

By Senator Ostalkiewicz

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A bill to be entitled  
An act relating to taxpayer rights; amending s.  
213.015, F.S.; providing additional rights to  
taxpayers regarding interest paid on delinquent  
taxes and interest received on delinquent  
refunds, freedom from being reaudited, rights  
of appeal, rights to obtain reimbursement of  
certain fees on favorable appeals, the right to  
compensation for providing certain information  
or documents to the department, freedom from  
commissioned auditors, statutes of limitation,  
the time permitted to file for refunds, and the  
right to apply overpayments to the payment of  
other taxes due; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Notwithstanding any other provision of law:

(1) The Department of Revenue shall pay interest at the market rate on the amount of refund due any person for overpayments of taxes, payment of taxes not due, or taxes paid in error, beginning 90 days after a refund application is filed with the department.

(2) A taxpayer may be charged interest on delinquent taxes at no more than the market rate paid by the Department of Revenue on delinquent refunds.

(3) A taxpayer may appeal all tax assessments and penalties to an administrative hearing officer prior to paying the contested amount. The hearing officer must issue a final order within 90 days after the appeal is filed.

1           (4) Outside auditors hired by the Department of  
2 Revenue may not be compensated based on the amount of tax  
3 assessed as a result of the audit.

4           (5) The Department of Revenue may not audit any return  
5 after a period of 2 years from the date it is filed. If a  
6 return is audited, the department may not reaudit the taxpayer  
7 for the same time period, unless fraud is suspected. A  
8 taxpayer may not file for a refund after a period of 3 years  
9 after the date the tax was paid.

10           (6) If a taxpayer appeals an audit and the appeal  
11 results in a finding in favor of the taxpayer, the Department  
12 of Revenue is liable for reasonable accountant's fees and  
13 attorney's fees incurred by the taxpayer as a result of the  
14 audit.

15           (7) If a taxpayer provides information or documents to  
16 the Department of Revenue and the department subsequently  
17 requests the taxpayer to provide the same information or  
18 documents, the department must pay reasonable compensation to  
19 the taxpayer for providing such information or documents.

20           (8) If a taxpayer overpays a tax liability and  
21 underpays another tax liability and notifies the Department of  
22 Revenue of the overpayment, the department must apply the  
23 overpayment to the underpaid tax liability before imposing a  
24 penalty against the taxpayer for the underpayment.

25           Section 2. Subsections (8), (12), and (14) of section  
26 213.015, Florida Statutes, are amended and subsections (16),  
27 (17), (18), and (19) are added to that section, to read:

28           213.015 Taxpayer rights.--There is created a Florida  
29 Taxpayer's Bill of Rights to guarantee that the rights,  
30 privacy, and property of Florida taxpayers are adequately  
31 safeguarded and protected during tax assessment, collection,

1 and enforcement processes administered under the revenue laws  
2 of this state. The Taxpayer's Bill of Rights compiles, in one  
3 document, brief but comprehensive statements which explain, in  
4 simple, nontechnical terms, the rights and obligations of the  
5 Department of Revenue and taxpayers. The rights afforded  
6 taxpayers to assure that their privacy and property are  
7 safeguarded and protected during tax assessment and collection  
8 are available only insofar as they are implemented in other  
9 parts of the Florida Statutes or rules of the Department of  
10 Revenue. The rights so guaranteed Florida taxpayers in the  
11 Florida Statutes and the departmental rules are:

12 (8) The right to seek review, through formal or  
13 informal proceedings, of any adverse decisions relating to  
14 determinations in the audit or collections processes and the  
15 right to seek a reasonable administrative stay of enforcement  
16 actions while the taxpayer pursues other administrative  
17 remedies available under Florida law (see ss. 120.80(14)(b),  
18 213.21(1), 220.717, and 220.719(2)). Such remedies include the  
19 right to appeal all assessments and penalties to an  
20 administrative hearing officer prior to paying the contested  
21 amount and the right to have a final order issued within 90  
22 days after the appeal is filed.

23 (12) The right to procedures that ~~which~~ assure that  
24 the individual employees of the department or outside auditors  
25 retained by the department are not paid, evaluated, or  
26 promoted on the basis of the amount of assessments or  
27 collections from taxpayers (see s. 213.30(2)).

28 (13) The right to an action at law within the  
29 limitations of s. 768.28, relating to sovereign immunity, to  
30 recover damages against the state or the Department of Revenue

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1 for injury caused by the wrongful or negligent act or omission  
2 of a department officer or employee (see s. 768.28).

3 (14)(a) The right of the taxpayer or the department,  
4 as the prevailing party in a judicial or administrative action  
5 brought or maintained without the support of justiciable  
6 issues of fact or law, to recover all costs of the  
7 administrative or judicial action, including reasonable  
8 attorney's fees, and of the department and taxpayer to settle  
9 such claims through negotiations (see ss. 57.105 and 57.111).

10 (b) The right of a taxpayer to recover reasonable  
11 accountant's fees and attorney's fees incurred in an audit, if  
12 the taxpayer appeals a department ruling and the appeal  
13 results in a finding in favor of the taxpayer.

14 (16)(a) The right to receive interest at the market  
15 rate on a refund that is not paid within 90 days after filing  
16 a completed application for refund of overpayments, payment of  
17 taxes not due, or taxes paid in error.

18 (b) The right to be charged interest on delinquent  
19 taxes at no more than the market rate paid by the department  
20 on delinquent refunds.

21 (17) The right to have returns audited within 2 years  
22 after they are filed; and the right to file for a refund  
23 within 3 years after the tax was paid and to not be reaudited  
24 for the same time period, unless fraud is suspected.

25 (18) The right to reasonable compensation for the  
26 resubmission of information or documents to the department.

27 (19) The right to have any overpayments of taxes  
28 applied to separate underpayments of other tax liabilities  
29 before penalties are imposed for the underpayments.

30 Section 3. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Provides specified rights for taxpayers including a cap on interest paid on delinquent taxes, the right to immunity from reaudit for a given time period, the right to receive interest on refunds that are not paid within 90 days, the right to appeal assessments and penalties to an administrative hearing officer and receive a final order within 90 days, the right to reimbursement of costs and fees incurred in a successful appeal, the right to compensation for resubmission of certain information or documents to the department, a 2-year statute of limitations on audits, the right to file for a refund within 3 years, and the right to have the amount of the overpayment of one tax applied to the amount of the underpayment of another.