

By Senator Ingoglia

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1                                   A bill to be entitled  
2       An act relating to federal taxation; creating s.  
3       17.45, F.S.; defining terms; requiring the Chief  
4       Financial Officer to reimburse an owner of a small  
5       business for attorney fees and costs with funds from  
6       the Internal Revenue Service Civil Liability Trust  
7       Fund under certain conditions; requiring the  
8       Department of Financial Services to certify certain  
9       information before such reimbursement; specifying that  
10      the identity of a small business is not affected by  
11      certain changes; requiring the department to adopt  
12      rules; creating s. 72.042, F.S.; authorizing taxpayers  
13      to bring actions in circuit court for an award of  
14      attorney fees and costs, actual damages, and punitive  
15      damages if the Internal Revenue Service is found to  
16      have committed certain violations; requiring such  
17      actions to be filed within a specified timeframe;  
18      amending s. 212.134, F.S.; defining terms; specifying  
19      that payment settlement entities are required to issue  
20      returns only to certain participating payees;  
21      requiring certain payment settlement entities to  
22      create and maintain specified records; amending s.  
23      655.045, F.S.; requiring that reports submitted by  
24      financial institutions to the Financial Services  
25      Commission include certain information received from  
26      the Internal Revenue Service; requiring the Office of  
27      Financial Regulation to submit an annual report to the  
28      commission and the Legislature by a specified date;  
29      providing a contingent effective date.

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30  
31 Be It Enacted by the Legislature of the State of Florida:

32  
33 Section 1. Section 17.45, Florida Statutes, is created to  
34 read:

35 17.45 Reimbursement for retaliatory taxation proceedings.—

36 (1) As used in this section, the term:

37 (a) "Domiciled in this state" means authorized to do  
38 business in this state and located in this state.

39 (b) "Retaliatory" means any proceeding initiated in part to  
40 discriminate against or target a taxpayer on the basis of his or  
41 her political affiliation, ideology, or beliefs, as determined  
42 by the department.

43 (c) "Small business" means any business entity, regardless  
44 of corporate structure, that is domiciled in this state, that  
45 employs 50 or fewer employees, and that generated an average  
46 annual gross revenue of \$4 million or less per year for the  
47 preceding 2 years.

48 (d) "Trust fund" means the Internal Revenue Service Civil  
49 Liability Trust Fund created under s. 17.44.

50 (2) Any owner of a small business against which the  
51 Internal Revenue Service initiates proceedings in the United  
52 States Tax Court may submit an application to the department for  
53 reimbursement of reasonable attorney fees and costs necessarily  
54 incurred in the proceedings, provided that all of the following  
55 criteria have been satisfied:

56 (a) The small business owner is the prevailing party in a  
57 proceeding before the United States Tax Court.

58 (b) The attorney representing the small business owner

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59 before the United States Tax Court certifies, in writing, that  
60 there is a good faith belief that the proceedings were  
61 retaliatory.

62 (c) The application is accompanied by a copy of the  
63 attorney's retainer agreement and fee or billing statements for  
64 the entire period of representation in the proceedings before  
65 the United States Tax Court.

66 (d) The application and accompanying documentation are  
67 submitted to the department within 90 days after receipt of a  
68 final order or other pleading concluding the proceedings before  
69 the United States Tax Court.

70 (e) The small business owner has not been previously  
71 awarded attorney fees or costs related to the proceedings before  
72 the United States Tax Court.

73 (3) If the criteria in subsection (2) are met, the  
74 department must certify the amount of the reimbursement and the  
75 name of the applicant to the Chief Financial Officer, who shall  
76 reimburse the applicant from the trust fund.

77 (4) For purposes of this section, the identity of a small  
78 business is not affected by a change in name or by a change in  
79 personnel.

80 (5) The department shall adopt rules to implement this  
81 section.

82 Section 2. Section 72.042, Florida Statutes, is created to  
83 read:

84 72.042 Tax liabilities arising under federal law;  
85 jurisdiction of circuit courts.-

86 (1) If, in connection with the collection of federal taxes  
87 concerning a taxpayer domiciled in this state, an action is

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88 brought in a federal district court of competent jurisdiction  
89 against any officer or employee of the Internal Revenue Service,  
90 or any independent contractor employed by the Internal Revenue  
91 Service, for a violation of:

92 (a) Title VI of the Civil Rights Act of 1964;

93 (b) Title VII of the Civil Rights Act of 1964;

94 (c) Title 26 of the Internal Revenue Code of 1986, as  
95 amended;

96 (d) The First Amendment to the United States Constitution;

97 (e) The Fourth Amendment to the United States Constitution;

98 or

99 (f) The Fifth Amendment to the United States Constitution,

100

101 the taxpayer may bring an action in circuit court pursuant to  
102 subsection (2) or subsection (3).

103 (2) In any action brought in a federal district court of  
104 competent jurisdiction pursuant to paragraph (1) (a), paragraph  
105 (1) (b), or paragraph (1) (c), upon a finding by the federal  
106 district court that a violation has occurred, the circuit court  
107 may award:

108 (a) Actual damages sustained by the taxpayer, which, but  
109 for the actions of the Internal Revenue Service, would not have  
110 been sustained.

111 (b) Attorney fees and costs.

112 (3) In any action brought in a federal district court of  
113 competent jurisdiction pursuant to paragraph (1) (d), paragraph  
114 (1) (e), or paragraph (1) (f), upon a finding by the federal  
115 district court that a violation has occurred, the circuit court  
116 may award:

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117 (a) Actual damages sustained by the taxpayer, which, but  
118 for the actions of the Internal Revenue Service, would not have  
119 been sustained.

120 (b) Punitive damages, provided that the provisions of s.  
121 768.72 are met.

122 (c) Attorney fees and costs.

123 (4) Notwithstanding any other provision of law, an action  
124 filed in circuit court pursuant to this section must be filed  
125 within 2 years after the date the cause of action accrues.

126 Section 3. Present subsections (1) through (4) of section  
127 212.134, Florida Statutes, are redesignated as subsections (2)  
128 through (5), respectively, a new subsection (1) and subsection  
129 (6) are added to that section, and present subsections (1) and  
130 (2) of that section are amended, to read:

131 212.134 Information returns relating to payment-card and  
132 third-party network transactions.—

133 (1) For purposes of this section, the term:

134 (a) "Participating payee" has the same meaning as in s.  
135 6050W of the Internal Revenue Code.

136 (b) "Payment settlement entity" has the same meaning as in  
137 s. 6050W of the Internal Revenue Code.

138 (c) "Return" or "information return" means IRS Form 1099-K  
139 required under s. 6050W of the Internal Revenue Code.

140 (d) "Third-party network transactions" has the same meaning  
141 as in s. 6050W of the Internal Revenue Code.

142 (2)~~(1)~~ For each year in which a payment settlement entity,  
143 an electronic payment facilitator, or other third party  
144 contracted with the payment settlement entity to make payments  
145 to settle reportable payment transactions on behalf of the

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146 payment settlement entity must file a return pursuant to s.  
147 6050W of the Internal Revenue Code, the entity, the facilitator,  
148 or the third party must submit the information in the return to  
149 the department by the 30th day after filing the ~~federal~~ return.  
150 The format of the information returns required must be either a  
151 copy of such information returns or a copy of such information  
152 returns related to participating payees with an address in the  
153 state. For purposes of complying with s. 6050W of the Internal  
154 Revenue Code, a payment settlement entity is required to issue a  
155 return only to those participating payees with an address in  
156 this state whose aggregate transactions for goods and services  
157 exceed \$600 ~~For purposes of this subsection, the term "payment~~  
158 ~~settlement entity" has the same meaning as provided in s. 6050W~~  
159 ~~of the Internal Revenue Code.~~

160 (3) ~~(2)~~ All returns ~~reports~~ submitted to the department  
161 under this section must be in an electronic format.

162 (6) A payment settlement entity participating in a third-  
163 party network transaction involving a participating payee with  
164 an address in this state must create and maintain records that  
165 clearly identify whether a transaction is a transaction for  
166 goods or services, or both, if applicable.

167 Section 4. Present subsections (3) and (4) of section  
168 655.045, Florida Statutes, are redesignated as subsections (4)  
169 and (5), respectively, a new subsection (3) is added to that  
170 section, and subsection (2) of that section is amended, to read:

171 655.045 Examinations, reports, and internal audits;  
172 penalty.—

173 (2) (a) Each state financial institution, subsidiary, or  
174 service corporation shall submit a report, at least four times

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175 each calendar year, as of such dates as the commission or office  
176 determines. The report must include:

177 1. The number of inquiries, requests, summons, subpoenas,  
178 or other requests for information or records received from the  
179 Internal Revenue Service concerning any account holder domiciled  
180 in this state.

181 2. Such other information as the commission by rule  
182 requires for that type of institution.

183 (b)(a) The office shall levy an administrative fine of up  
184 to \$100 per day for each day the report is past due, unless it  
185 is excused for good cause.

186 (c)(b) For an intentional late filing of the report, the  
187 office shall levy an administrative fine of up to \$1,000 per day  
188 for each day the report is past due.

189 (3) By January 30 of each year, the office shall submit a  
190 report that contains the information from the reports required  
191 under subsection (2) to the commission, the President of the  
192 Senate, and the Speaker of the House of Representatives.

193 Section 5. This act shall take effect on the same date that  
194 SB \_\_\_ or similar legislation takes effect, if such legislation  
195 is adopted in the same legislative session or an extension  
196 thereof and becomes a law.