

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

CHAMBER ACTION

Senate

House

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Senator Carlton moved the following amendment:

Senate Amendment (with title amendment)

On page 61, between lines 16 and 17,

insert:

Section 42. Effective January 1, 2004, paragraph (g) of subsection (10) and subsections (16) and (19) of section 212.02, Florida Statutes, are amended, and subsections (35), (36), (37), (38), (39), and (40) are added to that section, to read:

212.02 Definitions.--The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(10) "Lease," "let," or "rental" means leasing or renting of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps and real property, the same being defined as follows:

(g)1. "Lease," "let," or "rental" also means any

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 transfer of possession or control of tangible personal
 2 property for a fixed or indeterminate term for consideration.
 3 A clause for a future option to purchase the equipment or to
 4 extend the agreement does not preclude an agreement from being
 5 a lease or rental. This definition shall be used for sales and
 6 use tax purposes regardless of whether a transaction is
 7 characterized as a lease or rental under generally accepted
 8 accounting principles, the Internal Revenue Code, the Uniform
 9 Commercial Code, or other provisions of federal, state, or
 10 local law. This definition includes agreements covering motor
 11 vehicles and trailers when the amount of consideration may be
 12 increased or decreased by reference to the amount realized
 13 upon sale or disposition of the property as defined in 26
 14 U.S.C. s. 7701(h)(1). This definition does not include:
 15 a. A transfer of possession or control of property
 16 under a security agreement or deferred payment plan that
 17 requires the transfer of title upon completion of the required
 18 payments;
 19 b. A transfer of possession or control of property
 20 under an agreement that requires the transfer of title upon
 21 completion of required payments and payment of an option price
 22 that does not exceed the greater of \$100 or 1 percent of the
 23 total required payments; or
 24 c. Providing tangible personal property along with an
 25 operator for a fixed or indeterminate period of time. A
 26 condition of this exclusion is that the operator is necessary
 27 for the equipment to perform as designed. For the purpose of
 28 this sub-subparagraph, an operator must do more than maintain,
 29 inspect, or set up the tangible personal property. ~~the leasing~~
 30 or rental of tangible personal property and the possession or
 31 use thereof by the lessee or rentee for a consideration,

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~without transfer of the title of such property, except as~~
2 ~~expressly provided to the contrary herein.~~

3 2. The term "lease," "let," or "rental" does not mean
4 hourly, daily, or mileage charges, to the extent that such
5 charges are subject to the jurisdiction of the United States
6 Interstate Commerce Commission, when such charges are paid by
7 reason of the presence of railroad cars owned by another on
8 the tracks of the taxpayer, or charges made pursuant to car
9 service agreements. The term "lease," "let," "rental," or
10 "license" does not include payments made to an owner of
11 high-voltage bulk transmission facilities in connection with
12 the possession or control of such facilities by a regional
13 transmission organization, independent system operator, or
14 similar entity under the jurisdiction of the Federal Energy
15 Regulatory Commission. However, where two taxpayers, in
16 connection with the interchange of facilities, rent or lease
17 property, each to the other, for use in providing or
18 furnishing any of the services mentioned in s. 166.231, the
19 term "lease or rental" means only the net amount of rental
20 involved.

21 (16)(a) "Sales price" applies to the measure subject
22 to sales tax and means the total amount of consideration,
23 including cash, credit, property, and services, for which
24 personal property or services are sold, leased, or rented,
25 valued in money, whether received in money or otherwise,
26 without any deduction for the following:

27 1. The seller's cost of the property sold;
28 2. The cost of materials used, labor or service cost,
29 interest, losses, all costs of transportation to the seller,
30 all taxes imposed on the seller, and any other expense of the
31 seller;

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 3. Charges by the seller for any services necessary to
2 complete the sale, other than delivery and installation
3 charges;

4 4. Delivery charges; and

5 5. Installation charges.

6 (b) The term "sales price" does not include;

7 1. Trade-ins allowed and taken at the time of sale if
8 the amount is separately stated on the invoice, bill of sale,
9 or similar document given to the purchaser;

10 2. Discounts, including cash, term, or coupons, which
11 are not reimbursed by a third party, which are allowed by a
12 seller, and taken by a purchaser at the time of sale;

13 3. Interest, financing, and carrying charges from
14 credit extended on the sale of personal property or services,
15 if the amount is separately stated on the invoice, bill of
16 sale, or similar document given to the purchaser; and

17 4. Any taxes legally imposed directly on the consumer
18 which are separately stated on the invoice, bill of sale, or
19 similar document given to the purchaser.

20 ~~(16) "Sales price" means the total amount paid for~~
21 ~~tangible personal property, including any services that are a~~
22 ~~part of the sale, valued in money, whether paid in money or~~
23 ~~otherwise, and includes any amount for which credit is given~~
24 ~~to the purchaser by the seller, without any deduction~~
25 ~~therefrom on account of the cost of the property sold, the~~
26 ~~cost of materials used, labor or service cost, interest~~
27 ~~charged, losses, or any other expense whatsoever. "Sales~~
28 ~~price" also includes the consideration for a transaction which~~
29 ~~requires both labor and material to alter, remodel, maintain,~~
30 ~~adjust, or repair tangible personal property. Trade-ins or~~
31 ~~discounts allowed and taken at the time of sale shall not be~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~included within the purview of this subsection "Sales price"~~
2 ~~also includes the full face value of any coupon used by a~~
3 ~~purchaser to reduce the price paid to a retailer for an item~~
4 ~~of tangible personal property; where the retailer will be~~
5 ~~reimbursed for such coupon, in whole or in part, by the~~
6 ~~manufacturer of the item of tangible personal property; or~~
7 ~~whenever it is not practicable for the retailer to determine,~~
8 ~~at the time of sale, the extent to which reimbursement for the~~
9 ~~coupon will be made. The term "sales price" does not include~~
10 ~~federal excise taxes imposed upon the retailer on the sale of~~
11 ~~tangible personal property. The term "sales price" does~~
12 ~~include federal manufacturers' excise taxes, even if the~~
13 ~~federal tax is listed as a separate item on the invoice.~~

14 (19) "Tangible personal property" means and includes
15 personal property which may be seen, weighed, measured, or
16 touched or is in any manner perceptible to the senses,
17 including electric power or energy, water, gas, steam,
18 prewritten computer software, boats, motor vehicles and mobile
19 homes as defined in s. 320.01(1) and (2), aircraft as defined
20 in s. 330.27, and all other types of vehicles. The term
21 "tangible personal property" does not include stocks, bonds,
22 notes, insurance, or other obligations or securities;
23 intangibles as defined by the intangible tax law of the state;
24 or pari-mutuel tickets sold or issued under the racing laws of
25 the state.

26 (35) "Agent" means a person appointed by a principal
27 or authorized to act for the principal in a transaction
28 involving the sale of an item of tangible personal property.
29 The term also means a person appointed by a seller to
30 represent the seller before the states that are signatories to
31 the Streamlined Sales and Use Tax Agreement.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 (36) "Seller" means any person making sales, leases,
2 or rentals of personal property or services.

3 (37) "Certified service provider" means an agent
4 certified under the Streamlined Sales and Use Tax Agreement to
5 perform all of the seller's sales tax functions, other than
6 the seller's obligation to remit tax on its own purchases.

7 (38) "Direct mail" means printed material delivered or
8 distributed by United States mail or other delivery service to
9 a mass audience or to addressees on a mailing list provided by
10 the purchaser or at the direction of the purchaser when the
11 cost of the items is not billed directly to the recipients.
12 The term includes tangible personal property supplied directly
13 or indirectly by the purchaser to the direct mail seller for
14 inclusion in the package containing the printed material. The
15 term does not include multiple items of printed material
16 delivered to a single address.

17 (39) "Prewritten computer software" means computer
18 software, including prewritten upgrades, which is not designed
19 and developed by the author or other creator to the
20 specifications of a specific purchaser. The combining of two
21 or more "prewritten computer software" programs or prewritten
22 portions thereof does not cause the combination to be other
23 than "prewritten computer software." The term includes
24 software designed and developed by the author or other creator
25 to the specifications of a specific purchaser when it is sold
26 to a person other than that purchaser. When a person modifies
27 or enhances computer software of which the person is not the
28 author or creator, the person shall be deemed to be the author
29 or creator only of such person's modifications or
30 enhancements. Prewritten computer software, or a prewritten
31 portion thereof, that is modified or enhanced to any degree,

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 when such modification or enhancement is designed and
2 developed to the specifications of a specific purchaser,
3 remains "prewritten computer software"; however, when there is
4 a reasonable, separately stated charge or an invoice or other
5 statement of the price given to the purchaser for such
6 modification or enhancement, such modification or enhancement
7 does not constitute "prewritten computer software."

8 (40) "Delivery charges" means charges by the seller of
9 personal property or services for preparation and delivery to
10 a location designated by the purchaser of personal property or
11 services, including, but not limited to, transportation,
12 shipping, postage, handling, crating, and packing. The term
13 does not include the charges for delivery of "direct mail" as
14 defined by this section if the charges are separately stated
15 on an invoice or similar billing document given to the
16 purchaser.

17 Section 43. The amendment of the terms "lease," "let,"
18 and "rental" in section 212.02, Florida Statutes, made by this
19 act applies prospectively only, from July 1, 2003, and does
20 not apply retroactively to leases or rentals existing before
21 that date.

22 Section 44. Effective January 1, 2004, paragraphs (c)
23 and (e) of subsection (1) of section 212.05, Florida Statutes,
24 are amended to read:

25 212.05 Sales, storage, use tax.--It is hereby declared
26 to be the legislative intent that every person is exercising a
27 taxable privilege who engages in the business of selling
28 tangible personal property at retail in this state, including
29 the business of making mail order sales, or who rents or
30 furnishes any of the things or services taxable under this
31 chapter, or who stores for use or consumption in this state

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 any item or article of tangible personal property as defined
2 herein and who leases or rents such property within the state.

3 (1) For the exercise of such privilege, a tax is
4 levied on each taxable transaction or incident, which tax is
5 due and payable as follows:

6 (c) At the rate of 6 percent of the gross proceeds
7 derived from the lease or rental of tangible personal
8 property, as defined herein; ~~however, the following special~~
9 ~~provisions apply to the lease or rental of motor vehicles:~~

10 1. ~~When a motor vehicle is leased or rented for a~~
11 ~~period of less than 12 months:~~

12 a. ~~If the motor vehicle is rented in Florida, the~~
13 ~~entire amount of such rental is taxable, even if the vehicle~~
14 ~~is dropped off in another state.~~

15 b. ~~If the motor vehicle is rented in another state and~~
16 ~~dropped off in Florida, the rental is exempt from Florida tax.~~

17 2. ~~Except as provided in subparagraph 3., for the~~
18 ~~lease or rental of a motor vehicle for a period of not less~~
19 ~~than 12 months, sales tax is due on the lease or rental~~
20 ~~payments if the vehicle is registered in this state; provided,~~
21 ~~however, that no tax shall be due if the taxpayer documents~~
22 ~~use of the motor vehicle outside this state and tax is being~~
23 ~~paid on the lease or rental payments in another state.~~

24 3. ~~The tax imposed by this chapter does not apply to~~
25 ~~the lease or rental of a commercial motor vehicle as defined~~
26 ~~in s. 316.003(66)(a) to one lessee or rentee for a period of~~
27 ~~not less than 12 months when tax was paid on the purchase~~
28 ~~price of such vehicle by the lessor. To the extent tax was~~
29 ~~paid with respect to the purchase of such vehicle in another~~
30 ~~state, territory of the United States, or the District of~~
31 ~~Columbia, the Florida tax payable shall be reduced in~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~accordance with the provisions of s. 212.06(7). This~~
 2 ~~subparagraph shall only be available when the lease or rental~~
 3 ~~of such property is an established business or part of an~~
 4 ~~established business or the same is incidental or germane to~~
 5 ~~such business.~~

6 (e)1. At the rate of 6 percent on charges for:

7 a. Prepaid calling arrangements. The tax on charges
 8 for prepaid calling arrangements shall be collected at the
 9 time of sale and remitted by the selling dealer.

10 (I) "Prepaid calling arrangement" means the separately
 11 stated retail sale by advance payment of communications
 12 services that consist exclusively of telephone calls
 13 originated by using an access number, authorization code, or
 14 other means that may be manually, electronically, or otherwise
 15 entered and that are sold in predetermined units or dollars
 16 whose number declines with use in a known amount.

17 (II) The sale or recharge of the prepaid calling
 18 arrangement is deemed to take place in accordance with
 19 paraqraph 212.06(3)(d). In the case of a sale of a mobile
 20 communications service that is a prepaid calling arrangement,
 21 the retail sale is sourced at ~~If the sale or recharge of the~~
 22 ~~prepaid calling arrangement does not take place at the~~
 23 ~~dealer's place of business, it shall be deemed to take place~~
 24 ~~at the customer's shipping address or, if no item is shipped,~~
 25 ~~at the customer's address or~~ the location associated with the
 26 customer's mobile telephone number.

27 (III) The sale or recharge of a prepaid calling
 28 arrangement shall be treated as a sale of tangible personal
 29 property for purposes of this chapter, whether or not a
 30 tangible item evidencing such arrangement is furnished to the
 31 purchaser, and such sale within this state subjects the

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 selling dealer to the jurisdiction of this state for purposes
2 of this subsection.

3 b. The installation of telecommunication and
4 telegraphic equipment.

5 c. Electrical power or energy, except that the tax
6 rate for charges for electrical power or energy is 7 percent.

7 2. The provisions of s. 212.17(3), regarding credit
8 for tax paid on charges subsequently found to be worthless,
9 shall be equally applicable to any tax paid under the
10 provisions of this section on charges for prepaid calling
11 arrangements, telecommunication or telegraph services, or
12 electric power subsequently found to be uncollectible. The
13 word "charges" in this paragraph does not include any excise
14 or similar tax levied by the Federal Government, any political
15 subdivision of the state, or any municipality upon the
16 purchase, sale, or recharge of prepaid calling arrangements or
17 upon the purchase or sale of telecommunication, television
18 system program, or telegraph service or electric power, which
19 tax is collected by the seller from the purchaser.

20 Section 45. Effective January 1, 2004, section
21 212.054, Florida Statutes, is amended to read:

22 212.054 Discretionary sales surtax; limitations,
23 administration, and collection.--

24 (1) No general excise tax on sales shall be levied by
25 the governing body of any county unless specifically
26 authorized in s. 212.055. Any general excise tax on sales
27 authorized pursuant to said section shall be administered and
28 collected exclusively as provided in this section.

29 (2)(a) The tax imposed by the governing body of any
30 county authorized to so levy pursuant to s. 212.055 shall be a
31 discretionary surtax on all transactions occurring in the

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 county which transactions are subject to the state tax imposed
2 on sales, use, services, rentals, admissions, and other
3 transactions by this chapter and communications services as
4 defined for purposes of chapter 202. The surtax, if levied,
5 shall be computed as the applicable rate or rates authorized
6 pursuant to s. 212.055 times the amount of taxable sales and
7 taxable purchases representing such transactions. If the
8 surtax is levied on the sale of an item of tangible personal
9 property or on the sale of a service, the surtax shall be
10 computed by multiplying the rate imposed by the county within
11 which the sale occurs by the amount of the taxable sale. The
12 sale of an item of tangible personal property or the sale of a
13 service is not subject to the surtax if the property, the
14 service, or the tangible personal property representing the
15 service is delivered within a county that does not impose a
16 discretionary sales surtax.

17 (b) However:

18 1. The sales amount above \$5,000 on any item of
19 tangible personal property shall not be subject to the surtax.
20 However, charges for prepaid calling arrangements, as defined
21 in s. 212.05(1)(e)1.a., shall be subject to the surtax. For
22 purposes of administering the \$5,000 limitation on an item of
23 tangible personal property, if two or more taxable items of
24 tangible personal property are sold to the same purchaser at
25 the same time and, under generally accepted business practice
26 or industry standards or usage, are normally sold in bulk or
27 are items that, when assembled, comprise a working unit or
28 part of a working unit, such items must be considered a single
29 item for purposes of the \$5,000 limitation when supported by a
30 charge ticket, sales slip, invoice, or other tangible evidence
31 of a single sale or rental.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 2. In the case of utility services covering a period
2 starting before and ending after the effective date of the
3 surtax, the rate shall apply as follows:

4 a. In the case of a rate adoption or increase, the new
5 rate shall apply to the first billing period starting on or
6 after the effective date of the surtax or increase.

7 b. In the case of a rate decrease or termination, the
8 new rate shall apply to bills rendered on or after the
9 effective date of the rate change. ~~billed on or after the~~
10 ~~effective date of any such surtax, the entire amount of the~~
11 ~~charge for utility services shall be subject to the surtax. In~~
12 ~~the case of utility services billed after the last day the~~
13 ~~surtax is in effect, the entire amount of the charge on said~~
14 ~~items shall not be subject to the surtax.~~

15
16 "Utility service," as used in this section, does not include
17 any communications services as defined in chapter 202.

18 3. In the case of written contracts which are signed
19 prior to the effective date of any such surtax for the
20 construction of improvements to real property or for
21 remodeling of existing structures, the surtax shall be paid by
22 the contractor responsible for the performance of the
23 contract. However, the contractor may apply for one refund of
24 any such surtax paid on materials necessary for the completion
25 of the contract. Any application for refund shall be made no
26 later than 15 months following initial imposition of the
27 surtax in that county. The application for refund shall be in
28 the manner prescribed by the department by rule. A complete
29 application shall include proof of the written contract and of
30 payment of the surtax. The application shall contain a sworn
31 statement, signed by the applicant or its representative,

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 attesting to the validity of the application. The department
2 shall, within 30 days after approval of a complete
3 application, certify to the county information necessary for
4 issuance of a refund to the applicant. Counties are hereby
5 authorized to issue refunds for this purpose and shall set
6 aside from the proceeds of the surtax a sum sufficient to pay
7 any refund lawfully due. Any person who fraudulently obtains
8 or attempts to obtain a refund pursuant to this subparagraph,
9 in addition to being liable for repayment of any refund
10 fraudulently obtained plus a mandatory penalty of 100 percent
11 of the refund, is guilty of a felony of the third degree,
12 punishable as provided in s. 775.082, s. 775.083, or s.
13 775.084.

14 4. In the case of any vessel, railroad, or motor
15 vehicle common carrier entitled to partial exemption from tax
16 imposed under this chapter pursuant to s. 212.08(4), (8), or
17 (9), the basis for imposition of surtax shall be the same as
18 provided in s. 212.08 and the ratio shall be applied each
19 month to total purchases in this state of property qualified
20 for proration which is delivered or sold in the taxing county
21 to establish the portion used and consumed in intracounty
22 movement and subject to surtax.

23 (3) For purposes of this section, a retail sale,
24 lease, or rental of tangible personal property, a digital
25 good, or a service shall be deemed to have occurred in a
26 county imposing the surtax when the location where the sale is
27 deemed to take place in accordance with s. 212.06(3) is
28 located in a county that imposes a surtax.

29 (4)(3) For the purpose of this section, a transaction
30 shall be deemed to have occurred in a county imposing the
31 surtax when:

Bill No. CS for SB 1176

Amendment No. Barcode 962610

1 ~~(a)1. Notwithstanding subsection (3), the retail sale~~
 2 ~~includes an item of tangible personal property that is a~~
 3 ~~modular home or manufactured home that is not a mobile home, a~~
 4 ~~service, or tangible personal property representing a service,~~
 5 ~~and the item of tangible personal property, the service, or~~
 6 ~~the tangible personal property representing the service is~~
 7 ~~delivered within the county. If there is no reasonable~~
 8 ~~evidence of delivery of a service, the sale of a service is~~
 9 ~~deemed to occur in the county in which the purchaser accepts~~
 10 ~~the bill of sale.~~

11 ~~(b)2. Notwithstanding subsection (3), the retail sale,~~
 12 ~~excluding lease or rental, of any motor vehicle that does not~~
 13 ~~qualify as "transportation equipment," as defined in s.~~
 14 ~~212.06(3)(g), or the retail sale of a mobile home of a class~~
 15 ~~or type which is required to be registered in this state or in~~
 16 ~~any other state shall be deemed to have occurred only in the~~
 17 ~~county identified as the residence address of the purchaser on~~
 18 ~~the registration or title document for such property.~~

19 ~~(c) The real property that is leased or rented is~~
 20 ~~located in the county.~~

21 ~~(d) The transient rental transaction occurs in the~~
 22 ~~county.~~

23 ~~(e)(b) The event for which an admission is charged is~~
 24 ~~located in the county.~~

25 ~~(f) The coin-operated amusement or vending machine is~~
 26 ~~located in the county.~~

27 ~~(g) The florist taking the original order to sell~~
 28 ~~tangible personal property is located in the county,~~
 29 ~~notwithstanding any other provision of this section.~~

30 ~~(c) The consumer of utility services is located in the~~
 31 ~~county.~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~(h)(d)~~1. Notwithstanding subsection (3), the delivery
2 derived from the retail sale, excluding lease or rental, of
3 any aircraft that does not qualify as "transportation
4 equipment" as defined in s. 212.06(3)(g) or of any boat of a
5 class or type that is required to be registered, licensed,
6 titled, or documented in this state or by the United States
7 Government to a location in the county.

8 2. The user of any aircraft or boat of a class or type
9 which is required to be registered, licensed, titled, or
10 documented in this state or by the United States Government
11 imported into the county for use, consumption, distribution,
12 or storage to be used or consumed in the county is located in
13 the county.

14 ~~3.2.~~ However, it shall be presumed that such items
15 used outside the county for 6 months or longer before being
16 imported into the county were not purchased for use in the
17 county, except as provided in s. 212.06(8)(b).

18 ~~4.3.~~ This paragraph does not apply to the use or
19 consumption of items upon which a like tax of equal or greater
20 amount has been lawfully imposed and paid outside the county.

21 ~~(i)(e)~~ The purchaser of any motor vehicle or mobile
22 home of a class or type which is required to be registered in
23 this state is a resident of the taxing county as determined by
24 the address appearing on or to be reflected on the
25 registration document for such property.

26 ~~(j)(f)~~1. Any motor vehicle or mobile home of a class
27 or type which is required to be registered in this state is
28 imported from another state into the taxing county by a user
29 residing therein for the purpose of use, consumption,
30 distribution, or storage in the taxing county.

31 2. However, it shall be presumed that such items used

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 outside the taxing county for 6 months or longer before being
2 imported into the county were not purchased for use in the
3 county.

4 ~~(g) The real property which is leased or rented is~~
5 ~~located in the county.~~

6 ~~(h) The transient rental transaction occurs in the~~
7 ~~county.~~

8 ~~(i) The delivery of any aircraft or boat of a class or~~
9 ~~type which is required to be registered, licensed, titled, or~~
10 ~~documented in this state or by the United States Government is~~
11 ~~to a location in the county. However, this paragraph does not~~
12 ~~apply to the use or consumption of items upon which a like tax~~
13 ~~of equal or greater amount has been lawfully imposed and paid~~
14 ~~outside the county.~~

15 ~~(k)(j)~~ The dealer owing a use tax on purchases or
16 leases is located in the county.

17 ~~(k) The delivery of tangible personal property other~~
18 ~~than that described in paragraph (d), paragraph (e), or~~
19 ~~paragraph (f) is made to a location outside the county, but~~
20 ~~the property is brought into the county within 6 months after~~
21 ~~delivery, in which event, the owner must pay the surtax as a~~
22 ~~use tax.~~

23 ~~(l) The coin-operated amusement or vending machine is~~
24 ~~located in the county.~~

25 ~~(m) The florist taking the original order to sell~~
26 ~~tangible personal property is located in the county,~~
27 ~~notwithstanding any other provision of this section.~~

28 (5)(4)(a) The department shall administer, collect,
29 and enforce the tax authorized under s. 212.055 pursuant to
30 the same procedures used in the administration, collection,
31 and enforcement of the general state sales tax imposed under

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 the provisions of this chapter, except as provided in this
2 section. The provisions of this chapter regarding interest
3 and penalties on delinquent taxes shall apply to the surtax.
4 Discretionary sales surtaxes shall not be included in the
5 computation of estimated taxes pursuant to s. 212.11.
6 Notwithstanding any other provision of law, a dealer need not
7 separately state the amount of the surtax on the charge
8 ticket, sales slip, invoice, or other tangible evidence of
9 sale. For the purposes of this section and s. 212.055, the
10 "proceeds" of any surtax means all funds collected and
11 received by the department pursuant to a specific
12 authorization and levy under s. 212.055, including any
13 interest and penalties on delinquent surtaxes.

14 (b) The proceeds of a discretionary sales surtax
15 collected by the selling dealer located in a county which
16 imposes the surtax shall be returned, less the cost of
17 administration, to the county where the selling dealer is
18 located. The proceeds shall be transferred to the
19 Discretionary Sales Surtax Clearing Trust Fund. A separate
20 account shall be established in such trust fund for each
21 county imposing a discretionary surtax. The amount deducted
22 for the costs of administration shall not exceed 3 percent of
23 the total revenue generated for all counties levying a surtax
24 authorized in s. 212.055. The amount deducted for the costs
25 of administration shall be used only for those costs which are
26 solely and directly attributable to the surtax. The total
27 cost of administration shall be prorated among those counties
28 levying the surtax on the basis of the amount collected for a
29 particular county to the total amount collected for all
30 counties. No later than March 1 of each year, the department
31 shall submit a written report which details the expenses and

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 amounts deducted for the costs of administration to the
2 President of the Senate, the Speaker of the House of
3 Representatives, and the governing authority of each county
4 levying a surtax. The department shall distribute the moneys
5 in the trust fund each month to the appropriate counties,
6 unless otherwise provided in s. 212.055.

7 (c)1. Any dealer located in a county that does not
8 impose a discretionary sales surtax but who collects the
9 surtax due to sales of tangible personal property or services
10 delivered outside the county shall remit monthly the proceeds
11 of the surtax to the department to be deposited into an
12 account in the Discretionary Sales Surtax Clearing Trust Fund
13 which is separate from the county surtax collection accounts.
14 The department shall distribute funds in this account using a
15 distribution factor determined for each county that levies a
16 surtax and multiplied by the amount of funds in the account
17 and available for distribution. The distribution factor for
18 each county equals the product of:

19 a. The county's latest official population determined
20 pursuant to s. 186.901;

21 b. The county's rate of surtax; and

22 c. The number of months the county has levied a surtax
23 during the most recent distribution period;

24
25 divided by the sum of all such products of the counties
26 levying the surtax during the most recent distribution period.

27 2. The department shall compute distribution factors
28 for eligible counties once each quarter and make appropriate
29 quarterly distributions.

30 3. A county that fails to timely provide the
31 information required by this section to the department

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 authorizes the department, by such action, to use the best
2 information available to it in distributing surtax revenues to
3 the county. If this information is unavailable to the
4 department, the department may partially or entirely
5 disqualify the county from receiving surtax revenues under
6 this paragraph. A county that fails to provide timely
7 information waives its right to challenge the department's
8 determination of the county's share, if any, of revenues
9 provided under this paragraph.

10 ~~(5) No discretionary sales surtax or increase or~~
11 ~~decrease in the rate of any discretionary sales surtax shall~~
12 ~~take effect on a date other than January 1. No discretionary~~
13 ~~sales surtax shall terminate on a day other than December 31.~~

14 (6) The governing body of any county levying a
15 discretionary sales surtax shall enact an ordinance levying
16 the surtax in accordance with the procedures described in s.
17 125.66(2).

18 (7)(a) Any adoption, repeal, or rate change of the
19 surtax by the governing body of any county levying a
20 discretionary sales surtax or the school board of any county
21 levying the school capital outlay surtax authorized by s.
22 212.055(6) is effective on April 1. A county or school board
23 adopting, repealing, or changing the rate of such tax shall
24 notify the department within 10 days after final adoption by
25 ordinance or referendum of an ~~adoption, repeal imposition,~~
26 ~~termination,~~ or rate change of the surtax, but no later than
27 ~~November 16 immediately preceding such April 1 November 16~~
28 ~~prior to the effective date.~~ The notice must specify the time
29 period during which the surtax will be in effect and the rate
30 and must include a copy of the ordinance and such other
31 information as the department requires by rule. Failure to

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 timely provide such notification to the department shall
2 result in the delay of the effective date for a period of 1
3 year.

4 (b) In addition to the notification required by
5 paragraph (a), the governing body of any county proposing to
6 levy a discretionary sales surtax or the school board of any
7 county proposing to levy the school capital outlay surtax
8 authorized by s. 212.055(6) shall notify the department by
9 October 1 if the referendum or consideration of the ordinance
10 that would result in imposition, termination, or rate change
11 of the surtax is scheduled to occur on or after October 1 of
12 that year. Failure to timely provide such notification to the
13 department shall result in the delay of the effective date for
14 a period of 1 year.

15 (8) The department shall provide notice of such
16 adoption, repeal, or change to all affected sellers by the
17 December 1 immediately preceding the April 1 effective date.

18 (9)(8) With respect to any motor vehicle or mobile
19 home of a class or type which is required to be registered in
20 this state, the tax due on a transaction occurring in the
21 taxing county as herein provided shall be collected from the
22 purchaser or user incident to the titling and registration of
23 such property, irrespective of whether such titling or
24 registration occurs in the taxing county.

25 (10) For the purpose of the state providing and
26 maintaining a database of all sales and use tax rates for all
27 local taxing jurisdictions in accordance with the Streamlined
28 Sales and Use Tax Agreement under s. 213.256, the provisions
29 of s. 202.22(2) shall apply.

30 (a) A seller or certified service provider who
31 collects and remits the state and local sales and use tax

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 imposed by this chapter shall use the database provided under
2 s. 202.22(2).

3 (b) A seller or certified service provider who
4 collects and remits the state and local sales and use tax
5 imposed under this chapter shall be held harmless from tax,
6 interest, and penalties, which would otherwise be due solely
7 as a result of the seller or certified service provider
8 relying on an incorrect taxing jurisdiction assignment made in
9 the database provided under s. 202.22(2).

10 (c) The provisions of this subsection shall not apply
11 when the purchased product is received by the purchaser at the
12 business location of the seller.

13 Section 46. Effective January 1, 2004, present
14 subsections (3) through (16) of section 212.06, Florida
15 Statutes, are renumbered as subsections (4) through (17),
16 respectively, new subsection (3) is added to that section, and
17 present subsection (3) of that section is amended to read:

18 212.06 Sales, storage, use tax; collectible from
19 dealers; "dealer" defined; dealers to collect from purchasers;
20 legislative intent as to scope of tax.--

21 (3) It is the intent of this chapter to apply this
22 subsection to determine the source of a transaction for
23 purposes of applying the tax imposed by this chapter. When the
24 source of the transaction is determined to be a Florida
25 location, the tax imposed by this chapter applies in
26 accordance with this chapter.

27 (a) For purposes of this subsection, the terms
28 "receive" and "receipt" mean:

- 29 1. Taking possession of tangible personal property;
30 2. Making first use of services; or
31 3. Taking possession or making first use of digital

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 goods, whichever comes first.

2

3 The terms do not include possession by a shipping company on
4 behalf of the purchaser.

5 (b) For purposes of this subsection, the term
6 "product" means tangible personal property, a digital good, or
7 a service.

8 (c) This section does not apply to the sales or use
9 taxes levied on the following:

10 1. The retail sale or transfer of boats, modular
11 homes, manufactured homes, or mobile homes;

12 2. The retail sale, excluding lease or rental, of
13 motor vehicles or aircraft that do not qualify as
14 transportation equipment, as defined in paragraph (g). The
15 lease or rental of these items shall be deemed to have
16 occurred in accordance with paragraph (f).

17 3. The retail sale of tangible personal property by a
18 florist.

19

20 Such retail sales are deemed to take place in accordance with
21 s. 212.054(4).

22 (d) The retail sale of a product, excluding a lease or
23 rental, shall be deemed to take place:

24 1. When the product is received by the purchaser at a
25 business location of the seller, at that business location.

26 2. When the product is not received by the purchaser
27 at a business location of the seller, at the location where
28 receipt by the purchaser, or the purchaser's donee, designated
29 as such by the purchaser, occurs, including the location
30 indicated by instructions for delivery to the purchaser or
31 donee, known to the seller.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 3. When subparagraphs 1. and 2. do not apply, at the
2 location indicated by an address for the purchaser which is
3 available from the business records of the seller which are
4 maintained in the ordinary course of the seller's business
5 when use of this address does not constitute bad faith.

6 4. When subparagraphs 1., 2., and 3. do not apply, at
7 the location indicated by an address for the purchaser
8 obtained during the consummation of the sale, including the
9 address of a purchaser's payment instrument, if no other
10 address is available, when use of this address does not
11 constitute bad faith.

12 5. When subparagraphs 1., 2., 3., and 4. do not apply,
13 including when the seller is without sufficient information to
14 apply the previous paragraphs, the address from which tangible
15 personal property was shipped, from which the digital good or
16 the computer software delivered electronically was first
17 available for transmission by the seller, or from which the
18 service was provided, disregarding any location that merely
19 provided the digital transfer of the product sold.

20 (e) The lease or rental of tangible personal property,
21 other than property identified in paragraphs (f) and (g),
22 shall be deemed to have occurred as follows:

23 1. For a lease or rental that requires recurring
24 periodic payments, the first periodic payment is deemed to
25 take place in accordance with paragraph (d), notwithstanding
26 the exclusion of lease or rental in paragraph (d). Subsequent
27 periodic payments are deemed to have occurred at the primary
28 property location for each period covered by the payment. The
29 primary property location is determined by an address for the
30 property provided by the lessee which is available to the
31 lessor from its records maintained in the ordinary course of

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 business, when use of this address does not constitute bad
2 faith. The property location shall not be altered by
3 intermittent use of the property at different locations, such
4 as use of business property that accompanies employees on
5 business trips and service calls.

6 2. For a lease or rental that does not require
7 recurring periodic payments, the payment is deemed to take
8 place in accordance with the provisions of paragraph (d),
9 notwithstanding the exclusion of lease or rental in paragraph
10 (d).

11 3. This paragraph does not affect the imposition or
12 computation of sales or use tax on leases or rentals based on
13 a lump sum or accelerated basis or on the acquisition of
14 property for lease.

15 (f) The lease or rental of motor vehicles or aircraft
16 that do not qualify as transportation equipment, as defined in
17 paragraph (g), shall be sourced as follows:

18 1. For a lease or rental that requires recurring
19 periodic payments, each periodic payment is deemed to take
20 place at the primary property location. The primary property
21 location shall be determined by an address for the property
22 provided by the lessee which is available to the lessor from
23 its records maintained in the ordinary course of business,
24 when use of this address does not constitute bad faith. This
25 location shall not be altered by intermittent use at different
26 locations.

27 2. For a lease or rental that does not require
28 recurring periodic payments, the payment is deemed to take
29 place in accordance with paragraph (d), notwithstanding the
30 exclusion of lease or rental in paragraph (d).

31 3. This paragraph does not affect the imposition or

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 computation of sales or use tax on leases or rentals based on
2 a lump sum or accelerated basis or on the acquisition of
3 property for lease.

4 (g) The retail sale, including lease or rental, of
5 transportation equipment shall be deemed to take place in
6 accordance with paragraph (d), notwithstanding the exclusion
7 of lease or rental in paragraph (d). The term "transportation
8 equipment" means:

9 1. Locomotives and railcars that are used for the
10 carriage of persons or property in interstate commerce;

11 2. Trucks and truck tractors with a Gross Vehicle
12 Weight Rating (GVWR) of 10,001 pounds or greater, trailers,
13 semitrailers, or passenger buses that are registered through
14 the International Registration Plan and operated under
15 authority of a carrier authorized and certificated by the
16 United States Department of Transportation or another federal
17 authority to engage in the carriage of persons or property in
18 interstate commerce;

19 3. Aircraft that are operated by air carriers
20 authorized and certificated by the United States Department of
21 Transportation or another federal or a foreign authority to
22 engage in the carriage of persons or property in interstate or
23 foreign commerce; or

24 4. Containers designed for use on and component parts
25 attached or secured on the items set forth in subparagraphs 1.
26 through 3.

27 (4)(3)(a) Except as provided in paragraphs (a) and
28 paragraph (b), every dealer making retail sales, whether
29 within or outside the state, of tangible personal property for
30 distribution, storage, or use or other consumption, in this
31 state, shall, at the time of making sales, collect the tax

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 imposed by this chapter from the purchaser.

2 (a) Notwithstanding subsection (3), a business
3 purchaser that is not a holder of a direct-pay permit and that
4 knows at the time of purchase of a digital good, computer
5 software delivered electronically, or a service that the
6 digital good, computer software delivered electronically, or
7 service will be concurrently available for use in more than
8 one jurisdiction shall deliver to the dealer a multiple points
9 of use exemption form (MPU exemption form) at the time of
10 purchase.

11 1. Upon receipt of the MPU exemption form, the seller
12 is relieved of all obligation to collect, pay, or remit the
13 applicable tax, and the purchaser shall be obligated to
14 collect, pay, or remit the applicable tax on a direct-pay
15 basis.

16 2. A purchaser delivering the MPU exemption form may
17 use any reasonable, but consistent and uniform, method of
18 apportionment that is supported by the purchaser's business
19 records as they exist at the time of the consummation of the
20 sale.

21 3. The MPU exemption form will remain in effect for
22 all future sales by the seller to the purchaser, except as to
23 the subsequent sale's specific apportionment that is governed
24 by the principle of subparagraph 2. and the facts existing at
25 the time of the sale, until the MPU exemption form is revoked
26 in writing.

27 4. A holder of a direct-pay permit is not required to
28 deliver an MPU exemption form to the seller. A direct-pay
29 permitholder shall follow the provisions of subparagraph 2. in
30 apportioning the tax due on a digital good or a service that
31 will be concurrently available for use in more than one

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 jurisdiction.

2 (b)1. Notwithstanding subsection (3), a purchaser of
3 direct mail which is not a holder of a direct-pay permit shall
4 provide to the seller in conjunction with the purchase either
5 a direct mail form or information to show the jurisdictions to
6 which the direct mail is delivered to recipients. Upon receipt
7 of the direct mail form, the seller is relieved of all
8 obligations to collect, pay, or remit the applicable tax, and
9 the purchaser is obligated to pay or remit the applicable tax
10 on a direct-pay basis. A direct mail form shall remain in
11 effect for all future sales of direct mail by the seller to
12 the purchaser until it is revoked in writing.

13 2. Upon receipt of information from the purchaser
14 showing the jurisdictions to which the direct mail is
15 delivered to recipients, the seller shall collect the tax
16 according to the delivery information provided by the
17 purchaser. In the absence of bad faith, the seller is relieved
18 of any further obligation to collect tax on any transaction
19 where the seller has collected tax pursuant to the delivery
20 information provided by the purchaser.

21 3. If the purchaser of direct mail does not have a
22 direct-pay permit and does not provide the seller with either
23 a direct mail form or delivery information as required by
24 subparagraph 1., the seller shall collect the tax according to
25 subparagraph 5. This paragraph does not limit a purchaser's
26 obligation for sales or use tax to any state to which the
27 direct mail is delivered.

28 4. If a purchaser of direct mail provides the seller
29 with documentation of direct-pay authority, the purchaser is
30 not required to provide a direct mail form or delivery
31 information to the seller. A purchaser of printed materials

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~shall have sole responsibility for the taxes imposed by this~~
2 ~~chapter on those materials when the printer of the materials~~
3 ~~delivers them to the United States Postal Service for mailing~~
4 ~~to persons other than the purchaser located within and outside~~
5 ~~this state. Printers of materials delivered by mail to persons~~
6 ~~other than the purchaser located within and outside this state~~
7 ~~shall have no obligation or responsibility for the payment or~~
8 ~~collection of any taxes imposed under this chapter on those~~
9 ~~materials. However, printers are obligated to collect the~~
10 ~~taxes imposed by this chapter on printed materials when all,~~
11 ~~or substantially all, of the materials will be mailed to~~
12 ~~persons located within this state. For purposes of the~~
13 ~~printer's tax collection obligation, there is a rebuttable~~
14 ~~presumption that all materials printed at a facility are~~
15 ~~mailed to persons located within the same state as that in~~
16 ~~which the facility is located. A certificate provided by the~~
17 ~~purchaser to the printer concerning the delivery of the~~
18 ~~printed materials for that purchase or all purchases shall be~~
19 ~~sufficient for purposes of rebutting the presumption created~~
20 ~~herein.~~

21 5.2. The Department of Revenue is authorized to adopt
22 rules and forms to implement the provisions of this paragraph.

23 Section 47. Effective January 1, 2004, subsections (1)
24 and (2) of section 212.08, Florida Statutes, are amended to
25 read:

26 212.08 Sales, rental, use, consumption, distribution,
27 and storage tax; specified exemptions.--The sale at retail,
28 the rental, the use, the consumption, the distribution, and
29 the storage to be used or consumed in this state of the
30 following are hereby specifically exempt from the tax imposed
31 by this chapter.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 (1) EXEMPTIONS; GENERAL GROCERIES.--

2 (a) Food and food ingredients ~~products~~ for human
3 consumption are exempt from the tax imposed by this chapter.

4 (b) For the purpose of this chapter, as used in this
5 subsection, the term "food and food ingredients ~~products~~"
6 means substances, whether in liquid, concentrated, solid,
7 frozen, dried, or dehydrated form, which are sold for
8 ingestion or chewing by humans and are consumed for their
9 taste or nutritional value ~~edible commodities, whether~~
10 ~~processed, cooked, raw, canned, or in any other form, which~~
11 ~~are generally regarded as food. This includes, but is not~~
12 limited to, all of the following:

13 1. ~~Cereals and cereal products, baked goods,~~
14 ~~oleomargarine, meat and meat products, fish and seafood~~
15 ~~products, frozen foods and dinners, poultry, eggs and egg~~
16 ~~products, vegetables and vegetable products, fruit and fruit~~
17 ~~products, spices, salt, sugar and sugar products, milk and~~
18 ~~dairy products, and products intended to be mixed with milk.~~

19 2. ~~Natural fruit or vegetable juices or their~~
20 ~~concentrates or reconstituted natural concentrated fruit or~~
21 ~~vegetable juices, whether frozen or unfrozen, dehydrated,~~
22 ~~powdered, granulated, sweetened or unsweetened, seasoned with~~
23 ~~salt or spice, or unseasoned; coffee, coffee substitutes, or~~
24 ~~cocoa; and tea, unless it is sold in a liquid form.~~

25 1.3. Bakery products sold by bakeries, pastry shops,
26 or like establishments, if sold without eating utensils.
27 Bakery products for purposes of this subsection include bread,
28 rolls, buns, biscuits, bagels, croissants, pastries,
29 doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars,
30 cookies, and tortillas that do not have eating facilities.

31 2. Dietary supplements. The term "dietary supplements"

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 means any product, other than tobacco, intended to supplement
2 the diet that contains one or more of the following dietary
3 ingredients: a vitamin; a mineral; an herb or other botanical;
4 an amino acid; a dietary substance for use by humans to
5 supplement the diet by increasing the total dietary intake; or
6 a concentrate, metabolite, constituent, extract, or
7 combination of any ingredient described in this subparagraph
8 which is intended for ingestion in tablet, capsule, powder,
9 softgel, gelcap, or liquid form or, if not intended for
10 ingestion in such a form, is not represented as conventional
11 food and is not represented for use as a sole item of a meal
12 or of the diet; and which is required to be labeled as a
13 dietary supplement, identifiable by the "supplemental facts"
14 box found on the label and as required pursuant to 21 C.F.R.
15 s. 101.36.

16 (c) The exemption provided by this subsection does not
17 apply:

18 ~~1. When the food products are sold as meals for~~
19 ~~consumption on or off the premises of the dealer.~~

20 ~~2. When the food products are furnished, prepared, or~~
21 ~~served for consumption at tables, chairs, or counters or from~~
22 ~~trays, glasses, dishes, or other tableware, whether provided~~
23 ~~by the dealer or by a person with whom the dealer contracts to~~
24 ~~furnish, prepare, or serve food products to others.~~

25 ~~3. When the food products are ordinarily sold for~~
26 ~~immediate consumption on the seller's premises or near a~~
27 ~~location at which parking facilities are provided primarily~~
28 ~~for the use of patrons in consuming the products purchased at~~
29 ~~the location, even though such products are sold on a "take~~
30 ~~out" or "to go" order and are actually packaged or wrapped and~~
31 ~~taken from the premises of the dealer.~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

- 1 ~~4. To sandwiches sold ready for immediate consumption~~
 2 ~~on or off the seller's premises.~~
- 3 ~~5. When the food products are sold ready for immediate~~
 4 ~~consumption within a place, the entrance to which is subject~~
 5 ~~to an admission charge.~~
- 6 ~~1.6. When the food and food ingredients products are~~
 7 ~~sold as hot prepared food products.~~
- 8 ~~2.7. To soft drinks, which include, but are not~~
 9 ~~limited to, any nonalcoholic beverage, any preparation or~~
 10 ~~beverage commonly referred to as a "soft drink," or any~~
 11 ~~noncarbonated drink made from milk derivatives or tea, when~~
 12 ~~sold in cans or similar containers. The term "soft drinks"~~
 13 ~~means nonalcoholic beverages that contain natural or~~
 14 ~~artificial sweeteners. Soft drinks do not include beverages~~
 15 ~~that contain milk or milk products, soy, rice, or similar milk~~
 16 ~~substitutes, or greater than 50 percent of vegetable or fruit~~
 17 ~~juice by volume.~~
- 18 ~~8. To ice cream, frozen yogurt, and similar frozen~~
 19 ~~dairy or nondairy products in cones, small cups, or pints,~~
 20 ~~popsicles, frozen fruit bars, or other novelty items, whether~~
 21 ~~or not sold separately.~~
- 22 ~~9. To food prepared, whether on or off the premises,~~
 23 ~~and sold for immediate consumption. This does not apply to~~
 24 ~~food prepared off the premises and sold in the original sealed~~
 25 ~~container, or the slicing of products into smaller portions.~~
- 26 ~~3.10. When the food and food ingredients products are~~
 27 ~~sold through a vending machine, pushcart, motor vehicle, or~~
 28 ~~any other form of vehicle.~~
- 29 ~~4.11. To candy and any similar product regarded as~~
 30 ~~candy or confection, based on its normal use, as indicated on~~
 31 ~~the label or advertising thereof. The term "candy" means a~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 preparation of sugar, honey, or other natural or artificial
 2 sweeteners in combination with chocolate, fruits, nuts, or
 3 other ingredients or flavorings in the form of bars, drops, or
 4 pieces. Candy does not include any preparation that contains
 5 flour and requires no refrigeration.

6 ~~12. To bakery products sold by bakeries, pastry shops,~~
 7 ~~or like establishments that have eating facilities, except~~
 8 ~~when sold for consumption off the seller's premises.~~

9 ~~13. When food products are served, prepared, or sold~~
 10 ~~in or by restaurants, lunch counters, cafeterias, hotels,~~
 11 ~~taverns, or other like places of business.~~

12 5. To tobacco.

13 (d) As used in this subsection, the term:

14 ~~1. "For consumption off the seller's premises" means~~
 15 ~~that the food or drink is intended by the customer to be~~
 16 ~~consumed at a place away from the dealer's premises.~~

17 ~~2. "For consumption on the seller's premises" means~~
 18 ~~that the food or drink sold may be immediately consumed on the~~
 19 ~~premises where the dealer conducts his or her business. In~~
 20 ~~determining whether an item of food is sold for immediate~~
 21 ~~consumption, there shall be considered the customary~~
 22 ~~consumption practices prevailing at the selling facility.~~

23 ~~3. "Premises" shall be construed broadly, and means,~~
 24 ~~but is not limited to, the lobby, aisle, or auditorium of a~~
 25 ~~theater; the seating, aisle, or parking area of an arena,~~
 26 ~~rink, or stadium; or the parking area of a drive-in or outdoor~~
 27 ~~theater. The premises of a caterer with respect to catered~~
 28 ~~meals or beverages shall be the place where such meals or~~
 29 ~~beverages are served.~~

30 1.4. "Hot Prepared food products" means food sold in a
 31 heated state or heated by the seller; two or more food

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ingredients mixed or combined by the seller for sale as a
2 single item; or food sold with eating utensils provided by the
3 seller, including plates, knives, forks, spoons, glasses,
4 cups, napkins, or straws. A plate does not include a container
5 or packaging used to transport the food. Prepared food does
6 not include food that is only cut, repackaged, or pasteurized
7 by the seller and eggs, fish, meat, poultry, and foods
8 containing these raw animal foods requiring cooking by the
9 consumer as recommended by the Food and Drug Administration in
10 chapter 3, part 401.11 of its food code so as to prevent food
11 borne illnesses. "Prepared food" for purposes of this
12 subsection includes sandwiches sold for immediate consumption,
13 and those products, items, or components which have been
14 prepared for sale in a heated condition and which are sold at
15 any temperature that is higher than the air temperature of the
16 room or place where they are sold. "Hot prepared food
17 products," for the purposes of this subsection, includes a
18 combination of hot and cold food items or components where a
19 single price has been established for the combination and the
20 food products are sold in such combination, such as a hot
21 meal, a hot specialty dish or serving, or a hot sandwich or
22 hot pizza, or ice cream cones or sundaes, or food sold in an
23 unheated state by weight or volume as a single item, including
24 cold components or side items.

25 (e)1. Food or drinks not exempt under paragraphs (a),
26 (b), (c), and (d) shall be exempt, notwithstanding those
27 paragraphs, when purchased with food coupons or Special
28 Supplemental Food Program for Women, Infants, and Children
29 vouchers issued under authority of federal law.

30 2. This paragraph is effective only while federal law
31 prohibits a state's participation in the federal food coupon

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 program or Special Supplemental Food Program for Women,
2 Infants, and Children if there is an official determination
3 that state or local sales taxes are collected within that
4 state on purchases of food or drinks with such coupons.

5 3. This paragraph shall not apply to any food or
6 drinks on which federal law shall permit sales taxes without
7 penalty, such as termination of the state's participation.

8 (f) "Dietary supplements" that are sold as prepared
9 food are not exempt.

10 (2) EXEMPTIONS; MEDICAL.--

11 (a) There shall be exempt from the tax imposed by this
12 chapter:

13 1. Any drug;

14 2. Durable medical equipment, mobility enhancing
15 equipment, or prosthetic device ~~any medical products and~~
16 ~~supplies or medicine~~ dispensed according to an individual
17 prescription or prescriptions ~~written by a prescriber~~
18 ~~authorized by law to prescribe medicinal drugs;~~

19 3. Hypodermic needles; hypodermic syringes;

20 4. Chemical compounds and test kits used for the
21 diagnosis or treatment of human disease, illness, or injury
22 intended for one-time use;

23 5. Over-the-counter drugs ~~and common household~~
24 ~~remedies recommended and generally sold for internal or~~
25 ~~external use in the cure, mitigation, treatment, or prevention~~
26 ~~of illness or disease in human beings, but not including~~
27 grooming and hygiene products;

28 6. Band-aids, gauze, bandages, adhesive tape;

29 7. Hearing aids;

30 8. Dental prosthesis; or

31 9. Funerals.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1
2 Funeral directors shall pay tax on all tangible personal
3 property used by them in their business. ~~cosmetics or toilet~~
4 ~~articles, notwithstanding the presence of medicinal~~
5 ~~ingredients therein, according to a list prescribed and~~
6 ~~approved by the Department of Health, which list shall be~~
7 ~~certified to the Department of Revenue from time to time and~~
8 ~~included in the rules promulgated by the Department of~~
9 ~~Revenue. There shall also be exempt from the tax imposed by~~
10 ~~this chapter artificial eyes and limbs; orthopedic shoes;~~
11 ~~prescription eyeglasses and items incidental thereto or which~~
12 ~~become a part thereof; dentures; hearing aids; crutches;~~
13 ~~prosthetic and orthopedic appliances; and funerals. In~~
14 ~~addition, any items intended for one-time use which transfer~~
15 ~~essential optical characteristics to contact lenses shall be~~
16 ~~exempt from the tax imposed by this chapter; however, this~~
17 ~~exemption shall apply only after \$100,000 of the tax imposed~~
18 ~~by this chapter on such items has been paid in any calendar~~
19 ~~year by a taxpayer who claims the exemption in such year.~~
20 ~~Funeral directors shall pay tax on all tangible personal~~
21 ~~property used by them in their business.~~

22 (b) For the purposes of this subsection, the term:
23 1. "Drug" means a compound, substance, or preparation,
24 and any component of a compound, substance, or preparation,
25 other than food and food ingredients, dietary supplements, and
26 alcoholic beverages, which is:

27 a. Recognized in the official United States
28 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
29 United States, or official National Formulary, or the
30 supplement to any of them;

31 b. Intended for use in the diagnosis, cure,

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 mitigation, treatment, or prevention of disease; or

2 c. Intended to affect the structure or any function of
3 the body.

4 2. "Durable medical equipment" means equipment,
5 including repair and replacement parts to such equipment, but
6 the term does not include mobility-enhancing equipment, which
7 can withstand repeated use, is primarily and customarily used
8 to serve a medical purpose, generally is not useful to a
9 person in the absence of illness or injury, and is not worn on
10 or in the body.

11 3. "Mobility-enhancing equipment" means equipment,
12 including repair and replacement parts to such equipment, but
13 the term does not include durable medical equipment, which:

14 a. Is primarily and customarily used to provide or
15 increase the ability to move from one place to another and
16 which is appropriate for use either in a home or a motor
17 vehicle;

18 b. Is not generally used by persons with normal
19 mobility; and

20 c. Does not include any motor vehicle or any equipment
21 on a motor vehicle normally provided by a motor vehicle
22 manufacturer.

23 4. "Prosthetic device" means a replacement,
24 corrective, or supportive device, including repair or
25 replacement parts to such equipment, other than a hearing aid
26 or a dental prosthesis, that is worn on or in the body to:

27 a. Artificially replace a missing portion of the body;

28 b. Prevent or correct physical deformity or
29 malfunction; or

30 c. Support a weak or deformed portion of the body.

31 5. "Grooming and hygiene products" are soaps and

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 cleaning solutions, shampoo, toothpaste, mouthwash,
2 antiperspirants, and suntan lotions and screens, regardless of
3 whether the items meet the definition of over-the-counter
4 drugs.

5 6. "Over-the-counter drug" means a drug the packaging
6 for which contains a label that identifies the product as a
7 drug as required by 21 C.F.R. s. 201.66. The over-the-counter
8 drug label includes a "drug facts" panel or a statement of the
9 active ingredients with a list of those ingredients contained
10 in the compound, substance, or preparation. ~~"Prosthetic and~~
11 ~~orthopedic appliances" means any apparatus, instrument,~~
12 ~~device, or equipment used to replace or substitute for any~~
13 ~~missing part of the body, to alleviate the malfunction of any~~
14 ~~part of the body, or to assist any disabled person in leading~~
15 ~~a normal life by facilitating such person's mobility. Such~~
16 ~~apparatus, instrument, device, or equipment shall be exempted~~
17 ~~according to an individual prescription or prescriptions~~
18 ~~written by a physician licensed under chapter 458, chapter~~
19 ~~459, chapter 460, chapter 461, or chapter 466, or according to~~
20 ~~a list prescribed and approved by the Department of Health,~~
21 ~~which list shall be certified to the Department of Revenue~~
22 ~~from time to time and included in the rules promulgated by the~~
23 ~~Department of Revenue.~~

24 2. ~~"Cosmetics" means articles intended to be rubbed,~~
25 ~~poured, sprinkled, or sprayed on, introduced into, or~~
26 ~~otherwise applied to the human body for cleansing,~~
27 ~~beautifying, promoting attractiveness, or altering the~~
28 ~~appearance and also means articles intended for use as a~~
29 ~~compound of any such articles, including, but not limited to,~~
30 ~~cold creams, suntan lotions, makeup, and body lotions.~~

31 3. ~~"Toilet articles" means any article advertised or~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~held out for sale for grooming purposes and those articles~~
2 ~~that are customarily used for grooming purposes, regardless of~~
3 ~~the name by which they may be known, including, but not~~
4 ~~limited to, soap, toothpaste, hair spray, shaving products,~~
5 ~~colognes, perfumes, shampoo, deodorant, and mouthwash.~~

6 7.4. "Prescription" means an order, formula, or recipe
7 issued in any form of oral, written, electronic, or other
8 means of transmission by a duly licensed practitioner
9 authorized by chapter 458, chapter 459, chapter 460, chapter
10 461, or chapter 466. The term also includes an orally
11 transmitted order by the lawfully designated agent of such
12 practitioner. The term also includes an order written or
13 transmitted by a practitioner licensed to practice in a
14 jurisdiction other than this state, but only if the pharmacist
15 called upon to dispense such order determines, in the exercise
16 of his or her professional judgment, that the order is valid
17 and necessary for the treatment of a chronic or recurrent
18 illness. includes any order for drugs or medicinal supplies
19 written or transmitted by any means of communication by a duly
20 licensed practitioner authorized by the laws of the state to
21 prescribe such drugs or medicinal supplies and intended to be
22 dispensed by a pharmacist. The term also includes an orally
23 transmitted order by the lawfully designated agent of such
24 practitioner. The term also includes an order written or
25 transmitted by a practitioner licensed to practice in a
26 jurisdiction other than this state, but only if the pharmacist
27 called upon to dispense such order determines, in the exercise
28 of his or her professional judgment, that the order is valid
29 and necessary for the treatment of a chronic or recurrent
30 illness. The term also includes a pharmacist's order for a
31 product selected from the formulary created pursuant to s.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~465.186. A prescription may be retained in written form, or~~
2 ~~the pharmacist may cause it to be recorded in a data~~
3 ~~processing system, provided that such order can be produced in~~
4 ~~printed form upon lawful request.~~

5 (c) Chlorine shall not be exempt from the tax imposed
6 by this chapter when used for the treatment of water in
7 swimming pools.

8 ~~(d) Lithotripters are exempt.~~

9 ~~(d)(e) Human organs are exempt.~~

10 ~~(f) Sales of drugs to or by physicians, dentists,~~
11 ~~veterinarians, and hospitals in connection with medical~~
12 ~~treatment are exempt.~~

13 ~~(g) Medical products and supplies used in the cure,~~
14 ~~mitigation, alleviation, prevention, or treatment of injury,~~
15 ~~disease, or incapacity which are temporarily or permanently~~
16 ~~incorporated into a patient or client by a practitioner of the~~
17 ~~healing arts licensed in the state are exempt.~~

18 ~~(h) The purchase by a veterinarian of commonly~~
19 ~~recognized substances possessing curative or remedial~~
20 ~~properties which are ordered and dispensed as treatment for a~~
21 ~~diagnosed health disorder by or on the prescription of a duly~~
22 ~~licensed veterinarian, and which are applied to or consumed by~~
23 ~~animals for alleviation of pain or the cure or prevention of~~
24 ~~sickness, disease, or suffering are exempt. Also exempt are~~
25 ~~the purchase by a veterinarian of antiseptics, absorbent~~
26 ~~cotton, gauze for bandages, lotions, vitamins, and worm~~
27 ~~remedies.~~

28 ~~(i) X-ray opaques, also known as opaque drugs and~~
29 ~~radiopaque, such as the various opaque dyes and barium~~
30 ~~sulphate, when used in connection with medical X rays for~~
31 ~~treatment of bodies of humans and animals, are exempt.~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~(e)(j)~~ Parts, special attachments, special lettering,
2 and other like items that are added to or attached to tangible
3 personal property so that a handicapped person can use them
4 are exempt when such items are purchased by a person pursuant
5 to an individual prescription.

6 ~~(f)(k)~~ This subsection shall be strictly construed and
7 enforced.

8 Section 48. Effective January 1, 2004, section
9 212.095, Florida Statutes, is amended to read:

10 212.095 Refunds.--

11 (1) No exemption granted on a refund basis pursuant to
12 this chapter is authorized except as provided in this section.

13 ~~(2)(a) No person may secure a refund under this~~
14 ~~chapter unless such person is the holder of an unrevoked~~
15 ~~refund permit issued by the department before the purchase for~~
16 ~~which a refund is sought, which permit shall be numbered and~~
17 ~~issued annually.~~

18 ~~(b) To procure a permit, a person must file with the~~
19 ~~department an application, on forms furnished by the~~
20 ~~department, stating that he or she is entitled to a refund~~
21 ~~according to the provisions of this chapter and that he or she~~
22 ~~intends to file an application for refund for the current~~
23 ~~calendar year, and must furnish the department such other~~
24 ~~information as the department requests.~~

25 ~~(c) No person may in any event be allowed a refund~~
26 ~~unless he or she has filed the application provided for in~~
27 ~~paragraph (b) with the department. A permit shall be effective~~
28 ~~on the date issued by the department.~~

29 ~~(d) If an applicant for a refund permit has violated~~
30 ~~any provision of this section or any regulation pursuant~~
31 ~~hereto, or has been convicted of bribery, theft, or false~~

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 ~~swearing within the period of 5 years preceding the~~
 2 ~~application, or if the department has evidence of the~~
 3 ~~financial irresponsibility of the applicant, the department~~
 4 ~~may require the applicant to execute a corporate surety bond~~
 5 ~~of \$1,000 to be approved by the department, conditioned upon~~
 6 ~~the payment of all taxes, penalties, and fines for which such~~
 7 ~~applicant may become liable under this chapter.~~

8 (2)(3)(a) When a sale is made to a person who claims
 9 to be entitled to a refund under this section, the seller
 10 shall make out a sales invoice, which shall contain the
 11 following information:

- 12 1. The name and business address of the purchaser.
- 13 2. A description of the item or services sold.
- 14 3. The date on which the purchase was made.
- 15 4. The price and amount of tax paid for the item or
- 16 services.
- 17 5. The name and place of business of the seller at
- 18 which the sale was made.

19 ~~6. The refund permit number of the purchaser.~~

20 (b) The sales invoice shall be retained by the
 21 purchaser for attachment to his or her application for a
 22 refund, as a part thereof. No refund will be allowed unless
 23 the seller has executed such an invoice and unless proof of
 24 payment of the taxes for which the refund is claimed is
 25 attached. The department may refuse to grant a refund if the
 26 invoice is incomplete and fails to contain the full
 27 information required in this subsection.

28 (c) No person may execute a sales invoice, as
 29 described in paragraph (a), except a dealer duly registered
 30 pursuant to this chapter, or an authorized agent thereof.

31 (3)(4)(a) No refund may be authorized unless a sworn

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 application therefor containing the information required in
2 this section is filed with the department not later than 30
3 days immediately following the quarter for which the refund is
4 claimed. When a claim is filed after such 30 days and a
5 justified excuse for late filing is presented to the
6 department and the last preceding claim was filed on time,
7 such late filing may be accepted through 60 days following the
8 quarter. No refund will be authorized unless the amount due
9 is for \$5 or more in any quarter and unless application is
10 made upon forms prescribed by the department.

11 (b) Claims shall be filed and paid for each calendar
12 quarter. The department shall deduct a fee of \$2 for each
13 claim, which fee shall be deposited in the General Revenue
14 Fund.

15 (c) Refund application forms shall include at a
16 minimum the following information:

17 1. The name and address of the person claiming the
18 refund.

19 ~~2. The refund permit number of such person.~~

20 ~~2.3.~~ The location at which the items or services for
21 which a refund is claimed are used.

22 ~~3.4.~~ A description of each such item or service and
23 the purpose for which such item or service was acquired.

24 ~~4.5.~~ Copies of the sales invoices of items or services
25 for which a refund is being claimed.

26 ~~(4)(5)~~ The right to receive any refund under the
27 provisions of this section is not assignable, except to the
28 executor or administrator, or to the receiver, trustee in
29 bankruptcy, or assignee in an insolvency proceeding, of the
30 person entitled to the refund.

31 ~~(5)(6)~~(a) Each registered dealer shall, in accordance

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 with the requirements of the department, keep at his or her
2 principal place of business in this state or at the location
3 where the sale is made a complete record or duplicate sales
4 tickets of all items or services sold by the registered dealer
5 for which a refund provided in this section may be claimed,
6 which records shall contain the information required in
7 paragraph(2)(3)(a).

8 (b) Every person applying for ~~to whom~~ a refund ~~permit~~
9 ~~has been issued~~ under this section shall, in accordance with
10 the requirements of the department, keep at his or her
11 residence or principal place of business in this state a
12 record of each purchase for which a refund is claimed,
13 including the information required in paragraph(2)(3)(a).

14 (c) The records required to be kept under this
15 subsection shall at all reasonable hours be subject to audit
16 or inspection by the department or by any person duly
17 authorized by it. Such records shall be preserved and may not
18 be destroyed until 3 years after the date the item to which
19 they relate was sold or purchased.

20 (d) The department shall keep a permanent record of
21 the amount of refund claimed and paid to each claimant. Such
22 records shall be open to public inspection.

23 ~~(6)(7)~~ Agents of the department are authorized to go
24 upon the premises of any refund applicant ~~permitholder~~, or
25 duly authorized agent thereof, to make an inspection to
26 ascertain any matter connected with the operation of this
27 section or the enforcement hereof. However, no agent may enter
28 the dwelling of any person without the consent of the occupant
29 or authority from a court of competent jurisdiction.

30 ~~(7)(8)~~ If any taxes are refunded erroneously, the
31 department shall advise the payee by registered mail of the

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 erroneous refund. If the payee fails to reimburse the state
2 within 15 days after the receipt of the letter, an action may
3 be instituted by the department against such payee in the
4 circuit court, and the department shall recover from the payee
5 the amount of the erroneous refund plus a penalty of 25
6 percent.

7 ~~(8)(9)~~ No person shall:

8 (a) Knowingly make a false or fraudulent statement in
9 ~~an application for a refund permit or in an application for a~~
10 refund of any taxes under this section;

11 (b) Fraudulently obtain a refund of such taxes; or

12 (c) Knowingly aid or assist in making any such false
13 or fraudulent statement or claim.

14 ~~(10) The refund permit of any person who violates any~~
15 ~~provision of this section shall be revoked by the department~~
16 ~~and may not be reissued until 2 years have elapsed from the~~
17 ~~date of such revocation. The refund permit of any person who~~
18 ~~violates any other provision of this chapter may be suspended~~
19 ~~by the department for any period, in its discretion, not~~
20 ~~exceeding 6 months.~~

21 ~~(9)(11) Refund permits and refund~~ application forms
22 shall include instructions for dealers and purchasers as to
23 the relevant requirements of this section.

24 Section 49. Effective January 1, 2004, section
25 212.094, Florida Statutes, is created to read:

26 212.094 Purchaser requests for refunds from dealers.--

27 (1) If a purchaser seeks a refund of or credit from a
28 dealer for a tax collected under this chapter by that dealer,
29 the purchaser must submit a written request for the refund or
30 credit to the dealer in accordance with this section. The
31 request must contain all the information necessary for the

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 dealer to determine the validity of the purchaser's request.

2 (2) The purchaser may not take any other action
3 against the dealer with respect to the requested refund or
4 credit until the dealer has had 60 days following receipt of a
5 completed request in which to respond.

6 (3) Nothing in this section is intended to change the
7 law regarding standing to claim a refund.

8 Section 50. Effective January 1, 2004, subsection (3)
9 of section 212.17, Florida Statutes, is amended to read:

10 212.17 Credits for returned goods, rentals, or
11 admissions; goods acquired for dealer's own use and
12 subsequently resold; additional powers of department.--

13 (3) A dealer who has paid the tax imposed by this
14 chapter on tangible personal property or services may take a
15 credit or obtain a refund for any tax paid by the dealer on
16 the unpaid balance due on worthless accounts within 12 months
17 following the month in which the bad debt has been charged off
18 for federal income tax purposes. A dealer who has paid the tax
19 imposed by this chapter on tangible personal property or
20 services and who is not required to file federal income tax
21 returns may take a credit or obtain a refund for any tax paid
22 by the dealer on the unpaid balance due on worthless accounts
23 within 12 months following the month in which the bad debt is
24 written off as uncollectible in the dealer's books and records
25 and would be eligible for a bad debt deduction for federal
26 income tax purposes if the dealer was required to file a
27 federal income tax return.

28 (a) A dealer that is taking a credit or obtaining a
29 refund on worthless accounts shall base the bad debt recovery
30 calculation in accordance with 26 U.S.C. s. 166.

31 (b) Notwithstanding paragraph (a), the amount

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 calculated pursuant to 26 U.S.C. s. 166 shall be adjusted to
2 exclude financing charges or interest; sales or use taxes
3 charged on the purchase price; uncollectible amounts on
4 property that remain in the possession of the seller until the
5 full purchase price is paid; expenses incurred in attempting
6 to collect any debt; and repossessed property.

7 (c) When the amount of bad debt exceeds the amount of
8 taxable sales for the period during which the bad debt is
9 written off, a refund claim may be filed in accordance with
10 the timing provisions of s. 215.26(2), except that the statute
11 of limitations for filing the refund claim shall be measured
12 from the due date of the return on which the bad debt could
13 first be claimed.

14 (d) If any accounts so charged off for which a credit
15 or refund has been obtained are thereafter in whole or in part
16 paid to the dealer, the amount so paid shall be included in
17 the first return filed after such collection and the tax paid
18 accordingly.

19 (e) Where filing responsibilities have been assumed by
20 a certified service provider, the certified service provider
21 shall claim, on behalf of the seller, any bad debt allowance
22 provided by this section. The certified service provider must
23 credit or refund to the seller the full amount of any bad debt
24 allowance or refund received.

25 (f) For the purposes of reporting a payment received
26 on a previously claimed bad debt, any payments made on a debt
27 or account are applied first proportionally to the taxable
28 price of the property or service and the sales tax thereon,
29 and secondly to interest, service charges, and any other
30 charges.

31 (g) In situations in which the books and records of

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 the party claiming the bad debt allowance support an
2 allocation of the bad debts among states that are members of
3 the Streamlined Sales and Use Tax Agreement, the allocation is
4 permitted among those states.

5 Section 51. Effective January 1, 2004, section
6 213.052, Florida Statutes, is created to read:

7 213.052 Notice of state rate changes.--

8 (1) A sales or use tax rate change imposed under
9 chapter 212 is effective on January 1, April 1, July 1, or
10 October 1. The Department of Revenue shall provide notice of
11 such rate change to all affected sellers 90 days before the
12 effective date of the rate change.

13 (2) Failure of a seller to receive notice does not
14 relieve the seller of its obligation to collect sales or use
15 tax.

16 Section 52. Effective January 1, 2004, section
17 213.0521, Florida Statutes, is created to read:

18 213.0521 Effective date of state rate changes.--The
19 effective date for services covering a period starting before
20 and ending after the statutory effective date shall be as
21 follows:

22 (1) For a rate increase, the new rate shall apply to
23 the first billing period starting on or after the effective
24 date.

25 (2) For a rate decrease, the new rate shall apply to
26 bills rendered on or after the effective date.

27 Section 53. Effective January 1, 2004, subsection (11)
28 is added to section 213.21, Florida Statutes, to read:

29 213.21 Informal conferences; compromises.--

30 (11) Amnesty shall be provided for uncollected or
31 unpaid sales or use tax to a seller who registers to pay or to

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 collect and remit applicable sales or use tax in accordance
2 with the terms of the Streamlined Sales and Use Tax Agreement
3 authorized under s. 213.256, if the seller was not registered
4 with the Department of Revenue in the 12-month period
5 preceding the effective date of participation in the agreement
6 by this state.

7 (a) The amnesty precludes assessment for uncollected
8 or unpaid sales or use tax together with penalty or interest
9 for sales made during the period the seller was not registered
10 with the Department of Revenue, if registration occurs within
11 12 months after the effective date of this state's
12 participation in the agreement.

13 (b) The amnesty is not available to a seller with
14 respect to any matter or matters for which the seller received
15 notice of the commencement of an audit and which audit is not
16 yet finally resolved, including any related administrative and
17 judicial processes.

18 (c) The amnesty is not available for sales or use
19 taxes already paid or remitted to the state or to taxes
20 collected by the seller.

21 (d) The amnesty is fully effective, absent the
22 seller's fraud or intentional misrepresentation of a material
23 fact, as long as the seller continues registration and
24 continues payment or collection and remittance of applicable
25 sales or use taxes for at least 36 months.

26 (e) The amnesty is applicable only to sales or use
27 taxes due from a seller in its capacity as a seller and not to
28 sales or use taxes due from a seller in its capacity as a
29 buyer.

30 Section 54. Effective January 1, 2004, subsections (1)
31 and (7) of section 213.256, Florida Statutes, are amended,

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 present subsections (8), (9), and (10) of that section are
 2 renumbered as subsections (11), (12), and (13), respectively,
 3 and new subsections (8), (9), (10), and (14) are added to that
 4 section to read:

5 213.256 Simplified Sales and Use Tax Administration
 6 Act.--

7 (1) As used in ss. 213.256 and 213.2567 ~~this section,~~
 8 the term:

9 (a) "Department" means the Department of Revenue.

10 **(b) "Agent" means a person appointed by a seller to**
 11 **represent the seller before the member states.**

12 ~~(c)(b)~~ "Agreement" means the Streamlined Sales and Use
 13 Tax Agreement as amended and adopted on November 12, 2002
 14 ~~January 27, 2001~~, by the Executive Committee of the National
 15 Conference of State Legislatures.

16 ~~(d)(c)~~ "Certified automated system" means software
 17 certified jointly by the states that are signatories to the
 18 agreement to calculate the tax imposed by each jurisdiction on
 19 a transaction, determine the amount of tax to remit to the
 20 appropriate state, and maintain a record of the transaction.

21 ~~(e)(d)~~ "Certified service provider" means an agent
 22 certified under jointly by the states that are signatories to
 23 the agreement to perform all of the seller's sales tax
 24 functions other than the seller's obligation to remit tax on
 25 its own purchases.

26 **(f) "Model 1 seller" means a seller that has selected**
 27 **a certified service provider as its agent to perform all the**
 28 **seller's sales and use tax functions other than the seller's**
 29 **obligation to remit tax on its own purchases.**

30 **(g) "Model 2 seller" means a seller that has selected**
 31 **a certified automated system to perform part of its sales and**

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 use tax functions, but retains responsibility for remitting
 2 the tax.

3 (h) "Model 3 seller" means a seller that has sales in
 4 at least five member states, has total annual sales revenue of
 5 at least \$500 million, has a proprietary system that
 6 calculates the amount of tax due each jurisdiction, and has
 7 entered into a performance agreement with the member states
 8 which establishes a tax performance standard for the seller.
 9 As used in this subsection, a seller includes an affiliated
 10 group of sellers using the same proprietary system.

11 (i)(e) "Person" means an individual, trust, estate,
 12 fiduciary, partnership, limited liability company, limited
 13 liability partnership, corporation, or any other legal entity.

14 (j) "Registered under this agreement" means
 15 registration by a seller with the member states under the
 16 central registration system.

17 (k)(f) "Sales tax" means the tax levied under chapter
 18 212.

19 (l)(g) "Seller" means any person making sales, leases,
 20 or rentals of personal property or services.

21 (m)(h) "State" means any state of the United States
 22 and the District of Columbia.

23 (n)(i) "Use tax" means the tax levied under chapter
 24 212.

25 (7)(a) The agreement authorized by this act binds and
 26 inures only to the benefit of this state and the other member
 27 states. No person, other than a member state, is an intended
 28 beneficiary of the agreement. Any benefit to a person other
 29 than a state is established by the laws of this state and of
 30 other member states and not by the terms of the agreement.

31 (b) Consistent with paragraph (a), no person has any

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 cause of action or defense under the agreement or by virtue of
2 this state's approval of the agreement. No person may
3 challenge, in any action brought under any provision of law,
4 any action or inaction by any department, agency, or other
5 instrumentality of this state, or of any political subdivision
6 of this state, on the ground that the action or inaction is
7 inconsistent with the agreement.

8 (c) No law of this state, or the application thereof,
9 may be declared invalid as to any person or circumstance on
10 the ground that the provision or application is inconsistent
11 with the agreement.

12 (d) The determinations pertaining to the agreement
13 authorized by this act which are made by the member states are
14 final when rendered and are not subject to any protest,
15 appeal, or review.

16 (8) Authority to administer the agreement authorized
17 under this act shall rest with the governing board comprised
18 of representatives of each member state. Each member state may
19 appoint up to four representatives to the governing board.
20 This state shall be represented by three delegates, one
21 appointed by the President of the Senate, one appointed by the
22 Speaker of the House of Representatives, and the executive
23 director of the department or his or her designee.

24 (9) With respect to each member state, the agreement
25 authorized by this act shall continue in full force and effect
26 until a member state withdraws its membership or is expelled.
27 A member state's withdrawal or expulsion is not effective
28 until the first day of a calendar quarter after a minimum of
29 60 days' notice. A member state shall submit notice of its
30 intent to withdraw from the agreement to the governing board
31 and the chief executive of each member state's tax agency. The

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 member state shall provide public notice of its intent to
2 withdraw and post its notice of intent to withdraw from the
3 agreement to the governing board and the chief executive of
4 each member state's tax agency. The member state shall provide
5 public notice of its intent to withdraw and post its notice of
6 intent to withdraw on its web site. The withdrawal by or
7 expulsion of a state does not affect the validity of the
8 agreement among other member states. A state that withdraws or
9 is expelled from the agreement remains liable for its share of
10 any financial or contractual obligations that were incurred by
11 the governing board before the effective date of that state's
12 withdrawal or expulsion. The appropriate share of any
13 financial or contractual obligation shall be determined by the
14 state and the governing board in good faith based on the
15 relative benefits received and burdens incurred by the
16 parties.

17 (10) A member state that is found to be out of
18 compliance with the agreement authorized by this act may be
19 imposed with sanctions, which include expulsion or other
20 penalties as determined by the governing board.

21 (14) Each member state shall annually recertify that
22 such state is in compliance with the agreement authorized
23 under this act. Each member state shall make a recertification
24 to the governing board on or before August 1 of each year
25 after the year of the state's entry. In its annual
26 recertification, the state shall include any changes in its
27 statutes, rules or regulations, or other authorities that
28 could affect its compliance with the terms of the agreement.
29 The recertification shall be signed by the executive director
30 of the department. A member state that cannot recertify its
31 compliance with the agreement shall submit a statement of

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 noncompliance to the governing board. The statement of
2 noncompliance shall include any action or decision that takes
3 such state out of compliance with the agreement and the steps
4 it will take to return to compliance. Each member state shall
5 post its annual recertification or statement of noncompliance
6 on that state's web site.

7 Section 55. Effective January 1, 2004, section
8 213.2567, Florida Statutes, is created to read:

9 213.2567 Simplified Sales and Use Tax registration,
10 certification, liability, audit.--

11 (1) A seller that registers pursuant to the agreement
12 agrees to collect and remit sales and use taxes for all
13 taxable sales into the member states, including member states
14 joining after the seller's registration. Withdrawal or
15 revocation of a member state shall not relieve a seller of its
16 responsibility to remit taxes previously or subsequently
17 collected on behalf of the state.

18 (a) When registering, the seller may select a model 1,
19 model 2, or model 3 method of remittance or other method
20 allowed by state law to remit the taxes collected.

21 (b) A seller may be registered by an agent. Such
22 appointment shall be in writing and submitted to a member
23 state.

24 (2)(a) A certified service provider is the agent of a
25 model 1 seller with whom the certified service provider has
26 contracted for the collection and remittance of sales and use
27 taxes. As the model 1 seller's agent, the certified service
28 provider is liable for sales and use tax due each member state
29 on all sales transactions it processes for the model 1 seller
30 except as set out in paragraph (b).

31 (b) A model 1 seller is not liable to the state for

Bill No. CS for SB 1176

Amendment No. Barcode 962610

1 sales or use tax due on transactions processed by the
2 certified service provider unless the model 1 seller has
3 misrepresented the type of items it sells or has committed
4 fraud. In the absence of probable cause to believe that the
5 model 1 seller has committed fraud or made a material
6 misrepresentation, the model 1 seller is not subject to audit
7 on the transactions processed by the certified service
8 provider. A model 1 seller is subject to audit for
9 transactions that have not been processed by the certified
10 service provider. The member states acting jointly may perform
11 a system check of the model 1 seller and review the model 1
12 seller's procedures to determine if the certified service
13 provider's system is functioning properly and to determine the
14 extent to which the model 1 seller's transactions are being
15 processed by the certified service provider.

16 (3) A person that provides a certified automated
17 system is responsible for the proper functioning of that
18 system and is liable to the state for underpayments of tax
19 attributable to errors in the functioning of the certified
20 automated system. A model 2 seller that uses a certified
21 automated system remains responsible and is liable to the
22 state for reporting and remitting tax.

23 (4) A model 3 seller is liable for the failure of the
24 proprietary system to meet the performance standard.

25 (5) The governing board may certify a person as a
26 certified service provider if the person meets all of the
27 following requirements:

28 (a) The person uses a certified automated system;

29 (b) The person integrates its certified automated
30 system with the system of a seller for whom the person
31 collects tax so that the tax due on a sale is determined at

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 the time of the sale;

2 (c) The person agrees to remit the taxes it collects
3 at the time and in the manner specified by the member states;

4 (d) The person agrees to file returns on behalf of the
5 sellers for whom it collects tax;

6 (e) The person agrees to protect the privacy of tax
7 information it obtains in accordance with s. 213.053; and

8 (f) The person enters into a contract with the member
9 states and agrees to comply with the terms of the contract.

10 (6) The governing board may certify a software program
11 as a certified automated system if the governing board
12 determines that the program meets all of the following
13 requirements:

14 (a) The program determines the applicable state and
15 local sales and use tax rate for a transaction in accordance
16 with s. 212.06(3) and (4);

17 (b) The program determines whether or not an item is
18 exempt from tax;

19 (c) The program determines the amount of tax to be
20 remitted for each taxpayer for a reporting period;

21 (d) The program can generate reports and returns as
22 required by the governing board; and

23 (e) The program meets any other requirement set by the
24 governing board.

25 (7) The governing board may establish one or more
26 sales tax performance standards for model 3 sellers that meet
27 the eligibility criteria set by the governing board and that
28 developed a proprietary system to determine the amount of
29 sales and use tax due on transactions.

30 (8) Disclosure of information necessary under this
31 section must be pursuant to a written agreement between the

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 executive director of the department or his or her designee
2 and the certified service provider. The certified service
3 provider is bound by the same requirements of confidentiality
4 as the department. Breach of confidentiality is a misdemeanor
5 of the first degree, punishable as provided in s. 775.082 or
6 775.083.

7 Section 56. Effective January 1, 2004, paragraph (c)
8 of subsection (2) and paragraph (c) of subsection (3) of
9 section 212.055, Florida Statutes, are amended to read:

10 212.055 Discretionary sales surtaxes; legislative
11 intent; authorization and use of proceeds.--It is the
12 legislative intent that any authorization for imposition of a
13 discretionary sales surtax shall be published in the Florida
14 Statutes as a subsection of this section, irrespective of the
15 duration of the levy. Each enactment shall specify the types
16 of counties authorized to levy; the rate or rates which may be
17 imposed; the maximum length of time the surtax may be imposed,
18 if any; the procedure which must be followed to secure voter
19 approval, if required; the purpose for which the proceeds may
20 be expended; and such other requirements as the Legislature
21 may provide. Taxable transactions and administrative
22 procedures shall be as provided in s. 212.054.

23 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

24 (c) Pursuant to s. 212.054(6) ~~s. 212.054(4)~~, the
25 proceeds of the surtax levied under this subsection shall be
26 distributed to the county and the municipalities within such
27 county in which the surtax was collected, according to:

28 1. An interlocal agreement between the county
29 governing authority and the governing bodies of the
30 municipalities representing a majority of the county's
31 municipal population, which agreement may include a school

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 district with the consent of the county governing authority
2 and the governing bodies of the municipalities representing a
3 majority of the county's municipal population; or

4 2. If there is no interlocal agreement, according to
5 the formula provided in s. 218.62.

6
7 Any change in the distribution formula must take effect on the
8 first day of any month that begins at least 60 days after
9 written notification of that change has been made to the
10 department.

11 (3) SMALL COUNTY SURTAX.--

12 (c) Pursuant to s. 212.054(6) ~~s. 212.054(4)~~, the
13 proceeds of the surtax levied under this subsection shall be
14 distributed to the county and the municipalities within the
15 county in which the surtax was collected, according to:

16 1. An interlocal agreement between the county
17 governing authority and the governing bodies of the
18 municipalities representing a majority of the county's
19 municipal population, which agreement may include a school
20 district with the consent of the county governing authority
21 and the governing bodies of the municipalities representing a
22 majority of the county's municipal population; or

23 2. If there is no interlocal agreement, according to
24 the formula provided in s. 218.62.

25
26 Any change in the distribution formula shall take effect on
27 the first day of any month that begins at least 60 days after
28 written notification of that change has been made to the
29 department.

30 Section 57. Effective January 1, 2004, subsection (6)
31 of section 212.0596, Florida Statutes, is repealed.

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 Section 58. It is the intent of the Legislature to
2 further amend chapter 212, Florida Statutes, to make the
3 changes necessary to be in compliance with the provisions of
4 the Streamlined Sales and Use Tax Agreement which take effect
5 on December 31, 2005, and to address the prohibition on
6 multiple state rates in a revenue-neutral manner.

7 Section 59. Emergency rules.--Effective January 1,
8 2004, the executive director of the Department of Revenue is
9 authorized, and all conditions are deemed met, to adopt
10 emergency rules, under sections 120.536(1) and 120.54(4),
11 Florida Statutes, to implement this act. Notwithstanding any
12 other provision of law, such emergency rules shall remain
13 effective for 6 months after the date of adoption and may be
14 renewed during the pendency of procedures to adopt rules
15 addressing the subject of the emergency rules.

16
17 (Redesignate subsequent sections.)

18
19
20 ===== T I T L E A M E N D M E N T =====

21 And the title is amended as follows:

22 On page 5, line 4, after the semicolon,
23
24 insert:
25 amending s. 212.02, F.S.; redefining the terms
26 "lease," "let," "rental," "sales price," and
27 "tangible personal property" and defining the
28 terms "agent," "seller," "certified service
29 provider," "direct mail," "prewritten computer
30 software," and "delivery charges" for purposes
31 of sales and use taxes; providing

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 applicability; amending s. 212.05, F.S.;

2 deleting provisions relating to the rental or

3 lease of motor vehicles; providing for

4 determination of the location of the sale or

5 recharge of prepaid calling arrangements;

6 amending s. 212.054, F.S.; providing the time

7 for applying changes in local option tax rates;

8 providing guidelines for determining the situs

9 of certain transactions; providing for notice

10 of a change in a local option sales tax rate;

11 providing for applicability of s. 202.22(2),

12 F.S., relating to determination of local tax

13 situs, for the purpose of providing and

14 maintaining a database of sales and use tax

15 rates for local jurisdictions; amending s.

16 212.06, F.S.; defining terms; providing general

17 rules for determining the location of

18 transactions involving the retail sale of

19 tangible personal property, digital goods, or

20 services and for the lease or rental of

21 tangible personal property; requiring certain

22 business purchasers to obtain multiple points

23 of use exemption forms; providing for use of

24 such forms; requiring certain purchasers of

25 direct mail to obtain a direct mail form;

26 providing for the use of such form; amending s.

27 212.08, F.S., relating to exemptions from the

28 sales and use tax; defining and redefining

29 terms used with respect to the exemption for

30 general groceries; defining and redefining

31 terms used with respect to the exemption for

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 medical products and supplies; revising that
2 exemption; amending s. 212.095, F.S.; revising
3 provisions relating to refunds; creating s.
4 212.094, F.S.; providing that a purchaser
5 seeking a refund or credit under chapter 212,
6 F.S., must submit a written request for the
7 refund or credit; providing a time period
8 within which the dealer shall respond to the
9 written request; amending s. 212.17, F.S.;
10 prescribing additional guidelines and
11 procedures with respect to dealer credits for
12 taxes paid on worthless accounts; creating s.
13 213.052, F.S.; providing for notice of state
14 sales or use tax rate changes; creating s.
15 213.0521, F.S.; providing the effective date
16 for state sales and use tax rate changes;
17 amending s. 213.21, F.S.; providing for amnesty
18 to certain sellers for uncollected or unpaid
19 sales and use taxes; amending s. 213.256, F.S.,
20 relating to simplified sales and use tax
21 administration; defining terms; providing that
22 authority to administer the Streamlined Sales
23 and Use Tax Agreement rests with a governing
24 board comprised of representatives of member
25 states; providing for continuing effect of the
26 agreement; providing for annual recertification
27 by member states; creating s. 213.2567, F.S.;
28 providing for the registration of sellers, the
29 certification of a person as a certified
30 service provider, and the certification of a
31 software program as a certified automated

Bill No. CS for SB 1176

Amendment No. ____ Barcode 962610

1 system by the governing board under the
2 Streamlined Sales and Use Tax Agreement;
3 amending s. 212.055, F.S.; conforming a
4 cross-reference; repealing s. 212.0596(6),
5 F.S., relating to the exemption from collecting
6 and remitting any local option surtax for
7 certain dealers who make mail order sales;
8 declaring legislative intent; providing for the
9 adoption of emergency rules;

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