

# CARLTON FIELDS

ATTORNEYS AT LAW

## TAXATION

This is a summary of significant taxation legislation that passed in the 2003 Regular Session and Special Session A of the Florida Legislature. Please note that this report does not summarize every piece of taxation legislation enacted, nor is it meant to be an exhaustive section-by-section analysis of those bills included. The goal of this report is to provide a general overview of legislative tax actions that are likely to be of interest to our clients, attorneys, and consultants.

All of the taxation bills summarized in this report have been passed by the Regular Session and Special Session A of the 2003 Florida Legislature. As of this writing, many of them are awaiting review of the Governor and are subject to the Governor's veto authority. The reader is therefore encouraged to check the ultimate status of any bill by visiting the Legislature's web site ([www.leg.state.fl.us](http://www.leg.state.fl.us)). Please select the "Enrolled" (ER) version of the bill. Chapter Law citations and final legislative staff analyses of bills are also available on the Legislature's web site. Special Session A bills are noted with an "A" after the bill number, e.g., 120-A. This report was compiled in substantial part using public records data from the Florida Senate and the Florida House of Representatives.

---

● **HB 267**  
**Unpaid Taxes/Sale of Certificate**

This bill authorizes counties to conduct the sale of tax certificates for unpaid taxes by electronic means.

This bill amends s. 197.432, F.S.

Effective date: upon becoming law.

● **HB 691**  
**Economic Development  
Incentive Program**

This bill revises laws relating to several of the state's economic development incentive programs.

**Capital Investment  
Tax Credit Program**

Under the Capital Investment Tax Credit (CITC) Program, a "qualifying business" that establishes a "qualifying project" in this state is eligible to receive an annual credit against the business's corporate income tax liability or the premium tax liability generated by the project. The bill modifies the definition of a "qualifying project" eligible to receive a capital investment tax credit to expressly include:

a new financial services facility in this state which creates at least 2,000 new jobs in this state, pays an average annual wage of \$50,000, and makes a cumulative capital investment of at least \$30 million.

**Tax Refund Program for Qualified  
Defense Contractors**

The bill modifies the definition of "Department of Defense contract" in the Qualified Defense Contractor Tax Refund Program to include certain contracts for products or services for homeland security. Under the revised definition, eligible contracts may be made with the Department of Homeland Security. Businesses having Department of Defense contracts may be eligible for refunds of specified taxes paid to this state.

### **Tax Refund Program for Qualified Target Industry Businesses**

The Office of Tourism, Trade, and Economic Development and Enterprise Florida, Inc., are expressly directed by the bill to consider the development of strong industrial clusters which include defense and homeland security businesses when identifying target industry businesses under the Qualified Target Industry (QTI) Tax Refund Program. The bill also extends the deadline to June 30, 2004, for a qualified target industry business to apply for an economic stimulus exemption from its contractual obligations with the Office of Tourism, Trade, and Economic Development (OTTED). An economic-stimulus exemption will enable a qualified target industry business to remain in the QTI Tax Refund Program if it has been unable to comply with its contractual obligations with OTTED due to economic conditions or terrorism. The business will be able to receive the exemption in lieu of a tax refund.

### **Quick Action Closing Fund**

The bill revises the Quick Action Closing Fund to allow the Governor to disburse such funds to an eligible economic development project without consulting the Legislative Budget Commission through the process prescribed in s. 216.177, F.S. The bill also allows the Governor, in consultation with the President of the Senate and the Speaker of

the House of Representatives, to request a budget amendment from the Legislative Budget Commission for authority to reallocate unencumbered funds in the Quick Action Closing Fund to other economic development programs and operations in an emergency or special circumstance.

Effective date: upon becoming law.

### **● CS/SB 1024 Non-Ad Valorem Assessments**

This bill expands the time frame for holding a public hearing to adopt a non-ad valorem assessment roll, and authorizes an alternative notice process for certain changes to non-ad valorem assessments.

This bill amends s. 197.3632, F.S.

Effective date: upon becoming law.

### **● SB 1162 Taxation**

This bill revives and reenacts provisions relating to the tourist development tax and the Florida Taxpayer's Bill of Rights which are otherwise scheduled to be repealed October 1, 2005.

This bill revives and readopts ss. 125.0104(7) and 192.0105, F.S.

Effective date: upon becoming law.

### **● CS/SB 1176 Tax Administration**

The bill adopts numerous improvements to the administration and enforcement of Florida's revenue laws. Specifically, the bill does the following:

### **Communications Services Tax**

- Specifies what the service address shall be in the case of third-number and calling-card calls.
- Provides an exemption for the sale of communications services to a home for the aged.
- Creates penalties for providers who improperly situs customers and fail to make corrections when customers are assigned to the incorrect local jurisdiction.
- Authorizes that the penalty for a communications services dealer failing to respond to a notice from the Department of Revenue or request an extension may be compromised pursuant to s. 213.21, F.S.
- Provides a mechanism for correcting possible errors in situsing of local communications services tax revenues.
- Requires that each person selling communications services in more than one jurisdiction within Florida assist the Department of Revenue by providing necessary data in an electronic format specified by the department. The bill imposes a penalty for failure to comply.

### **Fuel Taxes**

- Inclusion of a definition of the new fuel "bio-diesel" and licensing requirements consistent with other fuels.
- Imposes a \$5,000 penalty for retailers who refuse to provide required reports.
- Requires wholesalers or terminal suppliers who divert a load of Florida fuel to pay the Florida tax on the return and establish limits to the number of

loads that may be diverted to Florida before an importer license is required.

- Imposes a flat \$5,000 penalty for taxpayers required to file electronically but fail to do so.
- Changes the requirement for corporations from having to provide certified copies of corporate documents to simply providing the Department of Revenue with a statement that the corporation is in good standing with the Florida Department of State.
- Authorizes, by statute, the Department of Revenue to obtain fingerprints and personal data from persons applying for certain fuel licenses.

### **Unemployment Compensation Tax**

- Provides that, for unemployment compensation tax purposes, a limited liability company will be treated the same as it is for federal income tax purposes.
- Provides that an employer may not be considered a successor under this section if the employer purchases a company with a lower rate into which employees with job functions unrelated to the business endeavors of the predecessor are transferred for the purpose of acquiring the low rate and avoiding payment of contributions.
- Authorizes the Department of Revenue to charge no more than 10 percent of the total cost of the interagency agreement for the overhead or indirect costs of providing unemployment compensation tax collections.

### **Other Tax Administration Issues**

- Provides authority for the Department to require dealers to report rental car surcharge collections on a county-by-county basis in order to facilitate the allocation of surcharge revenues to each Department of Transportation district.
- Authorizes carriers to prorate the tax on their purchases of motor fuel and diesel fuel used in a railroad locomotive or vessel when the carrier has been in business for less than a year.
- Permits the Department of Revenue to allow a taxpayer with a perfect tax return filing record for at least 12 consecutive months to retain his or her collection allowance, under certain circumstances.
- Specifies that only one penalty of 10 percent, which may not be less than \$50, shall be imposed for failure to timely file a sales and use tax return and to timely pay the tax shown due on the return.
- Permits the Department of Revenue to establish new tax brackets when necessary without requiring rulemaking when the Legislature changes a tax rate.
- For voluntary self-disclosure of tax liability, the bill changes the time period that the Department of Revenue may settle and compromise tax and interest due. The time period is changed from 5 years to 3 years immediately preceding the date the taxpayer contacted the Department of Revenue.
- Provides that failure to make an electronic funds transfer payment will be subject to the same prosecution as payment with a worthless check, bank draft, or debit card.
- Eliminates the requirement that the annual intangible tax return include language permitting a voluntary contribution of \$5 for the Election Campaign Financing Trust Fund, because the trust fund expired November 4, 1996.
- Authorizes an affiliate group of corporations that created a service company with an affiliated group on July 30, 2002, to receive the salary credits for Insurance Premium Tax purposes.
- Repeals the restriction on the use of Local Government Infrastructure Surtax revenue to supplant or replace user fees or reduce ad valorem taxes.
- Repeals the repeal of the certified audits pilot project, making it permanent.
- Expands the sales and use tax exemption for building materials used in a designated brownfield area of affordable housing.
- Expands the use, by a charter county, of the Charter County Transit System Surtax to include planning, development, construction, operation and maintenance of, as well as the payment of principal and interest on bonds issued for, roads and bridges in the county and bus and fixed guideway systems.
- Provides that local governments that collect a municipal resort tax may participate in the RISE (Registration Information Sharing and Exchange) Program.
- Corrects an unintended consequence of last year's legislation by restoring the

automatic renewal of lands classified as agricultural under s. 193.461, F.S., if the county waives the requirement for annual applications. It also declares that, for January 1, 2003, failure of a property owner to return the agricultural classification form or card in a county that waived the annual application process shall constitute an extenuating circumstance.

Effective date: July 1, 2003, except as otherwise provided.

● **SB 1632**  
**County Governments**

This bill specifies additional services for which counties may create municipal service taxing or benefit units.

This bill amends s. 125.01(1)(q), F.S.

Effective date: July 1, 2003.

● **HB 1721**  
**Subdivision Property**

This bill increases the tax deed application fee from \$15 to \$75; requires that before property is sold under an outstanding tax certificate on land that is either submerged land or common elements in a subdivision, each owner of property contiguous to the property subject to sale must be notified; requires that a county notify each owner of such property within 90 days after property is placed on the list of lands available for taxes if the county holds the tax certificate and does not purchase the property; and requires that the value of taxes and non-ad valorem assessments against common elements of a subdivision be prorated by the property appraiser and included within the value of the lots within the subdivision.

This bill amends ss. 197.502, 197.522 and 197.582, F.S., and creates an unspecified section of Florida Law.

Effective date: January 1, 2004.

● **HB 1813**  
**Local Option Fuel Taxes/  
Motor Fuel**

The bill amends s. 206.60, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent county fuel tax," levied pursuant to s. 206.41(1)(b), F.S., may be spent, at the discretion of county commissions.

The bill amends s. 206.605, F.S., to add bicycle paths and pedestrian pathways to those projects for which the "1-cent municipal fuel tax," levied pursuant to s. 206.41(1)(c), F.S., may be spent, at local discretion.

The bill amends s. 336.025(1)(b), F.S., to expand how counties and municipalities may expend funds received from the local option gas tax. This bill authorizes funds from the last 5 cents of the 11-cent local option fuel tax to be expended for projects needed to meet immediate local transportation problems and for other transportation related expenditures critical for building comprehensive roadway networks by local governments.

Subsection (7) of s. 336.025, F.S., is also amended to provide that proceeds from the 11-cent local option gas tax may be expended on current expenditures for the construction or reconstruction of sidewalks. Subsection (8) is amended authorizing a municipality in a county with a population of 50,000 or less to use the proceeds from the first 6 cents of the 11-cent local option gas tax for infrastructure projects, provided such

projects are consistent with the local government's comprehensive plan.

Effective date: upon becoming law.

● **HB 1839**  
**Corporate Income Tax**

This bill updates the Florida Income Tax Code to reflect changes in the U.S. Internal Revenue Code enacted by Congress since January 1, 2002. This definition provides for "piggybacking" each change made during 2002 in the Internal Revenue Code.

This bill ensures current administration of the corporate income tax and provides that corporations that are subject to Florida corporate income tax can base their tax calculations on current IRS rules. Failure to pass this bill would result in increased bookkeeping burdens for these entities.

Since Florida's corporate income tax is based upon a taxpayer's income as calculated for federal tax purposes, this bill allows Florida to rely on the efforts of the IRS to ensure the accuracy of the starting point for determining tax liability. Passage of this bill helps keep down the cost of enforcing Florida's income tax law.

Effective date: upon becoming law.

● **SB 18-A**  
**Taxpayer Amnesty**

The bill, passed during Special Session A, directs the Department of Revenue to develop and implement, not later than July 1, 2003, an amnesty program for taxpayers subject to the state and local taxes imposed by chapters 125, 198, 199, 201, 202, 203, 206, 211, 212, 220, 221, 336, 370, 376, 403, 538, 624, 627, and 681, Florida Statutes.

The amnesty program is a one-time opportunity for eligible taxpayers to satisfy their tax liabilities under the revenue laws of this state and thereby avoid specified criminal prosecution, penalties, and interest. Any taxpayer that has entered into a settlement of liability for state or local option taxes before July 1, 2003, whether or not full and complete payment has been made of the settlement amount, is not eligible to participate in the amnesty program.

The amnesty program will be in effect for a 4-month period beginning on July 1, 2003, and ending on October 31, 2003. The amnesty program applies only to tax liabilities due prior to July 1, 2003. In order to participate in the amnesty program, eligible taxpayers must file the forms and other documentation specified by the Department of Revenue, including, but not limited to, returns and amended returns, must make full payment of tax due, and must make payment of the interest due, if any, as further provided.

A taxpayer may participate in the amnesty program whether or not the taxpayer is under audit, inquiry, examination, or civil investigation initiated by the Department of Revenue, regardless of whether the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the Department of Revenue, and without regard to whether the amount due is subject to a pending administrative or judicial proceeding.

Under certain circumstances, the taxpayer will be required to pay the full amount of the tax due and 50 percent of the amount of interest due.

No penalties will be imposed on any tax paid pursuant to the amnesty program, and

the Department of Revenue will not initiate a criminal investigation against or refer for prosecution any taxpayer participating in the amnesty program with respect to the failure to timely pay the tax disclosed in the amnesty program.

The executive director of the Department of Revenue is authorized to adopt emergency rules under sections 120.536(1) and 120.54(4), Florida Statutes, to implement the amnesty program. Such rules may provide forms, procedures, terms, conditions, and

methods of payment appropriate for fair and effective administration of the amnesty program and to ensure the taxpayer's ongoing commitment to proper remittance of taxes to the state. Notwithstanding any other law, the emergency rules will remain in effect until the later of the date that is 6 months after the date of adoption of the rule or the date of final resolution of all amnesty applications filed pursuant to the bill.

Effective date: upon becoming law, except as otherwise indicated within the bill.