SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1072

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee and Senator Campbell

SUBJECT: The Streamlined Sales and Use Tax Agreement

DATE: March 4, 2004 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Favorable
2.	Cooper	Yeatman	CP	Favorable
3.	Cibula	Maclure	CM	Favorable/CS
4.			AGG	
5.			AP	
6.				

I. Summary:

This committee substitute is designed to bring Florida law into compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) and to enable Florida to petition for membership in the Agreement. To participate in the Agreement, states must harmonize their sale and use tax laws with other states as set forth in the Agreement. To some degree, states also must simplify the administration of their sales and use tax codes. The Agreement was drafted by participating states, including Florida, through the Streamlined Sales Tax Project, which was formed by the National Conference of State Legislatures. Although laws adopted in compliance with the Agreement will apply to both in-state and out-of-state retailers, the laws are largely designed to increase compliance with state use tax laws by out-of-state retailers.

Use taxes are due in Florida on purchases by persons in Florida from out-of-state Internet and mail-order retailers. If the out-of-state retailer does not collect the use tax, the purchaser is required to remit the tax to the Department of Revenue. Use taxes on out-of-state purchases are seldom remitted. Out-of-state retailers have successfully argued before the U.S. Supreme Court in *National Bellas Hess, Inc., v. Department of Revenue of Ill.*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), that it is an unconstitutional burden on interstate commerce for a state to compel out-of-state retailers to collect use taxes. The burden resulted, at least in part, from the fact that, at the time of the *Quill* opinion in 1992, there were more than 6,000 different taxing jurisdictions with different rates, exemptions, and record-keeping requirements. In 2000, there were more than 7,500 different taxing jurisdictions.

According to the National Conference of State Legislatures, it may be easier for out-of-state retailers to collect use taxes for states that have amended their laws to comply with the Agreement because there will be fewer differences among taxing jurisdictions. As a result, out-

of-state retailers may choose to voluntarily collect and remit use taxes to member states of the Agreement.[1] Additionally, legislation is pending in Congress that would allow member states to the Agreement to force out-of-state retailers to collect and remit use taxes.

This committee substitute substantially amends the following sections of the Florida Statutes: 212.02, 212.05, 212.054, 212.055, 212.06, 212.08, 212.095, 212.17, 213.21, and 213.256. The committee substitute creates the following sections: 212.094, 213.052, 213.0521, and 213.2567. The committee substitute repeals s. 212.0596(6), Florida Statutes.

II. Present Situation:

Sales and Use Taxes

Florida is among the 45 states and the District of Columbia that impose sales and use taxes. Florida is also among the eight states that do not have a personal income tax and rely heavily on sales tax collections to fund government operations. In fiscal year 2002-2003, Florida sales and use tax collections accounted for 73 percent of the receipts into the General Revenue Fund, 53 percent of all state tax revenues, and 33 percent of all state revenue.[2]

The state sales tax rate of 6 percent is typically imposed on the cost or price of tangible personal property or a service at the moment it is sold to a purchaser.[3] The seller or dealer is generally required to collect the sales tax from the purchaser at the time of the sale.[4] The dealer must remit the sales taxes collected to the Department of Revenue.[5]

The state use tax of 6 percent is imposed on the use, consumption, distribution, and storage of tangible personal property or a service in this state.[6] "The overall purpose of the use tax is to recoup sales tax revenues the state otherwise would lose when goods purchased out-of-state are brought into Florida for use here."[7] "A use tax ordinarily serves to complement the sales tax by eliminating the incentive to make major purchases in States with lower sales taxes; it requires the resident who shops out-of-state to pay a use tax equal to the sales tax savings."[8]

Use taxes levied on the purchase of items from on-line and catalog retailers are difficult for states to collect for two reasons. First, under the Commerce Clause of the U.S. Constitution, a state may not impose a duty to collect use taxes on a remote seller unless the remote seller has a substantial nexus to the taxing state. Second, the National Governors Association reports that

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[1] National Conference of State Legislatures, *Report on the Streamlined Sales Tax Implementing States*, July 2003, *at* http://www.ncsl.org/programs/fiscal/sstisupdate.htm (last visited February 13, 2004).
[2] *See* Florida Consensus Estimating Conference, *Revenue Analysis FY 1970-71 Through FY 2012-13*, 13, 29-30, Vol. 19, (Spring 2003).
[3] Section 212.06(1)(a), F.S.
[4] Section 212.06(3)(a), F.S.
[5] Section 212.11, F.S.
[6] Section 212.06(1)(a), F.S.
[7] *Kuhnlein v. Department of Highway Safety and Motor Vehicles*, 646 So. 2d 717, 722 (Fla. 1994).
[8] *Minneapolis Star and Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 581-582 (1983).

most consumers are unaware that they have to remit use taxes on their on-line and catalog purchases.[9]

Instructions for payment of use taxes in Florida on purchases from Internet sources, mail order catalogs, television or shopping networks, and auctions or toll-free (1-800) shopping services are available on the Department of Revenue's website at http://sun6.dms.state.fl.us/dor/ consumer/. These instructions direct consumers to file an Out-of-State Purchase Return, Form DR-15MO, to remit use tax to the state. Local option sales surtaxes are not imposed on out-of-state purchases.[10] According to a February 2003 article in the St. Petersburg Times, the Department of Revenue's own executives are about the only people who regularly file Form DR-15MO.[11]

Electronic Commerce

Because use taxes on on-line sales are difficult for states to collect, the growth in sales by on-line retailers is perceived by the National Governors Association as a threat to state sales tax revenues.[12] A frequently quoted study by the Center for Business and Economic Research estimates that Florida state and local government revenue losses from e-commerce will be $3.2 billion in 2006 and $3.9 billion in 2011.[13]

On February 23, 2004, the U.S. Department of Commerce reported that e-commerce sales for the fourth quarter of 2003 were $17.2 billion.[14] Total retail sales for the quarter were estimated at $918.2 billion. Sales by e-commerce represented 1.9 percent of the total retail sales for the quarter. Figures 1 and 2, below, show the historical volume of total retail sales and sales through e-commerce.

[9] National Governors Association, *New Report Shows States to Lose Nearly $440 Billion in Sales Tax Revenue from Remote Sales*, News Release, Oct. 2, 2001, *at* http://www.nga.org/nga/newsRoom/1,1169,C_PRESS_RELEASE^D_ 2635,00,00.html (last visited February 18, 2004).

[10] Section 212.0596(6), F.S. This exemption from local option sales surtaxes in s. 212.0596(6), F.S., however, is repealed by section 16 of the committee substitute. In some counties, local option sales surtaxes add an additional 1.5 percent to the 6 percent state sales tax rate. *See* Florida Legislative Committee on Intergovernmental Relations, *Local Government Financial Information Handbook*, 192 (2003 ed.) (December 2003).

[11] Martin Dyckman, St. Petersburg Times, *Missing money is in Internet sales*, February 2, 2003.

[12] National Governors Association, *Sales Tax Simplification*, *at* http://www.nga.org/nga/lobbyIssues/1,1169,C_ LOBBY_ISSUE^D_782,00.html (last visited February 18, 2004).

[13] Donald Bruce & William F. Fox, The University of Tennessee, Center for Business and Economic Research, *State and Local Sales Tax Revenue Losses from E-Commerce: Updated Estimates*, 9 (September 2001).

[14] U.S. Census Bureau, *United States Commerce Department News*, February 23, 2004, *at* http://www.census.gov/ mrts/www/current.html (last visited February 27, 2004).

Figure 1

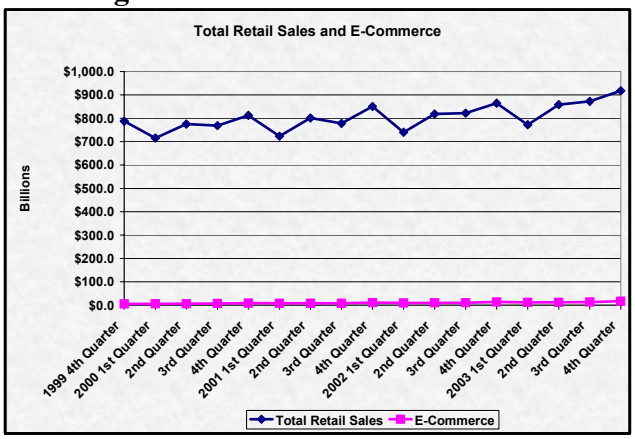
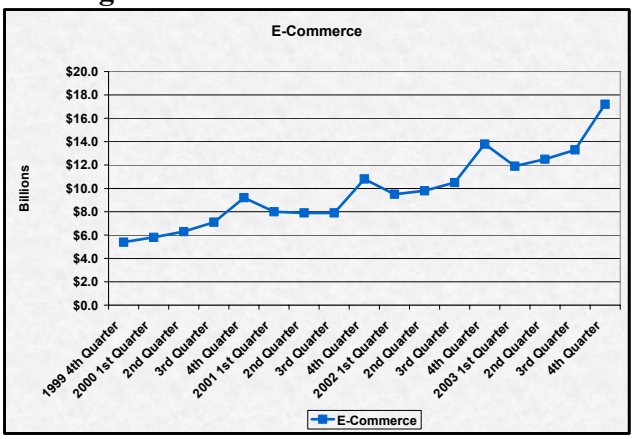


Figure 2



Source: Created from U.S. Census Bureau, *United States Commerce Department News*, February 23, 2004.

Internet Tax Freedom Act

Congress enacted the Internet Tax Freedom Act (ITFA) in October 1998.[15] This legislation called for a moratorium, from October 1, 1998, to October 21, 2001, on state and local taxes on Internet access, unless such tax was generally imposed and actually enforced before October 1, 1998. The ITFA specifically preserves state and local taxing authority. Purchases made via the Internet, if otherwise taxable, were still taxable when purchased over the Internet. On November 28, 2001, Congress and the President extended the ITFA to November 1, 2003.[16] On November 1, 2003, ITFA expired. Bills are pending in Congress to extend the ban on taxes on Internet access.

Streamlined Sales Tax Project

Serious consideration of utilizing modern technology coupled with substantial and substantive law changes to address e-commerce issues began with the National Tax Association's Communications and Electronic Commerce Tax Project. In that process, state and local government representatives suggested that tax compliance software, in coordination with systems maintained by financial intermediaries, could solve many of these problems. Out of this project emerged the National Conference of State Legislatures (NCSL) Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. In coordinated efforts with governors and tax administrators, NCSL formed the Streamlined Sales Tax Project (SSTP) in March 2000. The goal of the SSTP is to design and implement a simplified sales tax collection system that can be used by traditional brick-and-mortar vendors and vendors involved in e-commerce. In response to this effort, the Florida Legislature passed ch. 2000-355, L.O.F., creating s. 213.27(9), F.S., giving the Department of Revenue authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration.[17]

[15] Pub. L. No. 105-277, Div. C, Title XI, s. 1100 et seq. (1998).
[16] Pub. L. No. 107-75 (2001).
[17] The substance of s. 213.27(9), F.S., is now codified in s. 213.27(8), F.S.

On January 27, 2001, the NCSL Executive Committee unanimously endorsed the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement, as amended and approved by the Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. States that adopted the Uniform Sales and Use Tax Administration Act or had their governors issue executive orders or similar authorizations were authorized to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes. In 2001, the Florida Legislature passed ch. 2001-225, L.O.F., which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the SSTP.

There are 39 states and the District of Columbia involved in the project. Thirty-four states and the District of Columbia had their legislatures enact enabling legislation. These states, including Florida, make up the Streamlined Sales Tax Implementing States (SSTIS). On November 12, 2002, the Streamlined Sales and Use Tax Agreement (Agreement) was approved at a meeting of the SSTIS held in Chicago, Illinois.

The SSTIS met during 2002 to review, debate, and approve provisions in the Agreement proposed by the Streamlined Sales Tax Project. The project conducted its work through a steering committee with co-chairs, four work groups, and a number of sub-groups. Project participants are generally state revenue department administrators in addition to representatives from state legislatures and local governments. Businesses, including national retailers, trade associations, manufacturers, direct marketers, technology companies, and others, have actively participated in the SSTP.

One of the stated goals of the SSTP:

> is to encourage the registration and collection of sales and use taxes by remote sellers who are not now collecting such taxes on otherwise taxable sales to customers located in states where the remote sellers do not have physical presence sufficient to subject them to the states' jurisdiction to require such collection . . . .[18]

The SSTP goal to encourage remote sellers to collect sales and use taxes is a reaction to the decisions of the U.S. Supreme Court in *National Bellas Hess, Inc., v. Department of Revenue of Ill.*, 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In *Bellas Hess*, the Court held that Illinois could not require an out-of-state mail-order business to collect and pay uses taxes because the business did not have a physical presence in Illinois.[19] In *Quill*, the Court held that a physical presence is no longer required for a state to require a business to collect and pay use taxes.[20] However, a mail-order business must have a substantial nexus to a state before a state may impose a duty to collect and pay use taxes.[21] In *Quill*, a state sought to

[18] Streamlined Sales Tax Project, Resolution No. 07-03, adopted May 20, 2003, *available at* http://www.streamlinedsalestax.org/resolutions/SSTPResolution%2007-03.pdf.
[19] *National Bellas Hess, Inc., v. Department of Revenue of Ill.*, 386 U.S. 753, 758 (1967).
[20] *Quill Corp. v. North Dakota*, 504 U.S. 298, 316 (1992).
[21] *Quill*, 504 U.S. at 311.

require an out-of-state mail-order business that neither had outlets nor a sales force in the state to collect and pay use tax on goods purchased for use in the state.[22] The Court found that the mail-order business did not have a substantial nexus to the taxing state.[23] The *Quill* Court noted that the imposition of a duty on a mail-order business to collect use taxes poses an undue burden on interstate commerce in violation of the Commerce Clause of the U.S. Constitution. This undue burden resulted from the fact that there were more than 6,000 taxing jurisdictions with differing tax rates, allowable exemptions, and record-keeping requirements with which remote sellers would be required to comply.[24] In 2000, there were more than 7,500 state and local governments levying sales taxes out of a potential 30,000 jurisdictions.[25]

Collection Cost Study

Section 213.256(3)(f), F.S., required the Streamlined Sales and Use Tax Agreement, adopted January 27, 2001, the predecessor agreement to the Agreement at issue in CS/SB 1072, to allow for a joint study by the public and private sectors of the compliance costs to sellers and certified service providers of the costs of collecting sales and use taxes to be completed by July 1, 2002. This study has not been completed due to a lack of funding. A request for proposals to conduct the study, however, is available on the website for the Streamlined Sales Tax Project at http://www.streamlinedsalestax.org/.

Streamlined Sales and Use Tax Agreement

The key features found within the Streamlined Sales and Use Tax Agreement (Agreement) include:

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions.
- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances. Local jurisdictions will be allowed one local rate.
- State tax administration of all state and local taxes. A businesses will no longer file tax returns with each local government where it conducts business in a state. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. State and local governments must have common tax bases.
- Uniform sourcing rules. The states will have uniform rules to determine which jurisdictions may tax a transaction.
- Simplified exemption administration for use-and-entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest, and penalties for claiming incorrect exemptions.
- Uniform audit procedures.

[22] *Quill*, 504 U.S. at 301-302.
[23] *Quill*, 504 U.S. at 314.
[24] *Quill*, 504 U.S. at note 6.
[25] Advisory Commission on Electronic Commerce, *Report To Congress*, April 2000, at 17.

- State funding of the system. To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models.

When at least 10 states representing 20 percent of the U.S. population have amended their laws to comply with the Agreement, administration of the Agreement will switch to the governing states. As of July 1, 2003, 20 states representing more than 30 percent of the total population of the United States have enacted conforming legislation and make up the governing states. These states are: Arkansas, Iowa, Indiana, Kansas, Kentucky, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.

The governing board is comprised of representatives of each member state. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution. A State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector will advise the governing board.

Federal Legislation

In *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), the U.S. Supreme Court made clear that under the Commerce Clause of the U.S. Constitution, Congress is "free to decide whether, when, and to what extent the States may burden interstate mail-order concerns with a duty to collect use taxes."[26] Legislation is pending in Congress that will authorize member states to the Streamlined Sales and Use Tax agreement to force remote sellers to collect and remit use taxes.[27]

III. Effect of Proposed Changes:

This committee substitute is designed to bring Florida law into compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) and to enable Florida to petition for membership in the Agreement. To participate in the Agreement, states must harmonize their sale and use tax laws with other states as set forth in the Agreement. To some degree, states also must simplify the administration of their sales and use tax codes. The Agreement was drafted by participating states, including Florida, through the Streamlined Sales Tax Project, which was formed by the National Conference of State Legislatures. Although laws adopted in compliance with the Agreement will apply to both in-state and out-of-state retailers, the laws are largely designed to increase compliance with state use tax laws by out-of-state retailers.

Section 1 amends s. 212.02, F.S., to provide definitions adopted by the Streamlined Sales and Use Tax Agreement. Specifically, the committee substitute amends the definitions of the terms "lease," "let," or "rental"; "sales price"; and "tangible personal property" and defines the following new terms: "agent"; "seller"; "certified service provider"; "direct mail"; "prewritten computer software"; and "delivery charges." The definition of "sales price" includes all delivery charges, which is a change from current law. Under current law, delivery charges are taxable if

[26] *Quill Corp. v. North Dakota*, 504 U.S. 298, 318 (1992).
[27] See S. 1736 108th Cong. (2003) and H.R. 3184 108th Cong. (2003).

they are part of the sales price, and they are exempt if the customer has a choice to decline having the seller provide delivery.

Section 2 provides that the amendment of the terms "lease," "let," and "rental" in s. 212.02, F.S., made by the committee substitute applies prospectively only, from January 1, 2005, and does not apply retroactively to leases or rentals existing before that date.

Section 3 amends s. 212.05(1)(c), F.S., to delete the provisions that determine whether certain leases or rentals of motor vehicles for a period of less than 12 months are taxable in Florida. Similar provisions to determine what jurisdiction may tax certain leases or rentals of motor vehicles are created in section 5 of the committee substitute.

Section 212.05(1)(e)1.a.(II), F.S., is amended to provide a cross-reference to s. 212.06(3)(d), F.S., to be used to determine what jurisdiction may tax the sale or recharge of a prepaid calling arrangement.

Section 4 amends s. 212.054, F.S., dealing with the discretionary sales surtax.

Section 212.054(2)(b)2., F.S., is amended to provide that tax rate increases on utility services apply to the first billing period starting on or after the effective date of the increase. Tax rate decreases on utility services apply to all bills rendered on or after the rate change. Current law requires tax increases on utility services to apply to utility bills issued after the effective date of the increase. Tax rate decreases apply to utility bills issued after the rate change.

A new s. 212.054(3), F.S., is created to provide that with specified exceptions, s. 212.06(3), F.S., should be used to determine whether a retail sale, lease, or rental of tangible personal property, a digital good, or a service occurs in a county that imposes a discretionary sales surtax. The following are exceptions to the general rule in s. 212.06(3), F.S., to determine whether certain transactions occur in a county imposing a surtax:

- The retail sale of a modular or manufactured home occurs in the county to which the home is delivered.
- The retail sale of certain motor vehicles occurs in the county identified as the residential address of the purchaser on the registration or title document for the vehicle.

The committee substitute deletes existing s. 212.054(5), F.S., which specifies effective dates and termination dates for discretionary sales surtaxes.

Section 212.054(7)(a), F.S., is amended to provide an effective date of April 1 for the adoption, repeal, or rate change of a surtax and requires a county or school board to notify the Department of Revenue by November 16 immediately preceding the April 1 effective date. This provision appears to be designed to bring Florida law into compliance with s. 305 B., Streamlined Sales and Use Tax Agreement, which requires states to provide catalog sellers with at least 120 days' notice of tax rate changes for the tax rate changes to apply to catalog sales.

A new s. 212.054(7)(c), F.S., is created to provide that the Department of Revenue shall provide notice of the adoption, repeal, or change of a surtax to all affected sellers by the December 1

immediately preceding the April 1 effective date. This provision appears to be designed to bring Florida law into compliance with ss. 304 A. and 305 A., Streamlined Sales and Use Tax Agreement, which require states to provide sellers with advance notice of tax rate changes and changes to state tax laws.

A new s. 212.054(7)(d), F.S., is created to extend the termination dates of some county local option sales surtaxes that were adopted before the effective date of the committee substitute. Local option sales surtaxes adopted before January 1, 2005, that are scheduled to terminate on a date other than April 1 will terminate on the April 1 following the original termination date of the tax.

Section 212.054(10), F.S., is created to require the Department of Revenue to provide and maintain a database of all sales and use tax rates for all local taxing jurisdictions pursuant to the provisions of s. 202.22(2), F.S. This provision appears to be designed to comply with s. 305 D.-F., Streamlined Sales and Use Tax Agreement, which require states to maintain a database that will enable sellers to determine applicable sales or use taxes.

Section 212.054(10)(a), F.S., is created to relieve sellers from liability as the result of reliance on erroneous data provided by the database under s. 202.22(2), F.S., or a database approved by the governing board of the Streamlined Sales and Use Tax Agreement on tax rates, boundaries, or taxing jurisdiction assignments. This provision appears to be designed to bring Florida law into compliance with s. 306, Streamlined Sales and Use Tax Agreement.

Section 5 amends s. 212.06, F.S., to provide criteria to determine where a transaction occurs and to determine which taxing jurisdictions have authority to impose a sales or use tax.

Section 212.06(3)(d), F.S., is created to provide an order of precedence to determine where the retail sale of a product, excluding a lease or rental, occurs:

1. A sale occurs at the business location of the seller when the purchaser receives the product at that location.
2. If 1. is not satisfied, a sale occurs where the product is received by the purchaser.
3. If 1. and 2. are not satisfied, a sale occurs at the address of the purchaser as recorded on the seller's records.
4. If 1., 2., and 3. are not satisfied, a sale occurs at an address obtained during the sale, including an address on a check.
5. If 1.-4. are not satisfied, a sale occurs at the address from which the product was shipped.

Section 212.06(3)(e), F.S., is created to provide criteria to determine where leases or rentals of tangible personal property, excluding leases or rentals of motor vehicles, occur. For a lease or rental that requires periodic payments, the first payment occurs at the location determined under s. 212.06(3)(d), F.S., above. Subsequent payments occur at the location of the leased or rented property. The lease or rental of tangible personal property that does not require periodic payment occurs at the location determined under s. 212.06(3)(d), F.S., above.

Section 212.06(3)(f), F.S., is created to provide criteria to determine where leases or rentals of motor vehicles or aircraft, excluding transportation equipment, occur. A lease or rental that requires periodic payments occurs at the primary location of the motor vehicle or aircraft as

provided by the lessee. A lease or rental that does not require periodic payments occurs at the location determined under s. 212.06(3)(d), F.S., above.

Section 212.06(3)(g), F.S., is created to define the term "transportation equipment." The term "transportation equipment" refers to certain locomotives, rail cars, trucks weighing 10,001 pounds or more, airliners, and containers carried on these vehicles. The retail sale, including a lease or rental, of transportation equipment occurs at the location determined under s. 212.06(3)(d), F.S., above.

Section 212.06(4)(a), F.S., is created to provide criteria to determine who is responsible for remitting taxes on the purchase of a digital good, a good that is delivered electronically, and where the sale occurs. A purchaser of a digital good that knows at the time of purchase that the good will be used in more than one jurisdiction is responsible for apportioning the sale to the jurisdictions in which the good will be used and paying the applicable tax on a direct-pay basis. A seller has no responsibility to collect taxes on the sale of a digital good when the sale is to a holder of a direct-pay permit or when the purchaser delivers a multiple-points-of-use exemption form to the seller. A multiple-points-of-use exemption form is a form on which the purchaser apportions the sale to the jurisdictions in which a digital good will be used. This provision appears to be designed to bring Florida law into compliance with the s. 312, Streamlined Sales and Use Tax Agreement.

Section 212.06(4)(b), F.S., is created to provide criteria to determine who is responsible for remitting taxes on the purchase of direct mail and where the sale of the direct mail occurs. A purchaser of direct mail that is not a holder of a direct-pay permit shall provide to the seller, in conjunction with the purchase, either a direct-mail form or information to show the jurisdictions to which the direct mail will be delivered to recipients. Upon receipt of a direct-mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax, and the purchaser is obligated to pay or remit the applicable tax on a direct-pay basis. The seller, however, must collect and remit the taxes when the seller receives, instead of a direct-mail form, information showing the jurisdictions to which the mail will be sent. If the purchaser of direct mail provides the seller with neither a direct-mail form nor information on the jurisdictions to which the mail will be sent, the seller has to collect and pay taxes based on s. 212.06(3)(d)5., F.S., the address from which the mail was shipped to the purchaser. The foregoing provisions appear to be designed to bring Florida law into compliance with s. 313, Streamlined Sales and Use Tax Agreement.

The committee substitute deletes existing s. 212.06(3)(b)1., F.S., which requires printers of printed materials to collect and remit taxes on materials when all or substantially all of the materials are delivered to persons in Florida; otherwise, the purchaser is responsible for remitting the taxes.

Section 6 amends s. 212.08, F.S., providing for exemptions from the sales and use tax. This section amends current definitions to conform to the definitions in the Library of Definitions in Appendix C, Part II, Streamlined Sales and Use Tax Agreement. The amended definitions do not change current law except for the following:

- Subsection (2) of s. 212.08, F.S., provides for medical exemptions. With the adoption of the Agreement's medical definitions, the following items will be treated differently than they are under current law:
    - Items no longer exempt unless sold with a prescription:
        - Hypodermic syringes;
        - Artificial eyes and limbs, orthopedic shoes, and crutches;
        - Lithotripters; and
        - X-ray opaques used in connection with medical x-rays of humans or animals.
    - Items newly exempt:
        - Chemical compounds and test kits for the diagnosis and treatment of non-human disease, illness, or injury; and
        - Cosmetics and toilet articles sold as an over-the-counter drug or with a prescription.
- Under current law, all juice drinks are subject to sales tax, while 100 percent fruit juices are exempt. In the committee substitute, the term "soft drinks" is defined as nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume. As a result of this change in definition, fruit juices containing 50 percent or more juice are exempt from the sales tax.
- Under current law, all candy is subject to sales tax. In the committee substitute, candy is redefined to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation that contains flour and requires no refrigeration. This definition will result in candy containing flour becoming exempt from the sales tax and certain chocolate products used for baking becoming taxable.
- Under current law, ice cream, frozen yogurt, and similar frozen dairy or nondairy products sold in cones, small cups, or pints, and popsicles, frozen fruit bars, or other novelty items are taxable. In order to comply with Agreement definitions, these items will become exempt under this committee substitute.

Section 7 amends s. 212.095, F.S., relating to tax refunds. The committee substitute removes from current law the requirement that a person be a holder of a refund permit issued by the Department of Revenue in order to claim a tax refund.

Section 8 creates s. 212.094, F.S., regarding purchaser requests for refunds of over collected tax from dealers. Under the committee substitute, a purchaser must make requests for a tax refund to dealers in writing. The request must contain all information necessary to determine the validity of the claim. A purchaser may not take any action against a dealer to secure the refund until 60 days after the dealer's receipt of the request for a refund. These provisions appear to be designed to bring Florida law into compliance with s. 325, Streamlined Sales and Use Tax Agreement.

Section 9 amends s. 212.17(3), F.S., to revise the procedures by which a dealer may obtain a credit or refund of taxes paid on the unpaid balance of worthless accounts. Dealers, including both dealers required to file federal income tax returns and those who are not required to file the returns, may claim a credit or tax refund when they would be eligible for a bad debt deduction

for federal income tax purposes. When the claim for credit exceeds the amount of sales taxes due in a period, a refund claim may be filed within 3 years of the due date of the return in which a bad debt could first be claimed.

Section 10 creates s. 213.052, F.S., relating to notice of state rate changes. A sales and use tax rate change imposed under ch. 212, F.S., is effective on January 1, April 1, July 1, or October 1. The Department of Revenue must provide notice of such rate change to all affected sellers 90 days before the effective date of the rate change. This provision of the committee substitute appears to be designed to bring Florida law into compliance with s. 304, Streamlined Sales and Use Tax Agreement.

Section 11 creates s. 213.0521, F.S., relating to the effective date of state rate changes for sales tax on services. The effective date for services covering a period starting before and ending after the statutory effective date shall be as follows:

- For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.
- For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

This provision appears to be designed to bring Florida law into compliance with s. 329, Streamlined Sales and Use Tax Agreement.

Section 12 creates s. 213.21(11), F.S., to provide amnesty, with some exceptions, for uncollected or unpaid sales or use tax to a seller who registers to pay or collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Agreement. For the amnesty to apply, the seller must not have been registered with the Department of Revenue in the 12-month period preceding the effective date of the state's participation in the Agreement. This provision appears to be designed to bring Florida law into compliance with s. 401, Streamlined Sales and Use Tax Agreement.

As discussed in the Present Situation section of this staff analysis, the U.S. Supreme Court ruled in *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), that a state may not force a seller without a substantial nexus to the state to collect and remit use taxes. The Court expressly declined to determine whether a remote seller that eventually has a substantial nexus to a state could be liable for back taxes and penalties and suggested that Congress was in a better position to resolve the issue.[28] Because of the ambiguity in the *Quill* opinion over the liability of remote sellers for past taxes, this provision of the committee substitute providing amnesty for nonpayment of taxes may encourage remote sellers to voluntarily register to collect taxes for member states of the Agreement. A concurring opinion in *Quill* by Justices Scalia, Kennedy, and Thomas, however, stated that remote sellers should not be held responsible for nonpayment of past taxes because they relied on the Court's opinion in *National Bellas Hess, Inc., v. Department of Revenue of Ill.*, 386 U.S. 753 (1967).[29] The Court in *Bellas Hess* held that a business must have a physical presence in a state before a state can force the business to collect sales and use taxes.

[28] *Quill Corp. v. North Dakota*, 504 U.S. 298, note 10 (1992).
[29] *Quill*, 504 U.S. at 320-321.

Section 13 amends s. 213.256, F.S., relating to the Simplified Sales and Use Tax Administration Act. As used in ss. 213.256 and 213.2567, F.S., the committee substitute adds the following definitions to the Act:

- "Agent" means a person appointed by a seller to represent the seller before the member states.
- "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions.
- "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.
- "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states which establishes a tax performance standard for the seller.
- "Registered under this agreement" means registration by a seller with the member states under the central registration system.

The committee substitute amends the definition of "Agreement" to mean the Streamlined Sales and Use Tax Agreement as amended and adopted on November 12, 2002.

In addition, the committee substitute outlines the following powers of the member states in relation to the Agreement:

- The determinations pertaining to the Agreement which are made by the member states are final when rendered and are not subject to any protest, appeal, or review.
- Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Florida shall be represented by three delegates, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and the executive director of the Department of Revenue or his or her designee. Neither the length of the appointments nor conditions for removal of the appointees are specified by the committee substitute.
- With respect to each member state, the Agreement shall continue in full force and effect until the member state withdraws its membership or is expelled.
- A member state that is found to be out of compliance with the Agreement may be sanctioned, which may include expulsion or other penalties as determined by the governing board. This provision may constitute a waiver of the state's sovereign immunity.
- Each member state shall annually recertify that the state is in compliance with the Agreement.

Section 14 creates s. 213.2567, F.S., relating to the Simplified Sales and Use Tax registration, certification, liability, and audit. A seller that registers pursuant to the Agreement agrees to collect and remit sales and use taxes for all taxable sales into the member states. When

registering, the seller may select a model 1, model 2, or model 3 method of remittance or other method allowed by law to remit the taxes collected.

- A certified service provider is the agent of a model 1 seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes and is liable for sales and use tax due each member state on all sales transactions it processes for the model 1 seller.
- A model 2 seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.
- A model 3 seller is liable for the failure of the proprietary system to meet the performance standard.

The governing board is responsible for certification of a certified service provider and a software program as a certified automated system. In addition, the governing board may establish one or more sales tax performance standards for model 3 sellers.

Section 15 amends s. 212.055, F.S., to change cross-references in s. 212.055(2)(c) and (3)(c), F.S., from 212.054(4), F.S., to 212.054(5), F.S.

Section 16 repeals s. 212.0596(6), F.S. Currently, the state's 6 percent use tax is imposed on out-of-state purchases from mail-order businesses and Internet retailers; however, county local option surtaxes are not imposed on these purchases. By repealing s. 212.0596(6), F.S., these out-of-state purchases will be subject to county local option sales surtaxes.

Section 17 provides that it is the intent of the Legislature to further amend ch. 212, F.S., to make the changes necessary to be in compliance with the provisions of the Streamlined Sales and Use Tax Agreement which take effect on December 31, 2005, and to address the prohibition on multiple state rates in a revenue neutral manner.

According to the Agreement, the state will have to comply with the following requirements of the Agreement after December 31, 2005:

- Under s. 302, Streamlined Sales and Use Tax Agreement, with some exceptions, Florida and all its local taxing jurisdictions must have an identical tax base.
- Under s. 308, Streamlined Sales and Use Tax Agreement, Florida may not have multiple sales and use tax rates on items of personal property or services. Section 212.08(3), F.S., which imposes a 2.5 percent tax on certain types of farm equipment instead of the usual 6 percent rate, is an example a multiple rate that the state may have to address.
- Under s. 323, Streamlined Sales and Use Tax Agreement, with some exceptions, there must be no caps or thresholds on the application of local rates or use tax rates or exemptions that are based on the value of the transaction or item. Section 212.054(2)(b), F.S., which limits the applicability of local option sales surtaxes to the first $5,000 of the cost of an item, is an example of a cap or threshold that the state may have to address.
- Under s. 324, Streamlined Sales and Use Tax Agreement, Florida must adopt a rounding algorithm to determine taxes due. It may not continue to use a bracket system. Section 212.12(9), (10), and (11), F.S., establishes a bracket system to determine the applicable

amount of tax on amounts of less than $1. Section 212.12(14), F.S., provides that it is improper to calculate tax due by multiplying the sales tax rate by the price of an item and then rounding to the nearest whole cent.

Section 18 grants emergency rule making authority to the Department of Revenue to implement the committee substitute.

Section 19 provides that the committee substitute takes effect January 1, 2005.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Streamlined Sales and Use Tax Agreement may reduce the costs of collecting and remitting state and local sales and use taxes. In particular, the burden of collecting sales and use taxes on remote sales would be reduced by enactment of the Agreement, likely increasing sales and use tax collections for Florida and other member states. The fiscal impact of the collection and remittance of sales and use taxes by mail-order and e-commerce businesses that currently do not collect such taxes for the state of Florida is indeterminate, but could be significant once the Streamlined Sales and Use Tax Agreement is fully implemented.

During the 2003 Legislative Session, the Revenue Estimating Conference estimated the revenue impact of a similar measure, CS/SB 1776. The revenue impact should remain the same for CS/SB 1072. The changes in the definitions of "candy," "fruit drinks" and "medical exemptions" made by this act will result in a loss of sales tax revenue, while the change in the definition of "sales price" to include all delivery charges will result in an

increase in sales tax revenue.

	General Revenue		State Trust		Local Trust		Total	
Issues	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**
Candy/Food	(1.6)	(4.1)	(*)	(*)	(0.3)	(0.8)	(1.9)	(4.9)
Fruit Drinks Contain. 50% or more juice	(0.3)	(0.9)	(*)	(*)	(0.1)	(0.2)	(0.4)	(1.1)
Medical Exemptions	(1.2)	(2.8)	(*)	(*)	(0.3)	(0.6)	(1.5)	(3.4)
Delivery Charges	3.1	8.1	*	*	0.6	1.6	3.7	9.7
Total	0.0	0.3	*	*	(0.1)	0.0	(0.1)	0.3

B. Private Sector Impact:

The implementation of the Streamlined Sales and Use Tax Agreement may reduce the costs of collecting and remitting state and local sales and use taxes for sellers doing business in Florida and in other member states.

C. Government Sector Impact:

States are responsible for funding some of the technology models to be used under the Agreement, thus impacting the budget of the Department of Revenue. Estimates are not available at this time of the costs of providing such technology models.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.