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## **Finance & Tax Council**

**Wednesday, March 17, 2010  
2:00 PM  
404 HOB**

**Larry Cretul  
Speaker**

**Ellyn Setnor Bogdanoff  
Chair**

# Council Meeting Notice

## HOUSE OF REPRESENTATIVES

### Finance & Tax Council

**Start Date and Time:** Wednesday, March 17, 2010 02:00 pm  
**End Date and Time:** Wednesday, March 17, 2010 05:00 pm  
**Location:** 404 HOB  
**Duration:** 3.00 hrs

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

HB 281 Communications Services Taxes by Schultz  
HB 335 Tax on Transient Rentals by Long  
CS/HB 345 Alcoholic Beverage Regulation by Insurance, Business & Financial Affairs Policy Committee, Kreegel  
HB 1053 Melbourne-Tillman Water Control District, Brevard County by Workman

**Consideration of the following proposed council bill(s):**

PCB FTC 10-06 -- Taxation

**Workshop on the following:**

HB 1443 Tax on Sales, Use, and Other Transactions by Ambler

Pursuant to rule 7.13, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, March 16, 2010.

By request of the Chair, all council members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, March 16, 2010.

**NOTICE FINALIZED on 03/15/2010 16:23 by BAI**





## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Present Situation

Chapter 202, F.S., establishes the "Communications Services Tax Simplification Law."<sup>1</sup> This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.8 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.<sup>2</sup>

Section 202.29, F.S., states that a communications services provider subject to the CST may take a credit, or claim a refund, for tax the provider has paid on a balance that is ultimately written off as bad debt for a worthless account. Pursuant to s. 202.27, F.S., the provider (also referred to in chapter 202, F.S., as a "dealer") must file a communications services tax return with DOR. According to DOR, the dealer is required to report credits for bad debts separately from the tax when filing its return, and must do so based on the time period and the jurisdiction in which the original sale(s) occurred.

DOR estimates that, historically, dealers have received an average tax credit amount of approximately 3 percent.

##### Proposed Changes

This bill amends s. 202.29, F.S., by allowing dealers to "net" the credit allowed by s. 202.29, F.S., against the amount of tax due to the state or to a local jurisdiction for reporting purposes. This "netting" may not reduce the amount due to the state or to any local jurisdiction below zero.

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<sup>1</sup> Ch. 2000-260 and 2001-140, Laws of Florida.

<sup>2</sup> See, generally, <http://dor.myflorida.com/dor/taxes/cst.html>.

This bill allows dealers to use a "proportionate allocation method" to determine the credit for bad debt attributable to the state or to a local jurisdiction, rather than specifically identify the jurisdiction in which the bad debt originated. The allocation method must be based upon current gross taxes due, rather than requiring dealers to identify the specific time period of the sales associated with the bad debt. In addition, the bill allows dealers to use other reasonable allocation methods approved by DOR.

This bill provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill specifies that the retroactive operation of its provisions does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before July 1, 2010.

This bill has an effective date of July 1, 2010.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 202.29, F.S., relating to credits against communications services taxes for bad debts.

**Section 2.** Provides for retroactive operation to July 1, 2000, in a remedial manner.

**Section 3.** Provides an effective date of July 1, 2010.

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

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

**1. Revenues:**

The Revenue Estimating Conference estimates that this bill will have no fiscal impact on state government.

**2. Expenditures:**

None.

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

**1. Revenues:**

The Revenue Estimating Conference estimates that this bill will have no fiscal impact on local governments.

**2. Expenditures:**

None.

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

It appears that the provisions of this bill will ease data retention requirements on dealers who may seek a credit for bad debt. As a result, dealers may experience lower administrative costs.

**D. FISCAL COMMENTS:**

DOR has indicated that this bill would not have an operational impact on the agency or present difficulty in implementation, administration, or enforcement.

In addition, it appears that this bill will not impact the total amount of credit claimed for bad debt or the total amount of revenues collected. According to DOR, a proportionate allocation method will distribute any credit for bad debt to the state and to the local jurisdictions in the same proportion as CST revenues are distributed in a given month. Therefore, some slight variances in revenues may be expected from month-to-month. However, over time, total revenues should not be affected.

### **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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable

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

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

HB 281

2010

1 A bill to be entitled  
2 An act relating to communications services taxes; amending  
3 s. 202.29, F.S.; authorizing dealers to report a credit  
4 for bad debt by netting the credit against the tax due;  
5 authorizing dealers to use a proportionate allocation  
6 method or other reasonable method in determining the  
7 amount of bad debt attributable to the state or local  
8 jurisdiction; providing for retroactive operation;  
9 specifying that the act is remedial in nature and not a  
10 basis for certain refunds of tax; providing an effective  
11 date.

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

14  
15 Section 1. Subsection (4) is added to section 202.29,  
16 Florida Statutes, to read:

17 202.29 Bad debts.--

18 (4) (a) A dealer may report the credit for bad debt allowed  
19 under this section by netting such credit against the tax due to  
20 the state pursuant to s. 202.12 or to a local jurisdiction  
21 pursuant to s. 202.19, but such netting may not reduce the  
22 amount due to the state or to any local jurisdiction below zero.

23 (b) For purposes of determining the amount of bad debt  
24 that is attributable to the state or to a local jurisdiction, a  
25 dealer may employ a proportionate allocation method based on  
26 current gross taxes due or another reasonable allocation method  
27 approved by the department.

28 Section 2. This act shall operate retroactively to July 1,



HB 281

2010

29 2000; however, the retroactive operation of this act is remedial  
30 in nature, does not create a right to a refund, and does not  
31 require a refund by any governmental entity of any tax, penalty,  
32 or interest remitted to the Department of Revenue before July 1,  
33 2010.

34 Section 3. This act shall take effect July 1, 2010.



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 335 Tax on Transient Rentals

**SPONSOR(S):** Long

**TIED BILLS:** IDEN./SIM. BILLS: SB 156

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Finance & Tax Council		Aldridge <i>A</i>	Langston <i>JK</i>
2)	Military & Local Affairs Policy Committee			
3)	Full Appropriations Council on Education & Economic Development			
4)				
5)				

**SUMMARY ANALYSIS**

The bill addresses state and local taxes related to the business of renting, leasing, letting, or granting a license to use transient rental accommodations.

The bill provides that for purposes of the state sales and use tax, the local option tourist development tax, the tourist impact tax, the transient rentals tax, the convention development tax, and the municipal resort tax the taxable privilege to rent, lease, let, or grant a license to use accommodations includes activity in which a person offers the availability of transient stays at accommodations, arranges for their use, establishes the total rent amount, or collects the rental payments. Persons required to collect and remit applicable taxes may be persons other than the owner or operator of the accommodation.

The state sales and use tax and the local option tourist development tax, the tourist impact tax, the transient rentals tax, the convention development tax, and the municipal resort tax are applicable to the total amount paid to use the accommodation. The bill defines the terms related to the rent or consideration for purposes of these state and local taxes.

Persons who engage in this business are required to register with the Florida Department of Revenue (DOR) or appropriate political subdivision, and collect and remit the proper taxes, unless the registered owners or operators of the accommodations agree in writing to report and remit the taxes on their behalf. DOR may adopt rules to allow for a single application for registration with the department that identifies each county in which transient accommodations are located.

The bill provides for amnesty for unpaid taxes, penalties, and interest under certain conditions; DOR may administer the amnesty through the adoption of emergency rules.

The Revenue Estimating Conference (REC) has not reviewed this bill. However, in 2009, the REC reviewed the provisions of a substantially similar bill (CS/SB 1970). That bill, like HB 335, had provisions dealing with both taxation and an amnesty. The REC estimated revenue impacts for these issues separately. With respect to the tax, the REC estimated that CS/SB 1970 (2009) would increase state revenues by \$28.2 million in FY 2010-11, \$29.8 million in FY 2011-12, and 31.0 million in FY 2012-13. With respect to local revenues, the REC estimated a positive impact of \$5.6 million in FY 2010-11, \$5.9 million in FY 2011-2012 and \$6.1 million in FY 2012-13.

The REC also estimated that the amnesty portion of the bill would have no state revenue impact and a nonrecurring negative indeterminate impact on local revenues.

The bill has an effective date of July 1, 2010.

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- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### Taxation of Transient Rentals

Transient rentals are rentals or leases of accommodations for 6 months or less and include stays in hotels, apartment houses, roominghouses, tourist or trailer camps, mobile home parks or recreational vehicle parks.<sup>1</sup>

Currently, transient rentals are potentially subject to the following taxes:

1. Local Option Tourist Development Taxes: Current law authorizes five separate tourist development taxes on transient rental transactions. Section 125.0104(3)(a), F.S., provides that the local option tourist development tax is levied on the "total consideration charged for such lease or rental."
  - a. The tourist development tax may be levied at the rate of 1 or 2 percent.<sup>2</sup> Currently, 60 counties levy this tax at 2 percent; all 67 counties are eligible to levy this tax.<sup>3</sup>
  - b. An additional tourist development tax of 1 percent may be levied.<sup>4</sup> Currently 42 counties levy this tax; only 56 counties are currently eligible to levy this tax.<sup>5</sup>
  - c. A professional sports franchise facility tax may be levied up to an additional 1 percent on transient rental transactions.<sup>6</sup> Currently 31 counties levy this additional tax; all 67 counties are eligible to levy this tax.<sup>7</sup>
  - d. A high tourism impact county may levy an additional 1 percent on transient rental transactions.<sup>8</sup> Only Broward, Monroe, Orange, Osceola and Walton counties have been designated as high tourism impact counties eligible to impose this tax, but only Orange, Osceola and Monroe counties impose the tax.<sup>9</sup>

<sup>1</sup> These accommodations are defined in s. 212.02(10), F.S. See also Rule 12A-1.061(2)(f), F.A.C.

<sup>2</sup> Section 125.0104(3)(c), F.S.

<sup>3</sup> Florida Legislative Committee on Intergovernmental Relations. See <http://www.floridalcir.gov/UserContent/docs/File/data/2010LOTTRates.pdf> (last visited 3/15/10)

<sup>4</sup> Section 125.0104(3)(d), F.S.

<sup>5</sup> See fn. 3, supra.

<sup>6</sup> Section 125.0104(3)(l), F.S.

<sup>7</sup> See fn. 3, supra.

<sup>8</sup> Section 125.0104(3)(m), F.S.

<sup>9</sup> See fn. 3, supra.

- e. 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.<sup>10</sup> Out of 65 counties eligible to levy this tax, only 18 do.<sup>11</sup>
2. Local Option Tourist Impact Tax: The local option tourist impact tax under s. 125.0108, F.S., is levied at the rate of 1 percent of the total consideration charged. Only Monroe County is eligible and does levy this tax in areas designated as areas of critical state concern because they created a land authority pursuant to s. 380.0663(1), F.S.<sup>12</sup>
3. Local Convention Development Tax: The convention development tax under s. 212.0305, F.S., is imposed on the total consideration charged for the transient rental. Each county operating under a home rule charter, as defined in s. 125.011(1), F.S., may levy the tax at 3 percent (Miami-Dade County); each county operating under a consolidated government may levy the tax at 2 percent (Duval County); and each county chartered under Article VIII of the State Constitution that had a tourist advertising district on January 1, 1984, may levy the tax at up to 3 percent (Volusia County).<sup>13</sup> No county authorized to levy this tax can levy more than 2 percent of the tourist development tax, excluding the professional sports franchise facility tax.<sup>14</sup>
4. Municipal Resort Tax: Certain municipalities may levy the municipal resort tax at a rate of up to 4 percent on transient rental transactions.<sup>15</sup> The tourist development tax may not be levied in any municipality imposing the municipal resort tax. The tax is collected by the municipality. Currently only three municipalities in Miami-Dade county are eligible to impose the tax.
5. State Sales Tax: The state sales tax on transient rentals under s. 212.03, F.S., is levied in the amount of 6 percent of the "total rental charged" for the living quarters or sleeping or housekeeping accommodations in, from, or part of, or in connection with any hotel, apartment house, roominghouse, or tourist or trailer camp.

In general, the local taxes are adopted by ordinance, some of which must be approved by a referendum election of the voters of the county or area where the tax is to be levied. The local taxes on transient rentals are required to be remitted to DOR by the person receiving the consideration, unless a county has adopted an ordinance providing for local collection and administration of the tax.<sup>16</sup> Further, the use of the proceeds from each tax may only be used as set forth in the authorizing statute.

Certain rentals or leases are exempt from the taxes; these include rentals to active-duty military personnel, full-time students, bona fide written leases for continuous residence longer than 6 months, and accommodations in migrant labor camps.<sup>17</sup>

Every person desiring to engage in or conduct business in this state as a dealer or to lease, rent, or let or grant licenses to use accommodations that are subject to tax under s. 212.03, F.S., must file with DOR an application for a certificate of registration for each place of business prior to engaging in such business.<sup>18</sup> A separate application is required for each county where property is located. Agents, representatives, or management companies that collect and receive rent as the accommodation owner's representative are required to register as a dealer and collect and remit the applicable tax due on such rentals to the proper taxing authority.<sup>19</sup>

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<sup>10</sup> Section 125.0104(3)(n), F.S.

<sup>11</sup> See fn. 3, supra.

<sup>12</sup> Id.

<sup>13</sup> Id.

<sup>14</sup> Section 125.0104(3)(b), (3)(l)4., and (3)(n)2., F.S.

<sup>15</sup> Chapter 67-930, L.O.F., amended by chs. 82-142, 83-363, 93-286, and 94-344, L.O.F.

<sup>16</sup> See e.g., ss. 125.0104(10) and 212.0305(5), F.S. Also known as "self-administering."

<sup>17</sup> Section 212.03(7), F.S. See also ss. 125.0104(3)(a), 125.0108(1)(b), 212.0305(3)(a), F.S.

<sup>18</sup> Section 212.18(3)(a), F.S.

<sup>19</sup> Rule 12A-1.061(7), F.A.C.

In addition to the certificate of registration, each newly registered dealer also receives an initial resale certificate from DOR. The resale certificate is renewed annually for dealers with an active sales tax account, and expires on December 31 each year.<sup>20</sup> An annual resale certificate allows registered dealers to make tax-exempt purchases or rentals of property or services for resale, including re-rental of transient rental property and resale of tangible personal property. The annual resale certificate may not be used to make tax-exempt purchases or rentals of property or services that:

- Will be used rather than resold or rented.
- Will be used before selling or renting the goods.
- Will be used by the business or for personal purposes.<sup>21</sup>

#### Rental of Accommodations Online<sup>22</sup>

Some companies have websites that specialize in offering reservations of transient rental accommodations. These are generally independent third parties who act either as an agent or a merchant and are often referred to as “internet intermediaries” or some similar term. Travel agents have been allowed computerized access to search hotel room inventories and to book discounted hotel rooms in the name of, and for the account of, other people (i.e., as intermediaries) since the 1970s.

When an internet intermediary facilitates accommodation reservations acting as an agent, the intermediary is acting as a middle-man between the customer and the accommodation owner to reserve a room. Generally, the customer reserves a room with a credit card, and does not pay the hotel bill until check-out, at which point taxes are charged. In these circumstances, at the time of reservation online, the customer is typically advised that taxes may or may not be included in the total cost listed on the website. The accommodation owner compensates the agent with a commission based on the room rate set by the hotel. With this method, the room rate is subject to tax without any reduction for the commission paid. Agents do not arrange in advance of the customer’s transaction to purchase room inventory at the hotel.

Generally speaking, when an internet intermediary acts as a merchant, it enters into a contract with an accommodation owner to offer rooms to the public. The accommodation owner agrees to make rooms available for reservation at a negotiated rate.<sup>23</sup> The merchant agrees to pay the owner the negotiated room rate and to also forward money it collects from the customer to pay applicable taxes. The merchant advertises a room rate on the website with disclosures for separate charges for “taxes and service fees” or some similar designation.<sup>24</sup> The internet intermediary is the merchant of record for reservation of the room, and it initiates a charge to the customer’s credit card for the full room rate plus the disclosed line items. The consumer receives confirmation of the reservation from the merchant. When the accommodation owner sends the merchant an invoice for the room after the consumer’s stay, the merchant pays the negotiated room rate and the tax due on that amount.<sup>25</sup>

The issue of on-line reservations of accommodations by internet intermediaries has surfaced as a result of two main factors: 1) the increase in reservations of accommodations through websites; and 2) tax laws that were adopted before the existence of internet intermediaries. There has been some dispute and question as to the proper amount against which state and local transient rental taxes are levied.

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<sup>20</sup> Section 212.18(3)(c), F.S.

<sup>21</sup> Annual Resale Certificate for Sales Tax (Guidelines), at <http://dor.myflorida.com/dor/taxes/resale.html> (last visited 3/15/2010).

<sup>22</sup> Information for this section was obtained from Interim Project 2005-131, Senate Committee on Government Efficiency Appropriations (Nov. 2004); and Issue Brief 2009-320, Senate Committee on Finance and Tax (Oct. 2008).

<sup>23</sup> The negotiated rate is also referred to as a discounted or wholesale price or rate.

<sup>24</sup> One criticism of this practice is that the customer does not know the exact composition of the “taxes and fees” and therefore does not know how much tax is being collected and paid.

<sup>25</sup> For a detailed description of the merchant model, see, Columbus, Georgia v. Expedia, Civil Action No. SU-06-CV-1974-7 (Superior Court, Muscogee County, Ga, Sept. 22, 2008).

### *The Markup/Facilitation Fee/Service Fee*

Internet intermediaries argue that the tourist development tax is measured by the amount paid to the accommodation owner or operator for the right to use the transient accommodation (negotiated rate) and that the facilitation fee<sup>26</sup> is not subject to tax because it is not an amount paid to the owner (generally the difference between the retail rate paid by the customer and the negotiated rate paid by the internet intermediary). They argue that the taxable incident is not the isolated receipt of the rental payment, but the exercise of the privilege – the assemblage of activities consistent with ownership. Under this line of reasoning, money received to facilitate a booking, process a reservation application, or provide a similar service, is not subject to tax when a company lacks an ownership interest in the accommodation. This position extends to the tax treatment of customer charges variously labeled as “tax reimbursements,” “tax recovery charges,” or “taxes and fees.”

Local governments interpret the law such that internet intermediaries acting as merchants are sales tax dealers and that the total amount of each transaction is taxable. The internet intermediary acts in place of the accommodation owner in renting, leasing, or letting the real property, tangible personal property, and services as part of the accommodation. Local governments contend that dividing the sale of an accommodation reservation into discrete transactions ignores the sale’s singular nature. They are concerned that allowing intermediaries to shoehorn customary accommodation services into the non-taxable category will erode the tax base.

### *When Taxes Should Be Remitted*

Internet intermediaries argue that the tax is not due at the time money is paid by the consumer. Instead, it should be remitted by the hotel or facility, as owner of the accommodation, once the negotiated room charge is forwarded to the owner after the consumer’s stay.

Local governments argue that transient rental tax is due at the time of collection, not later when the accommodation owner is paid the negotiated rate.

### *Florida Department of Revenue*

DOR has not taken an official position on whether tax is due on the amount collected and retained by internet intermediaries. The department has not taken a position on whether tax is due on the additional charges variously labeled as “tax reimbursements,” “tax recovery charges,” or “taxes and fees.” Additionally, DOR has not take a position on whether tax should be remitted at the time the customer pays for the reservation.

### *Litigation in Florida<sup>27</sup>*

Litigation over these matters has ensued, both across the country and across the state of Florida. The following are examples of cases in Florida being actively litigated:

#### **Orange County, Florida v. Expedia, Inc., et. al. (2006-CA-0021 04) Ninth Judicial Circuit, Orange County, Florida**

Orange County, Florida, self-administers the local tourist development tax. In 2006, it brought a lawsuit against internet intermediaries Expedia and Orbitz to determine whether tax is due “on the difference between the wholesale price and the retail price they receive for the rooms when they re-sell them.”<sup>28</sup> The trial court dismissed the case, ruling that the county must complete audits first to estimate taxes

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<sup>26</sup> Also known as the “markup” or a “service fee.” A facilitation fee generally involves money received to facilitate a booking, process a reservation application, or provide a similar service.

<sup>27</sup> Lawsuits in other states “are based on the specific language of each jurisdiction’s taxing scheme and on the variety of causes of action pled...” Orange County v. Expedia, Inc. et al., 985 So.2d 622, 630 (5th DCA, 2008), rehearing denied, Expedia, Inc. v. Orange County, 999 So.2d 644 (Fla., 2008) (unpublished disposition).

<sup>28</sup> Orange County, at 2.

due. The appellate court reversed the trial court. The opinion did not suggest who might eventually win, only that the county is entitled to know whether it can lawfully assess the tourist development tax before attempting to audit the companies. Jurisdiction is now with the trial court to hear and evaluate the case.

**Leon County, et. al. v. Expedia, Inc., et. al. (2009-CA-4319) Second Judicial Circuit, Leon County, Florida**

Leon, Flagler, Lee, Manatee, Pinellas and Polk counties filed suit in November, 2009 against fourteen internet intermediaries, including Expedia, Inc., Orbitz Worldwide, Inc., Priceline.com, Inc., and Travelocity.com, Inc. Similar to the Orange County action, these counties are seeking declaratory relief. This case is still in its early stages.

**Orbitz, LLC, et. al. v. Broward County, Florida, et. al. (37 2009 CA 000126) Second Judicial Circuit, Leon County, Florida**

Orbitz, LLC and seven other internet intermediaries were audited by Broward County, resulting in assessments against the companies. All have filed suit in Leon County contesting those assessments. This case is still in its early stages.

**State of Florida, Office of the Attorney General, Department of Legal Affairs v. Expedia, Inc., Orbitz, LLC, and Orbitz, Inc. (37 2009 CA 004303) Second Judicial Circuit, Leon County, Florida**

The Attorney General's Office has filed suit against Expedia, Inc., Orbitz, Inc. and Orbitz, LLC, pursuant to Chapter 501, Part II, the Florida Deceptive and Unfair Trade Practices Act (the "Act"). Section 501.204(1) of the Act provides that "unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." This case is still in its early stages.

## **PROPOSED CHANGES**

### **Taxation**

The bill adds three new subsections to s. 212.03, F.S., to address all state and local taxes related to the business of renting, leasing, letting, or granting a license to use transient rental accommodations. For purposes of ss. 212.03, 125.0104, 125.0108, and 212.0305, F.S., and ch. 67-930, L.O.F., as amended, the business includes:

- Any activity in which a person offers information about the availability of accommodations to a customer,
- Arranges for the customer's occupancy of the accommodations,
- Establishes the total rent the customer pays for the accommodations, or
- Collects the rental payments from the customer.

The bill defines the terms "total rent," "total consideration," "consideration," or "rent," as used in the above mentioned statutes or laws, to include:

- The total amount a customer pays for the right to occupy a transient accommodation;
- Any charges paid as a condition of the right of occupancy, including:
  - Any charges paid to the person collecting the rent or consideration, even if these charges are separately stated;
  - Any charges for the use of tangible personal property or services, even if these charges are separately stated;
  - But excluding mandatory fees imposed for the availability of communications services.

The bill authorizes DOR to adopt rules that exclude separately stated charges for tangible personal property and services from the definition of total rent or consideration.



The bill requires persons who engage in this business to register with DOR or the appropriate political subdivision, and collect and remit the proper taxes, unless the registered owners or operators of the accommodations agree in writing to report and remit the taxes on their behalf. The owner or operator is not liable for any tax, penalty, or interest due as a result of the failure of the person engaged in the business to accurately report or remit the taxes.

The bill authorizes persons who engage in this business to file a single application for registration with the department that identifies each county in which transient accommodations are located. Such person may file consolidated returns as provided in s. 212.11(1)(e), F.S. However, persons engaged in this business must register with each political subdivision that self administers its local transient rental taxes.

### **Amnesty**

The bill creates an undesignated section of law providing an amnesty program for unpaid taxes, penalties, and interest on transient rental transactions, if:

- Rentals were made prior to July 1, 2010;
- Rental payments were collected by persons who were not owners, operators, or managers of the transient rental facilities or their agents;
- The person who collected the rental payments registers with DOR and any applicable local jurisdictions to pay taxes on or before October 1, 2010; and
- That same person applies for amnesty by October 1, 2010, pursuant to rules adopted by DOR.

Amnesty is not available:

- When the tax assessment is final and has not been timely challenged;
- For assessments that have already been paid, unless the payment is for an assessment that is not final or has been timely challenged; or
- For taxes billed or collected from consumers, unless the person engaged in the business can document that those amounts were remitted to the owner or operator of the transient rental facility.

The bill authorizes DOR to adopt emergency rules to implement the amnesty, including rules for forms and procedures related to application for amnesty, reporting amnesty rentals, and ensuring the applicant's ongoing commitment to registration, collection, and remittance of the taxes. These emergency rules will remain effective until the later of 6 months after adoption or the date of final resolution of all amnesty applications; the emergency rules may be renewed during the pendency of procedures to adopt formal rules.

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

**Section 1:** Adds subsections (8), (9), and (10) to s. 212.03, F.S., specifying taxation of certain transient rental transactions, providing definitions, and providing registration requirements.

**Section 2:** Creates an undesignated section of law that provides for a tax amnesty program related to specific transient rental transactions.

**Section 3:** Provides an effective date of July 1, 2010.

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

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

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

The REC has not reviewed this bill. However, in 2009, the REC reviewed the provisions of a substantially similar bill (CS/SB 1970). That bill, like HB 335, had provisions dealing with both taxation and an amnesty. The REC estimated revenue impacts for these issues separately. With respect to the tax, the REC estimated a positive revenue impact of \$28.2 million in FY 2010-11, \$29.8 million in FY 2011-12, and \$31.0 million in FY 2012-13. The REC also estimated that the amnesty portion of the bill would have no state revenue impact.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The REC has not reviewed this bill. However, in 2009, the REC reviewed the provisions of a substantially similar bill (CS/SB 1970). That bill, like HB 335, had provisions dealing with both taxation and an amnesty. The REC estimated revenue impacts for these issues separately. With respect to the tax, the REC estimated a positive revenue impact of \$5.6 million in FY 2010-11, \$5.9 million in FY 2011-2012 and \$6.1 million in FY 2012-13. For the amnesty issue, the REC estimated a recurring negative indeterminate impact on local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would require certain companies that are not currently registered to register with DOR or the appropriate political subdivision, and collect and remit the proper taxes, unless the registered owners or operators of the accommodations agree in writing to report and remit the taxes on their behalf.

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 authorizes DOR to adopt rules that exclude separately stated charges for tangible personal property and services from the definition of total rent or consideration. The bill also authorizes DOR to adopt emergency rules to implement the amnesty, including rules for forms and procedures related to application for amnesty, reporting amnesty rentals, and ensuring the applicant's ongoing commitment to registration, collection, and remittance of the taxes. These emergency rules will remain effective until the later of 6 months after adoption or the date of final resolution of all amnesty applications; the emergency rules may be renewed during the pendency of procedures to adopt formal rules

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

1 A bill to be entitled  
 2 An act relating to the tax on transient rentals; amending  
 3 s. 212.03, F.S.; expanding the description of certain  
 4 business activities relating to transient rental  
 5 accommodations that are subject to certain transient  
 6 rental taxation requirements; providing definitions;  
 7 authorizing the Department of Revenue to adopt rules;  
 8 requiring certain persons to register with the department  
 9 and report and remit the tax on certain transient rentals;  
 10 providing requirements, procedures, and limitations;  
 11 requiring the Department of Revenue to provide for an  
 12 amnesty for certain unpaid taxes, penalties, and interest;  
 13 providing criteria for qualifying for the amnesty;  
 14 providing exclusions from application of the amnesty;  
 15 authorizing the department to adopt emergency rules to  
 16 implement the amnesty; providing for the effective period  
 17 of such rules; providing an effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

20  
 21 Section 1. Subsections (8), (9), and (10) are added to  
 22 section 212.03, Florida Statutes, to read:

23 212.03 Transient rentals tax; rate, procedure,  
 24 enforcement, exemptions.--

25 (8) For purposes of this section, ss. 125.0104, 125.0108,  
 26 and 212.0305, and chapter 67-930, Laws of Florida, as amended,  
 27 the business of renting, leasing, letting, or granting a license  
 28 to use transient rental accommodations includes any activity in

29 which a person offers information about the availability of  
 30 accommodations to a customer, arranges for the customer's  
 31 occupancy of the accommodations, establishes the total rent the  
 32 customer will pay for the accommodations, or collects the rental  
 33 payments from the customer.

34 (9) (a) The terms "total rent" as used in this section,  
 35 "total consideration" as used in ss. 125.0104 and 125.0108,  
 36 "consideration" as used in s. 212.0305, and "rent" as used in  
 37 chapter 67-930, Laws of Florida, as amended, have the same  
 38 meaning and include:

39 1. The total amount a customer pays for the right to  
 40 occupy a transient rental accommodation.

41 2. Charges that must be paid as a condition of the right  
 42 of occupancy, except for mandatory fees imposed for the  
 43 availability of communications services.

44 3. Charges paid by a customer to the person collecting the  
 45 rent or consideration as a condition of the right of occupancy,  
 46 even if the charges are separately stated or are for tangible  
 47 personal property or services provided by a third party.

48 4. Charges for the use of tangible personal property or  
 49 services as a condition of the right of occupancy, even if  
 50 separately stated.

51 (b) Notwithstanding paragraph (a), the department may  
 52 adopt rules that exclude separately stated charges for tangible  
 53 personal property and services from the definition of total rent  
 54 or total consideration.

55 (10) Each person engaging in activities described in  
 56 subsection (8) shall register with the department and collect

57 and remit taxes on the total rent charged to their customers,  
58 unless the registered owners or operators of the accommodations  
59 agree in writing to report and remit taxes on such person's  
60 behalf. Any written agreement must require the person collecting  
61 the rent to report total taxable sales and taxes due and pay the  
62 taxes collected to the owner or operator by the last day of the  
63 month in which the customer pays the rent or the last day of the  
64 month in which the customer completes the occupancy of the  
65 accommodation. The owner or operator shall report and remit the  
66 taxes together with the owner's or operator's return, which is  
67 due in the month following the month in which the taxes are paid  
68 to the owner or operator. The owner or operator is not liable  
69 for any tax, penalty, or interest due as a result of the failure  
70 of the person who arranged the occupancy and collected the rent  
71 to accurately report and remit the taxes imposed by this  
72 section, s. 125.0104, s. 125.0108, s. 212.0305, or s. 2 of  
73 chapter 67-930, Laws of Florida, as amended. If the owner or  
74 operator does not agree to report and remit taxes on behalf of  
75 the person who rents the accommodations as provided in  
76 subsection (8), that person shall extend his or her annual  
77 resale certificate in lieu of paying taxes on the amounts he or  
78 she pays to the owner or operator for the accommodations. A  
79 person engaged in the activities described in subsection (8) may  
80 file with the department a single application for registration.  
81 Such application for registration must identify each county in  
82 which are located transient accommodations at which the person  
83 engages in the activities described in subsection (8). Such  
84 person must also file a separate registration with each county

85 that self-administers any local transient accommodations tax. A  
 86 person engaged in the activities described in subsection (8) may  
 87 file a consolidated return as provided in s. 212.11(1)(e).

88 Section 2. (1) The Department of Revenue shall provide  
 89 for an amnesty for unpaid taxes, penalties, and interest imposed  
 90 under chapter 125 or chapter 212, Florida Statutes, or chapter  
 91 67-930, Laws of Florida, as amended, on transient rentals if:

92 (a) The rentals subject to the amnesty were made prior to  
 93 July 1, 2010.

94 (b) The rental payments were collected by persons who are  
 95 not owners, operators, or managers of the transient rental  
 96 facilities or their agents.

97 (c) The person who collected the rental payments registers  
 98 with the department and any applicable local jurisdictions to  
 99 pay taxes on transient rentals on or before October 1, 2010.

100 (d) The person who collected the rental payments applies  
 101 for amnesty by October 1, 2010, pursuant to rules of the  
 102 department.

103 (2)(a) The amnesty does not apply to any taxes, penalties,  
 104 or interest assessed if the assessment is final and has not been  
 105 timely challenged, or for any taxes, penalties, or interest that  
 106 have been paid to the department or other jurisdiction unless  
 107 the payment is the subject of an assessment that is not final or  
 108 that has been timely challenged.

109 (b) The amnesty does not apply to any tax billed to or  
 110 collected from the consumer who pays for occupancy of the  
 111 transient rental facility. The amnesty applies, however, to such  
 112 amounts to the extent that the person who collected the rental

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113 payments documents that such taxes were remitted to the owner or  
114 operator of the transient rental facility.

115 (3) The Department of Revenue may adopt emergency rules to  
116 implement the provisions of this act. Such rules may provide  
117 forms and procedures for applying for the amnesty, for reporting  
118 the rentals for which amnesty is sought, and for ensuring the  
119 applicant's ongoing commitment to registration, collection, and  
120 remittance of the taxes imposed by state law on transient  
121 rentals. Notwithstanding any other provision of law, the  
122 emergency rules shall remain effective until 6 months after the  
123 date of adoption of the rule or the date of final resolution of  
124 all amnesty applications filed pursuant to this section,  
125 whichever occurs later. These rules may be renewed during the  
126 pendency of procedures to adopt rules addressing the subject of  
127 the emergency rules.

128 Section 3. This act shall take effect July 1, 2010.







## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) is responsible for regulating the conduct, management, and operation of the manufacturing, packaging, distribution, and sale within the state of alcoholic beverages. Florida's alcoholic beverage law provides for a structured three-tiered distribution system: manufacturer, wholesaler, and retailer (vendor). The retailer makes the ultimate sale to the consumer. Alcoholic beverage excise taxes are collected at the wholesale level based on inventory depletions and the state sales tax is collected at the retail level.

Chapters 561-565 and 567-568, F.S., comprise Florida's beverage law. The provisions of the bill primarily apply to ch. 565, F.S., relating to "Liquor." Section 565.01, F.S., provides a definition for purposes of the beverage law and states:

565.01 Definition; liquor.--The words "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" mean that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

#### Present situation

##### **Container labeling**

Sections 564.045 and 565.095, F.S., closely mirror each other relating to "licensure as [a] primary American source of supply" (PAS) for wine and distilled spirits, respectively. The PAS provisions require the registration of each brand of wine and distilled spirits sold in Florida and the licensure of that brand's PAS. Generally, the PAS is either the manufacturer or the source closest to the manufacturer in the channel of commerce from whom the product can be secured.

It has long been a common practice to require the registration of the brand and label of each alcoholic beverage container introduced into the marketplace. The 1937 Laws of Florida, chapter 18015, s. 8, specified in part:

Section 8. The Director of the Beverage Department by and with the consent of the Governor, is vested with power and authority to make and promulgate reasonable rules and regulations governing the labeling of all malt, vinous and spirituous beverages containing more than 1% of

alcohol by weight, which rules and regulations shall comply with the Federal regulations pertaining to such labeling.

Current law relating to distilled spirits specifies:

565.08 Labeling regulations; liquor.--The division is fully authorized to make and promulgate reasonable rules and regulations governing the labeling of all liquors containing 0.5 percent or more of alcohol by volume, which rules and regulations shall not conflict with the federal regulations pertaining to such labeling.

Currently, rule 61 A-4.005, FAC, establishes the guidelines for brand and label registration:

61A-4.005 Brand Registration.

(1) Each brand or label of spirituous beverages sold or offered for sale within the State of Florida or transported within the State of Florida must be registered with the Division and must have a brand registration number assigned to it by the Division. Requests for registration of brands shall be submitted on forms prescribed by the department for that purpose and in the manner prescribed by the Division.

(4) The registration year for all brands or labels shall be from July 1 to June 30 inclusive of each year.

(5) Annual registration of brands shall be affected by additions to or deletions from the master list of the registrant for the previous year and by the payment of twenty (\$20.00) dollars for each brand or label registered.

(6) Subsequent to the annual registration of brands or labels, any registrant desiring to register new brands or labels under which spirituous beverages are to be sold or offered for sale or transported within the State of Florida may register such brand or label on a registration form prescribed by the Division for that purpose and must make payment of twenty (\$20.00) dollar registration fee for each such brand or label. The payment of the \$20.00 registration fee shall be for the balance of the current registration year as set forth in Section (4) above.

Currently, alcoholic beverage and tobacco licenses are renewed annually. In general, the majority of the alcoholic beverage licenses, with the exception of brand registrations, are renewed in September for the northern part of Florida and in March for the southern part of the state. Brand registrations renewals are due by June 30<sup>th</sup> each year.<sup>1</sup>

Currently, the Administrative Procedure Act (APA), ch. 120, F.S., specifies various procedural guidelines for the operation of state agencies. Section 120.60, F.S., addresses general licensure procedures. Notification of the receipt of an application by an agency is not required under the APA. However, subsection (1) of this section specifies in part:

Upon receipt of an application for a license, an agency shall examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require.

Subsection (1) also specifies that:

Every application for a license shall be approved or denied within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law.

#### Effect of proposed changes

The bill codifies, with changes, and clarifies the registration requirements specified in rule 61 A-4.005, FAC. This bill adds the guideline that the registration of brands or labels will be effected if a brand or label is changed, if a brand or label is added or removed from a master list of a registrant, or if the nonpayment of registration fees for a brand or label occurs. The bill further specifies that a registration application does not have to be filed and processed by the DBPR if no changes have been made to the

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<sup>1</sup> DBPR spread sheet, 2010 Agency Legislative Proposals, Office of Budget & Financial Management, dated 11/14/2009, page 1, available in committee files.

brand or label during the year, however, the bill continues to require payment of the fee equal to the equivalent of the annualized fee.

The bill requires the DBPR to notify each brand registrant within 10 days that the application for registration and payment of the appropriate fee has been received by the DBPR. The bill also requires the DBPR to notify the applicant for registration of the approval or denial of a brand or label registration within 30 business days of receipt of the application and fee.

The bill provides for the issuance of an up to 5-year registration to registrants. This provision allows the registrant a choice as to how many years they would like to register the brand, up to a maximum of five years. The bill does not change the registration fee but does specify that the renewal fee may not exceed the statutory caps on an annualized basis.

### Present situation

#### **Beverage tastings**

Activities and interaction between alcoholic beverage licensees are extensively regulated and constitute the basis for Florida's "tied house evil" law. Among those restrictions, s. 561.42, F.S. prohibits a manufacturer or distributor from having any financial interest, directly or indirectly, in the establishment or business of any retailer. Notwithstanding the overall premise, the Beverage Law also contains exceptions to the structured three-tiered distribution system.

The DBPR web page notes -

"Section 561.42, F.S., provides certain limitations and prohibitions related to the manufacture, distribution, and retail sales of alcoholic beverages. Among other provisions, the statute provides for the following:

- Prohibits, with certain exceptions, gifts, loans of money or property, or rebates between manufacturers or distributors and vendors;
- Limits the extension of credit and provides consequences for nonpayment of sales by a vendor;
- Provides certain restrictions related to manufacturers or distributors giving, lending, renting, selling, or otherwise furnishing advertising materials to a vendor; and
- Prohibits certain sampling activities."<sup>2</sup>

Beer, wine and spirits tastings (consumer sampling of the alcoholic beverage product) are permitted by the Beverage Law. Section 565.17, F.S., allows distilled spirits distributors and distilled spirits vendors (but not manufacturers) to conduct distilled spirits tastings where beverages are sold by the package (carry-out) or for on-premises consumption.

565.17 Beverage tastings by distributors and vendors.--A licensed distributor of spirituous beverages, or any vendor, is authorized to conduct spirituous beverage tastings upon any licensed premises authorized to sell spirituous beverages by package or for consumption on premises without being in violation of s. 561.42, F.S., [tied house evil restrictions] provided that the conduct of the spirituous beverage tasting shall be limited to and directed toward the general public of the age of legal consumption.

Currently, there are no statutes that regulate the size or number of the samples provided at beverage tastings. However, the Division does have rules to guide the samples of spirituous beverages as they pertain to "gifts," as a part of the "tied house evil" restrictions. Under rule 61A-1.010, F.A.C., spirituous beverage samples cannot exceed 3 liters to each licensed premises and samples cannot be provided as gifts to a vendor who has purchased the brand within the last 12 months unless the ownership of the manufacturer or distributor has been transferred to a new entity or the vendor's license has been transferred to a new owner.

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<sup>2</sup> See question 15 at [http://www.myfloridalicense.com/dbpr/abt/documents/abt\\_frequently\\_asked\\_questions51209.pdf](http://www.myfloridalicense.com/dbpr/abt/documents/abt_frequently_asked_questions51209.pdf), March 16, 2010.

### Effect of proposed changes

The bill allows distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

The bill authorizes a distiller to deliver to any vendor licensed to sell spirituous beverages by package or consumption on premises, free samples of up to 12 containers of no more than 1.75 liters per container of distilled spirits per year for promotional purposes without being in violation of the "tied house evil" financial assistance limitations.

### Present situation

#### **Sales Tax – Chapter 212, F.S.**

Currently, a sales tax exemption exists as authorized in s. 212.08(7)(s), F.S., and specifies:

(s) Tasting beverages.--Vinous and alcoholic beverages provided by distributors or vendors for the purpose of "wine tasting" and "spirituous beverage tasting" as contemplated under the provisions of ss. 564.06 and 565.12, respectively, are exempt from the tax imposed by this chapter.

The footnote to this paragraph cites at footnote number 9:

"9. Note.--See ss. 564.08 and 565.17 for specific references to beverage tastings."

### Effect of proposed changes

The bill corrects the cross-references in this sales tax section and clarifies the application of the current sales tax exemption to beverage tastings as authorized in s. 564.08, F.S., relating to wine and s. 565.17, F.S., relating to liquor.

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

Section 1. Amends s. 212.08(7)(s), F.S., to correct the cross-references in this section to clarify the current application of the sales tax exemption to beverage tastings of wine and distilled spirits.

Section 2. Amends s. 565.08, F.S., to statutorily codify guidelines for the registration of brands or labels of distilled spirits beverages.

Section 3. Amends s. 565.17, F.S., to allow distillers to conduct spirituous beverage tastings under the same parameters as distributors and vendors.

Section 4. This act shall take effect July 1, 2010.

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

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

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

The 2010 Revenue Estimating Conference adopted that this bill would have a positive, but insignificant recurring impact on both General Revenue and State Trust beverage tax beginning in FY 2010-11. This bill will also have a positive, but insignificant impact on General Revenue service charge in FY 2010-11 and a negative, but insignificant recurring impact. This bill will also have a \$.3M impact on State Trust fees in FY 2010-11, with a zero recurring impact. The impacts on revenue in this bill are generated from the registration of licensed distiller brands or labels with the DBPR.

2. Expenditures:

The DBPR estimates "there will be an increase in workload in the Bureau of Licensing that will cost \$50,521 in operating expenditures in the first year and \$46,644 each thereafter."

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

In the aggregate, the brand and label registration changes should facilitate the processing of the registrations for the primary source of supply for distilled spirits thus improving timelines for these licensees. Also, the bill is further designed to facilitate marketing processes for spirits distillers by allowing spirits tastings and free samples for promotional purposes.

D. FISCAL COMMENTS:

The DBPR states "The bill provides for the issuance of an up to 5-year registration to selected registrants. Issuing an "up to 5-year registration" for liquor would most likely not reduce the number of new and revised primary American source of supply licenses and brand registrations, but should reduce the number of renewals processed annually. Since this affects liquor only, and based on FY 08/09 liquor renewals, it would have a minimal impact as only 4,350 of the 38,715 total brand renewals were for liquor. This equates to 11% of all brands renewed. The LicenseEase system will need configuration changes to allow a renewal structure different than malt beverage and vinous brands. Also, using the phrase "up to" could indicate that the registrant would have a choice as to how many years they would like to register the brand, up to a maximum of five years which would also require significant changes to the current system's configuration.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to 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/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On January 13, 2010, the Insurance, Business, & Financial Affairs Policy Committee took up the bill, adopted several amendments, and passed the bill as a Committee Substitute by a vote of 12-1.

The CS differs from the bill as filed in the following areas:

- Removes language that a distiller located in Florida shall have preference by the DBPR in processing the registration or fee payment over distillers that are not located in Florida.
- Removes language that a distiller located in Florida may conduct distilled spirits tastings thus allowing all licensed distillers to conduct tastings under the same parameters as are currently authorized for distributors and vendors.
- Removes language that a distiller located in this state may deliver to a vendor certain amounts of distilled spirits per year for promotional purposes thus allowing all licensed distillers to provide promotional spirits to vendors.
- Removes the provision in the bill that would have repealed language in the beverage law that prohibits the sale, processing, or consumption of distilled spirits containing more than 153 "proof" thus distilled spirits proof limitations in current law continue in effect.



1                                   A bill to be entitled  
 2           An act relating to alcoholic beverage regulation; amending  
 3           s. 212.08, F.S.; correcting and conforming cross-  
 4           references; providing an exemption from specified taxes on  
 5           alcoholic beverages provided by distillers for spirituous  
 6           beverage tastings; amending s. 565.08, F.S.; providing the  
 7           Division of Alcoholic Beverages and Tobacco with certain  
 8           requirements regarding the registration of brands and  
 9           labels, fee payments, and notices; amending s. 565.17,  
 10          F.S.; authorizing distillers to conduct spirituous  
 11          beverage tastings under specified conditions; authorizing  
 12          distillers to deliver free samples to vendors authorized  
 13          to sell spirituous beverages under specified conditions;  
 14          providing an effective date.

15  
 16   Be It Enacted by the Legislature of the State of Florida:

17  
 18           Section 1. Paragraph (s) of subsection (7) of section  
 19   212.08, Florida Statutes, is amended to read:

20           212.08 Sales, rental, use, consumption, distribution, and  
 21   storage tax; specified exemptions.—The sale at retail, the  
 22   rental, the use, the consumption, the distribution, and the  
 23   storage to be used or consumed in this state of the following  
 24   are hereby specifically exempt from the tax imposed by this  
 25   chapter.

26           (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any  
 27   entity by this chapter do not inure to any transaction that is  
 28   otherwise taxable under this chapter when payment is made by a

29 representative or employee of the entity by any means,  
 30 including, but not limited to, cash, check, or credit card, even  
 31 when that representative or employee is subsequently reimbursed  
 32 by the entity. In addition, exemptions provided to any entity by  
 33 this subsection do not inure to any transaction that is  
 34 otherwise taxable under this chapter unless the entity has  
 35 obtained a sales tax exemption certificate from the department  
 36 or the entity obtains or provides other documentation as  
 37 required by the department. Eligible purchases or leases made  
 38 with such a certificate must be in strict compliance with this  
 39 subsection and departmental rules, and any person who makes an  
 40 exempt purchase with a certificate that is not in strict  
 41 compliance with this subsection and the rules is liable for and  
 42 shall pay the tax. The department may adopt rules to administer  
 43 this subsection.

44 (s) Tasting beverages.—Vinous and alcoholic beverages  
 45 provided by distributors, ~~or~~ vendors, or distillers for the  
 46 purpose of "wine tasting" and "spirituous beverage tasting" as  
 47 contemplated under the provisions of ss. 564.08 ~~564.06~~ and  
 48 565.17 ~~565.12~~, respectively, are exempt from the tax imposed by  
 49 this chapter.

50 Section 2. Section 565.08, Florida Statutes, is amended to  
 51 read:

52 565.08 Labeling regulations; liquor.—

53 (1) The division is fully authorized to make and  
 54 promulgate reasonable rules and regulations governing the  
 55 labeling of all liquors containing 0.5 percent or more of  
 56 alcohol by volume, which rules and regulations shall not

57 conflict with the federal regulations pertaining to such  
 58 labeling.

59 (2) Registration of brands or labels shall be effected by  
 60 changes to a registered brand or label, by additions to or  
 61 deletions from the master list of the registrant for the  
 62 previous year, or by nonpayment of the registration fee for each  
 63 brand or label registered. The division shall issue up to a 5-  
 64 year registration to selected registrants, including in-state  
 65 licensed distillers, upon the application for a multiyear  
 66 registration, notwithstanding any other provision of law to the  
 67 contrary. Fees for such multiyear registration shall not exceed  
 68 the statutory fee caps for individual brands or labels on an  
 69 annualized basis.

70 (3) The division shall notify each registrant, in writing  
 71 or electronically, of the receipt of registration for a brand or  
 72 label and the required payment for the registration within 10  
 73 business days after receipt of the registration and payment of  
 74 the fee. The division shall notify the registrant, in writing or  
 75 electronically, of the approval or denial of a brand or label  
 76 registration within 30 business days after receipt of the  
 77 registration and payment of the fee.

78 Section 3. Section 565.17, Florida Statutes, is amended to  
 79 read:

80 565.17 Beverage tastings by distributors, ~~and~~ vendors, ~~and~~  
 81 distillers.-

82 (1) A licensed distributor of spirituous beverages, or any  
 83 vendor, is authorized to conduct spirituous beverage tastings  
 84 upon any licensed premises authorized to sell spirituous

85 beverages by package or for consumption on premises without  
86 being in violation of s. 561.42, provided that the conduct of  
87 the spirituous beverage tasting is ~~shall be~~ limited to and  
88 directed toward the general public of the age of legal  
89 consumption.

90 (2)(a) A licensed distiller is authorized to conduct  
91 spirituous beverage tastings upon any licensed premises  
92 authorized to sell spirituous beverages by package or for  
93 consumption on premises without being in violation of s. 561.42,  
94 provided that the conduct of the spirituous beverage tasting is  
95 limited to and directed toward the general public of the age of  
96 legal consumption.

97 (b) A licensed distiller is authorized to deliver to any  
98 vendor authorized to sell spirituous beverages by package or for  
99 consumption on premises free samples of up to 12 containers of  
100 no more than 1.75 liters per container of distilled spirits per  
101 annum for promotional purposes without being in violation of s.  
102 561.42. Excise taxes shall be paid pursuant to s. 565.12.

103 Section 4. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Finance & Tax Council  
 2 Representative Kreegel offered the following:

**Amendment (with title amendment)**

Between lines 49 and 50, insert:

Section 2. Subsection (6) of section 563.06, Florida Statutes, is amended to read:

563.06 Malt beverages; imprint on individual container; size of containers; exemptions.—

(6) All malt beverages packaged in individual containers sold or offered for sale by vendors at retail in this state shall be in individual containers of any size ~~containing no more than 32 ounces of such malt beverages~~; provided, however, that nothing contained in this section shall affect malt beverages packaged in bulk or in kegs or in barrels or in any individual container containing 1 gallon or more of such malt beverage regardless of individual container type.

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Amendment No. 1

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**T I T L E A M E N D M E N T**

Remove line 6 and insert:  
beverage tastings; amending s. 563.06, F.S.; removing a  
provision limiting the size of individual containers of malt  
beverages which may be sold or offered for sale by vendors at  
retail; amending s. 565.08, F.S.; providing the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No.2

Bill No. **CS/HB 345**

COUNCIL/COMMITTEE ACTION

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

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Council/Committee hearing bill: Finance & Tax Council  
Representative Kreegel offered the following:

**Amendment**

Remove line 96 and insert:

legal consumption. Excise taxes shall be paid pursuant to s.  
565.12.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **CS/HB 345**

COUNCIL/COMMITTEE 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 Council/Committee hearing bill: Finance & Tax Council

2 Representative Kreegel offered the following:

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4           **Amendment (with directory and title amendments)**

5           Remove line 99 and insert:

6           consumption on premises free samples of up to 4 containers of





HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

**BILL #:** HB 1053  
**SPONSOR(S):** Workman  
**TIED BILLS:**

Melbourne-Tillman Water Control District, Brevard County

**IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	12 Y, 0 N	Fudge	Hoagland
2)	Finance & Tax Council		Diez-Arguelles	Langston
3)	Economic Development & Community Affairs Policy Council			
4)				
5)				

**SUMMARY ANALYSIS**

The Melbourne-Tillman Water Control District was created in 1986 by ch. 86-417, L.O.F. Subsequent amendments followed and were codified by ch. 2001-336, L.O.F. The district was created as a dependent special district to "secure, operate, and maintain an adequate, dependable surface water management system" within the district's boundaries.

The bill amends the boundaries of the district and is effective upon becoming law.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

The Melbourne-Tillman Water Control District was created in 1986 by ch. 86-417, L.O.F. Subsequent amendments followed<sup>1</sup> and were codified by ch. 2001-336, L.O.F. The district was created as a dependent special district to "secure, operate, and maintain an adequate, dependable surface water management system" within the district's boundaries.<sup>2</sup> The district is governed by a seven member board of directors, comprised of three members appointed by the Brevard County Board of County Commissioners, three members appointed by the City of Palm Bay City Council, and one member appointed by the City of West Melbourne City Council.<sup>3</sup>

The district is funded by a non ad valorem user fee applied to each parcel within the district's boundary. The fee is based on an approved rate (approved annually by the district's board and by the Brevard county commission) applied to parcel acreage and land use category as designed by the Brevard county property appraiser. For example, under the current user fee rates, a typical single-family residential lot pays \$19.13 per year (\$19.13 per acre or portion thereof on residential classifications).

##### District Boundary Modification

Section 298.301, F.S., provides that when a water control district is created, or its authorities or boundaries amended, by special act, lands may be added to or deleted only through legislative modification of the special act.

##### **Effect of Proposed Changes**

The bill amends the boundaries of the district by adding two subdivisions: Preserve at Heritage Oaks (41.8 acres±) and Eastwood at Heritage Oaks (39.5 acres±). These subdivisions were accepted into the district for drainage at the request of the developer, RJP Development, on the condition that the developer submits a request to the Legislature to include this area in the district's boundaries. At that time, in 2004, the area was undeveloped. The deed restriction associated with properties within these two subdivisions explains that the "compensation [due to the district] shall be deemed a common operating expense of the [Homeowners] Association and included within its annual assessments unless

<sup>1</sup> Chapters 90-401, 91-341, 92-239, and 94-424, L.O.F.

<sup>2</sup> Section 3, s. 1, ch. 2001-336, L.O.F.

<sup>3</sup> Section 3, s. 2(8), ch 2001-336, L.O.F.

and until the Subdivision is include[d] within the boundaries of [the district] and assessments are thereafter made against the individual lots and owners in the Subdivision by the [district], (which assessments may be made and collected for [the district] through the offices of the Brevard County Property Appraiser and Tax Collector).”

**B. SECTION DIRECTORY:**

Section 1: Amends district boundary.

Section 2: Provides an effective date of upon becoming law.

**II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS**

A. NOTICE PUBLISHED? Yes  No

IF YES, WHEN? On January 14<sup>th</sup>, 2010.

WHERE? In *Florida Today*, a newspaper in Brevard County, Florida.

B. REFERENDUM(S) REQUIRED? Yes  No

IF YES, WHEN?

C. LOCAL BILL CERTIFICATION FILED? Yes, attached  No

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached  No

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

HB 1053

2010

1                                   A bill to be entitled  
 2           An act relating to the Melbourne-Tillman Water Control  
 3           District, Brevard County; amending chapter 2001-336, Laws  
 4           of Florida, as amended; revising the boundaries of the  
 5           district; providing an effective date.

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

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 9           Section 1. Section 3 of section 3 of chapter 2001-336,  
 10          Laws of Florida, as amended by chapter 2003-334, Laws of  
 11          Florida, is amended to read:

12           Section 3. Special district.—There is hereby created and  
 13          incorporated the Melbourne-Tillman Water Control District, a  
 14          dependent special district, for the purpose of constructing,  
 15          reconstructing and repairing, maintaining, and operating a  
 16          surface water management system. The boundaries of the District  
 17          are:

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 19          All of Township 29 South, Range 36 East, and portions of  
 20          Township 29 South, Range 37 East, Township 28 South, Range 36  
 21          East and Township 28 South, Range 37 East in Brevard County,  
 22          Florida being more particularly described as follows:

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 24          Township 29 South, Range 37 East:

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 26          The West 1/2 of Sections 3, 27 and 34, and all of Sections 4  
 27          through 9, 16 through 21, and 28 through 33, and the West 1/2 of  
 28          the Southwest 1/4 of the Northeast 1/4 of Section 34.

HB 1053

2010

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Township 28 South, Range 36 East:

The South 1/2 of Sections 1 through 5, the Southeast 1/4 of Section 6, and all of Sections 7 through 36.

All of Sections 20 and 29 located within Township 28 South, Range 36 East shall be annexed into the City of Palm Bay.

Township 28 South, Range 37 East:

(a) The Southwest 1/4 of Section 6, the West 1/2 and Southeast 1/4 of Section 7, the West 1/2 of Section 17, the South 1/2 of Section 21, a portion of the Southwest 1/4 of Section 22 described as the West 1/2 of the Northwest 1/4 of the Southwest 1/4, less Parcel 543, the South 1/2 of Section 27, less a portion of the North 1/2 of the South 1/2 described as the area bounded by the west section line, then southerly along the section line to a point 419 feet distant, then easterly to a point along the east section line 450 feet southerly of the midpoint of the east section line, then northerly along the section line to the midpoint of the section line, then westerly to the midpoint of the west section line, the point of beginning, the West 1/2, Northeast 1/4 and a portion of the Southeast 1/4 described as the North 1/2 of the Southeast 1/4 and Lot 4 and the West 1/2 of Lot 3, all within Section 34, the West 1/2 of the Northwest 1/4 and Northwest 1/4 of the Southwest 1/4 of Section 35, and all of Sections 18 through 20, and 28

HB 1053

2010

57 through 33.

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59 (b) Tracts 1, 2, 3 & 4 of the Garner Acres Plat, a replat of a  
60 portion of Central Highlands, as recorded in Plat Book 47, Page  
61 13, of the Public Records of Brevard County, Florida, lying in  
62 Section 8.

63

64 (c) Tax I.D. Parcels 503, 505, 507 & 508 lying in Section 8.

65

66 (d) Lot 29, Florida Indian River Land Company, as recorded in  
67 Plat Book 1, Page 164, of the Public Records of Brevard County,  
68 Florida, lying in Section 17.

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70 (e) The Northwest 1/4 of the Northeast 1/4 of Section 07; known  
71 as Preserve at Heritage Oaks as recorded in Plat Book 53, page  
72 29, of the Public Records of Brevard County, Florida and the  
73 Southwest 1/4 of the Northeast 1/4 of Section 07; known as  
74 Eastwood One at Heritage Oaks as recorded in Plat Book 53, page  
75 85, of the Public Records of Brevard County, Florida.

76

77 The District shall constitute a dependent special district under  
78 the laws of the state.

79 Section 2. This act shall take effect upon becoming a law.





**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** PCB FTC 10-06 Taxation

**SPONSOR(S):** Finance & Tax Council

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

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Finance & Tax Council		Wilson <i>WJW</i>	Langston <i>LS</i>
1)				
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**SUMMARY ANALYSIS**

This bill creates a structured state tax amnesty program to be administered by the Department of Revenue (Department). This amnesty program will provide Florida taxpayers the opportunity to pay overdue taxes without late penalties, with reduced interest charges and with avoidance of criminal prosecution for failure to timely pay tax. This amnesty program will be in effect for a 3-month period beginning on July 1, 2010 and ending on September 30, 2010.

The bill also provides the Department with additional tools to increase the effectiveness and efficiency of administration and enforcement of current tax laws when the amnesty program has ended. These new provisions are:

- Authorization to share and provide information regarding outstanding sales and use tax warrants or judgment liens of hotels and restaurants with the Department of Business and Professional Regulation's (DBPR),
- Authorization to publish and disclose specified taxpayer's information that have current warrants and judgment lien certificates,
- Authorization for DBPR to revoke or deny a hotel or restaurant license, if a tax warrant has been outstanding for more than 3 consecutive months,
- Establishment of integrated enforcement authority for the Department in order to revoke a taxpayer's certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant, notice of lien, or judgment lien certificate has been issued.
- Creation of comprehensive provisions that govern the transfer of tax liabilities; specifying when a transferor and/or transferee are liable for the tax liabilities transferred, and establishing that the Department can seek an injunction to prevent further business activity until all taxes, penalties and interest due have been paid.

This bill provides an appropriation of \$1.234M from the General Revenue Fund to the Department for the implementation and administration of the amnesty program.

This bill further provides an appropriation of \$1.445M recurring, and \$96,925 nonrecurring funds, from the General Revenue Fund to the Department for the hiring of 25 audit and collection services staff.

The Revenue Estimating Conference estimates that new revenue collections to the state in FY 2010-2011 will be \$82.9 million in General Revenue, of which 8.0 million will be recurring. State trust funds will receive an estimated additional \$0.7 million, of which \$0.1 million will be recurring. New revenues to local governments in FY 2010-2011 are estimated to be \$7.1 million, of which \$1.9 million will be recurring.

The bill shall take effect upon becoming a law, except as otherwise provided in the bill.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### CURRENT SITUATION

##### Amnesty

Under current law, the Department of Revenue (Department) is responsible for the assessment and collection of a majority of taxes owed to the State. Taxpayers who fail to timely and/or correctly pay the tax due may become subject to penalties, interest and fees administered by the Department. Civil and criminal proceedings may also be utilized in the enforcement of delinquent tax payments.

While most Florida taxpayers successfully and voluntarily comply with all revenue laws, sometimes tax obligations may be misunderstood or simply are just overlooked. In an effort to bring taxpayers into compliance with the law, the State can offer a tax amnesty program. These programs not only help provide a cost savings for current taxpayers, through reduced penalties and interest, but amnesties can also attract and identify new taxpayers that can be placed on the State tax rolls. Florida's last general tax amnesty program was offered in 2003.<sup>1</sup>

##### Enforcement of Current Tax Laws

Presently, there are numerous gaps in the enforcement tools available to the Department. For example:

- The Department is not permitted to share certain taxpayer information with other state agencies. The Department is currently permitted to disclose names, addresses, and sales tax registration with the Department of Business and Professional Regulation's (DBPR) Division of Hotels and Restaurants, but is unable to provide other sales and use tax information, such as the overdue taxes, for conducting its official duties.
- Current restrictions regarding confidential taxpayer information do not permit the Department to publish names of taxpayers who have current tax warrants.
- The DBPR does not have power to revoke or deny the application to renew a license of a hotel or restaurant license on the grounds of unpaid taxes.

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<sup>1</sup> Ch. 2003-395, Laws of Florida.

- Current law permits the Department to revoke a taxpayer's sales tax registration when they fail to pay their sales tax liability. However, the Department does not have the authority to revoke a sales tax registration from the same taxpayer who is delinquent in other tax liabilities owed to the State. Florida law does not provide a comprehensive statute for the transfer of tax liabilities when a business or business assets are sold or transferred. This offers taxpayers the opportunity to avoid owed taxes under certain circumstances through ownership transfers of a business or a stock of goods.

## **EFFECT OF PROPOSED CHANGES**

### **2010 State Tax Amnesty Program**

The program will target taxpayers subject to the following taxes, fees, and surcharges:

- Certain Local Option Taxes – Chapter 125
- Firefighter and Police Excise Taxes- Chapter 175 & 185
- Estate Tax – Chapter 198
- Intangible Personal Property – Chapter 199
- Documentary Stamp Tax – Chapter 201
- Communications Services Tax – Chapter 202
- Gross Receipts Tax – Chapter 203
- Motor Fuel Taxes – Chapter 206
- Severance Tax – Chapter 211
- Sales and Use Tax – Chapter 212
- Corporate Income Tax – Chapter 220
- Emergency Excise Tax – Chapter 221
- Emergency Management Surcharge - Chapter 252
- Local Option Fuel Taxes – Chapter 336
- Pollutant Taxes – Chapter 376
- Waste Tires and Lead-acid Batteries Fees – Chapter 403
- Insurance Premiums Taxes – Chapters 624 and 627
- Reciprocal Insurers - Chapter 629
- Motor Vehicle Warranty Trust Fund – Chapter 681

The provisions of this bill structure the amnesty program, as follows:

- The amnesty program will be in effect for a 3-month period beginning July 1, 2010 and ending September 30, 2010.
- A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation by the Department.
- A taxpayer may not participate if under criminal investigation, indictment, information, or prosecution regarding a Florida revenue law.
- A taxpayer who is currently under audit, inquiry, examination or civil investigation by the Department is responsible to pay the full amount of taxes due and receives a 25 percent reduction in interest due..
- A taxpayer who initiates contact with the Department is responsible to pay the full amount of taxes due and receives a 50 percent reduction in interest due..
- Late penalties are waived on any tax paid pursuant to the amnesty program. Furthermore, the Department will not initiate a criminal investigation against a participating taxpayer with respect to failure to timely pay a tax.
- A participating taxpayer must waive any right to claim a refund, protest, or initiate any administrative proceeding that challenges any assessment administered under the amnesty program. Preexisting protests or administrative or judicial proceedings must be dismissed.
- The Department is allowed to rescind a grant of amnesty on the basis of fraud, misrepresentation, or mutual mistake of fact.

- Any local option tax administered by a local government is not included in the amnesty program, unless the local government notifies the Department of Revenue by June 1, 2010, that it chooses to participate in the amnesty program.

The Department is authorized to adopt emergency rules to implement the amnesty.

### **Increased Enforcement of Current Tax Laws**

#### **Tax Liability Confidentiality and Information Sharing**

This bill amends s. 212.053(8)(d), F.S., authorizing the Department to share and provide information regarding outstanding sales and use tax warrants or judgment liens of hotels and restaurants with the Department of Business and Professional Regulation's (DBPR) Division of Hotels and Restaurants.

The bill creates s. 212.053(19), F.S., authorizing the Department to publish a list of taxpayers who have current warrants and judgment lien certificates. This list is permitted to be publicized on the Department's internet website that includes the name, amount of liability, and other publically available taxpayer information. This list shall be updated at least monthly. The Department is authorized to adopt rules in the administration of this provision.

Furthermore, this bill creates s. 212.053(20), F.S., authorizing the Department to disclose specified information related to taxpayers against whom the department has filed tax warrants, notice of liens, or judgment lien certificates.

#### **Revocation or Refusal to Reinstate a License**

This bill also creates s. 213.50(3) and 213.50(4), F.S., allowing DBPR to revoke a license or deny an application to renew a license of a licenseholder, if a tax warrant has been outstanding for more than 3 consecutive months.

#### **Integrated Enforcement Authority**

This bill also creates s. 213.692, F.S., allowing the Department to revoke a taxpayer's certificate of registration for any tax when the taxpayer owes any tax liability where a tax warrant, notice of lien, or judgment lien certificate has been issued. The Department must schedule an information conference with the taxpayer, before revocation, to allow the taxpayer to present evidence regarding the revocation action. The Department is also required to issue an administration complaint under Chapter 120, F.S., if the taxpayer fails to attend the informal conference or fails to comply with an executed compliance agreement.

The taxpayer whose certificates of registration, permits, or licenses have been revoked may not be issued a new one unless either the outstanding tax liabilities have been satisfied or the Department enters into a written agreement with the taxpayer regarding their liabilities. The Department must require a cash deposit, bond, or other security as a condition of issuing a new certificate of registration pursuant s. 212.14(4), F.S. The Department is authorized to adopt rules to administer the provisions of this section.

This bill also authorizes the Department to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority. These emergency rules will remain in effect for 6 months after their adoption and may be renewed when permanent rules are established.

#### **Transfer of Tax Liabilities**

This bill creates s. 213.758, F.S., a comprehensive statute governing the transfer of tax liabilities to future owners of a business and/or business assets.

The bill provides that a taxpayer, who quits a business without benefit of a purchaser, successor or assignee, or without transferring the business or stock of goods to a transferee, must file a final return

and make full payment of taxes owed, excluding corporate income tax, within 15 days after quitting the business. The bill also provides that a taxpayer, who transfers a business or stock of goods, must make a final return and full payment for any taxes due, excluding corporate income tax, within 15 days of the date of transfer. The transferee of more than 50% of a business is liable for the tax, interest, or penalty owed by the transferor, unless the transferor provides the transferee a receipt or certificate from the Department showing that the transferor is not liable for taxes and the Department conducts an audit and finds that the transferor is not liable for taxes. The transferee may withhold a portion of consideration to pay the taxes, interest, and penalties owed from the operation of the business. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the remaining amount owed. This section clarifies that new owners can be liable even if the business or business assets were transferred to the new owner but were not purchased.

The Department may request the Department of Legal Affairs to seek an injunction to prevent further business activity until all taxes, penalties and interest due have been paid. Transferees of more than 50 percent of a business or stock of goods are jointly and severally liable with the transferor for the payment of the taxes, interest, or penalties owed.

The maximum liability of the transferee is limited to the fair market value or the purchase price of the property transferred, whichever is higher. The Department is authorized to adopt rules in order to administer the provisions of this section.

#### B. SECTION DIRECTORY:

**Section 1:** Creates a state tax amnesty program to be administered by the Department, provides program time period, guidelines, eligible participants, wavier of penalties

**Section 2:** Appropriates \$1.234M in General Revenue Funding to the Department to administer the amnesty program.

**Section 3:** Amends s. 213.053, F.S., regarding information sharing information for outstanding sale and use tax warrants or judgment liens with DPBR. Creates s. 212.053(19) and s. 212.053(20), F.S., authorizing the disclosure and publication of specified information for taxpayers.

**Section 4:** Creates s. 213.50(3) and 213.50(4), F.S., providing DBPR may revoke and deny an application to renew a license holder for outstanding tax liabilities.

**Section 5:** Creates s. 213.692, F.S., establishing integrated enforcement authority for the Department, authorizing revocation of a taxpayer's certificate of registration under certain circumstances.

**Section 6:** Authorizes the department to adopt emergency rules to administer s. 213.692, F.S.

**Section 7:** Creates s. 213.758, F.S., establishing a comprehensive statute governing the transfer of tax liabilities to future owner(s) of a business and/or business assets. This section also authorizes rule-making authority.

**Section 8:** Appropriates \$1.445M, in recurring, and \$96,925, in non-recurring, General Revenue for 25 additional Department audit and tax collection services staff.

**Section 9:** This bill shall take effect on becoming a law, except as otherwise specifically provided in this bill.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The Revenue Estimating Conference estimates that new revenue collections to the state in FY 2010-2011 will be \$82.9 million in General Revenue, of which \$8.0 million will be recurring. State trust funds will receive an estimated additional \$0.7 million, of which \$0.1 million will be recurring.

Further revenue effects that have not yet been estimated by the Revenue Estimating Conference are the non-recurring shifts in the timing of audit payments that would have been paid to the state in the absence of the amnesty program. The amnesty is expected to shift into FY 2010-11 audit payments that normally would have been paid in Fiscal Years 2009-2010 and 2011-12. Also, the positive revenue impacts of additional auditors have not yet been estimated.

#### 2. Expenditures:

This bill provides an appropriation of \$1.234M in nonrecurring General Revenue funds to the Department for the implementation and administration of the amnesty program in FY 2009-10. Funds remaining unexpended from this appropriation as of June 30, 2010, will be reappropriated for the amnesty program in FY 2010-11.

This bill also provides an appropriation of \$1.445M, in recurring, and \$96,925, in nonrecurring General Revenue funds to the Department for the hiring of an additional 25 audit and collection services staff.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The Revenue Estimating Conference estimates that new revenue collections to local governments in FY 2010-2011 will be \$7.1 million, \$1.9 million will be recurring.

Further revenue effects that have not yet been estimated by the Revenue Estimating Conference are the non-recurring shifts in the timing of audit payments that would have been paid to the state in the absence of the amnesty program. The amnesty is expected to shift into FY 2010-11 audit payments that normally would have been paid in Fiscal Years 2009-2010 and 2011-12. Also, the positive revenue impacts of additional auditors have not yet been estimated.

#### 2. Expenditures:

None.

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

The state tax amnesty program will provide Florida taxpayers an opportunity to pay overdue taxes without late penalties, with reduced interest charges and avoidance of criminal prosecution. This program will provide a cost savings for both business and individual taxpayers, while bringing them into compliance with the law.

### D. FISCAL COMMENTS:

### 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 an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### 2. Other:

#### B. RULE-MAKING AUTHORITY:

Section 1. The executive director of the Department is authorized to adopt emergency rules under s. 120.536(1) and s. 120.54(4), F.S., to implement the amnesty program.

Section 3. The Department is authorized to adopt to administer provisions in s. 212.053(19), F.S., related to publishing a list of taxpayers whom it has filed a warrant, notice of a lien, or judgment lien certificate.

Section 5. The Department is authorized to adopt rules to administer s. 213.692, F.S., establishing integrated enforcement authority.

Section 6. Effective July 1, 2010, the Department is authorized to adopt emergency rules to administer s. 213.692, F.S., related to integrated enforcement authority.

Section 7. The Department is authorized to adopt rules necessary to administer and enforce s. 213.578, F.S., related to the transfer of tax liabilities.

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

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
2           An act relating to taxation; directing the Department of  
3           Revenue to develop and implement an amnesty program for  
4           taxpayers subject to the state and local taxes imposed by  
5           chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211,  
6           212, 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681,  
7           F.S.; and required to be paid to the Department of  
8           Revenue; providing time periods; providing program  
9           guidelines; providing for eligible participants; providing  
10          for waiver of penalties and interest under specified  
11          circumstances; providing for emergency rules; providing an  
12          appropriation; amending s. 213.053, F.S.; providing that  
13          the department may release confidential taxpayer  
14          information relating to a corporation having an  
15          outstanding tax warrant to the Department of Business and  
16          Professional Regulation; authorizing the department to  
17          publish a list of taxpayers against whom it has filed a  
18          warrant or judgment lien certificate; requiring the  
19          department to update the list at least monthly;  
20          authorizing the department to adopt rules; authorizing the  
21          department to provide confidential taxpayer information  
22          relating to collections from taxpayers against whom it has  
23          taken a collection action; amending s. 213.50, F.S.;  
24          authorizing the Department of Business and Professional  
25          Regulation to revoke or deny the renewal of a license for  
26          a hotel or restaurant having an outstanding tax warrant  
27          for a certain period of time; creating s. 213.692, F.S.;  
28          authorizing the department to revoke all certificates of



29 registration, permits, or licenses issued to a taxpayer  
 30 against whose property the department has filed a warrant  
 31 or tax lien; requiring the scheduling of an informal  
 32 conference before revocation of the certificates of  
 33 registration, permits, or licenses; prohibiting the  
 34 department from issuing a certificate of registration,  
 35 permit, or license to a taxpayer whose certificate of  
 36 registration, permit, or license has been revoked;  
 37 providing exceptions; requiring security as a condition of  
 38 issuing a new certificate of registration to a person  
 39 whose certificate of registration, permit, or license has  
 40 been revoked after the filing of a warrant or tax lien  
 41 certificate; authorizing the department to adopt rules,  
 42 including emergency rules; creating s. 213.758, F.S.;  
 43 defining terms; providing for the transfer of tax  
 44 liabilities to the transferee of a business or a stock of  
 45 goods under certain circumstances; providing exceptions;  
 46 requiring a taxpayer who quits a business to file a final  
 47 tax return; authorizing the Department of Legal Affairs to  
 48 seek injunctions to prevent business activities until  
 49 taxes are paid; requiring the transferor of a business or  
 50 stock of goods to file a final tax return and make a full  
 51 tax payment after a transfer; authorizing a transferee of  
 52 a business or stock of goods to withhold a portion of the  
 53 consideration for the transfer for the payment of certain  
 54 taxes; authorizing the Department of Legal Affairs to seek  
 55 an injunction to prevent business activities by a  
 56 transferee until the taxes are paid; providing that the

57 transferees are jointly and severally liable with the  
 58 transferor for the payment of taxes, interest, or  
 59 penalties under certain circumstances; limiting the  
 60 transferee's liability to the value or purchase price of  
 61 the transferred property; specifying a time period within  
 62 which a transferee may file certain actions; authorizing  
 63 the department to adopt rules; authorizing 25 full-time  
 64 equivalent positions and making an appropriation for the  
 65 purpose of conducting audits and tax collection services  
 66 in the Department of Revenue; providing an effective date.

67

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

69 Section 1. (1) No later than July 1, 2010, the Department  
 70 of Revenue shall develop and implement an amnesty program for  
 71 taxpayers subject to the state and local taxes imposed by  
 72 chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212,  
 73 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, Florida  
 74 Statutes.

75 (2) The amnesty program shall be a one-time opportunity  
 76 for eligible taxpayers to satisfy their tax liabilities under  
 77 the revenue laws of this state and thereby avoid criminal  
 78 prosecution, penalties, and interest as provided in subsections  
 79 (5), (6), and (7). Any taxpayer that has entered into a  
 80 settlement of liability for state or local option taxes before  
 81 July 1, 2010, whether or not full and complete payment has been  
 82 made of the settlement amount, shall not be eligible to  
 83 participate in the amnesty program.

84 (3) The amnesty program shall be in effect for a 3-month

85 period beginning on July 1, 2010, and ending on September 30,  
86 2010. The amnesty program shall apply only to tax liabilities  
87 due prior to July 1, 2010. In order to participate in the  
88 amnesty program, eligible taxpayers must file the forms and  
89 other documentation specified by the Department of Revenue,  
90 including, but not limited to, returns and amended returns, must  
91 make full payment of tax due, and must make payment of the  
92 interest due as provided in subsections (5) and (6).

93 (4) The administrative collection processing fee imposed  
94 pursuant to section 213.24, Florida Statutes, shall be  
95 calculated on the tax, penalty and interest due before the  
96 reductions allowed by the amnesty program.

97 (5) A taxpayer may participate in the amnesty program  
98 whether or not the taxpayer is under audit, inquiry,  
99 examination, or civil investigation initiated by the Department  
100 of Revenue, regardless of whether the amount due is included in  
101 a proposed assessment or an assessment, bill, notice, or demand  
102 for payment issued by the Department of Revenue, and without  
103 regard to whether the amount due is subject to a pending  
104 administrative or judicial proceeding. If any of the  
105 circumstances set forth in this subsection apply, the taxpayer  
106 shall be required to pay the full amount of the tax due and 75  
107 percent of the amount of interest due. When the department has  
108 issued a notice of intent to conduct an audit to a taxpayer but  
109 has not commenced the audit, the taxpayer may apply to the  
110 department during the amnesty program for approval to have the  
111 audit converted to the certified audits program authorized by  
112 section 213.285, Florida Statutes. When a taxpayer has been

113 approved during the amnesty program to have an audit converted  
 114 to the certified audits program, payment of any liability  
 115 determined as a result of this participation in the certified  
 116 audits program must be made during the period the amnesty  
 117 program is in effect. A taxpayer that is participating in the  
 118 certified audits program authorized by section 213.285, Florida  
 119 Statutes, shall be eligible for the interest and penalty  
 120 compromises authorized by either the amnesty program or the  
 121 certified audits program, but not both.

122 (6) If the circumstances set forth in subsection (4) do  
 123 not apply and the initial contact with the Department of Revenue  
 124 is made by the taxpayer pursuant to the amnesty program, the  
 125 taxpayer shall be required to pay the full amount of the tax due  
 126 and 50 percent of the amount of interest due.

127 (7) No penalties shall be imposed on any tax paid pursuant  
 128 to the amnesty program, and the Department of Revenue shall not  
 129 initiate a criminal investigation against or refer for  
 130 prosecution any taxpayer participating in the amnesty program  
 131 with respect to the failure to timely pay the tax disclosed in  
 132 the amnesty program.

133 (8) Participation in the amnesty program shall be  
 134 conditioned upon the taxpayer's express waiver of rights to  
 135 contest taxes being reported pursuant to the amnesty program. If  
 136 the taxes reported pursuant to the amnesty program are the  
 137 subject of a pending informal protest under section 213.21,  
 138 Florida Statutes, or of administrative or judicial proceedings  
 139 that have not become final as of the date payment of the taxes  
 140 is made pursuant to the amnesty program, participation in the

141 amnesty program is conditioned upon the taxpayer's withdrawal of  
 142 such informal protest or dismissal of such administrative or  
 143 judicial proceeding. Participation in the amnesty program shall  
 144 also be conditioned upon the taxpayer's express agreement to  
 145 waive any right to claim a refund or to protest or initiate an  
 146 administrative or judicial proceeding to review any denial of a  
 147 refund claim for any refund of tax or interest paid under the  
 148 amnesty program except as provided in this subsection. No refund  
 149 may be made of any penalty or interest paid prior to July 1,  
 150 2010. Any credit or refund of tax or interest paid as a result  
 151 of participation in the amnesty program shall be strictly  
 152 limited to amounts determined by the Department of Revenue to  
 153 have been paid in error.

154 (9) A taxpayer under criminal investigation, indictment,  
 155 information, or prosecution regarding a revenue law of this  
 156 state shall not be eligible to participate in the amnesty  
 157 program. A taxpayer that is under pre-trial intervention or a  
 158 diversion program, probation, community control, or in a work  
 159 camp, jail, state prison or another correctional system  
 160 regarding a revenue law of this state shall not be eligible to  
 161 participate in the amnesty program.

162 (10) With or without an audit, the Department of Revenue  
 163 is authorized to issue a notice or demand for payment with  
 164 respect to any tax or interest that it determines to be due with  
 165 any return filed under the tax amnesty program, and such notice  
 166 and demand shall be prima facie correct in any administrative,  
 167 judicial, or quasi-judicial proceeding.

168 (11) The Department of Revenue may, on the basis of fraud,

169 misrepresentation, or mutual mistake of fact, rescind a grant of  
 170 amnesty, including any amnesty granted as a result of  
 171 participation in the certified audit program during the period  
 172 the amnesty program is in effect. Any taxpayer that files under  
 173 the amnesty program false or fraudulent returns, forms, or  
 174 documentation or attempts in any manner to defeat or evade a tax  
 175 is subject to applicable penalties and criminal prosecution.

176 (12) Any local option tax administered by a local  
 177 government that imposed the tax pursuant to a statute permitting  
 178 self-administration is excluded from the amnesty program unless  
 179 the local government notifies the Department of Revenue by June  
 180 1, 2010, that it chooses to participate in the amnesty program.

181 (13) The executive director of the Department of Revenue  
 182 is authorized to adopt emergency rules under sections 120.536(1)  
 183 and 120.54(4), Florida Statutes, to implement the amnesty  
 184 program. Such rules may provide forms, procedures, terms,  
 185 conditions, and methods of payment appropriate for fair and  
 186 effective administration of the amnesty program and to ensure  
 187 the taxpayer's ongoing commitment to proper remittance of taxes  
 188 to the state. Notwithstanding any other law, the emergency rules  
 189 shall remain in effect until the later of the date that is 6  
 190 months after the date of adoption of the rule or the date of  
 191 final resolution of all amnesty applications filed pursuant to  
 192 this section.

193 Section 2. The sum of \$1,234,000 in non-recurring funds is  
 194 appropriated from the General Revenue Fund to the Department of  
 195 Revenue for the purpose of administering the amnesty program  
 196 created by this act. Funds remaining unexpended or unencumbered

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197 from this appropriation as of June 30, 2010, shall revert and be  
 198 reappropriated for the same purpose in fiscal year 2010-2011.

199 Section 3. Effective July 1, 2010, subsection (8) of  
 200 section 213.053, Florida Statutes, is amended, and subsections  
 201 (19) and (20) are added to that section, to read:

202 213.053 Confidentiality and information sharing.—

203 (8) Notwithstanding any other provision of this section,  
 204 the department may provide:

205 (d) Names, addresses, ~~and~~ sales tax registration  
 206 information, and information relating to a hotel or restaurant  
 207 having an outstanding tax warrant, notice of lien, or judgment  
 208 lien certificate to the Division of Hotels and Restaurants of  
 209 the Department of Business and Professional Regulation in the  
 210 conduct of its official duties.

211  
 212 Disclosure of information under this subsection shall be  
 213 pursuant to a written agreement between the executive director  
 214 and the agency. Such agencies, governmental or nongovernmental,  
 215 shall be bound by the same requirements of confidentiality as  
 216 the Department of Revenue. Breach of confidentiality is a  
 217 misdemeanor of the first degree, punishable as provided by s.  
 218 775.082 or s. 775.083.

219 (19) (a) The department may publish a list of taxpayers  
 220 against whom it has filed a warrant, notice of lien, or judgment  
 221 lien certificate. The list may include the name and address of  
 222 each taxpayer; the amounts and types of delinquent taxes, fees  
 223 or surcharges, penalties, or interest; and the employer  
 224 identification number or other taxpayer identification number.

225       (b) The department shall update the list at least monthly  
 226 to reflect payments for resolution of deficiencies and to  
 227 otherwise add or remove taxpayers from the list.

228       (c) The department may adopt rules to administer this  
 229 subsection.

230       (20) The department may disclose information relating to  
 231 taxpayers against whom it has filed a warrant, notice of lien or  
 232 judgment lien certificate. Such information includes the name  
 233 and address of the taxpayer; the actions taken; the amounts and  
 234 types of liabilities; and the amount of any collections made.

235       Section 4. Effective July 1, 2010, section 213.50, Florida  
 236 Statutes, is amended to read:

237       213.50 Failure to comply; revocation of corporate charter  
 238 or hotel or restaurant license; refusal to reinstate charter or  
 239 license.-

240       (1) Any corporation of this state which has an outstanding  
 241 tax warrant that has existed for more than 3 consecutive months  
 242 is subject to the revocation of its charter as provided in s.  
 243 607.1420.

244       (2) A request for reinstatement of a corporate charter may  
 245 not be granted by the Division of Corporations of the Department  
 246 of State if an outstanding tax warrant has existed for that  
 247 corporation for more than 3 consecutive months.

248       (3) The Department of Business and Professional Regulation  
 249 may revoke the hotel or restaurant license of a licenseholder if  
 250 a tax warrant has been outstanding against the licenseholder for  
 251 more than 3 months.



252 (4) The Department of Business and Professional Regulation  
 253 may deny an application to renew the hotel or restaurant license  
 254 of a licenseholder if a tax warrant has been outstanding against  
 255 the licenseholder for more than 3 months.

256 Section 5. Effective July 1, 2010, section 213.692,  
 257 Florida Statutes, is created to read:

258 213.692 Integrated enforcement authority.—

259 (1) If the department files a warrant, notice of lien, or  
 260 judgment lien certificate against the property of a taxpayer,  
 261 the department may also revoke all certificates of registration,  
 262 permits, or licenses issued by the department to that taxpayer.

263 (a) Before the department may revoke the certificates of  
 264 registration, permits, or licenses, the department must schedule  
 265 an informal conference that the taxpayer is required to attend.  
 266 At the conference, the taxpayer may present evidence regarding  
 267 the department's intended action or enter into a compliance  
 268 agreement. The department must provide written notice to the  
 269 taxpayer of the department's intended action and the time, date,  
 270 and place of the conference. The department shall issue an  
 271 administrative complaint to revoke the certificates of  
 272 registration, permits, or licenses if the taxpayer does not  
 273 attend the conference, enter into a compliance agreement, or  
 274 comply with the compliance agreement.

275 (b) The department may not issue a certificate of  
 276 registration, permit, or license to a taxpayer whose certificate  
 277 of registration, permit, or license has been revoked unless:

278 1. The outstanding liabilities of the taxpayer have been  
 279 satisfied; or

280 2. The department enters into a written agreement with the  
 281 taxpayer regarding any outstanding liabilities and, as part of  
 282 such agreement, agrees to issue a certificate of registration,  
 283 permit, or license.

284 (c) The department shall require a cash deposit, bond, or  
 285 other security as a condition of issuing a new certificate of  
 286 registration pursuant to the requirements of s. 212.14(4).

287 (2) If the department files a warrant or a judgment lien  
 288 certificate in connection with a jeopardy assessment, the  
 289 department must comply with the procedures in s. 213.732 before  
 290 or in conjunction with those provided in this section.

291 (3) The department may adopt rules to administer this  
 292 section.

293 Section 6. Effective July 1, 2010, the Department of  
 294 Revenue is authorized to adopt emergency rules to administer s.  
 295 213.692, Florida Statutes. The emergency rules shall remain in  
 296 effect for 6 months after adoption and may be renewed during the  
 297 pendency of procedures to adopt rules addressing the subject of  
 298 the emergency rules.

299 Section 7. Section 213.758, Florida Statutes, is created  
 300 to read:

301 213.758 Transfer of tax liabilities.—

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

303 (a) "Involuntary transfer" means a transfer of a business  
 304 or stock of goods made without the consent of the transferor,  
 305 including, but not limited to, a transfer:

306 1. That occurs due to the foreclosure of a security  
 307 interest issued to a person who is not an insider as defined in

308 s. 726.102;

309 2. That results from an eminent domain or condemnation  
 310 action;

311 3. Pursuant to chapter 61, chapter 702, or the United  
 312 States Bankruptcy Code;

313 4. To a financial institution, as defined in s. 655.005, if  
 314 the transfer is made to satisfy the transferor's debt to the  
 315 financial institution; or

316 5. To a third party to the extent that the proceeds are  
 317 used to satisfy the transferor's indebtedness to a financial  
 318 institution as defined in s. 655.005. If the third party  
 319 receives assets worth more than the indebtedness, the transfer  
 320 of the excess may not be deemed an involuntary transfer.

321 (b) "Transfer" means every mode, direct or indirect, with  
 322 or without consideration, of disposing of or parting with a  
 323 business or stock of goods, and includes, but is not limited to,  
 324 assigning, conveying, demising, gifting, granting, or selling.

325 (2) A taxpayer who is liable for any tax, interest,  
 326 penalty, surcharge, or fee administered by the department  
 327 pursuant to chapter 443 or described in s. 72.011(1), excluding  
 328 corporate income tax, and who quits a business without the  
 329 benefit of a purchaser, successor, or assignee, or without  
 330 transferring the business or stock of goods to a transferee,  
 331 must file a final return and make full payment within 15 days  
 332 after quitting the business. A taxpayer who fails to file a  
 333 final return and make payment may not engage in any business in  
 334 this state until the final return has been filed and all taxes,  
 335 interest, or penalties due have been paid. The Department of

336 Legal Affairs may seek an injunction at the request of the  
 337 department to prevent further business activity until such tax,  
 338 interest, or penalties are paid. A temporary injunction  
 339 enjoining further business activity may be granted by a court  
 340 without notice.

341 (3) A taxpayer who is liable for taxes, interest, or  
 342 penalties levied under chapter 443 or any of the chapters  
 343 specified in s. 213.05, excluding corporate income tax, who  
 344 transfers the taxpayer's business or stock of goods, must file a  
 345 final return and make full payment within 15 days after the date  
 346 of transfer.

347 (4) (a) A transferee, or a group of transferees acting in  
 348 concert, of more than 50 percent of a business or stock of goods  
 349 is liable for any tax, interest, or penalties owed by the  
 350 transferor unless:

351 1. The transferor provides a receipt or certificate from  
 352 the department to the transferee showing that the transferor is  
 353 not liable for taxes, interest, or penalties from the operation  
 354 of the business; and

355 2. The department finds that the transferor is not liable  
 356 for taxes, interest, or penalties after an audit of the  
 357 transferor's books and records. The audit may be requested by  
 358 the transferee or the transferor. The department may charge a  
 359 fee for the cost of the audit if it has not issued a notice of  
 360 intent to audit by the time the request for the audit is  
 361 received.

362 (b) A transferee may withhold a portion of the  
 363 consideration for a business or stock of goods to pay the taxes,

364 interest, or penalties owed to the state from the operation of  
 365 the business. The transferee shall pay the withheld  
 366 consideration to the state within 30 days after the date of the  
 367 transfer. If the consideration withheld is less than the  
 368 transferor's liability, the transferor remains liable for the  
 369 deficiency.

370 (c) A transferee who acquires the business or stock of  
 371 goods and fails to pay the taxes, interest, or penalties due,  
 372 may not engage in any business in the state until the taxes,  
 373 interest, or penalties are paid. The Department of Legal Affairs  
 374 may seek an injunction at the request of the department to  
 375 prevent further business activity until such tax, interest, or  
 376 penalties are paid. A temporary injunction enjoining further  
 377 business activity may be granted by a court without notice.

378 (5) The transferee, or transferees acting in concert, of  
 379 more than 50 percent of a business or stock of goods are jointly  
 380 and severally liable with the transferor for the payment of the  
 381 taxes, interest, or penalties owed to the state from the  
 382 operation of the business by the transferor.

383 (6) The maximum liability of a transferee pursuant to this  
 384 section is equal to the fair market value of the property  
 385 transferred or the total purchase price, whichever is greater.

386 (7) After notice by the department of transferee liability  
 387 under this section, the transferee has 60 days within which to  
 388 file an action as provided in chapter 72.

389 (8) This section does not impose liability on a transferee  
 390 of a business or stock of goods pursuant to an involuntary  
 391 transfer.

392       (9) The department may adopt rules necessary to administer  
 393 and enforce this section.

394       Section 8. For Fiscal Year 2010-2011, 25 full-time  
 395 equivalent positions, with associated salary rate of \$817,448,  
 396 are authorized. Also for Fiscal Year 2010-2011, from the  
 397 General Revenue Fund, the sums of \$1,445,100 in recurring funds  
 398 and \$96,925 in nonrecurring funds are hereby appropriated for  
 399 the purpose of conducting audits and tax collection services in  
 400 the Department of Revenue.

401       Section 9. Except as otherwise specifically provided in  
 402 this bill, this bill shall take effect upon becoming a law..



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A bill to be entitled  
 An act relating to the tax on sales, use, and other transactions; creating s. 213.758, F.S.; authorizing the department to contract to develop and implement the Internet Sales Tax Automated Revenue Tracking program as a system for collecting and administering sales and use taxes; providing program requirements, procedures, and criteria; requiring a report to the Governor and Legislature; providing for disclosure of information under the program; providing a penalty; providing for reducing the rate of the state sales and use tax under certain revenue certification circumstances; providing an effective date.

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

Section 1. Section 213.758, Florida Statutes, is created to read:

213.758 System for sales and use tax collection and administration by private or public vendors.-

(1) The department may enter into contracts pursuant to the procedures established in chapter 287 with public or private vendors to develop and implement a system for sales and use tax collection and administration. The department shall retain ownership of all intellectual property rights for any programs, processes, methodologies, and algorithms, including, but not limited to, all specially designed computer software for the purpose of sales and use tax collection and administration.



29 Collections by such means shall be referred to as the Internet  
 30 Sales Tax Automated Revenue Tracking program or iSTART. The  
 31 amount of compensation paid to such vendors shall be based upon  
 32 a percentage of the sales and use tax collections made under the  
 33 system, on a per-transaction basis, or upon other grounds  
 34 determined through the contracting process. The system at a  
 35 minimum must be capable of determining the taxability of a  
 36 transaction, the appropriate tax rate to be applied to the  
 37 taxable transaction including any applicable local sales tax  
 38 option adopted, and the total tax due on the transaction;  
 39 collecting the total tax due on the transaction; and providing a  
 40 method for reporting and paying the tax collected on the  
 41 transaction to the department.

42 (2) On or before January 1 each year, the department shall  
 43 provide to the Governor and Cabinet, the Speaker of the House of  
 44 Representatives, and the President of the Senate a report on any  
 45 sales and use tax collection and administration system developed  
 46 and implemented pursuant to this section. The report shall  
 47 include information on the number of vendors participating in  
 48 such system, the amount of sales and use tax collected by the  
 49 vendors, and the amount of compensation paid to such vendors.

50 (3) Disclosure of information under this section shall be  
 51 pursuant to a written agreement between the executive director  
 52 of the department and such vendors, and the department shall be  
 53 subject to the provisions of s. 213.053. Violation of such  
 54 agreement is a misdemeanor of the first degree, punishable as  
 55 provided in s. 775.082 or s. 775.083.

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56       (4) When total sales and use tax collections by the  
 57       department using the software developed under iSTART are  
 58       certified by the director of the department to be at least \$5  
 59       billion, the state sales and use tax rate shall be rolled back  
 60       by reducing the applicable rate by 1 percent, notwithstanding  
 61       the rate specified in chapter 212, and the rollback shall remain  
 62       in effect for each year that iSTART collections are certified to  
 63       be at least \$5 billion.

64       Section 2. This act shall take effect July 1, 2010.