

BILL #: HB 5139 PCB GOA 09-07 Administrative Collection Processing Fees for Taxpayer
Noncompliance
SPONSOR(S): Government Operations Appropriations Committee and Hays
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1748

SUMMARY ANALYSIS

The bill will take effect upon becoming law.

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DATE: 4/7/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The GTA within the DOR administers 33 taxes and fees, collecting more than \$34.8 billion per year to support schools, health care, transportation, prisons, environmental protection, and other essential services.

Section 213.24(1), F.S., provides that if a notice and demand is made for the payment of any amount due under laws applicable to chapter 213, F.S., and such amount due is paid within 30 days after the date of such billing or notice and demand, no additional penalties or interest will be imposed for the period after the date of such notice and demand.

Section 213.24(2), F.S., provides that billings for deficiencies or automated refunds of tax, penalty, or interest will not be issued for any amount less than the actual cost incurred to produce a billing or automated refund. The cost of issuing billings or automated refunds for any tax enumerated in section 213.05, F.S., will be computed in a study performed by the DOR's Inspector General. The study will be conducted every three years or as deemed necessary by the Inspector General. Any change in minimum billing or automated refund amount will be effective on July 1 following the completion of the study.

The DOR reports that most taxpayers when notified of potential additional liabilities or the failure to file a return take immediate action by either paying the additional amount due, correcting an error made on a filed tax return, or filing a tax return. However, for those taxpayers that refuse to pay their liabilities, more stringent, time consuming and expensive collection activities must be undertaken to insure the tax laws are complied with accordingly. The cost burden for these collection efforts is currently borne by taxpayers that voluntarily collect and pay their lawful taxes.

Section 213.75, F.S., stipulates the order and manner in which taxpayer payments are applied by the department pertaining to any revenue laws of this state, including a warrant, lien or levy.

Effect of Proposed Change

The bill amends section 213.24(2), F.S., to include any "fee" enumerated in section 213.05, F.S., and chapter 443, F.S., in the study conducted by the DOR's Inspector General that computes the cost of issuing billings or automated refunds.

The bill amends section 213.24, F.S., to include the following definitions:

- "Collection event" means when a taxpayer fails to timely file a complete return; timely pay the full amount of tax reported on a return; or timely pay the full amount due resulting from an audit after all appeal rights have expired or the result has been finally determined.
- "Extraordinary circumstances" means events beyond the control of the taxpayer, including, but not limited to: the taxpayer's death; acts of war or terrorism; natural disaster, fire or other casualty; or the nonfeasance or misfeasance of the taxpayer's employees or representative responsible for complying with the taxes and fees listed in section 213.05, F.S., and chapter 443, F.S. With respect to the acts of the taxpayer's employee or representative, the taxpayer must show that the principals of the business lacked actual knowledge of the collection event and any notification of the collection event.

The bill amends section 213.24, F.S., to provide for an administrative collection processing fee equal to 10 percent of the amount of tax, penalty, and interest that remains unpaid after 90 days, or \$10 for each collection event, whichever is greater be imposed to offset payment processing and administrative costs incurred by the state due to late payments of collection events. The administrative collection processing fee shall be imposed in addition to the taxes, fees, penalties and interest prescribed by law. The department may waive or reduce the administrative collection fee if the taxpayer demonstrates that the failure to pay the full amount due within 90 days from the initial notification was due to extraordinary circumstances. The administrative collection processing fee shall apply to those taxes and fees listed in section 213.05, F.S., and chapter 443, F.S.

The fiscal impact of this bill is estimated to generate approximately \$6.2 million of annual recurring revenue which would be deposited into to the General Revenue Fund from the administrative processing collection fees during FY 2009-10 and approximately \$9.7 million in FY 2010-11.²

The bill amends section 213.75, F.S., to include "administrative collection processing fees" to the order and manner in which taxpayer payments are applied by the department for any revenue laws of this state including a warrant, lien or levy.

The bill provides that the administrative collection processing fee apply retroactively to any remaining unpaid amount of tax, interest and penalty due from any collection event occurring prior to the bill becoming law; however, the department shall not collect such fee until September 1, 2009, calculated on the amount remaining unpaid on that date.

B. SECTION DIRECTORY:

- Section 1. Amends s. 213.24, F.S., relating to administrative collection processing fees and distribution of such fee to the General Revenue Fund.
- Section 2. Amends s. 213.75, F.S., adding administrative collection processing fee to the order and manner in which taxpayer payments that are applied by the department.
- Section 3. Relates to the schedule and application of the administrative collection processing fee.
- Section 4. Provides the bill will take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

² Consensus Estimate (Adopted 3/14/09)
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1. Revenues:

The fiscal impact of this bill is estimated to generate approximately \$6.2 million of annual recurring revenue which would be deposited into to the General Revenue Fund from the administrative processing collection fees during FY 2009-10 and approximately \$9.7 million in FY 2010-11.³ The \$6.2 million of General Revenue has been appropriated in the House of Representatives FY 2009-10 proposed General Appropriations Act.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide relief for compliant taxpayers of paying the collection costs for those taxpayers that choose not to comply with their legal obligations.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES