

CHAPTER 87-6

Committee Substitute for Senate Bill No. 777

An act relating to taxation; creating s. 212.059, F.S.; providing for levy of the tax on sales, use and other transactions on the sale and use of services; providing for collecting and remitting thereof; providing for apportionment of the tax on interstate and international transportation services; creating s. 212.0591, F.S.; providing rules of construction with respect to said tax; creating s. 212.0592, F.S.; providing exemptions from said tax; creating s. 212.0593, F.S.; providing for administration of the exemption for services sold in this state for use outside this state; providing for exempt purchase permits and affidavits; requiring dealers to maintain monthly logs; providing for application of certain penalty provisions; providing for refunds; creating s. 212.0594, F.S.; providing special provisions applicable to the tax on construction services; prohibiting issuance of certificate of occupancy under certain circumstances; creating s. 212.0595, F.S.; providing special provisions applicable to tax on advertising; amending s. 212.02, F.S.; providing definitions; excluding certain hourly, daily, or mileage charges and car service agreement charges from the meaning of "lease" or "service"; specifying when the sale of a service is a sale for resale; specifying those activities included within the meaning of "services"; excluding factory-built buildings from the meaning of "tangible personal property"; amending s. 212.031, F.S., relating to exemptions from tax on lease or rental of real property; reenacting an exemption for lease payments on recreational property or the common elements of a condominium; exempting property used as an integral part of the performance of certain qualified production services; exempting certain property leased to a person providing food and drink concessionaire services; reenacting and amending s. 212.04(2)(a), F.S.; deleting exemptions for admissions to athletic and other events sponsored by certain institutions, for dues, memberships fees, and admission charges imposed by certain nonprofit organizations, and for certain admissions paid by students; reenacting the exemption for admissions to National Football League championship games; amending ss. 212.05 and 212.054, F.S., to conform; reenacting the exemption for boats removed from the state after purchase or repair and the penalty for violation; including airplanes in said exemption; exempting lease or rental of certain commercial motor vehicles; amending ss. 212.06 and 212.07, F.S., relating to dealers and collection of the tax, and penalties for violations, to include tax on services; exempting certain fabrication labor relating to motion pictures; amending s. 212.08, F.S.; reenacting provisions relating to medical exemptions and providing an additional exemption; providing an exemption for services related to installation of machinery and equipment in new or expanding industry or used to

produce electrical or steam energy; revising the exemption for sales to political subdivisions; restructuring other exemptions; exempting certain license fees and charges for films, videotapes, and transcriptions; reenacting exemptions for resource recovery equipment, State Theater Program facilities, and volunteer fire departments; reenacting the partial exemption for sales of flyable aircraft and removing a deduction allowed manufacturers; amending s. 212.095, F.S., relating to refunds, to conform; providing application to attorneys and accountants; amending s. 212.11, F.S.; revising provisions relating to estimated tax liability; authorizing certain quarterly returns; amending s. 212.12, F.S.; including the tax on services within enforcement and collection provisions; providing application of the dealer's credit to persons who remit taxes or fees reported on the same documents utilized for sales and use tax; requiring certain information on returns; amending ss. 212.13, 212.14, 212.17, 212.18, and 212.21, F.S., relating to recordkeeping and inspection, hearings and enforcement regarding unpaid taxes, credits for worthless accounts and returns, dealer registration, legislative intent, and related penalties, to conform; amending s. 212.61, F.S.; correcting a reference; creating s. 212.235, F.S.; providing for deposit of a portion of funds collected under part I of chapter 212 in a State Infrastructure Trust Fund; providing a limitation; providing uses of the fund; authorizing issuance of bonds; amending s. 8 of chapter 86-166, Laws of Florida; deleting the repeal scheduled for July 1, 1987, of exemptions relating to certain convention hall subleases, certain leases or rentals by fair associations, certain admissions, volunteer fire departments, resource recovery equipment, State Theater Program facilities, motor vehicles sold to residents of another state, flyable aircraft, and electrical energy, building materials, and business property used in, and jobs created in, enterprise zones; amending ss. 212.0821, 290.007, 403.715, and 564.02, F.S.; correcting references; amending s. 240.533, F.S.; providing for retention of sales tax collected on admission to athletic events by institutions in the State University System to support women's athletics; providing for exemption from the tax on services with respect to certain improvements to real property; providing penalties; repealing Rule 12A-1.091(6) of the Department of Revenue, relating to self-accrual; authorizing certain rules relating thereto; providing for emergency rules; providing for client confidentiality; providing for waiver of penalties and interest with respect to the tax on services for a specified period; providing for application of the tax to services provided prior to the effective date of the act, certain prepaid services, and services provided over a specified period; amending s. 201.02, F.S.; providing for the levy of an additional tax on deeds and other instruments relating to real property; amending s. 201.15, F.S.; providing for payment of such additional tax into the State Infrastructure Trust Fund; revising the current distribution of the tax; amending s. 206.87, F.S.; providing for the levy of an additional tax on special fuels; providing an exception; providing for collection of the tax; amending s.

206.875, F.S.; providing for payment of the proceeds from such additional tax into the State Infrastructure Trust Fund; amending s. 207.026, F.S., relating to allocation of the tax on commercial motor vehicles, to conform; amending s. 57.071, F.S.; including sales or use tax on legal services within court costs; amending s. 57.111, F.S.; expanding the definition of "small business party" with respect to civil actions or administrative proceedings initiated by state agencies to include certain persons contesting the legality of any assessment of tax imposed for the sale or use of services; amending s. 120.57, F.S.; providing an exception to procedure in a formal proceeding on a decision which affects substantial interests for any proceeding to contest the legality of such tax; amending s. 120.575, F.S.; providing procedure for taxpayer contest proceedings to contest the legality of any assessment of such tax; amending s. 120.65, F.S.; providing for the appointment of a three-member panel to be the hearing officer in such taxpayer contest proceedings; directing the Department of Revenue to undertake a study regarding taxable services and report to the Governor and Legislature; requiring the Department of Revenue to develop and implement a tax amnesty program for certain taxes; providing terms and conditions for such program; amending ss. 95.091, 198.18, 199.232, 211.125, 211.33, 214.50, 214.51, and 220.23, F.S.; repealing ss. 212.14(6) and 214.09, F.S.; providing limitations on actions to collect certain taxes and providing for expiration of tax liens; providing penalties; providing limitations on enforcement of certain tax liens by foreclosure and levy proceedings; amending ss. 199.218, 212.08, and 214.04, F.S.; correcting references; amending ss. 125.0104, 198.37, 198.39, 199.282, 201.17, 201.18, 201.20, 203.01, 203.03, 203.63, 206.04, 206.11, 206.18, 206.426, 206.44, 206.87, 206.877, 206.9931, 207.007, 211.076, 211.25, 212.0305, 212.05, 212.054, 212.07, 212.085, 212.10, 212.12, 212.13, 212.14, 212.15, 212.18, 212.62, 214.40, 214.60, 214.61, and 220.181, F.S.; creating s. 211.335, F.S.; providing penalties for certain tax crimes; creating s. 213.30, F.S.; providing compensation for information concerning tax law violations; creating ss. 213.70, 213.71, 213.72, 213.73, 213.74, 213.75, and 213.76, F.S.; providing for the levy of real and personal property by the Department of Revenue to satisfy certain claims; requiring notice; providing for jeopardy assessments by the department under certain circumstances; providing for the sale of seized property; providing for the transfer of all right, title, and interest in such property; providing the order of payment of obligations from payments to the department; providing for freezing certain assets and obligations; providing a penalty; providing an appropriation; providing application of penalties; directing the Department of Revenue to establish a sales tax hot-line; providing for severability; providing effective dates.

WHEREAS, the Legislature enacted chapter 86-166, Laws of Florida, which repeals the exemption from the sales tax for all services effective July 1, 1987, and

WHEREAS, it is not this Legislature's intent to tax essential services such as medical and health services, agricultural services, social services, or religious or humanitarian services, and

WHEREAS, Florida is one of the nation's fastest growing states and by 1990 will be its fourth largest state and must equitably fund the costs of providing the infrastructure necessitated by such growth, and

WHEREAS, it is the intent of this Legislature to make the sales tax on services fair and equitable by reinstating the sales tax exemptions for essential services, NOW, THEREFORE.

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

Section 44. Paragraph (b) of subsection (1) of section 120.57, Florida Statutes, 1986 Supplement, is amended to read:

120.57. Decisions which affect substantial interests

The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless such proceedings are exempt pursuant to subsection (5). Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) Formal proceedings.--

(b) In any case to which this subsection is applicable, the following procedures apply:

1. A request for a hearing shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.

d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for any proceeding conducted as prescribed in s. 120.54(4), ~~*** s. 120.56, OR S. 120.575(1)(B)~~, a petition or request for a hearing under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall so notify the division within 10 days of receipt of the petition or request. When the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days of receipt of the notice of appeal if the commission elects to request the assignment of a hearing officer. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to the formal proceeding, except as a party litigant, as long as the division has jurisdiction over the formal proceeding. Any party may request the disqualification of the hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed

in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

6. The record in a case governed by this subsection shall consist only of:

a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records;

h. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

i. The official transcript.

7. The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 13., the applicant shall bear the cost of accurately and completely preserving all testimony and providing full or partial transcripts to the water management district. At the request of any other party, full or partial transcripts shall be provided at no more than cost.

8. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

9. Except as provided in subparagraph 12., the hearing officer shall complete and submit to the agency and all parties a recommended order

consisting of his findings of fact, conclusions of law, interpretation of administrative rules, and recommended penalty, if applicable, and any other information required by law or agency rule to be contained in the final order. The agency shall allow each party at least 10 days in which to submit written exceptions to the recommended order.

10. The agency may adopt the recommended order as the final order of the agency. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the recommended order, but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record, and states with particularity in the order, that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. The agency may accept the recommended penalty in a recommended order, but may not reduce or increase it without a review of the complete record and without stating with particularity its reasons therefor in the order, by citing to the record in justifying the action. When there is an appeal, the court in its discretion may award reasonable attorney's fees and costs to the prevailing party if the court finds that the appeal was frivolous, meritless, or an abuse of the appellate process or that the agency action which precipitated the appeal was a gross abuse of the agency's discretion.

11. If the hearing officer assigned to a hearing becomes unavailable, the division shall assign another hearing officer who shall use any existing record and receive any additional evidence or argument, if any, which the new hearing officer finds necessary.

12. A hearing officer who is a member of an agency head may participate in the formulation of the final order of the agency, provided he has completed all his duties as hearing officer.

13. In any application for a license or merger pursuant to title XXXVIII which is referred by the agency to the division for hearing pursuant to this section, the hearing officer shall complete and submit to the agency and to all parties a written report consisting of findings of fact and rulings on evidentiary matters. The agency shall allow each party at least 10 days in which to submit written exceptions to the report.

14. In any application for a consumptive use permit pursuant to part II of chapter 373, the water management district on its own motion may, or, at the request of the applicant for the permit, shall, refer the matter to the division for the appointment of a hearing officer to conduct a hearing under this section.

Section 45. Subsection (1) of section 120.575, Florida Statutes, is amended to read:

120.575. Taxpayer contest proceedings

(1)(A) In any administrative proceeding brought pursuant to chapter 120 as authorized in s. 72.011(1), the taxpayer or other substantially affected party shall be designated the "petitioner" and the Department of Revenue shall be designated the "respondent."

(B) IN ANY SUCH ADMINISTRATIVE PROCEEDING BROUGHT PURSUANT TO S. 120.57(1) AS AUTHORIZED IN S. 72.011(1) TO CONTEST THE LEGALITY OF ANY ASSESSMENT OF TAX IMPOSED FOR THE SALE OR USE OF SERVICES AS PROVIDED IN CHAPTER 212, OR INTEREST THEREON, OR PENALTY THEREFOR, THE FOLLOWING PROCEDURES SHALL APPLY, ANY PROVISIONS OF THIS CHAPTER TO THE CONTRARY NOTWITHSTANDING:

1. THE PETITION SHALL BE FILED WITH THE DIVISION, WHICH SHALL FORWARD A COPY TO THE DEPARTMENT IMMEDIATELY UPON RECEIPT OF THE PETITION.

2. THE PANEL PROVIDED IN S. 120.65(5) SHALL CONDUCT ALL PROCEEDINGS UNDER THIS PARAGRAPH.

3. WITHIN 10 DAYS AFTER RECEIVING THE PETITION, THE PANEL SHALL ACCEPT OR DENY THE PETITION AND, IF ACCEPTED, SHALL CONDUCT A HEARING THEREON, UNLESS THE PETITION IS WITHDRAWN.

4. WITHIN 30 DAYS AFTER THE HEARING OR RECEIPT OF THE HEARING TRANSCRIPT, WHICHEVER IS LATER, THE PANEL SHALL ISSUE ITS ORDER, WHICH SHALL CONSIST OF FINDINGS OF FACT, CONCLUSIONS OF LAW, INTERPRETATION OF ADMINISTRATIVE RULES, AND ANY OTHER INFORMATION REQUIRED BY LAW OR RULE TO BE CONTAINED IN THE FINAL ORDER. SUCH ORDER SHALL AFFIRM OR DENY THE ASSESSMENT, INTEREST, OR PENALTY, AND SHALL DETERMINE THE AMOUNT OF ANY ASSESSMENT, INTEREST, OR PENALTY.

5. THE ORDER OF THE PANEL SHALL BE FINAL AGENCY ACTION.

Section 46. Subsections (5), (6), (7), (8), and (9) of section 120.65, Florida Statutes, 1986 Supplement, are redesignated as subsections (6), (7), (8), (9),

and (10), respectively, and a new subsection (5) is added to said section to read:

120.65. Hearing officers

(5) THE DIRECTOR SHALL APPOINT, FROM AMONG THE FULL-TIME HEARING OFFICERS OF THE DIVISION, A PANEL CONSISTING OF THREE MEMBERS TO BE THE HEARING OFFICER IN ALL PROCEEDINGS BROUGHT AS PROVIDED IN S. 120.575(1)(B). SUCH APPOINTMENTS SHALL BE MADE WITH DUE REGARD TO THE EXPERTISE REQUIRED FOR DETERMINATION OF SUCH PROCEEDINGS. SERVICE AS A MEMBER OF SUCH PANEL SHALL BE AT THE PLEASURE OF THE DIRECTOR, AND SUCH SERVICE MAY BE IN ADDITION TO OTHER DUTIES OF EMPLOYMENT BY THE DIVISION.

UNCODIFIED AND/OR SPECIAL MATERIAL IS NOT DISPLAYED.