

STORAGE NAME: h0619a.grr
DATE: February 11, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
GOVERNMENTAL RULES AND REGULATIONS
ANALYSIS**

BILL #: HB 619
RELATING TO: Taxpayer/Assessment of Tax
SPONSOR(S): 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
 - (3) GENERAL GOVERNMENT APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

House Bill 619 addresses aspects of taxpayer contest proceedings regarding assessments made under Fla. Stat. chapter 212 (Tax on Sales) by the Department of Revenue.

This bill amends Fla. Stat. s. 120.80 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 to any tax imposed under Chapter 212.

This bill also amends Fla. Stat. s. 231.21 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 the assessment of tax, penalty, or interest or the denial of a refund under Chapter 212 and after the initiation of informal conference proceedings under this section.

The department indicates that implementing this bill will require recurring expenditures of approximately eighty thousand dollars.

This bill takes effect upon becoming law.

The strike-everything amendment adopted by the committee and traveling with the bill addressed both substantive sections of the bill. First, administrative law judges are to render a final order within 60 days of the conclusion of the hearing. Second, the 150 day time period imposed on the department to issue a notice of decision may be waived by the parties or the taxpayer in writing may request an extension of the time period. Additionally, the department must issue the notice of decision within 150 days or within the extension thereof, or the department is prohibited from taking further action to assess the tax, interest, penalty or denial of refund.

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:

Fla Stat. s. 120.80(14) provides exceptions to and special requirements for administrative hearings by the Department of Revenue. Fla Stat. s. 120.80(14)(b) provides special requirements for taxpayer contest proceedings, including designation of respondent agency depending on the tax assessment contested, burden of proof, payment of uncontested tax amounts prior to filing of petition, and award of attorney's fees and costs in certain instances.

The Department of Revenue reports that for the period 1997-1999, the Division of Administrative Hearings rendered 60 recommended orders on taxpayer contests of tax assessments imposed by the department. The department reports that it accepted 52 of the recommended orders and modified four. Of the remaining cases the department settled two cases and dismissed one; the division relinquished jurisdiction pursuant to Fla. Stat. chapter 120 on one case to the department for disposition

Fla. Stat. s. 213.21(1) provides authority to the Department of Revenue to establish an informal conference procedure to resolve disputes relating to assessment of taxes, interest, penalties and the denial of refunds, and for informal hearings under Fla. Stat. ss. 120.569 and 120.57(2).

A department PB² measurement is the time from the postmark of a taxpayer contest notice to the time of the issuance of the notice of decision. For fiscal years 1998 and 1999, the department proposed measure provided for an average of 175 days from date of receipt to notice of issuance. The department reports that in FY 1998, the actual average was 174 days and for FY 1999, 165 days. Beginning in FY 2000, the 175 days goal represents that average number of days from date of postmark to the date of issuance of notice of decision. For the first five months of FY 2000, the department reports an actual average of 163.

C. EFFECT OF PROPOSED CHANGES:

The changes would impact the speed that the Department of Revenue decides a taxpayer contest of the assessment under Chapter 212 (Tax on Sales), in that the bill would impose a time frame of 150 days in which the department would have to come to decided taxpayer contests to assessments under that chapter and for which informal conference procedures have been initiated. The bill would also remove from the department the authority to enter

a final decision in the appeal of these cases to the Division of Administrative Hearings, instead vesting the final decision authority in an administrative law judge.

D. SECTION-BY-SECTION ANALYSIS:

Section one. Creates Fla. Stat. s. 120.80(14)(b)6 to provide that where a taxpayer contest proceeding is brought with respect to tax assessment, penalty, interest or for the denial of a refund under Fla. Stat. chapter 212, an administrative law judge will issue a final order at the conclusion of the proceedings.

Section two. Creates Fla. Stat. s. 213.21(1)(d) to provide that when a taxpayer files a written protest with the department and informal conference procedures are initiated with respect to any tax imposed under Fla. Stat. chapter 212, the department shall issue its notice of decision within 150 days after the written protest is filed.

Section three. Provides that the act shall be effective upon becoming a law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

The Department of Revenue makes the following estimates:

1. Revenues:

	FY 2002	FY 2003	
General Revenue	(\$39,347)	(\$35,549)	
Administrative Trust Fund		(49,647)	(44,855)

2. Expenditures:

A. Nonrecurring Expenditures	FY 2002	FY 2003
OCO	\$4,000	
Expenses	4,590	
 B. Recurring Expenditures		
FTE	2	2
Salaries	\$68,342	68,342
Expenses	12,062	12,062
 C. Total	88,994	88,944

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The 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:

The 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:

The 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:

At its February 8, 2000, meeting, the Committee on Governmental Rules and Regulations adopted a strike-everything amendment addressing both substantive sections of the bill. It is traveling with the bill.

Section one, which provides a special requirement under the Administrative Procedure Act concerning taxpayer contests under chapter 212, is amended to provide for the issuance of a final order by the administrative law judge within 60 days of the conclusion of the proceedings under chapter 120. Note that Fla. Stat. s. 120.569(2)(l) provides that the final order in cases affecting the substantial interest of persons must be rendered within 90 days of the conclusion of the hearing conducted by the agency, after the recommended order is submitted to the agency and is mailed to all parties, or if there is no hearing, after the agency has received the written and oral material it has authorized to be submitted.

Section two, which provides a 150 day time period to issuance of a notice of decision by the department after initiating informal dispute resolution procedures, is amended to provide for the extension of the 150 period for issuance of a notice of decision by agreement of the parties; the taxpayer also may request in writing for an extension of the time period. The amendment also provides that failure of the department to issue its notice of decision within 150 days or within any extension thereof, will result in the dismissal of the underlying tax assessment and the prohibition of further action on the tax assessment.

VII. SIGNATURES:

COMMITTEE ON GOVERNMENTAL RULES AND REGULATIONS:

Prepared by:

Staff Director:

David M. Greenbaum

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