

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB GEAC 07-29 Taxation
SPONSOR(S): Government Efficiency & Accountability Council and Grant
TIED BILLS: IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 0 N	Levin	Cooper
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
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5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill contains recommendations for changes in taxation, the administration of the tax laws, and tax relief. The bill makes administrative changes to general tax administration and to the following specific taxes: communications services tax; sales and use tax; corporate income tax; unemployment compensation tax; and certain ad valorem and sales tax relief for homesteads substantially damaged by the tornadoes of December 25, 2006 and February 2, 2007.

Fiscal Impact:

The bill contains a section clarifying existing law on sales tax on delivery charges. This provision has not been to the Revenue Estimating Conference, but is not expected to have a significant impact on revenues or expenditures.

On March 24, 2007, the Revenue Estimating Conference considered an amendment to SB 2482 (a provision contained in this bill) which would grant ad valorem and sales tax relief for homesteads substantially damaged by the tornadoes of December 25, 2006 and February 2, 2007 and adopted a Total Local Impact of (\$1 million). Sections 34, 36 and 38 of the bill provide ad valorem tax relief to homestead owners who experienced major damage as a result of either the December 25, 2006 or February 2, 2007 tornadoes which struck Florida. Replacement mobile homes which were permanent residences of permanent residents are entitled to sales tax reimbursement. These sections of the bill contain appropriations from General Revenue to the Administrative Trust Fund of the Department of Revenue in the amount of \$1,301,500.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill would expand the Department's authority to: waive service fees; eliminate the need for estate tax zero returns; automate insurance premium tax refunds; clarify application of the sales and use tax regarding transient rentals, service warranties, and coin operated amusement and vending machine surtaxes.

Maintain public security - The bill would expand the Department's authority to issue temporary motor fuel licenses following a declared state of emergency or major disaster.

B. EFFECT OF PROPOSED CHANGES:

Section 1: Disbursement of surplus funds after judicial sale:

Present situation:

Chapter 2006-175, L.O.F., amended section 45.032(1) (b), F.S., and enumerated several specific types of liens that are entitled to participate in a mortgage foreclosure surplus as a "subordinate lienholder." The liens would be required to be shown on the face of the foreclosure surplus pleading as an encumbrance on the property. Specifically enumerated liens included, but were not limited to, subordinate mortgages, judgments, assessment liens, and construction liens. However, the law failed to list the most common type of recorded lien, a tax warrant. While attorneys know that tax warrants constitute liens, pro se persons filing motions for surplus would not necessarily know this, and these individuals may be failing to notify the Department.

Effect of Proposed Changes:

It appears to be undisputed that a tax warrant is a lien included in the class of subordinate lienholders. Since there is a concern that pro se persons might fail to notify the Department of its entitlement to participate in the distribution, sections 45.032(1)(b) and (3)(a)3., F.S., add the term "tax warrant" to the enumerated list.

Sections 2, 3 and 17. Tourist development tax; procedure for levying; authorized uses; referendum; enforcement. Areas of critical state concern; Tourist impact tax. Convention development taxes; intent; administration; authorization; use of proceeds:

Present situation:

The state sales tax on transient rentals is imposed under section 212.03, F.S. The tourist development tax (s. 125.0104, F.S.), tourist impact tax (s. 125.0108, F.S.), and convention development tax (s. 212.0305, F.S.), all "piggyback" on the state's sales tax on transient rentals and were intended to mirror the state sales tax. The language in these provisions concerning the applicability of this tax to transient rentals was written at different times and is not consistent.

Section 125.0104(3), F.S., requires every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less to collect tax on the transaction, unless such consideration is exempt under Chapter 212, F.S. (Sales and Use Tax).

Section 125.0108 (1) (b), F.S., declares that every person who rents, leases, or lets for consideration any living quarters or accommodations in any hotel, apartment hotel, motel, resort motel, apartment, apartment motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a

term of 6 months or less, unless such establishment is exempt from the tax imposed by s. 212.03, F.S., is exercising a taxable privilege on the proceeds therefrom.

Section 212.0305(3) (a), F.S., provides that the convention development tax on transient rentals applies to the amount of any payment made by any person to rent, lease, or use any living quarters or accommodations in a hotel, motel, roominghouse, mobile home park, recreational vehicle park, or condominium for a term of 6 months or less, unless such consideration is exempt under s. 212.03, F.S.

Section 212.03, F.S., requires every person who engages in the business of renting, leasing, letting, or granting a license to use any living quarters or accommodations in hotels, motels, roominghouse, tourist or trailer camps to collect tax on the transaction, unless the transaction is exempt.

Effect of Proposed Changes:

These three sections are technical amendments to clarify that these three local taxes are intended to mirror the state sales tax on transient rentals and to include the license to use a transient accommodation as a taxable privilege, making the three provisions consistent with s. 212.03, F.S.

Amends s. 125.0104(3), F.S., to clarify that the tourist development tax is required to be collected by any person who grants a license to use living quarters or accommodations that is subject to tax under s. 212.03, F.S.

Amends s. 125.0108(1) (b), F.S., to clarify that the tourist impact tax is required to be collected by any person who grants a license to use living quarters or accommodations that is subject to tax under s. 212.03, F.S.

Amends s. 212.0305(3) (a), F.S., to clarify that the convention development tax is required to be collected by any person who grants a license to use living quarters or accommodations that is subject to tax under s. 212.03, F.S.

Section 4. Estate Tax – Tax return to be made in certain cases; certificate of nonliability:

Present situation:

The Florida estate tax is directly linked to the federal estate tax. Generally, an estate is subject to Florida estate tax in the amount of the credit for state death taxes provided in the Internal Revenue Code. If no federal estate tax is due, no Florida estate tax is due.

The federal Economic Growth and Tax Relief Reconciliation Act of 2001 phased down the credit for state death taxes for decedents who died during calendar years 2001-2004 and eliminated the credit for decedents who die after December 31, 2004, but before January 1, 2011. Because of the phase-out, Florida estate tax was reduced or may have been eliminated for decedents who died during these years. However, Section 198.13, F.S., requires every estate that is required by federal law to file a federal estate tax return to file a Florida estate tax return, even when no Florida estate tax is due. In fiscal year 2005-2006, approximately 6,000 estates filed estate tax returns where no estate tax was due.

Effect of Proposed Changes:

Adds s. 198.13(4), F.S. which would remove the requirement that the personal representative file a zero return during the period that the 2001 federal tax act is in effect. Personal representatives would again be required to file a tax return for all estates of Florida decedents beginning January 1, 2011.

Sections 5, 6, and 7 – Sales of communications services – Payment; Resale Certificates

Present Situation:

Current law requires that a sale of communications services for resale must be made in compliance with the Department's rules. To ensure that a sale of communications services for resale is not subjected to the Communications Services Tax, the Department's rules provide that resale certificates are issued annually by the Department. These rules provide that a selling dealer must receive a copy of a resale certificate from a reseller purchasing its services. The rules allow a selling dealer, who makes a sale for purposes of resale to a purchaser who has previously provided a copy of its current resale certificate, to seek a new copy of the resale certificate for each subsequent transaction in that calendar year. The selling dealer must obtain a new copy of the resale certificate for sales made for the purpose of resale in subsequent calendar years.¹

Effect of Proposed Changes:

The section creates s. 202.16(2)(b), F.S., providing that effective January 1, 2008, any dealer who makes a sale for resale is required to document the exempt sale by retaining a copy of the purchaser's initial or annual resale certificate issued by the Department. Under the bill, in lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number that will be provided by the Department telephonically, electronically, or by other means established by the Department. The dealer may also rely on an additional or annual resale certificate issued pursuant to s. 202.17(6), F.S., valid at the time of receipt for the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business.

The section defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. For purposes of s. 202.16(2) (b) 1, F.S., purchases are made from a selling dealer on a continual basis if, in the normal course of business, the selling dealer makes sales to the purchaser no less frequently than once in every 12-month period.

Through the informal protest process provided in s. 213.21, F.S., and the Department rules, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale or resale certificates provided by purchasers who were active dealers at the time of sale. However, this alternative documentation may not be accepted in a proceeding under ch. 120, F.S., or in circuit court proceedings instituted under ch. 72, F.S., relating to tax matters.

The section provides for a certificate verification system for the Communications Services Tax that is essentially the same as what is currently provided for the sales and use tax. The bill requires the Department, by January 1, 2008, to establish a toll-free number for the verification of valid registration numbers and resale certificates for the Communications Services Tax. The system must be able to guarantee a low busy rate, respond to keypad inquiries, and be updated daily.

The bill also requires the Department to establish a system for receiving information from dealers regarding resale certificate numbers of other dealers who are seeking to make purchases for resale. The Department must provide dealers, free of charge, with verification of certificate numbers that are canceled or invalid.

Section 8. Communications Services Tax – Allocation and disposition of tax proceeds:

Present situation:

Most penalties collected under the Communication Services Tax law are distributed using information provided on the return. Section 202.18(3)(c)2., F.S., provides that the proceeds of the local communications services taxes levied under s. 202.19, F.S., less the amount deducted for costs of

¹ Rule 12-A19.060, F.A.C.

administration, be distributed monthly to the appropriate jurisdictions. It also provides that the proceeds of any discretionary sales surtax imposed on communications services be distributed in the same manner as discretionary surtaxes are distributed under ss. 212.054 and 212.055, F.S., and requires the Department to make adjustments to the distributions under paragraph (3)(c) to reflect the proper amounts due to individual jurisdictions.

Effect of Proposed Changes:

Amends s. 202.13(3) (c) 2. F.S. Requires the Department to make adjustments to the proceeds of the communications services tax distributed under Section 202.18, F.S., that are necessary to reflect the proper amounts due to individual jurisdictions or trust funds.

Section 9. Local Communications Services Taxes conversion rates; emergency local Communications Services Tax rates:

Present Situation:

Section 202.20(2)(a)1, F.S., provides that if revenues received by a local government from the Communications Services Tax with respect to certain periods² are less than the revenues from the replaced revenue source in the 2000-2001 period, plus reasonably anticipated revenue growth, the governing authority may adjust the rate of the local Communications Services Tax to generate the entire shortfall within one year of the rate adjustment and by an amount necessary to generate the expected amount of revenue on an annual basis. Section 202.20(2) (a) 2, F.S., provides that if complete data is not available to determine whether the revenues the local government actually received are less than the revenues received from the replaced revenue source, the local government must use the best data available to make the determination. Section 202.20(2) (a) 3, F.S., allows a local government to make the adjustment permitted under s. 202.20(2)(a)1, F.S., by emergency ordinance or resolution.

Effect of Proposed Changes:

The section amends s. 202.20(2)(a)1, F.S., to provide that complete data is deemed available to local governments after the Department notifies local governments that it has completed audits, including the redistribution of local tax, of dealers who account for no less than 80 percent of the amount of communication services tax revenues received for fiscal year 2005-2006. The bill also provides that beginning July 1, 2007, local governments may use this authority only if the Department or a dealer reallocates revenue away from the local government. However, the adjustments must be made within six months following the date the department notifies local governments in writing that complete data is deemed available.

Section 10. Communications Services Tax – Penalties:

Present situation:

Section 202.28(2) (d), F.S., imposes a penalty of \$5,000 per return if a communications services tax dealer fails to separately report and identify local communications services taxes on the appropriate return schedule. There is no statutory guidance on the distribution of any imposed penalty.

Effect of Proposed Changes:

Section 202.18(2) (d), F.S., is amended to provide that the \$5,000 per return penalty imposed will be allocated in the same manner as provided in s. 202.18(2), F.S., for tax proceeds received for direct-to-home satellite services.

² The actual periods are the periods ending December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002.

Section 11. Communications Services Tax – Payment of taxes by electronic funds transfer; filing of returns by electronic data interchange:

Present situation:

Section 202.30(1), F.S., requires a communications services tax dealer to remit taxes by electronic funds transfer when the amount of tax paid by the dealer in the previous state fiscal year was \$50,000 or more.

Effect of Proposed Changes

Amends s. 202.30(1), F.S. Effective January 1, 2009, communications services tax dealers who paid \$27,000 or more in taxes in the prior state fiscal year will be required to remit taxes by electronic funds transfer. Effective January 1, 2010, this threshold is lowered to \$24,000.

Sections 12, 13 and 14. Motor Fuels – Application for license; temporary license; terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers; application for license; carriers; Fuel and Other Pollutants – Pollutant tax license:

Present situation:

Section 206.02, F.S., authorizes the Department to issue a temporary license only when applicants for a license hold a current license in good standing of the same type and kind. The applicants must file a completed application, pay all fees, and post an adequate bond. The process can take up to 90 days. There are no provisions granting the Department authority to issue temporary licenses during emergencies.

Section 206.021, F.S., authorizes the Department to issue a license to a private or common carrier of motor fuel within Florida or to a person to engage in the business of transporting fuel by pipeline or by marine vessel. Applicants must file a completed application and pay all fees. There are no provisions granting the Department authority to issue temporary licenses during emergencies.

Section 206.9943, F.S., requires that any person who is not otherwise licensed for purposes of fuel tax, who is entitled to a refund of the tax paid on pollutants, must obtain a pollutant tax license from the Department. There are no provisions granting the Department authority to issue temporary licenses during emergencies.

Effect of Proposed Changes

Creates s. 206.02(8), F.S., which authorizes the Department to grant a temporary fuel license if the Governor of Florida has declared a state of emergency or the President of the United States has declared a major disaster in Florida or in any other state or territory. The Department may issue a temporary license as an importer or exporter of motor fuel to any person who holds a valid Florida wholesaler license or to an unlicensed dealer. It will require the business to have a physical location in Florida and to hold a valid Florida sales and use tax certificate of registration; or if it is a nonresident business, that it can present a valid fuel license issued by another state.

Provides that a temporary fuel license expires on the last day of the month following the month in which it was issued and may be extended on a month-to-month basis during the period of declared state of emergency or major disaster. Provides the information that an applicant for a temporary license must provide to the Department. Prohibits the renewal of a license if the licensee has not filed the required returns or made payment of the taxes required under Chapter 206, F.S.

Creates s. 206.021(5), F.S., which authorizes the Department to grant a temporary fuel license if the Governor of Florida has declared a state of emergency or the President of the United States has declared a major disaster in Florida or in any other state or territory. The Department may issue a temporary license as a carrier to any person who holds a valid Florida license as a wholesaler,

exporter, or blender or to an unlicensed dealer. Requires the business to have a physical location in Florida and to hold a valid Florida sales and use tax certificate of registration; or if it is a nonresident business, that it can present a valid fuel license issued by another state.

Provides that a temporary fuel license expires on the last day of the month following the month in which it was issued and may be extended on a month-to-month basis during the period of declared state of emergency or major disaster. Makes provision for the information that an applicant for a temporary license must furnish to the Department. Prohibits the renewal of a license if the licensee has not filed the required returns or made payment of the taxes required under Chapter 206, F.S.

Creates s. 206.9943(4), F.S., which authorizes the Department to grant a temporary pollutant tax to a holder of a valid Florida temporary importer, temporary wholesale, or temporary exporter license issued under s. 206.02, F.S., and subject to the same provisions regarding the temporary licenses as provided in s. 206.02(8), F.S.

Section 15. Severance Tax – Levy of tax on severance of phosphate rock; rate, bases, and distribution of tax:

Present situation:

Section 211.3103(9) (d), F.S., provides that if the producer price index for chemical and fertilizer mineral mining is substantially revised, the Department will make the appropriate adjustment in the method to compute the base rate adjustment for the tax on phosphate rock which would have been obtained if the producer price index for phosphate rock primary products had not been revised. The section requires the Department to adopt by rule a comparable index if the producer price index for primary phosphate rock primary products is discontinued. The commodity code numbering system has been substantially revised by the U.S. Bureau of Labor Statistics and an index code for phosphate rock has been adopted that is more reflective of the phosphate rock industry.

Effect of Proposed Changes:

Amends s. 211.3103(9) (d), F.S., and adopts the current producer price index commodity code for phosphate rock. This will permit the Department to compute the base rate adjustment for the tax on phosphate rock without the need for rulemaking every year.

Section 16. Sales and Use Tax – Definitions-Qualified Aircraft:

Present situation:

Effective July 1, 2006, an exemption for qualified aircraft, as defined in s. 212.02(33), F.S., was provided for sales or leases of qualified aircraft, for labor charges for the repair and maintenance of the qualified aircraft, and for replacement engines, parts, and equipment used in the repair or maintenance of qualified aircraft that are installed on the aircraft. (ss. 212.02(33), 212.08(7) (ee), (rr), (ss), and 212.0801, F.S.)

Section 212.02(33), F.S., defines the term “qualified aircraft” to include certain aircraft with twin turbofan engines that are used by a business operating as an on-demand air carrier that *owns* [italics added] and operates a fleet of at least 25 of such aircraft in Florida.

Effect of Proposed Changes:

Amends s. 212.02(33), F.S., and revises the definition of “qualified aircraft” to include such aircraft that are *leased* [italics added] by the business for such operations in Florida.

Section 17. Convention Development Tax. [See Sections 2, 3 and 17. Development taxes.]

Sections 18 and 20. Sales and Use Tax – Sales, storage, use tax [coin operated amusement machines]; Sales to vending machines: special provisions; registration; penalties:

Present situation:

Sales tax applies to sales made through coin-operated amusement machines and vending machines. Section 212.05(1) (h) 1., F.S., imposes a state tax at the rate of 4 percent on coin operated amusement machines. The sales tax due is calculated by dividing the machine's gross receipts by a specific divisor listed in the statute and then subtracting gross taxable sales from gross receipts to arrive at the amount of tax due. (The applicable divisor depends upon the surtax rate of the county.) The Department provides the specified divisors for counties that impose no surtax and for counties that impose a .5% and a 1% discretionary sales surtax. At present there is a county with a surtax rate that is not listed in the statutes. For counties that impose surtaxes at rates other than these surtax rates, the Department provides the divisors by rule.

Section 212.0515(2), F.S., provides that the amount of tax to be paid on food, beverages, or other items of tangible personal property sold in vending machines is to be calculated by dividing the gross receipts from such sales by specified divisors to compute gross taxable sales and the amount of sales tax and discretionary sales surtax due. The section provides the specified divisors for counties that impose no surtax and for counties that impose a .5%, a .75%, a 1%, and a 1.5% discretionary sales surtax. For counties that impose surtaxes at rates other than these surtax rates, the Department provides the divisors by rule. The Joint Administrative Procedures Committee has questioned the authority for adoption of divisors not specified in statute.

Effect of Proposed Changes:

Amends s. 212.05(1) (h) 1., F.S., to provide the specified divisor for counties that impose a 2% discretionary sales surtax. Requires the Department to make the applicable divisor rates in electronic format or otherwise if a county imposes a discretionary sales surtax at a rate other than those provided in s. 212.05(1) (h) 1., F.S. Requires additional divisors to bear the same mathematical relationship to the next higher and next lower divisors as the new surtax rate bears to the next higher and the next lower surtax rates for which divisors have been established.

Amends s. 212.0515(2), F.S. Provides the specified divisor for counties that impose a 2% discretionary sales surtax. Requires the Department to make the applicable divisor rates in electronic format or otherwise if a county imposes a discretionary sales surtax at a rate other than those provided in s. 212.0515(2), F.S. Requires additional divisors to bear the same mathematical relationship to the next higher and next lower divisors as the new surtax rate bears to the next higher and the next lower surtax rates for which divisors have been established

Section 19. Sales and Use Tax – Taxation of service warranties:

Present situation:

Florida imposes sales tax on sales of service warranties which are defined as contracts or agreements which indemnify the holder of the contract for the cost of maintaining, repairing, or replacing tangible personal property. However the definition of service warranty in Section 212.0506(3), F.S, specifically excludes service warranties that cover tangible personal property that itself would not be subject to sales tax when sold at retail. Current exemptions include parts and materials (and related labor charges) incorporated into industrial machinery and equipment used in qualifying manufacturing industries are exempt from tax. Some uncertainty exists concerning whether service warranties covering such repair and labor charges are excluded from the definition of taxable service warranty.

Effect of Proposed Changes:

Amends s. 212.0506(3), F.S., to clarify that the term “service warranty” does not include contracts or agreements to repair, maintain, or replace tangible personal property if the parts and labor to repair the property qualifies for an exemption under Chapter 212, F.S.

Sections 20 [See Sections 18 and 20. Sales, storage, use tax]

Sections 21-22. Sales and Use Tax – Refunds ions 21-22. Sales and Use Tax – Refunds:

Present situation:

A sales and use tax exemption was passed in 1983 for scientific and nationally recognized organizations providing special educational and social benefits to minors. Section 212.095, F.S., required these organizations to obtain a permit prior to receiving an exemption in the form of a refund. Subsequently section 212.08(7) (m), F.S., created an upfront exemption for organizations providing special educational, cultural, recreational, and social benefits to minors as well as one for scientific organizations. These organizations may now make tax-exempt purchases, as provided in s. 212.08(7), F.S., and the requirements concerning tax refunds are now obsolete. Currently there is inconsistency in the application of sales taxes on delivery charges of furniture and appliances by the retailer, especially when the retailer places the furniture or appliance in the customer's residence or business. Because of the inconsistency in the application of current law, retail dealers are unclear as to when to collect sales taxes on delivery charges of furniture and appliances.

Effect of Proposed Changes:

Repeals obsolete s. 212.095, F.S.

Amends ss. 212.08(5) (g) 5., (h) 5., (n) 3., and (o) 1.d., F.S., to remove provisions which provide that s. 212.095, F.S., does not apply. This language will clarify when sales tax is to be collected by retail dealers on the delivery of furniture and appliances. It essentially conforms the statute to the current rule being used by the Department and makes it clear that the placement of furniture and appliance in purchaser's business or residence does not subject the delivery to sales tax.

Section 23. Sales and Use Tax – Dealer’s credit for collecting tax; penalties for noncompliance; powers of Department of Revenue in dealing with delinquents:

Present situation:

Any person required to register and collect sales tax and who fails to do so may currently be found guilty of a misdemeanor. In some circumstances the Department believes that businesses knowingly refuse to comply with Florida sales and use tax law and operate at a competitive advantage over law abiding businesses by not collecting sales tax when required by law to do so. The Department believes that these businesses are responsible for the loss of millions of dollars of revenue to the State annually.

Section 212.12(2) (d), F.S., imposes, in addition to any other penalties provided by law, a specific penalty of 100% of the tax or fee upon any person who makes a false or fraudulent return with a willful intent to evade payment of any tax bill or fee imposed under Chapter 212, F.S. In addition, upon conviction, such person is liable for fine and punishment as provided in ss. 775.082, 775.083, or 775.084, F.S.

Section 212.12(6) (c) 1. and 3.a., F.S., authorizes the Department to sample the records of a dealer, except for fixed assets, if the records are adequate but voluminous, and to project the sample findings over the entire audit period. Provides that the taxpayer is entitled, in connection with an audit and in connection with an application for refund, to establish the amount of any refund or deficiency through statistical sampling.

Effect of Proposed Changes

The proposal would establish the process for documenting a taxpayer's intentional failure or refusal to register and collect sales tax and create a penalty scale from a second degree misdemeanor to first degree felony charge, depending on the amount of uncollected tax, for taxpayers repeated or continued failure or refusal to register and collect tax after written notification by the Department.

Amends s. 212.12(2) (d), F.S., to provide that:

- Any person who makes a false or fraudulent return with a willful intent to evade payment of any tax bill or fee imposed under Chapter 212, F.S.;
- Any person who, after the Department's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to register the person's business as a dealer, intentionally fails to register the business; and
- Any person who, after the Department's delivery of a written notice to the person's last known address specifically alerting the person of the requirement to collect the tax on specific transactions, intentionally fails to collect the tax,

is, in addition to any other penalties provided by law, liable for a specific penalty of 100% of the tax or fee, unless the person has brought a legal challenge in response to the Department's notice. In addition, upon conviction, such person is liable for fine and punishment as provided in ss. 775.082, 775.083, or 775.084, F.S. Delivery of written notice may be by certified mail or other reasonable methods.

Section 24. Sales and Use Tax – Departmental powers; hearings; distress warrants; bonds; subpoenas and subpoenas duces tecum:

Present situation:

Section 212.14(4), F.S., provides when the Department shall require a cash deposit, bond or other security as a condition of a person to obtain or retain a dealer's certificate of registration as a sales tax dealer.

Effect of Proposed Changes

Amends s. 212.12(4), F.S., to authorize the Department to require a cash deposit, bond or other security as a condition of a person to obtain or retain a dealer's certificate of registration as a sales tax dealer, as provided in s. 213.32(5), F.S., created by Section 29 of the bill.

Section 25. Tax Administration – Information conferences; compromises:

Present situation:

Section 213.21(3) (d), F.S., authorizes the Department to settle or compromise a taxpayer's liability for the service fee required under s. 215.34(2), F.S., for dishonored checks, drafts, or orders due to an error committed by the issuing financial institution when the error is substantiated by the Department.

Effect of Proposed Changes:

Amends s. 213.21(3) (d), F.S. Authorizes the Department to settle or compromise a taxpayer's liability for the service fee required under s. 215.34(2), F.S., for dishonored checks, drafts, or orders due to an unintentional error committed by the issuing financial institution, the taxpayer, or the Department when the unintentional error is substantiated by the Department.

Section 26. Tax Administration – Filing of returns and payment of taxes by electronic means:

Present situation:

Section 213.755(1), F.S., authorizes the Executive Director of the Department to require a taxpayer to file returns and remit payments by electronic means when the amount of tax paid by the taxpayer in the previous state fiscal year was \$30,000 or more.

Effect of Proposed Changes:

Amends s. 213.755(1), F.S. Effective January 1, 2009, taxpayers who paid \$27,000 or more in taxes in the prior state fiscal year will be required to remit taxes by electronic funds transfer. Effective January 1, 2010, this threshold is lowered to \$24,000.

Sections 27-28. Corporate Income Tax – Returns and records; regulations:

Present situation:

Section 220.21(2), F.S., provides that the Department will prescribe by rule the format and instructions necessary to ensure a full collection of taxes due, the acceptable method of transfer, the method and form of content of the electronic data interchange, and the acknowledgement that may be provided to the taxpayer.

Effect of Proposed Changes:

Amends s. 220.21(2), F.S., and adds s. 220.21(3), F.S. For returns due on or after January 1, 2008, a taxpayer who is required to file its federal income tax return by electronic mean is required to file Florida corporate income tax returns required by Chapter 220, F.S., by electronic means. Authorizes the Department to waive the requirement to file by electronic means for taxpayers that are unable to comply despite good faith efforts or due to circumstances beyond the taxpayer's reasonable control. Provides that these provisions apply in addition to the requirements of s. 213.755, F.S. Imposes a penalty, in addition to other applicable penalties, of five percent for the first 30 days the return is not filed electronically, with an additional five percent due for each additional month or fraction thereof, not to exceed the greater of 10% of the tax due with the return or \$250 for failure to comply with the electronic-filing requirements. Authorizes the Department to settle or compromise the penalty pursuant to s. 213.21, F.S. Authorizes the Department to adopt rules regarding an electronic return filing system, including any electronic systems developed by the Internal Revenue Service.

Sections 29.—Unemployment Compensation Tax – Employment:

Present situation:

Section 443.1216(1) (d), F.S., provides that if two or more related corporations concurrently employ the same individual and compensates the individual through a common payment, each related corporation is considered to have paid wages to the individual only in the amounts actually disbursed by that corporation. The corporation is not considered to have paid the wages actually disbursed to the individual by another of the related corporations.

Effect of Proposed Changes:

Amends s. 443.1216(1) (d), F.S., Authorizes the Agency for Workforce Innovation and the Department to adopt rules necessary to administer the provisions of the paragraphs.

Section 30 – Unemployment Compensation Tax – Employment:

Present Situation:

Section 443.1316(2) (b), F.S., provides the statutory sections that apply to the collection of unemployment contributions and reimbursements by the Department.

Section 443.1316(2) (c), F.S. Authorizes the Department to charge no more than 10% of the total cost of the interagency agreement for the overhead or indirect costs, or for any other costs not required for the payment of direct costs, of providing unemployment tax collection services.

Effect of Proposed Changes:

Amends s. 443.1316(2) (b), F.S. Adds ss. 213.015(1)-(3), (5)-(7), (9)-(21), 213.0535, 213.06, 213.21(4), 213.24, 213.25, 213.32, 213.34(1), (3), and (4), F.S., to the statutory sections that apply to the collection of unemployment contributions and reimbursements by the Department.

Repeals s. 443.1316(2) (c), F.S.

Section 31 - Insurance Premium Tax - Tax statement; overpayments:

Present situation:

Adds s. 624.511(3), F.S. Authorizes the Department to refund the amount of an overpayment to the taxpayer, without regard to whether the taxpayer has filed a written claim for a refund, when it appears upon an examination of an insurance premium tax return that an amount of insurance premium tax has been paid in excess of the amount due. Authorizes the Department to request a statement from the taxpayer affirming that the taxpayer made the overpayment. Prohibits the issuance of a refund of the tax after the statute of limitation period provided in Section 215.26, F.S., has elapsed. If a refund issued by the Department exceeds the amount that is legally due, the taxpayer will not be subject to penalties and interest if the Department is reimbursed for any overpayment within 60 days after the taxpayer is notified that the overpayment was made.

Effect of Proposed Changes:

Adds s. 624.511(3), F.S. Authorizes the Department to refund the amount of an overpayment to the taxpayer, without regard to whether the taxpayer has filed a written claim for a refund, when it appears upon an examination of an insurance premium tax return that an amount of insurance premium tax has been paid in excess of the amount due. Authorizes the Department to request a statement from the taxpayer affirming that the taxpayer made the overpayment. Prohibits the issuance of a refund of the tax after the statute of limitation period provided in Section 215.26, F.S., has elapsed. If a refund issued by the Department exceeds the amount that is legally due, the taxpayer will not be subject to penalties and interest if the Department is reimbursed for any overpayment within 60 days after the taxpayer is notified that the overpayment was made.

Sections 32 – 39 – homestead property tax relief

Present Situation:

Portions of the state of Florida suffered significant property damage as a result of tornadoes which struck Florida on December 25, 2006 and February 2, 2007. Many homestead properties were rendered uninhabitable.

Effect of Proposed Changes:

These sections provide relief for persons whose primary residences were damaged by the two tornadoes by reimbursing some of the taxes levied on storm-damaged homesteads as well as sales tax

reimbursement for sales of replacement mobile homes when the units were permanent residences of permanent residents. In order to qualify for the reimbursements, the following conditions must exist: (a) the homestead must have been damaged by the February 2, 2007 tornado; and (b) the property owner must submit an application to the property appraiser by October 1, 2008, identifying the damaged property, the date the damage occurred, and the number of days the property was uninhabitable. Supporting documentation must accompany the application.

The property appraiser in each county is charged with investigating each application and determining whether the applicants are entitled to reimbursement, as well as the amount of the reimbursement. For each application eligible for reimbursement, the property appraiser must calculate each reimbursement, and the total homestead tax relief may not exceed \$1,500.

Section 40: Provides an effective date of July 1, 2007, except as otherwise provided.

C. SECTION DIRECTORY:

- Section 1. Amends s. 45.032, F.S., disbursement of surplus funds after judicial sale.
- Section 2. Amends s. 125.0104, F.S., tourist development tax.
- Section 3. Amends s. 125.0108, F.S., tourist impact tax.
- Section 4. Amends s. 198.13, F.S., tax returns.
- Section 5. Amends s. 202.16(2), F.S., payment of communications services taxes.
- Section 6. Creates an unnumbered section of law requiring a toll free number.
- Section 7. Establishes an information system.
- Section 8. Amends s. 202.18, F.S., allocation and disposition of communications services taxes.
- Section 9. Amends s. 202.20, F.S., emergency local communications services taxes.
- Section 10. Amends 202.28, F.S., communications services tax-penalties.
- Section 11. Amends s. 202.30, F.S., communications services tax payment by electronic funds transfer.
- Section 12. Amends s. 206.02(8), F.S., motor fuels, application for license.
- Section 13. Amends s. 206.021, F.S., motor fuels, terminal suppliers.
- Section 14. Amends s. 206.9943, F.S., fuel and other pollutants – pollutant tax license.
- Section 15. Amends s. 211.3103, F.S., severance of phosphate rock.
- Section 16. Amends s. 212.02(33), F.S., sales and use tax definitions.
- Section 17. Amends s. 212.0305, F.S., convention development tax.
- Section 18. Amends s. 212.05, F.S., sales and use tax [coin operated amusements].
- Section 19. Amends s. 212.0506, F.S., taxation of service warranties.
- Section 20. Amends s. 212.0515, F.S., sales and use tax [vending machines].
- Section 21. Deletes an obsolete reference in s. 212.08 (5)(g)5, F.S. and amends s. 212.08(7) (eee), F.S., to clarify sales tax treatment of certain delivery charges.
- Section 22. Amends s. 212.12, F.S., dealer's credit for collecting taxes.
- Section 23. Amends s. 213.21, F.S., to permit waiver of penalty.
- Section 24. Amends s. 213.755, F.S., electronic filing.
- Section 25. Amends s. 220.21, F.S., corporate electronic filing.
- Section 26. Provides an effective date for the changes to s. 220.21(2), F.S.
- Section 27. Amends s. 443.1216, F.S.
- Section 28. Amends s. 443.1316, F.S..
- Section 29. Amends s. 624.511, F.S., insurance premium tax.
- Section 30. Reimburses certain ad valorem taxes on residential property rendered uninhabitable by tornadoes.
- Section 31. Reimburses certain sales tax paid on replacement mobile homes.
- Section 32. Requires the Department to forward undeliverable reimbursement checks to property appraiser.
- Section 33. Permits unexpended sums to be certified forward.
- Section 34. Makes a finding that the relief payments made are disaster assistance within the meaning of section 139 of the Internal Revenue Code.
- Section 35. Repeals s. 212.095, F.S.
- Section 36. Appropriates \$70,000 from General Revenue to the Department's Administrative Trust Fund for administration of the act.

Section 37. Appropriates \$922,500 from General Revenue to the Department's Administrative Trust Fund for paying partial reimbursements of property taxes. Appropriates \$309,000 from General Revenue to the Department's Administrative Trust Fund for reimbursing sales tax on certain mobile homes.

Section 38. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: The bill contains appropriations from General Revenue to the Administrative Trust Fund of the Department of Revenue in the amount of \$1,301,500.

Insignificant.

2. Expenditures:

Insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

The bill contains a section clarifying existing law on sales tax on delivery charges. This provision has not been to the Revenue Estimating Conference, but is not expected to have a significant impact on revenues or expenditures.

On March 24, 2007, the Revenue Estimating Conference considered an amendment to SB 2482 (a provision contained in this bill) which would grant ad valorem and sales tax relief for homesteads substantially damaged by the tornadoes of December 25, 2006 and February 2, 2007 and adopted a Total Local Impact of (\$1 million). Sections 34, 36 and 38 of the bill provide ad valorem tax relief to homestead owners who experienced major damage as a result of either the December 25, 2006 or February 2, 2007 tornadoes which struck Florida. Replacement mobile homes which were permanent residences of permanent residents are entitled to sales tax reimbursement.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require cities or counties to spend money or take actions that require the expenditure of money, does not reduce the authority of cities and counties to raise total revenues, not does the bill reduce the percentage of a tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department is given authority to promulgate rules concerning common paymasters and electronic filing of certain tax returns.

C. DRAFTING ISSUES OR OTHER COMMENTS:

After the PCB was approved by the Governmental Efficiency & Accountability Counsel, the Department of Revenue requested that the language concerning delivery charges be further refined. There is general agreement that after line 1158, it is appropriate to insert: “that can be avoided at the option of the purchaser”.

D. STATEMENT OF THE SPONSOR

No statement submitted.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.