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: SB 1176

SPONSOR: Senator Campbell

SUBJECT: General Tax Administration

DATE: March 17, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Favorable
2.			FT	
3.			AP	
4.				
5.				
6.				

I. Summary:

The bill provides for the following tax administration changes:

Communication Services Tax

- Specifies that in the case of third-number and calling-card calls, the service address for the communication services tax is the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number.
- Provides an exemption for the sale of communications services to a home for the aged.
- Creates penalties for providers who improperly situs customers and fail to make corrections when customers are assigned to the incorrect local jurisdiction.
- Requires that each person selling communication services in more than one jurisdiction within Florida assist the Department of Revenue in examining the person's records by providing all data related to the situsing of customers to the Department of Revenue in an electronic format specified by the Department of Revenue. The bill imposes a penalty for failure to comply.

Fuel Taxes

- Inclusion of a definition of the new fuel "bio-diesel" and licensing requirements consistent with other fuels.
- Imposes a $5,000 penalty for retailers who refuse to provide required reports.
- Requires wholesalers or terminal suppliers who divert a load of Florida fuel to pay the Florida tax on the return and establishes limits to the number of loads that may be diverted to Florida before an importer license is required.

- Imposes a flat $5,000 penalty for those who are required to file electronically but fail to do so.
- Changes the requirement for corporations from having to provide certified copies of corporate documents to simply providing the Department of Revenue with a statement that the corporation is in good standing with the Florida Department of State, which can be easily verified by the Department of Revenue.
- The bill authorizes, by statute, the Department of Revenue to obtain fingerprints and personal data from persons applying for certain fuel licenses.

Unemployment Compensation Tax

- Chapter 443, F.S., allows an employer to obtain the unemployment compensation tax rate of another business if there is a transfer of a business, merger or consolidation and if the employer "continues to carry on the employing enterprises of the business." The statute, however, does not define what is necessary for such requirements. The bill provides the following:
  - A specific time period of 90 days in which an employer that has acquired a business must, if they want the tax rate of the business they acquired, notify the Department of Revenue of the succession.
  - Clarification of the "continue the employing enterprise" requirement so businesses will know what they have to do to obtain the tax rate of the business they acquire.
  - A transfer of a large number of employees (500) from one employer to another will result in a transfer of a proportional share of the tax rate.
  - For unemployment compensation tax purposes, a limited liability company will be treated as the same status as it is classified for federal income tax purposes.
  - The recovery of federal monies by the Department of Revenue from the Agency for Workforce Innovation is not limited by state law to 5% of costs.

Other Tax Administration Issues

- Provides authority for the Department of Revenue to require dealers to report rental car surcharge collections on a county-by-county basis in order to facilitate the allocation of surcharge revenues to each DOT district.
- Authorizes carriers to prorate the tax on their purchases of motor fuel and diesel fuel used in a railroad locomotive or vessel when the carrier has been in business for less than a year.
- Permits the Department of Revenue to allow a taxpayer with a perfect tax return filing record for at least 12 consecutive months to retain their collection allowance, under certain circumstances.
- Caps penalties for filing errors at $50 or 10% of the delinquent tax, whichever is more, in lieu of current law wherein such penalties can be as high as 50% of the delinquent tax.
- Permits the Department of Revenue to establish new tax brackets when necessary without requiring rulemaking when the Legislature changes a tax rate.
- Changes the period in instances of voluntary self-disclosure, from 5 years to 3 years.
- Changes the date for county certification from May 1 to March 1 and the fiscal year ending period from March 31 to January 31.

- Provides that failure to make an EFT payment will be subject to the same prosecution as payment with a worthless check, bank draft, or debit card. This provision makes such failure a second-degree misdemeanor if the amount is less than $150 and a third-degree felony if the amount is $150 or more.
- The annual intangible tax return is required to include language permitting a voluntary contribution of $5 for the Election Campaign Financing Trust Fund. The trust fund expired, effective November 4, 1996. The bill eliminates this requirement

This bill substantially amends the following sections of the Florida Statutes: 202.11, 202.125, 202.19, 202.22, 202.34, 206.02, 206.026, 206.14, 206.414, 206.416, 206.485, 206.86, 206.89, 212.0606, 212.08, 212.12, 213.21, 336.021, 443.036, 443.131, 443.1316, 832.062, and 206.052; and repeals s. 199.052(13).

II. Present Situation:

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

III. Effect of Proposed Changes:

COMMUNICATION SERVICES TAX
(Sections 1, 2, 3, 4, 5, & 6)

PRESENT SITUATION:

Communications services are subject to state and local taxes under chapter 202, F.S., the Communications Services Tax Simplification Law, which was enacted in 2000. The Gross Receipts tax on communications services, imposed by chapter 203, F.S., is also administered under chapter 202, F.S.

Section 202.11, F.S., provides definitions for the Communications Services Tax Simplification Law. Subsection (15) defines "service address". The service address is the location of the originating communications equipment or the location of the equipment where the customer receives the communications services. When the location of the communications equipment can not be determined through the billing process, such as third-number and calling card calls, the service address is the location determined by the dealer based on the customer's telephone number, the customer's mailing address for bills, or another address provided by the customer. In addition, when a credit or payment mechanism does not relate to a service address, such as bank, credit, or debit card, the service address is the address of the central office based on the area code and first three numbers of the originating telephone number.

Section 202.125, F.S., provides an exemption for the sale of communications services to a religious or educational institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, and the sale of communication services by a religious institution that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code having an established physical place for worship at which nonprofit religious services and activities are regularly conducted and carried on.

Section 202.19, F.S., authorizes the governing authority of each county and municipality to levy, by ordinance, a discretionary communications services tax. However, this subsection does not require dealers to report the revenues and taxes collected within each jurisdiction. While the Department of Revenue (department) requires the reporting of taxable sales by jurisdiction on the communications services tax return, the only penalty for noncompliance with this reporting requirement is the loss of the taxpayer's collection allowance based on the filing of an incomplete return, pursuant to s. 202.28(1)(b), F.S. Subsection (2) of s. 202.28, F.S., provides for penalties to be imposed on any person who is required to make a return or pay communications services tax who fails to timely file such return or fails to pay the taxes due.

Dealers that exercise due diligence in using one of the four eligible methods to assign customer addresses to local taxing jurisdictions are granted a "hold harmless" status under the provisions of s. 202.22(1), F.S. Dealers that do not use a qualified method or fail to meet due diligence standards in using a qualified method are not "held harmless" for tax, penalty, and interest owed due to incorrectly assigning customers to local taxing jurisdictions. However, if a dealer collected enough total local communications services tax, even if it was not properly allocated, s. 202.22(5), F.S., provides that the department will properly reallocate the amounts and no interest or penalties will be imposed.

The department is required by s. 202.37(1)(a), F.S., to include in its audit a determination of the dealer's compliance with the jurisdictional situsing of its customer service addresses and a determination whether the rate collected is correct. This has proven difficult for the department. In some cases, the department reports, dealers that are clearly assigning addresses inaccurately have refused to cooperate in providing information about their customer base or situsing method.

Section 202.33, F.S., provides that the taxes collected under chapter 202, F.S., become government funds at the moment of collection by the dealer and that such taxes must be remitted to the department. Section 213.756, F.S., provides that any funds collected from a customer under the representation that they are taxes provided for under state revenue laws are state funds from the moment of collection and must be remitted to the state, and will not be refunded to the dealer unless first refunded by the dealer to the customer. The department reports that some communications services tax dealers over collect from customers as a result of incorrectly assigning customers to incorrect local jurisdictions and subsequently take credits for those over collections or apply them to subsequent liabilities without making refunds to the customers. Such dealers believe that there is no provision in chapter 202, F.S., that prohibits this practice.

Section 202.34, F.S., authorizes the department to audit the records of communications services dealers. Currently, s. 202.34, F.S., does not provide any audit provisions specific to persons that sell communications services in more than one local taxing jurisdiction. The only provision relating specifically to persons that make sales in more than one local taxing jurisdiction is s. 202.37(1)(c), F.S., which states that local taxing jurisdictions may only audit persons that make sales in a single county. The department is required by s. 202.37(1)(a), F.S., to include in its audit, a determination of the dealer's compliance with the jurisdictional situsing of its customer service addresses and a determination whether the rate collected is correct. Dealers are required to make available all of their books and records for audit, and the department is authorized to sample the sales of a dealer. However, there are no specific requirements regarding a dealer's

records relating to the situsing of customers. Further, there are no provisions that specifically allows for the sampling of a dealer's situsing records.

EFFECT OF PROPOSED CHANGES:

Section 1. Amends s. 202.11(15)(a), F.S., amending the definition of "service address" to remove the portion of the definition relating to situations where the location of the equipment can not be determined through the billing process. When a third number and calling card call does not relate to a service address, the service address will be the address of the central office based on the area code and first three numbers of the originating telephone number, as in the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card.

Section 2. Amends s. 202.125(4). F.S., providing an exemption for a "home for the aged" from both state and local communications services taxes. The bill also provides a definition for a "home for the aged".

Section 3. Amends s. 202.19, F.S., adding subsection (13), to require dealers to report the revenue and tax collected within each jurisdiction and to report corrections to the revenue and tax information originally reported. The subsection provides a specific penalty equal to 25 percent of the amount of tax improperly allocated to the local jurisdictions that is in addition to any taxes, interest, and penalty imposed by s. 202.28, F.S., due as a result of reallocating the incorrectly assigned customer service addresses. The 25 percent penalty does not apply to dealers that have "hold harmless" status.

Section 4. Amends s. 202.22, F.S., adding subsection (8), to provide that all local communications services taxes collected by a dealer are subject to the provisions of s. 213.756, F.S., which specifies that funds collected under the representation that they are taxes are state funds from the moment of collection and are not subject to refund absent proof that the funds have previously been refunded to the purchaser. The subsection further provides that the "hold harmless" provisions in s. 202.022, F.S., do not entitle dealers to keep or take credits for taxes over collected from a customer who was assigned to an incorrect local taxing jurisdiction. The subsection further specifies that dealers are only entitled to take a credit for the tax over collected after the tax has been refunded to their customers.

Section 5. This section provides that the amendment to s. 202.22, F.S., is remedial in nature and intended to clarify existing law.

Section 6. Amends s. 202.34, F.S., adding subsection (5), requiring that each person selling communications services in more than one jurisdiction within Florida assist the department in examining the person's records by providing all data related to the situsing of customers to the department in the electronic format specified by the department. Taxpayers are required to provide the customer records necessary to correct amounts originally reported, once the taxpayer is notified by the department of errors in its jurisdictional reporting. The subsection also provides that if the dealer's records are voluminous in nature and substance, then the department may sample such records and project the audit findings derived from the records over the entire audit period to determine the correct allocation of revenue for each jurisdiction. Further, the subsection

imposes a penalty for failure to comply with this subsection, in addition to all other penalties, equal to the amount of tax reported to the wrong jurisdiction for each customer account.

MOTOR FUEL AND DIESEL FUEL
(Sections 7, 8, 9, 10, 11, 12, 13, 14 & 25)

Section 206.02, F.S., provides for the licensing of a terminal supplier, importer, exporter, blender, or wholesaler of motor fuel. There are currently no provisions for the licensing of persons who manufacture biodiesel. Biodiesel is the name of a clean burning alternative fuel, produced from domestic, renewable resources. Biodiesel contains no petroleum, but it can be blended at any level with petroleum diesel to create a biodiesel blend, which can be operated in any diesel engine with little or no modifications to the engine or the fuel system. Biodiesel fuel is taxable under part II of chapter 206.

Corporations that apply for fuel tax licenses must provide the department with a certified copy of the certificate or license issued by the Department of State showing that the corporation is authorized to transact business in Florida.

Currently, s. 206.026(5), F.S., provides that the department shall make rules for photographing, fingerprinting, and obtaining personal data from individuals described in s. 206.026 (1)(a), F.S., for the purpose of determining whether such individuals are not of good moral character or have been convicted of a felony in Florida or in another state, or under the laws of the United States.

The Florida Department of Law Enforcement (FDLE) advised the Department of Revenue that it had received notification from the FBI that s. 206.026(5), F.S., does not comply with Public Law 92-544, which authorizes the FBI to do background checks for licensing purposes, based on submitted fingerprints. The FBI further notified FDLE that, after July 1, 2003, it would no longer process fingerprint cards submitted pursuant to s. 206.026(5), F.S., unless Florida passes legislation that:

- requires that applicants be fingerprinted;
- authorizes the use of FBI records for screening;
- identifies the specific categories of licenses falling within its purview;
- is not against public policy; and
- does not identify a private entity as a recipient of the results.

Section 206.14, F.S., authorizes the department to audit and examine the records, books, papers and equipment of terminal suppliers, importers, exporters, or wholesalers, retail dealers, terminal operators, or all private and common carriers to verify the accuracy of such records and whether or not the motor fuel and diesel fuel taxes have been paid. There are no penalty provisions for failure to provide adequate records to the department.

Section 206.414, F.S., provides that local option motor fuel taxes must be collected and remitted by licensed wholesalers and terminal suppliers upon each sale, delivery, or consignment to retail dealers, resellers, and end users. This section also prohibits the collection of local option fuel taxes by terminal suppliers when:

- A terminal supplier sells motor fuel to another terminal supplier;
- A terminal supplier sells motor fuel to a wholesaler; and
- A wholesaler sells motor fuel to another wholesaler.

In addition, terminal suppliers, wholesalers, and importers are prohibited from paying local option fuel taxes to their suppliers. When such sales occur, the provisions of the section further prohibit a credit or refund when local option taxes are collected under prohibited conditions.

Section 206.416, F.S., requires that any person who sells fuel destined for sale or use in Florida may change the destination state designated on the original shipping paper upon notification by the purchaser of the fuel by the 20th day of the month following the date of the transaction. The terminal supplier or position holder is required to document a change in destination state by issuing a new invoice bearing the corrected destination state. Each terminal supplier and position holder is also required to report monthly to the department all changes in the state of destination, including the name of the purchaser, date, number of gallons of fuel, and the basis for the change. A terminal supplier or position holder who issues a change in the state of destination on the invoice to Florida from another state is required to collect and remit to the department the Florida fuel taxes and is entitled to a credit or refund of any tax paid.

Subsections 206.413(3) and 206.872(11), F.S., provides that any person who willfully evades or attempts to evade or defeat the payment of motor fuel and diesel fuel shall be penalized in the amount of $10 for every gallon of motor fuel or diesel fuel involved or $1,000, whichever is greater, for the first offense. The penalty shall increase with subsequent violations by multiplying the penalty amount by the number of prior violations.

Section 206.485, F.S., provides authority to the department to establish, by rule, an electronic filing requirement on fuel tax licensees. There are no provisions in chapter 206, F.S., that impose a specific penalty for failure to file returns and remit tax electronically.

Section 206.86, F.S., provides definitions for Part II of chapter 206, F.S., Diesel Fuels. There is currently no reference to the terms “biodiesel” and “biodiesel manufacturer” in s. 206.485, F.S.

Section 206.89, F.S., provides for the licensing provisions for wholesalers of alternative fuels. In reality, it is actually retailers who sell alternative fuel at a service stations and not wholesalers.

EFFECT OF PROPOSED CHANGES:

Section 7. Amends s. 206.02, F.S., adding the term “biodiesel manufacturer” to the list of persons requiring a fuel tax license. In addition, the bill places a biodiesel manufacturer under the same reporting, bonding, and licensing requirements as a wholesaler.

The bill removes the requirement for corporations to provide a certified copy of the certificate or license issued by the Department of State showing that the corporation is authorized to transact business in Florida. Instead, corporate fuel tax applicants must indicate the state, territory, or country where the corporation is organized and the date the corporation was registered with the Department of State as a foreign corporation authorized to transact business in Florida.

Section 8. Amends s. 206.026(5), F.S., to adopt the requirements of Public Law 92-544, enabling the department to continue to have background checks processed by the FBI.

Section 9. Amends s. 206.14(2), F.S., providing that any person who fails to provide required records shall, in addition to all other penalties, be subject to an additional penalty of $5,000.

Section 10. Amends s. 206.414, F.S., to provide that the fuel taxes previously prohibited from collection may now be collected at the terminal loading rack. The department shall determine a minimum amount of local option tax on motor fuel prior to January 1 of each year, and the minimum amount shall be collected at the terminal loading rack. The new taxes collected at the terminal loading rack shall be collected in the same manner as the taxes that were already required to be collected at the terminal loading rack, and the new taxes collected, refunded, or credited shall be distributed based on the current applied period.

The bill provides that terminal suppliers and wholesalers shall not collect the new taxes above the annual minimum determined by the department on authorized exchanges and sales to terminal suppliers, wholesalers, and importers. It further provides that terminal suppliers, wholesalers, and importers shall not pay, to their suppliers, the new taxes above the annual minimum on sales of motor fuel.

Section 11. Amends s. 206.416(1), F.S., simplifying the reporting of diverted sales of fuel. The bill removes terminal suppliers from the requirement to issue a new invoice when properly notified by a customer that fuel purchased for use in this state was exported from the state. In addition, the bill adds terminal suppliers to a requirement for obtaining a diversion number, and manually recording the number on shipping papers when fuel was purchased, destined for export from the state, but diverted for sale or use in Florida.

If a wholesaler or exporter diverts fuel to Florida that was destined for out-of-state delivery more than 6 times within 3 consecutive months, the wholesaler or exporter must register as an importer within 30 days after such diversion. Penalties for violation of these new provisions shall be enforced in the same manner as prescribed in ss. 206.413 and 206.872, F.S.

Section 12. Amends s. 206.485, F.S., adding a new subsection (2), requiring that any person who fails to file an electronic fuel tax report within 3 months after notification of such failure by the department shall, in addition to all other penalties prescribed by chapter 206, F.S., be subject to an additional penalty of $5,000 for each month such failure continues.

Section 13. Amends s. 206.86(1), F.S., to add the term "biodiesel" to the definition of diesel fuel. The bill also creates subsections (14) and (15) providing definitions for "biodiesel" and "biodiesel manufacturer."

- "Biodiesel" means any production made from non-petroleum-base oils or fats which is suitable for use in diesel-powered engines. Biodiesel is also referred to as alkyl esters.
- "Biodiesel manufacturer" means those industrial plants, regardless of capacity, where organic products are used in the production of biodiesel. This includes businesses that process or blend organic products that are marketed as biodiesel.

Section 14. Amends s. 206.89, F.S., to change the licensing requirements from a "wholesaler of alternative fuel" to a "retailer of alternative fuel."

Section 25. Amends s. 206.052, F.S., correcting a cross-reference.

RENTAL CAR SURCHARGE
(Section 15)

In 1989, the legislature created s. 212.0606, F.S., the rental car surcharge The surcharge was levied at 50 cents per day upon the lease or rental of for-hire motor vehicles designed to carry less than nine passengers and increased to $2.00 in 1990. After deduction for administrative fees and the General Revenue Service Charge, the rental car surcharge is distributed as follows:

- 80% of the surcharge to the State Transportation Trust Fund
- 15.75% of the surcharge to the Tourism Promotion Trust Fund
- 4.25% of the surcharge to the Florida International Trade and Promotion Trust Fund

Beginning in fiscal year 2007-2008, the proceeds of the rental car surcharge that are deposited into the State Transportation Trust Fund shall be allocated to each Department of Transportation (DOT) district for projects, based on the amount of proceeds collected in the counties within each respective district.

The majority of the rental car surcharge collected is reported on consolidated returns by rental car companies with multiple locations and is not broken down by the amount of surcharge collected on a county-by-county basis. In order to accommodate DOT's needs for their 5-year planning cycle, the department is currently providing an estimate of the rental car surcharge based on sales tax returns.

EFFECT OF PROPOSED CHANGES:

Section 15. The bill amends s. 212.0606, F.S., authorizing the department to require dealers to report rental car surcharge collections according to the county in which the surcharge was collected, in order to facilitate the allocation of surcharge revenues collected within each Department of Transportation district.

This section takes effect January 1, 2004.

PRORATION OF MOTOR FUEL AND DIESEL FUEL
USED BY RAILROAD LOCOMOTIVES AND VESSELS
(Section 16)

Under current law, s. 212.08(4)(a)2., F.S., authorizes railroads and vessels engaged in interstate or foreign commerce, who have been operating for less than a fiscal year, to prorate their Florida sales tax on purchases during their initial year of operation and in subsequent years of operation. Additionally, such railroads and vessels are allowed to prorate their Florida motor fuel and diesel fuel purchases based on a mileage proration factor determined at the close of their fiscal year.

However, there is no provision for carriers to prorate their Florida purchases of motor fuel and diesel fuel in their initial year of operation.

EFFECT OF PROPOSED CHANGES:

Section 16. Amends s. 212.08(4)(a)2., F.S., authorizing carriers engaged in interstate or foreign commerce to prorate the tax on their purchases of motor fuel and diesel fuel used in a railroad locomotive or vessel when the carrier has been in business for less than a year. In such a case, the carrier's mileage apportionment factor may be determined on the basis of an estimated ratio of anticipated miles in this state to anticipated total miles for that year.

COLLECTION ALLOWANCE
(Section 17)

Section 212.12(1), F.S., authorizes sales tax dealers a collection allowance of 2.5 percent of the amount of tax due for remitting tax and filing a return. The collection allowance can not exceed $30. The collection allowance is not permitted if the required tax return or tax is delinquent at the time of payment.

Chapter 2002-218, L.O.F., created subsection (10) of s. 213.21, F.S., allowing for an automatic waiver of certain penalties for taxpayers with a perfect tax return filing record for at least 12 consecutive months. The original intent of the concept proposed by the department was to also allow these taxpayers the opportunity to retain their collection allowance. However, since ch. 2002-218, L.O.F., did not amend s. 212.12(1)(a), F.S., the department is still required by law to disallow the collection allowance under these circumstances.

Section 212.12(2)(a), F.S., imposes a penalty on the late payment of any tax or fee at the rate of 10 percent per 30 days, up to a maximum of 50 percent, with a minimum of $10. The minimum penalty for quarterly, semiannual and annual filings is $5.

EFFECT OF PROPOSED CHANGES:

Section 17. Amends s. 212.12(1), F.S., removing the prohibition against the department granting a collection allowance if the required tax return or tax is delinquent at the time of payment, thus authorizing the department to allow a collection allowance to taxpayers with a perfect tax return filing record for at least 12 consecutive months.

The bill also amends subsection (2) of s. 212.12, F.S., imposing a 10 percent penalty, with a $50 minimum, when a person either fails to timely file a return or timely pay the tax or fee shown due on the return, except as provided in s. 213.21(10), F.S. This penalty does not accumulate for each additional 30-day period. However, if a person fails to timely file a return and to timely pay the tax or fee shown on the return, then only one 10 percent penalty, with a $50 maximum, is assessed.

In addition to all other penalties provided in this section, the bill imposes a 10 percent penalty for failure to timely disclose a tax or fee on a return. The penalty accumulates at 10 percent per thirty days up to a maximum of 50 percent of any unpaid tax or fee.

BRACKET SYSTEM
(Section 17)

Subsections (9), (10), & (11) of s. 212.12, F.S., provides the brackets for collection of sales and use tax at 6 percent and 7 percent in counties with a 1 percent surtax. The department is authorized to provide by rule the brackets for other rates of sales and use tax. Setting the brackets is a mathematical function that should not require compliance with the notice and hearing procedures of the rulemaking process. When the Legislature changes a tax rate, it is often not possible to complete the rulemaking process to establish the brackets for that rate prior to the date it takes effect.

EFFECT OF PROPOSED CHANGES:

Section 17. Amends subsections (9), (10), & (11) of s. 212.12, F.S., permitting the department to establish new tax brackets when necessary without requiring rulemaking when the Legislature changes a tax rate.

VOLUNTARY SELF-DISCLOSURE OF TAX LIABILITY
(Sections 18 & 19)

Section 213.21(7)(a), F.S., provides for the voluntary self-disclosure of tax liability. When a taxpayer voluntarily self-discloses a liability for tax, the department is authorized to settle and compromise the tax and interest due under the voluntary disclosure to the amounts due for the 5 years immediately preceding the date that the taxpayer contacts the department. When revisions were made to s. 95.091, F.S., in 1999 reducing the statute of limitations for audits from 5 years to 3 years, amending s. 213.21(7)(a), F.S., was overlooked. The current statutory language of 5 years provides a disincentive to taxpayers to voluntarily disclose a potential tax liability.

EFFECT OF PROPOSED CHANGES:

Section 18. Amends s. 213.21(7)(a), F.S., changing the period in instances of voluntary self-disclosure from 5 years to 3 years, mirroring the audit period, to encourage more taxpayers to come forward when they are aware that they have an outstanding tax liability.

Section 19. Provides that the amendment to s. 213.21, F.S., made by this act shall take effect upon becoming a law and applies to any voluntary self-disclosure made to the department on or after that date.

LOCAL OPTION FUEL TAX – DISTRIBUTION FORMULA DATE CHANGE
(Section 20)

Subsection (1) of s. 336.021, F.S., contains provisions that specify the manner under which local option fuel taxes are distributed by the department to counties. Counties, in which a qualifying new retail station begins operation after June 30, 1996, are authorized to receive a distribution of local option fuel taxes from the qualifying new retail station. For a retail station to qualify, the retail station is required to have diesel sales exceeding 50 percent of the overall fuel sales of the

station. The 50 percent threshold is determined on gallons of diesel sold during the period between April 1 of one year and March 31 of the next year. Distribution of the local option fuel taxes from sales of motor fuel are determined based on the tax reported to the department by terminal suppliers and importers.

Since the formula went into effect in July of 1996, the number of gallons of diesel fuel sold has increased in excess of 21 percent. What this means is that the base distributions are being satisfied with the April fuel collections. As a result, the May 1 certification date does not provide sufficient time to calculate and adjust the local option fuel tax distribution.

EFFECT OF PROPOSED CHANGES:

Section 20. Amends s. 336.021(1), F.S., changing the qualifying period for retail stations to February 1 of one year to January 31 of the next year. In addition, the bill specifies that local option motor fuel taxes reported by wholesales are included in the distribution process.

UNEMPLOYMENT COMPENSATION TAX
(Sections 21, 22 & 23)

Florida law does not provide any basis to determine the treatment of limited liability companies for Florida unemployment tax purposes. A limited liability company may be treated as a partnership, sole proprietor, or a corporation for federal purposes depending on the structure of the limited liability company. According to the Department of Revenue, this has caused complaints from taxpayers in cases where entities were classified differently or claim to be partnerships or sole proprietors rather than corporations.

Section 443.036(20), F.S., defines "employing unit" to mean, among other entities, "any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign…" The definition does not include a limited liability company.

Chapter 443, F.S., allows an employer to obtain the tax rate of another business if there is a transfer of business, merger, or consolidation, and if the employer "continues to carry on the employing enterprises of the business." The statute, however, does not define what is necessary to meet the requirements of "continues to carry on the employing enterprises of the predecessor employer or employers." The department has been asked to clarify what is meant by "carrying on the employing enterprise" and for how long must the "employing enterprise" be continued. In addition, the are no statutory requirements that a taxpayer notify the department when a total merger or succession has occurred.

Large companies are able to manipulate the current tax laws by transferring employees between different companies where no purpose for the transfer exists other than to take advantage of a lower experience rate. This employee transfer results in the loss of substantial tax revenue for the Unemployment Compensation Trust Fund. The U.S. Department of Labor has requested that states, in order to ensure the integrity of both the tax rating system and the state's trust fund, promote legislation that deters tax rate manipulation.

Pursuant to s. 443.1316, F.S., the Department of Revenue and the Agency for Workforce Innovation have entered into a contract whereby the department administers Florida's unemployment tax program. The program is funded with federal monies. The department has incurred certain overhead and indirect costs in administering the program. Federal guidelines allow for the reimbursement of the department's overhead and indirect costs. However, state law, s. 216.346, F.S., limits the department's recovery of these costs to no more than 5 percent of the total costs of the contract. Therefore, although federal guidelines would allow for the payment by federal monies of more than 5 percent of overhead and indirect costs, due to this state law, the department must use state general revenue to pay for its overhead and indirect costs which exceed 5 percent of the contract. During fiscal year 2001-02, this amounted to approximately $2.2 million of state general revenue for costs which, but for s. 216.346, F.S., would have been paid for with federal monies.

EFFECT OF PROPOSED CHANGES:

Section 21. Amends s. 443.036(20), F.S., adding limited liability company to the types of organizations defined as employing units, for purposes of unemployment compensation. The bill provides that any person who is an officer or a member of a limited liability company classified as a corporation for federal income tax purposes and who performs services for a limited liability company shall be deemed an employee of the limited liability company. For unemployment compensation purposes, a limited liability company shall be treated as having the same status as that in which it is classified for federal income tax purposes.

This section takes effect January 1, 2004.

Section 22. Amends s. 443.131(3)(g), F.S., to clarify what is meant by "carrying on the employing enterprise" and for how long the "employing enterprise" must be continued in order to obtain and keep the unemployment compensation tax rate of the newly acquired business. Specifically, the bill does the following:

- Creates a 90 day time period in which an employer that has acquired a business must, if they want the tax rate of the business they acquired, notify the department of succession.
- Provides clarification of the "continue to carry on the employing enterprise" requirements so businesses will know what they have to do to obtain the tax rate of the business they acquire.
- Specifies that a transfer of more than 500 employees to a different employer will result in a transfer of a corresponding percentage of the transferring employer's records.
- Requires the employing unit that received 500 or more transferred employees to report the transfer on or before the last day of the month following the calendar quarter in which the transfer occurred, and to impose a $10 employee fee for each quarter the transferred employee is not reported. The Agency for Workforce Innovation (AWI) or its designee can waive the fee for failure to file the transfer report for just cause.
- Provides an effective date for the transfer of employment records relating to the transfer of more than 500 employees, gives AWI the authority within 5 years after the date of the transfer to recalculate the tax rate for the year in which the transfer occurred and for all subsequent years, and defines the employment records as the factors used to calculate the employer's tax rate.

These changes do not apply to any transfer of employees that occurred prior to July 1, 2003.

This section takes effect January 1, 2004.

Section 23. Amends s. 443.1316, F.S., exempting the contract between the Department of Revenue and the Agency for Workforce Innovation from the provisions of s. 216.346, F.S., removing the restriction on overhead and indirect costs.

ELECTRONIC FUNDS TRANSFER
(Section 24)

Florida Statutes require taxpayers to file returns and remit tax payments by electronic means where the taxpayer is subjected to tax and has paid that tax in the prior state fiscal year in the amount of $30,000 or more.

Section 832.062, F.S., is the controlling statute with respect to prosecution for worthless checks, drafts, or debit card orders given to pay any tax administered by the Department of Revenue. As written, s. 832.062, F.S., does not proscribe unlawful conduct related to dishonored or refused electronic funds transfers in payment of state taxes. Because the statute does not prohibit such conduct, a taxpayer is not subject to prosecution under the statute, where an electronic funds transfer is initiated with respect to payment of taxes due and the transaction is dishonored or refused. It has come to the attention of the department that some taxpayers make a habit of making an electronic funds transfer in payment of state taxes knowing at the time the Automated Clearinghouse debit transaction is executed, that he or she does not have sufficient funds on deposit in or credit with the receiving financial institution to pay the taxes due. Without some criminal sanctions, such behavior will only continue.

EFFECT OF PROPOSED CHANGES:

Section 24. Amends s. 832.062, F.S., providing that any attempt to initiate, send, or make a required electronic funds transfer payment (EFT) when the taxpayer does not have sufficient funds available to complete the EFT transaction will be subject to the same prosecution as payment with a worthless check, bank draft, or debit card. The act will be a second-degree misdemeanor if the amount is less than $150, and a third-degree felony if the amount is more than $150.

INTANGIBLE TAX
(Section 26)

Section 199.052(13), F.S., provides that the annual intangible tax return shall include language permitting a voluntary contribution of $5 per taxpayer for the Election Campaign Financing Trust Fund. The voluntary Election Campaign Trust Fund expired November 4, 1996, by operation of s. 19(f), Art. III of the State Constitution.

EFFECT OF PROPOSED CHANGES:

Section 26. The bill repeals subsection (13) of s. 199.052, F.S., eliminating the requirement that the department provide language on the intangible tax return permitting a $5 contribution to the Election Campaign Financing Trust Fund.

Section 27. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2003.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill provides an exemption for a "home for the aged" from both state and local communications services taxes.

The bill requires dealers of communications services to report the revenue and tax collected within each jurisdiction and to report corrections to the revenue and tax information originally reported. Failure to do so will result in a penalty equal to 25 percent of the amount of tax improperly allocated to the local jurisdiction.

The bill requires that each person selling communications services in more than one jurisdiction within Florida to provide to the Department of Revenue, the customer records necessary to correct amounts originally reported, once the taxpayer is notified by the department of errors in its jurisdictional reporting. Failure to comply with these provisions will result in a penalty equal to the amount of tax reported to the wrong jurisdiction for each customer account.

For the purpose of obtaining a license to do business in Florida as a terminal supplier, importer, exporter, blender or wholesaler, the bill removes the requirement for

corporations to provide a certified copy of the certificate or license issued by the Department of State showing that the corporation is authorized to transact business in Florida, thus eliminating an unnecessary burden on such corporations.

Terminal suppliers, importers, exporters, wholesalers, retail dealers, terminal operators, or all private and common carriers must provide required fuel tax records to the department or be subject to an additional penalty of $5,000.

Also, any person who fails to file an electronic fuel tax report within 3 months after notification of such failure by the department shall be subject to an additional penalty of $5,000.

Effective January 1, 2004, dealers must report rental car surcharge collections according to the county in which the surcharge was collected.

Carriers engaged in interstate or foreign commerce are authorized to prorate the tax on their purchases of motor fuel and diesel fuel used in a railroad locomotive or vessel when the carrier has been in business for less than a year.

Taxpayers with a perfect tax return filing record for at least 12 months, who are qualified for an automatic waiver of certain penalties pursuant to s. 213.21(10), F.S., will be allowed a collection allowance under the provisions of this bill.

By authorizing the Department of Revenue to establish new tax brackets when necessary without rulemaking when the Legislature changes tax rates, taxpayers will have the new tax brackets in a timely manner.

By changing the period in instances of voluntary self-disclosure from 5 years to 3 years, more taxpayers should be encouraged to come forward when they are aware that they have an outstanding tax liability.

The bill clarifies for employers what is necessary to meet the requirements of "continues to carry on the employing enterprises of the predecessor employer or employers" in order for the new employer to obtain the tax rate of the business it has just acquired. In addition, the bill adds a limited liability company to the types of organizations defined as employing units, for purposes of unemployment compensation, thus ensuring that entities will be classified the same as for federal income tax purposes.

C. Government Sector Impact:

The penalty provisions provided in the bill for communications services tax and motor fuel and diesel fuel taxes provides the Department of Revenue with the tools necessary to enforce these provisions.

The amendment to s. 206.026(5), F.S., adopting the requirements of Public Law 92-544, will enable the Department of Revenue to continue to have background checks on applications for motor fuel and diesel fuel licenses processed by the FBI.

The bill requires dealers to report rental car surcharge collections according to the county in which the surcharge was collected. This provision will facilitate the accurate allocation of surcharge revenues collected within each Department of Transportation district.

The provision in the bill authorizing the Department of Revenue to establish new tax brackets when necessary without requiring rulemaking when the Legislature changes a tax rate will facilitate the timely dissemination of the new tax brackets to sales and use tax dealers and save the taxpayers money by eliminating the cumbersome rulemaking process in this instance.

The amendment to s. 443.1316, F.S., exempting the contract between the Department of Revenue and the Agency for Workforce Innovation from the provisions of s. 216.346, F.S., limiting the department's recovery of overhead and indirect costs to 5 percent of the total costs of the contract, will save the state general revenue. In fiscal year 2001-02, the overhead and indirect costs above the 5 percent cap cost the General Revenue Fund $2.2 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.