensation tax collection services to the Agency for Workforce Innovation (AWI), pursuant to the contractual agreement between DOR and AWI. Specifies what statutory provisions in chapter 213, F.S., apply to DOR's administration of the unemployment compensation tax.

Exempt 501(c)(3) Organizations -- Technical & "Glitch" Issues:

PRESENT SITUATION AFFECTED

The 2000 Florida Legislature revised the sales tax law to extend exempt status to all entities with 501(c)(3) "tax-exempt" status under the Internal Revenue Code. The new law makes other more specific provisions unnecessary. Clarification is needed on the treatment of items purchased by qualifying 501(c)(3) entities prior to receiving a consumer's certificate of exemption.

CHANGES PROPOSED

Amends subsection (7) of s. 212.08, F.S. The proposal revises statutory language related to the sales tax exemption for 501(c)(3) tax-exempt organizations by:

- Eliminating the specific exemption for crime prevention, drunk driving prevention, and juvenile delinquency groups;
- Reinstating the exemption for parent teacher organizations and parent teacher associations that were inadvertently affected due to a change in the definition of "educational institution";
- Eliminating provisions for temporary exemption certificates, which are now unnecessary;
- Clarifying that the exemption applies only to purchases made with the organization's own funds; and
- Clarifying the effective date of the consumer certificate of exemption.

Sales of Vehicles:

PRESENT SITUATION AFFECTED

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 vehicle purchased in Florida and qualify for a reduced tax rate equal to the sales tax rate in their home state. Additionally, the requirement that the vehicle be removed

from Florida was eliminated. In what appears to be an unintended consequence of these changes, DOR 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.

CHANGES PROPOSED

Modifies the law to impose certain requirements on the removal of the vehicle from this state, similar to those currently in place for the purchase of boats and aircraft. This proposal will also address the effect of residency of corporate officers and stockholders on the taxable status of sales of vehicles.

Electricity – WAGES “Glitch” Issues:

PRESENT SITUATION AFFECTED

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.

CHANGES PROPOSED

Eliminates the obsolete reference to the WAGES registration requirement for manufacturers to qualify for the electricity and steam exemption.

Electricity & Steam – Affidavits Filed with Suppliers:

PRESENT SITUATION AFFECTED

The purchase of machinery and equipment necessary for the production of electrical or steam energy is exempt from sales and use tax, 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 15% 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 fuel accounts for more than 15% of the total energy, the exemption is prorated. Under the law, purchasers are required to file an affidavit with the Department stating that the item or items being purchased are for an exempt purpose.

CHANGES PROPOSED

Amends paragraph (5)(c) of s. 212.08, F.S. This proposal requires purchasers to file the affidavit stating the exempt nature of the purchase with the selling vendor instead of with the Department. This method will more appropriately document the exempt nature of these purchases. The bill provides that this revision applies retroactively to July 1, 1996.

“Section 38 Property”:

PRESENT SITUATION AFFECTED

Florida law exempts from sales and use tax the purchase of: a) machinery and equipment used to increase productive output; b) machinery and equipment used under federal procurement contracts; c) motion picture and video equipment used in motion picture or television activities; and d) 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 it was defined in a former provision of the Internal Revenue Code. 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.

CHANGES PROPOSED

Amends subsection (5) of s. 212.08, F.S. This proposal replaces the current definition of "Section 38 property" with an express definition that is consistent with the past federal explanation of that term. Additionally, this section states that it is the Legislature's intent that the new language has the same meaning without limitation as the former IRC provisions concerning Section 38 property.

Fixtures – Machinery & Equipment Exclusion:

PRESENT SITUATION AFFECTED

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." 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 have historically been treated as real property.

CHANGES PROPOSED

Amends paragraph (14)(b) of s. 212.06, F.S. Clarifies the definition of "fixtures" to provide guidance on the treatment of industrial machinery and equipment that is used in the manufacturing, processing, compounding, or production of tangible personal property and eliminate reference to the undefined term "trade fixture." This bill language also provides that these revisions are remedial in nature and clarify existing law.

Interstate Commerce:

PRESENT SITUATION AFFECTED

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 a fiscal year. Additionally, the United States Interstate Commerce Commission no longer exists, however, several provisions in the statutes still refer to the Commission.

CHANGES PROPOSED

Amends subsections (8) and (9) of s. 212.08, F.S. Provides consistent treatment among vessels, railroads, and motor vehicles in that tax applies to Florida taxable purchases and would apply even if the vessel, railroad or motor carrier has operated for less than a fiscal year. This proposal also

updates the statute to replace the references to the Interstate Commerce Commission with the Surface Transportation Board.

Flood Insurance Policies:

PRESENT SITUATION AFFECTED

The statutes exempt 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 to determine how many insurers were using this exemption; none were found. 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.

CHANGES PROPOSED

Repeals subsection (10) of s. 624.509, F.S. This provision eliminates the exemption from the insurance premium tax for insurers who write monoline flood insurance policies, thereby eliminating any alleged discrimination. It also provides that the revisions take effect on July 1, 2001.

Extension of Certified Audit Project:

PRESENT SITUATION AFFECTED

When the Certified Audit Project was authorized by the Legislature in 1998, a sunset provision was included of July 1, 2002, or upon completion of the project as determined by the Department, whichever occurs first. This program 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 of the first \$25,000 in interest and of 25% of any 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 CPAs and taxpayers have expressed an interest in the program, the Department is only beginning to see significant use of the program.

CHANGES PROPOSED

Amends paragraph (2)(c) of s. 213.285, F.S. Extends the certified audit program sunset provision by four years, to ensure that the program does not end on July 1, 2002 (the new sunset date is July 1, 2006). This should allow sufficient time for a thorough evaluation of the project for reporting to the Legislature. (This proposal is identical to HB 951 by Rep. Kallinger)

Annual Filing for Domestic Service Employees:

PRESENT SITUATION AFFECTED

Federal law allows annual filing for unemployment tax for domestic service employees. Current statutory language adversely affects the employer's ability to take full credit for payment of state unemployment taxes when filing a FUTA return annually. For state taxes to be considered paid timely for FUTA purposes, they must be paid to the state by February 10 for the preceding calendar year. Since the unemployment taxes are not due until April 1, they would not be paid by the February 1 deadline, thus making them ineligible for the full FUTA credit.

CHANGES PROPOSED

Amends the due date for annual filing from April 1 to January 1 and changes the delinquency date from April 30 to February 1. The statute is clarified to allow most employers of domestic employees to file annually by removing some exceptions that exist in current statute.

Unemployment Tax Paperwork Reduction Initiative:

PRESENT SITUATION AFFECTED

Approximately 20% of employers reporting unemployment tax have ten or more employees. Most of these employers or their service agents (CPAs, accountants, and payroll agents) submit quarterly unemployment tax returns on paper documents. As a result, much of the information required for unemployment compensation claims must be manually entered into an automated system. This data entry process causes delays in processing claims and increases the probability of error.

CHANGES PROPOSED

Requires employers that reported ten or more employees in any calendar quarter in the preceding calendar year to file the quarterly reports by electronic means. It also requires service agents filing quarterly reports for five or more employers to submit information by electronic means. Payments from employers or service agents meeting the electronic threshold must be made by electronic means.

Paperwork Reduction Initiatives:

PRESENT SITUATION AFFECTED

There are statutory thresholds that require electronic filings for taxpayers who remit \$50,000 or more in sales tax annually. For those not required to file electronically, DOR receives over 10 million paper returns each year.

CHANGES PROPOSED

Reduces the number of paper returns filed annually by taxpayers by 3 million over the next five years through the use of electronic filing and payment options including Internet based solutions, as follows:

- Lower electronic filing and payment thresholds to \$30,000;
- Eliminate the electronic filing and payment thresholds for consolidated filers and require all such accounts to file and remit payment tax electronically;
- Require all zero returns for all taxes to be filed via telefile or other electronic means;
- Provide penalties or other enforcement actions for obligated filers' failure to use electronic filing and payment options;
- Provide for a secure environment and simplify compliance.

Fee Waiver/Online Registration:

PRESENT SITUATION AFFECTED

Section 212.18, F.S., requires that a \$5 registration fee accompany the application for registration as a sales and use tax dealer if the applicant's business location is within the boundaries of the State of Florida. DOR now accepts applications via the internet and the \$5 fee has been waived for the first 6 months of the internet application implementation. Also, as a participating member state, Florida will begin to accept applications via the Multistate Tax Commission's online multi-jurisdiction registration process.

CHANGES PROPOSED

Provides statutory authority to waive registration fees for those who register online and those registrations received through the Multistate Tax Commission registration process.

Verification of Entitlement to Credit:

PRESENT SITUATION AFFECTED

Florida law authorizes sales and use tax dealers to take various credits against their sales and use tax liabilities such as: Urban high-crime area job credit, Enterprise Zone credit, Empowerment Zone program, Front Porch Communities, Designated Brownfield area or Urban Infill area, tax refunds, lawful deductions, or other deductions or exemptions. At times it is difficult to verify whether a dealer is entitled to such credit and supporting documentation must be requested. Delays in granting the credit can result.

CHANGES PROPOSED

Provides authority to require a report to be submitted when filing a sales and use tax return that claims these credits. The report would provide information and documentation to verify the dealer's entitlement to the credit. Credits not supported by the report may be disallowed. DOR would be allowed to adopt rules prescribing the manner in which the report must be submitted. Providing for a separate report of such information would allow DOR to reduce the amount of information collected on the general sales tax form, simplifying this form used by all sales tax payers.

Intangible Personal Property Tax Zero Returns:

PRESENT SITUATION AFFECTED

Recent changes in intangibles tax law have resulted in 90 percent of corporations being required to file returns even though they owe no intangibles tax.

CHANGES PROPOSED

Repeals the requirement that corporations file a return when no tax is due.

Intangible Personal Property Tax Information Returns:

PRESENT SITUATION AFFECTED

Current law requires each corporation to file an information report that is a representative copy of the notice of stock value for shares in the corporation's stock or its election to pay the intangibles tax as agent for its shareholders. Recent changes to the intangibles tax law have resulted in 90 percent of all corporate filers having no tax due each year, but they will still be required to file zero returns and provide an information report regarding stock value. A penalty of \$100 can be assessed against a corporation that does not timely file these information returns.

CHANGES PROPOSED

Repeals the requirement that corporations file annual information returns regarding stock value and the related penalty provisions. The information required by statute is general in nature. Specific information concerning the value of securities is available through other sources. The value of securities of closely held corporations is available through information sharing with the IRS. The value of securities traded over-the-counter or on a stock exchange is available from valuation services. Stockbrokers provide a position statement on the investments owned by a Florida resident and held in brokerage accounts.

Sales Tax Penalty Revisions – Basis for Compromise:

PRESENT SITUATION AFFECTED

Payment and filing errors result in numerous billings for penalties which can, and often are, compromised based on reasonable cause if requested by the taxpayer. Because penalties are imposed automatically by statute and many taxpayers are unaware of, or fail to avail themselves of, compromise procedures, there is an inequity in the imposition of these penalties against taxpayers. In the case of failure to collect sales tax on a taxable transaction, a dealer is liable for the uncollected tax, penalty and interest. Liability for the uncollected tax and interest where the dealer has lost the opportunity to collect the tax from customers is a sufficient incentive for tax compliance without imposition of a separate penalty. There is no explicit statutory provision allowing courts to review penalty compromise determinations made by DOR.

CHANGES PROPOSED

Provides for an automatic compromise of penalties for filing errors under certain conditions. Provides for an automatic compromise of penalties where the dealer is liable for uncollected sales tax and interest despite a good faith effort to comply with the law. Provides explicit statutory language allowing for the *de novo* review by a court of penalty compromise determinations made by DOR.

Sales for Resale:

PRESENT SITUATION AFFECTED

Section 212.18(3), F.S., provides that every person desiring to engage in or conduct business in this state as a dealer is required to register with DOR prior to engaging in or conducting such business. Section 212.07(1)(b), F.S., requires a resale to be in strict compliance with Section 212.18, and DOR's rules and regulations. Only a dealer who has registered with DOR may purchase or import goods tax-exempt for resale. A purchaser who is not registered with DOR cannot purchase or import goods for resale without tax becoming due on the transaction, since the purchaser did not comply with the resale requirements. Failure to comply with the resale provisions can result in severe penalties for purchasers or dealers when goods are repurchased or imported for resale when the purchaser is not registered with DOR.

Numerous nonprofit organizations are exempt from sales and use tax on their purchases. However, they must first apply for and obtain a Consumer's Certificate of Exemption from DOR to qualify for the exemption. The effective date of the certificate is the date the application is mailed, delivered, or faxed to DOR and purchase made prior to the effective date of the certificate are taxable. Often, organizations that are otherwise entitled to the exemption (such a 501(c)(3) entity) inadvertently fail to obtain a Consumer's Certificate, and instead present their 501(c)(3)

determination letter to the vendor, who inappropriately does not collect the tax. A subsequent audit results in an assessment against the purchaser or dealer based on improper documentation of the exempt organization's purchase.

CHANGES PROPOSED

Provides a penalty structure which limits liability for inadvertent registration errors and encourages voluntary self-disclosure, without jeopardizing compliance, as an alternative to the current imposition of tax, penalty and interest on otherwise tax exempt transactions. It also adds a provision to the Taxpayer Bill of Rights to alert taxpayers to this provision.

Cost Effective Unemployment Tax Refunds:

PRESENT SITUATION AFFECTED

The administration of unemployment tax refunds is accomplished through an automated computer system maintained by the Information Management Center, currently administratively housed in the Department of Labor & Employment Security. The State Comptroller has conducted a cost analysis study to determine the cost of issuing a refund checks for unemployment tax. They recommended DOR consider the cost of issuing a refund check compared to the amount of the refund. According to information received from the Comptroller's office, the cost to issue a refund is \$13. This does not include costs associated with DOR's processing. This cost figure exceeds the value of the amount being refunded in many cases, creating inefficiency when issuing a refund. Currently an employer is billed if the underpayment of unemployment tax is in excess of \$1.

CHANGES PROPOSED

Limits the amount for programmatically generated refunds and billings to the cost of processing the refund or billing. Cost of processing would be determined every three years through a study conducted by the DOR Inspector General. Taxpayers would continue to be able to request refunds. This proposal would eliminate billings to employers for less than the cost to produce the billing.

Unemployment Tax Liens Filed with the Department of State:

PRESENT SITUATION AFFECTED

The 2001 Legislature substantially changed the method for perfecting a lien on personal property including the establishment of a central database in the Secretary of State's office. This law requires creditors who want to perfect a lien on personal property to file a judgment lien certificate with the Secretary's office, and requires the payment of a \$20 fee. The legislation permits the Department of Revenue to transmit liens directly into the database without cost. It is the opinion of the Secretary of State's office that the application of this exemption to liens filed in unemployment tax cases is unclear because the Information Management Center (IMC) is responsible for processing and electronic transmission of unemployment tax liens, rather than DOR.

CHANGES PROPOSED

Enables designees of DOR to enter lien information into the Secretary of State's central databases without incurring the \$20 fee.

Bracket System:

PRESENT SITUATION AFFECTED

The "brackets" for collection of sales and use tax at 6% and 7% in counties with a 1% surtax are provided for in statute. Currently all brackets are rounded up to the nearest cent except any partial dollar amounts of less than ten cents. Rounding up may be easier for dealers than the current bracket system, as many dealers erroneously round to the nearest whole cent, which results in collecting and remitting too little sales tax, subjecting the dealer to additional tax, interest and penalties.

CHANGES PROPOSED

Provides a good faith exception from additional tax, interest, and penalties for dealers who erroneously collect and remit sales tax by rounding to the nearest whole cent.

Corporate Income Tax Information Returns:

PRESENT SITUATION AFFECTED

Unless already 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 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.

CHANGES PROPOSED

Reduces the burden on corporate income taxpayers by eliminating the initial year information return. These entities could be added to DOR's database when, and if, they owe Florida corporate income tax based on information that DOR receives from the IRS.

Interest Paid on Refunds:

PRESENT SITUATION AFFECTED

DOR is required to pay interest on refunds due beginning 90 days after a completed refund claim is filed. However, sec. 624.245, F.S., prohibits DOR from paying refunds for the Insurance Premium Tax no sooner than the first day of the state fiscal year following the date the tax was due. There is no variance or allowance for these Insurance Premium Tax refund claims that are made more than 90 days prior to the close of the fiscal year, resulting in interest being paid on some funds even though the refunds are processed timely.

CHANGES PROPOSED

Allows interest to begin to accrue on these refund claims on August 1, in instances where DOR is prohibited from paying refund claims until after the beginning of a new fiscal year.

Interest Rate on Delinquencies:

PRESENT SITUATION AFFECTED

In 1996, OPPAGA issued a report recommending adoption of a variable interest rate that would be higher than commercial borrowing rates (rates that apply to most businesses). Commercial borrowing rates are normally a few points higher than the Prime Rate (the rate banks charge their most creditworthy borrowers). Effective January 1, 2000, a variable interest rate was adopted that

is based upon the Prime Rate. In a follow up report, OPPAGA noted that failure to add a few points to the Prime Rate could create a disincentive for prompt payment by some taxpayers.

CHANGES PROPOSED

Creates an interest rate that is more competitive with commercial borrowing interest rates charged by lending institutions, which conforms the variable interest rate provisions to the OPPAGA recommendations.

Lemon Law Fee:

PRESENT SITUATION AFFECTED

A \$2 fee is imposed on the sale or lease of new vehicles in Florida. The vehicle dealer or lessor is required to collect the fee from the consumer and remit it to the county tax collector or private tag agency acting as agent for DOR. Once collected, the fees are transferred to the Department of Legal Affairs for enforcement of the vehicle "lemon law". Local tag agencies are not able to accept and process fees collected on vehicles that are not registered or titled in Florida.

CHANGES PROPOSED

Allows vehicle dealers to remit to \$2 Lemon Law fee for vehicles registered and titled outside of Florida directly to DOR.

Severance Tax Allocation:

PRESENT SITUATION AFFECTED

DOR distributes portions of the proceeds of the severance tax each year to certain counties based on the production information provided by taxpayers. The current statutory provision is unclear with respect to the production period used for purposes of making the calculation.

CHANGES PROPOSED

Clarifies that the county distributions are calculated annually based on the production information filed by taxpayers on the annual returns for the taxable year rather than the fiscal year.

Local Option Tax/Date Conformity:

PRESENT SITUATION AFFECTED

Beginning in 1996, as amended in 1997, the Legislature provided that for future local option and local ninth cent gas taxes, the imposition date would be January 1 and the repeal date would be December 31. The purpose of the change was to reduce the burden on the industry and difficulty in administration of these taxes that resulted from having a variety of imposition and repeal dates. However, local option taxes in existence at the time were not impacted and continue to create difficulties in administration for taxpayers and DOR due to non-standard imposition and repeal dates.

CHANGES PROPOSED

Allows for the imposition of these local gas taxes to go into effect on January 1 and repeal on December 31 to improve compliance and reduce the burden on the taxpayers who collect the tax and improve administration.

RISE Program:

PRESENT SITUATION AFFECTED

“Level Two” counties who administer certain local taxes and participate in the RISE Program (Registration Information Sharing and Exchange) are able to share certain confidential taxpayer information with DOR but are not allowed to exchange between counties under the program.

CHANGES PROPOSED

Allows “level two” counties participating in the RISE Program to share confidential taxpayer information with other participating counties.

Enterprise Zone Tax Incentives – Technical Issues:

PRESENT SITUATION AFFECTED

Chapter 2001-201, L.O.F., concerning Enterprise Zones and other economic development programs, contains some technical issues that could be problematic for entities wishing to claim tax incentives provided for in the law.

CHANGES PROPOSED

Corrects technical issues related to cross-referencing and provides appropriate definitions in each statutory chapter to clarify the implementation of the provisions regarding tax incentives.

Employee Relocation Companies:

PRESENT SITUATION AFFECTED

Currently, Florida law provides that documentary stamp tax shall apply to deeds, instruments, or writings whereby any interest in Florida real property is conveyed. There is no exemption for instruments that transfer any interest in Florida real property from a relocating employee to a relocation company.

CHANGES PROPOSED

Adds subsection (8) to s. 201.02, F.S. Provides that tax does not apply to a contract to sell the residence of an employee, when the contract is between the employee and an employee relocation company, but tax does apply to the transfer by deed that names the grantee.

Compensation for information relating to a violation of the tax laws (Rewards Program):

PRESENT SITUATION AFFECTED

In 1987, the Legislature created the “Rewards” statute to encourage public participation in ensuring compliance with the tax laws. Individuals can earn a “reward” of up to 10% of the amount of tax money that is recovered by the state as a result of their information. Some individuals have sought ways to circumvent the cap on the rewards program through the use of other statutes not intended

to address tax enforcement issues. These efforts are creating confusion, encouraging litigation, and causing taxpayers who may inadvertently fail to comply with the law to incur substantial costs.

CHANGES PROPOSED

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.

Communication Services Tax exemption for Non-profit Organizations:

PRESENT SITUATION AFFECTED

Currently, section 202.125, F.S., provides that the sale of communication services to a religious or educational organization that is exempt from federal income tax is also exempt from the communication services taxes under sections 202.12 and 19, F.S.

CHANGES PROPOSED

Exempts the sale of communications services by these religious organizations.

The exemption of Sales and Use Tax for specialty chemicals for pollution control:

PRESENT SITUATION AFFECTED

DOR recently published Technical Assistance Advisement (TAA) 01A-069 regarding whether the use of certain specialty chemicals to treat the water used in the manufacture of electricity is tax exempt under sec. 212.051, F.S. The TAA concludes such chemicals are not tax exempt, and that the statutory exemption is only for the specialty chemicals that treat wastewater in the manufacturing process, and the chemicals in question are used for treating process water or reducing airborne pollutants.

CHANGES PROPOSED

Allows a sales tax exemption for specialty chemicals used for the control or abatement of air and water pollution or contaminants.

Unemployment Compensation Trust Fund "tax trigger":

PRESENT SITUATION AFFECTED

Florida's Unemployment Compensation (UC) program was created by the Legislature in 1937. The program is currently administered by the Agency for Workforce Innovation (AWI). The state's UC taxes are based upon the first \$7,000 of each employee's wages – the minimum wage base allowed under federal law. New employers are assigned an initial tax rate of 2.7 percent. After 10 or 11 calendar quarters of payroll history (depending on when the employer became liable for UC taxes), the employer earns a tax rate from 0.1 to 5.4 percent of the \$7,000 wage base. Each employer's tax rate varies and is set using the benefit ratio method of experience rating. State UC taxes are collected by the Department of Revenue under contract with AWI and are deposited in the UC trust fund, which may be used solely for the payment of benefits. As of July 31, 2001, the trust fund's balance was approximately \$1.97 billion.

During the 2001 Regular Session, concerns emerged that the fund balance's would fall below the 4-percent tax trigger, leading some to call for a reduction in the trigger to avert a tax increase. The

Senate and the House of Representatives each passed legislation to reduce the tax trigger to 3.7 percent of taxable payrolls. Ultimately, however, the legislation was not enacted in both chambers in the identical form, and the tax trigger remained unchanged, but the trust fund did not hit the trigger on July 1, 2001.

CHANGES PROPOSED

Reduces from 5% to 4.7% the upper threshold that triggers a downward tax rate adjustment due to excessive unemployment compensation trust fund balances; 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 reflect the trust fund balance as a ratio of taxable wages.

Taxation of Entertainment Facilities:

PRESENT SITUATION AFFECTED

The Florida Legislature enacted Chapter 2000-345, L.O.F., which resolved several sales tax issues regarding the operation of such facilities as: convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers and publicly owned recreational facilities. This law expires on July 1, 2003.

CHANGES PROPOSED

Extends the expiration provision of Ch. 2000-345, L.O.F., two more years (to 2006).

Documentary Stamp Tax on Unsecured Notes:

PRESENT SITUATION AFFECTED

Current law imposes the documentary stamp tax on promissory notes, nonnegotiable notes, written obligations to pay money, and assignments of salaries, wages, or other compensation, at the rate of 35 cents per \$100, if executed delivered, sold, transferred, or assigned in the state. Florida residents and businesses can avoid this tax by executing these agreements outside the State of Florida. When the amount of tax that would be due on the Florida transaction is significantly greater than the cost of closing the deal outside of the state, the parties to the transaction have an incentive to leave the state, and often do. This will not affect the tax on notes secured by real property.

CHANGES PROPOSED

Caps at \$2,450, the documentary stamp tax due on an unsecured note executed in Florida. This translates into a loan of \$700,000, which means that all such loans of \$700,000 or more would have a tax liability of \$2,450.

Insurance Premium Tax/Local Premium Tax Siting Data Base:

PRESENT SITUATION AFFECTED

Under current law, pension plans of participating cities and special fire control districts receive annual distributions of premium tax dollars for insurance policies written within the boundaries of the cities or districts. Insurance premium taxes are collected by the Department of Revenue, and a portion of the revenue is transferred to the Police Officers' and Firefighters' Premium Tax Trust Fund at the Division of Retirement. Insurers must report the geographic location of its insured risks to DOR in order to determine the proper distribution of premium tax revenue to the police' and

firefighters' pension funds. This process has been prone to errors, and some municipalities have received improper distributions from the trust fund.

CHANGES PROPOSED

Authorizes the Department of Revenue to create databases to be used by insurance companies in identifying the location of risks insured by their property and casualty insurance policies. Insurers using these databases would be exempt from any tax, penalty or interest which would otherwise be due as a result of incorrectly assigning its policies. Insurers that did not use the databases or exercise due diligence would be subject to a 0.5 percent penalty on the premium of each policy incorrectly assigned. Provides for when insurers are unable to properly assign an insured property to a specific taxing jurisdiction.

Corporate Income Tax/Interest on Underpayments:

PRESENT SITUATION AFFECTED

Under current law, taxpayers generally pay market-rate interest on corporate income taxes not paid in a timely fashion. An exception to this general rule was created in 1999 by the case of *Barnett Banks, Inc. v. Department of Revenue*, 738 So.2d 502 (1st DCA 1999), which ruled that the intent of the Florida Legislature to impose interest on tax deficiencies discovered during federal audits was not clearly expressed in the Florida Income Tax Code. This ruling has created an inconsistency in the treatment delinquent taxpayers.

CHANGES PROPOSED

Amends s. 220.23, F.S., to clarify that interest is owed on underpayments from the original due date of the tax to the date the tax is paid, even if the deficiency is discovered during a federal audit.

Documentary Stamp Tax on Original Issues of Stock:

PRESENT SITUATION AFFECTED

Under current law, the original issue in Florida of certificates of stock or shares by a corporation or by any joint stock company or other association is subject to documentary stamp tax. Revenue from this tax source is very small because taxpayers can avoid the tax by issuing certificates of stock out of state or minimize the tax by issuing the stock at \$.01 par value. Tax on the resale and transfer of stock in Florida was repealed in 1987.

CHANGES PROPOSED

Repeals the documentary stamp tax on the original issue of stock certificates.

Florida Taxpayers Bill of Rights:

PRESENT SITUATION AFFECTED

The legislature created the Florida Taxpayer's Bill of Rights to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of this state. The Taxpayer's Bill of Rights compiles, brief but comprehensive statements which explain, in simple, nontechnical terms, the rights and obligations of the Department of Revenue and taxpayers. The rights afforded taxpayers to assure that their privacy and property are safeguarded and

protected during tax assessment and collection are available only insofar as they are implemented in other parts of the Florida Statutes or rules of the Department of Revenue.

In order to ensure consistent tax treatment by the Department of Revenue, the State Tax Reform Task Force recommended an amendment to s. 213.015, F.S., the "Florida Taxpayer's Bill of Rights".

CHANGES PROPOSED

Adds the right to pay a reasonable fine to reinstate an exemption when the taxpayer failed to properly register as a tax dealer or obtain the necessary certificates, to reference the provision in section 18 regarding sales for resale (described above); and adds the following: "Florida taxpayers shall have the right to fair and consistent application of Florida tax laws by the Department of Revenue" to implement the State Tax Reform Task Force recommendation.

Tangible Personal Property purchased exempt for lease but converted to personal use:

PRESENT SITUATION AFFECTED

Currently, tangible personal property bought exclusively for lease is exempted from the sales and use tax. This exemption is voided when the TPP is converted to personal use by the owner regardless of where the conversion takes place, and the owner pays the tax on the fair market value of the TPP at the time of the conversion.

CHANGES PROPOSED

Provides that TPP purchased exempt exclusively for lease but later converted to the owner's personal use outside the state will retain its exempt status.

Regional Transmission Organizations:

PRESENT SITUATION AFFECTED

Currently, 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.

CHANGES PROPOSED

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.

D. SECTION-BY-SECTION ANALYSIS:

This sectional analysis will cross-reference the provisions of the bill to the corresponding issues found in "effect of proposed changes" section. As a reminder, some issues have more than one section, and some sections have more than one issue.

Section 1 amends s. 45.031(7), re Unemployment Compensation Tax collection by DOR.

Section 2 amends s. 55.202,(5) re Unemployment Compensation Tax collection by DOR.

Section 3 amends s. 69.041(4)(a), re Unemployment Compensation Tax collection by DOR.

Section 4 creates s. 175.1015, re electronic database for situsing property insurance premiums.

Section 5 creates s. 185.085, re electronic database for situsing casualty insurance premiums.

Section 6 amends s. 199.052(2), re intangible personal property tax zero returns.

Section 7 amends s. 199.218(2), re intangible personal property tax information returns.

Section 8 amends s. 199.282(6)(a), re intangible personal property tax information returns.

Section 9 amends s. 201.02(8), re employee relocation companies and doc stamp tax.

Section 10 amends s. 201.08(1), (2), (4), and (5), re doc stamp tax on unsecured notes.

Section 11 amends s. 202.125(4), re Communication Services Tax for religious organizations.

Section 12 amends s. 211.3103(2) and (4), re severance tax allowance.

Section 13 amends s. 212.02(10), re Regional Transmission Organizations (RTOs).

Section 14 amends s. 212.05(1)(b), re exempt TPP converted to personal use.

Section 15 amends s. 212.051(3), re specialty chemicals for pollution control.

Section 16 amends s. 212.06(14), re fixtures – machinery and equipment exclusion.

Section 17 provides legislative intent that section 16 clarifies existing law.

Section 18 amends s. 212.07(1), re dealer reliance on resale certificates; sales for resale.

Section 19 amends s. 212.07(9), re sales tax penalty revisions – good faith exception.

Section 20 provides legislative intent that section 19 applies to current tax cases.

Section 21 amends s. 212.08(5), re electricity and steam – affidavits filed with vendors.

Section 22 amends s. 212.08(5), re “section 38” property.

Section 23 provides legislative intent and purpose for section 22 to clarify the law.

Section 24 amends s. 212.08(7) & (10), re 501(c)(3) and WAGES “glitch” issues; sales of vehicles.

Section 25 provides legislative clarification on the application of section 24.

Section 26 amends s. 212.08(8) and (9), re interstate commerce.

Section 27 amends s. 212.096(1) and (3), re Enterprise Zone tax credits.

Section 28 amends s. 212.098(2), (3) and (6), re Rural Job tax credits.

Section 29 amends s. 212.11, re verification of entitlement to credits.

Section 30 amends s. 212.12, re Bracket System – rounding error.

Section 31 amends s. 212.18(3), re waiver of fee for online registration.

Section 32 amends s. 213.015, re Taxpayer Bill of Rights.

Section 33 amends s. 213.053(1), (3) and (7), re confidentiality and information sharing.

Section 34 amends s. 213.0535(4), re RISE program.

Section 35 amends s. 213.21, re sales tax penalty revisions, extension of certified audits.

Section 36 amends s. 213.235(2) and (3), re interest rate on delinquencies.

Section 37 provides legislative intent for section 36.

Section 38 amends s. cost effective unemployment tax refunds.

Section 39 amends s. 213.255(4), re interest paid on refunds.

Section 40 amends s. 213.285(2), re extension of certified audits.

Section 41 amends 213.30, re Rewards Program.

Section 42 amends s. 213.755, re electronic filing of returns with DOR.

Section 43 amends s. 220.03(1), re Enterprise Zone tax credits.

Section 44 amends s. 220.181(1), re Enterprise Zone tax credits.

Section 45 amends s. 220.22, re corporate income tax information returns.

Section 46 amends s. 220.23(2), re corporate income tax – interest on underpayments.

Section 47 amends s. 220.807(2) and (3), re interest rate on delinquencies.

Section 48 provides legislative intent for section 47.

Section 49 amends s. 220.809(1), re corporate income tax – interest on underpayments.

Section 50 amends s. 290.00677(2), re Rural enterprise zones.

Section 51 amends s. 336.021(5), re local option tax/date conformity.

Section 52 amends s. 336.025(1) and (5), re local option tax/date conformity.

Section 53 amends s. 376.70(2), re waiver of fee for online registration.

Section 54 amends s. 443.131(1) and (3), re Unemployment Compensation tax administration.

Section 55 creates s. 443.1315, re treatment of Native American tribes for unemployment tax.

Section 56 amends s. 443.163, re electronic filing of returns with DOR.

Section 57 amends s. 681.117, re Lemon Law fee.

Section 58 amends chapter 2000-345, re taxation of entertainment facilities.

Section 59 amends chapter 2000-165, re Unemployment Compensation tax administration.

Section 60 repeals parts of ss. 199.062, re intangible personal property tax information returns; 201.05, doc stamp tax on original issues of stock; 212.084, , 501(c)(3) glitch issues; and 624.509, re monoline flood insurance.

Section 61 provides an appropriation of \$300,000 from GR for the situsing database.

Section 62 provides an effective date, except as otherwise provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Please see the "fiscal comments" section below.

2. Expenditures:

The bill provides an appropriation of \$300,000 from General Revenue to DOR for creating the situsing database.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Please see the "fiscal comments" section below.

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Several of these proposals would eliminate the filing requirement for many taxpayers, and require certain taxpayers to file their returns electronically.

D. FISCAL COMMENTS:

The following show the combined fiscal impact on both state and local government, as estimated by the Revenue Estimating Conference, as of 2/25/02:

indeterminate Exempt 501(c)(3) Organizations -- Technical & "Glitch" Issues

| | |
|---------------|--|
| +3.5 | Sales of Vehicles out of state |
| insignificant | Flood Insurance Policies |
| indeterminate | Certified Audit Project |
| -0.5 | Fee Waiver/Online Registration |
| -0.1 | Sales Tax Penalty Revisions –Compromise/good faith |
| -1.7 | Sales Tax Penalty Revisions –Compromise/not timely filed |
| -1.6 | Sales for Resale (unregistered dealers) |
| -0.1 | Bracket System/rounding error |
| +0.2 | Interest Paid on Refunds |
| +11.3 | Interest Rate on Delinquencies |
| 0.0 | Documentary Stamp Tax on Unsecured Notes |
| +10.8 | Corporate Income Tax/Interest on Underpayments |
| insignificant | Documentary Stamp Tax on Original Issues of Stock |
| -22.6 | TPP Exempt for lease/Converted to personal use |
| -0.1 | Communication Services (Seafarer’s House) |
| -0.3 | Specialty Chemicals for pollution control |
| 0.0 | Taxation of Entertainment Facilities |

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require cities or counties to expend funds or to take actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Section 18, Article VII, of the Florida Constitution, provides that a general law is a mandate when the law would reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989. The term “authority” includes a reduction in the base against which the tax is levied. A bill providing a sales tax exemption is a reduction in authority because counties have authority to levy local option sales taxes against the state sales tax base.

The estimated reduction in local revenue by this local option sales tax is \$1.8 million. The bill therefore reduces the authority of cities and counties to raise revenues in the aggregate and is a mandate to local governments. The Florida Constitution requires a 2/3 vote of the membership of both houses of the Legislature for this bill to be enacted.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

House Bill Drafting expressed a concern that the bill may contain more than one subject and that the broad “relating to” clause may not be determined by a court to cover all of the potential subjects.

STORAGE NAME: h1995.fpr.doc

DATE: March 4, 2002

PAGE: 22

B. RULE-MAKING AUTHORITY:

The bill provides DOR with the rulemaking authority regarding the administration of verifying tax credits by dealers.

C. OTHER COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY & RESOURCES:

Prepared by:

Staff Director:

Douglas Pile

Lynne Overton