

Bill No. SB 1602

Barcode 890764

CHAMBER ACTION

Senate

House

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

.
. .
. .
. .
. .
. .

The Committee on Commerce and Consumer Services (Aronberg) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Section 213.756, Florida Statutes, is amended to read:

213.756 Funds collected are state tax funds.--

(1) Funds collected from a purchaser under the representation that they are taxes provided for under the state revenue laws are state funds from the moment of collection and are not subject to refund absent proof that such funds have been refunded previously to the purchaser.

(2)(a) In any action by a purchaser against a retailer, dealer, or vendor to obtain a refund of or to otherwise recover taxes, fees, or surcharges collected by the retailer, dealer, or vendor from the purchaser:

1. The purchaser in the action has the burden of proving all elements of its claim for a refund by clear and

Bill No. SB 1602

Barcode 890764

1 convincing evidence;

2 2. The sole remedy in the action is damages measured
3 by the difference between what the retailer, dealer, or vendor
4 collected as a tax, fee, or surcharge and what the retailer,
5 dealer, or vendor paid to the taxing authority plus any
6 discount or collection allowance authorized by law and taken
7 by the retailer, dealer, or vendor; and

8 3. It is an affirmative defense to the action when the
9 retailer, dealer, or vendor remitted the amount collected from
10 the purchaser to the appropriate taxing authority, less any
11 discount or collection allowance authorized by law.

12 (b) This subsection applies to those taxes enumerated
13 in s. 72.011, excluding chapter 202 and that portion of
14 chapter 303 collected thereunder, and also applies to taxes
15 imposed under chapter 205.

16 (c) This subsection does not change the law regarding
17 standing to claim a refund.

18 Section 2. If any provision of this act or the
19 application thereof to any person or circumstance is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the act which can be given effect without the
22 invalid provision or application and, to this end, the
23 provisions of this act are severable.

24 Section 3. This act shall take effect July 1, 2005,
25 and shall apply retroactively to all actions initiated on or
26 after such date and, to the maximum extent authorized by law,
27 to all actions pending as of such date.

28
29

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

31 And the title is amended as follows:

Bill No. SB 1602

Barcode 890764

1 Delete everything before the enacting clause

2

3 and insert:

4 A bill to be entitled

5 An act relating to state tax funds; amending s.

6 213.756, F.S.; establishing a burden of proof

7 for certain refund claims; establishing a

8 measure of damages for certain refund claims;

9 specifying an affirmative defense to certain

10 actions by a purchaser to recover taxes or for

11 a refund of taxes; providing application;

12 providing construction; providing severability;

13 providing for retroactive application;

14 providing an effective date.

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31