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S 267 GENERAL BILL/CS/2ND ENG by Finance, Taxation and Claims; Deratany (Compare CS/H 1124, CS/1ST ENG/H 1199, H 1234, H 1790, CS/1ST ENG/S 256, CS/S 266, CS/S 617, CS/S 632, CS/S 759, CS/S 1103, CS/1ST ENG/S 1178, S 1303)

Taxation: prohibits refund of estate taxes pursuant to any allegation that decedent was resident of another state except under certain conditions; specifies that annual intangible personal property tax applies to property that has taxable situs in this state; revises information that corporations doing business in state are required to file with D.O.R. annually; amends certain provision re documentary excise tax on stock certificates, etc. Amends F.S. Appropriation: \$200,000. Effective Date: 07/06/89 except as otherwise provided.

02/15/89 SENATE Prefiled

02/17/89 SENATE Referred to Finance, Taxation and Claims

02/20/89 SENATE On Committee agenda—Finance, Taxation and Claims, 03/09/89, 9:00 am, Room-1C

03/09/89 SENATE Comm. Report: CS by Finance, Taxation and Claims, placed on Calendar

04/04/89 SENATE Introduced, referred to Finance, Taxation and Claims -SJ 30; Comm. Report: CS by Finance, Taxation and Claims, placed on Calendar -SJ 60; CS read first time -SJ 62

04/25/89 SENATE Placed on Special Order Calendar -SJ 198

05/09/89 SENATE Placed on Special Order Calendar -SJ 275; CS passed as amended; YEAS 35 NAYS 0 -SJ 281

05/10/89 HOUSE In Messages

06/02/89 HOUSE Received, placed on Calendar -HJ 1140; Read second time; Amendments adopted; Read third time; CS passed as amended; YEAS 109 NAYS 2 -HJ 1154

06/02/89 SENATE In Messages; Was taken up -SJ 952; Amendment to House amendment adopted; Concurred in House amendment as amended; Requested House to concur; Concurred in one amendment; CS passed as amended; YEAS 36 NAYS 0 -SJ 965

06/02/89 HOUSE In Messages; Concurred; CS passed as amended; YEAS 110 NAYS 1 -HJ 1342

06/03/89 Ordered engrossed, then enrolled -SJ 1406

06/20/89 Signed by Officers and presented to Governor

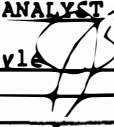

07/06/89 Became Law without Governor's Signature; Chapter No. 89-356; See also: CS/SB 1178 (Ch. 89-362) & CS/SB 759 (Ch. 89-153)

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

REVISED: _____

BILL NO. CS/SB 267DATE: March 9, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Boyle 	Beqgs 	1. FTC _____	Fav/CS _____
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT: Taxation

BILL NO. AND SPONSOR: CS/SB 267 by Finance, Taxation & Claims and Senator Deratany

I. SUMMARY:Illegal Motor Fuel Sales Penalty: Section 1.

A. Present Situation:

The penalty provisions of part I of chapter 206 apply to engaging in business without a license, to fraudulently reporting or evading taxes, failing to report, or failing to pay taxes due. There is no penalty for selling fuel in violation of any provision of part I. If a person sells fuel in violation of part I and the department discovers it, it will assess him any tax due and interest on the tax and assess a penalty for failing to report. Under s. 213.21, F.S., the person can seek relief from such assessments by proving that the tax was paid or that the purchase of fuel was exempt. However, there will be no penalty for selling the fuel in violation of part I.

B. Effect of Proposed Changes:

Any person who sells motor fuel in violation of any provision of Part I of Chapter 206, and who seeks relief from assessment of taxes shall pay a penalty of \$500 or 25 percent of taxes due, whichever is greater.

Unlicensed Special Fuel Dealers: Sections 2 & 3.

A. Present Situation:

In order to act as a dealer of special fuels, a person must hold a valid dealer of special fuels license issued by the Department of Revenue. But there are no penalties for persons acting as a dealer without such a license.

B. Effect of Proposed Changes:

Any person who acts as a dealer of special fuels as provided for in Part II of Chapters 206 and 212 and who does not hold a valid dealer's license, must pay a penalty equal to 25 percent of the tax assessed on the total fuel purchased or \$200, whichever is less.

Air Carriers Monthly Filing: Section 4.

A. Present Situation:

Under Part I, Chapter 206, refiners, importers, and wholesalers of motor fuel are required to file returns and pay fuel taxes monthly, as are dealers of special fuel under Part II, Chapter 206. However, air carriers are only required to file quarterly returns under Part III, Chapter 206.

B. Effect of Proposed Changes:

Air carriers would be required to file monthly returns beginning October 1, 1989.

Shrinkage Allowance: Section 5.**A. Present Situation:**

Section 212.67, F.S., provides that every licensed retail motor fuel dealer is entitled to a refund of 1.4 percent of the sales tax imposed on motor fuel purchased by such retailer to cover losses due to evaporation and shrinkage. In counties levying local option fuel taxes, dealers may take the allowance as a credit against local option taxes due instead of a refund. Currently, all dealers who can take the allowance as a credit are doing so.

B. Effect of Proposed Changes:

The bill requires retail dealers located in counties that do not impose a local option fuel tax to take the evaporation and shrinkage allowance as a refund and retail dealers located in counties levying a local option fuel tax to take the shrinkage and evaporation allowance as a credit against the local option fuel tax.

Documentary Stamp Tax - Obsolete Cross Reference: Section 6.**A. Present Situation:**

Section 201.05, F.S., contains a reference to s. 201.04, F.S. Section 201.04 was repealed in 1987 after transferring to s. 201.05(2) the definition of "stock" contained in 201.04.

B. Effect of Proposed Changes:

The incorrect statutory cross-reference is changed to reflect current law.

Continuing Care Facilities Contracts - Entrance Fee Taxation: Section 7.**A. Present Situation:**

As part of the insurance premium tax rewrite enacted in 1988, entrance fees paid to continuing care facilities under a continuing care contract were determined to be a form of insurance premium and subjected to taxation under section 13 of Chapter 88-206, Laws of Florida.

B. Effect of Proposed Changes:

Section 13 of chapter 88-206, Laws of Florida, is repealed effective upon the act becoming a law but operating retroactively to January 1, 1989.

Corporate Income Tax - Government Bonds Exemption Exclusion: Sections 8, 9, 10, 11, and 12.**A. Present Situation:**

Currently, a general tax exemption is granted to governmental authorities which issue bonds, but the exemption does not apply with respect to corporate income tax imposed on interest, income, or profit from such bonds owned by corporations. Sections 161.40, 341.329, 348.91, 380.0073, and 420.513, F.S., do not contain the standard exclusion for corporations which own bonds issued by beach and shore preservation authorities, a county for a high speed rail line, the Pasco County Expressway Authority, land authorities in counties with an area of critical state concern, and the Florida Housing Finance Agency.

B. Effect of Proposed Changes:

Includes in those sections the provision that the exemption does not apply to corporate income taxes on interest, income, and profits from such bonds owned by corporations.

Intangibles Tax - Information Reports: Sections 13 and 14.**A. Present Situation:**

Section 199.02(1) requires corporations doing business in this state to give its Florida stockholders written notice of the just value of its stock subject to annual intangible personal property tax. A copy of such notice must be filed with the Department of Revenue. These notices were originally required to aid in the control of the reporting of shareholder information. No notice to stockholders is required if the corporation elects, under s. 199.057, to pay the annual tax as do 90% of the closely-held companies. Also required are written notices to the department relating to dividend payment, the taxability of shares held by Florida residents, and the fact that a company had no Florida shareholders. Since the department has an exchange agreement with the Internal Revenue Service that allows access to computerized form 1099 information and, in addition, has computerized broker statements, these notice filing requirements have become obsolete. A penalty of \$100 is imposed for a failure to file notices when required, with a separate penalty to apply to each delinquent notice.

B. Effect of Proposed Changes:

The bill amends ss. 199.062(2), F.S., to eliminate all notice filing requirements except the required copy of any written notice to stockholders.

Intangibles Tax - Business Situs: Sections 15, 16, and 17.**A. Present Situation:**

Section 199.175, F.S., provides, in general terms, that receivables owned by nonresidents have business situs and are therefore subject to the annual intangible tax when such receivables arise out of, or are issued in connection with, the sale, leasing, or servicing of real or personal property in the state, or the sale of services in the state. Intent language in this statute specifies that nonresidents conducting the same business as residents must pay the same tax that residents pay.

Continuing problems with various situs issues arise from the broad, general form of the statute in its references to the nexus concepts of the owner-domicile rule and business situs. In fact, recent court decisions interpreting this statute seem to establish conflicting standards on the degree of contact necessary to establish business situs. Section 199.032, F.S., imposes the annual intangible tax and s. 199.052, F.S., provides for the provision of s. 199.075, F.S.

B. Effect of Proposed Changes:

Section 17 of the bill amends section 199.175, F.S., to consolidate provisions relating to taxable situs of intangibles for annual tax purposes and to clarify situations where intangibles owned by non-residents acquire a Florida business situs. Business situs would be determined by existence of business activities which are conducted from locations in the state, which are conducted by employees or agents in the state, or which receive benefits and protection from Florida law or courts. The revision also specifies conditions under which commercial domicile is acquired in Florida, as well as when a person is domiciled here.

Sections 15 and 16 conform language in ss. 199.032 and 199.052 to the proposed rewrite of section 199.175, F.S.

Corporate Tax - Internal Revenue Code Update: Section 18.

A. Present Situation:

The definitional rules contained in s. 220.03, F.S., relating to Florida's corporate income tax apply by reference the current version of the United States Internal Revenue Code. Each year the reference in s. 220.03, F.S., to the federal code must be updated as the Legislature cannot prospectively adopt the federal code without violating the prohibition against unlawfully delegating its legislative authority.

B. Effect of Proposed Changes:

Changes the reference to the Internal Revenue Code of 1986, as amended and in effect on January 1, 1988 to that in effect on January 1, 1989.

Estate Tax - Conflicts Between States: Section 19.

A. Present Situation:

Section 198.29, F.S., provides for refunds of estate tax paid in excess of the tax legally due under chapter 198. Presently, the Department of Revenue is involved in disputes with other states as to the domicile of decedents. Estate taxes are being paid to Florida as well as to other states. A refund is then being applied for from Florida by the other state claiming domicile of the decedent. Florida must then treat the estate as a nonresident estate and remit the appropriate refund. Florida could have been permitted to enter into a compromise agreement which apportions the tax or intervene in court proceedings determining domicile.

B. Effect of Proposed Changes:

The bill prohibits refunding estates taxes to a decedent's estate pursuant to an allegation by another state that the decedent was domiciled there unless the State of Florida is a party to any compromise agreement or party of the other state's court action. Although the Florida Constitution does not permit the state to impose an estate tax on residents greater than the credit allowable on the federal tax, reduced by all other state taxes that qualify for the credit this notification requirement would not do so but would rather apply sanctions on a non-notifying nonresident estate that could result in total estate taxes exceeding the credit, which, for nonresidents, is constitutional.

Estate Tax - Federal Code Cross-reference: Sections 20, 21, and 22.

A. Present Situation:

Due to changes in the federal estate tax on generation skipping transfers, references to federal code sections contained in ss. 198.01, 198.021, and 198.031, F.S., are incorrect.

B. Proposed Changes:

The bill corrects the incorrect cross-references.

Solid Mineral Severance Tax - Administration: Section 23.

A. Present Situation:

Part one of chapter 211, F.S., taxes oil and gas production, part II taxes solid mineral severance. Section 211.125, F.S., provides for administering and enforcing the oil and gas

production tax and contains lien provisions and provides for issuing warrants for delinquent taxes or taxes otherwise in jeopardy. Section 211.33, F.S., provides for administering the solid mineral severance tax but contains no similar provision for establishing liens or issuing tax warrants.

B. Proposed Change:

The bill provides for the enforceability of the solid mineral severance tax by amending s. 211.33, F.S., to include the lien and tax warrant provisions of s. 211.125, F.S.

Penalty Accrual Grace Period: Section 24.

A. Present Situation:

Under s. 213.24, F.S., a taxpayer has 30 days to pay any deficiency after receiving a notice and demand for payment from the Department of Revenue. If he pays the amount due, which may include penalties and interest, within the 30 day period, interest on such amount does not accrue. Such grace period does not apply to additional penalties.

B. Proposed Change:

The bill provides that additional penalties will also not be imposed if the amount due is paid within the 30 day grace period.

Minimum Cost Billing Studies: Section 24.

A. Present Situation:

Under s. 213.24, F.S., billings for deficiencies of tax, penalty, or interest shall not be issued for less than the actual cost of the billing. The Inspector General of the Department of Revenue must annually determine the cost of issuing billings and establish a minimum billing amount.

B. Proposed Change:

The requirement that the study be annual is changed to whenever the Inspector General deems it necessary but at least every 3 years.

DOR General Audit Authority: Section 25.

A. Present Situation:

Chapter 213, F.S., contains the general provisions under which the Department of Revenue administers the state revenue laws. Section 213.05, F.S., specifies the revenues laws which the department is to administer. Each revenue law contains an audit provision, however, whenever changes are made to a revenue law, care must be taken that the department's authority to audit encompasses any changes. A general audit authority would cover those situations in which specific audit authority did not encompass an amendment or new provision.

B. Proposed Change:

The bill creates s. 213.34, F.S., to give the department general audit authority. The general audit authority does not give the department any authority which exceeds or is in addition to any current specific audit authority. The department is authorized to audit the records of anyone subject to a revenue law to ascertain the correctness of returns filed or payments made; to inspect records to ascertain compliance, subject to the statute of limitations; to correct by credit or refund any overpayment or to assess any deficiency revealed by

an audit; and to adopt any rule necessary to implement such audit authority.

Gross Receipts Tax - Monthly Filing, Penalties: Section 26.

A. Present Situation:

Currently, under s. 203.01, F.S., people who receive payments for utility services must report quarterly and pay 1.5 percent of the total amount of gross receipts received during the preceding quarter. The department must give at least 5 days notice to anyone who fails to report and pay the tax, after which it may estimate the amount of gross receipts and tax due, and add 18 percent of the tax due as a penalty. However, no penalty is due if payment is made within the time specified in the department's notice.

B. Proposed Change:

Section 203.01, F.S., is amended to require monthly reporting and payment of taxes, the 20th of each month is specified as the due date for purposes of notice, the 5 day notice requirement is deleted, and the penalty is changed to 5 percent of any unpaid tax for the first month plus an additional 5 percent for each additional month or fraction of month the tax is unpaid. The penalty may not be less than \$5 nor more than 25 percent in the aggregate of any unpaid tax. Additionally falsely or fraudulently reporting or unlawfully attempting to evade the tax is subject to a penalty of 50 percent of any tax due and a second degree misdemeanor.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

People who sell motor fuel in violation of part I of chapter 206 will pay a penalty of \$500 or 25 percent of any tax assessed, whichever is greater. People who act as a dealer of special fuel without holding a valid license will pay a penalty of \$200 or 25 percent of the tax on any purchases of special fuel, whichever is less. People paying entrance fees to continuing care facilities will not pay an insurance premium tax on the fee. People who pay any assessment to the department within 30 days after being notified would not pay any additional penalties. People who receive payment for utility services and who falsely report or unlawfully evade the gross receipts tax will pay a penalty of 50 percent of any tax due.

B. Government:

The penalty for selling fuel in violation of part I of chapter 206 is estimated to generate approximately \$500,000 each year to the Gas Tax Collection Trust Fund. The repeal of the taxation of continuing care facility entrance fees will result in a loss of approximately \$500,000 for fiscal year 1989-90 to the General Revenue Fund. The clarification of taxable situs for purposes of the intangibles tax may prevent the loss of up to \$60 million in 1989-90. If it were to occur, 45% would be to General Revenue and 55% to the County Revenue Sharing Trust Fund. The monthly filing of gross receipts taxes will result in a one time speed up of approximately \$35 million in 1989-90 to the PECO Trust Fund.

III. COMMENTS:

The bill will take effect upon becoming a law. However, the repeal of the insurance premium tax on continuing care facility contract entrance fees will operate retroactively to January 1, 1989, and the effective date of the intangibles tax taxable situs provision is January 1, 1990.

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IV. AMENDMENTS:

None.

STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 267

The repeal of the insurance premium tax on continuing care facility contract entrance fees was made to operate retroactively to January 1, 1989.

The intangibles tax taxable situs provisions were made to take effect January 1, 1990.

All other amendments were technical in value to clarify provisions of the bill.

Committee on Finance, Taxation and Claims



Staff Director

(FILE THREE COPIES WITH THE SECRETARY OF THE SENATE)