

CHAPTER 72

TAX MATTERS

- 72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.
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72.011 Jurisdiction of circuit courts in specific tax matters; administrative hearings and appeals; time for commencing action; parties; deposits.—

(1)(a) A taxpayer may contest the legality of any assessment or denial of refund of tax, fee, surcharge, permit, interest, or penalty provided for under s. 125.0104, s. 125.0108, chapter 198, chapter 199, chapter 201, chapter 203, chapter 206, chapter 207, chapter 210, chapter 211, chapter 212, chapter 213, chapter 220, chapter 221, s. 336.021, s. 336.025, s. 336.026, s. 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185, s. 403.7195, s. 403.7197, s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 624, or s. 681.117 by filing an action in circuit court; or, alternatively, the taxpayer may file a petition under the applicable provisions of chapter 120. However, once an action has been initiated under s. 120.56, s. 120.565, s. 120.57, or s. 120.575, no action relating to the same subject matter may be filed by the taxpayer in circuit court, and judicial review shall be exclusively limited to appellate review pursuant to s. 120.68; and once an action has been initiated in circuit court, no action may be brought under chapter 120.

(b) A taxpayer may not file an action under paragraph (a) to contest an assessment or a denial of refund of any tax, fee, surcharge, permit, interest, or penalty relating to the statutes listed in paragraph (a) until the taxpayer complies with the applicable registration requirements contained in those statutes which apply to the tax for which the action is filed.

(2) No action may be brought to contest an assessment of any tax, interest, or penalty assessed under a section or chapter specified in subsection (1) after 60 days from the date the assessment becomes final. No action may be brought to contest a denial of refund of any tax, interest, or penalty paid under a section or chapter specified in subsection (1) after 60 days from the date the denial becomes final. The Department of Revenue or, with respect to assessments or refund denials under chapter 207, the Department of Highway Safety and Motor Vehicles or, with respect to assessments or refund denials under chapters 210, 550, 561, 562, 563, 564, and 565, the Department of Business and Professional Regulation, shall establish by rule when an assessment or refund denial becomes final for purposes of this section and a procedure by which a taxpayer shall be notified of the assessment or refund denial. It is not necessary for the applicable department to file or docket any assessment or refund denial with the agency clerk in order for such assessment or refund denial to become

final for purposes of an action initiated pursuant to this chapter or chapter 120.

(3) In any action filed in circuit court contesting the legality of any tax, interest, or penalty assessed under a section or chapter specified in subsection (1), the plaintiff must:

(a) Pay to the applicable department the amount of the tax, penalty, and accrued interest assessed by such department which is not being contested by the taxpayer; and either

(b)1. Tender into the registry of the court with the complaint the amount of the contested assessment complained of, including penalties and accrued interest, unless this requirement is waived in writing by the executive director of the applicable department; or

2. File with the complaint a cash bond or a surety bond for the amount of the contested assessment endorsed by a surety company authorized to do business in this state, or by any other security arrangement as may be approved by the court, and conditioned upon payment in full of the judgment, including the taxes, costs, penalties, and interest, unless this requirement is waived in writing by the executive director of the applicable department.

Failure to pay the uncontested amount as required in paragraph (a) shall result in the dismissal of the action and imposition of an additional penalty in the amount of 25 percent of the tax assessed. Provided, however, that if, at any point in the action, it is determined or discovered that a plaintiff, due to a good faith de minimis error, failed to comply with any of the requirements of paragraph (a) or paragraph (b), the plaintiff shall be given a reasonable time within which to comply before the action is dismissed. For purposes of this subsection, there shall be a rebuttable presumption that if the error involves an amount equal to or less than 5 percent of the total assessment the error is de minimis and that if the error is more than 5 percent of the total assessment the error is not de minimis.

(4)(a) Except as provided in paragraph (b), an action initiated in circuit court pursuant to subsection (1) shall be filed in the Second Judicial Circuit Court in and for Leon County or in the circuit court in the county where the taxpayer resides or maintains its principal commercial domicile in this state.

(b) Venue in an action initiated in circuit court pursuant to subsection (1) by a taxpayer that is not a resident of this state or that does not maintain a commercial domicile in this state shall be in Leon County. Venue in an action contesting the legality of an assessment or refund denial arising under chapter 198 shall be in the circuit court having jurisdiction over the administration of the estate.

(5) The requirements of this section are jurisdictional.

(6) Any action brought under this chapter is not subject to the provisions of chapter 45 as amended by chapter 87-249, Laws of Florida, relating to offers of settlement.

History.—s. 11, ch. 81-178; s. 12, ch. 83-217; ss. 1, 9, ch. 84-170; s. 34, ch. 85-342; s. 10, ch. 87-99; s. 1, ch. 87-102; s. 2, ch. 87-198; s. 10, ch. 89-171; s. 100, ch. 90-136; s. 27, ch. 90-203; s. 2, ch. 91-112; s. 18, ch. 92-315; s. 2, ch. 92-320; s. 63, ch. 93-207; ss. 23, 29, ch. 94-353; s. 126, ch. 95-417.

1Note.—Section 126, ch. 95-417, amended paragraph (a) of subsection (1), effective July 1, 1996, to read:

(1)(a) A taxpayer may contest the legality of any assessment or denial of refund of tax, fee, surcharge, permit, interest, or penalty provided for under s. 125.0104, s. 125.0108, chapter 198, chapter 199, chapter 201, chapter 203, chapter 206, chapter 207, chapter 210, chapter 211, chapter 212, chapter 213, chapter 220, chapter 221, s. 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185, s. 403.7195, s. 403.7197, s. 538.09, s. 538.25, chapter 550, chapter 561, chapter 562, chapter 563, chapter 564, chapter 565, chapter 624, or s. 681.117 by filing an action in circuit court; or, alternatively, the taxpayer may file a petition under the applicable provisions of chapter 120. However, once an action has been initiated under s. 120.56, s. 120.565, s. 120.57, or s. 120.575, no action relating to the same subject matter may be filed by the taxpayer in circuit court, and judicial review shall be exclusively limited to appellate review pursuant to s. 120.68; and once an action has been initiated in circuit court, no action may be brought under chapter 120.

2Note.—Section 29(2), ch. 94-353, provides that "[i]t is the intent of the Legislature that the amendment to subsection (3) of section 72.011, Florida Statutes, as set forth in this section, be applied in all pending and future actions."

72.031 Actions under s. 72.011(1); parties; service of process.—

(1) In any action brought in circuit court pursuant to s. 72.011(1), the person initiating the action shall be the plaintiff and the Department of Revenue shall be the defendant, except that for actions contesting an assessment or denial of refund under chapter 207 the Department of Highway Safety and Motor Vehicles shall be the defendant, and except that 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 the defendant. It shall not be necessary for the Governor and Cabinet, constituting the Department of Revenue, to be named as party defendants or named separately as individual parties; nor shall it be necessary for the executive director of the department to be named as an individual party.

(2) Service of process on the applicable department shall be perfected by service pursuant to s. 48.111, notwithstanding the provisions of s. 48.121.

History.—s. 12, ch. 81-178; s. 3, ch. 87-198; s. 6, ch. 91-112; s. 24, ch. 94-353.

72.041 Tax liabilities arising under the laws of other states.—Actions to enforce lawfully imposed sales, use, and corporate income taxes and motor and other fuel taxes of another state may be brought in a court of this state under the following conditions:

(1) The state seeking to institute an action for the collection, assessment, or enforcement of a lawfully imposed tax must have extended a like courtesy to this state;

(2) Venue for any action under this section shall be the circuit court of the county in which the defendant resides;

(3) This section does not apply to the enforcement of tax warrants of another state unless the warrant has been obtained as a result of a judgment entered by a court of competent jurisdiction in the taxing state or unless the courts of the state seeking to enforce its warrant allow the enforcement of the warrants issued by the Department of Revenue pursuant to chapters 206, 212, 213, 220, and 221, and ss. 336.021, 336.025, and 336.026; and

(4) All tax liabilities owing to this state or any of its subdivisions shall be paid first and shall be prior in right to any tax liability arising under the laws of other states.

History.—s. 45, ch. 85-342; s. 35, ch. 86-152; s. 101, ch. 90-136; s. 12, ch. 90-351; s. 86, ch. 91-112; s. 127, ch. 95-417.

1Note.—Section 127, ch. 95-417, amended subsection (3), effective July 1, 1996, to read:

(3) This section does not apply to the enforcement of tax warrants of another state unless the warrant has been obtained as a result of a judgment entered by a court of competent jurisdiction in the taxing state or unless the courts of the state seeking to enforce its warrant allow the enforcement of the warrants issued by the Department of Revenue pursuant to chapters 206, 212, 213, 220, and 221; and