

CHAPTER 98-95

Committee Substitute for Senate Bill No. 498

An act relating to tax administration; creating s. 213.285, F.S.; authorizing the Department of Revenue to initiate a certified audits project under which taxpayers may hire qualified practitioners to review and report on their tax compliance; providing definitions; providing requirements for participation by such practitioners and taxpayers; providing requirements for the conduct of certified audits; providing status of the audit report; providing rulemaking authority for the Department of Revenue; amending s. 213.053, F.S.; authorizing the department to provide certain information to the Board of Accountancy or to a court with respect to a certified public accountant participating in the project; amending s. 213.21, F.S.; authorizing settlement or compromise of penalties and abatement of interest for taxpayers who participate in the project; providing for repeal of the certified audits project; providing an appropriation and authorizing positions within the department; providing an effective date.

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

Section 1. Section 213.285, Florida Statutes, is created to read:

213.285 Certified audits.—

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

(a) “Certification program” means an instructional curriculum, examination, and process for certification, recertification, and revocation of certification of certified public accountants which is administered by an independent provider and which is officially approved by the department to ensure that a certified public accountant possesses the necessary skills and abilities to successfully perform an attestation engagement for tax compliance review in a certified audits project.

(b) “Department” means the Department of Revenue.

(c) “Participating taxpayer” means any person subject to the revenue laws administered by the department who enters into an engagement with a qualified practitioner for tax compliance review and who is approved by the department under the certified audits project.

(d) “Qualified practitioner” means a certified public accountant who is licensed to practice in Florida and who has completed the certification program.

(2)(a) The department is authorized to initiate a certified audits project to further enhance tax compliance reviews performed by qualified practitioners and to encourage taxpayers to hire qualified practitioners at their own expense to review and report on their tax compliance. The nature of

certified audit work performed by qualified practitioners shall be agreed-upon procedures in which the department is the specified user of the resulting report.

(b) As an incentive for taxpayers to incur the costs of a certified audit, the department shall compromise penalties and abate interest due on any tax liabilities revealed by a certified audit as provided in s. 213.21. This authority to compromise penalties or abate interest shall not apply to any liability for taxes that were collected by the participating taxpayer but that were not remitted to the department.

(c) The certified audits project is repealed on July 1, 2002, or upon completion of the project as determined by the department, whichever occurs first.

(3) Any practitioner responsible for planning, directing, or conducting a certified audit or reporting on a participating taxpayer's tax compliance in a certified audit must be a qualified practitioner. For the purposes of this subsection, a practitioner is considered responsible for:

(a) "Planning" in a certified audit when performing work that involves determining the objectives, scope, and methodology of the certified audit, when establishing criteria to evaluate matters subject to the review as part of the certified audit, when gathering information used in planning the certified audit, or when coordinating the certified audit with the department.

(b) "Directing" in a certified audit when the work involves supervising the efforts of others who are involved or when reviewing the work to determine whether it is properly accomplished and complete.

(c) "Conducting" a certified audit when performing tests and procedures or field audit work necessary to accomplish the audit objectives in accordance with applicable standards.

(d) "Reporting" on a participating taxpayer's tax compliance in a certified audit when determining report contents and substance or reviewing reports for technical content and substance prior to issuance.

(4)(a) The qualified practitioner shall notify the department of an engagement to perform a certified audit and shall provide the department with the information the department deems necessary to identify the taxpayer, to confirm that the taxpayer is not already under audit by the department, and to establish the basic nature of the taxpayer's business and the taxpayer's potential exposure to Florida revenue laws. The information provided in the notification shall include the taxpayer's name, federal employer identification number or social security number, state tax account number, mailing address, business location, and the specific taxes and period proposed to be covered by the engagement for the certified audit. In addition, the notice shall include the name, address, identification number, contact person, and telephone number of the engaged firm.

(b) If the taxpayer has not been issued a written notice of intent to conduct an audit, the taxpayer shall be a participating taxpayer and the

department shall so advise the qualified practitioner in writing within 10 days after receipt of the engagement notice. However, the department may exclude a taxpayer from a certified audit or may limit the taxes or periods subject to the certified audit on the basis that the department has previously conducted an audit, that it is in the process of conducting an investigation or other examination of the taxpayer's records, or for just cause determined solely by the department.

(c) Notice of the qualification of a taxpayer for a certified audit shall toll the statute of limitations provided in s. 95.091 with respect to the taxpayer for the tax and periods covered by the engagement.

(d) Within 30 days after receipt of the notice of qualification from the department, the qualified practitioner shall contact the department and submit a proposed audit plan and procedures for review and agreement by the department. The department may extend the time for submission of the plan and procedures for reasonable cause. The qualified practitioner shall initiate action to advise the department that amendment or modification of the plan and procedures is necessary in the event that the qualified practitioner's inspection reveals that the taxpayer's circumstances or exposure to the revenue laws is substantially different than as described in the engagement notice.

(5) Upon the department's designation of the agreed-upon procedures to be followed by the practitioner in the certified audit, the qualified practitioner shall perform the engagement and shall timely submit a completed report to the department. The report shall affirm completion of the agreed-upon procedures and shall provide any required disclosures.

(6) The department shall review the report of the certified audit and shall accept it when it is determined to be complete. Once the report is accepted by the department, the department shall issue a notice of proposed assessment reflecting the determination of any additional liability reflected in the report and shall provide the taxpayer with all the normal payment, protest, and appeal rights with respect to the liability. In cases where the report indicates an overpayment has been made, the taxpayer shall submit a properly executed application for refund to the department. Otherwise, the certified audit report is a final and conclusive determination with respect to the tax and period covered. No additional assessment may be made by the department for the specific taxes and period referenced in the report, except upon a showing of fraud or misrepresentation of material facts and except for adjustments made under s. 220.23 or s. 198.16. This determination shall not prevent the department from collecting liabilities not covered by the report or from conducting an audit or investigation and making an assessment for additional tax, penalty, or interest for any tax or period not covered by the report.

(7) To implement the certified audits project, the department shall have authority to adopt rules relating to:

(a) The availability of the certification program required for participation in the project;

(b) The requirements and basis for establishing just cause for approval or rejection of participation by taxpayers;

(c) Procedures for assessment, collection, and payment of liabilities or refund of overpayments and provisions for taxpayers to obtain informal and formal review of certified audit results;

(d) The nature, frequency, and basis for the department's review of certified audits conducted by qualified practitioners, including the requirements for documentation, work-paper retention and access, and reporting; and

(e) Requirements for conducting certified audits and for review of agreed-upon procedures.

Section 2. Paragraph (o) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(7) Notwithstanding any other provision of this section, the department may provide:

(o) Information contained in returns, reports, accounts, or declarations to the Board of Accountancy in connection with a disciplinary proceeding conducted pursuant to chapter 473 when related to a certified public accountant participating in the certified audits project, or to the court in connection with a civil proceeding brought by the department relating to a claim for recovery of taxes due to negligence on the part of a certified public accountant participating in the certified audits project. In any judicial proceeding brought by the department, upon motion for protective order, the court shall limit disclosure of tax information when necessary to effectuate the purposes of this section. This paragraph is repealed on July 1, 2002.

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

Section 3. Subsection (7) is added to section 213.21, Florida Statutes, to read:

213.21 Informal conferences; compromises.—

(7) In order to determine whether certified audits are an effective tool in the overall state tax collection effort, the executive director of the department or the executive director's designee shall settle or compromise penalty liabilities of taxpayers who participate in the certified audits project. As further incentive for participating in the program, the department shall abate the first \$25,000 of any interest liability and 25 percent of any interest due in excess of the first \$25,000. A settlement or compromise of penalties or interest pursuant to this subsection shall not be subject to the provisions

of paragraph (3)(a), except for the requirement relating to confidentiality of records. The department may consider an additional compromise of tax or interest pursuant to the provisions of paragraph (3)(a). This subsection does not apply to any liability related to taxes collected but not remitted to the department. This subsection is repealed on July 1, 2002.

Section 4. The sum of \$264,798 is appropriated from the Administrative Trust Fund to the Department of Revenue, and two positions are established within the department, for the purpose of implementing the provisions of this act. To expedite the implementation of the program, the Department of Revenue shall contract with the Florida Institute of Certified Public Accountants for instructional curriculum and examinations for the purposes of this act.

Section 5. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.