

1 F.S., relating to determination of local tax
2 situs, for the purpose of providing and
3 maintaining a database of sales and use tax
4 rates for local jurisdictions; amending s.
5 212.06, F.S.; defining terms; providing rules
6 for determining the location of transactions
7 involving the retail sale of tangible personal
8 property, digital goods, or services and for
9 the lease or rental of tangible personal
10 property; requiring certain business purchasers
11 to obtain multiple points of use exemption
12 forms; providing for use of such forms;
13 requiring certain purchasers of direct mail to
14 obtain a direct mail form; providing for the
15 use of such form; amending s. 212.08, F.S.,
16 relating to exemptions from the sales and use
17 tax; defining and redefining terms used with
18 respect to the exemption for general groceries;
19 defining and redefining terms used with respect
20 to the exemption for medical products and
21 supplies; revising that exemption; providing an
22 exemption for certain farm equipment; amending
23 s. 212.095, F.S.; revising provisions relating
24 to refunds; creating s. 212.094, F.S.;
25 requiring a purchaser seeking a refund or
26 credit under chapter 212, F.S., to submit a
27 written request for the refund or credit;
28 providing a time period within which the dealer
29 must respond to the written request; amending
30 s. 212.12, F.S.; providing for a monetary
31 allowance to certified service providers and

1 voluntary sellers pursuant to Article VI of the
2 Agreement; defining terms; deleting brackets;
3 providing for computation of tax due; deleting
4 the brackets for discretionary sales surtax
5 calculations; amending s. 212.17, F.S.;
6 prescribing additional guidelines and
7 procedures with respect to dealer credits for
8 taxes paid on worthless accounts; amending s.
9 212.18, F.S.; authorizing the Department of
10 Revenue to waive the dealer registration fee
11 for applications submitted through the central
12 electronic registration system provided by
13 member states of the Streamlined Sales and Use
14 Tax Agreement; creating s. 213.052, F.S.;
15 providing for notice of state sales or use tax
16 rate changes; creating s. 213.0521, F.S.;
17 providing the effective date for state sales
18 and use tax rate changes; amending s. 213.21,
19 F.S.; providing for amnesty to certain sellers
20 for uncollected or unpaid sales and use taxes;
21 amending s. 213.256, F.S., relating to
22 simplified sales and use tax administration;
23 defining terms; providing that authority to
24 administer the Streamlined Sales and Use Tax
25 Agreement rests with a governing board
26 comprised of representatives of member states;
27 providing for continuing effect of the
28 agreement; providing for annual recertification
29 by member states; creating s. 213.2567, F.S.;
30 providing for the registration of sellers, the
31 certification of a person as a certified

1 service provider, and the certification of a
2 software program as a certified automated
3 system by the governing board under the
4 Streamlined Sales and Use Tax Agreement;
5 amending s. 212.055, F.S.; conforming a
6 cross-reference; repealing s. 212.0596(6),
7 F.S., relating to the exemption from collecting
8 and remitting any local option surtax for
9 certain dealers who make mail order sales;
10 declaring legislative intent; providing for the
11 adoption of emergency rules; providing an
12 effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraph (g) of subsection (10) and
17 subsections (16) and (19) of section 212.02, Florida Statutes,
18 are amended, and subsections (35), (36), (37), (38), (39),
19 (40), (41), (42), and (43) are added to that section, to read:

20 212.02 Definitions.--The following terms and phrases
21 when used in this chapter have the meanings ascribed to them
22 in this section, except where the context clearly indicates a
23 different meaning:

24 (10) "Lease," "let," or "rental" means leasing or
25 renting of living quarters or sleeping or housekeeping
26 accommodations in hotels, apartment houses, roominghouses,
27 tourist or trailer camps and real property, the same being
28 defined as follows:

29 (g)1. "Lease," "let," or "rental" also means any
30 transfer of possession or control of tangible personal
31 property for a fixed or indeterminate term for consideration.

1 A clause for a future option to purchase or to extend the
2 agreement does not preclude an agreement from being a lease or
3 rental. This definition shall be used for purposes of the
4 sales and use tax regardless of whether a transaction is
5 characterized as a lease or rental under generally accepted
6 accounting principles, the Internal Revenue Code, the Uniform
7 Commercial Code, or other provisions of federal, state, or
8 local law. This definition includes agreements covering motor
9 vehicles and trailers if the amount of consideration may be
10 increased or decreased by reference to the amount realized
11 upon sale or disposition of the property as provided in 26
12 U.S.C. s. 7701(h)(1). This definition does not include:
13 a. A transfer of possession or control of property
14 under a security agreement or deferred payment plan that
15 requires the transfer of title upon completion of the required
16 payments;
17 b. A transfer of possession or control of property
18 under an agreement that requires the transfer of title upon
19 completion of required payments and payment of an option price
20 that does not exceed the greater of \$100 or 1 percent of the
21 total required payments; or
22 c. A provision of tangible personal property along
23 with an operator for a fixed or indeterminate period of time.
24 A condition of this exclusion is that the operator is
25 necessary for the equipment to perform as designed. For the
26 purpose of this sub-subparagraph, an operator must do more
27 than maintain, inspect, or set up the tangible personal
28 property. ~~the leasing or rental of tangible personal property~~
29 ~~and the possession or use thereof by the lessee or rentee for~~
30 ~~a consideration, without transfer of the title of such~~
31 ~~property, except as expressly provided to the contrary herein.~~

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

19 (16)(a) "Sales price" applies to the measure subject
20 to sales tax and means the total amount of consideration,
21 including cash, credit, property, and services, for which
22 personal property or services are sold, leased, or rented,
23 valued in money, whether received in money or otherwise,
24 without any deduction for:

- 25 1. The seller's cost of the property sold;
26 2. The cost of materials used, labor or service cost,
27 interest, losses, all costs of transportation to the seller,
28 all taxes imposed on the seller, and any other expense of the
29 seller;

30
31

1 3. Charges by the seller for any services necessary to
2 complete the sale, other than delivery and installation
3 charges;

4 4. Delivery charges; or

5 5. Installation charges.

6 (b) The term "sales price" does not include:

7 1. Trade-ins allowed and taken at the time of sale if
8 the amount is separately stated on the invoice, bill of sale,
9 or similar document given to the purchaser;

10 2. Discounts, including cash, term, or coupons, which
11 are not reimbursed by a third party, are allowed by a seller,
12 and taken by a purchaser at the time of sale;

13 3. Interest, financing, and carrying charges from
14 credit extended on the sale of personal property or services,
15 if the amount is separately stated on the invoice, bill of
16 sale, or similar document given to the purchaser; or

17 4. Any taxes legally imposed directly on the consumer
18 which are separately stated on the invoice, bill of sale, or
19 similar document given to the purchaser.

20 ~~(16) "Sales price" means the total amount paid for~~
21 ~~tangible personal property, including any services that are a~~
22 ~~part of the sale, valued in money, whether paid in money or~~
23 ~~otherwise, and includes any amount for which credit is given~~
24 ~~to the purchaser by the seller, without any deduction~~
25 ~~therefrom on account of the cost of the property sold, the~~
26 ~~cost of materials used, labor or service cost, interest~~
27 ~~charged, losses, or any other expense whatsoever. "Sales~~
28 ~~price" also includes the consideration for a transaction which~~
29 ~~requires both labor and material to alter, remodel, maintain,~~
30 ~~adjust, or repair tangible personal property. Trade ins or~~
31 ~~discounts allowed and taken at the time of sale shall not be~~

1 ~~included within the purview of this subsection "Sales price"~~
2 ~~also includes the full face value of any coupon used by a~~
3 ~~purchaser to reduce the price paid to a retailer for an item~~
4 ~~of tangible personal property; where the retailer will be~~
5 ~~reimbursed for such coupon, in whole or in part, by the~~
6 ~~manufacturer of the item of tangible personal property; or~~
7 ~~whenever it is not practicable for the retailer to determine,~~
8 ~~at the time of sale, the extent to which reimbursement for the~~
9 ~~coupon will be made. The term "sales price" does not include~~
10 ~~federal excise taxes imposed upon the retailer on the sale of~~
11 ~~tangible personal property. The term "sales price" does~~
12 ~~include federal manufacturers' excise taxes, even if the~~
13 ~~federal tax is listed as a separate item on the invoice.~~

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

26 (35) "Agent" means a person appointed by a principal
27 or authorized to act for the principal in a transaction
28 involving the sale of an item of tangible personal property.
29 The term also means a person appointed by a seller to
30 represent the seller before the states that are signatories to
31 the Streamlined Sales and Use Tax Agreement.

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

3 (37) "Model 1 seller" means a seller that has selected
4 a certified service provider as its agent to perform all the
5 seller's sale and use tax functions other than the seller's
6 obligation to remit tax on its own purchases.

7 (38) "Model 2 seller" means a seller that has selected
8 a certified automated system to perform part of its sales and
9 use tax functions, but retains responsibility for remitting
10 the tax.

11 (39) "Model 3 seller" means a seller that has sales in
12 at least five member states, has total annual sales revenues
13 of at least \$500 million, has a proprietary system that
14 calculates the amount of tax due each jurisdiction, and has
15 entered into a performance agreement with the member states
16 which establishes a tax performance standard for the seller.
17 As used in this section, a seller includes an affiliated group
18 of sellers using the same proprietary system.

19 (40) "Certified service provider" means an agent
20 certified under the Streamlined Sales and Use Tax Agreement to
21 perform all of the seller's sales tax functions, other than
22 the seller's obligation to remit tax on its own purchases.

23 (41) "Direct mail" means printed material delivered or
24 distributed by United States mail or other delivery service to
25 a mass audience or to addressees on a mailing list provided by
26 the purchaser or at the direction of the purchaser when the
27 cost of the items is not billed directly to the recipients.
28 The term includes tangible personal property supplied directly
29 or indirectly by the purchaser to the direct mail seller for
30 inclusion in the package containing the printed material. The
31

1 term does not include multiple items of printed material
2 delivered to a single address.

3 (42) "Prewritten computer software" means computer
4 software, including prewritten upgrades, which is not designed
5 and developed by the author or other creator to the
6 specifications of a specific purchaser. The combining of two
7 or more prewritten computer software programs or prewritten
8 portions thereof does not cause the combination to be other
9 than "prewritten computer software." The term includes
10 software designed and developed by the author or other creator
11 to the specifications of a specific purchaser when it is sold
12 to a person other than that purchaser. When a person modifies
13 or enhances computer software of which the person is not the
14 author or creator, the person is the author or creator only of
15 that person's modifications or enhancements. Prewritten
16 computer software, or a prewritten portion thereof, which is
17 modified or enhanced to any degree, when such modification or
18 enhancement is designed and developed to the specifications of
19 a specific purchaser, remains "prewritten computer software";
20 however, if there is a reasonable, separately stated charge or
21 an invoice or other statement of the price given to the
22 purchaser for such modification or enhancement, the
23 modification or enhancement does not constitute "prewritten
24 computer software."

25 (43) "Delivery charges" means charges by the seller of
26 personal property or services for preparation and delivery to
27 a location designated by the purchaser of personal property or
28 services, including, but not limited to, transportation,
29 shipping, postage, handling, crating, and packing. The term
30 does not include the charges for delivery of "direct mail" as
31 defined by this section if the charges are separately stated

1 on an invoice or similar billing document given to the
2 purchaser. If a shipment includes exempt property and taxable
3 property, the seller must tax the percentage of the delivery
4 charge allocated to the taxable property but does not have to
5 tax the percentage allocated to the exempt property. The
6 seller should allocate the delivery charge by using:

7 (a) A percentage based on the total sales prices of
8 all property in the shipment; or

9 (b) A percentage based on the total weight of the
10 taxable property compared to the total weight of all property
11 in the shipment.

12 Section 2. The amendment of the terms "lease," "let,"
13 and "rental" in section 212.02, Florida Statutes, made by this
14 act applies prospectively only, from January 1, 2006, and does
15 not apply retroactively to leases or rentals existing before
16 that date.

17 Section 3. Subsection (6) of section 212.0306, Florida
18 Statutes, is amended to read:

19 212.0306 Local option food and beverage tax; procedure
20 for levying; authorized uses; administration.--

21 (6) Any county levying a tax authorized by this
22 section must locally administer the tax using the powers and
23 duties enumerated for local administration of the tourist
24 development tax by s. 125.0104, 1992 Supplement to the Florida
25 Statutes 1991. ~~The county's ordinance shall also provide for~~
26 ~~brackets applicable to taxable transactions.~~

27 Section 4. Paragraph (b) of subsection (1) of section
28 212.04, Florida Statutes, is amended to read:

29 212.04 Admissions tax; rate, procedure, enforcement.--

30 (1)

31

1 (b) For the exercise of such privilege, a tax is
2 levied at the rate of 6 percent of sales price, or the actual
3 value received from such admissions, which 6 percent shall be
4 added to and collected with all such admissions from the
5 purchaser thereof, and such tax shall be paid for the exercise
6 of the privilege as defined in the preceding paragraph. Each
7 ticket must show on its face the actual sales price of the
8 admission, or each dealer selling the admission must
9 prominently display at the box office or other place where the
10 admission charge is made a notice disclosing the price of the
11 admission, and the tax shall be computed and collected on the
12 basis of the actual price of the admission charged by the
13 dealer. The sale price or actual value of admission shall,
14 for the purpose of this chapter, be that price remaining after
15 deduction of federal taxes and state or locally imposed or
16 authorized seat surcharges, taxes, or fees, if any, imposed
17 upon such admission. The sale price or actual value does not
18 include separately stated ticket service charges that are
19 imposed by a facility ticket office or a ticketing service and
20 added to a separately stated, established ticket price. The
21 rate of tax on each admission shall be according to ~~the~~
22 ~~brackets established by~~ s. 212.12(9).

23 Section 5. Paragraphs (c) and (e) of subsection (1)
24 and subsection (4) of section 212.05, Florida Statutes, are
25 amended to read:

26 212.05 Sales, storage, use tax.--It is hereby declared
27 to be the legislative intent that every person is exercising a
28 taxable privilege who engages in the business of selling
29 tangible personal property at retail in this state, including
30 the business of making mail order sales, or who rents or
31 furnishes any of the things or services taxable under this

1 chapter, or who stores for use or consumption in this state
2 any item or article of tangible personal property as defined
3 herein and who leases or rents such property within the state.

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

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

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

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

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

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

25 3. ~~The tax imposed by this chapter does not apply to~~
26 ~~the lease or rental of a commercial motor vehicle as defined~~
27 ~~in s. 316.003(66)(a) to one lessee or rentee for a period of~~
28 ~~not less than 12 months when tax was paid on the purchase~~
29 ~~price of such vehicle by the lessor. To the extent tax was~~
30 ~~paid with respect to the purchase of such vehicle in another~~
31 ~~state, territory of the United States, or the District of~~

1 ~~Columbia, the Florida tax payable shall be reduced in~~
2 ~~accordance with the provisions of s. 212.06(7). This~~
3 ~~subparagraph shall only be available when the lease or rental~~
4 ~~of such property is an established business or part of an~~
5 ~~established business or the same is incidental or germane to~~
6 ~~such business.~~

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

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

11 (I) "Prepaid calling arrangement" means the separately
12 stated retail sale by advance payment of communications
13 services that consist exclusively of telephone calls
14 originated by using an access number, authorization code, or
15 other means that may be manually, electronically, or otherwise
16 entered and that are sold in predetermined units or dollars
17 whose number declines with use in a known amount.

18 (II) The sale or recharge of the prepaid calling
19 arrangement is deemed to take place in accordance with s.
20 212.06(3)(d). In the case of a sale of a mobile communications
21 service that is a prepaid calling arrangement, the retail sale
22 may be sourced at ~~If the sale or recharge of the prepaid~~
23 ~~calling arrangement does not take place at the dealer's place~~
24 ~~of business, it shall be deemed to take place at the~~
25 ~~customer's shipping address or, if no item is shipped, at the~~
26 ~~customer's address or~~ the location associated with the
27 customer's mobile telephone number.

28 (III) The sale or recharge of a prepaid calling
29 arrangement shall be treated as a sale of tangible personal
30 property for purposes of this chapter, whether or not a
31 tangible item evidencing such arrangement is furnished to the

1 purchaser, and such sale within this state subjects the
2 selling dealer to the jurisdiction of this state for purposes
3 of this subsection.

4 b. The installation of telecommunication and
5 telegraphic equipment.

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

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

21 (4) The tax imposed under ~~pursuant to~~ this chapter
22 shall be due and payable according to the applicable state and
23 local rate brackets set forth in s. 212.12(9) ~~s. 212.12~~.

24 Section 6. Subsection (6) of section 212.0506, Florida
25 Statutes, is amended to read:

26 212.0506 Taxation of service warranties.--

27 (6) This tax shall be due and payable according to the
28 applicable state and local rate brackets set forth in s.
29 212.12(9) ~~s. 212.12~~.

30 Section 7. Section 212.054, Florida Statutes, is
31 amended to read:

1 212.054 Discretionary sales surtax; limitations,
2 administration, and collection.--

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

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

27 (b) However:

28 1. The sales amount above \$5,000 on any item of
29 tangible personal property which is a motor vehicle, aircraft,
30 boat, modular home, manufactured home, or mobile home shall
31 not be subject to the surtax. ~~However, charges for prepaid~~

1 ~~calling arrangements, as defined in s. 212.05(1)(c)1.a., shall~~
2 ~~be subject to the surtax.~~ For purposes of administering the
3 \$5,000 limitation ~~on an item of tangible personal property~~, if
4 two or more of these taxable items of tangible personal
5 property are sold to the same purchaser at the same time and,
6 under generally accepted business practice or industry
7 standards or usage, are normally sold in bulk or are items
8 that, when assembled, comprise a working unit or part of a
9 working unit, such items must be considered a single item for
10 purposes of the \$5,000 limitation when supported by a charge
11 ticket, sales slip, invoice, or other tangible evidence of a
12 single sale or rental.

13 2. In the case of utility services covering a period
14 starting before and ending after the effective date of the
15 surtax, the rate applies as follows:

16 a. In the case of a rate adoption or increase, the new
17 rate applies to the first billing period starting on or after
18 the effective date of the surtax or increase.

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

27
28 "Utility service," as used in this section, does not include
29 any communications services as defined in chapter 202.

30 3. In the case of written contracts which are signed
31 prior to the effective date of any such surtax for the

1 construction of improvements to real property or for
2 remodeling of existing structures, the surtax shall be paid by
3 the contractor responsible for the performance of the
4 contract. However, the contractor may apply for one refund of
5 any such surtax paid on materials necessary for the completion
6 of the contract. Any application for refund shall be made no
7 later than 15 months following initial imposition of the
8 surtax in that county. The application for refund shall be in
9 the manner prescribed by the department by rule. A complete
10 application shall include proof of the written contract and of
11 payment of the surtax. The application shall contain a sworn
12 statement, signed by the applicant or its representative,
13 attesting to the validity of the application. The department
14 shall, within 30 days after approval of a complete
15 application, certify to the county information necessary for
16 issuance of a refund to the applicant. Counties are hereby
17 authorized to issue refunds for this purpose and shall set
18 aside from the proceeds of the surtax a sum sufficient to pay
19 any refund lawfully due. Any person who fraudulently obtains
20 or attempts to obtain a refund pursuant to this subparagraph,
21 in addition to being liable for repayment of any refund
22 fraudulently obtained plus a mandatory penalty of 100 percent
23 of the refund, is guilty of a felony of the third degree,
24 punishable as provided in s. 775.082, s. 775.083, or s.
25 775.084.

26 4. In the case of any vessel, railroad, or motor
27 vehicle common carrier entitled to partial exemption from tax
28 imposed under this chapter pursuant to s. 212.08(4), (8), or
29 (9), the basis for imposition of surtax shall be the same as
30 provided in s. 212.08 and the ratio shall be applied each
31 month to total purchases in this state of property qualified

1 for proration which is delivered or sold in the taxing county
2 to establish the portion used and consumed in intracounty
3 movement and subject to surtax.

4 (3) Except as otherwise provided in this section, a
5 surtax applies to a retail sale, lease, or rental of tangible
6 personal property, a digital good, or a service when, under s.
7 212.06(3), the transaction occurs in a county that imposes a
8 surtax under s. 212.055.

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

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

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

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

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

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

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

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

14 ~~(c) The consumer of utility services is located in the~~
15 ~~county.~~

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

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

29 ~~3.2.~~ However, it shall be presumed that such items
30 used outside the taxing county for 6 months or longer before
31

1 being imported into the county were not purchased for use in
2 the county, except as provided in s. 212.06(8)(b).

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

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

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

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

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

26 ~~(h)~~ ~~The transient rental transaction occurs in the~~
27 ~~county.~~

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

1 ~~apply to the use or consumption of items upon which a like tax~~
2 ~~of equal or greater amount has been lawfully imposed and paid~~
3 ~~outside the county.~~

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

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

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

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

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

1 received by the department pursuant to a specific
2 authorization and levy under s. 212.055, including any
3 interest and penalties on delinquent surtaxes.

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

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

1 of the surtax to the department to be deposited into an
2 account in the Discretionary Sales Surtax Clearing Trust Fund
3 which is separate from the county surtax collection accounts.
4 The department shall distribute funds in this account using a
5 distribution factor determined for each county that levies a
6 surtax and multiplied by the amount of funds in the account
7 and available for distribution. The distribution factor for
8 each county equals the product of:
9 a. The county's latest official population determined
10 pursuant to s. 186.901;
11 b. The county's rate of surtax; and
12 c. The number of months the county has levied a surtax
13 during the most recent distribution period;
14
15 divided by the sum of all such products of the counties
16 levying the surtax during the most recent distribution period.
17 2. The department shall compute distribution factors
18 for eligible counties once each quarter and make appropriate
19 quarterly distributions.
20 3. A county that fails to timely provide the
21 information required by this section to the department
22 authorizes the department, by such action, to use the best
23 information available to it in distributing surtax revenues to
24 the county. If this information is unavailable to the
25 department, the department may partially or entirely
26 disqualify the county from receiving surtax revenues under
27 this paragraph. A county that fails to provide timely
28 information waives its right to challenge the department's
29 determination of the county's share, if any, of revenues
30 provided under this paragraph.
31

1 ~~(5) No discretionary sales surtax or increase or~~
2 ~~decrease in the rate of any discretionary sales surtax shall~~
3 ~~take effect on a date other than January 1. No discretionary~~
4 ~~sales surtax shall terminate on a day other than December 31.~~

5 (6) The governing body of any county levying a
6 discretionary sales surtax shall enact an ordinance levying
7 the surtax in accordance with the procedures described in s.
8 125.66(2).

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

26 (b) In addition to the notification required by
27 paragraph (a), the governing body of any county proposing to
28 levy a discretionary sales surtax or the school board of any
29 county proposing to levy the school capital outlay surtax
30 authorized by s. 212.055(6) shall notify the department by
31 October 1 if the referendum or consideration of the ordinance

1 that would result in imposition, termination, or rate change
2 of the surtax is scheduled to occur on or after October 1 of
3 that year. Failure to timely provide such notification to the
4 department shall result in the delay of the effective date for
5 a period of 1 year.

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

9 (d) Notwithstanding any ordinance provision to the
10 contrary regarding the termination date of a surtax, a surtax
11 may be terminated only on an April 1st. A surtax imposed
12 before January 1, 2006, for which an ordinance provides a
13 different termination date shall terminate on the April 1st
14 following the termination date established in the ordinance.

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

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

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

1 provided by the state if the seller or certified service
2 provider exercises due diligence in applying one or more of
3 the following methods for determining the taxing jurisdiction
4 and tax rate for a transaction:

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

7 2. Employing a database that has been approved by the
8 governing board and was developed by a seller or certified
9 service provider.

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

15 Section 8. Present subsections (3) through (16) of
16 section 212.06, Florida Statutes, are renumbered as
17 subsections (4) through (17), respectively, a new subsection
18 (3) is added to that section, and present subsection (3) of
19 that section is amended to read:

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

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

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

28 1. Taking possession of tangible personal property;
29 2. Making first use of services; or
30 3. Taking possession or making first use of digital
31 goods, whichever occurs first.

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

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

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

9 1. The retail sale or transfer of a boat, modular
10 home, manufactured home, or mobile home.

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

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

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

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

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

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

31

1 3. When subparagraphs 1. and 2. do not apply, at the
2 location indicated by an address for the purchaser which is
3 available from the business records of the seller which are
4 maintained in the ordinary course of the seller's business,
5 when use of this address does not constitute bad faith.

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

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

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

23 1. For a lease or rental that requires recurring
24 periodic payments, the first periodic payment is deemed to
25 take place in accordance with paragraph (d), notwithstanding
26 the exclusion of lease or rental in paragraph (d). Subsequent
27 periodic payments are deemed to have occurred at the primary
28 property location for each period covered by the payment. The
29 primary property location is determined by an address for the
30 property provided by the lessee which is available to the
31 lessor from its records maintained in the ordinary course of

1 business, when use of this address does not constitute bad
2 faith. The property location is not altered by intermittent
3 use of the property at different locations, such as use of
4 business property that accompanies employees on business trips
5 and service calls.

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

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

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

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

26 2. For a lease or rental that does not require
27 recurring periodic payments, the payment is deemed to take
28 place in accordance with paragraph (d), notwithstanding the
29 exclusion of a lease or rental in paragraph (d).

30 3. This paragraph does not affect the imposition or
31 computation of sales or use tax on leases or rentals based on

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 is obligated to collect,
13 pay, or remit the applicable tax on a direct-pay basis.

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

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

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

31

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 9. Subsections (1), (2), and (3) of section
23 212.08, 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, pusheart, 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 does not require refrigeration.~~

27 ~~5. To tobacco.~~

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

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

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

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

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

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

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

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

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

16 ~~(e)~~ Dietary supplements that are sold as prepared food
17 are not exempt.

18 (2) EXEMPTIONS; MEDICAL.--

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

21 1. Any drug;

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

27 3. Hypodermic needles; hypodermic syringes;

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

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 are shall
25 ~~be~~ exempt from the tax imposed by this chapter; however, this
26 exemption applies shall apply only after \$100,000 of the tax
27 imposed by this chapter on such items has been paid in any
28 calendar year by a taxpayer who claims the exemption in such
29 year. ~~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" mean 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 an over-the-counter
13 drug.
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 the 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 is ~~shall~~ not be exempt from the tax
16 imposed by this chapter when used for the treatment of water
17 in 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 (3) EXEMPTIONS, ~~PARTIAL~~; CERTAIN FARM
19 EQUIPMENT.--There shall be exempt from the tax imposed by this
20 chapter ~~taxable at the rate of 2.5 percent~~ the sale, rental,
21 lease, use, consumption, or storage for use in this state of
22 self-propelled, power-drawn, or power-driven farm equipment
23 used exclusively on a farm or in a forest in the agricultural
24 production of crops or products as produced by those
25 agricultural industries included in s. 570.02(1), or for fire
26 prevention and suppression work with respect to such crops or
27 products. Harvesting may not be construed to include
28 processing activities. This exemption is not forfeited by
29 moving farm equipment between farms or forests. However, this
30 exemption shall not be allowed unless the purchaser, renter,
31 or lessee signs a certificate stating that the farm equipment

1 is to be used exclusively on a farm or in a forest for
2 agricultural production or for fire prevention and
3 suppression, as required by this subsection. Possession by a
4 seller, lessor, or other dealer of a written certification by
5 the purchaser, renter, or lessee certifying the purchaser's,
6 renter's, or lessee's entitlement to an exemption permitted by
7 this subsection relieves the seller from the responsibility of
8 collecting the tax on the nontaxable amounts, and the
9 department shall look solely to the purchaser for recovery of
10 such tax if it determines that the purchaser was not entitled
11 to the exemption.

12 Section 10. Section 212.095, Florida Statutes, is
13 amended to read:

14 212.095 Refunds.--

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

17 ~~(2)(a) No person may secure a refund under this~~
18 ~~chapter unless such person is the holder of an unrevoked~~
19 ~~refund permit issued by the department before the purchase for~~
20 ~~which a refund is sought, which permit shall be numbered and~~
21 ~~issued annually.~~

22 ~~(b) To procure a permit, a person must file with the~~
23 ~~department an application, on forms furnished by the~~
24 ~~department, stating that he or she is entitled to a refund~~
25 ~~according to the provisions of this chapter and that he or she~~
26 ~~intends to file an application for refund for the current~~
27 ~~calendar year, and must furnish the department such other~~
28 ~~information as the department requests.~~

29 ~~(c) No person may in any event be allowed a refund~~
30 ~~unless he or she has filed the application provided for in~~

31

1 ~~paragraph (b) with the department. A permit shall be effective~~
2 ~~on the date issued by the department.~~

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

13 ~~(2)(3)(a)~~ (a) When a sale is made to a person who claims
14 to be entitled to a refund under this section, the seller
15 shall make out a sales invoice, which shall contain the
16 following information:

- 17 1. The name and business address of the purchaser.
- 18 2. A description of the item or services sold.
- 19 3. The date on which the purchase was made.
- 20 4. The price and amount of tax paid for the item or
- 21 services.
- 22 5. The name and place of business of the seller at
- 23 which the sale was made.

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

25 (b) The sales invoice shall be retained by the
26 purchaser for attachment to his or her application for a
27 refund, as a part thereof. No refund will be allowed unless
28 the seller has executed such an invoice and unless proof of
29 payment of the taxes for which the refund is claimed is
30 attached. The department may refuse to grant a refund if the
31

1 invoice is incomplete and fails to contain the full
2 information required in this subsection.

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

6 ~~(3)~~(4)(a) No refund may be authorized unless a sworn
7 application therefor containing the information required in
8 this section is filed with the department not later than 30
9 days immediately following the quarter for which the refund is
10 claimed. When a claim is filed after such 30 days and a
11 justified excuse for late filing is presented to the
12 department and the last preceding claim was filed on time,
13 such late filing may be accepted through 60 days following the
14 quarter. No refund will be authorized unless the amount due
15 is for \$5 or more in any quarter and unless application is
16 made upon forms prescribed by the department.

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

21 (c) Refund application forms shall include at a
22 minimum the following information:

23 1. The name and address of the person claiming the
24 refund.

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

26 ~~2.3.~~ The location at which the items or services for
27 which a refund is claimed are used.

28 ~~3.4.~~ A description of each such item or service and
29 the purpose for which such item or service was acquired.

30 ~~4.5.~~ Copies of the sales invoices of items or services
31 for which a refund is being claimed.

1 ~~(4)(5)~~ The right to receive any refund under the
2 provisions of this section is not assignable, except to the
3 executor or administrator, or to the receiver, trustee in
4 bankruptcy, or assignee in an insolvency proceeding, of the
5 person entitled to the refund.

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

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

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

26 ~~(6)(7)~~ Agents of the department are authorized to go
27 upon the premises of any refund applicant ~~permitholder~~, or
28 duly authorized agent thereof, to make an inspection to
29 ascertain any matter connected with the operation of this
30 section or the enforcement hereof. However, no agent may enter
31

1 the dwelling of any person without the consent of the occupant
2 or authority from a court of competent jurisdiction.

3 ~~(7)(8)~~ If any taxes are refunded erroneously, the
4 department shall advise the payee by registered mail of the
5 erroneous refund. If the payee fails to reimburse the state
6 within 15 days after the receipt of the letter, an action may
7 be instituted by the department against such payee in the
8 circuit court, and the department shall recover from the payee
9 the amount of the erroneous refund plus a penalty of 25
10 percent.

11 ~~(8)(9)~~ A No person may not shall:

12 (a) Knowingly make a false or fraudulent statement ~~in~~
13 ~~an application for a refund permit or~~ in an application for a
14 refund of any taxes under this section;

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

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

18 ~~(10) The refund permit of any person who violates any~~
19 ~~provision of this section shall be revoked by the department~~
20 ~~and may not be reissued until 2 years have elapsed from the~~
21 ~~date of such revocation. The refund permit of any person who~~
22 ~~violates any other provision of this chapter may be suspended~~
23 ~~by the department for any period, in its discretion, not~~
24 ~~exceeding 6 months.~~

25 ~~(9)(11)~~ Refund ~~permits and refund~~ application forms
26 must shall include instructions for dealers and purchasers as
27 to the relevant requirements of this section.

28 Section 11. Section 212.094, Florida Statutes, is
29 created to read:

30 212.094 Purchaser requests for refunds from dealers.--
31

1 (1) If a purchaser seeks a refund of or credit from a
2 dealer for a tax collected under this chapter by that dealer,
3 the purchaser must submit a written request for the refund or
4 credit to the dealer in accordance with this section. The
5 request must contain all the information necessary for the
6 dealer to determine the validity of the purchaser's request.

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

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

13 Section 12. Section 212.12, Florida Statutes, is
14 amended to read:

15 212.12 Dealer's credit for collecting tax; penalties
16 for noncompliance; powers of Department of Revenue in dealing
17 with delinquents; ~~computing tax due brackets applicable to~~
18 ~~taxable transactions~~; records required.--

19 (1) Notwithstanding any other provision of law and for
20 the purpose of compensating persons granting licenses for and
21 the lessors of real and personal property taxed hereunder, for
22 the purpose of compensating dealers in tangible personal
23 property, for the purpose of compensating dealers providing
24 communication services and taxable services, for the purpose
25 of compensating owners of places where admissions are
26 collected, and for the purpose of compensating remitters of
27 any taxes or fees reported on the same documents utilized for
28 the sales and use tax, as compensation for the keeping of
29 prescribed records, filing timely tax returns, and the proper
30 accounting and remitting of taxes by them, such seller,
31 person, lessor, dealer, owner, and remitter (except dealers

1 | who make mail order sales) shall be allowed 2.5 percent of the
2 | amount of the tax due and accounted for and remitted to the
3 | department, in the form of a deduction in submitting his or
4 | her report and paying the amount due by him or her; the
5 | department shall allow such deduction of 2.5 percent of the
6 | amount of the tax to the person paying the same for remitting
7 | the tax and making of tax returns in the manner herein
8 | provided, for paying the amount due to be paid by him or her,
9 | and as further compensation to dealers in tangible personal
10 | property for the keeping of prescribed records and for
11 | collection of taxes and remitting the same. However, if the
12 | amount of the tax due and remitted to the department for the
13 | reporting period exceeds \$1,200, no allowance shall be allowed
14 | for all amounts in excess of \$1,200. The executive director of
15 | the department is authorized to negotiate a collection
16 | allowance, pursuant to rules promulgated by the department,
17 | with a dealer who makes mail order sales. The rules of the
18 | department shall provide guidelines for establishing the
19 | collection allowance based upon the dealer's estimated costs
20 | of collecting the tax, the volume and value of the dealer's
21 | mail order sales to purchasers in this state, and the
22 | administrative and legal costs and likelihood of achieving
23 | collection of the tax absent the cooperation of the dealer.
24 | However, in no event shall the collection allowance negotiated
25 | by the executive director exceed 10 percent of the tax
26 | remitted for a reporting period.

27 | (a) The Department of Revenue may deny the collection
28 | allowance if a taxpayer files an incomplete return or if the
29 | required tax return or tax is delinquent at the time of
30 | payment.
31 |

1 1. An "incomplete return" is, for purposes of this
2 chapter, a return which is lacking such uniformity,
3 completeness, and arrangement that the physical handling,
4 verification, review of the return, or determination of other
5 taxes and fees reported on the return may not be readily
6 accomplished.

7 2. The department shall adopt rules requiring such
8 information as it may deem necessary to ensure that the tax
9 levied hereunder is properly collected, reviewed, compiled,
10 reported, and enforced, including, but not limited to: the
11 amount of gross sales; the amount of taxable sales; the amount
12 of tax collected or due; the amount of lawful refunds,
13 deductions, or credits claimed; the amount claimed as the
14 dealer's collection allowance; the amount of penalty and
15 interest; the amount due with the return; and such other
16 information as the Department of Revenue may specify. The
17 department shall require that transient rentals and
18 agricultural equipment transactions be separately shown. Sales
19 made through vending machines as defined in s. 212.0515 must
20 be separately shown on the return. Sales made through
21 coin-operated amusement machines as defined by s. 212.02 and
22 the number of machines operated must be separately shown on
23 the return or on a form prescribed by the department. If a
24 separate form is required, the same penalties for late filing,
25 incomplete filing, or failure to file as provided for the
26 sales tax return shall apply to said form.

27 (b) The collection allowance and other credits or
28 deductions provided in this chapter shall be applied
29 proportionally to any taxes or fees reported on the same
30 documents used for the sales and use tax.

31

1 (c) Notwithstanding paragraphs (a) and (b), a Model 1
2 seller under the Streamlined Sales and Use Tax Agreement is
3 not entitled to the collection allowance described in
4 paragraphs (a) and (b).

5 (d)1. In addition to any collection allowance that may
6 be provided under this subsection, the department may provide
7 the monetary allowances required to be provided by the state
8 to certified service providers and voluntary sellers pursuant
9 to Article VI of the Streamlined Sales and Use Tax Agreement,
10 as amended.

11 2. Such monetary allowances must be in the form of
12 collection allowances that certified service providers or
13 voluntary sellers are permitted to retain from the tax revenue
14 collected on remote sales to be remitted to the state pursuant
15 to this chapter.

16 3. For purposes of this paragraph, the term "voluntary
17 seller" or "volunteer seller" means a seller that does not
18 have a requirement to register in this state to collect
19 Florida sales tax pursuant to this chapter, and the term
20 "remote sales" means revenue generated by such a seller for
21 Florida for which the seller does not have a requirement to
22 register to collect Florida sales tax pursuant to this
23 chapter.

24 (2)(a) When any person required hereunder to make any
25 return or to pay any tax or fee imposed by this chapter either
26 fails to timely file such return or fails to pay the tax or
27 fee shown due on the return within the time required
28 hereunder, in addition to all other penalties provided herein
29 and by the laws of this state in respect to such taxes or
30 fees, a specific penalty shall be added to the tax or fee in
31 the amount of 10 percent of either the tax or fee shown on the

1 return that is not timely filed or any tax or fee not paid
2 timely. The penalty may not be less than \$50 for failure to
3 timely file a tax return required by s. 212.11(1) or timely
4 pay the tax or fee shown due on the return except as provided
5 in s. 213.21(10). If a person fails to timely file a return
6 required by s. 212.11(1) and to timely pay the tax or fee
7 shown due on the return, only one penalty of 10 percent, which
8 may not be less than \$50, shall be imposed.

9 (b) When any person required under this section to
10 make a return or to pay a tax or fee imposed by this chapter
11 fails to disclose the tax or fee on the return within the time
12 required, excluding a noncompliant filing event generated by
13 situations covered in paragraph (a), in addition to all other
14 penalties provided in this section and by the laws of this
15 state in respect to such taxes or fees, a specific penalty
16 shall be added to the additional tax or fee owed in the amount
17 of 10 percent of any such unpaid tax or fee not paid timely if
18 the failure is for not more than 30 days, with an additional
19 10 percent of any such unpaid tax or fee for each additional
20 30 days, or fraction thereof, while the failure continues, not
21 to exceed a total penalty of 50 percent, in the aggregate, of
22 any unpaid tax or fee.

23 (c) Any person who knowingly and with a willful intent
24 to evade any tax imposed under this chapter fails to file six
25 consecutive returns as required by law commits a felony of the
26 third degree, punishable as provided in s. 775.082 or s.
27 775.083.

28 (d) Any person who makes a false or fraudulent return
29 with a willful intent to evade payment of any tax or fee
30 imposed under this chapter shall, in addition to the other
31 penalties provided by law, be liable for a specific penalty of

1 100 percent of the tax bill or fee and, upon conviction, for
2 fine and punishment as provided in s. 775.082, s. 775.083, or
3 s. 775.084.

4 1. If the total amount of unreported taxes or fees is
5 less than \$300, the first offense resulting in conviction is a
6 misdemeanor of the second degree, the second offense resulting
7 in conviction is a misdemeanor of the first degree, and the
8 third and all subsequent offenses resulting in conviction is a
9 misdemeanor of the first degree, and the third and all
10 subsequent offenses resulting in conviction are felonies of
11 the third degree.

12 2. If the total amount of unreported taxes or fees is
13 \$300 or more but less than \$20,000, the offense is a felony of
14 the third degree.

15 3. If the total amount of unreported taxes or fees is
16 \$20,000 or more but less than \$100,000, the offense is a
17 felony of the second degree.

18 4. If the total amount of unreported taxes or fees is
19 \$100,000 or more, the offense is a felony of the first degree.

20 (e) When any person, firm, or corporation fails to
21 timely remit the proper estimated payment required under s.
22 212.11, a specific penalty shall be added in an amount equal
23 to 10 percent of any unpaid estimated tax. Beginning with
24 January 1, 1985, returns, the department, upon a showing of
25 reasonable cause, is authorized to waive or compromise
26 penalties imposed by this paragraph. However, other penalties
27 and interest shall be due and payable if the return on which
28 the estimated payment was due was not timely or properly
29 filed.

30 (f) Dealers filing a consolidated return pursuant to
31 s. 212.11(1)(e) shall be subject to the penalty established in

1 paragraph (e) unless the dealer has paid the required
2 estimated tax for his or her consolidated return as a whole
3 without regard to each location. If the dealer fails to pay
4 the required estimated tax for his or her consolidated return
5 as a whole, each filing location shall stand on its own with
6 respect to calculating penalties pursuant to paragraph (e).

7 (3) When any dealer, or other person charged herein,
8 fails to remit the tax, or any portion thereof, on or before
9 the day when such tax is required by law to be paid, there
10 shall be added to the amount due interest at the rate of 1
11 percent per month of the amount due from the date due until
12 paid. Interest on the delinquent tax shall be calculated
13 beginning on the 21st day of the month following the month for
14 which the tax is due, except as otherwise provided in this
15 chapter.

16 (4) All penalties and interest imposed by this chapter
17 shall be payable to and collectible by the department in the
18 same manner as if they were a part of the tax imposed. The
19 department may settle or compromise any such interest or
20 penalties pursuant to s. 213.21.

21 (5)(a) The department is authorized to audit or
22 inspect the records and accounts of dealers defined herein,
23 including audits or inspections of dealers who make mail order
24 sales to the extent permitted by another state, and to correct
25 by credit any overpayment of tax, and, in the event of a
26 deficiency, an assessment shall be made and collected. No
27 administrative finding of fact is necessary prior to the
28 assessment of any tax deficiency.

29 (b) In the event any dealer or other person charged
30 herein fails or refuses to make his or her records available
31 for inspection so that no audit or examination has been made

1 of the books and records of such dealer or person, fails or
2 refuses to register as a dealer, fails to make a report and
3 pay the tax as provided by this chapter, makes a grossly
4 incorrect report or makes a report that is false or
5 fraudulent, then, in such event, it shall be the duty of the
6 department to make an assessment from an estimate based upon
7 the best information then available to it for the taxable
8 period of retail sales of such dealer, the gross proceeds from
9 rentals, the total admissions received, amounts received from
10 leases of tangible personal property by such dealer, or of the
11 cost price of all articles of tangible personal property
12 imported by the dealer for use or consumption or distribution
13 or storage to be used or consumed in this state, or of the
14 sales or cost price of all services the sale or use of which
15 is taxable under this chapter, together with interest, plus
16 penalty, if such have accrued, as the case may be. Then the
17 department shall proceed to collect such taxes, interest, and
18 penalty on the basis of such assessment which shall be
19 considered prima facie correct, and the burden to show the
20 contrary shall rest upon the dealer, seller, owner, or lessor,
21 as the case may be.

22 (6)(a) The department is given the power to prescribe
23 the records to be kept by all persons subject to taxes imposed
24 by this chapter. It shall be the duty of every person required
25 to make a report and pay any tax under this chapter, every
26 person receiving rentals or license fees, and owners of places
27 of admission, to keep and preserve suitable records of the
28 sales, leases, rentals, license fees, admissions, or
29 purchases, as the case may be, taxable under this chapter;
30 such other books of account as may be necessary to determine
31 the amount of the tax due hereunder; and other information as

1 | may be required by the department. It shall be the duty of
2 | every such person so charged with such duty, moreover, to keep
3 | and preserve as long as required by s. 213.35 all invoices and
4 | other records of goods, wares, and merchandise; records of
5 | admissions, leases, license fees and rentals; and records of
6 | all other subjects of taxation under this chapter. All such
7 | books, invoices, and other records shall be open to
8 | examination at all reasonable hours to the department or any
9 | of its duly authorized agents.

10 | (b) For the purpose of this subsection, if a dealer
11 | does not have adequate records of his or her retail sales or
12 | purchases, the department may, upon the basis of a test or
13 | sampling of the dealer's available records or other
14 | information relating to the sales or purchases made by such
15 | dealer for a representative period, determine the proportion
16 | that taxable retail sales bear to total retail sales or the
17 | proportion that taxable purchases bear to total purchases.
18 | This subsection does not affect the duty of the dealer to
19 | collect, or the liability of any consumer to pay, any tax
20 | imposed by or pursuant to this chapter.

21 | (c)1. If the records of a dealer are adequate but
22 | voluminous in nature and substance, the department may sample
23 | such records, except for fixed assets, and project the audit
24 | findings derived therefrom over the entire audit period to
25 | determine the proportion that taxable retail sales bear to
26 | total retail sales or the proportion that taxable purchases
27 | bear to total purchases. In order to conduct such a sample,
28 | the department must first make a good faith effort to reach an
29 | agreement with the dealer, which agreement provides for the
30 | means and methods to be used in the sampling process. In the
31 |

1 event that no agreement is reached, the dealer is entitled to
2 a review by the executive director.

3 2. For the purposes of sampling pursuant to
4 subparagraph 1., the department shall project any deficiencies
5 and overpayments derived therefrom over the entire audit
6 period. In determining the dealer's compliance, the department
7 shall reduce any tax deficiency as derived from the sample by
8 the amount of any overpayment derived from the sample. In the
9 event the department determines from the sample results that
10 the dealer has a net tax overpayment, the department shall
11 provide the findings of this overpayment to the Chief
12 Financial Officer for repayment of funds paid into the State
13 Treasury through error pursuant to s. 215.26.

14 3.a. A taxpayer is entitled, both in connection with
15 an audit and in connection with an application for refund
16 filed independently of any audit, to establish the amount of
17 any refund or deficiency through statistical sampling when the
18 taxpayer's records, other than those regarding fixed assets,
19 are adequate but voluminous. Alternatively, a taxpayer is
20 entitled to establish any refund or deficiency through any
21 other sampling method agreed upon by the taxpayer and the
22 department when the taxpayer's records, other than those
23 regarding fixed assets, are adequate but voluminous. Whether
24 done through statistical sampling or any other sampling method
25 agreed upon by the taxpayer and the department, the completed
26 sample must reflect both overpayments and underpayments of
27 taxes due. The sample shall be conducted through:

28 (I) A taxpayer request to perform the sampling through
29 the certified audit program pursuant to s. 213.285;
30
31

1 (II) Attestation by a certified public accountant as
2 to the adequacy of the sampling method utilized and the
3 results reached using such sampling method; or

4 (III) A sampling method that has been submitted by the
5 taxpayer and approved by the department before a refund claim
6 is submitted. This sub-sub-subparagraph does not prohibit a
7 taxpayer from filing a refund claim prior to approval by the
8 department of the sampling method; however, a refund claim
9 submitted before the sampling method has been approved by the
10 department cannot be a complete refund application pursuant to
11 s. 213.255 until the sampling method has been approved by the
12 department.

13 b. The department shall prescribe by rule the
14 procedures to be followed under each method of sampling. Such
15 procedures shall follow generally accepted auditing procedures
16 for sampling. The rule shall also set forth other criteria
17 regarding the use of sampling, including, but not limited to,
18 training requirements that must be met before a sampling
19 method may be utilized and the steps necessary for the
20 department and the taxpayer to reach agreement on a sampling
21 method submitted by the taxpayer for approval by the
22 department.

23 (7) In the event the dealer has imported tangible
24 personal property and he or she fails to produce an invoice
25 showing the cost price of the articles, as defined in this
26 chapter, which are subject to tax, or the invoice does not
27 reflect the true or actual cost price as defined herein, then
28 the department shall ascertain, in any manner feasible, the
29 true cost price, and assess and collect the tax thereon with
30 interest plus penalties, if such have accrued on the true cost
31 price as assessed by it. The assessment so made shall be

1 | considered prima facie correct, and the duty shall be on the
2 | dealer to show to the contrary.

3 | (8) In the case of the lease or rental of tangible
4 | personal property, or other rentals or license fees as herein
5 | defined and taxed, if the consideration given or reported by
6 | the lessor, person receiving rental or license fee, or dealer
7 | does not, in the judgment of the department, represent the
8 | true or actual consideration, then the department is
9 | authorized to ascertain the same and assess and collect the
10 | tax thereon in the same manner as above provided, with respect
11 | to imported tangible property, together with interest, plus
12 | penalties, if such have accrued.

13 | (9) Taxes imposed by this chapter upon the privilege
14 | of the use, consumption, storage for consumption, or sale of
15 | tangible personal property, admissions, license fees, rentals,
16 | communication services, and upon the sale or use of services
17 | as herein taxed shall be collected upon the basis of an
18 | addition of the tax imposed by this chapter to the total price
19 | of such admissions, license fees, rentals, communication or
20 | other services, or sale price of such article or articles that
21 | are purchased, sold, or leased at any one time by or to a
22 | customer or buyer; the dealer, or person charged herein, is
23 | required to pay a privilege tax in the amount of the tax
24 | imposed by this chapter on the total of his or her gross sales
25 | of tangible personal property, admissions, license fees,
26 | rentals, and communication services or to collect a tax upon
27 | the sale or use of services, and such person or dealer shall
28 | add the tax imposed by this chapter to the price, license fee,
29 | rental, or admissions, and communication or other services and
30 | collect the total sum from the purchaser, admittee, licensee,
31 | lessee, or consumer. In computing the tax due or to be

1 collected as the result of any transaction, the seller may
2 elect to compute the tax due on a transaction on either an
3 item or an invoice basis. The tax rate shall be the sum of the
4 applicable state and local rate, if any, and the tax
5 computation must be carried to the third decimal place.
6 Whenever the third decimal place is greater than four, the tax
7 shall be rounded to the next whole cent. The department shall
8 ~~make available in an electronic format or otherwise the tax~~
9 ~~amounts and the following brackets applicable to all~~
10 ~~transactions taxable at the rate of 6 percent:~~
11 ~~(a) On single sales of less than 10 cents, no tax~~
12 ~~shall be added.~~
13 ~~(b) On single sales in amounts from 10 cents to 16~~
14 ~~cents, both inclusive, 1 cent shall be added for taxes.~~
15 ~~(c) On sales in amounts from 17 cents to 33 cents,~~
16 ~~both inclusive, 2 cents shall be added for taxes.~~
17 ~~(d) On sales in amounts from 34 cents to 50 cents,~~
18 ~~both inclusive, 3 cents shall be added for taxes.~~
19 ~~(e) On sales in amounts from 51 cents to 66 cents,~~
20 ~~both inclusive, 4 cents shall be added for taxes.~~
21 ~~(f) On sales in amounts from 67 cents to 83 cents,~~
22 ~~both inclusive, 5 cents shall be added for taxes.~~
23 ~~(g) On sales in amounts from 84 cents to \$1, both~~
24 ~~inclusive, 6 cents shall be added for taxes.~~
25 ~~(h) On sales in amounts of more than \$1, 6 percent~~
26 ~~shall be charged upon each dollar of price, plus the~~
27 ~~appropriate bracket charge upon any fractional part of a~~
28 ~~dollar.~~
29 ~~(10) In counties which have adopted a discretionary~~
30 ~~sales surtax at the rate of 1 percent, the department shall~~
31 ~~make available in an electronic format or otherwise the tax~~

1 ~~amounts and the following brackets applicable to all taxable~~
2 ~~transactions that would otherwise have been transactions~~
3 ~~taxable at the rate of 6 percent:~~
4 ~~(a) On single sales of less than 10 cents, no tax~~
5 ~~shall be added.~~
6 ~~(b) On single sales in amounts from 10 cents to 14~~
7 ~~cents, both inclusive, 1 cent shall be added for taxes.~~
8 ~~(c) On sales in amounts from 15 cents to 28 cents,~~
9 ~~both inclusive, 2 cents shall be added for taxes.~~
10 ~~(d) On sales in amounts from 29 cents to 42 cents,~~
11 ~~both inclusive, 3 cents shall be added for taxes.~~
12 ~~(e) On sales in amounts from 43 cents to 57 cents,~~
13 ~~both inclusive, 4 cents shall be added for taxes.~~
14 ~~(f) On sales in amounts from 58 cents to 71 cents,~~
15 ~~both inclusive, 5 cents shall be added for taxes.~~
16 ~~(g) On sales in amounts from 72 cents to 85 cents,~~
17 ~~both inclusive, 6 cents shall be added for taxes.~~
18 ~~(h) On sales in amounts from 86 cents to \$1, both~~
19 ~~inclusive, 7 cents shall be added for taxes.~~
20 ~~(i) On sales in amounts from \$1 up to, and including,~~
21 ~~the first \$5,000 in price, 7 percent shall be charged upon~~
22 ~~each dollar of price, plus the appropriate bracket charge upon~~
23 ~~any fractional part of a dollar.~~
24 ~~(j) On sales in amounts of more than \$5,000 in price,~~
25 ~~7 percent shall be added upon the first \$5,000 in price, and 6~~
26 ~~percent shall be added upon each dollar of price in excess of~~
27 ~~the first \$5,000 in price, plus the bracket charges upon any~~
28 ~~fractional part of a dollar as provided for in subsection (9).~~
29 ~~(11) The department shall make available in an~~
30 ~~electronic format or otherwise the tax amounts and brackets~~
31 ~~applicable to all taxable transactions that occur in counties~~

1 ~~that have a surtax at a rate other than 1 percent which~~
2 ~~transactions would otherwise have been transactions taxable at~~
3 ~~the rate of 6 percent. Likewise, the department shall make~~
4 ~~available in an electronic format or otherwise the tax amounts~~
5 ~~and brackets applicable to transactions taxable at 2.5 or 3~~
6 ~~percent pursuant to s. 212.08(3), transactions taxable at 7~~
7 ~~percent pursuant to s. 212.05(1)(c), and on transactions which~~
8 ~~would otherwise have been so taxable in counties which have~~
9 ~~adopted a discretionary sales surtax.~~

10 ~~(10)(12)~~ It is hereby declared to be the legislative
11 intent that, whenever in the construction, administration, or
12 enforcement of this chapter there may be any question
13 respecting a duplication of the tax, the end consumer, or last
14 retail sale, be the sale intended to be taxed and insofar as
15 may be practicable there be no duplication or pyramiding of
16 the tax.

17 ~~(11)(13)~~ In order to aid the administration and
18 enforcement of the provisions of this chapter with respect to
19 the rentals and license fees, each lessor or person granting
20 the use of any hotel, apartment house, roominghouse, tourist
21 or trailer camp, real property, or any interest therein, or
22 any portion thereof, inclusive of owners; property managers;
23 lessors; landlords; hotel, apartment house, and roominghouse
24 operators; and all licensed real estate agents within the
25 state leasing, granting the use of, or renting such property,
26 shall be required to keep a record of each and every such
27 lease, license, or rental transaction which is taxable under
28 this chapter, in such a manner and upon such forms as the
29 department may prescribe, and to report such transaction to
30 the department or its designated agents, and to maintain such
31 records as long as required by s. 213.35, subject to the

1 inspection of the department and its agents. Upon the failure
2 by such owner; property manager; lessor; landlord; hotel,
3 apartment house, roominghouse, tourist or trailer camp
4 operator; or real estate agent to keep and maintain such
5 records and to make such reports upon the forms and in the
6 manner prescribed, such owner; property manager; lessor;
7 landlord; hotel, apartment house, roominghouse, tourist or
8 trailer camp operator; receiver of rent or license fees; or
9 real estate agent is guilty of a misdemeanor of the second
10 degree, punishable as provided in s. 775.082 or s. 775.083,
11 for the first offense; for subsequent offenses, they are each
12 guilty of a misdemeanor of the first degree, punishable as
13 provided in s. 775.082 or s. 775.083. If, however, any
14 subsequent offense involves intentional destruction of such
15 records with an intent to evade payment of or deprive the
16 state of any tax revenues, such subsequent offense shall be a
17 felony of the third degree, punishable as provided in s.
18 775.082 or s. 775.083.

19 ~~(12)~~~~(14)~~ If it is determined upon audit that a dealer
20 has collected and remitted taxes by applying the applicable
21 tax rate to each transaction as described in subsection (9)
22 and rounding the tax due to the nearest whole cent rather than
23 applying the appropriate bracket system provided by law or
24 department rule, the dealer shall not be held liable for
25 additional tax, penalty, and interest resulting from such
26 failure if:

27 (a) The dealer acted in a good faith belief that
28 rounding to the nearest whole cent was the proper method of
29 determining the amount of tax due on each taxable transaction.

30 (b) The dealer timely reported and remitted all taxes
31 collected on each taxable transaction.

1 (c) The dealer agrees in writing to future compliance
2 with the laws and rules concerning brackets applicable to the
3 dealer's transactions.

4 Section 13. Subsection (3) of section 212.17, Florida
5 Statutes, is amended to read:

6 212.17 Credits for returned goods, rentals, or
7 admissions; goods acquired for dealer's own use and
8 subsequently resold; additional powers of department.--

9 (3) A dealer who has paid the tax imposed by this
10 chapter on tangible personal property or services may take a
11 credit or obtain a refund for any tax paid by the dealer on
12 the unpaid balance due on worthless accounts within 12 months
13 following the month in which the bad debt has been charged off
14 for federal income tax purposes. A dealer who has paid the tax
15 imposed by this chapter on tangible personal property or
16 services and who is not required to file federal income tax
17 returns may take a credit or obtain a refund for any tax paid
18 by the dealer on the unpaid balance due on worthless accounts
19 within 12 months following the month in which the bad debt is
20 written off as uncollectible in the dealer's books and records
21 and would be eligible for a bad-debt deduction for federal
22 income tax purposes if the dealer was required to file a
23 federal income tax return.

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

27 (b) Notwithstanding paragraph (a), the amount
28 calculated pursuant to 26 U.S.C. s. 166 shall be adjusted to
29 exclude financing charges or interest; sales or use taxes
30 charged on the purchase price; uncollectible amounts on
31 property that remains in the possession of the seller until

1 the full purchase price is paid; expenses incurred in
2 attempting to collect any debt; and repossessed property.

3 (c) When the amount of bad debt exceeds the amount of
4 taxable sales for the period during which the bad debt is
5 written off, a refund claim must be filed, notwithstanding s.
6 215.26(2), within 3 years after the due date of the return on
7 which the bad debt could first be claimed.

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

13 (e) If filing responsibilities have been assumed by a
14 certified service provider, the certified service provider
15 shall claim, on behalf of the seller, any bad-debt allowance
16 provided by this section. The certified service provider must
17 credit or refund to the seller the full amount of any bad-debt
18 allowance or refund received.

19 (f) For the purposes of reporting a payment received
20 on a previously claimed bad debt, any payments made on a debt
21 or account are applied first proportionally to the taxable
22 price of the property or service and the sales tax thereon,
23 and secondly to interest, service charges, and any other
24 charges.

25 (g) In situations in which the books and records of
26 the party claiming the bad-debt allowance support an
27 allocation of the bad debts among states that are members of
28 the Streamlined Sales and Use Tax Agreement, the allocation is
29 permitted among those states.

30 Section 14. Paragraph (a) of subsection (3) of section
31 212.18, Florida Statutes, is amended to read:

1 212.18 Administration of law; registration of dealers;
2 rules.--

3 (3)(a) Every person desiring to engage in or conduct
4 business in this state as a dealer, as defined in this
5 chapter, or to lease, rent, or let or grant licenses in living
6 quarters or sleeping or housekeeping accommodations in hotels,
7 apartment houses, roominghouses, or tourist or trailer camps
8 that are subject to tax under s. 212.03, or to lease, rent, or
9 let or grant licenses in real property, as defined in this
10 chapter, and every person who sells or receives anything of
11 value by way of admissions, must file with the department an
12 application for a certificate of registration for each place
13 of business, showing the names of the persons who have
14 interests in such business and their residences, the address
15 of the business, and such other data as the department may
16 reasonably require. However, owners and operators of vending
17 machines or newspaper rack machines are required to obtain
18 only one certificate of registration for each county in which
19 such machines are located. The department, by rule, may
20 authorize a dealer that uses independent sellers to sell its
21 merchandise to remit tax on the retail sales price charged to
22 the ultimate consumer in lieu of having the independent seller
23 register as a dealer and remit the tax. The department may
24 appoint the county tax collector as the department's agent to
25 accept applications for registrations. The application must be
26 made to the department before the person, firm, copartnership,
27 or corporation may engage in such business, and it must be
28 accompanied by a registration fee of \$5. However, a
29 registration fee is not required to accompany an application
30 to engage in or conduct business to make mail order sales. The
31 department may waive the registration fee for applications

1 submitted through the department's Internet registration
2 process or central electronic registration system provided by
3 member states of the Streamlined Sales and Use Tax Agreement.

4 Section 15. Section 213.052, Florida Statutes, is
5 created to read:

6 213.052 Notice of state rate changes.--

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

12 (2) Failure of a seller to receive notice does not
13 relieve the seller of its obligation to collect sales or use
14 tax.

15 Section 16. Section 213.0521, Florida Statutes, is
16 created to read:

17 213.0521 Effective date of state rate changes.--The
18 effective date for services covering a period starting before
19 and ending after the statutory effective date is as follows:

20 (1) For a rate increase, the new rate applies to the
21 first billing period starting on or after the effective date.

22 (2) For a rate decrease, the new rate applies to bills
23 rendered on or after the effective date.

24 Section 17. Subsection (11) is added to section
25 213.21, Florida Statutes, to read:

26 213.21 Informal conferences; compromises.--

27 (11) Amnesty shall be provided for uncollected or
28 unpaid sales or use tax to a seller who registers to pay or to
29 collect and remit applicable sales or use tax in accordance
30 with the terms of the Streamlined Sales and Use Tax Agreement
31 authorized under s. 213.256, if the seller was not registered

1 with the Department of Revenue in the 12-month period
2 preceding the effective date of participation in the agreement
3 by this state.

4 (a) The amnesty precludes assessment for uncollected
5 or unpaid sales or use tax, together with penalty or interest
6 for sales made during the period the seller was not registered
7 with the Department of Revenue, if registration occurs within
8 12 months after the effective date of this state's
9 participation in the agreement.

10 (b) The amnesty is not available to a seller with
11 respect to any matter for which the seller received notice of
12 the commencement of an audit if the audit is not yet finally
13 resolved, including any related administrative and judicial
14 processes.

15 (c) The amnesty is not available for sales or use
16 taxes already paid or remitted to the state or to taxes
17 collected by the seller.

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

23 (e) The amnesty is applicable only to sales or use
24 taxes due from a seller in its capacity as a seller and not to
25 sales or use taxes due from a seller in its capacity as a
26 buyer.

27 Section 18. Subsections (1) and (7) of section
28 213.256, Florida Statutes, are amended, present subsections
29 (8), (9), and (10) of that section are renumbered as
30 subsections (11), (12), and (13), respectively, and new
31

1 subsections (8), (9), (10), and (14) are added to that
2 section, to read:

3 213.256 Simplified Sales and Use Tax Administration
4 Act.--

5 (1) As used in this section and s. 213.2567 ~~this~~
6 ~~section~~, the term:

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

8 (b) "Agent" means a person appointed by a seller to
9 represent the seller before the member states.

10 (c)(b) "Agreement" means the Streamlined Sales and Use
11 Tax Agreement as amended and adopted on November 12, 2002, and
12 as amended on November 19, 2003, and November 16, 2004 ~~January~~
13 ~~27, 2001~~, by the Executive Committee of the National
14 Conference of State Legislatures.

15 (d)(e) "Certified automated system" means software
16 certified jointly by the states that are signatories to the
17 agreement to calculate the tax imposed by each jurisdiction on
18 a transaction, determine the amount of tax to remit to the
19 appropriate state, and maintain a record of the transaction.

20 (e)(d) "Certified service provider" means an agent
21 certified under jointly by the states that are signatories to
22 the agreement to perform all of the seller's sales tax
23 functions other than the seller's obligation to remit tax on
24 its own purchases.

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

29 (g) "Model 2 seller" means a seller that has selected
30 a certified automated system to perform part of its sales and
31

1 use tax functions, but retains responsibility for remitting
2 the tax.

3 (h) "Model 3 seller" means a seller that has sales in
4 at least five member states, has total annual sales revenue of
5 at least \$500 million, has a proprietary system that
6 calculates the amount of tax due each jurisdiction, and has
7 entered into a performance agreement with the member states
8 which establishes a tax performance standard for the seller.
9 As used in this paragraph, a seller includes an affiliated
10 group of sellers using the same proprietary system.

11 (i)(e) "Person" means an individual, trust, estate,
12 fiduciary, partnership, limited liability company, limited
13 liability partnership, corporation, or any other legal entity.

14 (j) "Registered under this agreement" means
15 registration by a seller with the member states under the
16 central registration system.

17 (k)(f) "Sales tax" means the tax levied under chapter
18 212.

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

21 (m)(h) "State" means any state of the United States
22 and the District of Columbia.

23 (n)(i) "Use tax" means the tax levied under chapter
24 212.

25 (7)(a) The agreement authorized by this act binds and
26 inures only to the benefit of this state and the other member
27 states. No person, other than a member state, is an intended
28 beneficiary of the agreement. Any benefit to a person other
29 than a state is established by the laws of this state and of
30 other member states and not by the terms of the agreement.

31

1 (b) Consistent with paragraph (a), no person has any
2 cause of action or defense under the agreement or by virtue of
3 this state's approval of the agreement. No person may
4 challenge, in any action brought under any provision of law,
5 any action or inaction by any department, agency, or other
6 instrumentality of this state, or of any political subdivision
7 of this state, on the ground that the action or inaction is
8 inconsistent with the agreement.

9 (c) No law of this state, or the application thereof,
10 may be declared invalid as to any person or circumstance on
11 the ground that the provision or application is inconsistent
12 with the agreement.

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

16 (8) Authority to administer the agreement rests with
17 the governing board comprised of representatives of each
18 member state. This state shall be represented by three
19 delegates, one appointed by the President of the Senate, one
20 appointed by the Speaker of the House of Representatives, and
21 the executive director of the department or his or her
22 designee.

23 (9) With respect to each member state, the agreement
24 continues in full force and effect until a member state
25 withdraws its membership or is expelled. A member state's
26 withdrawal or expulsion is not effective until the first day
27 of a calendar quarter after a minimum of 60 days' notice. A
28 member state shall submit notice of its intent to withdraw
29 from the agreement to the governing board and the chief
30 executive of each member state's tax agency. The member state
31 shall provide public notice of its intent to withdraw and post

1 its notice of intent to withdraw from the agreement to the
2 governing board and the chief executive of each member state's
3 tax agency. The member state shall provide public notice of
4 its intent to withdraw and post its notice of intent to
5 withdraw on its Internet website. The withdrawal by or
6 expulsion of a state does not affect the validity of the
7 agreement among other member states. A state that withdraws or
8 is expelled from the agreement remains liable for its share of
9 any financial or contractual obligations that were incurred by
10 the governing board before the effective date of that state's
11 withdrawal or expulsion. The appropriate share of any
12 financial or contractual obligation shall be determined by the
13 state and the governing board in good faith based on the
14 relative benefits received and burdens incurred by the
15 parties.

16 (10) Sanctions may be imposed upon a member state that
17 is found to be out of compliance with the agreement, which
18 include expulsion or other penalties as determined by the
19 governing board.

20 (14) Each member state shall annually recertify that
21 it is in compliance with the agreement. Each member state
22 shall make a recertification to the governing board on or
23 before August 1 of each year after the year of the state's
24 entry. In its annual recertification, the state shall include
25 any changes in its statutes, rules, or regulations or other
26 authorities that could affect its compliance with the terms of
27 the agreement. The recertification shall be signed by the
28 executive director of the department. A member state that
29 cannot recertify its compliance with the agreement shall
30 submit a statement of noncompliance to the governing board.
31 The statement of noncompliance must include any action or

1 decision that takes the state out of compliance with the
2 agreement and the steps it will take to return to compliance.
3 Each member state shall post its annual recertification or
4 statement of noncompliance on that state's Internet website.

5 Section 19. Section 213.2567, Florida Statutes, is
6 created to read:

7 213.2567 Simplified Sales and Use Tax registration,
8 certification, liability, and audit.--

9 (1) A seller that registers under the agreement agrees
10 to collect and remit sales and use taxes for all taxable sales
11 into the member states, including member states joining after
12 the seller's registration. Withdrawal or revocation of a
13 member state does not relieve a seller of its responsibility
14 to remit taxes previously or subsequently collected on behalf
15 of the state.

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

19 (b) A seller may be registered by an agent. Such an
20 appointment must be in writing and submitted to a member
21 state.

22 (2)(a) A certified service provider is the agent of a
23 model 1 seller with whom the certified service provider has
24 contracted for the collection and remittance of sales and use
25 taxes. As the model 1 seller's agent, the certified service
26 provider is liable for sales and use tax due each member state
27 on all sales transactions it processes for the model 1 seller,
28 except as set out in paragraph (b).

29 (b) A model 1 seller is not liable to the state for
30 sales or use tax due on transactions processed by the
31 certified service provider unless the model 1 seller has

1 misrepresented the type of items it sells or has committed
2 fraud. In the absence of probable cause to believe that the
3 model 1 seller has committed fraud or made a material
4 misrepresentation, the model 1 seller is not subject to audit
5 on the transactions processed by the certified service
6 provider. A model 1 seller is subject to audit for
7 transactions that have not been processed by the certified
8 service provider. The member states acting jointly may perform
9 a system check of the model 1 seller and review the model 1
10 seller's procedures to determine if the certified service
11 provider's system is functioning properly and to determine the
12 extent to which the model 1 seller's transactions are being
13 processed by the certified service provider.

14 (3) A person that provides a certified automated
15 system is responsible for the proper functioning of that
16 system and is liable to the state for underpayments of tax
17 attributable to errors in the functioning of the certified
18 automated system. A model 2 seller that uses a certified
19 automated system remains responsible and is liable to the
20 state for reporting and remitting tax.

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

23 (5) The governing board may certify a person as a
24 certified service provider if the person meets all of the
25 following requirements:

26 (a) Uses a certified automated system;

27 (b) Integrates its certified automated system with the
28 system of a seller for whom the person collects tax so that
29 the tax due on a sale is determined at the time of the sale;

30 (c) Agrees to remit the taxes it collects at the time
31 and in the manner specified by the member states;

1 (d) Agrees to file returns on behalf of the sellers
2 for whom it collects tax;

3 (e) Agrees to protect the privacy of tax information
4 it obtains in accordance with s. 213.053; and

5 (f) Enters into a contract with the member states and
6 agrees to comply with the terms of the contract.

7 (6) The governing board may certify a software program
8 as a certified automated system if the governing board
9 determines that the program meets all of the following
10 requirements:

11 (a) Determines the applicable state and local sales
12 and use tax rate for a transaction in accordance with s.
13 212.06(3) and (4);

14 (b) Determines whether or not an item is exempt from
15 tax;

16 (c) Determines the amount of tax to be remitted for
17 each taxpayer for a reporting period;

18 (d) Can generate reports and returns as required by
19 the governing board; and

20 (e) Meets any other requirement set by the governing
21 board.

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

27 (8) Disclosure of information necessary under this
28 section must be made according to a written agreement between
29 the executive director of the department or his or her
30 designee and the certified service provider. The certified
31 service provider is bound by the same requirements of

1 confidentiality as the department. Breach of confidentiality
2 is a misdemeanor of the first degree, punishable as provided
3 in s. 775.082 or s. 775.083.

4 Section 20. Paragraph (c) of subsection (2) and
5 paragraph (c) of subsection (3) of section 212.055, Florida
6 Statutes, are amended to read:

7 212.055 Discretionary sales surtaxes; legislative
8 intent; authorization and use of proceeds.--It is the
9 legislative intent that any authorization for imposition of a
10 discretionary sales surtax shall be published in the Florida
11 Statutes as a subsection of this section, irrespective of the
12 duration of the levy. Each enactment shall specify the types
13 of counties authorized to levy; the rate or rates which may be
14 imposed; the maximum length of time the surtax may be imposed,
15 if any; the procedure which must be followed to secure voter
16 approval, if required; the purpose for which the proceeds may
17 be expended; and such other requirements as the Legislature
18 may provide. Taxable transactions and administrative
19 procedures shall be as provided in s. 212.054.

20 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

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

25 1. An interlocal agreement between the county
26 governing authority and the governing bodies of the
27 municipalities representing a majority of the county's
28 municipal population, which agreement may include a school
29 district with the consent of the county governing authority
30 and the governing bodies of the municipalities representing a
31 majority of the county's municipal population; or

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

3
4 Any change in the distribution formula must take effect on the
5 first day of any month that begins at least 60 days after
6 written notification of that change has been made to the
7 department.

8 (3) SMALL COUNTY SURTAX.--

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

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

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

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

27 Section 21. Subsection (6) of section 212.0596,
28 Florida Statutes, is repealed.

29 Section 22. It is the intent of the Legislature to
30 urge the United States Congress to consider adequate
31 protections for small businesses engaging in both offline and

1 online transactions from added costs, administrative burdens,
2 and requirements imposed on intermediaries relating to the
3 collection and remittance of sales and use tax.

4 Section 23. Emergency rules.--The executive director
5 of the Department of Revenue is authorized, and all conditions
6 are deemed met, to adopt emergency rules, under sections
7 120.536(1) and 120.54(4), Florida Statutes, to implement this
8 act. Notwithstanding any other law, the emergency rules shall
9 remain effective for 6 months after the date of adoption and
10 may be renewed during the pendency of procedures to adopt
11 rules addressing the subject of the emergency rules.

12 Section 24. This act shall take effect January 1,
13 2006.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 56

4 The following changes were made to SB 56:

- 5
- 6 1) Provides definitions for "Model 1 seller," "Model 2
seller," and "Model 3 seller."
- 7 2) Expands the definition of "delivery charges" to include
8 shipments that include exempt property and taxable
property.
- 9 3) Provides that the prepaid calling service may be sourced
10 at the customer's mobile telephone number, in addition to
other sourcing options.
- 11 4) Removes the \$5,000 local option surtax cap for all retail
12 sales of tangible personal property, except for the sale
of motor vehicles, aircraft, boats, modular homes,
13 manufactured homes or mobiles homes. The Agreement does
not allow local option caps except for the larger items
14 of tangible personal property listed in the amendment.
- 15 (5) Provides a sales tax exemption for farm equipment. The
Agreement does not allow differential tax rates. Under
16 current law, farm equipment is taxed at the rate of 2.5
percent.
- 17 (6) Provides language that conforms to the Agreement on the
18 dealer collection allowance.
- 19 (7) Authorizes the Department of Revenue to waive the \$5
20 dealer registration fee for applications submitted
through the central electronic registration system
provided by member states of the Streamlined Sales and
21 Use Tax Agreement.
- 22 (8) The definition of "Agreement" is amended to include the
Agreement as amended on November 19, 2003 and November
23 16, 2004.
- 24 (9) Deletes legislative intent language that is no longer
valid and adds new legislative intent language urging the
25 United State Congress to consider adequate protections
for small businesses engaging in both on-line and
26 off-line transactions from added costs and administrative
burdens relating to the collection and remittance of
sales and use tax.
- 27 (10) Since Florida can no longer use our bracket system for
28 calculating tax, the Committee Substitute deletes
references to brackets and adopts the rounding provisions
29 of the Agreement.
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- 31