

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

B. EFFECT OF PROPOSED CHANGES:

The Department of Revenue administers the following taxes and fees:

- Local Option Surtaxes – Chapter 125
- Estate Tax – Chapter 198
- Intangible Personal Property Taxes – Chapter 199
- Documentary Stamp Tax – Chapter 201
- Communications Services Tax – Chapter 202
- Gross Receipts Taxes – Chapter 203
- Motor Fuel Taxes – Chapter 206
- Severance Tax – Chapter 211
- Sales and Use Tax – Chapter 212
- Corporate Income Tax – Chapter 220
- Emergency Excise Tax – Chapter 221
- Local Option Fuel Taxes – Chapter 336
- Apalachicola Bay Oyster Surcharge – Chapter 370
- Pollutant Taxes – Chapter 376
- Waste Tires and Lead-acid Batteries Fees – Chapter 403
- Secondhand Dealers and Secondary Metals Recyclers Fees – Chapter 538
- Insurance Premiums Taxes – Chapters 624 and 627
- Motor Vehicle Warranty Trust Fund Fee – Chapter 681

Taxpayers who fail to timely and correctly pay taxes are subject to penalties for non-compliance. For example, a sales tax dealer who fails to timely file a return and pay the tax due, is subject to a penalty of 10% of the unpaid tax if not more than 30 days late, with an additional 10% for each additional 30 day, up to the maximum penalty of 50% of the unpaid tax. The minimum penalty is \$10. A taxpayer is also charged interest on tax delinquencies. (See Interest Rates for Tax Delinquencies below.) Additionally, a taxpayer may be subject to criminal proceedings for certain willful or fraudulent acts. For example, a fraudulent claim of exemption carries a penalty of 200% of the tax and is a first degree misdemeanor.

The Department of Revenue (Department) has implemented an integrated tax-administration information system (SUNTAX) that will provide the Department with better information on taxpayer compliance. The SUNTAX system provides the Department with additional capabilities to discover unregistered and noncompliant taxpayers. Using the system, the Department will be able to make better audit selections and target industries that are not properly collecting or paying taxes.

Many taxpayers, either inadvertently because of lack of knowledge, or purposefully because of lack of fear of discovery, do not properly collect or pay taxes to the state. The SUNTAX system has the potential to assist the Department in recovering more of these delinquencies in the near future.

The preamble of the bill presents legislative findings that before the Department begins to fully use the capacity of the SUNTAX system, taxpayers should be given an opportunity to come forward and pay delinquent taxes. The Legislature further finds and declares that among the benefits gained through an amnesty program are increased collection of currently owed taxes and permanently bringing into the tax system taxpayers who have been unaware of or have not been fulfilling their tax obligations. To encourage the full payment of taxes owed to the State, the bill creates an amnesty program for taxes administered by the Department of Revenue.

The State has not had a general tax amnesty program since 1987. (Ch. 87-6, Laws of Florida)

Duration of Amnesty Program

The amnesty program will be in effect for a six-month period beginning on July 1, 2003 and ending on October 31, 2003.

Eligible Participants

A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue.

Non-eligible Taxpayers

A taxpayer that is under criminal investigation, or is under indictment, information, or prosecution regarding a revenue law of this state shall not be eligible to participate in the amnesty program. Also, a taxpayer who has been convicted of a crime a tax crime cannot participate in the amnesty program.

Program Benefits

A taxpayer who initiates contact with the Department: pays no penalties, is not subject to criminal prosecution, and receives a 50% reduction in interest.

A taxpayer who is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue: pays no penalties, is not subject to criminal prosecution, and receives a 25% reduction in interest.

Additionally during the amnesty program, a taxpayer who receives a notice to intent to audit may elect to participate in the certified audit project¹. The certified audit project allows a taxpayer to hire a private Certified Public Accountant (CPA) firm to perform a compliance audit. Taxpayers reporting a liability under this program receive a waiver of penalties and of the first \$25,000 in interest and of 25% of any interest in excess of \$25,000. The taxpayer participating in the amnesty program and the certified audit project is eligible for the penalty and interest compromises under either program, but not under both.

Taxpayer Obligations

The taxpayer must pay all taxes and interest due, may not apply for a refund, and must stop all legal challenges to any assessment subject to the amnesty program.

Local Option Taxes

¹ Outside of the amnesty program, a taxpayer receiving a notice of intent to audit may not participate in the certified audit project.

Any local option tax that is being administered by a local government is excluded from the amnesty program, unless the local government notifies the Department of Revenue by June 10, 2003, that it chooses to participate in the amnesty program.

Interest Rates

Tax Delinquencies

From September 1986 through January 1, 2000, the interest rate for most tax delinquencies was fixed at 12%. In 1996, the Office of Program Policy Analysis and Governmental Accountability (OPPAGA) studied Florida's interest provisions for tax delinquencies. (OPPAGA Report No. 96-13, November 4, 1996) OPPAGA concluded that a fixed interest rate could at times be substantially higher than commercial borrowing rates and therefore act as an additional penalty. At other times, the fixed interest rate could be lower than commercial borrowing rates and therefore could encourage late payment of taxes. OPPAGA issued a report recommending adoption of a variable interest rate that would be higher than commercial borrowing rates. Commercial borrowing rates are normally a few points higher than the prime rate. OPPAGA recommended that the interest rate be set at prime plus 3% or 4%. Effective January 1, 2000, a variable interest rate was adopted by the Legislature that is based upon the prime rate. However, the interest rate cannot exceed 12%.

In its 1999 progress report, OPPAGA noted that failure to add percentage points to the prime rate could create a disincentive for prompt payment by some taxpayers. (OPPAGA Report No. 98-85, June, 1999)

Tax Refunds

Sec. 213.225, F.S., provides that for all taxes administered by the Department of Revenue except corporate income tax, interest shall be paid on tax refunds that are not paid more than 90 days after a complete refund application is filed with the Department. Interest begins to accrue on the 91st day. The interest rate for refunds is the same as for tax delinquencies, except that the amount cannot exceed 11%.

Sec. 220.723, F.S. applies to refunds of corporate income tax. Interest shall be paid on refund applications that are not paid within 3 months and interest accrues from the date of application. Again, the interest rate for refunds is the same as for tax delinquencies, except that the amount cannot exceed 11%.

The bill amends s. 213.235, F.S., and s. 220.807, F.S. to provide that the interest rate on tax delinquencies and tax refunds is prime rate plus 4 percentage points. Sec. 213.235, F.S., applies to all taxes, except corporate income tax. Sec. 220.807, F.S., applies to corporate income tax. The new interest rate in s. 213.235, F.S., will apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and will also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003. The new interest rate in s. 220.807, F.S., will apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and will also apply to interest due on tax payment deficiencies that arose before January 1, 2000, but remain unpaid as of November 1, 2003.

The bill provides an appropriation of \$610,000 from the General Revenue Fund to the Department of Revenue to implement the amnesty program.

C. SECTION DIRECTORY:

Section 1: Creates the Amnesty Program.

Section 2: Effective November 1, 2003, amends s. 213.235, F.S., to provide that the interest rate on certain tax deficiencies shall be an adjusted prime rate plus four percentage points.

Section 3: Provides that the interest rate in s. 213.235, F.S., applies to interest due on tax payment deficiencies that arise on or after November 1, 2003, and also applies to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003.

Section 4: Effective November 1, 2003, amends s. 220.807, F.S., to provide that the interest rate on certain tax deficiencies shall be an adjusted prime rate plus four percentage points; clarifies that the interest rate for tax payment deficiencies for corporate income tax cannot exceed 12%.

Section 5: Provides that the interest rate in s. 220.807, F.S., applies to interest due on tax payment deficiencies that arise on or after November 1, 2003, and also applies to interest due on tax payment deficiencies that arose before January 1, 2003, but remain unpaid as of November 1, 2003.

Section 6: Effective November 1, 2003, amends s. 202.35, F.S., to clarify that the interest rate for tax payment deficiencies for Communications Services Tax cannot exceed 12%.

Section 7: Provides an appropriation of \$610,000 from the General Revenue Fund to the Department of Revenue to implement the amnesty program.

Section 8: Provides that if any law amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted at the same session of the Legislature, and full effect shall be given to each if possible.

Section 9: Provides that except as otherwise provided, the act shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

2003-04

| <u>Issue</u> | <u>General Revenue</u> | | <u>State Trust</u> | | <u>Local Trust</u> | | <u>Total</u> | |
|--|------------------------|---------------|--------------------|---------------|--------------------|---------------|--------------|---------------|
| | <u>Cash</u> | <u>Recurr</u> | <u>Cash</u> | <u>Recurr</u> | <u>Cash</u> | <u>Recurr</u> | <u>Cash</u> | <u>Recurr</u> |
| Interest Rate on Deficiencies-- Prime + 4% effective 11/1/03 | 10.4 | 15.6 | | | 1.3 | 2.0 | 11.7 | 17.6 |
| Tax Amnesty July1 thru October 31 2003 | 66.6 | 22.2 | 0.1 | | 8.6 | 2.9 | 75.3 | 25.1 |
| Total | 77.0 | 37.8 | 0.1 | | 9.9 | 4.9 | 87.0 | 42.7 |

2. Expenditures:

The operational impact to the Department of Revenue is \$610,000.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: See table above.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

B. RULE-MAKING AUTHORITY: The executive director of the department is authorized to adopt emergency rules under ss. 120.536(1) and 120.54(4), F. S., to implement the amnesty program.

C. DRAFTING ISSUES OR OTHER COMMENTS:

There is a drafting error on line 252. The date should be January 1, 2000.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES