



The Florida Senate

Interim Project Report 2005-215

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Committee on Government Efficiency Appropriations

Senator Jeffrey H. "Jeff" Atwater, Chair

COMPROMISING LIABILITY OF TAXPAYER WHO REASONABLY RELIED ON A WRITTEN DETERMINATION OF THE DEPARTMENT, S. 213.21(2)(C),(3), F.S.

SUMMARY

During the 2000 Regular Session, a number of bills were amended onto House Bill 509. The amended bill passed the Legislature and, upon approval by the Governor, became ch. 2000-312, L.O.F. One of the bills amended onto HB 509, (HB 71, relating to the county public hospital surtax) contained a repealer section that, once amended into HB 509, was not limited in its scope. The repealer section states that "(t)he provisions of this act shall be reviewed by the Legislature prior to October 1, 2005, and shall be repealed on that date unless otherwise reenacted by the Legislature." This repealer section creates the current situation where a number of provisions in the Florida Statutes will be repealed in 2005 unless they are reenacted.

Sections 213.21(2) and 213.21, F.S., which address the Department of Revenue's authority to enter into informal conference procedures to settle disputes between the department and taxpayers, were amended by s. 3 of ch. 2000-312, L.O.F., and are set to repeal October 1, 2005, unless reenacted by the Legislature.

BACKGROUND

Chapter 81-178, F.S., created s. 213.21, F.S., establishes a procedure by which the Department of Revenue can resolve disputes relating to assessment of taxes, interest, and penalties. This section provides that the executive director of the Department of Revenue may compromise tax or interest on a tax assessment based on doubt as to liability or collectibility of the tax or interest. Sections 213.21(2) and 213.21(3), F.S., were amended by s. 3 of ch. 2000-312, L.O.F., to add that a taxpayer who establishes reasonable reliance on written advice issued by the department to the taxpayer is deemed to have shown reasonable cause for the noncompliance. The amended statute stated that doubt as to liability of a taxpayer or tax and interest exists if the taxpayer demonstrates that he or she reasonably

relied on the written determination of the Department of Revenue in the following circumstances:

1. The audit workpapers clearly show that the same issue was considered in a prior audit of the taxpayer and the department's auditor determined that no assessment was appropriate in regard to that issue.
2. The same issue was raised in a prior audit of the taxpayer and during the informal protest of the proposed assessment the department issued a notice of decision withdrawing the issue from the assessment.
3. The taxpayer received a technical assistance advisement in regard to the issue.

The statute also states that the situations cited above are not intended to be the only circumstances in which a taxpayer demonstrates doubt as to liability for tax or interest. However, a taxpayer will be deemed not to have reasonably relied on a written determination of the department in the following circumstances:

1. The taxpayer misrepresented material facts or did not fully disclose material facts at the time the written documentation was issued
2. The specific facts and circumstances have changed in such a material manner that the written documentation no longer applies.
3. The statutes or regulations on which the determination was based have been materially revised or a published judicial opinion constitution precedent in the taxpayer's jurisdiction has overruled the department's determination on the issue.
4. The department has informed the taxpayer in writing that its previous written determination has been revised and should no longer be relied upon.

Sections 213.21(2) and 213.21(3), F.S., as amended by s. 3 of ch. 2000-312, L.O.F., will be repealed as of October 1, 2005 unless reenacted by the Legislature.

METHODOLOGY

Since the legislation clarifying the Department of Revenue's authority to compromise tax or interest on tax assessments originated in the department's legislative recommendations, the determination of whether to recommend reenactment will be based on the department's experience with the legislation.

FINDINGS

The Department of Revenue reports that there have been a few cases where the procedure authorized under this act has been used, but their outcome has not been formally tracked.

RECOMMENDATIONS

It is the recommendation of this report that the repeal of s. 3 of ch. 2000-312, Laws of Florida, should be abrogated by repealing s. 11 of that act, which provides for the repeal.