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 1176

SPONSOR: Finance and Taxation Committee and Senator Campbell

SUBJECT: General Tax Administration

DATE: April 10, 2003 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Favorable
2.	Keating	Johansen	FT	Favorable/CS
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.
- Authorizes that the penalty for a communications services dealer failing to respond to a notice from the Department of Revenue or request an extension may be compromised pursuant to s. 213.21.
- Excludes from the definition of "substitute communications system" for communications services tax purposes, a not-for-hire mobile communications service that exclusively serves the internal communication needs of a nonprofit utility provider.
- Provides a mechanism for correcting possible errors in situsing of local communications services tax revenues. These provisions are repealed effective June 30, 2004.
- Provides a penalty for failure to separately report and identify local communications services taxes on the appropriate return schedule. It also provides a penalty for failure to use an approved method for assigning service addresses to local jurisdictions.
- Allows the Department of Revenue to allocate the local communications services tax among local governments based on the best information available, if a dealer fails to respond to a contact made by the department under s. 202.27 (6) or (7), F.S., or if the dealer's records are inadequate to determine whether the dealer properly allocated the taxes.

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.
- Authorizes, by statute, the Department of Revenue to obtain fingerprints and personal data from persons applying for certain fuel licenses.
- Expands the use of local option fuel taxes to include expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures critical for building comprehensive roadway networks by locals.

Unemployment Compensation Tax

- Provides that an employer may not be considered a successor under this section if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions.
- Provides that notwithstanding s. 216.346, the Department of Revenue may charge no more than 10 percent of the total cost of the interagency agreement for the overhead or indirect costs, or for any other costs not required for the payment of the direct costs, of providing unemployment tax collections.
- Requires certain employers to file the Employers Quarterly Reports (UCT-6) by electronic means approved by the Agency for Workforce Innovation. Any employer who fails to file an UCT-6 report by electronic means, but who files the report by means other than electronic means, is liable for a penalty of $10 for that report, in addition to any other penalties provided by chapter 443

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.
- Provides for sharing of rental car surcharge revenue information between the Department of Revenue and the Department of Transportation.
- 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.
- Authorizes an affiliate group of corporations that created a service company with an affiliated group on July 30, 2002, to receive the salary credits for Insurance Premium tax purposes.
- Repeals the restriction on the use of Local Government Infrastructure Surtax revenue to supplant or replace user fees or reduce ad valorem taxes.
- Repeals the repeal of the certified audits pilot project, making it permanent.
- Expands the sales and use tax exemption for building materials used in a designated brownfield area of affordable housing.
- Expands the use, by a charter county, of the Charter County Transit System Surtax to include planning, development, construction, operation and maintenance of, as well as, the payment of principal and interest on bonds issued for, roads and bridges in the county and bus and fixed guideway systems.

This bill substantially amends the following sections of the Florida Statutes: 202.11, 202.125, 202.22, 202.27, 202.28, 202.34, 202.35, 206.02, 206.026, 206.14, 206.414, 206.416, 206.485, 206.86, 206.89,212.055, 212.0606, 212.08, 212.12, 213.053, 213.285, 213.21, 336.021, 336.025, 443.036, 443.131, 443.1316, 443.163, 624.163, 832.062, and 206.052; and repeals ss. 199.052(13) and 212.055(2)(f).

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.

"Substitute communications system" is defined to mean any telephone system, or other system capable of providing communications services, which person purchases, installs, rents, or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.

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.

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.

Section 202.27, F.S., requires every dealer to file a return and remit communications services taxes to the Department of Revenue.

Section 202.28, F.S., provides for a collection allowance for compensating persons providing communications services for the keeping of prescribed records, the filing of timely returns, and the proper accounting and remitting of taxes

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.

Section 202.35, F.S., provides for the powers of the Department of Revenue in dealing with delinquent tax returns.

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 cannot 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.

The definition of a "substitute communications system" is amended to exclude a not-for-hire mobile communications service that exclusively serves the internal communication needs of a nonprofit utility provider.

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. 202.22, 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 4. This section provides that the amendment to s. 202.22(8), F.S., is remedial in nature and intended to clarify existing law.

Section 5. Section 202.27, F.S., is amended to provide a mechanism for correcting possible errors in situsing of local communications services tax revenues. Communications services tax

dealers are required to designate a representative to whom the department can direct inquiries about their returns. Subsection (7) provides that if the department determines that a return probably contains a material error in its reporting of local government communications services taxes by jurisdiction, it shall try to resolve the issue with the dealer's designated representative and shall look for other sources of information about whether the return is in error. After consulting with the dealer's designated representative, the department may issue a notice specifying the schedule, the line or lines of the return that are the subject of the notice, describing the error, and describing other sources of information consulted by the department. The dealer must respond to this notice within 90 days, either acknowledging and correcting the error, or providing an explanation of why the apparent error was not an error. If the dealer's response provides incorrect information, and the return is determined, under audit, to contain the error identified in the notice, the dealer shall be subject to a penalty. This subsection does not require a dealer to perform a self-audit.

Section 6. Effective June 30, 2004, subsection (7) of section 202.27, F.S., as created by this act is repealed.

Section 7. Section 202.28, F.S., is amended to provide a penalty for failure to separately report and identify local communications services taxes on the appropriate return schedule. It also provides a penalty for failure to use an approved method for assigning service addresses to local jurisdictions.

Section 8. Amends s. 202.34, F.S., requiring that if a dealer of communications services retains records in both machine-readable and hardcopy formats, that upon request by the department, the dealer must make the records available to the department in the machine-readable format. Any dealer who fails or refuses to provide such records within 60 days after the department's request, shall, in addition to all penalties provided by law, be subject to a penalty of $5,000 per audit.

Section 9. Section 202.35, F.S., is amended to allow the Department of Revenue to allocate the local communications services tax among local governments based on the best information available, if a dealer fails to respond to a contact made by the department under s. 202.27 (6) or (7), F.S., or if the dealer's records are inadequate to determine whether the dealer properly allocated the taxes.

MOTOR FUEL AND DIESEL FUEL
(Sections 10, 11, 12, 13, 14, 15, 16, 17 & 31)

PRESENT SITUATION:

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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. 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 17. Amends s. 206.89, F.S., to change the licensing requirements from a "wholesaler of alternative fuel" to a "retailer of alternative fuel."

Section 31. Amends s. 206.052, F.S., correcting a cross-reference.

RENTAL CAR SURCHARGE
(Section 18)

PRESENT SITUATION:

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 18. 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 attributed to, in order to facilitate the allocation of surcharge revenues collected within each Department of Transportation district. For purposes of this section, the surcharge shall be attributed to the county where the rental agreement was entered into. This section takes effect January 1, 2004.

PRORATION OF MOTOR FUEL AND DIESEL FUEL USED BY RAILROAD LOCOMOTIVES AND VESSELS
(Section 19)

PRESENT SITUATION:

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 19. 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 20)

PRESENT SITUATION:

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 20. 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 20)

PRESENT SITUATION:

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 20. 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 21 & 22)

PRESENT SITUATION:

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 21. 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 22. 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 AND EXPANSION OF USES
(Section 23 & 24)

PRESENT SITUATION:

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.

Section 336.025(1)(b) and (7), F.S., provides for uses of the local option motor fuel and diesel fuel taxes. County and municipal governments shall utilize local option fuel taxes for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan.

EFFECT OF PROPOSED CHANGES:

Section 23. 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.

Section 24. Amens s. 336.026(1), F.S., to expand the uses of local option fuel tax revenues to include expenditures needed to meet immediate local transportation problems and for other transportation-related expenditures that are critical for building comprehensive roadway networks by local governments and to include sidewalks.

UNEMPLOYMENT COMPENSATION TAX
(Sections 25, 26, 27 & 28)

PRESENT SITUATION:

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.

Section 443.163(1) and (2), F.S., provides for electronic filing for unemployment compensation reports and tax collections.

EFFECT OF PROPOSED CHANGES:

Section 25. 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 26. Amends s. 443.131(3)(g), F.S., to provide that an employer may not be considered a successor under this section if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions. This section takes effect January 1, 2004.

Section 27. Amends s. 443.1316, F.S., providing that notwithstanding s. 216.346, the Department of Revenue may charge no more than 10 percent of the total cost of the interagency agreement for the overhead or indirect costs, or for any other costs not required for the payment of the direct costs, of providing unemployment tax collections.

Section 28. Amends s. 443.163(1) and (2), F.S., requiring certain employers to file the Employers Quarterly Reports (UCT-6) by electronic means approved by the Agency for Workforce Innovation. Any employer who fails to file an UCT-6 report by electronic means, but who files the report by means other than electronic means, is liable for a penalty of $10 for that report, in addition to any other penalties provided by chapter 443.

Section 29. Provides that the amendment made by this act to s. 443.161, F.S., shall apply retroactively for UCT-6 reports due on or after April 1, 2003.

ELECTRONIC FUNDS TRANSFER
(Section 30)

PRESENT SITUATION:

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 30. 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 32)

PRESENT SITUATION:

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 32. 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.

LOCAL GOVERNMENT INFRASTRUCTURE SURCHARGE - RESTRICTIONS
(Sections 33 & 41)

CURRENT SITUATION:

Section 212.055(1), F.S., creates the charter county transit system surtax and limits the uses of surtax revenues for the development, construction, operation, and maintenance or roads and bridges in the county; for the expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit systems, bus systems, roads, or bridges.

Paragraph (f) of subsection (2), F.S., prohibits counties and municipalities from using surtax proceeds to supplant or replace user fees or to reduce ad valorem taxes existing prior to the levy of the local government infrastructure surtax .

EFFECT OF PROPOSED CHANGES:

Section 33. Repeals paragraph (f) of subsection (2) of s. 212.055, F.S., eliminating the restrictions on the use of the local government infrastructure surtax from using surtax proceeds to supplant or replace user fees or to reduce ad valorem taxes.

Section 41. The bill amends s. 212.055(1), F.S., expanding the use, by a charter county, of the charter county transit system surtax to include planning, development, construction, operation, and maintenance of, as well as, the payment of principal and interest on bonds issued for, roads, and bridges in the county; for the planning, development, expansion, operation, and maintenance of bus and fixed guideway systems; and for the payment of principal and interest on bonds issued for the construction of fixed guideway rapid transit system, bus systems, roads, or bridges; and such proceeds may be pledged for bonds issued for the above reasons.

INFORMATION SHARING
(Sections 34 & 37)

PRESENT SITUATION:

Section 213.053, F.S., provides for confidentiality and information between the Department of Revenue and public entities. Paragraph (n) of s. (7) authorizes the department to share information with the Board of Accountancy in connection to the certified audit program. This authorization is repealed on July 1, 2006.

EFFECT OF PROPOSED CHANGES:

Section 34. Amends s. 213.053, F.S., adding subsection (x), providing for sharing of rental car surcharge revenue information between the department and the Department of Transportation.

Section 37. The bill repeals the repeal of paragraph (n) authorizing the department to share information with the Board of Accountancy in connection to the certified audit program.

INSURANCE PREMIUM TAX CREDITS
(Sections 35 & 36)

PRESENT SITUATION:

Section 624.509(5), F.S., allows a credit against the net insurance premium tax equal to 15 percent of the amount paid by the insurer in salaries to employees located or based within Florida.

EFFECT OF PROPOSED CHANGES:

Section 35. The bill amends s. 624.509(5), F.S., authorizing an affiliated group of corporations that created a service company with an affiliated group on July 30, 2002, to receive the salary credits for the insurance premium tax purposes. The bill provides a definition for "affiliated group of corporations" and "service company".

Section 36. The amendment to s. 624.509(5), F.S., made by this act shall take effect for tax years beginning January 1, 2003.

INFORMAL CONFERENCES; COMPOMISES
(Section 38)

PRESENT SITUATION:

Section 213.21(8), F.S., authorizes the executive director of the Department of Revenue or his or her designee to settle or compromise penalty liabilities of taxpayers who participate in the certified audits project. Subsection (8) is repealed July 1, 2006.

EFFECT OF PROPOSED CHANGES:

Section 38. The bill amends s. 213.21(8), F.S., repealing the repeal of subsection (8).

CERTIFIED AUDITS PROJECT

(Section 39)

PRESENT SITUATION:

Section 213.285, F.S., authorizes the Department of Revenue to initiate a certified audits project to enhance tax compliance reviews performed by qualified practioners and to encourage taxpayers to hire qualified practioners at their own expense to review and report on their tax compliance. The certified audits project is repealed on July 1, 2006.

EFFECTS OF PROPOSED CHANGES:

Section 39. The bill repeals the repeal of the certified audits projects.

SALES AND USE TAX EXEMPTION – BUILDING MATERIALS
(Section 40)

PRESENT SITUATION:

Section 212.08(5)(o), F.S., provides a sales and use tax exemption for building materials used in certain redevelopment projects.

EFFECT OF PROPOSED CHANGES:

Section 40. The bill amends s. 212.08(5), F.S., expanding the sales and use tax exemption to building materials used in a designated brownfield area of affordable housing.

Section 42. 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:

There are four provisions in this bill with a fiscal impact.

- The provision authorizing an affiliate group of corporations that created a service company with an affiliated group on July 30, 2002, to receive the salary credits for the insurance premium tax, will result in a loss to the General Revenue Fund in fiscal year 2003-04 of ($3.1) million, with a recurring loss of ($2.0) million.

- The exclusion from the definition of "substitute communications system" for communications services tax purposes, of a not-for-hire mobile communications service that exclusively serves the internal communication needs of a nonprofit utility provider is estimated to have a negative fiscal impact to the General Revenue Fund of $0.2 - $0.4 million.

- The exemption for the homes for the aged from communications services taxes will result in a recurring loss to the General Revenue Fund of ($0.1) million.

- The various penalties proposed in the bill will result in an indeterminate increase in revenues.

B. Private Sector Impact:

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

A not-for-hire mobile communications service that exclusively serves the internal communication needs of a nonprofit utility provider will not have to pay the communications services tax.

A communications services provider will have to pay a penalty for failure to separately report and identify local communications services taxes on the appropriate return schedule and for failure to use an approved method for assigning service addresses to local jurisdictions.

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.

An affiliate group of corporations that created a service company with an affiliated group on July 30, 2002, will qualify to receive the salary credits for Insurance Premium tax purposes.

The certified audits pilot project will become permanent.

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 Department of Revenue may charge no more than 10 percent of the total cost of the interagency agreement for the overhead or indirect costs, or for any other costs not required for the payment of the direct costs, of providing unemployment tax collections.

A charter county may use the proceeds from the Charter County Transit System Surtax to plan, develop, construct, operate and maintain, as well as, use for the payment of principal and interest on bonds issued for, roads and bridges in the county and bus and fixed guideway systems.

The restriction on the use of Local Government Infrastructure Surtax revenue to supplant or replace user fees or reduce ad valorem taxes, will enable local governments to use revenues for these purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.