

By the Committee on Commerce and Consumer Services; and  
Senator Baker

577-2095-05

1                                   A bill to be entitled  
2           An act relating to state tax funds; amending s.  
3           213.756, F.S.; establishing a burden of proof  
4           for certain refund claims; establishing a  
5           measure of damages for certain refund claims;  
6           specifying an affirmative defense to certain  
7           actions by a purchaser to recover taxes or for  
8           a refund of taxes; providing application;  
9           providing construction; providing severability;  
10          providing for retroactive application;  
11          providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:  
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15           Section 1. Section 213.756, Florida Statutes, is  
16 amended to read:

17           213.756 Funds collected are state tax funds.--

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

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

27           1. The purchaser in the action has the burden of  
28 proving all elements of its claim for a refund by clear and  
29 convincing evidence;

30           2. The sole remedy in the action is damages measured  
31 by the difference between what the retailer, dealer, or vendor

1 collected as a tax, fee, or surcharge and what the retailer,  
2 dealer, or vendor paid to the taxing authority plus any  
3 discount or collection allowance authorized by law and taken  
4 by the retailer, dealer, or vendor; and

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

9 (b) This subsection applies to those taxes enumerated  
10 in s. 72.011, excluding chapter 202 and that portion of  
11 chapter 203 collected thereunder, and also applies to taxes  
12 imposed under chapter 205.

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

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

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

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
Senate Bill 1602

This committee substitute differs from the bill as filed in that, in any action by a purchaser against a retailer, dealer, or vendor, to recover taxes collected:

- the purchaser has the burden of proving all elements by clear and convincing evidence;
- the damages available is the difference between what was collected and what was paid to the taxing authority; and
- it is an affirmative defense if the tax collected by the retailer, dealer, or vendor from the purchaser was remitted to the appropriate taxing authority.