

By the Committee on Commerce, Economic Opportunities, and
Consumer Services; and Senator Campbell

310-2046-04

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 "prewritten computer software," and "delivery
9 charges" for purposes of sales and use taxes;
10 providing applicability; amending s. 212.05,
11 F.S.; deleting provisions relating to the
12 rental or lease of motor vehicles; providing
13 for determination of the location of the sale
14 or 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; creating s.
13 212.094, F.S.; providing that a purchaser
14 seeking a refund or credit under chapter 212,
15 F.S., must submit a written request for the
16 refund or credit; providing a time period
17 within which the dealer must respond to the
18 written request; amending s. 212.17, F.S.;
19 prescribing additional guidelines and
20 procedures with respect to dealer credits for
21 taxes paid on worthless accounts; creating s.
22 213.052, F.S.; providing for notice of state
23 sales or use tax rate changes; creating s.
24 213.0521, F.S.; providing the effective date
25 for state sales and use tax rate changes;
26 amending s. 213.21, F.S.; providing for amnesty
27 to certain sellers for uncollected or unpaid
28 sales and use taxes; amending s. 213.256, F.S.,
29 relating to simplified sales and use tax
30 administration; defining terms; providing that
31 authority to administer the Streamlined Sales

1 and Use Tax Agreement rests with a governing
2 board comprised of representatives of member
3 states; providing for continuing effect of the
4 agreement; providing for annual recertification
5 by member states; creating s. 213.2567, F.S.;
6 providing for the registration of sellers, the
7 certification of a person as a certified
8 service provider, and the certification of a
9 software program as a certified automated
10 system by the governing board under the
11 Streamlined Sales and Use Tax Agreement;
12 amending s. 212.055, F.S.; conforming a
13 cross-reference; repealing s. 212.0596(6),
14 F.S., relating to the exemption from collecting
15 and remitting any local option surtax for
16 certain dealers who make mail order sales;
17 declaring legislative intent; providing for the
18 adoption of emergency rules; providing an
19 effective date.

20
21 Be It Enacted by the Legislature of the State of Florida:

22
23 Section 1. Paragraph (g) of subsection (10) and
24 subsections (16) and (19) of section 212.02, Florida Statutes,
25 are amended, and subsections (35), (36), (37), (38), (39), and
26 (40) are added to that section, to read:

27 212.02 Definitions.--The following terms and phrases
28 when used in this chapter have the meanings ascribed to them
29 in this section, except where the context clearly indicates a
30 different meaning:

31

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

6 (g)1. "Lease," "let," or "rental" also means any
7 transfer of possession or control of tangible personal
8 property for a fixed or indeterminate term for consideration.
9 A clause for a future option to purchase or to extend the
10 agreement does not preclude an agreement from being a lease or
11 rental. This definition shall be used for purposes of the
12 sales and use tax regardless of whether a transaction is
13 characterized as a lease or rental under generally accepted
14 accounting principles, the Internal Revenue Code, the Uniform
15 Commercial Code, or other provisions of federal, state, or
16 local law. This definition includes agreements covering motor
17 vehicles and trailers if the amount of consideration may be
18 increased or decreased by reference to the amount realized
19 upon sale or disposition of the property as provided in 26
20 U.S.C. s. 7701(h)(1). This definition does not include:

21 a. A transfer of possession or control of property
22 under a security agreement or deferred payment plan that
23 requires the transfer of title upon completion of the required
24 payments;

25 b. A transfer of possession or control of property
26 under an agreement that requires the transfer of title upon
27 completion of required payments and payment of an option price
28 that does not exceed the greater of \$100 or 1 percent of the
29 total required payments; or

30 c. A provision of tangible personal property along
31 with an operator for a fixed or indeterminate period of time.

1 A condition of this exclusion is that the operator is
2 necessary for the equipment to perform as designed. For the
3 purpose of this sub-subparagraph, an operator must do more
4 than maintain, inspect, or set up the tangible personal
5 property.~~the leasing or rental of tangible personal property~~
6 ~~and the possession or use thereof by the lessee or rentee for~~
7 ~~a consideration, without transfer of the title of such~~
8 ~~property, except as expressly provided to the contrary herein.~~

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

27 (16)(a) "Sales price" applies to the measure subject
28 to sales tax and means the total amount of consideration,
29 including cash, credit, property, and services, for which
30 personal property or services are sold, leased, or rented,
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1 valued in money, whether received in money or otherwise,
2 without any deduction for the following:
3 1. The seller's cost of the property sold;
4 2. The cost of materials used, labor or service cost,
5 interest, losses, all costs of transportation to the seller,
6 all taxes imposed on the seller, and any other expense of the
7 seller;
8 3. Charges by the seller for any services necessary to
9 complete the sale, other than delivery and installation
10 charges;
11 4. Delivery charges; or
12 5. Installation charges.
13 (b) The term "sales price" does not include:
14 1. Trade-ins allowed and taken at the time of sale if
15 the amount is separately stated on the invoice, bill of sale,
16 or similar document given to the purchaser;
17 2. Discounts, including cash, term, or coupons, which
18 are not reimbursed by a third party, which are allowed by a
19 seller, and taken by a purchaser at the time of sale;
20 3. Interest, financing, and carrying charges from
21 credit extended on the sale of personal property or services,
22 if the amount is separately stated on the invoice, bill of
23 sale, or similar document given to the purchaser; or
24 4. Any taxes legally imposed directly on the consumer
25 which are separately stated on the invoice, bill of sale, or
26 similar document given to the purchaser.
27 ~~(16) "Sales price" means the total amount paid for~~
28 ~~tangible personal property, including any services that are a~~
29 ~~part of the sale, valued in money, whether paid in money or~~
30 ~~otherwise, and includes any amount for which credit is given~~
31 ~~to the purchaser by the seller, without any deduction~~

1 ~~therefrom on account of the cost of the property sold, the~~
2 ~~cost of materials used, labor or service cost, interest~~
3 ~~charged, losses, or any other expense whatsoever. "Sales~~
4 ~~price" also includes the consideration for a transaction which~~
5 ~~requires both labor and material to alter, remodel, maintain,~~
6 ~~adjust, or repair tangible personal property. Trade-ins or~~
7 ~~discounts allowed and taken at the time of sale shall not be~~
8 ~~included within the purview of this subsection "Sales price"~~
9 ~~also includes the full face value of any coupon used by a~~
10 ~~purchaser to reduce the price paid to a retailer for an item~~
11 ~~of tangible personal property; where the retailer will be~~
12 ~~reimbursed for such coupon, in whole or in part, by the~~
13 ~~manufacturer of the item of tangible personal property; or~~
14 ~~whenever it is not practicable for the retailer to determine,~~
15 ~~at the time of sale, the extent to which reimbursement for the~~
16 ~~coupon will be made. The term "sales price" does not include~~
17 ~~federal excise taxes imposed upon the retailer on the sale of~~
18 ~~tangible personal property. The term "sales price" does~~
19 ~~include federal manufacturers' excise taxes, even if the~~
20 ~~federal tax is listed as a separate item on the invoice.~~

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

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

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

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

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

25 (39) "Prewritten computer software" means computer
26 software, including prewritten upgrades, which is not designed
27 and developed by the author or other creator to the
28 specifications of a specific purchaser. The combining of two
29 or more "prewritten computer software" programs or prewritten
30 portions thereof does not cause the combination to be other
31 than "prewritten computer software." The term includes

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

16 (40) "Delivery charges" means charges by the seller of
17 personal property or services for preparation and delivery to
18 a location designated by the purchaser of personal property or
19 services, including, but not limited to, transportation,
20 shipping, postage, handling, crating, and packing. The term
21 does not include the charges for delivery of "direct mail" as
22 defined by this section if the charges are separately stated
23 on an invoice or similar billing document given to the
24 purchaser.

25 Section 2. The amendment of the terms "lease," "let,"
26 and "rental" in section 212.02, Florida Statutes, made by this
27 act applies prospectively only, from January 1, 2005, and does
28 not apply retroactively to leases or rentals existing before
29 that date.

30 Section 3. Paragraphs (c) and (e) of subsection (1) of
31 section 212.05, Florida Statutes, are amended to read:

1 212.05 Sales, storage, use tax.--It is hereby declared
2 to be the legislative intent that every person is exercising a
3 taxable privilege who engages in the business of selling
4 tangible personal property at retail in this state, including
5 the business of making mail order sales, or who rents or
6 furnishes any of the things or services taxable under this
7 chapter, or who stores for use or consumption in this state
8 any item or article of tangible personal property as defined
9 herein and who leases or rents such property within the state.

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

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

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

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

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

24 2. ~~Except as provided in subparagraph 3., for the~~
25 ~~lease or rental of a motor vehicle for a period of not less~~
26 ~~than 12 months, sales tax is due on the lease or rental~~
27 ~~payments if the vehicle is registered in this state; provided,~~
28 ~~however, that no tax shall be due if the taxpayer documents~~
29 ~~use of the motor vehicle outside this state and tax is being~~
30 ~~paid on the lease or rental payments in another state.~~

31

1 ~~3. The tax imposed by this chapter does not apply to~~
2 ~~the lease or rental of a commercial motor vehicle as defined~~
3 ~~in s. 316.003(66)(a) to one lessee or rentee for a period of~~
4 ~~not less than 12 months when tax was paid on the purchase~~
5 ~~price of such vehicle by the lessor. To the extent tax was~~
6 ~~paid with respect to the purchase of such vehicle in another~~
7 ~~state, territory of the United States, or the District of~~
8 ~~Columbia, the Florida tax payable shall be reduced in~~
9 ~~accordance with the provisions of s. 212.06(7). This~~
10 ~~subparagraph shall only be available when the lease or rental~~
11 ~~of such property is an established business or part of an~~
12 ~~established business or the same is incidental or germane to~~
13 ~~such business.~~

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

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

18 (I) "Prepaid calling arrangement" means the separately
19 stated retail sale by advance payment of communications
20 services that consist exclusively of telephone calls
21 originated by using an access number, authorization code, or
22 other means that may be manually, electronically, or otherwise
23 entered and that are sold in predetermined units or dollars
24 whose number declines with use in a known amount.

25 (II) The sale or recharge of the prepaid calling
26 arrangement is deemed to take place in accordance with
27 paragraph 212.06(3)(d). In the case of a sale of a mobile
28 communications service that is a prepaid calling arrangement,
29 the retail sale is sourced at ~~if the sale or recharge of the~~
30 ~~prepaid calling arrangement does not take place at the~~
31 ~~dealer's place of business, it shall be deemed to take place~~

1 ~~at the customer's shipping address or, if no item is shipped,~~
2 ~~at the customer's address or~~ the location associated with the
3 customer's mobile telephone number.

4 (III) The sale or recharge of a prepaid calling
5 arrangement shall be treated as a sale of tangible personal
6 property for purposes of this chapter, whether or not a
7 tangible item evidencing such arrangement is furnished to the
8 purchaser, and such sale within this state subjects the
9 selling dealer to the jurisdiction of this state for purposes
10 of this subsection.

11 b. The installation of telecommunication and
12 telegraphic equipment.

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

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

28 Section 4. Section 212.054, Florida Statutes, is
29 amended to read:

30 212.054 Discretionary sales surtax; limitations,
31 administration, and collection.--

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

6 (2)(a) The tax imposed by the governing body of any
7 county authorized to so levy pursuant to s. 212.055 shall be a
8 discretionary surtax on all transactions occurring in the
9 county which transactions are subject to the state tax imposed
10 on sales, use, services, rentals, admissions, and other
11 transactions by this chapter and communications services as
12 defined for purposes of chapter 202. The surtax, if levied,
13 shall be computed as the applicable rate or rates authorized
14 pursuant to s. 212.055 times the amount of taxable sales and
15 taxable purchases representing such transactions. If the
16 surtax is levied on the sale of an item of tangible personal
17 property or on the sale of a service, the surtax shall be
18 computed by multiplying the rate imposed by the county within
19 which the sale occurs by the amount of the taxable sale. The
20 sale of an item of tangible personal property or the sale of a
21 service is not subject to the surtax if the property, the
22 service, or the tangible personal property representing the
23 service is delivered within a county that does not impose a
24 discretionary sales surtax.

25 (b) However:

26 1. The sales amount above \$5,000 on any item of
27 tangible personal property shall not be subject to the surtax.
28 However, charges for prepaid calling arrangements, as defined
29 in s. 212.05(1)(e)1.a., shall be subject to the surtax. For
30 purposes of administering the \$5,000 limitation on an item of
31 tangible personal property, if two or more taxable items of

1 tangible personal property are sold to the same purchaser at
2 the same time and, under generally accepted business practice
3 or industry standards or usage, are normally sold in bulk or
4 are items that, when assembled, comprise a working unit or
5 part of a working unit, such items must be considered a single
6 item for purposes of the \$5,000 limitation when supported by a
7 charge ticket, sales slip, invoice, or other tangible evidence
8 of a single sale or rental.

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

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

15 b. In the case of a rate decrease or termination, the
16 new rate shall apply to bills rendered on or after the
17 effective date of the rate change.~~billed on or after the~~
18 ~~effective date of any such surtax, the entire amount of the~~
19 ~~charge for utility services shall be subject to the surtax. In~~
20 ~~the case of utility services billed after the last day the~~
21 ~~surtax is in effect, the entire amount of the charge on said~~
22 ~~items shall not be subject to the surtax.~~

23
24 "Utility service," as used in this section, does not include
25 any communications services as defined in chapter 202.

26 3. In the case of written contracts which are signed
27 prior to the effective date of any such surtax for the
28 construction of improvements to real property or for
29 remodeling of existing structures, the surtax shall be paid by
30 the contractor responsible for the performance of the
31 contract. However, the contractor may apply for one refund of

1 any such surtax paid on materials necessary for the completion
2 of the contract. Any application for refund shall be made no
3 later than 15 months following initial imposition of the
4 surtax in that county. The application for refund shall be in
5 the manner prescribed by the department by rule. A complete
6 application shall include proof of the written contract and of
7 payment of the surtax. The application shall contain a sworn
8 statement, signed by the applicant or its representative,
9 attesting to the validity of the application. The department
10 shall, within 30 days after approval of a complete
11 application, certify to the county information necessary for
12 issuance of a refund to the applicant. Counties are hereby
13 authorized to issue refunds for this purpose and shall set
14 aside from the proceeds of the surtax a sum sufficient to pay
15 any refund lawfully due. Any person who fraudulently obtains
16 or attempts to obtain a refund pursuant to this subparagraph,
17 in addition to being liable for repayment of any refund
18 fraudulently obtained plus a mandatory penalty of 100 percent
19 of the refund, is guilty of a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, or s.
21 775.084.

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

31

1 (3) Except as otherwise provided in this section, a
2 surtax applies to a retail sale, lease, or rental of tangible
3 personal property, a digital good, or a service when, under s.
4 212.06(3), the transaction occurs in a county that imposes a
5 surtax under s. 212.055.

6 ~~(4)(3)~~ To determine whether a transaction occurs in a
7 county imposing a surtax, the following provisions shall apply
8 ~~For the purpose of this section, a transaction shall be deemed~~
9 ~~to have occurred in a county imposing the surtax when:~~

10 ~~(a)1.~~ The retail sale of a modular or manufactured
11 home, not including a mobile home, occurs in the county to
12 which the house is delivered.~~The sale includes an item of~~
13 ~~tangible personal property, a service, or tangible personal~~
14 ~~property representing a service, and the item of tangible~~
15 ~~personal property, the service, or the tangible personal~~
16 ~~property representing the service is delivered within the~~
17 ~~county. If there is no reasonable evidence of delivery of a~~
18 ~~service, the sale of a service is deemed to occur in the~~
19 ~~county in which the purchaser accepts the bill of sale.~~

20 ~~(b)2.~~ The retail sale, excluding a lease or rental, of
21 any motor vehicle that does not qualify as "transportation
22 equipment," as defined in s. 212.06(3)(g), or the retail sale
23 of a ~~The sale of any motor vehicle or mobile home of a class~~
24 or type that which is required to be registered in this state
25 or in any other state occurs ~~shall be deemed to have occurred~~
26 ~~only~~ in the county identified from as the residential
27 ~~residence~~ address of the purchaser on the registration or
28 title document for the such property.

29 (c) A lease or rental of real property occurs in the
30 county in which the real property is located.

31

1 (d) A transient rental transaction occurs in the
2 county in which the rental property is located.

3 ~~(e)(b) Admission charged for an event occurs~~ The event
4 ~~for which an admission is charged is located in the county in~~
5 ~~which the event is held.~~

6 (f) A transaction made from a coin-operated amusement
7 or vending machine occurs in the county in which the machine
8 is located.

9 (g) An original order to sell tangible personal
10 property taken by a florist occurs in the county in which the
11 florist taking the order is located.

12 ~~(c) The consumer of utility services is located in the~~
13 ~~county.~~

14 (h)(d)1. The retail sale, excluding the lease or
15 rental, of any aircraft that does not qualify as
16 "transportation equipment," as defined in s. 212.06(3)(g), or
17 of any boat of a class or type that is required to be
18 registered, licensed, titled, or documented in this state or
19 by the United States Government occurs in the county to which
20 the aircraft or boat is delivered.

21 2. The use user of any aircraft or boat of a class or
22 type that which is required to be registered, licensed,
23 titled, or documented in this state or by the United States
24 Government imported into the county for use, consumption,
25 distribution, or storage to be used or consumed occurs in the
26 county in which the user is located in the county.

27 ~~3.2.~~ However, it shall be presumed that such items
28 used outside the taxing county for 6 months or longer before
29 being imported into the county were not purchased for use in
30 the county, except as provided in s. 212.06(8)(b).

31

1 ~~4.3.~~ This paragraph does not apply to the use or
2 consumption of items upon which a like tax of equal or greater
3 amount has been lawfully imposed and paid outside the county.

4 ~~(i)(e)~~ The purchase purchaser of any motor vehicle or
5 mobile home of a class or type that ~~which~~ is required to be
6 registered in this state occurs in the county identified from
7 the residential address of the purchaser ~~is a resident of the~~
8 ~~taxing county as determined by the address appearing on or to~~
9 ~~be reflected on the registration document for the~~ such
10 property.

11 ~~(j)(f)~~1. The use, consumption, distribution, or
12 storage of a ~~Any~~ motor vehicle or mobile home of a class or
13 type that ~~which~~ is required to be registered in this state and
14 which is imported from another state occurs in the county to
15 which it is imported into the taxing county by a user residing
16 ~~therein for the purpose of use, consumption, distribution, or~~
17 ~~storage in the taxing county.~~

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

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

24 ~~(h)~~ ~~The transient rental transaction occurs in the~~
25 ~~county.~~

26 ~~(i)~~ ~~The delivery of any aircraft or boat of a class or~~
27 ~~type which is required to be registered, licensed, titled, or~~
28 ~~documented in this state or by the United States Government is~~
29 ~~to a location in the county. However, this paragraph does not~~
30 ~~apply to the use or consumption of items upon which a like tax~~
31

1 ~~of equal or greater amount has been lawfully imposed and paid~~
2 ~~outside the county.~~

3 (k)(j) A transaction occurs in a taxing county when
4 the dealer owing a use tax on purchases or leases is located
5 in the county.

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

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

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

17 (5)(4)(a) The department shall administer, collect,
18 and enforce the tax authorized under s. 212.055 pursuant to
19 the same procedures used in the administration, collection,
20 and enforcement of the general state sales tax imposed under
21 the provisions of this chapter, except as provided in this
22 section. The provisions of this chapter regarding interest
23 and penalties on delinquent taxes shall apply to the surtax.
24 Discretionary sales surtaxes shall not be included in the
25 computation of estimated taxes pursuant to s. 212.11.
26 Notwithstanding any other provision of law, a dealer need not
27 separately state the amount of the surtax on the charge
28 ticket, sales slip, invoice, or other tangible evidence of
29 sale. For the purposes of this section and s. 212.055, the
30 "proceeds" of any surtax means all funds collected and
31 received by the department pursuant to a specific

1 authorization and levy under s. 212.055, including any
2 interest and penalties on delinquent surtaxes.

3 (b) The proceeds of a discretionary sales surtax
4 collected by the selling dealer located in a county which
5 imposes the surtax shall be returned, less the cost of
6 administration, to the county where the selling dealer is
7 located. The proceeds shall be transferred to the
8 Discretionary Sales Surtax Clearing Trust Fund. A separate
9 account shall be established in such trust fund for each
10 county imposing a discretionary surtax. The amount deducted
11 for the costs of administration shall not exceed 3 percent of
12 the total revenue generated for all counties levying a surtax
13 authorized in s. 212.055. The amount deducted for the costs
14 of administration shall be used only for those costs which are
15 solely and directly attributable to the surtax. The total
16 cost of administration shall be prorated among those counties
17 levying the surtax on the basis of the amount collected for a
18 particular county to the total amount collected for all
19 counties. No later than March 1 of each year, the department
20 shall submit a written report which details the expenses and
21 amounts deducted for the costs of administration to the
22 President of the Senate, the Speaker of the House of
23 Representatives, and the governing authority of each county
24 levying a surtax. The department shall distribute the moneys
25 in the trust fund each month to the appropriate counties,
26 unless otherwise provided in s. 212.055.

27 (c)1. Any dealer located in a county that does not
28 impose a discretionary sales surtax but who collects the
29 surtax due to sales of tangible personal property or services
30 delivered outside the county shall remit monthly the proceeds
31 of the surtax to the department to be deposited into an

1 account in the Discretionary Sales Surtax Clearing Trust Fund
2 which is separate from the county surtax collection accounts.
3 The department shall distribute funds in this account using a
4 distribution factor determined for each county that levies a
5 surtax and multiplied by the amount of funds in the account
6 and available for distribution. The distribution factor for
7 each county equals the product of:
8 a. The county's latest official population determined
9 pursuant to s. 186.901;
10 b. The county's rate of surtax; and
11 c. The number of months the county has levied a surtax
12 during the most recent distribution period;
13
14 divided by the sum of all such products of the counties
15 levying the surtax during the most recent distribution period.
16 2. The department shall compute distribution factors
17 for eligible counties once each quarter and make appropriate
18 quarterly distributions.
19 3. A county that fails to timely provide the
20 information required by this section to the department
21 authorizes the department, by such action, to use the best
22 information available to it in distributing surtax revenues to
23 the county. If this information is unavailable to the
24 department, the department may partially or entirely
25 disqualify the county from receiving surtax revenues under
26 this paragraph. A county that fails to provide timely
27 information waives its right to challenge the department's
28 determination of the county's share, if any, of revenues
29 provided under this paragraph.
30 ~~(5) No discretionary sales surtax or increase or~~
31 ~~decrease in the rate of any discretionary sales surtax shall~~

1 ~~take effect on a date other than January 1. No discretionary~~
2 ~~sales surtax shall terminate on a day other than December 31.~~

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

7 (7)(a) Any adoption, repeal, or rate change of the
8 surtax by the governing body of any county levying a
9 discretionary sales surtax or the school board of any county
10 levying the school capital outlay surtax authorized by s.
11 212.055(6) is effective on April 1. A county or school board
12 adopting, repealing, or changing the rate of such tax shall
13 notify the department within 10 days after final adoption by
14 ordinance or referendum of an adoption, repeal ~~imposition,~~
15 ~~termination,~~ or rate change of the surtax, but no later than
16 November 16 immediately preceding such April 1 ~~November 16~~
17 ~~prior to the effective date.~~ The notice must specify the time
18 period during which the surtax will be in effect and the rate
19 and must include a copy of the ordinance and such other
20 information as the department requires by rule. Failure to
21 timely provide such notification to the department shall
22 result in the delay of the effective date for a period of 1
23 year.

24 (b) In addition to the notification required by
25 paragraph (a), the governing body of any county proposing to
26 levy a discretionary sales surtax or the school board of any
27 county proposing to levy the school capital outlay surtax
28 authorized by s. 212.055(6) shall notify the department by
29 October 1 if the referendum or consideration of the ordinance
30 that would result in imposition, termination, or rate change
31 of the surtax is scheduled to occur on or after October 1 of

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

4 (c) The department shall provide notice of the
5 adoption, repeal, or change to affected sellers by December 1
6 immediately preceding the April 1 effective date.

7 (d) Notwithstanding any ordinance provision to the
8 contrary regarding the termination date of a surtax, a surtax
9 may be terminated only on an April 1st. A surtax imposed
10 before January 1, 2005, for which an ordinance provides a
11 different termination date shall terminate on the April 1st
12 following the termination date established in the ordinance.

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

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

25 (a) A seller or certified service provider who
26 collects and remits the state and local tax imposed by this
27 chapter shall be held harmless from tax, interest, and
28 penalties due solely as a result of relying on erroneous data
29 on tax rates, boundaries, or taxing jurisdiction assignments
30 provided by the state if the seller or certified service
31 provider exercises due diligence in applying one or more of

1 the following methods for determining the taxing jurisdiction
2 and tax rate for a transaction:

3 1. Employing an electronic database provided by the
4 department under s. 202.22(2); or

5 2. Employing a database that has been approved by the
6 governing board which was developed by a seller or certified
7 service provider.

8 (b) If a seller or certified service provider does not
9 use one of the methods specified in paragraph (a), the seller
10 or certified service provider may be held liable to the
11 department for tax, interest, and penalties that are due for
12 charging and collecting the incorrect amount of tax.

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

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

21 (3) This subsection must be used to determine the
22 location where a transaction occurs for purposes of applying
23 the tax imposed by this chapter.

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

26 1. Taking possession of tangible personal property;

27 2. Making first use of services; or

28 3. Taking possession or making first use of digital
29 goods, whichever occurs first.

30
31

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

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

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

8 1. The retail sale or transfer of boats, modular
9 homes, manufactured homes, or mobile homes.

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

15 3. The retail sale of tangible personal property by a
16 florist.

17

18 Such retail sales are deemed to take place at the location
19 determined under s. 212.054(4).

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

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

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

30 3. When subparagraphs 1. and 2. do not apply, at the
31 location indicated by an address for the purchaser which is

1 available from the business records of the seller which are
2 maintained in the ordinary course of the seller's business,
3 when use of this address does not constitute bad faith.

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

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

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

21 1. For a lease or rental that requires recurring
22 periodic payments, the first periodic payment is deemed to
23 take place in accordance with paragraph (d), notwithstanding
24 the exclusion of lease or rental in paragraph (d). Subsequent
25 periodic payments are deemed to have occurred at the primary
26 property location for each period covered by the payment. The
27 primary property location is determined by an address for the
28 property provided by the lessee which is available to the
29 lessor from its records maintained in the ordinary course of
30 business, when use of this address does not constitute bad
31 faith. The property location shall not be altered by

1 intermittent use of the property at different locations, such
2 as use of business property that accompanies employees on
3 business trips and service calls.

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

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

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

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

25 2. For a lease or rental that does not require
26 recurring periodic payments, the payment is deemed to take
27 place in accordance with paragraph (d), notwithstanding the
28 exclusion of a lease or rental in paragraph (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 (g) The retail sale, including lease or rental, of
4 transportation equipment shall be deemed to take place in
5 accordance with paragraph (d), notwithstanding the exclusion
6 of a lease or rental in paragraph (d). The term
7 "transportation equipment" means:

8 1. Locomotives and rail cars that are used for the
9 carriage of persons or property in interstate commerce;

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

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

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

26 (4)(3)(a) Except as provided in paragraphs (a) and
27 paragraph (b), every dealer making retail sales, whether
28 within or outside the state, of tangible personal property for
29 distribution, storage, or use or other consumption, in this
30 state, shall, at the time of making sales, collect the tax
31 imposed by this chapter from the purchaser.

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

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

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

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

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

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

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

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

27 4. If a purchaser of direct mail provides the seller
28 with documentation of direct-pay authority, the purchaser is
29 not required to provide a direct mail form or delivery
30 information to the seller.~~A purchaser of printed materials~~
31 ~~shall have sole responsibility for the taxes imposed by this~~

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

20 ~~5.2.~~ The Department of Revenue is authorized to adopt
21 rules and forms to implement the provisions of this paragraph.

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

24 212.08 Sales, rental, use, consumption, distribution,
25 and storage tax; specified exemptions.--The sale at retail,
26 the rental, the use, the consumption, the distribution, and
27 the storage to be used or consumed in this state of the
28 following are hereby specifically exempt from the tax imposed
29 by this chapter.

30 (1) EXEMPTIONS; GENERAL GROCERIES.--

31

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

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

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

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

24 ~~1.3.~~ Bakery products sold by bakeries, pastry shops,
25 or like establishments, if sold without eating utensils.
26 Bakery products for purposes of this subsection include bread,
27 rolls, buns, biscuits, bagels, croissants, pastries,
28 doughnuts, danish, cakes, tortes, pies, tarts, muffins, bars,
29 cookies, and tortillas ~~that do not have eating facilities.~~

30 2. Dietary supplements. The term "dietary supplements"
31 means any product, other than tobacco, intended to supplement

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

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

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

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

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

31

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

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

6 1.6. When the food and food ingredients products are
7 sold as hot prepared food products. As used in this
8 subparagraph, the term "prepared food" means food sold in a
9 heated state or heated by the seller; two or more food
10 ingredients mixed or combined by the seller for sale as a
11 single item; or food sold with eating utensils provided by the
12 seller, including plates, knives, forks, spoons, glasses,
13 cups, napkins, or straws. A plate does not include a container
14 or packaging used to transport the food. Prepared food does
15 not include food that is only cut, repackaged, or pasteurized
16 by the seller and eggs, fish, meat, poultry, and foods
17 containing these raw animal foods requiring cooking by the
18 consumer as recommended by the Food and Drug Administration in
19 chapter 3, part 401.11 of its food code so as to prevent
20 food-borne illnesses. "Prepared food," for purposes of this
21 subparagraph, includes sandwiches sold for immediate
22 consumption, and a combination of hot and cold food items or
23 components where a single price has been established for the
24 combination and the food products are sold in such
25 combination, such as a meal; a specialty dish or serving; a
26 sandwich or pizza; an ice cream cone, sundae, or banana split;
27 or food sold in an unheated state by weight or volume as a
28 single item, including cold components or side items.

29 ~~2.7. To soft drinks, which include, but are not~~
30 ~~limited to, any nonalcoholic beverage, any preparation or~~
31 ~~beverage commonly referred to as a "soft drink," or any~~

1 ~~noncarbonated drink made from milk derivatives or tea, when~~
2 ~~sold in cans or similar containers. The term "soft drinks"~~
3 means nonalcoholic beverages that contain natural or
4 artificial sweeteners. Soft drinks do not include beverages
5 that contain milk or milk products, soy, rice, or similar milk
6 substitutes, or greater than 50 percent of vegetable or fruit
7 juice by volume.

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

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

16 ~~3.10. When the food and food ingredients products are~~
17 ~~sold through a vending machine, pushcart, motor vehicle, or~~
18 ~~any other form of vehicle.~~

19 ~~4.11. To candy and any similar product regarded as~~
20 ~~candy or confection, based on its normal use, as indicated on~~
21 ~~the label or advertising thereof. The term "candy" means a~~
22 preparation of sugar, honey, or other natural or artificial
23 sweeteners in combination with chocolate, fruits, nuts, or
24 other ingredients or flavorings in the form of bars, drops, or
25 pieces. Candy does not include any preparation that contains
26 flour and requires no refrigeration.

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

30
31

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

4 5. To tobacco.

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

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

9 ~~2. "For consumption on the seller's premises" means~~
10 ~~that the food or drink sold may be immediately consumed on the~~
11 ~~premises where the dealer conducts his or her business. In~~
12 ~~determining whether an item of food is sold for immediate~~
13 ~~consumption, there shall be considered the customary~~
14 ~~consumption practices prevailing at the selling facility.~~

15 ~~3. "Premises" shall be construed broadly, and means,~~
16 ~~but is not limited to, the lobby, aisle, or auditorium of a~~
17 ~~theater; the seating, aisle, or parking area of an arena,~~
18 ~~rink, or stadium; or the parking area of a drive-in or outdoor~~
19 ~~theater. The premises of a caterer with respect to catered~~
20 ~~meals or beverages shall be the place where such meals or~~
21 ~~beverages are served.~~

22 ~~4. "Hot Prepared food products" means those products,~~
23 ~~items, or components which have been prepared for sale in a~~
24 ~~heated condition and which are sold at any temperature that is~~
25 ~~higher than the air temperature of the room or place where~~
26 ~~they are sold. "Hot prepared food products," for the purposes~~
27 ~~of this subsection, includes a combination of hot and cold~~
28 ~~food items or components where a single price has been~~
29 ~~established for the combination and the food products are sold~~
30 ~~in such combination, such as a hot meal, a hot specialty dish~~

31

1 ~~or serving, or a hot sandwich or hot pizza, including cold~~
2 ~~components or side items.~~

3 (d)~~(e)~~1. Food or drinks not exempt under paragraphs
4 (a), (b), (c), and (d) shall be exempt, notwithstanding those
5 paragraphs, when purchased with food coupons or Special
6 Supplemental Food Program for Women, Infants, and Children
7 vouchers issued under authority of federal law.

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

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

17 (e) "Dietary supplements" that are sold as prepared
18 food are not exempt.

19 (2) EXEMPTIONS; MEDICAL.--

20 (a) There shall be exempt from the tax imposed by this
21 chapter:

22 1. Any drug;

23 2. Durable medical equipment, mobility enhancing
24 equipment, or prosthetic device ~~any medical products and~~
25 ~~supplies or medicine~~ dispensed according to an individual
26 prescription or prescriptions ~~written by a prescriber~~
27 ~~authorized by law to prescribe medicinal drugs;~~

28 3. Hypodermic needles; hypodermic syringes;

29 4. Chemical compounds and test kits used for the
30 diagnosis or treatment of ~~human~~ disease, illness, or injury
31 intended for one-time use;

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

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

7 7. Hearing aids;

8 8. Dental prosthesis; or

9 9. Funerals.

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

31 (b) For the purposes of this subsection, the term:

1 1. "Drug" means a compound, substance, or preparation,
2 and any component of a compound, substance, or preparation,
3 other than food and food ingredients, dietary supplements, and
4 alcoholic beverages, which is:

5 a. Recognized in the official United States
6 Pharmacopoeia, official Homeopathic Pharmacopoeia of the
7 United States, or official National Formulary, or the
8 supplement to any of them;

9 b. Intended for use in the diagnosis, cure,
10 mitigation, treatment, or prevention of disease; or

11 c. Intended to affect the structure or any function of
12 the body.

13 2. "Durable medical equipment" means equipment,
14 including repair and replacement parts to such equipment, but
15 excluding mobility-enhancing equipment, which can withstand
16 repeated use, is primarily and customarily used to serve a
17 medical purpose, generally is not useful to a person in the
18 absence of illness or injury, and is not worn on or in the
19 body.

20 3. "Mobility-enhancing equipment" means equipment,
21 including repair and replacement parts to such equipment, but
22 excluding durable medical equipment, which:

23 a. Is primarily and customarily used to provide or
24 increase the ability to move from one place to another and
25 which is appropriate for use either in a home or a motor
26 vehicle;

27 b. Is not generally used by persons with normal
28 mobility; and

29 c. Does not include any motor vehicle or any equipment
30 on a motor vehicle normally provided by a motor vehicle
31 manufacturer.

1 4. "Prosthetic device" means a replacement,
2 corrective, or supportive device, including repair or
3 replacement parts to such equipment, other than a hearing aid
4 or a dental prosthesis, which is worn on or in the body to:
5 a. Artificially replace a missing portion of the body;
6 b. Prevent or correct physical deformity or
7 malfunction; or
8 c. Support a weak or deformed portion of the body.
9 5. "Grooming and hygiene products" are soaps and
10 cleaning solutions, shampoo, toothpaste, mouthwash,
11 antiperspirants, and suntan lotions and screens, regardless of
12 whether the items meet the definition of over-the-counter
13 drugs.
14 6. "Over-the-counter drug" means a drug the packaging
15 for which contains a label that identifies the product as a
16 drug as required by 21 C.F.R. s. 201.66. The over-the-counter
17 drug label includes a "drug facts" panel or a statement of the
18 active ingredients with a list of those ingredients contained
19 in the compound, substance, or preparation.~~"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

1 ~~from time to time and included in the rules promulgated by the~~
2 ~~Department of Revenue.~~

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

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

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

1 ~~dispensed by a pharmacist. The term also includes an orally~~
2 ~~transmitted order by the lawfully designated agent of such~~
3 ~~practitioner. The term also includes an order written or~~
4 ~~transmitted by a practitioner licensed to practice in a~~
5 ~~jurisdiction other than this state, but only if the pharmacist~~
6 ~~called upon to dispense such order determines, in the exercise~~
7 ~~of his or her professional judgment, that the order is valid~~
8 ~~and necessary for the treatment of a chronic or recurrent~~
9 ~~illness. The term also includes a pharmacist's order for a~~
10 ~~product selected from the formulary created pursuant to s.~~
11 ~~465.186. A prescription may be retained in written form, or~~
12 ~~the pharmacist may cause it to be recorded in a data~~
13 ~~processing system, provided that such order can be produced in~~
14 ~~printed form upon lawful request.~~

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

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

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

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

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

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

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

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

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

16 ~~(f)(k)~~ This subsection shall be strictly construed and
17 enforced.

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

20 212.095 Refunds.--

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

23 ~~(2)(a) No person may secure a refund under this~~
24 ~~chapter unless such person is the holder of an unrevoked~~
25 ~~refund permit issued by the department before the purchase for~~
26 ~~which a refund is sought, which permit shall be numbered and~~
27 ~~issued annually.~~

28 ~~(b) To procure a permit, a person must file with the~~
29 ~~department an application, on forms furnished by the~~
30 ~~department, stating that he or she is entitled to a refund~~
31 ~~according to the provisions of this chapter and that he or she~~

1 ~~intends to file an application for refund for the current~~
2 ~~calendar year, and must furnish the department such other~~
3 ~~information as the department requests.~~

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

8 ~~(d) If an applicant for a refund permit has violated~~
9 ~~any provision of this section or any regulation pursuant~~
10 ~~hereto, or has been convicted of bribery, theft, or false~~
11 ~~swearing within the period of 5 years preceding the~~
12 ~~application, or if the department has evidence of the~~
13 ~~financial irresponsibility of the applicant, the department~~
14 ~~may require the applicant to execute a corporate surety bond~~
15 ~~of \$1,000 to be approved by the department, conditioned upon~~
16 ~~the payment of all taxes, penalties, and fines for which such~~
17 ~~applicant may become liable under this chapter.~~

18 (2)~~(3)~~(a) When a sale is made to a person who claims
19 to be entitled to a refund under this section, the seller
20 shall make out a sales invoice, which shall contain the
21 following information:

- 22 1. The name and business address of the purchaser.
- 23 2. A description of the item or services sold.
- 24 3. The date on which the purchase was made.
- 25 4. The price and amount of tax paid for the item or
- 26 services.
- 27 5. The name and place of business of the seller at
- 28 which the sale was made.

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

30 (b) The sales invoice shall be retained by the
31 purchaser for attachment to his or her application for a

1 refund, as a part thereof. No refund will be allowed unless
2 the seller has executed such an invoice and unless proof of
3 payment of the taxes for which the refund is claimed is
4 attached. The department may refuse to grant a refund if the
5 invoice is incomplete and fails to contain the full
6 information required in this subsection.

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

10 (3)~~(4)~~(a) No refund may be authorized unless a sworn
11 application therefor containing the information required in
12 this section is filed with the department not later than 30
13 days immediately following the quarter for which the refund is
14 claimed. When a claim is filed after such 30 days and a
15 justified excuse for late filing is presented to the
16 department and the last preceding claim was filed on time,
17 such late filing may be accepted through 60 days following the
18 quarter. No refund will be authorized unless the amount due
19 is for \$5 or more in any quarter and unless application is
20 made upon forms prescribed by the department.

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

25 (c) Refund application forms shall include at a
26 minimum the following information:

27 1. The name and address of the person claiming the
28 refund.

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

30 2.3. The location at which the items or services for
31 which a refund is claimed are used.

1 3.4. A description of each such item or service and
2 the purpose for which such item or service was acquired.

3 4.5. Copies of the sales invoices of items or services
4 for which a refund is being claimed.

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

10 (5)~~(6)~~(a) Each registered dealer shall, in accordance
11 with the requirements of the department, keep at his or her
12 principal place of business in this state or at the location
13 where the sale is made a complete record or duplicate sales
14 tickets of all items or services sold by the registered dealer
15 for which a refund provided in this section may be claimed,
16 which records shall contain the information required in
17 paragraph(2)~~(3)~~(a).

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

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

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

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

11 (7)~~(8)~~ If any taxes are refunded erroneously, the
12 department shall advise the payee by registered mail of the
13 erroneous refund. If the payee fails to reimburse the state
14 within 15 days after the receipt of the letter, an action may
15 be instituted by the department against such payee in the
16 circuit court, and the department shall recover from the payee
17 the amount of the erroneous refund plus a penalty of 25
18 percent.

19 (8)~~(9)~~ No person shall:

20 (a) Knowingly make a false or fraudulent statement in
21 ~~an application for a refund permit or in an application for a~~
22 refund of any taxes under this section;

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

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

26 ~~(10) The refund permit of any person who violates any~~
27 ~~provision of this section shall be revoked by the department~~
28 ~~and may not be reissued until 2 years have elapsed from the~~
29 ~~date of such revocation. The refund permit of any person who~~
30 ~~violates any other provision of this chapter may be suspended~~

31

1 ~~by the department for any period, in its discretion, not~~
2 ~~exceeding 6 months.~~

3 (9)~~(11)~~ Refund ~~permits and refund~~ application forms
4 shall include instructions for dealers and purchasers as to
5 the relevant requirements of this section.

6 Section 8. Section 212.094, Florida Statutes, is
7 created to read:

8 212.094 Purchaser requests for refunds from dealers.--

9 (1) If a purchaser seeks a refund of or credit from a
10 dealer for a tax collected under this chapter by that dealer,
11 the purchaser must submit a written request for the refund or
12 credit to the dealer in accordance with this section. The
13 request must contain all the information necessary for the
14 dealer to determine the validity of the purchaser's request.

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

19 (3) This section does not change the law regarding
20 standing to claim a refund.

21 Section 9. Subsection (3) of section 212.17, Florida
22 Statutes, is amended to read:

23 212.17 Credits for returned goods, rentals, or
24 admissions; goods acquired for dealer's own use and
25 subsequently resold; additional powers of department.--

26 (3) A dealer who has paid the tax imposed by this
27 chapter on tangible personal property or services may take a
28 credit or obtain a refund for any tax paid by the dealer on
29 the unpaid balance due on worthless accounts within 12 months
30 following the month in which the bad debt has been charged off
31 for federal income tax purposes. A dealer who has paid the tax

1 imposed by this chapter on tangible personal property or
2 services and who is not required to file federal income tax
3 returns may take a credit or obtain a refund for any tax paid
4 by the dealer on the unpaid balance due on worthless accounts
5 within 12 months following the month in which the bad debt is
6 written off as uncollectible in the dealer's books and records
7 and would be eligible for a bad debt deduction for federal
8 income tax purposes if the dealer was required to file a
9 federal income tax return.

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

13 (b) Notwithstanding paragraph (a), the amount
14 calculated pursuant to 26 U.S.C. s. 166 shall be adjusted to
15 exclude financing charges or interest; sales or use taxes
16 charged on the purchase price; uncollectible amounts on
17 property that remain in the possession of the seller until the
18 full purchase price is paid; expenses incurred in attempting
19 to collect any debt; and repossessed property.

20 (c) When the amount of bad debt exceeds the amount of
21 taxable sales for the period during which the bad debt is
22 written off, a refund claim must be filed, notwithstanding s.
23 215.26(2), within 3 years after the due date of the return on
24 which the bad debt could first be claimed.

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

30 (e) Where filing responsibilities have been assumed by
31 a certified service provider, the certified service provider

1 shall claim, on behalf of the seller, any bad debt allowance
2 provided by this section. The certified service provider must
3 credit or refund to the seller the full amount of any bad debt
4 allowance or refund received.

5 (f) For the purposes of reporting a payment received
6 on a previously claimed bad debt, any payments made on a debt
7 or account are applied first proportionally to the taxable
8 price of the property or service and the sales tax thereon,
9 and secondly to interest, service charges, and any other
10 charges.

11 (g) In situations in which the books and records of
12 the party claiming the bad debt allowance support an
13 allocation of the bad debts among states that are members of
14 the Streamlined Sales and Use Tax Agreement, the allocation is
15 permitted among those states.

16 Section 10. Section 213.052, Florida Statutes, is
17 created to read:

18 213.052 Notice of state rate changes.--

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

24 (2) Failure of a seller to receive notice does not
25 relieve the seller of its obligation to collect sales or use
26 tax.

27 Section 11. Section 213.0521, Florida Statutes, is
28 created to read:

29 213.0521 Effective date of state rate changes.--The
30 effective date for services covering a period starting before
31

1 and ending after the statutory effective date shall be as
2 follows:

3 (1) For a rate increase, the new rate shall apply to
4 the first billing period starting on or after the effective
5 date.

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

8 Section 12. Subsection (11) is added to section
9 213.21, Florida Statutes, to read:

10 213.21 Informal conferences; compromises.--

11 (11) Amnesty shall be provided for uncollected or
12 unpaid sales or use tax to a seller who registers to pay or to
13 collect and remit applicable sales or use tax in accordance
14 with the terms of the Streamlined Sales and Use Tax Agreement
15 authorized under s. 213.256, if the seller was not registered
16 with the Department of Revenue in the 12-month period
17 preceding the effective date of participation in the agreement
18 by this state.

19 (a) The amnesty precludes assessment for uncollected
20 or unpaid sales or use tax together with penalty or interest
21 for sales made during the period the seller was not registered
22 with the Department of Revenue, if registration occurs within
23 12 months after the effective date of this state's
24 participation in the agreement.

25 (b) The amnesty is not available to a seller with
26 respect to any matter or matters for which the seller received
27 notice of the commencement of an audit and which audit is not
28 yet finally resolved, including any related administrative and
29 judicial processes.

30
31

1 (c) The amnesty is not available for sales or use
2 taxes already paid or remitted to the state or to taxes
3 collected by the seller.

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

9 (e) The amnesty is applicable only to sales or use
10 taxes due from a seller in its capacity as a seller and not to
11 sales or use taxes due from a seller in its capacity as a
12 buyer.

13 Section 13. Subsections (1) and (7) of section
14 213.256, Florida Statutes, are amended, present subsections
15 (8), (9), and (10) of that section are renumbered as
16 subsections (11), (12), and (13), respectively, and new
17 subsections (8), (9), (10), and (14) are added to that
18 section, to read:

19 213.256 Simplified Sales and Use Tax Administration
20 Act.--

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

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

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

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

30 **(d)**~~(c)~~ "Certified automated system" means software
31 certified jointly by the states that are signatories to the

1 agreement to calculate the tax imposed by each jurisdiction on
2 a transaction, determine the amount of tax to remit to the
3 appropriate state, and maintain a record of the transaction.

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

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

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

17 (h) "Model 3 seller" means a seller that has sales in
18 at least five member states, has total annual sales revenue of
19 at least \$500 million, has a proprietary system that
20 calculates the amount of tax due each jurisdiction, and has
21 entered into a performance agreement with the member states
22 which establishes a tax performance standard for the seller.
23 As used in this subsection, a seller includes an affiliated
24 group of sellers using the same proprietary system.

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

28 (j) "Registered under this agreement" means
29 registration by a seller with the member states under the
30 central registration system.

31

1 ~~(k)(f)~~ "Sales tax" means the tax levied under chapter
2 212.

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

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

7 ~~(n)(i)~~ "Use tax" means the tax levied under chapter
8 212.

9 (7)(a) The agreement authorized by this act binds and
10 inures only to the benefit of this state and the other member
11 states. No person, other than a member state, is an intended
12 beneficiary of the agreement. Any benefit to a person other
13 than a state is established by the laws of this state and of
14 other member states and not by the terms of the agreement.

15 (b) Consistent with paragraph (a), no person has any
16 cause of action or defense under the agreement or by virtue of
17 this state's approval of the agreement. No person may
18 challenge, in any action brought under any provision of law,
19 any action or inaction by any department, agency, or other
20 instrumentality of this state, or of any political subdivision
21 of this state, on the ground that the action or inaction is
22 inconsistent with the agreement.

23 (c) No law of this state, or the application thereof,
24 may be declared invalid as to any person or circumstance on
25 the ground that the provision or application is inconsistent
26 with the agreement.

27 (d) The determinations pertaining to the agreement
28 which are made by the member states are final when rendered
29 and are not subject to any protest, appeal, or review.

30 (8) Authority to administer the agreement shall rest
31 with the governing board comprised of representatives of each

1 member state. This state shall be represented by three
2 delegates, one appointed by the President of the Senate, one
3 appointed by the Speaker of the House of Representatives, and
4 the executive director of the department or his or her
5 designee.

6 (9) With respect to each member state, the agreement
7 shall continue in full force and effect until a member state
8 withdraws its membership or is expelled. A member state's
9 withdrawal or expulsion is not effective until the first day
10 of a calendar quarter after a minimum of 60 days' notice. A
11 member state shall submit notice of its intent to withdraw
12 from the agreement to the governing board and the chief
13 executive of each member state's tax agency. The member state
14 shall provide public notice of its intent to withdraw and post
15 its notice of intent to withdraw from the agreement to the
16 governing board and the chief executive of each member state's
17 tax agency. The member state shall provide public notice of
18 its intent to withdraw and post its notice of intent to
19 withdraw on its Internet website. The withdrawal by or
20 expulsion of a state does not affect the validity of the
21 agreement among other member states. A state that withdraws or
22 is expelled from the agreement remains liable for its share of
23 any financial or contractual obligations that were incurred by
24 the governing board before the effective date of that state's
25 withdrawal or expulsion. The appropriate share of any
26 financial or contractual obligation shall be determined by the
27 state and the governing board in good faith based on the
28 relative benefits received and burdens incurred by the
29 parties.

30 (10) A member state that is found to be out of
31 compliance with the agreement may be imposed with sanctions,

1 which include expulsion or other penalties as determined by
2 the governing board.

3 (14) Each member state shall annually recertify that
4 such state is in compliance with the agreement. Each member
5 state shall make a recertification to the governing board on
6 or before August 1 of each year after the year of the state's
7 entry. In its annual recertification, the state shall include
8 any changes in its statutes, rules, or regulations or other
9 authorities that could affect its compliance with the terms of
10 the agreement. The recertification shall be signed by the
11 executive director of the department. A member state that
12 cannot recertify its compliance with the agreement shall
13 submit a statement of noncompliance to the governing board.
14 The statement of noncompliance shall include any action or
15 decision that takes such state out of compliance with the
16 agreement and the steps it will take to return to compliance.
17 Each member state shall post its annual recertification or
18 statement of noncompliance on that state's Internet website.

19 Section 14. Section 213.2567, Florida Statutes, is
20 created to read:

21 213.2567 Simplified Sales and Use Tax registration,
22 certification, liability, audit.--

23 (1) A seller that registers pursuant to the agreement
24 agrees to collect and remit sales and use taxes for all
25 taxable sales into the member states, including member states
26 joining after the seller's registration. Withdrawal or
27 revocation of a member state does not relieve a seller of its
28 responsibility to remit taxes previously or subsequently
29 collected on behalf of the state.

30
31

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

4 (b) A seller may be registered by an agent. Such an
5 appointment must be in writing and submitted to a member
6 state.

7 (2)(a) A certified service provider is the agent of a
8 model 1 seller with whom the certified service provider has
9 contracted for the collection and remittance of sales and use
10 taxes. As the model 1 seller's agent, the certified service
11 provider is liable for sales and use tax due each member state
12 on all sales transactions it processes for the model 1 seller,
13 except as set out in paragraph (b).

14 (b) A model 1 seller is not liable to the state for
15 sales or use tax due on transactions processed by the
16 certified service provider unless the model 1 seller has
17 misrepresented the type of items it sells or has committed
18 fraud. In the absence of probable cause to believe that the
19 model 1 seller has committed fraud or made a material
20 misrepresentation, the model 1 seller is not subject to audit
21 on the transactions processed by the certified service
22 provider. A model 1 seller is subject to audit for
23 transactions that have not been processed by the certified
24 service provider. The member states acting jointly may perform
25 a system check of the model 1 seller and review the model 1
26 seller's procedures to determine if the certified service
27 provider's system is functioning properly and to determine the
28 extent to which the model 1 seller's transactions are being
29 processed by the certified service provider.

30 (3) A person that provides a certified automated
31 system is responsible for the proper functioning of that

1 system and is liable to the state for underpayments of tax
2 attributable to errors in the functioning of the certified
3 automated system. A model 2 seller that uses a certified
4 automated system remains responsible and is liable to the
5 state for reporting and remitting tax.

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

8 (5) The governing board may certify a person as a
9 certified service provider if the person meets all of the
10 following requirements:

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

12 (b) The person integrates its certified automated
13 system with the system of a seller for whom the person
14 collects tax so that the tax due on a sale is determined at
15 the time of the sale;

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

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

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

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

24 (6) The governing board may certify a software program
25 as a certified automated system if the governing board
26 determines that the program meets all of the following
27 requirements:

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

31

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

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

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

7 (e) The program meets any other requirement set by the
8 governing board.

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

14 (8) Disclosure of information necessary under this
15 section must be pursuant to a written agreement between the
16 executive director of the department or his or her designee
17 and the certified service provider. The certified service
18 provider is bound by the same requirements of confidentiality
19 as the department. Breach of confidentiality is a misdemeanor
20 of the first degree, punishable as provided in s. 775.082 or
21 s. 775.083.

22 Section 15. Paragraph (c) of subsection (2) and
23 paragraph (c) of subsection (3) of section 212.055, Florida
24 Statutes, are amended to read:

25 212.055 Discretionary sales surtaxes; legislative
26 intent; authorization and use of proceeds.--It is the
27 legislative intent that any authorization for imposition of a
28 discretionary sales surtax shall be published in the Florida
29 Statutes as a subsection of this section, irrespective of the
30 duration of the levy. Each enactment shall specify the types
31 of counties authorized to levy; the rate or rates which may be

1 imposed; the maximum length of time the surtax may be imposed,
2 if any; the procedure which must be followed to secure voter
3 approval, if required; the purpose for which the proceeds may
4 be expended; and such other requirements as the Legislature
5 may provide. Taxable transactions and administrative
6 procedures shall be as provided in s. 212.054.

7 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

8 (c) Pursuant to s. 212.054(5)~~s. 212.054(4)~~, the
9 proceeds of the surtax levied under this subsection shall be
10 distributed to the county and the municipalities within such
11 county in which the surtax was collected, according to:

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

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

21
22 Any change in the distribution formula must take effect on the
23 first day of any month that begins at least 60 days after
24 written notification of that change has been made to the
25 department.

26 (3) SMALL COUNTY SURTAX.--

27 (c) Pursuant to s. 212.054(5)~~s. 212.054(4)~~, the
28 proceeds of the surtax levied under this subsection shall be
29 distributed to the county and the municipalities within the
30 county in which the surtax was collected, according to:

31

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.

10
11 Any change in the distribution formula shall take effect on
12 the 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 Section 16. Subsection (6) of section 212.0596,
16 Florida Statutes, is repealed.

17 Section 17. It is the intent of the Legislature to
18 further amend chapter 212, Florida Statutes, to make the
19 changes necessary to be in compliance with the provisions of
20 the Streamlined Sales and Use Tax Agreement which take effect
21 on December 31, 2005, and to address the prohibition on
22 multiple state rates in a revenue-neutral manner.

23 Section 18. Emergency rules.--The executive director
24 of the Department of Revenue is authorized, and all conditions
25 are deemed met, to adopt emergency rules, under sections
26 120.536(1) and 120.54(4), Florida Statutes, to implement this
27 act. Notwithstanding any other provision of law, such
28 emergency rules shall remain effective for 6 months after the
29 date of adoption and may be renewed during the pendency of
30 procedures to adopt rules addressing the subject of the
31 emergency rules.

1 Section 19. This act shall take effect January 1,
2 2005.

3
4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 Senate Bill 1072

7 The committee substitute makes the following changes to the
8 underlying bill:

- 9 -- Clarifies the criteria to determine whether a transaction
10 occurs in a county that imposes a local option sales
11 surtax.
12 -- Expands the relief from liability for a seller or a
13 certified service provider who uses a database to
14 determine applicable taxes due on a transaction. A seller
15 or certified service provider who uses certain databases
16 will be held harmless from tax, interest, and penalties
17 due solely as a result of relying on erroneous data on
18 tax rates, boundaries, or taxing jurisdiction
19 assignments.
20 -- Clarifies that when a bad debt has been written off by a
21 dealer on which sales or use taxes have been paid to the
22 Department of Revenue, a dealer must file a claim for a
23 tax refund within 3 years from the due date of the return
24 on which the bad debt could first be claimed.
25 -- Corrects cross references and makes further clarifying
26 changes.
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