

## Committee Substitute for Senate Bill No. 18-A

An act relating to taxation; directing the Department of Revenue to develop and implement an amnesty program for taxpayers subject to the state and local taxes imposed by chapters 125, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and 681, F.S.; providing time periods; providing program guidelines; providing for eligible participants; providing for waiver of penalties and interest under specified circumstances; providing for emergency rules; amending ss. 213.235, 220.807, F.S.; providing that the interest rate on certain tax deficiencies shall be an adjusted prime rate plus 4 percentage points; providing a maximum rate; providing legislative intent; providing an appropriation; amending s. 202.35, F.S.; providing a maximum interest rate on delinquent taxes; amending s. 626.932, F.S.; changing the distribution of the surplus lines tax; amending s. 626.938, F.S.; changing the distribution of the tax on independently procured coverages; providing for construction of the act in pari materia with laws enacted during the Regular Session of the Legislature; providing effective dates.

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

Section 1. (1) No later than July 1, 2003, the Department of Revenue shall develop and implement an amnesty program for taxpayers subject to the state and local taxes imposed by chapters 125, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and 681, Florida Statutes.

(2) The amnesty program shall be a one-time opportunity for eligible taxpayers to satisfy their tax liabilities under the revenue laws of this state and thereby avoid criminal prosecution, penalties, and interest as provided in subsections (4), (5), and (6). Any taxpayer that has entered into a settlement of liability for state or local option taxes before July 1, 2003, whether or not full and complete payment has been made of the settlement amount, shall not be eligible to participate in the amnesty program.

(3) The amnesty program shall be in effect for a 4-month period beginning on July 1, 2003, and ending on October 31, 2003. The amnesty program shall apply only to tax liabilities due prior to July 1, 2003. In order to participate in the amnesty program, eligible taxpayers must file the forms and other documentation specified by the Department of Revenue, including, but not limited to, returns and amended returns, must make full payment of tax due, and must make payment of the interest due as provided in subsections (4) and (5).

(4) A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue, regardless of whether the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the Department of Revenue, and without

regard to whether the amount due is subject to a pending administrative or judicial proceeding. If any of the circumstances set forth in this subsection apply, the taxpayer shall be required to pay the full amount of the tax due and 75 percent of the amount of interest due. When the department has issued a notice of intent to conduct an audit to a taxpayer but has not commenced the audit, the taxpayer may apply to the department during the amnesty program for approval to have the audit converted to the certified audits program authorized by section 213.285, Florida Statutes. When a taxpayer has been approved during the amnesty program to have an audit converted to the certified audits program, payment of any liability determined as a result of this participation in the certified audits program must be made during the period the amnesty program is in effect. A taxpayer that is participating in the certified audits program authorized by section 213.285, Florida Statutes, shall be eligible for the interest and penalty compromises authorized by either the amnesty program or the certified audits program, but not both.

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

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

(7) Participation in the amnesty program shall be conditioned upon the taxpayer's express waiver of rights to contest taxes being reported pursuant to the amnesty program. If the taxes reported pursuant to the amnesty program are the subject of a pending informal protest under section 213.21, Florida Statutes, or of administrative or judicial proceedings that have not become final as of the date payment of the taxes is made pursuant to the amnesty program, participation in the amnesty program is conditioned upon the taxpayer's withdrawal of such informal protest or dismissal of such administrative or judicial proceeding. Participation in the amnesty program shall also be conditioned upon the taxpayer's express agreement to waive any right to claim a refund or to protest or initiate an administrative or judicial proceeding to review any denial of a refund claim for any refund of tax or interest paid under the amnesty program except as provided in this subsection. No refund may be made of any penalty or interest paid prior to July 1, 2003. Any credit or refund of tax or interest paid as a result of participation in the amnesty program shall be strictly limited to amounts determined by the Department of Revenue to have been paid in error.

(8) A taxpayer under criminal investigation, indictment, information, or prosecution regarding a revenue law of this state shall not be eligible to participate in the amnesty program. A taxpayer that has been convicted of a crime regarding a revenue law of this state shall not be eligible to participate in the amnesty program.

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

(10) The Department of Revenue may, on the basis of fraud, misrepresentation, or mutual mistake of fact, rescind a grant of amnesty, including any amnesty granted as a result of participation in the certified audit program during the period the amnesty program is in effect. Any taxpayer that files under the amnesty program false or fraudulent returns, forms, or documentation or attempts in any manner to defeat or evade a tax is subject to applicable penalties and criminal prosecution.

(11) Any local option tax administered by a local government that imposed the tax pursuant to a statute permitting self-administration is excluded from the amnesty program unless the local government notifies the Department of Revenue by June 1, 2003, that it chooses to participate in the amnesty program.

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

Section 2. Effective November 1, 2003, subsections (2) and (3) of section 213.235, Florida Statutes, are amended to read:

213.235 Determination of interest on deficiencies.—

(2) If the adjusted prime rate charged by banks, rounded to the nearest full percent, plus 4 percentage points, during either:

- (a) The 6-month period ending on September 30 of any calendar year, or
- (b) The 6-month period ending on March 31 of any calendar year

differs from the interest rate in effect on either such date, the executive director of the department shall, within 20 days, establish an adjusted rate of interest equal to such adjusted prime rate plus 4 percentage points.

(3) An adjusted rate of interest established under this section becomes effective:

(a) On January 1 of the succeeding year, if based upon the adjusted prime rate plus 4 percentage points for the 6-month period ending on September 30; or

(b) On July 1 of the same calendar year, if based upon the adjusted prime rate plus 4 percentage points for the 6-month period ending on March 31.

Section 3. Amendments made by this act to section 213.235(2) and (3), Florida Statutes, apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003. When calculating the rate that takes effect on November 1, 2003, the department shall use in making that calculation the adjusted prime rate charged by banks, rounded to the nearest full percent, during the 6-month period ending on March 31, 2003.

Section 4. Effective November 1, 2003, subsections (1), (2), and (3) of section 220.807, Florida Statutes, are amended to read:

220.807 Determination of rate of interest.—

(1) The annual rate of interest applicable to this chapter shall be the adjusted rate established by the executive director of the Department of Revenue under subsection (2), except that the annual rate of interest shall never be greater than 12 percent.

(2) If the adjusted prime rate charged by banks, rounded to the nearest full percent, plus 4 percentage points, during either:

- (a) The 6-month period ending on September 30 of any calendar year; or
- (b) The 6-month period ending on March 31 of any calendar year,

differs from the interest rate in effect on either such date, the executive director of the Department of Revenue shall, within 20 days, establish an adjusted rate of interest equal to such adjusted prime rate plus 4 percentage points.

(3) An adjusted rate of interest established under this section shall become effective:

(a) On January 1 of the succeeding year, if based upon the adjusted prime rate plus 4 percentage points for the 6-month period ending on September 30; or

(b) On July 1 of the same calendar year, if based upon the adjusted prime rate plus 4 percentage points for the 6-month period ending on March 31.

Section 5. Amendments made by this act to section 220.807(1), (2), and (3), Florida Statutes, apply to interest due on tax payment deficiencies that arise on or after November 1, 2003, and also apply to interest due on tax payment deficiencies that arose on or after January 1, 2000, but remain unpaid as of November 1, 2003. When calculating the rate that takes effect on November 1, 2003, the department shall use in making that calculation the adjusted prime rate charged by banks, rounded to the nearest full percent, during the 6-month period ending on March 31, 2003.

Section 6. Effective November 1, 2003, subsection (1) of section 202.35, Florida Statutes, is amended to read:

202.35 Powers of department in dealing with delinquents; tax to be separately stated.—

(1) If any dealer or other person fails to remit the tax, or any portion thereof, on or before the day when the tax is required by law to be paid, there will be added to the amount due interest at the rate calculated pursuant to s. 213.235 of the amount due from the date due until paid, except that the annual rate of interest shall never be greater than 12 percent. Interest on the delinquent tax is to be calculated beginning on the 21st day of the month following the month for which the tax is due, except as otherwise provided in this chapter.

Section 7. The sum of \$610,000 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of administering the amnesty program created by this act. Funds remaining unexpended or unencumbered from this appropriation as of June 30, 2003, shall revert and be reappropriated for the same purpose in fiscal year 2003-2004.

Section 8. Subsection (5) of section 626.932, Florida Statutes, is amended to read:

626.932 Surplus lines tax.—

(5) The department shall deposit ~~24.3~~ 55 percent of all taxes collected under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund. Seventy-five and seven-tenths ~~Forty-five~~ percent of all taxes collected under this section shall be deposited into the General Revenue Fund.

Section 9. Subsection (7) of section 626.938, Florida Statutes, is amended to read:

626.938 Report and tax of independently procured coverages.—

(7) The department shall deposit ~~24.3~~ 55 percent of all taxes and interest collected under this section to the credit of the Insurance Commissioner's Regulatory Trust Fund. Seventy-five and seven-tenths ~~Forty-five~~ percent of all taxes and interest collected under this section shall be deposited into the General Revenue Fund.

Section 10. If any law that is amended by this act was also amended by a law enacted at the 2003 Regular Session of the Legislature, such laws shall be construed as if they had been enacted during the same session of the Legislature, and full effect should be given to each if that is possible.

Section 11. Except as otherwise specifically provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor June 18, 2003.

Filed in Office Secretary of State June 18, 2003.