

1                   A bill to be entitled  
2           An act relating to the tax on sales, use, and other  
3           transactions; amending s. 212.03, F.S.; clarifying the  
4           meaning of the term "engaging in the business of renting,  
5           leasing, letting, or granting a license to use transient  
6           rental accommodations" for taxation purposes; expanding  
7           the definition of the term "total rent or consideration";  
8           providing definitions for the terms "discount rate" and  
9           "markup"; requiring persons engaged in renting certain  
10          accommodations to register with the Department of Revenue  
11          as sales tax dealers and collect and remit taxes;  
12          providing that the registered owners or operators of  
13          certain accommodations may agree in writing to report and  
14          remit taxes on behalf of the person engaged in renting the  
15          accommodations; requiring persons engaged in certain  
16          remarketing activities regarding transient rental  
17          accommodations to collect taxes on total rentals;  
18          providing alternate methods for remarketers to remit taxes  
19          to the Department of Revenue; providing for incorporating  
20          transient rentals into vacation packages; providing for  
21          administration by the department of taxes remitted by  
22          remarketers; providing for a local audit under certain  
23          circumstances; providing intent; providing amnesty for  
24          unpaid taxes, penalties, and interest on transient rentals  
25          under certain circumstances; authorizing the department to  
26          adopt emergency rules to implement the amnesty; amending  
27          s. 212.04, F.S.; requiring travel agents to be registered  
28          as a seller of travel; providing for recordkeeping;

29 amending s. 212.18, F.S.; requiring a single registration  
 30 for transient rental remarketers; providing an effective  
 31 date.

32

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

34

35 Section 1. Subsections (8), (9), (10), and (11) are added  
 36 to section 212.03, Florida Statutes, to read:

37 212.03 Transient rentals tax; rate, procedure,  
 38 enforcement, exemptions.--

39 (8)(a) For purposes of this section and ss. 125.0104,  
 40 125.0108, and 212.0305, the term "engaging in the business of  
 41 renting, leasing, letting, or granting a license to use  
 42 transient rental accommodations" includes any activity in which  
 43 a person offers information about the availability of  
 44 accommodations to a customer, arranges for the customer's  
 45 occupancy of the accommodations, establishes the total rental  
 46 price the customer pays for the accommodations, and collects the  
 47 rental payments from the customer. The term "remarketer" means a  
 48 person who engages in the activities described in this  
 49 subsection.

50 (b) The terms "total rent" as used in this section, "total  
 51 consideration" as used in ss. 125.0104 and 125.0108, and  
 52 "consideration" as used in s. 212.0305 have the same meaning.  
 53 The terms include the total consideration a customer must pay in  
 54 order to use or occupy a transient accommodation, including  
 55 service charges or fees that are a condition of occupancy,  
 56 except for mandatory fees imposed for the availability of

57 communications services. Charges or fees paid by a customer to  
 58 the person collecting the rent or consideration as a condition  
 59 of occupancy are included in the taxable rent or consideration  
 60 even if the charges or fees are separately itemized on the  
 61 customer's bill or are for items or services provided by a third  
 62 party. Charges for items or services provided to occupants of  
 63 transient accommodations that are not intrinsic to occupancy of  
 64 the accommodation, are provided only upon the election of the  
 65 occupant, and are separately itemized are not taxable rent or  
 66 consideration.

67 (c) The term "discount rate" as used in this section means  
 68 the rate the registered owner or operator of the accommodation  
 69 charges the remarketer for the room.

70 (d) The term "markup" as used in this section means the  
 71 difference between the total rent and the discounted rate.

72 (9) Persons engaging in activities described in paragraph  
 73 (8)(a) shall register with the department and, except as  
 74 provided in subsection (10), collect and remit taxes on the  
 75 total rent charged to their customers, unless the registered  
 76 owners or operators of the accommodations agree in writing to  
 77 report and remit taxes on their behalf. Any written agreement  
 78 must require the person collecting the rent to report total  
 79 taxable sales and taxes due and pay the taxes collected to the  
 80 owner or operator by the last day of the month in which the  
 81 customer pays the rent or the last day of the month in which the  
 82 customer completes the occupancy of the accommodation. The owner  
 83 or operator shall report and remit the taxes with the owner or  
 84 operator's return that is due in the month following the month

85 in which the taxes are paid to the owner or operator. The owner  
 86 or operator is not liable for any tax, penalty, or interest due  
 87 as a result of the failure of the person who arranged the  
 88 occupancy and collected the rent to accurately report and remit  
 89 the taxes imposed by this section or by ss. 125.0104, 125.0108,  
 90 and 212.0305. If the owner or operator does not agree to report  
 91 and remit taxes on behalf of the person who rents the  
 92 accommodations as provided in paragraph (8)(a), that person  
 93 shall extend his or her annual resale certificate in lieu of  
 94 paying taxes on the amounts he or she pays to the owner or  
 95 operator for the accommodations. The department may provide by  
 96 rule for a single registration by a person engaged in the  
 97 activities described in paragraph (8)(a) rather than require  
 98 separate registrations for each location where transient rental  
 99 accommodations are located. Such person may file consolidated  
 100 returns as provided in s. 212.11(1)(e).

101 (10)(a) Remarketers shall collect taxes on the total rent  
 102 collected from their customers. A remarketer may elect to remit  
 103 the taxes as provided in paragraph (b) or in paragraph (c). A  
 104 remarketer shall remit all taxes collected under this section in  
 105 the same manner.

106 (b)1. A remarketer may elect to remit under a dual-  
 107 remittance system. The remarketer electing this method shall  
 108 register with the department as a dealer for purposes of this  
 109 chapter. The remarketer shall remit to the owner or operator of  
 110 any transient rental accommodations occupied by a customer of  
 111 the remarketer the taxes due under chapter 125 and under this  
 112 chapter at the discount rate at the time of payment of that rate

113 to the owner or operator. The owner or operator shall report and  
114 remit the total taxes received from the remarketer with the next  
115 return due after the month in which the owner or operator  
116 receives payment from the remarketer. The remarketer shall  
117 report and remit to the department the taxes due under chapter  
118 125 and under this chapter on the markup. The taxes must be  
119 reported on and remitted with the first return due from the  
120 remarketer after the month in which the customer pays the rental  
121 to the remarketer.

122 2. The remarketer shall provide a copy of its dealer  
123 registration certificate to the owner or operator of any  
124 transient rental accommodations with which the remarketer has  
125 entered a contractual remarketing arrangement to evidence the  
126 remarketer's election to remit taxes directly to the department  
127 on the markup. If a remarketer that has a contractual  
128 remarketing arrangement with the owner or operator does not  
129 provide the certificate, the owner or operator shall collect and  
130 remit taxes under the single remittance system described in  
131 paragraph (c), unless the remarketer provides the documentation  
132 described in paragraph (d) concerning use of transient  
133 accommodations as components of vacation packages.

134 (c) A remarketer may elect to remit under a single  
135 remittance system. The remarketer electing this method shall  
136 disclose to the owner or operator of the transient rental  
137 accommodations the total rental paid by the remarketer's  
138 customer and remit the taxes on the total rental to the owner or  
139 operator with the payment of the discount rate. If the  
140 remarketer does not disclose the total rental received from the

141 customer, the remarketer shall remit to the owner or operator  
142 taxes on 135 percent of the discount rate or, if a written  
143 contract between the remarketer and the owner or operator  
144 establishes a lesser maximum amount, the remarketer may charge  
145 as total rental to the customer tax on the maximum amount. The  
146 owner or operator shall report and remit the total taxes  
147 received from the remarketer with the next return due after the  
148 month in which the owner or operator receives the payment. The  
149 owner or operator is not liable for any tax, penalty, or  
150 interest due if the remarketer fails to accurately report and  
151 remit the taxes imposed by this section or by ss. 125.0104,  
152 125.0108, and 212.0305. The owner or operator shall maintain in  
153 its records the information provided by the remarketer for the  
154 period of time for which the return in which that information is  
155 reflected is subject to audit by the department.

156 (d) If a remarketer is a travel agent within the meaning  
157 of s. 212.04(1)(d), the remarketer may treat transient  
158 accommodations as component parts of vacation packages when the  
159 requirements of that provision are met. A remarketer that  
160 operates under a single remittance system may furnish a copy of  
161 the remarketer's certificate of registration as a seller of  
162 travel or letter of exemption from registration as a seller of  
163 travel to the owner or operator of accommodations that are  
164 incorporated as component parts of vacation packages to  
165 establish that the accommodations are not subject to the  
166 disclosure and tax collection requirements of paragraph (c).

167 (e) The owner or operator of transient accommodations has  
168 no obligation to inquire whether a person that rents transient

169 accommodations is acting as a remarketer in regard to those  
 170 accommodations. The obligations imposed on an owner or operator  
 171 by this subsection arise only if there is a contractual  
 172 remarketing arrangement between the owner or operator and the  
 173 person that rents transient accommodation from the owner or  
 174 operator.

175 (11)(a)1. The department shall administer, collect, and  
 176 enforce all taxes remitted by remarketers on the markup under a  
 177 dual-remittance system, including interest and penalties  
 178 attributable to such taxes, regardless of whether the taxes are  
 179 imposed under this chapter or chapter 125. Notwithstanding any  
 180 election made by a county to self-administer local taxes under  
 181 chapter 125 or s. 212.0305, each remarketer obligated to collect  
 182 and remit one or more local taxes on transient accommodations  
 183 imposed under chapter 125 or s. 212.0305 under a dual-remittance  
 184 system shall separately report and identify each tax to the  
 185 department, by jurisdiction, on a form prescribed by the  
 186 department, and shall pay the taxes to the department. A  
 187 remarketer may include in a single payment to the department the  
 188 total amount of all state and local taxes on the markup on  
 189 transient rentals imposed under this chapter and chapter 125.

190 2. The department shall keep records showing the amount of  
 191 taxes collected, which records shall also include records  
 192 disclosing the amount of taxes collected for each county in  
 193 which the tax authorized by this section is applicable. These  
 194 records shall be open for inspection during the regular office  
 195 hours of the department, subject to s. 213.053. Proceeds  
 196 received by the department from the taxes, less costs of

197 administration of this section, shall be paid and returned  
 198 monthly to the county that imposed the tax, for use by the  
 199 county according to the section under which the tax was imposed.  
 200 The proceeds shall be paid to the county in the month after  
 201 which they are received by the department in the same manner as  
 202 other taxes imposed under chapter 125 which are administered by  
 203 the department. For purposes of this section, the proceeds of  
 204 any tax levied by a county under chapter 125 or s. 212.0305 are  
 205 all funds collected and received by the department under a  
 206 specific levy authorized by this chapter or section, including  
 207 any interest and penalties attributable to the tax levy.

208 (b) Audits performed by the department shall include a  
 209 determination of whether the rates collected for applicable  
 210 local tourist development taxes, tourist impact taxes, and  
 211 convention development taxes are correct. A person or entity  
 212 designated by a county to receive information from the  
 213 department under s. 213.0535 may provide evidence to the  
 214 department demonstrating a specific person's failure to fully or  
 215 correctly report taxable remarketing activities within the  
 216 jurisdiction, including evidence discovered in a county's audit  
 217 of a transient rental owner or operator under chapter 125 or s.  
 218 212.0305. The department may request additional information from  
 219 the designee to assist in any review. The department shall  
 220 inform the designee of what action, if any, the department  
 221 intends to take regarding the person.

222 (c) Notwithstanding paragraph (a), if a remarketer engages  
 223 in remarketing activities solely in regard to transient  
 224 accommodations located within a single county in the state and



225 that county self-administers tourist development or tourist  
 226 impact taxes imposed under chapter 125 or convention development  
 227 taxes imposed under s. 212.0305, that county may perform an  
 228 audit of the remarketer with respect to the remarketing  
 229 activity, unless the department is conducting an audit of the  
 230 remarketer's compliance with this chapter for the same period.

231 1. Prior to the exercise of this authority, and for  
 232 purposes of determining whether a remarketer operates solely  
 233 within one county, a county may presume the localized operation  
 234 if the remarketer reports remarketing activity in a single  
 235 county. Upon notice by the county to the department of an intent  
 236 to audit a dealer, the department shall notify the county within  
 237 60 days if the department has issued a notice of intent to audit  
 238 the remarketer, or the department shall notify the remarketer of  
 239 the county's request to audit.

240 2. The remarketer may, within 30 days, rebut the single-  
 241 county-operation presumption by providing evidence to the  
 242 department that the remarketer engages in remarketing activity  
 243 in more than one county in the state.

244 3. If, during the course of an audit conducted under this  
 245 paragraph, a county determines that a remarketer was engaged in  
 246 remarketing activity in regard to transient accommodations  
 247 located in any other county in the state during the period under  
 248 audit, the county shall terminate the audit and notify the  
 249 department of its findings.

250 4. Counties conducting audits are bound by department  
 251 rules and technical assistance advisements issued during the  
 252 course of an audit conducted under this paragraph. Counties

253 conducting audits under this paragraph, or taxpayers being  
 254 audited under this paragraph, may request the department to  
 255 issue a technical assistance advisement under s. 213.22  
 256 regarding a pending audit issue. If the department is requested  
 257 to issue a technical assistance advisement, the department shall  
 258 notify the affected county or taxpayer of the technical  
 259 assistance request.

260 5. The review, protest, and collection of amounts due  
 261 under chapter 125 or s. 212.0305 as the result of an audit  
 262 performed by a county are the responsibility of the county.

263 6. The fee or any portion of a fee for audits conducted on  
 264 behalf of a county under this paragraph may not be based upon  
 265 the amount assessed or collected as a result of the audit, and a  
 266 determination based upon an audit conducted in violation of this  
 267 prohibition is valid.

268 7. All audits performed under this paragraph shall be  
 269 conducted according to the standards adopted by the American  
 270 Institute of Certified Public Accountants, the Institute of  
 271 Internal Auditors, or the Comptroller General of the United  
 272 States insofar as those standards are not inconsistent with  
 273 rules of the department.

274 8. The department may adopt rules for the notification and  
 275 determination processes established in this paragraph and for  
 276 the information to be provided by a county conducting an audit.

277 Section 2. Amnesty for registration and remittance of  
 278 tax.--

279 (1) The state shall provide an amnesty for unpaid taxes,  
 280 penalties, and interest imposed under chapter 125 or chapter

281 212, Florida Statutes, on transient rentals if the following  
282 requirements are met:

283 (a) The rentals subject to amnesty were made prior to July  
284 1, 2005.

285 (b) The rental payments were collected by remarketers who  
286 are not owners, operators, or managers of the transient rental  
287 facilities or their agents.

288 (c) The remarketer who collected the rental payments  
289 registers with the Department of Revenue to pay taxes on  
290 transient rentals on or before July 1, 2005.

291 (d) The remarketer who collected the rental payments  
292 applies for amnesty within 3 months after July 1, 2005, pursuant  
293 to rules of the Department of Revenue.

294 (2) The amnesty is not available for taxes, penalties, or  
295 interest that have been assessed if the assessment is final and  
296 has not been timely challenged, or for any taxes, penalties, or  
297 interest that have been paid to the department unless the  
298 payment is the subject of an assessment that is not final or  
299 that has been timely challenged.

300 (3) The amnesty is not available for tax billed to or  
301 collected from the consumer who pays for occupancy of the  
302 transient rental accommodation. The amnesty applies, however, to  
303 such amounts to the extent that the remarketer who collected the  
304 rental payments can document that such taxes were remitted to  
305 the owner or operator of the transient rental accommodation.

306 (4) The Department of Revenue may adopt emergency rules  
307 under ss. 120.536(1) and 120.54(4), Florida Statutes, to  
308 implement the amnesty. Such rules may provide forms and

309 procedures for applying for amnesty, for reporting the rentals  
 310 for which amnesty is sought, and for ensuring the applicant's  
 311 ongoing commitment to registration, collection, and remittance  
 312 of the taxes imposed by state law on transient rentals.  
 313 Notwithstanding any other provision of law, the emergency rules  
 314 shall remain effective until 6 months after the date of adoption  
 315 of the rule or the date of final resolution of all amnesty  
 316 applications filed pursuant to this section, whichever occurs  
 317 later.

318 Section 3. Paragraph (d) of subsection (1) of section  
 319 212.04, Florida Statutes, is amended to read:

320 212.04 Admissions tax; rate, procedure, enforcement.--

321 (1)

322 (d) No additional tax is due on components incorporated as  
 323 part of a package sold by a travel agent if the package includes  
 324 two or more components such as admissions, transient rentals,  
 325 transportation, or meals; if all of the components were  
 326 purchased by the travel agent from other parties and any sales  
 327 tax due on such purchases was paid; and if there is no separate  
 328 itemization of the admission, transient rental, transportation,  
 329 meal, or other components in the sales price of the package.

330 This paragraph does not apply if the actual price charged for a  
 331 component by the dealer to a travel agent is less than the price  
 332 charged to unrelated parties under normal industry practices and  
 333 the dealer and the travel agent are members of the same  
 334 controlled group of corporations for federal income tax  
 335 purposes. For purposes of this paragraph, the term "travel  
 336 agent" means a seller of travel as defined in s. 559.927 which

337 has registered with the Department of Agriculture and Consumer  
 338 Services as required by s. 559.928 or obtained a letter of  
 339 exemption from registration from the Department of Agriculture  
 340 and Consumer Services under s. 559.935.

341 Section 4. Paragraph (a) of subsection (3) of section  
 342 212.18, Florida Statutes, is amended to read:

343 212.18 Administration of law; registration of dealers;  
 344 rules.--

345 (3)(a) Every person desiring to engage in or conduct  
 346 business in this state as a dealer, as defined in this chapter,  
 347 or to lease, rent, or let or grant licenses in living quarters  
 348 or sleeping or housekeeping accommodations in hotels, apartment  
 349 houses, roominghouses, or tourist or trailer camps that are  
 350 subject to tax under s. 212.03, or to lease, rent, or let or  
 351 grant licenses in real property, as defined in this chapter, and  
 352 every person who sells or receives anything of value by way of  
 353 admissions, must file with the department an application for a  
 354 certificate of registration for each place of business, showing  
 355 the names of the persons who have interests in such business and  
 356 their residences, the address of the business, and such other  
 357 data as the department may reasonably require. However, owners  
 358 and operators of vending machines or newspaper rack machines are  
 359 required to obtain only one certificate of registration for each  
 360 county in which such machines are located. Persons engaged in  
 361 arranging transient accommodations as remarketers described in  
 362 s. 212.03(8)(a) who elect to remit taxes to the department under  
 363 a dual-remittance system described in s. 212.03(11) are required  
 364 to obtain only one certificate of registration in regard to

365 their remarketing activities in this state. The department, by  
366 rule, may authorize a dealer that uses independent sellers to  
367 sell its merchandise to remit tax on the retail sales price  
368 charged to the ultimate consumer in lieu of having the  
369 independent seller register as a dealer and remit the tax. The  
370 department may appoint the county tax collector as the  
371 department's agent to accept applications for registrations. The  
372 application must be made to the department before the person,  
373 firm, copartnership, or corporation may engage in such business,  
374 and it must be accompanied by a registration fee of \$5. However,  
375 a registration fee is not required to accompany an application  
376 to engage in or conduct business to make mail order sales. The  
377 department may waive the registration fee for applications  
378 submitted through the department's Internet registration  
379 process.

380 Section 5. This act shall take effect July 1, 2005.