HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 391 Interest Rates on Tax Payments
SPONSOR(S): Brummer
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1668

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce		Billmeier	Billmeier
2) Finance & Tax			
3) Commerce & Local Affairs Apps. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

HB 391 revises the method that interest rates on tax deficiencies are calculated for corporate income taxes and other taxes. Current law provides that the interest rate is the adjusted prime rate charged by banks plus four percentage points. This bill changes the rate to the adjusted prime rate charged by banks if the deficiency is paid within 60 days after issuance of an assessment, billing, or notice and demand for payment or if an agreement for scheduling payments of taxes, interest, and penalties is made within 60 days of the assessment, billing, or notice and demand for payment.

This bill provides that if a tax assessment, billing, or notice and demand for payment is paid within 60 days of issuance, no additional penalties and interest will be imposed.

This bill revises the method the Department of Revenue will use to calculate the interest paid for overpayment of taxes, payment of taxes not due, or taxes paid in error.

The Revenue Estimating Conference estimated this bill would have a total negative fiscal impact of $43.8 million in FY 04-05. See “Fiscal Analysis and Economic Impact Statement” for discussion.

This bill takes effect upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

B. EFFECT OF PROPOSED CHANGES:

HB 391 revises the method which the Department of Revenue (Department) must use to calculate the interest rate paid by the taxpayer on tax deficiencies and revises the interest rate the Department must pay on tax refunds. This bill makes changes to provisions relating to corporate income taxes and other taxes.

Section 1

Section 213.235, F.S., provides the method that the Department calculates the interest rate on tax deficiencies[1] that arise on or after January 1, 2000. Pursuant to s. 213.235(2), the interest rate is set by the Executive Director of the Department at the adjusted prime rate charged by banks[2] plus four percentage points. This rate can be adjusted every six months.[3]

This bill creates s. 213.235(3), F.S., which provides that if a payment of a tax deficiency is made within 60 days after issuance of an assessment, billing, or notice and demand for payment, interest on the tax deficiency shall be the adjusted prime rate charged by banks, rounded to the nearest full percent. This bill further provides that if an agreement for scheduling payments of taxes, interest, and penalties is made within 60 days after issuance of an assessment, billing, or notice and demand for payment, interest on the tax deficiency shall be the adjusted prime rate charged by banks, rounded to the nearest full percent. Accordingly, a taxpayer who pays a tax deficiency promptly would pay a lower interest rate.

Section 2

Section 213.24(1), F.S., provides that if payment of a tax deficiency is made within <u>30 days</u> after a notice and demand for payment, then no additional penalty or interest will be imposed. This bill provides if a payment of a tax deficiency is made within <u>60 days</u> after an assessment, billing, or notice and demand for payment, then no additional penalty or interest will be imposed.

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[1] Section 213.235, F.S., applies to all taxes except the corporate income tax. The corporate income tax is found in chapter 220.
[2] "Adjusted prime rate charged by banks" is defined as the "average predominant prime rate quoted by commercial banks to large businesses, as determined by the Board of Governors of the Federal Reserve System." s. 213.235(4), F.S.
[3] <u>See</u> s. 213.235(2), F.S.

Section 3

Section 213.255, F.S., provides a method for calculating interest paid by the Department for overpayment of taxes, payment of taxes not due, or taxes paid in error. Currently, the interest rate is set, by reference to s. 213.235, F.S, at the adjusted prime rate charged by banks plus four percentage points.[4] As discussed above, this bill creates a new s. 213.235(3), F.S. (discussed in "Section 1" of this analysis). This bill requires that the interest rate paid by the Department for overpayment of taxes be calculated pursuant the new s. 213.235(3), F.S. It is not clear how this new reference would work in practice because the new s. 213.235(3), F.S., refers to the interest rate when a deficiency is paid within 60 days and does not address other situations. The sponsor has indicated he will file an amendment to address this issue.

Section 5

Section 220.807, F.S., provides the method that the Department uses to calculate the interest rate on tax deficiencies due to the corporate income tax. Pursuant to s. 220.807(2), F.S., the interest rate is set by the Executive Director of the Department at the adjusted prime rate charged by banks plus four percentage points. This rate can be adjusted every six months.[5]

This bill creates a new s. 220.807(3), F.S., which provides that if a payment of a tax deficiency is made within 60 days after issuance of an assessment, billing, or notice and demand for payment, interest on the tax deficiency shall be the adjusted prime rate charged by banks, rounded to the nearest full percent. This bill further provides that if an agreement for scheduling payments of taxes, interest, and penalties is made within 60 days after issuance of an assessment, billing, or notice and demand for payment, interest on the tax deficiency shall be the adjusted prime rate charged by banks, rounded to the nearest full percent. Accordingly, a taxpayer who pays a tax deficiency promptly would pay a lower interest rate.

Sections 1 and 5 make similar changes to different areas of law. The changes in section 5 relate to tax deficiencies due to the corporate income tax. The changes in section 1 relate to tax deficiencies due to other taxes.

Section 4

Section 220.723, F.S., deals with the interest rate paid by the Department for overpayment of corporate income taxes. Currently, the rate is the adjusted prime rate charged by banks plus four percentage points.[6] As discussed above, this bill creates a new s. 220.807(3), F.S. This bill requires that the interest rate paid by the Department for overpayment of taxes be calculated pursuant the new s. 220.807(3), F.S. It is not clear how this new reference would work in practice because the new s. 220.807(3), F.S., refers to the interest rate when a deficiency is paid within 60 days and does not address other situations. The sponsor has indicated he will file an amendment to address this issue.

Section 6

Section 220.809(5), F.S., provides that if payment of a tax deficiency due to corporate income tax is made within <u>30 days</u> after a notice and demand for payment, then no additional penalty or interest will be imposed. This bill provides if a payment of a tax deficiency is made within <u>60 days</u> after an assessment, billing, or notice and demand for payment, then no additional penalty or interest will be imposed.

[4] <u>See</u> s. 213.255(12), F.S.
[5] <u>See</u> s. 220.807(3), F.S.
[6] <u>See</u>. ss. 220.723(1), 220.807, F.S.

Section 7

Section 7 of the bill creates a new section of law to address how the amendments contained in this bill will be applied. The bill provides that the changes to ss. 213.235 and 220.807, F.S., apply to interest due on tax payment deficiencies that arise on or after July 1, 2004, and also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of July 1, 2004. When calculating the rate that takes effect on July 1, 2004, the Department shall use in making that calculation the adjusted prime rate charged by banks, rounded to the nearest full percent, during the 6-month period ending on March 31, 2004.

Section 8 of this bill provides that this bill becomes effective upon becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 213.235, F.S., to permit an alternative method of calculating the interest rate due on tax deficiencies in certain situations.

Section 2. Amends 213.24, F.S., to provide that no additional interest or penalties will be imposed if a tax deficiency is paid within 60 days.

Section 3. Amends s. 213.255, F.S., to provide a different method for calculating the interest rate paid by the Department for overpayment of taxes.

Section 4. Amends s. 220.723, F.S., to provide a different method for calculating the interest rate paid by the Department for overpayment of corporate taxes.

Section 5. Amends s. 220.807, F.S., to permit an alternative method of calculating the interest rate due on corporate income tax deficiencies in certain situations.

Section 7. Provides a schedule for implementing provisions of the bill.

Section 8. Provides that this bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   For FY 04-05, the Revenue Estimating Conference estimates this bill will have a negative cash fiscal impact of $38.3 million. The Conference estimates the bill will have a recurring negative fiscal impact of $13.3 million.

2. Expenditures:

   The Department of Revenue estimates $58,600 in non-recurring costs for programming and training costs.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   For FY 04-05, the Revenue Estimating Conference estimates the bill will have a negative cash fiscal impact on local governments of $5.6 million. The Conference estimates a recurring negative fiscal impact of $2 million.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Uncertain. It is not known whether this bill would alter taxpayer behavior regarding late payment of taxes.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This 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 revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

This bill does not provide additional rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue has expressed concerns regarding the implementation and administration of this bill. The concerns of the Department are explained below:

Section 4.

This section references s. 220.807(3), F.S., for the computation of interest to be paid on overpayments. However, s. 220.807(3), F.S., as amended, only addresses interest to be paid on payments of deficiencies made within 60 days after issuance of an assessment, billing, or notice and demand for payment, or if an agreement for scheduling payments is made with 60 days of the issuance of any of those documents. The rate given therein is the adjusted prime rate charged by banks, rounded to the nearest full percent.

It is unclear from the bill language if the intent is for the Department to pay the adjusted prime rate charged by banks, rounded to the nearest full percent, on refunds of overpayments, or if the intended reference was to s. 220.807(2), F.S., as amended, which would pay interest on overpayments of prime rate plus four percent.

Section 7.

This section seems to provide that the interest rate for tax deficiencies that arise on or after July 1, 2004, will be computed only using the current interest rate in effect on July 1, 2004, after adjustment, based on the prime rate charged by banks, rounded to the nearest full percent, during the 6-month period ending on March 31, 2004, thereby nullifying the “prime plus four percent” interest rate provision.

The sponsor intends to offer a strike-all amendment to address the concerns raised in this analysis.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A