

CHAPTER 87-101

Committee Substitute for House Bill No. 1506

A bill to be entitled

An act relating to taxation; amending s. 212.059, F.S., relating to the sales and use tax on services; revising provisions relating to computation, collection, and remittance of the tax and registration of dealers as service providers; requiring multistate purchasers that self-accrue the tax to file an annual supplementary tax return; revising provisions relating to apportionment of interstate or international transportation services; requiring applicants for specified permits to attest that applicable use taxes have been paid; amending s. 212.0591, F.S.; revising rules of construction relating to inclusion of a proportion of the sales or cost price under certain circumstances, transactions involving both taxable and exempt services, and determining where the benefit of a service is enjoyed; providing legislative intent regarding exemptions from the tax; amending s. 212.0592, F.S.; revising exemptions and conditions applicable thereto and providing additional exemptions; amending s. 212.0593, F.S., relating to administration of the exemption for services sold in this state for use outside this state; revising provisions relating to exempt purchase permits; revising time period for maintenance of dealers' monthly logs and a penalty applicable thereto; specifying inapplicability of certain refund provisions; repealing section 5 of chapter 87-6, Laws of Florida, and creating s. 212.0594, F.S.; revising special provisions applicable to the tax on construction services; amending s. 212.0595, F.S.; revising special provisions applicable to the tax on advertising; creating s. 212.0598, F.S.; specifying conditions under which certain air carriers may elect to be subject to the tax on services and tangible personal property; providing basis of the tax applicable to such air carriers; specifying application of such tax to air carriers who do not so elect; amending s. 212.02, F.S.; revising definitions applicable to chapter 212, F.S.; amending s. 212.031, F.S.; revising an exemption from the tax on rental, lease, or granting a license for use of real property for certain property leased to persons providing food and drink concessionaire services; amending s. 212.04, F.S.; exempting admissions, dues, and membership fees to certain athletic or other events sponsored by schools and other institutions or by governmental entities and certain admissions paid by students to places of sport or recreation; providing an exception; amending s. 212.05, F.S.; specifying application of a definition of "telecommunication service"; specifying application of the tax on sales, use and other transactions to sale of newspapers and magazines; amending s. 212.08, F.S.; providing a retroactive exemption from said tax for certain beverages; revising the

exemptions for sales to political subdivisions and religious, scientific and educational institutions, film rentals, organizations providing special benefits to minors, and vehicles engaged in interstate or foreign commerce; amending s. 212.095, F.S.; removing a prohibition against dealers assisting in preparation of tax refund claims; amending s. 212.11, F.S.; revising provisions which authorize quarterly returns for certain dealers remitting the tax solely for the provision of services; amending section 17 of chapter 87-6, Laws of Florida; revising the effective date of an amendment relating to application of the dealer's credit to persons who remit taxes or fees reported on the same documents utilized for sales and use tax; amending s. 212.235, F.S., relating to the State Infrastructure Trust Fund; amending section 31 of chapter 87-6, Laws of Florida, revising an exemption from the tax on services for certain improvements to real property; requiring the Department of Revenue to report to the Legislature; amending section 32 of chapter 87-6, Laws of Florida, relating to certain conditions applicable to self-accrual; amending section 33 of chapter 87-6, Laws of Florida; specifying administrative provisions applicable to department rules implementing said chapter and this act; amending section 36 of chapter 87-6, Laws of Florida, relating to waiver of penalties and interest with respect to the tax on services for a specified period; amending section 37 of chapter 87-6, Laws of Florida; revising provisions relating to application of the tax to certain prepaid services; amending section 38 of chapter 87-6, Laws of Florida; revising provisions relating to construction of said chapter with respect to certain client confidentiality; amending ss. 120.575 and 120.65, F.S.; revising provisions relating to appointment of a panel to be hearing officer in certain administrative taxpayer contest proceedings; amending section 47 of chapter 87-6, Laws of Florida; revising a date for a department study of taxable services; amending section 48 of chapter 87-6, Laws of Florida; revising provisions relating to application of a tax amnesty program; providing an appropriation to the Division of Administrative Hearings; amending ss. 95.091, 198.18, 211.33, 214.50, 214.51, 212.08, 125.0104, 198.37, 198.39, 199.282, 201.17, 201.20, 203.01, 203.03, 203.63, 206.18, 206.44, 206.877, 206.9931, 207.007, 211.076, 211.25, 212.0305, 212.05, 212.07, 212.085, 212.10, 212.12, 212.13, 212.14, 212.15, 212.18, 214.40, and 214.60, F.S.; reducing certain penalties; repealing sections 100, 101, 102, and 106 of chapter 87-6, Laws of Florida, relating to priority of tax warrants, seizure of property for collection of taxes, sale of seized property, and freezing of assets and obligations, respectively; amending s. 213.73, F.S.; deleting an inapplicable notice provision; amending s. 213.74, F.S.; correcting cross-references; providing for applicability of certain penalties; providing for severability; repealing section 9 of chapter 86-166, Laws of Florida, which created a commission to review exemptions from the sales tax; providing effective dates.

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

Section 24. Paragraph (b) of subsection (1) of section 120.575, Florida Statutes, as created by chapter 87-6, Laws of Florida, is amended to read:

120.575. Taxpayer contest proceedings

(1)

(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 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, or penalty, and shall determine the amount of any assessment, interest, or penalty.

5. The order of the HEARING OFFICER OR panel shall be final agency action.

Section 25. Subsection (5) of section 120.65, Florida Statutes, as created by chapter 87-6, Laws of Florida, is amended to read:

120.65. Hearing officers

(5) The director shall appoint, from among the fulltime hearing officers of the division, a panel consisting of ONE TO three members to be the hearing officer in all proceedings brought as provided in s. 120.575(1)(b). THE DIRECTOR SHALL HAVE THE DISCRETION TO DETERMINE THE SIZE OF THE PANEL BASED UPON THE COMPLEXITY AND PRECEDENTIAL IMPORTANCE OF THE ISSUES INVOLVED, AND THE AMOUNT OF POTENTIAL REVENUES IN DISPUTE. 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.

Section 26. Section 47 of chapter 87-6, Laws of Florida, is amended to read:

Section 47. The Department of Revenue is directed to undertake a study of service transactions for the purpose of identifying those transactions not taxable pursuant to the definition of service in s. 212.02, Florida Statutes. On or before March 1, 1989***, the department shall report to the Governor and the Legislature all service transactions so identified.

Section 27. Section 48 of chapter 87-6, Laws of Florida, is amended to read:

Section 48. No later than January 1, 1988, the Department of Revenue shall develop and implement a tax amnesty program for taxpayers subject to the tax laws enumerated in s. 72.011(1), Florida Statutes, except those taxes governed by SS. ***199.032, ***212.0505, 212.059-212.0595, AND 212.0598, Florida Statutes. The tax amnesty program shall be a one-time opportunity for eligible taxpayers to satisfy their tax liabilities under the revenue laws of this state and thereby avoid criminal prosecution and any penalties imposed under such laws. Eligible taxpayers shall have no more than a 6-month period during which to file returns or amended returns and to make full payment of the amount of tax and interest due. An eligible taxpayer may participate in the amnesty program whether or not the taxpayer is under audit or investigation; notwithstanding the fact that the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the department; and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under this amnesty program is barred with respect to the amounts paid except as provided in this section. No refund may be made of any penalty paid prior to the date the amnesty program is implemented, and any refund or credit of amounts paid as a result of participation in the amnesty program shall be strictly limited to amounts determined by the department to have been paid in error. A taxpayer who is under a criminal investigation, indictment, information, or prosecution is not eligible to participate in the amnesty program. The department may prescribe such terms, conditions, and methods of payment as it deems necessary for fair and effective administration of the amnesty program, and may establish procedures and guidelines and adopt forms and rules to implement the program. With or without an audit, the department may issue a notice or demand for payment with respect to any tax or interest which it determines to

be due with any return filed under the tax amnesty program; such notice and demand for payment shall be prima facie correct in any administrative, judicial, or quasi-judicial proceeding.

Section 28. THERE IS HEREBY APPROPRIATED FROM THE GENERAL REVENUE FUND THE SUM OF \$364,757 TO THE DIVISION OF ADMINISTRATIVE HEARINGS OF THE DEPARTMENT OF ADMINISTRATION, FOR PURPOSES OF IMPLEMENTING THE PROVISIONS OF CHAPTER 87-6, LAWS OF FLORIDA, AND THIS ACT.