

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-06 Relating to General Tax Administration from DOR

SPONSOR(S): Finance & Tax Subcommittee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Pewitt	Langston

SUMMARY ANALYSIS

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

This bill:

- Permanently eliminates the requirement for a personal representative to file a Florida estate tax return.
- Clarifies the application of current criminal penalties regarding any person who willfully fails to collect a tax or fee, who makes a false or fraudulent return with willful intent, or who engages in acts that require a certificate of registration and "fails or refuses" to register or willfully fails to register after the Department provides notice.
- Provides that the Department can require individuals and entities seeking to obtain a dealer's certificate of registration to post a cash deposit, bond, or other security if that business will be operated at an identical location of a previous business that would have been required to post such security. This requirement can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated.
- Clarifies a provision requiring the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected to conform to a similar law changes made by the Legislature in 2010.
- Increases the Department of Revenue's authority to compromise when there is doubt as to liability or collectability by reducing tax assessed from \$250,000 up to \$500,000.
- Provides definitions for "automated sales suppression device" or "zappers" and "phantom-ware", and criminalizes the knowing sale, purchase, installation, transfer, or possession of such software or software devices that can be used to falsify the records of electronic cash registers and other point-of-sale systems.
- Provides the Department can use driver's license images for use in establishing positive identification for tax administration purposes.
- Establishes a requirement for employers to comply with all work records requested during an audit as a prerequisite to earn the lower, unemployment tax contribution rate instead of the "standard rate" at 5.4%. The bills further standardizes the interest rate provisions for unemployment tax and make them the same rate as is applied to other taxes administered by the Department.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Section 1. Estate Tax Return Requirements

Present situation

Effective January 1, 2005, Florida's estate tax has not been in effect due to a federal law eliminating tax credits against the federal estate tax, upon which Florida's estate tax is based. These provisions were set to expire on January 1, 2012, but they have been permanently extended, thus in effect eliminating Florida's estate tax. Section 198.13, F.S., eliminates the requirement for a personal representative to file a Florida estate tax return for the period January 1, 2005 through December 31, 2012.

Proposed change

The bill eliminates the expiration date of December 31, 2012 for this provision, thus permanently and retroactively removing the requirement for a personal representative to file a Florida estate tax return. This section will become effective upon becoming law.

Section 2. Failure to Collect; Penalties

Present situation

Provisions in s. 212.07(1)(b), F.S., provide that a resale must be in strict compliance with s. 212.18, F.S., and the rules and regulations of the Department. A dealer who makes a sale for resale that is not in strict compliance with 212.18, F.S., shall himself or herself be liable for and pay the tax due. Dealer guidelines for sales for resale are established and supported by rules of the Department. Section 212.07(3), F.S., establishes that any dealer who fails, neglects, or refuses to collect the tax is guilty of a first degree misdemeanor.

Proposed change

This bill amends s. 212.07(3), F.S., to clarify that a dealer who willfully fails to collect a tax or fee after receiving notice from the Department is liable for the uncollected tax or fee and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This section also provides that the Department may contact the dealer in violation by personal service, registered mail, or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 3 & 5. This bill also corrects a cross reference in s. 212.07(1).

Section 3. False or Fraudulent Return; Penalties

Present situation

Provisions in s. 212.12, F.S., establish rules regarding a person (dealer) who makes false or fraudulent returns and/or fails to register as a dealer. The Department will contact a person by written notice with a "failure to register" letter followed, if needed, by an intentional failure to collect letter. The provisions cited under s. 775.082, s. 775.083, and s. 775.084, F.S., provide the civil and criminal penalties imposed upon these violators.

Proposed change

This bill amends s. 212.12(2)(d), F.S., to provide that a person who makes a false or fraudulent return with willful intent is liable for the uncollected taxes or fees and subject to criminal penalties that are graduated based on the number of offenses and amount of taxes or fees that go uncollected. This amended section is related to similar changes made in sections 2 & 5. This section will become effective upon becoming a law.

Section 4. Security Requirements for New Registrations

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 dealer's certificate of registration. Despite this requirement, some delinquent sales tax dealers are able to close down their businesses with outstanding tax liabilities and reopen under a new name, allowing the dealers to repeatedly fail to remit sales and use tax for successive businesses. Delinquent dealers can engage in this activity because the current provisions in s. 212.14(4), F.S., do not clearly apply to all of the individuals who were operating, or all who had an ownership interest in, the prior businesses.

Proposed change

This bill amends s. 212.14(4), F.S., to define which individuals or entities the Department can require to produce a cash deposit, bond, or other security. Included in this list of individuals and entities are not only those who had an ownership interest or a controlling interest in a business that would otherwise be liable for posting a cash deposit, bond, or other security, but those individuals and entities seeking to obtain a dealer's certificate of registration for a business that will be operated at an identical location of a previous business that would have otherwise been liable for posting a cash deposit, bond, or other security. These requirements can be waived if absence of tax liability or an arms-length transfer of the business can be demonstrated. The bill further allows the Department to adopt rules necessary to administer this subsection.

Section 5. Failure to Register; Penalties

Present situation

In s. 212.18(3), F.S., guidelines are provided for persons who want to engage in and conduct business within the state as a dealer. The Department also grants certificates of registration for each place of business. The failure or refusal of any person, firm, co-partnership, or corporation to follow these rules is a first degree misdemeanor and is subject to injunctive proceedings as provided by law.

Proposed change

This bill amends s. 212.18(3)(c), F.S., to clarify that any person that engages in acts that require a certificate of registration and "fails or refuses" to register, commits a misdemeanor of the first degree. This bill also adds s. 212.18(3)(c)2., F.S., to provide that a person who willfully fails to register after the Department provides notice, commits a felony of the third degree, punishable as proscribed in law. This section further provides that the Department shall give written notice of the duty to register to the person through registered mail, personal service or both. This section will become effective upon becoming a law. This amended section is related to similar changes made in sections 2 & 3.

Section 6. Electronic Remittance and Distribution of Funds by the Clerk of Courts

Present situation

In 2010, the Legislature passed ch. 2010-162, L.O.F., that changed the remittance date for funds collected by the clerks of the court from the 20th to the 10th day of the month immediately following the month in which the funds are collected. A conforming provision in s. 213.13, F.S., regarding electronic remittance was not updated after the law change.

Proposed change

This bill amends s. 213.13(5), F.S., to require the clerks of the court to transmit all court-related collections electronically by the 10th of the month immediately following the month in which the funds are collected. This section is effective upon becoming a law and will apply retroactively to July 1, 2010.

Section 7. Informal Conferences; Compromises

Present Situation

Section 213.13, F.S., allows the Executive Director of the Department of Revenue to enter into an agreement to accept less than the tax allegedly owed if there is a doubt as to liability or collectability of the tax assessed. The statute limits the Department's compromise authority to reduce tax by no more than \$250,000.

Proposed Changes

The bill increases the Department's compromise limit from \$250,000 to \$500,000.

Section 8. Automated Sales Suppression Devices or "Zappers"

Present situation

The Department has identified a practice of retailers using automated sales suppression software programs ("zappers") and/or "phantom-ware" to falsify the records of electronic cash registers and other point-of-sale systems. In effect, the technologies allow dealers to create a fraudulent, virtual second set of books by which the dealers are able to evade sales taxes.

Proposed change

The bill creates s. 213.295, F.S., defines zappers and phantom-ware, and criminalizes the knowing sale, purchase, installation, transfer, or possession of phantom-ware in this state. This section provides that any person in violation of this section shall be guilty of a felony of the third degree and shall be liable for all taxes, fees, penalties, and interest due to the state; the dealer shall also forfeit to the state all profits associated with the sale or use of the zappers or phantom-ware. Finally, the bill classifies zappers and phantom-ware as contraband articles under s. 932.701-932.706, F.S., the Florida Contraband Forfeiture Act. This section will become effective upon becoming a law.

Section 9. Identity Confirmation; Interagency Agreements

Present situation

Currently, Department staff during an audit does not have a way to verify the identity of a business owner prior to visiting a business. In some cases, Department staff cannot be sure that the person with whom they are working during a field visit is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles (DHSMV) maintains a file of the digital images and signatures of driver's license holders. Currently, these DHSMV records can be shared with the Department through an interagency agreement for child support enforcement purposes but not for other uses.

Proposed change

The bill amends s. 322.142, F.S., to allow the Department to use driver's license images for use in establishing positive identification for tax administration purposes.

Section 10. Standard Rate for Non-Compliance with Audit Record Requests; Reemployment Tax

Present situation

Florida law provides a standard reemployment tax rate, and allows many employers to earn a lower rate if they meet certain compliance conditions set forth in s. 443.131(3)(h), F.S. However, under the current requirements to meet the compliance standards, it does not explicitly state that the taxpayer must comply with records requests to qualify for the reduced tax rate pursuant to s. 443.171(5), F.S.

Proposed change

This bill amends s. 443.131, F.S., to require an employer to comply with records requests as a prerequisite for that employer to earn the lower, reemployment tax contribution rate. In order to receive the lower contribution rate, the employer must produce all work records requested during an audit by the DEO or the state agency providing tax collection services pursuant to s. 443.171(5), F.S. This section will become effective upon becoming a law.

Section 11. Floating Interest Rate; Reemployment Tax

Present situation

Section 443.141(1)(a), F.S., states that reemployment assistance tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month (an effective rate of 12 percent annually). Other payment deficiencies on taxes that the Department administers have an interest rate of prime plus 4 percent but not to exceed an effective rate of 1 percent per month, adjusted twice per year.

Proposed change

This bill amends s. 443.141(1)(a), F.S., to adjust the interest rate applied to contributions or reimbursements unpaid on the date due. The current interest rate of 1 percent will carry on through December 31, 2013. Beginning January 1, 2014, the interest rate shall be calculated in accordance with s. 213.235, F.S., except that the rate of interest shall never be greater than 1 percent per month. This bill would reduce the interest rate provisions for reemployment tax and make them the same rate as is applied to other taxes administered by the Department. This section will become effective January 1, 2014.

Section 12. Effective Date

This act shall take effect July 1, 2013, except as expressly provided within the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on March 8, 2013, and estimated that the provisions relating to the standard reemployment tax rate for failure to provide records, criminalization of "zappers," and security requirements for sales tax dealers will have positive, indeterminate impacts on state general revenues and trust fund revenues. The provision relating to the Department's compromise authority will have an indeterminate impact of unknown direction on state general revenues and trust fund revenues. The provision relating to the interest rate on late reemployment tax remittances will have a negative insignificant general revenue impact in FY2013-2014 (-\$0.1 million recurring), and a -\$0.6 million state trust fund impact (-\$1.2 million recurring).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on March 8, 2013, and estimated that the provisions relating to the standard reemployment tax rate for failure to provide records, criminalization of "zappers," and security requirements for sales tax dealers will have positive, indeterminate impacts on local revenues. The provision relating to the Department's compromise authority will have an indeterminate impact of unknown direction on local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce the interest paid by some taxpayers who remit their reemployment tax payments late.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Revenue authority to adopt rules to administer their ability to require cash bonds from some sales tax dealers.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES