

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Finance and Tax Committee

BILL: CS/SB 2788

INTRODUCER: Finance and Tax Committee and Senator Haridopolos

SUBJECT: Tax Administration

DATE: April 2, 2008

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Fav/CS
2.			CJ	
3.			JU	
4.			GA	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

This proposed committee substitute includes several statutory changes that will reduce the burden on taxpayers, reduce Department of Revenue costs and increase efficiency, improve tax administration, and improve enforcement of tax laws. It also:

- creates a property tax exemption for certain educational property,
- creates a communications services tax exemption for simulcasting and intertrack wagering by pari-mutuel facilities,
- allows certain corporations to apply for renewable energy credits for prior years.
- provides a sales tax exemption for aircraft purchased in Florida by a nonresident and brought back into the state for fewer than 21 days in less than 6 months from the date of purchase,
- clarifies that rentals of timeshare property are subject to transient lodging taxes under certain circumstances,
- provides that, for transient lodging booked through an unrelated party, the taxable transaction is the payment made to the lodging provider by the unrelated third party, not the full amount paid by the final consumer of the transient lodging, and the unrelated party is not required to separately state the tax on the receipt, and

- provides additional uses for indigent care surtax proceeds under s. 212.05(7), and F.S., and the tourist development tax under s. 125.0104, F.S., and
- requires that the actual purchase price or other consideration paid be noted on deeds and other instruments that convey an interest in real property.

This proposed committee substitute creates ss. 213.0532, 213.691, and 213.692, F.S.; substantially amends ss. 72.011, 125.0104, 192.0105, 196.192, 201.02, 201.022, 202.125, 212.03, 212.0305, 212.031, 212.07, 212.08, 212.12, 212.18, 213.015, 213.053, 213.0532, 213.25, 213.67, 213.691, 213.692, 220.193, 220.21, 336.021, 443.1215, 443.1316, 443.141, 509.261, and 624.509, F.S.; and repeals s. 213.054, F.S.

II. Present Situation:

The Department of Revenue (department) is charged with ensuring that the 36 taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on taxpayers and to ensure that Florida tax laws are applied in a consistent, cost-effective and equitable manner.

(See detailed section-by-section analysis, below)

III. Effect of Proposed Changes:

This proposed committee substitute includes several statutory changes proposed by the department that will reduce the burden on taxpayers, reduce its costs and increase efficiency, improve tax administration, and improve enforcement of tax laws. These statutory changes are based on legislative concepts approved by the Governor and Cabinet in their role as the head of the department. It also includes various tax exemptions.

Section-by-section analysis:

Sections 1 and 21

Present situation: Section 72.011, F.S. provides that a taxpayer has 60 days from the date a tax assessment becomes final to protest the assessment. Section 213.67, F.S., provides that a taxpayer has 21 days from the date of receipt of a notice of intent to levy garnishment to contest the notice. The department may not consider petitions received after 60 days (for an assessment) or 21 days (for a garnishment) have elapsed, even though the postmark shows that the petition was sent well before the deadline, because the courts have held that the law is a statute of non-claim and its requirements are jurisdictional.

Proposed change: This proposed committee substitute amends ss. 72.011 and 213.67, F.S., so that the deadline to file a petition is based on the date of postmark, not the date it is received by the department.

Sections 2, 3, 8, 9, 10, 11, and 17

Present Situation: Transient rentals are subject to the local option tourist development tax under s. 125.0104, F.S., which provides that the tax is levied on the “total consideration charged for such lease or rental.” Transient rentals are also taxed under ss. 212.03 and 212.0305, F.S., the transient rentals tax and the convention development tax. The question of how these taxes should be applied to transient rentals arranged through Internet reservation services has been raised in recent years, and a 2004 Senate Interim Project, *Application of the Tourist Development Tax to the Sale of Discounted Hotel Rooms Over the Internet and to Hotel Rewards Points Programs*, made this finding:

The current practice of Internet intermediaries remitting taxes on the discounted rate paid by the Internet intermediaries to the hotels and not on the higher amounts actually paid by the customer occupying the room is in violation of Florida law.

Legislation (SB 2484) that would have clarified that tax is due on the entire amount paid by the customer was filed in 2005, but was not enacted by the Legislature.

Also in this section, a county designated as a high tourism impact county under s. 125.104(3)(m)2., F.S., is authorized to levy an addition 1¢ tax on transient rentals. Proceeds of this additional tax must be used for professional sports facilities or tourism promotion.

Proposed Change: The proposed committee substitute amends ss. 125.0104, 212.03, and 212.0305, F.S., to clarify that the taxes imposed under those sections (the tourist development tax, transient rentals tax, and convention development tax) apply to the rental of timeshare units, and says that payments received by unrelated person for facilitating the booking of reservations (e.g., online booking services) for transient rentals in excess of what the facility actually receives in payment for the room are not subject to those taxes and the unrelated party is not required to separately state the actual tax on the room receipt. It provides that the amendments to ss. 125.0104, 212.03, and 212.0305, F.S., are intended as clarifying and remedial in nature and are not a basis for tax assessment or refunds for periods before July 1, 2008. It correct a cross reference in ss. 212.031 and 213.015, F.S.

An additional use, provisions of publicly owned and operated sports venues, is provided for the proceeds of the additional 1¢ tax authorized for a county designated as a high tourism impact county.

Section 4

Present situation: Section 192.0105 creates a Taxpayers’ Bill of Rights for property taxes. One of the rights provided is the right to have information kept confidential, including returns for documentary stamp tax information and Form DR-219, which must be filed with the department and the property appraiser when any deed transferring property is filed in Florida.

Proposed change: S. 192.0105(4)(a) is amended to identify the Form DR-219 as the Return for Transfers of Interest in Real Property, and to specify that returns for documentary stamp tax information refer to information required by s. 201.022, F.S.

Section 5

Present Situation: Section 196.192(2) F.S., provides that property owned by a tax-exempt entity used predominantly for exempt purposes is exempt from property taxes proportionate to the use for exempt purposes. Section 196.198, F.S. provides a property tax exemption for property used exclusively for educational purposes. A recent Attorney General's opinion (AGO 2007-20) found that improved real property owned by an educational institution which is partially leased at market rate to non-exempt commercial parties whose use is unrelated to educational purposes is not eligible for the predominant use exemption under s. 196.192, F.S.

Proposed Change: Section 196.192, F.S., is amended to say that all property owned by an exempt entity, including an educational institution, and used predominantly for exempt purposes shall be exempted from ad valorem taxation to the extent of the ratio that such predominant use bears to the nonexempt use.

Section 6

Present situation: When any deed transferring real property is filed in Florida, s. 201.02, F.S., requires the clerk of the Court to file a return known as the DR-219 with the department and the property appraiser. Section 201.022, F.S., provides an exemption from documentary stamp taxes for transfers from certain nonprofit organizations to units of state or local government, and requires the department to provide a form, or a place on an existing form, for the nonprofit organization to indicate its exempt status.

Proposed change: The proposed committee substitute that the notice of an exempt transaction be placed on the document itself.

Section 7

Present Situation: Communications services are taxed under ch. 202, F.S. Section 202.125, F.S., provides that certain sales of communications services are exempt from the tax, and s. 202.13(2), F.S. says:

It is the intent of the Legislature to exempt from the taxes imposed or administered pursuant to this chapter only the communications services set forth in this chapter as exempt from such taxes, to the extent that such exemptions are in accordance with the constitutions of this state and of the United States.

Proposed Change: A communications services tax exemption is created for use of these services by a pari-mutuel permit holder for conducting simulcasting or intertrack wagering.

Section 12

Present Situation: Section 212.055(7), F.S., allows a county with population less than 800,000 to levy, by referendum, the Voter-Approved Indigent Care Surtax, which can be used to fund a broad range of health care services for both indigent and medically needy people.

Proposed Change: This section is amended to allow certain small counties to use the proceeds of the surtax to finance a hospital. Jackson County is the only county that meets the criteria specified.

Section 13, 15, and 16

Present situation: Section 212.07(3), F.S., provides penalties for willfully failing to collect sales or use taxes; s. 212.12(2)(d), F.S., provides penalties for filing false or fraudulent returns; s. 212.18(3) requires registration of businesses as sales tax dealers. Recent amendments to the criminal penalties imposed on failure to register and collect sales tax do not specifically state the level of offense, and have created confusion between the registration and failure-to-collect violations and the filing false or fraudulent returns violation.

Proposed Change: These sections are amended to specify that a person who willfully fails to register after notice commits a third degree felony and to establish graduated offence degrees for failure to collect taxes after notice. The penalties are placed in the same sections of statute that require registration and collection of taxes, and are removed from the section dealing with filing false or fraudulent returns. No new penalties are created in these sections.

Section 14

Present situation: building materials used to rehabilitate real property located in an enterprise zone are exempt from sales tax under s. 212.08(5)(g), F.S. Under the current statute it is unclear whether the developer or the ultimate property owner is the taxpayer who qualifies for the exemption, and the increase in number of condominiums being developed in enterprise zones has resulted in many applications being required for a single development. The statute also requires the taxpayer to provide building permits as documentation of rehabilitation, but some projects do not require full building permits.

Section 212.05(1)(a)2, F.S., provides that no tax is imposed on the sale of an aircraft by or through a registered dealer to a nonresident purchaser who removes is from the state within 10 days after the purchase. If the aircraft is to be repaired or altered after the purchase, it must be removed from the state within 20 days after the work is completed. Additionally, and aircraft is allowed to be returned to the state for repairs within six months after the date of its departure without incurring a tax liability if the aircraft is removed from the state within 20 days following completion of the repairs and appropriate documentation is provided.

Proposed change: The proposed committee substitute provides that the exemption inures to the owner, lessee, or lessor of the building at the time the property is rehabilitated, and says that a single application may be submitted for multiple, contiguous parcels that are being developed from a single parcel. The proposed committee substitute also removes the requirement for a building permit and substitutes a requirement for a permit issues by a municipal or county building department.

It amends s. 212.08, F.S, to provide a sales tax exemption for an aircraft owned by a nonresident that enters the state within 6 months of the date of purchase and remains for less than 21 total days.

Section 18

Present situation:: Section 213.053, F.S., provides for confidentiality of taxpayer information and allows for information sharing under specified circumstances. The statute does not appear to prohibit the department from sending general information messages to taxpayers by non-secure electronic format, but since it is not specifically authorized to do this, the department sends

Taxpayer Information Publications, due date reminders or other public document notices by mail.

Current restrictions regarding confidential taxpayer information prevent the department from publishing the names of taxpayers on whom it has filed tax warrants, even though the Department of State currently lists statewide judgment lien certificates on a website.

The department is not permitted to disclose taxpayer information, unless specifically allowed by law. It is currently allowed to disclose names and sales tax registration information to the division of Hotels and Restaurants within the Department of Business and Professional Regulation, but not information on tax enforcement.

Proposed change: This proposed committee substitute amends s. 213.053, F.S., specifically to authorize the department to send general information messages by non-secure electronic means, and would allow the department to publish on its website the name, amount of liability, and other publicly available information about a taxpayer against whom the department has filed a tax warrant and recorded a tax lien. The information would be provided in a list format and would be updated at least monthly. The proposed committee substitute also allows the department to share sales tax information with the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, and to share names and taxpayer information relative to information sharing agreements with financial institutions

Section 19

Present situation: The department is conducting a pilot program with financial institutions to electronically match their data with public records regarding tax warrants against existing accounts in order to recover funds owed to the state by delinquent taxpayers.

Proposed change: This proposed committee substitute creates s. 213.0352, F.S., relating to information for enforcement of tax laws. This section requires the department to request information and assistance from financial institutions as necessary to enforce the tax laws of the state. It requires financial institutions doing business in the state to enter into agreements with the department to develop and operate a data match system, using an automated data exchange to the maximum extent feasible, to provide quarterly data on customers who have been identified by the department. Use of this information by the department is limited to enforcing the collection of taxes and fees administered by the department. The department must pay a reasonable fee to each financial institution for conducting the required data match, not to exceed the actual costs incurred by the institution.

Section 20

Present situation: Section 213.25, F.S. allows the department to reduce the amount of a taxpayer's refund or credit by the amount of any other taxes that the taxpayer owes. It does not specifically include the unemployment tax assessed under ch. 443, F.S.

Proposed change: The proposed committee substitute amends s. 213.25, F.S., to include a specific reference to taxes assessed under ch. 443, F.S.

Section 22

Present situation: The department is nearing completion of an integrated accounting system (SUNTAX). Using a single business identifier, department employees are able to provide taxpayer assistance and collection services for multiple taxes. Filing of tax warrants remains segregated by tax.

Proposed change: This proposed committee substitute creates s. 213.691, F.S., which allows the filing of consolidated tax warrants covering multiple taxes.

Sections 23 and 24

Present situation: The department is allowed to revoke a dealer's sales tax registration if the dealer fails to pay its sales tax liability. There is no authority to revoke a delinquent taxpayer's certificate of registration for other taxes.

Proposed change: This proposed committee substitute creates s. 213.692, F.S., which allows the department to revoke all of a delinquent taxpayer's certificates of registration, permits, or licenses issued by the department. A taxpayer is considered delinquent only when the department has issued a warrant or filed a judgment lien certificate against the taxpayer's property. Before a taxpayer's registration, permits, or licenses may be revoked the department must schedule an informal conference at which the taxpayer may present evidence regarding the intended revocation or may enter into a compliance agreement with the department. If the taxpayer fails to attend the informal conference, fails to enter into a compliance agreement, or fails to comply with the agreement the department must issue an administrative complaint under ch. 120, F.S.

The proposed committee substitute authorizes the executive director of the department to adopt emergency rules to administer s. 213.692.

Section 25

Present situation: There is no provision in current law that governs the transfer of tax liabilities when a business or business assets are sold or transferred. The narrow provisions in the statutes do not cover instances where business assets are transferred, rather than purchased. Current provisions do not specify the new owner's liability when the purchaser or transferee does not acquire any equity in the business.

Proposed change: The proposed committee substitute creates s. 213.758, F.S., providing a comprehensive statute governing the transfer of a business's tax liability to future owners of the business or business assets. It clarifies that new owners can be liable even if the assets were transferred to the new owner, instead of being purchased. A transferee becomes liable only for voluntary transfers, and only for the higher of the fair market value or the purchase price of the property transferred. The seller remains liable for the debt, and it the department is allowed to obtain an injunction against the transferee if the acquired liability is not paid.

Section 26 and 27

Present situation: Section 220.193, F.S., allows for a corporate income tax credit for Florida renewable energy facilities. An annual credit against the tax imposed by this section is based on the taxpayer's production and sale of electricity from a new or expanded Florida renewable energy facility. For a new facility, the credit is based on the taxpayer's sale of the facility's entire

electrical production. For an expanded facility, the credit shall be based on the increases in the facility's electrical production that are achieved after May 1, 2006. The credit is \$0.01 for each kilowatt-hour of electricity produced and sold by the taxpayer to an unrelated party during a given tax year. Credits for the production and sale of electricity from a new or expanded Florida renewable energy facility may be earned between January 1, 2007 and June 30, 2010, and the combined total amount of tax credits which may be granted for all taxpayers is limited to \$5 million per state fiscal year.

Proposed Change: Section 220.193(3), F.S., is amended to allow this credit to corporations that own a partnership or limited liability company that has elected to be treated as a partnership for federal income tax purposes when the partnership of limited liability company produces and sells electricity from a new or expanded renewable energy facility. In this situation, the credit application must identify the taxpayer that passed through the credit, all taxpayers that received the credit an their shares of the credit, and other information as required by the department. This credit may be taken retroactively.

Sections 28 and 29

Present situation: Under legislation enacted in 2007 for failure to file corporate income tax returns electronically, taxpayers incur a 5 percent penalty per month until they file their return electronically. This penalty is imposed even if the taxpayer has remitted a paper return.

Proposed change: The requirement to file electronically if the taxpayer has filed a paper return is eliminated from s. 220.21, F.S., and a one-time penalty is imposed for not filing electronically. This penalty is 5 percent of the tax due, up to \$250.

Section 30

Present situation: Section 366.021, F.S. provides for distribution of the ninth-cent and local-option fuel tax to counties in three “tiers.”

- “Tier one” distributions are made to each county monthly and are in proportion to counties’ sales in Fiscal year 1995-96. These distributions are made to each county until total current-year gallons are equal to Fiscal Year 1995-96 gallons.
- “Tier two” is a special distribution made to Gadsden and Walton Counties
- “Tier three” is a monthly distribution of the remaining tax receipts to all counties in proportion to their current year storage capacities.

Because the volume of fuel being sold has increased, the department is ready to make “tier three” distributions before data are available to make “tier two” distributions.

Proposed change: The proposed committee substitute amends s. 336.021, F.S, to allow “tier three” distribution to be made before the “tier two” distribution. There is no impact on the “tier two” counties.

Section 31

Present situation: Section 443.1215(2)(b), F.S., which defines “employers” for unemployment compensation tax purposes, contains an incorrect reference. The reference to subsection (1) should be to paragraph (1)(a).

Proposed change: The proposed committee substitute corrects the incorrect reference.

Section 32

This section provides a cross reference to newly-created sections with respect to collection of unemployment tax.

Section 33

Present situation: Section 443.141, F.S. requires employers to pay unemployment compensation tax and file wage reports. The department frequently receives incomplete, erroneous, or insufficient tax payments or reports and its efforts to enforce the reporting requirements have been unsuccessful. Incomplete or erroneous reports or underpayment of taxes delay the payment of unemployment benefits, delay the completion of federal program requirements, and hinder the efforts of agencies such as the U.S. Department of Homeland Security, Immigration and Customs Enforcement, and Child Support Enforcement program.

Florida law does not specifically identify the statute of limitations period for unemployment tax liens. Enforcement of these liens often occurs when a business is sold.

Proposed change: The proposed committee substitute allows the department to impose a penalty of \$50 or 10 percent of the tax due, not to exceed \$300, for erroneous, incomplete, or insufficient tax payments or wage reports. The department would have the authority to compromise the penalty when imposition is determined to be inequitable. The proposed committee substitute also provides that notice of an unemployment tax lien expires 10 years after it is recorded.

Section 34

Present situation: The department is permitted to disclose names and sales tax registration information to the Division of Hotels and Restaurants within the Department of Business and Professional Regulation, which attempts to investigate all tax enforcement information on registrants.

Proposed change: The proposed committee substitute amends s. 509.261, F.S., to allow the division to fine, suspend, or revoke the license of a hotel or restaurant if the licensee or any of its corporate officers have violated any laws of this state or any state or territory of the United States.

Section 35

Present situation: Section 624.509(5)(b)5, F.S., was enacted in 2005 to provide an alternative calculation for the insurance premium tax salary credit for mutual holding companies, contingent on an appropriation. The Legislature appropriated \$2.6 million from the Workers Compensation Trust Fund to cover the estimated reduction in insurance premium tax revenue, but the appropriation was vetoed, and no further funds have been appropriated for this purpose.

Proposed change: This proposed committee substitute repeals the alternative salary credit calculation for mutual holding companies.

Sections 36 and 37

Present Situation: Section 695.22, F.S., requires the clerk of the circuit courts to provide the property appraiser a daily list of recorded deeds and other conveyances. Section 695.26, F.S., provides standards for any documents that are recorded by the clerk of the circuit court.

Proposed Change: These sections are amended to require each deed or other instrument by which real property is conveyed to include the actual purchase price or other valuable consideration paid on the face of the document.

Section 38

Present situation: International banking facilities are eligible for a corporate income tax deduction under s. 220.63(5), F.S. Since 1981, the department has been required by s. 213.054, F.S., to report the names and addresses of banks that take the deduction to the Chief Financial Officer. The report contains information that must be kept confidential by both the department and the Chief Financial Officer, and all affected agencies concur that the report is unnecessary.

Proposed change: This proposed committee substitute repeals s. 213.054, F.S.

Section 39

Provides a July 1, 2008, effective date for this bill, unless otherwise provided in the bill.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

This proposed committee substitute provides that payments made to a person who facilitate the booking of reservations for transient accommodations, who is unrelated to the person operating the transient accommodations in which the reservations are booked, are not part of the “consideration” that is subject to tourist development tax, transient rentals tax, or convention development tax. The impact of this amendment has not been estimated by the Revenue Estimating Conference.

The additional exemption for educational institutions has been estimated to have a indeterminate negative impact on local government revenue.

The communications services tax exemption for pari-mutuel permit holders has been estimated to have a total recurring impact of (\$.6) million, with an impact of (\$1.2) million in FY 2009-2010.

The tax exemption for aircraft brought into the state by a nonresident for fewer than 21 total days with 6 months of purchase has been estimated to have a recurring impact of (\$.9) million.

Extending the renewable energy tax credit has been estimated to have an indeterminate negative fiscal impact.

B. Private Sector Impact:

This bill:

- requires financial institutions to enter into agreements with the department to conduct data matches to identify delinquent taxpayers and requires the department to pay a fee to cover the cost to the institution;
- provides that the deadline to file various petitions to the department are based on the postmark instead of when the petition is received by the department;
- provides that only one application is needed to request enterprise zone tax exemptions for multiple properties within a development;
- provides for revocation of registrations for outstanding tax liabilities; and
- provides a comprehensive statute governing the transfer of a business's tax liability to future owners of the business or business assets

C. Government Sector Impact:

This bill makes several statutory changes that reduce department costs and increase the efficiency of tax administration. It:

- allows integrated filing of tax warrants;
- allows general information to be e-mailed to taxpayers
- repeals an unnecessary report
- allows for more efficient distribution of diesel tax revenue to local governments;
- allows information sharing with the Division of Hotels and Restaurant for tax enforcement purposes; and
- corrects several "glitches" identified in tax statutes.
- Requires that deeds and other instruments recorded by the clerk of the circuit court and furnished to the property appraiser must include the actual purchase price of the property or interest in the property conveyed by the instrument.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Finance and Tax on April 2, 2008:

In addition to addressing issues that were identified in the Department of Revenue's legislative proposal, the committee substitute:

- creates a property tax exemption for certain educational property,
- creates a communications services tax exemption for simulcasting and intertrack wagering by pari-mutuel facilities,
- allows certain corporations to apply for renewable energy credits for prior years.
- provides a sales tax exemption for aircraft purchased in Florida by a nonresident and brought back into the state for fewer than 21 days in less than 6 months from the date of purchase,
- clarifies that rentals of timeshare property are subject to transient lodging taxes under certain circumstances,
- provides that, for transient lodging booked through an unrelated party, the taxable transaction is the payment made to the lodging provider by the unrelated third party, not the full amount paid by the final consumer of the transient lodging, and the unrelated party are not required to separately state the tax on the receipt,
- provides additional uses for indigent care surtax proceeds under s. 212.05(7), and F.S., and the tourist development tax under s. 125.0104, F.S., and
- requires that the actual purchase price or other consideration paid be noted on deeds and other instruments that convey an interest in real property.

B. Amendments:

None.