

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1001 Taxation

SPONSOR(S): Ways & Means Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee		Rexford	Aldridge

SUMMARY ANALYSIS

The bill makes the following changes:

Sales Tax

- Removes the requirement that nonresident purchasers attest to having read statutory provisions and instead requires nonresident purchasers complete an affidavit that acknowledges compliance with the pertinent provisions of the statute.
- Clarifies that a boat and a boat trailer sold to the same purchaser at the same time and with both items located on the same invoice, are considered a single item for discretionary sales surtax purposes. Also, the sale of the boat and the trailer is deemed to occur in the county where the purchaser resides.

Other Taxes

- For the pollutant tax, obsolete language is removed for a \$30 registration fee repealed in 2017.
- For corporate tax, the tentative tax return underpayment amount increases from more than the greater of \$2,000 or 30% of the tax shown on the return when filed to more than \$6,000 or 30% of the tax shown on the return when filed.

Administrative Updates

- Allows the Department of Revenue to reopen a final assessment or refund denial for purposes of settling or compromising a liability if the failure to initiate a timely challenge was the result of a specified qualifying event beyond the control of the taxpayer.
- Authorizes the Department of Revenue to include all additional daily accrued interests, costs, and fees authorized by law to be included in garnishment levy and allows the Department to deliver its notices of levy by electronic means.

The Revenue Estimating Conference (REC) adopted discrete estimated impacts on state and local government revenues for different sections of the bill. See Fiscal Comments section for details.

The effective date of this bill is July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Affidavit for Non-Resident Purchaser of Boat/Aircraft

Current Situation

Under current law, nonresident purchasers of boats and aircrafts qualify for a sales tax exemption, provided that certain application requirements are met.¹ One of the requirements is that nonresident purchasers of boats and aircrafts must provide the Department an original signed affidavit attesting that he or she read the provisions of s. 212.05, F.S. That statute provides for the exemption and includes the process to document the purchaser's qualification for the exemption. The statutory affidavit requirement does not require that the purchaser understand the exemption or documentation requirements, or that they attest they will comply with the provisions.

Effect of Proposed Change

The bill removes the requirement that nonresident purchasers attest to having read statutory provisions and replaces it with the requirement that nonresident purchasers complete an affidavit that affirms that the nonresident purchaser qualifies for the exemption from sales tax pursuant to s. 212.05(1)(a)2., F.S., and attests that the nonresident purchaser will provide the documentation necessary to substantiate its qualification for the exemption.

Boat and Boat Trailer Sales

Current Situation

Florida Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property, admissions,² transient rentals,³ rental of commercial real estate,⁴ and a limited number of services. Chapter 212, F.S., authorizes the levy and collection of Florida's sales and use tax, and provides exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the sales price of the taxable good or service and is collected from the purchaser at the time of sale.⁵

Discretionary Sales Surtax

In addition to the state tax, s. 212.055, F.S., authorizes counties to impose nine local option sales surtaxes. A surtax applies to "all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by [ch. 212, F.S.], and communications services as defined in ch. 202."⁶ The discretionary sales surtax is based on the tax rate imposed by the county where the taxable goods or services are sold, or are delivered.⁷ Discretionary sales surtax rates currently levied vary by county in a range from 0.5 to 2 percent.⁸

¹ S. 212.05, F.S.

² S. 212.04, F.S.

³ S. 212.03, F.S.

⁴ S. 212.031, F.S.

⁵ S. 212.07(2), F.S., and s. 212.06(3)(a), F.S.

⁶ S. 212.054, F.S.

⁷ S. 212.054(2), F.S.

⁸ Office of Economic and Demographic Research, The Florida Legislature, *Florida Tax Handbook*, 2023 Local Discretionary Sales Surtax Rates in Florida's Counties, 235-236, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2023.pdf> (last visited Jan. 11, 2024).

Sales above \$5,000 on one item are not subject to the discretionary sales surtax.⁹ However, two or more items of tangible personal property will be considered a single item for the purposes of the \$5000 threshold if the items are sold to the same purchaser at the same time and are sold together under a generally accepted business practice, sold in bulk, or the items sold together make a working unit when assembled.¹⁰

Effect of Proposed Change

The bill amends s. 212.054(1)(b)1., F.S., to clarify that a boat and a corresponding boat trailer sold to the same purchaser at the same time and with both items located on the same invoice, are considered a single item for discretionary sales surtax purposes. The bill also amends s. 212.054(3)(a), F.S., to clarify that the sale of the boat and boat trailer is deemed to occur in the county where the purchaser resides, as shown on the title or registration documents, for discretionary sales surtax purposes.

Pollutant Tax Registration Fee

Current Situation

Under current law, any person producing in, importing into, or causing to be imported into this state taxable pollutants for sale, use, or otherwise and who is not registered or licensed is required to register and become licensed. Such person must register as either a producer or importer of pollutants and is subject to all applicable registration and licensing provisions of ch. 206, F.S. Registrations must be made prior to the first production or importation of pollutants for businesses created after July 1, 1986. Failure to timely register is a misdemeanor of the first degree. A registration fee of \$30 was repealed in 2017.¹¹

Effect of Proposed Change

The bill amends s. 206.9931(1), F.S., to remove obsolete language for the pollutant tax registration fee repealed in 2017.

Corporate Income Tax Returns

Florida levies a 5.5 percent tax on the taxable income of corporations and financial institutions doing business in Florida.¹² A corporate income taxpayer is required to file a Florida income tax return in every year that it is liable for Florida corporate income tax or is required to file a federal income tax return.¹³ The due dates to file several tax returns related to corporate income tax are tied to the federal law. Most corporate taxpayers¹⁴ follow a calendar-year taxable year¹⁵ and must file income tax returns on or before the first day of the 5th month following the close of the tax year. When a Florida corporation is granted an extension of time to file its federal return, the taxpayer may file an extension of time to file its Florida return. If granted, the extended Florida due date will be the 15th day after the expiration of the 6-month federal extension.¹⁶

If a taxpayer extends the time to file its Florida return, Florida law requires the taxpayer to file and pay a tentative tax return, which is due on or before the federal due date.¹⁷ A taxpayer fails to satisfy the tentative tax return requirement if it underpays the required payment by more than the greater of

⁹ S. 212.054(2)(b)1., F.S.

¹⁰ *Id.*

¹¹ S. 206.9931(1), F.S.

¹² S. 220.11(2), F.S.

¹³ S. 220.22, F.S.

¹⁴ 89.01% of corporate tax filers follow the calendar-year taxable year. Email from Matthew Cutillo, Chief Economist at Florida Department of Revenue, dated January 10, 2024 (on file with the staff of the Ways & Means Committee).

¹⁵ Some corporate taxpayers have a taxable year that ends on June 30th, they must file returns on or before the 1st day of the 4th month after the close of the taxable year. S. 220.222(1)(b), F.S.

¹⁶ For corporate taxpayers with a taxable year ending on June 30th, the extension is 15 days 7 months from the original due date. S. 220.222(2)(d), F.S.

¹⁷ S. 220.222(2), F.S.

\$2,000 or 30% of the tax shown on the return when filed. Underpayment results in a loss of the extension and the taxpayer must pay penalties and the interest due on the unpaid tax due.¹⁸

Effect of Proposed Changes

The bill amends s. 220.222, F.S. to increase the tentative tax return underpayment amount from more than the greater of \$2,000 or 30% of the tax shown on the return when filed to more than the greater of \$6,000 or 30% of the tax shown on the return when filed.

Qualified Event Impacting Timely Challenge

Current Situation

The Department does not have the authority to reopen a final assessment or refund denial following the expiration of all taxpayer appeal rights under the law for purposes of adjusting or compromising the liability of a taxpayer.

Effect of Proposed Change

The bill creates s. 213.21(11), F.S., to allow the Department to reopen a final assessment or refund denial for purposes of settling or compromising a liability if the failure to initiate a timely challenge was the result of a specified qualifying event (footnote and state) which were beyond the control of the taxpayer. The bill requires that a request to reopen an assessment or refund denial for a qualifying event occur no later than 180 after the time for filing a contest has expired. The bill also clarifies that any decision by the Department regarding a taxpayer’s request to compromise or settle a liability is not a final order subject to review under ch. 120, F.S.

A qualifying event includes:

- The death or life-threatening injury or illness of:
 - The taxpayer;
 - An immediate family member of the taxpayer; or
 - An individual with substantial responsibility for the management or control of the taxpayer;
- An act of war or terrorism; or
- A natural disaster, fire, or other catastrophic loss.

Garnishment Notice

Current Situation

Section 213.67, F.S., provides the statutory framework for the Department’s garnishment authority. This includes the authority to issue a levy upon credits, other personal property, or debts belonging to a delinquent taxpayer for any taxes, penalties, and interest owed. Under current law, the levy does not include additional daily interest accrued after the date of the levy, or the authority to issue notice to levy notices by electronic means.

Effect of Proposed Change

The bill amends s. 213.67, F.S., to authorize the Department to include all additional daily accrued interests, costs, and fees authorized by law to be included in garnishment levy. The bill allows the Department to deliver its notices of levy by electronic means.

B. SECTION DIRECTORY:

Section 1: Amends s. 206.9931, F.S., removing obsolete language for a \$30 pollutant tax registration fee repealed in 2017.

¹⁸ S. 220.32(3), F.S.
STORAGE NAME pcs1001.WMC
DATE 1/29/2024

- Section 2: Amends s. 212.05, F.S., removing the requirement that nonresident purchasers attest to having read statutory provisions and instead requires nonresident purchasers complete an affidavit that acknowledges compliance with the pertinent provisions of the statute.
- Section 3: Amends s. 212.054, F.S., clarifying that a boat and a boat trailer sold to the same purchaser at the same time and with both items located on the same invoice, are considered a single item for discretionary sales surtax purposes. Clarifies that the sale of the boat and the trailer is deemed to occur in the county where the purchaser resides.
- Section 4: Amends s. 213.21, F.S., allowing the Department of Revenue to reopen a final assessment or refund denial for purposes of settling or compromising a liability if the failure to initiate a timely challenge was the result of a specified qualifying event beyond the control of the taxpayer.
- Section 5: Amends s. 213.67, F.S., authorizing the Department of Revenue to include all additional daily accrued interests, costs, and fees authorized by law in garnishment levy and allows the Department to deliver its notices of levy by electronic means.
- Section 6: Amends s. 220.222, F.S. to increase the tentative tax return underpayment amount to more than the greater of \$6,000 or 30% of the tax shown on the return when filed.
- Section 7: Authorizes the Department of Revenue to adopt emergency rules for the purpose of implementing the act. Clarifies that adopted emergency rules are effective for 6 months after adoption and may be renewed during procedures to adopt permanent rules addressing the subject of the emergency rules.
- Section 8: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

The Department of Revenue indicated that it would incur operational expenses of \$1,889 in FY 2023-24 and \$35,048 in FY 2024-25 to implement the provisions of the bill. The Department indicated that it would absorb the FY 2023-24 operational impact.¹⁹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See FISCAL COMMENTS section.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Revenue Estimating Conference (REC) adopted discrete estimated impacts on state and local government revenues for different sections of the bill. The estimated impacts on state government revenues are as follows:

- Allowing the Department of Revenue to reopen a final assessment or refund denial if the failure to initiate a timely challenge was the result of a specified qualifying event beyond the control of the taxpayer will have a negative, indeterminate impact on state tax revenue.
- Authorizing the Department of Revenue to include all additional daily accrued interests, costs, and fees authorized by law in garnishment levy and to deliver notices of levy for electronic means will have a positive, indeterminate impact on state tax revenue.
- Increasing the tentative tax return underpayment amount to more than the greater of \$6000 or 30% of the tax shown on the return when filed will have a negative, indeterminate impact on state tax revenue.

The estimated impacts on local government revenues are as follows:

- Clarifying that a boat and a boat trailer sold together under certain circumstances are considered a single item for discretionary sales surtax purposes will have a negative, indeterminate impact on local government tax revenue.
- Allowing the Department of Revenue to reopen a final assessment or refund denial if the failure to initiate a timely challenge was the result of a specified qualifying event beyond the control of the taxpayer will have a negative, indeterminate impact on local tax revenue.
- Authorizing the Department of Revenue to include all additional daily accrued interests, costs, and fees authorized by law in garnishment levy and to deliver notices of levy for electronic means will have a positive, indeterminate impact on local tax revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to directly affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Department of Revenue to adopt emergency rules for the purpose of implementing the act. Adopted emergency rules are effective for 6 months after adoption and may be renewed during procedures to adopt permanent rules addressing the subject of the emergency rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES