

Committee Substitute for Senate Bill No. 1602

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

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

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

213.756 Funds collected are state tax funds.—

(1) 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.

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

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

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

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

(b) This subsection applies to those taxes enumerated in s. 72.011, excluding chapter 202 and that portion of chapter 203 collected thereunder, and also applies to taxes imposed under chapter 205.

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

Section 2. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application and, to this end, the provisions of this act are severable.

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

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.