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# Finance and Tax Subcommittee

Thursday, March 14, 2013

4:00 p.m.

Morris Hall

MEETING PACKET

# The Florida House of Representatives

## Finance and Tax Subcommittee



**Will Weatherford**  
Speaker

**Ritch Workman**  
Chair

### AGENDA

March 14, 2013

4:00 p.m.

Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks

#### **Consideration of the following bill(s):**

HB 4013 Tax Refund Programs by Santiago

CS/HB 423 Tax On Sales, Use & Other Transactions by Agriculture & Natural Resources Subcommittee, Adkins

HB 555 Tourist Development Tax by Hooper

CS/HB 579 Natural Gas Motor Fuel by Energy & Utilities Subcommittee, Ray

HB 633 Biodiesel Fuel by Perry

HB 837 Tax Collectors by Mayfield

#### **Consideration of the following proposed committee bill(s):**

PCB FTSC 13-02 -- Relating to Sales and Use Tax

PCB FTSC 13-04 -- Relating to Corporate Income Tax

PCB FTSC 13-06 -- Relating to Tax Administration

- III. Closing Remarks and Adjournment



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 4013 Tax Refund Programs  
**SPONSOR(S):** Santiago  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 236

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	12 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee		Pewitt <i>J</i>	Langston <i>A</i>
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for both the Qualified Target Industry and Qualified Defense and Space Flight Business Programs. The current limits imposed on the percentage of total award and the dollar amount a qualifying project could receive in a given fiscal year would remain in effect.

These programs are subject to annual appropriation by the Legislature.

The bill has an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Qualified Target Industry Tax Refund

The Qualified Target Industry Tax Refund (QTI), established in 1995, serves to attract new high quality, high wage jobs for Floridians. Tax refunds are made to qualifying, pre-approved businesses creating new jobs within Florida's target industries. All QTI projects include a performance-based contract with the state, which outlines specific milestones that must be achieved and verified by the state prior to payment of refunds.

This incentive requires that 20 percent of the award comes from the local city or county government, but that may be reduced by one-half for a qualified target industry business located in the counties of Bay, Escambia, Franklin, Gadsden, Gulf, Jefferson, Leon, Okaloosa, Santa Rosa, Wakulla or Walton. The reduction in local match is determined by the Department of Economic Opportunity and based on a determination that the project facilitates economic development, growth, or new employment within the previously referenced counties, and is in the best interest of the state.

The program also requires that a project must propose to create at least 10 new jobs, or in the case of a business expansion must result in a net increase in employment of at least 10 percent at that business. The jobs proposed to be created or retained must pay an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage. The statewide private sector average wage being used currently is \$40,555<sup>1</sup>.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is \$3,000 per employee, and the maximum amount is \$11,000 per employee over the term of the incentive agreement. Jobs created in rural communities and enterprise zones, as well as those paying higher annual average wages, are eligible for more incentives.

Since the inception of the QTI program, 1,134 applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, above the initial commitment to create 19,094. In fiscal year 2011-2012, \$58,063,500 in QTI incentives were awarded.<sup>2</sup>

##### Qualified Defense and Space Contractor Tax Refund

The Qualified Defense and Space Contractor Tax Refund (QDSC), established in 1996, serves to attract new high quality, high wage jobs for Floridians in the defense and space industries. Tax refunds are made to qualifying, pre-approved businesses bidding on new competitive contracts or consolidating existing defense or space contracts. This incentive is a partnership between the State and local community—20 percent of the award comes from the local city or county government. All QDSC projects include a performance-based contract with the State of Florida, which outlines specific milestones that must be achieved and verified by the State prior to payment of refunds.

<sup>1</sup> Enterprise Florida Inc., *State of Florida Incentives Average Wage Requirements*; 2012

<sup>2</sup> Enterprise Florida, Inc, *2012 Annual Incentive Report*; 2012

Like QTI, the program requires that jobs created by a QDSC project have an average annual wage of at least 115% of the average private sector wage in the area where the business is located, or the statewide private sector average wage.

The amount of the refund is based on the average wages paid by the business, number of jobs created, and where in the state the eligible business chooses to locate or expand. The minimum tax refund is \$3,000 per employee, and the maximum amount is \$8,000 per employee over the term of the incentive agreement.

Since the QDSC project's inception, 22 QDSC applications have been approved, 15 contracts, have been executed, and 5 projects have been completed. Of those 15 executed contracts, 6 remain active. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their commitment to create 795 new jobs. In fiscal year 2011-2012, \$2,180,000 in QDSC incentives were awarded.<sup>3</sup>

### QTI/QDSC Program Limits

Sections 288.106 and 288.1045, Florida Statutes, set the criteria for the QTI and QDSC programs. Included in these criteria are limits on awards for qualified projects under both programs. The limits include:

- The QTI and QDSC programs limit applicants to 25 percent of the total tax refunds in any given fiscal year.
- The QDSC program limits applicants to \$2.5 million in tax refunds in any given fiscal year.
- The QTI program limits applicants to \$1.5 million in tax refunds in any given fiscal year or \$2.5 million if the project is located within an enterprise zone.
- The QDSC program limits applicants to \$7 million in tax refunds over all fiscal years.
- The QTI program limits applicants to \$7 million in tax refunds over all fiscal years, or \$7.5 million if the project is located within an enterprise zone.

### Proposed Changes

The bill eliminates the maximum amount of tax refunds a business could receive over all fiscal years for the QTI and QDSC programs. The limits imposed on the percentage of total award and dollar amount a qualified project could receive in a single fiscal year would remain in effect.

#### B. SECTION DIRECTORY:

Section 1: Amends s. 288.1045 F.S., by removing program limits for applicants to the Qualified Defense Contractor or Space Flight Business Tax Refund Program.

Section 2: Amends s. 288.106 F.S., by removing program limits for applicants to the Qualified Target Industry Tax Refund Program.

Section 3: Provides an effective date of July 1, 2013.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

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<sup>3</sup> Enterprise Florida, Inc., *2012 Annual Incentive Report*; 2012  
STORAGE NAME: h4013b.FTSC.DOCX  
DATE: 3/5/2013

None.

2. Expenditures:

This bill could increase the number of businesses who would qualify for future awards by removing a lifetime cap on receipt of the eligible tax refunds. The amount of additional awards, if any, is unknown. However, both the QTI and QDSC programs' funding are subject to an annual appropriation in the General Appropriation Act, so any additional impact would require specific Legislative appropriation. Further, both programs are included in an annual cap of \$35 million in total awards issued by the Department of Economic Opportunity for programs funded through the Economic Development Incentives Account<sup>4</sup>.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would increase the number of jobs created or retained in the state if additional businesses that qualify for the tax refund programs decide to locate or expand in Florida as a result of the programs.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

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<sup>4</sup> Section 288.095(3)(a) F.S.  
STORAGE NAME: h4013b.FTSC.DOCX  
DATE: 3/5/2013

#### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES



HB 4013

2013

1 A bill to be entitled  
 2 An act relating to tax refund programs; amending ss.  
 3 288.1045 and 288.106, F.S.; deleting caps on tax  
 4 refunds for qualified defense contractors and space  
 5 flight businesses and for qualified target industry  
 6 businesses; providing an effective date.

7  
 8 Be It Enacted by the Legislature of the State of Florida:

9  
 10 Section 1. Present paragraphs (d) through (h) of  
 11 subsection (2) of section 288.1045, Florida Statutes, are  
 12 redesignated as paragraphs (c) through (g), respectively, and  
 13 present paragraph (c) of that subsection is amended, to read:

14 288.1045 Qualified defense contractor and space flight  
 15 business tax refund program.—

16 (2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

17 ~~(c) A qualified applicant may not receive more than \$7~~  
 18 ~~million in tax refunds pursuant to this section in all fiscal~~  
 19 ~~years.~~

20 Section 2. Paragraph (c) of subsection (3) of section  
 21 288.106, Florida Statutes, is amended to read:

22 288.106 Tax refund program for qualified target industry  
 23 businesses.—

24 (3) TAX REFUND; ELIGIBLE AMOUNTS.—

25 (c) A qualified target industry business may not receive  
 26 refund payments of more than 25 percent of the total tax refunds  
 27 specified in the tax refund agreement under subparagraph  
 28 (5)(a)1. in any fiscal year. Further, a qualified target

HB 4013

2013

29 | industry business may not receive more than \$1.5 million in  
30 | refunds under this section in any single fiscal year, or more  
31 | than \$2.5 million in any single fiscal year if the project is  
32 | located in an enterprise zone. ~~A qualified target industry~~  
33 | ~~business may not receive more than \$7 million in refund payments~~  
34 | ~~under this section in all fiscal years, or more than \$7.5~~  
35 | ~~million if the project is located in an enterprise zone.~~  
36 |       Section 3. This act shall take effect July 1, 2013.


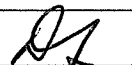


## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 423 Tax On Sales, Use, & Other Transactions

**SPONSOR(S):** Adkins

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
2) Finance & Tax Subcommittee		Flieger 	Langston 
3) State Affairs Committee			

### SUMMARY ANALYSIS

Under current law, a 6 percent sales and use tax is levied pursuant to ch. 212, F.S., on the sales price of dyed diesel fuel purchased for use in a vessel.

Dyed diesel fuel is used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. Dyed diesel is exempt from the fuel taxes imposed by ch. 206, F.S.

The bill provides an exemption from the sales and use tax on dyed diesel fuel that is used for commercial fishing and aquacultural purposes.

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative revenue impact of \$1.7 million to state government in FY 2013-2014 (-\$1.8 million recurring). That impact will exclusively affect the State Transportation Trust Fund. There will also be a negative impact to local governments, estimated by staff at approximately \$0.2 million annually.

The bill has an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Section 212.05(1)(k), F.S., provides that the sales and use tax rate of 6 percent is to be levied on the sales price of dyed diesel fuel that is purchased for use in a vessel.

Dyed diesel fuel is generally used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is typically dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. Diesel fuel that is not dyed is subject to the fuel tax imposed under ch. 206, F.S., however as discussed above dyed diesel is still subject to the sales and use tax unless specifically exempted.

Section 206.41(4)(c)3, F.S., provides that "commercial fishing and aquacultural purposes" means motor fuel used in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

##### Effect of Proposed Changes

The bill amends ss. 212.05, 212.0501, and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel used for commercial fishing and aquacultural purposes as defined in s. 206.41(4)(c)3., F.S.

#### B. SECTION DIRECTORY:

**Section 1:** Amends s. 212.05, F.S.; providing an exemption from sales and use tax for dyed diesel fuel used in vessels used for commercial fishing and aquacultural purposes.

**Section 2:** Amends s. 212.0501, F.S., providing an exemption from sales and use tax on dyed diesel fuel for dyed diesel fuel used for commercial fishing and aquacultural purposes.

**Section 3:** Amends s. 212.08, F.S.; providing an exemption from sales and use tax for dyed diesel fuel used for commercial fishing and aquacultural purposes.

**Section 4:** Provides an effective date of July 1, 2013.

### II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative revenue impact of \$1.7 million to state government in FY 2013-2014 (-\$1.8 million recurring). That impact will exclusively affect the State Transportation Trust Fund.

##### 2. Expenditures:

None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

Based on the state impact, staff estimates that there will be a negative impact to local governments of approximately \$0.2 million annually.

2. Expenditures:

None

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Commercial fishermen and aquaculturists will benefit from the sales tax exemption on dyed diesel fuel used to operate their commercial fishing vessels.

**D. FISCAL COMMENTS:**

The negative impact to the state will exclusively affect the State Transportation Trust Fund.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill reduces local government's ability to raise revenue; however, the insignificant fiscal impact exemption may apply as staff estimate the impact to be negative \$0.2 million annually.

2. Other:

None

**B. RULE-MAKING AUTHORITY:**

None

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 20, 2013, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment to HB 423. The strike-all amendment extends the sales tax exemption for dyed diesel fuel to vessels used for commercial fishing and aquacultural purposes as well as vessels used for the taking of shrimp.

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A bill to be entitled  
 An act relating to the tax on sales, use, and other transactions; amending s. 212.05, F.S.; providing an exception to sales tax for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.0501, F.S.; providing an exception from sales tax collected by a licensed sales tax dealer for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; amending s. 212.08, F.S.; providing a sales tax exemption for dyed diesel fuel used in vessels for commercial fishing and aquacultural purposes; providing an effective date.

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

Section 1. Paragraph (k) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on

29 each taxable transaction or incident, which tax is due and  
 30 payable as follows:

31 (k) At the rate of 6 percent of the sales price of each  
 32 gallon of diesel fuel not taxed under chapter 206 purchased for  
 33 use in a vessel, except dyed diesel fuel that is exempt pursuant  
 34 to s. 212.08(4)(a)4.

35 Section 2. Subsection (4) of section 212.0501, Florida  
 36 Statutes, is amended to read:

37 212.0501 Tax on diesel fuel for business purposes;  
 38 purchase, storage, and use.—

39 (4) Except as otherwise provided in s. 212.05(1)(k), a  
 40 licensed sales tax dealer may elect to collect such tax pursuant  
 41 to this chapter on all sales to each person who purchases diesel  
 42 fuel, except dyed diesel fuel used for commercial fishing and  
 43 aquacultural purposes listed in s. 206.41(4)(c)3., for  
 44 consumption, use, or storage by a trade or business. When the  
 45 licensed sales tax dealer has not elected to collect such tax on  
 46 all such sales, the purchaser or ultimate consumer shall be  
 47 liable for the payment of tax directly to the state.

48 Section 3. Paragraph (a) of subsection (4) of section  
 49 212.08, Florida Statutes, is amended to read:

50 212.08 Sales, rental, use, consumption, distribution, and  
 51 storage tax; specified exemptions.—The sale at retail, the  
 52 rental, the use, the consumption, the distribution, and the  
 53 storage to be used or consumed in this state of the following  
 54 are hereby specifically exempt from the tax imposed by this  
 55 chapter.

56 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—



CS/HB 423

2013

57 (a) Also exempt are:

58 1. Water delivered to the purchaser through pipes or  
59 conduits or delivered for irrigation purposes. The sale of  
60 drinking water in bottles, cans, or other containers, including  
61 water that contains minerals or carbonation in its natural state  
62 or water to which minerals have been added at a water treatment  
63 facility regulated by the Department of Environmental Protection  
64 or the Department of Health, is exempt. This exemption does not  
65 apply to the sale of drinking water in bottles, cans, or other  
66 containers if carbonation or flavorings, except those added at a  
67 water treatment facility, have been added. Water that has been  
68 enhanced by the addition of minerals and that does not contain  
69 any added carbonation or flavorings is also exempt.

70 2. All fuels used by a public or private utility,  
71 including any municipal corporation or rural electric  
72 cooperative association, in the generation of electric power or  
73 energy for sale. Fuel other than motor fuel and diesel fuel is  
74 taxable as provided in this chapter with the exception of fuel  
75 expressly exempt herein. Motor fuels and diesel fuels are  
76 taxable as provided in chapter 206, with the exception of those  
77 motor fuels and diesel fuels used by railroad locomotives or  
78 vessels to transport persons or property in interstate or  
79 foreign commerce, which are taxable under this chapter only to  
80 the extent provided herein. The basis of the tax shall be the  
81 ratio of intrastate mileage to interstate or foreign mileage  
82 traveled by the carrier's railroad locomotives or vessels that  
83 were used in interstate or foreign commerce and that had at  
84 least some Florida mileage during the previous fiscal year of

85 the carrier, such ratio to be determined at the close of the  
86 fiscal year of the carrier. However, during the fiscal year in  
87 which the carrier begins its initial operations in this state,  
88 the carrier's mileage apportionment factor may be determined on  
89 the basis of an estimated ratio of anticipated miles in this  
90 state to anticipated total miles for that year, and  
91 subsequently, additional tax shall be paid on the motor fuel and  
92 diesel fuels, or a refund may be applied for, on the basis of  
93 the actual ratio of the carrier's railroad locomotives' or  
94 vessels' miles in this state to its total miles for that year.  
95 This ratio shall be applied each month to the total Florida  
96 purchases made in this state of motor and diesel fuels to  
97 establish that portion of the total used and consumed in  
98 intrastate movement and subject to tax under this chapter. The  
99 basis for imposition of any discretionary surtax shall be set  
100 forth in s. 212.054. Fuels used exclusively in intrastate  
101 commerce do not qualify for the proration of tax.

102 3. The transmission or wheeling of electricity.

103 4. Dyed diesel fuel placed into the storage tank of a  
104 vessel used exclusively for the commercial fishing and  
105 aquacultural purposes listed in s. 206.41(4)(c)3.

106 Section 4. This act shall take effect July 1, 2013.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 555 Tourist Development Tax

**SPONSOR(S):** Hooper

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Economic Development & Tourism Subcommittee	13 Y, 0 N	Collins	West
2) Finance & Tax Subcommittee		Flieger <i>BF</i>	Langston <i>AL</i>
3) Economic Affairs Committee			

**SUMMARY ANALYSIS**

The bill permits counties to use the tax revenues from the existing tourist development tax for purposes related to aquariums owned by not-for-profit organizations including the acquisition, construction, maintenance, or promotion of such aquariums.

The bill has no fiscal impact on state or local funds.

The bill has an effective date of July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

##### Tourist Development Tax

Section 125.0104, F.S., authorizes five separate tourist development taxes on transient rental transactions. Depending on a county's eligibility to levy, the tax rate varies from a minimum of 3 percent to a maximum of 6 percent. The levies may be authorized by vote of the county's governing authority or referendum approval. The revenues generated by the tax may be used in various ways to promote tourism, including capital construction of tourism-related facilities. The authorized uses of each local option tax vary according to the particular levy.

The tourist development tax may be levied at the rate of 1 or 2 percent. All 67 counties are eligible to levy this tax, and currently 62 levy this tax – all at 2 percent. Calhoun, Hardee, Lafayette, Liberty and Union counties do not levy any tourist development taxes. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

An additional tourist development tax of 1 percent may be levied by counties who have previously levied a tourist development tax at the 1 or 2 percent rate for at least 3 years. Currently 45 counties levy this tax. Revenue from this tax may be bonded to finance certain facilities and projects, but may not be used to service debt or refinance facilities receiving funding from a previously levied tourist development tax unless approved by an extraordinary vote of the governing board. This tax may only be levied after the ordinance is approved by a majority of voters in a referendum.

A professional sports franchise facility tax may be levied up to an additional 1 percent. Currently 36 counties levy this additional tax, and all 67 counties are eligible to levy this tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

An additional professional sports franchise facility tax no greater than 1 percent may be imposed by a county that has already levied the professional sports franchise facility tax. Out of 36 counties that levy a professional sports facility tax, 20 levy an additional professional sports franchise facility tax. Revenue can be used to pay debt service on bonds for the construction or renovation of professional sports franchise facilities, spring training facilities of professional sports franchises, and convention centers and to promote and advertise tourism.

A high tourism impact tax may be levied at an additional 1 percent. Five counties are eligible to levy this tax (Broward, Monroe, Orange, Osceola, and Walton). Of these five counties, Monroe, Orange, and Osceola levy this additional tax. Revenue from this tax may be bonded to finance certain facilities and projects, including financing revenue bonds.

Local option tourist taxes are significant revenue sources to Florida's county governments and represent important funding mechanisms for a variety of tourism-related expenditures such as beach and shoreline maintenance, construction of convention centers and professional sports franchise facilities, and tourism promotion. Generally, the revenues from these levies may be used for capital construction, maintenance, and promotion of tourist-related facilities, tourism promotion, and beach and shoreline maintenance. Tourist-related facilities include convention centers, sports stadiums and arenas, coliseums, zoos, auditoriums, aquariums and museums that are publically owned and operated

within the area that the tax is levied. Museums and zoos that are operated by not-for-profit organizations may also receive funding.

### Florida Aquariums

Visit Florida's website<sup>1</sup> lists over 25 attractions in the category of "aquarium," including the Key West Aquarium, the Miami Seaquarium, the Mote Marine Laboratory and Aquarium in Sarasota, the Florida Aquarium in Tampa, and the Florida's Gulfarium in Fort Walton Beach.

### **Proposed Changes**

The bill adds aquariums owned and operated by not-for-profit organizations to the permissible uses of the tourist development tax, allowing counties to use revenue from that tax for purposes related to aquariums owned and operated by not-for-profit organizations, including the acquisition, construction, maintenance, or promotion of such aquariums.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 125.0104, F.S., to include aquariums owned by not-for-profit organizations as an eligible use of the tourism development tax.

**Section 2:** Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

#### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill will allow revenues from tourist development taxes to be used to benefit aquariums owned by not-for-profit organizations.

#### **D. FISCAL COMMENTS:**

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<sup>1</sup> <http://www.visitflorida.com/aquariums> (last accessed 3/11/13)  
STORAGE NAME: h0555b.FTSC.DOCX  
DATE: 3/11/2013

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not require a reduction of the percentage of state tax shared with municipalities or counties.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                   A bill to be entitled  
2           An act relating to the tourist development tax;  
3           amending s. 125.0104, F.S.; clarifying that the  
4           proceeds of the tax may be used for the benefit of  
5           certain museums or aquariums; providing an effective  
6           date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9  
10           Section 1. Paragraph (a) of subsection (5) and subsection  
11           (7) of section 125.0104, Florida Statutes, are amended to read:

12           125.0104 Tourist development tax; procedure for levying;  
13           authorized uses; referendum; enforcement.—

14           (5) AUTHORIZED USES OF REVENUE.—

15           (a) All tax revenues received pursuant to this section by  
16           a county imposing the tourist development tax shall be used by  
17           that county for the following purposes only:

18           1. To acquire, construct, extend, enlarge, remodel,  
19           repair, improve, maintain, operate, or promote one or more  
20           publicly owned and operated convention centers, sports stadiums,  
21           sports arenas, coliseums, or auditoriums, or museums or  
22           aquariums, ~~or museums~~ that are publicly owned and operated or  
23           owned and operated by not-for-profit organizations and open to  
24           the public, within the boundaries of the county or subcounty  
25           special taxing district in which the tax is levied. Tax revenues  
26           received pursuant to this section may also be used for promotion  
27           of zoological parks that are publicly owned and operated or  
28           owned and operated by not-for-profit organizations and open to



29 | the public. However, these purposes may be implemented through  
 30 | service contracts and leases with lessees that have ~~with~~  
 31 | sufficient expertise or financial capability to operate such  
 32 | facilities;

33 |         2. To promote and advertise tourism in this state ~~the~~  
 34 | ~~State of Florida~~ and nationally and internationally; however, if  
 35 | tax revenues are expended for an activity, service, venue, or  
 36 | event, the activity, service, venue, or event must ~~shall~~ have as  
 37 | one of its main purposes the attraction of tourists as evidenced  
 38 | by the promotion of the activity, service, venue, or event to  
 39 | tourists;

40 |         3. To fund convention bureaus, tourist bureaus, tourist  
 41 | information centers, and news bureaus as county agencies or by  
 42 | contract with the chambers of commerce or similar associations  
 43 | in the county, which may include any indirect administrative  
 44 | costs for services performed by the county on behalf of the  
 45 | promotion agency; or

46 |         4. To finance beach park facilities or beach improvement,  
 47 | maintenance, renourishment, restoration, and erosion control,  
 48 | including shoreline protection, enhancement, cleanup, or  
 49 | restoration of inland lakes and rivers to which there is public  
 50 | access as those uses relate to the physical preservation of the  
 51 | beach, shoreline, or inland lake or river. However, any funds  
 52 | identified by a county as the local matching source for beach  
 53 | renourishment, restoration, or erosion control projects included  
 54 | in the long-range budget plan of the state's Beach Management  
 55 | Plan, pursuant to s. 161.091, or funds contractually obligated  
 56 | by a county in the financial plan for a federally authorized

HB 555

2013

57 | shore protection project may not be used or loaned for any other  
58 | purpose. In counties of fewer ~~less~~ than 100,000 population, up  
59 | to no more than 10 percent of the revenues from the tourist  
60 | development tax may be used for beach park facilities.

61 | (7) AUTOMATIC EXPIRATION ON RETIREMENT OF BONDS. ~~Anything~~  
62 | ~~in this section to the contrary~~ Notwithstanding any other  
63 | provision of this section, if the plan for tourist development  
64 | approved by the governing board of the county, as amended ~~from~~  
65 | ~~time to time~~ pursuant to paragraph (4)(d), includes the  
66 | acquisition, construction, extension, enlargement, remodeling,  
67 | repair, or improvement of a publicly owned and operated  
68 | convention center, sports stadium, sports arena, coliseum,  
69 | auditorium, aquarium, or museum ~~that is publicly owned and~~  
70 | ~~operated or owned and operated by a not-for-profit organization,~~  
71 | the county ordinance levying and imposing the tax ~~shall~~  
72 | automatically expires ~~expire~~ upon the later of:

73 | (a) The retirement of all bonds issued by the county for  
74 | financing the same; or

75 | (b) The expiration of any agreement by the county for the  
76 | operation or maintenance, or both, of a publicly owned and  
77 | operated convention center, sports stadium, sports arena,  
78 | coliseum, auditorium, aquarium, or museum. However, this does  
79 | not ~~nothing herein shall~~ preclude that county from amending the  
80 | ordinance extending the tax to the extent that the board of the  
81 | county determines to be necessary to provide funds ~~with which~~ to  
82 | operate, maintain, repair, or renew and replace a publicly owned  
83 | and operated convention center, sports stadium, sports arena,  
84 | coliseum, auditorium, aquarium, or museum or from enacting an

HB 555

2013

85 ordinance that takes ~~which shall take~~ effect without referendum  
86 approval, unless the original referendum required ordinance  
87 expiration, pursuant to the provisions of this section  
88 reimposing a tourist development tax, upon or following the  
89 expiration of the previous ordinance.

90 Section 2. This act shall take effect July 1, 2013.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 579 Natural Gas Motor Fuel  
**SPONSOR(S):** Energy & Utilities Subcommittee; Ray and others  
**TIED BILLS:** None. **IDEN./SIM. BILLS:** CS/SB 560

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Whittier	Collins
2) Finance & Tax Subcommittee		Flieger <i>BA</i>	Langston <i>JS</i>
3) Appropriations Committee			
4) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, F.S., and entitles it "Natural Gas Fuel." It repeals the annual decal fee program for motor vehicles powered by alternative fuels effective January 1, 2014, and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019, thereby exempting natural gas fuel from fuel taxes for five years. The bill also exempts natural gas fuel from state sales and use taxes and expands the definition of "energy efficiency improvement" to include "installation of systems for natural gas fuel" under uses authorized by the Local Government Infrastructure Surtax.

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14, the revenue impacts will be negative insignificant to General Revenue, -\$0.3 million to state trust funds, and no impact to local government. However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.1 million to General Revenue, -\$0.1 million state trust funds, and \$0.4 million to local government.

The effective date of this bill is January 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

##### **Natural Gas**

During the past several years exploration has uncovered a supply of natural gas in the United States which has resulted in a reduction in the price of natural gas and an increased interest in natural gas powered vehicles and fueling stations. Similar to the dilemma facing electric vehicles, there is much discussion surrounding whether to first increase and/or convert fleets to be powered by natural gas in Florida or to begin with expanding the natural gas fueling infrastructure statewide. Currently, there are 32 natural gas fueling stations in Florida.<sup>1</sup>

When compared using equivalent units of measure natural gas is less expensive than gasoline or diesel fuel. The U.S. Department of Energy reports that in the fall of 2012 the national average price for gasoline was \$3.82, the price for diesel was \$4.13, and for a gasoline gallon equivalent of compressed natural gas ("CNG") was \$2.12.<sup>2</sup> Although initial savings in fuel costs may be offset by the cost of a natural gas vehicle over a gasoline or diesel-powered vehicle, cost savings may be experienced after a few years.

In a study<sup>3</sup> prepared for the Florida Natural Gas Vehicle Coalition ("FNGVC"), the following was noted:

The incremental cost of a standard passenger vehicle powered by CNG, compared to a standard passenger vehicle powered by gasoline, ranges from \$7,000 to \$18,500. Assuming each passenger vehicle consumes 531 gallons per year, and applying a gas-CNG price difference of \$1.74, the payback period ranges from 7.6 years to 20 years. In contrast, the incremental cost of a truck powered by CNG over a diesel-powered truck is \$76,100. Assuming each vehicle consumes 11,706 gallons per year and assuming a price difference of \$1.91, the payback period for conversion of a diesel-powered truck to a CNG-powered truck is only 3.4 years. Further, reduced engine wear and extended service intervals also reduce maintenance costs for CNG-powered vehicles.<sup>4</sup>

Natural gas is touted as the cleanest of the fossil fuels. The Natural Gas Supply Association points out that, "Pollutants emitted in the United States, particularly from the combustion of fossil fuels, have led to the development of many pressing environmental problems. Natural gas, emitting fewer harmful chemicals into the atmosphere than other fossil fuels, can help to mitigate some of these environmental issues." These concerns include:

- Greenhouse Gas Emissions;
- Smog, Air Quality and Acid Rain;
- Industrial and Electric Generation Emissions; and
- Pollution from the Transportation Sector<sup>5</sup>

<sup>1</sup> Correspondence from the Florida Natural Gas Association, March 1, 2013.

<sup>2</sup> *Clean Cities Alternative Fuel Price Report*, U.S. Department of Energy, October 2012, p. 3.

<sup>3</sup> *Economic Impact of Incentives to Facilitate Compressed Natural Gas Vehicles in Florida*, by Fishkind & Associates, Inc., August 1, 2012.

<sup>4</sup> *Id.*, pp. 17-18.

<sup>5</sup> Naturalgas.org website: <http://www.naturalgas.org/environment/naturalgas.asp>.

According to the FNGVC, the following are benefits associated with the use of natural gas for fleet trucks:

- Natural gas vehicles can save a company 30% – 50% of its fuel costs.
- Central fuel and maintenance make fleets highly conducive to CNG fueling infrastructure.
- While it is true that Florida currently has relatively few natural gas fueling stations in place, several companies offer no-cost or low-cost options for construction and maintenance of such infrastructure.
- Maintenance on a natural gas vehicle is no more problematic and often easier than traditional diesel trucks.
- The cost of converting to CNG is decreasing. In addition, such costs are offset by savings in direct fuel costs and possible financial incentives for the purchase of natural gas vehicles.<sup>6</sup>

The FNGVC study recommends providing incentives to utilize CNG-powered truck fleets, thereby creating a demand for the re-fueling stations and “producing significant stimulation of Florida’s economy.”

### ***State Gasoline, Diesel, and Alternative Fuel Taxes***

#### *Motor Fuel*

Section 206.01(9), F.S., defines “motor fuel” or “fuel” to mean “all gasoline products or any product blended with gasoline or any fuel placed in the storage supply tank of a gasoline-powered motor vehicle.” Section 206.41(1), F.S., provides for the following taxes on motor fuel:

- An excise or license tax of 2 cents per net gallon of motor fuel, designated as the “constitutional fuel tax.”
- An additional 1 cent per net gallon, designated as the “county fuel tax.”
- An additional 1 cent per net gallon, designated as the “municipal fuel tax.”
- An additional tax of 1 cent per net gallon may be imposed by each county, designated as the “ninth-cent fuel tax.”
- An additional tax of between 1 and 11 cents per net gallon may be imposed by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon of motor fuel is imposed by each county, designated as the State Comprehensive Enhanced Transportation System Tax (“SCETS”), at a rate determined as specified in paragraph (f) of the subsection.
- An additional tax per net gallon is imposed “on the privilege of selling motor fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (g) of the subsection.

The SCETS tax rate on motor fuel for 2013 is 5.9 cents and the fuel sales tax rate on motor fuel for 2013 is 12.9 cents.<sup>7</sup>

#### *Diesel Fuel*

Section 206.86(1), F.S., defines “diesel fuel” to mean “all petroleum distillates commonly known as diesel #2, biodiesel, or any other product blended with diesel or any product placed into the storage supply tank of a diesel-powered motor vehicle.” Section 206.87(1), F.S., provides for the following taxes on diesel fuel:

- An excise tax of 4 cents upon each net gallon of diesel fuel, except for alternative fuels which are subject to the fee imposed by s. 206.877, F.S.

<sup>6</sup> FNGVC website: <http://www.fuelforjobs.com/wp-content/uploads/2012/03/Executive-Summary-FINAL1.pdf>, p. 6.

<sup>7</sup> Florida Department of Revenue website: [http://dor.myflorida.com/dor/tips/pdf/12b05-02\\_chart.pdf](http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf), 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

- An additional 1 cent per net gallon by each county, designated as the “ninth-cent fuel tax.”
- An additional 6 cents per net gallon by each county, designated as the “local option fuel tax.”
- An additional tax per net gallon by each county, designated as the State Comprehensive Enhanced Transportation System Tax (SCETS), at a rate determined as specified in paragraph (d) of the subsection.
- An additional tax per net gallon “on the privilege of selling diesel fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (e) of the subsection.

The SCETS Tax rate on diesel for 2013 is 7.1 cents and the fuel sales tax rate on diesel for 2013 is 12.9 cents.<sup>8</sup>

Section 212.0501(5), F.S., provides that diesel fuel upon which the fuel taxes pursuant to ch. 206, F.S., have been paid is exempt from the tax on sales, use, and other transactions imposed by ch. 212, F.S.

### *Alternative Fuel*

Section 206.86(4), F.S., defines “alternative fuel” to mean “any liquefied petroleum gas product or compressed natural gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas or compressed natural gas.” Section 206.86(5), F.S., defines “natural gasoline” as “a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.”

Section 206.877(1)(a), F.S., requires owners or operators of motor vehicles licensed in this state which are powered by alternative fuels to pay, in lieu of the excise tax on diesel fuel (s. 206.87(1)(a)-(d), F.S.), an annual decal fee on each such motor vehicle in accordance with the rate schedule specified in that paragraph.

The Department of Revenue (“DOR”) issues an annual decal to be attached to the upper right corner of the front windshield on the motor vehicle for which the decal is issued, and it is unlawful to operate a vehicle that is required to have this decal unless the vehicle is titled outside the state. Each sale of alternative fuel placed in a motor vehicle displaying a decal must be documented on an invoice that includes the decal number, the motor vehicle license number, and the number of gallons placed into the motor vehicle. Any person who puts or causes to be put liquefied petroleum gas or compressed natural gas into a motor vehicle required to have a decal is guilty of a first degree misdemeanor unless the vehicle has the required attached decal. A state or local governmental agency is not required to obtain a decal and pay the annual decal fee for a motor vehicle powered by alternative fuel which it operates.<sup>9</sup> The taxes imposed on diesel fuel under s. 206.87, F.S., apply to purchases of alternative fuels by operators of vehicles licensed in other states and other vehicles that do not have the proper decal.

The sale of alternative fuel, as defined in s. 206.86(4), F.S., is also subject to sales and use tax imposed under ch. 212, F.S.<sup>10</sup>

Section 206.89, F.S., provides that a person may not act as a retailer of alternative fuel unless he or she holds a valid retailer of alternative fuel license issued by DOR, and any person acting as such who does not hold a license must pay a penalty of 25% of the tax assessed on the total purchases. A filing fee of \$5 and a bond is required at the time of filing an application for a license. Every person who operates as a retailer of alternative fuel, except those licensed under ch. 206, F.S., including a state

<sup>8</sup> Florida Department of Revenue website: [http://dor.myflorida.com/dor/tips/pdf/12b05-02\\_chart.pdf](http://dor.myflorida.com/dor/tips/pdf/12b05-02_chart.pdf), 2013 Florida Fuel Tax, Collection Allowance, Refund, and Pollutants Tax Rates, p. 2.

<sup>9</sup> Section 206.877, F.S.

<sup>10</sup> Rule 12A-1.059, F.A.C.



agency, federal agency, municipality, county, or special district, must report monthly to DOR and pay tax on all fuel purchases.

The revenues from the state alternative fuel fees imposed by s. 206.877, F.S., are deposited into the State Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds from state alternative fuel fees are distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).<sup>11</sup>

The revenues from the local alternative fuel fees imposed in lieu of s. 206.87(1)(b) or (c), F.S., are to be deposited into the Local Alternative Fuel User Fee Clearing Trust Fund. After deducting specified service charges, the proceeds are returned monthly to the appropriate county.<sup>12</sup>

### ***Local Discretionary Sales Surtaxes***

Local discretionary sales surtaxes, also referred to as local option sales taxes, are authorized under s. 212.055, F.S., and provide potential revenue sources for county and municipal governments and school districts. The local discretionary sales surtaxes apply to all transactions that are subject to the state tax imposed on sales, use, services, rentals, admissions, and other authorized transactions, pursuant to ch. 212, F.S., and communications services as defined for purposes of ch. 202, F.S. Discretionary sales surtaxes must be collected when the transaction occurs in, or delivery is into, a county that imposes the surtax, and the sale is subject to the state's sales and use tax.<sup>13</sup> The surtax applies to the first \$5,000 of any single taxable item when sold to the same purchaser at the same time.<sup>14</sup>

There are eight different types of local discretionary sales surtaxes currently authorized in law:

- Charter County and Regional Transportation System Surtax;
- Local Government Infrastructure Surtax;
- Small County Surtax;
- Indigent Care and Trauma Center Surtax;
- County Public Hospital Surtax;
- School Capital Outlay Surtax;
- Voter-Approved Indigent Care Surtax; and
- Emergency Fire Rescue Services and Facilities Surtax.

The local discretionary sales surtax rate varies from county to county, depending on the particular levies authorized in that jurisdiction.

### ***Local Government Infrastructure Surtax***

Section 212.055(2)(a)1., F.S., provides that the Local Government Infrastructure Surtax shall be levied at the rate of 0.5 or 1 percent pursuant to an ordinance enacted by a majority vote of the members of

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<sup>11</sup> Section 206.879(1), F.S.

<sup>12</sup> Section 206.879(2), F.S.

<sup>13</sup> 2012 Florida Tax Handbook, p. 207.

<sup>14</sup> Section 212.054(2)(b)1., F.S.

the county's governing body and approved by voters in a countywide referendum.<sup>15</sup> If the proposal to levy the surtax is approved by a majority of the electors, the levy shall take effect. The levy may only be extended by voter approval in a countywide referendum. There is no state-mandated limit on the length of levy for surtax ordinances enacted after July 1, 1993.<sup>16</sup> All counties are eligible to levy this surtax.<sup>17</sup>

Pursuant to s. 212.055(2)(d), F.S., school districts, counties,<sup>18</sup> and municipalities may expend the proceeds of the Local Government Infrastructure Surtax and any accrued interest for the following purposes:

- To finance, plan, and construct infrastructure;
- To acquire land for public recreation, conservation, or protection of natural resources;
- To provide loans, grants, or rebates to residential or commercial property owners who make energy efficiency improvements to their residential or commercial property, if a local government ordinance authorizing such use is approved by referendum; or
- To finance the closure of county-owned or municipally-owned solid waste landfills that have been closed or are required to be closed by order of the Department of Environmental Protection.

For purposes of the Local Government Infrastructure Surtax, s. 212.055(2)(d)2., F.S., defines "energy efficiency improvement" as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

A local government choosing to expend funds under this provision is required to enact or amend its ordinance pursuant to s. 125.66, F.S., and have the ordinance approved by referendum in a subsequent election.

### **Effects of Proposed Changes**

#### ***Natural Gas Fuel Taxes***

Chapter 206, F.S., addresses "Motor and Other Fuel Taxes." The bill creates Part V of Chapter 206, F.S., consisting of ss. 206.9951-206.998, and entitles it "Natural Gas Fuel." It repeals the annual decal fee program for motor vehicles powered by alternative fuels and establishes a fuel tax structure for natural gas used as a motor fuel similar to that for diesel fuel beginning January 1, 2019.

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<sup>15</sup> In lieu of action by the county's governing body, municipalities representing a majority of the county's population may initiate the surtax through the adoption of uniform resolutions calling for a countywide referendum on the issue.

<sup>16</sup> If the surtax was levied pursuant to a referendum held before July 1, 1993, the surtax may not be levied beyond the time established in the ordinance. If the pre-July 1, 1993, ordinance did not limit the period of the levy, the surtax may not be levied for more than 15 years.

<sup>17</sup> The Local Government Infrastructure Surtax is one of four surtaxes subject to a combined rate limitation. A county cannot levy this surtax and the Small County Surtax, Indigent Care and Trauma Center Surtax, and County Public Hospital Surtax in excess of a combined rate of 1 percent.

<sup>18</sup> Pursuant to s. 212.055(2)(d), F.S., proceeds of the surtax may also be expended within another county in the case of a negotiated joint county agreement.

Section 206.9951, F.S., provides the following definitions:

- "Motor fuel equivalent gallon" means the volume of natural gas fuel it takes to equal the energy content of 1 gallon of motor fuel.
- "Natural gas fuel" means any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23), F.S. This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.
- "Natural gas fuel retailer" means any person who sells natural gas fuel for use in a motor vehicle as defined in s. 206.01(23), F.S.
- "Natural gasoline" is a liquid hydrocarbon that is produced by natural gas and must be blended with other liquid petroleum products to produce motor fuel.
- "Person" means a natural person, corporation, copartnership, firm, company, agency, or association; a state agency; a federal agency; or a political subdivision of the state

The bill requires any person selling natural gas fuel at retail in Florida to obtain a natural gas fuel retailer license from the Department of Revenue. Until December 31, 2018, any person who acts as a natural gas retailer and does not hold a valid license must pay a penalty of \$200 for each month of operation without a license. Beginning January 1, 2019, a penalty of 25 percent of the tax assessed on total purchases is imposed on any person who acts as a natural gas fuel retailer and does not have a valid license.<sup>19</sup> In order to apply for a license from DOR, the applicant must file an application and a bond with the department and pay a license fee of \$5 for deposit into the General Revenue Fund.<sup>20</sup>

The bill replaces the annual decal and fee originally required in s. 206.877, F.S., with a tax on each motor fuel equivalent gallon of natural gas fuel. The bill provides the motor fuel equivalent gallon rates for compressed natural gas, liquefied natural gas, and liquefied petroleum gas. The person liable for payment of the taxes is the person selling the fuel to the end user for use in the fuel supply tank of a motor vehicle as defined in s. 206.01(23), F.S.<sup>21</sup>

Section 206.9955(2), F.S., provides for the following taxes on natural gas fuel, effective January 1, 2019:

- An excise tax of 4 cents upon each motor fuel equivalent gallon of natural gas fuel.
- An additional tax of 1 cent upon each motor fuel equivalent gallon of natural gas fuel, which is designated as the "ninth-cent fuel tax."
- An additional tax of 6 cents on each motor fuel equivalent gallon of natural gas fuel by each county, which is designated as the "local option fuel tax."
- An additional tax on each motor fuel equivalent gallon of natural gas fuel, which is designated as the "State Comprehensive Enhanced Transportation System Tax," at a rate determined pursuant to paragraph (d) of the subsection.<sup>22</sup>

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<sup>19</sup> Section 206.9952(3), F.S.

<sup>20</sup> Section 206.9952, F.S.

<sup>21</sup> See ss. 206.9955 and 206.996, F.S., for detailed information on specific calculations.

<sup>22</sup> Each calendar year, the department shall determine the tax rate applicable to the sale of natural gas fuel for the following 12-month period beginning January 1, rounded to the nearest tenth of a cent, by adjusting the initially established tax rate of 7.1 cents per gallon by the percentage change in the average of the Consumer Price Index issued by the United States Department of Labor for the most recent 12-month period ending September 30.

- An additional tax is imposed on each motor fuel equivalent gallon of natural gas fuel “for the privilege of selling natural gas fuel,” designated as the “fuel sales tax,” at a rate determined as specified in paragraph (e) of the section.

The bill provides that for the purpose of determining the amount of taxes, beginning with February 2019, each natural gas fuel retailer shall file, no later than the 20<sup>th</sup> of each month, monthly reports with the DOR providing information on inventory, purchases, nontaxable disposals, and taxable sales in gallons of natural gas fuel for the preceding month. The natural gas fuel retailer is allowed to deduct 0.67 percent of the amount of taxes owed to “compensate it for services rendered and expenses incurred in complying with the requirements...”<sup>23</sup> Upon the filing of the monthly report, the natural gas fuel retailer shall pay the DOR the full amount of fuel taxes for the preceding month, less the amount allowed for services and expenses.

The bill provides exemptions from the tax imposed by chapter 206 when used or purchased for the following:<sup>24</sup>

- Exclusive use by the United States or its departments or agencies. Exclusive use by the United States or its departments and agencies means the consumption by the United States or its departments or agencies of natural gas fuel in a motor vehicle as defined in s. 206.01(23).
- Use for agricultural purposes as defined in s. 206.41(4)(c).
- Uses as provided in s. 206.874(3) (which addresses dyed diesel fuel).
- Used to propel motor vehicles operated by state and local government agencies.
- Individual use resulting from residential refueling devices located at a person's primary residence.
- Purchases of natural gas fuel between licensed natural gas fuel retailers.<sup>25</sup>

Section 206.997, F.S., directs that, beginning with the calendar year 2019 and thereafter, revenues from the natural gas fuel tax be deposited into the State Alternative Fuel User Fee Clearing Trust Fund to be distributed as follows:

- One-half of the proceeds shall be transferred to the State Transportation Trust Fund.
- 50% of the remainder shall be transferred to the State Board of Administration for distribution in accordance with the Florida Constitution.
- 25% of the remainder shall be transferred to the Revenue Sharing Trust Fund for Municipalities.
- 25% of the remainder shall be distributed in accordance with s. 206.60(1), F.S. (to the counties for specified public transportation purposes).

The bill repeals the Local Alternative Fuel User Fee Clearing Trust Fund. The bill specifies that existing provisions within part I and part II of chapter 206 shall be applicable to the taxes levied, imposed, and collected unless the provision conflicts with the new part.

### **Local Government Infrastructure Surtax**

As noted in the *Present Situation* section, “energy efficiency improvement” is defined within the Local Government Infrastructure Surtax subsection of s. 212.055, F.S., as any energy conservation and efficiency improvement that reduces consumption through conservation or a more efficient use of electricity, natural gas, propane, or other forms of energy on the property, including, but not limited to:

<sup>23</sup> Section 206.996(1), F.S.

<sup>24</sup> Section 206.9965, F.S.

<sup>25</sup> A natural gas fuel retailer that sells tax-paid natural gas fuel to another natural gas fuel retailer may take a credit on its monthly return or may file a claim for refund with the Chief Financial Officer pursuant to s. 215.26, F.S. All sales of natural gas fuel between natural gas fuel retailers must be documented on invoices or other evidence of the sale of such fuel and the seller shall retain a copy of the purchaser's natural gas fuel retailer license.

- Air sealing;
- Installation of insulation;
- Installation of energy-efficient heating, cooling, or ventilation systems;
- Installation of solar panels;
- Building modifications to increase the use of daylight or shade;
- Replacement of windows;
- Installation of energy controls or energy recovery systems;
- Installation of electric vehicle charging equipment; and
- Installation of efficient lighting equipment.

The bill adds "installation of systems for natural gas fuel as defined in s. 206.9951" to the definition of "energy efficiency improvement." This would allow a county to use surtax revenues as loans, grants, or rebates to private property owners who install natural gas fueling systems if a local government ordinance authorizing such use is approved by referendum.<sup>26</sup>

### ***Sales and Use Tax***

The bill exempts natural gas fuel from the state sales and use tax when the fuel is placed into the fuel supply system of a motor vehicle.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 206.86, F.S.; deletes definitions for the terms "alternative fuel" and "natural gasoline."

**Section 2.** Amends s. 206.87, F.S.; conforms a cross-reference.

**Section 3.** Repeals s. 206.877, F.S., relating to the annual decal fee program for motor vehicles powered by alternative fuels.

**Section 4.** Repeals s. 206.89, F.S., relating to the requirements for alternative fuel retailer licenses.

**Section 5.** Amends s. 206.91, F.S.; makes grammatical and technical changes.

**Section 6.** Provides a directive to the Division of Law Revision and Information to create part V of chapter 206, Florida Statutes.

**Section 7.** Creates s. 206.9951, F.S.; provides definitions.

**Section 8.** Creates s. 206.9952, F.S.; establishes requirements for natural gas fuel retailer licenses; provides penalties for certain licensure violations.

**Section 9.** Creates s. 206.9955, F.S.; provides for the levy of the natural gas fuel tax; provides calculations for a motor fuel equivalent gallon; authorizes the Department of Revenue to adopt rules.

**Section 10.** Creates s. 206.996, F.S.; establishes requirements for monthly reports of natural gas fuel retailers; provides that reports are made under the penalties of perjury; allows natural gas fuel retailers to seek a deduction of the tax levied under specified conditions.

**Section 11.** Creates s. 206.9965, F.S.; provides exemptions and refunds from the natural gas fuel tax.

**Section 12.** Transfers and renumbers s. 206.879, F.S., as s. 206.997, F.S., and amends to revise provisions relating to the State Alternative Fuel User Fee Clearing Trust Fund.

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<sup>26</sup> Section 212.055(2)(d), F.S.  
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 DATE: 3/9/2013

**Section 13.** Terminates the Local Alternative Fuel User Fee Clearing Trust Fund within the Department of Revenue; prescribes procedures for the termination of the trust fund.

**Section 14.** Creates s. 206.998, F.S.; provides for the applicability of specified sections of parts I and II of ch. 206, F.S.

**Section 15.** Amends s. 212.055, F.S.; expands the use of the local government infrastructure surtax to include the installation of systems for natural gas fuel.

**Section 16.** Amends s. 212.08, F.S.; provides an exemption from taxes for natural gas fuel under certain circumstances.

**Section 17.** Provides an effective date of January 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14, the revenue impacts will be negative insignificant to General Revenue, -\$0.3 million to state trust funds. However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.1 million to General Revenue, -\$0.1 million state trust funds.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

On March 8, 2013, the Revenue Estimating Conference estimated that in FY 2013-14 there will be no impact to local government and slightly negative impacts in the subsequent 4 years (-\$0.1 million annually). However, in FY 2018-19 net revenue impacts will become more positive on a permanent basis as the new fuel tax system created by the bill takes effect. Consequently the recurring revenue impacts, expressed in FY 2013-14 dollars reflecting the longer-run perspective, will be \$0.4 million to local government.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may result in increased savings for drivers utilizing vehicles powered by natural gas fuel, an increase in conversions of vehicle fleets from being powered by traditional fuels to natural gas fuel, and an increase in natural gas refueling infrastructure across the state.

### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The DOR is authorized to adopt rules and publish forms to administer the fuel sales tax in s. 206.9955, F.S.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 5, 2013, the Energy & Utilities Subcommittee adopted a Proposed Committee Substitute (PCS) for the bill and passed the bill out as a Committee Substitute. One amendment to the PCS was adopted.

The amended PCS made the following changes to the filed version of the bill:

- Removed Section 4 from the bill. Section 4 created the Natural Gas Fuel Vehicle Investment Program, which directed that certain taxes be deposited into the General Inspection Trust Fund to be used to provide rebates for the incremental cost or purchase of natural gas fuel vehicles.
- Provided that natural gas fuel is exempt from the sales and use tax imposed in chapter 212, F.S.
- Provided for a 5-year exemption of natural gas fuel taxes beginning on January 1, 2014, and ending on December 31, 2018.
- Provided for a \$200 penalty for every month that a person who acts as a natural gas retailer without a valid license is in operation during the five-year tax exemption period.
- Adjusted the State Comprehensive Enhanced Transportation System Tax from being initially established at a tax rate of 6.9 cents per gallon to 7.1 cents per gallon.
- Revised the definitions of "natural gas fuel," "natural gas fuel retailer," and "person" in part V of chapter 206, F.S.

The staff analysis has been updated to reflect the committee substitute.

CS/HB 579

2013

1                                   A bill to be entitled  
2           An act relating to natural gas motor fuel; amending s.  
3           206.86, F.S.; deleting definitions for the terms  
4           "alternative fuel" and "natural gasoline"; amending s.  
5           206.87, F.S.; conforming a cross-reference; repealing  
6           s. 206.877, F.S., relating to the annual decal fee  
7           program for motor vehicles powered by alternative  
8           fuels; repealing s. 206.89, F.S., relating to the  
9           requirements for alternative fuel retailer licenses;  
10          amending s. 206.91, F.S.; making grammatical and  
11          technical changes; providing a directive to the  
12          Division of Law Revision and Information; creating s.  
13          206.9951, F.S.; providing definitions; creating s.  
14          206.9952, F.S.; establishing requirements for natural  
15          gas fuel retailer licenses; providing penalties for  
16          certain licensure violations; creating s. 206.9955,  
17          F.S.; providing calculations for a motor fuel  
18          equivalent gallon; providing for the levy of the  
19          natural gas fuel tax; authorizing the Department of  
20          Revenue to adopt rules; creating s. 206.996, F.S.;  
21          establishing requirements for monthly reports of  
22          natural gas fuel retailers; providing that reports are  
23          made under the penalties of perjury; allowing natural  
24          gas fuel retailers to seek a deduction of the tax  
25          levied under specified conditions; creating s.  
26          206.9965, F.S.; providing exemptions and refunds from  
27          the natural gas fuel tax; transferring, renumbering,  
28          and amending s. 206.879, F.S.; revising provisions

Page 1 of 21

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0579-01-c1



29 relating to the State Alternative Fuel User Fee  
 30 Clearing Trust Fund; terminating the Local Alternative  
 31 Fuel User Fee Clearing Trust Fund within the  
 32 Department of Revenue; prescribing procedures for the  
 33 termination of the trust fund; creating s. 206.998,  
 34 F.S.; providing for the applicability of specified  
 35 sections of parts I and II of ch. 206, F.S.; amending  
 36 s. 212.055, F.S.; expanding the use of the local  
 37 government infrastructure surtax to include the  
 38 installation of systems for natural gas fuel; amending  
 39 s. 212.08, F.S.; providing an exemption from taxes for  
 40 natural gas fuel under certain circumstances;  
 41 providing an effective date.

42

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

44

45 Section 1. Section 206.86, Florida Statutes, is amended to  
 46 read:

47 206.86 Definitions.—As used in this part:

48 (1) "Diesel fuel" means all petroleum distillates commonly  
 49 known as diesel #2, biodiesel, or any other product blended with  
 50 diesel or any product placed into the storage supply tank of a  
 51 diesel-powered motor vehicle.

52 (2) "Taxable diesel fuel" or "fuel" means any diesel fuel  
 53 not held in bulk storage at a terminal ~~and~~ which has not been  
 54 dyed for exempt use in accordance with Internal Revenue Code  
 55 requirements.

56 (3) "User" includes any person who uses diesel fuels

57 within this state for the propulsion of a motor vehicle on the  
58 public highways of this state, even though the motor is also  
59 used for a purpose other than the propulsion of the vehicle.

60 ~~(4) "Alternative fuel" means any liquefied petroleum gas~~  
61 ~~product or compressed natural gas product or combination thereof~~  
62 ~~used in an internal combustion engine or motor to propel any~~  
63 ~~form of vehicle, machine, or mechanical contrivance. This term~~  
64 ~~includes, but is not limited to, all forms of fuel commonly or~~  
65 ~~commercially known or sold as natural gasoline, butane gas,~~  
66 ~~propane gas, or any other form of liquefied petroleum gas or~~  
67 ~~compressed natural gas.~~

68 ~~(5) "Natural gasoline" is a liquid hydrocarbon that is~~  
69 ~~produced by natural gas and must be blended with other liquid~~  
70 ~~petroleum products to produce motor fuel.~~

71 (4)~~(6)~~ "Removal" means any physical transfer of diesel  
72 fuel and any use of diesel fuel other than as a material in the  
73 production of diesel fuel.

74 (5)~~(7)~~ "Blender" means any person who ~~that~~ produces  
75 blended diesel fuel outside the bulk transfer/terminal system.

76 (6)~~(8)~~ "Colorless marker" means material that is not  
77 perceptible to the senses until the diesel fuel into which it is  
78 introduced is subjected to a scientific test.

79 (7)~~(9)~~ "Dyed diesel fuel" means diesel fuel that is dyed  
80 in accordance with United States Environmental Protection Agency  
81 or Internal Revenue Service requirements for high sulfur diesel  
82 fuel or low sulfur diesel fuel.

83 (8)~~(10)~~ "Ultimate vendor" means a licensee that sells  
84 undyed diesel fuel to the United States or its departments or

85 agencies in bulk lots of not less than 500 gallons in each  
86 delivery or to the user of the diesel fuel for use on a farm for  
87 farming purposes.

88 (9)~~(11)~~ "Local government user of diesel fuel" means any  
89 county, municipality, or school district licensed by the  
90 department to use untaxed diesel fuel in motor vehicles.

91 (10)~~(12)~~ "Mass transit system" means any licensed local  
92 transportation company providing local bus service that is open  
93 to the public and that travels regular routes.

94 (11)~~(13)~~ "Diesel fuel registrant" means anyone required by  
95 this chapter to be licensed to remit diesel fuel taxes,  
96 including, but not limited to, terminal suppliers, importers,  
97 local government users of diesel fuel, and mass transit systems.

98 (12)~~(14)~~ "Biodiesel" means any product made from  
99 nonpetroleum-based oils or fats which is suitable for use in  
100 diesel-powered engines. Biodiesel is also referred to as alkyl  
101 esters.

102 (13)~~(15)~~ "Biodiesel manufacturer" means those industrial  
103 plants, regardless of capacity, where organic products are used  
104 in the production of biodiesel. This includes businesses that  
105 process or blend organic products that are marketed as  
106 biodiesel.

107 Section 2. Paragraph (a) of subsection (1) of section  
108 206.87, Florida Statutes, is amended to read:

109 206.87 Levy of tax.—

110 (1) (a) An excise tax of 4 cents per gallon is hereby  
111 imposed upon each net gallon of diesel fuel subject to the tax  
112 under subsection (2), ~~except alternative fuels which are subject~~

113 | ~~to the fee imposed by s. 206.877.~~

114 | Section 3. Section 206.877, Florida Statutes, is repealed.

115 | Section 4. Section 206.89, Florida Statutes, is repealed.

116 | Section 5. Subsection (1) of section 206.91, Florida  
 117 | Statutes, is amended to read:

118 | 206.91 Tax reports; computation and payment of tax.—

119 | (1) For the purpose of determining the amount of taxes  
 120 | imposed by s. 206.87, each diesel fuel registrant shall, not  
 121 | later than the 20th day of each calendar month, mail to the  
 122 | department, on forms prescribed by the department, monthly  
 123 | reports that provide ~~which shall show such~~ information on  
 124 | inventories, purchases, nontaxable disposals, and taxable sales  
 125 | in gallons of diesel fuel ~~and alternative fuel,~~ for the  
 126 | preceding calendar month ~~as may be~~ required by the department.  
 127 | However, if the 20th day falls on a Saturday, a Sunday, or a  
 128 | federal or state legal holiday, returns shall be accepted if  
 129 | postmarked on the next succeeding workday. The reports must  
 130 | include, ~~shall contain~~ or be verified by, a written declaration  
 131 | stating that they are ~~such report is~~ made under the penalties of  
 132 | perjury. The diesel fuel registrant shall deduct from the amount  
 133 | of taxes shown by the report to be payable an amount equivalent  
 134 | to .67 percent of the taxes on diesel fuel imposed by s.  
 135 | 206.87(1)(a) and (e), which deduction is ~~hereby~~ allowed to the  
 136 | diesel fuel registrant on account of services and expenses in  
 137 | complying with the provisions of this part. The allowance on  
 138 | taxable gallons of diesel fuel sold to persons licensed under  
 139 | this chapter is not ~~shall not be~~ deductible unless the diesel  
 140 | fuel registrant has allowed 50 percent of the allowance provided

141 by this section to a purchaser with a valid wholesaler or  
 142 terminal supplier license. This allowance is not ~~shall not be~~  
 143 deductible unless payment of the taxes is made on or before the  
 144 20th day of the month as ~~herein~~ required in this subsection.  
 145 ~~Nothing in~~ This subsection does not ~~shall be construed to~~  
 146 authorize a deduction from the constitutional fuel tax or fuel  
 147 sales tax.

148 Section 6. The Division of Law Revision and Information is  
 149 requested to create part V of chapter 206, Florida Statutes,  
 150 consisting of ss. 206.9951-206.998, entitled "NATURAL GAS FUEL."

151 Section 7. Section 206.9951, Florida Statutes, is created  
 152 to read:

153 206.9951 Definitions.—As used in this part, the term:

154 (1) "Motor fuel equivalent gallon" means the volume of  
 155 natural gas fuel it takes to equal the energy content of 1  
 156 gallon of motor fuel.

157 (2) "Natural gas fuel" means any liquefied petroleum gas  
 158 product, compressed natural gas product, or combination thereof  
 159 used in a motor vehicle as defined in s. 206.01(23). This term  
 160 includes, but is not limited to, all forms of fuel commonly or  
 161 commercially known or sold as natural gasoline, butane gas,  
 162 propane gas, or any other form of liquefied petroleum gas,  
 163 compressed natural gas, or liquefied natural gas.

164 (3) "Natural gas fuel retailer" means any person who sells  
 165 natural gas fuel for use in a motor vehicle as defined in s.  
 166 206.01(23).

167 (4) "Natural gasoline" is a liquid hydrocarbon that is  
 168 produced by natural gas and must be blended with other liquid

169 petroleum products to produce motor fuel.

170 (5) "Person" means a natural person, corporation,  
171 copartnership, firm, company, agency, or association; a state  
172 agency; a federal agency; or a political subdivision of the  
173 state.

174 Section 8. Section 206.9952, Florida Statutes, is created  
175 to read:

176 206.9952 Application for license as a natural gas fuel  
177 retailer.—

178 (1) It is unlawful for any person to engage in business as  
179 a natural gas fuel retailer within this state unless the person  
180 is the holder of a valid license issued by the department to  
181 engage in such business.

182 (2) A person who has facilities for placing natural gas  
183 fuel into the supply system of an internal combustion engine  
184 fueled by individual portable containers of 10 gallons or less  
185 is not required to be licensed as a natural gas fuel retailer,  
186 provided that the fuel is only used for exempt purposes.

187 (3) (a) Any person who acts as a natural gas retailer and  
188 does not hold a valid natural gas fuel retailer license shall  
189 pay a penalty of \$200 for each month of operation without a  
190 license. This paragraph expires December 31, 2018.

191 (b) Effective January 1, 2019, any person who acts as a  
192 natural gas fuel retailer and does not hold a valid natural gas  
193 fuel retailer license shall pay a penalty of 25 percent of the  
194 tax assessed on the total purchases made during the unlicensed  
195 period.

196 (4) To procure a natural gas fuel retailer license, a

CS/HB 579

2013

197 person shall file an application and a bond with the department  
198 on a form prescribed by the department. The department may not  
199 issue a license upon the receipt of any application unless it is  
200 accompanied by a bond.

201 (5) When a natural gas fuel retailer license application  
202 is filed by a person whose previous license was canceled for  
203 cause by the department or the department believes that such  
204 application was not filed in good faith or is filed by another  
205 person as a subterfuge for the actual person in interest whose  
206 previous license has been canceled, the department may, if  
207 evidence warrants, refuse to issue a license for such an  
208 application.

209 (6) Upon the department's issuance of a natural gas fuel  
210 retailer license, such license remains in effect so long as the  
211 natural gas fuel retailer is in compliance with the requirements  
212 of this part.

213 (7) Such license may not be assigned and is valid only for  
214 the natural gas fuel retailer in whose name the license is  
215 issued. The license shall be displayed conspicuously by the  
216 natural gas fuel retailer in the principal place of business for  
217 which the license was issued.

218 (8) With the exception of a state or federal agency or a  
219 political subdivision licensed under this chapter, each person,  
220 as defined in this part, who operates as a natural gas fuel  
221 retailer shall report monthly to the department and pay a tax on  
222 all natural gas fuel purchases beginning January 1, 2019.

223 (9) The license application requires a license fee of \$5.  
224 Each license shall be renewed annually by submitting a

CS/HB 579

2013

225 reapplication and the license fee to the department. The license  
226 fee shall be paid to the department for deposit into the General  
227 Revenue Fund.

228 Section 9. Section 206.9955, Florida Statutes, is created  
229 to read:

230 206.9955 Levy of natural gas fuel tax.-

231 (1) The motor fuel equivalent gallon means the following  
232 for:

233 (a) Compressed natural gas gallon: 5.66 pounds, or per  
234 each 126.67 cubic feet.

235 (b) Liquefied natural gas gallon: 6.22 pounds.

236 (c) Liquefied petroleum gas gallon: 1.35 gallons.

237 (2) Effective January 1, 2019, the following taxes shall  
238 be imposed:

239 (a) An excise tax of 4 cents upon each motor fuel  
240 equivalent gallon of natural gas fuel.

241 (b) An additional tax of 1 cent upon each motor fuel  
242 equivalent gallon of natural gas fuel, which is designated as  
243 the "ninth-cent fuel tax."

244 (c) An additional tax of 6 cents on each motor fuel  
245 equivalent gallon of natural gas fuel by each county, which is  
246 designated as the "local option fuel tax."

247 (d) An additional tax on each motor fuel equivalent gallon  
248 of natural gas fuel, which is designated as the "State  
249 Comprehensive Enhanced Transportation System Tax," at a rate  
250 determined pursuant to this paragraph. Each calendar year, the  
251 department shall determine the tax rate applicable to the sale  
252 of natural gas fuel for the following 12-month period beginning



CS/HB 579

2013

253 January 1, rounded to the nearest tenth of a cent, by adjusting  
254 the initially established tax rate of 7.1 cents per gallon by  
255 the percentage change in the average of the Consumer Price Index  
256 issued by the United States Department of Labor for the most  
257 recent 12-month period ending September 30.

258 (e)1. An additional tax is imposed on each motor fuel  
259 equivalent gallon of natural gas fuel for the privilege of  
260 selling natural gas fuel and is designated as the "fuel sales  
261 tax." Each calendar year, the department shall determine the tax  
262 rate applicable to the sale of natural gas fuel, rounded to the  
263 nearest tenth of a cent, for the following 12-month period  
264 beginning January 1. The tax rate is calculated by adjusting the  
265 initially established tax rate of 12.9 cents per gallon by the  
266 percentage change in the average of the Consumer Price Index  
267 issued by the United States Department of Labor for the most  
268 recent 12-month period ending September 30.

269 2. The department is authorized to adopt rules and publish  
270 forms to administer this paragraph.

271 (3) Unless otherwise provided by this chapter, the taxes  
272 specified in subsection (2) are imposed on natural gas fuel when  
273 it is placed into the fuel supply tank of a motor vehicle as  
274 defined in s. 206.01(23). The person liable for payment of the  
275 taxes imposed by this section is the person selling the fuel to  
276 the end user, for use in the fuel supply tank of a motor vehicle  
277 as defined in s. 206.01(23).

278 Section 10. Section 206.996, Florida Statutes, is created  
279 to read:

280 206.996 Monthly reports by natural gas fuel retailers;

281 deductions.—

282 (1) For the purpose of determining the amount of taxes  
283 imposed by s. 206.9955, each natural gas fuel retailer shall  
284 file beginning February 2019, and each month thereafter, no  
285 later than the 20th day of each month, monthly reports  
286 electronically with the department showing information on  
287 inventory, purchases, nontaxable disposals, and taxable sales in  
288 gallons of natural gas fuel for the preceding month. However, if  
289 the 20th day of the month falls on a Saturday, Sunday, or  
290 federal or state legal holiday, a return must be accepted if it  
291 is electronically filed on the next succeeding business day. The  
292 reports must include, or be verified by, a written declaration  
293 stating that such report is made under the penalties of perjury.  
294 The natural gas fuel retailer shall deduct from the amount of  
295 taxes shown by the report to be payable an amount equivalent to  
296 0.67 percent of the taxes on natural gas fuel imposed by s.  
297 206.9955(2)(a) and (e), which deduction is allowed to the  
298 natural gas fuel retailer to compensate it for services rendered  
299 and expenses incurred in complying with the requirements of this  
300 part. This allowance is not deductible unless payment of  
301 applicable taxes is made on or before the 20th day of the month.  
302 This subsection may not be construed as authorizing a deduction  
303 from the constitutional fuel tax or the fuel sales tax.

304 (2) Upon the electronic filing of the monthly report, each  
305 natural gas fuel retailer shall pay the department the full  
306 amount of natural gas fuel taxes for the preceding month at the  
307 rate provided in s. 206.9955, less the amount allowed the  
308 natural gas fuel retailer for services and expenses as provided

CS/HB 579

2013

309 in subsection (1).

310 (3) The department may authorize a quarterly return and  
311 payment of taxes when the taxes remitted by the natural gas fuel  
312 retailer for the preceding quarter did not exceed \$100, and the  
313 department may authorize a semiannual return and payment of  
314 taxes when the taxes remitted by the natural gas fuel retailer  
315 for the preceding 6 months did not exceed \$200.

316 (4) In addition to the allowance authorized by subsection  
317 (1), every natural gas fuel retailer is entitled to a deduction  
318 of 1.1 percent of the taxes imposed under s. 206.9955(2)(b) and  
319 (c), on account of services and expenses incurred due to  
320 compliance with the requirements of this part. This allowance  
321 may not be deductible unless payment of the tax is made on or  
322 before the 20th day of the month.

323 Section 11. Section 206.9965, Florida Statutes, is created  
324 to read:

325 206.9965 Exemptions and refunds; natural gas fuel  
326 retailers.—Natural gas fuel may be purchased from natural gas  
327 fuel retailers exempt from the tax imposed by this part when  
328 used or purchased for the following:

329 (1) Exclusive use by the United States or its departments  
330 or agencies. Exclusive use by the United States or its  
331 departments and agencies means the consumption by the United  
332 States or its departments or agencies of the natural gas fuel in  
333 a motor vehicle as defined in s. 206.01(23).

334 (2) Use for agricultural purposes as defined in s.  
335 206.41(4)(c).

336 (3) Uses as provided in s. 206.874(3).

337 (4) Used to propel motor vehicles operated by state and  
338 local government agencies.

339 (5) Individual use resulting from residential refueling  
340 devices located at a person's primary residence.

341 (6) Purchases of natural gas fuel between licensed natural  
342 gas fuel retailers. A natural gas fuel retailer that sells tax-  
343 paid natural gas fuel to another natural gas fuel retailer may  
344 take a credit on its monthly return or may file a claim for  
345 refund with the Chief Financial Officer pursuant to s. 215.26.  
346 All sales of natural gas fuel between natural gas fuel retailers  
347 must be documented on invoices or other evidence of the sale of  
348 such fuel and the seller shall retain a copy of the purchaser's  
349 natural gas fuel retailer license.

350 Section 12. Section 206.879, Florida Statutes, is  
351 transferred and renumbered as section 206.997, Florida Statutes,  
352 and amended to read:

353 206.997 ~~206.879~~ State and local alternative fuel user fee  
354 clearing trust funds; distribution.-

355 ~~(1)~~ Notwithstanding the provisions of s. 206.875, the  
356 revenues from the natural gas fuel tax imposed by s. 206.9955  
357 ~~state alternative fuel fees imposed by s. 206.877~~ shall be  
358 deposited into the State Alternative Fuel User Fee Clearing  
359 Trust Fund, which is hereby created. After deducting the service  
360 charges provided in s. 215.20, the proceeds in this trust fund  
361 shall be distributed as follows: one-half of the proceeds in  
362 calendar year 2019 and ~~one-fifth of the proceeds in calendar~~  
363 ~~year 1991, one-third of the proceeds in calendar year 1992,~~  
364 ~~three-sevenths of the proceeds in calendar year 1993, and one-~~

CS/HB 579

2013

365 ~~half of the proceeds in each calendar year~~ thereafter shall be  
366 transferred to the State Transportation Trust Fund; the  
367 remainder shall be distributed as follows: 50 percent shall be  
368 transferred to the State Board of Administration for  
369 distribution according to the provisions of s. 16, Art. IX of  
370 the State Constitution of 1885, as amended; 25 percent shall be  
371 transferred to the Revenue Sharing Trust Fund for  
372 Municipalities; and the remaining 25 percent shall be  
373 distributed using the formula contained in s. 206.60(1).

374 ~~(2) Notwithstanding the provisions of s. 206.875, the~~  
375 ~~revenues from the local alternative fuel fees imposed in lieu of~~  
376 ~~s. 206.87(1)(b) or (c) shall be deposited into The Local~~  
377 ~~Alternative Fuel User Fee Clearing Trust Fund, which is hereby~~  
378 ~~created. After deducting the service charges provided in s.~~  
379 ~~215.20, the proceeds in this trust fund shall be returned~~  
380 ~~monthly to the appropriate county.~~

381 Section 13. (1) The Local Alternative Fuel User Fee  
382 Clearing Trust Fund within the Department of Revenue is  
383 terminated.

384 (2) The Department of Revenue shall pay any outstanding  
385 debts or obligations of the terminated fund as soon as  
386 practicable, and the Chief Financial Officer shall close out and  
387 remove the terminated fund from various state accounting systems  
388 using generally accepted accounting principles concerning  
389 warrants outstanding, assets, and liabilities.

390 Section 14. Section 206.998, Florida Statutes, is created  
391 to read:

392 206.998 Applicability of specified sections of parts I and

393 II.—The provisions of ss. 206.01, 206.02, 206.025, 206.026,  
 394 206.027, 206.028, 206.03, 206.05, 206.055, 206.06, 206.07,  
 395 206.075, 206.09, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15,  
 396 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204,  
 397 206.205, 206.21, 206.215, 206.22, 206.23, 206.24, 206.25,  
 398 206.27, 206.28, 206.405, 206.406, 206.41, 206.413, 206.43,  
 399 206.44, 206.48, 206.485, 206.49, 206.56, 206.59, 206.606,  
 400 206.608, and 206.61 of part I of this chapter and ss. 206.86,  
 401 206.872, 206.874, 206.8745, 206.88, 206.90, and 206.93 of part  
 402 II of this chapter shall, as far as lawful or practicable, be  
 403 applicable to the tax levied and imposed and to the collection  
 404 thereof as if fully set out in this part. However, any provision  
 405 of any such section does not apply if it conflicts with any  
 406 provision of this part.

407 Section 15. Paragraph (d) of subsection (2) of section  
 408 212.055, Florida Statutes, is amended to read:

409 212.055 Discretionary sales surtaxes; legislative intent;  
 410 authorization and use of proceeds.—It is the legislative intent  
 411 that any authorization for imposition of a discretionary sales  
 412 surtax shall be published in the Florida Statutes as a  
 413 subsection of this section, irrespective of the duration of the  
 414 levy. Each enactment shall specify the types of counties  
 415 authorized to levy; the rate or rates which may be imposed; the  
 416 maximum length of time the surtax may be imposed, if any; the  
 417 procedure which must be followed to secure voter approval, if  
 418 required; the purpose for which the proceeds may be expended;  
 419 and such other requirements as the Legislature may provide.  
 420 Taxable transactions and administrative procedures shall be as

421 provided in s. 212.054.

422 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

423 (d) The proceeds of the surtax authorized by this  
424 subsection and any accrued interest shall be expended by the  
425 school district, within the county and municipalities within the  
426 county, or, in the case of a negotiated joint county agreement,  
427 within another county, to finance, plan, and construct  
428 infrastructure; to acquire land for public recreation,  
429 conservation, or protection of natural resources; to provide  
430 loans, grants, or rebates to residential or commercial property  
431 owners who make energy efficiency improvements to their  
432 residential or commercial property, if a local government  
433 ordinance authorizing such use is approved by referendum; or to  
434 finance the closure of county-owned or municipally owned solid  
435 waste landfills that have been closed or are required to be  
436 closed by order of the Department of Environmental Protection.  
437 Any use of the proceeds or interest for purposes of landfill  
438 closure before July 1, 1993, is ratified. The proceeds and any  
439 interest may not be used for the operational expenses of  
440 infrastructure, except that a county that has a population of  
441 fewer than 75,000 and that is required to close a landfill may  
442 use the proceeds or interest for long-term maintenance costs  
443 associated with landfill closure. Counties, as defined in s.  
444 125.011, and charter counties may, in addition, use the proceeds  
445 or interest to retire or service indebtedness incurred for bonds  
446 issued before July 1, 1987, for infrastructure purposes, and for  
447 bonds subsequently issued to refund such bonds. Any use of the  
448 proceeds or interest for purposes of retiring or servicing

449 indebtedness incurred for refunding bonds before July 1, 1999,  
450 is ratified.

451 1. For the purposes of this paragraph, the term  
452 "infrastructure" means:

453 a. Any fixed capital expenditure or fixed capital outlay  
454 associated with the construction, reconstruction, or improvement  
455 of public facilities that have a life expectancy of 5 or more  
456 years and any related land acquisition, land improvement,  
457 design, and engineering costs.

458 b. A fire department vehicle, an emergency medical service  
459 vehicle, a sheriff's office vehicle, a police department  
460 vehicle, or any other vehicle, and the equipment necessary to  
461 outfit the vehicle for its official use or equipment that has a  
462 life expectancy of at least 5 years.

463 c. Any expenditure for the construction, lease, or  
464 maintenance of, or provision of utilities or security for,  
465 facilities, as defined in s. 29.008.

466 d. Any fixed capital expenditure or fixed capital outlay  
467 associated with the improvement of private facilities that have  
468 a life expectancy of 5 or more years and that the owner agrees  
469 to make available for use on a temporary basis as needed by a  
470 local government as a public emergency shelter or a staging area  
471 for emergency response equipment during an emergency officially  
472 declared by the state or by the local government under s.  
473 252.38. Such improvements are limited to those necessary to  
474 comply with current standards for public emergency evacuation  
475 shelters. The owner must enter into a written contract with the  
476 local government providing the improvement funding to make the



477 private facility available to the public for purposes of  
478 emergency shelter at no cost to the local government for a  
479 minimum of 10 years after completion of the improvement, with  
480 the provision that the obligation will transfer to any  
481 subsequent owner until the end of the minimum period.

482 e. Any land acquisition expenditure for a residential  
483 housing project in which at least 30 percent of the units are  
484 affordable to individuals or families whose total annual  
485 household income does not exceed 120 percent of the area median  
486 income adjusted for household size, if the land is owned by a  
487 local government or by a special district that enters into a  
488 written agreement with the local government to provide such  
489 housing. The local government or special district may enter into  
490 a ground lease with a public or private person or entity for  
491 nominal or other consideration for the construction of the  
492 residential housing project on land acquired pursuant to this  
493 sub-subparagraph.

494 2. For the purposes of this paragraph, the term "energy  
495 efficiency improvement" means any energy conservation and  
496 efficiency improvement that reduces consumption through  
497 conservation or a more efficient use of electricity, natural  
498 gas, propane, or other forms of energy on the property,  
499 including, but not limited to, air sealing; installation of  
500 insulation; installation of energy-efficient heating, cooling,  
501 or ventilation systems; installation of solar panels; building  
502 modifications to increase the use of daylight or shade;  
503 replacement of windows; installation of energy controls or  
504 energy recovery systems; installation of electric vehicle

CS/HB 579

2013

505 charging equipment; installation of systems for natural gas fuel  
506 as defined in s. 206.9951; and installation of efficient  
507 lighting equipment.

508 3. Notwithstanding any other provision of this subsection,  
509 a local government infrastructure surtax imposed or extended  
510 after July 1, 1998, may allocate up to 15 percent of the surtax  
511 proceeds for deposit into ~~in~~ a trust fund within the county's  
512 accounts created for the purpose of funding economic development  
513 projects having a general public purpose of improving local  
514 economies, including the funding of operational costs and  
515 incentives related to economic development. The ballot statement  
516 must indicate the intention to make an allocation under the  
517 authority of this subparagraph.

518 Section 16. Subsection (4) of section 212.08, Florida  
519 Statutes, is amended to read:

520 212.08 Sales, rental, use, consumption, distribution, and  
521 storage tax; specified exemptions.—The sale at retail, the  
522 rental, the use, the consumption, the distribution, and the  
523 storage to be used or consumed in this state of the following  
524 are hereby specifically exempt from the tax imposed by this  
525 chapter.

526 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

527 (a) Also exempt are:

528 1. Water delivered to the purchaser through pipes or  
529 conduits or delivered for irrigation purposes. The sale of  
530 drinking water in bottles, cans, or other containers, including  
531 water that contains minerals or carbonation in its natural state  
532 or water to which minerals have been added at a water treatment

533 facility regulated by the Department of Environmental Protection  
534 or the Department of Health, is exempt. This exemption does not  
535 apply to the sale of drinking water in bottles, cans, or other  
536 containers if carbonation or flavorings, except those added at a  
537 water treatment facility, have been added. Water that has been  
538 enhanced by the addition of minerals and that does not contain  
539 any added carbonation or flavorings is also exempt.

540 2. All fuels used by a public or private utility,  
541 including any municipal corporation or rural electric  
542 cooperative association, in the generation of electric power or  
543 energy for sale. Fuel other than motor fuel and diesel fuel is  
544 taxable as provided in this chapter with the exception of fuel  
545 expressly exempt herein. Natural gas fuel as defined in s.  
546 206.9951(2) is exempt from the tax imposed by this chapter when  
547 placed into the fuel supply system of a motor vehicle. Motor  
548 fuels and diesel fuels are taxable as provided in chapter 206,  
549 with the exception of those motor fuels and diesel fuels used by  
550 railroad locomotives or vessels to transport persons or property  
551 in interstate or foreign commerce, which are taxable under this  
552 chapter only to the extent provided herein. The basis of the tax  
553 shall be the ratio of intrastate mileage to interstate or  
554 foreign mileage traveled by the carrier's railroad locomotives  
555 or vessels that were used in interstate or foreign commerce and  
556 that had at least some Florida mileage during the previous  
557 fiscal year of the carrier, such ratio to be determined at the  
558 close of the fiscal year of the carrier. However, during the  
559 fiscal year in which the carrier begins its initial operations  
560 in this state, the carrier's mileage apportionment factor may be

CS/HB 579

2013

561 determined on the basis of an estimated ratio of anticipated  
562 miles in this state to anticipated total miles for that year,  
563 and subsequently, additional tax shall be paid on the motor fuel  
564 and diesel fuels, or a refund may be applied for, on the basis  
565 of the actual ratio of the carrier's railroad locomotives' or  
566 vessels' miles in this state to its total miles for that year.  
567 This ratio shall be applied each month to the total Florida  
568 purchases made in this state of motor and diesel fuels to  
569 establish that portion of the total used and consumed in  
570 intrastate movement and subject to tax under this chapter. The  
571 basis for imposition of any discretionary surtax shall be set  
572 forth in s. 212.054. Fuels used exclusively in intrastate  
573 commerce do not qualify for the proration of tax.

574 3. The transmission or wheeling of electricity.

575 (b) Alcoholic beverages and malt beverages are not exempt.  
576 The terms "alcoholic beverages" and "malt beverages" as used in  
577 this paragraph have the same meanings ascribed to them in ss.  
578 561.01(4) and 563.01, respectively. It is determined by the  
579 Legislature that the classification of alcoholic beverages made  
580 in this paragraph for the purpose of extending the tax imposed  
581 by this chapter is reasonable and just, and it is intended that  
582 such tax be separate from, and in addition to, any other tax  
583 imposed on alcoholic beverages.

584 Section 17. This act shall take effect January 1, 2014.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 633 Biodiesel Fuel
SPONSOR(S): Perry and others
TIED BILLS: IDEN./SIM. BILLS: SB 522

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Rows include Energy & Utilities Subcommittee, Finance & Tax Subcommittee, and Regulatory Affairs Committee.

SUMMARY ANALYSIS

Currently, each biodiesel manufacturer in Florida, including municipalities, counties, and school districts who are manufacturing biodiesel for the sole use by the municipality, county, or school district, is required to meet the reporting, bonding, and licensing requirements prescribed for wholesalers pursuant to chapter 206, F.S.1 An exemption from the diesel fuel excise tax and registration requirements for a biodiesel manufacturer was created in 2010 for a public or private secondary school that manufactures less than 1,000 gallons on an annual basis for use at the school, by its employees, or its students.2

HB 633 creates an exemption from certain reporting, bonding, and licensing requirements for all municipalities, counties, and school districts that manufacture biodiesel fuel. The bill specifies that the exemption applies only when the biodiesel fuel is manufactured to be used solely by the municipality, county, or school district.

The bill will require those municipalities, counties, and school districts that manufacture biodiesel fuel to account for the biodiesel manufactured on their local government user return.

The Revenue Estimating Conference has not yet evaluated this bill.

The effective date of this bill is July 1, 2013.

1 Section 206.02(5), F.S.

2 Chapter 2010-195, L.O.F., and s. 206.874(7), F.S.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

“Biodiesel” is a product made from non-petroleum-based oils or fats suitable for use in diesel-powered engines.<sup>3</sup> A “biodiesel manufacturer” is defined in s. 206.86(15), F.S., to mean “those industrial plants, regardless of capacity, where organic products are used in the production of biodiesel. This includes businesses that process or blend organic products that are marketed as biodiesel.”

Currently, each biodiesel manufacturer in Florida, including municipalities, counties, and school districts who are manufacturing biodiesel for the sole use by the municipality, county, or school district, is required to meet the reporting, bonding, and licensing requirements prescribed for wholesalers pursuant to chapter 206, F.S.<sup>4</sup> An exemption from the diesel fuel excise tax and registration requirements for a biodiesel manufacturer was created in 2010 for a public or private secondary school that manufactures less than 1,000 gallons on an annual basis for use at the school, by its employees, or its students.<sup>5</sup>

To obtain a wholesaler of motor fuel license, an application form must be filed with the Department of Revenue (“DOR”) under oath.<sup>6</sup> While a bond must simultaneously be filed with the DOR,<sup>7</sup> local governments are exempt from the bond requirement<sup>8</sup> as well as a background check required of certain applicants. Each license must be renewed annually. Licensed fuel wholesalers, which include local governments who manufacture biodiesel, must file a monthly return. Local government users of diesel fuel must also register with DOR and file a monthly report of acquisitions, inventory, and use of diesel fuel<sup>9</sup> and pay 3 cents of the 4-cent excise tax plus all other taxes levied under s. 206.87(1), F.S.

The state imposes a tax on the sale, use, distribution, or consumption of motor and other fuels.<sup>10</sup> Part II of chapter 206, F.S., addresses diesel fuel. The tax imposed by this part is levied “for the purpose of providing revenue to be used by the state to defray in whole or in part the cost of constructing, widening, reconstructing, maintaining, resurfacing, and repairing the public highways of this state and the cost and expense incurred in the administration and enforcement of this part and for no other purpose whatsoever.”<sup>11</sup>

According to the *Florida Senate Bill Analysis and Fiscal Impact Statement for Senate Bill 522* published on February 18, 2013, staff indicated that,

One local government reports that complying with the wholesale licensing and reporting requirements for the small volume of biodiesel manufactured for internal use is burdensome to the point that it has suspended its program.<sup>12</sup> That county’s biodiesel manufacturing operation began in 2010 after it received a grant to purchase equipment to recycle waste vegetable oil as part of a fuel supply program that also was intended to achieve environmental benefits by keeping waste products out of the wastewater system. To have a diesel fuel manufacturing

<sup>3</sup> Section 206.86(14), F.S.

<sup>4</sup> Section 206.02(5), F.S.

<sup>5</sup> Chapter 2010-195, L.O.F., and s. 206.874(7), F.S.

<sup>6</sup> Section 206.02(4), F.S., and Rule 12B-5.060, F.A.C.

<sup>7</sup> Section 206.02(6), F.S.

<sup>8</sup> Section 206.05(1), F.S.

<sup>9</sup> Section 206.874(4), F.S.

<sup>10</sup> Chapter 206, F.S.

<sup>11</sup> Section 206.85, F.S.

<sup>12</sup> Oral conversation with Mark Sexton, Communications Coordinator, Alachua County Manager’s Office (February 2013).

operation, the county was required to expend additional time and labor monthly to perform a more extensive review of diesel fuel purchased from commercial suppliers and internally produced biodiesel in order to file the monthly return required of fuel wholesalers. There are other counties and cities that have similar programs<sup>13</sup> and they face the same challenges in complying with the reporting requirements of a wholesaler as well as a local government user.

Biodiesel fuel manufactured by a public or private secondary school that produces less than 1,000 gallons annually for the sole use at the school, by its employees, or its students is exempt from fuel tax.

Local governments are required to file a return accounting for diesel fuel acquisitions, inventory, and use.

### **Effects of Proposed Changes**

HB 633 creates an exemption from certain reporting, bonding, and licensing requirements for all municipalities, counties, and school districts that manufacture biodiesel fuel. The bill specifies that the exemption applies only when the biodiesel fuel is manufactured to be used solely by the municipality, county, or school district.

The bill will require those municipalities, counties, and school districts that manufacture biodiesel fuel to account for the biodiesel manufactured on their local government user return.

#### **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 206.02, F.S., exempting municipalities, counties, and school districts that manufacture biodiesel fuel from the reporting, bonding, and licensing requirements that apply to biodiesel manufacturers.

**Section 2.** Amends s. 206.874, F.S., requiring municipalities, counties, and school districts that manufacture biodiesel fuel to file certain monthly returns.

**Section 3.** Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

#### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

##### **1. Revenues:**

The Revenue Estimating Conference has not yet evaluated this bill. Minimal impacts are expected based on preliminary staff analysis.

##### **2. Expenditures:**

See FISCAL COMMENTS

#### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

##### **1. Revenues:**

The Revenue Estimating Conference has not yet evaluated this bill. No impacts are expected based on preliminary staff analysis.

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<sup>13</sup> The Gainesville Sun, *From chicken wings and fries to powering county trucks*. See <http://www.gainesville.com/article/20130129/ARTICLES/130129540>.



2. Expenditures:

See FISCAL COMMENTS

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Local governments that manufacture biodiesel for use only by that municipality, county, or school district will be relieved of the time and labor needed to be expended to comply with licensing and reporting requirements of fuel wholesalers.

The DOR reports that implementation of this bill will present an insignificant operational impact.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1                                    A bill to be entitled  
 2                    An act relating to biodiesel fuel; amending s. 206.02,  
 3                    F.S.; exempting municipalities, counties, and school  
 4                    districts that manufacture biodiesel fuel from certain  
 5                    reporting, bonding, and licensing requirements;  
 6                    amending s. 206.874, F.S.; requiring municipalities,  
 7                    counties, and school districts that manufacture  
 8                    biodiesel fuel to file certain returns and remit  
 9                    certain taxes; providing an effective date.

10  
 11    Be It Enacted by the Legislature of the State of Florida:

12  
 13                    Section 1. Subsection (5) of section 206.02, Florida  
 14                    Statutes, is amended to read:

15                    206.02 Application for license; temporary license;  
 16                    terminal suppliers, importers, exporters, blenders, biodiesel  
 17                    manufacturers, and wholesalers.—

18                    (5) Each biodiesel manufacturer must meet the reporting,  
 19                    bonding, and licensing requirements ~~prescribed~~ for wholesalers  
 20                    under by this chapter. This subsection does not apply to a  
 21                    municipality, county, or school district that manufactures  
 22                    biodiesel fuel solely for the use by the municipality, county,  
 23                    or school district.

24                    Section 2. Paragraph (b) of subsection (4) of section  
 25                    206.874, Florida Statutes, is amended to read:

26                    206.874 Exemptions.—

27                    (4)

28                    (b) A municipality, county, or school district that

HB 633

2013

29 | manufactures biodiesel fuel solely for the use by the  
30 | municipality, county, or school district and local government  
31 | users of diesel fuel are ~~shall be~~ required to file a return  
32 | accounting for biodiesel fuel manufacturing, diesel fuel  
33 | acquisitions, inventory, and use, and remit a tax equal to 3  
34 | cents of the 4-cent tax required under s. 206.87(1)(a), plus the  
35 | taxes required under s. 206.87(1)(b), (c), and (d) each month to  
36 | the department.

37 | Section 3. This act shall take effect July 1, 2013.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER

1 Committee/Subcommittee hearing bill: Finance & Tax Subcommittee  
2 Representative Perry offered the following:

3

4 **Amendment**

5 Remove lines 22-29 and insert:

6 biodiesel fuel solely for use by the municipality, county, or  
7 school district.

8 Section 2. Paragraph (b) of subsection (4) of section  
9 206.874, Florida Statutes, is amended to read:

10 206.874 Exemptions.—

11 (4)

12 (b) A municipality, county, or school district that  
13 manufactures biodiesel fuel solely for use by the



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 837 Tax Collectors  
SPONSOR(S): Mayfield  
TIED BILLS: IDEN./SIM. BILLS: SB 1026

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Aldridge <i>WA</i>	Langston <i>JS</i>
2) Local & Federal Affairs Committee			

SUMMARY ANALYSIS

The bill amends s. 197.332(1), F.S., which relates to the duties of tax collectors, to include an express statement in statute that the tax collector’s authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, is done in part “by processing tax deed applications.”

Under current law, the tax collector may collect the cost of contracted services and reasonable attorney’s fees and court costs in actions on proceedings to recover delinquent taxes, interest, and costs.

The bill amends s. 197.332(1), F.S., to allow tax collectors, in addition to current authority, to collect the cost of contracted services not associated with actions on proceedings to recover delinquent taxes, interest, and costs.

The Revenue Estimating Conference has not yet estimated the revenue impacts of this bill on local governments. However, to the extent that tax collectors choose to collect the cost of additional contracted services there would be a positive revenue impact to local governments.

The bill is effective July 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Background

Chapter 197, F.S., governs tax collections, sales, and liens.

###### *Tax Certificates*

A tax certificate is a legal document, representing unpaid delinquent real property taxes, non-ad valorem assessments, including special assessments, interest, and related costs and charges, issued in accordance with Chapter 197, F.S., against a specific parcel of real property.<sup>1</sup> The tax certificate acts as a first lien on the property superior to all other liens, but it does not convey any property rights.<sup>2</sup>

Property taxes are due and payable on November 1 of each year or as soon thereafter as the certified tax roll is received by the tax collector and tax notices are mailed to taxpayers notifying them of the amount of taxes due and any discounts that are available to them.<sup>3</sup> Taxes are considered delinquent if they are not paid by April 1 following the year in which they are assessed.<sup>4</sup> By April 30, the tax collector mails an additional tax notice to each taxpayer whose payment has not been received, notifying the taxpayer that a tax certificate on the property will be sold for delinquent taxes that are not paid in full.<sup>5</sup>

On or before June 1 or 60 days after the date of delinquency, tax collectors are required to hold tax certificate auctions to sell tax certificates on properties with delinquent taxes which "shall be struck off to the person who will pay the taxes, interest, cost and charges and will demand the lowest rate of interest under the maximum rate of interest."<sup>6</sup> Tax certificates that are not sold are issued to the county at the maximum interest rate (18%). The sale of the tax certificate acts as first lien on the property that is superior to all other liens; but it does not convey any property rights to the investor.<sup>7</sup>

A property owner can redeem a tax certificate anytime before a tax deed is issued or the property is placed on the list of lands available for sale. The person redeeming or purchasing the tax certificate is required to pay the investor or county "all taxes, interest, costs, charges, and [any] omitted taxes" and a \$6.25 fee to the tax collector.<sup>8</sup>

###### *Tax Deeds*

If the property owner has not redeemed the tax certificate, a tax certificateholder may apply for a tax deed on the property on or after the second year following the sale of the certificate and before the expiration of seven years from issuance, by filing the certificate with the county tax collector and paying all amounts required for redemption or purchase of all other outstanding tax certificates, any omitted taxes or delinquent taxes, and any current taxes due, plus interest.<sup>9</sup> The tax collector is authorized to

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<sup>1</sup> Section 197.102(3), F.S.

<sup>2</sup> Section 197.122(1), F.S., *see also* s. 197.432, F.S.

<sup>3</sup> Sections 197.322 and 197.333, F.S.

<sup>4</sup> *Id.*

<sup>5</sup> Section 197.343(1), F.S.

<sup>6</sup> Section 197.432(5), F.S.

<sup>7</sup> Section 197.122, F.S., *see also* s. 197.432, F.S.

<sup>8</sup> Section 197.472, F.S.

<sup>9</sup> Section 197.502(2), F.S.

collect a tax deed application fee of \$75 at the time of application for the tax deed.<sup>10</sup> The property is then placed on the list of lands available for sale and sold to the highest bidder at a public auction held by the clerk of the circuit court.<sup>11</sup> If property placed on the list of lands available for sale is not sold within three years after the public auction, the land escheats to the county in which the property is located free and clear of all liens.<sup>12</sup> Tax certificates that are not redeemed or for which a tax deed has not been applied for after a period of seven years become null and void.<sup>13</sup>

### Duties of Tax Collectors

Section 197.332(1), F.S., relates to the duties of tax collectors and provides:

The tax collector has the authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, by sale of tax certificates on real property and by seizure and sale of personal property. In exercising their powers to contract, the tax collector may perform such duties by use of contracted services or products or by electronic means. The use of contracted services, products, or vendors does not diminish the responsibility or liability of the tax collector to perform such duties pursuant to law. The tax collector may collect the cost of contracted services and reasonable attorney's fees and court costs in actions on proceedings to recover delinquent taxes, interest, and costs.

### **Proposed Changes**

The bill would amend s. 197.332(1), F.S., to include an express statement in statute that the tax collector's authority and obligation to collect all taxes as shown on the tax roll by the date of delinquency or to collect delinquent taxes, interest, and costs, is done in part "by processing tax deed applications."

The bill would also amend the last sentence of s. 197.332(1), F.S., which currently reads:

The tax collector may collect the cost of contracted services and reasonable attorney's fees and court costs in actions on proceedings to recover delinquent taxes, interest, and costs.

The bill amends this sentence to allow tax collectors, in addition to current authority, to collect the cost of contracted services not associated with actions on proceedings to recover delinquent taxes, interest, and costs.

### **B. SECTION DIRECTORY:**

Section 1: Amends s. 197.332(1), F.S.

Section 2: Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

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<sup>10</sup> Section 197.502(1), F.S.

<sup>11</sup> Section 197.542(1), F.S.,

<sup>12</sup> Section 197.502(8), F.S.

<sup>13</sup> Section 197.482(1), F.S.



None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has not yet estimated the revenue impacts of this bill on local governments. However, to the extent that tax collectors choose to collect the cost of additional contracted services there would be a positive revenue impact to local governments.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Unknown.

**D. FISCAL COMMENTS:**

None.

**III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

HB 837

2013

1                   A bill to be entitled  
2           An act relating to tax collectors; amending s.  
3           197.332, F.S.; specifying that the tax collector may  
4           collect delinquent taxes by processing tax deed  
5           applications; providing an effective date.

6  
7   Be It Enacted by the Legislature of the State of Florida:

8  
9           Section 1. Subsection (1) of section 197.332, Florida  
10          Statutes, is amended to read:

11           197.332 Duties of tax collectors; branch offices.—

12           (1) The tax collector has the authority and obligation to  
13          collect all taxes as shown on the tax roll by the date of  
14          delinquency or ~~to~~ collect delinquent taxes, interest, and costs,  
15          by sale of tax certificates on real property, by processing tax  
16          deed applications, and by seizure and sale of personal property.  
17          In exercising their powers to contract, the tax collector may  
18          perform such duties by use of contracted services or products or  
19          by electronic means. The use of contracted services, products,  
20          or vendors does not diminish the responsibility or liability of  
21          the tax collector to perform such duties pursuant to law. The  
22          tax collector may collect the cost of contracted services. The  
23          tax collector may also collect ~~and~~ reasonable attorney  
24          ~~attorney's~~ fees and court costs in actions on proceedings to  
25          recover delinquent taxes, interest, and costs.

26           Section 2. This act shall take effect July 1, 2013.



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB FTSC 13-02 Relating to Florida Sales and Use Tax
SPONSOR(S): Finance & Tax Subcommittee
TIED BILLS: IDEN./SIM. BILLS:

Table with 4 columns: REFERENCE, ACTION, ANALYST, STAFF DIRECTOR or BUDGET/POLICY CHIEF. Row 1: Orig. Comm.: Finance & Tax Subcommittee, Flieger BF, Langston [Signature]

SUMMARY ANALYSIS

Under Florida law, sales of tangible personal property are subject to the sales and use tax unless specifically exempt. However, it is difficult for states to collect the tax due on sales made from out-of-state vendors because the state must rely on either out-of-state vendors to voluntarily collect the sales tax or purchasers to voluntarily remit the use tax themselves.

The proposed committee bill amends s. 212.0596, F.S., to provide that a "mail order sale" includes the sale of tangible personal property over the internet. The bill adds in-state representatives of a dealer, in addition to the current law inclusion of in-state agents of that dealer, to cause a dealer to have nexus.

The bill also establishes a rebuttable presumption that an out-of-state dealer who makes "mail order sales" to Florida customers is required to collect taxes if the dealer enters into an agreement with one or more persons ("affiliates") within Florida under which the Florida affiliate refers (directly or indirectly) potential customers to the dealer.

The definition of "dealer" in s. 212.06, F.S., is revised to include any person who uses within this state an office, distributing house, salesroom, or house, warehouse, or other place of business operated by any person other than a common carrier acting in the capacity of a common carrier.

The bill creates s. 212.0802, establishing a recurring sales tax holiday on clothing and school supplies. The length of the holiday will be determined each year by the Revenue Estimating Conference to reduce total sales tax collections by at least the amount of new collections received pursuant to the changes to the mail order sales statute in the bill.

The Revenue Estimating Conference has not evaluated the proposed committee bill, but on March 1, 2013, it estimated that substantially similar language would have an indeterminate positive revenue impact on state and local government in the first year of implementation and an indeterminate revenue impact of unknown direction each year subsequently.

The proposed committee bill has an effective date of February 1, 2014.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Law**

##### Florida Sales and Use Tax

Chapter 212, F.S., contains the statutory provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on sales or rental of most tangible personal property, admissions, storage, rentals of transient accommodations, rental of commercial real estate, and a limited number of services.<sup>1</sup> The statutes currently provide more than 200 different exemptions.<sup>2</sup> Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

In conjunction with that sales tax, a use tax of 6 percent is levied on tangible personal property when it is used, consumed, distributed, or stored in Florida. For example, use tax is owed when:<sup>3</sup>

- A taxable item is purchased in Florida and the sales tax is not collected;
- An item is tax-exempt when purchased because the taxpayer intended to resell it, but the item is used in a business or for personal use; or
- A taxable item is purchased outside Florida and is brought or delivered into the state within 6 months of the purchase date, and sales tax was not collected at time of purchase.

If the item brought into Florida is subject to tax, a credit is allowed for equivalent taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

The Florida Department of Revenue ("DOR") is responsible for administering, collecting, and enforcing all sales and use taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments.<sup>4</sup> A few revenue sharing programs require that the county or municipality meet certain criteria to be eligible to receive funds. While there are restrictions on the use of some shared revenues, proceeds derived from shared sales tax revenues may be used for the general revenue needs of local governments.<sup>5</sup>

##### Local Discretionary Sales Surtaxes

Sections 212.054 and 212.055, F.S., authorize Florida counties to charge discretionary sales surtaxes on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services as defined in ch. 202, F.S.<sup>6</sup> The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S. Currently, the highest surtax imposed is 1.5 percent in several

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<sup>1</sup> Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.

<sup>2</sup> For a list of exemptions and history, see REC, 2012 Florida Tax Handbook. Exemptions are estimated to total about \$10 billion.

<sup>3</sup> Department of Revenue, Florida's Sales and Use Tax, available at [http://dor.myflorida.com/dor/taxes/sales\\_tax.html#tab1](http://dor.myflorida.com/dor/taxes/sales_tax.html#tab1) (last visited 1/31/2013).

<sup>4</sup> See, s. 212.20, F.S., for provisions governing this distribution

<sup>5</sup> For more information see REC, 2012 Florida Tax Handbook.

<sup>6</sup> The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.

counties;<sup>7</sup> however, the theoretical maximum rate ranges between 2 percent and 3.5 percent, depending on the specifics of each individual county.<sup>8</sup> In general, the levy of each particular tax is subject to county voter approval, though there are exceptions.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state tax. The sale is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to sales price above \$5,000 on any item of tangible personal property. This \$5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

#### Internet Sales and Out of State Vendors<sup>9</sup>

Under Florida law, every sale of tangible personal property is subject to sales tax unless specifically exempt. Sales made over the internet are not exempt from the provisions of ch. 212, F.S.<sup>10</sup> However, it is difficult for states to collect the tax due on sales made by out-of-state vendors because the state must rely on either out-of-state vendors to voluntarily collect the sales tax or purchasers to voluntarily remit the use tax themselves. A state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause of the U.S. Constitution.<sup>11</sup> As regulation of interstate commerce is exclusively the domain of the U.S. Congress,<sup>12</sup> states may not regulate interstate commerce without Congressional authorization. In Quill Corp. v. North Dakota, 504 U.S. 298 (1992), the Supreme Court ruled that it is unconstitutional under the Commerce Clause for a state to require an out-of-state retailer to collect sales tax unless that out-of-state retailer has a "physical presence" to create sufficient connection or "nexus" with that state (e.g. offices, showrooms, etc.). The Supreme Court held that requiring retailers to comply with numerous jurisdictions' tax laws would be overly burdensome.

Currently, s. 212.0596, F.S., defines a "mail order sale" as, "a sale of tangible personal property, ordered by mail or other means of communication, from a dealer who receives the order in another state of the United States, or in a commonwealth, territory, or other area under the jurisdiction of the United States, and transports the property or causes the property to be transported, whether or not by mail, from any jurisdiction of the United States, including this state, to a person in this state, including the person who ordered the property."<sup>13</sup>

Section 212.0596(2), F.S., provides requirements for dealers doing mail order business in Florida to collect and remit Florida sales tax if the dealer has nexus with Florida, and provides what activities constitute nexus for purposes of mail order sales. These include when:

- The dealer has agents in Florida who solicit or transact business on behalf of the dealer, whether the resulting mail orders result from or are related to the agent's solicitation or transaction of business;
- The property was delivered in Florida in fulfillment of a sales contract entered into in Florida where Florida law would apply under conflict of law rules;

<sup>7</sup> See DOR Form DR-15 DSS, "Discretionary Sales Surtax Information", available at <http://dor.myflorida.com/dor/forms/2013/dr15dss.pdf> (last visited 1/31/2013).

<sup>8</sup> See pg. 212-213 of the REC's 2012 Florida Tax Handbook, available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2012.pdf> (last visited 3/9/12)

<sup>9</sup> For more detailed background information, see The Florida Senate Budget Subcommittee on Finance and Tax, "Interim Report 2012-107: Application of Florida's Sales Tax to Sales by Out-of-State Retailers" (August 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/BFT1072012-107ft.pdf> (last visited 1/28/2013).

<sup>10</sup> See DOR, "Florida Consumer Information website on remitting use tax for Internet sales", available at <http://dor.myflorida.com/dor/taxes/consumer.html> (last visited 1/31/2013).

<sup>11</sup> Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state. See Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977), rehearing denied, 430 U.S. 976 (1977).

<sup>12</sup> This is often referred to as the "Dormant" Commerce Clause.

<sup>13</sup> Section 212.0596(1), F.S.

- The dealer creates nexus with Florida by purposefully or systematically exploiting Florida's market by any media assisted, media facilitated, or media solicited means;
- Another U.S. jurisdiction uses its taxing power over the retailer in support of Florida's taxing power;
- The dealer is subject to service of process; or
- The dealer without nexus with Florida is a corporation that is a member of an affiliated group of corporations under s. 1504 of the Internal Revenue Code and whose members are eligible to file a consolidated federal corporate income tax return.

If the out-of-state retailer does not have sufficient nexus to require collection, and the goods are delivered in Florida, then use tax applies and is due from the purchaser. Consumers with use tax liability may voluntarily remit taxes due using Form DR-15MO.<sup>14</sup>

### E-Commerce

According to the U.S. Census Bureau about 70 percent of U.S. households have internet access.<sup>15</sup> The U.S. Census Bureau estimated that national e-commerce sales over the last 4 quarters total over \$216 billion dollars. This is roughly 5 percent of total retail sales in the U.S.<sup>16</sup>

Studies have estimated that amounts of lost sales tax revenue in Florida range from \$281 million to \$804 million in 2012.<sup>17</sup> In addition to the uncertainty created by attempting to estimate transactions that are not recorded, it is difficult to determine the exact amount of lost sales tax revenue due to the over 200 sales tax exemptions in Florida law (any tax exempt items purchased online do not cause a revenue loss) and the 67 different state and local taxing jurisdictions in the state (isolating the loss to individual taxing jurisdiction adds an additional layer of uncertainty).

### Federal Action

Since the power to regulate interstate commerce resides at the federal level, federal legislation appears to be the only comprehensive solution for states to grant them authority to require out-of-state retailers to collect sales tax. Multiple bills have been filed in Congress over the years to try to address the issue, generally by allowing those states which enact certain simplification and uniformity provisions to require collection by out-of-state sellers, but none have yet been enacted into law.<sup>18</sup>

### Actions of Other States

In the absence of federal action, several states have attempted to address the issue of taxing sales by out-of-state retailers through various methods.

Some states have passed legislation to fully participate in the Streamlined Sales and Use Tax Agreement.<sup>19</sup> These states adopt a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. However, participation in collecting sales tax under the agreement is still voluntary for sellers who do not have nexus with a state.

<sup>14</sup> <http://dor.myflorida.com/dor/forms/2010/dr15mo.pdf> (last accessed 3/11/13).

<sup>15</sup> 2010 data available at <http://www.census.gov/population/www/socdemo/computer.html> (last visited 1/28/2013).

<sup>16</sup> Quarterly Retail E-Commerce Sales, 3<sup>rd</sup> Quarter 2012, available at [http://www.census.gov/retail/mrts/www/data/pdf/ec\\_current.pdf](http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf) (last visited 1/28/2013).

<sup>17</sup> Bruce, Donald, William Fox, and LeAnn Luna, "State and Local Government Sales Tax Revenue Losses from Electronic Commerce", University of Tennessee, April 8, 2009; Eisenach, Jeffrey A., and Robert E. Litan, "Uncollected Sales Taxes on Electronic Commerce: A Reality Check", Empiris LLC, February 2010.

<sup>18</sup> In the 113th Congress, the "Marketplace Fairness Act" has been introduced as S. 336 and H.R. 684. Despite bipartisan sponsorship neither version has received a committee hearing as of March 9, 2013.

<sup>19</sup> Florida legislative action in response to this project includes s. 213.27, F.S., which grants DOR 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 (ch. 2000-355, L.O.F.), and ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the project. See the SSUTA website for more information: <http://www.streamlinedsalestax.org/>.

In 2008, New York attempted to redefine what qualified as nexus to include arrangements where in-state companies (known as “affiliates”) refer business to an out-of-state dealer for a commission. This so-called “click-through” nexus law has been challenged and is currently in litigation.<sup>20</sup> Numerous other states have followed New York’s example and passed similar laws.<sup>21</sup> The response by e-commerce dealers has generally been to sever whatever affiliate arrangements they have within that state and continue to not collect sales tax on sales to that state. Additional nexus expansion legislation has attempted to extend the reach of state taxing authority through related corporations, shared trademarks, common ownership, and similar business relationship concepts where nexus with an out-of-state retailer can be achieved through in-state business activities.

Some states have elected to exempt certain retailers from collecting and remitting sales tax if the seller agrees to make a substantial investment in the state in the form of a distribution center and create a certain number of jobs. For example, South Carolina’s statute requires a \$125 million investment and 2,000 new jobs in exchange for exemption from sales tax collections until 2016. Tennessee, California, Texas, Indiana, New Jersey, and Virginia have, through legislation or executive action, made arrangements with at least some e-commerce retailers where the retailer would begin collecting tax at a future date and either maintain currently operational distribution centers or invest in building additional facilities within that state.

### Sales Tax Holiday

There is no current statutory provision providing for an annual sales tax holiday. Since 1998, the Legislature has enacted eleven temporary periods during which certain clothing, footwear, books and school supply items were exempted from the state sales tax and county discretionary sales surtaxes. The length of the exemption periods has varied from 3 to 10 days. The type and value of exempt items has also varied. Clothing and footwear with values under \$100, \$75, or \$50 have been exempt at different times. Books valued at \$50 or less were exempt in five of the holidays. School supplies were included in recent holidays, with the value threshold increasing from \$10 to \$15 over time.

### **Proposed Changes**

The proposed committee bill amends Florida’s laws related to what conduct by out-of-state retailers qualifies as nexus with this state and creates a revenue-neutral sales tax holiday funded by the increased collections caused by the changes made to the nexus provisions.

### Nexus

The bill amends s. 212.0596, F.S., to provide that a “mail order sale” includes the sale of tangible personal property over the internet as well as a sale made from a foreign country. The bill adds in-state representatives of a dealer, in addition to current law’s inclusion of in-state agents of that dealer,<sup>22</sup> to cause a dealer to have nexus.

The bill provides, in addition to the nexus creation provisions of current law, that an out-of-state dealer has nexus with Florida and is therefore obligated to collect tax if a person other than the dealer (excluding common carriers) engages in any of the following activities within Florida:

- Sells a similar line of products as the dealer and does so under a similar business name;
- Maintains an office, distribution facility, warehouse, or similar place of business to facilitate delivery of products or services sold by that dealer to in-state customers;
- Uses trademarks, service marks, or trade names that are the same or substantially similar to those used by the dealer;

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<sup>20</sup> New York won at the trial level but the case was revived on appeal. See Overstock.com v. New York State Department of Taxation and Finance, New York State Court of Appeals No. APL-2012-00017, Amazon.com v. New York State Department of Taxation and Finance, New York State Court of Appeals No. APL-2012-00045.

<sup>21</sup> States which have passed a variant of New York-style nexus laws as of March, 2013, include California, Illinois, Georgia, Rhode Island, North Carolina, Texas, Arizona, Vermont, and Connecticut.

<sup>22</sup> Section 212.0596(c), F.S.



- Delivers, installs, assembles, or performs maintenance services for the dealer's Florida customers;
- Facilitates the dealer's delivery of property to customers in this state by allowing the dealer's customers to pick up property at a distribution, warehouse, or similar place of business maintained by the person;
- Conducts any other activities in this state which are significantly associated with the dealer's ability to establish and maintain a market in Florida for the dealer's sales.

The bill also establishes a rebuttable presumption that an out-of-state dealer who makes mail order sales to Florida customers is required to collect taxes if the dealer enters into an agreement with one or more persons ("affiliates") within Florida under which the Florida affiliate refers (directly or indirectly) potential customers to the dealer.<sup>23</sup> The bill requires annual gross receipts by the dealer of at least \$10,000 in sales by customers referred by affiliates within Florida before this presumption is created.

The bill provides that an out-of-state dealer may rebut this presumption of nexus by proving the in-state affiliates with whom the dealer had an agreement with did not engage in any activity in Florida that was significantly associated with the dealer's ability to establish or maintain a market in this state. The dealer may offer sworn affidavits from their Florida affiliates as evidence in proving that claim.

The definition of "dealer" in s. 212.06(2), F.S., is revised by the bill to include any person uses within this state an office, distributing house, salesroom, or house, warehouse, or other place of business operated by any person other than a common carrier acting in the capacity of a common carrier.

#### Sales Tax Holiday

The bill creates s. 212.0802, F.S., to establish an annual variable length sales tax holiday exempting clothing, shoes and school supplies from the sales and use tax levied under ch. 212, F.S. The length of the holiday will be determined annually by the Revenue Estimating Conference to offset the increased collections caused by the nexus extension provisions described above.

The bill provides for a sales tax holiday to begin on the first Friday of August each year beginning in 2014. During the sales tax holiday, the following items that cost \$75 or less will be exempt from the state sales tax and county discretionary sales surtaxes:

- Clothing (defined as an "article of wearing apparel intended to be worn on or about the human body," but excluding watches, watchbands, jewelry, umbrellas, and handkerchiefs);
- Footwear (excluding skis, swim fins, roller blades, and skates);
- Wallets; and
- Bags (including handbags, backpacks, fanny packs, and diaper bags, but excluding briefcases, suitcases, and other garment bags).

During the sales tax holiday, the bill will also exempt "school supplies" that cost \$15 or less per item. "School supplies" are defined as pens, pencils, erasers, crayons, notebooks, notebook filler paper, legal pads, binders, lunch boxes, construction paper, markers, folders, poster board, composition books, poster paper, scissors, cellophane tape, glue or paste, rulers, computer disks, protractors, compasses, and calculators.

The bill provides that the sales tax holiday will not apply to sales within a theme park, entertainment complex, public lodging establishment, or airport. Thus, sales of school supplies and related items in these locations would still be subject to taxation during the holiday.

The bill directs the Department of Revenue, in consultation with the Revenue Estimating Conference, to determine the amount of taxes that were collected from out-of-state dealers who would not have been required to collect sales tax but for the changes the bill makes to the treatment of mail order sales.

<sup>23</sup> Whether by a link on an Internet website, an in-person oral presentation, telemarketing, or otherwise.

Beginning in 2014, and continuing each year afterwards, the Department shall report to the Governor, Speaker of the House, and President of the Senate the amount of taxes that were collected from such dealers for the 12 month period that ended on April 30 of that year.

Using that collections data for each year provided by the Department, the Revenue Estimating Conference will then determine how many days the sales tax holiday will run for in the upcoming fiscal year. On or before June 1 (beginning in 2014), they shall estimate the number of days required to reduce total sales tax collections by at least the amount of sales taxes collected due to the mail order sale changes.

If in any year the amount of days determined by that calculation is fewer than three, there will not be a sales tax holiday for that year. Those new collections will be carried forward, unallocated in the General Revenue Fund, until the next year, adding them to the next year's collections until there are enough new collections to fund a tax holiday period of at least three days.

If the number of days calculated is greater than 365, requiring a sales tax holiday that would run past the first Friday of the following year, the collections will be used to permanently reduce the state sales tax rate. The tax rate will be reduced by multiplying each state sales tax rate in ch. 212, F.S., by the difference between one and the ratio determined by the following formula:

- The numerator will be the amount of newly collected taxes from out-of-state dealers for that year, plus any collections carried forward from previous years;
- The denominator will be the sum total of sales tax collections for the upcoming calendar year forecasted by the Revenue Estimating Conference.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 212.0596, F.S., revising the definition of "mail order sale" and extending nexus to dealers who engage in certain activities.

Section 2. Amends s. 212.06, F.S., revising the definition of "dealer" for the purposes of the sales and use tax.

Section 3. Creates s. 212.0802, F.S., establishing an annual sales tax holiday on school supplies, providing the methodology to determine the length of each holiday.

Section 4. Directing the Department of Revenue to make certain reports.

Section 5. Providing an effective date of February 1, 2014.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

#### A. FISCAL IMPACT ON STATE GOVERNMENT:

##### 1. Revenues:

The Revenue Estimating Conference has not evaluated the proposed committee bill, but on March 1, 2013, it estimated that substantially similar language would have an indeterminate positive revenue impact on state government in the first year of implementation and an indeterminate revenue impact of unknown direction each year subsequently.

##### 2. Expenditures:

N/A

## B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

### 1. Revenues:

The Revenue Estimating Conference has not evaluated the proposed committee bill, but on March 1, 2013, it estimated that substantially similar language would have an indeterminate positive revenue impact on local government in the first year of implementation and an indeterminate revenue impact of unknown direction each year subsequently.

### 2. Expenditures:

N/A

## C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If out-of-state retailers begin to collect sales tax, their tax treatment would equalize with brick and mortar retail establishments, which currently operate at a competitive disadvantage. Consumers who make purchases from out-of-state dealers and do not voluntarily remit the use tax due on those purchases would have additional taxes collected on their purchases.

## D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

#### 2. Other:

##### Mail Order Sales

As mentioned above, some of the states who have enacted similar laws have become faced lawsuits challenging the constitutionality of those laws from affected out-of-state dealers. If this bill were to become law, Florida may be subject to such lawsuits. A state's ability to compel an out-of-state seller to collect and remit sales tax is primarily limited by the Dormant Commerce Clause of the U.S. Constitution.<sup>24</sup>

Upholding a tax imposed by state statute against a Dormant Commerce Clause challenge is dependent upon satisfaction of a 4-part test.<sup>25</sup>

- the tax is applied to an activity with a substantial nexus with the taxing state;
- the tax is fairly apportioned;
- the tax does not discriminate against interstate commerce; and
- the tax is fairly related to a service provided by the taxing state.

The nexus requirement outlined in Complete Auto has generally been interpreted to require that in order to require an out-of-state retailer to collect sales tax the retailer must have a "physical presence" in the state.<sup>26</sup>

<sup>24</sup> See AMJUR STATELOCL s. 157; 71 A.L.R.5th 671.

<sup>25</sup> Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

In Scripto, Inc. v. Carson, the U.S. Supreme Court held that an out-of-state retailer with agents in Florida was a dealer required to collect and remit Florida sales tax.<sup>27</sup> The agents of the out-of-state retailer represented the retailer pursuant to a contract that authorized the Florida merchants to solicit orders and otherwise obtain business for the retailer in Florida in return for compensation to be paid in the form of a commission.

The U.S. Supreme Court later elaborated in Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, that, "the crucial factor governing nexus is whether the activities performed in this state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state for the sales."<sup>28</sup> The Court found that this standard was satisfied because of the activities of the business's sales representatives in the state.

Many of the cases related to this issue were decided before the emergence of the internet, and thus it is unclear how the case law should be applied to sales over the internet. Several of the states that have enacted similar laws since 2008 have faced lawsuits challenging the constitutionality of their laws. There have been no final decisions on any of those lawsuits.

#### Sales Tax Holiday

The nondelegation doctrine requires that no branch of the government delegate its assigned powers to another branch. Thus, the Florida Legislature cannot delegate the power to make a law; it may only confer the authority to execute the laws it makes. Courts have held, however, that the legislature may transfer subordinate functions to permit administration of legislative policy where there are ascertainable minimal standards and guidelines and it is evident that Legislature has not delegated the power to enact policy or completely determine a law's standards.<sup>29</sup>

That the Revenue Estimating Conference, rather than the Legislature, per se, is tasked with determining the length of the sales tax holiday each year under the bill may raise nondelegation issues. Broadly, the Legislature may not adopt future 'external authority', delegate decision making, or grant the authority to determine what the parameters of a law shall be (without sufficient detail and instruction) to an implementing authority. However, in Jones v. Department of Revenue, the First District Court of Appeals held that the Legislature was permitted to task the Department of Revenue with making projections for tax revenues as the statute in question dealt with, "the field of economics, a highly complex discipline which requires the expertise and flexibility of the agency to deal with 'complex and fluid' conditions."<sup>30</sup>

#### B. RULE-MAKING AUTHORITY:

None.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

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<sup>26</sup> See Quill Corporation v. North Dakota, 504 U.S. 298 (1992).

<sup>27</sup> Scripto, Inc., v. Carson, 362 U.S. 207, 211 (1960).

<sup>28</sup> Tyler Pipe Industries, Inc., v. Washington State Dept. of Revenue, 483 U.S. 232, 250 – 251 (1987).

<sup>29</sup> Sloban v. Florida Bd. of Pharmacy, 982 So. 2d 26 (Fla. Dist. Ct. App. 1st Dist. 2008); State ex rel. Palm Beach Jockey Club v. Florida State Racing Com'n, 158 Fla. 335, 28 So. 2d 330 (1946).

<sup>30</sup> Jones v. Department of Revenue, 523 So.2d 1211 (Fla. 1st DCA 1988).

1                                   A bill to be entitled  
 2           An act relating to the tax on sales, use, and other  
 3           transactions; amending s. 212.0596, F.S.; revising the  
 4           term "mail order sale" to specifically include sales  
 5           of tangible personal property ordered through the  
 6           Internet or from a dealer who receives the order in a  
 7           foreign country; providing that certain persons who  
 8           make mail order sales and who have a nexus with this  
 9           state are subject to this state's power to levy and  
 10          collect the sales and use tax when they engage in  
 11          certain enumerated activities; specifying that certain  
 12          dealers are not required to collect and remit sales  
 13          and use tax unless certain circumstances exist;  
 14          creating a rebuttable presumption that a dealer is  
 15          subject to the state's power to levy and collect the  
 16          sales or use tax under specified circumstances;  
 17          specifying evidentiary proof that may be submitted to  
 18          rebut the presumption; amending s. 212.06, F.S.;  
 19          revising the definition of the term "dealer"; creating  
 20          s. 212.0802, F.S.; creating an annual sales tax  
 21          holiday; providing for determining the length of such  
 22          sales tax holiday; providing for permanent reductions  
 23          in the state tax rates imposed on sales, use, and  
 24          other transactions under specified circumstances;  
 25          requiring that the Department of Revenue develop a  
 26          tracking system, in consultation with the Revenue  
 27          Estimating Conference, to determine the amount of  
 28          sales tax remitted by out-of-state dealers who would

29 otherwise not be required to collect and remit sales  
 30 taxes but for the amendments made by the act;  
 31 requiring the department to submit an annual report to  
 32 the Governor and Legislature; providing effective  
 33 dates.

34

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

36

37 Section 1. Section 212.0596, Florida Statutes, is amended  
 38 to read:

39 212.0596 Taxation of mail order sales.—

40 (1) For purposes of this chapter, a "mail order sale" is a  
 41 sale of tangible personal property, ordered by mail, the  
 42 Internet, or other means of communication, from a dealer who  
 43 receives the order in another state ~~of the United States~~, or in  
 44 a commonwealth, territory, or other area under the jurisdiction  
 45 of the United States, or in a foreign country, and transports  
 46 the property or causes the property to be transported, whether  
 47 or not by mail, from any jurisdiction of the United States,  
 48 including this state, to a person in this state, including the  
 49 person who ordered the property.

50 (2) Every dealer as defined in s. 212.06(2)(c) who makes a  
 51 mail order sale is subject to the power of this state to levy  
 52 and collect the tax imposed by this chapter if ~~when~~:

53 (a) The dealer is ~~a corporation~~ doing business under the  
 54 laws of this state or is ~~a person~~ domiciled in, a resident of,  
 55 or a citizen of, this state;

56 (b) The dealer maintains retail establishments or offices

57 | in this state, whether the mail order sales ~~thus~~ subject to  
 58 | taxation by this state result from or are related in any other  
 59 | way to the activities of such establishments or offices;

60 |       (c) The dealer has agents or representatives in this state  
 61 | who solicit business or transact business on behalf of the  
 62 | dealer, whether the mail order sales ~~thus~~ subject to taxation by  
 63 | this state result from or are related in any other way to such  
 64 | solicitation or transaction of business, except that a printer  
 65 | who mails or delivers for an out-of-state print purchaser  
 66 | material the printer printed for it is ~~shall~~ not be deemed to be  
 67 | the print purchaser's agent or representative for purposes of  
 68 | this paragraph;

69 |       (d) The property was delivered in this state in  
 70 | fulfillment of a sales contract that was entered into in this  
 71 | state, in accordance with applicable conflict of laws rules,  
 72 | when a person in this state accepted an offer by ordering the  
 73 | property;

74 |       (e) The dealer, by purposefully or systematically  
 75 | exploiting the market provided by this state by any media-  
 76 | assisted, media-facilitated, or media-solicited means,  
 77 | including, but not limited to, direct mail advertising,  
 78 | unsolicited distribution of catalogs, computer-assisted  
 79 | shopping, television, radio, or other electronic media, or  
 80 | magazine or newspaper advertisements or other media, creates  
 81 | nexus with this state;

82 |       (f) Through compact or reciprocity with another  
 83 | jurisdiction of the United States, that jurisdiction uses its  
 84 | taxing power and its jurisdiction over the retailer in support

PCB FTSC 13-02

2013

85 of this state's taxing power;

86 (g) The dealer consents, expressly or by implication, to  
87 the imposition of the tax imposed by this chapter;

88 (h) The dealer is subject to service of process under s.  
89 48.181;

90 (i) The dealer's mail order sales are subject to the power  
91 of this state to tax sales or to require the dealer to collect  
92 use taxes pursuant to federal law ~~under a statute or statutes of~~  
93 ~~the United States~~;

94 (j) The dealer owns real property or tangible personal  
95 property that is physically in this state, except that a dealer  
96 whose only property, ~~(including property owned by an affiliate,)~~  
97 in this state is located at the premises of a printer with which  
98 the vendor has contracted for printing, and is ~~either~~ a final  
99 printed product, ~~or~~ property that ~~which~~ becomes a part of the  
100 final printed product, or property from which the printed  
101 product is produced, is not deemed to own such property for  
102 purposes of this paragraph;

103 (k) The dealer, while not having nexus with this state on  
104 any of the bases described in paragraphs (a)-(j) or paragraph  
105 (m) ~~(l)~~, is a corporation that is a member of an affiliated  
106 group of corporations, as defined in s. 1504(a) of the Internal  
107 Revenue Code, whose members are includable under s. 1504(b) of  
108 the Internal Revenue Code and whose members are eligible to file  
109 a consolidated tax return for federal corporate income tax  
110 purposes and any parent or subsidiary corporation in the  
111 affiliated group has nexus with this state on one or more of the  
112 bases described in paragraphs (a)-(j) or paragraph (m) ~~(l)~~; ~~or~~



113           (1) A person, other than a person acting in the capacity  
 114 of a common carrier, has nexus with this state and:  
 115           1. Sells a similar line of products as the dealer and does  
 116 so under the same or a similar business name;  
 117           2. Maintains an office, distribution facility, warehouse,  
 118 storage place, or similar place of business in this state to  
 119 facilitate the delivery of property or services sold by the  
 120 dealer to the dealer's customers;  
 121           3. Uses trademarks, service marks, or trade names in this  
 122 state which are the same or substantially similar to those used  
 123 by the dealer;  
 124           4. Delivers, installs, assembles, or performs maintenance  
 125 services for the dealer's customers in this state;  
 126           5. Facilitates the dealer's delivery of property to  
 127 customers in this state by allowing the dealer's customers to  
 128 pick up property sold by the dealer at an office, distribution  
 129 facility, warehouse, storage place, or similar place of business  
 130 maintained by the person in this state; or  
 131           6. Conducts any other activities in this state which are  
 132 significantly associated with the dealer's ability to establish  
 133 and maintain a market in this state for the dealer's sales; or  
 134           ~~(m)-(1)~~ The dealer or the dealer's activities have  
 135 sufficient connection with or relationship to this state or its  
 136 residents of some type other than those described in paragraphs  
 137 (a) - (k) to create a nexus empowering this state to tax its mail  
 138 order sales or to require the dealer to collect sales tax or  
 139 accrue use tax.  
 140

141 Notwithstanding any other provision of law, a dealer, other than  
 142 a dealer described in paragraphs (g) and (i), is not required to  
 143 collect and remit sales or use tax under this subsection unless  
 144 the dealer has a physical presence in this state or the  
 145 activities conducted in this state on the dealer's behalf are  
 146 significantly associated with the dealer's ability to establish  
 147 and maintain a market for sales in this state.

148 (3) (a) Notwithstanding this section or any other provision  
 149 of law, there is a rebuttable presumption that every dealer, as  
 150 defined in s. 212.06, who makes a mail order sale is also  
 151 subject to the power of this state to levy and collect the tax  
 152 imposed by this chapter if the dealer enters into an agreement  
 153 with one or more persons in this state under which the person in  
 154 this state, for a commission or other consideration, directly or  
 155 indirectly refers potential customers, whether by a link on an  
 156 Internet website, an in-person oral presentation, telemarketing,  
 157 or otherwise, to the dealer, if the cumulative gross receipts  
 158 from sales by the dealer to customers in this state who are  
 159 referred to the dealer by all persons in this state having this  
 160 type of an agreement with the dealer is in excess of \$10,000  
 161 during the 12 months immediately before the rebuttable  
 162 presumption arose.

163 (b) The presumption in paragraph (a) may be rebutted by  
 164 the submission of evidence proving that the persons in this  
 165 state with whom the dealer has an agreement did not engage in  
 166 any activity within this state which was significantly  
 167 associated with the dealer's ability to establish or maintain  
 168 the dealer's market in this state during the 12 months

169 immediately before the rebuttable presumption arose. The  
 170 evidence may consist of sworn affidavits, obtained and given in  
 171 good faith, from each person in this state with whom the dealer  
 172 has an agreement attesting that he or she did not engage in any  
 173 solicitation in this state on the dealer's behalf during the  
 174 previous year.

175 (4)-(3) A Every dealer engaged in the business of making  
 176 mail order sales is subject to the requirements of this chapter  
 177 for cooperation of dealers in collection of taxes and in  
 178 administration of this chapter, except that a no fee may not  
 179 ~~shall~~ be imposed upon such dealer for carrying out any required  
 180 activity.

181 (5)-(4) The department shall, with the consent of another  
 182 jurisdiction of the United States whose cooperation is needed,  
 183 enforce this chapter in that jurisdiction, ~~either~~ directly or,  
 184 at the option of that jurisdiction, through its officers or  
 185 employees.

186 (6)-(5) The tax required under this section to be collected  
 187 and any amount unreturned to a purchaser which ~~that~~ is not tax  
 188 but was collected from the purchaser under the representation  
 189 that it was tax constitute funds of this ~~the state of Florida~~  
 190 from the moment of collection.

191 (7)-(6) Notwithstanding other provisions of law, a dealer  
 192 who makes a mail order sale in this state is exempt from  
 193 collecting and remitting any local option surtax on the sale,  
 194 unless the dealer is located in a county that imposes a surtax  
 195 within the meaning of s. 212.054(3)(a), the order is placed  
 196 through the dealer's location in such county, and the property

197 purchased is delivered into such county or into another county  
 198 in this state which ~~that~~ levies the surtax, in which case the  
 199 provisions of s. 212.054(3)(a) are applicable.

200 ~~(8)-(7)~~ The department may establish by rule procedures for  
 201 collecting the use tax from unregistered persons who but for  
 202 their mail order purchases would not be required to remit sales  
 203 or use tax directly to the department. The procedures may  
 204 provide for waiver of registration and registration fees,  
 205 provisions for irregular remittance of tax, elimination of the  
 206 collection allowance, and nonapplication of local option  
 207 surtaxes.

208 Section 2. Subsection (2) of section 212.06, Florida  
 209 Statutes, is amended to read:

210 212.06 Sales, storage, use tax; collectible from dealers;  
 211 "dealer" defined; dealers to collect from purchasers;  
 212 legislative intent as to scope of tax.—

213 ~~(2)(a)~~ The term "dealer," as used in this chapter, means a  
 214 ~~includes every person who:~~

215 (a) Manufactures or produces tangible personal property  
 216 for sale at retail; for use, consumption, or distribution; or  
 217 for storage to be used or consumed in this state.

218 ~~(b) The term "dealer" is further defined to mean every~~  
 219 ~~person, as used in this chapter, who~~ Imports, or causes to be  
 220 imported, tangible personal property from any state or foreign  
 221 country for sale at retail; for use, consumption, or  
 222 distribution; or for storage to be used or consumed in this  
 223 state.

224 ~~(c) The term "dealer" is further defined to mean every~~

225 ~~person, as used in this chapter, who~~ Sells at retail or who  
 226 offers for sale at retail, or who has in his or her possession  
 227 for sale at retail; ~~or~~ for use, consumption, or distribution; or  
 228 for storage to be used or consumed in this state, tangible  
 229 personal property ~~as defined herein~~, including a retailer who  
 230 transacts a mail order sale.

231 (d) ~~The term "dealer" is further defined to mean any~~  
 232 ~~person who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or  
 233 distributed; or stored for use or consumption in this state,  
 234 tangible personal property and who cannot prove that the tax  
 235 levied by this chapter has been paid on the sale at retail, the  
 236 use, the consumption, the distribution, or the storage of such  
 237 tangible personal property. ~~However,~~ The term "dealer" does not  
 238 include ~~mean~~ a person who is not a "dealer" as otherwise defined  
 239 in ~~under the definition of any other paragraph of this~~  
 240 subsection and whose only owned or leased property, ~~(including~~  
 241 property owned or leased by an affiliate,~~)~~ in this state is  
 242 located at the premises of a printer with which it has  
 243 contracted for printing, if such property consists of the final  
 244 printed product, property which becomes a part of the final  
 245 printed product, or property from which the printed product is  
 246 produced.

247 (e) ~~The term "dealer" is further defined to mean any~~  
 248 ~~person, as used in this chapter, who~~ Leases or rents tangible  
 249 personal property, ~~as defined in this chapter,~~ for a  
 250 consideration, permitting the use or possession of such property  
 251 without transferring title thereto, except as expressly provided  
 252 in this chapter ~~for to the contrary herein~~.

253           (f) ~~The term "dealer" is further defined to mean any~~  
 254 ~~person, as used in this chapter, who~~ Maintains or has within  
 255 this state, directly or by a subsidiary, an office, distributing  
 256 house, salesroom, or house, warehouse, or other place of  
 257 business, or uses within this state an office, distributing  
 258 house, salesroom, or house, warehouse, or other place of  
 259 business operated by any person other than a common carrier  
 260 acting in the capacity of a common carrier.

261           (g) ~~"Dealer" also means and includes every person who~~  
 262 Solicits business either by direct representatives, indirect  
 263 representatives, or manufacturers' agents within this state, by  
 264 ~~distribution of catalogs or other advertising matter, or by any~~  
 265 ~~other means whatsoever,~~ and by reason thereof receives orders  
 266 for tangible personal property from consumers for use,  
 267 consumption, distribution, and storage for use or consumption in  
 268 the state. Such dealer shall collect the tax imposed by this  
 269 chapter from the purchaser, and no action, either in law or in  
 270 equity, on a sale or transaction as provided by the terms of  
 271 this chapter may be had in this state by any such dealer unless  
 272 it is affirmatively shown that the provisions of this chapter  
 273 have been fully complied with.

274           (h) ~~"Dealer" also means and includes every person who,~~ As  
 275 a representative, agent, or solicitor of an out-of-state  
 276 principal or principals, solicits, receives, and accepts orders  
 277 from consumers in the state for future delivery and whose  
 278 principal refuses to register as a dealer.

279           (i) Constitutes ~~"Dealer" also means and includes the state~~  
 280 or any, county, municipality, district any political

281 ~~subdivision~~, agency, bureau, or department, or other state or  
 282 local governmental instrumentality.

283 (j) ~~The term "dealer" is further defined to mean any~~  
 284 ~~person who~~ Leases, or grants a license to use, occupy, or enter  
 285 upon, living quarters, sleeping or housekeeping accommodations  
 286 in hotels, apartment houses, roominghouses, tourist or trailer  
 287 camps, real property, space or spaces in parking lots or garages  
 288 for motor vehicles, docking or storage space or spaces for boats  
 289 in boat docks or marinas, or tie-down or storage space or spaces  
 290 for aircraft at airports. The term includes ~~"dealer" also means~~  
 291 any person who has leased, occupied, or used or was entitled to  
 292 use any living quarters, sleeping or housekeeping accommodations  
 293 in hotels, apartment houses, roominghouses, tourist or trailer  
 294 camps, real property, space or spaces in parking lots or garages  
 295 for motor vehicles, or docking or storage space or spaces for  
 296 boats in boat docks or marinas, or who has purchased  
 297 communication services or electric power or energy, and who  
 298 cannot prove that the tax levied by this chapter has been paid  
 299 to the vendor or lessor on ~~any~~ such transactions. The term  
 300 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,  
 301 or grants a license to use, occupy, or enter upon any living  
 302 quarters, sleeping quarters, or housekeeping accommodations in  
 303 apartment houses, roominghouses, tourist camps, or trailer  
 304 camps, and who exclusively enters into a bona fide written  
 305 agreement for continuous residence for longer than 6 months ~~in~~  
 306 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is  
 307 granted a license to use such property.

308 (k) ~~"Dealer" also means any person who~~ Sells, provides, or

309 performs a service taxable under this chapter. The term includes  
 310 a "Dealer" also means any person who purchases, uses, or  
 311 consumes a service taxable under this chapter who cannot prove  
 312 that the tax levied by this chapter has been paid to the seller  
 313 of the taxable service.

314 (1) ~~"Dealer" also means any person who~~ Solicits, offers,  
 315 provides, enters into, issues, or delivers any service warranty  
 316 taxable under this chapter, or who receives, on behalf of such a  
 317 person, any consideration from a service warranty holder.

318 Section 3. Effective July 1, 2014, section 212.0802,  
 319 Florida Statutes, is created to read:

320 212.0802 Annual sales tax holiday.-

321 (1) The tax levied under this chapter may not be collected  
 322 during the period beginning at 12:01 a.m. on the first Friday in  
 323 August and continuing for the number of days determined under  
 324 subsection (3) on the sale of:

325 (a) Clothing, wallets, or bags, including handbags,  
 326 backpacks, fanny packs, and diaper bags, but excluding  
 327 briefcases, suitcases, and other garment bags, having a sales  
 328 price of \$75 or less per item. As used in this paragraph, the  
 329 term "clothing" means:

330 1. Any article of wearing apparel intended to be worn on  
 331 or about the human body, excluding watches, watchbands, jewelry,  
 332 umbrellas, and handkerchiefs; and

333 2. All footwear, excluding skis, swim fins, roller blades,  
 334 and skates.

335 (b) School supplies having a sales price of \$15 or less  
 336 per item. As used in this paragraph, the term "school supplies"



337 means pens, pencils, erasers, crayons, notebooks, notebook  
 338 filler paper, legal pads, binders, lunch boxes, construction  
 339 paper, markers, folders, poster board, composition books, poster  
 340 paper, scissors, cellophane tape, glue or paste, rulers,  
 341 computer disks, protractors, compasses, and calculators.

342 (2) The tax exemptions provided in this section do not  
 343 apply to sales within a theme park or entertainment complex as  
 344 defined in s. 509.013(9), Florida Statutes, within a public  
 345 lodging establishment as defined in s. 509.013(4), Florida  
 346 Statutes, or within an airport as defined in s. 330.27(2),  
 347 Florida Statutes.

348 (3) (a) As used in this subsection, the term "amount of tax  
 349 reported by the department" means the amount of taxes imposed  
 350 under this chapter, remitted in a 12-month period ending on  
 351 April 30 immediately before the estimate required under  
 352 paragraph (b) by dealers who would otherwise not be required to  
 353 collect and remit taxes imposed under this chapter but for the  
 354 revisions to s. 212.0596, that take effect February 1, 2014,  
 355 pursuant to this act.

356 (b) On or before June 1 each year, the Revenue Estimating  
 357 Conference shall estimate the number of days that the tax-free  
 358 period authorized under this section must continue in order to  
 359 reduce total tax collections under this chapter on the items  
 360 subject to the tax-free period by an amount not less than the  
 361 amount of tax reported by the department.

362 1. The Revenue Estimating Conference shall use the latest  
 363 methodology employed before May 1, 2013, to estimate the revenue  
 364 impacts of tax-free periods on the items listed in subsection

365 (1).

366 2. Except as provided in subsection (4), the result of the  
 367 estimate shall determine the number of days for the tax-free  
 368 period provided in subsection (1).

369 (4) (a) If the number of days determined under subsection  
 370 (3) is less than 3 days, then no tax-free period under this  
 371 section may begin in the upcoming August, and the amount of tax  
 372 used in the determination shall be retained unallocated in the  
 373 General Revenue Fund for use in estimates under subsection (3)  
 374 in subsequent years.

375 (b) If the number of days determined under subsection (3)  
 376 exceeds 365 days, then, in lieu of the tax-free period provided  
 377 in subsection (1), the state tax rates imposed under this  
 378 chapter shall, effective on January 1 of the upcoming year, be  
 379 reduced by multiplying each state tax rate by the difference  
 380 between one and a ratio:

381 1. The numerator of which shall be the sum of the amount  
 382 of tax as determined by the Department of Revenue and any  
 383 additional amounts carried forward from previous years; and

384 2. The denominator of which shall be the sum of the state  
 385 tax collections under this chapter forecasted by the Revenue  
 386 Estimating Conference for the upcoming calendar year.

387 (c) Any tax rate reductions under paragraph (b) shall be  
 388 permanent. After such tax rate reductions, future estimates made  
 389 by the Revenue Estimating Conference for an upcoming fiscal year  
 390 under subsection (3) shall decrease the amount of tax reported  
 391 by the department by an amount equal to the reduction in state  
 392 tax collections attributable to the tax rate reductions as

393 estimated by the Revenue Estimating Conference for the upcoming  
 394 fiscal year.

395 Section 4. (1) The Department of Revenue shall, in  
 396 consultation with the Revenue Estimating Conference, determine  
 397 the amount of taxes remitted by dealers who would otherwise not  
 398 be required to collect and remit taxes imposed by chapter 212,  
 399 Florida Statutes, but for the amendments made by this act to s.  
 400 212.0596, Florida Statutes.

401 (2) By May 15, 2014, and by May 15 annually thereafter,  
 402 the Department of Revenue shall report to the Governor, the  
 403 President of the Senate, and the Speaker of the House of  
 404 Representatives the amount of taxes determined pursuant to  
 405 subsection (1) for the 12-month period ending on April 30  
 406 immediately before the due date of the report and the tracking  
 407 system used to determine such amount.

408 (3) The amount reported in subsection (2) shall be the  
 409 same amount of tax that is reported by the Department of Revenue  
 410 for use in making the estimate required in s. 212.0802(3),  
 411 Florida Statutes.

412 Section 5. Except as otherwise expressly provided in this  
 413 act and except for this section, which shall take effect upon  
 414 this act becoming a law, this act shall take effect February 1,  
 415 2014.



## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB FTSC 13-04 Relating to Florida's Corporate Income Tax Code  
**SPONSOR(S):** Finance & Tax Subcommittee  
**TIED BILLS:** IDEN./SIM. **BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Finance & Tax Subcommittee		Aldridge <i>A</i>	Langston <i>LS</i>

### SUMMARY ANALYSIS

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida. The determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes. This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year in question. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

In January 2013, the federal government passed an act that affected the Internal Revenue Code - the American Taxpayer Relief Act of 2012. This act contained provisions that will reduce Florida corporate tax receipts over the next two years if adopted in Florida. Those provisions are:

- 50% first year bonus depreciation for certain new business property placed in service in 2013.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2012, from \$250,000 to \$500,000.
- Increase in the amount that can be immediately expensed for certain depreciable asset purchases made in 2013, from \$25,000 to \$500,000.

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2013. The change will apply retroactively to January 1, 2013. However, the bill contains provisions that do not adopt the federal bonus depreciation and enhanced expensing provisions described above. The bill accomplishes this by extending current statutory provisions adopted by Florida in both 2009 and 2011 to decouple from similar bonus depreciation and enhanced expensing provisions enacted by Congress in 2008, 2009 and 2010.

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

The bill is effective upon becoming law and applies retroactively to January 1, 2013.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

Florida imposes a 5.5% tax on the taxable income of corporations doing business in Florida.<sup>1</sup> For simplicity's sake, the determination of taxable income for Florida tax purposes begins with the taxable income used for federal income tax purposes.<sup>2</sup> This means that a corporation paying taxes in Florida generally receives the same benefits from deductions allowed in determining its federal taxable income. With federal taxable income as a starting point, Florida law then requires a variety of additions and subtractions to reflect Florida-specific policies to determine Florida taxable income.

Florida maintains this relationship by each year adopting the Federal Internal Revenue Code as it exists on January 1 of the year. By doing this, Florida adopts any changes that were made in the previous year to the determination of federal taxable income. The bill adopting the federal code is commonly referred to as the "piggyback bill."

##### ***Depreciation Deduction***

Under federal tax law, a corporation is entitled to reduce its income over time to reflect the cost of an asset it purchases. If a corporation purchases equipment for \$10,000 with an expected useful life of 5 years, it is entitled to reduce its income by annual amounts totaling \$10,000 over 5 years. For example, if the corporation uses the straight-line depreciation method, it can reduce its income by \$2,000 each year for 5 years.

Under Florida law, this treatment for federal tax purposes flows to the Florida tax return and reduces Florida taxable income.

##### ***Bonus Depreciation***

Bonus depreciation essentially allows a corporation to take an enhanced depreciation deduction in the first year that certain property is placed into service. Congress in recent years<sup>3</sup> has allowed bonus depreciation of either 50% or 100% of the cost of the business property during various timeframes from 2008 through 2012. For example, corporations could take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service between January 1 and September 8, 2010 and 100% of the cost of certain business property placed in service after September 8, 2010 through December 31, 2011.

##### ***Section 179 "Expensing"***

Section 179 of the Internal Revenue Code generally allows small businesses that purchase certain depreciable business property to expense (completely depreciate) that property valued up to certain limits in the year the property is placed into service. Before 2008, the amount allowed to be "expensed" was \$25,000. However, in recent years, Congress has increased this amount to varying degrees, including setting the amount at \$125,000, \$250,000 and \$500,000 for various timeframes from 2008 through 2012.

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<sup>1</sup> Section 220.11, F.S.

<sup>2</sup> Sections 220.12 and 220.13, F.S.

<sup>3</sup> With the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010

## ***Florida's Response to Federal Bonus Depreciation and Enhanced Sec. 179 "Expensing"***

To avoid the near-term negative revenue consequences to Florida, the Legislature in 2009<sup>4,5</sup> and 2011,<sup>6</sup> adopted a process to account for the increased depreciation deductions in the Florida tax return. Specifically, the Legislature spread out the amount of bonus depreciation or additional expensing claimed by a taxpayer on the federal return over a 7-year period on the Florida return. Thus, ultimately, the taxpayer did not lose the benefit of the deductions for Florida purposes. Rather, the benefit of the deductions was spread out over time.

This was accomplished by providing that a taxpayer claiming bonus depreciation or additional expensing on its federal return must add the amount so claimed to Florida taxable income. In the first year and in each of the 6 subsequent taxable years, the taxpayer could subtract from taxable income one-seventh of the amount by which taxable income was increased. These adjustments to Florida taxable income were available whether the property remained with the taxpayer or was sold or otherwise disposed.

### ***American Taxpayer Relief Act of 2012***

In January 2013, the federal government passed an act that affected the Internal Revenue Code - the American Taxpayer Relief Act (ATRA) of 2012. Among other things, this act provides tax benefits to corporations that are similar to those provided with the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010. The ATRA allows corporations to take an additional depreciation deduction equal to 50% of the cost of certain business property placed in service in 2012. The ATRA also allowed corporations to immediately expense (completely depreciate) certain new depreciable business property valued in total up to \$500,000 (instead of \$250,000) placed in service during 2012 and \$500,000 (instead of \$25,000) in 2013. The effect of these changes was to increase depreciation and expensing provisions in the year property is placed in service and to decrease depreciation deductions in later years for federal income tax purposes.

### **Proposed Changes**

The bill updates the Florida Income Tax Code to reflect changes Congress made to the U.S. Internal Revenue Code of 1986 by adopting the Internal Revenue Code as in effect on January 1, 2013. The change will apply retroactively to January 1, 2013. However, the bill contains provisions that "decouple" the Florida income tax code from the federal bonus depreciation and enhanced s. 179 expensing provisions described above. The bill accomplishes this by extending the 7-year adjustment process adopted in 2009 and 2011 for the relevant enhanced federal depreciation deductions authorized by Congress in 2008, 2009 and 2010.<sup>7</sup>

The effect of these changes is to allow a taxpayer to take advantage of the deductions for federal tax purposes, but place the taxpayer in a similar position for Florida tax purposes as the taxpayer would have been had it not taken advantage of the federal provisions.

The bill also grants emergency rulemaking authority to the executive director of the Department of Revenue. The bill specifies that such rules may be renewed during the pendency of procedures to adopt permanent rules.

## **B. SECTION DIRECTORY:**

<sup>4</sup> See SB 1112 (2009); Ch. 2009-18, Laws of Florida.

<sup>5</sup> See SB 2504 (2009); Ch. 2009-192, Laws of Florida.

<sup>6</sup> See CS/HB 7185 (2011); Ch. 2011-229, Laws of Florida.

<sup>7</sup> With the Economic Stimulus Act of 2008, American Recovery and Reinvestment Act of 2009, Small Business Jobs Act of 2010, Tax Relief, Unemployment Insurance reauthorization, and Job Creation Act of 2010.

- Section 1: Amends ss. 220.03(1) and (2), F.S., to update the version of the internal revenue code adopted by Chapter 220, F.S., from 2012 to 2013.
- Section 2: Amends s. 220.13(1)(e), F.S., to decouple Florida's corporate income tax from federal income tax deductions allowed by the American Taxpayer Relief Act of 2012 at the federal level.
- Section 3: Provides emergency rulemaking authority to the executive director of the Department of Revenue.
- Section 4: Provides that the bill is effective upon becoming law and operates retroactively to January 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference (REC) has estimated that the bill will have an indeterminate impact on state revenues. Because of uncertainty as to the mix of affected assets owned by Florida taxpayers, the REC could not determine the direction of the indeterminate impact.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Florida businesses that pay Florida corporate income tax will not be able to take advantage of the bonus depreciation and expensing provisions of the American Taxpayer Relief Act of 2012 for Florida income tax purposes.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

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

#### 2. Other:

None.



**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Department of Revenue to adopt emergency rules to implement the provisions of this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled

2 An act relating to corporate income tax; amending s.  
 3 220.03, F.S.; providing for the adoption of the 2013  
 4 version of the Internal Revenue Code; amending s.  
 5 220.13, F.S.; specifying the treatment by this state  
 6 of certain depreciation and expensing of assets that  
 7 are allowed for federal income tax purposes;  
 8 authorizing the executive director of the Department  
 9 of Revenue to adopt emergency rules; providing for  
 10 retroactive effect; providing an effective date.

11  
 12 Be It Enacted by the Legislature of the State of Florida:

13  
 14 Section 1. Paragraph (n) of subsection (1) and paragraphs  
 15 (a) and (c) of subsection (2) of section 220.03, Florida  
 16 Statutes, are amended to read:

17 220.03 Definitions.—

18 (1) SPECIFIC TERMS.—When used in this code, and when not  
 19 otherwise distinctly expressed or manifestly incompatible with  
 20 the intent thereof, the following terms shall have the following  
 21 meanings:

22 (n) "Internal Revenue Code" means the United States  
 23 Internal Revenue Code of 1986, as amended and in effect on  
 24 January 1, 2013 ~~2012~~, except as provided in subsection (3).

25 (2) DEFINITIONAL RULES.—When used in this code and neither  
 26 otherwise distinctly expressed nor manifestly incompatible with  
 27 the intent thereof:

28 (a) The word "corporation" or "taxpayer" shall be deemed

PCB FTSC 13-04

ORIGINAL

2013

29 | to include the words "and its successors and assigns" as if  
30 | these words, or words of similar import, were expressed;

31 | (c) Any term used in this code shall have the same meaning  
32 | as when used in a comparable context in the Internal Revenue  
33 | Code and other statutes of the United States relating to federal  
34 | income taxes, as such code and statutes are in effect on January  
35 | 1, 2013 ~~2012~~. However, if subsection (3) is implemented, the  
36 | meaning of any term shall be taken at the time the term is  
37 | applied under this code.

38 | Section 2. Paragraph (e) of subsection (1) of section  
39 | 220.13, Florida Statutes, is amended to read:

40 | 220.13 "Adjusted federal income" defined.—

41 | (1) The term "adjusted federal income" means an amount  
42 | equal to the taxpayer's taxable income as defined in subsection  
43 | (2), or such taxable income of more than one taxpayer as  
44 | provided in s. 220.131, for the taxable year, adjusted as  
45 | follows:

46 | (e) Adjustments related to the Federal Economic Stimulus  
47 | Act of 2008, the American Recovery and Reinvestment Act of 2009,  
48 | the Small Business Jobs Act of 2010, ~~and~~ the Tax Relief,  
49 | Unemployment Insurance Reauthorization, and Job Creation Act of  
50 | 2010, and the American Taxpayer Relief Act of 2012.—Taxpayers  
51 | shall be required to make the adjustments prescribed in this  
52 | paragraph for Florida tax purposes in relation to certain tax  
53 | benefits received pursuant to the Economic Stimulus Act of 2008,  
54 | the American Recovery and Reinvestment Act of 2009, the Small  
55 | Business Jobs Act of 2010, ~~and~~ the Tax Relief, Unemployment  
56 | Insurance Reauthorization, and Job Creation Act of 2010, and the

57 | American Taxpayer Relief Act of 2012.

58 |       1. There shall be added to such taxable income an amount  
 59 | equal to 100 percent of any amount deducted for federal income  
 60 | tax purposes as bonus depreciation for the taxable year pursuant  
 61 | to ss. 167 and 168(k) of the Internal Revenue Code of 1986, as  
 62 | amended by s. 103 of Pub. L. No. 110-185, s. 1201 of Pub. L. No.  
 63 | 111-5, s. 2022 of Pub. L. No. 111-240, ~~and~~ s. 401 of Pub. L. No.  
 64 | 111-312, and s. 331 of Pub. L. No. 112-240, for property placed  
 65 | in service after December 31, 2007, and before January 1, 2014  
 66 | ~~2013~~. For the taxable year and for each of the 6 subsequent  
 67 | taxable years, there shall be subtracted from such taxable  
 68 | income an amount equal to one-seventh of the amount by which  
 69 | taxable income was increased pursuant to this subparagraph,  
 70 | notwithstanding any sale or other disposition of the property  
 71 | that is the subject of the adjustments and regardless of whether  
 72 | such property remains in service in the hands of the taxpayer.

73 |       2. There shall be added to such taxable income an amount  
 74 | equal to 100 percent of any amount in excess of \$128,000  
 75 | deducted for federal income tax purposes for the taxable year  
 76 | pursuant to s. 179 of the Internal Revenue Code of 1986, as  
 77 | amended by s. 102 of Pub. L. No. 110-185, s. 1202 of Pub. L. No.  
 78 | 111-5, s. 2021 of Pub. L. No. 111-240, ~~and~~ s. 402 of Pub. L. No.  
 79 | 111-312, and s. 315 of Pub. L. No. 112-240, for taxable years  
 80 | beginning after December 31, 2007, and before January 1, 2014  
 81 | ~~2013~~. For the taxable year and for each of the 6 subsequent  
 82 | taxable years, there shall be subtracted from such taxable  
 83 | income one-seventh of the amount by which taxable income was  
 84 | increased pursuant to this subparagraph, notwithstanding any

85 | sale or other disposition of the property that is the subject of  
 86 | the adjustments and regardless of whether such property remains  
 87 | in service in the hands of the taxpayer.

88 |       3. There shall be added to such taxable income an amount  
 89 | equal to the amount of deferred income not included in such  
 90 | taxable income pursuant to s. 108(i)(1) of the Internal Revenue  
 91 | Code of 1986, as amended by s. 1231 of Pub. L. No. 111-5. There  
 92 | shall be subtracted from such taxable income an amount equal to  
 93 | the amount of deferred income included in such taxable income  
 94 | pursuant to s. 108(i)(1) of the Internal Revenue Code of 1986,  
 95 | as amended by s. 1231 of Pub. L. No. 111-5.

96 |       4. Subtractions available under this paragraph may be  
 97 | transferred to the surviving or acquiring entity following a  
 98 | merger or acquisition and used in the same manner and with the  
 99 | same limitations as specified by this paragraph.

100 |       5. The additions and subtractions specified in this  
 101 | paragraph are intended to adjust taxable income for Florida tax  
 102 | purposes, and, notwithstanding any other provision of this code,  
 103 | such additions and subtractions shall be permitted to change a  
 104 | taxpayer's net operating loss for Florida tax purposes.

105 |       Section 3. (1) The executive director of the Department  
 106 | of Revenue is authorized, and all conditions are deemed met, to  
 107 | adopt emergency rules for the purpose of implementing this act.

108 |       (2) Notwithstanding any other provision of law, the  
 109 | emergency rules shall remain in effect for 6 months after  
 110 | adoption and may be renewed during the pendency of procedures to  
 111 | adopt permanent rules addressing the subject of the emergency  
 112 | rules.

PCB FTSC 13-04

ORIGINAL

2013

113           Section 4.   This act shall take effect upon becoming a law  
114   and operates retroactively to January 1, 2013.



**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 <i>JP</i>	Langston <i>LS</i>

**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**

1 A bill to be entitled  
 2 An act relating to tax administration; amending s.  
 3 198.13, F.S.; eliminating a requirement for a personal  
 4 representative to file a Florida estate tax return for  
 5 decedents who die after December 31, 2012; providing  
 6 for retroactive application; amending s. 212.07, F.S.;  
 7 conforming a cross-reference; subjecting a dealer to  
 8 monetary and criminal penalties for the willful  
 9 failure to collect certain taxes or fees after notice  
 10 of the duty to collect the taxes or fees by the  
 11 Department of Revenue; amending s. 212.12, F.S.;  
 12 deleting provisions relating to the imposition of  
 13 criminal penalties after notice by the Department of  
 14 Revenue of requirements to register as a dealer or to  
 15 collect taxes; making technical and grammatical  
 16 changes to provisions specifying penalties for making  
 17 a false or fraudulent return with the intent to evade  
 18 payment of a tax or fee; amending s. 212.14, F.S.;  
 19 defining the term "person"; authorizing the Department  
 20 of Revenue to adopt rules relating to requirements for  
 21 a person to deposit cash, a bond, or other security  
 22 with the department in order to ensure compliance with  
 23 sales tax laws; making technical and grammatical  
 24 changes; amending s. 212.18, F.S.; subjecting a person  
 25 to criminal penalties for willfully failing to  
 26 register as a dealer after notice of the duty to  
 27 register by the Department of Revenue; making  
 28 technical and grammatical changes; amending s. 213.13,

29 F.S.; revising the due date for funds collected by the  
 30 clerks of court to be transmitted to the Department of  
 31 Revenue; providing for retroactive application;  
 32 amending s. 213.21, F.S.; revising the maximum dollar  
 33 amount of compromise authority that the Department of  
 34 Revenue may delegate to the executive director;  
 35 creating s. 213.295, F.S.; providing definitions;  
 36 subjecting a person to criminal penalties and monetary  
 37 penalties for knowingly selling or engaging in certain  
 38 other actions involving an automated sales suppression  
 39 device, zapper, or phantom-ware; defining sales  
 40 suppression devices, zappers, and phantom-ware as  
 41 contraband articles under the Florida Contraband  
 42 Forfeiture Act; amending s. 322.142, F.S.; authorizing  
 43 the Department of Highway Safety and Motor Vehicles to  
 44 release photographs or digital images to the  
 45 Department of Revenue in order to identify individuals  
 46 for purposes of tax administration; amending s.  
 47 443.131, F.S.; requiring employers to produce records  
 48 for the Department of Economic Opportunity or its tax  
 49 collection service provider as a prerequisite for a  
 50 reduction in the employers' rate of unemployment tax;  
 51 amending s. 443.141, F.S.; providing a method for  
 52 calculating the interest rate for past due  
 53 contributions and reimbursements, and delinquent,  
 54 erroneous, incomplete, or insufficient reports;  
 55 providing effective dates.

56

57 | Be It Enacted by the Legislature of the State of Florida:

58

59 | Section 1. Effective upon this act becoming a law and  
60 | operating retroactively to January 1, 2013, subsection (4) of  
61 | section 198.13, Florida Statutes, is amended to read:

62 | 198.13 Tax return to be made in certain cases; certificate  
63 | of nonliability.—

64 | (4) Notwithstanding any other provisions of this section  
65 | and applicable to the estate of a decedent who dies after  
66 | December 31, 2004, if, upon the death of the decedent, a state  
67 | death tax credit or a generation-skipping transfer credit is not  
68 | allowable pursuant to the Internal Revenue Code of 1986, as  
69 | amended:

70 | (a) The personal representative of the estate is not  
71 | required to file a return under subsection (1) in connection  
72 | with the estate.

73 | (b) The person who would otherwise be required to file a  
74 | return reporting a generation-skipping transfer under subsection  
75 | (3) is not required to file such a return in connection with the  
76 | estate.

77

78 | ~~The provisions of this subsection do not apply to estates of~~  
79 | ~~decedents dying after December 31, 2012.~~

80 | Section 2. Effective upon this act becoming a law,  
81 | subsections (1) and (3) of section 212.07, Florida Statutes, are  
82 | amended to read:

83 | 212.07 Sales, storage, use tax; tax added to purchase  
84 | price; dealer not to absorb; liability of purchasers who cannot



85 | prove payment of the tax; penalties; general exemptions.—  
 86 |       (1) (a) The privilege tax herein levied measured by retail  
 87 | sales shall be collected by the dealers from the purchaser or  
 88 | consumer.  
 89 |       (b) A resale must be in strict compliance with s. 212.18  
 90 | and the rules and regulations, and any dealer who makes a sale  
 91 | for resale which is not in strict compliance with s. 212.18 and  
 92 | the rules and regulations shall himself or herself be liable for  
 93 | and pay the tax. Any dealer who makes a sale for resale shall  
 94 | document the exempt nature of the transaction, as established by  
 95 | rules promulgated by the department, by retaining a copy of the  
 96 | purchaser's resale certificate. In lieu of maintaining a copy of  
 97 | the certificate, a dealer may document, before ~~prior to~~ the time  
 98 | of sale, an authorization number provided telephonically or  
 99 | electronically by the department, or by such other means  
 100 | established by rule of the department. The dealer may rely on a  
 101 | resale certificate issued pursuant to s. 212.18(3)(d)  
 102 | ~~212.18(3)(e)~~, valid at the time of receipt from the purchaser,  
 103 | without seeking annual verification of the resale certificate if  
 104 | the dealer makes recurring sales to a purchaser in the normal  
 105 | course of business on a continual basis. For purposes of this  
 106 | paragraph, "recurring sales to a purchaser in the normal course  
 107 | of business" refers to a sale in which the dealer extends credit  
 108 | to the purchaser and records the debt as an account receivable,  
 109 | or in which the dealer sells to a purchaser who has an  
 110 | established cash or C.O.D. account, similar to an open credit  
 111 | account. For purposes of this paragraph, purchases are made from  
 112 | a selling dealer on a continual basis if the selling dealer

113 makes, in the normal course of business, sales to the purchaser  
 114 no less frequently than once in every 12-month period. A dealer  
 115 may, through the informal protest provided for in s. 213.21 and  
 116 the rules of the Department of Revenue, provide the department  
 117 with evidence of the exempt status of a sale. Consumer  
 118 certificates of exemption executed by those exempt entities that  
 119 were registered with the department at the time of sale, resale  
 120 certificates provided by purchasers who were active dealers at  
 121 the time of sale, and verification by the department of a  
 122 purchaser's active dealer status at the time of sale in lieu of  
 123 a resale certificate shall be accepted by the department when  
 124 submitted during the protest period, but may not be accepted in  
 125 any proceeding under chapter 120 or any circuit court action  
 126 instituted under chapter 72.

127 (c) Unless the purchaser of tangible personal property  
 128 that is incorporated into tangible personal property  
 129 manufactured, produced, compounded, processed, or fabricated for  
 130 one's own use and subject to the tax imposed under s.  
 131 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)1.  
 132 extends a certificate in compliance with the rules of the  
 133 department, the dealer shall himself or herself be liable for  
 134 and pay the tax.

135 (3) (a) A ~~Any~~ dealer who fails, neglects, or refuses to  
 136 collect the tax or fees imposed under this chapter herein  
 137 ~~provided, either~~ by himself or herself or through the dealer's  
 138 agents or employees, ~~is,~~ in addition to the penalty of being  
 139 liable for ~~and~~ paying the tax ~~himself or herself,~~ commits guilty  
 140 ~~of~~ a misdemeanor of the first degree, punishable as provided in

141 | s. 775.082 or s. 775.083.

142 |       (b) A dealer who willfully fails to collect a tax or fee  
 143 | after the department provides notice of the duty to collect the  
 144 | tax or fee is liable for a specific penalty of 100 percent of  
 145 | the uncollected tax or fee. This penalty is in addition to any  
 146 | other penalty that may be imposed by law. A dealer who willfully  
 147 | fails to collect taxes or fees totaling:

148 |       1. Less than \$300:

149 |       a. For a first offense, commits a misdemeanor of the  
 150 | second degree, punishable as provided in s. 775.082 or s.  
 151 | 775.083.

152 |       b. For a second offense, commits a misdemeanor of the  
 153 | first degree, punishable as provided in s. 775.082 or s.  
 154 | 775.083.

155 |       c. For a third or subsequent offense, commits a felony of  
 156 | the third degree, punishable as provided in s. 775.082, s.  
 157 | 775.083, or s. 775.084.

158 |       2. An amount equal to \$300 or more, but less than \$20,000,  
 159 | commits a felony of the third degree, punishable as provided in  
 160 | s. 775.082, s. 775.083, or s. 775.084.

161 |       3. An amount equal to \$20,000 or more, but less than  
 162 | \$100,000, commits a felony of the second degree, punishable as  
 163 | provided in s. 775.082, s. 775.083, or s. 775.084.

164 |       4. An amount equal to \$100,000 or more, commits a felony  
 165 | of the first degree, punishable as provided in s. 775.082, s.  
 166 | 775.083, or s. 775.084.

167 |       (c) The department shall provide written notice of the  
 168 | duty to collect taxes or fees to the dealer by personal service,

169 by sending notice to the dealer's last known address by  
 170 registered mail, or by both personal service and registered  
 171 mail.

172 Section 3. Effective upon this act becoming a law,  
 173 paragraph (d) of subsection (2) of section 212.12, Florida  
 174 Statutes, is amended to read:

175 212.12 Dealer's credit for collecting tax; penalties for  
 176 noncompliance; powers of Department of Revenue in dealing with  
 177 delinquents; brackets applicable to taxable transactions;  
 178 records required.—

179 (2)

180 (d) A Any person who makes a false or fraudulent return  
 181 with a willful intent to evade payment of any tax or fee imposed  
 182 under this chapter ~~is, any person who, after the department's~~  
 183 ~~delivery of a written notice to the person's last known address~~  
 184 ~~specifically alerting the person of the requirement to register~~  
 185 ~~the person's business as a dealer, intentionally fails to~~  
 186 ~~register the business; and any person who, after the~~  
 187 ~~department's delivery of a written notice to the person's last~~  
 188 ~~known address specifically alerting the person of the~~  
 189 ~~requirement to collect tax on specific transactions,~~  
 190 ~~intentionally fails to collect such tax, shall, in addition to~~  
 191 ~~the other penalties provided by law, be liable for a specific~~  
 192 ~~penalty of 100 percent of any unreported or any uncollected tax~~  
 193 ~~or fee. This penalty is in addition to any other penalty~~  
 194 provided by law. A person who makes a false or fraudulent return  
 195 with a willful intent to evade payment of taxes or fees  
 196 totaling:

197           1. Less than \$300:  
 198           a. For a first offense, commits a misdemeanor of the  
 199 second degree, punishable as provided in s. 775.082 or s.  
 200 775.083.  
 201           b. For a second offense, commits a misdemeanor of the  
 202 first degree, punishable as provided in s. 775.082 or s.  
 203 775.083.  
 204           c. For a third or subsequent offense, commits a felony of  
 205 the third degree, punishable as provided in s. 775.082, s.  
 206 775.083, or s. 775.084.  
 207           2. An amount equal to \$300 or more, but less than \$20,000,  
 208 commits a felony of the third degree, punishable as provided in  
 209 s. 775.082, s. 775.083, or s. 775.084.  
 210           3. An amount equal to \$20,000 or more, but less than  
 211 \$100,000, commits a felony of the second degree, punishable as  
 212 provided in s. 775.082, s. 775.083, or s. 775.084.  
 213           4. An amount equal to \$100,000 or more, commits a felony  
 214 of the first degree, punishable and, upon conviction, for fine  
 215 and punishment as provided in s. 775.082, s. 775.083, or s.  
 216 775.084. Delivery of written notice may be made by certified  
 217 mail, or by the use of such other method as is documented as  
 218 being necessary and reasonable under the circumstances. The  
 219 civil and criminal penalties imposed herein for failure to  
 220 comply with a written notice alerting the person of the  
 221 requirement to register the person's business as a dealer or to  
 222 collect tax on specific transactions shall not apply if the  
 223 person timely files a written challenge to such notice in  
 224 accordance with procedures established by the department by rule

225 ~~or the notice fails to clearly advise that failure to comply~~  
 226 ~~with or timely challenge the notice will result in the~~  
 227 ~~imposition of the civil and criminal penalties imposed herein.~~

228 1. ~~If the total amount of unreported or uncollected taxes~~  
 229 ~~or fees is less than \$300, the first offense resulting in~~  
 230 ~~conviction is a misdemeanor of the second degree, the second~~  
 231 ~~offense resulting in conviction is a misdemeanor of the first~~  
 232 ~~degree, and the third and all subsequent offenses resulting in~~  
 233 ~~conviction is a misdemeanor of the first degree, and the third~~  
 234 ~~and all subsequent offenses resulting in conviction are felonies~~  
 235 ~~of the third degree.~~

236 2. ~~If the total amount of unreported or uncollected taxes~~  
 237 ~~or fees is \$300 or more but less than \$20,000, the offense is a~~  
 238 ~~felony of the third degree.~~

239 3. ~~If the total amount of unreported or uncollected taxes~~  
 240 ~~or fees is \$20,000 or more but less than \$100,000, the offense~~  
 241 ~~is a felony of the second degree.~~

242 4. ~~If the total amount of unreported or uncollected taxes~~  
 243 ~~or fees is \$100,000 or more, the offense is a felony of the~~  
 244 ~~first degree.~~

245 Section 4. Subsection (4) of section 212.14, Florida  
 246 Statutes, is amended to read:

247 212.14 Departmental powers; hearings; distress warrants;  
 248 bonds; subpoenas and subpoenas duces tecum.—

249 (4) In all cases where it is necessary to ensure  
 250 compliance with ~~the provisions of~~ this chapter, the department  
 251 shall require a cash deposit, bond, or other security as a  
 252 condition to a person obtaining or retaining a dealer's

253 | certificate of registration under this chapter. Such bond shall  
 254 | be in the form and such amount as the department deems  
 255 | appropriate under the particular circumstances. Every person  
 256 | failing to produce such cash deposit, bond, or other security as  
 257 | provided for herein shall not be entitled to obtain or retain a  
 258 | dealer's certificate of registration under this chapter, and the  
 259 | Department of Legal Affairs is hereby authorized to proceed by  
 260 | injunction, when so requested by the Department of Revenue, to  
 261 | prevent such person from doing business subject to ~~the~~  
 262 | ~~provisions of~~ this chapter until such cash deposit, bond, or  
 263 | other security is posted with the department, and any temporary  
 264 | injunction for this purpose may be granted by any judge or  
 265 | chancellor authorized by law to grant injunctions. Any security  
 266 | required to be deposited may be sold by the department at public  
 267 | sale if it becomes necessary so to do in order to recover any  
 268 | tax, interest, or penalty due. Notice of such sale may be served  
 269 | personally or by mail upon the person who deposited the such  
 270 | security. If by mail, notice sent to the last known address as  
 271 | the same appears on the records of the department shall be  
 272 | sufficient for the purpose of this requirement. Upon such sale,  
 273 | the surplus, if any, above the amount due under this chapter  
 274 | shall be returned to the person who deposited the security. The  
 275 | department may adopt rules necessary to administer this  
 276 | subsection. For the purpose of the cash deposit, bond, or other  
 277 | security required by this subsection, the term "person" includes  
 278 | those entities defined in s. 212.02(12), as well as:  
 279 |       (a) An individual or entity owning a controlling interest  
 280 | in an entity;

281           (b) An individual or entity that has acquired an ownership  
 282 interest or a controlling interest in a business that would  
 283 otherwise be liable for posting a cash deposit, bond, or other  
 284 security, unless the department has determined that the  
 285 individual or entity is not liable for taxes, interest, or  
 286 penalties as set forth in s. 213.758; or

287           (c) An individual or entity seeking to obtain a dealer's  
 288 certificate of registration for a business that will be operated  
 289 at an identical location of a previous business that would  
 290 otherwise have been liable for posting a cash deposit, bond, or  
 291 other security, if the individual or entity fails to provide  
 292 evidence that the business was acquired for consideration in an  
 293 arms-length transaction.

294           Section 5. Effective upon this act becoming a law,  
 295 subsection (3) of section 212.18, Florida Statutes, is amended  
 296 to read:

297           212.18 Administration of law; registration of dealers;  
 298 rules.—

299           (3) (a) Every person desiring to engage in or conduct  
 300 business in this state as a dealer, ~~as defined in this chapter,~~  
 301 or to lease, rent, or let or grant licenses in living quarters  
 302 or sleeping or housekeeping accommodations in hotels, apartment  
 303 houses, roominghouses, or tourist or trailer camps that are  
 304 subject to tax under s. 212.03, or to lease, rent, or let or  
 305 grant licenses in real property, ~~as defined in this chapter,~~ and  
 306 every person who sells or receives anything of value by way of  
 307 admissions, must file with the department an application for a  
 308 certificate of registration for each place of business. The



309 application must include, ~~showing~~ the names of the persons who  
 310 have interests in such business and their residences, the  
 311 address of the business, and ~~such~~ other data reasonably required  
 312 by ~~as~~ the department ~~may reasonably require~~. However, owners and  
 313 operators of vending machines or newspaper rack machines are  
 314 required to obtain only one certificate of registration for each  
 315 county in which such machines are located. The department, by  
 316 rule, may authorize a dealer that uses independent sellers to  
 317 sell its merchandise to remit tax on the retail sales price  
 318 charged to the ultimate consumer in lieu of having the  
 319 independent seller register as a dealer and remit the tax. The  
 320 department may appoint the county tax collector as the  
 321 department's agent to accept applications for registrations. The  
 322 application must be made to the department before the person,  
 323 firm, copartnership, or corporation may engage in such business,  
 324 and it must be accompanied by a registration fee of \$5. However,  
 325 a registration fee is not required to accompany an application  
 326 to engage in or conduct business to make mail order sales. The  
 327 department may waive the registration fee for applications  
 328 submitted through the department's Internet registration  
 329 process.

330 (b) The department, upon receipt of such application,  
 331 shall ~~will~~ grant to the applicant a separate certificate of  
 332 registration for each place of business, which certificate may  
 333 be canceled by the department or its designated assistants for  
 334 any failure by the certificateholder to comply with ~~any of the~~  
 335 ~~provisions of~~ this chapter. The certificate is not assignable  
 336 and is valid only for the person, firm, copartnership, or

337 corporation to which issued. The certificate must be placed in a  
 338 conspicuous place in the business or businesses for which it is  
 339 issued and must be displayed at all times. Except as provided in  
 340 this subsection, a ~~no~~ person may not ~~shall~~ engage in business as  
 341 a dealer or in leasing, renting, or letting of or granting  
 342 licenses in living quarters or sleeping or housekeeping  
 343 accommodations in hotels, apartment houses, roominghouses,  
 344 tourist or trailer camps, or real property, or ~~as hereinbefore~~  
 345 ~~defined, nor shall any person~~ sell or receive anything of value  
 346 by way of admissions, without a valid ~~first having obtained such~~  
 347 ~~a certificate.~~ A ~~or after such certificate has been canceled, no~~  
 348 ~~person may not shall~~ receive a ~~any~~ license from any authority  
 349 within the state to engage in any such business without a valid  
 350 certificate ~~first having obtained such a certificate or after~~  
 351 ~~such certificate has been canceled.~~ A person may not engage ~~The~~  
 352 ~~engaging~~ in the business of selling or leasing tangible personal  
 353 property or services ~~or~~ engage, ~~as defined in this~~  
 354 ~~chapter, or the engaging in the business of~~ leasing, renting, or  
 355 letting of or granting licenses in living quarters or sleeping  
 356 or housekeeping accommodations in hotels, apartment houses,  
 357 roominghouses, or tourist or trailer camps that are taxable  
 358 under this chapter, or real property; or engage ~~the engaging~~ in  
 359 the business of selling or receiving anything of value by way of  
 360 admissions, ~~without a valid such certificate first being~~  
 361 ~~obtained or after such certificate has been canceled by the~~  
 362 ~~department, is prohibited.~~

363 (c)1. A ~~The failure or refusal of any person who engages~~  
 364 in acts requiring a certificate of registration under this

365 subsection who fails or refuses to register commits, ~~firm,~~  
366 ~~copartnership, or corporation to so qualify when required~~  
367 ~~hereunder~~ is a misdemeanor of the first degree, punishable as  
368 provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject  
369 to injunctive proceedings as provided by law. A person who  
370 engages in acts requiring a certificate of registration and who  
371 fails or refuses to register is also subject ~~Such failure or~~  
372 ~~refusal also subjects the offender~~ to a \$100 initial  
373 registration fee in lieu of the \$5 registration fee required by  
374 ~~authorized in~~ paragraph (a). However, the department may waive  
375 the increase in the registration fee if it finds ~~is determined~~  
376 ~~by the department~~ that the failure to register was due to  
377 reasonable cause and not to willful negligence, willful neglect,  
378 or fraud.

379 2.a. A person who willfully fails to register after the  
380 department provides notice of the duty to register as a dealer  
381 commits a felony of the third degree, punishable as provided in  
382 s. 775.082, s. 775.083, or s. 775.084.

383 b. The department shall provide written notice of the duty  
384 to register to the person by personal service, by sending notice  
385 by registered mail to the person's last known address, or by  
386 both personal service and registered mail.

387 (d)-(e) In addition to the certificate of registration, the  
388 department shall provide to each newly registered dealer an  
389 initial resale certificate that will be valid for the remainder  
390 of the period of issuance. The department shall provide each  
391 active dealer with an annual resale certificate. For purposes of  
392 this section, the term "active dealer" means a person who is

393 currently registered with the department and who is required to  
394 file at least once during each applicable reporting period.

395 (e)~~(d)~~ The department may revoke a ~~any~~ dealer's  
396 certificate of registration if ~~when~~ the dealer fails to comply  
397 with this chapter. Before ~~prior~~ to revocation of a dealer's  
398 certificate of registration, the department must schedule an  
399 informal conference at which the dealer may present evidence  
400 regarding the department's intended revocation or enter into a  
401 compliance agreement with the department. The department must  
402 notify the dealer of its intended action and the time, place,  
403 and date of the scheduled informal conference by written  
404 notification sent by United States mail to the dealer's last  
405 known address of record furnished by the dealer on a form  
406 prescribed by the department. The dealer is required to attend  
407 the informal conference and present evidence refuting the  
408 department's intended revocation or enter into a compliance  
409 agreement with the department which resolves the dealer's  
410 failure to comply with this chapter. The department shall issue  
411 an administrative complaint under s. 120.60 if the dealer fails  
412 to attend the department's informal conference, fails to enter  
413 into a compliance agreement with the department resolving the  
414 dealer's noncompliance with this chapter, or fails to comply  
415 with the executed compliance agreement.

416 (f)~~(e)~~ As used in this paragraph, the term "exhibitor"  
417 means a person who enters into an agreement authorizing the  
418 display of tangible personal property or services at a  
419 convention or a trade show. The following provisions apply to  
420 the registration of exhibitors as dealers under this chapter:

421 1. An exhibitor whose agreement prohibits the sale of  
 422 tangible personal property or services subject to the tax  
 423 imposed in this chapter is not required to register as a dealer.

424 2. An exhibitor whose agreement provides for the sale at  
 425 wholesale only of tangible personal property or services subject  
 426 to the tax imposed in this chapter must obtain a resale  
 427 certificate from the purchasing dealer but is not required to  
 428 register as a dealer.

429 3. An exhibitor whose agreement authorizes the retail sale  
 430 of tangible personal property or services subject to the tax  
 431 imposed in this chapter must register as a dealer and collect  
 432 the tax imposed under this chapter on such sales.

433 4. Any exhibitor who makes a mail order sale pursuant to  
 434 s. 212.0596 must register as a dealer.

435

436 Any person who conducts a convention or a trade show must make  
 437 his or her ~~their~~ exhibitor's agreements available to the  
 438 department for inspection and copying.

439 Section 6. Effective upon this act becoming a law and  
 440 operating retroactively to July 1, 2010, subsection (5) of  
 441 section 213.13, Florida Statutes, is amended to read:

442 213.13 Electronic remittance and distribution of funds  
 443 collected by clerks of the court.—

444 (5) All court-related collections, including fees, fines,  
 445 reimbursements, court costs, and other court-related funds that  
 446 the clerks must remit to the state pursuant to law, must be  
 447 transmitted electronically by the 10th ~~20th~~ day of the month  
 448 immediately following the month in which the funds are

449 collected.

450 Section 7. Effective upon this act becoming a law,  
 451 paragraph (a) of subsection (2) of section 213.21, Florida  
 452 Statutes, is amended to read:

453 213.21 Informal conferences; compromises.—

454 (2) (a) The executive director of the department or his or  
 455 her designee is authorized to enter into closing agreements with  
 456 any taxpayer settling or compromising the taxpayer's liability  
 457 for any tax, interest, or penalty assessed under any of the  
 458 chapters specified in s. 72.011(1). Such agreements shall be in  
 459 writing when the amount of tax, penalty, or interest compromised  
 460 exceeds \$30,000 or for lesser amounts when the department deems  
 461 it appropriate or when requested by the taxpayer. When a written  
 462 closing agreement has been approved by the department and signed  
 463 by the executive director or his or her designee and the  
 464 taxpayer, it shall be final and conclusive; and, except upon a  
 465 showing of fraud or misrepresentation of material fact or except  
 466 as to adjustments pursuant to ss. 198.16 and 220.23, no  
 467 additional assessment may be made by the department against the  
 468 taxpayer for the tax, interest, or penalty specified in the  
 469 closing agreement for the time period specified in the closing  
 470 agreement, and the taxpayer shall not be entitled to institute  
 471 any judicial or administrative proceeding to recover any tax,  
 472 interest, or penalty paid pursuant to the closing agreement. The  
 473 department is authorized to delegate to the executive director  
 474 the authority to approve any such closing agreement resulting in  
 475 a tax reduction of \$500,000 ~~\$250,000~~ or less.

476 Section 8. Effective upon this act becoming a law, section

477 213.295, Florida Statutes, is created to read:

478 213.295 Automated sales suppression devices.-

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

480 (a) "Automated sales suppression device" or "zapper" means  
 481 a software program that falsifies the electronic records of  
 482 electronic cash registers or other point-of-sale systems,  
 483 including, but not limited to, transaction data and transaction  
 484 reports. The term includes the software program, any device that  
 485 carries the software program, or an Internet link to the  
 486 software program.

487 (b) "Electronic cash register" means a device that keeps a  
 488 register or supporting documents through the use of an  
 489 electronic device or computer system designed to record  
 490 transaction data for the purpose of computing, compiling, or  
 491 processing retail sales transaction data in whatever manner.

492 (c) "Phantom-ware" means a hidden programming option  
 493 embedded in the operating system of an electronic cash register  
 494 or hardwired into the electronic cash register that may be used  
 495 to create a second set of records or eliminate or manipulate  
 496 transaction records, which records may or may not be preserved  
 497 in digital formats, to represent the true or manipulated record  
 498 of transactions in the electronic cash register.

499 (d) "Transaction data" includes items purchased by a  
 500 customer; the price of each item; a taxability determination for  
 501 each item; a segregated tax amount for each of the taxed items;  
 502 the amount of cash or credit tendered; the net amount returned  
 503 to the customer in change; the date and time of the purchase;  
 504 the name, address, and identification number of the vendor; and

505 the receipt or invoice number of the transaction.

506 (e) "Transaction report" means a report that documents,  
 507 but is not limited to documenting, the sales, taxes, or fees  
 508 collected; media totals; and discount voids at an electronic  
 509 cash register that is printed on a cash register tape at the end  
 510 of a day or a shift, or a report that documents every action at  
 511 an electronic cash register and that is stored electronically.

512 (2) A person may not knowingly sell, purchase, install,  
 513 transfer, possess, use, or access any automated sales  
 514 suppression device, zapper, or phantom-ware.

515 (3) (a) A person who violates this section commits a felony  
 516 of the third degree, punishable as provided in s. 775.082, s.  
 517 775.083, or s. 775.084.

518 (b) A person who violates this section is liable for all  
 519 taxes, fees, penalties, and interest due the state as a result  
 520 of the use of an automated sales suppression device, zapper, or  
 521 phantom-ware and shall forfeit to the state as an additional  
 522 penalty all profits associated with the sale or use of an  
 523 automated sales suppression device, zapper, or phantom-ware.

524 (4) An automated sales suppression device, zapper, or  
 525 phantom-ware, or any device containing such device or software,  
 526 is a contraband article under ss. 932.701-932.706, the Florida  
 527 Contraband Forfeiture Act.

528 Section 9. Subsection (4) of section 322.142, Florida  
 529 Statutes, is amended to read:

530 322.142 Color photographic or digital imaged licenses.—

531 (4) The department may maintain a film negative or print  
 532 file. The department shall maintain a record of the digital



PCB FTSC 13-06

2013

533 image and signature of the licensees, together with other data  
534 required by the department for identification and retrieval.  
535 Reproductions from the file or digital record are exempt from  
536 ~~the provisions of~~ s. 119.07(1) and shall be made and issued only  
537 for departmental administrative purposes; for the issuance of  
538 duplicate licenses; in response to law enforcement agency  
539 requests; to the Department of Business and Professional  
540 Regulation pursuant to an interagency agreement for the purpose  
541 of accessing digital images for reproduction of licenses issued  
542 by the Department of Business and Professional Regulation; to  
543 the Department of State pursuant to an interagency agreement to  
544 facilitate determinations of eligibility of voter registration  
545 applicants and registered voters in accordance with ss. 98.045  
546 and 98.075; to the Department of Revenue pursuant to an  
547 interagency agreement for use in establishing paternity and  
548 establishing, modifying, or enforcing support obligations in  
549 Title IV-D cases; to the Department of Revenue for use in  
550 establishing positive identification for tax administration  
551 purposes; to the Department of Children and Family Services  
552 pursuant to an interagency agreement to conduct protective  
553 investigations under part III of chapter 39 and chapter 415; to  
554 the Department of Children and Family Services pursuant to an  
555 interagency agreement specifying the number of employees in each  
556 of that department's regions to be granted access to the records  
557 for use as verification of identity to expedite the  
558 determination of eligibility for public assistance and for use  
559 in public assistance fraud investigations; to the Department of  
560 Financial Services pursuant to an interagency agreement to

Page 20 of 23

PCB FTSC 13-06.docx

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

V

561 facilitate the location of owners of unclaimed property, the  
 562 validation of unclaimed property claims, and the identification  
 563 of fraudulent or false claims; or to district medical examiners  
 564 pursuant to an interagency agreement for the purpose of  
 565 identifying a deceased individual, determining cause of death,  
 566 and notifying next of kin of any investigations, including  
 567 autopsies and other laboratory examinations, authorized in s.  
 568 406.011.

569 Section 10. Effective upon this act becoming a law,  
 570 paragraph (h) of subsection (3) of section 443.131, Florida  
 571 Statutes, is amended to read:

572 443.131 Contributions.—

573 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT  
 574 EXPERIENCE.—

575 (h) Additional conditions for variation from the standard  
 576 rate.—An employer's contribution rate may not be reduced below  
 577 the standard rate under this section unless:

578 1. All contributions, reimbursements, interest, and  
 579 penalties incurred by the employer for wages paid by him or her  
 580 in all previous calendar quarters, except the 4 calendar  
 581 quarters immediately preceding the calendar quarter or calendar  
 582 year for which the benefit ratio is computed, are paid; and

583 2. The employer has produced for inspection and copying  
 584 all work records in his or her possession, custody, or control  
 585 that were requested by the Department of Economic Opportunity or  
 586 its tax collection service provider pursuant to s. 443.171(5).  
 587 An employer shall have at least 60 days to provide the requested  
 588 work records before the employer is assigned the standard rate;

589 | and

590 |       ~~3.2.~~ The employer entitled to a rate reduction must have  
 591 | at least one annual payroll as defined in subparagraph (b)1.  
 592 | unless the employer is eligible for additional credit under the  
 593 | Federal Unemployment Tax Act. If the Federal Unemployment Tax  
 594 | Act is amended or repealed in a manner affecting credit under  
 595 | the federal act, this section applies only to the extent that  
 596 | additional credit is allowed against the payment of the tax  
 597 | imposed by the Federal Unemployment Tax Act.

598 |  
 599 | The tax collection service provider shall assign an earned  
 600 | contribution rate to an employer ~~under subparagraph 1.~~ the  
 601 | quarter immediately after the quarter in which all  
 602 | contributions, reimbursements, interest, and penalties are paid  
 603 | in full and all work records requested pursuant to s. 443.171(5)  
 604 | have been provided to the Department of Economic Opportunity or  
 605 | the tax collection service provider for inspection and copying.

606 |       Section 11. Effective January 1, 2014, paragraph (a) of  
 607 | subsection (1) of section 443.141, Florida Statutes, is amended  
 608 | to read:

609 |       443.141 Collection of contributions and reimbursements.—

610 |       (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,  
 611 | ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

612 |       (a) Interest.—Contributions or reimbursements unpaid on  
 613 | the date due bear interest at the rate of 1 percent per month  
 614 | through December 31, 2013. Beginning January 1, 2014, the  
 615 | interest rate shall be calculated in accordance with s. 213.235,  
 616 | except that the rate of interest shall never be greater than 1

PCB FTSC 13-06

2013

617 percent per month, from and after the ~~that~~ date due until  
618 payment plus accrued interest is received by the tax collection  
619 service provider, unless the service provider finds that the  
620 employing unit has good reason for failing to pay the  
621 contributions or reimbursements when due. Interest collected  
622 under this subsection must be paid into the Special Employment  
623 Security Administration Trust Fund.

624 Section 12. Except as otherwise expressly provided in this  
625 act and except for this section, which shall take effect upon  
626 this act becoming a law, this act shall take effect July 1,  
627 2013.