

## SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

Date: March 26, 1998 Revised: 3/31/98 \_\_\_\_\_

Subject: Taxation (Delinquent Personal Property Taxes)

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Cooper</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/6 amendments</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

### I. Summary:

Committee Substitute for House Bill 1373 permits county tax collectors to implement an installment program for the payment of delinquent personal property taxes. If implemented, the program must be available to each delinquent personal property taxpayer whose delinquent personal property taxes exceed \$1,000.

This bill also revises the requirements for calculating the rate of interest on void tax certificates; prohibits holders of tax certificates from contacting property owners and demanding payment without the approval of the Department of Revenue; and grants garnishment authority to counties that self-administer the local option tourist development tax.

This bill creates sections 197.4155 and 213.68, and amends sections 197.172, 197.432, and 197.472 of the Florida Statutes.

### II. Present Situation:

Section 196.001, F.S., requires ad valorem taxation, unless expressly exempt, of all real and personal property in this state. Property is taxed as either real property, personal property, or intangible personal property.

Chapter 197, F.S., governs ad valorem and non-ad valorem tax collections, sales and liens. Section 197.333, F.S., provides that all taxes are due and payable on November 1 of each year, or as soon thereafter as the certified tax roll is received by the tax collector. Taxes become delinquent on April 1 following the year in which they are assessed or immediately after 60 days have expired from the mailing of the original tax notice, whichever is later.

### **Prepayment of Real and Tangible Personal Property Taxes**

Section 197.222, F.S., allows a taxpayer to prepay estimated real and tangible personal property taxes by installment method when taxes are estimated to be more than \$100. The amount of prepaid tax is based on the actual taxes levied the prior year. Installments are due quarterly, between June 30 of the year in which the taxes are assessed and March 31 of the following year. A taxpayer electing to prepay taxes must file an application with the tax collector prior to May 1 of the year in which the taxpayer elects to prepay.

### **Delinquent Personal Property Taxes**

Section 197.413, F.S., establishes procedures for the collection of delinquent personal property taxes. These procedures culminate in the issuance of a court order “directing the tax collector or his deputy to levy upon and seize so much of the tangible personal property of the taxpayers who are listed in the petition as is necessary to satisfy the unpaid taxes, costs, interest, attorneys’ fees, and other charges.” After court order is issued, the tax collector issues a tax warrant for the collection of tangible personal property taxes, and the warrant “has the same force as a writ of garnishment upon any person who has goods, money, chattels, or effects of the delinquent taxpayer in his hands, possession or control or who is indebted to such delinquent taxpayer.” The tax collector is not required to issue warrants if the delinquent taxes are less than \$50.

### **Delinquent Real Property Taxes**

Section 197.432, F.S., sets forth the procedures for collecting unpaid taxes on real property through the sale of tax certificates at a public auction. The notice of the sale must provide the day and approximate time when the sale will commence. The tax collector must continue the sale until each certificate is sold to pay the taxes, interest, costs, and charges on the parcel described in the certificate. The tax collector is required to offer all certificates on the lands as they are assessed.

Subsection (5) of s. 197.432, F.S., requires certificates be sold to the person who will pay the taxes, interest, costs, and charges and will demand the lowest rate of interest, not in excess of the maximum rate specified in s. 197.172(2), F.S. If there is no buyer, the certificate must be issued to the county at the maximum rate of interest allowed in s. 197.172(2), F.S.

Pursuant to s. 197.432(10), F.S., certain voided tax certificates issued after January 1, 1977 earn interest at 8 percent per year, simple interest, calculated from the date the certificate was purchased until the date the refund is ordered.

### **Interest Rates on Delinquent Taxes**

Section 197.172(2), F.S., requires that real property taxes bear interest at the rate of 18 percent per year (1.5 percent per month) from the date of delinquency until a certificate is sold, except that the minimum charge for delinquent taxes paid prior to the sale of a tax certificate is 3 percent. The maximum rate of interest on a tax certificate is 18 percent per year. Personal property taxes must bear interest at 18 percent per year from the date of delinquency until paid or barred under chapter 95, F.S.

### **Redemption of Tax Certificates**

Section 197.472, F.S., outlines the procedures for redeeming tax certificates. Subsection (1) specifies that any person may redeem a tax certificate or purchase a county-held certificate at any time after the certificate is issued and before a tax deed is issued or the property is placed on the list of lands available for sale. When purchased or redeemed, all taxes, interest, costs, charges and omitted taxes, if any, as provided by law upon the part of parts of the certificate, must be paid.

Subsection (2) of s. 197.472, F.S., provides that when a tax certificate is redeemed and the interest rate earned on the certificate is less than 5 percent of the face amount of the certificate, a mandatory charge of 5 percent is to be levied on the tax certificate. This provision applies to all county held tax certificates and all individual tax certificates except those with an interest rate bid of zero percent.

### **Garnishment**

Section 213.67, F.S., provides that if a taxpayer is delinquent in the payment of taxes, the Department of Revenue may notify persons having possession of credits or personal property of the taxpayer, except wages, of the delinquency. Once notified, the person may not transfer or make any other disposition of the taxpayer's property until the executive director of the department consents or until 60 days after the receipt of the notice. This section provides recourse for the affected taxpayer.

## **III. Effect of Proposed Changes:**

**Section 1** creates s. 197.4155, F.S., to permit county tax collectors to implement an installment program for the payment of delinquent personal property taxes. If implemented, the program must be available to each delinquent personal property taxpayer whose delinquent personal property taxes exceed \$1,000. Each person who wants to participate in the program must submit an application to the tax collector that includes the name, address, and telephone number of the taxpayer, a description of the property subject to personal property taxes, and the amount of the personal property taxes owed by the taxpayer.

Within 10 days after a taxpayer submits the required application, the tax collector must prescribe an installment payment plan for the full payment of the taxes, delinquency charges, interest and other costs owed. The tax collector is authorized to exercise all necessary flexibility to collect the delinquent personal property taxes owed by the taxpayer. However, the plan must provide for the full satisfaction of all amounts owed by the taxpayer within 2 years after the due date of the first payment due under the plan or 6 months before the date on which the tax warrant on the delinquent property taxes becomes unenforceable pursuant to s. 197.416, F.S., whichever is earlier.

If a tax warrant is issued under s. 197.413, F.S., against a delinquent taxpayer who is participating in the installment plan, the tax warrant is unenforceable as long as the taxpayer is neither delinquent under the terms of the installment payment plan nor attempting to remove or dispose of the personal property that is subject to the tax warrant. However, the tax collector may use all

methods available under the law if the amounts due under the installment payment plan are not paid in full in accordance with the terms of the plan.

**Section 2** amends s. 197.432(10), F.S., to specify that voided tax certificates issued after January 1, 1977, and which are subsequently canceled or corrected, will earn interest at 8 percent per year, simple interest, or the “rate of interest bid at the tax certificate sale, whichever is less.” This section also creates subsection (14) to restrict the holder of a tax certificate or his or her agent from contacting the owner of property upon which he or she holds a tax certificate and demanding payment unless the Department of Revenue approves the contact.

**Section 3** amends s.197.172(2), F.S., to delete references to the 5-percent mandatory charge for the redemption of a tax certificate, as provided in s. 197.472, F.S. The 5-percent mandatory charge is deleted in section 4 of the bill.

**Section 4** amends s. 197.472, F.S., to provide that when a tax certificate is redeemed, the interest rate earned must be the amount bid at the tax certificate sale, calculated in accordance with s. 197.172(2), F.S., rather than the greater of 5 percent of the face value of the certificate or the actual interest rate due.

**Section 5** creates s. 213.68, F.S., to authorize the collecting entities of counties that self-administer the collection of tourist development taxes the same garnishment authority the Department of Revenue exercises, as provided in s. 213.67, F.S., when a taxpayer is delinquent in the payment of taxes.

**Section 6** provides that the bill will take effect 60 days after becoming a law.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

To the extent that persons who have delinquent personal property taxes are permitted to pay such taxes on an installment plan, those persons should benefit.

C. Government Sector Impact:

To the extent that tax collectors implement an installment payment program, they will incur additional expenses.

**VI. Technical Deficiencies:**

Section 2 of the bill creates s. 197.432(14), F.S., to restrict the holder of a tax certificate or his or her agent from contacting the owner of property upon which he or she holds a tax certificate and demand payment unless the Department of Revenue approves the contact. No penalty is specified for violating this prohibition.

In response to this provision, the Department of Revenue states that:

The proposal would place DOR in the position of reviewing for propriety every contact between a certificate holder and a land owner with no parameters provided for the Department to make such approval or disapproval. The Department may not have the ability or legal authority to determine the line between the free speech and unreasonable or harassing contact by a certificate holder. Where contact is regarded as unfair or deceptive, there are other agencies that are charged with protecting citizens from unfair or deceptive business practices. Additionally, since this is a locally administered tax and the tax collectors are fielding the initial complaints from property owners in their counties, it would seem appropriate to provide the tax collector with a mechanism of enforcement.

**VII. Related Issues:**

None.

**VIII. Amendments:**

#1 by Community Affairs:

Deletes a requirement that the taxpayer provide their telephone number on the application for the proposed personal property tax installment payment program, and clarifies that the taxpayer

provide a “legal description,” as opposed to a “description” of the property subject to taxes.

#2 by Community Affairs:

Expands the requirements of the tax collector in developing the installment plan for delinquent personal property taxes. The plan must be delivered to the taxpayer, and must specify that if the taxpayer fails to meet the payment requirements of the plan, the taxpayer will be considered delinquent, and all unpaid taxes, penalties, or interest is due immediately. In addition, this amendment increases the time period for paying the delinquent taxes under the proposed installment program to 3 years.

#3 by Community Affairs:

Replaces proposed subsection (14) of s. 197.432, F.S., to prohibit tax certificate holders from “initiating contact,” rather than “contacting” property owners, and deletes the Department of Revenue’s proposed role in approving such contacts.

Adds proposed subsection (15) of s. 197.432, F.S., to authorize the tax collector to bar tax certificate holders from bidding at future tax certificate sales if they initiate contact with the property owner upon which he or she holds a certificate, and declares such initiation of contact to be an unfair and deceptive trade practice, actionable under the consumer protection laws specified in chapter 501, F.S.

Deletes section 3 of the bill, which proposed to amend s.197.172(2), F.S., to delete references to the 5 percent mandatory charge for the redemption of a tax certificate, as provided in s. 197.472, F.S.

Deletes section 4 of the bill, which proposed to amend s. 197.472, F.S., to provide that when a tax certificate is redeemed, the interest rate earned must be the amount bid at the tax certificate sale, calculated in accordance with s. 197.172(2), F.S., rather than the greater of 5 percent of the face value of the certificate or the actual interest rate due.

#4 by Community Affairs:

Amends the current TRIM Notice to allow local governments to include *proposed* non ad valorem assessments, as opposed to only *adopted* non ad valorem assessments as provided in current law.

#5 by Community Affairs:

Adds a new section, which amends s. 170.201(2), F.S., to allow municipalities to exempt housing facilities used for elderly or disabled persons, financed by HUD, and which are owned and operated by an exempt charitable organization, from special assessments for emergency medical services.

#6 by Community Affairs:

Creates section 6, which amends s. 197.122(3)(b), F.S., to specify that “material mistakes of fact” by the property appraiser may be corrected within a 1-year period after the tax roll is approved by

the Department of Revenue, rather than within 60 days after the tax roll is certified by the County Value Adjustment Board, thereby extending the opportunity for corrections of assessments; beginning in 1999, if such a correction results in a refund of taxes paid because of the erroneous assessment, the property appraiser may ask the Department of Revenue to approve the refund request as provided in s. 197.182, F.S., or submit the correction and refund order directly to the tax collector for action. This section is effective January 1, 1999. Section 7 is amended to provide the effective date of the bill, unless otherwise specified, is October 1, 1998.

---

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

---