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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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