1 - Pre-Audit Preparation Period
ISSUE: The Department of Revenue is required to provide notification to a taxpayer of an audit at least 60 days before the audit begins. This 60-day period gives the taxpayer time to gather and prepare records, meet with their accountant or secure the assistance of a professional. Some practitioners have argued that the Department can have no contact with the taxpayer during this 60-day period even to answer questions asked by the taxpayer. It has also been argued that the Department must refrain from reviewing its own records or records voluntarily provided by the taxpayer prior to the end of the 60-day period or preparing internally for the audit.
PROPOSAL: Clarifies activities the Department may engage in during the 60-day period without violating the statute or receiving a waiver from the taxpayer. Provided that the Department may: • Confirm receipt of the notification of intent to audit • Answer any questions raised by the taxpayer or taxpayer representative • Confirm date and location of the audit • Confirm the way the taxpayer would like to provide records • Discuss the scope of the audit • Review records voluntarily provided by the taxpayer • Review records already in the Department's possession

Paragraph (f) is added to subsection (4) of section 202.34, Florida Statutes, and subsection (6) is added to that section, to read:

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact initiated by a taxpayer to discuss the audit, and the taxpayer may provide records or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties, information already in the department's possession, or publicly available information. Examination by the department of such information does not commence an audit if the review takes place within 60 days of the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department from making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer believes the department has prematurely commenced the audit, the taxpayer must object in writing to the department prior to the issuance of an assessment or the objection is waived. If the department agrees that the audit was prematurely commenced, or a judge, hearing officer or administrative law judge so determines, the tolling period provided for in s. 213.345 shall be considered lifted for the number of days equal to the difference between the date of premature commencement of audit and the 61st day from the date of the department's notice of intent to audit.

(6) The department may adopt rules to administer this section.

Subsection (5) of section 212.13, Florida Statutes, is amended, and subsection (7) is added to that section, to read:

(f) Once the notification required by paragraph (a) is issued, the department, at any time, may respond to contact initiated by a taxpayer to discuss the audit, and the taxpayer may provide documentation or other information, electronically or otherwise, to the department. The department may examine, at any time, documentation and other information voluntarily provided by the taxpayer, its representative, or other parties, information already in the department's possession, or publicly available information. Examination by the department of such information does not commence an audit if the review takes place within 60 days of the notice of intent to conduct an audit. The requirement in paragraph (a) does not limit the department from making initial contact with the taxpayer to confirm receipt of the notification or to confirm the date that the audit will begin. If the taxpayer believes the department prematurely commenced the audit, the taxpayer must object in writing to the department prior to the issuance of an assessment or the objection is waived. If the department agrees that the audit was prematurely commenced, or a judge, hearing officer or administrative law judge so determines, the tolling period provided for in s. 213.345 shall be considered lifted for the number of days equal to the difference between the date of premature commencement of audit and the 61st day from the date of the department's notice of intent to audit.

(7) The department may adopt rules to administer this section.

2 - Delivery of Administrative Subpoenas and Extension of Tolling Provisions
ISSUE: The vast majority of taxpayers provide records and documents when requested during the audit process. Some taxpayers refuse to provide books and records despite the legal requirement to do so. The Department has the statutory authority to issue an "administrative subpoena" to compel production of records and documents. However, this tool is rarely used because a contest of the administrative subpoena in Circuit Court will cause the Department to miss other statutory deadlines and may run out the statute of limitations on the audit assessment. Additionally, service and enforcement of administrative subpoenas on non-Florida residents (whether natural persons or corporations) is timely and cost prohibitive. In order to avoid these problems, the Department instead uses its authority to issue an estimated assessment which results in the use of additional resources for both the taxpayer and the Department in resolving disputed issues.
PROPOSAL: Toll the statute of limitations for the issuance of an assessment upon receipt of written objections to a subpoena or during an action to enforce an administrative subpoena, to allow the taxpayer time to challenge the subpoena or respond to the demand for records. Creates a presumption that the failure of a taxpayer to comply with an administrative subpoena is evidence that documents not produced would be adverse to the taxpayer's position. The presumption applies to any proposed Final Agency Action (NOPA's, billing actions, Refunds, etc.) where formal demand for records and a subpoena has been issued. Explicitly authorizes the Department to serve subpoenas issued pursuant to ss. 202.36, 206.14 and 212.14, F.S. consistent with Chapter 48, F.S., plus via other methods for those taxpayers registered with the Department (US Mail, electronically, etc.)

Paragraph (a) of subsection (4) of section 202.36, Florida Statutes, is amended to read:

(4)(a) The department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas must be issued with the written and signed approval of the executive director or his or her designee on a written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied or administered under this chapter. A subpoena shall be served in the manner provided by law and by the Florida Rules of Civil Procedure and shall be returnable only during regular business hours and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must identify the taxpayer to whom the subpoena relates and to whom the records pertain and must provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to the inspection or copying of any of the designated materials. If objection is made, the department may not inspect or copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or custodian of records must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses are entitled to be paid a mileage allowance and witness fees as authorized for witnesses in civil cases. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced

by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The department may create estimates for purposes of assessment if a taxpayer fails to provide documents requested by a subpoena issued under this section. The presumption and authority to create estimates under this paragraph are not triggered merely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Subsection (4) of section 206.14, Florida Statutes, is amended to read:

(4) If any person unreasonably refuses access to such records, books, papers or other documents, or equipment, or if any person fails or refuses to obey such subpoenas duces tecum or to testify, except for lawful reasons, before the department or any of its authorized agents, the department shall certify the names and facts to the clerk of the circuit court of any county; and the circuit court shall enter such order against such person in the premises as the enforcement of this law and justice requires. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The department may create estimates for purposes of assessment if a taxpayer fails to provide documents requested by a subpoena issued under this section.

Paragraph (b) of subsection (3) of section 211.125, Florida Statutes, is amended to read:

(b) The department may ~~shall have the power to~~ inspect or examine the books, records, or papers of any operator, producer, purchaser, royalty interest owner, taxpayer, or transporter of taxable products which are reasonably required for the purposes of this part and may require such person to testify under oath or affirmation or to answer competent questions touching upon such person's business or production of taxable products in this ~~the~~ state.

1. The department may issue subpoenas to compel third parties to testify or to produce records or other evidence held by them.

2. Any duly authorized representative of the department may administer an oath or affirmation.

3. If any person fails to comply with a request of the department for the inspection of records, fails to give testimony or respond to competent questions, or fails to comply with a subpoena, a circuit court having jurisdiction over such person may, upon application by the department, issue orders necessary to secure compliance. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The department may create estimates for purposes of assessment if a taxpayer fails to provide documents requested by a subpoena issued under this section.

Paragraph (a) of subsection (7) of section 212.14, Florida Statutes, is amended to read:

(7)(a) For purposes of collection and enforcement of taxes, penalties, and interest levied under this chapter, the department may issue subpoenas or subpoenas duces tecum compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. Subpoenas shall be issued with the written and signed approval of the executive director or his or her designee on written and sworn application by any employee of the department. The application must set forth the reason for the application, the name of the person subpoenaed, the time and place of appearance of the witness, and a description of any books, records, or electronically recorded information to be produced, together with a statement by the applicant that the department has unsuccessfully attempted other reasonable means of securing information and that the testimony of the witness or the written or electronically recorded materials sought in the subpoena are necessary for the collection of taxes, penalty, or interest or the enforcement of the taxes levied under this chapter. A subpoena must ~~shall~~ be served in the manner provided by law and by the Florida Rules of Civil Procedure and is ~~shall be~~ returnable only during regular business hours

and at least 20 calendar days after the date of service of the subpoena. Any subpoena to which this subsection applies must ~~shall~~ identify the taxpayer to whom the subpoena relates and to whom the records pertain and must ~~shall~~ provide other information to enable the person subpoenaed to locate the records required under the subpoena. The department shall give notice to the taxpayer to whom the subpoena relates within 3 days after ~~of~~ the day on which the service of the subpoena is made. Within 14 days after service of the subpoena, the person to whom the subpoena is directed may serve written objection to inspection or copying of any of the designated materials. If objection is made, the department is ~~shall~~ not ~~be~~ entitled to inspect and copy the materials, except pursuant to an order of the circuit court. If an objection is made, the department may petition any circuit court for an order to comply with the subpoena. The subpoena must ~~shall~~ contain a written notice of the right to object to the subpoena. Every subpoena served upon the witness or records custodian must be accompanied by a copy of ~~the provisions of~~ this subsection. If a person refuses to obey a subpoena or subpoena duces tecum, the department may apply to any circuit court of this state to enforce compliance with the subpoena. Witnesses must ~~shall~~ be paid mileage and witness fees as authorized for witnesses in civil cases. The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The department may create estimates for purposes of assessment if a taxpayer fails to provide documents requested by a subpoena issued under this section. The presumption and authority to create estimates under this paragraph are not triggered merely because a taxpayer or its representative requests a conference to negotiate the production of a sample of records demanded by a subpoena.

Section 213.051, Florida Statutes, is amended to read:

(1) For the purpose of administering and enforcing ~~the provisions of~~ the revenue laws of this state, the executive director of the Department of Revenue, or any of his or her assistants designated in writing by the executive director, may ~~shall be authorized to~~ serve subpoenas and subpoenas duces tecum issued by the state attorney relating to investigations concerning the taxes enumerated in s. 213.05.

(2) In addition to the procedures for service prescribed by chapter 48, the department may serve subpoenas it issues pursuant to ss. 202.36, 206.14, 211.125, 212.14, and 220.735 upon any business registered with the department at the address on file with the department if it received correspondence from the business from that address within 30 days of issuance of the subpoena or if the address is listed with the Department of State Division of Corporations as a principal or business address. If a business's address is not in this state, service is made upon proof of delivery by registered mail or under the notice provisions of s. 213.0537.

Section 213.345, Florida Statutes, is amended to read:

213.345 Tolling of periods during an audit.—The limitations in s. 95.091(3) and the period for filing a claim for refund as required by s. 215.26(2) are ~~shall be~~ tolled for a period of 1 year if the Department of Revenue has, on or after July 1, 1999, issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time. The 1-year period is tolled upon receipt of written objections to the subpoena and for the entire pendency of any action that seeks an order to enforce compliance with or to challenge any subpoena issued by the department compelling the attendance and testimony of witnesses and the production of books, records, written materials, and electronically recorded information. The department must commence an audit within 120 days after it issues a notice of intent to conduct an audit, unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period terminates ~~shall terminate~~ unless the taxpayer and the department enter into an agreement to extend the period pursuant to s. 213.23. In the event the department issues an assessment beyond the tolling period, the assessment will be considered late and the assessment shall be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

Subsection (4) is added to section 220.735, Florida Statutes, to read:

(4) The failure of a taxpayer to provide documents available to, or required to be kept by, the taxpayer and requested by a subpoena issued under this section creates a presumption that the resulting proposed final agency action by the department, as to the requested documents, is correct and that the requested documents not produced by the taxpayer would be adverse to the taxpayer's position as to the proposed final agency action. The department may create estimates for purposes of assessment if a taxpayer fails to provide documents requested by a subpoena issued under this section.

3 - Notice Prior to Issuing an Assessment and Extension of Tolling Provisions
ISSUE: The Department is required to issue an assessment capable of becoming final 60-days prior to the end of the tolling of the audit period. The Department's rules provide taxpayers with a notice prior to the issuance of the Notice of Proposed Assessment and 30 days to request a conference with the auditor to resolve as many issues as possible before the taxpayer must take more formal actions to contest the assessment. Additional documentation is often provided during this period resulting in revisions to the liability. The statute does not require this pre-notice and does not allow for an extension of the tolling of the statute of limitations during this process. Providing the taxpayer additional time to work out issues in the field benefits both the taxpayer and the Department. A District court decision held that an assessment was untimely where the assessment was not issued 60 days prior to the expiration of an extended statute of limitations. This decision is inconsistent with the operation of other statutes controlling application of the statute of limitations on the audit process and creates an inconsistency with assessments issued without an extension. The confusion makes it less likely for the Department to engage in extensions at the request of taxpayers and may result in less opportunity for taxpayers to resolve issues in the field.
PROPOSAL: The proposed change creates a statutory requirement for the Department to provide a taxpayer with a conference within 30 days of a notice of the audit findings and additional conferences upon written request of the taxpayer. The proposal provides the taxpayer with additional response time and the ability to provide additional information and extends the tolling period so taxpayers and the Department can ensure the audit is accurate based on the data available. The proposal clarifies that tolling is terminated and the statute of limitations begins to run when the Department fails to issue a "proposed assessment" instead of a "final assessment" within the one-year audit period or any extension of that period. The proposal also provides that an audit will be considered commenced upon the issuance of a notice of audit findings that is based on an estimate due to taxpayer noncompliance instead of the current practice of issuing a notice of proposed assessment. This will allow the taxpayer to have the option of having a field conference prior to the issuance of a notice of proposed assessment.

Section 213.34, Florida Statutes, is amended to read:

(1) The Department of Revenue may ~~shall have the authority to~~ audit and examine the accounts, books, or records of all persons ~~who are~~ subject to a revenue law made applicable to this chapter, or otherwise placed under the control and administration of the department, for the purpose of ascertaining the correctness of any return which has been filed or payment which has been made, or for the purpose of making a return where none has been made.

(2) The department, or its duly authorized agents, may inspect such books and records necessary to ascertain a taxpayer's compliance with the revenue laws of this state, provided that the department's power to make an assessment or grant a refund has not terminated under s. 95.091(3).

(a) During the course of an audit, but before the issuance of an assessment other than a jeopardy assessment, the department shall issue to the taxpayer a notice explaining the audit findings. No later than 14 days after the issuance of the notice, the taxpayer may request an exit conference in writing at a mutually agreeable date and time with the department's audit staff to discuss the audit findings. The exit conference must be conducted no later than 30 days after the date of the notice, unless the taxpayer and the department enter into an agreement to extend the audit tolling period pursuant to s. 213.23. The taxpayer shall be given an opportunity at or before the exit conference to provide additional information and documents to the department to rebut the audit findings. Upon the mutual written agreement between the department and the taxpayer to extend the audit tolling period pursuant to s. 213.23, the exit conference may be continued to allow the taxpayer additional time to provide information and documents to the department. The department shall review any information provided by the taxpayer and, if the department revises the audit findings, a copy of the revised audit findings must be provided to the taxpayer. Such revision of the audit findings does not provide a right to any additional conference.

(b) If an exit conference is timely requested in writing, the limitations in s. 95.091(3) are tolled an additional 30 days. If the department fails to offer a taxpayer the opportunity to hold an exit conference despite a timely written request, the limitations period in s. 95.091(3) shall not be tolled for the additional 30 days. If the assessment is issued outside of the

limitations period, the assessment shall be reduced by the amount of those taxes, penalties, and interest for reporting periods outside of the limitations period, as modified by any other tolling or extension provisions.

(c) If a request for an exit conference is not timely made, the right to a conference is waived. A taxpayer may also affirmatively waive its right to an exit conference. Failure to hold an exit conference does not preclude the department from issuing an assessment.

(d) The department may adopt rules to implement this subsection.

Section 213.345, Florida Statutes, is amended to read:

The limitations in s. 95.091(3) and the period for filing a claim for refund as required by s. 215.26(2) shall be tolled for a period of 1 year if the Department of Revenue has, on or after July 1, 1999, issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time. The department must commence an audit within 120 days after it issues a notice of intent to conduct an audit, unless the taxpayer requests a delay. If the taxpayer does not request a delay and the department does not begin the audit within 120 days after issuing the notice, the tolling period shall terminate unless the taxpayer and the department enter into an agreement to extend the period pursuant to s. 213.23. If the department issues a notice explaining audit findings under s. 213.34(2)(a) based on an estimate because the taxpayer has failed or refuses to provide records, the audit will be deemed to have commenced for purposes of this section.

4 - Automatic Refund of Overpayments Revealed by Audit
ISSUE: When a compliance audit results in an overpayment, credit or refund, except for Corporate Income Tax, the Taxpayer is required to complete an Application for Refund before the refund can be issued by the Department.
PROPOSAL: Eliminate the requirement for taxpayer to submit a refund application to obtain a refund discovered as the result of a compliance audit. This concept removes a burden from taxpayers when an audit results in a net overpayment and creates efficiencies for both the taxpayer and the Department.

Subsection (5) is added to section 213.34, Florida Statutes, to read:

(5) After application of subsection (4), if the department's audit finds that the tax paid is more than the correct amount, the department shall refund the overpayment that is within the applicable period provided by s. 215.26. Such action by the department does not prevent a taxpayer from challenging the amount of the refund pursuant to chapters 120 and 213 or applying for a refund of additional tax within the applicable period.

5 - Refusal to Give Records/Resale Certificate
ISSUE: During audits by the Florida Department of Revenue, some dealers selling alcoholic beverages and tobacco advise Department auditors they have no records as to purchase, sale or tax collected for these regulated products. Florida tax and alcohol and beverage laws require dealers to maintain and produce certain records and without records the Department of Revenue is unable to conduct Sales and Use Tax audit and must resort to estimating the dealer's compliance.
PROPOSAL: The proposal would allow the Department to immediately suspend a dealer's privilege to hold a resale certificate and purchase products tax exempt for resale on 30 days' notice when a dealer asserts that they have no records or refuse to provide records related to their purchase and/or sale of alcoholic beverages and tobacco. The dealer would still be able to purchase products and take a credit for taxes paid against sales tax collected and remitted on the resale of the products. The proposal would also allow DBPR to remove the dealer's license to sell these regulated products for failure to maintain required records.

Subsection (2) of section 212.13, Florida Statutes, is amended to read:

(2)(a) Each dealer, as defined in this chapter, shall secure, maintain, and keep as long as required by s. 213.35 a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter. All such records must be made available to the department at reasonable times and places and by reasonable means, including in an electronic format when so kept by the dealer. Any dealer subject to this chapter who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. If, however, any subsequent offense involves intentional destruction of such records with an intent to evade payment of or deprive the state of any tax revenues, such subsequent offense is a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) Dealers licensed under chapter 561 shall maintain records of all monthly sales and all monthly purchases of alcoholic beverages and produce such records for inspection by any department employee within 10 days after written request therefor. The failure of a dealer licensed under chapter 561 to comply with such a request is deemed sufficient cause under s. 561.29(1)(j), and the department shall promptly notify the Division of Alcoholic Beverages and Tobacco and the dealer of such failure for further appropriate action by the division. The department may suspend the resale certificate issued to a dealer licensed under chapter 561 if the dealer fails to produce the records requested by the department under this section, unless such dealer, within 30 days after the receipt of notice by the department, corrects such failure or establishes reasonable cause to the department why the requested records do not exist. A dealer licensed under chapter 561 aggrieved by an action of the department which suspends the resale certificate of that dealer may apply to the department within 30 days after the receipt of the notice of suspension for an administrative hearing pursuant to chapter 120.

6 - Refusal to Give Records/Penalty Compromise
ISSUE: Florida's tax laws require taxpayers to maintain and provide records related to tax compliance upon audit. While there are no specific statutory penalties solely for failure to keep and provide records, delinquency penalties may be imposed up to 50% of any tax due. Under current law the Department is **required** to compromise 25% of the delinquency penalty if the Department determines that compliance errors were due to reasonable cause and not willful negligence, willful neglect or fraud. The Department has **discretion** to compromise the remaining 25% for the same reason. Without records the Department is forced to estimate any potential liability and a determination regarding reasonable cause and penalty compromise is impossible. While rarely imposed, the Department can impose a penalty of 100% when a taxpayer willfully files a false return, willfully fails to file a return for six months or willfully attempts to evade the tax.
PROPOSAL: The proposal creates a rebuttable presumption that a taxpayer's failure to keep records and/or refusal to provide records during an audit is evidence of willful neglect and clarifies that the Department cannot consider a compromise of any penalty, including the required compromise, when the taxpayer refuses to provide adequate records during the audit process. This provision would not apply when there is a reasonable explanation and evidence for why the records do not exist, for example, destruction of the records due to fire, hurricane etc.

Paragraph (a) of subsection (3) of section 213.21, Florida Statutes, is amended to read:

(3)(a) A taxpayer's liability for any tax or interest specified in s. 72.011(1) may be compromised by the department upon the grounds of doubt as to liability for or collectibility of such tax or interest. A taxpayer's liability for interest under any of the chapters specified in s. 72.011(1) shall be settled or compromised in whole or in part whenever or to the extent that the department determines that the delay in the determination of the amount due is attributable to the action or inaction of the department. A taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) greater than 25 percent of the tax must ~~may~~ be settled or compromised if ~~it is determined by~~ the department determines that the noncompliance is not due to ~~reasonable cause and not to~~ willful negligence, willful neglect, or fraud. There is a rebuttable presumption that a taxpayer's noncompliance is due to willful negligence, willful neglect, or fraud when adequate records as requested by the department are not provided to the department before the issuance of an assessment. In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) up to and including 25 percent of the tax may be settled or compromised if the department determines that reasonable cause exists and the penalties greater than 25 percent of the tax were compromised because the noncompliance is not due to willful negligence, willful neglect, or fraud. The facts and circumstances are subject to de novo review to determine the existence of reasonable cause in any administrative proceeding or judicial action challenging an assessment of penalty under any of the chapters specified in s. 72.011(1). A taxpayer who establishes reasonable reliance on the written advice issued by the department to the taxpayer is ~~will be~~ deemed to have shown reasonable cause for the noncompliance. ~~In addition, a taxpayer's liability for penalties under any of the chapters specified in s. 72.011(1) in excess of 25 percent of the tax shall be settled or compromised if the department determines that the noncompliance is due to reasonable cause and not to willful negligence, willful neglect, or fraud.~~ The department shall maintain records of all compromises, and the records shall state the basis for the compromise. The records of compromise under this paragraph are ~~shall~~ not ~~be~~ subject to disclosure pursuant to s. 119.07(1) and are ~~shall be~~ considered confidential information governed by ~~the provisions of~~ s. 213.053.

7 - Exclusion of Certain Records in Litigation
ISSUE: Taxpayers who refuse to provide records during an audit as required by law are subject to the Department issuing an estimated assessment. In litigation taxpayers will selectively provide records when it is to their benefit to challenge the estimated assessment even though the estimate was created because of the taxpayer's own willful non-compliance with records laws.
PROPOSAL: The proposal prohibits the use of records in civil or administrative litigation if the records were withheld from the Department after a formal demand for records or subpoena. The proposal does not prohibit the offering of records where the records were not available to the taxpayer at the time of the demand or subpoena unless the records were required to be kept by the taxpayer and the taxpayer failed to keep the records.

Paragraph (c) is added to subsection (1) of section 72.011, Florida Statutes, to read:

(c) A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding under this section if those records were available to, or required to be kept by, the taxpayer and were not timely provided to the Department of Revenue during the audit or protest period and before submission of a petition for hearing pursuant to chapter 120 or the filing of an action under paragraph (a).

Paragraph (b) of subsection (14) of section 120.80, Florida Statutes, is amended to read:

(b) Taxpayer contest proceedings.—

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the "respondent," and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the "respondent."

2. In any such administrative proceeding, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

3.a. Before ~~Prior to~~ filing a petition under this chapter, the taxpayer shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

b. The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

4. Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

5. The prevailing party, in a proceeding under ss. 120.569 and 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney ~~attorney's~~ fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney ~~attorney's~~ fees and reasonable costs of the appeal to the prevailing appellant.

7. A taxpayer may not submit records pertaining to an assessment or refund claim as evidence in any proceeding brought pursuant to this chapter as authorized by s. 72.011(1) if those records were available to, or required to be kept by, the taxpayer and not timely provided to the Department of Revenue during the audit or protest period and before submission of a petition for hearing under this chapter.

8 - Garnishment/Levy Comprehensive Authority
ISSUE: The Department has the authority to issue a levy upon credits, other personal property, or debts belonging to a delinquent taxpayer. Currently, section 213.67 (1), F.S., allows DOR to levy for any taxes, penalties, and interest. This section has not been updated to give DOR the authority to levy for fees (administrative collection processing fee (ACP fee), warrant filing fees, or any other fee or cost that might be enacted into the Florida Statutes), additional daily accrued interest, or the authority to issue notices to levy (garnishments) by electronic means. As a result, the Department typically continues with collection efforts for these additional fees after the initial levy is complete.
PROPOSAL: The proposal authorizes the Department to include all taxes, fees, interest, and costs authorized by law to be included in a garnishment or levy. This avoids multiple collection efforts for additional amounts. The proposal also allows the Department to deliver its notices of levy by electronic means as requested by many financial institutions.

Subsections (1), (3), and (6) of section 213.67, Florida Statutes, are amended to read:

(1) If a person is delinquent in the payment of any taxes, penalties, ~~and~~ interest, additional daily accrued interest, costs, and fees owed to the department, the executive director or his or her designee may give notice of the amount of such delinquency by registered mail, by personal service, or by electronic means, including, but not limited to, facsimile transmissions, electronic data interchange, or use of the Internet, to all persons having in their possession or under their control any credits or personal property, exclusive of wages, belonging to the delinquent taxpayer, or owing any debts to such delinquent taxpayer at the time of receipt by them of such notice. Thereafter, any person ~~who has been~~ notified may not transfer or make any other disposition of such credits, other personal property, or debts until the executive director or his or her designee consents to a transfer or disposition or until 60 days after the receipt of such notice. However, the credits, other personal property, or debts that exceed the delinquent amount stipulated in the notice are not subject to this section, wherever held, if the taxpayer does not have a prior history of tax delinquencies. If during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under this section, he or she is liable to the state for any indebtedness owed to the department by the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. If the delinquent taxpayer contests the intended levy in circuit court or under chapter 120, the notice under this section remains effective until that final resolution of the contest. Any financial institution receiving such notice maintains ~~will maintain~~ a right of setoff for any transaction involving a debit card occurring on or before the date of receipt of such notice.

(3) During the last 30 days of the 60-day period set forth in subsection (1), the executive director or his or her designee may levy upon such credits, other personal property, or debts. The levy must be accomplished by delivery of a notice of levy by registered mail, by personal service, or by electronic means, including, but not limited to, facsimile transmission, electronic data exchange, or use of the Internet. Upon receipt of the notice of levy, ~~which~~ the person possessing the credits, other personal property, or debts shall transfer them to the department or pay to the department the amount owed to the delinquent taxpayer.

(6)(a) Levy may be made under subsection (3) upon credits, other personal property, or debt of any person with respect to any unpaid tax, penalties, ~~and~~ interest, additional daily accrued interest, costs, and fees only after the executive director or his or her designee has notified such person in writing of the intention to make such levy.

(b) No less than 30 days before the day of the levy, the notice of intent to levy required under paragraph (a) must ~~shall~~ be given in person or sent by certified or registered mail to the person's last known address.

(c) The notice required in paragraph (a) must include a brief statement that sets forth in simple and nontechnical terms:

1. The provisions of this section relating to levy and sale of property;

2. The procedures applicable to the levy under this section;

3. The administrative and judicial appeals available to the taxpayer with respect to such levy and sale, and the procedures relating to such appeals; and

4. Any ~~The~~ alternatives~~, if any,~~ available to taxpayers which could prevent levy on the property.

9 - Qualifying Event Impacting Timely Challenge
ISSUE: The Department does not have the authority to reopen a final assessment under the law for purposes of adjusting or compromising the liability other than to resolve the outstanding liability for collectability. The Department believes in fairness to the taxpayer where there were circumstances beyond the control of the taxpayer causing the taxpayer to miss critical deadlines in protesting an assessment there should be some ability to reopen the assessment for further consideration.
PROPOSAL: The proposed concept provides the Department with the discretion to consider extraordinary circumstances as a qualifying event for reopening a final assessment for purposes of settling or compromising the liability. The proposal requires that a request to reopen an assessment for a qualifying event occur no later than 180 days from the date the assessment became final and also clarifies that decisions to reopen assessment under the proposal and decisions to settle or compromise an assessment are not subject to review under Chapter 120.

Subsections (11) and (12) are added to section 213.21, Florida Statutes, to read:

(11) Following the expiration of time for a taxpayer to challenge an assessment as provided in s. 72.011, the department may consider a request to settle or compromise any tax, interest, penalty, or other liability under this section if the taxpayer demonstrates that the failure to initiate a timely challenge was due to a qualified event that directly impacted compliance with that section. For purposes of this subsection, a qualified event is limited to the occurrence of events during an audit or the expired protest period which were beyond the control of the taxpayer, including the death or life-threatening injury or illness of the taxpayer or an immediate family member of the taxpayer; the death or life-threatening injury or illness of the responsible party that controlled, managed, or directed the affected business entity; acts of war or terrorism; natural disasters; fire; or other catastrophic loss. The department may not consider a request received more than 180 days after the expiration of time allowed under s. 72.011.

(12) Any decision by the department regarding a taxpayer's request to compromise or settle a liability under this section is not a final order subject to review under chapter 120.

10 - Pandemic Benefit Charges Clarification		
ISSUE: In the 2021 Legislative Session the legislature amended Chapter 443 to remove benefit charges incurred during certain months heavily impacted by the pandemic from the 2020 rate calculation. The legislation provides that if the balance of the Unemployment Compensation Trust Fund on June 30 of any year exceeds $4,071,519,600, certain rate adjustments for the years 2023-2025 contained in Chapter 2021-2, Laws of Florida are repealed. The rate adjustments, in part, exclude any benefit charges from the 2nd, 3rd and 4th quarters of 2020. While it was not the Legislature's intent, a strict reading of the statute would result in the inclusion of all benefit charges from the 2nd, 3rd and 4th quarters of 2020 in employer's rate calculations which could substantially increase their rates.		
PROPOSAL: Clarifies benefit charges excluded in 2020 from the 2021 and 2022 rate calculation are permanently excluded from future calculations regardless of trust fund balance. (The 9 months excluded are 2nd, 3rd, and 4th quarters of 2020, i.e., April – December 2020). The calculation typically includes a combination of benefit charges from the previous four years. See below:		
2022 rate calculation: 1st and 2nd quarters of 2021 1st 2nd 3rd and 4th quarters of 2020 1st 2nd 3rd and 4th quarters of 2019 3rd and 4th quarters of 2018	**2023 rate calculation:** 1st and 2nd quarters of 2022 1st 2nd 3rd and 4th quarters of 2021 1st 2nd 3rd and 4th quarters of 2020 3rd and 4th quarters of 2019	**2024 rate calculation:** 1st and 2nd quarters of 2023 1st 2nd 3rd and 4th quarters of 2022 1st 2nd 3rd and 4th quarters of 2021 3rd and 4th quarters of 2020

Paragraph (e) of subsection (3) of section 443.131, Florida Statutes, is amended to read:

443.131 Contributions.—

(3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT EXPERIENCE.—

(e) *Assignment of variations from the standard rate.*—

1. As used in this paragraph, the terms "total benefit payments," "benefits paid to an individual," and "benefits charged to the employment record of an employer" mean the amount of benefits paid to individuals multiplied by:

a. For benefits paid before ~~prior to~~ July 1, 2007, 1.

b. For benefits paid during the period beginning on July 1, 2007, and ending March 31, 2011, 0.90.

c. For benefits paid after March 31, 2011, 1.

d. For benefits paid during the period beginning April 1, 2020, and ending December 31, 2020, 0.

e. For benefits paid during the period beginning January 1, 2021, and ending June 30, 2021, 1, except as otherwise adjusted in accordance with paragraph (f).

2. For the calculation of contribution rates effective January 1, 2012, and thereafter:

a. The tax collection service provider shall assign a variation from the standard rate of contributions for each calendar year to each eligible employer. In determining the contribution rate, varying from the standard rate to be assigned each employer, adjustment factors computed under sub-sub-subparagraphs (I)-(IV) are added to the benefit ratio. This addition shall be accomplished in two steps by adding a variable adjustment factor and a final adjustment factor. The sum of these adjustment factors computed under sub-sub-subparagraphs (I)-(IV) shall first be algebraically summed. The sum of these adjustment factors shall next be divided by a gross benefit ratio determined as follows: Total benefit payments for the 3-year period described in subparagraph (b)3. are charged to employers eligible for a variation from the standard rate, minus excess payments for the same period, divided by taxable payroll entering into the computation of individual benefit ratios for the calendar year for which the contribution rate is being computed. The ratio of the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to the gross benefit ratio is multiplied by each individual benefit ratio that is less than the maximum contribution rate to obtain variable adjustment factors; except

that if the sum of an employer's individual benefit ratio and variable adjustment factor exceeds the maximum contribution rate, the variable adjustment factor is reduced in order for the sum to equal the maximum contribution rate. The variable adjustment factor for each of these employers is multiplied by his or her taxable payroll entering into the computation of his or her benefit ratio. The sum of these products is divided by the taxable payroll of the employers who entered into the computation of their benefit ratios. The resulting ratio is subtracted from the sum of the adjustment factors computed under sub-sub-subparagraphs (I)-(IV) to obtain the final adjustment factor. The variable adjustment factors and the final adjustment factor must be computed to five decimal places and rounded to the fourth decimal place. This final adjustment factor is added to the variable adjustment factor and benefit ratio of each employer to obtain each employer's contribution rate. An employer's contribution rate may not, however, be rounded to less than 0.1 percent. In determining the contribution rate, varying from the standard rate to be assigned, the computation shall exclude any benefit that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1. <u>for rates effective January 1, 2021, through December 31, 2025, notwithstanding the repeal of subparagraph 5. as provided in chapter 2021-2, Laws of Florida.</u> The computation of the contribution rate, varying from the standard rate to be assigned, shall also exclude any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business. In addition, the contribution rate for the 2021 and 2022 calendar years shall be calculated without the application of the positive adjustment factor in sub-sub-subparagraph (III).

(I) An adjustment factor for noncharge benefits is computed to the fifth decimal place and rounded to the fourth decimal place by dividing the amount of noncharge benefits during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the taxable payrolls for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "noncharge benefits" means benefits paid to an individual, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., from the Unemployment Compensation Trust Fund which were not charged to the employment record of any employer, but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business.

(II) An adjustment factor for excess payments is computed to the fifth decimal place, and rounded to the fourth decimal place by dividing the total excess payments during the 3-year period described in subparagraph (b)3. by the taxable payroll of employers eligible for a variation from the standard rate who have a benefit ratio for the current year which is less than the maximum contribution rate. For purposes of computing this adjustment factor, the taxable payroll of these employers is the same figure used to compute the adjustment factor for noncharge benefits under sub-sub-subparagraph (I). As used in this sub-subparagraph, the term "excess payments" means the amount of benefits charged to the employment record of an employer, as adjusted pursuant to subparagraph (b)2. and subparagraph 1., during the 3-year period described in subparagraph (b)3., but excluding any benefit paid as a result of a governmental order related to COVID-19 to close or reduce capacity of a business, less the product of the maximum contribution rate and the employer's taxable payroll for the 3 years ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the same calendar year. As used in this sub-sub-subparagraph, the term "total excess payments" means the sum of the individual employer excess payments for those employers that were eligible for assignment of a contribution rate different from the standard rate.

(III) With respect to computing a positive adjustment factor:

(A) Beginning January 1, 2012, if the balance of the Unemployment Compensation Trust Fund on September 30 of the calendar year immediately preceding the calendar year for which the contribution rate is being computed is less than 4 percent of the taxable payrolls for the year ending June 30 as reported to the tax collection service provider by September 30 of that calendar year, a positive adjustment factor shall be computed. The positive adjustment factor is computed annually to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fifth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution

rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(B) Beginning January 1, 2018, and for each year thereafter, the positive adjustment shall be computed by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of that calendar year and the sum of 5 percent of the total taxable payrolls for that year. The positive adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate equals or exceeds 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year.

(IV) If, beginning January 1, 2015, and each year thereafter, the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the calendar year for which the contribution rate is being computed exceeds 5 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year, a negative adjustment factor must be computed. The negative adjustment factor shall be computed annually beginning on January 1, 2015, and each year thereafter, to the fifth decimal place and rounded to the fourth decimal place by dividing the sum of the total taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of the calendar year into a sum equal to one-fourth of the difference between the balance of the fund as of September 30 of the current calendar year and 5 percent of the total taxable payrolls of that year. The negative adjustment factor remains in effect for subsequent years until the balance of the Unemployment Compensation Trust Fund as of September 30 of the year immediately preceding the effective date of the contribution rate is less than 5 percent, but more than 4 percent of the taxable payrolls for the year ending June 30 of the current calendar year as reported to the tax collection service provider by September 30 of that calendar year. The negative adjustment authorized by this section is suspended in any calendar year in which repayment of the principal amount of an advance received from the federal Unemployment Compensation Trust Fund under 42 U.S.C. s. 1321 is due to the Federal Government.

(V) The maximum contribution rate that may be assigned to an employer is 5.4 percent, except employers participating in an approved short-time compensation plan may be assigned a maximum contribution rate that is 1 percent greater than the maximum contribution rate for other employers in any calendar year in which short-time compensation benefits are charged to the employer's employment record.

(VI) As used in this subsection, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000. Beginning January 1, 2012, "taxable payroll" shall be determined by excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year as described in s. 443.1217(2). For the purposes of the employer rate calculation that will take effect in January 1, 2012, and in January 1, 2013, the tax collection service provider shall use the data available for taxable payroll from 2009 based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $7,000, and from 2010 and 2011, the data available for taxable payroll based on excluding any part of the remuneration paid to an individual by an employer for employment during a calendar year in excess of the first $8,500.

b. If the transfer of an employer's employment record to an employing unit under paragraph (g) which, before the transfer, was an employer, the tax collection service provider shall recompute a benefit ratio for the successor employer based on the combined employment records and reassign an appropriate contribution rate to the successor employer effective on the first day of the calendar quarter immediately after the effective date of the transfer.

3. The tax collection service provider shall reissue rates for the 2021 calendar year. However, an employer shall continue to timely file its employer's quarterly reports and pay the contributions due in a timely manner in accordance with the rules of the Department of Economic Opportunity. The Department of Revenue shall post the revised rates on its website to enable employers to securely review the revised rates. For contributions for the first quarter of the 2021 calendar year, if any employer remits to the tax collection service provider an amount in excess of the amount that would be due as calculated pursuant to this paragraph, the tax collection service provider shall refund the excess

amount from the amount erroneously collected. Notwithstanding s. 443.141(6), refunds issued through August 31, 2021, for first quarter 2021 contributions must be paid from the General Revenue Fund.

4. The tax collection service provider shall calculate and assign contribution rates effective January 1, 2022, through December 31, 2022, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1, 2021, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective January 1, 2022. The tax collection service provider shall calculate and post rates for the 2022 calendar year by March 1, 2022.

5. Subject to subparagraph 6., the tax collection service provider shall calculate and assign contribution rates effective January 1, 2023, through December 31, 2025, excluding any benefit charge that is excluded by the multipliers under subparagraph (b)2. and subparagraph 1.; without the application of the positive adjustment factor in sub-sub-subparagraph 2.a.(III); and without the inclusion of any benefit charge directly related to COVID-19 as a result of a governmental order to close or reduce capacity of a business, as determined by the Department of Economic Opportunity, for each employer ~~who is~~ eligible for a variation from the standard rate pursuant to paragraph (d). The Department of Economic Opportunity shall provide the tax collection service provider with all necessary benefit charge information by August 1 of each year, including specific information for adjustments related to COVID-19 charges resulting from a governmental order to close or reduce capacity of a business, to enable the tax collection service provider to calculate and issue tax rates effective the following January.

6. If the balance of the Unemployment Compensation Trust Fund on June 30 of any year exceeds $4,071,519,600, subparagraph 5. is repealed for rates effective the following years. The Office of Economic and Demographic Research shall advise the tax collection service provider of the balance of the trust fund on June 30 by August 1 of that year. After the repeal of subparagraph 5. and notwithstanding the dates specified in that subparagraph, the tax collection service provider shall calculate and assign contribution rates for each subsequent calendar year as otherwise provided in this section.

11 - Federally Required Offset Program
ISSUE: The United States Department of Labor (USDOL) is requiring states to participate in a US Treasury Offset Program (TOP) whereby states send a list of delinquent employers to Treasury which intercepts any federal income tax refund and sends it to the states to offset the employers reemployment tax debt.
PROPOSAL: The proposal specifically authorizes the Department to participate in the federally required US Treasury Offset Program to collect unpaid reemployment tax debt.

Paragraph (a) of subsection (9) of section 443.171, Florida Statutes, is amended to read:

443.171 Department of Economic Opportunity and commission; powers and duties; records and reports; proceedings; state-federal cooperation.—

(9) STATE-FEDERAL COOPERATION.—

(a)1. In the administration of this chapter, the Department of Economic Opportunity and its tax collection service provider shall cooperate with the United States Department of Labor to the fullest extent consistent with this chapter and shall take those actions, through the adoption of appropriate rules, administrative methods, and standards, necessary to secure for this state all advantages available under the provisions of federal law relating to reemployment assistance.

2. In the administration of the provisions in s. 443.1115, which are enacted to conform with the Federal-State Extended Unemployment Compensation Act of 1970, the department shall take those actions necessary to ensure that those provisions are interpreted and applied to meet the requirements of the federal act as interpreted by the United States Department of Labor and to secure for this state the full reimbursement of the federal share of extended benefits paid under this chapter which is reimbursable under the federal act.

3. The department and its tax collection service provider shall comply with the regulations of the United States Department of Labor relating to the receipt or expenditure by this state of funds granted under federal law; shall submit the reports in the form and containing the information the United States Department of Labor requires; and shall comply with directions of the United States Department of Labor necessary to assure the correctness and verification of these reports.

4. The department and its tax collection service provider shall comply with the requirements of the federal Treasury Offset Program as it pertains to the recovery of unemployment compensation debts as required by the United States Department of Labor pursuant to 26 U.S.C. 6402. The department or the tax collection service provider may adopt rules to implement this subparagraph.

12 - Affidavit Non-Resident Purchaser of Boat/Aircraft
ISSUE: Nonresident purchasers of boats and aircraft are required to sign an affidavit attesting that they have read the provisions of section 212.05, F.S., in its entirety, in order to claim an exemption from sales tax. Section 212.05, F.S., is lengthy and includes many provisions that are not pertinent to the purchaser of a boat or aircraft.
PROPOSAL: Removes requirement that purchasers attest to having read statutory provisions and replaces with the requirement that the purchaser complete an affidavit that acknowledges the pertinent provisions of the statute.

Paragraph (a) of subsection (1) of section 212.05, Florida Statutes, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making or facilitating remote sales; who rents or furnishes any of the things or services taxable under this chapter; or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government is ~~shall be~~ subject to tax at the rate provided in this paragraph. The department shall by rule adopt any nationally recognized publication for valuation of used motor vehicles as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed pursuant to this subparagraph.

2. This paragraph does not apply to the sale of a boat or aircraft by or through a registered dealer under this chapter to a purchaser who, at the time of taking delivery, is a nonresident of this state, does not make his or her permanent place of abode in this state, and is not engaged in carrying on in this state any employment, trade, business, or profession in which the boat or aircraft will be used in this state, or is a corporation none of the officers or directors of which is a resident of, or makes his or her permanent place of abode in, this state, or is a noncorporate entity that has no individual vested with authority to participate in the management, direction, or control of the entity's affairs who is a resident of, or makes his or her permanent abode in, this state. For purposes of this exemption, either a registered dealer acting on his or her own behalf as seller, a registered dealer acting as broker on behalf of a seller, or a registered dealer acting as broker on behalf of the nonresident purchaser may be deemed to be the selling dealer. This exemption is ~~shall~~ not ~~be~~ allowed unless:

a. The nonresident purchaser removes a qualifying boat, as described in sub-subparagraph f., from this ~~the~~ state within 90 days after the date of purchase or extension, or the nonresident purchaser removes a nonqualifying boat or an aircraft from this state within 10 days after the date of purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of the repairs or alterations; or if the aircraft will be registered in a foreign jurisdiction and:

(I) Application for the aircraft's registration is properly filed with a civil airworthiness authority of a foreign jurisdiction within 10 days after the date of purchase;

(II) The nonresident purchaser removes the aircraft from this ~~the~~ state to a foreign jurisdiction within 10 days after the date the aircraft is registered by the applicable foreign airworthiness authority; and

(III) The aircraft is operated in this ~~the~~ state solely to remove it from this ~~the~~ state to a foreign jurisdiction.

For purposes of this sub-subparagraph, the term "foreign jurisdiction" means any jurisdiction outside of the United States or any of its territories;

b. The nonresident purchaser, within 90 days after ~~from~~ the date of departure, provides the department with written proof that the nonresident purchaser licensed, registered, titled, or documented the boat or aircraft outside this ~~the~~ state. If such written proof is unavailable, within 90 days the nonresident purchaser must ~~shall~~ provide proof that the nonresident purchaser applied for such license, title, registration, or documentation. The nonresident purchaser shall forward to the department proof of title, license, registration, or documentation upon receipt;

c. The nonresident purchaser, within 30 days after removing the boat or aircraft from this state ~~Florida~~, furnishes the department with proof of removal in the form of receipts for fuel, dockage, slippage, tie-down, or hangaring from outside of this state ~~Florida~~. The information so provided must clearly and specifically identify the boat or aircraft;

d. The selling dealer, within 30 days after the date of sale, provides to the department a copy of the sales invoice, closing statement, bills of sale, and the original affidavit signed by the nonresident purchaser affirming that the nonresident purchaser qualifies for exemption from sales tax pursuant to this subparagraph and attesting that the nonresident purchaser will provide the documentation required to substantiate the exemption claimed under this subparagraph ~~attesting that he or she has read the provisions of this section~~;

e. The seller makes a copy of the affidavit a part of his or her record for as long as required by s. 213.35; and

f. Unless the nonresident purchaser of a boat of 5 net tons of admeasurement or larger intends to remove the boat from this state within 10 days after the date of purchase or when the boat is repaired or altered, within 20 days after completion of the repairs or alterations, the nonresident purchaser applies to the selling dealer for a decal which authorizes 90 days after the date of purchase for removal of the boat. The nonresident purchaser of a qualifying boat may apply to the selling dealer within 60 days after the date of purchase for an extension decal that authorizes the boat to remain in this state for an additional 90 days, but not more than a total of 180 days, before the nonresident purchaser is required to pay the tax imposed by this chapter. The department is authorized to issue decals in advance to dealers. The number of decals issued in advance to a dealer shall be consistent with the volume of the dealer's past sales of boats which qualify under this sub-subparagraph. The selling dealer or his or her agent shall mark and affix the decals to qualifying boats in the manner prescribed by the department, before delivery of the boat.

(I) The department is hereby authorized to charge dealers a fee sufficient to recover the costs of decals issued, except the extension decal shall cost $425.

(II) The proceeds from the sale of decals will be deposited into the administrative trust fund.

(III) Decals shall display information to identify the boat as a qualifying boat under this sub-subparagraph, including, but not limited to, the decal's date of expiration.

(IV) The department is authorized to require dealers who purchase decals to file reports with the department and may prescribe all necessary records by rule. All such records are subject to inspection by the department.

(V) Any dealer or his or her agent who issues a decal falsely, fails to affix a decal, mismarks the expiration date of a decal, or fails to properly account for decals will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VI) Any nonresident purchaser of a boat who removes a decal before permanently removing the boat from this ~~the~~ state, or defaces, changes, modifies, or alters a decal in a manner affecting its expiration date before its expiration, or

who causes or allows the same to be done by another, will be considered prima facie to have committed a fraudulent act to evade the tax and will be liable for payment of the tax plus a mandatory penalty of 200 percent of the tax, and shall be liable for fine and punishment as provided by law for a conviction of a misdemeanor of the first degree, as provided in s. 775.082 or s. 775.083.

(VII) The department is authorized to adopt rules necessary to administer and enforce this subparagraph and to publish the necessary forms and instructions.

(VIII) The department is hereby authorized to adopt emergency rules pursuant to s. 120.54(4) to administer and enforce ~~the provisions of~~ this subparagraph.

If the nonresident purchaser fails to remove the qualifying boat from this state within the maximum 180 days after purchase or a nonqualifying boat or an aircraft from this state within 10 days after purchase or, when the boat or aircraft is repaired or altered, within 20 days after completion of such repairs or alterations, or permits the boat or aircraft to return to this state within 6 months after ~~from~~ the date of departure, except as provided in s. 212.08(7)(fff), or if the nonresident purchaser fails to furnish the department with any of the documentation required by this subparagraph within the prescribed time period, the nonresident purchaser is ~~shall be~~ liable for use tax on the cost price of the boat or aircraft and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2). The maximum 180-day period following the sale of a qualifying boat tax-exempt to a nonresident may not be tolled for any reason.

13 - Documentary Stamp Tax Consideration Determination
ISSUE: Many real property transactions include the transfer of tangible personal property. The parties to a transaction typically pay documentary stamp tax on the full consideration at the time of transfer unless the consideration attributable to tangible personal property is specifically agreed to at the time of transfer. In some cases one or both parties will seek a refund of tax paid on the total consideration arguing without contemporaneous documentation that a portion of the consideration was paid for tangible personal property.
PROPOSAL: The proposal would make it clear that tax paid on consideration for the transfer of tangible personal property is not available for refund unless the consideration was established by the parties prior to the transfer or recordation of the deed and the tax was paid in error. The documentary stamp tax is a tax on documents and should be determined at the time of recordation not with extraneous information after the fact offered by one or both parties. This proposal codifies First District Court of Appeal decision in the 1701 Collins Miami Owner, LLC vs Department of Revenue case.

Paragraph (a) of subsection (1) of section 201.02, Florida Statutes, is amended, and subsection (12) is added to that section, to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(1)(a) On deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, is ~~shall be~~ granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his or her direction, on each $100 of the consideration therefor the tax shall be 70 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax must ~~shall~~ be at the rate of 70 cents for each $100 or fractional part thereof of the consideration therefor. The parties to any document evidencing the transfer of real property shall establish the consideration before the transfer of the real property or the delivery of any document evidencing the transfer of the real property. For purposes of this section, consideration includes, but is not limited to, the money paid or agreed to be paid; the discharge of an obligation; and the amount of any mortgage, purchase money mortgage lien, or other encumbrance, whether or not the underlying indebtedness is assumed. If the consideration paid or given in exchange for real property or any interest therein includes property other than money, it is presumed that the consideration is equal to the fair market value of the real property or interest therein.

(12) The Department of Revenue shall adopt rules governing the implementation and operation of this section.

14 - State Fire Marshal Tax Percentages
ISSUE: The Department works with the Office of Insurance Regulation to periodically update the rates for various lines of fire coverage. Some taxpayers pay rates based on their own experience and avoid the published rate. The updating of these rates has not happened regularly. Out-of-date rates may cause taxpayers using the published rates to pay rates inconsistent with the intent of the law.
PROPOSAL: The proposal would seek a regular schedule of updating rates and allow the Department to publish the rates exempt from Chapter 120. In the alternative, the legislature could establish fixed rates. Revenue collected from the imposition of this tax funds the State Fire Marshal Trust Fund.

Paragraph (b) of subsection (1) of section 624.515, Florida Statutes, is amended to read:

624.515 State Fire Marshal regulatory assessment and surcharge; levy and amount.—

(1)

(b)1. Annually before the due date of the first installment, the department, with the assistance of the office, shall make available in an electronic format or otherwise the percentage of fire insurance contained within lines of insurance for the industry for that taxable year. The percentages determined by the office shall be exempt from chapter 120.

2. Insurers may choose to use their own previous 5 years of loss experience or rate filings that have been approved by the office instead of using the percentages provided by the department pursuant to subparagraph 1. However, if an insurer chooses not to use the percentages provided by the department, it must use the same alternative method for all lines of business, continue using the method for a minimum of 3 consecutive tax years, and attach documentation of the calculation and determination to the tax return ~~When it is impractical, due to the nature of the business practices within the insurance industry, to determine the percentage of fire insurance contained within a line of insurance written by an insurer on risks located or resident in Florida, the Department of Revenue may establish by rule such percentages for the industry. The Department of Revenue may also amend the percentages as the insurance industry changes its practices concerning the portion of fire insurance within a line of insurance~~.

15 - Pollutants Tax Registration Fee
ISSUE: Section 206.9931, Florida Statutes (F.S.), requires an entity to pay a $30 registration fee when requesting a pollutants license. Registration fees were eliminated during the 2017 legislative session. See Chapter 2017-036, Laws of Florida.
PROPOSAL: Removes obsolete language for pollutant tax registration fee repealed in 2017.

Subsection (1) of section 206.9931, Florida Statutes, is amended to read:

206.9931 Administrative provisions.—

(1) Any person producing in, importing into, or causing to be imported into this state taxable pollutants for sale, use, or otherwise and who is not registered or licensed pursuant to other parts of this chapter is hereby required to register and become licensed for the purposes of this part. Such person shall register as either a producer or importer of pollutants and shall be subject to all applicable registration and licensing provisions of this chapter, as if fully set out in this part and made expressly applicable to the taxes imposed herein, including, but not limited to, ss. 206.02, 206.021, 206.022, 206.025, 206.03, 206.04, and 206.05. For the purposes of this section, registrations required exclusively for this part shall be made within 90 days of July 1, 1986, for existing businesses, or <u>before</u> ~~prior to~~ the first production or importation of pollutants for businesses created after July 1, 1986. ~~The fee for registration shall be $30.~~ Failure to timely register is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

16 - Building Materials
ISSUE: Sections 290.001-290.014, F.S. (Enterprise Zones), were repealed on December 31, 2015, pursuant to s. 11, Ch. 2005-287, L.O.F. Accordingly, paragraph (g) of Section 212.08(5), F.S. (building materials used in the rehabilitation of real property located in an enterprise zone), has been rendered obsolete.
PROPOSAL: Removes obsolete language rendered ineffective after repeal of enterprise zone provisions in 2015.

Paragraphs (g) and (h) of subsection (5) and paragraph (f) of subsection (15) of section 212.08, Florida Statutes, are amended to read:

(5) EXEMPTIONS; ACCOUNT OF USE.—

~~(g) *Building materials used in the rehabilitation of real property located in an enterprise zone.*—~~

~~1. Building materials used in the rehabilitation of real property located in an enterprise zone are exempt from the tax imposed by this chapter upon an affirmative showing to the satisfaction of the department that the items have been used for the rehabilitation of real property located in an enterprise zone. Except as provided in subparagraph 2., this exemption inures to the owner, lessee, or lessor at the time the real property is rehabilitated, but only through a refund of previously paid taxes. To receive a refund pursuant to this paragraph, the owner, lessee, or lessor of the rehabilitated real property must file an application under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable. A single application for a refund may be submitted for multiple, contiguous parcels that were part of a single parcel that was divided as part of the rehabilitation of the property. All other requirements of this paragraph apply to each parcel on an individual basis. The application must include:~~

~~a. The name and address of the person claiming the refund.~~

~~b. An address and assessment roll parcel number of the rehabilitated real property for which a refund of previously paid taxes is being sought.~~

~~c. A description of the improvements made to accomplish the rehabilitation of the real property.~~

~~d. A copy of a valid building permit issued by the county or municipal building department for the rehabilitation of the real property.~~

~~e. A sworn statement, under penalty of perjury, from the general contractor licensed in this state with whom the applicant contracted to make the improvements necessary to rehabilitate the real property, which lists the building materials used to rehabilitate the real property, the actual cost of the building materials, and the amount of sales tax paid in this state on the building materials. If a general contractor was not used, the applicant, not a general contractor, shall make the sworn statement required by this sub-subparagraph. Copies of the invoices that evidence the purchase of the building materials used in the rehabilitation and the payment of sales tax on the building materials must be attached to the sworn statement provided by the general contractor or by the applicant. Unless the actual cost of building materials used in the rehabilitation of real property and the payment of sales taxes is documented by a general contractor or by the applicant in this manner, the cost of the building materials is deemed to be an amount equal to 40 percent of the increase in assessed value for ad valorem tax purposes.~~

~~f. The identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the rehabilitated real property is located.~~

~~g. A certification by the local building code inspector that the improvements necessary to rehabilitate the real property are substantially completed.~~

~~h. A statement of whether the business is a small business as defined by s. 288.703.~~

i. If applicable, the name and address of each permanent employee of the business, including, for each employee who is a resident of an enterprise zone, the identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the employee resides.

2. This exemption inures to a municipality, county, other governmental unit or agency, or nonprofit community-based organization through a refund of previously paid taxes if the building materials used in the rehabilitation are paid for from the funds of a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program. To receive a refund, a municipality, county, other governmental unit or agency, or nonprofit community-based organization must file an application that includes the same information required in subparagraph 1. In addition, the application must include a sworn statement signed by the chief executive officer of the municipality, county, other governmental unit or agency, or nonprofit community-based organization seeking a refund which states that the building materials for which a refund is sought were funded by a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program.

3. Within 10 working days after receipt of an application, the governing body or enterprise zone development agency shall review the application to determine if it contains all the information required by subparagraph 1. or subparagraph 2. and meets the criteria set out in this paragraph. The governing body or agency shall certify all applications that contain the required information and are eligible to receive a refund. If applicable, the governing body or agency shall also certify if 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees. The certification must be in writing, and a copy of the certification shall be transmitted to the executive director of the department. The applicant is responsible for forwarding a certified application to the department within the time specified in subparagraph 4.

4. An application for a refund must be submitted to the department within 6 months after the rehabilitation of the property is deemed to be substantially completed by the local building code inspector or by November 1 after the rehabilitated property is first subject to assessment.

5. Only one exemption through a refund of previously paid taxes for the rehabilitation of real property is permitted for any single parcel of property unless there is a change in ownership, a new lessor, or a new lessee of the real property. A refund may not be granted unless the amount to be refunded exceeds $500. A refund may not exceed the lesser of 97 percent of the Florida sales or use tax paid on the cost of the building materials used in the rehabilitation of the real property as determined pursuant to sub-subparagraph 1.e. or $5,000, or, if at least 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the amount of refund may not exceed the lesser of 97 percent of the sales tax paid on the cost of the building materials or $10,000. A refund shall be made within 30 days after formal approval by the department of the application for the refund.

6. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

7. The department shall deduct an amount equal to 10 percent of each refund granted under this paragraph from the amount transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20 for the county area in which the rehabilitated real property is located and shall transfer that amount to the General Revenue Fund.

8. For the purposes of the exemption provided in this paragraph, the term:

a. "Building materials" means tangible personal property that becomes a component part of improvements to real property.

b. "Real property" has the same meaning as provided in s. 192.001(12), except that the term does not include a condominium parcel or condominium property as defined in s. 718.103.

c. "Rehabilitation of real property" means the reconstruction, renovation, restoration, rehabilitation, construction, or expansion of improvements to real property.

d. "Substantially completed" has the same meaning as provided in s. 192.042(1).

9. This paragraph expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(h) *Business property used in an enterprise zone.—*

1. Business property purchased for use by businesses located in an enterprise zone which is subsequently used in an enterprise zone shall be exempt from the tax imposed by this chapter. This exemption inures to the business only through a refund of previously paid taxes. A refund shall be authorized upon an affirmative showing by the taxpayer to the satisfaction of the department that the requirements of this paragraph have been met.

2. To receive a refund, the business must file under oath with the governing body or enterprise zone development agency having jurisdiction over the enterprise zone where the business is located, as applicable, an application which includes:

a. The name and address of the business claiming the refund.

b. The identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the business is located.

c. A specific description of the property for which a refund is sought, including its serial number or other permanent identification number.

d. The location of the property.

e. The sales invoice or other proof of purchase of the property, showing the amount of sales tax paid, the date of purchase, and the name and address of the sales tax dealer from whom the property was purchased.

f. Whether the business is a small business as defined by s. 288.703.

g. If applicable, the name and address of each permanent employee of the business, including, for each employee who is a resident of an enterprise zone, the identifying number assigned pursuant to s. 290.0065 to the enterprise zone in which the employee resides.

3. Within 10 working days after receipt of an application, the governing body or enterprise zone development agency shall review the application to determine if it contains all the information required pursuant to subparagraph 2. and meets the criteria set out in this paragraph. The governing body or agency shall certify all applications that contain the information required pursuant to subparagraph 2. and meet the criteria set out in this paragraph as eligible to receive a refund. If applicable, the governing body or agency shall also certify if 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees. The certification shall be in writing, and a copy of the certification shall be transmitted to the executive director of the Department of Revenue. The business shall be responsible for forwarding a certified application to the department within the time specified in subparagraph 4.

4. An application for a refund pursuant to this paragraph must be submitted to the department within 6 months after the tax is due on the business property that is purchased.

5. The amount refunded on purchases of business property under this paragraph shall be the lesser of 97 percent of the sales tax paid on such business property or $5,000, or, if no less than 20 percent of the employees of the business are residents of an enterprise zone, excluding temporary and part-time employees, the amount refunded on purchases of business property under this paragraph shall be the lesser of 97 percent of the sales tax paid on such business property or $10,000. A refund approved pursuant to this paragraph shall be made within 30 days after formal approval by the department of the application for the refund. A refund may not be granted under this paragraph unless the amount to be refunded exceeds $100 in sales tax paid on purchases made within a 60-day time period.

6. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

7. If the department determines that the business property is used outside an enterprise zone within 3 years from the date of purchase, the amount of taxes refunded to the business purchasing such business property shall immediately be due and payable to the department by the business, together with the appropriate interest and penalty, computed from the date of purchase, in the manner provided by this chapter. Notwithstanding this subparagraph, business property used exclusively in:

a. Licensed commercial fishing vessels,

b. Fishing guide boats, or

c. Ecotourism guide boats

that leave and return to a fixed location within an area designated under s. 379.2353, Florida Statutes 2010, are eligible for the exemption provided under this paragraph if all requirements of this paragraph are met. Such vessels and boats must be owned by a business that is eligible to receive the exemption provided under this paragraph. This exemption does not apply to the purchase of a vessel or boat.

8. The department shall deduct an amount equal to 10 percent of each refund granted under this paragraph from the amount transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20 for the county area in which the business property is located and shall transfer that amount to the General Revenue Fund.

9. For the purposes of this exemption, "business property" means new or used property defined as "recovery property" in s. 168(c) of the Internal Revenue Code of 1954, as amended, except:

a. Property classified as 3-year property under s. 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

b. Industrial machinery and equipment as defined in sub-subparagraph (b)6.a. and eligible for exemption under paragraph (b); and

c. ~~Building materials as defined in sub-subparagraph (g)8.a.; and~~

~~d.~~ Business property having a sales price of under $5,000 per unit.

10. This paragraph expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

(15) ELECTRICAL ENERGY USED IN AN ENTERPRISE ZONE.—

(f) For the purpose of the exemption provided in this subsection, the term "qualified business" means a business which is:

1. First occupying a new structure to which electrical service, other than that used for construction purposes, has not been previously provided or furnished; or

2. Newly occupying an existing, remodeled, renovated, or rehabilitated structure to which electrical service, other than that used for remodeling, renovation, or rehabilitation of the structure, has not been provided or furnished in the three preceding billing periods.~~; or~~

~~3. Occupying a new, remodeled, rebuilt, renovated, or rehabilitated structure for which a refund has been granted pursuant to paragraph (5)(g).~~

17 - Method of Accounting
ISSUE: Section 220.42(3), F.S., referencing the completed contract method of accounting is obsolete and references Treasury Regulation citations that have been repurposed by the Internal Revenue Service (IRS).
PROPOSAL: Removes outdated references to "completed contract" method of accounting and obsolete references to a certain Treasury Regulations. This method has not been available since 1989.

Section 220.42, Florida Statutes, is amended to read:

220.42 Methods of accounting.—

(1) For purposes of this code, a taxpayer's method of accounting must ~~shall~~ be the same as such taxpayer's method of accounting for federal income tax purposes~~, except as provided in subsection (3)~~. If no method of accounting has been regularly used by a taxpayer, net income for purposes of this code must ~~shall~~ be computed by the ~~such~~ method that ~~as in the opinion of~~ the department determines most fairly reflects income.

(2) If a taxpayer's method of accounting is changed for federal income tax purposes, the taxpayer's method of accounting for purposes of this code must ~~shall~~ be similarly changed.

~~(3) Any taxpayer which has elected for federal income tax purposes to report any portion of its income on the completed contract method of accounting under Treasury Regulation 1.451-3(b)(2) may elect to return the income so reported on the percentage of completion method of accounting under Treasury Regulation 1.451-3(b)(1), provided the taxpayer regularly maintains its books of account and reports to its shareholders on the percentage of completion method. The election provided by this subsection shall be allowed only if it is made, in such manner as the department may prescribe, not later than the due date, including any extensions thereof, for filing a return for the taxpayer's first taxable year under this code in which a portion of its income is returned on the completed contract method of accounting for federal tax purposes. An election made pursuant to this subsection shall apply to all subsequent taxable years of the taxpayers unless the department consents in writing to its revocation.~~

18 - Rulemaking Authority
ISSUE: The Department has received at least one final order from the Division of Administrative Hearings (DOAH) holding that the Department may not rely on a general grant of rulemaking authority to adopt a rule implementing other specific revenue laws. The First District Court of Appeal has ruled inconsistently on this issue. It appears that a grant of rulemaking authority and a specific law to be implemented has been confused by some courts to require a grant of specific rulemaking authority. Most revenue laws, especially those predating the administrative procedures act, do not contain specific rulemaking authority for each provision.
PROPOSAL: The proposal ensures that the Department has the necessary rulemaking authority to promulgate rules implementing the tax laws. The Department's rules must be approved by the Governor and Cabinet and are necessary to ensure taxpayers understand application of the tax laws and the Department treats taxpayers consistently.

Subsection (3) is added to section 213.06, Florida Statutes, to read:

(3) The grants of rulemaking authority in subsections (1) and (2) are sufficient to allow the department to adopt rules implementing all revenue laws administered by the department. Each revenue law administered by the department is an enabling statute authorizing the department to implement it, regardless of whether the enabling statute contains its own grant of rulemaking authority.

19 - Emergency Rules
ISSUE: Current law provides emergency rule making authority for revenue laws effective less than 60 days after the end of the session in which the change enacted under section 213.06(2), F.S. This provision is extremely helpful but fails to include many revenue laws, which typically have an October 1 effective date or changes with an upon becoming law effective date when the bill is not transferred to the Governor from the Legislature for a number of weeks or months delaying the Department's ability to begin rulemaking.
PROPOSAL: This proposal provides that emergency rulemaking is available if a legislative change occurs less than 120 days after the close of the legislative session in which enacted or after the Governor approves or fails to veto the measure whichever is later. This provision only applies when the change affects a tax rate or a collection or reporting procedure which affects a substantial number of dealers or persons subject to the tax change or procedure. The revision also provides that emergency rules adopted under revised section 212.06(2) are: • exempt from s. 120.54(4)(c) (i.e., 90 day expiration period; restricted renewal) • shall remain in effect for 6 months or until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act, and the rule may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

Section 213.06, Florida Statutes, is amended, to read:

213.06 Rules of department; circumstances requiring emergency rules.—

(1) The Department of Revenue may ~~has the authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of the revenue laws.

(2) The executive director of the department may adopt emergency rules pursuant to s. 120.54 on behalf of the department when the effective date of a legislative change occurs sooner than 120 ~~60~~ days after the close of a legislative session in which enacted or after the governor approves or fails to veto the legislative change, whichever is later, and the change affects a tax rate or a collection or reporting procedure which affects a substantial number of dealers or persons subject to the tax change or procedure. The Legislature finds that such circumstances qualify as an exception to the prerequisite of a finding of immediate danger to the public health, safety, or welfare as set forth in s. 120.54(4)(a) and qualify as circumstances requiring an emergency rule. Emergency rules adopted under this subsection are exempt from s. 120.54(4)(c), remain in effect for 6 months or until replaced by rules adopted under the nonemergency rulemaking procedures of the Administrative Procedure Act, and may be renewed during the pendency of procedures to adopt permanent rules addressing the subject of the emergency rules.

20 - Stay of Ch. 120 Proceedings
ISSUE: Sections 120.56(4) and 120.595 provide for a stay of litigation challenging an agency statement as an unadopted rule upon the publication of a notice of rulemaking under section 120.54(3), Florida Statutes, addressing the agency statement. This provision does not apply to emergency rulemaking and is not consistent with the procedures of Cabinet agencies.
PROPOSAL: This proposal extends this provision for a stay of litigation challenging an agency statement as an unadopted rule upon the publication of a notice of rule development under s. 120.54(2), Florida Statutes and a notice of adoption of an emergency rule under section 120.54(4), to remain in place while the emergency rule remains in effect. Other provisions of law allow the challenge of the emergency rule on an expedited basis.

Subsection (19) is added to section 120.80, Florida Statutes, to read:

(19) AGENCIES HEADED BY THE GOVERNOR AND THE CABINET.—In a proceeding under s. 120.56(4) challenging a statement of an agency headed by the Governor and the Cabinet, upon notification to the administrative law judge provided before the final hearing that the agency has published a notice of rule development under s. 120.54(2) regarding the statement and for which a notice of adoption of an emergency rule under s. 120.54(4) was also published, such notice automatically operates as a stay of proceedings pending adoption of the statement as a rule or while the emergency rule remains in effect. The administrative law judge may vacate the stay for good cause shown. A stay of proceedings under this subsection remains in effect so long as the agency is proceeding expeditiously and in good faith to adopt the statement as a rule or the emergency rule remains in effect.