

Bill No. CS/HB 1885, 2nd Eng.

Amendment No.     

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11	Senator Carlton moved the following amendment:		
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13	<b>Senate Amendment (with title amendment)</b>		
14	On page 16, between lines 19 and 20,		
15			
16	insert:		
17	Section 6. Paragraph (b) of subsection (14) of section		
18	120.80, Florida Statutes, is amended to read:		
19	120.80 Exceptions and special requirements;		
20	agencies.--		
21	(14) DEPARTMENT OF REVENUE.--		
22	(b) Taxpayer contest proceedings.--		
23	1. In any administrative proceeding brought pursuant		
24	to this chapter as authorized by s. 72.011(1), the taxpayer		
25	shall be designated the "petitioner" and the Department of		
26	Revenue shall be designated the "respondent," except that for		
27	actions contesting an assessment or denial of refund under		
28	chapter 207, the Department of Highway Safety and Motor		
29	Vehicles shall be designated the "respondent," and for actions		
30	contesting an assessment or denial of refund under chapters		
31	210, 550, 561, 562, 563, 564, and 565, the Department of		

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1 Business and Professional Regulation shall be designated the  
2 "respondent."

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

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

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

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

27           5. The prevailing party, in a proceeding under ss.  
28 120.569 and 120.57 authorized by s. 72.011(1), may recover all  
29 legal costs incurred in such proceeding, including reasonable  
30 attorney's fees, if the losing party fails to raise a  
31 justiciable issue of law or fact in its petition or response.

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

9           Section 7. Subsections (2) and (3) of section 213.21,  
10 Florida Statutes, are amended to read:

11           213.21 Informal conferences; compromises.--

12           (2)(a) The executive director of the department or his  
13 or her designee is authorized to enter into closing agreements  
14 with any taxpayer settling or compromising the taxpayer's  
15 liability for any tax, interest, or penalty assessed under any  
16 of the chapters specified in s. 72.011(1). Such agreements  
17 shall be in writing when the amount of tax, penalty, or  
18 interest compromised exceeds \$30,000 or for lesser amounts  
19 when the department deems it appropriate or when requested by  
20 the taxpayer. When a written closing agreement has been  
21 approved by the department and signed by the executive  
22 director or his or her designee and the taxpayer, it shall be  
23 final and conclusive; and, except upon a showing of fraud or  
24 misrepresentation of material fact or except as to adjustments  
25 pursuant to ss. 198.16 and 220.23, no additional assessment  
26 may be made by the department against the taxpayer for the  
27 tax, interest, or penalty specified in the closing agreement  
28 for the time period specified in the closing agreement, and  
29 the taxpayer shall not be entitled to institute any judicial  
30 or administrative proceeding to recover any tax, interest, or  
31 penalty paid pursuant to the closing agreement. The

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1 department is authorized to delegate to the executive director  
2 the authority to approve any such closing agreement resulting  
3 in a tax reduction of \$250,000 or less.

4 (b) Notwithstanding the provisions of paragraph (a),  
5 for the purpose of facilitating the settlement and  
6 distribution of an estate held by a personal representative,  
7 the executive director of the department may, on behalf of the  
8 state, agree upon the amount of taxes at any time due or to  
9 become due from such personal representative under the  
10 provisions of chapter 198; and payment in accordance with such  
11 agreement shall be full satisfaction of the taxes to which the  
12 agreement relates.

13 (c) Notwithstanding paragraph (a), for the purpose of  
14 compromising the liability of any taxpayer for tax or interest  
15 on the grounds of doubt as to liability based on the  
16 taxpayer's reasonable reliance on a written determination  
17 issued by the department as described in paragraph (3)(b), the  
18 department may compromise the amount of such tax or interest  
19 liability resulting from such reasonable reliance.

20 (3)(a) A taxpayer's liability for any tax or interest  
21 specified in s. 72.011(1) may be compromised by the department  
22 upon the grounds of doubt as to liability for or  
23 collectibility of such tax or interest. A taxpayer's liability  
24 for penalties under any of the chapters specified in s.  
25 72.011(1) may be settled or compromised if it is determined by  
26 the department that the noncompliance is due to reasonable  
27 cause and not to willful negligence, willful neglect, or  
28 fraud. A taxpayer who establishes reasonable reliance on the  
29 written advice issued by the department to the taxpayer will  
30 be deemed to have shown reasonable cause for the  
31 noncompliance.In addition, a taxpayer's liability for

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1 penalties under any of the chapters specified in s. 72.011(1)  
2 in excess of 25 percent of the tax shall be settled or  
3 compromised if the department determines that the  
4 noncompliance is due to reasonable cause and not to willful  
5 negligence, willful neglect, or fraud. The department shall  
6 maintain records of all compromises, and the records shall  
7 state the basis for the compromise. The records of compromise  
8 under this paragraph shall not be subject to disclosure  
9 pursuant to s. 119.07(1) and shall be considered confidential  
10 information governed by the provisions of s. 213.053.

11 (b) Doubt as to liability of a taxpayer for tax and  
12 interest exists if the taxpayer demonstrates that he or she  
13 reasonably relied on a written determination of the department  
14 in the following circumstances:

15 1. The audit workpapers clearly show that the same  
16 issue was considered in a prior audit of the taxpayer  
17 conducted by or on behalf of the department and, after  
18 consideration of the issue, the department's auditor  
19 determined that no assessment was appropriate in regard to  
20 that issue.

21 2. The same issue was raised in a prior audit of the  
22 taxpayer and, during the informal protest of the proposed  
23 assessment, the department issued a notice of decision  
24 withdrawing the issue from the assessment.

25 3. The taxpayer received a technical assistance  
26 advisement pursuant to s. 213.22 in regard to the issue.

27  
28 The circumstances listed in this paragraph are not intended to  
29 be the only circumstances in which doubt as to liability  
30 exists. Nothing contained in this section shall interfere with  
31 the state's ability to structure a remedy to cure a judicially

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1 determined constitutional defect in a tax law.

2 (c) A taxpayer shall not be deemed to have reasonably  
3 relied on a written determination of the department under any  
4 of the following circumstances:

5 1. The taxpayer misrepresented material facts or did  
6 not fully disclose material facts at the time the written  
7 determination was issued.

8 2. The specific facts and circumstances have changed  
9 in such a material manner that the written determination no  
10 longer applies.

11 3. The statutes or regulations on which the  
12 determination was based have been materially revised or a  
13 published judicial opinion constituting precedent in the  
14 taxpayer's jurisdiction has overruled the department's  
15 determination on the issue.

16 4. The department has informed the taxpayer in writing  
17 that its previous written determination has been revised and  
18 should no longer be relied upon.

19 (d)(b) A taxpayer's liability for the service fee  
20 required by s. 215.34(2) may be settled or compromised if it  
21 is determined that the dishonored check, draft, or order was  
22 returned due to an error committed by the issuing financial  
23 institution, and the error is substantiated by the department.  
24 The department shall maintain records of all compromises, and  
25 the records shall state the basis for the compromise.

26 Section 8. The amendments to section 213.21(2) and  
27 (3), Florida Statutes, by this act shall apply only to notices  
28 of intent to conduct an audit issued on or after October 1,  
29 2000.

30  
31 (Redesignate subsequent sections.)

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1 ===== T I T L E    A M E N D M E N T =====

2 And the title is amended as follows:

3            On page 2, line 7, after the semicolon,

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5 insert:

6            amending s. 120.80, F.S.; providing for the  
7            award of reasonable attorney's fees and costs  
8            of an appeal to a prevailing appellant on an  
9            appeal of an assessment imposed or refund  
10           denied under chapter 212, F.S., under specified  
11           circumstances; amending s. 213.21, F.S.;  
12           providing conditions under which a taxpayer's  
13           liability may be compromised when the taxpayer  
14           establishes reasonable reliance on written  
15           advice issued by the department; providing  
16           application;

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