

HB 617

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CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

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3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Section 213.756, Florida Statutes, is amended
18 to read:

19 213.756 Funds collected are state tax funds.--

20 (1) Funds collected from a purchaser under the
21 representation that they are taxes provided for under the state
22 revenue laws are state funds from the moment of collection and

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23 are not subject to refund absent proof that such funds have been
24 refunded previously to the purchaser.

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

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

32 2. The sole remedy in such action is damages measured by
33 the difference between what the retailer, dealer, or vendor
34 collected as a tax, fee, or surcharge and what the retailer,
35 dealer, or vendor paid to the taxing authority plus any discount
36 or collection allowance authorized by law and taken by the
37 retailer, dealer, or vendor; and

38 3. It is an affirmative defense to such action when the
39 retailer, dealer, or vendor remitted the amount collected from
40 the purchaser to the appropriate taxing authority, less any
41 discount or collection allowance authorized by law.

42 (b) This subsection applies to those taxes enumerated in
43 s. 72.011, excluding chapter 202 and that portion of chapter 303
44 collected thereunder, and also applies to taxes imposed under
45 chapter 205.

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

48 Section 2. If any provision of this act or the application
49 thereof to any person or circumstance is held invalid, the
50 invalidity shall not affect other provisions or applications of

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51 the act which can be given effect without the invalid provision
52 or application and, to this end, the provisions of this act are
53 declared severable.

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