

hbd-05

Bill No. HB 2433, 1st Eng.

Amendment No. \_\_\_\_ (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Representative(s) Ryan offered the following:

**Amendment (with title amendment)**

On page 7, between lines 13 & 14,

insert:

Section 3. 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

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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.

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

And the title is amended as follows:

          On page 1, line 14,  
remove from the title of the bill: all of said line  
and insert in lieu thereof:

          F.S.; amending s. 120.80, F.S.; providing for  
the award of reasonable attorney's fees and  
costs of an appeal to a prevailing appellant on  
an appeal of an assessment imposed or refund  
denied under chapter 212, F.S., under specified  
circumstances; amending s. 166.231(1), F.S., to  
allow a