

STORAGE NAME: h1171a.fpr.doc

DATE: April 4, 2001

**HOUSE OF REPRESENTATIVES  
COMMITTEE ON  
FISCAL POLICY AND RESOURCES  
ANALYSIS**

**BILL #:** HB 1171

**RELATING TO:** Taxation

**SPONSOR(S):** Representative Weissman

**TIED BILL(S):**

**ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:**

- (1) FISCAL POLICY AND RESOURCES YEAS 11 NAYS 0
  - (2) JUDICIAL OVERSIGHT
  - (3) FISCAL RESPONSIBILITY COUNCIL
  - (4)
  - (5)
- 

I. SUMMARY:

This bill makes several changes in the tax statutes regarding the tax treatment of various business entities. It provides for an additional choice of venue for initiating action in tax cases, and allows improperly filed cases to be transferred, rather than dismissed. It provides that any class interest in a business entity that is not registered with the Securities and Exchange Commission is exempt from intangibles tax. It allows a taxpayer to establish overpayment of sales and use tax through statistical sampling when applying for a refund. It requires that penalties in excess of 25 percent of the tax be settled or compromised under certain conditions, and provides for a *de novo* review of challenges to penalty assessments. It requires that that the tax classification of a single-member entity under sections 7701 and 7704 of the IRC is determinative, and provides that certain single-member limited liability companies that are disregarded for federal income tax purposes must be treated as separate legal entities for non-income tax purposes.

The Revenue Estimating Conference has not adopted an official estimate.

**On April 4, 2001, the committee on Fiscal Policy and Resources adopted four amendments. The first amendment clarifies the use of statistical sampling. The second amendment removes sections 2 and 3 from the bill. This text pertained to intangible tax definitions and exemption from intangible taxation. The third amendment reinstated the word "may". The Fourth amendment reinstated existing statute language that was deleted in the bill.**

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- |                                   |   |                             |   |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u>         | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. <u>Lower Taxes</u>             | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 3. <u>Individual Freedom</u>      | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/>            |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u>      | Yes <input type="checkbox"/>            | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

When contesting the legality of any assessment or denial of refund of any tax, fee, surcharge, permit, interest, or penalty, a taxpayer has two choices of venue under as provided under s. 72.011, Florida Statutes: the Second Judicial Circuit Court in and for Leon County, or in the county where the taxpayer resides or maintains its principal commercial domicile in this state. For corporate and other entity taxpayers, particularly multistate taxpayers, it is unclear where the taxpayer may "reside" or have its "principal commercial domicile." If a taxpayer selects the wrong venue the case is dismissed, not transferred, and the statute of limitations may run out on the claim.

Section 199.023(1), Florida Statutes, defines as intangible personal property "all stocks or shares of incorporated or unincorporated companies, businesses, trusts, and mutual funds." Section 199.185, Florida Statutes, provides an exemption from intangibles tax for interests in general and limited partnerships, including interests in limited liability partnerships not registered with the Securities and Exchange Commission (SEC). Ownership interests in other forms of non-SEC-registered business entities are subject to intangibles tax. It is difficult to value accurately non-publicly traded business interests, making administration of intangibles tax difficult in these instances.

Section 215.26(2), Florida Statutes, requires a taxpayer to submit an application for any refund of all funds paid into the State Treasury on a form approved by the Comptroller, and to provide additional proof as deemed necessary to establish the refund requested. Section 212.12(6)(c), Florida Statutes, provides that a sales and use tax refund or overpayment may be verified by DOR through a sample when records are adequate but voluminous during the period being audited, but such verification is not required. Sampling of records regarding fixed assets is not allowed. This section applies to overpayments found during compliance audits and to verification of amounts requested on a refund application. When records are not adequate during the refund period, the sales and use tax refund request will be verified by DOR through a detailed examination of the available records. A taxpayer is not permitted to establish an overpayment of sales and use tax through sampling except in the context of an audit.

Current law provides for penalties to be assessed for tax delinquencies. Section 213.21, Florida Statutes, authorizes DOR to settle or compromise a taxpayers liability for penalties if it determines that the taxpayer's noncompliance was "due to reasonable cause and not to willful negligence, willful neglect, or fraud." A taxpayer's liability for penalties in excess of 25 percent of the tax may be settled or compromised if DOR determines that the noncompliance was due to reasonable cause.

Limited liability companies classified as partnerships for federal income tax purposes are not required to file returns and are not subject to tax under the Florida Income Tax Code. Section 220.02, Florida Statutes, specifically provides that the law is not intended to tax any natural person who engages in a trade, business, or profession in this state as a member or manager of a limited liability company classified as a partnership for federal income tax purposes.

Section 608.471, Florida Statutes, provides, in part, that a limited liability company classified as a partnership or single member limited liability company that is disregarded as an entity separate from its owner for federal income tax purposes is not required to file a separate return under the Florida Income Tax Code. The statutes do not address how single-member limited liability companies are treated for non-income tax purposes, and the Department of Revenue has no rulemaking authority in this area. This creates problems for single-member limited liability companies that are treated as pass-through entities for federal income tax purposes but require separate treatment for sales and employment tax purposes.

#### C. EFFECT OF PROPOSED CHANGES:

Section 1 of HB 1171 amends s. 72.011(4) and (5), Florida Statutes, to provide that an action can be filed where a taxpayer regularly maintains its books and records in this state, and to provide that actions filed under s. 72.011, Florida Statutes, are not jurisdictional and can be transferred instead of being dismissed.

Section 2 amends s. 199.023(a), Florida Statutes, which defines intangible personal property, to include stocks or shares of business entities, all interests in other types of entities, any interest in a limited liability company, and any interest as a partner in a partnership, either general or limited, including limited liability partnerships. Section 199.185, Florida Statutes, is amended in section 3 of the bill to exempt from taxation any class of interest in a business entity that is not registered with the Securities and Exchange Commission.

Section 4 of this bill amends s. 212.12, Florida Statutes, to provide that a taxpayer is entitled to establish an overpayment through a statistical sample, in connection with a compliance audit or an application for refund. Any other sampling method can be used if agreed upon by the taxpayer and DOR.

Section 5 amends s. 213.21, Florida Statutes, to require that penalties imposed under s. 72.011(1), Florida Statutes, be settled or compromised if it is determined that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud. It also provides that DOR's determination is subject to *de novo* review in any administrative proceeding or judicial action challenging a penalty assessment.

Section 6 of HB 1171 amends s. 220.03(2), Florida Statutes, to provide that the tax classification of a business entity, as determined under sections 7701 and 7704 of the Internal Revenue Code, is determinative of the entity's classification under the Florida Income Tax Code, even though other provisions of the law call for a different classification.

Section 7 of this bill amends s.608.471, Florida Statutes, to provide that single-member limited liability companies and other entities that are disregarded for federal income tax purposes must be treated as separate legal entities for all non-income tax purposes, and directs DOR to adopt rules to take into account that single-member disregarded entities may report and account for income, employment, and other taxes under the taxpayer identification number of the owner of the single-member entity.

D. SECTION-BY-SECTION ANALYSIS:

Please see above.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill may reduce intangibles and corporate tax revenue by reducing the number of taxpayers or assets subject to tax. It may also reduce penalty revenue by requiring that certain penalties be settled or compromised. The magnitude of these effects on tax revenue, if any, has not been determined by the Revenue Estimating Conference.

The Revenue Estimating Conference has not adopted an official estimate.

2. Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The tax law changes provided by this bill have been proposed by the Tax Section of the Florida Bar and according to that organization these changes will enhance the fairness of Florida's tax system, promote equal treatment for all taxpayers, and provide sound tax policy for the state. The law particularly benefits the owners of business interests not registered with the Securities and Exchange Commission, taxpayers who want to challenge DOR determinations and who request tax refunds, and taxpayers who use federal check-the-box regulations.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of counties and municipalities to raise total aggregate revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill is not anticipated to reduce the total aggregate percent of state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

This bill requires the Department of Revenue to adopt rules with respect to single-member disregarded entities, allowing these entities to report and account for income, employment, and other taxes under the taxpayer identification number of the owner of the single-member entity.

The Department feels that the bill fails to provide any guidance on criteria to be used when determining whether there is a defect in the sampling methodology used by the taxpayer.

If a taxpayer's records are adequate but voluminous the Department may sample such records, but they are prohibited from sampling "fixed assets." They feel the bill does not recognize this prohibition.

Also, the Department feels that s. 212.12(6)(c), F.S. limits sampling to verify a refund to cases where a taxpayer's records are adequate but voluminous. This existing standard should be applied to this new provision.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

**On April 4, 2001, the committee on Fiscal Policy and Resources adopted four amendments. The first amendment clarifies the use of statistical sampling. The second amendment removes sections 2 and 3 from the bill. This text pertained to intangible tax definitions and exemption from intangible taxation. The third amendment reinstated the word "may". The Fourth amendment reinstated existing statute language that was deleted in the bill.**

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VII. SIGNATURES:

COMMITTEE ON FISCAL POLICY AND RESOURCES:

Prepared by:

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Adam Shamy

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