HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1355 Streamlined Sales and Use Tax Agreement
SPONSOR(S): Seiler
TIED BILLS: **IDEN./SIM. BILLS:** SB 1072

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Commerce		Sheheane	Billmeier
2) Finance & Tax			
3) Commerce & Local Affairs Approp. (Sub)			
4) Appropriations			
5)			

SUMMARY ANALYSIS

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

The bill amends definitions in chapter 212, F.S., to conform the definitions to those in the Agreement. The bill deletes the provisions that determine whether certain leases or rentals of motor vehicles for a period of less than 12 months are taxable in Florida. The bill provides that tax rate increases on utility services apply to the first billing period starting on or after the effective date of the increase. Current law requires tax increases on utility services to apply to utility bills issued after the effective date of the increase. Tax rate decreases apply to utility bills issued after the rate change. The bill provides criteria to determine who is responsible for remitting taxes on the purchase of a digital good, a good that is delivered electronically, and where the sale occurs.

The bill provides for exemptions from the sales and use tax and removes from current law the requirement that a person be a holder of a refund permit issued by the Department of Revenue in order to claim a tax refund. The bill creates s. 213.2567, F.S., relating to the Simplified Sales and Use Tax registration, certification, liability, and audit.

The Department of Revenue expects a non-recurring cost of $900,940 as a result of this bill. Please see "Fiscal Analysis and Economic Impact Statement."

The bill will take effect January 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

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

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Present Situation

Sales and Use Taxes

Florida is among the 45 states and the District of Columbia that impose sales and use taxes. Florida is also among the eight states that do not have a personal income tax and rely heavily on sales tax collections to fund government operations. In fiscal year 2002-2003, Florida sales and use tax collections accounted for 73 percent of the receipts into the General Revenue Fund, 53 percent of all state tax revenues, and 33 percent of all state revenue.[1]

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[1] *See* Florida Consensus Estimating Conference, *Revenue Analysis FY 1970-71 Through FY 2012-13*, 13, 29-30, Vol. 19, (Spring 2003).

The state sales tax rate of 6 percent is typically imposed on the cost or price of tangible personal property or a service at the moment it is sold to a purchaser.[2] The seller or dealer is generally required to collect the sales tax from the purchaser at the time of the sale. The dealer must remit the sales taxes collected to the Department of Revenue.[3]

The state use tax of 6 percent is imposed on the use, consumption, distribution, and storage of tangible personal property or a service in this state.[4] "The overall purpose of the use tax is to recoup sales tax revenues the state otherwise would lose when goods purchased out-of-state are brought into Florida for use here."[5] "A use tax ordinarily serves to complement the sales tax by eliminating the incentive to make major purchases in States with lower sales taxes; it requires the resident who shops out-of-state to pay a use tax equal to the sales tax savings."[6]

Use taxes levied on the purchase of items from on-line and catalog retailers are difficult for states to collect for two reasons. First, under the Commerce Clause of the U.S. Constitution, a state may not impose a duty to collect use taxes on a remote seller unless the remote seller has a substantial nexus to the taxing state. Second, the National Governors Association reports that most consumers are unaware that they have to remit use taxes on their on-line and catalog purchases.[7] Instructions for payment of use taxes in Florida on purchases from Internet sources, mail order catalogs, television or shopping networks, and auctions or toll-free (1-800) shopping services are available on the Department of Revenue's website at http://sun6.dms.state.fl.us/dor/ consumer/. These instructions direct consumers to file an Out-of-State Purchase Return, Form DR-15MO, to remit use tax to the state.

Electronic Commerce

On February 23, 2004, the U.S. Department of Commerce reported that e-commerce sales for the fourth quarter of 2003 were $17.2 billion.[8] Total retail sales for the quarter were estimated at $918.2 billion. Sales by e-commerce represented 1.9 percent of the total sales for the quarter.

Streamlined Sales Tax Project

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

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[2] *See* s. 212.06(1)(a), F.S.
[3] *See* s. 212.11, F.S.
[4] *See* s. 212.06(1)(a), F.S.
[5] *Kuhnlein v. Department of Highway Safety and Motor Vehicles*, 646 So. 2d 717, 722 (Fla. 1994).
[6] *Minneapolis Star and Tribune Co. v. Minnesota Comm'r of Revenue*, 460 U.S. 575, 581-582 (1983).
[7] National Governors Association, *New Report Shows States to Lose Nearly $440 Billion in Sales Tax Revenue from Remote Sales*, News Release, Oct. 2, 2001, at http://www.nga.org/nga/newsRoom/1,1169,C_PRESS_RELEASE^D_2635,00,00.html (last visited April 13, 2004).
[8] U.S. Census Bureau, *United States Commerce Department News*, February 23, 2004, at http://www.census.gov/mrts/www/current.html (last visited April 13, 2004).
[9] The substance of s. 213.27(9), F.S., is now codified in s. 213.27(8), F.S.

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

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

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

One of the stated goals of the SSTP:

is to encourage the registration and collection of sales and use taxes by remote sellers who are not now collecting such taxes on otherwise taxable sales to customers located in states where the remote sellers do not have physical presence sufficient to subject them to the states' jurisdiction to require such collection.[10]

The SSTP goal to encourage remote sellers to collect sales and use taxes is a reaction to the decisions of the U.S. Supreme Court in *National Bellas Hess, Inc., v. Department of Revenue of Ill*., 386 U.S. 753 (1967), and *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992). In *Bellas Hess*, the Court held that Illinois could not require an out-of-state mail-order business to collect and pay uses taxes because the business did not have a physical presence in Illinois.[11] In *Quill*, the Court held that a physical presence is no longer required for a state to require a business to collect and pay use taxes.[12] However, a mail-order business must have a substantial nexus to a state before a state may impose a duty to collect and pay use taxes.[13] In *Quill*, a state sought to require an out-of-state mail-order business that neither had outlets nor a sales force in the state to collect and pay use tax on goods purchased for use in the state.[14] The Court found that the mail- order business did not have a substantial nexus to the taxing state.[15] The *Quill* Court noted that the imposition of a duty on a mail-order business to collect use taxes poses an undue burden on interstate commerce in violation of the Commerce Clause of the U.S. Constitution. This undue burden resulted from the fact that there were more than 6,000 taxing

[10] Streamlined Sales Tax Project, Resolution No. 07-03, adopted May 20, 2003, *available at* http://www.streamlinedsalestax.org/resolutions/SSTPResolution%2007-03.pdf.
[11] *National Bellas Hess, Inc., v. Department of Revenue of Ill*., 386 U.S. 753, 758 (1967).
[12] *Quill Corp. v. North Dakota*, 504 U.S. 298, 316 (1992).
[13] *Quill*, 504 U.S. at 311.
[14] *Quill*, 504 U.S. at 301-302.
[15] *Quill*, 504 U.S. at 314.

jurisdictions with differing tax rates, allowable exemptions, and record-keeping requirements with which remote sellers would be required to comply.[16]

Effect of Proposed Changes

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

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

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

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

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

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

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

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

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

Section 212.054(7)(a), F.S., is amended to provide an effective date of April 1 for the adoption, repeal, or rate change of a surtax and requires a county or school board to notify the Department of Revenue by November 16 immediately preceding the April 1 effective date. This provision appears to be designed to bring Florida law into compliance with s. 305 B., Streamlined Sales and Use Tax

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[16] *Quill*, 504 U.S. at note 6.

Agreement, which requires states to provide catalog sellers with at least 120 days' notice of tax rate changes for the tax rate changes to apply to catalog sales.

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

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

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

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

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

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

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

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

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

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

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

Subsection (2) of s. 212.08, F.S., provides for medical exemptions. With the adoption of the Agreement's medical definitions, the following items will be treated differently than they are under current law:

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

novelty items are taxable. In order to comply with Agreement definitions, these items will become exempt under this bill.

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

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

Section 9 amends s. 212.17, F.S., relating to credit for returned goods. The bill provides that a dealer who has paid the sales tax and who is not required to file federal income tax returns may take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt is written off as uncollectible and would be eligible for a bad debt deduction for federal income tax purposes if the dealer was required to file a federal income tax return.

Section 10 creates s. 213.052, F.S., relating to notice of state rate changes. A sales and use tax rate change imposed under ch. 212, F.S., is effective on January 1, April 1, July 1, or October 1. The Department of Revenue must provide notice of such rate change to all affected sellers 90 days before the effective date of the rate change.

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

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

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

Section 12 amends s. 213.21, F.S., providing that amnesty shall be provided for uncollected or unpaid sales or use tax to a seller who registers to pay or collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Agreement, if the seller was not so registered in that state in the 12-month period preceding the effective date of the state's participation in the Agreement.

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

- "Agent" means a person appointed by a seller to represent the seller before the member states.
- "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions.
- "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

- “Model 3 seller” means a seller that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states which establishes a tax performance standard for the seller.
- “Registered under this agreement” means registration by a seller with the member states under the central registration system.

The bill amends the definition of “Agreement” to mean the Streamlined Sales and Use Tax Agreement as amended and adopted on November 12, 2002.

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

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

Section 14 creates s. 213.2567, F.S., relating to the Simplified Sales and Use Tax registration, certification, liability, and audit. A seller that registers pursuant to the Agreement agrees to collect and remit sales and use taxes for all taxable sales into the member states. When registering, the seller may select a model 1, model 2, or model 3 method of remittance or other method allowed by law to remit the taxes collected.

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

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

Sections 15-18 amends cross references.

Section 19 deletes subsection (6) of section 212.0596, F.S., relating to the exemption from collecting and remitting any local option surtax for certain dealers who make mail order sales.

Section 20 provides legislative intent.

Section 21 provides emergency rulemaking authority for the Department of Revenue.

Section 22 provides an effective date.

C. SECTION DIRECTORY:

Section 1 amends s. 212.02, F.S., to provide definitions adopted by the Streamlined Sales and Use Tax Agreement.

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

Section 3 amends s. 212.05(1)(c), F.S., to delete the provisions that determine whether certain leases or rentals of motor vehicles for a period of less than 12 months are taxable in Florida.

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

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

Section 6 amends s. 212.08, F.S., providing for exemptions from the sales and use tax.

Section 7 amends s. 212.095, F.S., relating to tax refunds.

Section 8 creates s. 212.094, F.S., regarding purchaser requests for refunds of over collected tax from dealers. Under the bill, a purchaser must make requests for a tax refund to dealers in writing.

Section 9 amends s. 212.17, F.S., relating to credit for returned goods.

Section 10 creates s. 213.052, F.S., relating to notice of state rate changes.

Section 11 creates s. 213.0521, F.S., relating to the effective date of state rate changes for sales tax on services.

Section 12 amends s. 213.21, F.S., providing that amnesty shall be provided for uncollected or unpaid sales or use tax to a seller who registers to pay or collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Agreement, if the seller was not so registered in that state in the 12-month period preceding the effective date of the state’s participation in the Agreement.

Section 13 amends s. 213.256, F.S., relating to the Simplified Sales and Use Tax Administration Act.

Section 14 creates s. 213.2567, F.S., relating to the Simplified Sales and Use Tax registration, certification, liability, and audit.

Section 15 amends cross references in s. 212.055, F.S.

Section 16 amends cross references in s. 212.07, F.S.

Section 17 amends cross references in s. 212.15, F.S.

Section 18 amends cross references in s. 212.183, F.S.

Section 19 deletes subsection (6) of section 212.0596, F.S., relating to the exemption from collecting and remitting any local option surtax for certain dealers who make mail order sales.

Section 20 provides legislative intent.

Section 21 provides emergency rulemaking authority for the Department of Revenue.

Section 22 provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not yet considered this bill.

2. Expenditures:

   According to the Department of Revenue, this bill will create a $900,940 non-recurring expenditure to the state. This estimation is a result of administrative costs such as taxpayer communication, programming enhancements for the Department of Revenue, and compliance and enforcement.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the executive of the Department of Revenue to adopt emergency rules to implement this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A