

# CHAPTER 2000-355

## House Bill No. 2433

An act relating to taxation; creating s. 196.2002, F.S., providing an exemption for not-for-profit water and wastewater corporations; amending s. 95.091, F.S.; specifying the time period within which the Department of Revenue and Department of Business and Professional Regulation may determine and assess the amount of certain taxes, penalties, or interest due beginning July 1, 2002; correcting a reference; amending s. 106.265, F.S.; providing that the Florida Elections Commission, rather than the Department of Revenue, shall have responsibility for collecting civil penalties for violation of chapter 104 or chapter 106, F.S.; amending s. 120.80, F.S.; providing for the award of reasonable attorney's fees and costs of an appeal to a prevailing appellant on an appeal of an assessment imposed or refund denied under chapter 212, F.S., under specified circumstances; amending s. 166.231(1), F.S., to allow a municipality to levy tax on water service outside municipal boundaries if an agreement is reached by specific date; amending ss. 175.111 and 185.09, F.S.; removing a requirement that insurers subject to a premium tax for a municipal or special district firefighter pension plan or a municipal police pension plan file an annual premium receipt report with the Division of Retirement; amending s. 213.053, F.S.; authorizing the Department of Revenue to share information regarding such reports with the Department of Management Services, and to share certain identifying information with the Department of Highway Safety and Motor Vehicles; creating s. 189.420, F.S.; providing requirements with respect to special district assessments on facilities regulated under ch. 513, F.S.; amending s. 203.01, F.S.; authorizing the department to require quarterly, semiannual, or annual returns for the tax on gross receipts for utility services under certain conditions; amending ss. 206.09 and 206.095, F.S.; authorizing the department to suspend a requirement for certain reports from carriers transporting, or terminal operators handling, motor fuel and similar products, under certain conditions; amending s. 212.051, F.S.; including specialty chemicals and bioaugmentation products within the sales tax exemption for equipment and machinery used for pollution control in connection with the manufacture of items of tangible personal property for sale; providing definitions; amending s. 212.06, F.S.; clarifying language with respect to the exemption from the indexed tax on manufactured asphalt for asphalt used for government public works projects; specifying that the exemption includes federal projects; amending s. 212.08, F.S.; revising application of the exemption for portable containers used for processing farm products; providing conditions under which the full sales tax exemption for machinery and equipment used to produce electrical or steam energy will apply when both residual and nonresidual fuels are used; revising application of the sales tax exemption for repair and labor charges for certain industrial machinery and equipment; providing intent; providing an exemption for people-mover systems and parts thereof purchased or manufactured by certain contractors; providing an exemption for the purchase of component parts by, and other manufacturing costs incurred by, certain contractors who manufacture and install such systems and parts; providing definitions; amending s. 212.11, F.S.; authorizing the department to allow a sales tax dealer to continue to use a filing frequency when the dealer exceeds the maximum tax for that frequency, under certain conditions; amending s. 212.12, F.S.; revising provisions which authorize

the department to sample a dealer's records when such records are adequate but voluminous, in order to determine the dealer's tax liability; providing that overpayments and deficiencies shall be projected over the entire audit period, and the tax deficiency reduced or refund made as necessary; providing intent; amending s. 213.015, F.S.; specifying additional taxpayer rights with respect to treatment by department personnel and explanation of the reason for audit selection; amending s. 213.21, F.S.; providing conditions under which a taxpayer's liability may be compromised when the taxpayer establishes reasonable reliance on written advice issued by the department; providing application; repealing s. 213.235(6), F.S., which relates to application of the annual rate of interest applicable to tax payment deficiencies as determined under said section; amending s. 213.27, F.S.; authorizing the department to contract with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration; providing for compensation; requiring reports; providing for application of provisions of chapter 212, F.S., to system users; providing for maintenance of confidentiality of certain information; providing a penalty; amending s. 220.03, F.S.; updating references to the Internal Revenue Code for corporate income tax purposes; providing for retroactive effect; amending s. 220.62, F.S.; including savings association holding companies registered under the Homeowners' Loan Act within the definition of "savings association" for purposes of the franchise tax on banks and savings associations; providing that s. 1 of ch. 98-187, Laws of Florida, which amends s. 201.09, F.S., to provide liability for the excise tax on documents when a renewal note increases the unpaid balance or the original face amount of the original contract and obligation, applies retroactively to certain term obligations; directing the Division of Retirement to adjust a municipality's 1997 base year revenue for purposes of its own pension plan for firefighters or police officers based on specified information; authorizing the department to provide data to the division; providing that, for a specified period, persons classified under SIC Industry Group Number 212 who paid tax under ch. 212, F.S., on certain charges for steam or electrical energy entitled to exemption are entitled to a refund, and that such persons who did not pay the tax are not required to pay the tax, penalty, or interest; providing that failure to timely file a consolidated return for intangible personal property tax for any one or more years shall not prejudice a taxpayer's right to file a consolidated return under certain conditions; amending s. 210.20, F.S.; eliminating transfers of net cigarette tax collections to the Municipal Financial Assistance Trust Fund and Revenue Sharing Trust Fund for Municipalities; amending s. 212.20, F.S.; authorizing a distribution of proceeds under ch. 212, F.S., to the Revenue Sharing Trust Fund for Municipalities; amending s. 288.1169, F.S.; revising a cross reference, to conform; amending s. 11.45, F.S.; revising a reference, to conform; repealing s. 200.132, F.S., relating to the Municipal Financial Assistance Trust Fund; providing effective dates.

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

Section 4. Paragraph (b) of subsection (14) of section 120.80, Florida Statutes, is amended to read:

120.80 Exceptions and special requirements; agencies.--

(14) DEPARTMENT OF REVENUE.--

(b) Taxpayer contest proceedings.--

1. In any administrative proceeding brought pursuant to this chapter as authorized by s. 72.011(1), the taxpayer 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," and for actions contesting an assessment or denial of refund under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation shall be designated the "respondent."

2. In any such administrative proceeding, 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. Prior to filing a petition under this chapter, the taxpayer 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, the Department of Highway Safety and Motor Vehicles, or the Department of Business and Professional Regulation.

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 ss. 120.569 and 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.

6. Upon review pursuant to s. 120.68 of final agency action concerning an assessment of tax, penalty, or interest with respect to a tax imposed under chapter 212, or the denial of a refund of any tax imposed under chapter 212, if the court finds that the Department of Revenue improperly rejected or modified a conclusion of law, the court may award reasonable attorney's fees and reasonable costs of the appeal to the prevailing appellant.