

By Senator Haridopolos

26-1268B-07

1 A bill to be entitled
2 An act relating to tax administration; amending
3 s. 45.032, F.S.; including a tax warrant as a
4 subordinate lienholder for purposes of the
5 disbursement of surplus funds after a judicial
6 sale; amending ss. 125.0104 and 125.0108, F.S.;
7 providing for the grant of a license to use
8 living quarters or accommodations to be subject
9 to the tourist development tax and the tourist
10 impact tax; amending s. 198.13, F.S.; exempting
11 certain representatives of an estate from the
12 requirement to file certain returns if there is
13 no tax on estates of decedents or no tax on
14 generation-skipping transfers; amending ss.
15 202.18 and 202.28, F.S.; providing requirements
16 for the Department of Revenue with respect to
17 distributing proceeds of the communications
18 services tax and allocating certain penalties;
19 amending s. 202.30, F.S.; reducing the
20 threshold tax amount over a specified period
21 under which a dealer of communications services
22 is required to remit taxes electronically;
23 amending ss. 206.02 and 206.021, F.S.;
24 authorizing the Department of Revenue to issue
25 temporary fuel licenses during a declared state
26 of emergency or a declared disaster; amending
27 ss. 206.41 and 206.87, F.S.; revising the date
28 of the annual adjustment of the fuel tax;
29 amending s. 206.9943, F.S.; authorizing the
30 department to issue a temporary pollutant tax
31 license during a declared state of emergency or

1 a declared disaster; amending s. 211.3103,
2 F.S.; providing for the annual producer price
3 index to apply to the tax on the severance of
4 phosphate rock; amending s. 212.02, F.S.;
5 adding leases of certain aircraft to the
6 definition of the term "qualified aircraft";
7 amending s. 212.0305, F.S.; providing for the
8 grant of a license to use living quarters or
9 accommodations to be subject to the convention
10 development tax on transient rentals; amending
11 ss. 212.05 and 212.0515, F.S.; authorizing the
12 department to adopt additional divisors for
13 calculating the sales tax on vending machines
14 when a county imposes a sales surtax rate that
15 is not listed in statute; amending s. 212.0506,
16 F.S.; clarifying that the definition of the
17 term "service warranty" excludes certain
18 contracts; amending s. 212.08, F.S., relating
19 to exemptions from the sales tax; deleting
20 provisions exempting certain building materials
21 and business property from application of
22 certain requirements for refunds; repealing s.
23 212.095, F.S., relating to a sales tax refund
24 permit for certain organizations; amending s.
25 212.10, F.S.; authorizing the Department of
26 Revenue to transfer tax liability to certain
27 entities upon the transfer of a dealer's assets
28 or liabilities; authorizing the department to
29 require that the liability be paid or a bond be
30 posted; providing that transfer of the
31 liability does not extinguish the liability of

1 the seller or former owner; providing a
2 penalty; amending s. 212.12, F.S.; providing
3 that a person is liable for failure to register
4 a business or collect the required taxes;
5 providing penalties; authorizing the department
6 to statistically sample records regarding
7 certain fixed or capital assets; providing
8 legislative intent with respect to application
9 of such provisions to pending tax audits or
10 other actions or inquiries; amending s. 212.14,
11 F.S.; providing for the department to require a
12 bond or other security as a condition of
13 obtaining a tax certificate or registration at
14 its discretion; amending s. 212.18, F.S.,
15 relating to dealer registrations; deleting
16 obsolete provisions governing informal
17 conferences; creating s. 213.0352, F.S.;
18 authorizing the Department of Revenue to
19 develop procedures to enter into agreements
20 with certain financial institutions to develop
21 and operate a data match system for collecting
22 tax warrants; amending s. 213.053, F.S.;
23 authorizing the department to provide
24 information to certain financial institutions
25 and to the child support enforcement program;
26 amending s. 213.21, F.S.; providing for a
27 taxpayer's liability for a service fee to be
28 waived due to unintentional error; creating s.
29 213.32, F.S.; providing legislative intent with
30 respect to the integration of the enforcement
31 authority of the Department of Revenue;

1 authorizing the department to issue warrants
2 and file judgment lien certificates evidencing
3 a taxpayer's total liability for all taxes,
4 fees, or surcharges; providing procedures for
5 the department in revoking a certificate of
6 registration, permit, or license; authorizing
7 the department to place an administrative
8 freeze on the assets of a delinquent taxpayer;
9 providing definitions; providing procedures and
10 requiring prior notice; specifying duties of a
11 custodian of assets that are subject to an
12 administrative freeze; providing for a notice
13 of release following satisfaction of the
14 liability for taxes, fees, or surcharges;
15 authorizing the department to require cash
16 deposits, surety bonds, or irrevocable letters
17 of credit as a condition to a taxpayer
18 obtaining, renewing, or retaining a certificate
19 of registration, permit, or license; providing
20 definitions; prohibiting the amount of required
21 security from exceeding the taxpayer's
22 estimated liability; requiring that a taxpayer
23 be given prior notice; providing for the
24 department to require additional security under
25 certain circumstances; providing for a release
26 or refund of security; authorizing the
27 department to request that the Department of
28 Legal Affairs obtain an injunction to prevent
29 the taxpayer from engaging in business activity
30 under certain circumstances; authorizing the
31 department to sell any security to recover

1 taxes, fees, or surcharges that are due;
2 providing for garnishment proceedings;
3 authorizing the department to transfer
4 liabilities to responsible corporate officers;
5 providing for jeopardy assessments; authorizing
6 the department to adopt rules; amending s.
7 213.755, F.S.; reducing the threshold tax
8 amount over a specified period under which a
9 taxpayer may be required to remit taxes
10 electronically; amending s. 220.21, F.S.;
11 requiring a taxpayer that is required to file
12 its federal income tax return electronically to
13 also file its state corporate income tax
14 electronically; providing a penalty for failure
15 to do so; authorizing the department to adopt
16 rules; providing for applicability; creating s.
17 220.802, F.S.; authorizing the Department of
18 Revenue to impose accuracy-related penalties
19 for negligence or disregard of statutes or
20 rules or for a substantial understatement of
21 tax; defining terms; prohibiting the imposition
22 of a penalty if the underpayment is based on a
23 ruling provided to the taxpayer by the
24 department; providing for the penalty to apply
25 to the tax year in which the loss, deduction,
26 or credit is carried; authorizing the
27 department to adopt rules; providing for
28 applicability; amending s. 220.803, F.S.,
29 relating to the determination of certain tax
30 deficiencies; deleting provisions imposing a
31 penalty for tax deficiencies due to negligence

1 or intentional disregard of rules and
2 regulations; amending s. 443.1216, F.S.;
3 authorizing the Agency for Workforce Innovation
4 and the agency that collects unemployment taxes
5 to adopt rules; amending s. 443.1316, F.S.;
6 providing for certain provisions of ch. 213,
7 F.S., relating to taxpayers rights, to apply to
8 the collection of unemployment taxes; deleting
9 a limitation on the amount the department may
10 charge for the costs of collection services;
11 amending s. 443.141, F.S.; authorizing the
12 department to impose a penalty for erroneous,
13 incomplete, or insufficient reports with
14 respect to unemployment contributions and
15 reimbursements; requiring that the penalties be
16 paid into the Special Employment Security
17 Administration Trust Fund; amending s. 443.163,
18 F.S.; revising the threshold number of
19 employees for which an employer must report and
20 remit contributions and reimbursements
21 electronically; amending s. 624.511, F.S.;
22 authorizing the Department of Revenue to refund
23 an overpayment of insurance premium tax under
24 certain circumstances; amending s. 832.062,
25 F.S.; providing for prima facie evidence of
26 intent to defraud or knowledge of insufficient
27 funds with respect to an electronic transfer to
28 the Department of Revenue which is not honored
29 or refused; providing requirements for notice;
30 providing for the department to recover court
31 costs and attorney's fees; providing procedures

1 for establishing prima facie evidence;
2 providing effective dates.

3
4 Be It Enacted by the Legislature of the State of Florida:

5
6 Section 1. Paragraph (b) of subsection (1) and
7 paragraph (a) of subsection (3) of section 45.032, Florida
8 Statutes, are amended to read:

9 45.032 Disbursement of surplus funds after judicial
10 sale.--

11 (1) For purposes of ss. 45.031-45.035, the term:

12 (b) "Subordinate lienholder" means the holder of a
13 subordinate lien shown on the face of the pleadings as an
14 encumbrance on the property. The lien held by the party filing
15 the foreclosure lawsuit is not a subordinate lien. A
16 subordinate lienholder includes, but is not limited to, a
17 subordinate mortgage, judgment, tax warrant, assessment lien,
18 or construction lien. However, the holder of a subordinate
19 lien shall not be deemed a subordinate lienholder if the
20 holder was paid in full from the proceeds of the sale.

21 (3) During the 60 days after the clerk issues a
22 certificate of disbursements, the clerk shall hold the surplus
23 pending a court order.

24 (a) If the owner of record claims the surplus during
25 the 60-day period and there is no subordinate lienholder, the
26 court shall order the clerk to deduct any applicable service
27 charges from the surplus and pay the remainder to the owner of
28 record. The clerk may establish a reasonable requirement that
29 the owner of record prove his or her identity before receiving
30 the disbursement. The clerk may assist an owner of record in

31

1 making a claim. An owner of record may use the following form
2 in making a claim:

3

4 (Caption of Action)

5

6

OWNER'S CLAIM FOR

7

MORTGAGE FORECLOSURE SURPLUS

8

9

State of

10

County of

11

Under penalty of perjury, I (we) hereby certify that:

12

1. I was (we were) the owner of the following

13

described real property in County, Florida, prior to the

14

foreclosure sale and as of the date of the filing of the lis

15

pendens:

16

17

...(Legal description of real property)...

18

19

2. I (we) do not owe any money on any mortgage on the

20

property that was foreclosed other than the one that was paid

21

off by the foreclosure.

22

3. I (we) do not owe any money that is the subject of

23

an unpaid judgment, tax warrant, condominium lien, cooperative

24

lien, or homeowners' association.

25

4. I am (we are) not currently in bankruptcy.

26

5. I (we) have not sold or assigned my (our) right to

27

the mortgage surplus.

28

6. My (our) new address is:

29

7. If there is more than one owner entitled to the

30

surplus, we have agreed that the surplus should be paid

31

jointly, or to:, at the following address:

1 8. I (WE) UNDERSTAND THAT I (WE) AM (ARE) NOT REQUIRED
2 TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND I (WE) DO NOT
3 HAVE TO ASSIGN MY (OUR) RIGHTS TO ANYONE ELSE IN ORDER TO
4 CLAIM ANY MONEY TO WHICH I (WE) MAY BE ENTITLED.

5 9. I (WE) UNDERSTAND THAT THIS STATEMENT IS GIVEN
6 UNDER OATH, AND IF ANY STATEMENTS ARE UNTRUE THAT I (WE) MAY
7 BE PROSECUTED CRIMINALLY FOR PERJURY.

8

9 ...(Signatures)...

10

11 Sworn to (or affirmed) and subscribed before me this
12 day of, ...(year)...., by ...(name of person making
13 statement)....

14

 ...(Signature of Notary Public - State of Florida)...

15

 ...(Print, Type, or Stamp Commissioned Name of Notary

16

Public)...

17

18 Personally Known OR Produced Identification

19

Type of Identification Produced.....

20

21 Section 2. Paragraph (a) of subsection (3) of section
22 125.0104, Florida Statutes, is amended to read:

23

 125.0104 Tourist development tax; procedure for
24 levying; authorized uses; referendum; enforcement.--

25

 (3) TAXABLE PRIVILEGES; EXEMPTIONS; LEVY; RATE.--

26

 (a) It is declared to be the intent of the Legislature
27 that every person who rents, leases, ~~or~~ lets, or grants a
28 license to use for consideration any living quarters or
29 accommodations in any hotel, apartment hotel, motel, resort
30 motel, apartment, apartment motel, roominghouse, mobile home
31 park, recreational vehicle park, or condominium for a term of

1 | 6 months or less is exercising a privilege which is subject to
2 | taxation under this section, unless such person rents, leases,
3 | ~~or lets, or grants a license to use~~ for consideration any
4 | living quarters or accommodations which are exempt according
5 | to the provisions of chapter 212.

6 | Section 3. Paragraph (b) of subsection (1) of section
7 | 125.0108, Florida Statutes, is amended to read:

8 | 125.0108 Areas of critical state concern; tourist
9 | impact tax.--

10 | (1)

11 | (b) It is declared to be the intent of the Legislature
12 | that every person who rents, leases, ~~or lets, or grants a~~
13 | license to use for consideration any living quarters or
14 | accommodations in any hotel, apartment hotel, motel, resort
15 | motel, apartment, apartment motel, roominghouse, mobile home
16 | park, recreational vehicle park, or condominium for a term of
17 | 6 months or less, unless such establishment is exempt from the
18 | tax imposed by s. 212.03, is exercising a taxable privilege on
19 | the proceeds therefrom under this section.

20 | Section 4. Subsection (4) is added to section 198.13,
21 | Florida Statutes, to read:

22 | 198.13 Tax return to be made in certain cases;
23 | certificate of nonliability.--

24 | (4) Notwithstanding any other provisions of this
25 | section and applicable to the estate of a decedent who dies
26 | after December 31, 2004, if, upon the death of the decedent, a
27 | state death tax credit or a generation-skipping transfer
28 | credit is not allowable pursuant to the Internal Revenue Code
29 | of 1986, as amended:

1 (a) The personal representative of the estate is not
2 required to file a return under subsection (1) in connection
3 with the estate.

4 (b) The person who would otherwise be required to file
5 a return reporting a generation-skipping transfer under
6 subsection (3) is not required to file such a return in
7 connection with the estate.

8
9 The provisions of this subsection do not apply to estates of
10 descendents dying after December 31, 2010.

11 Section 5. Paragraph (c) of subsection (3) of section
12 202.18, Florida Statutes, is amended to read:

13 202.18 Allocation and disposition of tax
14 proceeds.--The proceeds of the communications services taxes
15 remitted under this chapter shall be treated as follows:

16 (3)

17 (c)1. Except as otherwise provided in this paragraph,
18 proceeds of the taxes levied pursuant to s. 202.19, less
19 amounts deducted for costs of administration in accordance
20 with paragraph (b), shall be distributed monthly to the
21 appropriate jurisdictions. The proceeds of taxes imposed
22 pursuant to s. 202.19(5) shall be distributed in the same
23 manner as discretionary surtaxes are distributed, in
24 accordance with ss. 212.054 and 212.055.

25 2. The department shall make any adjustments to the
26 distributions pursuant to this ~~section paragraph~~ which are
27 necessary to reflect the proper amounts due to individual
28 jurisdictions or trust funds. In the event that the department
29 adjusts amounts due to reflect a correction in the situsing of
30 a customer, such adjustment shall be limited to the amount of
31

1 tax actually collected from such customer by the dealer of
2 communication services.

3 Section 6. Paragraph (d) of subsection (2) of section
4 202.28, Florida Statutes, is amended to read:

5 202.28 Credit for collecting tax; penalties.--

6 (2)

7 (d) If a dealer fails to separately report and
8 identify local communications services taxes on the
9 appropriate return schedule, the dealer shall be subject to a
10 penalty of \$5,000 per return. If the department is unable to
11 obtain appropriate return schedules, any penalty imposed by
12 this paragraph shall be allocated in the same manner as
13 provided in s. 202.18(2).

14 Section 7. Effective January 1, 2008, subsection (1)
15 of section 203.30, Florida Statutes, is amended to read:

16 202.30 Payment of taxes by electronic funds transfer;
17 filing of returns by electronic data interchange.--

18 (1) A dealer of communications services is required to
19 remit taxes by electronic funds transfer, in the manner
20 prescribed by the department, when the amount of tax paid by
21 the dealer under this chapter, chapter 203, or chapter 212 in
22 the previous state fiscal year was ~~\$20,000~~ ~~\$50,000~~ or more;
23 \$10,000 or more, effective January 1, 2009; and \$5,000 or
24 more, effective January 1, 2010.

25 Section 8. Subsection (8) is added to section 206.02,
26 Florida Statutes, to read:

27 206.02 Application for license; temporary license;
28 terminal suppliers, importers, exporters, blenders, biodiesel
29 manufacturers, and wholesalers.--

30
31

1 (8)(a) Notwithstanding any provision to the contrary
2 contained in this chapter, the department may grant a
3 temporary fuel license for immediate use if:

4 1. The Governor has declared a state of emergency
5 under s. 252.36; or

6 2. The President of the United States has declared a
7 major disaster in this state or in any other state or
8 territory of the United States.

9 (b) Notwithstanding the provisions of this chapter
10 requiring a license tax and a bond or criminal background
11 check, the department may issue a temporary license as an
12 importer or exporter to a person who holds a valid Florida
13 wholesaler license or to a person who is an unlicensed dealer.

14 A license may be issued under this subsection only to a
15 business that has a physical location in this state and holds
16 a valid Florida sales and use tax certificate or registration
17 or that holds a valid fuel license issued by another state.

18 (c) A temporary license expires on the last day of the
19 month following the month in which the temporary license was
20 issued. The department may extend any temporary license on a
21 month-to-month basis during the period of a declared state of
22 emergency or major disaster as provided in this subsection. If
23 the department extends a temporary license, the extended
24 license expires on the last day of the month in which the
25 temporary license was extended.

26 (d) In order to procure a temporary license, a
27 nonresident business must provide to the department the
28 information required in subsection (4); the federal
29 identification number of the business or, if such number is
30 unavailable, the social security number of the owner; and any
31 other information that is required by the department.

1 (e) A temporary license authorized by this subsection
2 may not be renewed if the licensee has not filed the required
3 returns or made payment of the taxes required under this
4 chapter.

5 Section 9. Subsection (5) is added to section 206.021,
6 Florida Statutes, to read:

7 206.021 Application for license; carriers.--

8 (5)(a) Notwithstanding any provision to the contrary
9 contained in this chapter, the department may grant a
10 temporary fuel license for immediate use if:

11 1. The Governor has declared a state of emergency
12 under s. 252.36; or

13 2. The President of the United States has declared a
14 major disaster in this state or in any other state or
15 territory of the United States.

16 (b) Notwithstanding the provisions of this chapter
17 requiring a license tax and a bond or criminal background
18 check, the department may issue a temporary license as a
19 carrier to a person who holds a valid Florida wholesaler,
20 importer, exporter, or blender license or to a person who is
21 an unlicensed dealer. A license may be issued under this
22 subsection only to a business that has a physical location in
23 this state and holds a valid Florida sales and use tax
24 certificate or registration or that holds a valid fuel license
25 issued by another state.

26 (c) A temporary license expires on the last day of the
27 month following the month in which the temporary license was
28 issued. The department may extend any temporary license on a
29 month-to-month basis during the period of a declared state of
30 emergency or major disaster as provided in this subsection. If
31 the department extends a temporary license, the extended

1 license expires on the last day of the month in which the
2 temporary license was extended.

3 (d) In order to procure a temporary license, a
4 nonresident business must provide to the department the
5 information required in subsection (2); the federal
6 identification number of the business or, if such number is
7 unavailable, the social security number of the owner; and any
8 other information that is required by the department.

9 (e) A temporary license authorized by this subsection
10 may not be renewed if the licensee has not filed the required
11 returns or made payment of the taxes required under this
12 chapter.

13 Section 10. Effective January 1, 2008, paragraphs (f)
14 and (g) of subsection (1) of section 206.41, Florida Statutes,
15 are amended to read:

16 206.41 State taxes imposed on motor fuel.--

17 (1) The following taxes are imposed on motor fuel
18 under the circumstances described in subsection (6):

19 (f)1. An additional tax designated as the State
20 Comprehensive Enhanced Transportation System Tax is imposed on
21 each net gallon of motor fuel in each county. This tax shall
22 be levied and used as provided in s. 206.608.

23 2. The rate of the tax in each county shall be equal
24 to two-thirds of the lesser of the sum of the taxes imposed on
25 motor fuel pursuant to paragraphs (d) and (e) in such county
26 or 6 cents, rounded to the nearest tenth of a cent.

27 3. ~~Beginning January 1, 1992, and on January 1 of each~~
28 ~~year thereafter,~~ The tax rate provided in subparagraph 2.
29 shall be adjusted by the percentage change in the average of
30 the Consumer Price Index issued by the United States
31 Department of Labor for the most recent 12-month period ending

1 September 30, compared to the base year average, which is the
2 average for the 12-month period ending September 30, 1990, and
3 rounded to the nearest tenth of a cent.

4 4. The department shall notify each terminal supplier,
5 position holder, wholesaler, and importer of the tax rate
6 applicable under this paragraph for the 12-month period
7 beginning January 1.

8 (g)1. An additional tax is imposed on each net gallon
9 of motor fuel, which tax is on the privilege of selling motor
10 fuel and which is designated the "fuel sales tax," at a rate
11 determined pursuant to this paragraph. ~~Before January 1 of~~
12 ~~1997, and of each year thereafter,~~ The department shall
13 determine the tax rate applicable to the sale of fuel for the
14 ~~forthcoming~~ 12-month period beginning January 1, 2008, and
15 each year thereafter, rounded to the nearest tenth of a cent,
16 by adjusting the initially established tax rate of 6.9 cents
17 per gallon by the percentage change in the average of the
18 Consumer Price Index issued by the United States Department of
19 Labor for the most recent 12-month period ending June 30
20 ~~September 30~~, compared to the base year average, which is the
21 average for the 12-month period ending September 30, 1989.
22 However, the tax rate shall not be lower than 6.9 cents per
23 gallon.

24 2. The department is authorized to adopt rules and
25 adopt such forms as may be necessary for the administration of
26 this paragraph.

27 3. The department shall notify each terminal supplier,
28 position holder, wholesaler, and importer of the tax rate
29 applicable under this paragraph for the 12-month period
30 beginning January 1.

31

1 Section 11. Effective January 1, 2008, paragraph (e)
2 of subsection (1) of section 206.87, Florida Statutes, is
3 amended to read:

4 206.87 Levy of tax.--

5 (1)

6 (e)1. An additional tax is imposed on each net gallon
7 of diesel fuel, which tax is on the privilege of selling
8 diesel fuel and which is designated the "fuel sales tax," at a
9 rate determined pursuant to this paragraph. ~~Before January 1~~
10 ~~of 1997 and of each year thereafter,~~ The department shall
11 determine the annual tax rate applicable to the sale of diesel
12 fuel applicable for the ~~forthcoming~~ 12-month period beginning
13 January 1, 2008, and each year thereafter, rounded to the
14 nearest tenth of a cent, by adjusting the initially
15 established tax rate of 6.9 cents per gallon by the percentage
16 change in the average of the Consumer Price Index issued by
17 the United States Department of Labor for the most recent
18 12-month period ending June 30 ~~September 30~~, compared to the
19 base year average, which is the average for the 12-month
20 period ending September 30, 1989. However, the tax rate shall
21 not be lower than 6.9 cents per gallon.

22 2. The department is authorized to adopt rules and
23 adopt such forms as may be necessary for the administration of
24 this paragraph.

25 3. The department shall notify each terminal supplier,
26 position holder, wholesaler, and importer of the tax rate
27 applicable under this paragraph for the 12-month period
28 beginning January 1.

29 Section 12. Subsection (4) is added to section
30 206.9943, Florida Statutes, to read:

31 206.9943 Pollutant tax license.--

1 (4) A temporary pollutant tax license may be issued to
2 a holder of a valid Florida temporary importer, temporary
3 wholesaler, or temporary exporter license issued under s.
4 206.02. A temporary pollutant tax license is subject to the
5 provisions set forth in s. 206.02(8).

6 Section 13. Paragraphs (d) and (e) of subsection (9)
7 of section 211.3103, Florida Statutes, are amended to read:

8 211.3103 Levy of tax on severance of phosphate rock;
9 rate, basis, and distribution of tax.--

10 (9)

11 (d) If the producer price index for phosphate rock
12 ~~chemical and fertilizer mineral mining~~ is substantially
13 revised, the department shall make appropriate adjustment in
14 the method used to compute the base rate adjustment under this
15 subsection which will produce results reasonably consistent
16 with the result ~~that~~ which would have been obtained if the
17 producer price index for phosphate rock ~~primary products~~ had
18 not been revised. However, the tax rate shall not be less than
19 \$1.56 per ton severed.

20 (e) ~~If in the event~~ the producer price index for
21 phosphate rock ~~primary products~~ is discontinued, ~~then~~ a
22 comparable index shall be selected by the department and
23 adopted by rule.

24 Section 14. Subsection (33) of section 212.02, Florida
25 Statutes, is amended to read:

26 212.02 Definitions.--The following terms and phrases
27 when used in this chapter have the meanings ascribed to them
28 in this section, except where the context clearly indicates a
29 different meaning:

30 (33) "Qualified aircraft" means any aircraft having a
31 maximum certified takeoff weight of less than 10,000 pounds

1 and equipped with twin turbofan engines that meet Stage IV
2 noise requirements that is used by a business operating as an
3 on-demand air carrier under Federal Aviation Administration
4 Regulation Title 14, chapter I, part 135, Code of Federal
5 Regulations, that owns or leases and operates a fleet of at
6 least 25 of such aircraft in this state.

7 Section 15. Paragraph (a) of subsection (3) of section
8 212.0305, Florida Statutes, is amended to read:

9 212.0305 Convention development taxes; intent;
10 administration; authorization; use of proceeds.--

11 (3) APPLICATION; ADMINISTRATION; PENALTIES.--

12 (a) The convention development tax on transient
13 rentals imposed by the governing body of any county authorized
14 to so levy shall apply to the amount of any payment made by
15 any person to rent, lease, let, or grant a license to ~~or~~ use
16 for a period of 6 months or less any living quarters or
17 accommodations in a hotel, apartment hotel, motel, resort
18 motel, apartment, apartment motel, roominghouse, tourist or
19 trailer camp, mobile home park, recreational vehicle park, or
20 condominium. When receipt of consideration is by way of
21 property other than money, the tax shall be levied and imposed
22 on the fair market value of such nonmonetary consideration.
23 Any payment made by a person to rent, lease, let, or grant a
24 license to ~~or~~ use any living quarters or accommodations which
25 are exempt from the tax imposed under s. 212.03 shall likewise
26 be exempt from any tax imposed under this section.

27 Section 16. Paragraph (h) of subsection (1) of section
28 212.05, Florida Statutes, is amended to read:

29 212.05 Sales, storage, use tax.--It is hereby declared
30 to be the legislative intent that every person is exercising a
31 taxable privilege who engages in the business of selling

1 | tangible personal property at retail in this state, including
2 | the business of making mail order sales, or who rents or
3 | furnishes any of the things or services taxable under this
4 | chapter, or who stores for use or consumption in this state
5 | any item or article of tangible personal property as defined
6 | herein and who leases or rents such property within the state.

7 | (1) For the exercise of such privilege, a tax is
8 | levied on each taxable transaction or incident, which tax is
9 | due and payable as follows:

10 | (h)1. ~~Beginning January 1, 1995,~~ A tax is imposed at
11 | the rate of 4 percent on the charges for the use of
12 | coin-operated amusement machines. The tax shall be calculated
13 | by dividing the gross receipts from such charges for the
14 | applicable reporting period by a divisor, determined as
15 | provided in this subparagraph, to compute gross taxable sales,
16 | and then subtracting gross taxable sales from gross receipts
17 | to arrive at the amount of tax due. For counties that do not
18 | impose a discretionary sales surtax, the divisor is equal to
19 | 1.04;~~except that~~ for counties that impose a 0.5 percent
20 | discretionary sales surtax, with a 6.5 percent sales tax rate
21 | the divisor is shall be equal to 1.045;~~and~~ for counties that
22 | impose a 1 percent discretionary sales surtax, with a 7.0
23 | percent sales tax rate the divisor is shall be equal to 1.050;
24 | and for counties that impose a 2 percent sales surtax, the
25 | divisor is equal to 1.060. If a county imposes a discretionary
26 | sales surtax that is not listed in this subparagraph, the
27 | department shall make the applicable divisor available in an
28 | electronic format or otherwise. Additional divisors shall bear
29 | the same mathematical relationship to the next higher and next
30 | lower divisors as the new surtax rate bears to the next higher
31 | and next lower surtax rates for which divisors have been

1 | established. When a machine is activated by a slug, token,
2 | coupon, or any similar device which has been purchased, the
3 | tax is on the price paid by the user of the device for such
4 | device.

5 | 2. As used in this paragraph, the term "operator"
6 | means any person who possesses a coin-operated amusement
7 | machine for the purpose of generating sales through that
8 | machine and who is responsible for removing the receipts from
9 | the machine.

10 | a. If the owner of the machine is also the operator of
11 | it, he or she shall be liable for payment of the tax without
12 | any deduction for rent or a license fee paid to a location
13 | owner for the use of any real property on which the machine is
14 | located.

15 | b. If the owner or lessee of the machine is also its
16 | operator, he or she shall be liable for payment of the tax on
17 | the purchase or lease of the machine, as well as the tax on
18 | sales generated through the machine.

19 | c. If the proprietor of the business where the machine
20 | is located does not own the machine, he or she shall be deemed
21 | to be the lessee and operator of the machine and is
22 | responsible for the payment of the tax on sales, unless such
23 | responsibility is otherwise provided for in a written
24 | agreement between him or her and the machine owner.

25 | 3.a. An operator of a coin-operated amusement machine
26 | may not operate or cause to be operated in this state any such
27 | machine until the operator has registered with the department
28 | and has conspicuously displayed an identifying certificate
29 | issued by the department. The identifying certificate shall
30 | be issued by the department upon application from the
31 | operator. The identifying certificate shall include a unique

1 number, and the certificate shall be permanently marked with
2 the operator's name, the operator's sales tax number, and the
3 maximum number of machines to be operated under the
4 certificate. An identifying certificate shall not be
5 transferred from one operator to another. The identifying
6 certificate must be conspicuously displayed on the premises
7 where the coin-operated amusement machines are being operated.

8 b. The operator of the machine must obtain an
9 identifying certificate before the machine is first operated
10 in the state and by July 1 of each year thereafter. The annual
11 fee for each certificate shall be based on the number of
12 machines identified on the application times \$30 and is due
13 and payable upon application for the identifying device. The
14 application shall contain the operator's name, sales tax
15 number, business address where the machines are being
16 operated, and the number of machines in operation at that
17 place of business by the operator. No operator may operate
18 more machines than are listed on the certificate. A new
19 certificate is required if more machines are being operated at
20 that location than are listed on the certificate. The fee for
21 the new certificate shall be based on the number of additional
22 machines identified on the application form times \$30.

23 c. A penalty of \$250 per machine is imposed on the
24 operator for failing to properly obtain and display the
25 required identifying certificate. A penalty of \$250 is imposed
26 on the lessee of any machine placed in a place of business
27 without a proper current identifying certificate. Such
28 penalties shall apply in addition to all other applicable
29 taxes, interest, and penalties.

30 d. Operators of coin-operated amusement machines must
31 obtain a separate sales and use tax certificate of

1 registration for each county in which such machines are
2 located. One sales and use tax certificate of registration is
3 sufficient for all of the operator's machines within a single
4 county.

5 4. The provisions of this paragraph do not apply to
6 coin-operated amusement machines owned and operated by
7 churches or synagogues.

8 5. In addition to any other penalties imposed by this
9 chapter, a person who knowingly and willfully violates any
10 provision of this paragraph commits a misdemeanor of the
11 second degree, punishable as provided in s. 775.082 or s.
12 775.083.

13 6. The department may adopt rules necessary to
14 administer the provisions of this paragraph.

15 Section 17. Subsection (3) of section 212.0506,
16 Florida Statutes, is amended to read:

17 212.0506 Taxation of service warranties.--

18 (3) For purposes of this section, "service warranty"
19 means any contract or agreement which indemnifies the holder
20 of the contract or agreement for the cost of maintaining,
21 repairing, or replacing tangible personal property. The term
22 "service warranty" does not include contracts or agreements to
23 repair, maintain, or replace tangible personal property if
24 such property when sold at retail in this state would not be
25 subject to the tax imposed by this chapter or if the parts and
26 labor to repair tangible personal property qualify for an
27 exemption under this chapter, nor does it include such
28 contracts or agreements covering tangible personal property
29 which becomes a part of real property.

30 Section 18. Subsection (2) of section 212.0515,
31 Florida Statutes, is amended to read:

1 212.0515 Sales from vending machines; sales to vending
2 machine operators; special provisions; registration;
3 penalties.--

4 (2) Notwithstanding any other provision of law, the
5 amount of the tax to be paid on food, beverages, or other
6 items of tangible personal property that are sold in vending
7 machines shall be calculated by dividing the gross receipts
8 from such sales for the applicable reporting period by a
9 divisor, determined as provided in this subsection, to compute
10 gross taxable sales, and then subtracting gross taxable sales
11 from gross receipts to arrive at the amount of tax due. For
12 counties that do not impose a discretionary sales surtax, the
13 divisor is equal to the sum of 1.0645 for beverage and food
14 items, or 1.0659 for other items of tangible personal
15 property, ~~except that~~ For counties with a 0.5 percent sales
16 surtax rate the divisor is equal to the sum of 1.0686 for
17 beverage and food items or 1.0707 for other items of tangible
18 personal property; for counties with a 0.75 percent sales
19 surtax rate the divisor is equal to the sum of 1.0706 for
20 beverage and food items or 1.0727 for other items of tangible
21 personal property; for counties with a 1 percent sales surtax
22 rate the divisor is equal to the sum of 1.0726 for beverage
23 and food items or 1.0749 for other items of tangible personal
24 property; ~~and~~ for counties with a 1.5 percent sales surtax
25 rate the divisor is equal to the sum of 1.0767 for beverage
26 and food items or 1.0791 for other items of tangible personal
27 property; and for counties with a 2 percent sales surtax rate
28 the divisor is equal to the sum of 1.0808 for beverage and
29 food items or 1.0833 for other items of tangible personal
30 property. When a county imposes a surtax rate that is not
31 listed in this subparagraph, the department shall make the

1 applicable divisor available in an electronic format or
2 otherwise. Additional divisors shall bear the same
3 mathematical relationship to the next higher and next lower
4 divisors as the new surtax rate bears to the next higher and
5 next lower surtax rates for which divisors have been
6 established. If an operator cannot account for each type of
7 item sold through a vending machine, the highest tax rate
8 shall be used for all products sold through that machine.

9 Section 19. Paragraphs (g), (h), (n), and (o) of
10 subsection (5) of section 212.08, Florida Statutes, are
11 amended to read:

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

18 (5) EXEMPTIONS; ACCOUNT OF USE.--

19 (g) Building materials used in the rehabilitation of
20 real property located in an enterprise zone.--

21 1. Building materials used in the rehabilitation of
22 real property located in an enterprise zone shall be exempt
23 from the tax imposed by this chapter upon an affirmative
24 showing to the satisfaction of the department that the items
25 have been used for the rehabilitation of real property located
26 in an enterprise zone. Except as provided in subparagraph 2.,
27 this exemption inures to the owner, lessee, or lessor of the
28 rehabilitated real property located in an enterprise zone only
29 through a refund of previously paid taxes. To receive a refund
30 pursuant to this paragraph, the owner, lessee, or lessor of
31 the rehabilitated real property located in an enterprise zone

1 | must file an application under oath with the governing body or
2 | enterprise zone development agency having jurisdiction over
3 | the enterprise zone where the business is located, as
4 | applicable, which includes:

5 | a. The name and address of the person claiming the
6 | refund.

7 | b. An address and assessment roll parcel number of the
8 | rehabilitated real property in an enterprise zone for which a
9 | refund of previously paid taxes is being sought.

10 | c. A description of the improvements made to
11 | accomplish the rehabilitation of the real property.

12 | d. A copy of the building permit issued for the
13 | rehabilitation of the real property.

14 | e. A sworn statement, under the penalty of perjury,
15 | from the general contractor licensed in this state with whom
16 | the applicant contracted to make the improvements necessary to
17 | accomplish the rehabilitation of the real property, which
18 | statement lists the building materials used in the
19 | rehabilitation of the real property, the actual cost of the
20 | building materials, and the amount of sales tax paid in this
21 | state on the building materials. In the event that a general
22 | contractor has not been used, the applicant shall provide this
23 | information in a sworn statement, under the penalty of
24 | perjury. Copies of the invoices which evidence the purchase of
25 | the building materials used in such rehabilitation and the
26 | payment of sales tax on the building materials shall be
27 | attached to the sworn statement provided by the general
28 | contractor or by the applicant. Unless the actual cost of
29 | building materials used in the rehabilitation of real property
30 | and the payment of sales taxes due thereon is documented by a
31 | general contractor or by the applicant in this manner, the

1 | cost of such building materials shall be an amount equal to 40
2 | percent of the increase in assessed value for ad valorem tax
3 | purposes.

4 | f. The identifying number assigned pursuant to s.
5 | 290.0065 to the enterprise zone in which the rehabilitated
6 | real property is located.

7 | g. A certification by the local building code
8 | inspector that the improvements necessary to accomplish the
9 | rehabilitation of the real property are substantially
10 | completed.

11 | h. Whether the business is a small business as defined
12 | by s. 288.703(1).

13 | i. If applicable, the name and address of each
14 | permanent employee of the business, including, for each
15 | employee who is a resident of an enterprise zone, the
16 | identifying number assigned pursuant to s. 290.0065 to the
17 | enterprise zone in which the employee resides.

18 | 2. This exemption inures to a city, county, other
19 | governmental agency, or nonprofit community-based organization
20 | through a refund of previously paid taxes if the building
21 | materials used in the rehabilitation of real property located
22 | in an enterprise zone are paid for from the funds of a
23 | community development block grant, State Housing Initiatives
24 | Partnership Program, or similar grant or loan program. To
25 | receive a refund pursuant to this paragraph, a city, county,
26 | other governmental agency, or nonprofit community-based
27 | organization must file an application which includes the same
28 | information required to be provided in subparagraph 1. by an
29 | owner, lessee, or lessor of rehabilitated real property. In
30 | addition, the application must include a sworn statement
31 | signed by the chief executive officer of the city, county,

1 other governmental agency, or nonprofit community-based
2 organization seeking a refund which states that the building
3 materials for which a refund is sought were paid for from the
4 funds of a community development block grant, State Housing
5 Initiatives Partnership Program, or similar grant or loan
6 program.

7 3. Within 10 working days after receipt of an
8 application, the governing body or enterprise zone development
9 agency shall review the application to determine if it
10 contains all the information required pursuant to subparagraph
11 1. or subparagraph 2. and meets the criteria set out in this
12 paragraph. The governing body or agency shall certify all
13 applications that contain the information required pursuant to
14 subparagraph 1. or subparagraph 2. and meet the criteria set
15 out in this paragraph as eligible to receive a refund. If
16 applicable, the governing body or agency shall also certify if
17 20 percent of the employees of the business are residents of
18 an enterprise zone, excluding temporary and part-time
19 employees. The certification shall be in writing, and a copy
20 of the certification shall be transmitted to the executive
21 director of the Department of Revenue. The applicant shall be
22 responsible for forwarding a certified application to the
23 department within the time specified in subparagraph 4.

24 4. An application for a refund pursuant to this
25 paragraph must be submitted to the department within 6 months
26 after the rehabilitation of the property is deemed to be
27 substantially completed by the local building code inspector
28 or by September 1 after the rehabilitated property is first
29 subject to assessment.

30 5. ~~The provisions of s. 212.095 do not apply to any~~
31 ~~refund application made pursuant to this paragraph.~~ Not more

1 | than one exemption through a refund of previously paid taxes
2 | for the rehabilitation of real property shall be permitted for
3 | any single parcel of property unless there is a change in
4 | ownership, a new lessor, or a new lessee of the real property.
5 | No refund shall be granted pursuant to this paragraph unless
6 | the amount to be refunded exceeds \$500. No refund granted
7 | pursuant to this paragraph shall exceed the lesser of 97
8 | percent of the Florida sales or use tax paid on the cost of
9 | the building materials used in the rehabilitation of the real
10 | property as determined pursuant to sub-subparagraph 1.e. or
11 | \$5,000, or, if no less than 20 percent of the employees of the
12 | business are residents of an enterprise zone, excluding
13 | temporary and part-time employees, the amount of refund
14 | granted pursuant to this paragraph shall not exceed the lesser
15 | of 97 percent of the sales tax paid on the cost of such
16 | building materials or \$10,000. A refund approved pursuant to
17 | this paragraph shall be made within 30 days of formal approval
18 | by the department of the application for the refund. This
19 | subparagraph shall apply retroactively to July 1, 2005.

20 | 6. The department shall adopt rules governing the
21 | manner and form of refund applications and may establish
22 | guidelines as to the requisites for an affirmative showing of
23 | qualification for exemption under this paragraph.

24 | 7. The department shall deduct an amount equal to 10
25 | percent of each refund granted under the provisions of this
26 | paragraph from the amount transferred into the Local
27 | Government Half-cent Sales Tax Clearing Trust Fund pursuant to
28 | s. 212.20 for the county area in which the rehabilitated real
29 | property is located and shall transfer that amount to the
30 | General Revenue Fund.

31 |

1 8. For the purposes of the exemption provided in this
2 paragraph:

3 a. "Building materials" means tangible personal
4 property which becomes a component part of improvements to
5 real property.

6 b. "Real property" has the same meaning as provided in
7 s. 192.001(12).

8 c. "Rehabilitation of real property" means the
9 reconstruction, renovation, restoration, rehabilitation,
10 construction, or expansion of improvements to real property.

11 d. "Substantially completed" has the same meaning as
12 provided in s. 192.042(1).

13 9. This paragraph expires on the date specified in s.
14 290.016 for the expiration of the Florida Enterprise Zone Act.

15 (h) Business property used in an enterprise zone.--

16 1. Business property purchased for use by businesses
17 located in an enterprise zone which is subsequently used in an
18 enterprise zone shall be exempt from the tax imposed by this
19 chapter. This exemption inures to the business only through a
20 refund of previously paid taxes. A refund shall be authorized
21 upon an affirmative showing by the taxpayer to the
22 satisfaction of the department that the requirements of this
23 paragraph have been met.

24 2. To receive a refund, the business must file under
25 oath with the governing body or enterprise zone development
26 agency having jurisdiction over the enterprise zone where the
27 business is located, as applicable, an application which
28 includes:

29 a. The name and address of the business claiming the
30 refund.

31

1 b. The identifying number assigned pursuant to s.
2 290.0065 to the enterprise zone in which the business is
3 located.

4 c. A specific description of the property for which a
5 refund is sought, including its serial number or other
6 permanent identification number.

7 d. The location of the property.

8 e. The sales invoice or other proof of purchase of the
9 property, showing the amount of sales tax paid, the date of
10 purchase, and the name and address of the sales tax dealer
11 from whom the property was purchased.

12 f. Whether the business is a small business as defined
13 by s. 288.703(1).

14 g. If applicable, the name and address of each
15 permanent employee of the business, including, for each
16 employee who is a resident of an enterprise zone, the
17 identifying number assigned pursuant to s. 290.0065 to the
18 enterprise zone in which the employee resides.

19 3. Within 10 working days after receipt of an
20 application, the governing body or enterprise zone development
21 agency shall review the application to determine if it
22 contains all the information required pursuant to subparagraph
23 2. and meets the criteria set out in this paragraph. The
24 governing body or agency shall certify all applications that
25 contain the information required pursuant to subparagraph 2.
26 and meet the criteria set out in this paragraph as eligible to
27 receive a refund. If applicable, the governing body or agency
28 shall also certify if 20 percent of the employees of the
29 business are residents of an enterprise zone, excluding
30 temporary and part-time employees. The certification shall be
31 in writing, and a copy of the certification shall be

1 transmitted to the executive director of the Department of
2 Revenue. The business shall be responsible for forwarding a
3 certified application to the department within the time
4 specified in subparagraph 4.

5 4. An application for a refund pursuant to this
6 paragraph must be submitted to the department within 6 months
7 after the tax is due on the business property that is
8 purchased.

9 5. ~~The provisions of s. 212.095 do not apply to any~~
10 ~~refund application made pursuant to this paragraph.~~ The amount
11 refunded on purchases of business property under this
12 paragraph shall be the lesser of 97 percent of the sales tax
13 paid on such business property or \$5,000, or, if no less than
14 20 percent of the employees of the business are residents of
15 an enterprise zone, excluding temporary and part-time
16 employees, the amount refunded on purchases of business
17 property under this paragraph shall be the lesser of 97
18 percent of the sales tax paid on such business property or
19 \$10,000. A refund approved pursuant to this paragraph shall be
20 made within 30 days of formal approval by the department of
21 the application for the refund. No refund shall be granted
22 under this paragraph unless the amount to be refunded exceeds
23 \$100 in sales tax paid on purchases made within a 60-day time
24 period.

25 6. The department shall adopt rules governing the
26 manner and form of refund applications and may establish
27 guidelines as to the requisites for an affirmative showing of
28 qualification for exemption under this paragraph.

29 7. If the department determines that the business
30 property is used outside an enterprise zone within 3 years
31 from the date of purchase, the amount of taxes refunded to the

1 business purchasing such business property shall immediately
2 be due and payable to the department by the business, together
3 with the appropriate interest and penalty, computed from the
4 date of purchase, in the manner provided by this chapter.

5 Notwithstanding this subparagraph, business property used
6 exclusively in:

- 7 a. Licensed commercial fishing vessels,
- 8 b. Fishing guide boats, or
- 9 c. Ecotourism guide boats

10
11 that leave and return to a fixed location within an area
12 designated under s. 370.28 are eligible for the exemption
13 provided under this paragraph if all requirements of this
14 paragraph are met. Such vessels and boats must be owned by a
15 business that is eligible to receive the exemption provided
16 under this paragraph. This exemption does not apply to the
17 purchase of a vessel or boat.

18 8. The department shall deduct an amount equal to 10
19 percent of each refund granted under the provisions of this
20 paragraph from the amount transferred into the Local
21 Government Half-cent Sales Tax Clearing Trust Fund pursuant to
22 s. 212.20 for the county area in which the business property
23 is located and shall transfer that amount to the General
24 Revenue Fund.

25 9. For the purposes of this exemption, "business
26 property" means new or used property defined as "recovery
27 property" in s. 168(c) of the Internal Revenue Code of 1954,
28 as amended, except:

- 29 a. Property classified as 3-year property under s.
30 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

31

1 b. Industrial machinery and equipment as defined in
2 sub-subparagraph (b)6.a. and eligible for exemption under
3 paragraph (b);

4 c. Building materials as defined in sub-subparagraph
5 (g)8.a.; and

6 d. Business property having a sales price of under
7 \$5,000 per unit.

8 10. This paragraph expires on the date specified in s.
9 290.016 for the expiration of the Florida Enterprise Zone Act.

10 (n) Materials for construction of single-family homes
11 in certain areas.--

12 1. As used in this paragraph, the term:

13 a. "Building materials" means tangible personal
14 property that becomes a component part of a qualified home.

15 b. "Qualified home" means a single-family home having
16 an appraised value of no more than \$160,000 which is located
17 in an enterprise zone, empowerment zone, or Front Porch
18 Florida Community and which is constructed and occupied by the
19 owner thereof for residential purposes.

20 c. "Substantially completed" has the same meaning as
21 provided in s. 192.042(1).

22 2. Building materials used in the construction of a
23 qualified home and the costs of labor associated with the
24 construction of a qualified home are exempt from the tax
25 imposed by this chapter upon an affirmative showing to the
26 satisfaction of the department that the requirements of this
27 paragraph have been met. This exemption inures to the owner
28 through a refund of previously paid taxes. To receive this
29 refund, the owner must file an application under oath with the
30 department which includes:

31 a. The name and address of the owner.

1 b. The address and assessment roll parcel number of
2 the home for which a refund is sought.

3 c. A copy of the building permit issued for the home.

4 d. A certification by the local building code
5 inspector that the home is substantially completed.

6 e. A sworn statement, under penalty of perjury, from
7 the general contractor licensed in this state with whom the
8 owner contracted to construct the home, which statement lists
9 the building materials used in the construction of the home
10 and the actual cost thereof, the labor costs associated with
11 such construction, and the amount of sales tax paid on these
12 materials and labor costs. If a general contractor was not
13 used, the owner shall provide this information in a sworn
14 statement, under penalty of perjury. Copies of invoices
15 evidencing payment of sales tax must be attached to the sworn
16 statement.

17 f. A sworn statement, under penalty of perjury, from
18 the owner affirming that he or she is occupying the home for
19 residential purposes.

20 3. An application for a refund under this paragraph
21 must be submitted to the department within 6 months after the
22 date the home is deemed to be substantially completed by the
23 local building code inspector. Within 30 working days after
24 receipt of the application, the department shall determine if
25 it meets the requirements of this paragraph. A refund approved
26 pursuant to this paragraph shall be made within 30 days after
27 formal approval of the application by the department. ~~The~~
28 ~~provisions of s. 212.095 do not apply to any refund~~
29 ~~application made under this paragraph.~~

30
31

1 4. The department shall establish by rule an
2 application form and criteria for establishing eligibility for
3 exemption under this paragraph.

4 5. The exemption shall apply to purchases of materials
5 on or after July 1, 2000.

6 (o) Building materials in redevelopment projects.--

7 1. As used in this paragraph, the term:

8 a. "Building materials" means tangible personal
9 property that becomes a component part of a housing project or
10 a mixed-use project.

11 b. "Housing project" means the conversion of an
12 existing manufacturing or industrial building to housing units
13 in an urban high-crime area, enterprise zone, empowerment
14 zone, Front Porch Community, designated brownfield area, or
15 urban infill area and in which the developer agrees to set
16 aside at least 20 percent of the housing units in the project
17 for low-income and moderate-income persons or the construction
18 in a designated brownfield area of affordable housing for
19 persons described in s. 420.0004(8), (10), (11), or (15) or in
20 s. 159.603(7).

21 c. "Mixed-use project" means the conversion of an
22 existing manufacturing or industrial building to mixed-use
23 units that include artists' studios, art and entertainment
24 services, or other compatible uses. A mixed-use project must
25 be located in an urban high-crime area, enterprise zone,
26 empowerment zone, Front Porch Community, designated brownfield
27 area, or urban infill area, and the developer must agree to
28 set aside at least 20 percent of the square footage of the
29 project for low-income and moderate-income housing.

30 d. "Substantially completed" has the same meaning as
31 provided in s. 192.042(1).

1 2. Building materials used in the construction of a
2 housing project or mixed-use project are exempt from the tax
3 imposed by this chapter upon an affirmative showing to the
4 satisfaction of the department that the requirements of this
5 paragraph have been met. This exemption inures to the owner
6 through a refund of previously paid taxes. To receive this
7 refund, the owner must file an application under oath with the
8 department which includes:

9 a. The name and address of the owner.

10 b. The address and assessment roll parcel number of
11 the project for which a refund is sought.

12 c. A copy of the building permit issued for the
13 project.

14 d. A certification by the local building code
15 inspector that the project is substantially completed.

16 e. A sworn statement, under penalty of perjury, from
17 the general contractor licensed in this state with whom the
18 owner contracted to construct the project, which statement
19 lists the building materials used in the construction of the
20 project and the actual cost thereof, and the amount of sales
21 tax paid on these materials. If a general contractor was not
22 used, the owner shall provide this information in a sworn
23 statement, under penalty of perjury. Copies of invoices
24 evidencing payment of sales tax must be attached to the sworn
25 statement.

26 3. An application for a refund under this paragraph
27 must be submitted to the department within 6 months after the
28 date the project is deemed to be substantially completed by
29 the local building code inspector. Within 30 working days
30 after receipt of the application, the department shall
31 determine if it meets the requirements of this paragraph. A

1 refund approved pursuant to this paragraph shall be made
2 within 30 days after formal approval of the application by the
3 department. ~~The provisions of s. 212.095 do not apply to any~~
4 ~~refund application made under this paragraph.~~

5 4. The department shall establish by rule an
6 application form and criteria for establishing eligibility for
7 exemption under this paragraph.

8 5. The exemption shall apply to purchases of materials
9 on or after July 1, 2000.

10 Section 20. Section 212.095, Florida Statutes, is
11 repealed.

12 Section 21. Section 212.10, Florida Statutes, is
13 amended to read:

14 212.10 Sale of business; liability for tax, procedure,
15 penalty for violation.--

16 (1)(a) If any dealer liable for any tax, interest, or
17 penalty levied hereunder sells ~~shall sell~~ out his or her
18 business or stock of goods, transfers substantially all of the
19 dealer's assets or liabilities to another entity or person, or
20 otherwise quits or ceases to conduct business:

21 1. The dealer shall make a final return and payment
22 within 15 days after the date of selling or otherwise
23 transferring the business; and

24 2. The dealer's purchaser, transferee, successor,
25 ~~successors,~~ or assignee assigns shall withhold a sufficient
26 portion of the consideration ~~purchase money~~ to safely cover
27 the account of such taxes, interest, or penalties due and
28 unpaid until the ~~such~~ former owner produces ~~shall produce~~ a
29 receipt from the department showing that he or she has ~~they~~
30 ~~have been~~ paid or a certificate stating that no taxes,
31 interest, or penalty are due.

1 **(b)** If the purchase or transfer is for less than fair
2 market value, or if a purchaser, transferee, successor, or
3 assignee ~~purchasers~~ of a business or stock of goods fails
4 ~~shall fail~~ to withhold a sufficient amount of the
5 consideration ~~purchase money~~ as ~~above~~ provided in paragraph
6 (a), he or she ~~is shall be~~ personally liable for the payment
7 of the taxes, interest, and penalties accruing and unpaid on
8 account of the operation of the business by any former owner,
9 owners, or assigns as follows:-

10 1. If the purchaser fails or refuses to provide
11 competent substantial evidence of the consideration paid, the
12 purchaser is liable for the full amount of any liability for
13 tax, interest, and penalties accruing and unpaid on account of
14 the operation of the business by any former owner, owners, or
15 assigns and the same shall be assessed.

16 2. If the purchaser, transferee, successor, or
17 assignee of a business or stock of goods expressly assumed the
18 debt of the selling dealer, or other preexisting liabilities
19 are otherwise assumed, the purchaser is liable for the full
20 amount of any liability for tax, interest, and penalties
21 accruing and unpaid on account of the operation of the
22 business by any former owner, owners, or assigns and the same
23 shall be assessed.

24 3. If assets are transferred for consideration
25 determined to be less than fair market value, the transferee
26 is liable for the full amount of any liability for tax,
27 interest, and penalties accruing and unpaid on account of the
28 operation of the business by any former owner, owners, or
29 assigns and the same shall be assessed up to the fair market
30 value of the assets transferred.
31

1 4. If a successor entity is created that, upon
2 transfer, acts to continue the dealer's business without a
3 material change to the persons managing or controlling the
4 original business or entity, the full amount of any unpaid
5 liability for tax, interest, and penalties shall be assessed
6 against the successor entity. If, at the time of the transfer,
7 the liability was recorded as a warrant, the persons managing
8 or controlling the successor entity are liable, in addition to
9 other penalties provided by law, for a specific penalty of 100
10 percent of the tax, penalties, and interest due as established
11 by the warrant and the same shall be assessed.

12 (c) Protection from transferee liability may be
13 secured only by an audit of the seller's or former owner's or
14 operator's books and records. The seller or purchaser,
15 transferee, successor, or assignee under this subsection may
16 request an audit of the seller's books and records. Any
17 receipt or certificate from the department does not, without
18 an audit of the selling dealer's books and records by the
19 department, guarantee that there is not a tax deficiency owed
20 the state from operation of the seller's or former owner's or
21 operator's business. ~~To secure protection from transferee~~
22 ~~liability under this section, the seller or purchaser may~~
23 ~~request an audit of the seller's books and records.~~ The
24 department may contract with private auditors pursuant to s.
25 213.28 to perform the audit. The department may charge the
26 cost of the audit to the person requesting the audit.

27 1. For the purposes of the personal liability imposed
28 by this subsection, in the case of a business requiring
29 registration with the department, in addition to any other
30 enforcement action the department may take, the department may
31 require:

1 a. Payment of the liability or a written agreement
2 with the department to pay such liability; and

3 b. Posting of a bond equal to or greater than three
4 times the estimated average monthly liability of the
5 transferee for all taxes, fees, and surcharges administered by
6 the department.

7 2. The imposition of personal liability upon a
8 transferee under this paragraph does not extinguish the
9 liability of the seller, former owner, or former operator.

10 ~~(2) If any dealer liable for any tax, interest, or~~
11 ~~penalty shall quit the business without the benefit of a~~
12 ~~purchaser and there is no successor, successors, or assigns,~~
13 ~~he or she shall make a final return and payment within 15~~
14 ~~days. Any person failing to file such final return and make~~
15 ~~payment shall be denied the right to engage in any business in~~
16 ~~the state until the person has filed such final return and~~
17 ~~paid any moneys due; and~~

18 (d) At the request of the department, the Department
19 of Legal Affairs is hereby authorized to proceed by
20 injunction, when requested by the department to do so, to
21 prevent by injunction any activity in the performance of
22 further business activity until such tax is paid; and a
23 temporary injunction enjoining further business activity shall
24 be granted without notice by any judge or chancellor
25 authorized by law to grant injunctions with regard to:-

26 1. Any dealer who fails to make a final return and
27 payment in the time and manner required by this subsection;
28 and

29 2. Any taxpayer who is subject to personal liability
30 under this subsection.

31

1 ~~(2)(3)~~ In the event any dealer is delinquent in the
2 payment of the tax herein provided for, the department may
3 give notice of the amount of such delinquency by registered
4 mail to all persons having in their possession or under their
5 control any credits or other personal property belonging to
6 such dealer or owing any debts to such dealer at the time of
7 receipt by them of such notice. All persons so notified shall
8 within 5 days after receipt of the notice advise the
9 department of all such credits, other personal property, or
10 debts in their possession, under their control, or owing by
11 them. After receiving the notice, the persons so notified
12 shall neither transfer nor make any other disposition of the
13 credits, other personal property, or debts in their possession
14 or under their control at the time they receive the notice
15 until the department consents to a transfer or disposition or
16 until 60 days elapse after the receipt of the notice,
17 whichever period expires the earlier, except that the credits,
18 other personal property, or debts which exceed the delinquent
19 amount stipulated in the notice shall not be subject to the
20 provisions of this section, wherever held, in any case in
21 which such dealer does not have a prior history of sales tax
22 delinquencies. All persons notified shall likewise within 5
23 days advise the department of any subsequent credits or other
24 personal property belonging to such dealer or any debts
25 incurred and owing to such dealer which may come within their
26 possession or under their control during the time prescribed
27 by the notice or until the department consents to a transfer
28 or disposition, whichever expires the earlier. If such notice
29 seeks to prevent the transfer or other disposition of a
30 deposit in a bank or other credits or personal property in the
31 possession or under the control of a bank, the notice to be

1 | effective shall be delivered or mailed to the office of such
2 | bank at which such deposit is carried or at which such credits
3 | or personal property is held. If, during the effective period
4 | of the notice to withhold, any person so notified makes any
5 | transfer or disposition of the property or debts required to
6 | be withheld hereunder, he or she shall be liable to the state
7 | for any indebtedness due under this chapter from the person
8 | with respect to whose obligation the notice was given to the
9 | extent of the value of the property or the amount of the debts
10 | thus transferred or paid if, solely by reason of such transfer
11 | or disposition, the state is unable to recover the
12 | indebtedness of the person with respect to whose obligation
13 | the notice was given. All such credits or other personal
14 | property or debts are subject to garnishment by the department
15 | for satisfaction of the delinquent tax due.

16 | ~~(3)(4)~~ After notice by the department of a transferee
17 | liability under this section, the dealer shall have 60 days
18 | within which to file an action as provided in chapter 72.

19 | ~~(4)(5)~~ Any violation of the provisions of this section
20 | is a misdemeanor of the first degree, punishable as provided
21 | in s. 775.082 or s. 775.083.

22 | Section 22. Paragraph (d) of subsection (2) and
23 | paragraph (c) of subsection (6) of section 212.12, Florida
24 | Statutes, are amended to read:

25 | 212.12 Dealer's credit for collecting tax; penalties
26 | for noncompliance; powers of Department of Revenue in dealing
27 | with delinquents; brackets applicable to taxable transactions;
28 | records required.--

29 | (2)

30 | (d) Any person who makes a false or fraudulent return
31 | with a willful intent to evade payment of any tax or fee

1 | imposed under this chapter; any person who, after the
2 | department's delivery of a written notice to the person's last
3 | known address specifically alerting the person of the
4 | requirement to register the person's business as a dealer,
5 | intentionally fails to register the business; and any person
6 | who, after the department's delivery of a written notice to
7 | the person's last known address specifically alerting the
8 | person of the requirement to collect tax on specific
9 | transactions, intentionally fails to collect such tax, shall,
10 | unless first having brought a legal challenge in response to
11 | such notice and in addition to the other penalties provided by
12 | law, be liable for a specific penalty of 100 percent of any
13 | unreported or any uncollected ~~the tax bill~~ or fee and, upon
14 | conviction, for fine and punishment as provided in s. 775.082,
15 | s. 775.083, or s. 775.084.

16 | 1. If the total amount of unreported or uncollected
17 | taxes or fees is less than \$300, the first offense resulting
18 | in conviction is a misdemeanor of the second degree, the
19 | second offense resulting in conviction is a misdemeanor of the
20 | first degree, and the third and all subsequent offenses
21 | resulting in conviction is a misdemeanor of the first degree,
22 | and the third and all subsequent offenses resulting in
23 | conviction are felonies of the third degree.

24 | 2. If the total amount of unreported or uncollected
25 | taxes or fees is \$300 or more but less than \$20,000, the
26 | offense is a felony of the third degree.

27 | 3. If the total amount of unreported or uncollected
28 | taxes or fees is \$20,000 or more but less than \$100,000, the
29 | offense is a felony of the second degree.

30 |
31 |

1 4. If the total amount of unreported or uncollected
2 taxes or fees is \$100,000 or more, the offense is a felony of
3 the first degree.

4 (6)

5 (c)1. If the records of a dealer are adequate but
6 voluminous in nature and substance, the department may sample
7 such records, except for fixed assets, and project the audit
8 findings derived therefrom over the entire audit period to
9 determine the proportion that taxable retail sales bear to
10 total retail sales or the proportion that taxable purchases
11 bear to total purchases. Adequate but voluminous records of
12 fixed assets that have an individual cost price of \$25,000 or
13 less may be statistically sampled, unless a greater amount not
14 to exceed \$100,000 is requested by the taxpayer. In order to
15 conduct such a sample, the department must first make a good
16 faith effort to reach an agreement with the dealer, which
17 agreement provides for the means and methods to be used in the
18 sampling process. In the event that no agreement is reached,
19 the dealer is entitled to a review by the executive director.

20 2. For the purposes of sampling pursuant to
21 subparagraph 1., the department shall project any deficiencies
22 and overpayments derived therefrom over the entire audit
23 period. In determining the dealer's compliance, the department
24 shall reduce any tax deficiency as derived from the sample by
25 the amount of any overpayment derived from the sample. In the
26 event the department determines from the sample results that
27 the dealer has a net tax overpayment, the department shall
28 provide the findings of this overpayment to the Chief
29 Financial Officer for repayment of funds paid into the State
30 Treasury through error pursuant to s. 215.26.

31

1 3.a. A taxpayer is entitled, both in connection with
2 an audit and in connection with an application for refund
3 filed independently of any audit, to establish the amount of
4 any refund or deficiency through statistical sampling when the
5 taxpayer's records, other than those regarding fixed assets,
6 are adequate but voluminous. Adequate but voluminous records
7 of fixed assets that have an individual cost price of \$25,000
8 or less may be statistically sampled, unless a greater amount
9 not to exceed \$100,000 is requested by the taxpayer.

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

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

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

24 (III) A sampling method that has been submitted by the
25 taxpayer and approved by the department before a refund claim
26 is submitted. This sub-sub-subparagraph does not prohibit a
27 taxpayer from filing a refund claim prior to approval by the
28 department of the sampling method; however, a refund claim
29 submitted before the sampling method has been approved by the
30 department cannot be a complete refund application pursuant to
31

1 s. 213.255 until the sampling method has been approved by the
2 department.

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

13 Section 23. It is the intent of the Legislature that
14 the amendments made by this act to s. 212.12(6)(c), Florida
15 Statutes, apply to all pending sales and use tax audits or
16 other actions or inquiries, excluding those currently under
17 protest or in litigation. The amendments made by this act to
18 s. 212.12(6)(c), Florida Statutes, do not create any right to
19 refund for taxes previously assessed and paid in regard to
20 audits or other actions or inquiries that are no longer
21 pending.

22 Section 24. Subsection (4) of section 212.14, Florida
23 Statutes, is amended to read:

24 212.14 Departmental powers; hearings; distress
25 warrants; bonds; subpoenas and subpoenas duces tecum.--

26 (4) ~~In all cases where it is necessary to ensure~~
27 ~~compliance with the provisions of this chapter,~~ The department
28 ~~may shall~~ require a cash deposit, bond or other security as a
29 condition to a person obtaining or retaining a dealer's
30 certificate of registration under this chapter, as provided in
31 s. 213.32(5). ~~Such bond shall be in the form and such amount~~

1 ~~as the department deems appropriate under the particular~~
2 ~~circumstances. Every person failing to produce such cash~~
3 ~~deposit, bond or other security as provided for herein shall~~
4 ~~not be entitled to obtain or retain a dealer's certificate of~~
5 ~~registration under this chapter, and the Department of Legal~~
6 ~~Affairs is hereby authorized to proceed by injunction, when so~~
7 ~~requested by the Department of Revenue, to prevent such person~~
8 ~~from doing business subject to the provisions of this chapter~~
9 ~~until such cash deposit, bond or other security is posted with~~
10 ~~the department, and any temporary injunction for this purpose~~
11 ~~may be granted by any judge or chancellor authorized by law to~~
12 ~~grant injunctions. Any security required to be deposited may~~
13 ~~be sold by the department at public sale if it becomes~~
14 ~~necessary so to do in order to recover any tax, interest or~~
15 ~~penalty due. Notice of such sale may be served personally or~~
16 ~~by mail upon the person who deposited such security. If by~~
17 ~~mail, notice sent to the last known address as the same~~
18 ~~appears on the records of the department shall be sufficient~~
19 ~~for the purpose of this requirement. Upon such sale, the~~
20 ~~surplus, if any, above the amount due under this chapter shall~~
21 ~~be returned to the person who deposited the security.~~

22 Section 25. Subsection (3) of section 212.18, Florida
23 Statutes, is amended to read:

24 212.18 Administration of law; registration of dealers;
25 rules.--

26 (3)(a) Every person desiring to engage in or conduct
27 business in this state as a dealer, as defined in this
28 chapter, or to lease, rent, or let or grant licenses in living
29 quarters or sleeping or housekeeping accommodations in hotels,
30 apartment houses, roominghouses, or tourist or trailer camps
31 that are subject to tax under s. 212.03, or to lease, rent, or

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

26 (b) The department, upon receipt of such application,
27 will grant to the applicant a separate certificate of
28 registration for each place of business, which certificate may
29 be canceled by the department or its designated assistants for
30 any failure by the certificateholder to comply with any of the
31 provisions of this chapter. The certificate is not assignable

1 | and is valid only for the person, firm, copartnership, or
2 | corporation to which issued. The certificate must be placed in
3 | a conspicuous place in the business or businesses for which it
4 | is issued and must be displayed at all times. Except as
5 | provided in this subsection, no person shall engage in
6 | business as a dealer or in leasing, renting, or letting of or
7 | granting licenses in living quarters or sleeping or
8 | housekeeping accommodations in hotels, apartment houses,
9 | roominghouses, tourist or trailer camps, or real property as
10 | hereinbefore defined, nor shall any person sell or receive
11 | anything of value by way of admissions, without first having
12 | obtained such a certificate or after such certificate has been
13 | canceled; no person shall receive any license from any
14 | authority within the state to engage in any such business
15 | without first having obtained such a certificate or after such
16 | certificate has been canceled. The engaging in the business of
17 | selling or leasing tangible personal property or services or
18 | as a dealer, as defined in this chapter, or the engaging in
19 | leasing, renting, or letting of or granting licenses in living
20 | quarters or sleeping or housekeeping accommodations in hotels,
21 | apartment houses, roominghouses, or tourist or trailer camps
22 | that are taxable under this chapter, or real property, or the
23 | engaging in the business of selling or receiving anything of
24 | value by way of admissions, without such certificate first
25 | being obtained or after such certificate has been canceled by
26 | the department, is prohibited. The failure or refusal of any
27 | person, firm, copartnership, or corporation to so qualify when
28 | required hereunder is a misdemeanor of the first degree,
29 | punishable as provided in s. 775.082 or s. 775.083, or subject
30 | to injunctive proceedings as provided by law. Such failure or
31 | refusal also subjects the offender to a \$100 initial

1 registration fee in lieu of the \$5 registration fee authorized
2 in paragraph (a). However, the department may waive the
3 increase in the registration fee if it is determined by the
4 department that the failure to register was due to reasonable
5 cause and not to willful negligence, willful neglect, or
6 fraud.

7 (c) In addition to the certificate of registration,
8 the department shall provide to each newly registered dealer
9 an initial resale certificate that will be valid for the
10 remainder of the period of issuance. The department shall
11 provide each active dealer with an annual resale certificate.
12 For purposes of this section, "active dealer" means a person
13 who is currently registered with the department and who is
14 required to file at least once during each applicable
15 reporting period.

16 ~~(d) The department may revoke any dealer's certificate~~
17 ~~of registration when the dealer fails to comply with this~~
18 ~~chapter. Prior to revocation of a dealer's certificate of~~
19 ~~registration, the department must schedule an informal~~
20 ~~conference at which the dealer may present evidence regarding~~
21 ~~the department's intended revocation or enter into a~~
22 ~~compliance agreement with the department. The department must~~
23 ~~notify the dealer of its intended action and the time, place,~~
24 ~~and date of the scheduled informal conference by written~~
25 ~~notification sent by United States mail to the dealer's last~~
26 ~~known address of record furnished by the dealer on a form~~
27 ~~prescribed by the department. The dealer is required to attend~~
28 ~~the informal conference and present evidence refuting the~~
29 ~~department's intended revocation or enter into a compliance~~
30 ~~agreement with the department which resolves the dealer's~~
31 ~~failure to comply with this chapter. The department shall~~

1 ~~issue an administrative complaint under s. 120.60 if the~~
2 ~~dealer fails to attend the department's informal conference,~~
3 ~~fails to enter into a compliance agreement with the department~~
4 ~~resolving the dealer's noncompliance with this chapter, or~~
5 ~~fails to comply with the executed compliance agreement.~~

6 (d)~~(e)~~ As used in this paragraph, the term "exhibitor"
7 means a person who enters into an agreement authorizing the
8 display of tangible personal property or services at a
9 convention or a trade show. The following provisions apply to
10 the registration of exhibitors as dealers under this chapter:

11 1. An exhibitor whose agreement prohibits the sale of
12 tangible personal property or services subject to the tax
13 imposed in this chapter is not required to register as a
14 dealer.

15 2. An exhibitor whose agreement provides for the sale
16 at wholesale only of tangible personal property or services
17 subject to the tax imposed in this chapter must obtain a
18 resale certificate from the purchasing dealer but is not
19 required to register as a dealer.

20 3. An exhibitor whose agreement authorizes the retail
21 sale of tangible personal property or services subject to the
22 tax imposed in this chapter must register as a dealer and
23 collect the tax imposed under this chapter on such sales.

24 4. Any exhibitor who makes a mail order sale pursuant
25 to s. 212.0596 must register as a dealer.

26
27 Any person who conducts a convention or a trade show must make
28 their exhibitor's agreements available to the department for
29 inspection and copying.

30 Section 26. Section 213.0352, Florida Statutes, is
31 created to read:

1 213.0352 Information for enforcement of tax laws.--
2 (1) As used in this section, the term:
3 (a) "Financial institution" means:
4 1. A depository institution, as defined in s. 3(c) of
5 the Federal Deposit Insurance Act, 12 U.S.C. s. 1813(c);
6 2. An institution-affiliated party, as defined in s.
7 3(u) of the Federal Deposit Insurance Act, 12 U.S.C. s.
8 1813(u);
9 3. Any federal credit union or state credit union, as
10 defined in s. 101 of the Federal Credit Union Act, 12 U.S.C.
11 s. 1752, including an institution-affiliated party of such a
12 credit union, as defined in s. 206(r) of the Federal Credit
13 Union Act, 12 U.S.C. s. 1786(r); or
14 4. Any benefit association, insurance company,
15 safe-deposit company, money-market mutual fund, or similar
16 entity authorized to do business in this state.
17 (b) "Account" means a demand deposit account, checking
18 or negotiable withdrawal order account, savings account, time
19 deposit account, or money-market mutual fund account.
20 (c) "Obligor" means any person against whose property
21 the department has issued a warrant or filed a judgment lien
22 certificate.
23 (d) "Person" means a person as defined in s. 212.02.
24 (2) The department may request from a financial
25 institution information and assistance to enable the
26 department to enforce the tax laws of the state. The
27 department shall develop procedures to enter into agreements
28 with financial institutions doing business in the state to
29 develop and operate a data match system, using automated data
30 exchanges to the maximum extent feasible, in which each
31 financial institution is required to provide for each calendar

1 quarter the name, record address, social security number or
2 other taxpayer identification number, average daily account
3 balance, and other identifying information for:

4 (a) Each obligor who maintains an account at such
5 institution, as identified by the department by name and
6 social security number or other taxpayer identification
7 number; or

8 (b) At the financial institution's option, each person
9 who maintains an account at such institution.

10
11 Use of this information shall be limited to the purpose of
12 administering the taxes and fees administered by the
13 department.

14 (3) The department shall, to the extent possible in
15 compliance with state and federal law, administer this section
16 in conjunction with s. 409.25657 in order to reduce the burden
17 of compliance on financial institutions.

18 (4) The department shall pay a reasonable fee to a
19 financial institution for conducting the data match provided
20 for in subsection (2), which may not exceed the actual costs
21 incurred by the financial institution.

22 (5) A financial institution is not liable to any
23 person and is not required to provide notice to its customers:

24 (a) For the disclosure of any information required
25 under this section;

26 (b) For encumbering or surrendering any assets held by
27 the financial institution in response to a notice of lien or
28 levy issued by the department;

29 (c) For disclosing any information in connection with
30 a data match; or

31

1 (d) For any other action taken in good faith to comply
2 with the requirements of this section.

3 (6) Any financial records obtained under this section
4 may be disclosed only for the purpose of, and to the extent
5 necessary in, administering and enforcing the tax laws of this
6 state.

7 (7) The department may institute civil proceedings to
8 enforce this section.

9 (8) The department may adopt rules pursuant to ss.
10 120.536(1) and 120.54 for establishing the procedures and
11 requirements for automated data matches with financial
12 institutions under this section.

13 Section 27. Paragraph (z) is added to subsection (8)
14 of section 213.053, Florida Statutes, and paragraph (a) of
15 subsection (16) of that section is amended, to read:

16 213.053 Confidentiality and information sharing.--

17 (8) Notwithstanding any other provision of this
18 section, the department may provide:

19 (z) Names and taxpayer identification numbers relative
20 to information agreements with financial institutions pursuant
21 to s. 213.0352.

22
23 Disclosure of information under this subsection shall be
24 pursuant to a written agreement between the executive director
25 and the agency. Such agencies, governmental or
26 nongovernmental, shall be bound by the same requirements of
27 confidentiality as the Department of Revenue. Breach of
28 confidentiality is a misdemeanor of the first degree,
29 punishable as provided by s. 775.082 or s. 775.083.

30 (16)(a) ~~The department may disclose Confidential~~
31 taxpayer information may be shared with ~~contained in returns,~~

1 ~~reports, accounts, or declarations filed with the department~~
2 ~~by persons subject to any state or local tax to the child~~
3 support enforcement program, which may use the information for
4 purposes of program administration, ~~to assist in the location~~
5 ~~of parents who owe or potentially owe a duty of support, as~~
6 ~~defined in s. 409.2554, pursuant to Title IV D of the Social~~
7 ~~Security Act, their assets, their income, and their employer,~~
8 and with ~~to~~ the Department of Children and Family Services for
9 the purpose of diligent search activities pursuant to chapter
10 39.

11 Section 28. Paragraph (d) of subsection (3) of section
12 213.21, Florida Statutes, is amended to read:

13 213.21 Informal conferences; compromises.--

14 (3)

15 (d) A taxpayer's liability for the service fee
16 required by s. 215.34(2) may be settled or compromised if it
17 is determined that the dishonored check, draft, or order was
18 returned due to an unintentional error committed by the
19 issuing financial institution, the taxpayer, or the department
20 and the unintentional error is substantiated by the
21 department. The department shall maintain records of all
22 compromises, and the records shall state the basis for the
23 compromise.

24 Section 29. Section 213.32, Florida Statutes, is
25 created to read:

26 213.32 Integrated enforcement authority.--

27 (1) INTENT.--It is the intent of the Legislature to
28 integrate, to the greatest extent possible, the department's
29 collection and enforcement authority for each tax, fee, or
30 surcharge it administers.

31

1 (2) INTEGRATED WARRANTS AND JUDGMENT LIEN

2 CERTIFICATES.--In addition to the authority granted to the
3 department by law to issue warrants and file judgment lien
4 certificates regarding any tax, fee, or surcharge it
5 administers, the department may issue a single warrant and
6 file a single judgment lien certificate evidencing a
7 taxpayer's total liability for all taxes, fees, or surcharges
8 administered by the department. Each integrated warrant and
9 integrated judgment lien certificate issued or filed must
10 separately identify and itemize the total amount due with
11 regard to each tax, fee, or surcharge, including any related
12 penalty and interest. In order for a taxpayer's liability for
13 any individual tax, fee, or surcharge, including penalties and
14 interest, to be included in an integrated warrant or judgment
15 lien certificate, the department must have the current
16 authority to file a warrant or judgment lien certificate with
17 regard to the taxpayer's liability for that tax, fee, or
18 surcharge.

19 (3) REVOCATION OF CERTIFICATES OF REGISTRATION,

20 PERMITS, OR LICENSES.--

21 (a) When a taxpayer is delinquent in the payment of
22 any tax, fee, or surcharge administered by the department, the
23 department may revoke the taxpayer's certificate of
24 registration, permit, or license issued to that taxpayer by
25 the department. For purposes of this subsection, a taxpayer is
26 delinquent only when the department has issued a warrant or
27 filed a judgment lien certificate against such taxpayer's
28 property.

29 (b) Before revoking one or more of the taxpayer's
30 certificates of registration, permits, or licenses, the
31 department must schedule an informal conference at which the

1 taxpayer may present evidence regarding the department's
2 intended revocation or enter into a compliance agreement with
3 the department. The department must provide written notice to
4 the taxpayer at the taxpayer's last known address of its
5 intended action and the time, place, and date of the scheduled
6 informal conference. The taxpayer shall attend the informal
7 conference and present evidence refuting the department's
8 intended revocation or enter into a compliance agreement with
9 the department which resolves the dealer's failure to comply
10 with any tax, fee, or surcharge administered by the
11 department. The department shall issue an administrative
12 complaint under chapter 120 if the taxpayer fails to attend
13 the department's informal conference, fails to enter into a
14 compliance agreement with the department resolving the
15 dealer's noncompliance with all taxes administered under this
16 chapter, or fails to comply with the executed compliance
17 agreement.

18 (c) If one or more of a taxpayer's certificates of
19 registration, permits, or licenses have been revoked, the
20 department may not issue a new certificate of registration,
21 permit, or license to that taxpayer unless:

22 1. The taxpayer's outstanding liabilities have been
23 satisfied;

24 2. The taxpayer has entered into a written agreement
25 with the department for payment and is current in all
26 payments; or

27 3. The department, at its sole discretion, otherwise
28 enters into a written agreement with the taxpayer regarding
29 the liability and, as part of that agreement, agrees to issue
30 a new certificate of registration, permit, or license to the
31 taxpayer.

1 (d) When the department has issued a warrant or filed
2 a judgment lien certificate in connection with a jeopardy
3 assessment, the procedures specified in s. 213.732 must be
4 complied with prior to or in conjunction with those provided
5 in this subsection.

6 (4) ADMINISTRATIVE FREEZE OF A DELINQUENT TAXPAYER'S
7 ASSETS.--

8 (a) As used in this subsection, the term:

9 1. "Assets" means any personal property, credits, or
10 debts owned by or owed to a delinquent taxpayer, excluding
11 wages.

12 2. "Custodian" means any person, as defined by s.
13 212.02, the Federal Government, or any agency or
14 instrumentality of the Federal Government having control or
15 possession of any assets owned by, or owed to, any delinquent
16 taxpayer.

17 3. "Delinquent taxpayer" means any taxpayer delinquent
18 in the payment of any tax, fee, or surcharge, including
19 penalties and interest, administered by the department and
20 against whose property the department has issued a warrant or
21 filed a judgment lien certificate.

22 (b) In addition to other remedies granted to the
23 department by law, when any taxpayer is delinquent in the
24 payment of tax, fee, or surcharge administered by the
25 department, including penalties and interest, the department
26 may give notice to all custodians having in their possession
27 or under their control any assets of such delinquent taxpayer
28 at the time the notice is received.

29 (c) In order to initiate a freeze of a delinquent
30 taxpayer's assets, the department must prepare a notice of
31 freeze that applies to the total assets of the delinquent

1 taxpayer or that applies only to a specified dollar amount.
2 The notice of freeze must be sent by registered mail to all
3 custodians having in their possession or control any assets of
4 the delinquent taxpayer.

5 (d) The notice of freeze must state the department's
6 authority to initiate the procedure; specifically identify the
7 delinquent taxpayer subject to the freeze; specify each tax,
8 fee, or surcharge for which the taxpayer is delinquent;
9 specify the amount of each tax, fee, or surcharge, including
10 penalties and interest, owed by the taxpayer; indicate the
11 dates during which the freeze of assets is effective; specify
12 the amount of the taxpayer's assets which must be frozen or
13 withheld by the custodian; and fully describe the custodian's
14 responsibilities pursuant to this subsection.

15 (e) The notice of freeze must notify the custodian
16 that:

17 1. The custodian is prohibited from transferring or
18 otherwise disposing of the specified partial amount or the
19 entire amount of the assets of the delinquent taxpayer in its
20 possession or under its control at the time of receipt of the
21 notice of freeze, or any additional assets of the delinquent
22 taxpayer which the custodian subsequently acquires possession
23 or control of during the period prescribed by the notice of
24 freeze, unless consent is given by the department in writing.

25 2. The notice of freeze is effective as of the date of
26 its receipt, and it remains in effect until the department
27 consents to a transfer or disposition or until 60 days elapse
28 after the receipt of the notice, whichever period expires
29 earlier.

30 3. If, during the period prescribed by the notice of
31 freeze, a custodian makes any transfer or other disposition of

1 the assets required to be frozen or withheld, the custodian
2 will be liable for any indebtedness owed to the department by
3 the delinquent taxpayer to the extent of the value of the
4 property or amounts of the debt transferred or paid, if the
5 department is unable to recover the indebtedness solely by
6 reason of the transfer or disposition.

7 (f) The notice of freeze must inform the custodian
8 that each custodian who receives a notice of freeze issued
9 under this section shall:

10 1. Inform the department in writing, within 5 days
11 after receipt of the notice, of all such assets of the
12 delinquent taxpayer in its possession, under its control, or
13 owing to it.

14 2. Inform the department in writing within 5 days
15 after coming into possession or control of any assets of the
16 delinquent taxpayer subsequent to receipt of the notice of
17 freeze and during the time prescribed by the notice.

18 3. Comply with the statutory prohibition against
19 transferring or disposing of the delinquent taxpayer's assets
20 specified in the notice of freeze and any subsequently
21 possessed or controlled assets.

22 (g) If the notice of freeze seeks to prevent the
23 transfer or other disposition of a deposit in a bank or other
24 assets under the control of a bank, the notice is effective if
25 delivered to any office of the bank at which the deposit is
26 carried or at which such assets are held.

27 (h) If, during the period prescribed by the notice of
28 freeze, the delinquent taxpayer satisfies the liability for
29 taxes, fees, or surcharges, including penalties and interest,
30 the department shall issue a notice of release. Upon receipt
31 of the notice of release, the custodian is no longer

1 prohibited from transferring, returning, or disposing of any
2 assets owned, controlled by, or owed to the taxpayer which are
3 in the custodian's possession or control.

4 (i) All assets subject to freeze under this subsection
5 are also subject to:

6 1. Garnishment by the department; and

7 2. Levy, seizure, and sale by the department.

8 (5) CASH DEPOSIT, SURETY BOND, OR IRREVOCABLE LETTERS
9 OF CREDIT.--In order to collect the taxes, fees, and
10 surcharges administered by the department and to ensure
11 compliance with the revenue laws of this state, the
12 department, in its sole discretion, may require a taxpayer to
13 provide security as a condition to the taxpayer obtaining,
14 renewing, or retaining any dealer's certificate of
15 registration, permit, or license with the department as
16 provided in this subsection. The authority granted by this
17 subsection is in addition to other authority granted to the
18 executive director and the department by law.

19 (a) As used in this subsection, the term:

20 1. "Department" means the executive director of the
21 Department of Revenue or the executive director's designee.

22 2. "Security" means any cash deposit, surety bonds, or
23 irrevocable letters of credit. Surety bonds must be issued by
24 a surety company authorized to transact business in this state
25 as a surety. Irrevocable letters of credit must be issued by a
26 bank authorized to do business in this state as a bank and
27 shall be engaged as an agreement to honor demands for payment
28 as specified in this subsection.

29 3. "Taxpayer" means any person, as defined by s.
30 212.02 and, solely for the purposes of determining whether
31 security is required under this subsection and the amount of

1 any such security required, the term also includes any related
2 person.

3 (b)1. In determining whether security will be required
4 and the amount of the security, the department shall consider:

5 a. The taxpayer's compliance with state and federal
6 laws;

7 b. The taxpayer's compliance with state and federal
8 revenue laws;

9 c. The taxpayer's financial status and ability to pay;
10 and

11 d. Any other facts and circumstances affecting
12 compliance with the revenue laws of this state.

13 2. The security shall be in the amount required by the
14 department. The amount of security required by the department
15 may not exceed a taxpayer's estimated liability, as determined
16 by the department, for all taxes, fees, and surcharges,
17 including penalties and interest, administered by the
18 department for 12 consecutive months, plus any unpaid
19 delinquencies of the taxpayer.

20 3. If the department determines that security is
21 required, it shall provide written notice of such
22 determination to the taxpayer at the taxpayer's last known
23 address as it appears in the department's records. The
24 taxpayer must post the required security or send a written
25 objection to the department within 30 days after the date on
26 the department's notice, failing which the department shall
27 refuse the issuance or renewal of any dealer's certificate of
28 registration, permit, or license with the department, or
29 initiate revocation proceedings to revoke any existing
30 registrations, permits, or licenses.

31

1 4. If the department determines that the amount of any
2 existing security is insufficient to ensure payment of the
3 amount of the taxes, fees, and surcharges, including penalties
4 and interest, for which the taxpayer is or may at any time
5 become liable, or if the amount of the security is reduced or
6 released, whether by judgment rendered or by use of the
7 security to pay the delinquent taxes, penalty, or interest,
8 the department shall provide written notification to the
9 taxpayer of the revised amount of security required. The
10 taxpayer shall file additional security in the amount required
11 or provide a written objection within 30 days, failing which
12 the department shall refuse the issuance or renewal of any
13 taxpayer's certificate of registration, permit, or license
14 with the department, or initiate revocation proceedings to
15 revoke any existing registrations, permits, or licenses. If a
16 new security is furnished, the department shall cancel,
17 surrender, or discharge the previous security as appropriate,
18 for which such new security is substituted.

19 5. When a taxpayer that has provided security is
20 delinquent more than 30 days in the payment of any tax, fee,
21 or surcharge administered by the department, the department
22 may, upon 10 days' written notice provided to the last known
23 address of the taxpayer as it appears in the department's
24 records, apply the security in whole or in part to the amount
25 that the taxpayer should have collected and remitted or paid.

26 6. The duration of any security required under this
27 subsection may not be less than 12 months. If a taxpayer files
28 all returns and pays all tax to the state within the time
29 required by law for a period of 12 consecutive months, the
30 department shall, upon written request by the taxpayer,
31 release or refund the security. If the taxpayer ceases

1 operations during the time the security is being held by the
2 department, the taxpayer must submit a written request to the
3 department within 90 days after ceasing operations for the
4 return of the deposit or release of the surety bond or letter
5 of credit. The department shall offset any reimbursement of
6 security under this subsection against any outstanding
7 liability of the taxpayer.

8 (c) Any taxpayer failing to post security as provided
9 in this subsection is not entitled to obtain, renew, or retain
10 any certificate of registration, permit, or license issued by
11 the department. At the request of the department, the
12 Department of Legal Affairs may proceed by injunction to
13 prevent any activity in the performance of further business
14 activity subject to registration, permitting, or licensing by
15 the department until such security is posted with the
16 department. A temporary injunction for this purpose may be
17 granted by any judge or chancellor authorized by law to grant
18 injunctions.

19 (d) Any security required under this subsection may be
20 sold by the department to recover any taxes, fees, or
21 surcharges due, including penalties and interest. Notice of
22 such sale may be served personally or by mail upon the
23 taxpayer who deposited such security. If by mail, notice sent
24 to the last known address as the same appears on the records
25 of the department is sufficient for the purpose of this
26 requirement. Upon such sale, the surplus, if any, above the
27 amount due under this chapter shall be returned to the
28 taxpayer who deposited the security.

29 (6) GARNISHMENT.--Garnishment shall be conducted for
30 all taxes administered by the department under s. 213.67.
31

1 (7) TRANSFER OF LIABILITY.--The liability for any tax,
2 fee, or surcharge, including penalties and interest, may be
3 transferred to responsible corporate officers as provided in
4 s. 213.29.

5 (8) JEOPARDY ASSESSMENTS.--If there is jeopardy to the
6 revenue and jeopardy is asserted in or with an assessment, the
7 department shall proceed in the manner specified for jeopardy
8 assessments in s. 213.732.

9 (9) RULES.--The department may adopt rules pursuant to
10 ss. 120.536(1) and 120.54 to administer this section.

11 Section 30. Effective January 1, 2008, subsection (1)
12 of section 213.755, Florida Statutes, is amended to read:

13 213.755 Filing of returns and payment of taxes by
14 electronic means.--

15 (1) The executive director of the Department of
16 Revenue shall have authority to require a taxpayer to file
17 returns and remit payments by electronic means where the
18 taxpayer is subject to tax and has paid that tax in the prior
19 state fiscal year in an amount of ~~\$20,000~~\$30,000 or more;
20 \$10,000 or more, effective January 1, 2009; and \$5,000 or
21 more, effective January 1, 2010. Any taxpayer who operates two
22 or more places of business for which returns are required to
23 be filed with the department shall combine the tax payments
24 for all such locations in order to determine whether they are
25 obligated under this section. This subsection does not
26 override additional requirements in any provision of a revenue
27 law which the department has the responsibility for
28 regulating, controlling, and administering.

29 Section 31. Subsection (2) of section 220.21, Florida
30 Statutes, is amended, and subsection (3) is added to that
31 section, to read:

1 220.21 Returns and records; regulations.--
2 (2) A taxpayer who is required to file its federal
3 income tax return by electronic means on a separate or
4 consolidated basis shall file returns required by this chapter
5 by electronic means. For the reasons described in s.
6 213.755(9), the department may waive the requirement to file a
7 return by electronic means for taxpayers that are unable to
8 comply despite good faith efforts or due to circumstances
9 beyond the taxpayer's reasonable control. The provisions of
10 this subsection are in addition to the requirements of s.
11 213.755 to electronically file returns and remit payments
12 required under this chapter. ~~A taxpayer may choose to file a~~
13 return required by this code in a form initiated through a
14 telephonic or electronic data interchange using an advanced
15 encrypted transmission by means of the Internet or other
16 suitable transmission. The department ~~may~~ shall prescribe by
17 rule the format and instructions necessary for electronic such
18 filing to ensure a full collection of taxes due. In addition
19 to the authority granted under s. 213.755, the acceptable
20 method of transfer, the method, form, and content of the
21 electronic data interchange, and the means, if any, by which
22 the taxpayer will be provided with an acknowledgment ~~may~~ shall
23 be prescribed by the department. In the case of any failure to
24 comply with the electronic-filing requirements of this
25 subsection there shall be added as a penalty to the amount of
26 tax due with such return the greater of 10 percent of the
27 amount of such tax or \$250. The department may settle or
28 compromise the penalty pursuant to s. 213.21. This penalty is
29 in addition to any other penalty that may be applicable and
30 shall be assessed, collected, and paid in the same manner as
31 taxes.

1 (3) In addition to its authority under s. 213.755, the
2 department may adopt rules requiring or allowing taxpayers to
3 use an electronic-filing system to file returns required by
4 subsection (2), including any electronic systems developed by
5 the Internal Revenue Service.

6 Section 32. The amendments made by this act to s.
7 220.21(2), Florida Statutes, apply to returns due on or after
8 January 1, 2008.

9 Section 33. Section 220.802, Florida Statutes, is
10 created to read:

11 220.802 Accuracy-related penalties.--

12 (1) IMPOSITION OF PENALTY.--If this section applies to
13 any portion of an underpayment of tax required to be shown on
14 a return under this chapter or chapter 221, there shall be
15 added to the tax an amount equal to 20 percent of the portion
16 of the underpayment to which this section applies.

17 (2) PORTION OF UNDERPAYMENT TO WHICH THIS SECTION
18 APPLIES.--

19 (a) This section applies to the portion of any
20 underpayment due under this chapter or chapter 221 which is
21 attributable to one or more of the following:

- 22 1. Negligence or disregard of statutes or rules.
23 2. Any substantial understatement of tax.

24 (b) This section does not apply to any portion of an
25 underpayment which is due to fraud and on which the penalty
26 for fraud is imposed and sustained. For purposes of this
27 section, the amount shown as tax by the taxpayer upon a return
28 shall be taken into account in determining the amount of the
29 deficiency only if such return was filed on or before the last
30 day prescribed by law for the filing of such return, including
31 any extensions of time for such filing.

1 1. As used in this section, the term "negligence"
2 includes any failure to make a reasonable attempt to comply
3 with the provisions of this chapter or chapter 221, and the
4 rules adopted thereunder, or to exercise ordinary and
5 reasonable care in preparing a tax return. The term also
6 includes any failure by the taxpayer to keep adequate books
7 and records or to substantiate items properly. A position with
8 respect to an item is attributable to negligence if it lacks a
9 reasonable basis.

10 2. As used in this section, the term "disregard"
11 includes any careless, reckless, or intentional disregard of
12 statutes or rules adopted under this chapter or chapter 221. A
13 disregard of statutes or rules is "careless" if the taxpayer
14 or the taxpayer's representative does not exercise reasonable
15 diligence to determine the correctness of a return position
16 that is contrary to a statute or rule and does not adequately
17 disclose that return position on the return. A disregard is
18 "reckless" if the taxpayer or the taxpayer's representative
19 makes little or no effort to determine if a statute or rule
20 exists under circumstances that demonstrate a substantial
21 deviation from the standard of conduct that a reasonable
22 person would observe. A disregard is "intentional" if the
23 taxpayer or the taxpayer's representative knows or should know
24 of the statute or rule that is disregarded. Nevertheless, a
25 taxpayer or representative who takes a position contrary to a
26 ruling, as opposed to a statute or rule, has not disregarded
27 the ruling if the contrary position has a realistic
28 possibility of being sustained on its merits and the
29 taxpayer's position is adequately disclosed. The penalty for
30 disregarding statutes or rules does not apply if the taxpayer
31 has adequately disclosed the position that is the basis for

1 the penalty and there is a reasonable basis for the position
2 of the taxpayer or to the extent that the taxpayer acted in
3 good faith and had reasonable cause. The reasonable-cause
4 provisions of s. 213.21 do not apply to this section and
5 reasonable cause shall be interpreted in the same manner as
6 under ss. 6662 and 6664 of the Internal Revenue Code and the
7 regulations thereunder.

8 (3) SUBSTANTIAL UNDERSTATEMENT OF TAX.--

9 (a) For purposes of this section, there is a
10 substantial understatement of tax for any taxable year if the
11 amount of the understatement for the taxable year exceeds the
12 greater of:

13 1. Ten percent of the tax required to be shown on the
14 return for the taxable year; or

15 2. Ten thousand dollars.

16 (b) For purposes of this section, the term
17 "understatement" means the excess of the amount of tax
18 required to be shown on the return for the taxable year, over
19 the amount of tax imposed which is shown on the return.

20 (c) The amount of the understatement under paragraph
21 (b) shall be reduced by that portion of the understatement
22 which is attributable to any item if the relevant facts
23 affecting the item's tax treatment are adequately disclosed in
24 the return or in a statement attached to the return and there
25 is a reasonable basis for the tax treatment of such item by
26 the taxpayer.

27 (4) DISCLOSURE.--A penalty for negligence or disregard
28 of statutes or rules may not be imposed on any portion of an
29 underpayment which is attributable to a ruling provided to the
30 taxpayer by the department under s. 213.22 if the position is
31 adequately disclosed in accordance with this section and, in

1 the case of a position contrary to a statute or rule, the
2 position represents a good faith challenge to the validity of
3 the statute or rule. However, an exception under this section
4 does not apply in the case of a position that does not have a
5 reasonable basis or if the taxpayer fails to keep or furnish
6 adequate books and records or fails to substantiate items
7 properly. Disclosure is adequate for purposes of this section
8 if it is made in accordance with rules adopted by the
9 department and if it is made on a properly completed form as
10 prescribed by the department. If such a form is not
11 prescribed, disclosure is adequate if it is made on a properly
12 completed Internal Revenue Service Form 8275 or Form 8275-R.
13 In addition, the statute, rule, or ruling provision must be
14 adequately identified on the separate form, as appropriate.

15 (5) CARRYFORWARDS.--The penalty for negligence or
16 disregard of statutes or rules applies to any portion of a
17 deficiency for the year to which the loss, deduction, or
18 credit is carried, which portion is attributable to negligence
19 or disregard of statutes or rules in the year in which the
20 carryforward of the loss, deduction, or credit is applied.

21 (6) RULES.--The Department of Revenue may adopt rules
22 to administer this section, including rules establishing forms
23 and procedures, as well as methods of disclosure.

24 Section 34. Section 32 of this act applies to tax
25 years ending after December 31, 2007.

26 Section 35. Effective January 1, 2008, and applicable
27 to tax years ending after December 31, 2007, section 220.803,
28 Florida Statutes, is amended to read:

29 220.803 Penalties; failure to pay tax.--

30 ~~(1) If any part of a deficiency is due to negligence~~
31 ~~or intentional disregard of rules and regulations prescribed~~

1 ~~by or under this chapter, but without intent to defraud, there~~
2 ~~shall be added to the tax as a penalty an amount equal to 10~~
3 ~~percent of the deficiency.~~

4 ~~(1)(2)~~ If any part of a deficiency is due to fraud,
5 there shall be added to the tax as a penalty, in lieu of the
6 penalty under s. 220.802 ~~subsection (1)~~, an amount equal to
7 100 percent of the deficiency.

8 ~~(2)(3)~~ For purposes of this section, the amount shown
9 as tax by the taxpayer upon a return shall be taken into
10 account in determining the amount of the deficiency only if
11 such return was filed on or before the last day prescribed by
12 law for the filing of such return, including any extensions of
13 the time for such filing.

14 Section 36. Paragraph (d) of subsection (1) of section
15 443.1216, Florida Statutes, is amended to read:

16 443.1216 Employment.--Employment, as defined in s.
17 443.036, is subject to this chapter under the following
18 conditions:

19 (1)

20 (d) If two or more related corporations concurrently
21 employ the same individual and compensate the individual
22 through a common paymaster, each related corporation is
23 considered to have paid wages to the individual only in the
24 amounts actually disbursed by that corporation to the
25 individual and is not considered to have paid the wages
26 actually disbursed to the individual by another of the related
27 corporations. The Agency for Workforce Innovation and the
28 state agency providing unemployment tax collection services
29 may adopt rules necessary to administer this paragraph.

30 1. As used in this paragraph, the term "common
31 paymaster" means a member of a group of related corporations

1 | that disburses wages to concurrent employees on behalf of the
2 | related corporations and that is responsible for keeping
3 | payroll records for those concurrent employees. A common
4 | paymaster is not required to disburse wages to all the
5 | employees of the related corporations; however, this
6 | subparagraph does not apply to wages of concurrent employees
7 | which are not disbursed through a common paymaster. A common
8 | paymaster must pay concurrently employed individuals under
9 | this subparagraph by one combined paycheck.

10 | 2. As used in this paragraph, the term "concurrent
11 | employment" means the existence of simultaneous employment
12 | relationships between an individual and related corporations.
13 | Those relationships require the performance of services by the
14 | employee for the benefit of the related corporations,
15 | including the common paymaster, in exchange for wages that, if
16 | deductible for the purposes of federal income tax, are
17 | deductible by the related corporations.

18 | 3. Corporations are considered related corporations
19 | for an entire calendar quarter if they satisfy any one of the
20 | following tests at any time during the calendar quarter:

21 | a. The corporations are members of a "controlled group
22 | of corporations" as defined in s. 1563 of the Internal Revenue
23 | Code of 1986 or would be members if paragraph 1563(a)(4) and
24 | subsection 1563(b) did not apply.

25 | b. In the case of a corporation that does not issue
26 | stock, at least 50 percent of the members of the board of
27 | directors or other governing body of one corporation are
28 | members of the board of directors or other governing body of
29 | the other corporation or the holders of at least 50 percent of
30 | the voting power to select those members are concurrently the
31 |

1 holders of at least 50 percent of the voting power to select
2 those members of the other corporation.

3 c. At least 50 percent of the officers of one
4 corporation are concurrently officers of the other
5 corporation.

6 d. At least 30 percent of the employees of one
7 corporation are concurrently employees of the other
8 corporation.

9 4. The common paymaster must report to the tax
10 collection service provider, as part of the unemployment
11 compensation quarterly tax and wage report, the state
12 unemployment compensation account number and name of each
13 related corporation for which concurrent employees are being
14 reported. Failure to timely report this information shall
15 result in the related corporations being denied common
16 paymaster status for that calendar quarter.

17 5. The common paymaster also has the primary
18 responsibility for remitting contributions due under this
19 chapter for the wages it disburses as the common paymaster.
20 The common paymaster must compute these contributions as
21 though it were the sole employer of the concurrently employed
22 individuals. If a common paymaster fails to timely remit these
23 contributions or reports, in whole or in part, the common
24 paymaster remains liable for the full amount of the unpaid
25 portion of these contributions. In addition, each of the other
26 related corporations using the common paymaster is jointly and
27 severally liable for its appropriate share of these
28 contributions. Each related corporation's share equals the
29 greater of:

30 a. The liability of the common paymaster under this
31 chapter, after taking into account any contributions made.

1 b. The liability under this chapter which,
2 notwithstanding this section, would have existed for the wages
3 from the other related corporations, reduced by an allocable
4 portion of any contributions previously paid by the common
5 paymaster for those wages.

6 Section 37. Subsection (2) of section 443.1316,
7 Florida Statutes, is amended to read:

8 443.1316 Unemployment tax collection services;
9 interagency agreement.--

10 (2)(a) The Department of Revenue is considered to be
11 administering a revenue law of this state when the department
12 implements this chapter, or otherwise provides unemployment
13 tax collection services, under contract with the Agency for
14 Workforce Innovation through the interagency agreement.

15 (b) Sections 213.015(1), (2), (3), (5), (6), (7), (9)-(21),
16 213.018, 213.025, 213.051, 213.053, 213.0535, 213.055, 213.06,
17 213.071, 213.10, 213.21(4), 213.2201, 213.23, 213.24, 213.25,
18 ~~213.24(2),~~ 213.27, 213.28, 213.285, 213.32, 213.34(1), (3), and
19 (4), 213.37, 213.50, 213.67, 213.69, 213.73, 213.733, 213.74,
20 and 213.757 apply to the collection of unemployment
21 contributions and reimbursements by the Department of Revenue
22 unless prohibited by federal law.

23 ~~(c) The Department of Revenue may charge no more than~~
24 ~~10 percent of the total cost of the interagency agreement for~~
25 ~~the overhead or indirect costs, or for any other costs not~~
26 ~~required for the payment of the direct costs, of providing~~
27 ~~unemployment tax collection services.~~

28 Section 38. Subsection (1) of section 443.141, Florida
29 Statutes, is amended to read:

30 443.141 Collection of contributions and
31 reimbursements.--

1 (1) PAST DUE CONTRIBUTIONS; ERRONEOUS, INCOMPLETE, OR
2 INSUFFICIENT REPORTS; AND REIMBURSEMENTS.--

3 (a) Interest.--Contributions or reimbursements unpaid
4 on the date due shall bear interest at the rate of 1 percent
5 per month from and after that date until payment plus accrued
6 interest is received by the tax collection service provider,
7 unless the service provider finds that the employing unit has
8 or had good reason for failure to pay the contributions or
9 reimbursements when due. Interest collected under this
10 subsection must be paid into the Special Employment Security
11 Administration Trust Fund.

12 (b) Penalty for delinquent reports.--

13 1. An employing unit that fails to file any report
14 required by the Agency for Workforce Innovation or its tax
15 collection service provider, in accordance with rules for
16 administering this chapter, shall pay to the tax collection
17 service provider for each delinquent report the sum of \$25 for
18 each 30 days or fraction thereof that the employing unit is
19 delinquent, unless the agency or its service provider,
20 whichever required the report, finds that the employing unit
21 has or had good reason for failure to file the report. The
22 agency or its service provider may assess penalties only
23 through the date of the issuance of the final assessment
24 notice. However, additional penalties accrue if the delinquent
25 report is subsequently filed.

26 2. Sums collected as penalties under subparagraph 1.
27 must be deposited in the Special Employment Security
28 Administration Trust Fund.

29 3. The penalty and interest for a delinquent report
30 may be waived when the penalty or interest is inequitable.
31

1 (c) Penalty for erroneous, incomplete, or insufficient
2 reports.--

3 1. In the case where an erroneous, incomplete, or
4 insufficient tax or wage report is made, a penalty in the
5 amount of \$50 or 10 percent of the tax finally determined to
6 be due, whichever is greater, shall be added to the amount of
7 tax, penalty, and interest otherwise due. Penalties collected
8 under this subparagraph shall be paid into the Special
9 Employment Security Administration Trust Fund.

10 2. As used in this chapter, the phrase "erroneous,
11 incomplete, or insufficient tax or wage report" means a report
12 that is lacking uniformity, completeness, or arrangement and
13 that the physical handling, verification, or review of the
14 report may not be readily accomplished. The phrase includes,
15 but is not limited to, missing wage items, an illegible wage
16 report, a wage report that is not in a format approved by the
17 service provider, a report that does not contain all required
18 social security numbers, a report that contains erroneous
19 social security numbers, a report that omits the last name of
20 one or more employees, or a report in which the gross wages do
21 not equal the total of the individuals' wages.

22 (d)(e) Application of partial payments.--When a
23 delinquency exists in the employment record of an employer not
24 in bankruptcy, a partial payment less than the total
25 delinquency shall be applied to the employment record as the
26 payor directs. In the absence of specific direction, the
27 partial payment shall be applied to the payor's employment
28 record as prescribed in the rules of the Agency for Workforce
29 Innovation or the state agency providing tax collection
30 services.

31

1 Section 39. Effective January 1, 2008, subsection (1)
2 of section 443.163, Florida Statutes, is amended to read:

3 443.163 Electronic reporting and remitting of
4 contributions and reimbursements.--

5 (1) An employer may file any report and remit any
6 contributions or reimbursements required under this chapter by
7 electronic means. The Agency for Workforce Innovation or the
8 state agency providing unemployment tax collection services
9 shall adopt rules prescribing the format and instructions
10 necessary for electronically filing reports and remitting
11 contributions and reimbursements to ensure a full collection
12 of contributions and reimbursements due. The acceptable method
13 of transfer, the method, form, and content of the electronic
14 means, and the method, if any, by which the employer will be
15 provided with an acknowledgment shall be prescribed by the
16 Agency for Workforce Innovation or its tax collection service
17 provider. However, any employer who employed 10 or more
18 employees in any quarter during the preceding state fiscal
19 year must file the Employers Quarterly Reports (UCT-6) for the
20 current calendar year and remit the contributions and
21 reimbursements due by electronic means approved by the tax
22 collection service provider. A person who prepared and
23 reported for 10 ~~100~~ or more employers in any quarter during
24 the preceding state fiscal year must file the Employers
25 Quarterly Reports (UCT-6) for each calendar quarter in the
26 current calendar year, beginning with reports due for the
27 second calendar quarter of 2003, by electronic means approved
28 by the tax collection service provider.

29 Section 40. Subsection (3) is added to section
30 624.511, Florida Statutes, to read:

31 624.511 Tax statement; overpayments.--

1 (3)(a) If it appears, upon examination of an insurance
2 premium tax return made under this chapter, that an amount of
3 insurance premium tax has been paid in excess of the amount
4 due, the Department of Revenue may refund the amount of the
5 overpayment to the taxpayer by a warrant of the Chief
6 Financial Officer. The Department of Revenue may refund the
7 overpayment without regard to whether the taxpayer has filed a
8 written claim for a refund; however, the Department of Revenue
9 may request that the taxpayer file a statement affirming that
10 the taxpayer made the overpayment.

11 (b) Notwithstanding paragraph (a), a refund of the
12 insurance premium tax may not be made, and a taxpayer is not
13 entitled to bring an action for a refund of the insurance
14 premium tax, after the period specified in s. 215.26(2) has
15 elapsed.

16 (c) If a refund issued by the Department of Revenue
17 under this subsection is found to exceed the amount of refund
18 legally due to the taxpayer, the provisions of s. 624.5092
19 concerning penalties and interest do not apply if the taxpayer
20 reimburses the department for any overpayment within 60 days
21 after the taxpayer is notified that the overpayment was made.

22 Section 41. Subsections (4) and (5) are added to
23 section 832.062, Florida Statutes, to read:

24 832.062 Prosecution for worthless checks, drafts,
25 debit card orders, or electronic funds transfers made to pay
26 any tax or associated amount administered by the Department of
27 Revenue.--

28 (4)(a) In any prosecution or action under this
29 section, the making, drawing, uttering, or delivery of a
30 check, draft, order; the making, sending, instructing,
31 ordering, or initiating of any electronic funds transfer; or

1 causing the making, sending, instructing, ordering, or
2 initiating of any electronic transfer payment, any of which
3 are refused by the drawee because of lack of funds or credit,
4 is prima facie evidence of intent to defraud or knowledge of
5 insufficient funds in, or credit with, such bank, banking
6 institution, trust company, or other depository, unless the
7 maker, drawer, sender, instructor, orderer, or initiator, or
8 someone for him or her, has paid the holder thereof the amount
9 due thereon, together with a service charge, which may not
10 exceed the service fees authorized under s. 832.08(5), or an
11 amount of up to 5 percent of the face amount of the check or
12 the amount of the electronic funds transfer, whichever is
13 greater, within 15 days after written notice has been sent to
14 the address printed on the check, or given or on file at the
15 time of issuance, that such check, draft, order, or electronic
16 funds transfer has not been paid to the holder thereof, and
17 has paid the bank fees incurred by the holder. In the event of
18 legal action for recovery, the maker, drawer, sender,
19 instructor, orderer, or initiator may be additionally liable
20 for court costs and reasonable attorney's fees. Notice mailed
21 by certified or registered mail that is evidenced by return
22 receipt, or by first-class mail that is evidenced by an
23 affidavit of service of mail, to the address printed on the
24 check or given or on file at the time of issuance shall be
25 deemed sufficient and equivalent to notice having been
26 received by the maker, drawer, sender, instructor, orderer, or
27 initiator, whether such notice is returned undelivered or not.
28 The form of the notice shall be substantially as follows:

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"You are hereby notified that a check or
electronic funds transfer, numbered _____, in

1 the face amount of \$ _____, issued or initiated
2 by you on (date) _____, drawn upon (name of bank) _____,
3 and payable to _____, has been dishonored.
4 Pursuant to Florida law, you have 15 days
5 following the date of this notice to tender
6 payment of the full amount of such check or
7 electronic funds transfer plus a service charge
8 of \$25, if the face value does not exceed \$50;
9 \$30, if the face value exceeds \$50 but does not
10 exceed \$300; \$40, if the face value exceeds
11 \$300; or an amount of up to 5 percent of the
12 face amount of the check, whichever is greater,
13 the total amount due being \$ _____ and
14 cents. Unless this amount is paid in full
15 within the time specified above, the holder of
16 such check or electronic funds transfer may
17 turn over the dishonored check or electronic
18 funds transfer and all other available
19 information relating to this incident to the
20 state attorney for criminal prosecution. You
21 may be additionally liable in a civil action
22 for triple the amount of the check or
23 electronic funds transfer, but in no case less
24 than \$50, together with the amount of the check
25 or electronic funds transfer, a service charge,
26 court costs, reasonable attorney's fees, and
27 incurred bank fees, as provided in s. 68.065,
28 Florida Statutes."
29
30 Subsequent persons receiving a check, draft, order, or
31 electronic funds transfer from the original payee or a

1 successor endorsee have the same rights that the original
2 payee has against the maker of the instrument if the
3 subsequent persons give notice in a substantially similar form
4 to that provided above. Subsequent persons providing such
5 notice are immune from civil liability for the giving of such
6 notice and for proceeding under the forms of such notice so
7 long as the maker of the instrument has the same defenses
8 against these subsequent persons as against the original
9 payee. However, the remedies available under this section may
10 be exercised only by one party in interest.

11 (b) When a check, draft, order, or electronic funds
12 transfer is drawn on a bank in which the maker, drawer,
13 sender, instructor, orderer, or initiator has no account or a
14 closed account, it shall be presumed that the check, draft, or
15 order was issued, or the electronic funds transfer was
16 initiated, with intent to defraud, and the notice requirement
17 set forth in this section shall be waived.

18 (5)(a) In any prosecution or action under this
19 section, a check, draft, order, or electronic funds transfer
20 for which the information required in paragraph (b) is
21 available at the time of issuance constitutes prima facie
22 evidence of the identity of the person issuing the check,
23 draft, order, or electronic funds transfer and that such
24 person is authorized to draw upon the named account.

25 (b) To establish this prima facie evidence:

26 1. If a check or electronic funds transfer is received
27 by the Department of Revenue through the mail or by delivery
28 to a representative of the Department of Revenue or by
29 electronic means, the prima facie evidence referred to in
30 paragraph (a) may be established by presenting the original
31 tax return, certificate, license, application for certificate

1 or license, enrollment and authorization for the e-services
2 program, or other document relating to amounts owed by that
3 person or taxpayer which the check or electronic funds
4 transfer purports to pay for, bearing the signature of the
5 person who signed the check or electronic signature of the
6 person who initiated the electronic funds transfer, or by
7 presenting a copy of the information required in subparagraph
8 2. which is on file with the acceptor of the check or
9 electronic funds transfer together with the signature or
10 electronic signature of the person presenting the check or
11 initiating the electronic funds transfer. The use of taxpayer
12 information for purposes of establishing the identity of a
13 person under this paragraph shall be deemed a use of such
14 information for official purposes.

15 2. The person accepting such check or electronic funds
16 transfer must obtain the following information regarding the
17 identity of the person presenting the check: the presenter's
18 or initiator's full name, residence address, home telephone
19 number, business telephone number, place of employment,
20 gender, date of birth, and height.

21 Section 42. Except as otherwise expressly provided in
22 this act, this act shall take effect July 1, 2007.
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SENATE SUMMARY

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3 Revises various provisions governing the collection and
4 enforcement of the tax laws by the Department of Revenue.
5 Authorizes the department to issue temporary fuel
6 licenses and temporary pollutant tax licenses during a
7 declared state of emergency or disaster. Revises the
8 requirements for calculating the sales tax on vending
9 machines. Authorizes the department to transfer tax
10 liability to certain additional entities upon the
11 transfer of assets. Authorizes the department to enter
12 into agreements with financial institutions to operate a
13 data match system for collecting tax warrants. Provides
14 for the integration of the department's enforcement
15 authority. Provides for the department to freeze the
16 assets of a delinquent taxpayer. Revises the requirements
17 for electronically remitting taxes and unemployment
18 contributions and reimbursements. Provides for
19 establishing prima facie evidence of intent to defraud
20 with respect to an electronic funds transfer that lacks
21 sufficient funds. (See bill for details.)
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