

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 617

State Tax Funds

SPONSOR(S): Stargel

TIED BILLS:

IDEN./SIM. BILLS: SB 1602

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|----------------------------|--------|---------|----------------|
| 1) Finance & Tax Committee | _____ | 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 a complete defense when the retailer, dealer, or vendor: (a) was authorized or required by law to collect the tax from the purchaser, and (b) 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., and to taxes imposed under Chapter 205, F.S.

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.

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 a complete defense when the retailer, dealer, or vendor: (a) was authorized or required by law to collect the tax from the purchaser, and (b) 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., and to taxes imposed under Chapter 205, F.S.

C. SECTION DIRECTORY:

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

Section 2. Provides an effective date of July 1, 2005.

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. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. 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:

The proposed statute includes the words "complete defense." The language could be clarified as to what is the effect of this "complete defense"; is it an affirmative defense? When is it raised?

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES