

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

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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.