

STORAGE NAME: h2433z.ft
DATE: June 26, 2000

****AS PASSED BY THE LEGISLATURE****
CHAPTER #: 2000-355, Laws of Florida

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE AND TAXATION
FINAL ANALYSIS**

BILL #: HB 2433 (PCB FT 00-01)

RELATING TO: Taxation

SPONSOR(S): Committee on Finance & Taxation and Representative Albright

TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCE & TAXATION (FRC) YEAS 14 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

This bill makes the following changes to the administration of revenue laws:

- amends the statute of limitations for audit so that effective July 1, 2002 the limitation period is three years for all open periods;
- transfers the responsibility for the collection of civil penalties assessed by the Elections Commission from the Department of Revenue to the Elections Commission;
- provides that if the Department of Revenue improperly rejects or modifies the conclusions of law made by an Administrative Law Judge in a proceeding to protest a sales or use tax assessment, then the appellate court may award the taxpayer reasonable costs and attorney's fees;
- allows a municipality to impose the public service tax on the purchase of water services outside municipal boundaries under specified conditions;
- deletes a duplicate filing requirement for certain insurance companies;
- provides for the sharing of specified information by the Department of Revenue with the Department of Management Services and the Department of Highway Safety and Motor Vehicles;
- directs the manner in which an independent or dependent special district assesses a mobile home or recreational vehicle park facility;
- provides optional filing periods for certain entities required to pay gross receipts tax;
- allows the Department of Revenue to suspend reporting requirements for terminal operators and bulk carriers when identical data becomes available to the Department from the Internal Revenue Service;
- clarifies the exemption from the indexed tax of 20 percent of the manufactured asphalt used for any government public works project;
- clarifies the manner in which interest is applied to tax deficiencies;
- provides authority to the Department of Revenue to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration;
- allows taxpayers to remain in a less frequent filing status even when the taxpayer remits an amount of tax greater than the threshold for their present filing status;
- removes that requirement that the Department of Revenue use statistical sampling during audits;
- provides that the taxpayer has the right to be treated in a professional manner by Department of Revenue personnel and that the taxpayer has the right to obtain simple, non-technical statements which explain the reason for audit selection;

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- provides that doubt as to liability for tax and interest exists when a taxpayer establishes reasonable reliance on the written determination issued by the Department of Revenue; and,
- provides that revenue collections from cigarette taxes will no longer be shared with municipalities. The funds will be replaced with revenues from sales and use tax collections.

In addition, the bill does the following:

- provides an ad valorem tax exemption for not-for-profit water and wastewater corporations;
- adds to the sales tax exemption on equipment or machinery for pollution control, specialty chemical or bioaugmentation products;
- for the purpose of the sales tax exemption for machinery and equipment used in the production of electrical or steam energy, provides an exemption if 15% or less of all electrical or steam energy generated was produced by burning residual fuel;
- adds SIC code 35 (computer manufacturers) to the exemption for repair and labor charges. SIC code 35 was inadvertently left out of the bill creating the exemption last year. The Department of Revenue has implemented the law as if SIC code 35 were included;
- provides a sales and use tax exemption for moveable receptacles in which portable containers are placed when used for processing farm products;
- provides a sales and use tax exemption for people-mover systems;
- adds savings association holding companies to the list of entities exempt from the intangible tax;
- provides a retroactive exemption for renewals of promissory notes for revolving obligations, if the renewal extends the existing agreement for certain term obligations;
- provides instructions for adjustments to the 1997 base year revenue for the purpose of calculating firefighters and police officer pension plans; and,
- provides a refund to the cigar industry for sales tax paid on certain uses of electricity and steam for the period July 1, 1998, through June 30, 1999.

The estimated fiscal impact upon General Revenue is (\$3.4) million for FY 00-01 and (\$2.8) million for FY 01-02. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.3) million for FY 00-01 and (\$0.3) million for FY 01-02. The total estimated fiscal impact for this bill is (\$3.7) million for FY 00-01 and (\$3.1) million for FY 01-02.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- 1. Less Government Yes No N/A
- 2. Lower Taxes Yes No N/A
- 3. Individual Freedom Yes No N/A
- 4. Personal Responsibility Yes No N/A
- 5. Family Empowerment Yes No N/A

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Please see Effect of Proposed Changes

C. EFFECT OF PROPOSED CHANGES:

The substantive analysis is broken down by topic with a present situation and effect of proposed changes for each topic. The section by section analysis provides a reference as to which statutes have been amended and the effect of the amendment.

NOT-FOR-PROFIT WATER AND WASTE WATER SYSTEMS
(Section 1)

PRESENT SITUATION:

Property of any not-for-profit water and wastewater corporation which holds a current exemption from federal income tax under section 501(c)(12) of the Internal Revenue Code, as amended, is subject to ad valorem taxation.

EFFECT OF PROPOSED CHANGES:

The bill creates an exemption from ad valorem taxation for the property of any not-for-profit water and wastewater corporation which holds a current exemption from federal income tax under section 501(c)(12) of the Internal Revenue Code, as amended, if the sole or primary function of the corporation is to construct, maintain or operate a water and/or wastewater system in this state.

STATUTE OF LIMITATIONS
(Section 2)

PRESENT SITUATION:

Since the passage of the sales tax on services and a tax amnesty program in 1987, the statute of limitations for tax assessments has been five years from the date the tax is due. Chapter 99- 239, L.O.F., changed the statute of limitations on taxes, tax penalties, or interest collected by the Department of Revenue and the Department of Business and Professional Regulation (DBPR) (re: tobacco and alcohol taxes) by reducing the time period

from five years to three years for taxes due on or after July 1, 1999. The five-year statute of limitations continues to apply to taxes due before July 1, 1999.

EFFECT OF PROPOSED CHANGES:

Under present law, a business would have tax records subject to two different statutes of limitations. For example, taxes due on June 1, 1999, would continue to be subject to audit until May 31, 2004; however, taxes due on July 1, 1999, would only be subject to audit until June 30, 2002. Having to hold older records for longer periods of times is unduly confusing to the public. The bill amends s. 95.091(3)(a), F.S., so that effective July 1, 2002, the statute of limitations for audit is 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later. After July 1, 2002, all records created prior to July 1, 1999, will no longer be subject to audit.

COLLECTION OF FLORIDA ELECTIONS COMMISSIONS FINES
(Section 3)

PRESENT SITUATION:

Prior to January 1, 1998, the Florida Elections Commission had authority to bring a civil action to collect civil penalties assessed by the Elections Commission. Effective January 1, 1998, the State Comptrollers Office was given the responsibility for collecting civil penalties assessed by the Elections Commission. Chapter 97-13, L.O.F. Effective July 1, 1998, the responsibility for collection the civil penalties assessed by the Elections Commission was transferred to the Department of Revenue. Chapter 98-129, L.O.F. The legislative history is silent as to why these transfers of authorities were made.

The Department of Revenue lacks the necessary personnel and expertise to efficiently prosecute these cases and to collect the fines. The Department has received 20 case files with fines ranging from \$25 to \$466,000. The Florida Elections Commission has indicated to the Department that it has the resources and expertise to effectively handle the collection of the civil penalties that it assesses.

EFFECT OF PROPOSED CHANGES:

Section 106.265(2), F.S., is amended to transfer the responsibility for the collection of civil penalties assessed by the Elections Commission from the Department of Revenue to the Elections Commission.

ATTORNEY'S FEES
(Section 4)

PRESENT SITUATION:

A taxpayer may contest any tax assessment or denial of refund by the Department of Revenue by either bringing an action in circuit court or filing a petition for an administrative hearing pursuant to Chapter 120, F.S. Except in limited circumstances, the hearing will be held before an Administrative Law Judge (ALJ). After the hearing the ALJ, will issue a recommended order to the Department of Revenue containing finding of facts and conclusions of law. Section 120.57(1)(l), F.S. The Department may adopt the recommended order as its final order, or in its final order, the Department may reject or modify the conclusions of law over which it has substantive jurisdiction. Section 120.80(140(b)5., F.S., provides that the prevailing party in a tax contest proceeding may recover all legal costs incurred in the proceeding, including reasonable attorney's fees, if the losing party fails to raise a valid issue of law or fact in the petition or response.

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EFFECT OF PROPOSED CHANGES:

The bill amends section 120.80(14)(b), F.S. to add that a taxpayer may be awarded costs and attorney's fees in a contest of a sales and use tax assessment if the Department of Revenue rejects or modifies an Administrative Law Judge's conclusions of law and the appellate court finds that the Department of Revenue improperly rejected or modified the conclusions.

MUNICIPAL UTILITY TAX
(Section 5)

PRESENT SITUATION:

A municipality may levy a public service tax on the purchase of water services. The tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller for the services.

EFFECT OF PROPOSED CHANGES:

Section 166.231(1), F.S., is amended to allow a municipality to impose the public service tax on the purchase of water services outside municipal boundaries if the area outside of the municipality is included in a development of regional impact approved pursuant to s. 380.06, and the tax is agreed to in writing by the development of such property and the municipality prior to March 31, 2000. If the tax levied pursuant to section 5 of the bill is challenged, recovery, if any, shall be limited to monies paid into an escrow account of the clerk of the court subsequent to such challenge.

**INFORMATION SHARING WITH THE DEPARTMENT OF MANAGEMENT
SERVICES AND THE DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES**
(Sections 6, 7 and 8)

PRESENT SITUATION:

Effective July 1, 1995, the administration of insurance premium taxes collected for the purposes of the Municipal Firefighters' Pension Trust Funds and the Municipal Police Officers' Pension Trust Funds was transferred from the Department of Insurance to the Division of Retirement in the Department of Management Services. Chapter 95-250, L.O.F. The Department of Insurance has authority for information sharing with the Department of Revenue. The Department of Management Services does not have the authority for information sharing with the Department of Revenue.

Insurance companies writing property or casualty insurance for any property located in a municipality which impose an insurance premium tax for the Municipal Firefighters' Pension Trust Funds and the Municipal Police Officers' Pension Trust Funds must file a duplicate annual report with the Department of Management Services and the Department of Revenue.

The Department of Highway Safety and Motor Vehicles (DHSMV) is responsible for collecting fuel tax under the International Fuel Tax Agreement. DHSMV also administers the motor vehicle registration licensing program. Under present law, the Department of Revenue has no authority to share information with DHSMV. DHSMV and the Department of Revenue believe DHSMV could improve the efficiency of its collection activities under the International Fuel Tax Agreement and improve its administration of the motor vehicle dealer licensure program if it could receive federal employer identification numbers and other similar information from the Department of Revenue.

EFFECT OF PROPOSED CHANGES:

Sections 175.111 and 185.09, F.S., are amended to delete the filing of an annual report by an insurance company to the Department of Management Services Division of Retirement. The reporting requirement to the Department of Revenue is retained.

Section 213.053, F.S., is amended to allow the Department of Revenue to share the following:

(1) Information related to the returns required by ss. 175.111 (Municipal Firefighters' Pension Trust Funds) and 185.09, F.S., (Municipal Police Officers' Pension Trust Funds) to the Department of Management Services in the conduct of its official duties; and

(2) Names, addresses, and federal employer identification numbers, or similar identifiers, to the DHSMV for use in the conduct of its official duties.

VALUING MOBILE HOME AND RECREATIONAL VEHICLE PARKS
(Section 9)

PRESENT SITUATION:

Currently, when an independent or dependent special district levies an assessment on mobile home or recreational vehicle park facility, the district could treat the facility as being comprised as residential units, or as a hotel, motel, or similar facility.

EFFECT OF PROPOSED CHANGES:

The bill creates a new s. 189.420, F.S., which states that facilities regulated under Chapter 513, F.S., (mobile home or recreational vehicle park facilities) shall be assessed by independent or dependant special districts in the same manner as a hotel, motel, or other similar facility.

OPTIONAL FILING PERIODS FOR GROSS RECEIPTS TAX
(Section 10)

PRESENT SITUATION:

Florida imposes a gross receipts tax at the rate of 2.5% on the gross receipts of sellers of electricity, natural or manufactured gas, and telecommunications services. Businesses subject to the gross receipts tax must file a monthly return. The Department of Revenue states that approximately 3,500 taxpayers must pay the gross receipts tax each month. Of these taxpayers, about 2,000 remit less than \$1,000 per year. Filing monthly returns for these taxpayers can be an unnecessary administrative burden.

EFFECT OF PROPOSED CHANGES:

Section 203.01(1)(g), F.S., is added which allows the Department of Revenue to require:

(1) a quarterly return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$1,000;

(2) a semi-annual return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$500; or

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(3) an annual return when the gross receipts tax remitted for the preceding four calendar quarters did not exceed \$100.

This section will take effect January 1, 2001.

REPORTING MOTOR FUEL DATA THROUGH THE "Ex-STARS" SYSTEM
(Section 11 and 12)

PRESENT SITUATION:

The Internal Revenue Service (IRS) is developing a national fuel tracking system in which terminal operators and bulk carriers will be required to file essentially the same data currently filed with the Department of Revenue. The system, known as the Excise Summary Terminal Activity Reporting System or "Ex-STARS", will be made available to the Department in an electronic form through an information sharing agreement with the IRS under current law. When the Department has access to the Ex-STARS data, terminal operators and bulk carriers will be required to file duplicate reports with the Department and the IRS.

Sections 206.09 and 206.095, F.S., are amended to allow the Department to suspend reporting requirements for terminal operators and bulk carriers when the Ex-STARS data becomes available to the Department.

This section shall take effect July 1, 2000.

SALES TAX EXEMPTION FOR SPECIALTY CHEMICAL
OR BIOAUGMENTATION PRODUCTS
(Section 13)

PRESENT SITUATION:

Section 212.051, F.S., provides for a sales and use tax exemption for any facility, device, fixture, equipment, or machinery used primarily for the control or abatement of pollution or contaminants in manufacturing, processing, compounding, or producing for sale items of tangible personal property at a fixed location, or any structure, machinery, or equipment installed in the reconstruction or replacement of such facility, device, fixture, equipment, or machinery.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2000, s. 212.051, F.S., is amended to add to the sales tax exemption on equipment or machinery for pollution control, specialty chemical or bioaugmentation products. The bill also provides the following definitions: "specialty chemicals" are those chemicals used to enhance or further treat waste water including, but not limited to, defoamers, nutrients, and polymers; "bioaugmentation products" means the micro-organisms used in waste treatment plants to break down solids and consume organic matter.

This section will take effect January 1, 2000.

ASPHALT USED IN PUBLIC WORKS -
SALES TAX EXEMPTION - CLARIFICATION
(Section 14)

PRESENT SITUATION:

In 1988, the Legislature passed revisions to s. 212.06, F.S., based on recommendations for a uniform, statewide manufacturer's use tax for asphalt. This section levies a 6 percent tax on the cost of materials that become a component part or ingredient of finished asphalt, and upon the cost of transportation of the components or ingredients.

Additionally, an indexed tax, imposed on costs associated with the manufacture of asphalt, was set at \$.38 per ton for the first year. The indexed tax is adjusted on July 1, of each year in conjunction with a formula tied to the Producer Price Index average of the "materials and components for construction" series calculated and published by the U.S. Department of Labor, Bureau of Statistics. Currently the indexed tax rate is \$.48 per ton.

In 1999 the Legislature amended s. 212.06, F.S., providing an exemption from the indexed tax of 20 percent of the manufactured asphalt used for any state or local government public works project. Chapter 99-344, L.O.F. Senate Bill 1296 originally exempted all manufactured asphalt used for any state or local government public works project from tax. The bill was amended by the Senate to exempt only 20 percent. When the bill was considered by the House, Representative George Albright, Chair of the House Finance and Taxation Committee, read the following statement into the Journal of the House:

Senate Bill 1296, as it arrived from the Senate, is somewhat ambiguous. The intent of this bill is to exempt 20 percent of the tax on asphalt used in the governmental public works projects. One possible reading of this language is that asphalt would be totally exempt. I want the record to clearly reflect that the bill should be read to exempt 20 percent of the tax. Journal of the House, page 1740, April 29, 1999

EFFECT OF PROPOSED CHANGES:

Section 212.06(1)(c), F.S., is amended to remove ambiguity and to clearly reflect the intent of the Legislature. The bill states that the indexed tax on manufactured asphalt for use in public works projects is reduced by 20 percent and that the reduction applies to all public works projects, including federal.

The bill states that:

It is the intent of the Legislature that the amendment to s. 212.06(1)(c), F.S., by this section is remedial in nature and merely clarifies existing law.

SALES TAX EXEMPTION FOR MOVEABLE RECEPTACLES,
"DE MINIMUS" USE OF BOILER FUELS, SIC CODE 35,
AND PEOPLE MOVER SYSTEMS
(Section 15)

PRESENT SITUATION:

Paragraph (a) of subsection (5) of s. 212.08, F.S., provides a sales and use tax exemption for portable containers used in processing farm products.

Paragraph (c) of subsection (5) of s. 212.08, F.S., provides a sales and use tax exemption on the purchase of machinery and equipment for use at a fixed location which machinery and equipment are necessary in the production of electrical or steam energy resulting from the burning of boiler fuels other than residual oil.

Chapter 99-364, L.O.F., amended paragraph (eee) of subsection (7) of s. 212.08, F.S., providing an exemption from the sales, use and storage tax for labor charges for the repair of, and parts and materials used in the repair of and incorporated into, industrial machinery

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and equipment which is used for the manufacture, processing, compounding, or production of items of tangible personal property at a fixed location within this state. This exemption applies to the following SIC Major Groups: 10 - Metal Mining; 12 - Coal Mining; 13 - Oil and Gas Extraction; 14 - Nonmetallic Materials, except fuels; 20 - Food and kindred products; 22 - Textile Mill Products; 23 - Apparel and other Textile Products; 24 - Lumber and Wood Products; 25 - Furniture and Fixtures; 26 - Paper and Allied Products; 27 - Printing and Publishing; 28 - Chemicals and Allied Products; 29 - Petroleum and Coal Products; 30 - Rubber and Misc. Plastics Products; 31 - Leather and Leather Products; 32 - Stone, Clay and Glass Products; 33 - Primary Metal Products; 34 - Fabricated Metal Products; 36 - Electronic and Other Electric Equipment; 37 - Transportation Equipment; 38 - Instruments and Related Products; 39 - Miscellaneous Manufacturing Industries; and 212 - Cigars. (See Standard Industrial Classification (SIC) Manual, 1987, published by the Office of Management and Budget, Executive Office of the President.)

SIC code 35, which includes businesses engaged in the manufacture of machinery and equipment and computers, was inadvertently left out of the bill last year. The Department of Revenue has implemented the law as if SIC code 35 were included.

This tax exemption became effective beginning July 1, 1999, at a rate of 25 percent of such charges for repair parts and labor, and will increase at a rate of 25 percent until reaching 100 percent beginning July 1, 2002.

Presently there is no sales tax exemption for people-mover systems, and parts thereof, which are purchased or manufactured by contractors employed either directly by or as agents for the United States Government, the state, a county, a municipality, a political subdivision of the state, or the public operator of a public-use airport as when the systems or parts go into or become part of publicly owned facilities.

EFFECT OF PROPOSED CHANGES:

The bill amends paragraph (a) of subsection (5) of s. 212.08, F.S., to provide a sales and use tax exemption for moveable receptacles in which portable containers are placed when used for processing farm products.

The bill amends s. 212.08(5)(c), F.S., to provide a full sales and use tax exemption if it is determined that 15 percent or less of all electrical or steam energy generated was produced by burning residual fuel.

Section 212.08(7)(eee), F.S., is amended to include in the exemption labor charges used to prepare items for shipping.

The bill amends s. 212.08(eee), F.S., adding SIC code 35 to the exemption for repair and labor charges. This amendment is remedial in nature and shall have the force and effect as if SIC Code 35 had been included from July 1, 1999.

Section 212.08(7)(ggg), F.S., is amended to create a sales tax exemption for people-mover systems, and parts thereof, which are purchased or manufactured by contractors employed either directly by or as agents for the United States Government, the state, a county, a municipality, a political subdivision of the state, or the public operator of a public-use airport as when the systems or parts go into or become part of publicly owned facilities. "People-mover systems" include wheeled passenger vehicles and related control and power distribution systems that are part of a transportation system for use by the general public, regardless of whether such vehicles are operator-controlled or driverless, self-propelled or propelled by external power and control systems, or conducted on roads, rails, guidebeams, or other permanent structures that are an integral part of such transportation system. "Related control and power distribution systems" include any electrical or electronic control

or signaling equipment, but does not include the embedded wiring, conduits, or cabling used to transmit electrical or electronic signals among such control equipment, power distribution equipment, signaling equipment, and wheeled vehicles.

This section will take effect July 1, 2000.

TAX RETURNS - FILING FREQUENCY
(Section 16)

PRESENT SITUATION:

As a general rule, business who collect sales and use tax must file monthly returns with the Department of Revenue. Section 212.11, F.S. allows the Department to reduce the filing frequency for taxpayers when their tax collections fall below a certain level. When the tax remitted for the preceding four calendar quarters does not exceed \$1,000, the taxpayer may file quarterly. When the tax remitted for the preceding four calendar quarters does not exceed \$500, the taxpayer may file semiannually. When the tax remitted for the preceding four calendar quarters does not exceed \$500, the taxpayer may file annually.

Some taxpayers experience periods when they remit greater than normal amounts of tax to the Department and are then placed on a more frequent filing schedule. A common example is when a farmer buys an expensive piece of farm equipment from out of state and must remit use tax to the Department. Such a purchase may be made once every four or five years, but takes the taxpayer from quarterly filing to monthly filing.

EFFECT OF PROPOSED CHANGES:

Section 212.11(1)(c), F.S., is amended to allow taxpayers to remain in a less frequent filing status even when the taxpayer remits an amount of tax greater than the threshold for their present filing status. The taxpayer must demonstrate to the Department that the increase in tax remitted represents non-occurring business.

This section will take effect January 1, 2000.

SAMPLING AND REFUNDS DURING AUDITS
(Section 17)

PRESENT SITUATION:

The Department of Revenue is permitted to statistically sample voluminous sales tax records and project net underpayment of sales tax obligations for the entire period being audited. However, the Department indicates that the term "statistically" does not accurately reflect the operating practices of the Department. A statistical sample is a term of art that indicates a particular sampling technique. The Department's actual practice is judgmental sampling.

When overpayments are found by the audit an offset, credit, or refund is given for actual overpayments only. Overpayments are not projected because the Department lacks specific statutory authority to project sales tax overpayments.

EFFECT OF PROPOSED CHANGES:

Section 212.12(6)(c), F.S., is amended to remove the word "statistically." This codifies the operating practices of the Department. The Department will be required to project sales tax overpayments over the entire audit period and refund net overpayments.

TAXPAYER'S BILL OF RIGHTS; INFORMAL CONFERENCES; COMPROMISES
(Sections 18 and 19)

PRESENT SITUATION:

Chapter 95-272, L.O.F., created s. 213.015, F.S., the Taxpayer's Bill of Rights, which was created to guarantee that the rights, privacy, and property of Florida taxpayers are adequately safeguarded and protected during tax assessment, collection, and enforcement processes administered under the revenue laws of Florida.

Section 213.21, F.S., authorizes the executive director of the Department of Revenue or his or her designee to enter into closing agreements with any taxpayer settling or compromising the taxpayer's liability for any tax, interest, or penalty assessment.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2000, the bill amends s. 213.015, F.S., providing that the taxpayer has the right to be treated in a professional manner by Department of Revenue personnel and that the taxpayer has the right to obtain simple, nontechnical statements which explain the reason for audit selection.

Effective July 1, 2000, the bill amends subsections (2) & (3) of section 213.21, F.S., providing circumstances for when doubt as to liability of a taxpayer for tax and interest exists. A taxpayer who establishes reasonable reliance on the written determination issued by the Department of Revenue to the taxpayer will be deemed to have shown reasonable cause for noncompliance. The amendments to s. 213.21(2) and (3), F.S., made by the bill shall apply only to notices of intent to conduct an audit issued on or after October 1, 2000.

This section will take effect January 1, 2000.

INTEREST RATE CLARIFICATION
(Section 20)

PRESENT SITUATION:

Prior to January 1, 2000, the interest applied to most delinquent taxes was 1% a month or 12% a year. In 1999, the Legislature created s. 213.235, F.S., to lower the interest rate for tax deficiencies. Chapter 99-239, L.O.F. The new interest rate is a floating rate based on the adjusted prime rate charged by banks.

Sections 213.235(1)-(5), F.S., set out in detail how the interest rate shall be applied to deficiencies. Section 213.235(6), F.S., is redundant and has the potential to confuse taxpayers on how the floating rate of interest will be administered.

EFFECT OF PROPOSED CHANGES:

Section 213.235(6) is repealed.

PRIVATE VENDORS - THIRD-PARTY SALES TAX COLLECTION
(Section 21)

PRESENT SITUATION:

The Department of Revenue reports that as part of a nationwide effort to resolve issues concerning sales and use tax obligations of remote (out of state) sellers, various concepts

have been raised. The Department hopes to modernize and simplify existing sales and use tax systems in a manner that would reduce the burden for both remote and in state sellers. The Department believes that in the near future private vendors will develop automated systems that have the potential to significantly reduce the burdens on both in-state and remote sellers in calculating and remitting sales tax. Such a system would allow a seller to contract with a third-party to collect sales tax on behalf of the seller and remit it to the State. Under this system, the seller would not be subject to audit or liable for miscalculated sales tax unless the seller committed fraud. The Department presently has no authority to enter into contracts for the use of such systems.

EFFECT OF PROPOSED CHANGES:

Section 213.27(9), F.S., is created to give the Department authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration. The amount of compensation paid to vendors shall be established by the executive director and shall be based upon a percentage of the sales and use tax collections made through the system or on a per transaction basis. The system shall have the capability to determine the taxability of a transaction, the appropriate tax rate to be applied to a taxable transaction, and the total tax due on a transaction, and shall provide a method for remitting the tax to the Department. The Department shall be responsible for testing and certifying the accuracy of the system.

A seller who utilizes the system for computation and remittance of sales shall not be responsible for the reporting or remittance of tax for those transactions handled through the system. A seller who utilizes the system shall not be subject to audit for those transactions handled through the system, unless there are indicia that fraud has been committed by the seller.

The Department shall provide quarterly reports to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate on the amount of compensation paid pursuant to these contracts.

On or before January 1 annually, the Department shall provide recommendations to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate for provisions to be adopted for inclusion within the system that will make sales and use tax collection and administration simplified and uniform.

CORPORATE INCOME TAX - FEDERAL "PIGGY BACK"
(Section 22)

PRESENT SITUATION:

Florida's Corporate Income Tax Code follows the Federal Internal Revenue Code by using federal rules and starting with federal taxable income as the tax base for the Florida Corporate Income Tax. Section 220.03, F.S., defines specific terms as they apply to Florida's corporate income tax code. The term "Internal Revenue Code" is defined to mean those provisions of the United States Internal Revenue Code of 1986, as amended and in effect on January 1, 1999.

EFFECT OF PROPOSED CHANGES:

Since Congress makes changes to the Internal Revenue Code each year, the Florida Legislature must update the Florida Corporate Code to include those changes. The definition of "Internal Revenue Code" is updated to include those provisions of the 1986 Code, as amended,

and in effect on January 1, 2000. This definition provides for "piggybacking" each change made during 1999 in the Internal Revenue Code.

INTANGIBLE TAX EXEMPTION
FOR SAVINGS ASSOCIATION HOLDING COMPANIES
(Section 23)

PRESENT SITUATION:

Entities listed in s. 220.62(1) through (4), F.S., are exempt from intangible tax under s. 199.185(5), F.S. Savings Association holding companies are not included in the list of exempt entities.

EFFECT OF PROPOSED CHANGES:

The bill amends s. 220.62(2), F.S., adding savings association holding companies to the list of entities exempt from the intangibles tax.

RETROACTIVE DOCUMENTARY STAMP TAX EXEMPTION
FOR TERM OBLIGATIONS
(Section 24)

PRESENT SITUATION:

Section 210.09, F.S., was amended by Ch. 98-187, L.O.F., to provide that a renewal note evidencing a term obligation which increases the unpaid balance of the original contract and obligation, but which otherwise meets the exemption criteria of this section is taxable only on the face amount of the increase. It provided a similar limitation on renewals of revolving obligations. Chapter 98-187, L.O.F., also provided a retroactive application to the renewal of any note evidencing a revolving application, but did not provide a retroactive application for term obligations.

EFFECT OF PROPOSED CHANGES:

The bill provides a retroactive documentary stamp tax exemption for renewals of promissory notes for revolving obligations, if the renewal extends the existing agreement for certain term obligations.

BASE YEAR REVENUE ADJUSTMENTS FOR
FIREFIGHTERS AND POLICE OFFICERS
PENSION TRUST FUNDS
(Section 25)

PRESENT SITUATION:

Qualified municipalities, special fire control districts, chapter plans, local law municipalities, local law special fire control districts, or local law plans may establish a "Firefighters Pension Trust Fund" (s. 175.041, F.S.) and/or a "Police Officers Pension Trust Fund" (s. 185.03, F.S.). The trust funds are funded through local impositions of insurance premium tax. Sections 175.101 and 185.08, F.S. The year 1997 is the base period for certain calculations for the trust funds.

EFFECT OF PROPOSED CHANGES:

For purposes of future calculations only, the base year revenue received by a municipality for the calendar year 1997, as provided for in ss. 175.351(1) and 185.35(1), F.S., shall be adjusted by the

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Division of Retirement based on all original 1997 insurance returns as adjusted by all amended 1997 insurance returns received by the Department of Revenue no later than February 28, 2001. The Department of Revenue is authorized to provide, and shall provide, the return data for the excise taxes under Chapters 175 and 185, F.S., to the Division of Retirement. It is the intent of the Legislature that this section shall not impact any judicial proceeding pending on or before March 31, 2000.

SALES TAX REFUND TO THE CIGAR INDUSTRY
(Section 26)

PRESENT SITUATION:

In 1996, the Legislature created a sales tax exemption for electricity used to operate certain machinery and equipment used in manufacturing. Section 212.08(7)(ii), F.S. The exemption was only available to industries classified under certain SIC Industry Major Group Numbers. SIC Major Group Number 21 was included in industries qualified to use the exemption. SIC Major Group Number 21 includes manufacturer of cigarettes, cigars, smoking and chewing tobacco, snuff, and reconstituted tobacco. The group also includes industries who stem and redry tobacco. Steam used to operate certain machinery and equipment used in manufacturing also became exempt in 1998. Effective July 1, 1999, s. 212.08(7)(ii), F.S., was amended to remove SIC Major Group Number 21 from the list of industries qualified to use the exemption. Effective July 1, 1999, the statute was again amended to include SIC Industry Group Number 212 in the industries qualified to use the exemption. SIC Industry Group Number 212 covers businesses engaged primarily in the manufacture of cigarillos, cigars, and stogies.

EFFECT OF PROPOSED CHANGES:

For the period July, 1998, through June 30, 1999, industries in SIC Industry Group Number 212 will receive a refund plus interest for any sales tax paid on charges for steam or electricity which was used in the manner described in section 212.08(7)(ii), F.S. If the tax has not been paid, it is forgiven.

INTANGIBLE TAX - CONSOLIDATED RETURNS
(Section 27)

PRESENT SITUATION:

An annual intangible tax return must be filed with the Department of Revenue by every corporation authorized to do business in this state who on January 1 owns, controls, or manages intangible personal property which has a taxable situs in this State. The return shall be due on June 30 of each year. Section 199.052(10), F.S., states that an affiliated group may elect to make a consolidated return for any year. The election shall be made by timely filing a consolidated return. Once made, an election may not be revoked, and it is binding for the tax year. Failure to timely file a consolidated return shall not prejudice the taxpayer's right to file a consolidated return, provided that the failure to file a consolidated return is limited to 1 year and the taxpayer's intent to file a consolidated return is evidenced by the taxpayer having filed a consolidated return for the 3 years prior to the year the return was not timely filed.

EFFECT OF PROPOSED CHANGES:

A chapter law is created which states that notwithstanding the provisions of s. 199.052(10), F.S., the failure to timely file a consolidated intangible tax return for any one or more years shall not prejudice the taxpayer's right to file a consolidated return if the consolidated return is filed prior to July 31, 2000, and the affiliated group of corporations of which the taxpayer is a member has

previously filed consolidated returns for corporate income tax purposes under s. 220.131, Florida Statutes.

MUNICIPAL REVENUE SHARING
(Sections 27-32)

PRESENT SITUATION:

Florida's Constitution reserves all authority to tax, except the authority to levy the ad valorem tax, for the state. In general law, the state may authorize other governmental entities to levy taxes or participate in revenue sharing programs. Historically, local governments have had to absorb many of the costs associated with a variety of state-required programs and regulations. To address the implications of those fiscal demands and fund local government operations generally, state government utilizes several mechanisms to provide financial resources to local governments. One of those mechanisms involves the sharing of funds from designated state revenues with local governments.

The Legislature created the Municipal Financial Assistance Trust Fund in 1971 to share a portion of state cigarette tax revenues with municipalities. Prior to the creation of the trust fund, municipalities had the authority to levy a tax on cigarettes. In creating the trust fund, the Legislature prohibited municipalities from levying a tax on cigarettes. Currently, 5.8 percent of net collections are deposited into the trust fund. The statutory authority for the distribution of net cigarette tax collections to the trust fund is s. 210.20, F.S. The administration of the trust fund is addressed by s. 200.132, F.S.

The Florida Revenue Sharing Act of 1972 created the Revenue Sharing Trust Fund for Municipalities. Currently, the trust fund receives 32.4 percent of net cigarette tax collections, 12.5 percent of the state alternative fuel user decal fee collections, and the net collections from the one-cent municipal fuel tax.

An allocation formula serves as the basis for the distribution of these revenues to each municipality that meets the strict eligibility requirements. Funds derived from the one-cent municipal fuel tax may only be used by municipalities for transportation-related expenditures. In addition, there are some statutory limitations regarding funds that can be used as a pledge for indebtedness. Specifically, s. 218.25, F.S., specifies that no local municipality may bond any portion of its revenue sharing distribution in excess of its guaranteed entitlement. The guaranteed amount is a "hold harmless" provision that guarantees a minimum allotment in order to insure coverage of all bonding obligations for those municipalities that qualified for revenue sharing dollars prior to July 1, 1972. In addition, Miami/Dade County has a unique guaranteed entitlement, which specifies it may not receive less than the aggregate amount it received from the trust fund in the preceding fiscal year plus a percentage increase in an amount equal to the percentage increase of the trust fund for the preceding fiscal year. Municipalities incorporated after July 1, 1972, do not receive a guaranteed entitlement.

The statutory authorizations for the allocation of the three revenue sources are: s. 206.605, F.S., for the one-cent municipal fuel tax, s. 206.879, F.S., for the 12.5 percent of state alternative fuel user decal fees, and s. 210.20, F.S., for the 32.4 percent of net cigarette tax collections. The administration of the program itself is addressed in ss. 218.20 - 218.26, F.S.

EFFECT OF PROPOSED CHANGES:

Effective July 1, 2000, s. 210.20(2)(a), F.S., is amended to provide that revenue collections from cigarette taxes will not longer be deposited into the Municipal Financial Assistance Trust Fund or into the Revenue Sharing Trust Fund for Municipalities. Section 212.20(6)(f), F.S., is amended to provide that 1.0715 percent of available proceeds from sales and use tax

collections shall be transferred to the Revenue Sharing Trust Fund for Municipalities. If the total revenue to be distributed is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

EFFECTIVE DATE
(Section 33)

Except as otherwise provided, the act shall take effect upon becoming a law.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

<u>Speciality Chemicals</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$0.3M)	(\$0.3M)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
 <u>Boiler Fuel</u>	 <u>FY 00-01</u>	 <u>FY 01-02</u>
General Revenue	(\$0.4M)	(\$0.4M)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
 <u>Shipping</u>	 <u>FY 00-01</u>	 <u>FY 01-02</u>
General Revenue	(\$0.2M)	(\$0.2M)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
 <u>SIC 35</u>	 <u>FY 00-01</u>	 <u>FY 01-02</u>
General Revenue	(\$0.8M)	(\$1.2M)
Solid Waste Management T.F.	(*)	(*)
Local	(\$0.2M)	(\$0.2M)
 <u>Savings and Loans</u>	 <u>FY 00-01</u>	 <u>FY 01-02</u>
General Revenue	(\$0.2M)	(\$0.2M)
Solid Waste Management T.F.	(*)	(*)
Local	(\$0.1M)	(\$0.1M)
 <u>Revolving Lines of Credit</u>	 <u>FY 00-01</u>	 <u>FY 01-02</u>
General Revenue	(\$0.1M)	\$0
Solid Waste Management T.F.	(*)	\$0
Local	(*)	\$0

<u>Cigar Manufacturers</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(*)	(*)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
<u>Consolidated Returns</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(0.1M)	0
Solid Waste Management T.F.	0	0
Local	0	0
<u>People Mover Systems</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(0.2M)	(0.3M)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
<u>Movable Receptacles</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(0.2M)	(0.2M)
Solid Waste Management T.F.	(*)	(*)
Local	(*)	(*)
<u>Total</u>	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$3.4M)	(\$2.8M)
Solid Waste Management T.F.	(*)	(*)
Local	(\$0.3M)	(\$0.3M)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III.A.1.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The changes to municipal revenue sharing result in a positive \$0.7 million to local governments and a negative \$0.7 million to general revenue for FY 00-01. For FY 01-02, the fiscal impact is a positive \$7.6 million to local governments and a negative \$7.6 million to general revenue.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

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This bill does not require counties or municipalities to spend funds or to take any actions requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill will reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON Finance and Taxation:

Prepared by:

Lynne Overton

Staff Director:

Alan Johansen

FINAL ANALYSIS PREPARED BY THE COMMITTEE ON APPLICATIONS:

Prepared by:

Lynne Overton

Staff Director:

Alan Johansen