

By the Committee on Finance and Taxation; and Senator Lynn

32-1059B-03

1 A bill to be entitled
2 An act relating to the Streamlined Sales and
3 Use Tax Agreement; amending s. 212.02, F.S.;
4 redefining the terms "lease," "let," "rental,"
5 "sales price," and "tangible personal property"
6 and defining the terms "agent," "seller,"
7 "certified service provider," "direct mail,"
8 and "prewritten computer software" for purposes
9 of sales and use taxes; providing
10 applicability; amending s. 212.05, F.S.;
11 deleting provisions relating to the rental or
12 lease of motor vehicles; providing for
13 determination of the location of the sale or
14 recharge of prepaid calling arrangements;
15 amending s. 212.054, F.S.; providing the time
16 for applying changes in local option tax rates;
17 providing guidelines for determining the situs
18 of certain transactions; providing for notice
19 of a change in a local option sales tax rate;
20 providing for applicability of s. 202.22(2),
21 F.S., relating to determination of local tax
22 situs, for the purpose of providing and
23 maintaining a database of sales and use tax
24 rates for local jurisdictions; amending s.
25 212.06, F.S.; defining terms; providing general
26 rules for determining the location of
27 transactions involving the retail sale of
28 tangible personal property, digital goods, or
29 services and for the lease or rental of
30 tangible personal property; requiring certain
31 business purchasers to obtain multiple points

1 of use exemption forms; providing for use of
2 such forms; requiring certain purchasers of
3 direct mail to obtain a direct mail form;
4 providing for the use of such form; amending s.
5 212.08, F.S., relating to exemptions from the
6 sales and use tax; defining and redefining
7 terms used with respect to the exemption for
8 general groceries; defining and redefining
9 terms used with respect to the exemption for
10 medical products and supplies; revising that
11 exemption; amending s. 212.095, F.S.; revising
12 provisions relating to refunds; amending s.
13 212.17, F.S.; prescribing additional guidelines
14 and procedures with respect to dealer credits
15 for taxes paid on worthless accounts; creating
16 s. 213.052, F.S.; providing for notice of state
17 sales or use tax rate changes; creating s.
18 213.0521, F.S.; providing the effective date
19 for state sales and use tax rate changes;
20 amending s. 213.21, F.S.; providing for amnesty
21 to certain sellers for uncollected or unpaid
22 sales and use taxes; amending s. 213.256, F.S.,
23 relating to simplified sales and use tax
24 administration; defining terms; providing that
25 authority to administer the Streamlined Sales
26 and Use Tax Agreement rests with a governing
27 board comprised of representatives of member
28 states; providing for continuing effect of the
29 agreement; providing for annual recertification
30 by member states; creating s. 213.2567, F.S.;
31 providing for the registration of sellers, the

1 certification of a person as a certified
2 service provider, and the certification of a
3 software program as a certified automated
4 system by the governing board under the
5 Streamlined Sales and Use Tax Agreement;
6 amending s. 212.055, F.S.; conforming a
7 cross-reference; repealing s. 212.0596(6),
8 F.S., relating to the exemption from collecting
9 and remitting any local option surtax for
10 certain dealers who make mail order sales;
11 declaring legislative intent; providing an
12 effective date.

13

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

15

16 Section 1. Paragraph (g) of subsection (10) and
17 subsections (16) and (19) of section 212.02, Florida Statutes,
18 are amended, and subsections (35), (36), (37), (38), and (39)
19 are added to that section, to read:

20 212.02 Definitions.--The following terms and phrases
21 when used in this chapter have the meanings ascribed to them
22 in this section, except where the context clearly indicates a
23 different meaning:

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

29 (g)1. "Lease," "let," or "rental" also means any
30 transfer of possession or control of tangible personal
31 property for a fixed or indeterminate term for consideration.

1 A lease or rental may include future options to purchase or
2 extend. This definition shall be used for sales and use tax
3 purposes regardless of whether a transaction is characterized
4 as a lease or rental under generally accepted accounting
5 principles, the Internal Revenue Code, the Uniform Commercial
6 Code, or other provisions of federal, state, or local law.
7 This definition includes agreements covering motor vehicles
8 and trailers when the amount of consideration may be increased
9 or decreased by reference to the amount realized upon sale or
10 disposition of the property as defined in 26 U.S.C. s.
11 7701(h)(1). This definition does not include:
12 a. A transfer of possession or control of property
13 under a security agreement or deferred payment plan that
14 requires the transfer of title upon completion of the required
15 payments;
16 b. A transfer of possession or control of property
17 under an agreement that requires the transfer of title upon
18 completion of required payments and payment of an option price
19 that does not exceed the greater of \$100 or 1 percent of the
20 total required payments; or
21 c. Providing tangible personal property along with an
22 operator for a fixed or indeterminate period of time. A
23 condition of this exclusion is that the operator is necessary
24 for the equipment to perform as designed. For the purpose of
25 this sub-subparagraph, an operator must do more than maintain,
26 inspect, or set up the tangible personal property.~~the leasing~~
27 ~~or rental of tangible personal property and the possession or~~
28 ~~use thereof by the lessee or rentee for a consideration,~~
29 ~~without transfer of the title of such property, except as~~
30 ~~expressly provided to the contrary herein.~~
31

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

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

1 within the purview of this subsection if separately stated on
2 the invoice, bill of sale, or similar document given to the
3 purchaser. "Sales price" also includes the full face value of
4 any coupon used by a purchaser to reduce the price paid to a
5 retailer for an item of tangible personal property; where the
6 retailer will be reimbursed for such coupon, in whole or in
7 part, by the manufacturer of the item of tangible personal
8 property; or whenever it is not practicable for the retailer
9 to determine, at the time of sale, the extent to which
10 reimbursement for the coupon will be made. The term "sales
11 price" does not include interest, financing, and carrying
12 charges from credit extended on the sale of personal property
13 or services, if the amount is separately stated on the
14 invoice, bill of sale, or similar document given to the
15 purchaser. The term "sales price" does not include any taxes
16 legally imposed directly on the purchaser which are separately
17 stated on the invoice, bill of sale, or similar document given
18 to the purchaser. The term "sales price" does not include
19 federal excise taxes imposed upon the retailer on the sale of
20 tangible personal property. The term "sales price" does
21 include federal manufacturers' excise taxes, even if the
22 federal tax is listed as a separate item on the invoice.

23 (19) "Tangible personal property" means and includes
24 personal property which may be seen, weighed, measured, or
25 touched or is in any manner perceptible to the senses,
26 including electric power or energy, water, gas, steam,
27 prewritten computer software, boats, motor vehicles and mobile
28 homes as defined in s. 320.01(1) and (2), aircraft as defined
29 in s. 330.27, and all other types of vehicles. The term
30 "tangible personal property" does not include stocks, bonds,
31 notes, insurance, or other obligations or securities;

1 intangibles as defined by the intangible tax law of the state;
2 or pari-mutuel tickets sold or issued under the racing laws of
3 the state.

4 (35) "Agent" means a person appointed by a principal
5 or authorized to act for the principal in a transaction
6 involving the sale of an item of tangible personal property.
7 The term also means a person appointed by a seller to
8 represent the seller before the states that are signatories to
9 the Streamlined Sales and Use Tax Agreement.

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

12 (37) "Certified service provider" means an agent
13 certified jointly by the states that are signatories to the
14 Streamlined Sales and Use Tax Agreement to perform all of the
15 seller's sales tax functions, other than the seller's
16 obligation to remit tax on its own purchases.

17 (38) "Direct mail" means printed material delivered or
18 distributed by United States mail or other delivery service to
19 a mass audience or to addressees on a mailing list provided by
20 the purchaser or at the direction of the purchaser when the
21 cost of the items is not billed directly to the recipients.
22 The term includes tangible personal property supplied directly
23 or indirectly by the purchaser to the direct mail seller for
24 inclusion in the package containing the printed material. The
25 term does not include multiple items of printed material
26 delivered to a single address.

27 (39) "Prewritten computer software" means computer
28 software, including prewritten upgrades, which is not designed
29 and developed by the author or other creator to the
30 specifications of a specific purchaser. The combining of two
31 or more "prewritten computer software" programs or prewritten

1 portions thereof does not cause the combination to be other
2 than "prewritten computer software." The term includes
3 software designed and developed by the author or other creator
4 to the specifications of a specific purchaser when it is sold
5 to a person other than that purchaser. When a person modifies
6 or enhances computer software of which the person is not the
7 author or creator, the person shall be deemed to be the author
8 or creator only of such person's modifications or
9 enhancements. Prewritten computer software, or a prewritten
10 portion thereof, that is modified or enhanced to any degree,
11 when such modification or enhancement is designed and
12 developed to the specifications of a specific purchaser,
13 remains "prewritten computer software"; however, when there is
14 a reasonable, separately stated charge or an invoice or other
15 statement of the price given to the purchaser for such
16 modification or enhancement, such modification or enhancement
17 does not constitute "prewritten computer software."

18 Section 2. The amendment of the terms "lease," "let,"
19 and "rental" in section 212.02, Florida Statutes, made by this
20 act applies prospectively only, from July 1, 2003, and does
21 not apply retroactively to leases or rentals existing before
22 that date.

23 Section 3. Paragraphs (c) and (e) of subsection (1) of
24 section 212.05, Florida Statutes, 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

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~~

1 accordance with the provisions of s. 212.06(7). This paragraph
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 paragraph 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

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 4. Section 212.054, Florida Statutes, is
21 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

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.

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.

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 surtax.~~billed on or after the effective~~
10 ~~date of any such surtax, the entire amount of the charge for~~
11 ~~utility services shall be subject to the surtax. In the case~~
12 ~~of utility services billed after the last day the surtax is in~~
13 ~~effect, the entire amount of the charge on said items shall~~
14 ~~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,

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 in accordance with s. 212.06(3).

27 (4)~~(3)~~ For the purpose of this section, a transaction
28 shall be deemed to have occurred in a county imposing the
29 surtax when:

30 (a)1. Notwithstanding subsection (3), the retail sale
31 of ~~includes~~ an item of tangible personal property that is a

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

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

17 3. The real property that is leased or rented is
18 located in the county.

19 4. The transient rental transaction occurs in the
20 county.

21 5. Notwithstanding subsection (3), the delivery
22 derived from the retail sale, excluding lease or rental, of
23 any aircraft that does not qualify as "transportation
24 equipment" as defined in s. 212.06(3)(g) or any boat of a
25 class or type that is required to be registered, licensed,
26 titled, or documented in this state or by the United States
27 Government to a location in the county. However, this
28 subparagraph does not apply to the use or consumption of items
29 upon which a like tax of equal or greater amount has been
30 lawfully imposed and paid outside the county.

31

1 6.(b) The event for which an admission is charged is
2 located in the county.

3 7. The coin-operated amusement or vending machine is
4 located in the county.

5 8. The florist taking the original order to sell
6 tangible personal property is located in the county,
7 notwithstanding any other provision of this section.

8 ~~(c) The consumer of utility services is located in the~~
9 ~~county.~~

10 (b)(d)1. The user of any aircraft or boat of a class
11 or type which is required to be registered, licensed, titled,
12 or documented in this state or by the United States Government
13 imported into the county for use, consumption, distribution,
14 or storage to be used or consumed in the county is located in
15 the county.

16 1.2. However, it shall be presumed that such items
17 used outside the county for 6 months or longer before being
18 imported into the county were not purchased for use in the
19 county, except as provided in s. 212.06(8)(b).

20 2.3. This paragraph does not apply to the use or
21 consumption of items upon which a like tax of equal or greater
22 amount has been lawfully imposed and paid outside the county.

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

28 (d)(f)1. Any motor vehicle or mobile home of a class
29 or type which is required to be registered in this state is
30 imported from another state into the taxing county by a user
31

1 residing therein for the purpose of use, consumption,
2 distribution, or storage in the taxing county.

3 2. However, it shall be presumed that such items used
4 outside the taxing county for 6 months or longer before being
5 imported into the county were not purchased for use in the
6 county.

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

9 ~~(h) The transient rental transaction occurs in the~~
10 ~~county.~~

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

18 ~~(e)(j)~~ The dealer owing a use tax on purchases or
19 leases is located in the county.

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

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

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

31

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

18 (b) The proceeds of a discretionary sales surtax
19 collected by the selling dealer located in a county which
20 imposes the surtax shall be returned, less the cost of
21 administration, to the county where the selling dealer is
22 located. The proceeds shall be transferred to the
23 Discretionary Sales Surtax Clearing Trust Fund. A separate
24 account shall be established in such trust fund for each
25 county imposing a discretionary surtax. The amount deducted
26 for the costs of administration shall not exceed 3 percent of
27 the total revenue generated for all counties levying a surtax
28 authorized in s. 212.055. The amount deducted for the costs
29 of administration shall be used only for those costs which are
30 solely and directly attributable to the surtax. The total
31 cost of administration shall be prorated among those counties

1 levying the surtax on the basis of the amount collected for a
2 particular county to the total amount collected for all
3 counties. No later than March 1 of each year, the department
4 shall submit a written report which details the expenses and
5 amounts deducted for the costs of administration to the
6 President of the Senate, the Speaker of the House of
7 Representatives, and the governing authority of each county
8 levying a surtax. The department shall distribute the moneys
9 in the trust fund each month to the appropriate counties,
10 unless otherwise provided in s. 212.055.

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

- 23 a. The county's latest official population determined
24 pursuant to s. 186.901;
25 b. The county's rate of surtax; and
26 c. The number of months the county has levied a surtax
27 during the most recent distribution period;
28
29 divided by the sum of all such products of the counties
30 levying the surtax during the most recent distribution period.
31

1 2. The department shall compute distribution factors
2 for eligible counties once each quarter and make appropriate
3 quarterly distributions.

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

15 ~~(5) No discretionary sales surtax or increase or
16 decrease in the rate of any discretionary sales surtax shall
17 take effect on a date other than January 1. No discretionary
18 sales surtax shall terminate on a day other than December 31.~~

19 (6) The governing body of any county levying a
20 discretionary sales surtax shall enact an ordinance levying
21 the surtax in accordance with the procedures described in s.
22 125.66(2).

23 (7)(a) Any adoption, repeal, or rate change of the
24 surtax by the governing body of any county levying a
25 discretionary sales surtax or the school board of any county
26 levying the school capital outlay surtax authorized by s.
27 212.055(6) is effective on January 1. A county or school board
28 adopting, repealing, or changing the rate of such tax shall
29 notify the department within 10 days after final adoption by
30 ordinance or referendum of an adoption, repeal ~~imposition,~~
31 ~~termination,~~ or rate change of the surtax, but no later than

1 October 1 immediately preceding such January 1 ~~November 16~~
2 ~~prior to the effective date.~~ A county or school board
3 adopting, repealing, or changing the rate of such tax shall
4 notify the department by August 1 immediately preceding the
5 January 1 effective date for the local rate change to apply to
6 purchases from printed catalogs.The notice must specify the
7 time period during which the surtax will be in effect and the
8 rate and must include a copy of the ordinance and such other
9 information as the department requires by rule. Failure to
10 timely provide such notification to the department shall
11 result in the delay of the effective date for a period of 1
12 year.

13 (b) In addition to the notification required by
14 paragraph (a), the governing body of any county proposing to
15 levy a discretionary sales surtax or the school board of any
16 county proposing to levy the school capital outlay surtax
17 authorized by s. 212.055(6) shall notify the department by
18 September ~~October~~ 1 if the referendum or consideration of the
19 ordinance that would result in imposition, termination, or
20 rate change of the surtax is scheduled to occur on or after
21 September ~~October~~ 1 of that year. Failure to timely provide
22 such notification to the department shall result in the delay
23 of the effective date for a period of 1 year.

24 (8) The state shall provide notice of such adoption,
25 repeal, or change to all affected sellers by the November 1
26 immediately preceding the January 1 effective date. The state
27 shall apply a local rate change to purchases from printed
28 catalogs only on January 1 and must notify sellers of such
29 rate change by the September 1 immediately preceding such
30 January 1.

31

1 ~~(9)(8)~~ With respect to any motor vehicle or mobile
2 home of a class or type which is required to be registered in
3 this state, the tax due on a transaction occurring in the
4 taxing county as herein provided shall be collected from the
5 purchaser or user incident to the titling and registration of
6 such property, irrespective of whether such titling or
7 registration occurs in the taxing county.

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

13 (a) A seller or certified service provider who
14 collects and remits the state and local sales and use tax
15 imposed by this chapter shall use the database provided under
16 s. 202.22(2).

17 (b) A seller or certified service provider who
18 collects and remits the state and local sales and use tax
19 imposed under this chapter shall be held harmless from any
20 liability, including tax, interest, and penalties, which would
21 otherwise be due solely as a result of the seller or certified
22 service provider relying on an incorrect taxing jurisdiction
23 assignment.

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

27 Section 5. Present subsections (3) through (16) of
28 section 212.06, Florida Statutes, are renumbered as
29 subsections (4) through (17), respectively, new subsection (3)
30 is added to that section, and present subsection (3) of that
31 section is amended to read:

1 212.06 Sales, storage, use tax; collectible from
2 dealers; "dealer" defined; dealers to collect from purchasers;
3 legislative intent as to scope of tax.--

4 (3) It is the intent of this chapter to apply this
5 subsection to determine a seller's obligation to pay or
6 collect and remit a sales or use tax with respect to the
7 seller's retail sale of a product. This subsection does not
8 affect the obligation of a purchaser or lessee to remit tax on
9 the use of the product.

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

- 12 1. Taking possession of tangible personal property;
13 2. Making first use of services; or
14 3. Taking possession or making first use of digital
15 goods, whichever comes first.

16
17 The terms do not include possession by a shipping company on
18 behalf of the purchaser.

19 (b) For purposes of this subsection, the term
20 "product" means tangible personal property, a digital good, or
21 a service.

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

- 24 1. The retail sale or transfer of boats, modular
25 homes, manufactured homes, or mobile homes;
26 2. The retail sale, excluding lease or rental, of
27 motor vehicles or aircraft that do not qualify as
28 transportation equipment, as defined in paragraph (g). The
29 lease or rental of these items shall be deemed to have
30 occurred in accordance with paragraph (f).

31

1 3. The retail sale of tangible personal property by a
2 florist.

3
4 Such retail sales are deemed to take place in accordance with
5 s. 212.054(5).

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

8 1. When the product is received by the purchaser at a
9 business location of the seller, the sale is deemed to take
10 place at that business location.

11 2. When the product is not received by the purchaser
12 at a business location of the seller, the sale is deemed to
13 take place at the location where receipt by the purchaser, or
14 the purchaser's donee, designated as such by the purchaser,
15 occurs, including the location indicated by instructions for
16 delivery to the purchaser or donee, known to the seller.

17 3. When subparagraphs 1. and 2. do not apply, the sale
18 is deemed to take place at the location indicated by an
19 address for the purchaser which is available from the business
20 records of the seller which are maintained in the ordinary
21 course of the seller's business when use of this address does
22 not constitute bad faith.

23 4. When subparagraphs 1., 2., and 3. do not apply, the
24 sale is deemed to take place at the location indicated by an
25 address for the purchaser obtained during the consummation of
26 the sale, including the address of a purchaser's payment
27 instrument, if no other address is available, when use of this
28 address does not constitute bad faith.

29 5. When subparagraphs 1., 2., 3., and 4. do not apply,
30 including when the seller is without sufficient information to
31 apply the previous paragraphs, the address from which tangible

1 personal property was shipped, from which the digital good or
2 the computer software delivered electronically was first
3 available for transmission by the seller, or from which the
4 service was provided, disregarding any location that merely
5 provided the digital transfer of the product sold, shall
6 determine where the retail sale is deemed to take place.

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

10 1. For a lease or rental that requires recurring
11 periodic payments, the first periodic payment is deemed to
12 take place in accordance with paragraph (d), notwithstanding
13 the exclusion of lease or rental in paragraph (d). Subsequent
14 periodic payments are deemed to have occurred at the primary
15 property location for each period covered by the payment. The
16 primary property location is determined by an address for the
17 property provided by the lessee which is available to the
18 lessor from its records maintained in the ordinary course of
19 business, when use of this address does not constitute bad
20 faith. The property location shall not be altered by
21 intermittent use of the property at different locations, such
22 as use of business property that accompanies employees on
23 business trips and service calls.

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

29 3. This paragraph does not affect the imposition or
30 computation of sales or use tax on leases or rentals based on
31

1 a lump sum or accelerated basis or on the acquisition of
2 property for lease.

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

6 1. For a lease or rental that requires recurring
7 periodic payments, each periodic payment is deemed to take
8 place at the primary property location. The primary property
9 location shall be determined by an address for the property
10 provided by the lessee which is available to the lessor from
11 its records maintained in the ordinary course of business,
12 when use of this address does not constitute bad faith. This
13 location shall not be altered by intermittent use at different
14 locations.

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

19 3. This paragraph does not affect the imposition or
20 computation of sales or use tax on leases or rentals based on
21 a lump sum or accelerated basis or on the acquisition of
22 property for lease.

23 (g) The retail sale, including lease or rental, of
24 transportation equipment shall be deemed to take place in
25 accordance with paragraph (d), notwithstanding the exclusion
26 of lease or rental in paragraph (d). The term "transportation
27 equipment" means:

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

30 2. Trucks and truck tractors with a Gross Vehicle
31 Weight Rating (GVWR) of 10,001 pounds or greater, trailers,

1 semitrailers, or passenger buses that are registered through
2 the International Registration Plan and operated under
3 authority of a carrier authorized and certificated by the
4 United States Department of Transportation or another federal
5 authority to engage in the carriage of persons or property in
6 interstate commerce;

7 3. Aircraft that are operated by air carriers
8 authorized and certificated by the United States Department of
9 Transportation or another federal or a foreign authority to
10 engage in the carriage of persons or property in interstate or
11 foreign commerce; or

12 4. Containers designed for use on and component parts
13 attached or secured on the items set forth in subparagraphs 1.
14 through 3.

15 (4)(3)(a) Except as provided in paragraphs (a) and
16 paragraph (b), every dealer making retail sales, whether
17 within or outside the state, of tangible personal property for
18 distribution, storage, or use or other consumption, in this
19 state, shall, at the time of making sales, collect the tax
20 imposed by this chapter from the purchaser.

21 (a) Notwithstanding subsection (3), a business
22 purchaser that is not a holder of a direct-pay permit and that
23 knows at the time of purchase of a digital good, computer
24 software delivered electronically, or a service that the
25 digital good, computer software delivered electronically, or
26 service will be concurrently available for use in more than
27 one jurisdiction shall deliver to the dealer a multiple points
28 of use exemption form (MPU exemption form) at the time of
29 purchase.

30 1. Upon receipt of the MPU exemption form, the seller
31 is relieved of all obligation to collect, pay, or remit the

1 applicable tax, and the purchaser shall be obligated to
2 collect, pay, or remit the applicable tax on a direct-pay
3 basis.

4 2. A purchaser delivering the MPU exemption form may
5 use any reasonable, but consistent and uniform, method of
6 apportionment that is supported by the purchaser's business
7 records as they exist at the time of the consummation of the
8 sale.

9 3. The MPU exemption form will remain in effect for
10 all future sales by the seller to the purchaser, except as to
11 the subsequent sale's specific apportionment that is governed
12 by the principle of subparagraph 2. and the facts existing at
13 the time of the sale, until the MPU exemption form is revoked
14 in writing.

15 4. A holder of a direct-pay permit is not required to
16 deliver an MPU exemption form to the seller. A direct-pay
17 permitholder shall follow the provisions of subparagraph 2. in
18 apportioning the tax due on a digital good or a service that
19 will be concurrently available for use in more than one
20 jurisdiction.

21 (b)1. Notwithstanding subsection (3), a purchaser of
22 direct mail which is not a holder of a direct-pay permit shall
23 provide to the seller in conjunction with the purchase either
24 a direct mail form or information to show the jurisdictions to
25 which the direct mail is delivered to recipients. Upon receipt
26 of the direct mail form, the seller is relieved of all
27 obligations to collect, pay, or remit the applicable tax, and
28 the purchaser is obligated to pay or remit the applicable tax
29 on a direct-pay basis. A direct mail form shall remain in
30 effect for all future sales of direct mail by the seller to
31 the purchaser until it is revoked in writing.

1 2. Upon receipt of information from the purchaser
2 showing the jurisdictions to which the direct mail is
3 delivered to recipients, the seller shall collect the tax
4 according to the delivery information provided by the
5 purchaser. In the absence of bad faith, the seller is relieved
6 of any further obligation to collect tax on any transaction
7 where the seller has collected tax pursuant to the delivery
8 information provided by the purchaser.

9 3. If the purchaser of direct mail does not have a
10 direct-pay permit and does not provide the seller with either
11 a direct mail form or delivery information as required by
12 subparagraph 1., the seller shall collect the tax according to
13 subparagraph 5. This paragraph does not limit a purchaser's
14 obligation for sales or use tax to any state to which the
15 direct mail is delivered.

16 4. If a purchaser of direct mail provides the seller
17 with documentation of direct-pay authority, the purchaser is
18 not required to provide a direct mail form or delivery
19 information to the seller.~~A purchaser of printed materials~~
20 ~~shall have sole responsibility for the taxes imposed by this~~
21 ~~chapter on those materials when the printer of the materials~~
22 ~~delivers them to the United States Postal Service for mailing~~
23 ~~to persons other than the purchaser located within and outside~~
24 ~~this state. Printers of materials delivered by mail to persons~~
25 ~~other than the purchaser located within and outside this state~~
26 ~~shall have no obligation or responsibility for the payment or~~
27 ~~collection of any taxes imposed under this chapter on those~~
28 ~~materials. However, printers are obligated to collect the~~
29 ~~taxes imposed by this chapter on printed materials when all,~~
30 ~~or substantially all, of the materials will be mailed to~~
31 ~~persons located within this state. For purposes of the~~

1 ~~printer's tax collection obligation, there is a rebuttable~~
2 ~~presumption that all materials printed at a facility are~~
3 ~~mailed to persons located within the same state as that in~~
4 ~~which the facility is located. A certificate provided by the~~
5 ~~purchaser to the printer concerning the delivery of the~~
6 ~~printed materials for that purchase or all purchases shall be~~
7 ~~sufficient for purposes of rebutting the presumption created~~
8 ~~herein.~~

9 ~~5.2.~~ The Department of Revenue is authorized to adopt
10 rules and forms to implement the provisions of this paragraph.

11 Section 6. Subsections (1) and (2) of section 212.08,
12 Florida Statutes, are amended to read:

13 212.08 Sales, rental, use, consumption, distribution,
14 and storage tax; specified exemptions.--The sale at retail,
15 the rental, the use, the consumption, the distribution, and
16 the storage to be used or consumed in this state of the
17 following are hereby specifically exempt from the tax imposed
18 by this chapter.

19 (1) EXEMPTIONS; GENERAL GROCERIES.--

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

22 (b) For the purpose of this chapter, as used in this
23 subsection, the term "food and food ingredients products"
24 means substances, whether in liquid, concentrated, solid,
25 frozen, dried, or dehydrated form, which are sold for
26 ingestion or chewing by humans and are consumed for their
27 taste or nutritional value ~~edible commodities, whether~~
28 ~~processed, cooked, raw, canned, or in any other form, which~~
29 ~~are generally regarded as food. This includes, but is not~~
30 limited to, all of the following:

1 1. Cereals and cereal products, baked goods,
2 oleomargarine, meat and meat products, fish and seafood
3 products, frozen foods and dinners, poultry, eggs and egg
4 products, vegetables and vegetable products, fruit and fruit
5 products, spices, salt, sugar and sugar products, milk and
6 dairy products, and products intended to be mixed with milk.

7 2. Natural fruit or vegetable juices or their
8 concentrates or reconstituted natural concentrated fruit or
9 vegetable juices, whether frozen or unfrozen, dehydrated,
10 powdered, granulated, sweetened or unsweetened, seasoned with
11 salt or spice, or unseasoned; coffee, coffee substitutes, or
12 cocoa; and tea, unless it is sold in a liquid form.

13 3. Bakery products sold by bakeries, pastry shops, or
14 like establishments, if sold without eating utensils. Bakery
15 products for purposes of this subsection include bread, rolls,
16 buns, biscuits, bagels, croissants, pastries, doughnuts,
17 danish, cakes, tortes, pies, tarts, muffins, bars, cookies,
18 and tortillas that do not have eating facilities.

19 4. Dietary supplements. The term "dietary supplements"
20 means any product, other than tobacco, intended to supplement
21 the diet that contains one or more of the following dietary
22 ingredients: a vitamin; a mineral; an herb or other botanical;
23 an amino acid; a dietary substance for use by humans to
24 supplement the diet by increasing the total dietary intake; or
25 a concentrate, metabolite, constituent, extract, or
26 combination of any ingredient described in this subparagraph
27 which is intended for ingestion in tablet, capsule, powder,
28 softgel, gelcap, or liquid form or, if not intended for
29 ingestion in such a form, is not represented as conventional
30 food and is not represented for use as a sole item of a meal
31 or of the diet; and which is required to be labeled as a

1 dietary supplement, identifiable by the "supplemental facts"
2 box found on the label and as required pursuant to 21 C.F.R.
3 s. 101.36.

4 (c) The exemption provided by this subsection does not
5 apply:

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

8 ~~2. When the food products are furnished, prepared, or~~
9 ~~served for consumption at tables, chairs, or counters or from~~
10 ~~trays, glasses, dishes, or other tableware, whether provided~~
11 ~~by the dealer or by a person with whom the dealer contracts to~~
12 ~~furnish, prepare, or serve food products to others.~~

13 ~~3. When the food products are ordinarily sold for~~
14 ~~immediate consumption on the seller's premises or near a~~
15 ~~location at which parking facilities are provided primarily~~
16 ~~for the use of patrons in consuming the products purchased at~~
17 ~~the location, even though such products are sold on a "take~~
18 ~~out" or "to go" order and are actually packaged or wrapped and~~
19 ~~taken from the premises of the dealer.~~

20 ~~4. To sandwiches sold ready for immediate consumption~~
21 ~~on or off the seller's premises.~~

22 ~~5. When the food products are sold ready for immediate~~
23 ~~consumption within a place, the entrance to which is subject~~
24 ~~to an admission charge.~~

25 1.6. When the food and food ingredients products are
26 sold as ~~not~~ prepared food ~~products~~.

27 2.7. To soft drinks, ~~which include, but are not~~
28 ~~limited to, any nonalcoholic beverage, any preparation or~~
29 ~~beverage commonly referred to as a "soft drink," or any~~
30 ~~noncarbonated drink made from milk derivatives or tea, when~~
31 ~~sold in cans or similar containers. The term "soft drinks"~~

1 means nonalcoholic beverages that contain natural or
2 artificial sweeteners. Soft drinks do not include beverages
3 that contain milk or milk products, soy, rice, or similar milk
4 substitutes, or greater than 50 percent of vegetable or fruit
5 juice by volume.

6 ~~3.8.~~ To ice cream, frozen yogurt, and similar frozen
7 dairy or nondairy products in cones, small cups, or pints,
8 ~~popsicles, frozen fruit bars,~~ or other novelty items, whether
9 or not sold separately.

10 ~~9.~~ ~~To food prepared, whether on or off the premises,~~
11 ~~and sold for immediate consumption. This does not apply to~~
12 ~~food prepared off the premises and sold in the original sealed~~
13 ~~container, or the slicing of products into smaller portions.~~

14 ~~4.10.~~ When the food and food ingredients ~~products~~ are
15 sold through a vending machine, pushcart, motor vehicle, or
16 any other form of vehicle.

17 ~~5.11.~~ To candy and any similar product regarded as
18 candy or confection, ~~based on its normal use, as indicated on~~
19 ~~the label or advertising thereof.~~ The term "candy" means a
20 preparation of sugar, honey, or other natural or artificial
21 sweeteners in combination with chocolate, fruits, nuts, or
22 other ingredients or flavorings in the form of bars, drops, or
23 pieces. Candy does not include any preparation that contains
24 flour and requires no refrigeration.

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

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

31 6. To tobacco.

1 (d) As used in this subsection, the term:
2 1. ~~"For consumption off the seller's premises" means~~
3 ~~that the food or drink is intended by the customer to be~~
4 ~~consumed at a place away from the dealer's premises.~~
5 2. ~~"For consumption on the seller's premises" means~~
6 ~~that the food or drink sold may be immediately consumed on the~~
7 ~~premises where the dealer conducts his or her business. In~~
8 ~~determining whether an item of food is sold for immediate~~
9 ~~consumption, there shall be considered the customary~~
10 ~~consumption practices prevailing at the selling facility.~~
11 3. ~~"Premises" shall be construed broadly, and means,~~
12 ~~but is not limited to, the lobby, aisle, or auditorium of a~~
13 ~~theater; the seating, aisle, or parking area of an arena,~~
14 ~~rink, or stadium; or the parking area of a drive-in or outdoor~~
15 ~~theater. The premises of a caterer with respect to catered~~
16 ~~meals or beverages shall be the place where such meals or~~
17 ~~beverages are served.~~
18 1.4. "Hot Prepared food products" means food sold in a
19 heated state or heated by the seller; two or more food
20 ingredients mixed or combined by the seller for sale as a
21 single item; or food sold with eating utensils provided by the
22 seller, including plates, knives, forks, spoons, glasses,
23 cups, napkins, or straws. A plate does not include a container
24 or packaging used to transport the food. Prepared food does
25 not include food that is only cut, repackaged, or pasteurized
26 by the seller and eggs, fish, meat, poultry, and foods
27 containing these raw animal foods requiring cooking by the
28 consumer as recommended by the Food and Drug Administration in
29 chapter 3, part 401.11 of its food code so as to prevent food
30 borne illnesses. "Prepared food" for purposes of this
31 subsection includes sandwiches sold for immediate consumption,

1 ~~and those products, items, or components which have been~~
2 ~~prepared for sale in a heated condition and which are sold at~~
3 ~~any temperature that is higher than the air temperature of the~~
4 ~~room or place where they are sold. "Hot prepared food~~
5 ~~products," for the purposes of this subsection, includes a~~
6 combination of hot and cold food items or components where a
7 single price has been established for the combination and the
8 food products are sold in such combination, such as a ~~hot~~
9 meal, a ~~hot~~ specialty dish or serving, or a ~~hot~~ sandwich or
10 ~~hot~~ pizza, or food sold in an unheated state by weight or
11 volume as a single item, including cold components or side
12 items.

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

18 2. This paragraph is effective only while federal law
19 prohibits a state's participation in the federal food coupon
20 program or Special Supplemental Food Program for Women,
21 Infants, and Children if there is an official determination
22 that state or local sales taxes are collected within that
23 state on purchases of food or drinks with such coupons.

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

27 (f) "Dietary supplements" that are sold as prepared
28 food are not exempt.

29 (2) EXEMPTIONS; MEDICAL.--

30 (a) There shall be exempt from the tax imposed by this
31 chapter any medical products and supplies or medicine

1 dispensed according to an individual prescription or
2 prescriptions written by a prescriber authorized by law to
3 prescribe medicinal drugs; hypodermic needles; hypodermic
4 syringes; chemical compounds and test kits used for the
5 diagnosis or treatment of human disease, illness, or injury;
6 and common household remedies recommended and generally sold
7 for internal or external use in the cure, mitigation,
8 treatment, or prevention of illness or disease in human
9 beings, but not including grooming and hygiene products
10 ~~cosmetics or toilet articles~~, notwithstanding the presence of
11 medicinal ingredients therein, according to a list prescribed
12 and approved by the Department of Health, which list shall be
13 certified to the Department of Revenue from time to time and
14 included in the rules promulgated by the Department of
15 Revenue. There shall also be exempt from the tax imposed by
16 this chapter artificial eyes ~~and limbs~~; orthopedic shoes;
17 prescription eyeglasses and items incidental thereto or which
18 become a part thereof; dentures; hearing aids; crutches;
19 durable medical equipment; mobility enhancing equipment;
20 prosthetic devices ~~and orthopedic appliances~~; and funerals. In
21 addition, any items intended for one-time use which transfer
22 essential optical characteristics to contact lenses shall be
23 exempt from the tax imposed by this chapter; however, this
24 exemption shall apply only after \$100,000 of the tax imposed
25 by this chapter on such items has been paid in any calendar
26 year by a taxpayer who claims the exemption in such year.
27 Funeral directors shall pay tax on all tangible personal
28 property used by them in their business.

29 (b) For the purposes of this subsection, the term:
30 1. "Drug" means a compound, substance, or preparation,
31 and any component of a compound, substance, or preparation,

1 other than food and food ingredients, dietary supplements, and
2 alcoholic beverages, which is:
3 a. Recognized in the official United States
4 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
5 United States, or official National Formulary, or the
6 supplement to any of them;
7 b. Intended for use in the diagnosis, cure,
8 mitigation, treatment, or prevention of disease; or
9 c. Intended to affect the structure or any function of
10 the body.
11 2. "Durable medical equipment" means equipment,
12 including repair and replacement parts therefor, but the term
13 does not include mobility-enhancing equipment, which can
14 withstand repeated use, is primarily and customarily used to
15 serve a medical purpose, generally is not useful to a person
16 in the absence of illness or injury, and is not worn on or in
17 the body.
18 3. "Mobility-enhancing equipment" means equipment,
19 including repair and replacement parts therefor, but the term
20 does not include durable medical equipment, which:
21 a. Is primarily and customarily used to provide or
22 increase the ability to move from one place to another and
23 which is appropriate for use either in a home or a motor
24 vehicle;
25 b. Is not generally used by persons with normal
26 mobility; and
27 c. Does not include any motor vehicle or any equipment
28 on a motor vehicle normally provided by a motor vehicle
29 manufacturer.
30
31

1 4. "Prosthetic device" means a replacement,
2 corrective, or supportive device, including repair or
3 replacement parts therefor, worn on or in the body to:

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

5 b. Prevent or correct physical deformity or
6 malfunction; or

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

8 5. "Grooming and hygiene products" are soaps and
9 cleaning solutions, shampoo, toothpaste, mouthwash,
10 antiperspirants, and suntan lotions and screens, regardless of
11 whether the items meet the definition of over-the-counter
12 drugs.

13 6. "Over-the-counter drug" means a drug the packaging
14 for which contains a label that identifies the product as a
15 drug as required by 21 C.F.R. s. 201.66. The over-the-counter
16 drug label includes a "drug facts" panel or a statement of the
17 active ingredients with a list of those ingredients contained
18 in the compound, substance, or preparation.

19 ~~"Prosthetic and~~
20 ~~orthopedic appliances" means any apparatus, instrument,~~
21 ~~device, or equipment used to replace or substitute for any~~
22 ~~missing part of the body, to alleviate the malfunction of any~~
23 ~~part of the body, or to assist any disabled person in leading~~
24 ~~a normal life by facilitating such person's mobility. Such~~
25 ~~apparatus, instrument, device, or equipment shall be exempted~~
26 ~~according to an individual prescription or prescriptions~~
27 ~~written by a physician licensed under chapter 458, chapter~~
28 ~~459, chapter 460, chapter 461, or chapter 466, or according to~~
29 ~~a list prescribed and approved by the Department of Health,~~
30 ~~which list shall be certified to the Department of Revenue~~
31 ~~from time to time and included in the rules promulgated by the~~
~~Department of Revenue.~~

1 2. ~~"Cosmetics" means articles intended to be rubbed,~~
2 ~~poured, sprinkled, or sprayed on, introduced into, or~~
3 ~~otherwise applied to the human body for cleansing,~~
4 ~~beautifying, promoting attractiveness, or altering the~~
5 ~~appearance and also means articles intended for use as a~~
6 ~~compound of any such articles, including, but not limited to,~~
7 ~~cold creams, suntan lotions, makeup, and body lotions.~~

8 3. ~~"Toilet articles" means any article advertised or~~
9 ~~held out for sale for grooming purposes and those articles~~
10 ~~that are customarily used for grooming purposes, regardless of~~
11 ~~the name by which they may be known, including, but not~~
12 ~~limited to, soap, toothpaste, hair spray, shaving products,~~
13 ~~colognes, perfumes, shampoo, deodorant, and mouthwash.~~

14 4. "Prescription" means an order, formula, or recipe
15 issued in any form of oral, written, electronic, or other
16 means of transmission by a duly licensed practitioner
17 authorized by the laws of this state.~~includes any order for~~
18 ~~drugs or medicinal supplies written or transmitted by any~~
19 ~~means of communication by a duly licensed practitioner~~
20 ~~authorized by the laws of the state to prescribe such drugs or~~
21 ~~medicinal supplies and intended to be dispensed by a~~
22 ~~pharmacist. The term also includes an orally transmitted order~~
23 ~~by the lawfully designated agent of such practitioner. The~~
24 ~~term also includes an order written or transmitted by a~~
25 ~~practitioner licensed to practice in a jurisdiction other than~~
26 ~~this state, but only if the pharmacist called upon to dispense~~
27 ~~such order determines, in the exercise of his or her~~
28 ~~professional judgment, that the order is valid and necessary~~
29 ~~for the treatment of a chronic or recurrent illness. The term~~
30 ~~also includes a pharmacist's order for a product selected from~~
31 ~~the formulary created pursuant to s. 465.186. A prescription~~

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

5 (c) Such durable medical equipment, mobility enhancing
6 equipment, or prosthetic device shall be exempted according to
7 an individual prescription or prescriptions written by a
8 physician licensed under chapter 458, chapter 459, chapter
9 460, chapter 461, or chapter 466, or according to a list
10 prescribed and approved by the Department of Health, which
11 list shall be certified to the Department of Revenue from time
12 to time and included in the rules adopted by the Department of
13 Revenue.

14 ~~(d)(e)~~ Chlorine shall not be exempt from the tax
15 imposed by this chapter when used for the treatment of water
16 in swimming pools.

17 ~~(e)(d)~~ Lithotripters are exempt.

18 ~~(f)(e)~~ Human organs are exempt.

19 ~~(g)(f)~~ Sales of drugs to or by physicians, dentists,
20 veterinarians, and hospitals in connection with medical
21 treatment are exempt.

22 ~~(h)(g)~~ Medical products and supplies used in the cure,
23 mitigation, alleviation, prevention, or treatment of injury,
24 disease, or incapacity which are temporarily or permanently
25 incorporated into a patient or client by a practitioner of the
26 healing arts licensed in the state are exempt.

27 ~~(i)(h)~~ The purchase by a veterinarian of commonly
28 recognized substances possessing curative or remedial
29 properties which are ordered and dispensed as treatment for a
30 diagnosed health disorder by or on the prescription of a duly
31 licensed veterinarian, and which are applied to or consumed by

1 animals for alleviation of pain or the cure or prevention of
2 sickness, disease, or suffering are exempt. Also exempt are
3 the purchase by a veterinarian of antiseptics, absorbent
4 cotton, gauze for bandages, lotions, vitamins, and worm
5 remedies.

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

10 (k)~~(j)~~ Parts, special attachments, special lettering,
11 and other like items that are added to or attached to tangible
12 personal property so that a handicapped person can use them
13 are exempt when such items are purchased by a person pursuant
14 to an individual prescription.

15 (l)~~(k)~~ This subsection shall be strictly construed and
16 enforced.

17 Section 7. Section 212.095, Florida Statutes, is
18 amended to read:

19 212.095 Refunds.--

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

22 (2) Notwithstanding any other law, a purchaser seeking
23 a refund of or credit for a tax collected by a dealer under
24 this chapter must, within 3 years following collection of the
25 tax from the purchaser, submit a written request for the
26 refund or credit to the dealer in accordance with this
27 section. A request shall not be granted unless the amount
28 claimed was collected from the purchaser and was not due to
29 the state or to any local taxing jurisdiction.

30 (a) A request for a refund or credit may be submitted
31 under this section if:

1 1. The dealer charged and collected the tax with
2 respect to a transaction or charge that was not subject to the
3 taxes imposed by this chapter or applied a tax rate in excess
4 of the lawful rate.

5 2. The purchaser or the transaction was exempt or
6 immune from such taxes.

7 3. The purchaser was assigned to the incorrect local
8 taxing jurisdiction for purposes of the taxes authorized in
9 ss. 212.054 and 212.055 in respect to a transaction with a
10 seller who is registered under the Streamlined Sales and Use
11 Tax Agreement pursuant to s. 213.256.

12 4. The purchaser paid the tax in error.

13 (b) A purchaser's request for a refund or credit must
14 be signed by the purchaser and is complete for purposes of
15 this section and the limitation period if it states the
16 purchaser's name, mailing address, account number, the tax
17 amounts claimed, the specific months during which those
18 amounts were collected, and the reason for the purchaser's
19 claim that such amounts were not due to the state or to any
20 local taxing jurisdiction. If the reason for the request is an
21 exemption or immunity or a claim that the purchaser was
22 assigned to the incorrect local taxing jurisdiction for
23 purposes of a tax imposed under ss. 212.054 and 212.055, a
24 completed request must also include any additional information
25 the department prescribes by rule to facilitate verification
26 of the purchaser's eligibility for exemption or immunity or to
27 facilitate verification of the purchaser's address. Upon
28 receipt of a completed request, the dealer shall ascertain
29 whether it collected the tax claimed from the purchaser and
30 whether the request is timely.

31

1 (c) Within 30 days following receipt of a completed
2 request, the dealer shall determine as to whether any portion
3 of the tax was collected solely as the result of an error of
4 the dealer or the purchaser or solely as the result of a
5 combination of errors of the dealer and the purchaser. The
6 dealer shall refund any such amount or credit the purchaser's
7 account for such amount within 45 days following such
8 determination.

9 (d) With respect to all amounts timely claimed which
10 the dealer collected from the purchaser and which the dealer
11 has not determined to be subject to refund or credit pursuant
12 to paragraph (c), the dealer shall, within 30 days following
13 receipt of the purchaser's completed request for refund or
14 credit, provide a copy of the request to the department. If
15 the reason for the purchaser's request is described in
16 subparagraph (a)1. or subparagraph (a)3., the dealer shall
17 contemporaneously furnish to the department an identification
18 of the charges included in the taxable measure and the tax
19 rates applied to the charges or a written identification of
20 each local jurisdiction to which the purchaser was assigned
21 and the amounts collected from the purchaser and reported for
22 each such jurisdiction, as the case may be. If a purchaser's
23 request submitted to the department under this section sets
24 forth another reason for claiming a refund or credit, the
25 dealer shall furnish to the department information to
26 facilitate the department's evaluation of the request.

27 (e) Within 90 days following receipt of the
28 purchaser's request from the dealer, the department shall
29 determine whether the tax was correctly applied and notify the
30 dealer in writing of its determination. If the department
31 determines that the tax was incorrectly applied, its

1 notification to the dealer must inform the dealer how the tax
2 should have been applied, including, in the case of an
3 incorrect assignment of the purchaser to a local taxing
4 jurisdiction, an identification of the correct local taxing
5 jurisdiction and the applicable rates of tax levied by the
6 local jurisdiction. The department's notification must also
7 inform the dealer of any portion of the amount claimed which
8 was not due to the state or to any local taxing jurisdiction
9 and approve the refund or credit of such amount to the
10 purchaser. Within 45 days following receipt of notification
11 from the department, the dealer shall issue a refund or credit
12 the purchaser's account for any such amount. The dealer's
13 obligation to issue a refund or credit the purchaser's account
14 is limited to amounts approved in accordance with this
15 section.

16 (f) The dealer shall issue a written response within
17 60 days following the dealer's receipt of the request advising
18 the purchaser of the disposition of the purchaser's request.
19 The response must specify any portion of the tax claimed which
20 is being refunded or credited to the purchaser's account and
21 the reason for denial of any portion of the request. If the
22 dealer has not determined that the request is subject to
23 refund or credit pursuant to paragraph (c), the response must
24 state that the dealer has submitted a copy of the request to
25 the department. The request may be denied if the request was
26 untimely or incomplete, the dealer did not collect the tax
27 claimed, the purchaser previously received a refund of or
28 credit for the same tax, the tax collected was due, or the
29 department failed to furnish the notification required by
30 paragraph (e).

31

1 (g) The dealer may deduct from any refund or credit
2 under this section any amount owed by the purchaser to the
3 dealer which is delinquent.

4 (3) This section provides the sole and exclusive
5 procedure and remedy for a purchaser who claims that a dealer
6 has collected taxes imposed or administered under this chapter
7 which were not due. An action that arises as a result of the
8 claimed collection of taxes that were not due may not be
9 commenced or maintained by or on behalf of a purchaser against
10 a dealer, a municipality, a county, or the state unless the
11 purchaser pleads and proves that the purchaser has exhausted
12 the procedures in subsection (2) and that the defendant has
13 failed to comply with subsection (2). However, no
14 determination by a dealer under paragraph (2)(c) shall be
15 deemed a failure to comply with subsection (2) if the dealer
16 has complied with the obligations imposed on the dealer by
17 paragraphs (2)(d), (e), and (f). In any such action, it is a
18 complete defense that the dealer, a municipality, a county, or
19 the state has refunded the taxes claimed or credited the
20 purchaser's account. In such an action against a seller, it is
21 also a complete defense that, in collecting the tax, the
22 seller used an electronic database provided by the department
23 set forth in s. 202.22(2) for assigning the purchaser to a
24 local taxing jurisdiction. Such action is barred unless it is
25 commenced within 180 days following the date of the dealer's
26 written response under paragraph (2)(f), or within 1 year
27 following submission of the purchaser's request to the dealer
28 if the dealer failed to issue a timely written response. The
29 relief available to a purchaser as a result of collection of
30 taxes imposed under chapter 212 that were not due is limited
31 to a refund of or credit for such taxes.

1 (4) A dealer who remitted a tax amount to the
2 department for which the dealer subsequently issued a refund
3 or credit to the purchaser pursuant to this section, and a
4 dealer who has otherwise remitted to the department a tax
5 amount with respect to taxes which was not due under this
6 chapter, is entitled to a refund or credit of such amount from
7 the department. The dealer may apply for a refund within the
8 period prescribed in s. 215.26 or may take a credit against a
9 tax remittance otherwise required under this chapter within 3
10 years after the date that the amount for which credit is
11 claimed was remitted to the department, or within 60 days
12 following such provider's issuance of a refund or credit to
13 the purchaser for such amount, whichever occurs later. In
14 addition, s. 213.34 applies to the offset of overpayments
15 against deficiencies in audits of dealers and purchasers.

16 (5) A seller who takes a credit on a subsequent
17 return, as provided in subsection (4), for a tax imposed
18 pursuant to ss. 212.054 and 212.055 which has been collected
19 and remitted by the seller must indicate such credit in the
20 portion of the Streamlined Sales and Use Tax return applicable
21 to the local taxing jurisdiction for which the tax was
22 originally reported.

23 (6) A dealer who has collected and remitted amounts
24 that were not due, as determined by the department under
25 paragraph (2)(e), who has issued a refund or credit to the
26 purchaser for such amounts, and who takes a credit or receives
27 a refund from the department for such amounts as provided in
28 subsection (4) is not subject to assessment for any of the tax
29 that was refunded or credited or for any interest or penalty
30 with respect to the tax. In addition, a seller who modifies
31 his or her tax compliance practices to conform to a department

1 determination under paragraph (2)(e) is not subject to
2 assessment as a result of such modification, absent a
3 subsequent change in law or update to a database pursuant to
4 s. 202.22(2).

5 (7) A purchaser who seeks a refund of taxes imposed
6 under this chapter, that the purchaser paid directly to the
7 department must apply to the department for such refund in
8 accordance with s. 215.26 and may not apply to the dealer.

9 (8)(2)(a) A person who seeks a refund of taxes imposed
10 under this chapter which the person paid directly to the
11 department or a dealer who seeks a refund from the department
12 pursuant to subsection (4)~~No person may not secure a refund~~
13 ~~under this chapter unless such person files is the holder of~~
14 ~~an unrevoked refund permit issued by the department before the~~
15 ~~purchase for which a refund is sought, which permit shall be~~
16 ~~numbered and issued annually.~~

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

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

28 ~~(d) If an applicant for a refund permit has violated~~
29 ~~any provision of this section or any regulation pursuant~~
30 ~~hereto, or has been convicted of bribery, theft, or false~~
31 ~~swearing within the period of 5 years preceding the~~

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

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

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

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

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

30 (9)(4)(a) No refund may be authorized unless a sworn
31 application therefor containing the information required in

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

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

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

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

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

19 2.3. The location at which the items or services for
20 which a refund is claimed are used.

21 3.4. A description of each such item or service and
22 the purpose for which such item or service was acquired.

23 4.5. Copies of the sales invoices of items or services
24 for which a refund is being claimed.

25 ~~(10)(5)~~ The right to receive any refund under the
26 provisions of this section is not assignable, except to the
27 executor or administrator, or to the receiver, trustee in
28 bankruptcy, or assignee in an insolvency proceeding, of the
29 person entitled to the refund.

30 (11)(6)(a) Each registered dealer shall, in accordance
31 with the requirements of the department, keep at his or her

1 principal place of business in this state or at the location
2 where the sale is made a complete record or duplicate sales
3 tickets of all items or services sold by the registered dealer
4 for which a refund provided in this section may be claimed,
5 which records shall contain:

6 1. The name and business address of the purchaser;
7 2. A description of the item or services sold;
8 3. The date on which the purchase was made;
9 4. The price and amount of tax paid for the item or
10 services;

11 5. The name and place of business of the seller at
12 which the sale was made; and

13 6. The refund permit number of the purchaser. ~~the~~
14 ~~information required in paragraph (3)(a).~~

15 (b) Every person who seeks a refund of taxes imposed
16 under this chapter ~~to whom a refund permit has been issued~~
17 ~~under this section~~ shall, in accordance with the requirements
18 of the department, keep at his or her residence or principal
19 place of business in this state a record of each purchase for
20 which a refund is claimed, including the information required
21 in subsection ~~paragraph~~(11)(3)(a).

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

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

31

1 (12)~~(7)~~ Agents of the department are authorized to go
2 upon the premises of any refund permitholder, or duly
3 authorized agent thereof, to make an inspection to ascertain
4 any matter connected with the operation of this section or the
5 enforcement hereof. However, no agent may enter the dwelling
6 of any person without the consent of the occupant or authority
7 from a court of competent jurisdiction.

8 (13)~~(8)~~ If any taxes are refunded erroneously, the
9 department shall advise the payee by registered mail of the
10 erroneous refund. If the payee fails to reimburse the state
11 within 15 days after the receipt of the letter, an action may
12 be instituted by the department against such payee in the
13 circuit court, and the department shall recover from the payee
14 the amount of the erroneous refund plus a penalty of 25
15 percent.

16 (14)~~(9)~~ No person shall:

17 (a) Knowingly make a false or fraudulent statement in
18 ~~an application for a refund permit or in an application for a~~
19 refund of any taxes under this section;

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

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

23 ~~(10) The refund permit of any person who violates any~~
24 ~~provision of this section shall be revoked by the department~~
25 ~~and may not be reissued until 2 years have elapsed from the~~
26 ~~date of such revocation. The refund permit of any person who~~
27 ~~violates any other provision of this chapter may be suspended~~
28 ~~by the department for any period, in its discretion, not~~
29 ~~exceeding 6 months.~~

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31

1 ~~(15)(11)~~ Refund ~~permits and refund~~ application forms
2 shall include instructions for dealers and purchasers as to
3 the relevant requirements of this section.

4 Section 8. Subsection (3) of section 212.17, Florida
5 Statutes, is amended to read:

6 212.17 Credits for returned goods, rentals, or
7 admissions; goods acquired for dealer's own use and
8 subsequently resold; additional powers of department.--

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

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

27 (b) Notwithstanding paragraph (a), the amount
28 calculated pursuant to 26 U.S.C. s. 166 shall be adjusted to
29 exclude financing charges or interest; sales or use taxes
30 charged on the purchase price; uncollectible amounts on
31 property that remain in the possession of the seller until the

1 full purchase price is paid; expenses incurred in attempting
2 to collect any debt; and repossessed property.

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

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

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

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

27 (g) In situations in which the books and records of
28 the party claiming the bad debt allowance support an
29 allocation of the bad debts among states that are members of
30 the Streamlined Sales and Use Tax Agreement, the allocation is
31 permitted among those states.

1 Section 9. Section 213.052, Florida Statutes, is
2 created to read:

3 213.052 Notice of state rate changes.--

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

9 (2) Failure of a seller to receive notice or failure
10 of a Streamlined Sales and Use Tax Agreement member state to
11 provide notice or limit the effective date of a rate change
12 shall not relieve the seller of its obligation to collect
13 sales or use tax for that member state.

14 Section 10. Section 213.0521, Florida Statutes, is
15 created to read:

16 213.0521 Effective date of state rate changes.--The
17 effective date for services covering a period starting before
18 and ending after the statutory effective date shall be as
19 follows:

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

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

25 Section 11. Subsection (11) is added to section
26 213.21, Florida Statutes, to read:

27 213.21 Informal conferences; compromises.--

28 (11) A member state shall provide amnesty for
29 uncollected or unpaid sales or use tax to a seller who
30 registers to pay or to collect and remit applicable sales or
31 use tax on sales made to purchasers in the state in accordance

1 with the terms of the Streamlined Sales and Use Tax Agreement
2 authorized under s. 213.256, if the seller was not so
3 registered in that state in the 12-month period preceding the
4 effective date of the state's participation in the agreement.

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

11 (b) Amnesty similarly shall be provided by any
12 additional state that joins the agreement after the seller has
13 registered.

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

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

22 (e) The amnesty is fully effective, absent the
23 seller's fraud or intentional misrepresentation of a material
24 fact, as long as the seller continues registration and
25 continues payment or collection and remittance of applicable
26 sales or use taxes for at least 36 months. Each member state
27 shall toll its statute of limitations applicable to asserting
28 a tax liability during this 36-month period.

29 (f) The amnesty is applicable only to sales or use
30 taxes due from a seller in its capacity as a seller and not to
31

1 sales or use taxes due from a seller in its capacity as a
2 buyer.

3 Section 12. Subsections (1) and (7) of section
4 213.256, Florida Statutes, are amended, present subsections
5 (8), (9), and (10) of that section are renumbered as
6 subsections (11), (12), and (13), respectively, and new
7 subsections (8), (9), (10), and (14) are added to that section
8 to read:

9 213.256 Simplified Sales and Use Tax Administration
10 Act.--

11 (1) As used in this section, the term:

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

13 (b) "Agent" means a person appointed by a seller to
14 represent the seller before the member states.

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

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

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

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

3 (g) "Model 2 seller" means a seller that has selected
4 a certified automated system to perform part of its sales and
5 use tax functions, but retains responsibility for remitting
6 the tax.

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

15 (i)~~(e)~~ "Person" means an individual, trust, estate,
16 fiduciary, partnership, limited liability company, limited
17 liability partnership, corporation, or any other legal entity.

18 (j) "Registered under this agreement" means
19 registration by a seller with the member states under the
20 central registration system.

21 (k)~~(f)~~ "Sales tax" means the tax levied under chapter
22 212.

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

25 (m)~~(h)~~ "State" means any state of the United States
26 and the District of Columbia.

27 (n)~~(i)~~ "Use tax" means the tax levied under chapter
28 212.

29 (7)(a) The agreement authorized by this act binds and
30 inures only to the benefit of this state and the other member
31 states. No person, other than a member state, is an intended

1 beneficiary of the agreement. Any benefit to a person other
2 than a state is established by the laws of this state and of
3 other member states and not by the terms of the agreement.

4 (b) Consistent with paragraph (a), no person has any
5 cause of action or defense under the agreement or by virtue of
6 this state's approval of the agreement. No person may
7 challenge, in any action brought under any provision of law,
8 any action or inaction by any department, agency, or other
9 instrumentality of this state, or of any political subdivision
10 of this state, on the ground that the action or inaction is
11 inconsistent with the agreement.

12 (c) No law of this state, or the application thereof,
13 may be declared invalid as to any person or circumstance on
14 the ground that the provision or application is inconsistent
15 with the agreement.

16 (d) The determinations pertaining to the agreement
17 authorized by this act which are made by the member states are
18 final when rendered and are not subject to any protest,
19 appeal, or review.

20 (8) Authority to administer the agreement authorized
21 under this act shall rest with the governing board comprised
22 of representatives of each member state. Each member state may
23 appoint up to four representatives to the governing board. The
24 representatives shall be members of the executive or
25 legislative branches of the state.

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

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

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

23 (14) Each member state shall annually recertify that
24 such state is in compliance with the agreement authorized
25 under this act. Each member state shall make a recertification
26 to the governing board on or before August 1 of each year
27 after the year of the state's entry. In its annual
28 recertification, the state shall include any changes in its
29 statutes, rule or regulations, or other authorities that could
30 affect its compliance with the terms of the agreement. The
31 recertification shall be signed by the executive director of

1 the Department of Revenue. A member state that cannot
2 recertify its compliance with the agreement shall submit a
3 statement of noncompliance to the governing board. The
4 statement of noncompliance shall include any action or
5 decision that takes such state out of compliance with the
6 agreement and the steps it will take to return to compliance.
7 Each member state shall post its annual recertification or
8 statement of noncompliance on that state's web site.

9 Section 13. Section 213.2567, Florida Statutes, is
10 created to read:

11 213.2567 Simplified Sales and Use Tax registration,
12 certification, liability, audit.--

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

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

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

26 (2)(a) A certified service provider is the agent of a
27 model 1 seller with whom the certified service provider has
28 contracted for the collection and remittance of sales and use
29 taxes. As the model 1 seller's agent, the certified service
30 provider is liable for sales and use tax due each member state

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1 on all sales transactions it processes for the model 1 seller
2 except as set out in paragraph (b).

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

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

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

28 (5) The governing board may certify a person as a
29 certified service provider if the person meets all of the
30 following requirements:

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

1 (b) The person integrates its certified automated
2 system with the system of a seller for whom the person
3 collects tax so that the tax due on a sale is determined at
4 the time of the sale;

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

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

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

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

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

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

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

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

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

26 (e) The program meets any other requirement set by the
27 governing board.

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

3 (8) Disclosure of information necessary under this
4 section must be pursuant to a written agreement between the
5 executive director of the department or his or her designee
6 and the certified service provider. The certified service
7 provider is bound by the same requirements of confidentiality
8 as the department. Breach of confidentiality is a misdemeanor
9 of the first degree, punishable as provided in s. 775.082 or
10 775.083.

11 Section 14. Paragraph (c) of subsection (2) and
12 paragraph (c) of subsection (3) of section 212.055, Florida
13 Statutes, are amended to read:

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

27 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

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

1 1. An interlocal agreement between the county
2 governing authority and the governing bodies of the
3 municipalities representing a majority of the county's
4 municipal population, which agreement may include a school
5 district with the consent of the county governing authority
6 and the governing bodies of the municipalities representing a
7 majority of the county's municipal population; or

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

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11 Any change in the distribution formula must take effect on the
12 first day of any month that begins at least 60 days after
13 written notification of that change has been made to the
14 department.

15 (3) SMALL COUNTY SURTAX.--

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

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

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

29
30 Any change in the distribution formula shall take effect on
31 the first day of any month that begins at least 60 days after

1 written notification of that change has been made to the
2 department.

3 Section 15. Subsection (6) of section 212.0596,
4 Florida Statutes, is repealed.

5 Section 16. It is the intent of the Legislature to
6 further amend chapter 212, Florida Statutes, to make the
7 changes necessary to be in compliance with the provisions of
8 the Streamlined Sales and Use Tax Agreement which take effect
9 on December 31, 2005, and to address the prohibition on
10 multiple state rates in a revenue-neutral manner.

11 Section 17. This act shall take effect July 1, 2003.

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14 SENATE SUMMARY

15 Revises various provisions relating to sales and use
16 taxes, including provisions relating to the effective
17 date of changes in tax rates; determining the situs of
18 taxable transactions; procedures to be used by sellers,
19 including sellers' responsibilities under the Streamlined
20 Sales and Use Tax Agreement; credits for bad debts;
21 amnesty for unpaid or uncollected taxes; and
22 administration of the agreement. (See bill for details.)
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