

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 7157 PCB FTC 10-04 Taxation

**SPONSOR(S):** Finance & Tax Council; Fresen

**TIED BILLS:** **IDEN./SIM. BILLS:** SB 1976

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council	15 Y, 0 N	Wilson	Langston
1)	Government Operations Appropriations Committee		Fox	Topp
2)				
3)				
4)				
5)				

### SUMMARY ANALYSIS

The Department of Revenue is responsible for collecting and distributing taxes, enforcement of child support laws, and oversight of Florida's property tax administration.

This bill contains the Department of Revenue's (DOR) recommendations for General Tax Administration improvements. The bill includes numerous statutory changes that will reduce the burden on taxpayers, reduce DOR's costs, increase efficiency in tax administration, and improve enforcement of tax laws.

This bill has not been analyzed by the 2010 Revenue Impact Estimating Conference. However, several sections of Senate Bill 1976 which are nearly identical to sections in House Bill 7157 have been analyzed and determined to have no fiscal impact or to have an indeterminate fiscal impact. In addition, staff estimates HB 7157 will have a positive but indeterminate impact on both state and local government revenues.

The bill shall take effect upon becoming a law, except as otherwise provided in the bill.

## 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:

##### **Section 1. Liens for unemployment tax obligations**

###### Present situation:

Section 55.204, F.S., governs the duration and continuation of judgment liens. A general provision is set forth that, except as provided elsewhere in the section, a judgment lien required under s. 55.202, F.S., lapses and becomes invalid 5 years after filing. An exception to the general rule is that liens securing the payment of child support or tax obligations as provided in s. 95.091(1)(b), F.S., shall not lapse until 20 years after the date of the original filing of the warrant or other document required by law to establish a lien.

###### Proposed change:

This section amends s. 55.204(2), F.S., to provide that liens securing the payment of unemployment tax obligations lapse 10 years after the date of the original filing of the notice of the lien. This provision is related to changes made in section 20.

##### **Section 2. Unemployment Tax Liens**

###### Present situation:

In s. 95.091(1)(a), F.S., except in the case of taxes for which certificates have been sold, taxes stated in s. 72.011, F.S., or tax liens issued under section 196.161, F.S., any tax lien will expire 5 years after the tax is assessed or becomes delinquent, whichever is later.

###### Proposed change:

This section amends 95.091(1)(a), F.S., to add s. 443.141, F.S., related to unemployment taxes to the exception from the 5 year limitation on tax liens. This provision is related to changes made in section 20, which provides that the duration of liens securing the payment of unemployment taxes is 10 years.

### **Section 3. Documentary Stamp Tax Treatment of Short Sale Transactions**

#### Present Situation:

Section 201.02(1), F.S., currently imposes documentary stamp tax on documents that transfer an interest in real property. The tax is calculated based on the “consideration” of the transfer. Consideration includes money paid or to be paid in the discharge of an obligation, and the amount of any mortgage or other encumbrance.

However, in “short sale” transactions, because the purchase price of the property is less than the outstanding loan balance, the lender agrees to receive partial satisfaction of the loan obligation with the remaining debt cancelled. This cancelled debt has value to the seller because the seller is repaying less than what the seller borrowed to purchase the property; as a result, the issue arises as to whether the amount of cancelled debt should be treated as consideration for the transfer and therefore included in calculations for documentary stamp tax purposes under s. 201.02, F.S.

#### Proposed change:

This bill will clarify the law governing the calculation of documentary stamp tax owed when real property is conveyed via a “short sale”. The bill creates s. 201.02(11), F.S., to provide that consideration does not include the unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the property. The bill defines a “short sale” as the purchase and sale of real property in which:

- The grantor’s (seller’s) interest in the real property is encumbered by a mortgage or mortgages securing indebtedness in an aggregate amount greater than the purchase price paid by the grantee (buyer).
- A mortgagee releases the real property from its mortgage in exchange for a partial payment of less than the outstanding mortgage indebtedness owing to the releasing mortgagee.
- The releasing mortgagee does not receive, directly or indirectly, any interest in the property transferred.
- The releasing mortgagee is not controlled by or related to the grantor or the grantee.

This bill further codifies the Department’s advisement<sup>1</sup> conclusion that in a “short sale” transaction, cancellation of debt is not consideration used to determine documentary stamps tax.

### **Section 4. Communication Services Tax**

#### Present situation:

In s. 202.125(1), F.S., an exemption from the communications services tax imposed by s. 202.12, F.S., exists for separately stated sales prices of communications services sold to residential households. This exemption does not apply to any residence that is a “public lodging establishment” as defined in ch. 509, F.S. However, ch. 2008-240, L.O.F., changed the definition of “public lodging establishment” under ch. 509, F.S., and created separate definitions for “transient” and “nontransient” public lodging establishments. This change has created uncertainty regarding the Department’s administration of the sale of communication services sold to “nontransient” public lodging establishments that include residential units such as apartment complexes.

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<sup>1</sup> Florida Dep’t of Revenue, *Technical Assistance Advisement No. 08B4-006, Documentary Stamp Tax – “Short Sales” of Florida Real Property*, 1 (Sept. 23, 2008), available at <https://taxlaw.state.fl.us/wordfiles/DOC%20TAA%2008B4-006.pdf> (last visited Feb. 28, 2010).

Proposed change:

This section amends s. 202.125(1), F.S., clarifying that the Department will not exempt the tax imposed by s. 202.12, F.S., from the sale of communication services sold explicitly to “transient” public lodging establishments.

## **Section 5. SIC to NAICS Transition for Identifying Taxpayers**

Present situation:

During the 2009 Legislative Session, several statutory references to the Standard Industrial Classification System (SIC) were replaced with the North American Industry Classification System (NAICS) by ch. 2009-51, L.O.F. Currently, s. 212.05(1)(i)1.b., F.S., imposes a tax on nonresidential cleaning and nonresidential pest control services listed under NAICS National Numbers 561710 and 561720. NAICS Number 561720 includes “cleaning interiors of transportation equipment” such as aircraft, rail cars, and ships. This service was not listed and taxed prior to the 2009 law change.

Proposed change:

This section amends s. 212.05, F.S., clarifying that the 2009 industry classification change excluded the cleaning of interiors of transportation equipment from the tax imposed on cleaning services.

## **Section 6. Vending Machine Operators Tax Information**

Present situation:

Vending machine owners are required by s. 212.0515(3)(a), F.S., to place a notice on each vending machine that includes the operator’s name, address, and Federal Employer Identification Number or sales tax registration number. The Department has reported that there have been instances where operators of vending machines in correctional facilities have had inmates file fraudulent tax returns with the IRS, creating problems for the operator.

Proposed change:

This section will amend s. 212.0515, F.S., removing specific information regarding the vending machine operator from being included in the notice.

## **Section 7. Tax Exemptions**

Present situation:

The State of Florida exempts from sales and use tax various products and materials in section 212.08, F.S. Particularly, this bill speaks to various subsections in s. 212.08, F.S., including groceries and building materials.

Certain food products are exempt from taxes provided in s. 212.08, F.S. In some cases, non-taxable food items are packaged with taxable items and sold together. The Department’s rule 12A-1.011, F.A.C., states that the entire sale is exempt, if the value of the taxable item(s) does not exceed 25% of the value of the complete package. It has recently become clear that the Department does not have the requisite statutory basis for this rule.

In regards to s. 212.08(5)(g), F.S., building materials used in the rehabilitation of real property located in an enterprise zone are exempt from sales and use tax. The exemption is only available through a refund of previously paid taxes on materials used in these zones. As the enterprise zone program has grown, various administrative questions have been raised regarding owner tax credit qualification, tax credit applications required for numerous properties, and permit requirements.

Proposed change:

This section amends s. 212.08, F.S., to provide that if the cost of a taxable nonfood item when packaged with a non-taxable food item exceeds 25% of the package cost, then the entire sales price is subject to tax. Otherwise the package price is exempt.

This section also amends s. 212.08(5)(g), F.S., clarifying that the owner of a property within an enterprise zone at the time improvements are made, is the only entity entitled to receive a refund of previously paid taxes. It also amends an application requirement allowing a permit issued by a local government building department to satisfy the permit requirement, and allowing a single application to be submitted for multiple, contiguous parcels that were part of a single parcel divided as part of the property rehabilitation.

Furthermore, this section clarifies that if a general contractor is not used in the rehabilitation of the property, the applicant must make the required sworn statement listing the building materials used, the actual costs of the materials, and the amount of sales tax paid. This section also allows that the application for refund can be filed with the Department by November 1 after the rehabilitated property is first subject to assessment.

## **Section 8. Department of Environmental Protection; Florida Energy and Climate Commission**

Present situation:

The Department is authorized to provide to the Department of Environmental Protection (DEP) information related to the current sales tax exemptions for equipment, machinery, and other materials related to renewable energy technologies. Information regarding the renewable energy technologies investment corporate income tax credit is also shared. Recent legislation in ch. 2008-227, L.O.F., transferred these duties from DEP to the Florida Energy and Climate Commission in regards to the renewable energy technologies tax credit. However, certain responsibilities for this credit were not transferred.

Proposed change:

The bill amends s. 213.053(8)(y), F.S., retroactively to July 1, 2008, to authorize these responsibilities to the Florida Energy and Climate Commission. This provision conforms to similar changes in section 15.

## **Section 9: Confidentiality and Information Sharing**

This section creates and amends various subsections in 213.053, F.S.

Present situation:

In s. 213.053, F.S., the Department is authorized to send general information to taxpayers, however it does not clearly specify through electronic means. Such information would be general tax law changes and reminders regarding tax due dates. This section also allows for the disclosure of taxpayer information to the Chief Financial Officer for exemptions claimed for international banking institutions in an annual report.

Unless specified by law, the Department is not permitted to disclose taxpayer information. The Department is currently permitted to disclose names, addresses, and sales tax registration with the Department of

Business and Professional Regulation's Division of Hotels and Restaurants, but is unable to provide other sales and use tax information for conducting its official duties.

Current restrictions regarding confidential taxpayer information do not permit the Department to publish names of taxpayers who have current tax warrants. This information can be found in the public records in a County Courthouse or on the Department of State's website within a judgment lien searchable database.

Proposed change:

This bill amends s. 213.053(5)(b), F.S., authorizing the Department to send general information to taxpayers through regular electronic systems. General information includes such items as Taxpayer Information Publications, due date reminders, and other general notices. This section also removes a provision that allows information-sharing between the Department and the Chief Financial Officer (CFO) regarding exemptions claimed by international banking institutions. The annual report provided to the CFO's office by the Department related to the information-sharing agreement in 213.053(5)(b), F.S., is removed in section 26.

This bill amends s. 212.053(8)(d), F.S., authorizing the Department to share and provide information regarding the outstanding sales and use tax warrants or judgment liens with the Department of Business and Professional Regulation's Division of Hotels and Restaurants. This amended section conforms to similar changes in section 12.

This bill creates s. 212.053(8)(z), F.S., authorizing the Department to provide names and taxpayer identification numbers to financial institutions for the purposes of information-sharing agreements. These information-sharing agreements are provided by s. 213.0532, F.S., similar to a provision found in section 10.

This bill also creates s. 212.053(8)(aa), F.S., authorizing the Department to provide sales and use tax information to the Department of Environmental Protection for the use in the administration of submerged land leaseholders.

The bill creates s. 212.053(19), F.S., authorizing the Department to publish a list of taxpayers who have current warrants and judgment lien certificates. This list is permitted to be publicized on the Department's internet website that includes the name, amount of liability, and other publically available taxpayer information. This list shall be updated at least monthly. The Department is authorized to adopt rules in the administration of this provision.

Furthermore, this bill creates s. 212.053(20), F.S., authorizing the Department to disclose specified information related to taxpayers against whom the department has filed tax warrants, notice of liens, or judgment lien certificates.

## **Section 10. Information-Sharing Agreements with Financial Institutions**

Present situation:

In 2007, the Legislature passed ch. 2007-106, L.O.F., authorizing the Department to conduct a pilot project with financial institutions in Florida, to match financial records with Department information on delinquent taxes in order to identify possible taxpayer assets. The project identified accounts for 5% of the delinquent taxpayers submitted for match. The Department, however, was not authorized to take action against taxpayer accounts during the pilot program.

Proposed change:

This bill creates s. 213.0532, F.S., which requires financial institutions with at least \$50 million in deposits to enter into information-sharing agreements with the Department in order to make the program permanent. The bill sets guidelines for both the Department and financial institutions in regards to the development and operation of the data match program. The Department can utilize this information to enforce the collection of outstanding taxes and fees from account holders to the extent allowable by law. The financial institution is not required to provide notice to its customers and is not liable for disclosing any information required under s. 213.0532, F.S. The Department is authorized to adopt rules to administer the provisions of this section.

**Section 11. Department Refunds & Credits; Unemployment Compensation Tax**

Present situation:

Section 213.25, F.S., allows the department to reduce a taxpayer's refund or credit by the amount of other taxes that the taxpayer owes. In 2007, this offset authority was added to ch. 443, F.S., related to unemployment compensation. The Agency for Workforce Innovation, which administers Florida's unemployment compensation program, has requested ch. 443, F.S., be specifically cited in s. 213.25, F.S.

Proposed change:

The bill amends s. 213.25, F.S., to clarify the Department's authority to reduce a taxpayer's refund or credit by the amount of any billings for unemployment compensation tax.

**Section 12. Revocation of Corporate Charter or Hotel or Restaurant License; Refusal to Reinstate Charter or Hotel or Restaurant License**

Present situation:

The Department of Business and Professional Regulation (DBPR) in s. 213.50, F.S., currently does not have power to revoke or deny the application to renew a license of a public lodging or public food service establishment on the grounds of unpaid taxes.

Proposed change:

This bill creates s. 213.50(3) and 213.50(4), F.S., providing that DBPR may revoke and deny an application to renew a license if a tax warrant has been outstanding for more than three consecutive months.

**Section 13. Garnishment**

Present situation:

In section 213.67(1), F.S., the Department is required by certified letter to notify financial institutions or other entities that may have assets of a delinquent taxpayer in their possession or control that the assets are to be garnished.

Proposed change:

The bill amends s. 213.67(1), F.S., expanding the method of required notification to financial institutions or other entities to include personal service, electronic means, or use of the Internet.

## **Section 14. Transfer of Tax Liabilities**

### Present situation:

Current law does not provide a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred.

### Proposed change:

This bill creates s. 213.758, F.S., a comprehensive statute governing the transfer of tax liabilities to future owners of a business and/or business assets. It specifies that the seller remains liable for the debt, and allows the department to obtain an injunction against the transferee if the acquired liability is not paid. The Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity.

This bill provides that a taxpayer, who transfers a business or stock of goods, must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer. This section clarifies that new owners can be liable even if the business or business assets were transferred to the new owner but were not purchased. The transferee of more than 50% of a business is liable for the tax, interest, or penalty owed by the transferor, unless the transferor provides the transferee a receipt or certificate from the Department showing that the transferor is not liable for taxes and the Department conducts an audit and finds that the transferor is not liable for taxes. The transferee may withhold a portion of consideration to pay the taxes, interest, and penalties owed from the operation of the business. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the remaining amount owed. The Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity.

The maximum liability of the transferee is limited to the fair market value or the purchase price of the property transferred, whichever is higher. The Department is authorized to adopt rules in order to administer the provisions of this section.

## **Section 15. Renewable Energy Technologies Investment Tax Credit**

### Present situation:

The Department of Environmental Protection (DEP) is responsible for the application and administration of the renewable energy investment corporate income tax credit. Recent legislation in ch. 2008-227, L.O.F., transferred these duties from DEP to the Florida Energy and Climate Commission in regards to the credits. However, certain responsibilities for these credits were not transferred.

### Proposed change:

The bill amends s. 220.192(4) and 220.192(5), F.S., retroactively to July 1, 2008, authorizing these responsibilities to the Florida Energy and Climate Commission. This amended provision is related to similar changes made in section 8.

## **Section 16. Levy of Ninth-Cent Fuel Tax on Motor Fuel and Diesel Fuel; Distributions**

### Present situation:

Section 336.021, F.S., establishes the distribution of local option fuel taxes collected on the sales or use of diesel fuel throughout the State. These distributions are made monthly to each county based on three "tiers". The law generally requires these distribution "tiers" to be paid out in sequential order. "Tier one" distributions are made to counties based on the number of gallons sold, minus administrative charges and special allowances. "Tier two" distributions are made available to counties with qualified new retail stations. These retail stations have diesel sales exceeding 50 percent of the diesel sold in the county in which it was



located in FY 1995-1996<sup>2</sup>. Currently, Gadsden and Walton Counties are the only counties that qualify for this distribution. “Tier three” distributions are based on additional taxes available for vehicular diesel storage capacities. Due to the growth in the fuel tax base, the Department has sufficient revenues to make “tier three” distributions before it receives data from “tier two” qualified counties.

Proposed change:

The bill amends s. 336.021(1)(c), F.S., providing that the “tier” distributions of local option fuel taxes more accurately reflect the current fuel market. This section clarifies that “tier three” distributions that occur before “tier two” distribution data is available, will not affect the amounts provided for “tier two” qualified counties.

## **Section 17. Tax Treatment of a Limited Liability Corporation (LLC)**

Present situation:

In s. 443.036(20), F.S., a limited liability company (LLC) is treated, for state unemployment tax purposes, as they are classified for federal income tax purposes. A single-member LLC may designate either the LLC or the owner as the “employer”. New Internal Revenue Service (IRS) regulations have changed how single member LLC’s report for federal employment tax purposes and require the LLC to be treated as the employer.

Proposed change:

This bill amends s. 443.036(20), F.S., requiring that a single-member LLC be treated as the employer, as stated under new federal IRS regulations.

## **Section 18. Employers**

Present situation:

Section 443.1215(2)(b), F.S., incorrectly cites guidelines dealing with agricultural employers. Currently, by referencing “subsection (1)” the statute allows an agricultural employer to be considered a domestic employer without meeting the proper criteria.

Proposed change:

This bill amends 443.1215(2)(b), F.S., correcting the citation to reference “paragraph (1)(a)”.

## **Section 19. Unemployment Tax Collection Services**

Present situation:

Section 443.1316(2), F.S., establishes the provisions that apply to the collection of unemployment contributions and reimbursements by the Department.

Proposed change:

This bill amends s. 443.1316(2)(b), F.S., to include new provisions created by this bill related to: information-sharing agreements with financial institutions in s. 213.0532, F.S., integrated enforcement authority in s. 213.692, F.S., and the transfer of tax liabilities in s. 213.758, F.S. These provisions are related to similar changes in sections 10, 14, and 23.

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<sup>2</sup> Section 336.021(1)(c)1, F.S.

## **Section 20. Collection of Contributions and Reimbursements; Unemployment Compensation Tax**

### Present situation:

In s. 443.141(1)(b), F.S., employers are required to pay unemployment compensation tax and file quarterly wage reports. If these wage reports are not done correctly or are incomplete, there may be a delay in the payment of unemployment benefits to unemployed workers. The Department frequently receives erroneous, incorrect, or insufficient reports and efforts to enforce the current reporting requirements have been unsuccessful.

Also, in s. 443.141(3), F.S., lien provisions for the payment of contributions or reimbursement are also established. The statute of limitations for unemployment tax liens is unclear. The State has asserted that the lien is valid for 10 years, but taxpayers have recently challenged the position. The Department needs further clarification in order to ensure proper enforcement of unemployment tax liens.

### Proposed change:

This bill amends s. 441.141(1)(b), F.S., to include erroneous, incomplete or insufficient reports in the penalty provisions that will result in a fine of \$50 or 10% of the tax due on wage reports. The Department will be able to waive the penalty if a corrected report is filed within 30 days of the penalty notice. The penalty will not be waived more than once during a 12-month period. Employers will not be penalized for erroneous information supplied by employees, if the employer was unaware of the inaccuracy.

This section also amends s. 443.141(3), F.S., clarifying that unemployment tax liens expire 10 years after the filing of the notice with the clerk of court, and provides for extended collection efforts. This section is related to changes in sections 1 and 2 of the bill.

## **Section 21. Electronic Reporting and Remitting of Contributions and Reimbursements**

### Present situation:

Section 443.163(2), F.S., requires certain employers to file the Employer's Quarterly Wage Report (UCT-6) electronically. If this report is not filed electronically, a penalty of \$10 will be assessed to the employer per report. These same provisions apply to a person who files a quarterly wage report for 100 or more employers. In both cases, current law allows for a waiver of the electronic filing requirement if they are unable to comply despite good faith efforts. This penalty has not proven to be a deterrent from noncompliance.

### Proposed change:

This section amends s. 443.163(2), F.S., increasing the penalty to \$50 per report and \$1 per employee when the required information is not provided by approved electronic means.

## **Section 22. Electronic Reporting and Remitting of Contributions and Reimbursements**

### Present situation:

Section 443.163(3), F.S., references "telefile" can be utilized when applying for a waiver from electronic filing with the Department. However, "telefile" is no longer utilized for unemployment tax purposes.

### Proposed change:

This bill removes the obsolete terminology.

## **Section 23: Integrated Enforcement Authority**

Present situation:

Current law permits the Department to revoke a taxpayer's sales tax registration when they fail to pay their sales tax liability. However, the Department does not have the authority to revoke a sales tax registration from the same taxpayer who is delinquent in other tax liabilities owed to the State.

Proposed change:

This bill creates s. 213.692, F.S., establishing integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant, notice of lien, or judgment lien certificate has been issued. The Department must schedule an information conference with the taxpayer, before revocation, to allow the taxpayer to present evidence regarding the revocation action. The Department is also required to issue an administration complaint under Chapter 120, F.S., if the taxpayer fails to attend the informal conference or fails to comply with the executed compliance agreement.

The taxpayer whose certificates of registration, permits, or licenses have been revoked may not be issued a new one unless either the outstanding tax liabilities have been satisfied or the Department enters into a written agreement with the taxpayer regarding their liabilities. The Department will require a cash deposit, bond, or other security as a condition of issuing a new certificate of registration pursuant s. 212.14(4), F.S. The Department is authorized to adopt rules to administer the provisions of this section.

**Section 24: Emergency Rules for Integrated Enforcement Authority**

This section authorizes the Department to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority. These emergency rules will remain in effect for six months after their adoption and may be renewed when permanent rules are established.

**Section 25: Repeal; Approved State Bidder List and Standard Contracts**

Present situation:

Section 195.095, F.S., requires the Department to maintain an Approved State Bidder List that contains a list of approved vendors for property assessment services and assessment related technologies that can be utilized by local governments. The Department is also required to promulgate a standard contract that contains the minimum requirements for all contracts with these vendors. Due to advancements in computer assisted mass appraisal technologies utilized by local government entities, the Department has found that these requirements are no longer necessary.

Proposed change:

This bill repeals s. 195.095, F.S., removing the Approved State Bidder List and standard contract requirements.

**Section 26: Repeal; International Banking Facilities Annual Report**

Present situation:

Florida's corporate income tax laws permit a deduction for international banking facilities. The Department is required to report the names and addresses of the banks that take this deduction to the Chief Financial Officer (CFO). The report is kept confidential by both the Department and the CFO's office, as it contains taxpayer information that may not be disclosed to other parties. Both the Department and the CFO's officer have deemed this annual report unnecessary.

Proposed change:

This bill repeals s. 213.054, F.S., which requires this annual report. This provision is related to changes in section 9.

**Section 27. Effective Date**

This bill provides that except as otherwise provided, this bill takes effect upon becoming a law.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 55.204(2), F.S., providing liens securing the payment of unemployment tax obligations.

**Section 2:** Amends 95.091(1)(a), F.S., clarifying unemployment liens expire 10 years after the filing of the notice with the clerk of court.

**Section 3:** Creates s. 201.02(11), F.S., providing that consideration does not include the unpaid indebtedness that is forgiven or released by a mortgagee. The section also defines a “short sale”.

**Section 4:** Amends s. 202.125(1), F.S., clarifying the tax treatment of communication services sold explicitly to “transient” public lodging establishments.

**Section 5:** Amends s. 212.05, F.S., clarifying the industry classification change related to the cleaning of interiors of transportation equipment.

**Section 6:** Amends s. 212.0515, F.S., removing specific information from vending machine notices.

**Section 7:** Creates s. 212.08(1)(f), F.S., clarifying the department’s rules regarding the cost of a taxable food item sold with non-taxable food item exceeding 25%. Amends s. 212.08(5)(g), F.S., clarifying enterprise zone tax refunds and application requirements.

**Section 8:** Amends s. 213.053(8)(y), F.S., authorizing responsibilities to the Florida Energy and Climate Commission.

**Section 9:** Amends s. 213.053, F.S., authorizing the Department to send taxpayers information by electronic mail. This section also removes information sharing between the CFO and the Department. Amends s. 212.053(8)(d), F.S., regarding information sharing information for outstanding sale and use tax warrants or judgment liens with the Division of Hotels and Restaurants. Creates s. 212.053(8)(z), F.S., providing data for the purposes of information-sharing agreements with financial institutions. Creates s. 212.053(8)(aa), F.S., providing sales and use tax information to the Department of Environmental Protection. Creates s. 212.053(19) and s. 212.053(20), F.S., authorizing the disclosure and publication of specified information for taxpayers.

**Section 10:** Creates s. 213.0532, F.S., enabling the Department to enter into information-sharing agreements with financial institutions related to outstanding taxpayer liabilities.

**Section 11:** Amends s. 213.25, F.S., authorizing the Department to reduce a taxpayer’s refund or credit.

**Section 12:** Creates s. 213.50(3) and 213.50(4), F.S., providing DBPR may revoke and deny an application to renew a license holder.

**Section 13:** Amends s. 213.67(1), F.S., expanding the method of required notification for garnishment.

**Section 14:** Creates s. 213.758, F.S., establishing a comprehensive statute governing the transfer of tax liabilities to future owner(s) of a business and/or business assets.

**Section 15:** Amends s. 220.192, F.S., clarifying the responsibilities of the Florida Energy and Climate Commission.

**Section 16:** Amends s. 336.021, F.S., clarify the distributions of the ninth-cent fuel tax.

**Section 17:** Amends s. 442.036(20), F.S., requiring that a single-member LLC be treated as the employer.

**Section 18:** Amends 442.1215(2)(b), F.S., to correct a citation.

**Section 19:** Amends s. 443.1316(2)(b), F.S., to include information-sharing agreements with financial institutions, integrated enforcement authority, and transfer of tax liabilities.

**Section 20:** Amends s. 441.141(1)(b) and 443.141(3), F.S., increasing penalties for inaccurate or incomplete wage reports and clarifying the expiration of unemployment tax liens.

**Section 21:** Amends s. 443.163(2), F.S., increasing penalties when required employee information is not provided by approved electronic means.

**Section 22:** Amends s. 443.163(3), F.S., removing obsolete provisions regarding telefile.

**Section 23:** Creates s. 213.692, F.S., establishing integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration.

**Section 24:** Authorizes the department to adopt emergency rules to administer s. 213.692, F.S.

**Section 25:** Repeals s. 195.095, F.S., removing the Approved State Bidder List and standard contract requirement

**Section 26:** Repeals s. 213.054, F.S., requiring an annual report.

**Section 27:** Provides an effective date upon becoming a law, except as otherwise expressly provided in this bill.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See FISCAL COMMENTS.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

See FISCAL COMMENTS.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill will reduce various taxpayer expenses. These reductions will be generated by the following provisions:

- Providing that the portion of a seller's debt cancelled by a lender pursuant to a "short sale" is not subject to the documentary stamp tax;
- Clarifying that the residential exemption for communications services sold to residential households in apartment complexes;
- Removing specified taxpayer information from required vending machine notices;
- Clarifying the Department's sale tax treatment of bundled food and non-food items;
- Authorizing the Department to provide general information to taxpayers by email; and
- Providing a single application for enterprise zone sales tax refunds for multi-unit developments and the streamlining application requirements.

D. FISCAL COMMENTS:

The 2010 Revenue Estimating Conference (REC) reviewed several sections of Senate Bill 1976, which are nearly identical to the House bill<sup>3</sup>. The Revenue Estimating Conference determined the following:

**Section 4 – Sales of Communication Services** – The REC determined that the proposed change in the exemption does not apply to any residence that constitutes all or part of a transient public lodging establishment. Therefore there is no fiscal impact.

**Section 5 – Cleaning Supplies** – The REC determined that the clarifying language regarding cleaning services proposed does not have a fiscal impact.

**Section 7 – Exemption for Packaging of Exempt Food Items** – The REC determined that the proposed statutory language modification to match the current Department of Revenue's current practice does not have a fiscal impact.

**Section 7 – Enterprise Zone Building Materials** - The REC determined that the clarifying language regarding the Enterprise Zone building materials exemptions' has an indeterminate fiscal impact.

However, staff estimates that the statutory changes provided are expected to have an overall positive indeterminate impact on both state and local government revenues. These revenues will be generated from reduction in the Department's costs, increased efficiency in tax administration, and improved enforcement of current tax laws.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

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<sup>3</sup> Revenue Estimating Conference dated March 19, 2010. A copy of the analysis is on file with the Government Operations Appropriations Committee.

2. Other:

**B. RULE-MAKING AUTHORITY:**

Section 9. The Department is authorized to adopt administrative provisions in s. 212.053(19), F.S., related to publishing a list of taxpayers whom it has filed a warrant, notice of a lien, or judgment lien certificate.

Section 10. The Department may adopt rules establishing the procedures and requirements for conducting automated data matches with financial institutions pursuant to s. 213.0532, F. S.

Section 14. The Department is authorized to adopt rules necessary to administer and enforce provisions in s. 213.758, F.S., related to the transfer of tax liabilities.

Section 23. The Department is authorized to adopt rules to administer s. 213.692, F.S., establishing integrated enforcement authority.

Section 24. The Department is authorized to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**