HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617 CS State Tax Funds

SPONSOR(S): Stargel **TIED BILLS:**

IDEN./SIM. BILLS: SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	9 Y, 0 N, w/CS	Levin	Diez-Arguelles
2) Civil Justice Committee			
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Section 213.756, F.S., currently states: "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."

HB 617 redesignates the existing language of s. 213.756, F.S., as subsection (1), and adds new subsection (2), which provides that in any action by a purchaser against a retailer, dealer, or vendor for a refund or recovery of taxes collected from the purchaser, it is an affirmative defense to such action when the retailer, dealer, or vendor: actually remitted the amount collected by the appropriate taxing authority, less and discount or collection allowance authorized by law. New subsection (2) applies to the taxes enumerated in s. 72.011, F.S., excluding Chapter 202, F.S., and that portion of Chapter 303, F.S., collected thereunder, and also applies to taxes imposed under Chapter 205, F.S. The bill provides for severability and retroactive application.

The bill is designed to limit litigation in circumstances in which retailers have collected and remitted a tax and are subsequently sued by consumers for refund of the tax. Future litigation would most likely then be directed to the taxing authority.

The bill has an effective date of July 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives. STORAGE NAME: h0617a.FT.doc 3/29/2005

DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government:

HB 617 is likely to limit future lawsuits against the collectors of retail taxes.

B. EFFECT OF PROPOSED CHANGES:

HB 617 redesignates the existing language of s. 213.756, F.S., as subsection (1) and adds new subsection (2), which provides that in any action by a purchaser against a retailer, dealer, or vendor for a refund or recovery of taxes collected from the purchaser, it is an affirmative defense when the retailer, dealer, or vendor remitted the amount collected by the appropriate taxing authority, less and discount or collection allowance authorized by law. The sole remedy is an action for damages measured by the difference between what the retailer, dealer, or vendor collected as a tax and what the person remitted, plus discounts or collection allowances. New subsection (2) applies to the taxes enumerated in s. 72.011, F.S., excluding Chapter 202, F.S., and that portion of Chapter 303, F.S. collected thereunder, and also applies to taxes imposed under Chapter 205, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 213.756, F.S.

Section 2. This is a severability clause.

Section 3. Provides an effective date of July 1, 2005 to apply retroactively.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

If the amount of current and future litigation is reduced as a result of this complete defense, there may be a savings in the administration of State Courts.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

If local governments supplement the budgets for local courts, local governments may see a decrease in expenditures for local courts.

C.

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D. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private sector retailers, dealers, and vendors will not be unwilling participants in tax refund litigation.

E. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because the bill does not: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities and counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Finance and Tax Committee met on March 29, 2005 and adopted a strike-all amendment, as well as an amendment to the strike-all, which clarified that remittance of the tax collected by the retailer, dealer, or vendor to the taxing authority constituted an affirmative defense. The strike-all clarified that the only remedy available to the purchaser is damages for the difference between what the retailer, dealer, or vendor collected and what they remitted to the taxing authority, less plus any discount or collection allowance. It also added a section on severability and a section which provides for retroactive application of the bill.

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