

## CHAPTER 2010-138

### Committee Substitute for House Bill No. 7157

An act relating to taxation; amending s. 55.204, F.S.; specifying the duration of liens securing the payment of unemployment compensation tax obligations; amending s. 95.091, F.S.; applying an exception to a limit on the duration of tax liens for certain tax liens relating to unemployment compensation taxes; amending s. 201.02, F.S.; excluding certain unpaid indebtedness from the taxable consideration for short sale transfers of real property; defining the term "short sale"; amending s. 202.125, F.S.; providing that an exemption from the communications services tax does not apply to transient public lodging establishments; amending s. 212.05, F.S.; specifying that the tax on sales, use, and other transactions applies to charges for nonresidential building cleaning and nonresidential building pest control; amending s. 212.0515, F.S.; revising the content of a required notice that must be posted on vending machines; amending s. 212.08, F.S.; providing criteria to determine whether the tax on sales, use, and other transactions applies to a package containing exempt food products and taxable nonfood products; providing that the tax exemption for building materials used in the rehabilitation of real property in an enterprise zone applies only while the property is being rehabilitated; providing that a single application for a tax refund of taxes paid on building materials used in the rehabilitation of real property may be used for certain contiguous parcels; revising the information that must be included in an application for a tax refund; providing that the tax exemption for building materials used in an enterprise zone may inure to a unit of government; revising the date by which an application for a tax refund for taxes paid on building materials used in an enterprise zone must be submitted to the department; amending s. 212.08, F.S.; revising provisions excluding certain sales of tangible personal property to contractors from application of an exemption for sales made to governmental entities under certain circumstances; specifying additional requirements, procedures, and limitations; requiring the Department of Revenue to adopt rules for purposes of determining eligibility for the exemption and providing for a certificate of entitlement to the exemption; specifying certification requirements; authorizing the department to adopt emergency rules; providing for time of effect of emergency rules; amending s. 213.053, F.S.; authorizing the department to provide certain confidential taxpayer information to the Florida Energy and Climate Commission; providing for retroactive operation; providing that restrictions on disclosure of confidential taxpayer information do not prohibit the department from using certain methods of electronic communication for certain purposes; 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 share taxpayer names and identification numbers for purposes of information-sharing agreements with financial institutions; authorizing the department to share certain

information relating to the tax on sales, use, and other transactions with the Department of Environmental Protection; authorizing the department to publish a list of taxpayers against whom it has filed a warrant 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; creating s. 213.0532, F.S.; defining terms; requiring the department and certain financial institutions to enter into information-sharing agreements to enable the department to obtain the account balances and personally identifying information of taxpayers; authorizing the department and certain financial institutions to enter into information-sharing agreements to enable the department to obtain the account balances and personally identifying information of taxpayers; limiting the use of information gathered for the purpose of enforcing the collection of certain taxes and fees; requiring the department to pay a fee to the financial institutions for their services; limiting the liability for certain acts of financial institutions that enter into an information-sharing agreement; authorizing the department to adopt rules; amending s. 213.25, F.S.; authorizing the department to reduce a tax refund or credit owing to a taxpayer to the extent of liability for unemployment compensation taxes; 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 for a hotel or restaurant having an outstanding tax warrant for a certain period of time; amending s. 213.67, F.S.; specifying additional methods by which the department may give notice of a tax delinquency for garnishment purposes; amending s. 220.192, F.S.; providing for the administration of certain portions of the renewable energy technologies tax credit program by the Florida Energy and Climate Commission; providing for retroactive application; amending s. 336.021, F.S.; revising the distribution of the ninth-cent fuel tax on motor fuel and diesel fuel; amending s. 443.036, F.S.; providing for the treatment of a single-member limited liability company as the employer for purposes of unemployment compensation law; amending s. 443.1215, F.S.; correcting a cross-reference; amending s. 443.1316, F.S.; conforming cross-references; amending s. 443.141, F.S.; providing penalties for erroneous, incomplete, or insufficient reports; authorizing a waiver of the penalty under certain circumstances; defining a term; authorizing the Agency for Workforce Innovation and the state agency providing unemployment compensation tax collection services to adopt rules; providing an expiration date for liens for contributions and reimbursements; amending s. 443.163, F.S.; increasing penalties for failing to file Employers Quarterly Reports by means other than approved electronic means; revising waiver provisions; 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 or tax lien; 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 or tax lien certificate; authorizing the department to adopt rules, including emergency rules; repealing s. 195.095, F.S., relating to the authority of the Department of Revenue to develop lists of bidders that are approved to contract with property appraisers, tax collectors, or county commissions for assessment or collection services; repealing s. 213.054, F.S., relating to monitoring and reporting on the use of a tax deduction claimed by international banking institutions; providing effective dates.

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

Section 1. Section 55.204, Florida Statutes, is amended to read:

55.204 Duration and continuation of judgment lien; destruction of records.—

(1) Except as provided in this section, a judgment lien acquired under s. 55.202 lapses and becomes invalid 5 years after the date of filing the judgment lien certificate.

(2) Liens securing the payment of child support or tax obligations under as set forth in s. 95.091(1)(b) shall not lapse until 20 years after the date of the original filing of the warrant or other document required by law to establish a lien. Liens securing the payment of unemployment tax obligations lapse 10 years after the date of the original filing of the notice of lien. A No second lien based on the original filing may not be obtained.

(3) At any time within 6 months before or 6 months after the scheduled lapse of a judgment lien under subsection (1), the judgment creditor may acquire a second judgment lien by filing a new judgment lien certificate. The effective date of the second judgment lien is the date and time on which the judgment lien certificate is filed. The second judgment lien is a new judgment lien and not a continuation of the original judgment lien. The second judgment lien permanently lapses and becomes invalid 5 years after its filing date, and no additional liens based on the original judgment or any judgment based on the original judgment may be acquired.

(4) A judgment lien continues only as to itemized property for an additional 90 days after lapse of the lien. Such judgment lien will continue only if:

(a) The property was ~~had been~~ itemized and its location described with sufficient particularity in the instructions for levy to permit the sheriff to act;

(b) The instructions for the levy had been delivered to the sheriff before ~~prior to~~ the date of lapse of the lien; and

(c) The property was located in the county in which the sheriff has jurisdiction at the time of delivery of the instruction for levy. Subsequent removal of the property does not defeat the lien. A court may order continuation of the lien beyond the 90-day period on a showing that extraordinary circumstances have prevented levy.

(5) The date of lapse of a judgment lien whose enforceability has been temporarily stayed or enjoined as a result of any legal or equitable proceeding is tolled until 30 days after the stay or injunction is terminated.

(6) If ~~a~~ ~~no~~ second judgment lien is not filed, the Department of State shall maintain each judgment lien file and all information contained therein for a minimum of 1 year after the judgment lien lapses in accordance with this section. If a second judgment lien is filed, the department shall maintain both files and all information contained in such files for a minimum of 1 year after the second judgment lien lapses.

(7) ~~Nothing in~~ This section does not shall be construed to extend the life of a judgment lien beyond the time that the underlying judgment, order, decree, or warrant otherwise expires or becomes invalid pursuant to law.

Section 2. Section 95.091, Florida Statutes, is amended to read:

95.091 Limitation on actions to collect taxes.—

(1)(a) Except in the case of taxes for which certificates have been sold, taxes enumerated in s. 72.011, or tax liens issued under s. 196.161 or s. 443.141, any tax lien granted by law to the state or any of its political subdivisions, any municipality, any public corporation or body politic, or any other entity having authority to levy and collect taxes shall expire 5 years after the date the tax is assessed or becomes delinquent, whichever is later. An ~~No~~ action may be begun to collect any tax may not be commenced after the expiration of the lien securing the payment of the tax.

(b) Any tax lien granted by law to the state or any of its political subdivisions for any tax enumerated in s. 72.011 or any tax lien imposed under s. 196.161 expires shall expire 20 years after the last date the tax may be assessed, after the tax becomes delinquent, or after the filing of a tax warrant, whichever is later. An action to collect any tax enumerated in s. 72.011 may not be commenced after the expiration of the lien securing the payment of the tax.

(2) If ~~a~~ ~~no~~ lien to secure the payment of a tax is not provided by law, an ~~no~~ action may be begun to collect the tax may not be commenced after 5 years following from the date the tax is assessed or becomes delinquent, whichever is later.

(3)(a) With the exception of taxes levied under chapter 198 and tax adjustments made pursuant to ss. 220.23 and 624.50921, the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to

administer and the Department of Business and Professional Regulation may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011 which it has authority to administer:

1.a. For taxes due before July 1, 1999, within 5 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later; and for taxes due on or after July 1, 1999, within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

b. Effective July 1, 2002, notwithstanding sub-subparagraph a., within 3 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

2. For taxes due before July 1, 1999, within 6 years after the date the taxpayer either makes a substantial underpayment of tax, or files a substantially incorrect return;

3. At any time while the right to a refund or credit of the tax is available to the taxpayer;

4. For taxes due before July 1, 1999, at any time after the taxpayer has filed a grossly false return;

5. At any time after the taxpayer has failed to make any required payment of the tax, has failed to file a required return, or has filed a fraudulent return, except that for taxes due on or after July 1, 1999, the limitation prescribed in subparagraph 1. applies if the taxpayer has disclosed in writing the tax liability to the department before the department has contacted the taxpayer; or

6. In any case in which there has been a refund of tax erroneously made for any reason:

a. For refunds made before July 1, 1999, within 5 years after making such refund; and

b. For refunds made on or after July 1, 1999, within 3 years after making such refund,

or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(b) For the purpose of this paragraph, a tax return filed before the last day prescribed by law, including any extension thereof, shall be deemed to have been filed on such last day, and payments made prior to the last day prescribed by law shall be deemed to have been paid on such last day.

(4) If administrative or judicial proceedings for review of the tax assessment or collection are initiated by a taxpayer within the period of limitation prescribed in this section, the running of the period ~~is shall be~~

tolled during the pendency of the proceeding. Administrative proceedings shall include taxpayer protest proceedings initiated under s. 213.21 and department rules.

Section 3. Effective July 1, 2010, subsection (11) is added to section 201.02, Florida Statutes, to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(11) The taxable consideration for a short sale transfer does not include unpaid indebtedness that is forgiven or released by a mortgagee holding a mortgage on the grantor's interest in the property. For purposes of this subsection, the term "short sale" means a purchase and sale of real property in which all of the following apply:

(a) The grantor's interest is encumbered by a mortgage or mortgages securing indebtedness in an aggregate amount greater than the consideration paid or given by the grantee.

(b) A mortgagee releases the real property from its mortgage in exchange for a payment of less than the total of the outstanding mortgage indebtedness owed to the releasing mortgagee.

(c) The releasing mortgagee does not receive, directly or indirectly, any interest in the property transferred.

(d) The releasing mortgagee is not controlled by or related to the grantor or the grantee.

Section 4. Subsection (1) of section 202.125, Florida Statutes, is amended to read:

202.125 Sales of communications services; specified exemptions.—

(1) The separately stated sales price of communications services sold to residential households is exempt from the tax imposed by s. 202.12. This exemption ~~does~~ shall not apply to any residence that constitutes all or part of a transient public lodging establishment as defined in chapter 509, any mobile communications service, any cable service, or any direct-to-home satellite service.

Section 5. Paragraph (i) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or

consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(i)1. At the rate of 6 percent on charges for all:

a. Detective, burglar protection, and other protection services (NAICS National Numbers 561611, 561612, 561613, and 561621). Any law enforcement officer, as defined in s. 943.10, who is performing approved duties as determined by his or her local law enforcement agency in his or her capacity as a law enforcement officer, and who is subject to the direct and immediate command of his or her law enforcement agency, and in the law enforcement officer’s uniform as authorized by his or her law enforcement agency, is performing law enforcement and public safety services and is not performing detective, burglar protection, or other protective services, if the law enforcement officer is performing his or her approved duties in a geographical area in which the law enforcement officer has arrest jurisdiction. Such law enforcement and public safety services are not subject to tax irrespective of whether the duty is characterized as “extra duty,” “off-duty,” or “secondary employment,” and irrespective of whether the officer is paid directly or through the officer’s agency by an outside source. The term “law enforcement officer” includes full-time or part-time law enforcement officers, and any auxiliary law enforcement officer, when such auxiliary law enforcement officer is working under the direct supervision of a full-time or part-time law enforcement officer.

b. Nonresidential cleaning, excluding cleaning of the interiors of transportation equipment, and nonresidential building pest control services (NAICS National Numbers 561710 and 561720).

2. As used in this paragraph, “NAICS” means those classifications contained in the North American Industry Classification System, as published in 2007 by the Office of Management and Budget, Executive Office of the President.

3. Charges for detective, burglar protection, and other protection security services performed in this state but used outside this state are exempt from taxation. Charges for detective, burglar protection, and other protection security services performed outside this state and used in this state are subject to tax.

4. If a transaction involves both the sale or use of a service taxable under this paragraph and the sale or use of a service or any other item not taxable under this chapter, the consideration paid must be separately identified and stated with respect to the taxable and exempt portions of the transaction or the entire transaction shall be presumed taxable. The burden shall be on the seller of the service or the purchaser of the service, whichever applicable, to overcome this presumption by providing documentary evidence as to which

portion of the transaction is exempt from tax. The department is authorized to adjust the amount of consideration identified as the taxable and exempt portions of the transaction; however, a determination that the taxable and exempt portions are inaccurately stated and that the adjustment is applicable must be supported by substantial competent evidence.

5. Each seller of services subject to sales tax pursuant to this paragraph shall maintain a monthly log showing each transaction for which sales tax was not collected because the services meet the requirements of subparagraph 3. for out-of-state use. The log must identify the purchaser's name, location and mailing address, and federal employer identification number, if a business, or the social security number, if an individual, the service sold, the price of the service, the date of sale, the reason for the exemption, and the sales invoice number. The monthly log shall be maintained pursuant to the same requirements and subject to the same penalties imposed for the keeping of similar records pursuant to this chapter.

Section 6. Paragraph (a) of subsection (3) of section 212.0515, Florida Statutes, is amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; penalties.—

(3)(a) An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the department, has obtained a separate registration certificate for each county in which such machines are located, and has affixed a notice to each vending machine selling food or beverages ~~which states the operator's name, address, and Federal Employer Identification (FEI) number. If the operator is not required to have an FEI number, the notice shall include the operator's sales tax registration number.~~ The notice must be conspicuously displayed on the vending machine when it is being operated in this state and shall contain the following language in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD. DO NOT USE THIS NUMBER TO REPORT PROBLEMS WITH THE VENDING MACHINE SUCH AS LOST MONEY OR OUT-OF-DATE PRODUCTS.

Section 7. Subsection (1) and paragraph (g) of subsection (5) of section 212.08, Florida Statutes, are amended to read:

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

(1) EXEMPTIONS; GENERAL GROCERIES.—



(a) Food products for human consumption are exempt from the tax imposed by this chapter.

(b) For the purpose of this chapter, as used in this subsection, the term “food products” means edible commodities, whether processed, cooked, raw, canned, or in any other form, which are generally regarded as food. This includes, but is not limited to, all of the following:

1. Cereals and cereal products, baked goods, oleomargarine, meat and meat products, fish and seafood products, frozen foods and dinners, poultry, eggs and egg products, vegetables and vegetable products, fruit and fruit products, spices, salt, sugar and sugar products, milk and dairy products, and products intended to be mixed with milk.

2. Natural fruit or vegetable juices or their concentrates or reconstituted natural concentrated fruit or vegetable juices, whether frozen or unfrozen, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned with salt or spice, or unseasoned; coffee, coffee substitutes, or cocoa; and tea, unless it is sold in a liquid form.

3. Bakery products sold by bakeries, pastry shops, or like establishments that do not have eating facilities.

(c) The exemption provided by this subsection does not apply to:

1. ~~When the~~ Food products are sold as meals for consumption on or off the premises of the dealer.

2. ~~When the~~ Food products are furnished, prepared, or served for consumption at tables, chairs, or counters or from trays, glasses, dishes, or other tableware, whether provided by the dealer or by a person with whom the dealer contracts to furnish, prepare, or serve food products to others.

3. ~~When the~~ Food products are ordinarily sold for immediate consumption on the seller’s premises or near a location at which parking facilities are provided primarily for the use of patrons in consuming the products purchased at the location, even though such products are sold on a “take out” or “to go” order and are actually packaged or wrapped and taken from the premises of the dealer.

4. ~~To~~ Sandwiches sold ready for immediate consumption on or off the seller’s premises.

5. ~~When the~~ Food products are sold ready for immediate consumption within a place, the entrance to which is subject to an admission charge.

6. ~~When the~~ Food products are sold as hot prepared food products.

7. ~~To~~ Soft drinks, including which include, but are not limited to, any nonalcoholic beverage, any preparation or beverage commonly referred to as

a “soft drink,” or any noncarbonated drink made from milk derivatives or tea, ~~if~~ when sold in cans or similar containers.

8. ~~To~~ Ice cream, frozen yogurt, and similar frozen dairy or nondairy products in cones, small cups, or pints, popsicles, frozen fruit bars, or other novelty items, whether or not sold separately.

9. ~~To~~ Food that is prepared, whether on or off the premises, and sold for immediate consumption. This does not apply to food prepared off the premises and sold in the original sealed container, or the slicing of products into smaller portions.

10. ~~When the~~ Food products ~~are~~ sold through a vending machine, pushcart, motor vehicle, or any other form of vehicle.

11. ~~To~~ Candy and any similar product regarded as candy or confection, based on its normal use, as indicated on the label or advertising thereof.

12. ~~To~~ Bakery products sold by bakeries, pastry shops, or like establishments having ~~that have~~ eating facilities, except when sold for consumption off the seller’s premises.

13. ~~When~~ Food products ~~are~~ served, prepared, or sold in or by restaurants, lunch counters, cafeterias, hotels, taverns, or other like places of business.

(d) As used in this subsection, the term:

1. “For consumption off the seller’s premises” means that the food or drink is intended by the customer to be consumed at a place away from the dealer’s premises.

2. “For consumption on the seller’s premises” means that the food or drink sold may be immediately consumed on the premises where the dealer conducts his or her business. In determining whether an item of food is sold for immediate consumption, ~~there shall be considered~~ the customary consumption practices prevailing at the selling facility shall be considered.

3. “Premises” shall be construed broadly, and means, but is not limited to, the lobby, aisle, or auditorium of a theater; the seating, aisle, or parking area of an arena, rink, or stadium; or the parking area of a drive-in or outdoor theater. The premises of a caterer with respect to catered meals or beverages shall be the place where such meals or beverages are served.

4. “Hot prepared food products” means those products, items, or components which have been prepared for sale in a heated condition and which are sold at any temperature that is higher than the air temperature of the room or place where they are sold. “Hot prepared food products,” for the purposes of this subsection, includes a combination of hot and cold food items or components where a single price has been established for the combination and the food products are sold in such combination, such as a hot meal, a hot

specialty dish or serving, or a hot sandwich or hot pizza, including cold components or side items.

(e)1. Food or drinks not exempt under paragraphs (a), (b), (c), and (d) are shall be exempt, notwithstanding those paragraphs, when purchased with food coupons or Special Supplemental Food Program for Women, Infants, and Children vouchers issued under authority of federal law.

2. This paragraph is effective only while federal law prohibits a state's participation in the federal food coupon program or Special Supplemental Food Program for Women, Infants, and Children if there is an official determination that state or local sales taxes are collected within that state on purchases of food or drinks with such coupons.

3. This paragraph shall not apply to any food or drinks on which federal law shall permit sales taxes without penalty, such as termination of the state's participation.

(f) The application of the tax on a package that contains exempt food products and taxable nonfood products depends upon the essential character of the complete package.

1. If the taxable items represent more than 25 percent of the cost of the complete package and a single charge is made, the entire sales price of the package is taxable. If the taxable items are separately stated, the separate charge for the taxable items is subject to tax.

2. If the taxable items represent 25 percent or less of the cost of the complete package and a single charge is made, the entire sales price of the package is exempt from tax. The person preparing the package is liable for the tax on the cost of the taxable items going into the complete package. If the taxable items are separately stated, the separate charge is subject to tax.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(g) Building materials used in the rehabilitation of real property located in an enterprise zone.—

1. Building materials used in the rehabilitation of real property located in an enterprise zone are shall be exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the items have been used for the rehabilitation of real property located in an enterprise zone. Except as provided in subparagraph 2., this exemption inures to the owner, lessee, or lessor at the time of the rehabilitated real property is rehabilitated, but located in an enterprise zone only through a refund of previously paid taxes. To receive a refund pursuant to this paragraph, the owner, lessee, or lessor of the rehabilitated real property located in an enterprise zone must file an application under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable. A single application for a refund may be submitted for multiple, contiguous parcels

that were part of a single parcel that was divided as part of the rehabilitation of the property. All other requirements of this paragraph apply to each parcel on an individual basis. The application must include, which includes:

- a. The name and address of the person claiming the refund.
- b. An address and assessment roll parcel number of the rehabilitated real property ~~in an enterprise zone~~ for which a refund of previously paid taxes is being sought.
- c. A description of the improvements made to accomplish the rehabilitation of the real property.
- d. A copy of a valid ~~the~~ building permit issued by the county or municipal building department for the rehabilitation of the real property.
- e. A sworn statement, under the penalty of perjury, from the general contractor licensed in this state with whom the applicant contracted to make the improvements necessary to rehabilitate ~~accomplish the rehabilitation of~~ the real property, which ~~statement~~ lists the building materials used to rehabilitate ~~in the rehabilitation of~~ the real property, the actual cost of the building materials, and the amount of sales tax paid in this state on the building materials. ~~If in the event that a general contractor was~~ has not been used, the applicant, not a general contractor, shall make the sworn statement required by this sub-subparagraph ~~shall provide this information in a sworn statement, under the penalty of perjury.~~ Copies of the invoices that ~~which~~ evidence the purchase of the building materials used in the ~~such~~ rehabilitation and the payment of sales tax on the building materials must ~~shall~~ be attached to the sworn statement provided by the general contractor or by the applicant. Unless the actual cost of building materials used in the rehabilitation of real property and the payment of sales taxes ~~due thereon~~ is documented by a general contractor or by the applicant in this manner, the cost of the ~~such~~ building materials is deemed to ~~shall~~ be an amount equal to 40 percent of the increase in assessed value for ad valorem tax purposes.
- f. The identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the rehabilitated real property is located.
- g. A certification by the local building code inspector that the improvements necessary to rehabilitate ~~accomplish the rehabilitation of~~ the real property are substantially completed.
- h. A statement of whether the business is a small business as defined by s. 288.703(1).
- i. If applicable, the name and address of each permanent employee of the business, including, for each employee who is a resident of an enterprise zone, the identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the employee resides.

2. This exemption inures to a municipality city, county, other governmental unit or agency, or nonprofit community-based organization through a refund of previously paid taxes if the building materials used in the rehabilitation of real property located in an enterprise zone are paid for from the funds of a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program. To receive a refund ~~pursuant to this paragraph~~, a municipality city, county, other governmental unit or agency, or nonprofit community-based organization must file an application that ~~which~~ includes the same information required to be provided in subparagraph 1. ~~by an owner, lessee, or lessor of rehabilitated real property.~~ In addition, the application must include a sworn statement signed by the chief executive officer of the municipality city, county, other governmental unit or agency, or nonprofit community-based organization seeking a refund which states that the building materials for which a refund is sought were funded by ~~paid for from the funds of~~ a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program.

3. Within 10 working days after receipt of an application, the governing body or enterprise zone development agency shall review the application to determine if it contains all the information required ~~by pursuant to~~ subparagraph 1. or subparagraph 2. and meets the criteria set out in this paragraph. The governing body or agency shall certify all applications that contain the required information ~~required pursuant to subparagraph 1. or subparagraph 2. and are~~ meet the criteria set out in this paragraph as eligible to receive a refund. If applicable, the governing body or agency shall also certify if 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees. The certification must ~~shall~~ be in writing, and a copy of the certification shall be transmitted to the executive director of the Department of Revenue. The applicant is ~~shall be~~ responsible for forwarding a certified application to the department within the time specified in subparagraph 4.

4. An application for a refund ~~pursuant to this paragraph~~ must be submitted to the department within 6 months after the rehabilitation of the property is deemed to be substantially completed by the local building code inspector or by November 1 ~~September 1~~ after the rehabilitated property is first subject to assessment.

5. Only ~~Not more than~~ one exemption through a refund of previously paid taxes for the rehabilitation of real property is ~~shall be~~ permitted for any single parcel of property unless there is a change in ownership, a new lessor, or a new lessee of the real property. A ~~No~~ refund may not ~~shall~~ be granted ~~pursuant to this paragraph~~ unless the amount to be refunded exceeds \$500. A ~~No~~ refund may not ~~granted pursuant to this paragraph~~ shall exceed the lesser of 97 percent of the Florida sales or use tax paid on the cost of the building materials used in the rehabilitation of the real property as determined pursuant to sub-subparagraph 1.e. or \$5,000, or, if at least ~~no~~ less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the amount

of refund ~~may granted pursuant to this paragraph~~ shall not exceed the lesser of 97 percent of the sales tax paid on the cost of ~~the such~~ building materials or \$10,000. A refund ~~approved pursuant to this paragraph~~ shall be made within 30 days ~~after~~ of formal approval by the department of the application for the refund. ~~This subparagraph shall apply retroactively to July 1, 2005.~~

6. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

7. The department shall deduct an amount equal to 10 percent of each refund granted under the provisions of this paragraph from the amount transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20 for the county area in which the rehabilitated real property is located and shall transfer that amount to the General Revenue Fund.

8. For the purposes of the exemption provided in this paragraph, the term:

a. "Building materials" means tangible personal property which becomes a component part of improvements to real property.

b. "Real property" has the same meaning as provided in s. 192.001(12).

c. "Rehabilitation of real property" means the reconstruction, renovation, restoration, rehabilitation, construction, or expansion of improvements to real property.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

9. This paragraph expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

Section 8. (1) Effective January 2, 2011, subsection (6) of section 212.08, Florida Statutes, is amended to read:

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

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—

(a) There are also exempt from the tax imposed by this chapter sales made to the United States Government, a state, or any county, municipality, or political subdivision of a state when payment is made directly to the dealer by the governmental entity. This exemption shall not inure to any transaction otherwise taxable under this chapter when payment is made

by a government employee by any means, including, but not limited to, cash, check, or credit card when that employee is subsequently reimbursed by the governmental entity. ~~This exemption does not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision. A determination whether a particular transaction is properly characterized as an exempt sale to a government entity or a taxable sale to a contractor shall be based on the substance of the transaction rather than the form in which the transaction is cast. The department shall adopt rules that give special consideration to factors that govern the status of the tangible personal property before its affixation to real property. In developing these rules, assumption of the risk of damage or loss is of paramount consideration in the determination. This exemption does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion. Likewise exempt are charges for services rendered by radio and television stations, including line charges, talent fees, or license fees and charges for films, videotapes, and transcriptions used in producing radio or television broadcasts. The exemption provided in this subsection does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in providing two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(15), and for which a certificate is required under chapter 364, which facility is owned and operated by any county, municipality, or other political subdivision of the state. Any immunity of any political subdivision of the state or other entity of local government from taxation of the property used to provide telecommunication services that is taxed as a result of this section is hereby waived. However, the exemption provided in this subsection includes transactions taxable under this chapter which are for use by the operator of a public-use airport, as defined in s. 332.004, in providing such telecommunications services for the airport or its tenants, concessionaires, or licensees, or which are for use by a public hospital for the provision of such telecommunications services.~~

(b) The exemption provided under this subsection does not include sales of tangible personal property made to contractors employed directly to or as agents of any such government or political subdivision when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision. A determination of whether a particular transaction is properly characterized as an exempt sale to a government entity or a taxable sale to a contractor shall be based upon the substance of the transaction rather than the form in which the transaction is cast. However, for sales of tangible personal property that go into or become a part of public works owned by a governmental entity, other than the Federal

Government, a governmental entity claiming the exemption provided under this subsection shall certify to the dealer and the contractor the entity's claim to the exemption by providing the dealer and the contractor a certificate of entitlement to the exemption for such sales. If the department later determines that such sales, in which the governmental entity provided the dealer and the contractor with a certificate of entitlement to the exemption, were not exempt sales to the governmental entity, the governmental entity shall be liable for any tax, penalty, and interest determined to be owed on such transactions. Possession by a dealer or contractor of a certificate of entitlement to the exemption from the governmental entity relieves the dealer from the responsibility of collecting tax on the sale and the contractor for any liability for tax, penalty, or interest related to the sale, and the department shall look solely to the governmental entity for recovery of tax, penalty, and interest if the department determines that the transaction was not an exempt sale to the governmental entity. The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

(c) The department shall adopt rules for determining whether a particular transaction is properly characterized as an exempt sale to a governmental entity or a taxable sale to a contractor which give special consideration to factors that govern the status of the tangible personal property before being affixed to real property. In developing such rules, assumption of the risk of damage or loss is of paramount consideration in the determination. The department shall also adopt, by rule, a certificate of entitlement to exemption for use as provided in paragraph (b). The certificate shall require the governmental entity to affirm that it will comply with the requirements of this subsection and the rules adopted under paragraph (b) in order to qualify for the exemption and that it acknowledges its liability for any tax, penalty, or interest later determined by the department to be owed on such transactions.

(2) The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, to implement the amendment to s. 212.08(6), Florida Statutes, made by this section. 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 9. Effective upon this act becoming a law and operating retroactively to July 1, 2008, paragraph (y) of subsection (8) of section 213.053, Florida Statutes, is amended to read:

213.053 Confidentiality and information sharing.—

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



(y) Information relative to ss. 212.08(7)(ccc) and 220.192 to the Florida Energy and Climate Commission Department of Environmental Protection for use in the conduct of its official business.

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 10. Effective July 1, 2010, subsection (5) and paragraph (d) of subsection (8) of section 213.053, Florida Statutes, are amended, paragraphs (z) and (aa) are added to subsection (8), and subsections (20) and (21) are added to that section, to read:

213.053 Confidentiality and information sharing.—

(5) ~~Nothing contained in~~ This section does not shall prevent the department from:

(a) Publishing statistics so classified as to prevent the identification of particular accounts, reports, declarations, or returns; or

(b) Using telephones, e-mail, facsimile machines, or other electronic means to:

1. Distribute information relating to changes in law, tax rates, interest rates, or other information that is not specific to a particular taxpayer;

2. Remind taxpayers of due dates;

3. Respond to a taxpayer to an electronic mail address that does not support encryption if the use of that address is authorized by the taxpayer; or

4. Notify taxpayers to contact the department ~~Disclosing to the Chief Financial Officer the names and addresses of those taxpayers who have claimed an exemption pursuant to former s. 199.185(1)(i) or a deduction pursuant to s. 220.63(5).~~

(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 hotel or restaurant 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.

(z) Taxpayer names and identification numbers for the purposes of information-sharing agreements with financial institutions pursuant to s. 213.0532.

(aa) Information relative to chapter 212 to the Department of Environmental Protection in the conduct of its official duties in the administration of s. 253.03(7)(b) and (11).

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, 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 may include the name and address of the taxpayer, the actions taken, the amounts and types of liabilities, and the amount of any collections made.

Section 11. Effective July 1, 2010, section 213.0532, Florida Statutes, is created to read:

213.0532 Information-sharing agreements with financial institutions.—

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

(a) “Account” means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

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

(c) “Financial institution” means:

1. A depository institution as defined in 12 U.S.C. s. 1813(c);

2. An institution-affiliated party as defined in 12 U.S.C. s. 1813(u);

3. A federal credit union or state credit union as defined in 12 U.S.C. s. 1752, including an institution-affiliated party of such a credit union as defined in 12 U.S.C. s. 1786(r); or

4. A benefit association, insurance company, safe-deposit company, money-market mutual fund, or similar entity authorized to do business in this state.

(d) “Obligor” means any person against whose property the department has filed a warrant or judgment lien certificate.

(e) “Person” has the same meaning as provided in s. 212.02.

(2) The department shall request information and assistance from a financial institution as necessary to enforce the tax laws of this state. Pursuant to this subsection, financial institutions doing business in this state and having deposits of at least \$50 million shall enter into agreements with the department to develop and operate a data match system, using an automated data exchange to the maximum extent feasible, under which the financial institution shall provide, to the extent allowable by law, for each calendar quarter the name, record address, social security number or other taxpayer identification number, average daily account balance, and other identifying information for:

(a) Each obligor who maintains an account at the financial institution as identified to the institution by the department by name and social security number or other taxpayer identification number; or

(b) At the financial institution’s option, each person who maintains an account at the institution.

(3) The department may enter into agreements to operate an automated data exchange with financial institutions having deposits that do not exceed \$50 million.

(4) The department may use the information received pursuant to this section only for the purpose of enforcing the collection of taxes and fees administered by the department.

(5) To the extent possible and in compliance with state and federal law, the department shall administer this section in conjunction with s. 409.25657 in order to avoid duplication and reduce the burden on financial institutions.

(6) The department shall pay a reasonable fee to the financial institution for conducting the data match provided for in this section, which may not exceed actual costs incurred by the financial institution.

(7) A financial institution is not required to provide notice to its customers and is not liable to any person for:

(a) Disclosing to the department any information required under this section.

(b) Encumbering or surrendering any assets held by the financial institution in response to a notice of lien or levy issued by the department.

(c) Disclosing any information in connection with a data match.

(d) Taking any other action in good faith to comply with the requirements of this section.

(8) Any financial records obtained pursuant to this section may be disclosed only for the purpose of, and to the extent necessary, to administer and enforce the tax laws of this state.

(9) The department may adopt rules establishing the procedures and requirements for conducting automated data matches with financial institutions pursuant to this section.

Section 12. Effective July 1, 2010, section 213.25, Florida Statutes, is amended to read:

213.25 Refunds; credits; right of setoff.—~~If In any instance that a taxpayer has a tax refund or tax credit is due to a taxpayer for an overpayment of taxes assessed under any of the chapters specified in s. 72.011(1), the department may reduce the such refund or credit to the extent of any billings not subject to protest under s. 213.21 or chapter 443 for the same or any other tax owed by the same taxpayer.~~

Section 13. Effective July 1, 2010, section 213.50, Florida Statutes, is amended to read:

213.50 Failure to comply; revocation of corporate charter or hotel or restaurant license; 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 14. Effective July 1, 2010, subsection (1) of section 213.67, Florida Statutes, is amended to read:

213.67 Garnishment.—

(1) If a person is delinquent in the payment of any taxes, penalties, and interest owed to the department, the executive director or his or her designee may give notice of the amount of such delinquency by registered mail, personal service, or by electronic means, including, but not limited to, facsimile transmissions, electronic data interchange, or use of the Internet, to all persons having in their possession or under their control any credits or personal property, exclusive of wages, belonging to the delinquent taxpayer, or owing any debts to such delinquent taxpayer at the time of receipt by them of such notice. Thereafter, any person who has been notified may not transfer or make any other disposition of such credits, other personal property, or debts until the executive director or his or her designee consents to a transfer or disposition or until 60 days after the receipt of such notice. However, except that the credits, other personal property, or debts that which exceed the delinquent amount stipulated in the notice are shall not be subject to the provisions of this section, wherever held, if in any case in which the taxpayer does not have a prior history of tax delinquencies. If during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under this section hereunder, he or she is liable to the state for any indebtedness owed to the department by the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. If the delinquent taxpayer contests the intended levy in circuit court or under chapter 120, the notice under this section remains effective until that final resolution of the contest. Any financial institution receiving such notice will maintain a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of such notice.

Section 15. Effective upon this act becoming a law and operating retroactively to July 1, 2008, subsections (4) and (5) of section 220.192, Florida Statutes, are amended to read:

220.192 Renewable energy technologies investment tax credit.—

(4) TAXPAYER APPLICATION PROCESS.—To claim a credit under this section, each taxpayer must apply to the Florida Energy and Climate Commission ~~Department of Environmental Protection~~ for an allocation of each type of annual credit by the date established by the Florida Energy and

~~Climate Commission Department of Environmental Protection.~~ The application form may be established by the Florida Energy and Climate Commission. ~~The form must Department of Environmental Protection and~~ shall include an affidavit from each taxpayer certifying that all information contained in the application, including all records of eligible costs claimed as the basis for the tax credit, are true and correct. Approval of the credits under this section shall be accomplished on a first-come, first-served basis, based upon the date complete applications are received by the Florida Energy and Climate Commission Department of Environmental Protection. A taxpayer shall submit only one complete application based upon eligible costs incurred within a particular state fiscal year. Incomplete placeholder applications will not be accepted and will not secure a place in the first-come, first-served application line. If a taxpayer does not receive a tax credit allocation due to the exhaustion of the annual tax credit authorizations, then such taxpayer may reapply in the following year for those eligible costs and will have priority over other applicants for the allocation of credits.

(5) ADMINISTRATION; AUDIT AUTHORITY; RECAPTURE OF CREDITS.—

(a) In addition to its existing audit and investigation authority, the Department of Revenue may perform any additional financial and technical audits and investigations, including examining the accounts, books, and records of the tax credit applicant, which ~~that~~ are necessary to verify the eligible costs included in the tax credit return and to ensure compliance with this section. ~~The Florida Energy and Climate Commission Department of Environmental Protection~~ shall provide technical assistance when requested by the Department of Revenue on any technical audits or examinations performed pursuant to this section.

(b) It is grounds for forfeiture of previously claimed and received tax credits if the Department of Revenue determines, as a result of either an audit or examination or from information received from the Florida Energy and Climate Commission Department of Environmental Protection, that a taxpayer received tax credits pursuant to this section to which the taxpayer was not entitled. The taxpayer is responsible for returning forfeited tax credits to the Department of Revenue, and such funds shall be paid into the General Revenue Fund of the state.

(c) ~~The Florida Energy and Climate Commission Department of Environmental Protection~~ may revoke or modify any written decision granting eligibility for tax credits under this section if it is discovered that the tax credit applicant submitted any false statement, representation, or certification in any application, record, report, plan, or other document filed in an attempt to receive tax credits under this section. ~~The Florida Energy and Climate Commission Department of Environmental Protection~~ shall immediately notify the Department of Revenue of any revoked or modified orders affecting previously granted tax credits. Additionally, the taxpayer must notify the Department of Revenue of any change in its tax credit claimed.

(d) The taxpayer shall file with the Department of Revenue an amended return or such other report as the Department of Revenue prescribes by rule and shall pay any required tax and interest within 60 days after the taxpayer receives notification from the Florida Energy and Climate Commission ~~Department of Environmental Protection~~ that previously approved tax credits have been revoked or modified. If the revocation or modification order is contested, the taxpayer shall file an amended return or other report as provided in this paragraph within 60 days after a final order is issued after ~~following~~ proceedings.

(e) A notice of deficiency may be issued by the Department of Revenue at any time within 3 years after the taxpayer receives formal notification from the Florida Energy and Climate Commission ~~Department of Environmental Protection~~ that previously approved tax credits have been revoked or modified. If a taxpayer fails to notify the Department of Revenue of any changes to its tax credit claimed, a notice of deficiency may be issued at any time.

Section 16. Effective July 1, 2010, paragraph (c) of subsection (1) of section 336.021, Florida Statutes, is amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(1)

(c) Local option taxes collected on sales or use of diesel fuel in this state shall be distributed in the following manner:

1. The fiscal year of July 1, 1995, through June 30, 1996, shall be the base year for all distributions.

2. Each year the tax collected, less the service and administrative charges enumerated in s. 215.20 and the allowances allowed under s. 206.91, on the number of gallons reported, up to the total number of gallons reported in the base year, shall be distributed to each county using the distribution percentage calculated for the base year.

3. After the distribution of taxes pursuant to subparagraph ~~4.~~ 2., additional taxes available for distribution shall first be distributed pursuant to this subparagraph. A distribution shall be made to each county in which a qualified new retail station is located. A qualified new retail station is a retail station that began operation after June 30, 1996, and that has sales of diesel fuel exceeding 50 percent of the sales of diesel fuel reported in the county in which it is located during the 1995-1996 state fiscal year. The determination of whether a new retail station is qualified shall be based on the total gallons of diesel fuel sold at the station during each full month of operation during the 12-month period ending January 31, divided by the number of full months of operation during those 12 months, and the result multiplied by 12. The amount distributed pursuant to this subparagraph to each county in

which a qualified new retail station is located shall equal the local option taxes due on the gallons of diesel fuel sold by the new retail station during the year ending January 31, less the service charges enumerated in s. 215.20 and the dealer allowance provided for by s. 206.91. Gallons of diesel fuel sold at the qualified new retail station shall be certified to the department by the county requesting the additional distribution by June 15, 1997, and by March 1 in each subsequent year. The certification shall include the beginning inventory, fuel purchases and sales, and the ending inventory for the new retail station for each month of operation during the year, the original purchase invoices for the period, and any other information the department deems reasonable and necessary to establish the certified gallons. The department may review and audit the retail dealer's records provided to a county to establish the gallons sold by the new retail station. Notwithstanding the provisions of this subparagraph, when more than one county qualifies for a distribution pursuant to this subparagraph and the requested distributions exceed the total taxes available for distribution, each county shall receive a prorated share of the moneys available for distribution.

4. After the distribution of taxes pursuant to subparagraph 2. ~~3.~~, all additional taxes available for distribution, except the taxes described in subparagraph 3., shall be distributed based on vehicular diesel fuel storage capacities in each county pursuant to this subparagraph. The total vehicular diesel fuel storage capacity shall be established for each fiscal year based on the registration of facilities with the Department of Environmental Protection as required by s. 376.303 for the following facility types: retail stations, fuel user/nonretail, state government, local government, and county government. Each county shall receive a share of the total taxes available for distribution pursuant to this subparagraph equal to a fraction, the numerator of which is the storage capacity located within the county for vehicular diesel fuel in the facility types listed in this subparagraph and the denominator of which is the total statewide storage capacity for vehicular diesel fuel in those facility types. The vehicular diesel fuel storage capacity for each county and facility type shall be that established by the Department of Environmental Protection by June 1, 1997, for the 1996-1997 fiscal year, and by January 31 for each succeeding fiscal year. The storage capacities so established shall be final. The storage capacity for any new retail station for which a county receives a distribution pursuant to subparagraph 3. shall not be included in the calculations pursuant to this subparagraph.

Section 17. Subsection (20) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, the term:

(20) "Employing unit" means an individual or type of organization, including a partnership, limited liability company, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign; the receiver, trustee in bankruptcy, trustee, or successor of any of the foregoing; or the legal representative of a deceased person, which has or



had in its employ one or more individuals performing services for it within this state.

(a) Each individual employed to perform or to assist in performing the work of any agent or employee of an employing unit is deemed to be employed by the employing unit for the purposes of this chapter, regardless of whether the individual was hired or paid directly by the employing unit or by an agent or employee of the employing unit, if the employing unit had actual or constructive knowledge of the work.

(b) Each individual performing services in this state for an employing unit maintaining at least two separate establishments in this state is deemed to be performing services for a single employing unit for the purposes of this chapter.

(c) A person who is an officer of a corporation, or a member of a limited liability company classified as a corporation for federal income tax purposes, and who performs services for the corporation or limited liability company in this state, regardless of whether those services are continuous, is deemed an employee of the corporation or the limited liability company during all of each week of his or her tenure of office, regardless of whether he or she is compensated for those services. Services are presumed to be rendered for the corporation in cases in which the officer is compensated by means other than dividends upon shares of stock of the corporation owned by him or her.

(d) A limited liability company shall be treated as having the same status as it is classified for federal income tax purposes. However, a single-member limited liability company shall be treated as the employer.

Section 18. Paragraph (b) of subsection (2) of section 443.1215, Florida Statutes, is amended to read:

443.1215 Employers.—

(2)

(b) In determining whether an employing unit for which service, other than agricultural labor, is also performed is an employer under paragraph (1)(a), paragraph (1)(b), paragraph (1)(c), or subparagraph (1)(d)2., the wages earned or the employment of an employee performing service in agricultural labor may not be taken into account. If an employing unit is determined to be an employer of agricultural labor, the employing unit is considered an employer for purposes of paragraph (1)(a) subsection (1).

Section 19. Subsection (2) of section 443.1316, Florida Statutes, is amended to read:

443.1316 Unemployment tax collection services; interagency agreement.

(2)(a) The Department of Revenue is considered to be administering a revenue law of this state when the department implements this chapter, or

otherwise provides unemployment tax collection services, under contract with the Agency for Workforce Innovation through the interagency agreement.

(b) Sections 213.015(1)-(3), (5)-(7), (9)-(19), and (21); 213.018; 213.025; 213.051; 213.053; 213.0532; 213.0535; 213.055; 213.071; 213.10; 213.21(4); 213.2201; 213.23; 213.24; 213.25; 213.27; 213.28; 213.285; 213.34(1), (3), and (4); 213.37; 213.50; 213.67; 213.69; 213.692; 213.73; 213.733; 213.74; and 213.757 apply to the collection of unemployment contributions and reimbursements by the Department of Revenue unless prohibited by federal law.

Section 20. Subsections (1), (2), and (3) of section 443.141, Florida Statutes, are amended to read:

443.141 Collection of contributions and reimbursements.—

(1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT, ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.

(a) Interest.—Contributions or reimbursements unpaid on the date due shall bear interest at the rate of 1 percent per month from and after that date until payment plus accrued interest is received by the tax collection service provider, unless the service provider finds that the employing unit has or had good reason for failure to pay the contributions or reimbursements when due. Interest collected under this subsection must be paid into the Special Employment Security Administration Trust Fund.

(b) Penalty for delinquent, erroneous, incomplete, or insufficient reports.

1. An employing unit that fails to file any report required by the Agency for Workforce Innovation or its tax collection service provider, in accordance with rules for administering this chapter, shall pay to the tax collection service provider for each delinquent report the sum of \$25 for each 30 days or fraction thereof that the employing unit is delinquent, unless the agency or its service provider, whichever required the report, finds that the employing unit has or had good reason for failure to file the report. The agency or its service provider may assess penalties only through the date of the issuance of the final assessment notice. However, additional penalties accrue if the delinquent report is subsequently filed.

2.a. An employing unit that files an erroneous, incomplete, or insufficient report with the Agency for Workforce Innovation or its tax collection service provider shall pay a penalty. The amount of the penalty is \$50 or 10 percent of any tax due, whichever is greater, but no more than \$300 per report. The penalty shall be added to any tax, penalty, or interest otherwise due.

b. The agency or its tax collection service provider shall waive the penalty if the employing unit files an accurate, complete, and sufficient report within 30 days after a penalty notice is issued to the employing unit. The penalty may not be waived pursuant to this subparagraph more than one time during a 12-month period.

c. As used in this subsection, the term “erroneous, incomplete, or insufficient report” means a report so lacking in information, completeness, or arrangement that the report cannot be readily understood, verified, or reviewed. Such reports include, but are not limited to, reports having missing wage or employee information, missing or incorrect social security numbers, or illegible entries; reports submitted in a format that is not approved by the agency or its tax collection service provider; and reports showing gross wages that do not equal the total of the wages of each employee. However, the term does not include a report that merely contains inaccurate data that was supplied to the employer by the employee, if the employer was unaware of the inaccuracy.

~~3.2.—Sums collected as Penalties imposed pursuant to this paragraph shall under subparagraph 1. must be deposited in the Special Employment Security Administration Trust Fund.~~

~~4.3.~~ The penalty and interest for a delinquent, erroneous, incomplete, or insufficient report may be waived if when the penalty or interest is inequitable. The provisions of s. 213.24(1) apply to any penalty or interest that is imposed under this section.

5. The Agency for Workforce Innovation and the state agency providing unemployment tax collection services may adopt rules to administer this subsection.

(c) Application of partial payments.—~~If~~ When a delinquency exists in the employment record of an employer not in bankruptcy, a partial payment less than the total delinquency amount shall be applied to the employment record as the payor directs. In the absence of specific direction, the partial payment shall be applied to the payor’s employment record as prescribed in the rules of the Agency for Workforce Innovation or the state agency providing tax collection services.

## (2) REPORTS, CONTRIBUTIONS, APPEALS.—

(a) Failure to make reports and pay contributions.—If an employing unit determined by the tax collection service provider to be an employer subject to this chapter fails to make and file any report as and when required by this chapter or by any rule of the Agency for Workforce Innovation or the state agency providing tax collection services, for the purpose of determining the amount of contributions due by the employer under this chapter, or if any filed report is found by the service provider to be incorrect or insufficient, and the employer, after being notified in writing by the service provider to file the report, or a corrected or sufficient report, as applicable, fails to file the report within 15 days after the date of the mailing of the notice, the tax collection service provider may:

1. Determine the amount of contributions due from the employer based on the information readily available to it, which determination is deemed to be prima facie correct;

2. Assess the employer the amount of contributions determined to be due; and

3. Immediately notify the employer by mail of the determination and assessment including penalties as provided in this chapter, if any, added and assessed, and demand payment together with interest on the amount of contributions from the date that amount was due and payable.

(b) Hearings.—The determination and assessment are final 15 days after the date the assessment is mailed unless the employer files with the tax collection service provider within the 15 days a written protest and petition for hearing specifying the objections thereto. The tax collection service provider shall promptly review each petition and may reconsider its determination and assessment in order to resolve the petitioner's objections. The tax collection service provider shall forward each petition remaining unresolved to the Agency for Workforce Innovation for a hearing on the objections. Upon receipt of a petition, the Agency for Workforce Innovation shall schedule a hearing and notify the petitioner of the time and place of the hearing. The Agency for Workforce Innovation may appoint special deputies to conduct hearings and to submit their findings together with a transcript of the proceedings before them and their recommendations to the agency for its final order. Special deputies are subject to the prohibition against ex parte communications in s. 120.66. At any hearing conducted by the Agency for Workforce Innovation or its special deputy, evidence may be offered to support the determination and assessment or to prove it is incorrect. In order to prevail, however, the petitioner must either prove that the determination and assessment are incorrect or file full and complete corrected reports. Evidence may also be submitted at the hearing to rebut the determination by the tax collection service provider that the petitioner is an employer under this chapter. Upon evidence taken before it or upon the transcript submitted to it with the findings and recommendation of its special deputy, the Agency for Workforce Innovation shall either set aside the tax collection service provider's determination that the petitioner is an employer under this chapter or reaffirm the determination. The amounts assessed under the final order, together with interest and penalties, must be paid within 15 days after notice of the final order is mailed to the employer, unless judicial review is instituted in a case of status determination. Amounts due when the status of the employer is in dispute are payable within 15 days after the entry of an order by the court affirming the determination. However, any determination that an employing unit is not an employer under this chapter does not affect the benefit rights of any individual as determined by an appeals referee or the commission unless:

1. The individual is made a party to the proceedings before the special deputy; or

2. The decision of the appeals referee or the commission has not become final or the employing unit and the Agency for Workforce Innovation were not made parties to the proceedings before the appeals referee or the commission.

(c) Appeals.—The Agency for Workforce Innovation and the state agency providing unemployment tax collection services shall adopt rules prescribing the procedures for an employing unit determined to be an employer to file an appeal and be afforded an opportunity for a hearing on the determination. Pending a hearing, the employing unit must file reports and pay contributions in accordance with s. 443.131.

(3) COLLECTION PROCEEDINGS.—

(a) Lien for payment of contributions or reimbursements.—

1. ~~There is created~~ A lien exists in favor of the tax collection service provider upon all the property, both real and personal, of any employer liable for payment of any contribution or reimbursement levied and imposed under this chapter for the amount of the contributions or reimbursements due, together with interest, costs, and penalties. If any contribution or reimbursement imposed under this chapter or any portion of that contribution, reimbursement, interest, or penalty is not paid within 60 days after becoming delinquent, the tax collection service provider may file ~~subsequently issue~~ a notice of lien ~~that may be filed~~ in the office of the clerk of the circuit court of any county in which the delinquent employer owns property or conducts or has conducted business. The notice of lien must include the periods for which the contributions, reimbursements, interest, or penalties are demanded and the amounts due. A copy of the notice of lien must be mailed to the employer at the employer's her or his last known address. The notice of lien may not be filed ~~issued and recorded~~ until 15 days after the date the assessment becomes final under subsection (2). Upon filing presentation of the notice of lien, the clerk of the circuit court shall record the notice of lien it in a book maintained for that purpose, and the amount of the notice of lien, together with the cost of recording and interest accruing upon the amount of the contribution or reimbursement, becomes a lien upon the title to and interest, whether legal or equitable, in any real property, chattels real, or personal property of the employer against whom the notice of lien is issued, in the same manner as a judgment of the circuit court docketed in the office of the circuit court clerk, with execution issued to the sheriff for levy. This lien is prior, preferred, and superior to all mortgages or other liens filed, recorded, or acquired after the notice of lien is filed. Upon the payment of the amounts due, or upon determination by the tax collection service provider that the notice of lien was erroneously issued, the lien is satisfied when the service provider acknowledges in writing that the lien is fully satisfied. A lien's satisfaction does not need to be acknowledged before any notary or other public officer, and the signature of the director of the tax collection service provider or his or her designee is conclusive evidence of the satisfaction of the lien, which satisfaction shall be recorded by the clerk of the circuit court who receives the fees for those services.

2. The tax collection service provider may subsequently issue a warrant directed to any sheriff in this state, commanding him or her to levy upon and sell any real or personal property of the employer liable for any amount under this chapter within his or her jurisdiction, for payment, with the added

penalties and interest and the costs of executing the warrant, together with the costs of the clerk of the circuit court in recording and docketing the notice of lien, and to return the warrant to the service provider with payment. The warrant may only be issued and enforced for all amounts due to the tax collection service provider on the date the warrant is issued, together with interest accruing on the contribution or reimbursement due from the employer to the date of payment at the rate provided in this section. In the event of sale of any assets of the employer, however, priorities under the warrant shall be determined in accordance with the priority established by any notices of lien filed by the tax collection service provider and recorded by the clerk of the circuit court. The sheriff shall execute the warrant in the same manner prescribed by law for executions issued by the clerk of the circuit court for judgments of the circuit court. The sheriff is entitled to the same fees for executing the warrant as for a writ of execution out of the circuit court, and these fees must be collected in the same manner.

3. The lien expires 10 years after the filing of a notice of lien with the clerk of court. An action to collect amounts due under this chapter may not be commenced after the expiration of the lien securing the payment of the amounts owed.

(b) Injunctive procedures to contest warrants after issuance.—An injunction or restraining order to stay the execution of a warrant may not be issued until a motion is filed; reasonable notice of a hearing on the motion for the injunction is served on the tax collection service provider; and the party seeking the injunction either pays into the custody of the court the full amount of contributions, reimbursements, interests, costs, and penalties claimed in the warrant or enters into and files with the court a bond with two or more good and sufficient sureties approved by the court in a sum at least twice the amount of the contributions, reimbursements, interests, costs, and penalties, payable to the tax collection service provider. The bond must also be conditioned to pay the amount of the warrant, interest, and any damages resulting from the wrongful issuing of the injunction, if the injunction is dissolved, or the motion for the injunction is dismissed. Only one surety is required when the bond is executed by a lawfully authorized surety company.

(c) Attachment and garnishment.—Upon the filing of notice of lien as provided in subparagraph (a)1., the tax collection service provider is entitled to remedy by attachment or garnishment as provided in chapters 76 and 77, as for a debt due. Upon application by the tax collection service provider, these writs shall be issued by the clerk of the circuit court as upon a judgment of the circuit court duly docketed and recorded. These writs shall be returnable to the circuit court. A bond may not be required of the tax collection service provider as a condition required for the issuance of these writs of attachment or garnishment. Issues raised under proceedings by attachment or garnishment shall be tried by the circuit court in the same manner as a judgment under chapters 76 and 77. Further, the notice of lien filed by the tax collection service provider is valid for purposes of all remedies under this chapter until satisfied under this chapter, and revival by scire facias or other proceedings are not necessary before pursuing any remedy

authorized by law. Proceedings authorized upon a judgment of the circuit court do not make the lien a judgment of the circuit court upon a debt for any purpose other than as are specifically provided by law as procedural remedies.

(d) Third-party claims.—Upon any levy made by the sheriff under a writ of attachment or garnishment as provided in paragraph (c), the circuit court shall try third-party claims to property involved as upon a judgment thereof and all proceedings authorized on third-party claims in ss. 56.16, 56.20, 76.21, and 77.16 shall apply.

(e) Proceedings supplementary to execution.—At any time after a warrant provided for in subparagraph (a)2. is returned unsatisfied by any sheriff of this state, the tax collection service provider may file an affidavit in the circuit court affirming the warrant was returned unsatisfied and remains valid and outstanding. The affidavit must also state the residence of the party or parties against whom the warrant is issued. The tax collection service provider is subsequently entitled to have other and further proceedings in the circuit court as upon a judgment thereof as provided in s. 56.29.

(f) Reproductions.—In any proceedings in any court under this chapter, reproductions of the original records of the Agency for Workforce Innovation, its tax collection service provider, the former Department of Labor and Employment Security, or the commission, including, but not limited to, photocopies or microfilm, are primary evidence in lieu of the original records or of the documents that were transcribed into those records.

(g) Jeopardy assessment and warrant.—If the tax collection service provider reasonably believes that the collection of contributions or reimbursements from an employer will be jeopardized by delay, the service provider may assess the contributions or reimbursements immediately, together with interest or penalties when due, regardless of whether the contributions or reimbursements accrued are due, and may immediately issue a notice of lien and jeopardy warrant upon which proceedings may be conducted as provided in this section for notice of lien and warrant of the service provider. Within 15 days after mailing the notice of lien by registered mail, the employer may protest the issuance of the lien in the same manner provided in paragraph (2)(a). The protest does not operate as a supersedeas or stay of enforcement unless the employer files with the sheriff seeking to enforce the warrant a good and sufficient surety bond in twice the amount demanded by the notice of lien or warrant. The bond must be conditioned upon payment of the amount subsequently found to be due from the employer to the tax collection service provider in the final order of the Agency for Workforce Innovation upon protest of assessment. The jeopardy warrant and notice of lien are satisfied in the manner provided in this section upon payment of the amount finally determined to be due from the employer. If enforcement of the jeopardy warrant is not superseded as provided in this section, the employer is entitled to a refund from the fund of all amounts paid as contributions or reimbursements in excess of the amount finally determined to be due by the employer upon application being made as provided in this chapter.

Section 21. Effective July 1, 2010, subsection (2) of section 443.163, Florida Statutes, is amended to read:

443.163 Electronic reporting and remitting of contributions and reimbursements.—

(2)(a) An employer who is required by law to file an Employers Quarterly Report (UCT-6) by approved electronic means, but who files the report by a means other than approved electronic means, is liable for a penalty of \$50 \$10 for that report and \$1 for each employee. This penalty, which is in addition to any other applicable penalty provided by this chapter. However, unless the penalty does not apply if employer first obtains a waiver of this requirement from the tax collection service provider waives the electronic filing requirement in advance. An employer who fails to remit contributions or reimbursements by approved electronic means as required by law is liable for a penalty of \$50 \$10 for each remittance submitted by a means other than approved electronic means. This penalty, which is in addition to any other applicable penalty provided by this chapter.

(b) A person who prepared and reported for 100 or more employers in any quarter during the preceding state fiscal year, but who fails to file an Employers Quarterly Report (UCT-6) for each calendar quarter in the current calendar year by approved electronic means as required by law, is liable for a penalty of \$50 \$10 for that report and \$1 for each employee. This penalty, which is in addition to any other applicable penalty provided by this chapter. However, unless the penalty does not apply if person first obtains a waiver of this requirement from the tax collection service provider waives the electronic filing requirement in advance.

Section 22. Subsection (3) of section 443.163, Florida Statutes, is amended to read:

443.163 Electronic reporting and remitting of contributions and reimbursements.—

(3) The tax collection service provider may waive the requirement to file an Employers Quarterly Report (UCT-6) by electronic means for employers that are unable to comply despite good faith efforts or due to circumstances beyond the employer’s reasonable control.

(a) As prescribed by the Agency for Workforce Innovation or its tax collection service provider, grounds for approving the waiver include, but are not limited to, circumstances in which the employer does not:

1. Currently file information or data electronically with any business or government agency; or
2. Have a compatible computer that meets or exceeds the standards prescribed by the Agency for Workforce Innovation or its tax collection service provider.



(b) The tax collection service provider shall accept other reasons for requesting a waiver from the requirement to submit the Employers Quarterly Report (UCT-6) by electronic means, including, but not limited to:

- 1. That the employer needs additional time to program his or her computer;
- 2. That complying with this requirement causes the employer financial hardship; or
- 3. That complying with this requirement conflicts with the employer's business procedures.

(c) The Agency for Workforce Innovation or the state agency providing unemployment tax collection services may establish by rule the length of time a waiver is valid and may determine whether subsequent waivers will be authorized, based on this subsection; ~~however, the tax collection service provider may only grant a waiver from electronic reporting if the employer timely files the Employers Quarterly Report (UCT-6) by telefile, unless the employer wage detail exceeds the service provider's telefile system capabilities.~~

Section 23. 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 24. Effective July 1, 2010, the Department of Revenue is authorized to adopt emergency rules 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 25. Sections 195.095 and 213.054, Florida Statutes, are repealed.

Section 26. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor May 27, 2010.

Filed in Office Secretary of State May 27, 2010.