

Bill No. CS for SB 2482

Barcode 463796

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

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Senator Haridopolos moved the following amendment:

**Senate Amendment (with directory and title amendments)**

On page 54, between lines 3 and 4,

insert:

(6)

(c)1. If the records of a dealer are adequate but voluminous in nature and substance, the department may sample such records, ~~except for fixed assets~~, and project the audit findings derived therefrom over the entire audit period to determine the proportion that taxable retail sales bear to total retail sales or the proportion that taxable purchases bear to total purchases. In order to conduct such a sample, the department must first make a good faith effort to reach an agreement with the dealer, which agreement provides for the means and methods to be used in the sampling process. In the event that no agreement is reached, the dealer is entitled to a review by the executive director. In the case of fixed assets, a dealer may agree in writing with the department for adequate but voluminous records to be statistically sampled.

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1 Such an agreement shall provide for the methodology to be used  
 2 in the statistical sampling process. The audit findings  
 3 derived therefrom shall be projected over the period  
 4 represented by the sample in order to determine the proportion  
 5 that taxable purchases bear to total purchases. Once an  
 6 agreement has been signed, it is final and conclusive with  
 7 respect to the method of sampling fixed assets, and the  
 8 department may not conduct a detailed audit of fixed assets  
 9 and the taxpayer may not request a detailed audit after the  
 10 agreement is reached.

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

22           3.a. A taxpayer is entitled, both in connection with  
 23 an audit and in connection with an application for refund  
 24 filed independently of any audit, to establish the amount of  
 25 any refund or deficiency through statistical sampling when the  
 26 taxpayer's records, ~~other than those regarding fixed assets,~~  
 27 are adequate but voluminous. In the case of fixed assets, a  
 28 dealer may agree in writing with the department for adequate  
 29 but voluminous records to be statistically sampled. Such an  
 30 agreement shall provide for the methodology to be used in the  
 31 statistical sampling process. The audit findings derived

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1 therefrom shall be projected over the period represented by  
 2 the sample in order to determine the proportion that taxable  
 3 purchases bear to total purchases. Once an agreement has been  
 4 signed, it is final and conclusive with respect to the method  
 5 of sampling fixed assets, and the department may not conduct a  
 6 detailed audit of fixed assets and the taxpayer may not  
 7 request a detailed audit after the agreement is reached.

8         b. Alternatively, a taxpayer is entitled to establish  
 9 any refund or deficiency through any other sampling method  
 10 agreed upon by the taxpayer and the department when the  
 11 taxpayer's records, other than those regarding fixed assets,  
 12 are adequate but voluminous. Whether done through statistical  
 13 sampling or any other sampling method agreed upon by the  
 14 taxpayer and the department, the completed sample must reflect  
 15 both overpayments and underpayments of taxes due. The sample  
 16 shall be conducted through:

17             (I) A taxpayer request to perform the sampling through  
 18 the certified audit program pursuant to s. 213.285;

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

22             (III) A sampling method that has been submitted by the  
 23 taxpayer and approved by the department before a refund claim  
 24 is submitted. This sub-sub-subparagraph does not prohibit a  
 25 taxpayer from filing a refund claim prior to approval by the  
 26 department of the sampling method; however, a refund claim  
 27 submitted before the sampling method has been approved by the  
 28 department cannot be a complete refund application pursuant to  
 29 s. 213.255 until the sampling method has been approved by the  
 30 department.

31         ~~c.b.~~ The department shall prescribe by rule the

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1 procedures to be followed under each method of sampling. Such  
 2 procedures shall follow generally accepted auditing procedures  
 3 for sampling. The rule shall also set forth other criteria  
 4 regarding the use of sampling, including, but not limited to,  
 5 training requirements that must be met before a sampling  
 6 method may be utilized and the steps necessary for the  
 7 department and the taxpayer to reach agreement on a sampling  
 8 method submitted by the taxpayer for approval by the  
 9 department.

10           Section 27. The amendments to s. 212.12(6)(c), Florida  
 11 Statutes, shall take effect on July 1, 2007. It is the intent  
 12 of the Legislature that the amendments to s. 212.12(6)(c),  
 13 Florida Statutes, apply to all pending sales and use tax  
 14 audits or other actions or inquiries, excluding those  
 15 currently under protest or in litigation. The amendments to s.  
 16 212.12(6)(c), Florida Statutes, do not create any right to  
 17 refund for taxes previously assessed and paid in regard to  
 18 audits or other actions or inquiries that are no longer  
 19 pending.

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21 (Redesignate subsequent sections.)

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24 ===== DIRECTORY CLAUSE AMENDMENT =====

25 And the directory clause is amended as follows:

26           On page 52, lines 15 and 16, delete those lines

27  
28 and insert:

29           Section 26. Paragraph (d) of subsection (2) and  
 30 paragraph (c) of subsection (6) of section 212.12, Florida  
 31 Statutes, are amended to read:

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

2 And the title is amended as follows:

3            On page 4, line 14, after the semicolon,

4

5 insert:

6            providing for voluntary sampling of fixed  
7            assets; providing for application; providing  
8            legislative intent;

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