

SENATOR CHAMBERS: So then...

SENATOR LANDIS: In other words, the prevailing party or the winner gets their automatic refund.

SENATOR CHAMBERS: So then even without this bill, as you want to amend it, even if there were a status that would be equivalent to a class action plaintiff, should that person win, the others, in order to get their refund, would still have to file individually.

SENATOR LANDIS: No, I think, Senator Chambers, you could argue that the court is being ordered in subsection 1 to grant class action relief and, if they so did, I think the automatic refund would then apply. But subsection 1, I think, is addressed to the court saying, here's...of course, you have your judicial power to decide, but here is the legislative order as well, and the legislative order is to grant a refund to taxpayers who are successful.

SENATOR CHAMBERS: Now does that granting of a refund in the upper portion of the bill that changes taxpayers to appellant direct that the refund shall be granted without the person who is seeking it doing anything to obtain it? I don't see where anything is imposed on the collecting agency of the tax to pay it out. It says it shall be refunded and then the statute goes on to tell how the refunding process is to operate. So the person who is situated similarly to the winning party does not have to go to court to justify his or her receiving the refund, but has to go through the steps that are laid out in order to receive it.

SENATOR LANDIS: I think I understand the distinction. I think arguably there is an ambiguity in subsection 1 worth cleaning up and that is that you are authorizing the court, as a matter of legislative dictate, to order refunds and if the court so ordered, I think that then 77-1736.104 would create an automatic refund, right. That is my answer to the question. In fact, I'm not exactly sure I can tell you, there's a lot of code here and I haven't been through all of it.

SENATOR CHAMBERS: Okay. I would tend to disagree with Senator Landis's final conclusion that if a person would win an action and thereby entitle everybody similarly situated to the refund,