

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative(s) Brummer offered the following:

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3 **Amendment to Senate Amendment (552744) (with title**
4 **amendment)**

5 On page 20, line 14, through page 23, line 17, remove all
6 of said lines, and insert:

7 Section 16. Effective July 1, 2005, paragraph (ccc) is
8 added to subsection (7) of section 212.08, Florida Statutes, to
9 read:

10 212.08 Sales, rental, use, consumption, distribution, and
11 storage tax; specified exemptions.--The sale at retail, the
12 rental, the use, the consumption, the distribution, and the
13 storage to be used or consumed in this state of the following
14 are hereby specifically exempt from the tax imposed by this
15 chapter.

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16 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
17 entity by this chapter do not inure to any transaction that is
18 otherwise taxable under this chapter when payment is made by a
19 representative or employee of the entity by any means,
20 including, but not limited to, cash, check, or credit card, even
21 when that representative or employee is subsequently reimbursed
22 by the entity. In addition, exemptions provided to any entity by
23 this subsection do not inure to any transaction that is
24 otherwise taxable under this chapter unless the entity has
25 obtained a sales tax exemption certificate from the department
26 or the entity obtains or provides other documentation as
27 required by the department. Eligible purchases or leases made
28 with such a certificate must be in strict compliance with this
29 subsection and departmental rules, and any person who makes an
30 exempt purchase with a certificate that is not in strict
31 compliance with this subsection and the rules is liable for and
32 shall pay the tax. The department may adopt rules to administer
33 this subsection.

34 (ccc) Advertising materials distributed by mail in an
35 envelope.--Likewise exempt are materials consisting exclusively
36 of advertising that are distributed by mail in an envelope, such
37 as individual coupons or other individual cards, sheets, or
38 pages of printed advertising, for ten or more persons, that are
39 distributed free of charge on a monthly, bimonthly, or other
40 regular basis.

41 Section 17. Paragraph (a) of subsection (2) of section
42 212.12, Florida Statutes, is amended, present paragraph (e) of

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43 that subsection is redesignated as paragraph (f), present
44 paragraph (f) of that subsection is redesignated as paragraph
45 (g) and amended, and a new paragraph (e) is added to that
46 subsection, to read:

47 212.12 Dealer's credit for collecting tax; penalties for
48 noncompliance; powers of Department of Revenue in dealing with
49 delinquents; brackets applicable to taxable transactions;
50 records required.--

51 (2)

52 (a) When any person required hereunder to make any return
53 or to pay any tax or fee imposed by this chapter either fails to
54 timely file such return or fails to pay the tax or fee shown due
55 on the return within the time required hereunder, in addition to
56 all other penalties provided herein and by the laws of this
57 state in respect to such taxes or fees, a specific penalty shall
58 be added to the tax or fee in the amount of 10 percent of either
59 the tax or fee shown on the return that is not timely filed or
60 any tax or fee not paid timely. The penalty may not be less than
61 \$50 for failure to timely file a tax return required by s.

62 212.11(1) or timely pay the tax or fee shown due on the return
63 except as provided in s. 213.21(11)(10). If a person fails to
64 timely file a return required by s. 212.11(1) and to timely pay
65 the tax or fee shown due on the return, only one penalty of 10
66 percent, which may not be less than \$50, shall be imposed.

67 (e) A person who willfully attempts in any manner to evade
68 any tax, surcharge, or fee imposed under this chapter or the
69 payment thereof is, in addition to any other penalties provided

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70 by law, liable for a specific penalty in the amount of 100
71 percent of the tax, surcharge, or fee and commits a felony of
72 the third degree, punishable as provided in s. 775.082, s.
73 775.083, or s. 775.084.

74 (g)(f) A dealer who files ~~Dealers filing~~ a consolidated
75 return pursuant to s. 212.11(1)(e) is ~~shall be~~ subject to the
76 penalty established in paragraph (f) ~~(e)~~ unless the dealer has
77 paid the required estimated tax for his or her consolidated
78 return as a whole without regard to each location. If the dealer
79 fails to pay the required estimated tax for his or her
80 consolidated return as a whole, each filing location shall stand
81 on its own with respect to calculating penalties pursuant to
82 paragraph (f) ~~(e)~~.

83 Section 18. Paragraph (1) of subsection (7) of section
84 213.053, Florida Statutes, is amended to read:

85 213.053 Confidentiality and information sharing.--

86 (7) Notwithstanding any other provision of this section,
87 the department may provide:

88 (1) Information relative to chapter 212 and the Bill of
89 Lading Program to the Office of Agriculture Law Enforcement of
90 the Department of Agriculture and Consumer Services in the
91 conduct of its official duties ~~the Bill of Lading Program~~. ~~This~~
92 ~~information is limited to the business name and whether the~~
93 ~~business is in compliance with chapter 212.~~

94 Section 19. Paragraph (b) of subsection (5) of section
95 212.13, Florida Statutes, is amended to read:

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96 212.13 Records required to be kept; power to inspect;
97 audit procedure.--

98 (5)

99 (b) Such written notification shall contain:

100 1. The approximate date on which the auditor is scheduled
101 to begin the audit.

102 2. A reminder that all of the records, receipts, invoices,
103 resale certificates, and related documentation of the taxpayer
104 must be made available to the auditor.

105 3. A notification of the availability of having the audit
106 conducted pursuant to s. 213.285 by a qualified practitioner
107 instead of the department.

108 ~~4.3.~~ Any other requests or suggestions the department may
109 deem necessary.

110 Section 20. Subsection (8) of section 213.21, Florida
111 Statutes, is amended, subsection (9) of said section is
112 renumbered as subsection (10), subsection (10) of said section
113 is renumbered as subsection (11) and amended, and a new
114 subsection (9) is added to said section, to read:

115 213.21 Informal conferences; compromises.--

116 (8) In order to determine whether certified audits are an
117 effective tool in the overall state tax collection effort, the
118 executive director of the department or the executive director's
119 designee shall settle or compromise penalty liabilities of
120 taxpayers who participate in the certified audits project before
121 the department issues a notice of intent to audit. As further
122 incentive for participating in the program before the department

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123 issues a notice of intent to audit, the department shall abate
124 the first \$25,000 of any interest liability and 25 percent of
125 any interest due in excess of the first \$25,000. A settlement or
126 compromise of penalties or interest pursuant to this subsection
127 shall not be subject to the provisions of paragraph (3)(a),
128 except for the requirement relating to confidentiality of
129 records. The department may consider an additional compromise of
130 tax or interest pursuant to the provisions of paragraph (3)(a).
131 This subsection does not apply to any liability related to taxes
132 collected but not remitted to the department.

133 (9) For taxpayers that participate in the certified audit
134 program after a written notification of intent to audit has been
135 issued by the department, the department shall only compromise
136 penalty based upon reasonable cause pursuant to s. 213.21 and
137 shall abate the first \$10,000 of any interest liability and 10
138 percent of any interest due in excess of the first \$10,000.

139 (11)(10)(a) ~~Effective July 1, 2003,~~ Notwithstanding any
140 other provision of law and solely for the purpose of
141 administering the taxes tax imposed by ss. 125.0104 and 125.0108
142 and chapter 212, except s. 212.0606, under the circumstances set
143 forth in this subsection, the department shall settle or
144 compromise a taxpayer's liability for penalty without requiring
145 the taxpayer to submit a written request for compromise or
146 settlement.

147 (b) For taxpayers who file returns and remit tax on a
148 monthly basis:

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149 1. Any penalty related to a noncompliant filing event
150 shall be settled or compromised if the taxpayer has:

151 a. No noncompliant filing event in the immediately
152 preceding 12-month period and no unresolved ~~chapter 212~~
153 liability under s. 125.0104, s. 125.0108, or chapter 212
154 resulting from a noncompliant filing event; or

155 b. One noncompliant filing event in the immediately
156 preceding 12-month period, resolution of the current
157 noncompliant filing event through payment of tax and interest
158 and the filing of a return within 30 days after notification by
159 the department, and no unresolved ~~chapter 212~~ liability under s.
160 125.0104, s. 125.0108, or chapter 212 resulting from a
161 noncompliant filing event.

162 2. If a taxpayer has two or more noncompliant filing
163 events in the immediately preceding 12-month period, the
164 taxpayer shall be liable, absent a showing by the taxpayer that
165 the noncompliant filing event was due to extraordinary
166 circumstances, for the penalties provided in s. 125.0104 or s.
167 125.0108 and s. 212.12, including loss of collection allowance,
168 and shall be reported to a credit bureau.

169 (c) For taxpayers who file returns and remit tax on a
170 quarterly basis, any penalty related to a noncompliant filing
171 event shall be settled or compromised if the taxpayer has no
172 noncompliant filing event in the immediately preceding 12-month
173 period and no unresolved ~~chapter 212~~ liability under s.
174 125.0104, s. 125.0108, or chapter 212 resulting from a
175 noncompliant filing event.

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176 (d) For purposes of this subsection:

177 1. "Noncompliant filing event" means a failure to timely
178 file a complete and accurate return required under s. 125.0104,
179 s. 125.0108, or chapter 212 or a failure to timely pay the
180 amount of tax reported on a return required by s. 125.0104, s.
181 125.0108, or chapter 212.

182 2. "Extraordinary circumstances" means the occurrence of
183 events beyond the control of the taxpayer, such as, but not
184 limited to, the death of the taxpayer, acts of war or terrorism,
185 natural disasters, fire, or other casualty, or the nonfeasance
186 or misfeasance of the taxpayer's employees or representatives
187 responsible for compliance with s. 125.0104, s. 125.0108, or the
188 ~~provisions of~~ chapter 212. With respect to the acts of an
189 employee or representative, the taxpayer must show that the
190 principals of the business lacked actual knowledge of the
191 noncompliance and that the noncompliance was resolved within 30
192 days after actual knowledge.

193 Section 21. The amendment to s. 213.21(10), Florida
194 Statutes, made by this act, shall operate retroactively to July
195 1, 2003.

196 Section 22. Paragraph (d) of subsection (1), paragraph (b)
197 of subsection (2), paragraphs (b) and (c) of subsection (4), and
198 subsection (7) of section 213.285, Florida Statutes, are amended
199 to read:

200 213.285 Certified audits.--

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

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202 (d) "Qualified practitioner" means a certified public
203 accountant who is licensed to practice in Florida and who has
204 completed the certification program. For certified audits
205 entered into after the department issues a notice of intent to
206 audit, a qualified practitioner cannot have performed
207 accounting, auditing, management consulting, or tax services for
208 the taxpayer or person that is a subsidiary, parent, sister, or
209 other affiliate of the taxpayer during the 60-month period
210 immediately preceding the written notice of intent to conduct an
211 audit. Furthermore, for certified audits entered into after the
212 department issues a notice of intent to audit, the qualified
213 practitioner may not perform accounting, auditing, management
214 consulting, or tax services for any taxpayer or person that is a
215 subsidiary, parent, sister, or other affiliate of the taxpayer
216 for a period of 36 months after the department's approval of the
217 certified audit report.

218 (2)

219 (b)1. As an incentive for taxpayers to incur the costs of
220 a certified audit, the department shall compromise penalties and
221 abate interest due on any tax liabilities revealed by a
222 certified audit as provided in s. 213.21. This authority to
223 compromise penalties or abate interest shall not apply to any
224 liability for taxes that were collected by the participating
225 taxpayer but that were not remitted to the department.

226 2. If the taxpayer's request to participate in the
227 certified audit program is submitted after the taxpayer has been
228 issued a written notice of intent to conduct an audit, the

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229 department shall compromise penalties on any tax liabilities
230 revealed by a certified audit as provided in s. 213.21. This
231 authority to compromise penalties shall not apply to any
232 liability for taxes that were collected by the participating
233 taxpayer but that were not remitted to the department.

234 (4)

235 (b)1. If the taxpayer has not been issued a written notice
236 of intent to conduct an audit, the taxpayer shall be a
237 participating taxpayer and the department shall so advise the
238 qualified practitioner in writing within 10 days after receipt
239 of the engagement notice. However, the department may exclude a
240 taxpayer from a certified audit or may limit the taxes or
241 periods subject to the certified audit on the basis that the
242 department has previously conducted an audit, that it is in the
243 process of conducting an investigation or other examination of
244 the taxpayer's records, or for just cause determined solely by
245 the department.

246 2. If the taxpayer has been issued a written notice of
247 intent to conduct an audit and the department has not begun its
248 field audit work, the taxpayer may be a participating taxpayer,
249 and the department shall so advise the qualified practitioner in
250 writing within 10 days after receipt of the engagement notice.
251 An engagement notice must be submitted within 45 days after the
252 written notice of intent to conduct an audit.

253 (c)1. Notice of the qualification of a taxpayer for a
254 certified audit shall toll the statute of limitations provided

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255 in s. 95.091 with respect to the taxpayer for the tax and
256 periods covered by the engagement.

257 2. If the taxpayer's request to participate in the
258 certified audit program is submitted after the taxpayer has been
259 issued a written notice of intent to conduct an audit, the
260 written notice of intent to conduct an audit issued by the
261 department shall toll the statute of limitations provided in
262 s.95.091.

263 (7) To implement the certified audits project, the
264 department shall have authority to adopt rules relating to:

265 (a) The availability of the certification program required
266 for participation in the project;

267 (b) The requirements and basis for establishing just cause
268 for approval or rejection of participation by taxpayers;

269 (c) The requirements and basis for establishing just cause
270 for suspension, rejection, or cancellation of the department's
271 certification of a qualified practitioner.

272 (d)(e) Procedures for assessment, collection, and payment
273 of liabilities or refund of overpayments and provisions for
274 taxpayers to obtain informal and formal review of certified
275 audit results;

276 (e)(d) The nature, frequency, and basis for the
277 department's review of certified audits conducted by qualified
278 practitioners, including the requirements for documentation,
279 work-paper retention and access, and reporting; and

280 (f)(e) Requirements for conducting certified audits and
281 for review of agreed-upon procedures.

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282 (g) Requirements to prevent the qualified practitioner who
 283 conducted the certified audit after the department issued a
 284 notice of intent to audit from representing the taxpayer in the
 285 informal conference procedures provided in s. 213.21.

286

287 ===== T I T L E A M E N D M E N T =====

288 On page 49, lines 15-18, remove all of said lines, and
289 insert:

290 amending s. 212.08, F.S.; exempting certain advertising
 291 materials distributed by mail in an envelope; amending s.
 292 212.13, F.S.; specifying an additional audit notification notice
 293 requirement; amending s. 213.21, F.S.; clarifying application of
 294 certain certified audit program procedures; providing
 295 limitations on department authorization to compromise penalties
 296 and abate interest for certain taxpayers; specifying which taxes
 297 qualify for the automatic penalty compromise or settlement of
 298 liability; providing for retroactivity; amending s. 213.285,
 299 F.S.; revising provisions relating to certified audits; revising
 300 a definition, department authority to compromise penalties,
 301 participation by a taxpayer in certain audits, statutes of
 302 limitation, and department authority to adopt rules for the
 303 certified audits project; amending s.

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