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 2302

SPONSOR: Finance and Taxation Committee and Senator Pruitt

SUBJECT: Tax Administration

DATE: February 28, 2002 REVISED: ________ ________ ________ ________

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

I. Summary:

The bill provides for the following tax administration changes:

Sales and Use Tax:

- Repeals the issuance of temporary exemption certificates.
- Eliminates specific exemptions for crime prevention, drunk-driving prevention, and juvenile delinquency groups because the exemptions already exist.
- Reinstates the exemption for parent-teacher organizations and parent-teacher associations that were inadvertently eliminated due to a change in the definition of "educational institution."
- Eliminates an 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 usage of that 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 for vessels, railroads, and motor vehicles engaged in interstate or foreign commerce.

- Clarifies that payments to utility companies by a regional transmission organization are not subject to the rental tax.

- Provides that in certain situations, dealers are not required to obtain new resale certificates from purchasers annually. The language is taken from the Department of Revenue’s current rule.

- Provides for the forgiveness of tax, penalty and interest resulting from failure to use the traditional rounding of tax, under certain circumstances.

- Extends for an additional 3 years, from 2003 to 2006, the sales tax exemptions awarded to civic centers, convention halls, stadiums, performing arts centers, etc.

Other Tax Administration Issues:

- 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.

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

- 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.

- Provides that Indian Tribes can elect to be assigned an unemployment 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

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

- Requires employers that report ten or more employees in any calendar quarter in the preceding calendar year to file quarterly reports and remit unemployment compensation taxes 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.

- Lowers electronic filing and payment thresholds from $50,000 to $30,000.

- Eliminates the electronic filing and payment thresholds for consolidated filers and requires all such accounts to file and remit tax payments electronically.

- Provides explicit statutory language allowing de novo review of penalty compromise determinations made by the DOR.

- 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 for a penalty structure that 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. Section 24 provides intent language.

- 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.

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

- Conforms the variable interest rate provisions to the OPPAGA recommendations, creating an interest rate that is more competitive with commercial borrowing interest rates charged by lending institutions. Sections 28 and 30 are intent language.

- 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.

- Provides for changes in local gas taxes to go into effect on January 1 and to terminate on December 31 to improve compliance and reduce the burden on the taxpayers who collect the tax and improve administration.

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

- Corrects technical issues in ss. 212.096, 212.098, 220.03, 220.181, and 290.00677, F.S., relating to cross-referencing and provide appropriate definitions in each statutory chapter to clarify the implementation of the provisions regarding tax incentives.

- Reenacts the aviation fuel tax credit for certain airlines. This provision expired July 1, 2001.

- The bill cleans-up Municipal Revenue Sharing language contained in ss. 218.21(6) and 212.20(6)(d)6., F.S., relating to Metro-Dade's annual increase.

This bill substantially amends the following sections of the Florida Statutes: 201.08, 206.9825, 211.3103, 212.02, 212.031, 212.04, 212.06, 212.07, 212.08, 212.12, 212.20, 218.21, 220.22, 213.053, 213.0535, 213.21, 213.24, 213.235, 213.255, 213.285, 213.30, 55.202, 220.03, 220.807, 220.181, 45.031, 69.041, 213.053, 215.20, 290.00677, 443.131, 443.163, and 561.501 .

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

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

I. Present Situation:

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

II. Effect of Proposed Changes:

<u>TEMPORARY EXEMPTION CERTIFICATES</u>
(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.

<u>SALES AND USE TAX EXEMPTIONS</u>
(Sections 2 & 3)

PRESENT SITUATION:

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 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, 2002.

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
(Sections 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.

SALES OF MOTOR VEHICLES TO NON-RESIDENTS
(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, 2002.

<u>MACHINERY AND EQUIPMENT EXCLUSION – FIXTURES</u>
(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. Section 8 takes effect July 1, 2002, 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.

INSURANCE PREMIUM TAX – FLOOD INSURANCE POLICIES
(Section 11)

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, 2002.

EXTENSION OF THE CERTIFIED AUDIT PROJECT
(Section 12)

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.

CONFIDENTIALITY OF INFORMATION SHARING AND INFORMAL CONFERENCES AND COMPROMISES
(Sections 13 & 14)

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:

The bill amends s. 213.053(1) and (3), 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 Agency for Workforce Innovation (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.

The bill also 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.

UNEMPLOYMENT COMPENSATION TAX ADMINISTRATION
(Sections 15, 16 & 17)

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 15 of the bill amends paragraph (f) of subsection (4) of 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 16 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 17 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.

UNEMPLOYMENT COMPENSATION TAX
(Section 18)

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.

EFFECT OF PROPOSED CHANGES:

The bill 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 18 is effective upon becoming a law and applies retroactively to December 21, 2000.

UNEMPLOYMENT COMPENSATION TAX PAPERWORK REDUCTION INITIATIVE
(Sections 19 & 20)

PRESENT SITUATION:

Approximately 20% of employers reporting unemployment tax have ten or more employees. Most of these employers or their service agents (CPA's, 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.

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, the DOR receives over 10 million paper returns each year.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 443.163, F.S., requiring employers that report ten or more employees in any calendar quarter in the preceding calendar year to file quarterly reports and remit tax by electronic means. It also requires service agents filing quarterly reports for five or more employers to submit information and remit tax by electronic means. Payments from employers or service agents meeting the electronic threshold must be made by electronic means.

Through the use of electronic filing and payment options, including Internet based solutions, the DOR seeks to reduce the number of paper returns filed annually by taxpayers by 3 million over the next five years. The bill amends s. 213.755, F.S., to do the following:

- Lower electronic filing and payment thresholds from $50,000 or more to $30,000 or more.
- Eliminate the electronic filing and payment thresholds for consolidated filers and require all such accounts to file and remit tax payments electronically beginning January 1, 2003.
- 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
- Allows the DOR to waive the requirements to file a return by electronic means for taxpayers that are unable to comply despite good-faith efforts or due to circumstances beyond the taxpayer's reasonable control.

SALES TAX PENALTY REVISIONS
(Sections 21 & 22)

PRESENT SITUATION:

Payment and filing errors result in numerous billings for penalties that can, and often are, compromised based on reasonable causes 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 the customer 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 the DOR.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.21(3)(a), F.S., providing explicit statutory language allowing for the de novo review by a court of penalty compromise determinations made by the DOR.

The bill also amends s. 213.21 (9) & (10), F.S., effective July 1, 2003, providing 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.

SALE FOR RESALE
(Sections 23 & 24)

PRESENT SITUATION:

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 s. 212.18, F.S., 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 purchased 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 form from the 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.

EFFECT OF PROPOSED CHANGES:

Section 23 amends s. 212.07(1), F.S., providing that under curtain circumstance, a sales tax dealer my rely on a resale certificate valid at the time of receipt from the purchaser, without seeking annual verification. The bill also adds subsection (9) to s. 212.07, F.S., providing a penalty structure which limits liability for inadvertent registration errors and encourages voluntary self-disclosure, as an alternative to the current imposition of tax, penalty and interest on otherwise tax exempt transactions. Section 24 provides intent language.

Section 23 takes effect July 1, 2002.

<u>COST EFFECTIVE UNEMPLOYMENT COMPENSATION TAX REFUNDS</u>
(Section 25)

PRESENT SITUATION:

The administration of unemployment compensation 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 compensation 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

The bill amends s. 213.24(2), F.S., to limit 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
(Section 26)

PRESENT SITUATION:

The 2001 Legislature substantially changes 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 compensation tax cases is unclear because the Information Management Center (IMC) is responsible for processing and electronic transmission of unemployment tax liens, rather than DOR.

EFFECTS OF PROPOSED CHANGES:

The bill amends s. 55.202(5), F.S., to enable designees of the DOR to enter lien information into the Secretary of State's central databases without incurring the $20 fee.

INTEREST RATES ON DELINQUENCIES
(Sections 27, 28, 29 & 30)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.235(2) & (3), and s. 220.807(2) & (3), F.S., to conform the variable interest rate provisions to the OPPAGA recommendations, creating an interest rate that is more competitive with commercial borrowing interest rates charged by lending institutions. Sections 28 and 30 are intent language.

Sections 27 and 29 take effect July 1, 2002.

INTEREST PAID ON REFUNDS
(Section 31)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.255(4), F.S., to provide that in instances where DOR is prohibited from paying refund claims until after the beginning of a new fiscal year, interest begins to accrue on these refund claims on August 1.

LEMON LAW FEE
(Section 32)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 681.117(1), F.S., allowing vehicle dealers to remit to $2 Lemon Law fee for vehicles registered and titled outside of Florida directly to DOR.

This section takes effect July 1, 2002.

SEVERANCE TAX ALLOCATION
(Section 33)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 211.3103(2), (3) & (4), F.S., clarifying 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
(Sections 34 and 35)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends ss. 336.021(5) and 336.025(1) & (5), F.S., allowing for the imposition of these local gas taxes to go into effect on January 1 and terminate on December 31 to improve compliance and reduce the burden on the taxpayers who collect the tax and improve administration.

RISE PROGRAM
(Section 36)

PRESENT SITUATION:

"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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 213.0535(4), F.S., allowing "level two" counties participating in the RISE Program to share confidential taxpayer information with other participating counties.

ENTERPRISE ZONE TAX INCENTIVES – TECHNICAL ISSUES
(Sections 37 - 41)

PRESENT SITUATION:

Chapter 2001-201, L.O.F., concerning Enterprise Zones and other economic development programs contains ambiguities which create problems for entities wishing to claim tax incentives provided for in the law.

EFFECT OF PROPOSED CHANGES:

The bill corrects technical issues in ss. 212.096, 212.098, 220.03, 220.181, and 290.00677, F.S., relating to cross-referencing and provides appropriate definitions in each statutory chapter to clarify the implementation of the provisions regarding tax incentives.

EXTENSION OF SALES TAX EXEMPTIONS FOR CERTAIN ENTERTAINMENT FACILITIES

(Sections 42, 43, 44, & 45)

PRESENT SITUATION:

The Florida Legislature enacted ch. 2000-345, L.O.F., which provided for sales tax exemptions under s. 212.031, F.S., (lease or rental of or license in real property) and s. 212.04, F.S., (admissions tax), regarding the operation of convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, or publicly owned recreational facilities. This law expires on July 1, 2003.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.031(1)(a), (3), and (10), F.S., and s. 212.04(1)(a), (2), and (3), F.S., extending for three additional years, from July 1, 2003 to July 1, 2006, the sales tax exemptions awarded to convention halls, exhibition halls, auditoriums, stadiums, theaters, arenas, civic centers, performing arts centers, or publicly owned recreational facilities by ch. 2000-345, L.O.F.

REGIONAL TRANSMISSION ORGANIZATION

(Section 46)

PRESENT SITUATION:

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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.02(10)(g), F.S., to exclude 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 to an electric utility in connection with the RTO's use or control of the utility's high-voltage bulk transmission facilities.

BRACKET SYSTEM
(Sections 47 & 48)

PRESENT SITUATION:

The "brackets" for collection of sales and use tax at 6% and 7%, in counties with a 1% surtax, are provided s. 212.12, F.S. 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.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.12, F.S., adding a new subsection (12), providing for the forgiveness of tax, penalty and interest resulting from failure to use the traditional rounding of tax, if the dealer acted in a good faith belief that rounding to the nearest whole cent was the proper method of determining the amount of tax due, the dealer timely reported and remitted all taxes collected, and the dealer agrees in writing to future compliance with the statutes and rules concerning brackets application.

AVIATION FUEL TAX CREDIT
(Section 49)

PRESENT SITUATION:

Part III of Chapter 206, Florida Statutes, imposes an excise tax of 6.9 cents per gallon of aviation fuel sold in Florida or brought into Florida for use. Until July 1, 2001, s. 206.9825(1)(b), F.S., provided a credit or refund of the 6.9 cents per gallon aviation fuel tax to transcontinental air carriers that increase its work force in Florida by 1000% and by at least 250 full-time employees after January 1,1996. This aviation fuel tax credit expired July 1, 2001.

EFFECT OF PROPOSED CHANGES:

The bill reenacts s. 206.9825(1)(b), F.S., the aviation fuel tax credit, and amends out the July 1, 2001 expiration date. This section will take effective upon the bill becoming law.

MUNICIPAL REVENUE SHARING
(Section 50)

PRESENT SITUATION:

Effective July 1, 2000, the Municipal Financial Assistance Trust Fund cigarette tax distributions to the cities were replaced with sales tax and rolled into the Municipal Revenue Sharing program. This combination artificially increased the Municipal Revenue Sharing Trust Fund in

fiscal year 2000-2001 by approximately $20 million. Pursuant to s. 218.21(6)(b), F.S., Metro-Dade participates in Municipal Revenue Sharing and receives a unique annual growth increase based on the percentage increase in the trust fund for the preceding state fiscal year. Thus, the 2000-01 increase was used to calculate Metro-Dade's share for the current fiscal year of 2000-01, resulting in the increase in Metro-Dade's annual distribution over 16%, while all the other municipalities in the state were reduced by @ 1.5%.

The error was corrected in the Department's bill in the Regular 2001 Legislative Session, but did not pass. That language would have corrected the factors for the annual calculation of Metro-Dade's growth percentage to remove the windfall created by the increase in the Municipal Revenue Sharing Trust Fund in fiscal year 2000-01

Corrective language was passed during the Fall 2001 Special Session, in a supplemental appropriations bill. The over-distribution windfall to Metro-Dade during the 2001-2002 fiscal year is to be corrected during the 2002-03 fiscal year by reducing Metro-Dade's 2002-03 distributions by the 2001-02 windfall amount and reallocating that amount to the remainder of the municipalities during 2002-03. However, the appropriations bill expires on June 30, 2002, and therefore may not result in the corrective distributions that would be made after July 1, 2002.

EFFECT OF PROPOSED CHANGES:

The bill reenacts language regarding the Municipal Revenue Sharing calculations for Metro-Dade's annual growth increase contained in SB 2-C.

Section 51. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. 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**
MV Sales to Out-of-State Residents	1.0	2.9	*	*	0.2	0.6	1.2	3.5
Waiver of Registration Fee	(0.1)	(0.5)	0.0	0.0	0.0	0.0	(0.1)	(0.5)
Untaxed Purchases of Unreg. Dealers	(1.3)	(1.3)	(*)	(*)	(0.3)	(0.3)	(1.6)	(1.6)
Increase Interest Rate on Delinquencies	8.3	10.5	*	*	0.7	0.8	9.0	11.3
Insurance Premium Tax Interest	0.2	0.2	0.0	0.0	0.0	0.0	0.2	0.2
Extension of Sales Tax Exemption for Civic Centers, Etc.	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Rounding of Sales Tax – no tax, penalty or interest	(0.1)	(0.1)	0.0	0.0	0.0	0.0	(0.1)	(0.1)
Aviation Fuel Tax Credit *	0.0	0.0	(1.7)	(1.7)	0.0	0.0	(1.7)	(1.7)
Total (millions)	**$8.0**	**$11.7**	**0.0**	**0.0**	**$(1.1)**	**$(0.6)**	**$6.9**	**$11.1**

* This is a preliminary estimate. The Revenue Estimating Conference has not reviewed this provision.

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 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.

Delinquent taxpayers will have to pay higher interest rates on their delinquencies.

Air carriers meeting the criteria set up in s. 206.9825(1)(b), F.S., can avail themselves of the aviation fuel tax credit.

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.

$3.6 million of Municipal Revenue Sharing money will be shifted from Metro-Dade to the other 405 municipalities in fiscal year 2002-03. This represents overpayments to Metro-Dade in fiscal year 2001-02 and implements the provisions of SB 2-C, the Supplemental General Appropriations Act.

II. Technical Deficiencies:

None.

III. Related Issues:

None.

IV. Amendments:

None.

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