

# Chapter 92-315

## House Bill No. 113-H

AN ACT relating to taxation; creating s. 213.015, F.S.; providing requirements with respect to the rights, safeguards, and protections afforded taxpayers during tax assessment, collection, and enforcement processes; creating s. 213.018, F.S.; providing for a taxpayer problem resolution program; providing for a taxpayers' rights advocate with authority to issue taxpayer assistance orders; amending s. 213.21, F.S.; providing a taxpayer's right to have representation and record informal conferences; creating s. 213.025, F.S.; requiring the Department of Revenue to conduct its audits, inspections, and interviews at reasonable times and places, with exceptions; amending s. 213.34, F.S.; directing the department to offset overpayments against deficiencies; creating s. 213.731, F.S.; requiring notice before collection action is taken; providing a taxpayer's right to protest and seek a review; creating s. 213.732, F.S.; providing procedural requirements, taxpayers' rights, and venue for certain legal actions with respect to jeopardy findings and assessments; creating s. 213.733, F.S.; providing for cancellation, amendment, or modification of warrants; amending ss. 199.262, 206.075, 211.125, 211.33, 212.14, 212.15, 220.719, and 220.815, F.S.; specifying procedures applicable if jeopardy to the revenue exists and is asserted in or with an assessment; repealing s. 220.719(4), F.S., relating to taxpayer protest regarding a jeopardy assessment lien; amending s. 20.21, F.S.; creating within the department the position of taxpayers' rights advocate and providing his responsibilities; amending s. 72.011, F.S.; prohibiting certain legal actions when an action has been initiated under s. 120.575, F.S.; amending s. 95.091, F.S.; requiring the department to commence an audit within a specified period of time after it issues a notice of intent to conduct an audit; amending s. 120.575, F.S., which provides procedures and requirements applicable when a taxpayer contests specified taxes, interest, penalties, or denials of refund; removing provisions which specify requirements applicable to proceedings involving tax on the sale or use of services; specifying conditions under which collection and enforcement of contested amounts is stayed; providing for recovery of legal costs, including attorney's fees; amending ss. 57.111 and 120.57, F.S., to conform; repealing s. 120.65(5), F.S., which provides for hearing officer panels for proceedings involving tax on the sale or use of services; providing an effective date.

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

20. 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," except that for actions contesting an assessment or denial of refund under chapter 207 the Department of Highway Safety and Motor Vehicles 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 or denial of refund 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 hearing officer or panel provided in s. 120.65(5) shall conduct all proceedings under this paragraph.~~

~~3. Within 10 days after receiving the petition, the hearing officer or panel shall accept or deny the petition.~~

~~4. Within 30 days after the hearing or receipt of the hearing transcript, whichever is later, the hearing officer or panel shall issue an 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, penalty, or denial of refund and shall determine the amount of any assessment, interest, penalty, or refund.~~

~~5. The order of the hearing officer or panel shall be final agency action.~~

(2) In any administrative proceeding brought pursuant to s. 120.57, the applicable department's burden of proof, except as otherwise specifically provided by general law, shall be limited to a showing that an assessment has been made against the taxpayer and the factual and legal grounds upon which the applicable department made the assessment.

(3)(a) Before a taxpayer may file a petition under this chapter, he shall pay to the applicable department the amount of taxes, penalties, and accrued interest assessed by that department which are not being contested by the taxpayer. Failure to pay the uncontested amount shall result in the dismissal of the action and imposition of an additional penalty of 25 percent of the amount taxed.

(b) The requirements of s. 72.011(2) and (3)(a) are jurisdictional for any action under this chapter to contest an assessment or denial of refund by the Department of Revenue or by the Department of Highway Safety and Motor Vehicles.

(4) Except as provided in s. 220.719, further collection and enforcement of the contested amount of an assessment for nonpayment or underpayment of any tax, interest, or penalty shall be stayed beginning on the date a petition is filed. Upon entry of a final order, an agency may resume collection and enforcement action.

(5) The prevailing party, in a proceeding under s. 120.57 authorized by s. 72.011(1), may recover all legal costs incurred in such proceeding, including reasonable attorney's fees, if the losing party fails to raise a justiciable issue of law or fact in its petition or response.