

STORAGE NAME: h0619s1.ft

DATE: April 7, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS/HB 619

RELATING TO: Taxpayer/Assessment of Tax

SPONSOR(S): Committee on Finance and Taxation, Representative Ryan, and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) GOVERNMENTAL RULES AND REGULATIONS YEAS 6 NAYS 0
 - (2) FINANCE AND TAXATION YEAS 14 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

The Committee Substitute provides that if the Department of Revenue improperly rejects or modifies the conclusions of law made by an Administrative Law Judge in a proceeding to protest a sales or use tax assessment, then the appellate court may award the taxpayer reasonable costs and attorney's fees.

The Committee Substitute also provides the Department of Revenue with authority to compromise tax, penalty, and interest under specified circumstances when a taxpayer reasonably relies on a written determination of the Department.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

B. PRESENT SITUATION:

A taxpayer may contest any tax assessment or denial of refund by the Department of Revenue by either bringing an action in circuit court or filing a petition for an administrative hearing pursuant to Chapter 120, F.S. Except in limited circumstances, the hearing will be held before an Administrative Law Judge (ALJ). After the hearing the ALJ, will issue a recommended order to the Department of Revenue containing finding of facts and conclusions of law. Section 120.57(1)(l), F.S. The Department may adopt the recommended order as its final order, or in its final order, the Department may reject or modify the conclusions of law over which it has substantive jurisdiction. Section 120.80(14)(b)5., F.S., provides that the prevailing party in a tax contest proceeding may recover all legal costs incurred in the proceeding, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in the petition or response.

Section 213.21, F.S. provides that the executive director may compromise tax or interest on a tax assessment based on doubt as to liability or collectability of the tax or interest. The compromise of tax is limited to \$250,000 or less. There is no limit on the compromise of penalty or interest. The executive director may also compromise penalty if the taxpayer demonstrates reasonable cause for noncompliance with the tax laws. The Department of Revenue rules regarding compromise of tax, penalty, and interest are contained in Chapter 12-13, Florida Administrative Code.

C. EFFECT OF PROPOSED CHANGES:

The bill amends section 120.80(14)(b), F.S. to add that a taxpayer may be awarded costs and attorney's fees in a contest of a sales and use tax assessment if the Department of Revenue rejects or modifies an Administrative Law Judge's conclusions of law and the appellate court finds that the Department of Revenue improperly rejected or modified the conclusions.

The Department of Revenue may compromise penalty on a tax assessment if the taxpayer demonstrates reasonable cause for noncompliance with the tax laws. Section 213.21(3)(a), F.S., is amended to state that a taxpayer who establishes reasonable reliance on written

advice issued by the Department to the taxpayer is deemed to have shown reasonable cause for the noncompliance.

Section 120.21(3)(b), F.S., statute is created to state that doubt as to liability of a taxpayer for tax and interest exists if the taxpayer demonstrates that he or she reasonably relied on a written determination of the Department of Revenue in the following circumstances:

1. The audit workpapers clearly show that the same issue was considered in a prior audit of the taxpayer and the Department's auditor determined that no assessment was appropriate in regard to that issue.
2. The same issue was raised in a prior audit of the taxpayer and during the informal protest of the proposed assessment the Department issued a notice of decision withdrawing the issue from the assessment.
3. The taxpayer received a technical assistance advisement in regard to the issue.

The bill states that the above are not intended to be the only circumstances in which a taxpayer demonstrates doubt as to liability for tax or interest.

The taxpayer will be deemed not to have reasonable relied on a written determination of the Department in the following circumstances:

1. The taxpayer misrepresented material facts or did not fully disclose material facts at the time the written documentation was issued.
2. The specific facts and circumstances have changed in such a material manner that the written determination no longer applies.
3. The statutes or regulations on which the determination was based have been materially revised or a published judicial opinion constituting precedent in the taxpayer's jurisdiction has overruled the Department's determination on the issue.
4. The Department has informed the taxpayer in writing that its previous written determination has been revised and should no longer be relied upon.

The bill amends 213.21(2), F.S., to allow the executive director to compromise more than \$250,000 in tax when the grounds as of doubt as to liability for the compromise is based on the taxpayer's reasonable reliance on a written determination issued by the Department.

The amendments to section 213.21(2) and (3), F.S., apply on to notices of intent to conduct an audit issued on or after October 1, 2000.

The act shall take effect July 1, 2000.

D. SECTION-BY-SECTION ANALYSIS:

See Effect of Proposed Changes.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

A. Nonrecurring Expenditures

See III.D.

B. Recurring Expenditures

See III.D.

C. Total

See III.D.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Taxpayers will be able to recover costs and attorney's fees associated with litigating a sales and use tax assessment when the Department of Revenue improperly modifies or rejects the conclusions of law made by an Administrative Law Judge.

D. FISCAL COMMENTS:

The expenditures under this bill are indeterminate. The Department of Revenue will have to pay costs and attorney's fees to taxpayers if a court finds that the Department of Revenue improperly modified or rejected the conclusions of law made by an Administrative Law Judge. However, if the Department makes no improper modifications or rejections, no expenditures will have to be made.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require the counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenue in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 2000, the Committee on Finance and Taxation adopted an amendment that made substantial changes to the original bill. The bill was made a committee substitute.

The original bill also dealt with taxpayer's rights in contests of sales and use tax assessments. The original bill amended section 120.80, F.S., to provide that an Administrative Law Judge shall issue a final order in taxpayer contests of assessment of tax, penalty, or interest or the denial of a refund with respect sales and use tax. Presently, an Administrative Law Judge issues a recommended order.

The original bill also amended section 231.21, F.S., to provide that the Department of Revenue shall issue its notice of decision within 150 days after the filing of a taxpayer's written protest to

STORAGE NAME: h0619s1.ft

DATE: April 7, 2000

PAGE 6

the assessment of tax, penalty, or interest or the denial of a refund of sales and use taxes. Presently, there is no time limitation.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

David M. Greenbaum

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Staff Director:

Lynne Overton

Alan Johansen