

Bill No. SB 1918

Amendment No. ____

| | | |
|---------------|----------------|--------------|
| <u>Senate</u> | CHAMBER ACTION | <u>House</u> |
|---------------|----------------|--------------|

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
.
.
.
.
.

Senator Klein moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 13,

insert:

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

120.80 Exceptions and special requirements; agencies.--

(14) DEPARTMENT OF REVENUE.--

(b) Taxpayer contest proceedings.--

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent," except that for actions contesting an assessment or denial of refund under chapter 207, the Department of Highway Safety and Motor Vehicles shall be designated the "respondent," and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of

Bill No. SB 1918

Amendment No. ____

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.

Bill No. SB 1918

Amendment No. ____

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 2. 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

Bill No. SB 1918

Amendment No. ____

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

Bill No. SB 1918

Amendment No. ____

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

Bill No. SB 1918

Amendment No. ____

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 3. 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.)

Bill No. SB 1918

Amendment No. ____

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 1, line 2, delete that line

4

5 and insert:

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

18
19
20
21
22
23
24
25
26
27
28
29
30
31