

CHAPTER 2010-166

Council Substitute for House Bill No. 5801

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, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 252, 336, 376, 403, 624, 627, 629, and 681, F.S., and required to be paid to the Department of Revenue; providing time periods; providing program guidelines; providing for eligible participants; providing for waiver of penalties and interest under specified circumstances; providing for emergency rules; providing an appropriation; amending s. 211.3103, F.S.; revising the rate and distribution of taxes on the severance of phosphate rock; amending s. 213.053, F.S.; providing that the department may release confidential taxpayer information relating to a corporation having an outstanding tax warrant to the Department of Business and Professional Regulation; authorizing the department to publish a list of taxpayers against whom it has filed a warrant, notice of lien, or judgment lien certificate; requiring the department to update the list at least monthly; authorizing the department to adopt rules; authorizing the department to provide confidential taxpayer information relating to collections from taxpayers against whom it has taken a collection action; amending s. 213.50, F.S.; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to suspend or deny the renewal of a license to operate a public lodging establishment or public food service establishment under certain circumstances; creating s. 213.692, F.S.; authorizing the Department of Revenue to revoke all certificates of registration, permits, or licenses issued to a taxpayer against whose property the department has filed a warrant, notice of lien, or judgment lien certificate; requiring the scheduling of an informal conference before revocation of the certificates of registration, permits, or licenses; prohibiting the Department of Revenue from issuing a certificate of registration, permit, or license to a taxpayer whose certificate of registration, permit, or license has been revoked; providing exceptions; requiring security as a condition of issuing a new certificate of registration to a person whose certificate of registration, permit, or license has been revoked after the filing of a warrant, notice of lien, or judgment lien certificate; authorizing the department to adopt rules, including emergency rules; creating s. 213.758, F.S.; defining terms; providing for the transfer of tax liabilities to the transferee of a business or a stock of goods under certain circumstances; providing exceptions; requiring a taxpayer who quits a business to file a final tax return; authorizing the Department of Legal Affairs to seek injunctions to prevent business activities until taxes are paid; requiring the transferor of a business or stock of goods to file a final tax return and make a full tax payment after a transfer; authorizing a transferee of a business or stock of goods to withhold a portion of the consideration for the transfer for the payment of certain taxes; authorizing the Department of Legal Affairs to

seek an injunction to prevent business activities by a transferee until the taxes are paid; providing that the transferees are jointly and severally liable with the transferor for the payment of taxes, interest, or penalties under certain circumstances; limiting the transferee's liability to the value or purchase price of the transferred property; specifying a time period within which a transferee may file certain actions; providing no liability to a transferee for an involuntary transfer; authorizing the Department of Revenue to adopt rules; reenacting and amending s. 218.12, F.S.; making permanent a methodology for determining the value of assessments for certain homesteads for certain purposes; authorizing full-time equivalent positions and providing an appropriation for the purpose of conducting audits and tax collection services in the Department of Revenue; providing effective dates.

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

Section 1. (1) No later than July 1, 2010, the Department of Revenue shall develop and implement an amnesty program for taxpayers subject to the state and local taxes imposed by chapters 125, 175, 185, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 252, 336, 376, 403, 624, 627, 629, 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 (5), (6), and (7). Any taxpayer that has entered into a settlement of liability for state or local option taxes before July 1, 2010, whether or not full and complete payment of the settlement amount has been made, is not eligible to participate in the amnesty program.

(3) The amnesty program shall be in effect for a 3-month period beginning on July 1, 2010, and ending on September 30, 2010. The amnesty program shall apply only to tax liabilities due prior to July 1, 2010. 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, and must make full payment of tax due, the interest due as provided in subsections (5) and (6), and the administrative collection processing fee imposed pursuant to s. 213.24, Florida Statutes.

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

(5) 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 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 s. 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 s. 213.285, Florida Statutes, is eligible for the interest and penalty compromises authorized by the amnesty program or the certified audits program, but not both.

(6) If the circumstances set forth in subsection (5) 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 pay the full amount of the tax due and 50 percent of the amount of interest due.

(7) Penalties may not be imposed on any tax paid pursuant to the amnesty program, and the Department of Revenue may 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.

(8) Participation in the amnesty program is 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 s. 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 is also 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. A refund of any penalty or interest paid prior to July 1, 2010, may not be made. Any credit or refund of tax or interest paid as a result of participation in the amnesty program is strictly limited to amounts determined by the Department of Revenue to have been paid in error.

(9) In lieu of making full payment, as provided in subsection (3), a taxpayer may request in writing to make stipulated payments under a stipulated payment agreement. To be eligible to make stipulated payments, the taxpayer must sign the agreement to participate in the amnesty program, make a request for stipulated payments, and sign a stipulated payment agreement. The taxpayer shall make a minimum down payment of

12.5 percent of the outstanding amount due under the amnesty, pay the remaining balance in up to seven additional monthly installments, and meet each payment term detailed on the amortization schedule provided by the department. Interest on the balance shall accrue pursuant to s. 213.235, Florida Statutes. If a taxpayer fails to make a monthly installment payment or is delinquent, the agreement to participate in the amnesty program and the stipulated payment agreement are void and the full amount of the original liability, including any interest and penalty, are due and payable.

(10) A taxpayer under criminal investigation, indictment, information, or prosecution regarding a revenue law of this state is not eligible to participate in the amnesty program. A taxpayer under pretrial intervention or a diversion program, probation, or community control or in a work camp, jail, state prison, or another correctional system regarding a revenue law of this state is not eligible to participate in the amnesty program.

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

(12) 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.

(13) 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, 2010, that it chooses to participate in the amnesty program.

(14) The executive director of the Department of Revenue may adopt emergency rules under ss. 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 taxpayers' ongoing commitment to proper remittance of taxes to the state. Notwithstanding any other law, the emergency rules shall remain in effect until 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, whichever is later.

Section 2. The sum of \$1,234,000 in nonrecurring funds 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, 2010, shall revert and be reappropriated for the same purpose in the 2010-2011 fiscal year.

Section 3. Subsection (11) of section 211.3103, Florida Statutes, is amended to read:

211.3103 Levy of tax on severance of phosphate rock; rate, basis, and distribution of tax.—

(11)(a) Beginning July 1, 2008, there is hereby levied a surcharge of \$1.38 per ton severed in addition to the excise tax levied by this section. The surcharge shall be levied until the last day of the calendar quarter in which the total revenue generated by the surcharge equals \$60 million. Revenues derived from the surcharge shall be deposited into the Nonmandatory Land Reclamation Trust Fund and shall be exempt from the general revenue service charge provided in s. 215.20. Revenues derived from the surcharge shall be used to augment funds appropriated for the rehabilitation, management, and closure of the Piney Point and Mulberry sites and for approved reclamation of nonmandatory lands in accordance with chapter 378. A minimum of 75 percent of the revenues from the surcharge shall be dedicated to the Piney Point and Mulberry sites.

(b) Beginning July 1, 2008, the excise tax rate shall be \$1.945 per ton severed and the base rate adjustment provided in subsection (6) shall not apply.

(c)1. Beginning July 1 of the 2010-2011 fiscal year following the date on which the amount of revenues collected from the surcharge equals or exceeds \$60 million, the tax rate shall be the base rate of \$1.71 ~~\$1.51~~ per ton severed.

2. Beginning July 1 of the 2011-2012 fiscal year, the tax rate shall be the base rate of \$1.61 per ton severed.

3. and The base rate adjustment provided in subsection (6) shall not apply until the conditions of paragraph (d) are met.

(d) Beginning July 1 of the fiscal year following the date on which a taxpayer's surcharge offset equals or exceeds the total amount of surcharge remitted by such taxpayer under paragraph (a), and each year thereafter, the excise tax rate levied on such taxpayer shall be adjusted as provided in subsection (6). The surcharge offset for each taxpayer is an amount calculated by the department equal to the cumulative difference between the amount of excise tax that would have been collected under subsections (5) and (6) and the excise tax collected under subparagraphs (c)1. and 2. ~~paragraph (c)~~ from such taxpayer.

(e) Beginning July 1 of the 2010-2011 fiscal year ~~after the revenues from the surcharge equal \$60 million,~~ the proceeds of all taxes, interest, and penalties imposed under this section shall be exempt from the general revenue service charge provided in s. 215.20, and shall be paid into the State Treasury as follows:

1. To the credit of the Conservation and Recreation Lands Trust Fund, 21.9 ~~25.5~~ percent.

2. To the credit of the General Revenue Fund of the state, 37.1 ~~37~~ percent.

3. For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 12 ~~13.6~~ percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Any such proceeds received by a county shall be used only for phosphate-related expenses.

4. For payment to counties that have been designated a rural area of critical economic concern pursuant to s. 288.0656 in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 9.4 ~~10.7~~ percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Payments under this subparagraph shall be made to the counties unless the Legislature by special act creates a local authority to promote and direct the economic development of the county. If such authority exists, payments shall be made to that authority.

5. To the credit of the Nonmandatory Land Reclamation Trust Fund, 5.8 ~~6.6~~ percent.

6. To the credit of the Phosphate Research Trust Fund in the Division of Universities of the Department of Education, 5.8 ~~6.6~~ percent.

7. To the credit of the Minerals Trust Fund, 8.0 percent.

(f) Beginning July 1 of the 2011-2012 fiscal year, the proceeds of all taxes, interest, and penalties imposed under this section are exempt from the general revenue service charge provided in s. 215.20, and such proceeds shall be paid into the State Treasury as follows:

1. To the credit of the Conservation and Recreation Lands Trust Fund, 25.5 percent.

2. To the credit of the General Revenue Fund of the state, 35.7 percent.

3. For payment to counties in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located within such political boundary, 12.8 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Any such proceeds received by a county shall be used only for phosphate-related expenses.

4. For payment to counties that have been designated as a rural area of critical economic concern pursuant to s. 288.0656 in proportion to the number of tons of phosphate rock produced from a phosphate rock matrix located

within such political boundary, 10.0 percent. The department shall distribute this portion of the proceeds annually based on production information reported by the producers on the annual returns for the taxable year. Payments under this subparagraph shall be made to the counties unless the Legislature by special act creates a local authority to promote and direct the economic development of the county. If such authority exists, payments shall be made to that authority.

5. To the credit of the Nonmandatory Land Reclamation Trust Fund, 6.2 percent.

6. To the credit of the Phosphate Research Trust Fund in the Division of Universities of the Department of Education, 6.2 percent.

7. To the credit of the Minerals Trust Fund, 3.6 percent.

(g)(f) For purposes of this section, “phosphate-related expenses” means those expenses that provide for infrastructure or services in support of the phosphate industry, reclamation or restoration of phosphate lands, community infrastructure on such reclaimed lands, and similar expenses directly related to support of the industry.

Section 4. Effective July 1, 2010, paragraph (d) of subsection (8) of section 213.053, Florida Statutes, is amended, and subsections (20) and (21) are added to that section, to read:

213.053 Confidentiality and information sharing.—

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

(d) Names, addresses, and sales tax registration information, and information relating to a public lodging establishment or a public food service establishment having an outstanding tax warrant, notice of lien, or judgment lien certificate to the Division of Hotels and Restaurants of the Department of Business and Professional Regulation in the conduct of its official duties.

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.

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

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

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

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

Section 5. Effective July 1, 2010, section 213.50, Florida Statutes, is amended to read:

213.50 Failure to comply; revocation of corporate charter or license to operate a public lodging establishment or public food service establishment; refusal to reinstate charter or license.—

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

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

(3)(a) The Division of Hotels and Restaurants of the Department of Business and Professional Regulation may suspend a license to operate a public lodging establishment or a public food service establishment if a tax warrant has been outstanding against the licenseholder for more than 3 months.

(b) The division may deny an application to renew a license to operate a public lodging establishment or a public food service establishment if a tax warrant has been outstanding against the licenseholder for more than 3 months.

Section 6. Effective July 1, 2010, section 213.692, Florida Statutes, is created to read:

213.692 Integrated enforcement authority.—

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

(a) Before the department may revoke the certificates of registration, permits, or licenses, the department must schedule an informal conference

that the taxpayer is required to attend. At the conference, the taxpayer may present evidence regarding the department's intended action or enter into a compliance agreement. The department must provide written notice to the taxpayer of the department's intended action and the time, date, and place of the conference. The department shall issue an administrative complaint to revoke the certificates of registration, permits, or licenses if the taxpayer does not attend the conference, enter into a compliance agreement, or comply with the compliance agreement.

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

1. The outstanding liabilities of the taxpayer have been satisfied; or
2. The department enters into a written agreement with the taxpayer regarding any outstanding liabilities and, as part of such agreement, agrees to issue a certificate of registration, permit, or license.

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

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

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

Section 7. Effective July 1, 2010, the Department of Revenue is authorized to adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, to administer s. 213.692, Florida Statutes. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 8. Section 213.758, Florida Statutes, is created to read:

213.758 Transfer of tax liabilities.—

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

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

1. That occurs due to the foreclosure of a security interest issued to a person who is not an insider as defined in s. 726.102;
2. That results from an eminent domain or condemnation action;

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

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

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

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

(2) A taxpayer who is liable for any tax, interest, penalty, surcharge, or fee administered by the department pursuant to chapter 443 or described in s. 72.011(1), excluding corporate income tax, and who quits a business without the 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 within 15 days after quitting the business. A taxpayer who fails to file a final return and make payment may not engage in any business in this state until the final return has been filed and all taxes, interest, or penalties due have been paid. The Department of Legal Affairs may seek an injunction at the request of the department to prevent further business activity until such tax, interest, or penalties are paid. A temporary injunction enjoining further business activity may be granted by a court without notice.

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

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

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

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

(b) A transferee may withhold a portion of the consideration for a business or stock of goods to pay the taxes, interest, or penalties owed to the state from the operation of the business. The transferee shall pay the withheld consideration to the state within 30 days after the date of the transfer. If the consideration withheld is less than the transferor's liability, the transferor remains liable for the deficiency.

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

(5) The transferee, or transferees acting in concert, 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 to the state from the operation of the business by the transferor.

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

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

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

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

Section 9. Notwithstanding section 25 of chapter 2009-82, Laws of Florida, subsection (3) of section 218.12, Florida Statutes, as created by section 24 of chapter 2009-82, Laws of Florida, shall not expire July 1, 2010, but is reenacted and amended to read:

218.12 Appropriations to offset reductions in ad valorem tax revenue in fiscally constrained counties.—

(3) In determining the reductions in ad valorem tax revenues occurring as a result of the implementation of the revisions to Art. VII of the State Constitution approved in the special election held on January 29, 2008, the value of assessments reduced pursuant to s. 4(d)(8)a., Art. VII of the State Constitution shall include only the reduction in taxable value for homesteads established January 1 of the year in which the determination is being made; 2009.

Section 10. For the 2010-2011 fiscal year, 25 full-time equivalent positions, with associated salary rate of \$817,448, are authorized. Also for the 2010-2011 fiscal year, the sums of \$1,445,100 in recurring funds and \$96,925 in nonrecurring funds from the General Revenue Fund are appropriated to the Department of Revenue for the purpose of conducting audits and tax collection services in the department.

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

Approved by the Governor May 28, 2010.

Filed in Office Secretary of State May 28, 2010.