



The Florida Senate

Interim Project Report 2005-209

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Committee on Government Efficiency Appropriations

Senator Jeffrey H. "Jeff" Atwater, Chair

AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS TO PREVAILING APPELLANT REGARDING ASSESSMENT OF TAXES UNDER CHAPTER 212, S. 120.80(14)(B)6., F.S.

SUMMARY

During the 2000 Regular Session, a number of bills were amended onto House Bill 509. The amended bill passed the Legislature and, upon approval by the Governor, became ch. 2000-312, Laws of Florida. One of the bills amended into HB 509, HB 71, relating to the county public hospital surtax, contained a repealer section that, once amended into HB 509, was not limited in its scope. The repealer section states that "[t]he provisions of this act shall be reviewed by the Legislature prior to October 1, 2005, and shall be repealed on that date unless otherwise reenacted by the Legislature." This repealer section creates the current situation where a number of provisions in the Florida Statutes will be repealed in 2005 unless reenacted by the Legislature.

Section 120.80(14)(b), F.S., which addresses taxpayer contest proceedings against the Department of Revenue, was amended by s. 2 of ch. 2000-312, Laws of Florida, and is set to repeal October 1, 2005, unless reenacted by the Legislature.

BACKGROUND

Chapter 96-159, Laws of Florida, reorganized Chapter 120, F.S., the Administrative Procedures Act. Section 120.57, F.S., provides that an administrative law judge assigned by the Division of Administrative Hearings shall conduct all hearings involving disputed issues of material fact, except as provided in ss. 120.80 and 120.81, F.S. Section 120.80, F.S., provides for exceptions and special requirements for state agencies and s. 120.81, F.S., provides for exceptions and special requirements for educational units, local units of government, regulation of professions, hunting and fishing regulation, and risk impact statements. Subsection (14) of s. 120.80, F.S., provides that a

taxpayer may contest any tax assessment or denial of refund by the Department of Revenue by either bringing an action in circuit court or filing a petition for an administrative hearing pursuant to Chapter 120, F.S. Except in limited circumstances, the hearing will be held before an Administrative Law Judge. After the hearing, the Administrative Law Judge will issue a recommended order to the Department of Revenue containing findings of fact and conclusions of law. The department may adopt the recommended order as its final order, or in its final order, the department may reject or modify the conclusions of law over which it has substantive jurisdiction. Section 120.80(14)(b)5., F.S., provides that the prevailing party in a tax contest proceeding may recover all legal costs incurred in the proceeding, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in the petition or response. Section 2 of ch. 2000-312, Laws of Florida, amended s. 120.80(14)(b), F.S., adding a new sub-paragraph 6., providing that a taxpayer may be awarded costs and attorney's fees in a contest of a sales and use tax assessment if the department rejects or modifies an Administrative Law Judge's conclusions of law and the appellate court finds that the department improperly rejected or modified the conclusions. Pursuant to s. 11 of ch. 2000-312, Laws of Florida, s. 120.80(14)(b), F.S., is set to repeal October 1, 2005, unless otherwise reenacted by the Legislature.

METHODOLOGY

The legislative history of s. 120.80(14), F.S., was researched and the Department of Revenue was asked to share information on their experience with s. 120.80(14)(b)6., F.S.

FINDINGS

The amendment to s. 120.80(14)(b)6., F.S., is a taxpayer fairness issue. As in s. 120.80(14)(b)5., F.S., where the prevailing party in a tax contest proceeding may recover legal costs incurred in the proceeding, including reasonable attorney's fees, the prevailing party in the judicial appeal of final agency action should be entitled to recover the same such fees and costs. Pursuant to s. 2 of ch. 2000-312, L.O.F., upon review of a final agency action concerning an assessment of tax, penalty or interest or the denial of a refund with respect to sales and use tax, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, then the court may award reasonable attorney's fees and reasonable costs of the appeal to the prevailing party.

The Department of Revenue has no information on whether this provision has been utilized or not.

RECOMMENDATIONS

It is the recommendation of this report to abrogate the repeal of s. 2 of ch. 2000-312, Laws of Florida. Legislation should be drafted to repeal s. 11 of ch. 2000-312, Laws of Florida, which provides for the repeal of s. 2 of ch. 2000-312, Laws of Florida.