

SUMMARY

OF CHANGES IN CHAPTER 120

1984 LEGISLATIVE SESSION

Four laws were enacted during the 1984 Legislative Session making substantive changes to Chapter 120, Florida Statutes: Chapters 84-170, 84-173, 84-265 and 84-203, Laws of Florida.

The following summary of changes was prepared by the staff of the House Governmental Operations Committee in the Joint Legislative Management Summary of General Legislation, 1984.

I. Chapter 84-170, Laws of Florida

This Chapter contains various administrative provisions, some of which are discussed under specific tax headings. In addition, it amends Section 72.011, F.S., which provides procedures for taxpayers to contest various taxes and penalties. It includes among the taxes subject to said section those assessed under Sections 125.0104 (tourist development tax), 125.0165 (discretionary sales tax), 336.021 (voted gas tax on motor fuel and special fuel), 336.025 (local option gas tax on motor fuel and special fuel), and Chapters 207 (tax on operation of commercial motor vehicles), and 221 (tax on particular corporate income taxpayers), F.S. It requires that before bringing an action in circuit court, a taxpayer must pay to the Department of Revenue the amount of tax, plus penalties and interest, which he admits to be owing, and specifies with respect to the existing bond requirement that the bond be for the amount of the contested assessment. It also requires that before a taxpayer files a petition under Chapter 120, F.S., he must pay to the Department the amount of tax admitted to be owed and file a bond for the amount of the contested assessment. The act specifies that no action may be maintained unless all taxes assessed in years after the action is brought, which the taxpayer admits to be owing, are paid before they become delinquent. The requirements of the section are specified to be jurisdictional. The section also applies to notices of assessments of transferee liability and to any notices or billings made by the Department of Revenue. The section amended to provide that it is not necessary for the Department to file any assessment to become final. Section 72.021, F.S., is created to provide that if the court or hearing officer finds that the amount of tax which the taxpayer has admitted to be owing is grossly disproportionate to the amount of tax found to be due or that the taxpayer's admission was not made in good faith, a 15 percent penalty may be imposed.

This act amends Section 213.053, F.S., relating to confidentiality of tax information, to include former officers and employees of the Department under the penalty for divulging confidential information. It also authorizes the Department to provide information relative to Chapter 376, F.S. (pollutant spill prevention and control), to the proper state agency, and to provide information relating to sales tax to the Division of Alcoholic Beverages and Tobacco of the Department of Business Regulation. Such state agencies are bound by confidentiality requirements and violation is a first degree misdemeanor.

Paragraph 624.509(3)(b), F.S., is amended to provide for applicability of penalties for failure to report and timely pay any tax due on an insurance premium tax final return.

Subsection 120.52(10), F.S., which defines “order” under the “Administrative Procedure Act” (Chapter 120, F.S.) as a “final agency decision,” is amended to exclude from its application assessments of tax, penalty or interest made by the Department.

Finally, the act amends Subsection 20.21(3), F.S., to transfer Department of Revenue authority over investigative services from the Assistant Executive Director to the Division of Collection and Enforcement.

I I . Chapter 84-173, Laws of Florida

This Chapter also amends various sections in Chapter 120, the Administrative Procedure Act (APA), to revise procedures relating to emergency rules, application of penalties recommended by hearing officers, and the awarding of attorney’s fees.

Paragraph 120.54(9)(c), F.S., is revised to allow the renewal of an emergency rule if a proposed rule dealing with the same subject is challenged. Subparagraph 120.57(1)(b)3., F.S., is amended to provide that when an agency requests a hearing officer, it cannot take further action concerning the formal proceeding except as a party litigant as long as the Division of Administrative Hearings of the Department of Administration has jurisdiction. Subparagraph 120.57(1)(b) 9., F.S., is amended to prohibit an agency from reducing or increasing a penalty recommended by a hearing officer without a review of the hearing record, as well as the submission of a statement of reasons citing the record in justification of its action.

Paragraph 120.58(a)(b), F.S., is revised to restore procedures for enforcing discovery orders and subpoenas issued by hearing officers under the APA. The hearing officers’ power to control their hearings through the use of sanction is clarified. Subsection 120.58(2), F.S., is amended to allow hearing officers and agencies to invalidate subpoenas, relating to hearings, under certain circumstances. Current references to orders directing discovery are eliminated. Subsection 120.58(3), F.S., conforms the procedures for enforcement of subpoenas, discovery orders, and orders imposing sanctions to other sections in the statutes. The courts are allowed the discretion to award attorney’s fees to prevailing parties pursuant to existing procedures in the Florida Rules of Civil Procedure.

Subsection 120.68(1), F.S., is amended to provide that orders of hearing officers as well as agency actions or rulings can be appealed immediately if the final agency decision does not provide an adequate remedy. Finally, subsection 120.68(12), F.S., is amended to require the courts to remand a case to an agency for corrective action if it finds that the agency’s exercise of its discretion is inconsistent with its own rules.

I I I . Chapter 84-265, Laws of Florida

This Chapter amends Subsection 322.251(1) and Subsection 120.60(6), F.S., to authorize

the Department of Highway Safety and Motor Vehicles to send orders of driver license cancellation, suspension or revocation by first class mail rather than by certified mail. Further, the act amends Subsection 322.29(1), F.S., to delete the requirement that in order to have his license reinstated following suspension, the licensee must successfully pass a complete examination. Instead, the licensee is only required to pass the vision, signs and traffic law examinations. The Department could, however, require a driving examination under certain circumstances specified in the law.

I V . Chapter 84-203, Laws of Florida

Administrative Procedure Act

Numerous changes to Chapter 120, F.S., the Administrative Procedure Act (APA), were made. Procedures relating to emergency rules were amended, as well as provisions for the application of penalties recommended by hearing officers, and the awarding attorney's fees. Additionally, the act was amended to: require agencies to file certain forms; set explicit time requirements and procedures with respect to the granting or denying of licenses; and change filing deadlines for final orders and emergency rules.

This Chapter amends Paragraph 120.53(a)(b), F.S., to eliminate the requirement that all agency rules include a list of the forms and instructions used by the agency in its dealings with the public.

Section 120.54, F.S., is clarified to specifically permit a fact-finding hearing while an administrative determination is in process. Also, this section requires that emergency rules be published in their entirety, in the first available issue of the Florida Administrative Weekly. The term "public hearing" is clarified, and if a petition for an administrative determination is filed the 90-day time limit for rule filings is tolled until the hearing officer has filed his order with the Department of Administration's Division of Administrative Hearings clerk. Additionally, this section is amended to require that agencies must draft and formally propose rules within 180 days of the effective date of the act which authorizes such rule promulgation, unless the provisions of the act provide otherwise.

Paragraphs 120.55(1)(a) and (b), F.S., are amended to require that agencies must file forms and instructions that the public may use, with the Joint Administrative Procedures Committee before such forms are used. If any of the forms or instructions meet the definition of a rule, then the form must be incorporated into the rules by reference. The reference must specifically state that the forms are incorporated by reference, and must include the number, title, and effective date of each form.

Section 120.57, F.S., is changed to require the Florida Land and Water Adjudicatory Commission to notify the Division of Administrative Hearings within 60 days of receipt of the notice of appeal if the Commission elects to request a hearing. The section is also amended to allow the court to award reasonable attorney's fees if it finds that an appeal was frivolous, meritless, or an abuse of the appellate process. State university students are exempted from the procedures of the APA by another amendment to this section. The Board of Regents is directed

to appoint a committee to establish by January 1, 1985, rules and guidelines insuring fairness and due process in judicial proceedings involving students in the State University System.

Section 120.59, F.S., is amended to require that a notice explaining the availability of any administrative hearing or judicial review be included with all hearing orders. If a recommended order is submitted to an agency, the agency is required to return its final order to the Division within 15 days after the order is filed with the agency clerk.

Section 120.60, F.S., is amended to require that written notice be delivered either personally, or by mail, indicating that the agency intends to grant or deny or has granted or denied an application for a license. The notice must include any administrative or judicial remedy available to the applicant, and the procedure and time limits to be adhered to by the applicant. The agency is also required to certify the time and date that the notice was mailed or delivered.

Subsection 455.213, F.S., is altered to require persons applying to the Department of Professional Regulation for licenses, to supplement their applications with additional data if their circumstances materially change before a license is granted or denied to them.