

By Senator Sebesta

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A bill to be entitled

An act relating to the municipal public service tax; creating s. 166.235, F.S.; providing procedures for refunds or credits; providing that this act is remedial in nature and applies to prior claims; providing an effective date.

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

Section 1. Section 166.235, Florida Statutes, is created to read:

166.235 Procedure on purchaser's request for refund or credit.--

(1) A purchaser seeking a refund of or credit for public service taxes shall submit a written request therefor to the seller within the time prescribed in s. 166.234(6) and in accordance with this section. A request may not be granted unless the amount claimed was collected from the purchaser and was not due to any municipality.

(a) The request must be signed by the purchaser and is considered completed for purposes of this section and the limitations period if it states the purchaser's name, mailing address, and account number; the tax amounts claimed; the specific months during which those amounts were collected; and the reason for the purchaser's claim that such amounts were not due to any municipality. Upon receipt of a completed request, the seller shall ascertain whether it collected the tax claimed from the purchaser and whether the request is timely.

(b) Within 30 days following receipt of a completed request, the seller shall determine whether lists available

1 pursuant to s. 166.233(3) support the purchaser's claim and
2 whether all or any portion of the tax timely claimed was not
3 due to any municipality and was collected solely as a result
4 of the seller's error. The seller shall refund or credit the
5 purchaser's account for any such amount within 45 days
6 following its determination thereof.

7 (c) With respect to all amounts timely claimed which
8 the seller collected from the purchaser and which the seller
9 has not determined to be subject to refund or credit pursuant
10 to paragraph (b), the seller shall within 30 days following
11 receipt of the completed request provide a copy thereof to
12 each municipality to which the taxes claimed were remitted and
13 to each municipality that has asserted in writing the right to
14 impose the tax in a geographic area that includes the
15 purchaser's billing address or service address, as the case
16 may be. Within 30 days following receipt of such information,
17 each such municipality shall notify the seller in writing if
18 it approves the issuance of a refund or credit for all or a
19 specified portion of the purchaser's claim. A municipality
20 shall approve the refund or credit except to the extent that
21 the tax was due to such municipality. Within 45 days
22 following receipt of notifications establishing that all of
23 the municipalities receiving the request have approved a
24 refund or credit, the seller shall issue a refund or credit
25 the purchaser's account for the amount approved by all such
26 municipalities. The seller's obligation to refund or credit
27 the purchaser's account is limited to amounts approved in
28 accordance with this section. The seller is entitled to a
29 corresponding refund or credit from any municipality to which
30 the tax was remitted.

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1 (d) The seller shall issue a written response advising
2 the purchaser of the disposition of the purchaser's request.
3 The response shall specify any portion of the tax claimed that
4 is being refunded or credited to the purchaser's account and
5 the reason for denial of any portion of the request. Reasons
6 for denial include untimely submission of the request, the
7 failure of the seller to collect the tax claimed, the absence
8 of municipal approval to issue a refund or credit, the
9 previous receipt by the purchaser of a refund of or credit for
10 the same tax, and the failure to provide information required
11 to complete the request. A copy of each notification received
12 from a municipality pursuant to paragraph (c) must accompany
13 the response. If the seller submitted the request to a
14 municipality but received no such notification, the response
15 must so state. With respect to any portion of the request
16 which is granted, the response must be issued at the time of
17 refund or credit to the purchaser's account. With respect to
18 any portion of the request which is denied, the response must
19 be issued within 90 days following receipt of the purchaser's
20 completed request.

21 (e) The seller may deduct from any refund or credit
22 under this section any amount owed by the purchaser to the
23 seller which is delinquent.

24 (2) This section provides the sole and exclusive
25 procedure and remedy for a purchaser who claims that a seller
26 has collected municipal public service taxes that were not
27 due. An action arising as a result of the claimed collection
28 of municipal public service taxes that were not due may not be
29 commenced or maintained by or on behalf of a purchaser against
30 a seller or municipality unless the purchaser pleads and
31 proves that the purchaser has exhausted the procedures in

1 subsection (1) and that the defendant has failed to comply
2 with that subsection; however, the lack of a determination of
3 a seller under paragraph (1)(b) does not constitute a failure
4 to comply with subsection (1) if the seller has complied with
5 paragraphs (1)(c) and (d). In any such action it is a
6 complete defense that the seller or municipality has refunded
7 the taxes claimed or has credited the purchaser's account
8 therewith; and in such an action against a seller it is a
9 complete defense that the seller collected the tax in reliance
10 upon written information provided by the municipality,
11 pursuant to s. 166.233(3) or supplementary information. Such
12 an action must be commenced within 180 days following the
13 purchaser's submission of a completed request, or it is
14 barred. The relief available to a purchaser as a result of
15 collection of municipal public service taxes that were not due
16 is limited to a refund of or credit for such taxes.

17 Section 2. This act is remedial in nature, and applies
18 to all claims asserted by purchasers before, on, or after the
19 effective date of this act based upon the alleged collection
20 of municipal public service taxes that were not due, except
21 for claims that have been finally resolved by judgment,
22 settlement, or the issuance of refunds or credits before the
23 effective date of this act. With respect to any claim that
24 was properly asserted before the effective date of this act
25 and that is the subject of pending litigation in a trial or
26 appellate court on or after the effective date of this act,
27 the court shall, upon motion, direct the parties to comply
28 with the procedures prescribed in section 166.235, Florida
29 Statutes, and allow such amendments of the pleadings and enter
30 such amendments of the pleadings and enter such other orders

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1 as are appropriate to dispose of the cause in a manner
2 consistent with section 166.235, Florida Statutes.

3 Section 3. This act shall take effect upon becoming a
4 law.

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7 SENATE SUMMARY

8 Provides procedures for a purchaser seeking a refund of
9 or credit for municipal public service taxes.

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