

By the Committee on Fiscal Resource and Senator Klein

314-1905-00

1                                   A bill to be entitled  
2           An act relating to tax administration; amending  
3           s. 120.80, F.S.; providing for the court to  
4           award attorney's fees and costs, as specified,  
5           when a taxpayer contests an assessment of tax,  
6           penalty, or interest or the denial of a refund  
7           with respect to any tax imposed under ch. 212,  
8           F.S., under the Administrative Procedure Act;  
9           amending s. 213.21, F.S.; specifying the time  
10          period within which the Department of Revenue  
11          shall issue a notice of decision when a  
12          taxpayer contests such an assessment, penalty,  
13          or interest or refund denial using informal  
14          conference procedures; providing an effective  
15          date.

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

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19           Section 1. Paragraph (b) of subsection (14) of section  
20 120.80, Florida Statutes, is amended to read:

21           120.80 Exceptions and special requirements;  
22 agencies.--

23           (14) DEPARTMENT OF REVENUE.--

24           (b) Taxpayer contest proceedings.--

25           1. In any administrative proceeding brought pursuant  
26 to this chapter as authorized by s. 72.011(1), the taxpayer  
27 shall be designated the "petitioner" and the Department of  
28 Revenue shall be designated the "respondent," except that for  
29 actions contesting an assessment or denial of refund under  
30 chapter 207, the Department of Highway Safety and Motor  
31 Vehicles shall be designated the "respondent," and for actions

1 | contesting an assessment or denial of refund under chapters  
2 | 210, 550, 561, 562, 563, 564, and 565, the Department of  
3 | Business and Professional Regulation shall be designated the  
4 | "respondent."

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

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

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

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

29 |         5. The prevailing party, in a proceeding under ss.  
30 | 120.569 and 120.57 authorized by s. 72.011(1), may recover all  
31 | legal costs incurred in such proceeding, including reasonable

1 attorney's fees, if the losing party fails to raise a  
2 justiciable issue of law or fact in its petition or response.

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

11 Section 2. Paragraph (d) is added to subsection (1) of  
12 section 213.21, Florida Statutes, to read:

13 213.21 Informal conferences; compromises.--

14 (1)(a) The Department of Revenue may adopt rules for  
15 establishing informal conference procedures within the  
16 department for resolution of disputes relating to assessment  
17 of taxes, interest, and penalties and the denial of refunds,  
18 and for informal hearings under ss. 120.569 and 120.57(2).

19 (b) The statute of limitations upon the issuance of  
20 final assessments shall be tolled during the period in which  
21 the taxpayer is engaged in a procedure under this section.

22 (c) During procedures under this section, the taxpayer  
23 has the right to be represented at the taxpayer's cost and to  
24 record procedures electronically or manually at the taxpayer's  
25 cost.

26 (d) Upon receipt of a notice of proposed assessment or  
27 denial of a claim for refund, a taxpayer may initiate an  
28 informal proceeding under this section by filing a timely  
29 written protest with the department. The department shall  
30 notify the taxpayer within 14 days after receipt of the  
31 protest that it has been received by the department and the

1 date of its receipt. If a protest involves a dispute relating  
2 to an assessment of taxes, interest, or penalty imposed under  
3 chapter 212 or a denial of a refund claim related to taxes  
4 imposed under chapter 212, the department shall have 150 days  
5 following receipt of the taxpayer's written protest in which  
6 to issue a notice of decision. If the department does not  
7 issue its notice of decision within 150 days, interest will  
8 not accrue on any assessment that is the subject of the  
9 protest during the period beginning at the expiration of the  
10 150 days and ending on the date the department issues its  
11 notice of decision; however, that interest will continue to  
12 accrue during that period if the reason for the department's  
13 failure is a request by the taxpayer for an extension of time.  
14 Any agreement by the department and the taxpayer concerning  
15 mutual consent to an extension must be in writing and must  
16 state whether or not interest will continue to accrue during  
17 the extension period.

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

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21                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
22   COMMITTEE SUBSTITUTE FOR  
23   SB 1366

24 This committee substitute removes language that takes final  
25 order authority from the Department of Revenue in sales tax  
26 cases and replaces it with a provision that awards attorneys  
27 fees in cases where the court finds that the department  
28 improperly rejected or modified the conclusions of law in a  
29 recommended order issued by an administrative law judge.

30 This bill also removed language requiring the department to  
31 issue a notice of decision within 150 days of the filing of a  
protest in a sales tax assessment. It adds a provision that  
stops accrual of additional interest on an assessment if the  
department does not issue a notice of decision within 150  
days, unless the extension was at the request of the taxpayer.