

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 Committee on Commerce and Tourism

BILL: CS/SB 1654

INTRODUCER: Commerce and Tourism and Appropriations Committees

SUBJECT: Tax Administration

DATE: March 18, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
<u>Fournier</u>	<u>Kynoch</u>		AP SPB 7066 as introduced
1. <u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	Fav/CS

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1654 contains changes in tax administration that were recommended by the Department of Revenue (department) and approved by the Governor and Cabinet, as well as a clarification of current tax law regarding charges for the storage of towed vehicles, revising the procedures local governments may use to authorize ad valorem exemptions for economic development, and permitting certain entities to publish aggregate data on certain tourism taxes. The bill clarifies provisions pertaining to criminal penalties for failing to collect a tax or fee, making a false or fraudulent return, or failing to register with the department; clearly establishes the department's authority to require security for certain individuals seeking to register new businesses; increases the authority of the department's executive director to compromise taxes; conforms the remittance date for funds collected by the clerks of the court to other statutory requirements for the remittance of these funds; bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions; provides an incentive for businesses to comply with requests for reemployment assistance tax records for audit purposes; reduces the interest rate imposed on reemployment assistance tax deficiencies; and extends the protest period for reemployment assistance tax assessments.

Several sections of this bill have a positive, but indeterminate, impact on state and local revenue. Section 14, which reduces the interest rate charged on delinquent reemployment taxes, was estimated by the Revenue Estimating Conference to reduce revenue to the Special Employment Security Administration Trust Fund by \$0.2 million on a recurring basis.

II. Present Situation:

The Department of Revenue is responsible for ensuring that the 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 proposes changes in tax administration laws to reduce the burden on taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

III. Effect of Proposed Changes:

Sections 1 and 2

Present situation: Section 196.1995, F.S., permits a local government to allow an ad valorem tax exemption for economic development. The local government may permit exemptions for new or expanding businesses for improvements to real property and for tangible personal property. Initially, the local government must hold a referendum within its total jurisdiction to determine whether the jurisdiction may grant economic development ad valorem exemptions under Art. VII, s. 3 of the Florida Constitution. Once the referendum measure is approved, specific exemptions are effectuated by enactment of an ordinance. However, the improvements must be made or the tangible personal property added or increased on or after an ordinance is adopted by the locality.

Proposed change: The bill permits the improvements to be made or the tangible personal property to be added or increased after approval by motion or resolution of the local governing body and before enactment of the ordinance. The bill provides that an ordinance in existence prior to the effective date of the bill will not be invalidated simply because the improvements to real property were made or the tangible personal property was added or increased prior to the day such ordinance was adopted as long as the local governing body acted substantially in accordance with the law as amended by the bill.

Section 3

Present situation: Section 212.03(6), F.S., provides that every person engaging in a lease or rental of parking or storage spaces for motor vehicles in parking lots or garages, who leases or rents docking or storage space for boats in boat docks or marinas, or who leases or rents tie-down or storage space for aircraft at airports, shall be taxed at the rate of 6 percent on the total rental charges. Current administration of this statute treats storage facilities for towed vehicles as "parking lots or garages" for purposes of application of the tax, but the statute does not explicitly mention these facilities or provide an exception for law enforcement impoundment facilities.

Proposed change: The bill explicitly states that storage facilities for towed vehicles are included in "parking lots and garages" for tax purposes. It also provides that charges for storage of towed vehicles from a "lawful impoundment" by a local, state, or federal law enforcement agency are not taxable, and defines "lawful impoundment" as the storage of a vehicle at the direction of or by a law enforcement agency and the owner is not authorized to access or remove the vehicle.

Sections 4, 5, and 7

Present situation: Sections 212.07, 212.12, and 212.18, F.S., contain redundant and potentially confusing provisions concerning criminal penalties. Section 212.12, F.S., sets forth the penalties for failure to collect a tax or fee, making fraudulent returns, and failure to register with the department. However, ss. 212.07 and 212.18, F.S., also include some reference to such penalties.

Proposed change: The bill amends these sections to clarify the criminal penalties imposed on a person who:

- Willfully fails to collect a tax or fee (s. 212.07, F.S.).
- Makes a false or fraudulent return with a willful intent to evade payment of taxes or fees (s. 212.12, F.S.).
- Willfully fails to register after the department provides notice of the duty to register (s. 212.18, F.S.).

The bill creates no new penalties; the amendments are intended to clarify existing statutory penalties. These sections take effect July 1, 2014.

Section 8 republishes s. 212.20, F.S., to incorporate by reference the amendments made to s. 212.18, F.S., in section 5 of the bill. This section takes effect July 1, 2014.

Section 6

Present situation: Section 212.14(4), F.S., authorizes the department to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's certification of registration. Despite this requirement, delinquent sales tax dealers are able to close down businesses with tax liabilities and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when those individuals seek to register new businesses.

Proposed change: The bill revises s. 212.14(4), F.S., to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses. This section takes effect July 1, 2014.

Section 9

Present situation: Section 213.0535, F.S., creates the Registration Information Sharing and Exchange Program and permits the sharing of tax administration information between different specified entities. "Level-two" participants include local officials responsible for collecting tourism taxes; these participants are permitted to share information between each other but not with other related entities.

Proposed change: The bill permits a level-two participant to publish aggregate statistics on tourism taxes as long as the data does not pertain to fewer than three taxpayers or the data is prepared for geographic areas below the county level and does not pertain to fewer than ten taxpayers. Statistics published may only relate to the taxes imposed under ss. 125.0104, 125.0108, 212.0305, F.S., and ch. 67-930, L.O.F.

Section 10

Present situation: Chapter 2010-162, L.O.F., changed the remittance date for state funds collected by the Clerks of the Court from the 20th day to the 10th day of the month immediately after the month in which the funds are collected. Section 213.13, F.S., which governs the electronic remittance and distribution of funds by the Clerks of the Court, was not amended to conform to the change.

Proposed change: Section 213.13(5), F.S., is amended to conform to changes made by ch. 2010-162, L.O.F.

Section 11

Present situation: Section 213.21, F.S., allows the department's executive director to enter into an agreement with a taxpayer that compromises the taxpayer's liability if there is a "doubt as to liability" or "doubt as to collectability" of the tax assessed. The statute limits this compromise authority to a reduction of \$250,000 or less.

Proposed change: The bill increases the executive director's authority to compromise taxes to a reduction of \$500,000 or less.

Section 12

Present situation: Automated sales suppression devices or "zappers" are software programs that falsify the records of electronic cash registers and other point-of-sale systems.¹ These devices alter sales records to reduce the value of sales that are reported for tax purposes in order to evade state and federal taxes. In the case of sales tax, the use of these devices results in the theft of taxes that have been collected from a business' customers. While evading state taxes is illegal under current law, the sale, purchase, installation, use, or possession of the devices themselves is not illegal per se. Since 2011, eleven states have enacted legislation making it illegal to sell, install, or possess these devices.

Proposed change: The bill creates s. 213.295, F.S., which makes an automated sales suppression device a contraband article under Florida's Contraband Forfeiture Act (ss. 932.701-932.706, F.S.), and makes it unlawful to knowingly sell, purchase, install, transfer, use, or possess in this state any automated sales suppression device, zapper, or phantom-ware. Any person convicted of violating this law is guilty of a third degree felony;² is liable for all taxes, fees, penalties and interest due the state as a result of the use of the device; and must forfeit to the state as an additional penalty all profits associated with the sale or use of the device. This section takes effect July 1, 2014.

¹ See for example Furchgott, Roy, "With Software, Till Tampering Is Hard To Find," New York Times (August 29, 2008), available at http://www.nytimes.com/2008/08/30/technology/30zapper.html?_r=0 (last visited 3/13/2014).

² Punishable by a term of imprisonment not exceeding 5 years and a fine of up to \$5,000. In the case of a habitual offender, the punishment may be a term of imprisonment not exceeding 10 years Sections 775.072, 775.083, and 775.084, F.S.

Section 13

Present situation: Florida law provides a standard reemployment assistance tax rate and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard reemployment assistance tax rate. The condition is that the employer has produced records requested by the Department of Economic Opportunity or the department for audit purposes.

Section 14

Present situation: Reemployment assistance tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month, an effective annual rate of 12 percent. Other taxes that are administered by the department have an interest rate of prime plus 4 percent, not to exceed an effective rate of 1 percent per month. The interest rate is adjusted twice yearly.

Under s. 443.131, F.S., a determination of reemployment assistance tax rate is final 20 days after the date it is mailed, unless the employer requests a redetermination. However, under s. 443.141, F.S., if an employer does not respond to the Department of Economic Opportunity or the department when required to file a report related to reemployment assistance tax, the department may assess the amount of reemployment assistance tax due upon the employer and such assessment is final 15 days after the date it is mailed, unless the employer files a written protest.

Proposed change: Section 443.141, F.S., is amended to change the interest rate imposed on reemployment assistance tax deficiencies to prime plus 4 percent, not to exceed 1 percent per month, beginning January 1, 2015. This is the rate applied to other taxes administered by the department.

This section is also amended to provide a 20-day protest period for reemployment assistance tax assessments.

This section is effective January 1, 2015.

Section 15 provides that except as otherwise expressly provided, the bill takes effect upon becoming a law.

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:**

The department anticipates that the following provisions will improve enforcement and collection of state tax laws:

- Banning the sale, purchase, installation, transfer, use, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions, should improve the department's ability to collect and enforce the sales tax statutes.
- Improved compliance with reemployment tax reporting is expected to improve the department's audit capability.

The Revenue Estimating Conference has determined that decreasing the interest rate on unpaid reemployment assistance taxes will reduce state trust fund revenue by \$600,000 in Fiscal Year 2014-15 and \$200,000 on a recurring basis. Other provisions of the bill are expected to have an indeterminate, positive impact on state and local revenue.

B. Private Sector Impact:

This bill:

- Revises the procedures local governments may use to authorize ad valorem exemptions for economic development;
- Clarifies that storage facilities for towed vehicles are taxable, but that storage of towed vehicles from a "lawful impoundment" by a law enforcement agency are not taxable;
- Authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales tax dealer's certificate of registration;
- Increases the executive director's authority to compromise taxes;
- Prohibits the sale, purchase, installation, transfer, use, or possession of automated sales suppression devices, zappers, and phantom-ware, and specifies criminal penalties for these actions;
- Provides that an employer may not qualify for a reduced reemployment assistance tax rate unless the employer has produced all records that were requested by the department or the Department of Economic Opportunity; and
- Reduces the interest rate imposed on reemployment assistance tax deficiencies and lengthens the protest period for such tax assessments.

C. **Government Sector Impact:**

The provisions of this bill are expected to improve tax administration by the department.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 196.1995, 212.03, 212.07, 212.12, 212.14, 212.18, 213.0535, 213.13, 213.21, 443.131, and 443.141.

This bill creates section 213.295 of the Florida Statutes.

This bill reenacts section 212.20 of the Florida Statutes for the purpose of incorporating the amendments made to section 212.18 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 17, 2014:

The committee substitute:

- Revises the procedures local governments may use to authorize ad valorem exemptions for economic development.
- Permits certain entities to publish aggregate data related to certain tourism taxes.

B. **Amendments:**

None.