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.)

Prepared By: Government Efficiency Appropriations Committee

BILL: SB 300

SPONSOR: Government Efficiency Appropriations Committee

SUBJECT: Repeal of the October 1, 2005 Repeal of Certain Tax Administration Statutes

DATE: January 26, 2005 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating & Fournier	Johansen	GE	**Favorable**
2.			GO	
3.				
4.				
5.				
6.				

I. Summary:

During the 2000 Regular Session, a number of bills were amended onto House Bill 509, which passed the Legislature, becoming ch. 2000-312, Laws of Florida. One of the bills contained a repealer section that, once amended into HB 509, was not limited in its scope. This repealer section creates the current situation where a number of provisions in the Florida Statutes will be repealed effective October 1, 2005, unless they are reenacted by the Legislature.

Senate Bill 300 abrogates the repeal of the following statutory provisions:

- Paragraph (b) of subsection (14) of s. 120.80, F.S., which addresses taxpayer contest proceedings against the Department of Revenue, was amended by s. 2 of ch. 2000-312, Laws of Florida. The amendment provided that a taxpayer may be awarded costs and attorney's fees in a contest of a sales tax assessment if the Department of Revenue rejects or modifies an Administrative Law Judge's conclusions of law and an appellate court finds for the taxpayer.

- Paragraph (d) of subsection (6) of s. 125.0104, F.S., which relates to the referendum repeal requirements for the Tourist Development Tax, was amended by s. 14 of ch. 2000-312, Laws of Florida. The amendment clarified that the repeal of the tax cannot apply to any portion of taxes initially levied in November 1989, which has been pledged or are being used to support bonds, until after the retirement of those bonds.

- Subsection (10) of s.125.0104, F.S., which relates to the local administration of the Tourist Development Tax, was amended by s. 6 of ch. 2000-312, Laws of Florida. The amendment authorized counties that elect to audit the tourist development tax to use CPAs.

- Amendments to s. 197.182, F.S., found in s. 1 of ch. 2000-312, Laws of Florida, provide an additional exception to the requirement that the Department of Revenue approve a refund of property taxes. When a payment has been made in error by a taxpayer because of an error in the tax notice sent to the taxpayer, a refund must be made directly by the tax collector.

- Paragraph (n) of subsection (1) of s. 199.185, F.S., provides an exemption from the tax on intangible personal property for a leasehold estate in governmental property where the lessee is required to furnish space on the leasehold estate for public use by governmental agencies at no cost to those agencies, which was created by s. 5 of ch. 200-312, Laws of Florida.

- Paragraph (c) of subsection (5) of s. 212.0305, F.S., which relates to auditing of records relating to the local administration of the Convention Development Tax, was amended by s. 7 of ch. 2000-312, Laws of Florida. The amendment authorized counties that elect to audit the convention development tax to use CPAs.

- Subsection (5) of s. 212.055, F.S., which authorizes Miami-Dade County to levy the County Public Hospital Surtax, was amended by s. 10 of ch. 2000-312, Laws of Florida.

- Subsection (7) of s. 212.055, F.S., which authorizes the Voter-Approved Indigent Care Surtax, was created by s. 16 of ch. 2000-312, Laws of Florida.

- An amendment to paragraph (j) of subsection (7) of s. 213.053, F.S., found in s. 8 of ch. 2000-312, Laws of Florida, authorizes the Department of Revenue to share information with certified public accountants for participants in the Registration Information Sharing and Exchange Program.

- Amendments to subsections (2) and (3) of s. 213.21, F.S., found in s. 3 of ch. 2000-312, Laws of Florida, provide that the department may compromise taxes and interest if a taxpayer establishes reasonable reliance on written advice issued by the department.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 197.182(1) & (3); 120.80(14)(b); 213.21(2) & (3); 199.185(1)(n); 125.0104(6) & (10); 212.0305(5)(c); 213.053(7)(j); and 212.055(2)(c), (5) & (7).

II. Present Situation:

During the 2000 Regular Session, a number of bills were amended onto House Bill 509, which passed the Legislature, becoming ch. 2000-312, Laws of Florida. One of the bills contained a repealer section that, once amended into HB 509, was not limited in its scope. This repealer section creates the current situation where a number of provisions in the Florida Statutes will be repealed effective October 1, 2005, unless they are reenacted by the Legislature.

Section 120.80(14)(b), Florida Statutes

Chapter 96-159, Laws of Florida, reorganized Chapter 120, F.S., the Administrative Procedures Act. Section 120.57, F.S., provides that an administrative law judge assigned by the Division of

Administrative Hearings shall conduct all hearings involving disputed issues of material fact, except as provided in ss. 120.80 and 120.81, F.S.

Section 120.80, F.S., provides for exceptions and special requirements for state agencies and s. 120.81, F.S., provides for exceptions and special requirements for educational units, local units of government, regulation of professions, hunting and fishing regulation, and risk impact statements.

Subsection (14) of s. 120.80, F.S., provides that a taxpayer may contest any tax assessment or denial of refund by the Department of Revenue (department) by either bringing an action in circuit court or filing a petition for an administrative hearing pursuant to Chapter 120, F.S. Except in limited circumstances, the hearing will be held before an Administrative Law Judge. After the hearing, the Administrative Law Judge will issue a recommended order to the department containing findings of fact and conclusions of law. The department may adopt the recommended order as its final order, or in its final order, the department may reject or modify the conclusions of law over which it has substantive jurisdiction.

Section 120.80(14)(b)5., F.S., provides that the prevailing party in a tax contest proceeding may recover all legal costs incurred in the proceeding, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in the petition or response. Section 2 of ch. 2000-312, Laws of Florida, amended s. 120.80(14)(b), F.S., adding a new sub-paragraph 6., providing that a taxpayer may be awarded costs and attorney's fees in a contest of a sales and use tax assessment if the department rejects or modifies an Administrative Law Judge's conclusions of law and the appellate court finds that the department improperly rejected or modified the conclusions. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 120.80(14)(b), F.S., is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

The amendment to s. 120.80(14)(b)6., F.S., is a taxpayer fairness issue. As in s. 120.80(14)(b)5., F.S., where the prevailing party in a tax contest proceeding may recover legal costs incurred in the proceeding, including reasonable attorney's fees, the prevailing party in the judicial appeal of final agency action should be entitled to recover the same such fees and costs. Pursuant to s. 2 of ch. 2000-312, L.O.F., upon review of a final agency action concerning an assessment of tax, penalty or interest or the denial of a refund with respect to sales and use tax, if the court finds that the department improperly rejected or modified a conclusion of law, then the court may award reasonable attorney's fees and reasonable costs of the appeal to the prevailing party.

Section 125.0104(6), Florida Statutes

Chapter 77-209, Laws of Florida, created the "Local Option Tourist Development Tax Act" which became s. 125.0104, F.S. Section 125.1040, F.S., imposes tourist-related or "bed taxes" on transient rentals. Transient rentals involve the rental or lease of any living quarters or accommodations in any hotel, apartment, motel, rooming house, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less.[1] There are five tourist development taxes authorized by s. 125.0104, F.S. They are:

[1] Section 212.03(1), F.S.

- The original tourist development tax must be approved by referendum and may be levied at 1 percent or 2 percent;

- A 1 percent additional tourist development tax can be levied by extraordinary vote of the governing board of the county or by referendum by any county which has levied the initial tax for three years, and does not levy a convention development tax;

- A 1 percent professional sports franchise facility tax may be levied by majority vote of the governing board of the county to pay debt service on professional sports facility bonds;

- A 1 percent additional professional sports franchise facility tax may be levied by a county that has imposed the professional sports franchise facility tax; and

- A 1 percent high tourism impact tax may be imposed by extraordinary vote of the governing board of the county in a high tourism impact county.[2]

As of January 1, 2004, 53 counties levied tourist development taxes ranging from 2 percent to 5 percent.[3] Generally, tourist development tax revenues may be used for capital construction of tourist-related facilities, tourist promotion, and beach and shoreline maintenance; however, the authorized uses vary according to the particular levy. In addition to tourist development taxes authorized under s. 125.1040, F.S., there are three other "bed taxes":

- Section 125.0108, F.S. authorizes a tourist impact tax which is a 1 percent tax restricted to areas of critical state concern. Currently there are four areas of critical state concern: the Florida Keys in Monroe County; the Big Cypress Swamp, primarily in Collier County; the Green Swamp in central Florida; and the Apalachicola Bay area in Franklin County. Only Monroe County is currently imposing the tourist impact tax;

- Section 212.0305, F.S. authorizes the convention development tax. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising special district on January 1, 1984, may levy the tax at 2 percent (Volusia County); and

- The municipal resort tax which is authorized and levied in just three cities, Miami Beach, Bal Harbour, and Surfside, at the maximum rate of 4 percent on transient rentals and 2 percent on food and beverages.

Section 125.0104(6), F.S., sets forth the requirements for the adoption by referendum of the tourist development tax. Paragraph (d) of subsection (6) provides that a tax imposed by referendum shall have an election brought for repeal of the tax when 15% of the electors petition the county commissioners for a referendum for repeal of the tax. Section 14 of chapter 2000-312,

[2] Only Monroe County imposes the tax. Orange County and Osceola County are currently certified as a high tourism impact county.
[3] 2004 Florida Tax Handbook

Laws of Florida, clarified that the repeal of the tax cannot apply to any portion of taxes initially levied in November 1989, which had been pledged or are being used to support bonds under s. 125.0104(3)(d)[4] or s. 125.0104(3)(l)[5], F.S., until the retirement of those bonds. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 125.0104(6)(d), F.S., is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

The amendment to s. 125.0104(6)(d), F.S., was passed primarily for Okaloosa County. Okaloosa County levied a 2% tourist development tax on November 1, 1989. The tax was increased to 4% effective October 1, 1999, in order to fund the construction of the Emerald Coast Convention Center. The bonds issued for the convention center were 30 year bonds. The amendment was adopted to protect Okaloosa County's tourist development tax revenues until the convention center revenue bonds are retired.

Section 125.0104(10), Florida Statutes

Section 1 of ch. 87-175, Laws of Florida, created subsection (10) of s. 125.0104, F.S., authorizing a county levying a tourist development tax to adopt an ordinance providing for the collection and administration of the tax on a local basis. As of January 1, 2004, 39 counties self-administer tourist development taxes. [6] Pursuant to s. 31 of ch. 89-356, Laws of Florida, a county adopting an ordinance providing for the collection and administration of the tax on a local basis shall also adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such authority to the Department of Revenue. Section 6 of ch. 2000-312, Laws of Florida, authorizes counties that elect to assume all such auditing responsibility to use certified public accountants licensed in Florida in the administration of its statutory duties and responsibilities. Such certified public accountants are bound by the same confidentiality requirements and subject to the same penalties as the county under s. 213.053, F.S. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 125.0104(10), F.S. is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

According to the Department of Revenue, four counties are currently using CPA's to audit the tourist development tax - Brevard, Collier, Gulf and Sarasota counties.

- Brevard County contracts with a CPA firm to audit its tourist development tax. The firm is used twice a year by the tourist development tax department during the months of June through September.

- Collier County contracts with a CPA firm to audit its tourist development tax. By having the authority to use a CPA, Collier County does not have to have their own audit staff resulting in a cost-savings for Collier County.

[4] 1 percent additional tourist development tax.
[5] 1 percent professional sports franchise facility tax.
[6] 2004 Florida Tax Handbook

- Gulf County contracts with a CPA firm to audit its tourist development tax. Gulf County is a small county and does not have its own audit staff. It is important to them to continue to have the authority to contract with CPA's to audit the tourist development tax.

- Sarasota County contracts with a CPA firm to audit its tourist development tax. Staff of the Sarasota Clerk of the Court, reported that Sarasota County would like to continue to contract with CPA's to audit the tourist development tax. They have been very satisfied with their local CPA firm.

According to Art Heintz, Audit Collection Supervisor, Volusia County, and current President of the Florida Tourist Development Tax Association, it is important to continue the authorization for counties to contract with CPA's to audit their tourist development taxes, especially for counties that currently have contracts with CPA firms. In addition, many of the smaller counties do not have their own audit staff and would benefit from contracting with a CPA firm to audit their tourist development taxes.

Section 197.182(1), Florida Statutes

Section 197.182, F.S., requires the Department of Revenue to pass upon and order refunds of property taxes except in specific circumstances. Before the enactment of ch. 2000-312, F.S., the statute provided an exception to this requirement for refunds that have been ordered by a court and those refunds that do not result from changes made in the assessed value on a tax roll certified to the tax collector. It also provided that overpayments over $5 resulting from taxpayer error were automatically refunded to the taxpayer if they were determined within the 4-year period of limitation. Chapter 2000-312, Laws of Florida, added another exception to the requirement that the department approve a refund of taxes. The statute currently provides that when a payment has been made in error by a taxpayer to the tax collector because of an error in the tax notice sent to the taxpayer, refund must be made directly by the tax collector and does not require approval by the department. The taxpayer may request that the amount paid in error be applied to the taxes for which the taxpayer is liable. This provision will be repealed as of October 1, 2005, unless it is reenacted by the Legislature.

The Department of Revenue's Division of Property Tax does not have a record of how many refunds it reviewed and approved prior to the enactment of ch. 2000-312, Laws of Florida, which had been made as the result of an erroneous tax notice. According to department staff, however, virtually all refunds affected by this legislation would already have been covered by the exception already in the law, that is, they were ordered by a court or they were not the result of a change in assessed value on a certified tax roll.

Section 199.185(1)(n), Florida Statutes

Section 199.185(1)(n), F.S., provides an exemption from the tax on intangible personal property for a leasehold estate in governmental property where the lessee is required to furnish space on the leasehold estate for public use by governmental agencies at no charge to those agencies. The exemption was given a retroactive application, but did not reopen or extend a closed period of nonclaim under s. 215.26, F.S., or any other statute. This exemption will be repealed on October 1, 2005, unless it is reenacted by the Legislature.

In general, leaseholds in real property owned by a government entity are subject to an annual tax on the value of the leasehold. Section 199.032, F.S., imposes a 1 mill tax on intangible personal property that has taxable situs in the state. Section 199.023(1)(d), F.S., includes governmental leaseholds in the definition of intangible personal property subject to tax. Section 199.292(1), F.S., provides that revenues derived from the tax on leaseholds shall be returned to the local school board for the county in which the property is located. The exemption created by ch. 2000-312, Laws of Florida, was expected to affect only the leasehold of a specific radio station in Miami-Dade County, according to the staff analysis of HB 509, which became ch. 2000-312, Laws of Florida.

According to the Department of Revenue, there is no was to determine how many leases of government property have a requirement that the lessee provide space to government as a part of the lease contract. Persons that are exempt from payment of the intangible personal property tax are not required to report to or notify the Department of Revenue.

Revenue from this source tends to fluctuate from year to year, and it is not possible to observe the impact of this provision in the annual county-by-county collection data.

Section 212.0305(5)(c), Florida Statutes

Chapter 83-356, Laws of Florida, created the "Convention Development Tax Act" which became s. 212.0305, F.S. Section 212.0305, F.S., imposes tourist-related or "bed taxes" on transient rentals. The principal purpose of the convention development tax is to promote tourism and the use of hotel facilities by facilitating the improvement and construction of convention centers.[7]

Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County). Each county operating under a consolidated government may levy the tax at 2 percent (Duval County). Each county chartered under Article VIII of the State Constitution that had a tourist advertising special district on January 1, 1984, may levy the tax at 2 percent (Volusia County).

Section 11 of ch. 87-99, Laws of Florida, created subsection (5) of s. 212.0305, F.S., authorizing a county levying a convention development tax to adopt an ordinance providing for the collection and administration of the tax on a local basis. Miami-Dade County has self-administered the tax since April 1, 1988; Duval County since December 1, 1990; and Volusia County since April 1, 1990.[8]

Pursuant to s. 32 of ch. 89-356, Laws of Florida, a county adopting an ordinance providing for the collection and administration of the tax on a local basis shall also adopt an ordinance electing either to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, or to delegate such authority to the Department of Revenue.

[7] Section 212.0305(2), F.S.
[8] 2004 Florida Tax Handbook

Section 7 of ch. 2000-312, Laws of Florida, authorizes counties that elect to assume all such auditing responsibility to use certified public accountants licensed in Florida in the administration of its statutory duties and responsibilities. Such certified public accountants are bound by the same confidentiality requirements and subject to the same penalties as the county under s. 213.053, F.S. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 212.0305(5)(c), F.S., is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

As of this time, none of the three counties levying the convention development tax - Miami-Dade, Duval and Volusia – are using CPA's to audit the convention development tax. All three counties currently have their own audit staffs. According to Art Heintz, Audit Collection Supervisor, Volusia County, and current President of the Florida Tourist Development Tax Association, it is important to continue the authorization for convention development tax counties to use CPA's to audit the tax. Even though all three counties currently have their own audit staff, if that should change in the future, then the convention development tax counties would be able to utilize private CPA firms to audit their convention development taxes.

Section 212.055(5), Florida Statutes, County Public Hospital Surtax

The Florida Legislature enacted ch. 91-81, Laws of Florida, authorizing Miami-Dade County[9], to levy a 0.5 percent surtax on taxable sales to fund the county public general hospital. The surtax required Miami-Dade County to provide a maintenance of effort in which the county must contribute each year at least 80 percent of that percentage of the total county budget appropriated for the operation, administration, and maintenance of the county public general hospital from the county's general revenues in the fiscal year of the county ending September 30, 1991. The voters of Miami-Dade County approved the 0.5 percent surtax on September 3, 1991, to go into effect January 1, 1992. The referendum specified that the surtax would be used to improve health care services at Jackson Memorial Hospital such as emergency room treatment/trauma care for life threatening injuries; critical care for infants and children; obstetric and gynecological services; treating cancer and heart disease; and treating severe burns, spinal cord injuries, and Alzheimer's disease.

In 1991, when the referendum passed, Jackson Memorial Hospital was facing serious financial challenges and was operating at a loss.[10] The surtax has allowed Miami-Dade County to fund Jackson Memorial Hospital which, since 1991, has evolved into a health care system, consisting of 12 primary care centers, two long-term care facilities, one community hospital located in south Dade, correctional health services, mobile health vans, disease management programs, AIDS programs, and a health plan. Jackson Memorial Hospital continues to provide a significant portion of health care services to indigent persons located in Miami-Dade County.

On May 5, 2000, the Florida Legislature enacted s. 10 of ch. 2000-312, Laws of Florida, to amend s. 212.055(5), F.S., (2000 Surtax Amendment) to require Miami-Dade County, as a condition of levying the half-cent county public hospital surtax, to reallocate 25 percent of the

[9] Pursuant to s. 212.055(5), F.S., any county defined in s. 125.011(1), F.S., is authorized to levy the County Public Hospital Surtax. Section 125.011(1) defines "county" to mean any county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.

[10] Miami-Dade Public Health Trust which is the governing body that oversees Jackson Health system.

funds which the county must budget for the operation, maintenance, and administration of the county public general hospital (Jackson Memorial Hospital) to a separate governing board, agency, or authority to be used solely for the purpose of funding the plan for indigent health care services. The law provided that in the first year of the plan, a total of $10 million would be remitted to the governing board and $15 million in the second year of the plan. The law also provided for the creation of the governing board, and for the adoption of a health care plan to distribute funds and specify the types of services to be provided.

Subsection (5) of s. 212.055, F.S., County Public Hospital Surtax, as amended by s. 10 of ch. 2000-312, Laws of Florida, is subject to repeal October 1, 2005, pursuant to s. 11, ch. 2000-312, Laws of Florida, unless reenacted by the Legislature.

On September 19, 2000, under its home rule charter, the Miami-Dade County Commission abolished the governing board created by the 2000 Surtax Amendment. The Miami-Dade County Commission adopted Ordinance 2000-111 to state that the county commission would not comply with the 2000 Surtax Amendment because it was an unconstitutional special or general law applicable only to Miami-Dade County. Several private hospitals filed a legal action seeking declaratory relief to compel the county to comply with the 2000 Surtax Amendment. The trial court granted summary judgment in favor of Miami-Dade County and found that the 2000 Surtax Amendment was "invalid, unconstitutional, and unenforceable because it was a special act which impermissibly applies only to Miami-Dade County."[11] The trial court ordered, in the alternative, that under its home rule authority Miami-Dade County may abolish any authority, board, or other governmental unit whose jurisdiction lies wholly within Miami-Dade.

On appeal, the Third District Court of Appeal rejected arguments made by the private hospitals that the trial court erred in finding the 2000 Surtax Amendment an unconstitutional law.[12] The hospitals argued that if the court found the 2000 Surtax Amendment is an unconstitutional special law, that provisions regarding a nominating committee be saved by severance from the remaining provisions. The 2000 Surtax Amendment created a nominating committee made up of members appointed by various organizations located within Miami-Dade County or South Florida, and the Mayor of Miami-Dade County. In *Homestead*, the Third District Court of Appeal held that provisions of the 2000 Surtax Amendment regarding the nominating committee could not be saved by severing the provision from the remaining provisions of the 2000 Surtax Amendment which had been found to be unconstitutional and unenforceable.

Jackson officials noted that the surtax makes up about 10 percent of its annual operating budget and is used to maximize federal funding which generates over $54 million in special Medicaid payments to nine community hospitals located in Miami-Dade County. Jackson officials argue that surtax funding is critical to its mission as a safety net for providing indigent care in Miami-Dade County.

Since imposition of the County Public Hospital Surtax in 1992, Jackson has developed a comprehensive health care system for the medically needy in Miami-Dade County. Surtax revenues are essential for Jackson to continue to provide such health care services

[11] See *Homestead Hospital v. Miami-Dade County*, 829 So.2d 259 at 262 (3rd DCA) 2002.
[12] *Id.*

Paragraphs (d) and (e) of subsection (5) of s. 212.055, F.S., as amended by s. 10 of ch. 2000-312, Laws of Florida, requiring Miami-Dade County to share 25 percent of surtax revenues with a separate, newly created governing board, were declared invalid, unconstitutional, and unenforceable as a special act relating to Miami-Dade County. As such, the 2000 Surtax Amendment can be repealed. In order to repeal the 2000 Surtax Amendment, all of s. 212.055(5), F.S., which created the County Public Hospital Surtax, would need to be republished in order to "stike-through" the 2000 Surtax Amendment language. Personnel from Miami-Dade County and Jackson have expressed concern at republishing the entire section of statute creating the surtax. They do not want to open up the surtax to possible amendments. Since the 2000 Surtax Amendment is invalid, leaving it in the statute would not result in any statutory problems.

Section 212.055(7), Florida Statutes, Voter-Approved Indigent Care Surtax

Section 16 of ch. 2000-312, Laws of Florida, created s. 212.055(7), F.S., to authorize counties with less than 800,000 residents to impose the Voter-Approved Indigent Care Surtax. The rate of the levy is capped at 0.5 percent or 1 percent if a publicly supported medical school is located in the county. Counties levying the tax must develop a plan, by ordinance, for providing health care services to "qualified" indigent or medically poor residents.Tax proceeds must be used to fund health care services for indigent and medically poor persons, including, but not limited to, primary care, preventive care, and hospital care.

The Department of Revenue is required to collect and remit the tax proceeds to the Clerk of Court, who must deposit the funds in an Indigent Health Care Trust Fund, invest the deposits as prescribed in general law, and disburse the funds to qualified providers of health care services.

The maximum rate for any combination of the Infrastructure Surtax, the Small County Surtax, and the Voter-Approved Indigent Care Surtax, is 1 percent, or 1.5 percent in counties with a publicly supported medical school. Sixty-one counties are authorized to levy the Voter-Approved Indigent Care Surtax.

Section 212.055(7), F.S., authorizing the Voter-Approved Indigent Care Surtax was created by s. 16 of ch. 2000-312, Laws of Florida, and is subject to repeal October 1, 2005, pursuant to s. 11, ch. 2000-312, Laws of Florida, unless reenacted by the Legislature.

To date, only Polk County and Alachua County have adopted the Voter-Approved Indigent Care Surtax. On March 9, 2004, Polk County voters passed a 0.5 percent surtax by a vote of 62 to 38 percent. The surtax goes into effect January 1, 2005. Surtax revenues will provide additional funding for health care for the poor, including an emphasis on preventative health care for the working poor, funding children's dental health care, adult health care education, increasing preventative measures for teenage pregnancy and expanded mental health programs for teens. The county plans to broaden eligibility for the plan to include people at or below 150 percent of the federal poverty level.[13] In addition to the 0.5 percent indigent care surtax, Polk County imposes a 0.5 percent School Capital Outlay Surtax. The Polk County Commission wants the authorization for the Voted-Indigent Care Surtax to be continued.

[13] "Approval of Tax Just Beginning," The Polk County Ledger, March 11, 2004.

Alachua County voters approved the levy of a 0.25 percent Voter-Approved Indigent Care Surtax on the primary ballot held August 31, 2004, by a vote of 50.11 to 49.89 percent. The surtax will be in effect January 1, 2005, through December 31, 2011. The surtax proceeds will only be used to provide a broad range of health care services to indigent and medically poor Alachua County residents by creating a Community Health Program Offering Innovative Care and Health Education Services (CHOICES). Alachua County does not levy any other local option sales surtaxes. The Alachua County Commission wants the authorization for the Voter-Approved Indigent Care Surtax to be continued.

On November 2, 2004, Escambia County voters defeated an ordinance that would have imposed a 0.5 percent Indigent Care Surtax.

Section 213.053(7)(j), Florida Statutes

Section 213.053(7)(j), F.S., which relates to the disclosure of confidential information by the Department of Revenue, was amended by s. 8 of ch. 2000-312, Laws of Florida, and is set to repeal October 1, 2005, unless reenacted by the legislature. This paragraph authorizes the Department of Revenue to share information with certified public accountants for participants in the Registration Information Sharing and Exchange (R.I.S.E.) Program.

The R.I.S.E. Program was created in ch. 92-319, Laws of Florida. Under this program, which is coordinated by the Department of Revenue, each unit of state or local government responsible for administering certain taxes, licenses or permits shares certain information about registrants, licensees, or taxpayers. The taxes, licenses, or permits covered by this program include:

- sales and use tax
- tourist development tax
- tourist impact tax
- local occupational license taxes
- convention development taxes
- public lodging and food service establishment licenses
- beverage law licenses, and
- municipal resort tax.

Any confidentiality required by law for data shared under this program applies to recipients of the data and their employees. Any penalties for disclosure of the data also apply to the recipients.

The Department of Revenue's recommendations for changes in laws relating to general tax administration for 2000 included the recommendation that it be authorized to share information with certified public accountants for participants in the R.I.S.E. Program.

The Department of Revenue reports that Brevard, Collier, and Sarasota Counties are using outside certified public accountants. The City of Miami Beach is also using outside CPAs. Collier and Sarasota County staffs report that the use of outside accountants to audit their tourist development taxes has been very productive and makes good use of public resources. They

recommend that the authorization for the Department of Revenue to disclose confidential information to these outside auditors should be retained.

Section 213.21, Florida Statutes

Chapter 81-178, Laws of Florida, created s. 213.21, F.S, which establishes a procedure by which the Department of Revenue can resolve disputes relating to assessment of taxes, interest, and penalties. This section provides that the executive director of the Department of Revenue may compromise tax or interest on a tax assessment based on doubt as to liability or collectibility of the tax or interest. The section was amended by s.3 of ch. 2000-312, L.O.F., to add that a taxpayer who establishes reasonable reliance on written advice issued by the department to the taxpayer is deemed to have shown reasonable cause for the noncompliance. The amended statute stated that doubt as to liability of a taxpayer for tax and interest exists if the taxpayer demonstrates that he or she reasonably relied on the written determination of the Department of Revenue in the following circumstances:

- The audit workpapers clearly show that the same issue was considered in a prior audit of the taxpayer and the department's auditor determined that no assessment was appropriate in regard to that issue.

- The same issue was raised in a prior audit of the taxpayer and during the informal protest of the proposed assessment the department issued a notice of decision withdrawing the issue from the assessment.

- The taxpayer received a technical assistance advisement in regard to the issue.

The statute also states that the situations cited above are not intended to be the only circumstances in which a taxpayer demonstrates doubt as to liability for tax or interest. However, a taxpayer will be deemed not to have reasonably relied on a written determination of the department in the following circumstances:

- The taxpayer misrepresented material facts or did not fully disclose material facts at the time the written documentation was issued.

- The specific facts and circumstances have changed in such a material manner that the written documentation no longer applies.

- The statutes or regulations on which the determination was based have been materially revised or a published judicial opinion constitution precedent in the taxpayer's jurisdiction has overruled the department's determination on the issue.

- The department has informed the taxpayer in writing that its previous written determination has been revised and should no longer be relied upon.

The Department of Revenue reports that there have been a few cases where the procedure authorized under this act has been used, but their outcome has not been formally tracked.

III. Effect of Proposed Changes:

Section 1. Senate Bill 300 abrogates the repeal of ss. 1, 2, 3, 5, 6, 7, 8, 10, 14, and 16 of ch. 2000-312, Laws of Florida, by repealing s. 11 of ch. 2000-312, Laws of Florida, resulting in the continuation of the following statutes: ss.197.182(1) & (3); 120.80(14)(b); 213.21(2) & (3); 199.185(1)(n); 125.0104(6) & (10); 212.0305(5)(c); 213.053(7)(j); and 212.055(2)(c), (5) & (7).

Section 2. This act shall take effect July 1, 2005.

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:

Authorization for the County Public Hospital Tax and the Voter-Approved Indigent Care Surtax will continue. A leasehold estate in governmental property where the lessee is required to furnish space on the leasehold estate for public use by governmental agencies at no charge to those agencies will continue to be exempt from intangibles tax.

B. Private Sector Impact:

Authorization for CPAs to contract with counties that self-administer tourist taxes to audit the tourist development tax and the convention development tax will continue.

C. Government Sector Impact:

Polk County and Alachua County may continue to impose the Voter-Approved Indigent Care Surtax.

Miami-Dade County may continue to impose the County Public Hospital Tax.

Counties that self-administer tourist taxes may continue to contract with CPAs to audit the tourist development tax and the convention development tax. The Department of Revenue will continue to share confidential information with CPAs for participants in the Registration Information Sharing and Exchange Program.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.