

STORAGE NAME: h2523slz.ft
DATE: June 12, 1991

AS PASSED BY THE LEGISLATURE
CHAPTER #: 91-112, Laws of Florida

HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCE & TAXATION
FINAL BILL ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: CS/HB 2523

RELATING TO: Taxation

SPONSOR(S): Committee on Finance & Taxation and Rep. Brown

STATUTE(S) AFFECTED: Chapters 20, 26, 72, 120, 193, 194, 195, 196, 197, 198, 199, 200, 201, 203, 206, 212, 213, 214, 215, 220, 221, 320, 335, 336, 395, 607, 624 and 893, Florida Statutes

COMPANION BILL(S): CS/SB 1128 (S), CS/CS/CS/SB 480

COMMITTEES OF REFERENCE:

- (1) FINANCE & TAXATION YEA 26 NAY 2
- (2) APPROPRIATIONS YEA 31 NAY 3

COPY

reproduced by
FLORIDA STATE ARCHIVES
DEPARTMENT OF STATE
R. A. GRAY BUILDING

***** Tallahassee, FL 32399-0250 *****
Series 19 Carton 2228

I. SUMMARY:

This bill is intended to address several issues concerning tax administration and enforcement. Among its primary components, the bill provides taxpayers an additional avenue of remedy to challenge denials of tax refunds, provides the Department of Revenue increased enforcement powers, clarifies the administration of the corporate income tax and ad valorem taxation, and adopts the provisions of the Internal Revenue Code of 1986, as amended, and in effect on January 1, 1991, for purposes of the corporate income tax. Additional issues addressed by the bill are included in section II of this bill analysis.

Generally, the provisions of the bill have a positive indeterminate fiscal impact. However, the following sections have significant impact: Section 13 of the bill potentially saves the state \$20.0 million in refunds from the Public Education Capital Outlay Fund. Sections 172-175 increase General Revenue Fund receipts in FY 1991-92 \$77.2 million by continuing to require 66 percent of collections to be considered in the calculation for estimated payments of sales tax, eliminating a scheduled increase in the dealer collection allowance, and reducing the dollar threshold for determining which dealers must make estimated sales tax payments. Section 127 generates \$10.2 million in nonrecurring revenue for the General Revenue Fund for FY 1991-92 by recapturing revenue lost when a credit against the franchise tax was allowed prematurely. Section 125 generates \$24 million in nonrecurring revenue for the General Revenue Fund for FY 1991-92 by not allowing insurance premium tax refunds to be paid until the next fiscal year. Section 175 imposes an additional \$2 license tax on most motor vehicles, raising about \$21.5 million in recurring revenues for the State Transportation Trust Fund. Section 177 extends the 1.5% hospital assessment to other health care providers, raising \$14.1m in recurring revenues for the Public Medical Assistance Trust Fund. The fiscal impacts of the bill are further addressed in the attachment to this bill analysis.

Section 607.1622, F.S., is amended to require each corporation filing an annual return to include information as to whether the corporation owes any intangibles taxes to the state. The Department of State is required to report to the Department of Revenue the names of those corporations indicating no intangibles tax liability.

GROSS RECEIPTS TAX
(Sections 11 through 13)

PRESENT SITUATION

Chapter 203, F.S., imposes a gross receipts tax on "every person that receives payment for utility service . . ." Utility service is defined to mean electricity, natural gas or manufactured gas for light, heat, or power, or telecommunications services. The tax rate was 1.5 percent of the gross receipts derived from such activity before July 1, 1990. Last year, the tax rate was increased to 2.0 percent beginning July 1, 1990, to 2.25 percent beginning July 1, 1991, and to 2.5 percent beginning July 1, 1992. All utilities have the option to separately state the first 1.5 percent of the tax, but are required to separately state all tax rate increases occurring after December 31, 1989, and to collect the taxes from the purchaser.

Some federal agencies have questioned whether a federal agency purchasing utility services must remit the separately stated tax to the utility. The federal agencies cite the prohibition against directly taxing such governmental agencies. Although the tax is collected from the purchaser, the gross receipts tax is a tax on the provider of the utilities, and that provider is ultimately liable for the payment of all gross receipts taxes.

In 1988, several public utilities requested refunds for taxes paid on "customer charges" and "customer facilities charges." The utilities argued that such charges were not received as "payment for electricity . . .," and thus were not subject to the gross receipts tax. The Department has denied these claims for refund and litigation is pending in circuit court.

Part II of chapter 203 subjects interstate telecommunications services, other than private communication services, the charge for which is billed or charged to a Florida telecommunications number or device, Florida telephone or number, or Florida customer, to the gross receipts tax. At the option of the service provider, the tax may be separately stated as Florida gross receipts tax on the total amount of any bill or invoice and may be added as a component part of the charge for the taxable services provided.

Interstate telecommunications are also subject to the provisions of §203.01(5) requiring any tax imposed after December 31, 1989, to be separately stated.

Amounts separately stated by telecommunications utilities are not included in gross receipts. Amounts separately stated by electric and gas utilities are included in gross receipts.

EFFECT OF PROPOSED CHANGES

Section 203.01, F.S., is amended to allow the utility companies to elect to separately state the entire gross receipts tax. The decision to separately state any increase in the tax imposed after December 31, 1989, and the ability to recover such charge from the customer, is not subject to regulatory approval. Furthermore, this language clarifies the position that governmental agencies must remit the portion of the utility charge separately stated on the customer's bill.

The bill clarifies that the gross receipts derived from the sale of electricity include monthly customer charges and monthly customer facility charges. This clarification is intended to resolve the pending litigation.

Section 203.012(2)(b)5., F.S., is amended to delete the exemption from gross receipts for revenues derived from the separately stated tax by telecommunication service providers.

MOTOR FUEL

(Sections 14 through 22)

PRESENT SITUATION

Section 206.01(13), F.S., provides for the definition of "motor fuel." Natural gasoline is currently included under the definition of "motor fuel" as a mixture of gasoline, even though it cannot be used to propel a motor vehicle without further blending. A person handling natural gasoline must be licensed as a motor fuel dealer and cannot sell motor fuel between dealers "tax free." As a result, dealers selling natural gasoline to other dealers must pay motor fuel taxes even though the fuel cannot be used in a vehicle without further blending.

Section 206.56, F.S., establishes the offense of embezzlement of funds, defined as the collection of tax from another by a refiner, importer, or wholesaler who then fails to report and pay such tax to the Department of Revenue. The offense requires the refiner, importer, or wholesaler to intend to temporarily or permanently deprive the state of a right or benefit to the collected monies. Part II of chapter 206, F.S., imposes a tax on "special fuels."

Section 206.86(13), F.S., provides for the definition of "alternative fuel." A person handling "alternative fuel" must be licensed as a special fuel dealer, which entitles that person to sell "tax free" to another licensed special fuel dealer.

Section 206.9825, F. S., allows certain air carriers to elect to apportion aviation fuel based on 8 percent of the retail price, with a 4.4 cent per gallon minimum tax. This apportionment election expires July 1, 1992.