

1 A bill to be entitled
2 An act relating to the Streamlined Sales and Use Tax
3 Agreement; amending s. 212.02, F.S.; revising definitions
4 for the purposes of sales and use taxes; defining the
5 terms "agent," "seller," "certified service provider,"
6 "direct mail," "prewritten computer software," and
7 "delivery charges"; providing applicability; amending ss.
8 212.0306 and 212.04, F.S.; deleting references to
9 brackets; amending s. 212.05, F.S.; deleting provisions
10 relating to the rental or lease of motor vehicles;
11 revising the determination of the location of the sale or
12 recharge of prepaid calling arrangements; deleting a
13 reference to brackets; amending s. 212.0506, F.S.;
14 deleting a reference to brackets; conforming a cross-
15 reference; amending s. 212.054, F.S.; providing the time
16 for applying changes in local option tax rates; providing
17 guidelines for determining the situs of certain
18 transactions; providing for notice of a change in the rate
19 of a local option sales tax; providing for applicability
20 of s. 202.22(2), F.S., relating to determination of local
21 tax situs, for the purpose of providing and maintaining a
22 database of sales and use tax rates for local
23 jurisdictions; amending s. 212.06, F.S.; providing for
24 determining the location of transactions involving the
25 retail sale of tangible personal property, digital goods,
26 or services and for the lease or rental of tangible
27 personal property; requiring certain business purchasers
28 to obtain multiple-points-of-use exemption forms;

29 providing for use of such forms; requiring certain
30 purchasers of direct mail to obtain a direct-mail form;
31 providing for the use of such form; amending s. 212.08,
32 F.S., relating to exemptions from the sales and use tax;
33 defining and redefining terms used with respect to the
34 exemption for general groceries; defining and redefining
35 terms used with respect to the exemption for medical
36 products and supplies; revising that exemption; conforming
37 a cross-reference; creating s. 212.094, F.S.; requiring a
38 purchaser seeking a refund or credit under ch. 212, F.S.,
39 to submit a written request for the refund or credit;
40 providing a time period within which the dealer must
41 respond to the written request; amending s. 212.12, F.S.;
42 providing for a monetary allowance for tax credits to
43 certified service providers and voluntary sellers pursuant
44 to the Streamlined Sales and Use Tax Agreement; providing
45 for computation of tax due; deleting the brackets for
46 state and discretionary sales surtax calculations;
47 amending s. 212.17, F.S.; prescribing additional
48 guidelines and procedures with respect to dealer credits
49 for taxes paid on worthless accounts; creating s. 213.052,
50 F.S.; providing for notice of state sales or use tax rate
51 changes; creating s. 213.0521, F.S.; providing the
52 effective date for state sales and use tax rate changes;
53 amending s. 213.21, F.S.; providing for amnesty to certain
54 sellers for uncollected or unpaid sales and use taxes;
55 amending s. 213.256, F.S.; relating to simplified sales
56 and use tax administration; defining terms; providing that

57 authority to administer the Streamlined Sales and Use Tax
 58 Agreement rests with a governing board comprised of
 59 representatives of member states; providing for continuing
 60 effect of the agreement; providing for annual
 61 recertification; creating s. 213.2565, F.S.; providing for
 62 the registration of sellers, the certification of a person
 63 as a certified service provider, and the certification of
 64 a software program as a certified automated system by the
 65 governing board under the Streamlined Sales and Use Tax
 66 Agreement; amending ss. 196.012, 203.01, 212.03, 212.031,
 67 212.052, 212.0596, 212.081, 212.13, 213.015, 551.102, and
 68 790.0655, F.S.; conforming cross-references; repealing s.
 69 212.0596(6), F.S., relating to the exemption from
 70 collecting and remitting local option surtaxes for certain
 71 dealers who make mail order sales; declaring legislative
 72 intent; providing for the adoption of emergency rules;
 73 providing an effective date.

74

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

76

77 Section 1. Section 212.02, Florida Statutes, is amended to
 78 read:

79 212.02 Definitions.--As used in this chapter, the term ~~The~~
 80 ~~following terms and phrases when used in this chapter have the~~
 81 ~~meanings ascribed to them in this section, except where the~~
 82 ~~context clearly indicates a different meaning:~~

83 (1) ~~The term~~ "Admissions" means ~~and includes~~ the net sum
 84 of money after the deduction of any federal taxes for admitting

85 a person or vehicle ~~or persons~~ to a any place of amusement,
 86 sport, or recreation or for the privilege of entering or staying
 87 in a any place of amusement, sport, or recreation, including,
 88 but not limited to, theaters, outdoor theaters, shows,
 89 exhibitions, games, races, or any place where charge is made
 90 through the ~~by way of~~ sale of tickets, gate charges, seat
 91 charges, box charges, season pass charges, cover charges, greens
 92 fees, participation fees, entrance fees, or other fees or
 93 receipts of anything of value measured on an admission or
 94 entrance or length of stay or seat box accommodations in any
 95 place where there is an any exhibition, amusement, sport, or
 96 recreation, and all dues and fees paid to private clubs and
 97 membership clubs providing recreational or physical fitness
 98 facilities, including, but not limited to, golf, tennis,
 99 swimming, yachting, boating, athletic, exercise, and fitness
 100 facilities, except physical fitness facilities owned or operated
 101 by a any hospital licensed under chapter 395.

102 (2) "Agent" means any person appointed by, or authorized
 103 to act for, a principal in a transaction involving the sale of
 104 an item of tangible personal property.

105 (3) "Agricultural commodity" means horticultural products,
 106 aquacultural products, poultry and farm products, and livestock
 107 and livestock products.

108 (4) "Agricultural production" means the production of
 109 plants and animals useful to humans, including the preparation,
 110 planting, cultivating, or harvesting of these products or any
 111 other processes necessary to accomplish production through the
 112 harvest phase, and includes aquaculture, horticulture,

113 floriculture, viticulture, forestry, dairy, livestock, poultry,
 114 bees, and all other forms of farm products and farm production.

115 (5)(2) "Business" means any activity engaged in ~~by any~~
 116 ~~person,~~ or caused to be engaged in, by a person ~~him or her,~~ with
 117 the object of private or public gain, benefit, or advantage,
 118 directly or indirectly ~~either direct or indirect.~~ Except for the
 119 sale ~~sales~~ of any aircraft, boat, mobile home, or motor vehicle,
 120 the term does ~~"business"~~ shall not be construed in this chapter
 121 ~~to~~ include occasional or isolated sales or transactions
 122 involving tangible personal property or services by a person who
 123 does not hold himself or herself out as engaged in business or
 124 sales of unclaimed tangible personal property under s. 717.122,
 125 but does include ~~includes other~~ charges for the sale or rental
 126 of tangible personal property, sales of services taxable under
 127 this chapter, sales of or charges of admission, communication
 128 services, all rentals and leases of living quarters, other than
 129 low-rent housing operated under chapter 421, sleeping or
 130 housekeeping accommodations in hotels, apartment houses,
 131 roominghouses, tourist or trailer camps, or mobile home or
 132 recreational vehicle parks, and all rentals of or licenses in
 133 real property, other than low-rent housing operated under
 134 chapter 421, all leases or rentals of or licenses in parking
 135 lots or garages for motor vehicles, docking or storage spaces
 136 for boats in boat docks or marinas ~~as defined in this chapter~~
 137 ~~and~~ made subject to a tax imposed by this chapter. The term does
 138 ~~"business"~~ shall not be construed in this chapter to include the
 139 leasing, subleasing, or licensing of real property by one
 140 corporation to another if all of the stock of both ~~such~~

141 corporations is owned, directly or through one or more wholly
 142 owned subsidiaries, by a common parent corporation; the property
 143 was in use before ~~prior to~~ July 1, 1989, title to the property
 144 was transferred after July 1, 1988, and before July 1, 1989,
 145 between members of an affiliated group, as defined in s. 1504(a)
 146 of the Internal Revenue Code of 1986, which group included both
 147 ~~such~~ corporations, and there is no substantial change in the use
 148 of the property following the transfer of title; the leasing,
 149 subleasing, or licensing of the property was required by an
 150 unrelated lender as a condition of providing financing to one or
 151 more members of the affiliated group; and the corporation to
 152 which the property is leased, subleased, or licensed had sales
 153 subject to the tax imposed by this chapter of at least ~~not less~~
 154 ~~than~~ \$667 million during the most recent 12-month period ended
 155 June 30. A ~~Any~~ tax on such sales, charges, rentals, admissions,
 156 or other transactions ~~made~~ subject to the tax imposed by this
 157 chapter shall be collected by the state, ~~county, municipality,~~
 158 any political subdivision, ~~agency, bureau, or department,~~ or
 159 other state or local governmental instrumentality in the same
 160 manner as other dealers, unless specifically exempted by this
 161 chapter.

162 ~~(3) The terms "cigarettes," "tobacco," or "tobacco~~
 163 ~~products" referred to in this chapter include all such products~~
 164 ~~as are defined or may be hereafter defined by the laws of the~~
 165 ~~state.~~

166 (6) "Certified service provider" has the same meaning as
 167 in s. 213.256.

168 (7) "Coin-operated amusement machine" means a machine
 169 operated by coin, slug, token, coupon, or similar device for the
 170 purposes of entertainment or amusement. The term includes coin-
 171 operated pinball machines, music machines, juke boxes,
 172 mechanical games, video games, arcade games, billiard tables,
 173 moving picture viewers, shooting galleries, and all similar
 174 amusement devices.

175 (8)~~(4)~~ "Cost price" means the actual cost of articles of
 176 tangible personal property without any deductions for ~~therefrom~~
 177 ~~on account of~~ the cost of materials used, labor or service
 178 costs, transportation charges, or any other expenses ~~whatsoever~~.

179 (9)~~(5)~~ ~~The term~~ "Department" means the Department of
 180 Revenue.

181 (10) "Dealer" means a person who:

182 (a) Manufactures or produces tangible personal property
 183 for sale at retail; for use, consumption, or distribution; or
 184 for storage to be used or consumed in this state.

185 (b) Imports, or causes to be imported, tangible personal
 186 property from any state or foreign country for sale at retail;
 187 for use, consumption, or distribution; or for storage to be used
 188 or consumed in this state.

189 (c) Sells at retail or who offers for sale at retail, or
 190 who has in his or her possession for sale at retail; or for use,
 191 consumption, or distribution; or for storage to be used or
 192 consumed in this state, tangible personal property, and includes
 193 a retailer who transacts a mail order sale.

194 (d) Has sold at retail; or used, or consumed, or
 195 distributed; or stored for use or consumption in this state,

196 tangible personal property and who cannot prove that the tax
 197 levied by this chapter has been paid. However, the term does not
 198 include a person who is not a dealer under any other paragraph
 199 of this subsection and whose only owned or leased property in
 200 this state, including property owned or leased by an affiliate,
 201 is located on the premises of a printer with whom it has
 202 contracted for printing, if the property consists of the final
 203 printed product, property that becomes a part of the final
 204 printed product, or property from which the printed product is
 205 produced.

206 (e) Leases or rents tangible personal property for
 207 consideration, permitting the use or possession of such property
 208 without transferring title to the property, except as expressly
 209 provided for under this chapter.

210 (f) Maintains within this state, directly or by a
 211 subsidiary, an office, distributing house, salesroom, or house,
 212 warehouse, or other place of business.

213 (g) Solicits business through direct representatives,
 214 indirect representatives, or manufacturers' agents; through
 215 distribution of catalogs or other advertising matter; or by any
 216 other means, for the purpose of receiving orders for tangible
 217 personal property from consumers for use, consumption,
 218 distribution, and storage for use or consumption in this state.
 219 Such dealer shall collect the tax imposed by this chapter from
 220 the purchaser and may not bring a cause of action, in law or in
 221 equity, on a sale or transaction in this state unless it is
 222 affirmatively shown that this chapter has been fully complied
 223 with.

224 (h) Solicits, receives, and accepts orders for future
225 delivery from consumers in the state as a representative, agent,
226 or solicitor for an out-of-state principal who refuses to
227 register as a dealer.

228 (i) Leases or grants a license to use, occupy, or enter
229 upon living quarters, sleeping or housekeeping accommodations in
230 hotels, apartment houses, roominghouses, tourist or trailer
231 camps, mobile home or recreational vehicle parks, real property,
232 space or spaces in parking lots or garages for motor vehicles,
233 docking or storage space or spaces for boats in boat docks or
234 marinas, or tie-down or storage space or spaces for aircraft at
235 airports. The term also includes a person who has leased,
236 occupied, or used or was entitled to use living quarters,
237 sleeping or housekeeping accommodations in hotels, apartment
238 houses, roominghouses, tourist or trailer camps, mobile home or
239 recreational vehicle parks, real property, spaces in parking
240 lots or garages for motor vehicles or docking or storage spaces
241 for boats in boat docks or marinas, or who has purchased
242 communication services or electric power or energy, and who
243 cannot prove that the tax levied by this chapter has been paid
244 to the vendor or lessor on any such transactions. The term does
245 not include a person who leases, lets, rents, or grants a
246 license to use, occupy, or enter upon living quarters, sleeping
247 quarters, or housekeeping accommodations in apartment houses,
248 roominghouses, tourist camps, or trailer camps, mobile home or
249 recreational vehicle parks, and who exclusively enters into a
250 bona fide written agreement for continuous residence for longer

251 than 6 months with a person who leases, lets, rents, or is
 252 granted a license to use the property.

253 (j) Sells, provides, or performs a service taxable under
 254 this chapter. The term includes a person who purchases, uses, or
 255 consumes a service taxable under this chapter and cannot prove
 256 that the tax has been paid to the seller of the taxable service.

257 (k) Solicits, offers, provides, enters into, issues, or
 258 delivers a service warranty taxable under this chapter, or who
 259 receives on behalf of such a person, consideration from a
 260 service warranty holder.

261 (11) "Delivery charges" means charges by the seller of
 262 personal property or services for preparation and delivery to a
 263 location designated by the purchaser of personal property or
 264 services, including, but not limited to, transportation,
 265 shipping, postage, handling, crating, and packing. The term does
 266 not include the charges for delivery of direct mail if the
 267 charges are separately stated on an invoice or similar billing
 268 document given to the purchaser.

269 (12) "Diesel fuel" means any liquid product, gas product,
 270 or combination thereof used in an internal combustion engine or
 271 motor to propel any form of vehicle, machine, or mechanical
 272 contrivance. The term includes, but is not limited to, all forms
 273 of fuel commonly or commercially known or sold as diesel fuel or
 274 kerosene. However, the term does not include butane gas, propane
 275 gas, or any other form of liquefied petroleum gas or compressed
 276 natural gas.

277 (13) "Direct mail" means printed material delivered or
 278 distributed by United States mail or other delivery service to a

279 mass audience or to addressees on a mailing list provided by the
 280 purchaser or at the direction of the purchaser if the cost of
 281 the items is not billed directly to the recipients. The term
 282 includes tangible personal property supplied directly or
 283 indirectly by the purchaser to the direct mail seller for
 284 inclusion in the package containing the printed material. The
 285 term does not include multiple items of printed material
 286 delivered to a single address.

287 (14)~~(6)~~ "Enterprise zone" means an area of the state
 288 designated pursuant to s. 290.0065. This subsection expires on
 289 the date specified in s. 290.016 for the expiration of the
 290 Florida Enterprise Zone Act.

291 (15)~~(7)~~ "Factory-built building" means a structure
 292 manufactured in a manufacturing facility for installation or
 293 erection as a finished building. The term~~,"factory built~~
 294 ~~building"~~ includes, but is not limited to, residential,
 295 commercial, institutional, storage, and industrial structures.

296 (16) "Farmer" means a person who is directly engaged in
 297 the business of producing crops, livestock, or other
 298 agricultural commodities. The term includes, but is not limited
 299 to, horse breeders, nurserymen, dairy farmers, poultry farmers,
 300 cattle ranchers, apiarists, and persons raising fish.

301 (17) "Forest" means the land stocked by trees of any size
 302 used in the production of forest products, or formerly having
 303 such tree cover and not currently being developed for nonforest
 304 use.

305 (18) "Gross sales" means the sum total of all sales of
 306 tangible personal property without any deduction of any kind or
 307 character, except as otherwise provided in this chapter.

308 ~~(8) "In this state" or "in the state" means within the~~
 309 ~~state boundaries of Florida as defined in s. 1, Art. II of the~~
 310 ~~State Constitution and includes all territory within these~~
 311 ~~limits owned by or ceded to the United States.~~

312 (19)~~(9) The term "Intoxicating beverages" or "alcoholic~~
 313 beverages" means referred to in this chapter includes all such
 314 beverages as are so defined or may be hereafter defined by the
 315 laws of the state.

316 ~~(20)~~~~(10) "Lease," "let," or "rental" means:~~

317 (a) The leasing or renting of living quarters or sleeping
 318 or housekeeping accommodations in hotels, apartment houses,
 319 roominghouses, tourist camps, ~~or~~ trailer camps, mobile home
 320 parks, or recreational vehicle parks and real property, the same
 321 being defined as follows:

322 1.(a) A "hotel" is every building or other structure kept,
 323 used, maintained, ~~or~~ advertised as, or held out to the public to
 324 be, a place where sleeping accommodations are supplied for pay
 325 to transient or permanent guests or tenants, in which 10 or more
 326 rooms are furnished for the accommodation of such guests, and
 327 having one or more dining rooms or cafes where meals or lunches
 328 are served to ~~such~~ transient or permanent guests; ~~such sleeping~~
 329 ~~accommodations and dining rooms or cafes being conducted in the~~
 330 ~~same building or buildings in connection therewith, shall, for~~
 331 ~~the purpose of this chapter, be deemed a hotel.~~

332 ~~2.(b)~~ An "apartment house" is any building, or part
 333 thereof, where separate accommodations for two or more families
 334 living independently of each other are supplied to transient or
 335 permanent guests or tenants ~~shall for the purpose of this~~
 336 ~~chapter be deemed an apartment house.~~

337 ~~3.(e)~~ A "roominghouse" is every house, boat, vehicle,
 338 motor court, trailer court, or other structure or any place or
 339 location kept, used, maintained, or advertised as, or held out
 340 to the public to be, a place where living quarters or sleeping
 341 or housekeeping accommodations are supplied for pay to transient
 342 or permanent guests or tenants, whether in one or adjoining
 343 buildings, ~~shall for the purpose of this chapter be deemed a~~
 344 ~~roominghouse.~~

345 ~~4.(d)~~ A "room" in all hotels, apartment houses, and
 346 roominghouses includes ~~within the meaning of this chapter,~~ the
 347 parlor, dining room, sleeping porch ~~porches,~~ kitchen, office,
 348 and sample rooms ~~shall be construed to mean "rooms."~~

349 ~~5.(e)~~ A "tourist camp" is a place where two or more tents,
 350 tent houses, or camp cottages are located and offered by a
 351 person or municipality for sleeping or eating accommodations,
 352 most generally to the transient public for ~~either~~ a direct money
 353 consideration or an indirect benefit to the lessor or owner in
 354 connection with a related business.

355 ~~6.(f)~~ A "trailer camp," "mobile home park," or
 356 "recreational vehicle park" is a place where space is offered,
 357 with or without service facilities, by any person ~~persons~~ or
 358 municipality to the public for the parking and accommodation of
 359 two or more automobile trailers, mobile homes, or recreational

360 vehicles ~~which are~~ used for lodging, for either a direct money
 361 consideration or an indirect benefit to the lessor or owner in
 362 connection with a related business, such space being ~~hereby~~
 363 ~~defined as~~ living quarters, and the rental price includes
 364 ~~thereof shall include~~ all service charges paid to the lessor.

365 (b) (g) The transfer of possession or control "Lease,"
 366 "let," or "rental" also means the leasing or rental of tangible
 367 personal property for a fixed or indeterminate term and the
 368 possession or use thereof by the lessee or rentee for a
 369 consideration, without transfer of the title of such property,
 370 except as expressly provided to the contrary herein. A clause in
 371 an agreement for a future option to purchase or to extend an
 372 agreement does not preclude an agreement from being a lease or
 373 rental. This provision may be used for sales and use tax
 374 purposes regardless of whether a transaction is characterized as
 375 a lease or rental under generally accepted accounting
 376 principles, the Internal Revenue Code, the Uniform Commercial
 377 Code, or other provisions of federal, state, or local law.
 378 Agreements covering motor vehicles and trailers are included if
 379 the amount of consideration may be increased or decreased by
 380 reference to the amount realized upon sale or disposition of the
 381 property as defined in 26 U.S.C. s. 7701(h) (1).

- 382 1. This paragraph does not apply to:
- 383 a. A transfer of possession or control of property under a
 384 security agreement or deferred payment plan that requires the
 385 transfer of title upon completion of the required payments;
 - 386 b. A transfer of possession or control of property under
 387 an agreement that requires the transfer of title upon completion

388 of required payments and payment of an option price that does
 389 not exceed the greater of \$100 or 1 percent of the total
 390 required payments; or

391 c. Providing tangible personal property along with an
 392 operator for a fixed or indeterminate period of time where the
 393 operator is necessary for the equipment to perform as designed.
 394 For the purpose of this sub-subparagraph, an operator must do
 395 more than maintain, inspect, or set up the tangible personal
 396 property.

397 2. The term "lease," "let," or "rental" does not include:
 398 ~~mean~~

399 a. Hourly, daily, or mileage charges, ~~to the extent that~~
 400 ~~such charges are~~ subject to the jurisdiction of the United
 401 States Interstate Commerce Commission, for ~~when such charges are~~
 402 ~~paid by reason of the presence of~~ railroad cars owned by another
 403 on the tracks of the taxpayer, or charges made pursuant to car
 404 service agreements.

405 ~~b. The term "lease," "let," "rental," or "license" does~~
 406 ~~not include~~ Payments made to an owner of high-voltage bulk
 407 transmission facilities in connection with the possession or
 408 control of such facilities by a regional transmission
 409 organization, independent system operator, or similar entity
 410 under the jurisdiction of the Federal Energy Regulatory
 411 Commission. However, if ~~where~~ two taxpayers, in connection with
 412 the interchange of facilities, rent or lease property, each to
 413 the other, for use in providing or furnishing any of the
 414 services mentioned in s. 166.231, the term "lease or rental"
 415 applies ~~means~~ only to the net amount of rental involved.

416 (c)-(h) The leasing or rental of real property. "Real
 417 property" means the surface land, improvements thereto, and
 418 fixtures, and is synonymous with "realty" and "real estate."

419 1.(i) "License," as used in this chapter with reference to
 420 the use of real property, means the granting of a privilege to
 421 use or occupy a building or a parcel of real property for any
 422 purpose.

423 2.(j) Privilege, franchise, or concession fees, or fees
 424 for a license to do business, paid to an airport are not
 425 payments for leasing, letting, renting, or granting a license
 426 for the use of real property.

427 (21) "Livestock" means all animals of the equine, bovine,
 428 or swine class, including goats, sheep, mules, horses, hogs,
 429 cattle, and other grazing animals raised for commercial
 430 purposes. The term also includes ostriches and fish raised for
 431 commercial purposes.

432 (22)-(11) "Motor fuel" means and includes what is commonly
 433 known and sold as gasoline and fuels containing a mixture of
 434 gasoline and other products.

435 (23)-(12) "Person" means an includes any individual, firm,
 436 copartnership, joint adventure, association, corporation,
 437 estate, trust, business trust, receiver, syndicate, or other
 438 group or combination acting as a unit and also includes any
 439 political subdivision, municipality, state agency, or other
 440 public or quasi-public instrumentality bureau, or department and
 441 includes the plural as well as the singular number.

442 (24) "Power farm equipment" means moving or stationary
 443 equipment that contains within itself the means for its own

444 propulsion or power and moving or stationary equipment that is
445 dependent upon an external power source to perform its
446 functions.

447 (25) "Prewritten computer software" means computer
448 software, including prewritten upgrades, which is not designed
449 and developed by the author or other creator to the
450 specifications of a specific purchaser. The combining of two or
451 more prewritten computer software programs, or portions thereof,
452 does not cause the combination to be other than "prewritten
453 computer software." The term includes software designed and
454 developed by the author or other creator to the specifications
455 of a specific purchaser when it is sold to a person other than
456 that purchaser. If a person who modifies or enhances computer
457 software is not the author or creator of the software, the
458 person shall be deemed to be the author or creator only of the
459 modifications or enhancements. Prewritten computer software, or
460 a portion thereof, which is modified or enhanced to any degree
461 to the specifications of a specific purchaser remains prewritten
462 computer software, unless there is a reasonable, separately
463 stated charge or an invoice or other statement of the price
464 given to the purchaser for the modification or enhancement.

465 (26) "Qualified aircraft" means aircraft having a maximum
466 certified takeoff weight of less than 10,000 pounds, equipped
467 with twin turbofan engines that meet Stage IV noise
468 requirements, and used by a business, operating as an on-demand
469 air carrier under Federal Aviation Administration Regulation
470 Title 14, chapter I, part 135, Code of Federal Regulations,

HB 1393

2008

471 which owns or leases and operates a fleet of at least 25 such
472 aircraft in this state.

473 (27) "Real property" means the surface land, improvements
474 thereto, and fixtures, and is synonymous with "realty" and "real
475 estate." For the purposes of this definition:

476 (a) "Fixtures" means items that are an accessory to a
477 building, other structure, or land and that do not lose their
478 identity as accessories when installed, but do become
479 permanently attached to realty. It is not necessary for the
480 owner of the item to also own the real property to which it is
481 attached. However, the term does not include the following
482 items, regardless of whether such items are attached to real
483 property in a permanent manner: property that is required to be
484 registered, licensed, titled, or documented by this state or by
485 the Federal Government, including, but not limited to, mobile
486 homes, except for mobile homes assessed as real property, or
487 industrial machinery or equipment. For purposes of this
488 paragraph, industrial machinery or equipment is not limited to
489 machinery and equipment used to manufacture, process, compound,
490 or produce tangible personal property.

491 (b) "Improvements to real property" include the activities
492 of building, erecting, constructing, altering, improving,
493 repairing, or maintaining real property.

494 (28)~~(13)~~ "Retailer" means ~~and includes~~ every person
495 engaged in the business of making sales at retail or for
496 distribution, or use, or consumption, or storage to be used or
497 consumed in this state.

498 ~~(29)(14)(a)~~ "Retail sale" or a "sale at retail" means a
 499 sale of tangible personal property or services taxable under
 500 this chapter to a consumer or to any person for any purpose
 501 ~~other than for resale in the form of tangible personal property~~
 502 ~~or services taxable under this chapter~~, and includes all such
 503 transactions that may be made in lieu of retail sales or sales
 504 at retail. The term includes a mail order sale, as defined in s.
 505 212.0596(1).

506 (a) A sale for resale includes a sale of qualifying
 507 property. As used in this paragraph, the term "qualifying
 508 property" means tangible personal property, other than
 509 electricity, which is used or consumed by a government
 510 contractor in the performance of a qualifying contract, as
 511 defined in s. 212.08(17)(c), if to the extent that the cost of
 512 the property is allocated or charged as a direct item of cost to
 513 the such contract, title to the which property vests in or
 514 passes to the government under the contract. The term
 515 "government contractor" includes prime contractors and
 516 subcontractors. As used in this paragraph, a cost is a "direct
 517 item of cost" if it is a "direct cost" as defined in 48 C.F.R.
 518 s. 9904.418-30(a)(2), or similar successor provisions, including
 519 costs identified specifically with a particular contract.

520 (b) The terms "retail sales," "sales at retail," "use,"
 521 "storage," and "consumption" include the sale, use, storage, or
 522 consumption of all tangible advertising materials imported or
 523 caused to be imported into this state. Tangible advertising
 524 material includes displays, display containers, brochures,
 525 catalogs, price lists, point-of-sale advertising, and technical

HB 1393

2008

526 manuals or any tangible personal property that ~~which~~ does not
527 accompany the product to the ultimate consumer.

528 (c) "Retail sales," "sale at retail," "use," "storage,"
529 and "consumption" do not include materials, containers, labels,
530 sacks, bags, or similar items intended to accompany a product
531 sold to a customer without which delivery of the product would
532 be impracticable because of the character of the contents and ~~be~~
533 used only one time ~~only~~ for packaging tangible personal property
534 for sale, ~~or~~ for the convenience of the customer, ~~or~~ for
535 packaging in the process of providing a service taxable under
536 this chapter. If ~~When~~ a separate charge for packaging materials
537 is made, the charge is ~~shall be considered~~ part of the sales
538 price or rental charge for purposes of determining the
539 applicability of tax. The terms do not include the sale, use,
540 storage, or consumption of industrial materials, including
541 chemicals and fuels except as provided herein, for future
542 processing, manufacture, or conversion into articles of tangible
543 personal property for resale if the ~~when such~~ industrial
544 materials, ~~including chemicals and fuels except as provided~~
545 ~~herein,~~ become a component or ingredient of the finished
546 product. However, the terms include the sale, use, storage, or
547 consumption of tangible personal property, including machinery
548 and equipment or parts thereof, purchased electricity, and fuels
549 used to power machinery, if the ~~when such~~ items are used and
550 dissipated in fabricating, converting, or processing tangible
551 personal property for sale, even though they may become
552 ingredients or components of the tangible personal property for
553 sale through accident, wear, tear, erosion, corrosion, or

554 similar means. The terms do not include the sale of materials to
 555 a registered repair facility for use in repairing a motor
 556 vehicle, airplane, or boat, if the ~~when such~~ materials are
 557 incorporated into and sold as part of the repair. Such a sale
 558 shall be deemed a purchase for resale by the repair facility,
 559 even though every material is not separately stated or
 560 separately priced on the repair invoice.

561 ~~(d) "Gross sales" means the sum total of all sales of~~
 562 ~~tangible personal property as defined herein, without any~~
 563 ~~deduction whatsoever of any kind or character, except as~~
 564 ~~provided in this chapter.~~

565 ~~(e) The term "retail sale" includes a mail order sale, as~~
 566 ~~defined in s. 212.0596(1).~~

567 (30) ~~(15)~~ "Sale" means ~~and includes:~~

568 (a) Any transfer of title or possession, or both,
 569 exchange, barter, license, lease, or rental, conditional or
 570 otherwise, in any manner or by any means whatsoever, of tangible
 571 personal property for a consideration.

572 (b) The leasing or rental of living quarters or sleeping
 573 or housekeeping accommodations ~~in hotels, apartment houses or~~
 574 ~~roominghouses, or tourist or trailer camps, as hereinafter~~
 575 ~~defined in this chapter.~~

576 (c) The producing, fabricating, processing, printing, or
 577 imprinting of tangible personal property for a consideration for
 578 consumers who furnish, either ~~either~~ directly or indirectly, the
 579 materials used in the producing, fabricating, processing,
 580 printing, or imprinting.

581 (d) The furnishing, preparing, or serving for a
 582 consideration of ~~any~~ tangible personal property for consumption
 583 on or off the premises of the person furnishing, preparing, or
 584 serving the ~~such~~ tangible personal property, which includes the
 585 sale of meals or prepared food by an employer to his or her
 586 employees.

587 (e) A transaction whereby the possession of property is
 588 transferred but the seller retains title as security for the
 589 payment of the price.

590 ~~(31)(16)~~ "Sales price" means the total amount of
 591 consideration, including cash, credit, property, and services,
 592 for which personal property or services are sold, leased, or
 593 rented, valued in money, whether received in money or otherwise,
 594 and applies to the measure subject to the sales tax. ~~paid for~~
 595 ~~tangible personal property, including any services that are a~~
 596 ~~part of the sale, valued in money, whether paid in money or~~
 597 ~~otherwise, and includes any amount for which credit is given to~~
 598 ~~the purchaser by the seller, without any deduction therefrom on~~
 599 ~~account of the cost of the property sold, the cost of materials~~
 600 ~~used, labor or service cost, interest charged, losses, or any~~
 601 ~~other expense whatsoever. "Sales price" also includes the~~
 602 ~~consideration for a transaction which requires both labor and~~
 603 ~~material to alter, remodel, maintain, adjust, or repair tangible~~
 604 ~~personal property. Trade ins or discounts allowed and taken at~~
 605 ~~the time of sale shall not be included within the purview of~~
 606 ~~this subsection. "Sales price" also includes the full face value~~
 607 ~~of any coupon used by a purchaser to reduce the price paid to a~~
 608 ~~retailer for an item of tangible personal property; where the~~

609 ~~retailer will be reimbursed for such coupon, in whole or in~~
 610 ~~part, by the manufacturer of the item of tangible personal~~
 611 ~~property; or whenever it is not practicable for the retailer to~~
 612 ~~determine, at the time of sale, the extent to which~~
 613 ~~reimbursement for the coupon will be made. The term "sales~~
 614 ~~price" does not include federal excise taxes imposed upon the~~
 615 ~~retailer on the sale of tangible personal property. The term~~
 616 ~~"sales price" does include federal manufacturers' excise taxes,~~
 617 ~~even if the federal tax is listed as a separate item on the~~
 618 ~~invoice. To the extent required by federal law, the term "sales~~
 619 ~~price" does not include charges for Internet access services~~
 620 ~~which are not itemized on the customer's bill, but which can be~~
 621 ~~reasonably identified from the selling dealer's books and~~
 622 ~~records kept in the regular course of business. The dealer may~~
 623 ~~support the allocation of charges with books and records kept in~~
 624 ~~the regular course of business covering the dealer's entire~~
 625 ~~service area, including territories outside this state.~~

626 (a) The sales price may be adjusted to include a deduction
 627 for:

- 628 1. The seller's cost of the property sold.
- 629 2. The cost of materials used, labor or service cost,
 630 interest, losses, all costs of transportation to the seller, all
 631 taxes imposed on the seller, and any other expense of the
 632 seller.
- 633 3. Charges by the seller for services necessary to
 634 complete the sale, other than delivery and installation charges.
- 635 4. Delivery charges.
- 636 5. Installation charges.

637 (b) The sales price does not include:
 638 1. Trade-ins allowed and taken at the time of sale if the
 639 amount is separately stated on the invoice, bill of sale, or
 640 similar document given to the purchaser.
 641 2. Discounts, including cash, term, or coupons, which are
 642 not reimbursed by a third party, which are allowed by a seller,
 643 and which are taken by a purchaser at the time of sale.
 644 3. Interest, financing, and carrying charges from credit
 645 extended on the sale of personal property or services, if the
 646 amount is separately stated on the invoice, bill of sale, or
 647 similar document given to the purchaser.
 648 4. Any taxes legally imposed directly on the consumer
 649 which are separately stated on the invoice, bill of sale, or
 650 similar document given to the purchaser.
 651 ~~(17) "Diesel fuel" means any liquid product, gas product,~~
 652 ~~or combination thereof used in an internal combustion engine or~~
 653 ~~motor to propel any form of vehicle, machine, or mechanical~~
 654 ~~contrivance. This term includes, but is not limited to, all~~
 655 ~~forms of fuel commonly or commercially known or sold as diesel~~
 656 ~~fuel or kerosene. However, the term "diesel fuel" does not~~
 657 ~~include butane gas, propane gas, or any other form of liquefied~~
 658 ~~petroleum gas or compressed natural gas.~~
 659 (32) "Seller" means any person making sales, leases, or
 660 rentals of tangible personal property or services.
 661 (33) "Solar energy system" means the equipment and
 662 requisite hardware that provide and are used for collecting,
 663 transferring, converting, storing, or using incident solar
 664 energy for water heating, space heating, cooling, or other

665 applications that would otherwise require the use of a
 666 conventional source of energy such as petroleum products,
 667 natural gas, manufactured gas, or electricity.

668 (34) "Space flight" means any flight designed for
 669 suborbital, orbital, or interplanetary travel of a space
 670 vehicle, satellite, or station of any kind.

671 (35) "Spaceport activities" means activities directed or
 672 sponsored by Space Florida on spaceport territory pursuant to
 673 its powers and responsibilities under the Space Florida Act.

674 (36)-(18) "Storage" means and includes any keeping or
 675 retention in this state of tangible personal property for use or
 676 consumption in this state or for any purpose other than sale at
 677 retail in the regular course of business.

678 (37)-(19) "Tangible personal property" means and includes
 679 personal property that which may be seen, weighed, measured, or
 680 touched or is in any manner perceptible to the senses, including
 681 electric power or energy, water, gas, steam, prewritten computer
 682 software, boats, motor vehicles and mobile homes as defined in
 683 s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all
 684 other types of vehicles. The term "tangible personal property"
 685 does not include stocks, bonds, notes, insurance, or other
 686 obligations or securities or pari-mutuel tickets sold or issued
 687 under the racing laws of the state.

688 (38) "Tobacco," or "tobacco products" means all such
 689 products as are defined or may be hereafter defined by the laws
 690 of this state.

691 (39) "Transportation equipment" means:

692 (a) Locomotives and rail cars that are used for the
 693 carriage of persons or property in interstate commerce;
 694 (b) Trucks and truck tractors having a Gross Vehicle
 695 Weight Rating (GVWR) of 10,001 pounds or greater, trailers,
 696 semitrailers, or passenger buses that are registered through the
 697 International Registration Plan and operated under authority of
 698 a carrier authorized and certificated by the United States
 699 Department of Transportation or other federal authority to
 700 engage in the carriage of persons or property in interstate
 701 commerce;
 702 (c) Aircraft that are operated by air carriers authorized
 703 and certificated by the United States Department of
 704 Transportation or other federal or foreign authority to engage
 705 in the carriage of persons or property in interstate or foreign
 706 commerce; or
 707 (d) Containers designed for use on and component parts
 708 attached to or secured on the items set forth in paragraphs (a)
 709 through (c).
 710 ~~(40)-(20)~~ "Use" means ~~and includes~~ the exercise of any
 711 right or power over tangible personal property incident to the
 712 ownership thereof, or interest therein, except that it does not
 713 include the sale at retail of that property in the regular
 714 course of business. The term "~~use~~" does not include the loan of
 715 an automobile by a motor vehicle dealer to a high school for use
 716 in its driver education and safety program. The term "~~use~~" does
 717 not include a contractor's use of "qualifying property" as
 718 defined by paragraph (29) (a) ~~(14) (a)~~.

719 ~~(41)(21)~~ The term "use tax" means the tax imposed for
720 ~~referred to in this chapter includes~~ the use, the consumption,
721 the distribution, and the storage of tangible personal property
722 ~~as herein defined.~~

723 ~~(22)~~ "Spaceport activities" ~~means activities directed or~~
724 ~~sponsored by Space Florida on spaceport territory pursuant to~~
725 ~~its powers and responsibilities under the Space Florida Act.~~

726 ~~(23)~~ "Space flight" ~~means any flight designed for~~
727 ~~suborbital, orbital, or interplanetary travel of a space~~
728 ~~vehicle, satellite, or station of any kind.~~

729 ~~(24)~~ "Coin operated amusement machine" ~~means any machine~~
730 ~~operated by coin, slug, token, coupon, or similar device for the~~
731 ~~purposes of entertainment or amusement. The term includes, but~~
732 ~~is not limited to, coin operated pinball machines, music~~
733 ~~machines, juke boxes, mechanical games, video games, arcade~~
734 ~~games, billiard tables, moving picture viewers, shooting~~
735 ~~galleries, and all other similar amusement devices.~~

736 ~~(25)~~ "Sea trial" ~~means a voyage for the purpose of testing~~
737 ~~repair or modification work, which is in length and scope~~
738 ~~reasonably necessary to test repairs or modifications, or a~~
739 ~~voyage for the purpose of ascertaining the seaworthiness of a~~
740 ~~vessel. If the sea trial is to test repair or modification work,~~
741 ~~the owner or repair facility shall certify, in a form required~~
742 ~~by the department, what repairs have been tested. The owner and~~
743 ~~the repair facility may also be required to certify that the~~
744 ~~length and scope of the voyage were reasonably necessary to test~~
745 ~~the repairs or modifications.~~

746 ~~(26) "Solar energy system" means the equipment and~~
 747 ~~requisite hardware that provide and are used for collecting,~~
 748 ~~transferring, converting, storing, or using incident solar~~
 749 ~~energy for water heating, space heating, cooling, or other~~
 750 ~~applications that would otherwise require the use of a~~
 751 ~~conventional source of energy such as petroleum products,~~
 752 ~~natural gas, manufactured gas, or electricity.~~

753 ~~(27) "Agricultural commodity" means horticultural,~~
 754 ~~aquacultural, poultry and farm products, and livestock and~~
 755 ~~livestock products.~~

756 ~~(28) "Farmer" means a person who is directly engaged in~~
 757 ~~the business of producing crops, livestock, or other~~
 758 ~~agricultural commodities. The term includes, but is not limited~~
 759 ~~to, horse breeders, nurserymen, dairy farmers, poultry farmers,~~
 760 ~~cattle ranchers, apiarists, and persons raising fish.~~

761 ~~(29) "Livestock" includes all animals of the equine,~~
 762 ~~bovine, or swine class, including goats, sheep, mules, horses,~~
 763 ~~hogs, cattle, ostriches, and other grazing animals raised for~~
 764 ~~commercial purposes. The term "livestock" shall also include~~
 765 ~~fish raised for commercial purposes.~~

766 ~~(30) "Power farm equipment" means moving or stationary~~
 767 ~~equipment that contains within itself the means for its own~~
 768 ~~propulsion or power and moving or stationary equipment that is~~
 769 ~~dependent upon an external power source to perform its~~
 770 ~~functions.~~

771 ~~(31) "Forest" means the land stocked by trees of any size~~
 772 ~~used in the production of forest products, or formerly having~~
 773 ~~such tree cover, and not currently developed for nonforest use.~~

774 ~~(32) "Agricultural production" means the production of~~
 775 ~~plants and animals useful to humans, including the preparation,~~
 776 ~~planting, cultivating, or harvesting of these products or any~~
 777 ~~other practices necessary to accomplish production through the~~
 778 ~~harvest phase, and includes aquaculture, horticulture,~~
 779 ~~floriculture, viticulture, forestry, dairy, livestock, poultry,~~
 780 ~~bees, and any and all forms of farm products and farm~~
 781 ~~production.~~

782 ~~(33) "Qualified aircraft" means any aircraft having a~~
 783 ~~maximum certified takeoff weight of less than 10,000 pounds and~~
 784 ~~equipped with twin turbofan engines that meet Stage IV noise~~
 785 ~~requirements that is used by a business operating as an on-~~
 786 ~~demand air carrier under Federal Aviation Administration~~
 787 ~~Regulation Title 14, chapter I, part 135, Code of Federal~~
 788 ~~Regulations, that owns or leases and operates a fleet of at~~
 789 ~~least 25 of such aircraft in this state.~~

790 Section 2. The amendment of the terms "lease," "let," and
 791 "rental" in s. 212.02, Florida Statutes, made by this act
 792 applies prospectively only from January 1, 2009, and does not
 793 apply retroactively to leases or rentals existing before that
 794 date.

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

797 212.0306 Local option food and beverage tax; procedure for
 798 levying; authorized uses; administration.--

799 (6) Any county levying a tax authorized by this section
 800 must locally administer the tax using the powers and duties
 801 enumerated for local administration of the tourist development

802 tax by s. 125.0104, 1992 Supplement to the Florida Statutes
 803 1991. ~~The county's ordinance shall also provide for brackets~~
 804 ~~applicable to taxable transactions.~~

805 Section 4. Paragraph (b) of subsection (1) of section
 806 212.04, Florida Statutes, is amended to read:

807 212.04 Admissions tax; rate, procedure, enforcement.--

808 (1)

809 (b) For the exercise of this ~~such~~ privilege, a tax is
 810 levied at the rate of 6 percent of the sales price, or the
 811 actual value received for ~~from~~ ~~such~~ admissions, which ~~6 percent~~
 812 shall be added to and collected with all ~~such~~ admissions paid by
 813 ~~from~~ the purchaser thereof, and ~~such tax shall be paid for the~~
 814 ~~exercise of the privilege as defined in the preceding paragraph.~~

815 Each ticket must show on its face the actual sales price of the
 816 admission, or each dealer selling the admission must prominently
 817 display at the box office or other place where the admission
 818 charge is made a notice disclosing the price of the admission,
 819 and the tax shall be computed and collected on the basis of the
 820 actual price of the admission charged by the dealer. The sale
 821 price or actual value of admission shall, for the purpose of
 822 this chapter, be that price remaining after deduction of federal
 823 taxes and state or locally imposed or authorized seat
 824 surcharges, taxes, or fees, if any, imposed upon such admission.
 825 The sale price or actual value does not include separately
 826 stated ticket service charges that are imposed by a facility
 827 ticket office or a ticketing service and added to a separately
 828 stated, established ticket price. The rate of tax on each

829 admission shall be determined in accordance with ~~according to~~
 830 ~~the brackets established by~~ s. 212.12(9).

831 Section 5. Paragraphs (c) and (e) of subsection (1) and
 832 subsection (4) of section 212.05, Florida Statutes, are amended
 833 to read:

834 212.05 Sales, storage, use tax.--It is hereby declared to
 835 be the legislative intent that every person is exercising a
 836 taxable privilege who engages in the business of selling
 837 tangible personal property at retail in this state, including
 838 the business of making mail order sales, or who rents or
 839 furnishes any of the things or services taxable under this
 840 chapter, or who stores for use or consumption in this state any
 841 item or article of tangible personal property as defined herein
 842 and who leases or rents such property within the state.

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

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

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

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

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

HB 1393

2008

857 ~~2. Except as provided in subparagraph 3., for the lease or~~
858 ~~rental of a motor vehicle for a period of not less than 12~~
859 ~~months, sales tax is due on the lease or rental payments if the~~
860 ~~vehicle is registered in this state; provided, however, that no~~
861 ~~tax shall be due if the taxpayer documents use of the motor~~
862 ~~vehicle outside this state and tax is being paid on the lease or~~
863 ~~rental payments in another state.~~

864 ~~3. The tax imposed by this chapter does not apply to the~~
865 ~~lease or rental of a commercial motor vehicle as defined in s.~~
866 ~~316.003(66) (a) to one lessee or rentee for a period of not less~~
867 ~~than 12 months when tax was paid on the purchase price of such~~
868 ~~vehicle by the lessor. To the extent tax was paid with respect~~
869 ~~to the purchase of such vehicle in another state, territory of~~
870 ~~the United States, or the District of Columbia, the Florida tax~~
871 ~~payable shall be reduced in accordance with the provisions of s.~~
872 ~~212.06(7). This subparagraph shall only be available when the~~
873 ~~lease or rental of such property is an established business or~~
874 ~~part of an established business or the same is incidental or~~
875 ~~germane to such business.~~

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

877 a. Prepaid calling arrangements. ~~The tax on charges for~~
878 ~~prepaid calling arrangements~~ shall be collected at the time of
879 sale and remitted by the selling dealer.

880 (I) "Prepaid calling arrangement" means the separately
881 stated retail sale by advance payment of communications services
882 that consist exclusively of telephone calls originated by using
883 an access number, authorization code, or other means that may be
884 manually, electronically, or otherwise entered and that are sold

885 in predetermined units or dollars whose number declines with use
 886 in a known amount.

887 (II) The sale or recharge of the prepaid calling
 888 arrangement is deemed to take place in accordance with paragraph
 889 212.06(2)(d). For a sale of a mobile communications service that
 890 is a prepaid calling arrangement, the retail sale may be sourced
 891 at ~~If the sale or recharge of the prepaid calling arrangement~~
 892 ~~does not take place at the dealer's place of business, it shall~~
 893 ~~be deemed to take place at the customer's shipping address or,~~
 894 ~~if no item is shipped, at the customer's address or the location~~
 895 associated with the customer's mobile telephone number.

896 (III) The sale or recharge of a prepaid calling
 897 arrangement shall be treated as a sale of tangible personal
 898 property for purposes of this chapter, whether or not a tangible
 899 item evidencing such arrangement is furnished to the purchaser,
 900 and the ~~such~~ sale within this state subjects the selling dealer
 901 to the jurisdiction of this state for purposes of this
 902 subsection.

903 b. The installation of telecommunication and telegraphic
 904 equipment.

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

907 2. The provisions of s. 212.17(3), regarding credit for
 908 tax paid on charges subsequently found to be worthless, are
 909 ~~shall be~~ equally applicable to a ~~any~~ tax paid under ~~the~~
 910 ~~provisions of~~ this section on charges for prepaid calling
 911 arrangements, telecommunication or telegraph services, or
 912 electric power subsequently found to be uncollectible. The word

913 "charges" in this paragraph does not include any excise or
 914 similar tax levied by the Federal Government, any political
 915 subdivision of the state, or any municipality upon the purchase,
 916 sale, or recharge of prepaid calling arrangements or upon the
 917 purchase or sale of telecommunication, television system
 918 program, or telegraph service or electric power, which tax is
 919 collected by the seller from the purchaser.

920 (4) The tax imposed pursuant to this chapter shall be due
 921 and payable according to the applicable state and local rate
 922 provided ~~the brackets set forth~~ in s. 212.12.

923 Section 6. Subsections (6) and (11) of section 212.0506,
 924 Florida Statutes, are amended to read:

925 212.0506 Taxation of service warranties.--

926 (6) This tax shall be due and payable according to the
 927 applicable state and local rate provided ~~brackets set forth~~ in
 928 s. 212.12.

929 (11) Any duties imposed by this chapter upon dealers of
 930 tangible personal property with respect to collecting and
 931 remitting taxes; making returns; keeping books, records, and
 932 accounts; and complying with the rules ~~and regulations~~ of the
 933 department apply to all dealers ~~as defined in s. 212.06(2)(1)~~.

934 Section 7. Section 212.054, Florida Statutes, is amended
 935 to read:

936 212.054 Discretionary sales surtax; limitations,
 937 administration, and collection.--

938 (1) A ~~No~~ general excise tax on sales may not shall be
 939 levied by the governing body of a ~~any~~ county unless specifically
 940 authorized in s. 212.055. Any general excise tax on sales

941 authorized pursuant to that ~~said~~ section shall be administered
 942 and collected exclusively as provided in this section.

943 (2) ~~(a)~~ The tax imposed by the governing body of a ~~any~~
 944 county ~~authorized to so levy~~ pursuant to s. 212.055 shall be a
 945 discretionary surtax on all transactions occurring in the county
 946 which ~~transactions~~ are subject to the state tax imposed on
 947 sales, use, services, rentals, admissions, and other
 948 transactions by this chapter and on communications services
 949 under ~~as defined for purposes of~~ chapter 202.

950 (a) The surtax, if levied, shall be computed as the
 951 applicable rate or rates authorized pursuant to s. 212.055 times
 952 the amount of taxable sales and taxable purchases representing
 953 such transactions. If the surtax is levied on the sale of an
 954 item of tangible personal property or on the sale of a service,
 955 the surtax shall be computed by multiplying the rate imposed by
 956 the county within which the sale occurs by the amount of the
 957 taxable sale. The sale of an item of tangible personal property
 958 or the sale of a service is not subject to the surtax if the
 959 property, the service, or the tangible personal property
 960 representing the service is delivered within a county that does
 961 not impose a discretionary sales surtax.

962 (b) However:

963 1. A ~~The~~ sales amount above \$5,000 on an ~~any~~ item of
 964 tangible personal property is ~~shall~~ not ~~be~~ subject to the
 965 surtax. However, charges for prepaid calling arrangements, as
 966 described ~~defined~~ in s. 212.05(1)(e)1.a., are ~~shall be~~ subject
 967 to the surtax. For purposes of administering the \$5,000
 968 ~~limitation on an item of tangible personal property~~, if two or

969 more taxable items of tangible personal property are sold to the
 970 same purchaser at the same time and, under generally accepted
 971 business practice or industry standards or usage, are normally
 972 sold in bulk or are items that, when assembled, comprise a
 973 working unit or part of a working unit, the such items shall
 974 ~~must~~ be considered a single item for purposes of the \$5,000
 975 limitation if ~~when~~ supported by a charge ticket, sales slip,
 976 invoice, or other tangible evidence of a single sale or rental.

977 2. For In the case of utility services covering a period
 978 starting before and ending billed on or after the effective date
 979 of the any such surtax, the rate applies as follows:

980 a. For a rate adoption or increase, the new rate shall
 981 apply to the first billing period starting on or after the
 982 effective date of the surtax or increase.

983 b. For a rate decrease or termination, the new rate shall
 984 apply to bills rendered on or after the effective date of the
 985 rate change the entire amount of the charge for utility services
 986 ~~shall be subject to the surtax. In the case of utility services~~
 987 ~~billed after the last day the surtax is in effect, the entire~~
 988 ~~amount of the charge on said items shall not be subject to the~~
 989 ~~surtax.~~

990
 991 "Utility service," as used in this paragraph ~~section~~, does not
 992 include any communications services as defined in chapter 202.

993 3. For In the case of written contracts that which are
 994 signed before ~~prior to~~ the effective date of the any such surtax
 995 for the construction of improvements to real property or for
 996 remodeling of existing structures, the surtax shall be paid by

997 the contractor responsible for the performance of the contract.
 998 However, the contractor may apply for one refund of the ~~any such~~
 999 surtax paid on materials necessary for the completion of the
 1000 contract. An ~~Any~~ application for refund must ~~shall~~ be made
 1001 within ~~no later than~~ 15 months after the ~~following~~ initial
 1002 imposition of the surtax in that county. The application for
 1003 refund shall be in the manner prescribed by the department by
 1004 rule. A complete application must ~~shall~~ include proof of the
 1005 written contract and of payment of the surtax, and. ~~The~~
 1006 ~~application shall~~ contain a sworn statement, signed by the
 1007 applicant or its representative, attesting to the validity of
 1008 the application. The department shall, within 30 days after
 1009 approval of a complete application, certify to the county
 1010 information necessary for issuance of a refund to the applicant.
 1011 Counties are ~~hereby~~ authorized to issue refunds for this purpose
 1012 and must ~~shall~~ set aside from the proceeds of the surtax a sum
 1013 sufficient to pay any refund lawfully due. Any person who
 1014 fraudulently obtains or attempts to obtain a refund pursuant to
 1015 this subparagraph, in addition to being liable for repayment of
 1016 any refund fraudulently obtained plus a mandatory penalty of 100
 1017 percent of the refund, commits ~~is guilty of~~ a felony of the
 1018 third degree, punishable as provided in s. 775.082, s. 775.083,
 1019 or s. 775.084.

1020 4. For a ~~In the case of any~~ vessel, railroad, or motor
 1021 vehicle common carrier entitled to a partial exemption from tax
 1022 imposed under this chapter pursuant to s. 212.08(4), (8), or
 1023 (9), the basis for imposition of the surtax is ~~shall be~~ the same
 1024 as provided in s. 212.08 and the ratio shall be applied each

1025 month to total purchases in this state of property qualified for
 1026 proration which is delivered or sold in the taxing county to
 1027 establish the portion used and consumed in intracounty movement
 1028 and subject to surtax.

1029 (3) Except as otherwise provided in this section, a
 1030 discretionary surtax applies to a retail sale, lease, or rental
 1031 of tangible personal property, a digital good, or a service if,
 1032 under s. 212.06(2), the transaction occurs in a county that
 1033 imposes a surtax. ~~For the purpose of this section, A transaction~~
 1034 ~~shall be deemed to have occurred in a county if imposing the~~
 1035 ~~surtax when:~~

1036 ~~(a)1. The retail sale of a modular or manufactured home,~~
 1037 ~~not including a mobile home, occurs in the county where the home~~
 1038 ~~is delivered. The sale includes an item of tangible personal~~
 1039 ~~property, a service, or tangible personal property representing~~
 1040 ~~a service, and the item of tangible personal property, the~~
 1041 ~~service, or the tangible personal property representing the~~
 1042 ~~service is delivered within the county. If there is no~~
 1043 ~~reasonable evidence of delivery of a service, the sale of a~~
 1044 ~~service is deemed to occur in the county in which the purchaser~~
 1045 ~~accepts the bill of sale.~~

1046 (b)2. The retail sale, excluding a lease or rental, of a
 1047 motor vehicle that does not qualify as transportation equipment
 1048 or a ~~The sale of any motor vehicle or mobile home of a class or~~
 1049 ~~type that which is required to be registered in this state or in~~
 1050 ~~any other state occurs shall be deemed to have occurred only in~~
 1051 ~~the county identified as the residence address of the purchaser~~
 1052 ~~on the registration or title document for the such property.~~

1053 (c) The lease or rental of real property occurs in the
 1054 county in which the real property is located.

1055 (d) A transient rental transaction occurs in the county in
 1056 which the rental property is located.

1057 ~~(e)(b)~~ ~~The event for which an Admission~~ for an event is
 1058 ~~charged is located~~ in the county in which the event is held.

1059 ~~(e) The consumer of utility services is located in the~~
 1060 ~~county.~~

1061 (f) A transaction made from a coin-operated amusement
 1062 machine or vending machine occurs in the county in which the
 1063 machine is located.

1064 (g) A florist taking the original order to sell tangible
 1065 personal property is located in the county in which the order
 1066 occurs.

1067 (h) The retail sale, excluding the lease or rental, of
 1068 aircraft that does not qualify as transportation equipment, or a
 1069 boat of a class or type that is required to be registered,
 1070 licensed, titled, or documented in this state or by the Federal
 1071 Government occurs in the county in which the aircraft or boat is
 1072 delivered.

1073 ~~(i)(d)1.~~ The user ~~user~~ of any aircraft or boat of a class
 1074 or type that ~~which~~ is required to be registered, licensed,
 1075 titled, or documented in this state or by the Federal ~~United~~
 1076 ~~States~~ Government imported into the county for use, consumption,
 1077 distribution, or storage to be used or consumed occurs in the
 1078 county in which the user is located ~~in the county.~~

1079 ~~2.~~ However, it is ~~shall be~~ presumed that ~~such~~ items used
 1080 outside the county for 6 months or longer before being imported

HB 1393

2008

1081 into the county were not purchased for use in the county, except
 1082 as provided in s. 212.06(8)(b).

1083 ~~3.~~ This paragraph does not apply to the use or consumption
 1084 of items upon which a like tax of equal or greater amount has
 1085 been lawfully imposed and paid outside the county.

1086 ~~(j)(e)~~ The purchase purchaser of a any motor vehicle or
 1087 mobile home of a class or type that ~~which~~ is required to be
 1088 registered in this state occurs in the county identified as the
 1089 residence of the purchaser ~~is a resident of the taxing county as~~
 1090 ~~determined by the address appearing on or to be reflected on the~~
 1091 registration document for the ~~such~~ property.

1092 ~~(k)(f)1.~~ The use, consumption, distribution, or storage of
 1093 a Any motor vehicle or mobile home of a class or type that ~~which~~
 1094 is required to be registered in this state and that is imported
 1095 from another state occurs in the county to which it is imported
 1096 ~~into the taxing county by a user residing therein for the~~
 1097 ~~purpose of use, consumption, distribution, or storage in the~~
 1098 ~~taxing county.~~

1099 ~~2.~~ However, it is ~~shall be~~ presumed that ~~such~~ items used
 1100 outside the taxing county for 6 months or longer before being
 1101 imported into the county were not purchased for use in the
 1102 county.

1103 ~~(g)~~ ~~The real property which is leased or rented is located~~
 1104 ~~in the county.~~

1105 ~~(h)~~ ~~The transient rental transaction occurs in the county.~~

1106 ~~(i)~~ ~~The delivery of any aircraft or boat of a class or~~
 1107 ~~type which is required to be registered, licensed, titled, or~~
 1108 ~~documented in this state or by the United States Government is~~

HB 1393

2008

1109 ~~to a location in the county. However, this paragraph does not~~
1110 ~~apply to the use or consumption of items upon which a like tax~~
1111 ~~of equal or greater amount has been lawfully imposed and paid~~
1112 ~~outside the county.~~

1113 (1)(j) The dealer owing a use tax on purchases or leases
1114 is located in the county.

1115 ~~(k) The delivery of tangible personal property other than~~
1116 ~~that described in paragraph (d), paragraph (e), or paragraph (f)~~
1117 ~~is made to a location outside the county, but the property is~~
1118 ~~brought into the county within 6 months after delivery, in which~~
1119 ~~event, the owner must pay the surtax as a use tax.~~

1120 ~~(l) The coin operated amusement or vending machine is~~
1121 ~~located in the county.~~

1122 ~~(m) The florist taking the original order to sell tangible~~
1123 ~~personal property is located in the county, notwithstanding any~~
1124 ~~other provision of this section.~~

1125 (4)(a) The department shall administer, collect, and
1126 enforce a discretionary surtax ~~the tax~~ authorized under s.
1127 212.055 pursuant to the same procedures used in the
1128 administration, collection, and enforcement of the general state
1129 sales tax imposed under ~~the provisions of~~ this chapter, except
1130 as provided in this section. The provisions of this chapter
1131 regarding interest and penalties on delinquent taxes shall also
1132 apply to the surtax. Discretionary sales surtaxes may ~~shall~~ not
1133 be included in the computation of estimated taxes pursuant to s.
1134 212.11. Notwithstanding any other provision of law, ~~a dealer~~
1135 ~~need not separately state~~ the amount of the surtax does not need
1136 to be separately stated on the charge ticket, sales slip,

HB 1393

2008

1137 invoice, or other tangible evidence of sale. For the purposes of
1138 this section and s. 212.055, the "proceeds" of a ~~any~~ surtax
1139 means all funds collected and received by the department
1140 pursuant to a specific authorization and levy under s. 212.055,
1141 including any interest and penalties on delinquent surtaxes.

1142 (a) ~~(b)~~ The proceeds of a discretionary sales surtax
1143 collected by the selling dealer located in a county that ~~which~~
1144 imposes the surtax shall be returned, less the cost of
1145 administration, to the county where the selling dealer is
1146 located. The proceeds shall be transferred to the Discretionary
1147 Sales Surtax Clearing Trust Fund. A separate account shall be
1148 established in the ~~such~~ trust fund for each county imposing a
1149 discretionary surtax. The amount deducted for the costs of
1150 administration may ~~shall~~ not exceed 3 percent of the total
1151 revenue generated for all counties levying a discretionary
1152 surtax ~~authorized in s. 212.055~~. The amount deducted for the
1153 costs of administration shall be used only for those costs that
1154 ~~which~~ are solely and directly attributable to the surtax. The
1155 total cost of administration shall be prorated among those
1156 counties levying the surtax on the basis of the amount collected
1157 for a particular county to the total amount collected for all
1158 counties. By ~~No later than~~ March 1 of each year, the department
1159 shall submit a written report that ~~which~~ details the expenses
1160 and amounts deducted for the costs of administration to the
1161 President of the Senate, the Speaker of the House of
1162 Representatives, and the governing authority of each county
1163 levying a surtax. The department shall distribute the moneys in

1164 the trust fund each month to the appropriate counties pursuant
 1165 ~~to, unless otherwise provided in~~ s. 212.055.

1166 ~~(b)(c)1.~~ A ~~Any~~ dealer located in a county that does not
 1167 impose a discretionary sales surtax but who collects the surtax
 1168 due to sales of tangible personal property or services delivered
 1169 outside the county shall remit monthly the proceeds of the
 1170 surtax to the department to be deposited into an account in the
 1171 Discretionary Sales Surtax Clearing Trust Fund which is separate
 1172 from the county surtax collection accounts. The department shall
 1173 distribute funds in this account using a distribution factor
 1174 determined for each county that levies a surtax and multiplied
 1175 by the amount of funds in the account and available for
 1176 distribution.

1177 1. The distribution factor for each county equals the
 1178 product of:

1179 a. The county's latest official population determined
 1180 pursuant to s. 186.901;

1181 b. The county's rate of surtax; and

1182 c. The number of months the county has levied a surtax
 1183 during the most recent distribution period;

1184
 1185 divided by the sum of all such products of the counties levying
 1186 the surtax during the most recent distribution period.

1187 2. The department shall compute distribution factors for
 1188 eligible counties once each quarter and make appropriate
 1189 quarterly distributions.

1190 3. A county that fails to timely provide the information
 1191 required by this section to the department authorizes the

1192 department, ~~by such action,~~ to use the best information
 1193 available to it in distributing surtax revenues to the county.
 1194 If this information is unavailable ~~to the department,~~ the
 1195 department may partially or entirely disqualify the county from
 1196 receiving surtax revenues ~~under this paragraph.~~ A county that
 1197 fails to provide timely information waives its right to
 1198 challenge the department's determination of the county's share,
 1199 if any, of revenues provided under this paragraph.

1200 ~~(5) No discretionary sales surtax or increase or decrease~~
 1201 ~~in the rate of any discretionary sales surtax shall take effect~~
 1202 ~~on a date other than January 1. No discretionary sales surtax~~
 1203 ~~shall terminate on a day other than December 31.~~

1204 (5)(6) The governing body of a any county levying a
 1205 discretionary sales surtax shall enact an ordinance levying the
 1206 surtax in accordance with the procedures described in s.
 1207 125.66(2).

1208 (6)(7)(a) An adoption, repeal, or rate change of a
 1209 discretionary surtax by the governing body of a any county
 1210 levying a ~~discretionary sales~~ surtax or the school board of a
 1211 ~~any~~ county levying the school capital outlay surtax authorized
 1212 by s. 212.055(6) is effective on April 1.

1213 (a) A county or school board must ~~shall~~ notify the
 1214 department within 10 days after final adoption by ordinance or
 1215 referendum of an adoption, repeal, ~~imposition, termination,~~ or
 1216 rate change of the surtax, but no later than November 16
 1217 immediately preceding ~~prior to~~ the effective date. The notice
 1218 must specify the time period during which the surtax will be in
 1219 effect and the rate and must include a copy of the ordinance and

1220 such other information as the department requires by rule.
 1221 Failure to timely provide ~~such~~ notification to the department
 1222 shall result in the delay of the effective date for a period of
 1223 1 year.

1224 (b) A county or school board must also notify the
 1225 department ~~In addition to the notification required by paragraph~~
 1226 ~~(a), the governing body of any county proposing to levy a~~
 1227 ~~discretionary sales surtax or the school board of any county~~
 1228 ~~proposing to levy the school capital outlay surtax authorized by~~
 1229 ~~s. 212.055(6) shall notify the department by October 1 if the~~
 1230 referendum or consideration of the ordinance that would result
 1231 in imposition, termination, or rate change of the surtax is
 1232 scheduled to occur on or after October 1 of that year. Failure
 1233 to timely provide ~~such~~ notification to the department shall
 1234 result in the delay of the effective date for a period of 1
 1235 year.

1236 (c) The department shall provide notice of the adoption,
 1237 repeal, or change to affected sellers by December 1 immediately
 1238 preceding the effective date.

1239 (d) A surtax may be terminated only on April 1. A surtax
 1240 imposed before January 1, 2009, for which an ordinance provides
 1241 a different termination date terminates on April 1 following the
 1242 termination date established in the ordinance.

1243 (7)-(8) With respect to a ~~any~~ motor vehicle or mobile home
 1244 of a class or type which is required to be registered in this
 1245 state, the tax due on a transaction occurring in the taxing
 1246 county ~~as herein provided~~ shall be collected from the purchaser
 1247 or user incident to the titling and registration of the ~~such~~

HB 1393

2008

1248 property, irrespective of whether such titling or registration
1249 occurs in the taxing county.

1250 (8) For the purpose of the state in providing and
1251 maintaining a database of all sales and use tax rates for all
1252 local taxing jurisdictions in accordance with the Streamlined
1253 Sales and Use Tax Agreement under s. 213.256, the provisions of
1254 s. 202.22(2) apply.

1255 (a) A seller or certified service provider who collects
1256 and remits the state and local tax imposed by this chapter is
1257 held harmless from tax, interest, and penalties due solely as a
1258 result of relying on erroneous data on tax rates, boundaries, or
1259 taxing jurisdiction assignments provided by the state if the
1260 seller or certified service provider exercises due diligence in
1261 applying one or more of the following methods for determining
1262 the taxing jurisdiction and tax rate for a transaction:

1263 1. Employing an electronic database provided by the
1264 department under s. 202.22(2); or

1265 2. Employing a database that has been approved by the
1266 county governing board and developed by a seller or certified
1267 service provider.

1268 (b) If a seller or certified service provider does not use
1269 one of the methods specified in paragraph (a), the seller or
1270 certified service provider may be held liable to the department
1271 for tax, interest, and penalties that are due for charging and
1272 collecting the incorrect amount of tax.

1273 Section 8. Section 212.06, Florida Statutes, is amended to
1274 read:

1275 212.06 Sales, storage, use tax; transaction location;
 1276 ~~collectible from dealers; "dealer" defined;~~ dealers to collect
 1277 from purchasers; mail order sales; legislative intent as to
 1278 scope of tax.--

1279 (1) (a) The ~~aforesaid~~ tax at the rate of 6 percent of the
 1280 retail sales price as of the moment of sale, 6 percent of the
 1281 cost price as of the moment of purchase, or 6 percent of the
 1282 cost price as of the moment of commingling with the general mass
 1283 of property in this state, ~~as the case may be,~~ shall be
 1284 collectible from all dealers ~~as herein defined~~ on the sale at
 1285 retail, the use, the consumption, the distribution, and the
 1286 storage for use or consumption in this state of tangible
 1287 personal property or services taxable under this chapter. The
 1288 full amount of the tax on a credit sale, installment sale, or
 1289 sale made on any kind of deferred payment plan is ~~shall be~~ due
 1290 at the moment of the transaction in the same manner as on a cash
 1291 sale.

1292 (b) Except as otherwise provided, any person who
 1293 manufactures, produces, compounds, processes, or fabricates in
 1294 any manner tangible personal property for his or her own use
 1295 shall pay a tax upon the cost of the product manufactured,
 1296 produced, compounded, processed, or fabricated without any
 1297 deduction for ~~therefrom on account of~~ the cost of material used,
 1298 labor or service costs, or transportation charges,
 1299 notwithstanding ~~the provisions of~~ s. 212.02 defining "cost
 1300 price." However, the tax may ~~levied under this paragraph shall~~
 1301 not be imposed upon any person who manufactures or produces
 1302 electrical power or energy, steam energy, or other energy at a

1303 single location, if the ~~when such~~ power or energy is used
 1304 directly and exclusively at that ~~such~~ location, or at other
 1305 locations if the energy is transferred through facilities of the
 1306 owner in the operation of machinery or equipment that is used to
 1307 manufacture, process, compound, produce, fabricate, or prepare
 1308 for shipment tangible personal property for sale or to operate
 1309 pollution control equipment, maintenance equipment, or
 1310 monitoring or control equipment used in such operations. The
 1311 manufacture or production of electrical power or energy that is
 1312 used for space heating, lighting, office equipment, or air-
 1313 conditioning or any other nonmanufacturing, nonprocessing,
 1314 noncompounding, nonproducing, nonfabricating, or nonshipping
 1315 activity is taxable. Electrical power or energy consumed or
 1316 dissipated in the transmission or distribution of electrical
 1317 power or energy for resale is also not taxable. Fabrication
 1318 labor is ~~shall~~ not be taxable if ~~when~~ a person is using his or
 1319 her own equipment and personnel, for his or her own account, as
 1320 a producer, subproducer, or coproducer of a qualified motion
 1321 picture. For purposes of this chapter, the term "qualified
 1322 motion picture" means all or any part of a series of related
 1323 images, ~~either~~ on film, tape, or other embodiment, including,
 1324 but not limited to, all items comprising part of the original
 1325 work and film-related products derived therefrom as well as
 1326 duplicates and prints thereof and all sound recordings created
 1327 to accompany a motion picture, which is produced, adapted, or
 1328 altered for exploitation in, on, or through any medium or device
 1329 and at any location, primarily for entertainment, commercial,
 1330 industrial, or educational purposes. This exemption for

1331 fabrication labor associated with production of a qualified
 1332 motion picture inures ~~will inure~~ to the taxpayer upon
 1333 presentation of the certificate of exemption issued to the
 1334 taxpayer under ~~the provisions of~~ s. 288.1258. A person who
 1335 manufactures factory-built buildings for his or her own use in
 1336 the performance of contracts for the construction or improvement
 1337 of real property shall pay a tax only upon the person's cost
 1338 price of items used in the manufacture of the ~~such~~ buildings.

1339 (c) ~~1.~~ Notwithstanding ~~the provisions of~~ paragraph (b), the
 1340 use tax on asphalt manufactured for one's own use shall be
 1341 calculated ~~with respect to paragraph (b)~~ only upon the cost of
 1342 materials that ~~which~~ become a component part or that ~~which~~ are
 1343 an ingredient of the finished asphalt and upon the cost of the
 1344 transportation of the ~~such~~ components and ingredients. In
 1345 addition, an indexed tax of 38 cents per ton of such
 1346 manufactured asphalt is ~~shall be~~ due at the same time and in the
 1347 same manner as taxes due under ~~pursuant to~~ paragraph (b).

1348 1. Beginning July 1, 1989, the indexed tax must ~~shall~~ be
 1349 adjusted each July 1 to an amount, rounded to the nearest cent,
 1350 equal to the product of 38 cents multiplied by a fraction, the
 1351 numerator of which is the annual average of the "materials and
 1352 components for construction" series of the producer price index,
 1353 as calculated and published by the United States Department of
 1354 Labor, Bureau of Statistics, for the previous calendar year, and
 1355 the denominator of which is the annual average of that ~~said~~
 1356 series for calendar year 1988.

1357 2. ~~a.~~ Beginning July 1, 1999, the indexed tax imposed by
 1358 this paragraph on manufactured asphalt ~~which is~~ used for a ~~any~~

1359 federal, state, or local government public works project shall
 1360 be reduced by 20 percent.

1361 ~~3.b.~~ Beginning July 1, 2000, the indexed tax imposed by
 1362 this paragraph on manufactured asphalt ~~which is~~ used for a any
 1363 federal, state, or local government public works project shall
 1364 be reduced by 40 percent.

1365 (d) For purposes of paragraph (b), the department may
 1366 establish a cost price amount for industry groups that
 1367 manufacture, produce, compound, process, or fabricate tangible
 1368 personal property for their own use in the performance of
 1369 contracts for improvements to real property. The ~~Such~~ cost price
 1370 amount must be established as a percentage, rounded to the
 1371 nearest whole number, of the total contract price charged for
 1372 the improvement. The cost price percentages ~~established~~ must be
 1373 adopted by rule pursuant to ~~the procedures provided in s.~~
 1374 120.54, upon petition of a majority of the members of an
 1375 industry group or by a statewide association that represents the
 1376 ~~such~~ industry group, and must be based on a reasonable estimate
 1377 of average costs incurred by members of the petitioning industry
 1378 group. The department shall ~~is required to~~ adopt a cost price
 1379 percentage only if sufficient information is available to
 1380 determine such percentage. The information ~~considered by the~~
 1381 ~~department to establish the cost price percentage~~ must be that
 1382 set forth in the petition or ~~that which is~~ otherwise be made
 1383 available to the department. A ~~Any~~ cost price percentage so
 1384 established shall ~~must~~ be made available only by election of a
 1385 member of the industry group for which the percentage was
 1386 established and applies ~~may apply~~ only to the ~~such~~ periods or

1387 | contracts for which the election is made. The election must be
 1388 | made by the taxpayer by timely accruing and remitting tax on the
 1389 | contract using the established percentage figure. If the
 1390 | taxpayer does not timely accrue and remit the use tax due for a
 1391 | contract using the percentage figure, the taxpayer may not later
 1392 | use this method of calculating the use tax due for that
 1393 | contract. Taxpayers must maintain adequate records showing the
 1394 | accrual of tax using the percentage figure on total contract
 1395 | price. A ~~Any~~ cost price so established must remain available for
 1396 | use for a period of at least 5 years from the date of its
 1397 | adoption and must be reviewed and be subject to adjustment by
 1398 | the department no more frequently than at 5-year intervals. The
 1399 | provisions of this paragraph are not available to persons
 1400 | subject to paragraph (c).

1401 | (e)~~1~~. Notwithstanding any other provision of this chapter,
 1402 | tax may ~~shall~~ not be imposed on a ~~any~~ vessel registered under s.
 1403 | 328.52 by a vessel dealer or vessel manufacturer and ~~with~~
 1404 | ~~respect to a vessel~~ used solely for demonstration, sales
 1405 | promotional, or testing purposes. The term "promotional
 1406 | purposes" includes ~~shall include~~, but is not ~~be~~ limited to,
 1407 | participation in fishing tournaments. For the purposes of this
 1408 | paragraph, "promotional purposes" means the entry of the vessel
 1409 | in a marine-related event where prospective purchasers would be
 1410 | in attendance, ~~where~~ the vessel is entered in the name of the
 1411 | dealer or manufacturer, ~~and where~~ the vessel is clearly marked
 1412 | as for sale, ~~on which vessel~~ the name of the dealer or
 1413 | manufacturer is clearly displayed on the vessel, and the ~~which~~
 1414 | vessel has never been transferred into the dealer's or

1415 manufacturer's accounting books from an inventory item to a
 1416 capital asset for depreciation purposes.

1417 ~~1.2-~~ The provisions of this paragraph do not apply to a
 1418 ~~any vessel when~~ used for transporting persons or goods for
 1419 compensation; ~~when~~ offered, let, or rented to another for
 1420 consideration; ~~when~~ offered for rent or hire as a means of
 1421 transportation for compensation; or ~~when~~ offered or used to
 1422 provide transportation for persons solicited through personal
 1423 contact or through advertisement on a "share expense" basis.

1424 ~~2.3-~~ Notwithstanding any other provision of this chapter,
 1425 tax may not be imposed on a ~~any~~ vessel imported into this state
 1426 for the sole purpose of being offered for sale at retail by a
 1427 yacht broker or yacht dealer registered in this state if the
 1428 vessel remains under the care, custody, and control of the
 1429 registered broker or dealer and the owner of the vessel does not
 1430 make personal use of the vessel during that time. The provisions
 1431 of this chapter govern the taxability of any sale or use of the
 1432 vessel subsequent to its importation under this provision.

1433 (2) The provisions of this subsection shall be used to
 1434 determine the location where a transaction occurs for purposes
 1435 of applying the tax imposed by this chapter.

1436 (a) For purposes of this subsection, the term:

1437 1. "Receive" and "receipt" means taking possession of
 1438 tangible personal property; making first use of services; or
 1439 taking possession or making first use of digital goods,
 1440 whichever occurs first. The terms do not include possession by a
 1441 shipping company on behalf of the purchaser.

1442 2. "Product" means tangible personal property, a digital
1443 good, or a service.

1444 (b) The retail sale of a product, excluding a lease or
1445 rental, shall be sourced as follows:

1446 1. At a business location of the seller, if the product is
1447 received by the purchaser at that location.

1448 2. If subparagraph 1. does not apply, at the location the
1449 product is received by the purchaser or the purchaser's donee,
1450 as designated by the purchaser, including the location indicated
1451 by delivery instructions known to the seller.

1452 3. If subparagraphs 1. and 2. do not apply, at the
1453 purchaser's address, which is available from the seller's
1454 business records maintained in the ordinary course of business,
1455 if use of this address does not constitute bad faith.

1456 4. If subparagraphs 1., 2., and 3. do not apply, at the
1457 purchaser's address obtained during the consummation of the
1458 sale, including the address of a purchaser's payment instrument,
1459 if no other address is available, if use of this address does
1460 not constitute bad faith.

1461 5. If subparagraphs 1., 2., 3., and 4. do not apply,
1462 including when the seller is without sufficient information to
1463 apply the previous paragraphs, the address from which the
1464 tangible personal property was shipped, the digital good or the
1465 computer software delivered electronically was first available
1466 for transmission by the seller, or the service was provided,
1467 disregarding a location that merely provided the digital
1468 transfer of the product sold.

HB 1393

2008

1469 (c) The lease or rental of tangible personal property,
1470 other than property identified in paragraphs (d) and (e), shall
1471 be sourced as follows:

1472 1. For a lease or rental that requires recurring periodic
1473 payments, the first payment is deemed to take place in
1474 accordance with paragraph (b) notwithstanding the exclusion of a
1475 lease or rental. Subsequent periodic payments are deemed to have
1476 occurred at the primary property location for each period
1477 covered by the payment. The primary property location is the
1478 address for the property provided by the lessee, which is
1479 available to the lessor from its records maintained in the
1480 ordinary course of business, if use of this address does not
1481 constitute bad faith. The property location is not altered by
1482 intermittent use of the property at different locations, such as
1483 the use of business property that accompanies employees on
1484 business trips and service calls.

1485 2. For a lease or rental that does not require recurring
1486 periodic payments, the payment is deemed to take place in
1487 accordance with paragraph (b) notwithstanding the exclusion of a
1488 lease or rental.

1489 3. This paragraph does not affect the imposition or
1490 computation of sales or use tax on leases or rentals based on a
1491 lump sum or accelerated basis, or on the acquisition of property
1492 for lease.

1493 (d) The lease or rental of a motor vehicle or aircraft
1494 that does not qualify as transportation equipment shall be
1495 sourced as follows:

HB 1393

2008

1496 1. For a lease or rental that requires recurring periodic
1497 payments, each periodic payment is deemed to take place at the
1498 primary property location. The primary property location is the
1499 address for the property provided by the lessee, which is
1500 available to the lessor from its records maintained in the
1501 ordinary course of business, if use of this address does not
1502 constitute bad faith. This location may not be altered by
1503 intermittent use at different locations.

1504 2. For a lease or rental that does not require recurring
1505 periodic payments, the payment is deemed to take place in
1506 accordance with paragraph (b) notwithstanding the exclusion of a
1507 lease or rental.

1508 3. This paragraph does not affect the imposition or
1509 computation of sales or use taxes on leases or rentals based on
1510 a lump-sum or accelerated basis, or on the acquisition of
1511 property for lease.

1512 (e) The retail sale, including lease or rental, of
1513 transportation equipment shall be deemed to take place in
1514 accordance with paragraph (b) notwithstanding the exclusion of a
1515 lease or rental.

1516 (f) This section does not apply to sales or use taxes
1517 levied on:

1518 1. The retail sale or transfer of a boat, modular home,
1519 manufactured home, or mobile home.

1520 2. The retail sale, excluding a lease or rental, of a
1521 motor vehicle or aircraft that does not qualify as
1522 transportation equipment. The lease or rental of these items

1523 shall be deemed to have occurred in accordance with paragraph
 1524 (d).

1525 3. The retail sale of tangible personal property by a
 1526 florist.

1527
 1528 Such retail sales are deemed to take place at the location
 1529 determined under s. 212.054(3).

1530 ~~(a) The term "dealer," as used in this chapter, includes~~
 1531 ~~every person who manufactures or produces tangible personal~~
 1532 ~~property for sale at retail; for use, consumption, or~~
 1533 ~~distribution; or for storage to be used or consumed in this~~
 1534 ~~state.~~

1535 ~~(b) The term "dealer" is further defined to mean every~~
 1536 ~~person, as used in this chapter, who imports, or causes to be~~
 1537 ~~imported, tangible personal property from any state or foreign~~
 1538 ~~country for sale at retail; for use, consumption, or~~
 1539 ~~distribution; or for storage to be used or consumed in this~~
 1540 ~~state.~~

1541 ~~(c) The term "dealer" is further defined to mean every~~
 1542 ~~person, as used in this chapter, who sells at retail or who~~
 1543 ~~offers for sale at retail, or who has in his or her possession~~
 1544 ~~for sale at retail; or for use, consumption, or distribution; or~~
 1545 ~~for storage to be used or consumed in this state, tangible~~
 1546 ~~personal property as defined herein, including a retailer who~~
 1547 ~~transacts a mail order sale.~~

1548 ~~(d) The term "dealer" is further defined to mean any~~
 1549 ~~person who has sold at retail; or used, or consumed, or~~
 1550 ~~distributed; or stored for use or consumption in this state,~~

HB 1393

2008

1551 ~~tangible personal property and who cannot prove that the tax~~
1552 ~~levied by this chapter has been paid on the sale at retail, the~~
1553 ~~use, the consumption, the distribution, or the storage of such~~
1554 ~~tangible personal property. However, the term "dealer" does not~~
1555 ~~mean a person who is not a "dealer" under the definition of any~~
1556 ~~other paragraph of this subsection and whose only owned or~~
1557 ~~leased property (including property owned or leased by an~~
1558 ~~affiliate) in this state is located at the premises of a printer~~
1559 ~~with which it has contracted for printing, if such property~~
1560 ~~consists of the final printed product, property which becomes a~~
1561 ~~part of the final printed product, or property from which the~~
1562 ~~printed product is produced.~~

1563 ~~(e) The term "dealer" is further defined to mean any~~
1564 ~~person, as used in this chapter, who leases or rents tangible~~
1565 ~~personal property, as defined in this chapter, for a~~
1566 ~~consideration, permitting the use or possession of such property~~
1567 ~~without transferring title thereto, except as expressly provided~~
1568 ~~for to the contrary herein.~~

1569 ~~(f) The term "dealer" is further defined to mean any~~
1570 ~~person, as used in this chapter, who maintains or has within~~
1571 ~~this state, directly or by a subsidiary, an office, distributing~~
1572 ~~house, salesroom, or house, warehouse, or other place of~~
1573 ~~business.~~

1574 ~~(g) "Dealer" also means and includes every person who~~
1575 ~~solicits business either by direct representatives, indirect~~
1576 ~~representatives, or manufacturers' agents; by distribution of~~
1577 ~~catalogs or other advertising matter; or by any other means~~
1578 ~~whatsoever, and by reason thereof receives orders for tangible~~

1579 ~~personal property from consumers for use, consumption,~~
 1580 ~~distribution, and storage for use or consumption in the state;~~
 1581 ~~such dealer shall collect the tax imposed by this chapter from~~
 1582 ~~the purchaser, and no action, either in law or in equity, on a~~
 1583 ~~sale or transaction as provided by the terms of this chapter may~~
 1584 ~~be had in this state by any such dealer unless it is~~
 1585 ~~affirmatively shown that the provisions of this chapter have~~
 1586 ~~been fully complied with.~~

1587 ~~(h) "Dealer" also means and includes every person who, as~~
 1588 ~~a representative, agent, or solicitor of an out-of-state~~
 1589 ~~principal or principals, solicits, receives, and accepts orders~~
 1590 ~~from consumers in the state for future delivery and whose~~
 1591 ~~principal refuses to register as a dealer.~~

1592 ~~(i) "Dealer" also means and includes the state, county,~~
 1593 ~~municipality, any political subdivision, agency, bureau or~~
 1594 ~~department, or other state or local governmental~~
 1595 ~~instrumentality.~~

1596 ~~(j) The term "dealer" is further defined to mean any~~
 1597 ~~person who leases, or grants a license to use, occupy, or enter~~
 1598 ~~upon, living quarters, sleeping or housekeeping accommodations~~
 1599 ~~in hotels, apartment houses, roominghouses, tourist or trailer~~
 1600 ~~amps, real property, space or spaces in parking lots or garages~~
 1601 ~~for motor vehicles, docking or storage space or spaces for boats~~
 1602 ~~in boat docks or marinas, or tie-down or storage space or spaces~~
 1603 ~~for aircraft at airports. The term "dealer" also means any~~
 1604 ~~person who has leased, occupied, or used or was entitled to use~~
 1605 ~~any living quarters, sleeping or housekeeping accommodations in~~
 1606 ~~hotels, apartment houses, roominghouses, tourist or trailer~~

HB 1393

2008

1607 ~~camps, real property, space or spaces in parking lots or garages~~
 1608 ~~for motor vehicles or docking or storage space or spaces for~~
 1609 ~~boats in boat docks or marinas, or who has purchased~~
 1610 ~~communication services or electric power or energy, and who~~
 1611 ~~cannot prove that the tax levied by this chapter has been paid~~
 1612 ~~to the vendor or lessor on any such transactions. The term~~
 1613 ~~"dealer" does not include any person who leases, lets, rents, or~~
 1614 ~~grants a license to use, occupy, or enter upon any living~~
 1615 ~~quarters, sleeping quarters, or housekeeping accommodations in~~
 1616 ~~apartment houses, roominghouses, tourist camps, or trailer~~
 1617 ~~camps, and who exclusively enters into a bona fide written~~
 1618 ~~agreement for continuous residence for longer than 6 months in~~
 1619 ~~duration with any person who leases, lets, rents, or is granted~~
 1620 ~~a license to use such property.~~

1621 ~~(k) "Dealer" also means any person who sells, provides, or~~
 1622 ~~performs a service taxable under this chapter. "Dealer" also~~
 1623 ~~means any person who purchases, uses, or consumes a service~~
 1624 ~~taxable under this chapter who cannot prove that the tax levied~~
 1625 ~~by this chapter has been paid to the seller of the taxable~~
 1626 ~~service.~~

1627 ~~(l) "Dealer" also means any person who solicits, offers,~~
 1628 ~~provides, enters into, issues, or delivers any service warranty~~
 1629 ~~taxable under this chapter, or who receives, on behalf of such a~~
 1630 ~~person, any consideration from a service warranty holder.~~

1631 (3)(a) Except as provided in paragraphs (a) and paragraph
 1632 (b), every dealer making retail sales, whether within or outside
 1633 the state, of tangible personal property for distribution,
 1634 storage, or use or other consumption, in this state, shall, at

1635 the time of making sales, collect the tax imposed by this
1636 chapter from the purchaser.

1637 (a) A business purchaser who is not a holder of a direct-
1638 pay permit and who knows at the time of purchase of a digital
1639 good, computer software delivered electronically, or a service
1640 that the digital good, computer software, or service is
1641 concurrently available for use in more than one jurisdiction
1642 shall deliver to the dealer a multiple-points-of-use (MPU)
1643 exemption form at the time of purchase.

1644 1. Upon receipt of the MPU exemption form, the seller is
1645 relieved of all obligation to collect, pay, or remit the
1646 applicable tax, and the purchaser is obligated to collect, pay,
1647 or remit the applicable tax on a direct-pay basis.

1648 2. A purchaser delivering the MPU exemption form may use
1649 any reasonable, consistent, and uniform method of apportioning
1650 the applicable tax which is supported by the purchaser's
1651 business records as they exist at the time of the sale.

1652 3. The MPU exemption form remains in effect for all future
1653 sales by the seller to the purchaser, except as to the
1654 subsequent sale's specific apportionment, which is governed by
1655 subparagraph 2. and the facts existing at the time of the sale,
1656 until the MPU exemption form is revoked in writing.

1657 4. A holder of a direct-pay permit is not required to
1658 deliver an MPU exemption form to the seller and must comply with
1659 subparagraph 2. in apportioning the tax due on a digital good or
1660 a service that is concurrently available for use in more than
1661 one jurisdiction.

HB 1393

2008

1662 (b)~~1~~. A purchaser of direct mail who is not a holder of a
1663 direct-pay permit shall provide to the seller in conjunction
1664 with the purchase a direct-mail form or information to show the
1665 jurisdictions to which the direct mail is delivered to
1666 recipients.

1667 1. Upon receipt of the direct-mail form, the seller is
1668 relieved of all obligations to collect, pay, or remit the
1669 applicable tax, and the purchaser is obligated to pay or remit
1670 the applicable tax on a direct-pay basis. A direct-mail form
1671 remains in effect for all future sales of direct mail by the
1672 seller to the purchaser until it is revoked in writing.

1673 2. Upon receipt of information from the purchaser showing
1674 the jurisdictions to which the direct mail is delivered to
1675 recipients, the seller shall collect the tax according to the
1676 delivery information provided by the purchaser. In the absence
1677 of bad faith, the seller is relieved of any further obligation
1678 to collect tax on any transaction for which the seller has
1679 collected tax pursuant to the delivery information provided by
1680 the purchaser.

1681 3. If the purchaser of direct mail does not have a direct-
1682 pay permit and does not provide the seller with a direct-mail
1683 form or delivery information as required by this paragraph, the
1684 seller shall collect the tax according to subparagraph (2)(b)5.
1685 This subparagraph does not limit a purchaser's obligation for
1686 sales or use tax to any state to which the direct mail is
1687 delivered.

1688 4. If a purchaser of direct mail provides the seller with
1689 documentation of direct-pay authority, the purchaser is not

1690 required to provide a direct-mail form or delivery information
 1691 to the seller. ~~A purchaser of printed materials shall have sole~~
 1692 ~~responsibility for the taxes imposed by this chapter on those~~
 1693 ~~materials when the printer of the materials delivers them to the~~
 1694 ~~United States Postal Service for mailing to persons other than~~
 1695 ~~the purchaser located within and outside this state. Printers of~~
 1696 ~~materials delivered by mail to persons other than the purchaser~~
 1697 ~~located within and outside this state shall have no obligation~~
 1698 ~~or responsibility for the payment or collection of any taxes~~
 1699 ~~imposed under this chapter on those materials. However, printers~~
 1700 ~~are obligated to collect the taxes imposed by this chapter on~~
 1701 ~~printed materials when all, or substantially all, of the~~
 1702 ~~materials will be mailed to persons located within this state.~~
 1703 ~~For purposes of the printer's tax collection obligation, there~~
 1704 ~~is a rebuttable presumption that all materials printed at a~~
 1705 ~~facility are mailed to persons located within the same state as~~
 1706 ~~that in which the facility is located. A certificate provided by~~
 1707 ~~the purchaser to the printer concerning the delivery of the~~
 1708 ~~printed materials for that purchase or all purchases shall be~~
 1709 ~~sufficient for purposes of rebutting the presumption created~~
 1710 ~~herein.~~

1711 5.2. ~~The department of Revenue is authorized to adopt~~
 1712 ~~rules and forms to~~ administer ~~implement the provisions of this~~
 1713 ~~paragraph.~~

1714 (4) On all tangible personal property imported or caused
 1715 to be imported from other states, territories, the District of
 1716 Columbia, or a ~~any~~ foreign country, and used by him or her, the
 1717 dealer, ~~as herein defined,~~ shall pay the same tax imposed by

1718 this chapter on all articles of tangible personal property so
 1719 imported and used, ~~the same~~ as if the ~~such~~ articles had been
 1720 sold at retail for use or consumption in this state. For the
 1721 purposes of this chapter, the use, or consumption, or
 1722 distribution, or storage to be used or consumed in this state of
 1723 tangible personal property shall each be equivalent to a sale at
 1724 retail, and the tax shall ~~thereupon~~ immediately levy and be
 1725 collected in the manner provided herein, provided that there is
 1726 ~~there shall be~~ no duplication of the tax ~~in any event~~.

1727 (5) (a) 1. Except as provided in subparagraph 2., it is not
 1728 the intention of this chapter to levy a tax upon tangible
 1729 personal property imported, produced, or manufactured in this
 1730 state for export, ~~provided that tangible personal property may~~
 1731 ~~not be considered as being imported, produced, or manufactured~~
 1732 ~~for export~~ unless the importer, producer, or manufacturer
 1733 delivers the same to a licensed exporter for exporting or to a
 1734 common carrier for shipment outside the state or mails the same
 1735 by United States mail to a destination outside the state; or,
 1736 for in the case of aircraft being exported under their own power
 1737 to a destination outside the continental limits of the United
 1738 States, by submission to the department of a duly signed and
 1739 validated United States customs declaration, showing the
 1740 departure of the aircraft from the continental United States;
 1741 and further with respect to aircraft, submission to the
 1742 department of the canceled United States registry of said
 1743 aircraft; or for in the case of parts and equipment installed on
 1744 aircraft of foreign registry, by submission to the department of
 1745 documentation, as the extent of which shall be provided by rule,

1746 showing the departure of the aircraft from the continental
 1747 United States. It is also not, ~~nor is it~~ the intention of this
 1748 chapter to levy a tax on any sale that ~~which~~ the state is
 1749 prohibited from taxing under the Constitution or laws of the
 1750 United States. Every retail sale made to a person physically
 1751 present at the time of sale is ~~shall be~~ presumed to have been
 1752 delivered in this state.

1753 2.a. Notwithstanding subparagraph 1., a tax is levied on
 1754 each sale of tangible personal property to be transported to a
 1755 cooperating state as defined in sub-subparagraph c., at the rate
 1756 specified in sub-subparagraph d. However, a registered Florida
 1757 dealer is not required to collect this tax ~~will be relieved from~~
 1758 ~~the requirements of collecting taxes pursuant to this~~
 1759 ~~subparagraph~~ if the Florida dealer obtains from the purchaser an
 1760 affidavit setting forth the purchaser's name, address, state
 1761 taxpayer identification number, and a statement that the
 1762 purchaser is aware of his or her state's use tax laws, is a
 1763 registered dealer in this state ~~Florida~~ or another state, ~~or~~ is
 1764 purchasing the tangible personal property for resale, or is
 1765 otherwise not required to pay the tax on the transaction. The
 1766 department may, by rule, provide a form to be used for this
 1767 purpose ~~the purposes set forth herein~~.

1768 b. For purposes of this subparagraph, "a cooperating
 1769 state" is one determined by the executive director of the
 1770 department to cooperate satisfactorily with this state in
 1771 collecting taxes on mail order sales by meeting. ~~No state shall~~
 1772 ~~be so determined unless it meets~~ all the following minimum
 1773 requirements:

1774 (I) It levies and collects taxes on mail order sales of
 1775 property transported from that state to persons in this state,
 1776 as described in s. 212.0596, upon request of the department.

1777 (II) The tax so collected is ~~shall be~~ at the rate
 1778 specified in s. 212.05, not including any local option or
 1779 tourist or convention development taxes collected pursuant to s.
 1780 125.0104 or this chapter.

1781 (III) The ~~Such~~ state agrees to remit to the department all
 1782 taxes so collected no later than 30 days after ~~from~~ the last day
 1783 of the calendar quarter following their collection.

1784 (IV) The ~~Such~~ state authorizes the department to audit
 1785 dealers within its jurisdiction who make mail order sales that
 1786 are the subject of s. 212.0596, or makes arrangements deemed
 1787 adequate by the department for auditing them with its own
 1788 personnel.

1789 (V) The ~~Such~~ state agrees to provide to the department
 1790 records obtained by it from retailers or dealers in the ~~such~~
 1791 state showing delivery of tangible personal property into this
 1792 state upon which no sales or use tax has been paid in a manner
 1793 similar to that provided in sub-subparagraph g.

1794 c. For purposes of this subparagraph, "sales of tangible
 1795 personal property to be transported to a cooperating state"
 1796 means a mail order sale ~~sales~~ to a person who is in the
 1797 cooperating state at the time the order is executed, from a
 1798 dealer who receives that order in this state.

1799 d. The tax levied by sub-subparagraph a. shall be at the
 1800 rate at which ~~such~~ a sale would have been taxed pursuant to the
 1801 cooperating state's tax laws if consummated in the cooperating

1802 state by a dealer and a purchaser, both of whom were physically
 1803 present in that state at the time of the sale.

1804 e. The tax levied by sub-subparagraph a., when collected,
 1805 shall be held in the State Treasury in trust for the benefit of
 1806 the cooperating state and shall be paid to it at a time agreed
 1807 upon between the department, acting for this state, and the
 1808 cooperating state or the department or agency designated by it
 1809 to act for it; however, the such payment must be made within
 1810 ~~shall in no event be made later than~~ 30 days after ~~from~~ the last
 1811 day of the calendar quarter after the tax was collected. Funds
 1812 held in trust for the benefit of a cooperating state are ~~shall~~
 1813 not be subject to the service charges imposed by s. 215.20.

1814 f. The department may ~~is authorized to~~ perform such acts
 1815 and ~~to~~ provide such cooperation to a cooperating state with
 1816 reference to the tax levied by sub-subparagraph a. as is
 1817 required of the cooperating state by sub-subparagraph b.

1818 g. In furtherance of this subparagraph ~~act~~, dealers
 1819 selling tangible personal property for delivery in another state
 1820 shall make available to the department, upon request of the
 1821 department, records of all tangible personal property so sold.
 1822 The ~~Such~~ records must ~~shall~~ include a description of the
 1823 property, the name and address of the purchaser, the name and
 1824 address of the person to whom the property was sent, the
 1825 purchase price of the property, information regarding whether
 1826 sales tax was paid in this state on the purchase price, and such
 1827 other information as the department may by rule prescribe.

1828 (b) ~~1-~~ Notwithstanding ~~the provisions of~~ paragraph (a), it
 1829 is not the intention of this chapter to levy a tax on the sale

1830 of tangible personal property to a nonresident dealer who does
 1831 not hold a Florida sales tax registration if the, ~~provided such~~
 1832 nonresident dealer furnishes the seller with a statement
 1833 declaring that the tangible personal property will be
 1834 transported outside this state by the nonresident dealer for
 1835 resale and for no other purpose.

1836 1. The statement must ~~shall~~ include, but need not be
 1837 limited to, the nonresident dealer's name, address, applicable
 1838 passport or visa number, arrival-departure card number, and
 1839 evidence of authority to do business in the nonresident dealer's
 1840 home state or country, such as his or her business name and
 1841 address, occupational license number, if applicable, or any
 1842 other suitable requirement. The statement must ~~shall~~ be signed
 1843 by the nonresident dealer and must ~~shall~~ include the following
 1844 sentence: "Under penalties of perjury, I declare that I have
 1845 read the foregoing, and the facts alleged are true to the best
 1846 of my knowledge and belief."

1847 2. The burden of proof ~~of subparagraph 1.~~ rests with the
 1848 seller, who must retain the proper documentation to support the
 1849 exempt sale. The exempt transaction is subject to verification
 1850 by the department.

1851 (c) Notwithstanding ~~the provisions of~~ paragraph (a), it is
 1852 not the intention of this chapter to levy a tax on the sale by a
 1853 printer to a nonresident print purchaser of material printed by
 1854 that printer if ~~for that nonresident print purchaser when the~~
 1855 print purchaser does not furnish to the printer a resale
 1856 certificate containing a sales tax registration number but does

1857 furnish to the printer a statement declaring that the ~~such~~
 1858 material will be resold by the nonresident print purchaser.

1859 (6) It is ~~however,~~ the intention of this chapter to levy a
 1860 tax on the sale at retail, the use, the consumption, the
 1861 distribution, and the storage to be used or consumed in this
 1862 state of tangible personal property after it has come to rest in
 1863 this state and has become a part of the mass property of this
 1864 state.

1865 (7) The provisions of this chapter do not apply ~~in respect~~
 1866 to the use or consumption of tangible personal property or
 1867 services, or distribution or storage of tangible personal
 1868 property for use or consumption in this state, upon which a like
 1869 tax equal to or greater than the amount imposed by this chapter
 1870 has been lawfully imposed and paid in another state, territory
 1871 of the United States, or the District of Columbia. The proof of
 1872 payment of such tax shall be made in accordance with department
 1873 ~~according to rules and regulations of the department.~~ If the
 1874 amount of tax paid in another state, territory of the United
 1875 States, or the District of Columbia is not equal to or greater
 1876 than the amount of tax imposed by this chapter, ~~then~~ the dealer
 1877 must shall pay the difference to the department ~~an amount~~
 1878 ~~sufficient to make the tax paid in the other state, territory of~~
 1879 ~~the United States, or the District of Columbia and in this state~~
 1880 ~~equal to the amount imposed by this chapter.~~

1881 (8) (a) Use tax applies ~~will apply~~ and is ~~be~~ due on
 1882 tangible personal property imported or caused to be imported
 1883 into this state for use, consumption, distribution, or storage
 1884 to be used or consumed in this state. ~~, provided, however, that,~~

1885 Except as provided in paragraph (b), it is ~~shall be~~ presumed
 1886 that tangible personal property used in another state, territory
 1887 of the United States, or the District of Columbia for 6 months
 1888 or longer before being imported into this state was not
 1889 purchased for use in this state. The rental or lease of tangible
 1890 personal property that ~~which~~ is used or stored in this state is
 1891 ~~shall be~~ taxable without regard to its prior use or tax paid on
 1892 purchase outside this state.

1893 (b) The presumption that tangible personal property used
 1894 in another state, territory of the United States, or the
 1895 District of Columbia for 6 months or longer before being
 1896 imported into this state was not purchased for use in this state
 1897 does not apply to a ~~any~~ boat for which a saltwater vessel
 1898 ~~fishing~~ license fee is required to be paid pursuant to s.
 1899 372.57(7), ~~either directly or indirectly, for the purpose of~~
 1900 ~~taking, attempting to take, or possessing any saltwater fish for~~
 1901 ~~noncommercial purposes.~~ Use tax applies ~~shall apply~~ and is ~~be~~
 1902 due on such a boat ~~as provided in this paragraph~~, and proof of
 1903 payment of the ~~such~~ tax must be presented prior to the first
 1904 ~~such~~ licensure of the boat, registration of the boat pursuant to
 1905 chapter 328, and titling of the boat pursuant to chapter 328.

1906 1. A boat that is first licensed within 1 year after
 1907 purchase is ~~shall be~~ subject to use tax on the full amount of
 1908 the purchase price.†

1909 2. A boat that is first licensed in the second year after
 1910 purchase is ~~shall be~~ subject to use tax on 90 percent of the
 1911 purchase price.†

1912 3. A boat that is first licensed in the third year after
 1913 purchase ~~is shall be~~ subject to use tax on 80 percent of the
 1914 purchase price.~~†~~

1915 4. A boat that is first licensed in the fourth year after
 1916 purchase ~~is shall be~~ subject to use tax on 70 percent of the
 1917 purchase price.~~†~~

1918 5. A boat that is first licensed in the fifth year after
 1919 purchase ~~is shall be~~ subject to use tax on 60 percent of the
 1920 purchase price.~~†~~ ~~and~~

1921 6. A boat that is first licensed in the sixth year after
 1922 purchase, or later, ~~is shall be~~ subject to use tax on 50 percent
 1923 of the purchase price.

1924 7. If the purchaser fails to provide the purchase invoice
 1925 on such boat, the fair market value of the boat at the time of
 1926 importation into this state shall be used to compute the tax.

1927 (9) The taxes imposed by this chapter do not apply to the
 1928 use, sale, or distribution of religious publications, bibles,
 1929 hymn books, prayer books, vestments, altar paraphernalia,
 1930 sacramental chalices, and similar ~~like~~ church service and
 1931 ceremonial raiments and equipment.

1932 (10) A ~~no~~ title certificate may not be issued on any boat,
 1933 mobile home, motor vehicle, or other vehicle, or, if a ~~no~~ title
 1934 is not required ~~by law~~, a ~~no~~ license or registration may not be
 1935 issued for any boat, mobile home, motor vehicle, or other
 1936 vehicle, unless there is filed with the ~~such~~ application for
 1937 title certificate, ~~or~~ license, ~~or~~ registration ~~certificate~~ a
 1938 receipt, issued by an authorized dealer or a designated agent of
 1939 the department ~~of Revenue~~, evidencing the payment of the tax

1940 imposed by this chapter where the tax ~~same~~ is payable. A
 1941 presumption of sales and use tax applicability is created if the
 1942 motor vehicle is registered in this state. For the purpose of
 1943 enforcing this subsection ~~provision~~, all county tax collectors
 1944 and all persons or firms authorized to sell or issue boat,
 1945 mobile home, and motor vehicle licenses are ~~hereby~~ designated
 1946 agents of the department and are required to perform such duty
 1947 in the same manner and under the same conditions prescribed for
 1948 their other duties by the constitution or laws ~~any statute~~ of
 1949 this state. All transfers of title to boats, mobile homes, motor
 1950 vehicles, and other vehicles are taxable transactions, unless
 1951 expressly exempt under this chapter.

1952 (11) ~~(a)~~ Notwithstanding any other provision of this
 1953 chapter, the taxes imposed by this chapter may ~~shall~~ not be
 1954 imposed on promotional materials that, ~~which~~ are imported,
 1955 purchased, sold, used, manufactured, fabricated, processed,
 1956 printed, imprinted, assembled, distributed, or stored in this
 1957 state, if the promotional materials are subsequently exported
 1958 outside this state, and, regardless of whether the exportation
 1959 process is continuous and unbroken, a separate consideration is
 1960 charged for the material ~~so~~ exported, or the taxpayer keeps,
 1961 retains, or exercises any right, power, dominion, or control
 1962 over the promotional materials before or for the purpose of
 1963 subsequently transporting them outside this state.

1964 (a) ~~(b)~~ As used in this subsection, the term "promotional
 1965 materials" means tangible personal property that is given away
 1966 or otherwise distributed to promote the sale of a subscription
 1967 to a publication; written or printed advertising material,

1968 direct mail literature, correspondence, written solicitations,
 1969 renewal notices, and billings for sales connected with or to
 1970 promote the sale of a subscription to a publication; and the
 1971 component parts of each of these types of promotional materials.

1972 ~~(b)(e)~~ After ~~July 1, 1992,~~ This exemption inures to the
 1973 taxpayer only through refund of previously paid taxes or by
 1974 self-accruing taxes as provided in s. 212.183 and applies only
 1975 where the seller of subscriptions to publications sold in the
 1976 state:

1977 1. Is registered with the department pursuant to this
 1978 chapter; and

1979 2. Remits the taxes imposed by this chapter on such
 1980 publications.

1981 ~~(d) This subsection applies retroactively to July 1, 1987.~~

1982 (12) In lieu of ~~any~~ other facts that ~~which~~ may indicate
 1983 commingling, a ~~any~~ boat that ~~which~~ remains in this state for
 1984 more than an aggregate of 183 days in any 1-year period, except
 1985 as provided in subsection (8) or s. 212.08(7)(t), is ~~shall be~~
 1986 presumed to be commingled with the general mass of property of
 1987 this state.

1988 (13) Registered aircraft dealers who purchase aircraft
 1989 exclusively for resale and who do not pay sales tax on the
 1990 purchase price at the time of purchase must ~~shall~~ pay a use tax
 1991 computed on 1 percent of the value of the aircraft each calendar
 1992 month that the aircraft is used by the dealer. Payment of the
 1993 ~~such~~ tax shall commence in the month during which the aircraft
 1994 is first used for any purpose for which income is received by
 1995 the dealer. A dealer may pay the sales tax on the purchase of

1996 the aircraft in lieu of the monthly use tax. The value of the
 1997 aircraft must ~~shall~~ include its acquisition cost and the cost of
 1998 reconditioning that enhances the value of the aircraft and shall
 1999 generally be the value shown on the books of the dealer in
 2000 accordance with generally accepted accounting principles.
 2001 Notwithstanding ~~the~~ payment by the dealer of tax computed on 1
 2002 percent of the value of the ~~any~~ aircraft, if the aircraft is
 2003 leased or rented, the dealer must ~~shall~~ collect from the
 2004 customer and remit the tax that is due on the lease or rental of
 2005 the aircraft; such payments do not diminish or offset any use
 2006 tax due from the dealer.

2007 ~~(14) For the purpose of determining whether a person is~~
 2008 ~~improving real property, the term:~~

2009 ~~(a) "Real property" means the land and improvements~~
 2010 ~~thereto and fixtures and is synonymous with the terms "realty"~~
 2011 ~~and "real estate."~~

2012 ~~(b) "Fixtures" means items that are an accessory to a~~
 2013 ~~building, other structure, or land and that do not lose their~~
 2014 ~~identity as accessories when installed but that do become~~
 2015 ~~permanently attached to realty. However, the term does not~~
 2016 ~~include the following items, whether or not such items are~~
 2017 ~~attached to real property in a permanent manner: property of a~~
 2018 ~~type that is required to be registered, licensed, titled, or~~
 2019 ~~documented by this state or by the United States Government,~~
 2020 ~~including, but not limited to, mobile homes, except mobile homes~~
 2021 ~~assessed as real property, or industrial machinery or equipment.~~
 2022 ~~For purposes of this paragraph, industrial machinery or~~
 2023 ~~equipment is not limited to machinery and equipment used to~~

2024 ~~manufacture, process, compound, or produce tangible personal~~
 2025 ~~property. For an item to be considered a fixture, it is not~~
 2026 ~~necessary that the owner of the item also own the real property~~
 2027 ~~to which it is attached.~~

2028 ~~(c) "Improvements to real property" includes the~~
 2029 ~~activities of building, erecting, constructing, altering,~~
 2030 ~~improving, repairing, or maintaining real property.~~

2031 ~~(14)~~ (15) (a) ~~If~~ When a contractor secures rock, shell, fill
 2032 dirt, or similar materials from a location that he or she owns
 2033 or leases and uses such materials to fulfill a real property
 2034 contract on the property of another person, the contractor is
 2035 the ultimate consumer of the ~~such~~ materials and is liable for
 2036 use tax thereon. This paragraph does not apply to a person or a
 2037 corporation or affiliated group as defined by s. 220.03(1)(b) or
 2038 (e) who ~~that~~ secures such materials from a location that he,
 2039 she, or it owns for use on his, her, or its own property. The
 2040 basis upon which the contractor shall remit the tax is the fair
 2041 retail market value determined by establishing ~~either~~ the price
 2042 he or she would have to pay for it on the open market or the
 2043 price he or she would regularly charge if he or she sold it to
 2044 other contractors or users.

2045 (b) ~~If~~ When a contractor does not own or lease the land
 2046 but has entered into an agreement to purchase fill dirt, rock,
 2047 shell, or similar materials for his or her own use and ~~wherein~~
 2048 the contractor will excavate and remove the material, the
 2049 taxable basis includes ~~shall include~~ the cost of the material
 2050 plus all costs of clearing, excavating, and removing, including
 2051 labor and all other costs incurred by the contractor.

2052 (c) In lieu of the method described in paragraph (a) for
 2053 determining the taxable basis on rock, shell, fill dirt, and
 2054 similar materials a contractor uses in performing a contract for
 2055 the improvement of real property, the taxable basis may be
 2056 calculated as the land cost plus all costs of clearing,
 2057 excavating, and loading, including labor, power, blasting, and
 2058 similar costs.

2059 (d) A tax may not be imposed if ~~No tax is applicable when~~
 2060 the Department of Transportation furnishes without charge the
 2061 borrow materials or the pits where materials are ~~to be~~ extracted
 2062 for use on a road contract.

2063 (15) ~~(16)~~ (a) Notwithstanding other provisions of this
 2064 chapter, the use by the publisher of a newspaper, magazine, or
 2065 periodical of copies for his or her own consumption or to be
 2066 given away is taxable at the usual retail price ~~thereof~~, if any,
 2067 or at the "cost price."

2068 (b) For the purposes of this subsection, the term "cost
 2069 price" means the actual cost of printing ~~of~~ newspapers,
 2070 magazines, and other publications, without any deductions for
 2071 ~~therefrom on account of~~ the cost of materials used, labor or
 2072 services cost, transportation charges, or other direct or
 2073 indirect overhead costs that are a part of the printing costs of
 2074 the property. However, the cost of labor to manufacture,
 2075 produce, compound, process, or fabricate expendable items of
 2076 tangible personal property which are directly used by such
 2077 person in printing other tangible personal property for sale or
 2078 for his or her own use is exempt. Authors' royalties, fees, ~~or~~
 2079 salaries, general overhead, and other costs not directly related

2080 to printing are ~~shall be~~ deemed to be labor associated with
 2081 manufacturing, producing, compounding, processing, or
 2082 fabricating expendable items.

2083 Section 9. Subsections (1) and (2) and paragraphs (b) and
 2084 (c) of subsection (17) of section 212.08, Florida Statutes, are
 2085 amended to read:

2086 212.08 Sales, rental, use, consumption, distribution, and
 2087 storage tax; specified exemptions.--The sale at retail, the
 2088 rental, the use, the consumption, the distribution, and the
 2089 storage to be used or consumed in this state of the following
 2090 are ~~hereby~~ specifically exempt from the tax imposed by this
 2091 chapter.

2092 (1) EXEMPTIONS; GENERAL GROCERIES.--

2093 (a) Food and food ingredients ~~products~~ for human
 2094 consumption are exempt from the tax imposed by this chapter.

2095 (b) For the purpose of this chapter, ~~as used in this~~
 2096 ~~subsection,~~ the term "food and food ingredients" mean
 2097 substances, whether in liquid, concentrated, solid, frozen,
 2098 dried, or dehydrated form, which are sold for ingestion or
 2099 chewing by humans and are consumed for their taste or
 2100 nutritional value ~~products" means edible commodities, whether~~
 2101 ~~processed, cooked, raw, canned, or in any other form, which are~~
 2102 ~~generally regarded as food.~~ This includes, but is not limited
 2103 to, all of the following:

- 2104 1. ~~Cereals and cereal products, baked goods,~~
 2105 ~~oleomargarine, meat and meat products, fish and seafood~~
 2106 ~~products, frozen foods and dinners, poultry, eggs and egg~~
 2107 ~~products, vegetables and vegetable products, fruit and fruit~~

HB 1393

2008

2108 ~~products, spices, salt, sugar and sugar products, milk and dairy~~
 2109 ~~products, and products intended to be mixed with milk.~~

2110 ~~2. Natural fruit or vegetable juices or their concentrates~~
 2111 ~~or reconstituted natural concentrated fruit or vegetable juices,~~
 2112 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
 2113 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
 2114 ~~unseasoned; coffee, coffee substitutes, or cocoa; and tea,~~
 2115 ~~unless it is sold in a liquid form.~~

2116 ~~1.3. Bakery products sold by bakeries, pastry shops, or~~
 2117 ~~like establishments, if sold without eating utensils. The term~~
 2118 ~~"bakery products" includes bread, rolls, buns, biscuits, bagels,~~
 2119 ~~croissants, pastries, doughnuts, danish, cakes, tortes, pies,~~
 2120 ~~tarts, muffins, bars, cookies, and tortillas that do not have~~
 2121 ~~eating facilities.~~

2122 ~~2. Dietary supplements. The term "dietary supplements"~~
 2123 ~~means any product, other than tobacco, intended to supplement~~
 2124 ~~the diet which contains one or more of the following dietary~~
 2125 ~~ingredients: a vitamin; a mineral; an herb or other botanical;~~
 2126 ~~an amino acid; a dietary substance for use by humans to~~
 2127 ~~supplement the diet by increasing the total dietary intake; or a~~
 2128 ~~concentrate, metabolite, constituent, extract, or combination of~~
 2129 ~~any ingredient described in this subparagraph which is intended~~
 2130 ~~for ingestion in tablet, capsule, powder, softgel, gelcap, or~~
 2131 ~~liquid form or, if not intended for ingestion in such form, is~~
 2132 ~~not represented as conventional food and is not represented for~~
 2133 ~~use as a sole item of a meal or of the diet, and which is~~
 2134 ~~required to be labeled as a dietary supplement, identifiable by~~

2135 the "supplemental facts" box found on the label and as required
 2136 pursuant to 21 C.F.R. s. 101.36.

2137 (c) The exemption provided by this subsection does not
 2138 apply:

2139 ~~1. When the food products are sold as meals for~~
 2140 ~~consumption on or off the premises of the dealer.~~

2141 ~~2. When the food products are furnished, prepared, or~~
 2142 ~~served for consumption at tables, chairs, or counters or from~~
 2143 ~~trays, glasses, dishes, or other tableware, whether provided by~~
 2144 ~~the dealer or by a person with whom the dealer contracts to~~
 2145 ~~furnish, prepare, or serve food products to others.~~

2146 ~~3. When the food products are ordinarily sold for~~
 2147 ~~immediate consumption on the seller's premises or near a~~
 2148 ~~location at which parking facilities are provided primarily for~~
 2149 ~~the use of patrons in consuming the products purchased at the~~
 2150 ~~location, even though such products are sold on a "take out" or~~
 2151 ~~"to go" order and are actually packaged or wrapped and taken~~
 2152 ~~from the premises of the dealer.~~

2153 ~~4. To sandwiches sold ready for immediate consumption on~~
 2154 ~~or off the seller's premises.~~

2155 ~~5. When the food products are sold ready for immediate~~
 2156 ~~consumption within a place, the entrance to which is subject to~~
 2157 ~~an admission charge.~~

2158 ~~1.6.~~ If ~~When~~ the food and food ingredients ~~products~~ are
 2159 sold as ~~hot~~ prepared food products. The term "prepared food"
 2160 means food sold in a heated state or heated by the seller; two
 2161 or more food ingredients mixed or combined by the seller for
 2162 sale as a single item; or food sold with eating utensils

2163 provided by the seller including plates, knives, forks, spoons,
 2164 glasses, cups, napkins, or straws. A plate does not include a
 2165 container or packaging used to transport the food. Prepared food
 2166 does not include food that is only cut, repackaged, or
 2167 pasteurized by the seller and eggs, fish, meat, poultry, and
 2168 foods containing these raw animal foods requiring cooking by the
 2169 consumer as recommended by the Food and Drug Administration in
 2170 chapter 3, part 401.11 of its food code so as to prevent food-
 2171 borne illnesses. Prepared food includes sandwiches sold for
 2172 immediate consumption and a combination of hot and cold food
 2173 items or components if a single price has been established for
 2174 the combination and the food products are sold in such
 2175 combination, such as a meal; a specialty dish or serving; a
 2176 sandwich or pizza; an ice cream cone, sundae, or banana split;
 2177 or food sold in an unheated state by weight or volume as a
 2178 single item, including cold components or side items.

2179 ~~2.7. To soft drinks, which include, but are not limited~~
 2180 ~~to, any nonalcoholic beverage, any preparation or beverage~~
 2181 ~~commonly referred to as a "soft drink," or any noncarbonated~~
 2182 ~~drink made from milk derivatives or tea, when sold in cans or~~
 2183 ~~similar containers. The term "soft drinks" means nonalcoholic~~
 2184 ~~beverages that contain natural or artificial sweeteners. Soft~~
 2185 ~~drinks do not include beverages that contain milk or milk~~
 2186 ~~products, soy, rice, or similar milk substitutes, or greater~~
 2187 ~~than 50 percent of vegetable or fruit juice by volume.~~

2188 ~~8. To ice cream, frozen yogurt, and similar frozen dairy~~
 2189 ~~or nondairy products in cones, small cups, or pints, popsicles,~~

2190 ~~frozen fruit bars, or other novelty items, whether or not sold~~
 2191 ~~separately.~~

2192 ~~9. To food prepared, whether on or off the premises, and~~
 2193 ~~sold for immediate consumption. This does not apply to food~~
 2194 ~~prepared off the premises and sold in the original sealed~~
 2195 ~~container, or the slicing of products into smaller portions.~~

2196 ~~3.10. If When the food and food ingredients ~~products~~ are~~
 2197 ~~sold through a vending machine, ~~pusheart, motor vehicle, or any~~~~
 2198 ~~other form of vehicle.~~

2199 ~~4.11. To candy and any similar product regarded as candy~~
 2200 ~~or confection, based on its normal use, as indicated on the~~
 2201 ~~label or advertising thereof. The term "candy" means a~~
 2202 ~~preparation of sugar, honey, or other natural or artificial~~
 2203 ~~sweeteners in combination with chocolate, fruits, nuts, or other~~
 2204 ~~ingredients or flavorings in the form of bars, drops, or pieces.~~
 2205 ~~Candy does not include any preparation that contains flour and~~
 2206 ~~does not require refrigeration.~~

2207 ~~5. To tobacco or tobacco products.~~

2208 ~~12. To bakery products sold by bakeries, pastry shops, or~~
 2209 ~~like establishments that have eating facilities, except when~~
 2210 ~~sold for consumption off the seller's premises.~~

2211 ~~13. When food products are served, prepared, or sold in or~~
 2212 ~~by restaurants, lunch counters, cafeterias, hotels, taverns, or~~
 2213 ~~other like places of business.~~

2214 ~~(d) As used in this subsection, the term:~~

2215 ~~1. "For consumption off the seller's premises" means that~~
 2216 ~~the food or drink is intended by the customer to be consumed at~~
 2217 ~~a place away from the dealer's premises.~~

2218 2. ~~"For consumption on the seller's premises" means that~~
 2219 ~~the food or drink sold may be immediately consumed on the~~
 2220 ~~premises where the dealer conducts his or her business. In~~
 2221 ~~determining whether an item of food is sold for immediate~~
 2222 ~~consumption, there shall be considered the customary consumption~~
 2223 ~~practices prevailing at the selling facility.~~

2224 3. ~~"Premises" shall be construed broadly, and means, but~~
 2225 ~~is not limited to, the lobby, aisle, or auditorium of a theater,~~
 2226 ~~the seating, aisle, or parking area of an arena, rink, or~~
 2227 ~~stadium, or the parking area of a drive-in or outdoor theater.~~
 2228 ~~The premises of a caterer with respect to catered meals or~~
 2229 ~~beverages shall be the place where such meals or beverages are~~
 2230 ~~served.~~

2231 4. ~~"Hot prepared food products" means those products,~~
 2232 ~~items, or components which have been prepared for sale in a~~
 2233 ~~heated condition and which are sold at any temperature that is~~
 2234 ~~higher than the air temperature of the room or place where they~~
 2235 ~~are sold. "Hot prepared food products," for the purposes of this~~
 2236 ~~subsection, includes a combination of hot and cold food items or~~
 2237 ~~components where a single price has been established for the~~
 2238 ~~combination and the food products are sold in such combination,~~
 2239 ~~such as a hot meal, a hot specialty dish or serving, or a hot~~
 2240 ~~sandwich or hot pizza, including cold components or side items.~~

2241 ~~(d)(e)1.~~ Food or drinks not exempt under paragraph
 2242 paragraphs (a), paragraph (b), or paragraph (c) are, and ~~(d)~~
 2243 ~~shall be exempt if, notwithstanding those paragraphs, when~~
 2244 ~~purchased with food coupons or Special Supplemental Food Program~~

2245 for Women, Infants, and Children vouchers issued under authority
 2246 of federal law.

2247 ~~1.2-~~ This paragraph is effective only if ~~while~~ federal law
 2248 prohibits a state's participation in the federal food coupon
 2249 program or Special Supplemental Food Program for Women, Infants,
 2250 and Children if there is an official determination that state or
 2251 local sales taxes are collected within that state on purchases
 2252 of food or drinks with such coupons.

2253 ~~2.3-~~ This paragraph does ~~shall~~ not apply to any food or
 2254 drinks on which federal law allows ~~shall permit~~ sales taxes
 2255 without penalty, such as termination of the state's
 2256 participation.

2257 (e) Dietary supplements that are sold as prepared food are
 2258 not exempt.

2259 (2) EXEMPTIONS; MEDICAL.--

2260 (a) The following are ~~There shall be~~ exempt from the tax
 2261 imposed by this chapter:

2262 1. Any drug. The term "drug" under this subsection means a
 2263 compound, substance, or preparation, and any component of a
 2264 compound, substance, or preparation, other than food and food
 2265 ingredients, dietary supplements, and alcoholic beverages, which
 2266 is:

2267 a. Recognized in the official United States Pharmacopoeia,
 2268 official Homeopathic Pharmacopoeia of the United States, or
 2269 official National Formulary, or the supplement to any of them;

2270 b. Intended for use in the diagnosis, cure, mitigation,
 2271 treatment, or prevention of disease; or

2272 c. Intended to affect the structure or any function of the
 2273 body.

2274 2. Durable medical equipment, mobility-enhancing
 2275 equipment, or prosthetic device ~~any medical products and~~
 2276 ~~supplies or medicine~~ dispensed according to an individual
 2277 prescription or prescriptions.

2278 a. The term "durable medical equipment" under this
 2279 subsection means equipment, including repair and replacement
 2280 parts to such equipment, but excluding mobility-enhancing
 2281 equipment, which can withstand repeated use, is primarily and
 2282 customarily used to serve a medical purpose, generally is not
 2283 useful to a person in the absence of illness or injury, and is
 2284 not worn on or in the body. ~~written by a prescriber authorized~~
 2285 ~~by law to prescribe medicinal drugs;~~

2286 b. The term "mobility-enhancing equipment" under this
 2287 subsection means equipment, including repair and replacement
 2288 parts to such equipment, but excluding durable medical
 2289 equipment, which is primarily and customarily used to provide or
 2290 increase the ability to move from one place to another and which
 2291 is appropriate for use in a home or a motor vehicle; is not
 2292 generally used by persons having normal mobility; and does not
 2293 include any motor vehicle or any equipment on a motor vehicle
 2294 normally provided by a motor vehicle manufacturer.

2295 c. The term "prosthetic device" under this subsection
 2296 means a replacement, corrective, or supportive device, including
 2297 repair or replacement parts to such equipment, other than a
 2298 hearing aid or a dental prosthesis, which is worn on or in the
 2299 body to artificially replace a missing portion of the body;

2300 prevent or correct physical deformity or malfunction; or support
 2301 a weak or deformed portion of the body.

2302 d. The term "prescription" under this subsection means an
 2303 order, formula, or recipe issued in any form of oral, written,
 2304 electronic, or other means of transmission by a duly licensed
 2305 practitioner authorized by chapter 458, chapter 459, chapter
 2306 460, chapter 461, or chapter 466. The term also includes an
 2307 orally transmitted order by the lawfully designated agent of a
 2308 practitioner. The term also includes an order written or
 2309 transmitted by a practitioner licensed to practice in a
 2310 jurisdiction other than this state, but only if the pharmacist
 2311 called upon to dispense the order determines, in the exercise of
 2312 his or her professional judgment, that the order is valid and
 2313 necessary for the treatment of a chronic or recurrent illness.

2314 3. Hypodermic needles. ~~hypodermic syringes;~~

2315 4. Chemical compounds and test kits used for the diagnosis
 2316 or treatment of human disease, illness, or injury and intended
 2317 for one-time use.

2318 5. Over-the-counter drugs and common household remedies
 2319 recommended and generally sold for internal or external use in
 2320 the cure, mitigation, treatment, or prevention of illness or
 2321 disease in human beings, but not including grooming and hygiene
 2322 products. The term "over-the-counter drug" under this subsection
 2323 means a drug the packaging for which contains a label that
 2324 identifies the product as a drug as required by 21 C.F.R. s.
 2325 201.66. The over-the-counter drug label includes a drug facts
 2326 panel or a statement of the active ingredients, with a list of
 2327 those ingredients contained in the compound, substance, or

HB 1393

2008

2328 preparation. The term "grooming and hygiene products" under this
 2329 subsection means soaps and cleaning solutions, shampoo,
 2330 toothpaste, mouthwash, antiperspirants, and suntan lotions and
 2331 screens, regardless of whether the items meet the definition of
 2332 an over-the-counter drug.

2333 6. Band-aids, gauze, bandages, adhesive tape.

2334 7. Hearing aids.

2335 8. Dental prosthesis.

2336 9. Funerals. Funeral directors must pay tax on all
 2337 tangible personal property used by them in their business.

2338 ~~cosmetics or toilet articles, notwithstanding the presence of~~
 2339 ~~medicinal ingredients therein, according to a list prescribed~~
 2340 ~~and approved by the Department of Health, which list shall be~~
 2341 ~~certified to the Department of Revenue from time to time and~~
 2342 ~~included in the rules promulgated by the Department of Revenue.~~
 2343 ~~There shall also be exempt from the tax imposed by this chapter~~
 2344 ~~artificial eyes and limbs; orthopedic shoes; prescription~~
 2345 ~~eyeglasses and items incidental thereto or which become a part~~
 2346 ~~thereof; dentures; hearing aids; crutches; prosthetic and~~
 2347 ~~orthopedic appliances; and funerals. In addition, any~~

2348
 2349 Items intended for one-time use which transfer essential optical
 2350 characteristics to contact lenses are ~~shall be~~ exempt from the
 2351 tax imposed by this chapter; however, this exemption ~~shall apply~~
 2352 applies only after \$100,000 of the tax imposed by this chapter
 2353 on the ~~such~~ items has been paid in any calendar year by a
 2354 taxpayer who claims the exemption in that ~~such~~ year. ~~Funeral~~

2355 ~~directors shall pay tax on all tangible personal property used~~
 2356 ~~by them in their business.~~

2357 ~~(b) For the purposes of this subsection:~~

2358 ~~1. "Prosthetic and orthopedic appliances" means any~~
 2359 ~~apparatus, instrument, device, or equipment used to replace or~~
 2360 ~~substitute for any missing part of the body, to alleviate the~~
 2361 ~~malfunction of any part of the body, or to assist any disabled~~
 2362 ~~person in leading a normal life by facilitating such person's~~
 2363 ~~mobility. Such apparatus, instrument, device, or equipment shall~~
 2364 ~~be exempted according to an individual prescription or~~
 2365 ~~prescriptions written by a physician licensed under chapter 458,~~
 2366 ~~chapter 459, chapter 460, chapter 461, or chapter 466, or~~
 2367 ~~according to a list prescribed and approved by the Department of~~
 2368 ~~Health, which list shall be certified to the Department of~~
 2369 ~~Revenue from time to time and included in the rules promulgated~~
 2370 ~~by the Department of Revenue.~~

2371 ~~2. "Cosmetics" means articles intended to be rubbed,~~
 2372 ~~poured, sprinkled, or sprayed on, introduced into, or otherwise~~
 2373 ~~applied to the human body for cleansing, beautifying, promoting~~
 2374 ~~attractiveness, or altering the appearance and also means~~
 2375 ~~articles intended for use as a compound of any such articles,~~
 2376 ~~including, but not limited to, cold creams, suntan lotions,~~
 2377 ~~makeup, and body lotions.~~

2378 ~~3. "Toilet articles" means any article advertised or held~~
 2379 ~~out for sale for grooming purposes and those articles that are~~
 2380 ~~customarily used for grooming purposes, regardless of the name~~
 2381 ~~by which they may be known, including, but not limited to, soap,~~

2382 ~~toothpaste, hair spray, shaving products, colognes, perfumes,~~
 2383 ~~shampoo, deodorant, and mouthwash.~~

2384 ~~4. "Prescription" includes any order for drugs or~~
 2385 ~~medicinal supplies written or transmitted by any means of~~
 2386 ~~communication by a duly licensed practitioner authorized by the~~
 2387 ~~laws of the state to prescribe such drugs or medicinal supplies~~
 2388 ~~and intended to be dispensed by a pharmacist. The term also~~
 2389 ~~includes an orally transmitted order by the lawfully designated~~
 2390 ~~agent of such practitioner. The term also includes an order~~
 2391 ~~written or transmitted by a practitioner licensed to practice in~~
 2392 ~~a jurisdiction other than this state, but only if the pharmacist~~
 2393 ~~called upon to dispense such order determines, in the exercise~~
 2394 ~~of his or her professional judgment, that the order is valid and~~
 2395 ~~necessary for the treatment of a chronic or recurrent illness.~~
 2396 ~~The term also includes a pharmacist's order for a product~~
 2397 ~~selected from the formulary created pursuant to s. 465.186. A~~
 2398 ~~prescription may be retained in written form, or the pharmacist~~
 2399 ~~may cause it to be recorded in a data processing system,~~
 2400 ~~provided that such order can be produced in printed form upon~~
 2401 ~~lawful request.~~

2402 ~~(b)(e)~~ Chlorine ~~is~~ ~~shall~~ not be exempt from the tax
 2403 imposed by this chapter ~~if~~ when used for the treatment of water
 2404 in swimming pools.

2405 ~~(d)~~ ~~Lithotripters are exempt.~~

2406 ~~(c)(e)~~ Human organs are exempt from the tax imposed by
 2407 this chapter.

2408 ~~(f) Sales of drugs to or by physicians, dentists,~~
 2409 ~~veterinarians, and hospitals in connection with medical~~
 2410 ~~treatment are exempt.~~

2411 ~~(g) Medical products and supplies used in the cure,~~
 2412 ~~mitigation, alleviation, prevention, or treatment of injury,~~
 2413 ~~disease, or incapacity which are temporarily or permanently~~
 2414 ~~incorporated into a patient or client by a practitioner of the~~
 2415 ~~healing arts licensed in the state are exempt.~~

2416 ~~(h) The purchase by a veterinarian of commonly recognized~~
 2417 ~~substances possessing curative or remedial properties which are~~
 2418 ~~ordered and dispensed as treatment for a diagnosed health~~
 2419 ~~disorder by or on the prescription of a duly licensed~~
 2420 ~~veterinarian, and which are applied to or consumed by animals~~
 2421 ~~for alleviation of pain or the cure or prevention of sickness,~~
 2422 ~~disease, or suffering are exempt. Also exempt are the purchase~~
 2423 ~~by a veterinarian of antiseptics, absorbent cotton, gauze for~~
 2424 ~~bandages, lotions, vitamins, and worm remedies.~~

2425 ~~(i) X ray opaques, also known as opaque drugs and~~
 2426 ~~radiopaque, such as the various opaque dyes and barium sulphate,~~
 2427 ~~when used in connection with medical X rays for treatment of~~
 2428 ~~bodies of humans and animals, are exempt.~~

2429 (d)(j) Parts, special attachments, special lettering, and
 2430 other like items that are added to or attached to tangible
 2431 personal property so that a ~~handicapped~~ person with a disability
 2432 can use them are exempt from the tax imposed under this chapter
 2433 if the ~~when such~~ items are purchased by a person pursuant to an
 2434 individual prescription.

2435 (e)~~(k)~~ This subsection shall be strictly construed and
 2436 enforced.

2437 (17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.--

2438 (b) As used in this subsection, the term "overhead
 2439 materials" means all tangible personal property, other than
 2440 qualifying property as defined in s. 212.02(29)(a) ~~s.~~
 2441 ~~212.02(14)(a)~~ and electricity, which is used or consumed in the
 2442 performance of a qualifying contract, title to which property
 2443 vests in or passes to the government under the contract.

2444 (c) As used in this subsection and in s. 212.02(29)(a) ~~s.~~
 2445 ~~212.02(14)(a)~~, the term "qualifying contract" means a contract
 2446 with the United States Department of Defense or the National
 2447 Aeronautics and Space Administration, or a subcontract
 2448 thereunder, but does not include a contract or subcontract for
 2449 the repair, alteration, improvement, or construction of real
 2450 property, except to the extent that purchases under such a
 2451 contract would otherwise be exempt from the tax imposed by this
 2452 chapter.

2453 Section 10. Section 212.094, Florida Statutes, is created
 2454 to read:

2455 212.094 Purchaser requests for tax refunds from dealers.--

2456 (1) If a purchaser seeks a refund or credit from a dealer
 2457 for a tax collected under this chapter by that dealer, the
 2458 purchaser must submit a written request for the refund or credit
 2459 to the dealer in accordance with this section. The request must
 2460 contain all the information necessary for the dealer to
 2461 determine the validity of the purchaser's request.

2462 (2) The purchaser may not take any other action against
 2463 the dealer with respect to the requested refund or credit until
 2464 the dealer has had 60 days following receipt of a completed
 2465 request to respond.

2466 (3) This section does not change the law regarding
 2467 standing to claim a refund.

2468 Section 11. Section 212.12, Florida Statutes, is amended
 2469 to read:

2470 212.12 Dealer's credit for collecting tax; delinquent
 2471 payments; penalties for noncompliance; powers of department of
 2472 Revenue in dealing with delinquents; computing tax due brackets
 2473 applicable to taxable transactions; records required.--

2474 (1) Notwithstanding any other provision of law and for the
 2475 purpose of compensating persons granting licenses for and the
 2476 lessors of real and personal property taxed under this chapter
 2477 ~~hereunder, for the purpose of~~ compensating dealers in tangible
 2478 personal property, ~~for the purpose of~~ compensating dealers
 2479 providing communication services and taxable services, ~~for the~~
 2480 ~~purpose of~~ compensating owners of places where admissions are
 2481 collected, and ~~for the purpose of~~ compensating remitters of any
 2482 taxes or fees reported on the same documents used ~~utilized~~ for
 2483 the sales and use tax, as compensation for the keeping of
 2484 prescribed records, filing timely tax returns, and the proper
 2485 accounting and remitting of taxes by them, such seller, person,
 2486 lessor, dealer, owner, and remitter, except ~~(except~~ dealers who
 2487 make mail order sales, sales) shall be allowed 2.5 percent of
 2488 the amount of the tax due and accounted for and remitted to the
 2489 department, in the form of a deduction when ~~in~~ submitting his or

2490 her report and paying the amount due. ~~by him or her;~~ The
 2491 department shall allow the ~~such~~ deduction ~~of 2.5 percent of the~~
 2492 ~~amount of the tax to the person paying the same~~ for remitting
 2493 the tax and making of tax returns in the manner herein provided,
 2494 for paying the amount due to be paid ~~by him or her,~~ and as
 2495 further compensation to dealers in tangible personal property
 2496 for the keeping of prescribed records and for collection of
 2497 taxes and remitting the same. However, an ~~if the amount of the~~
 2498 ~~tax due and remitted to the department for the reporting period~~
 2499 ~~exceeds \$1,200,~~ no allowance is not ~~shall be~~ allowed for all
 2500 amounts in excess of \$1,200.

2501 (a) The executive director of the department may ~~is~~
 2502 ~~authorized to~~ negotiate a collection allowance, pursuant to
 2503 rules adopted ~~promulgated~~ by the department, with a dealer who
 2504 makes mail order sales. The rules ~~of the department~~ shall
 2505 provide guidelines for establishing a ~~the~~ collection allowance
 2506 based upon the dealer's estimated costs of collecting the tax,
 2507 the volume and value of the dealer's mail order sales to
 2508 purchasers in this state, and the administrative and legal costs
 2509 and likelihood of achieving collection of the tax absent the
 2510 cooperation of the dealer. However, ~~in no event shall~~ the
 2511 collection allowance negotiated by the executive director may
 2512 not exceed 10 percent of the tax remitted for a reporting
 2513 period.

2514 1.(a) The department ~~of Revenue~~ may deny the collection
 2515 allowance if a taxpayer files an incomplete return or if the
 2516 required tax return or tax is delinquent at the time of payment.

2517 ~~1.~~ For the purposes of this subsection, an "incomplete
 2518 return" is, ~~for purposes of this chapter,~~ a return that ~~which~~ is
 2519 lacking such uniformity, completeness, and arrangement so that
 2520 the physical handling, verification, review of the return, or
 2521 determination of other taxes and fees reported on the return
 2522 cannot ~~may not~~ be readily accomplished.

2523 2. The department shall adopt rules specifying the
 2524 ~~requiring such~~ information ~~as it may deem~~ necessary to ensure
 2525 that the tax levied ~~hereunder~~ is properly collected, reviewed,
 2526 compiled, reported, and enforced, including, but not limited to:
 2527 the amount of gross sales; the amount of taxable sales; the
 2528 amount of tax collected or due; the amount of lawful refunds,
 2529 deductions, or credits claimed; the amount claimed as the
 2530 dealer's collection allowance; the amount of penalty and
 2531 interest; and the amount due with the return; ~~and such other~~
 2532 ~~information as the department of Revenue may specify.~~ The
 2533 department shall require that transient rentals and agricultural
 2534 equipment transactions be separately shown. Sales made through
 2535 vending machines, as defined in s. 212.0515, must be separately
 2536 shown on the return. Sales made through coin-operated amusement
 2537 machines ~~as defined by s. 212.02~~ and the number of machines
 2538 operated must be separately shown on the return or on a form
 2539 prescribed by the department. If a separate form is required,
 2540 the same penalties for late filing, incomplete filing, or
 2541 failure to file as provided for the sales tax return ~~shall~~ apply
 2542 to the ~~said~~ form.

2543 (b) The collection allowance and other credits or
 2544 deductions provided in this chapter shall be applied

2545 | proportionally to any taxes or fees reported on the same
 2546 | documents used for the sales and use tax.

2547 | (c)~~1~~. A dealer entitled to the collection allowance
 2548 | provided in this section may elect to forego the collection
 2549 | allowance and direct that the ~~said~~ amount be transferred into
 2550 | the Educational Enhancement Trust Fund. Such ~~an~~ election must be
 2551 | made with the timely filing of a return and may not be rescinded
 2552 | once made. If a dealer who makes the ~~such an~~ election files a
 2553 | delinquent return, underpays the tax, or files an incomplete
 2554 | return, the amount transferred into the Educational Enhancement
 2555 | Trust Fund shall be the amount of the collection allowance
 2556 | remaining after resolution of liability for all of the tax,
 2557 | interest, and penalty due on that return or underpayment of tax.
 2558 | The Department of Education shall distribute the remaining
 2559 | amount from the trust fund to ~~the~~ school districts that have
 2560 | adopted resolutions stating that those funds are to ~~will~~ be used
 2561 | to ensure that up-to-date technology is purchased for the
 2562 | classrooms in the district and that teachers are trained in the
 2563 | use of that technology. Revenues collected in districts that do
 2564 | not adopt ~~such~~ a resolution shall be equally distributed to
 2565 | districts that have adopted such resolutions.

2566 | ~~1.2~~. This paragraph applies to all taxes, surtaxes, and
 2567 | any local option taxes administered under this chapter and
 2568 | remitted directly to the department. It ~~This paragraph~~ does not
 2569 | apply to any locally imposed and self-administered convention
 2570 | development tax, tourist development tax, or tourist impact tax
 2571 | administered under this chapter.

2572 ~~2.3-~~ Revenues from the dealer-collection allowances shall
 2573 be transferred quarterly from the General Revenue Fund to the
 2574 Educational Enhancement Trust Fund. The department ~~of Revenue~~
 2575 shall provide to the Department of Education quarterly
 2576 information about such revenues by county to which the
 2577 collection allowance was attributed.

2578
 2579 Notwithstanding any provision of chapter 120 ~~to the contrary,~~
 2580 the department ~~of Revenue~~ may adopt rules to carry out the
 2581 amendment made by chapter 2006-52, Laws of Florida, to this
 2582 section.

2583 (d) A Model 1 seller as defined in s. 213.256, under the
 2584 Streamlined Sales and Use Tax Agreement, is not entitled to a
 2585 collection allowance as described in this subsection. However,
 2586 the department may provide the monetary allowance required to be
 2587 provided by the state to certified service providers and
 2588 voluntary sellers under the agreement.

2589 1. The monetary allowances must be in a form that
 2590 certified service providers or voluntary sellers are permitted
 2591 to retain from the tax revenue collected on remote sales to be
 2592 remitted to this state pursuant to this chapter.

2593 2. For purposes of this paragraph, "voluntary seller"
 2594 means a seller that is not required to register in this state to
 2595 collect sales tax under this chapter and "remote sales" means
 2596 sales revenue generated by a seller for this state for which the
 2597 seller does not have to register to collect sales tax under this
 2598 chapter.

2599 (2) (a) If ~~When~~ any person required ~~hereunder~~ to make a ~~any~~
 2600 return or to pay any tax or fee imposed by this chapter ~~either~~
 2601 fails to timely file such return or fails to pay the tax or fee
 2602 shown due on the return within the time required ~~hereunder~~, in
 2603 addition to all other penalties provided ~~herein~~ and by law the
 2604 ~~laws of this state in respect to such taxes or fees~~, a specific
 2605 penalty shall be added to the tax or fee in the amount of 10
 2606 percent of ~~either~~ the tax or fee shown on the return that is not
 2607 timely filed or any tax or fee not paid timely. The penalty ~~may~~
 2608 ~~not be less than \$50~~ for failure to timely file a tax return
 2609 required by s. 212.11(1) or timely pay the tax or fee shown due
 2610 on the return, except as provided in s. 213.21(10), must be at
 2611 least \$50. If a person fails to timely file a tax return
 2612 required by s. 212.11(1) and to timely pay the tax or fee shown
 2613 due on the return, only one penalty of 10 percent, which is at
 2614 least ~~may not be less than~~ \$50, shall be imposed.

2615 (b) If ~~When~~ any person required under this section to make
 2616 a return or to pay a tax or fee imposed by this chapter fails to
 2617 disclose the tax or fee on the return within the time required,
 2618 excluding a noncompliant filing event ~~generated by situations~~
 2619 covered in paragraph (a), in addition to all other penalties
 2620 provided ~~in this section~~ and by law the ~~laws of this state in~~
 2621 ~~respect to such taxes or fees~~, a specific penalty shall be added
 2622 to the additional tax or fee owed in the amount of 10 percent of
 2623 any ~~such~~ unpaid tax or fee not paid timely if the failure is for
 2624 up to not more than 30 days, with an additional 10 percent of
 2625 any ~~such~~ unpaid tax or fee for each additional 30 days, or
 2626 fraction thereof, that ~~while~~ the failure continues, not to

2627 exceed a total penalty of 50 percent, in the aggregate, of any
 2628 unpaid tax or fee.

2629 (c) Any person who knowingly and with a willful intent to
 2630 evade any tax imposed under this chapter fails to file six
 2631 consecutive returns as required by law commits a felony of the
 2632 third degree, punishable as provided in s. 775.082 or s.
 2633 775.083.

2634 (d) Any person who makes a false or fraudulent return with
 2635 a willful intent to evade payment of any tax or fee imposed
 2636 under this chapter; any person who, after the department's
 2637 delivery of a written notice to the person's last known address
 2638 specifically alerting the person of the requirement to register
 2639 the person's business as a dealer, intentionally fails to
 2640 register the business; and any person who, after the
 2641 department's delivery of a written notice to the person's last
 2642 known address specifically alerting the person of the
 2643 requirement to collect tax on specific transactions,
 2644 intentionally fails to collect such tax, shall, in addition to
 2645 the other penalties provided by law, be liable for a specific
 2646 penalty of 100 percent of any unreported or any uncollected tax
 2647 or fee and, upon conviction, for fine and punishment as provided
 2648 in s. 775.082, s. 775.083, or s. 775.084. Delivery of written
 2649 notice may be made by certified mail, or by the use of such
 2650 other method as is documented as being necessary and reasonable
 2651 under the circumstances. The civil and criminal penalties
 2652 imposed ~~herein~~ for failure to comply with a written notice
 2653 alerting the person of the requirement to register the person's
 2654 business as a dealer or to collect tax on specific transactions

2655 does ~~shall~~ not apply if the person timely files a written
 2656 challenge to such notice in accordance with procedures
 2657 established by the department by rule or the notice fails to
 2658 clearly advise that failure to comply with or timely challenge
 2659 the notice will result in the imposition of ~~the~~ civil and
 2660 criminal penalties ~~imposed herein~~.

2661 1. If the total amount of unreported or uncollected taxes
 2662 or fees is less than \$300, the first offense ~~resulting in~~
 2663 ~~conviction~~ is a misdemeanor of the second degree, the second
 2664 offense ~~resulting in conviction~~ is a misdemeanor of the first
 2665 degree, and the third and all subsequent offenses are
 2666 misdemeanors ~~resulting in conviction is a misdemeanor~~ of the
 2667 first degree, and the third and all subsequent offenses
 2668 ~~resulting in conviction~~ are felonies of the third degree.

2669 2. If the total amount of unreported or uncollected taxes
 2670 or fees is \$300 or more but less than \$20,000, the offense is a
 2671 felony of the third degree.

2672 3. If the total amount of unreported or uncollected taxes
 2673 or fees is \$20,000 or more but less than \$100,000, the offense
 2674 is a felony of the second degree.

2675 4. If the total amount of unreported or uncollected taxes
 2676 or fees is \$100,000 or more, the offense is a felony of the
 2677 first degree.

2678 (e) A person who willfully attempts in any manner to evade
 2679 any tax, surcharge, or fee imposed under this chapter or the
 2680 payment thereof is, in addition to any other penalties provided
 2681 by law, liable for a specific penalty in the amount of 100
 2682 percent of the tax, surcharge, or fee, and commits a felony of

HB 1393

2008

2683 the third degree, punishable as provided in s. 775.082, s.
 2684 775.083, or s. 775.084.

2685 (f) If ~~When~~ any person, firm, or corporation fails to
 2686 timely remit the ~~proper~~ estimated payment required under s.
 2687 212.11, a specific penalty shall be added in an amount equal to
 2688 10 percent of the ~~any~~ unpaid estimated tax. ~~Beginning with~~
 2689 ~~January 1, 1985, returns,~~ The department, upon a showing of
 2690 reasonable cause, may ~~is authorized to~~ waive or compromise
 2691 penalties imposed by this paragraph. However, other penalties
 2692 and interest shall be due and payable if the return on which the
 2693 estimated payment is ~~was~~ due is ~~was~~ not timely or properly
 2694 filed.

2695 (g) A dealer who files a consolidated return pursuant to
 2696 s. 212.11(1)(e) is subject to the penalty established in
 2697 paragraph (e) unless the dealer ~~has~~ paid the required estimated
 2698 tax ~~for his or her consolidated return~~ as a whole without regard
 2699 to each location. If the dealer fails to pay the required
 2700 estimated tax ~~for his or her consolidated return~~ as a whole,
 2701 each filing location shall stand on its own with respect to
 2702 calculating penalties pursuant to paragraph (f).

2703 (3) If ~~When~~ any dealer, or other person charged ~~herein~~,
 2704 fails to remit the tax, or any portion thereof, on or before the
 2705 day when the ~~such~~ tax is required by law to be paid, ~~there shall~~
 2706 ~~be added to the amount due~~ interest at the rate of 1 percent per
 2707 month of the amount due from the date due until paid shall be
 2708 added to the amount due. Interest on the delinquent tax shall be
 2709 calculated beginning on the 21st day of the month following the

2710 month for which the tax is due, except as otherwise provided in
 2711 this chapter.

2712 (4) All penalties and interest imposed by this chapter
 2713 shall be payable to and collectible by the department in the
 2714 same manner as if they were a part of the tax imposed. The
 2715 department may settle or compromise ~~any~~ such interest or
 2716 penalties pursuant to s. 213.21.

2717 (5)(a) The department is authorized to audit or inspect
 2718 the records and accounts of dealers ~~defined herein~~, including
 2719 audits or inspections of dealers who make mail order sales to
 2720 the extent permitted by another state, and to correct by credit
 2721 any overpayment of tax, and, in the event of a deficiency, an
 2722 assessment shall be made and collected. An ~~No~~ administrative
 2723 finding of fact is not necessary prior to the assessment of a
 2724 ~~any~~ tax deficiency.

2725 (b) If ~~In the event~~ any dealer or other person charged
 2726 ~~herein~~ fails or refuses to make his or her records available for
 2727 inspection so that no audit or examination is ~~has been~~ made of
 2728 the books and records ~~of such dealer or person~~, fails or refuses
 2729 to register as a dealer, fails to make a report and pay the tax
 2730 as provided by this chapter, makes a grossly incorrect report or
 2731 makes a report that is false or fraudulent, ~~then, in such event,~~
 2732 ~~it shall be the duty of~~ the department shall ~~to~~ make an
 2733 assessment from an estimate based upon the best information ~~then~~
 2734 available to it for the taxable period of retail sales of the
 2735 ~~such~~ dealer, the gross proceeds from rentals, the total
 2736 admissions received, amounts received from leases of tangible
 2737 personal property by the ~~such~~ dealer, or ~~of~~ the cost price of

HB 1393

2008

2738 all articles of tangible personal property imported by the
 2739 dealer for use or consumption or distribution or storage to be
 2740 used or consumed in this state, or ~~of~~ the sales or cost price of
 2741 all services the sale or use of which is taxable under this
 2742 chapter, together with interest, plus penalty, if such have
 2743 accrued, ~~as the case may be. Then~~ The department shall proceed
 2744 to collect such taxes, interest, and penalty on the basis of the
 2745 ~~such~~ assessment, which shall be considered prima facie correct,
 2746 and the burden to show the contrary shall rest upon the dealer,
 2747 seller, owner, or lessor, ~~as the case may be.~~

2748 (6) (a) The department may ~~is given the power to~~ prescribe
 2749 the records to be kept by all persons subject to taxes imposed
 2750 by this chapter. ~~It shall be the duty of~~ Every person required
 2751 to make a report and pay any tax under this chapter, every
 2752 person receiving rentals or license fees, and owners of places
 2753 of admission shall, ~~to~~ keep and preserve suitable records of the
 2754 sales, leases, rentals, license fees, admissions, or purchases,
 2755 ~~as the case may be,~~ taxable under this chapter; such other books
 2756 of account as may be necessary to determine the amount of the
 2757 tax due ~~hereunder~~; and other information as may be required by
 2758 the department. ~~It shall be the duty of~~ Every such person shall
 2759 also ~~so charged with such duty, moreover, to~~ keep and preserve,
 2760 as long as required by s. 213.35, all invoices and other records
 2761 of goods, wares, and merchandise; records of admissions, leases,
 2762 license fees and rentals; and records of all other subjects of
 2763 taxation under this chapter. All such books, invoices, and other
 2764 records must ~~shall~~ be open to examination at all reasonable
 2765 hours to the department or ~~any of its~~ duly authorized agents.

2766 (b) For the purpose of this subsection, if a dealer does
 2767 not have adequate records of his or her retail sales or
 2768 purchases, the department may, upon the basis of a test or
 2769 sampling of the dealer's available records or other information
 2770 relating to the sales or purchases made by the ~~such~~ dealer for a
 2771 representative period, determine the proportion that taxable
 2772 retail sales bear to total retail sales or the proportion that
 2773 taxable purchases bear to total purchases. This subsection does
 2774 not affect the duty of the dealer to collect, or the liability
 2775 of any consumer to pay, any tax imposed by or pursuant to this
 2776 chapter.

2777 (c) ~~1.~~ If the records of a dealer are adequate but
 2778 voluminous in nature and substance, the department may sample
 2779 the ~~such~~ records and project the audit findings derived
 2780 therefrom over the entire audit period to determine the
 2781 proportion that taxable retail sales bear to total retail sales
 2782 or the proportion that taxable purchases bear to total
 2783 purchases.

2784 1. In order to conduct ~~such~~ a sample, the department must
 2785 first make a good faith effort to reach an agreement with the
 2786 dealer, ~~which agreement provides for~~ the means and methods to be
 2787 used in the sampling process. If an ~~In the event that no~~
 2788 agreement is not reached, the dealer is entitled to a review by
 2789 the executive director. For ~~In the case of~~ fixed assets, a
 2790 dealer may agree in writing with the department for adequate but
 2791 voluminous records to be statistically sampled. The ~~Such an~~
 2792 agreement must ~~shall~~ provide ~~for~~ the methodology to be used in
 2793 the statistical sampling process. The audit findings derived

2794 therefrom shall be projected over the period represented by the
 2795 sample in order to determine the proportion that taxable
 2796 purchases bear to total purchases. Once an agreement has been
 2797 signed, it is final and conclusive with respect to the method of
 2798 sampling fixed assets, and the department may not conduct a
 2799 detailed audit of fixed assets, and the taxpayer may not request
 2800 a detailed audit after the agreement is reached.

2801 2. For the purposes of sampling ~~pursuant to subparagraph~~
 2802 ~~1-~~, the department shall project any deficiencies and
 2803 overpayments derived therefrom over the entire audit period. In
 2804 determining the dealer's compliance, the department shall reduce
 2805 any tax deficiency ~~as~~ derived from the sample by the amount of
 2806 any overpayment derived from the sample. If ~~In the event~~ the
 2807 department determines from the sample ~~results~~ that the dealer
 2808 has a net tax overpayment, the department shall provide the
 2809 findings of this overpayment to the Chief Financial Officer for
 2810 repayment of funds paid into the State Treasury through error
 2811 pursuant to s. 215.26.

2812 3.a. A taxpayer is entitled, both in connection with an
 2813 audit and in connection with an application for refund filed
 2814 independently of any audit, to establish the amount of any
 2815 refund or deficiency through statistical sampling if ~~when~~ the
 2816 taxpayer's records are adequate but voluminous. For ~~In the case~~
 2817 ~~of~~ fixed assets, the ~~a~~ dealer may agree in writing with the
 2818 department for adequate but voluminous records to be
 2819 statistically sampled. The ~~Such an~~ agreement must ~~shall~~ provide
 2820 ~~for~~ the methodology to be used in the statistical sampling
 2821 process. The audit findings derived therefrom shall be projected

2822 over the period represented by the sample in order to determine
 2823 the proportion that taxable purchases bear to total purchases.
 2824 Once an agreement has been signed, it is final and conclusive
 2825 with respect to the method of sampling fixed assets, ~~and~~ the
 2826 department may not conduct a detailed audit of fixed assets, and
 2827 the taxpayer may not request a detailed audit after the
 2828 agreement is reached.

2829 b. Alternatively, a taxpayer is entitled to establish any
 2830 refund or deficiency through any other sampling method agreed to
 2831 ~~upon~~ by the taxpayer and the department if ~~when~~ the taxpayer's
 2832 records, other than those regarding fixed assets, are adequate
 2833 but voluminous. Whether done through statistical sampling or any
 2834 other sampling method agreed upon ~~by the taxpayer and the~~
 2835 ~~department~~, the completed sample must reflect both overpayments
 2836 and underpayments of taxes due. The sample shall be conducted
 2837 through:

2838 (I) A taxpayer request to perform the sampling through the
 2839 certified audit program pursuant to s. 213.285;

2840 (II) Attestation by a certified public accountant as to
 2841 the adequacy of the sampling method used ~~utilized~~ and the
 2842 results reached using the ~~such~~ sampling method; or

2843 (III) A sampling method that has been submitted by the
 2844 taxpayer and approved by the department before a refund claim is
 2845 submitted. This sub-sub-subparagraph does not prohibit a
 2846 taxpayer from filing a refund claim prior to approval by the
 2847 department of the sampling method; however, a refund claim
 2848 submitted before the sampling method has been approved is not ~~by~~
 2849 ~~the department cannot be~~ a complete refund application pursuant

2850 to s. 213.255 until the sampling method has been approved by the
 2851 department.

2852 c. The department shall prescribe by rule the procedures
 2853 to be followed under each method of sampling. The ~~Such~~
 2854 procedures must ~~shall~~ follow generally accepted auditing
 2855 procedures for sampling. The rule must ~~shall~~ also set forth
 2856 other criteria regarding the use of sampling, including, but not
 2857 limited to, training requirements that must be met before a
 2858 sampling method may be used ~~utilized~~ and the steps necessary for
 2859 the department and the taxpayer to reach agreement on a sampling
 2860 method submitted by the taxpayer for approval by the department.

2861 (7) ~~If In the event~~ the dealer has imported tangible
 2862 personal property and ~~he or she~~ fails to produce an invoice
 2863 showing the cost price of the articles, ~~as defined in this~~
 2864 ~~chapter,~~ which are subject to tax, or the invoice does not
 2865 reflect the true or actual cost price ~~as defined herein,~~ then
 2866 the department shall ascertain, in any manner feasible, the true
 2867 cost price, and assess and collect the tax thereon with interest
 2868 plus penalties, if such have accrued ~~on the true cost price as~~
 2869 ~~assessed by it.~~ The assessment so made shall be considered prima
 2870 facie correct, and the burden ~~duty~~ shall be on the dealer to
 2871 show to the contrary.

2872 (8) ~~For In the case of~~ the lease or rental of tangible
 2873 personal property, or other rentals or license fees ~~as herein~~
 2874 ~~defined and taxed,~~ if the consideration given or reported by the
 2875 lessor, person receiving rental or license fee, or dealer does
 2876 not, in the judgment of the department, represent the true or
 2877 actual consideration, ~~then~~ the department is authorized to

2878 ascertain ~~the same~~ and assess and collect the tax ~~thereon~~ in the
 2879 same manner as ~~above~~ provided in subsection (7), ~~with respect to~~
 2880 ~~imported tangible property~~, together with interest, plus
 2881 penalties, if such have accrued.

2882 (9) Taxes imposed by this chapter upon the privilege of
 2883 the use, consumption, storage for consumption, or sale of
 2884 tangible personal property, admissions, license fees, rentals,
 2885 communication services, and upon the sale or use of services ~~as~~
 2886 ~~herein taxed~~ shall be collected by the ~~upon the basis of an~~
 2887 addition of the tax imposed ~~by this chapter~~ to the total price
 2888 of such admissions, license fees, rentals, communication or
 2889 other services, or sale price of such article or articles that
 2890 are purchased, sold, or leased at any one time by or to a
 2891 customer or buyer. ~~7~~ The dealer, or person charged ~~herein~~, is
 2892 required to pay a privilege tax in the amount of the tax imposed
 2893 by this chapter on the total of his or her gross sales of
 2894 tangible personal property, admissions, license fees, rentals,
 2895 and communication services or to collect a tax upon the sale or
 2896 use of services, and such person or dealer shall add the tax
 2897 imposed ~~by this chapter~~ to the price, license fee, rental, or
 2898 admissions, and communication or other services and collect the
 2899 total sum from the purchaser, admittee, licensee, lessee, or
 2900 consumer. In computing the tax due or to be collected, the
 2901 seller may elect to compute the tax on an item basis or an
 2902 invoice basis. The tax rate shall be the sum of the applicable
 2903 state and local rate, if any, and the tax computation must be
 2904 carried to the third decimal place. If the third decimal place
 2905 is greater than four, the tax shall be rounded to the next whole

2906 cent. ~~The department shall make available in an electronic~~
 2907 ~~format or otherwise the tax amounts and the following brackets~~
 2908 ~~applicable to all transactions taxable at the rate of 6 percent.~~

2909 ~~(a) On single sales of less than 10 cents, no tax shall be~~
 2910 ~~added.~~

2911 ~~(b) On single sales in amounts from 10 cents to 16 cents,~~
 2912 ~~both inclusive, 1 cent shall be added for taxes.~~

2913 ~~(c) On sales in amounts from 17 cents to 33 cents, both~~
 2914 ~~inclusive, 2 cents shall be added for taxes.~~

2915 ~~(d) On sales in amounts from 34 cents to 50 cents, both~~
 2916 ~~inclusive, 3 cents shall be added for taxes.~~

2917 ~~(e) On sales in amounts from 51 cents to 66 cents, both~~
 2918 ~~inclusive, 4 cents shall be added for taxes.~~

2919 ~~(f) On sales in amounts from 67 cents to 83 cents, both~~
 2920 ~~inclusive, 5 cents shall be added for taxes.~~

2921 ~~(g) On sales in amounts from 84 cents to \$1, both~~
 2922 ~~inclusive, 6 cents shall be added for taxes.~~

2923 ~~(h) On sales in amounts of more than \$1, 6 percent shall~~
 2924 ~~be charged upon each dollar of price, plus the appropriate~~
 2925 ~~bracket charge upon any fractional part of a dollar.~~

2926 ~~(10) In counties which have adopted a discretionary sales~~
 2927 ~~surtax at the rate of 1 percent, the department shall make~~
 2928 ~~available in an electronic format or otherwise the tax amounts~~
 2929 ~~and the following brackets applicable to all taxable~~
 2930 ~~transactions that would otherwise have been transactions taxable~~
 2931 ~~at the rate of 6 percent.~~

2932 ~~(a) On single sales of less than 10 cents, no tax shall be~~
 2933 ~~added.~~

2934 ~~(b) On single sales in amounts from 10 cents to 14 cents,~~
 2935 ~~both inclusive, 1 cent shall be added for taxes.~~

2936 ~~(c) On sales in amounts from 15 cents to 28 cents, both~~
 2937 ~~inclusive, 2 cents shall be added for taxes.~~

2938 ~~(d) On sales in amounts from 29 cents to 42 cents, both~~
 2939 ~~inclusive, 3 cents shall be added for taxes.~~

2940 ~~(e) On sales in amounts from 43 cents to 57 cents, both~~
 2941 ~~inclusive, 4 cents shall be added for taxes.~~

2942 ~~(f) On sales in amounts from 58 cents to 71 cents, both~~
 2943 ~~inclusive, 5 cents shall be added for taxes.~~

2944 ~~(g) On sales in amounts from 72 cents to 85 cents, both~~
 2945 ~~inclusive, 6 cents shall be added for taxes.~~

2946 ~~(h) On sales in amounts from 86 cents to \$1, both~~
 2947 ~~inclusive, 7 cents shall be added for taxes.~~

2948 ~~(i) On sales in amounts from \$1 up to, and including, the~~
 2949 ~~first \$5,000 in price, 7 percent shall be charged upon each~~
 2950 ~~dollar of price, plus the appropriate bracket charge upon any~~
 2951 ~~fractional part of a dollar.~~

2952 ~~(j) On sales in amounts of more than \$5,000 in price, 7~~
 2953 ~~percent shall be added upon the first \$5,000 in price, and 6~~
 2954 ~~percent shall be added upon each dollar of price in excess of~~
 2955 ~~the first \$5,000 in price, plus the bracket charges upon any~~
 2956 ~~fractional part of a dollar as provided for in subsection (9).~~

2957 ~~(11) The department shall make available in an electronic~~
 2958 ~~format or otherwise the tax amounts and brackets applicable to~~
 2959 ~~all taxable transactions that occur in counties that have a~~
 2960 ~~surtax at a rate other than 1 percent which transactions would~~
 2961 ~~otherwise have been transactions taxable at the rate of 6~~

2962 ~~percent. Likewise, the department shall make available in an~~
 2963 ~~electronic format or otherwise the tax amounts and brackets~~
 2964 ~~applicable to transactions taxable at 7 percent pursuant to s.~~
 2965 ~~212.05(1)(c) and on transactions which would otherwise have been~~
 2966 ~~so taxable in counties which have adopted a discretionary sales~~
 2967 ~~surtax.~~

2968 (10)~~(12)~~ It is hereby declared to be the legislative
 2969 intent that if, ~~whenever~~ in the construction, administration, or
 2970 enforcement of this chapter, there is ~~may be~~ any question
 2971 respecting a duplication of the tax, the end consumer, or last
 2972 retail sale is, ~~be~~ the sale intended to be taxed and that, as
 2973 far insofar as ~~may be~~ practicable, there may not be ~~no~~
 2974 duplication or pyramiding of the tax.

2975 (11)~~(13)~~ In order to aid the administration and
 2976 enforcement of ~~the provisions of~~ this chapter with respect to
 2977 ~~the~~ rentals and license fees, each lessor or person granting the
 2978 use of any hotel, apartment house, roominghouse, tourist or
 2979 trailer camp, mobile home or recreational vehicle parks, real
 2980 property, or any interest therein, or any portion thereof,
 2981 inclusive of owners; property managers; lessors; landlords;
 2982 hotel, apartment house, and roominghouse operators; and all
 2983 licensed real estate agents within the state leasing, granting
 2984 the use of, or renting such property, shall ~~be required to~~ keep
 2985 a record of each ~~and every~~ such lease, license, or rental
 2986 transaction that ~~which~~ is taxable under this chapter, in ~~such~~ a
 2987 manner and upon such forms as the department may prescribe, ~~and~~
 2988 ~~to~~ report such transaction to the department or its designated
 2989 agents, and ~~to~~ maintain such records as long as required by s.

HB 1393

2008

2990 213.35, subject to the inspection of the department and its
 2991 agents. Upon the failure by the ~~such~~ owner; property manager;
 2992 lessor; landlord; hotel, apartment house, roominghouse, tourist
 2993 or trailer camp operator, or mobile home or recreational vehicle
 2994 park; or real estate agent to keep and maintain such records and
 2995 to make ~~such~~ reports upon the forms and in the manner
 2996 prescribed, the ~~such~~ owner; property manager; lessor; landlord;
 2997 hotel, apartment house, roominghouse, tourist or trailer camp
 2998 operator, or mobile home or recreational vehicle park; receiver
 2999 of rent or license fees; or real estate agent commits ~~is guilty~~
 3000 ~~of~~ a misdemeanor of the second degree, punishable as provided in
 3001 s. 775.082 or s. 775.083, for the first offense; and for
 3002 subsequent offenses commits, ~~they are each guilty of~~ a
 3003 misdemeanor of the first degree, punishable as provided in s.
 3004 775.082 or s. 775.083. If, however, any subsequent offense
 3005 involves intentional destruction of ~~such~~ records with an intent
 3006 to evade payment of or deprive the state of any tax revenues, a
 3007 ~~such~~ subsequent offense is ~~shall be~~ a felony of the third
 3008 degree, punishable as provided in s. 775.082 or s. 775.083.

3009 (12) ~~(14)~~ If it is determined upon audit that a dealer has
 3010 collected and remitted taxes by applying the applicable tax rate
 3011 to each transaction as described in subsection (9) and rounding
 3012 the tax due to the nearest whole cent rather than to the third
 3013 decimal place ~~applying the appropriate bracket system provided~~
 3014 ~~by law or department rule~~, the dealer is ~~shall not be held~~
 3015 liable for additional tax, penalty, and interest resulting from
 3016 such failure if:

3017 (a) The dealer acted in a good faith belief that rounding
 3018 to the nearest whole cent was the proper method of determining
 3019 the amount of tax due on each taxable transaction.

3020 (b) The dealer timely reported and remitted all taxes
 3021 collected on each taxable transaction.

3022 (c) The dealer agrees in writing to future compliance with
 3023 the laws and rules ~~concerning brackets~~ applicable to the
 3024 dealer's transactions.

3025 Section 12. Subsection (3) of section 212.17, Florida
 3026 Statutes, is amended to read:

3027 212.17 Credits for returned goods, rentals, or admissions;
 3028 goods acquired for dealer's own use and subsequently resold;
 3029 additional powers of department.--

3030 (3) A dealer who has paid the tax imposed by this chapter
 3031 on tangible personal property or services may take a credit or
 3032 obtain a refund for any tax paid by the dealer on the unpaid
 3033 balance due on worthless accounts within 12 months following the
 3034 month in which the bad debt has been written ~~charged~~ off for
 3035 federal income tax purposes. A dealer who is not required to
 3036 file a federal income tax return may take a credit or obtain a
 3037 refund for any tax paid by the dealer on the unpaid balance due
 3038 on worthless accounts within 12 months following the month in
 3039 which the bad debt is written off as uncollectible in the
 3040 dealer's books and records and would be eligible for a bad-debt
 3041 deduction for federal income tax purposes if the dealer was
 3042 required to file a federal income tax return.

3043 (a) A dealer who is taking a credit or obtaining a refund
 3044 on worthless accounts shall base the bad-debt-recovery
 3045 calculation in accordance with 26 U.S.C. s. 166.

3046 (b) Notwithstanding paragraph (a), the amount calculated
 3047 pursuant to 26 U.S.C. s. 166 must be adjusted to exclude
 3048 financing charges or interest, sales or use taxes charged on the
 3049 purchase price, uncollectible amounts on property that remains
 3050 in the possession of the seller until the full purchase price is
 3051 paid, expenses incurred in attempting to collect any debt, and
 3052 repossessed property.

3053 (c) Notwithstanding s. 215.26(2), if the amount of bad
 3054 debt exceeds the amount of taxable sales for the period during
 3055 which the bad debt is written off, a refund claim must be filed
 3056 within 3 years after the due date of the return on which the bad
 3057 debt could first be claimed.

3058 (d) If any accounts ~~written so charged~~ off for which a
 3059 credit or refund has been obtained are thereafter in whole or in
 3060 part paid to the dealer, the amount ~~so paid~~ must ~~shall~~ be
 3061 included in the first return filed after such collection and the
 3062 tax paid accordingly.

3063 (e) If filing responsibilities have been assumed by a
 3064 certified service provider, the service provider shall claim, on
 3065 behalf of the seller, any bad-debt allowance provided by this
 3066 section. The certified service provider must credit or refund to
 3067 the seller the full amount of any bad-debt allowance or refund
 3068 received.

3069 (f) For the purposes of reporting a payment received on a
 3070 previously claimed bad debt, payments made on a debt or account

3071 shall be applied proportionally first to the taxable price of
 3072 the property or service and the sales tax thereon, and secondly
 3073 to interest, service charges, and any other charges.

3074 (g) If the books and records of the party claiming the
 3075 bad-debt allowance support an allocation of the bad debt among
 3076 states that are members of the Streamlined Sales and Use Tax
 3077 Agreement, the allocation is authorized among those states.

3078 Section 13. Section 213.052, Florida Statutes, is created
 3079 to read:

3080 213.052 Notice of state tax rate change.--

3081 (1) A sales or use tax rate change imposed under chapter
 3082 212 is effective on January 1, April 1, July 1, or October 1.
 3083 The Department of Revenue shall provide notice of the rate
 3084 change to all affected sellers 90 days before the effective date
 3085 of the rate change.

3086 (2) Failure of a seller to receive notice does not relieve
 3087 the seller of its obligation to collect the sales or use tax.

3088 Section 14. Section 213.0521, Florida Statutes, is created
 3089 to read:

3090 213.0521 Effective date of state tax rate changes applied
 3091 to services.--A tax rate change for taxing services covering a
 3092 period starting before and ending after the effective date of
 3093 the tax is applied as follows:

3094 (1) For a tax rate increase, the new rate applies to the
 3095 first billing period starting on or after the effective date.

3096 (2) For a tax rate decrease, the new rate applies to bills
 3097 rendered on or after the effective date.

3098 Section 15. Subsection (11) is added to section 213.21,
 3099 Florida Statutes, to read:

3100 213.21 Informal conferences; compromises.--

3101 (11) Amnesty shall be provided for uncollected or unpaid
 3102 sales or use taxes to a seller who registers to pay or to
 3103 collect and remit applicable sales or use taxes in accordance
 3104 with the terms of the Streamlined Sales and Use Tax Agreement
 3105 authorized under s. 213.256 if the seller was not registered
 3106 with the Department of Revenue in the 12-month period preceding
 3107 the effective date of participation in the agreement by this
 3108 state.

3109 (a) The amnesty precludes assessment for uncollected or
 3110 unpaid sales or use taxes, together with penalty or interest for
 3111 sales made during the period the seller was not registered with
 3112 the Department of Revenue, if registration occurs within 12
 3113 months after the effective date of this state's participation in
 3114 the agreement.

3115 (b) The amnesty is not available to a seller for any
 3116 matter for which the seller received notice of the commencement
 3117 of an audit if the audit is not yet finally resolved, including
 3118 any related administrative and judicial processes.

3119 (c) The amnesty is not available for sales or use taxes
 3120 already paid or remitted to the state or to taxes collected by
 3121 the seller.

3122 (d) Absent the seller's fraud or intentional
 3123 misrepresentation of a material fact, the amnesty is fully
 3124 effective as long as the seller continues registration and

3125 payment or collection and remittance of applicable sales or use
 3126 taxes for at least 36 months.

3127 (e) The amnesty applies only to sales or use taxes due
 3128 from a seller in its capacity as a seller and not to sales or
 3129 use taxes due from a seller in its capacity as a buyer.

3130 Section 16. Section 213.256, Florida Statutes, is amended
 3131 to read:

3132 213.256 Simplified Sales and Use Tax Administration Act.--

3133 (1) As used in this section and s. 213.2565, the term:

3134 (a) "Agent" means a person appointed by a seller to
 3135 represent the seller before the member states.

3136 ~~(a) "Department" means the Department of Revenue.~~

3137 (b) "Agreement" means the Streamlined Sales and Use Tax
 3138 Agreement, as amended and adopted ~~on January 27, 2001,~~ by the
 3139 Executive Committee of the National Conference of State
 3140 Legislatures.

3141 (c) "Certified automated system" means software certified
 3142 jointly by member ~~the states that are signatories to the~~
 3143 ~~agreement~~ to calculate the tax imposed by each jurisdiction on a
 3144 transaction, determine the amount of tax to remit to the
 3145 appropriate state, and maintain a record of the transaction.

3146 (d) "Certified service provider" means an agent certified
 3147 under jointly by the states that are signatories to the
 3148 agreement to perform all of the seller's sales tax functions
 3149 other than the obligation to remit tax on the seller's own
 3150 purchases.

3151 (e) "Department" means the Department of Revenue.

3152 (f) "Governing board" means the Streamlined Sales Tax
 3153 Governing Board, Inc., composed of member states and responsible
 3154 for administering and operating the agreement.

3155 (g) "Member states" means states that are signatories to
 3156 the agreement.

3157 (h) "Model 1 seller" means a seller that has selected a
 3158 certified service provider as its agent to perform all the
 3159 seller's sales and use tax functions other than the obligation
 3160 to remit tax on the seller's own purchases.

3161 (i) "Model 2 seller" means a seller that has selected a
 3162 certified automated system to perform part of its sales and use
 3163 tax functions, but that retains responsibility for remitting the
 3164 tax.

3165 (j) "Model 3 seller" means a seller that has sales in at
 3166 least five member states, has total annual sales revenue of at
 3167 least \$500 million, has a proprietary system that calculates the
 3168 amount of tax due in each jurisdiction, and has entered into a
 3169 performance agreement with the member states which establishes a
 3170 tax performance standard for the seller. As used in this
 3171 paragraph, a "seller" includes an affiliated group of sellers
 3172 using the same proprietary system.

3173 (k)~~(e)~~ "Person" means an individual, trust, estate,
 3174 fiduciary, partnership, limited liability company, limited
 3175 liability partnership, corporation, or any other legal entity.

3176 (l)~~(f)~~ "Sales tax" means the tax levied under chapter 212.

3177 (m)~~(g)~~ "Seller" means any person making sales, leases, or
 3178 rentals of personal property or services.

HB 1393

2008

3179 (n)~~(h)~~ "State" means any state of the United States and
3180 the District of Columbia.

3181 (o)~~(i)~~ "Use tax" means the tax levied under chapter 212.

3182 (2)~~(a)~~ The executive director of the department shall
3183 enter into the Streamlined Sales and Use Tax Agreement with one
3184 or more member states to simplify and modernize sales and use
3185 tax administration in order to substantially reduce the burden
3186 of tax compliance for all sellers and for all types of commerce.

3187 (a) ~~In furtherance of the agreement,~~ The executive
3188 director of the department or his or her designee shall act
3189 jointly with other member states ~~that are members of the~~
3190 ~~agreement~~ to establish standards for certification of a
3191 certified service provider and certified automated system and
3192 establish performance standards for multistate sellers.

3193 (b) The executive director of the department or his or her
3194 designee shall take other actions reasonably required to
3195 administer this section. Other actions authorized by this
3196 section include, but are not limited to, the adoption of rules
3197 and the joint procurement, with other member states, of goods
3198 and services in furtherance of the cooperative agreement.

3199 (c) The executive director of the department or his or her
3200 designee may represent this state before ~~the~~ other member states
3201 ~~that are signatories to the agreement.~~

3202 (3) The executive director of the department may not enter
3203 into the ~~Streamlined Sales and Use Tax~~ agreement unless the
3204 agreement requires each state to abide by the following
3205 requirements:

3206 (a) The agreement must set restrictions to limit, over
 3207 time, the number of state tax rates.

3208 (b) The agreement must establish uniform standards for:

3209 1. The sourcing of transactions to taxing jurisdictions.

3210 2. The administration of exempt sales.

3211 3. Sales and use tax returns and remittances.

3212 (c) The agreement must provide a central electronic
 3213 registration system that allows a seller to register to collect
 3214 and remit sales and use taxes for all member ~~signatory~~ states.

3215 (d) The agreement must provide that registration with the
 3216 central registration system and the collection of sales and use
 3217 taxes in the signatory state is ~~will~~ not be used as a factor in
 3218 determining whether the seller has nexus with a state for any
 3219 tax.

3220 (e) The agreement must provide for reduction of the
 3221 burdens of complying with local sales and use taxes through:

3222 1. Restricting variances between the state and local tax
 3223 bases.

3224 2. Requiring states to administer ~~any~~ sales and use taxes
 3225 levied by local jurisdictions within the state so that sellers
 3226 who collect and remit these taxes do ~~will~~ not have to register
 3227 or file returns with, remit funds to, or be subject to
 3228 independent audits from local taxing jurisdictions.

3229 3. Restricting the frequency of changes in the local sales
 3230 and use tax rates and setting effective dates for the
 3231 application of local jurisdictional boundary changes to local
 3232 sales and use taxes.

3233 4. Providing notice of changes in local sales and use tax
 3234 rates and of local changes in the boundaries of local taxing
 3235 jurisdictions.

3236 (f) The agreement must outline any monetary allowances
 3237 that are to be provided by the states to sellers or certified
 3238 service providers. ~~The agreement must allow for a joint study by~~
 3239 ~~the public and private sectors, which must be completed by July~~
 3240 ~~1, 2002, of the compliance cost to sellers and certified service~~
 3241 ~~providers of collecting sales and use taxes for state and local~~
 3242 ~~governments under various levels of complexity.~~

3243 (g) The agreement must require each state to certify
 3244 compliance with the terms of the agreement before joining and to
 3245 maintain compliance, under the laws of the member state, with
 3246 all provisions of the agreement while a member.

3247 (h) The agreement must require each state to adopt a
 3248 uniform policy for certified service providers which protects
 3249 the privacy of consumers and maintains the confidentiality of
 3250 tax information.

3251 (i) The agreement must provide for the appointment of an
 3252 advisory council of private sector representatives and an
 3253 advisory council of nonmember state representatives to consult
 3254 within the administration of the agreement.

3255 (4) For the purposes of reviewing or amending the
 3256 agreement to embody the simplification requirements ~~as~~ set forth
 3257 in subsection (3), this state shall enter into multistate
 3258 discussions. For purposes of such discussions, this state shall
 3259 be represented by three delegates, one appointed by the
 3260 President of the Senate, one appointed by the Speaker of the

3261 House of Representatives, and the executive director of the
 3262 department or his or her designee.

3263 (5) No provision of the agreement authorized by this
 3264 section in whole or in part invalidates or amends any provision
 3265 of the laws of this state. Adoption of the agreement by this
 3266 state does not amend or modify any law of the state.
 3267 Implementation of any condition of the agreement ~~in this state,~~
 3268 whether adopted before, at, or after membership of this state in
 3269 the agreement, must be by the action of the state.

3270 (6) The agreement ~~authorized by this section~~ is an accord
 3271 among individual cooperating sovereigns in furtherance of their
 3272 governmental functions and. ~~The agreement~~ provides a mechanism
 3273 among the member states to establish and maintain a cooperative,
 3274 simplified system for the application and administration of
 3275 sales and use taxes under the duly adopted law of each member
 3276 state.

3277 (7)(a) The agreement ~~authorized by this act~~ binds and
 3278 inures only to the benefit of this state and the other member
 3279 states. No person, other than a member state, is an intended
 3280 beneficiary of the agreement. Any benefit to a person other than
 3281 a state is established by the laws of this state and of other
 3282 member states and not by the terms of the agreement.

3283 (a)(b) ~~Consistent with paragraph (a),~~ No person has any
 3284 cause of action or defense under the agreement or by virtue of
 3285 this state's approval of the agreement. No person may challenge,
 3286 in any action brought under any provision of law, any action or
 3287 inaction by any department, agency, or other instrumentality of
 3288 this state, or of any political subdivision of this state, on

HB 1393

2008

3289 the ground that the action or inaction is inconsistent with the
3290 agreement.

3291 (b)~~(e)~~ No law of this state, or the application thereof,
3292 may be declared invalid as to any person or circumstance on the
3293 ground that the provision or application is inconsistent with
3294 the agreement.

3295 (c) Determinations pertaining to the agreement which are
3296 made by the member states are final when rendered and are not
3297 subject to protest, appeal, or review.

3298 (8) Authority to administer the agreement rests with the
3299 governing board comprised of representatives of each member
3300 state. This state shall be represented by three delegates, one
3301 appointed by the President of the Senate, one appointed by the
3302 Speaker of the House of Representatives, and the executive
3303 director of the department or his or her designee.

3304 (9) The agreement shall continue in full force and effect
3305 in this state until this state withdraws its membership or is
3306 expelled. The withdrawal by or expulsion of another state does
3307 not affect the validity of the agreement among this state and
3308 other member states. The state shall submit notice of its intent
3309 to withdraw from the agreement to the governing board and the
3310 chief executive of each member state's tax agency. The state
3311 shall provide public notice of its intent to withdraw and post
3312 its notice on the department's Internet website. The state's
3313 withdrawal or expulsion is not effective until the first day of
3314 a calendar quarter after at least 60 days' notice. The state
3315 remains liable for its share of any financial or contractual
3316 obligations that were incurred by the governing board before the

HB 1393

2008

3317 effective date of that state's withdrawal or expulsion. The
3318 appropriate share of any financial or contractual obligation
3319 shall be determined by the state and the governing board in good
3320 faith based on the relative benefits received and burdens
3321 incurred by the parties.

3322 (10) As a member state, this state agrees to be subject to
3323 sanctions that may be imposed upon a member state that is found
3324 to be out of compliance with the agreement, which include
3325 expulsion or other penalties as determined by the governing
3326 board.

3327 ~~(8)(a) A certified service provider is the agent of a~~
3328 ~~seller with whom the certified service provider has contracted~~
3329 ~~for the collection and remittance of sales and use taxes. As the~~
3330 ~~seller's agent, the certified service provider is liable for~~
3331 ~~sales and use tax due each member state on all sales~~
3332 ~~transactions it processes for the seller except as set out in~~
3333 ~~this subsection.~~

3334 ~~(b) A seller that contracts with a certified service~~
3335 ~~provider is not liable to the state for sales or use tax due on~~
3336 ~~transactions processed by the certified service provider unless~~
3337 ~~the seller has misrepresented the type of items it sells or has~~
3338 ~~committed fraud. In the absence of probable cause to believe~~
3339 ~~that the seller has committed fraud or made a material~~
3340 ~~misrepresentation, the seller is not subject to audit on the~~
3341 ~~transactions processed by the certified service provider. A~~
3342 ~~seller is subject to audit for transactions that have not been~~
3343 ~~processed by the certified service provider. The member states~~
3344 ~~acting jointly may perform a system check of the seller and~~

HB 1393

2008

3345 ~~review the seller's procedures to determine if the certified~~
3346 ~~service provider's system is functioning properly and to~~
3347 ~~determine the extent to which the seller's transactions are~~
3348 ~~being processed by the certified service provider.~~

3349 ~~(c) A person that provides a certified automated system is~~
3350 ~~responsible for the proper functioning of that system and is~~
3351 ~~liable to the state for underpayments of tax attributable to~~
3352 ~~errors in the functioning of the certified automated system. A~~
3353 ~~seller that uses a certified automated system remains~~
3354 ~~responsible and is liable to the state for reporting and~~
3355 ~~remitting tax.~~

3356 ~~(d) A seller that has a proprietary system for determining~~
3357 ~~the amount of tax due on transactions and has signed an~~
3358 ~~agreement establishing a performance standard for that system is~~
3359 ~~liable for the failure of the system to meet the performance~~
3360 ~~standard.~~

3361 ~~(9) Disclosure of information necessary under this section~~
3362 ~~must be pursuant to a written agreement between the executive~~
3363 ~~director of the department or his or her designee and the~~
3364 ~~certified service provider. The certified service provider is~~
3365 ~~bound by the same requirements of confidentiality as the~~
3366 ~~department. Breach of confidentiality is a misdemeanor of the~~
3367 ~~first degree, punishable as provided in s. 775.082 or s.~~
3368 ~~775.083.~~

3369 ~~(11)~~(10) On or before January 1 annually, the department
3370 shall provide recommendations to the President of the Senate,
3371 the Senate Minority Leader, the Speaker of the House of
3372 Representatives, and the Minority Leader of the House of

3373 ~~Representatives for provisions to be adopted for inclusion~~
 3374 ~~within the system~~ which are necessary to bring the system ~~it~~
 3375 into compliance with the Streamlined Sales and Use Tax
 3376 Agreement.

3377 (12) The state shall annually recertify to the governing
 3378 board that it is in compliance with the agreement on or before
 3379 August 1 after the year of the state's entry. In its annual
 3380 recertification, the state shall include any changes in its laws
 3381 or rules or other authorities which may affect its compliance
 3382 with the terms of the agreement. The recertification shall be
 3383 signed by the executive director of the department. If the state
 3384 cannot recertify its compliance with the agreement, it must
 3385 submit a statement of noncompliance to the governing board. The
 3386 statement of noncompliance must include any action or decision
 3387 that takes the state out of compliance with the agreement and
 3388 the steps it will take to return to compliance. The state shall
 3389 post its annual recertification or statement of noncompliance on
 3390 the department's Internet website.

3391 Section 17. Section 213.2565, Florida Statutes, is created
 3392 to read:

3393 213.2565 Simplified Sales and Use Tax central
 3394 registration; certified service providers; model sellers.--

3395 (1) A seller that registers with the central registration
 3396 system agrees to collect and remit sales and use taxes for all
 3397 taxable sales into member states, including member states
 3398 joining after the seller's registration. Withdrawal or
 3399 revocation of a member state does not relieve a seller of its

3400 responsibility to remit taxes previously or subsequently
 3401 collected on behalf of the state.

3402 (a) When registering, the seller may select a model 1,
 3403 model 2, or model 3 method of remittance or other method allowed
 3404 by state law to remit the taxes collected.

3405 (b) A seller may be registered by an agent. Appointment of
 3406 the agent must be in writing and a copy submitted to a member
 3407 state.

3408 (2) The governing board may certify a person as a
 3409 certified service provider if the person meets all of the
 3410 following requirements:

3411 (a) Uses a certified automated system.

3412 (b) Integrates its certified automated system with the
 3413 system of a seller for whom the person collects tax so that the
 3414 tax due on a sale is determined at the time of the sale.

3415 (c) Agrees to remit the taxes it collects at the time and
 3416 in the manner specified by the member states.

3417 (d) Agrees to file returns on behalf of the sellers for
 3418 whom it collects tax.

3419 (e) Agrees to protect the privacy of tax information it
 3420 obtains in accordance with s. 213.053.

3421 (f) Enters into a contract with the member states and
 3422 agrees to comply with the terms of the contract.

3423 (3) The governing board may certify a software program as
 3424 a certified automated system if the governing board determines
 3425 that the program meets all of the following requirements:

HB 1393

2008

- 3426 (a) Determines the applicable state and local sales and
3427 use tax rate for a transaction in accordance with s. 212.06(2)
3428 and (3).
- 3429 (b) Determines whether or not an item is exempt from tax.
- 3430 (c) Determines the amount of tax to be remitted for each
3431 taxpayer for a reporting period.
- 3432 (d) Is able to generate reports and returns as required by
3433 the governing board.
- 3434 (e) Meets any other requirement set by the governing
3435 board.
- 3436 (4) A certified service provider is liable for all sales
3437 and use tax due each member state on all sales transactions it
3438 processes for a model 1 seller unless the model 1 seller has
3439 misrepresented the type of items it sells or has committed
3440 fraud. In the absence of probable cause to believe that the
3441 seller has committed fraud or made a material misrepresentation,
3442 the model 1 seller is not subject to audit on the transactions
3443 processed by the certified service provider. A model 1 seller is
3444 subject to audit for transactions that have not been processed
3445 by the certified service provider. The member states acting
3446 jointly may perform a system check of the model 1 seller and
3447 review the seller's procedures to determine if the certified
3448 service provider's system is functioning properly and to
3449 determine the extent to which the model 1 seller's transactions
3450 are being processed by the certified service provider.
- 3451 (5) A person who provides a certified automated system is
3452 responsible for the proper functioning of that system and is
3453 liable to the state for underpayments of tax attributable to

3454 errors in the functioning of the certified automated system. A
 3455 model 2 seller who uses a certified automated system remains
 3456 responsible and is liable to the state for reporting and
 3457 remitting tax.

3458 (6) A model 3 seller is liable for the failure of its
 3459 proprietary system to meet performance standards. The governing
 3460 board may establish one or more sales tax performance standards
 3461 for model 3 sellers who meet the eligibility criteria set by the
 3462 governing board and who have developed a proprietary system to
 3463 determine the amount of sales and use tax due on transactions.

3464 (7) Disclosure of information necessary under this section
 3465 must be made according to a written agreement between the
 3466 executive director of the department or his or her designee and
 3467 the certified service provider. The certified service provider
 3468 is bound by the same requirements of confidentiality as the
 3469 department. Breach of confidentiality is a misdemeanor of the
 3470 first degree, punishable as provided in s. 775.082 or s.
 3471 775.083.

3472 Section 18. Subsection (6) of section 196.012, Florida
 3473 Statutes, is amended to read:

3474 196.012 Definitions.--For the purpose of this chapter, the
 3475 following terms are defined as follows, except where the context
 3476 clearly indicates otherwise:

3477 (6) Governmental, municipal, or public purpose or function
 3478 shall be deemed to be served or performed if ~~when~~ the lessee
 3479 under a ~~any~~ leasehold interest created in property of the United
 3480 States, the state or ~~any of~~ its political subdivisions, ~~or any~~
 3481 ~~municipality, agency, special district, authority, or other~~

HB 1393

2008

3482 public body corporate of the state is demonstrated to perform a
 3483 function or serve a governmental purpose that ~~which~~ could
 3484 properly be performed or served by an appropriate governmental
 3485 unit or ~~which is demonstrated to perform a function or serve a~~
 3486 ~~purpose~~ ~~which~~ would otherwise be a valid subject for the
 3487 allocation of public funds. For purposes of this subsection ~~the~~
 3488 ~~preceding sentence~~, an activity undertaken by a lessee which is
 3489 authorized ~~permitted~~ under the terms of its lease of real
 3490 property designated as an aviation area on an airport layout
 3491 plan that ~~which~~ has been approved by the Federal Aviation
 3492 Administration and which ~~real property~~ is used for the
 3493 administration, operation, business offices and activities
 3494 related to ~~specifically thereto in connection with~~ the conduct
 3495 of an aircraft full service fixed base operation that ~~which~~
 3496 provides goods and services to the general aviation public in
 3497 the promotion of air commerce, shall be deemed an activity that
 3498 ~~which~~ serves a governmental, municipal, or public purpose or
 3499 function. Any activity undertaken by a lessee which is
 3500 authorized ~~permitted~~ under the terms of its lease of real
 3501 property designated as a public airport as defined in s.
 3502 332.004(14) by the state or a political subdivision
 3503 ~~municipalities, agencies, special districts, authorities, or~~
 3504 ~~other public bodies corporate and public bodies politic of the~~
 3505 ~~state, or~~ a spaceport as defined in s. 331.303, or which is
 3506 located in a deepwater port identified in s. 403.021(9)(b) and
 3507 owned by one of the foregoing governmental units, subject to a
 3508 leasehold or other possessory interest of a nongovernmental
 3509 lessee that is deemed to perform an aviation, airport,

3510 aerospace, maritime, or port purpose or operation shall be
 3511 deemed an activity that serves a governmental, municipal, or
 3512 public purpose or function. The use by a lessee, licensee, or
 3513 management company of real property or a portion thereof as a
 3514 convention center, visitor center, sports facility with
 3515 permanent seating, concert hall, arena, stadium, park, or beach
 3516 is deemed a use that serves a governmental, municipal, or public
 3517 purpose or function if ~~when~~ access to the property is open to
 3518 the general public with or without a charge for admission. If
 3519 property deeded to a municipality by the United States is
 3520 subject to a requirement that the Federal Government, through a
 3521 schedule established by the Secretary of the Interior, determine
 3522 that the property is being maintained for public historic
 3523 preservation, park, or recreational purposes and if those
 3524 conditions are not met the property will revert back to the
 3525 Federal Government, the ~~then such~~ property shall be deemed to
 3526 serve a municipal or public purpose. The term "governmental
 3527 purpose" also includes a direct use of property on federal lands
 3528 in connection with the Federal Government's Space Exploration
 3529 Program or spaceport activities as defined in s. 212.02 ~~s.~~
 3530 ~~212.02(22)~~. Real property and tangible personal property owned
 3531 by the Federal Government or Space Florida and used for defense
 3532 and space exploration purposes or which is put to a use in
 3533 support thereof shall be deemed to perform an essential national
 3534 governmental purpose and shall be exempt. "Owned by the lessee"
 3535 as used in this chapter does not include personal property,
 3536 buildings, or other real property improvements used for the
 3537 administration, operation, business offices and activities

HB 1393

2008

3538 related specifically to ~~thereto in connection with~~ the conduct
 3539 of an aircraft full service fixed based operation that ~~which~~
 3540 provides goods and services to the general aviation public in
 3541 the promotion of air commerce if ~~provided that~~ the real property
 3542 is designated as an aviation area on an airport layout plan
 3543 approved by the Federal Aviation Administration. For purposes of
 3544 determining ownership, ~~determination of "ownership,"~~ buildings
 3545 and other real property improvements that ~~which~~ will revert to
 3546 the airport authority or other governmental unit upon expiration
 3547 of the ~~term of the~~ lease shall be deemed "owned" by the
 3548 governmental unit and not the lessee. Providing two-way
 3549 telecommunications services to the public for hire by the use of
 3550 a telecommunications facility, as defined in s. 364.02(15), and
 3551 for which a certificate is required under chapter 364 does not
 3552 constitute an exempt use for purposes of s. 196.199, unless the
 3553 telecommunications services are provided by the operator of a
 3554 public-use airport, as defined in s. 332.004, for the ~~operator's~~
 3555 provision of telecommunications services for the airport or its
 3556 tenants, concessionaires, or licensees, or unless the
 3557 telecommunications services are provided by a public hospital.

3558 Section 19. Paragraphs (f), (g), (h), and (i) of
 3559 subsection (1) of section 203.01, Florida Statutes, are amended
 3560 to read:

3561 203.01 Tax on gross receipts for utility and
 3562 communications services.--

3563 (1)

3564 (f) Any person who imports into this state electricity,
 3565 natural gas, or manufactured gas, or severs natural gas, for

3566 that person's own use or consumption as a substitute for
 3567 purchasing utility, transportation, or delivery services taxable
 3568 under this chapter and who cannot demonstrate payment of the tax
 3569 imposed by this chapter must register with the Department of
 3570 Revenue and pay into the State Treasury each month an amount
 3571 equal to the cost price of the ~~such~~ electricity, natural gas, or
 3572 manufactured gas times the rate set forth in paragraph (b),
 3573 reduced by the amount of any like tax lawfully imposed ~~on~~ and
 3574 paid by the person from whom the electricity, natural gas, or
 3575 manufactured gas was purchased or any person who provided
 3576 delivery service or transportation service in connection with
 3577 the electricity, natural gas, or manufactured gas. For purposes
 3578 of this subsection ~~paragraph~~, the term "cost price" has the
 3579 meaning provided in s. 212.02 ~~ascribed in s. 212.02(4)~~. The
 3580 methods of demonstrating proof of payment and the amount of ~~such~~
 3581 reductions in tax shall be made according to rules of the
 3582 Department of Revenue.

3583 (g) Electricity produced by cogeneration or by small power
 3584 producers which is transmitted and distributed by a public
 3585 utility between two locations of a customer of the utility
 3586 pursuant to s. 366.051 is subject to the tax imposed by this
 3587 section. The tax shall be applied to the cost price of the ~~such~~
 3588 electricity ~~as provided in s. 212.02(4)~~ and ~~shall~~ be paid each
 3589 month by the producer of such electricity.

3590 (h) Electricity produced by cogeneration or by small power
 3591 producers during the 12-month period ending June 30 ~~of each year~~
 3592 which is in excess of nontaxable electricity produced during the
 3593 12-month period ending June 30, 1990, is subject to the tax

HB 1393

2008

3594 imposed by this section. The tax shall be applied to the cost
 3595 price of the ~~such~~ electricity ~~as provided in s. 212.02(4)~~ and
 3596 ~~shall~~ be paid each month, beginning with the month in which
 3597 total production exceeds the production of nontaxable
 3598 electricity for the 12-month period ending June 30, 1990. For
 3599 purposes of this paragraph, "nontaxable electricity" means
 3600 electricity produced by cogeneration or by small power producers
 3601 which is not subject to tax under paragraph (g). Taxes paid
 3602 pursuant to paragraph (g) may be credited against taxes due
 3603 under this paragraph. Electricity generated as part of an
 3604 industrial manufacturing process that ~~which~~ manufactures
 3605 products from phosphate rock, raw wood fiber, paper, citrus, or
 3606 any agricultural product is ~~shall~~ not be subject to the tax
 3607 imposed by this paragraph. "Industrial manufacturing process"
 3608 means the entire process conducted at the location where the
 3609 process takes place.

3610 (i) Any person other than a cogenerator or small power
 3611 producer described in paragraph (h) who produces for his or her
 3612 own use electrical energy, which is a substitute for electrical
 3613 energy produced by an electric utility as defined in s. 366.02,
 3614 is subject to the tax imposed by this section. The tax shall be
 3615 applied to the cost price of the ~~such~~ electrical energy ~~as~~
 3616 ~~provided in s. 212.02(4)~~ and ~~shall~~ be paid each month. The
 3617 provisions of this paragraph do not apply to ~~any~~ electrical
 3618 energy produced and used by an electric utility.

3619 Section 20. Paragraph (c) of subsection (7) of section
 3620 212.03, Florida Statutes, is amended to read:

3621 212.03 Transient rentals tax; rate, procedure,
 3622 enforcement, exemptions.--
 3623 (7)
 3624 (c) The rental of facilities in a trailer camp, mobile
 3625 home park, or recreational vehicle park, ~~as defined in s.~~
 3626 ~~212.02(10)(f)~~, which are intended primarily for rental as a
 3627 principal or permanent place of residence, is exempt from the
 3628 tax imposed by this chapter. The rental of such facilities that
 3629 primarily serve transient guests is not exempt by this
 3630 subsection. In the application of this law, or in making a ~~any~~
 3631 determination against the exemption, the department shall
 3632 consider the facility as primarily serving transient guests
 3633 unless the facility owner makes a verified declaration on a form
 3634 prescribed by the department that more than half of the total
 3635 rental units available are occupied by tenants who have a
 3636 continuous residence in excess of 3 months. The owner of a
 3637 facility declared to be exempt by this paragraph must make a
 3638 determination of the taxable status of the facility at the end
 3639 of the owner's accounting year using any consecutive 3-month
 3640 period at least one month of which is in the accounting year.
 3641 The owner must use a selected consecutive 3-month period during
 3642 each annual redetermination. If ~~In the event that~~ an exempt
 3643 facility no longer qualifies for the exemption ~~by this~~
 3644 ~~paragraph~~, the owner must notify the department on a form
 3645 prescribed by the department by the 20th day of the first month
 3646 of the owner's next succeeding accounting year that the facility
 3647 no longer qualifies for the ~~such~~ exemption. The tax levied by
 3648 this section applies ~~shall apply~~ to the rental of facilities

HB 1393

2008

3649 that no longer qualify for the exemption ~~under this paragraph~~
 3650 beginning the first day of the owner's next succeeding
 3651 accounting year. The provisions of this paragraph do not apply
 3652 to mobile home lots regulated under chapter 723.

3653 Section 21. Paragraph (a) of subsection (1) of section
 3654 212.031, Florida Statutes, is amended to read:

3655 212.031 Tax on rental or license fee for use of real
 3656 property.--

3657 (1) (a) It is ~~declared to be~~ the legislative intent that
 3658 every person is exercising a taxable privilege who engages in
 3659 the business of renting, leasing, letting, or granting a license
 3660 for the use of ~~any~~ real property unless the ~~such~~ property is:

- 3661 1. Assessed as agricultural property under s. 193.461.
- 3662 2. Used exclusively as dwelling units.
- 3663 3. Property subject to tax on parking, docking, or storage
 3664 spaces under s. 212.03(6).

3665 4. Recreational property or the common elements of a
 3666 condominium ~~when~~ subject to a lease between the developer or
 3667 owner ~~thereof~~ and the condominium association in its own right
 3668 or as agent for the owners of individual condominium units or
 3669 the owners of individual condominium units. However, only the
 3670 lease payments on such property are ~~shall be~~ exempt from the tax
 3671 imposed by this chapter, and any other use made by the owner or
 3672 the condominium association is ~~shall be~~ fully taxable under this
 3673 chapter.

3674 5. A public or private street or right-of-way and poles,
 3675 conduits, fixtures, and similar improvements located on such
 3676 streets or rights-of-way, occupied or used by a utility or

3677 provider of communications services, as defined by s. 202.11,
 3678 for utility or communications or television purposes. For
 3679 purposes of this subparagraph, the term "utility" means any
 3680 person providing utility services as defined in s. 203.012. This
 3681 exception also applies to property, wherever located, on which
 3682 the following are placed: towers, antennas, cables, accessory
 3683 structures, or equipment, not including switching equipment,
 3684 used in the provision of mobile communications services as
 3685 defined in s. 202.11. For purposes of this chapter, towers used
 3686 in the provision of mobile communications services, as defined
 3687 in s. 202.11, are considered to be fixtures.

3688 6. A public street or road that ~~which~~ is used for
 3689 transportation purposes.

3690 7. Property used at an airport exclusively for the purpose
 3691 of aircraft landing or aircraft taxiing or property used by an
 3692 airline for the purpose of loading or unloading passengers or
 3693 property onto or from aircraft or for fueling aircraft.

3694 8.a. Property used at a port authority, as defined in s.
 3695 315.02(2), exclusively for the purpose of oceangoing vessels or
 3696 tugs docking, or such vessels mooring on property used by a port
 3697 authority for the purpose of loading or unloading passengers or
 3698 cargo onto or from such vessels ~~a vessel~~, or property used at a
 3699 port authority for fueling such vessels, or to the extent that
 3700 the amount paid for the use of ~~any~~ property at the port is based
 3701 on the charge for the amount of tonnage actually imported or
 3702 exported through the port by a tenant.

3703 b. The amount charged for the use of ~~any~~ property at the
 3704 port in excess of the amount charged for tonnage actually

3705 imported or exported remains ~~shall remain~~ subject to tax except
3706 as provided in sub-subparagraph a.

3707 9. Property used as an integral part of the performance of
3708 qualified production services. As used in this subparagraph, the
3709 term "qualified production services" means any activity or
3710 service performed directly in connection with the production of
3711 a qualified motion picture, as defined in s. 212.06(1)(b), and
3712 includes:

3713 a. Photography, sound and recording, casting, location
3714 managing and scouting, shooting, creation of special and optical
3715 effects, animation, adaptation (language, media, electronic, or
3716 otherwise), technological modifications, computer graphics, set
3717 and stage support (such as electricians, lighting designers and
3718 operators, greensmen, prop managers and assistants, and grips),
3719 wardrobe (design, preparation, and management), hair and makeup
3720 (design, production, and application), performing (such as
3721 acting, dancing, and playing), designing and executing stunts,
3722 coaching, consulting, writing, scoring, composing,
3723 choreographing, script supervising, directing, producing,
3724 transmitting dailies, dubbing, mixing, editing, cutting,
3725 looping, printing, processing, duplicating, storing, and
3726 distributing;

3727 b. The design, planning, engineering, construction,
3728 alteration, repair, and maintenance of real or personal property
3729 including stages, sets, props, models, paintings, and facilities
3730 principally required for the performance of those services
3731 listed in sub-subparagraph a.; and

3732 c. Property management services directly related to
 3733 property used in connection with the services described in sub-
 3734 subparagraphs a. and b.

3735
 3736 This exemption inures ~~will inure~~ to the taxpayer upon
 3737 presentation of the certificate of exemption issued to the
 3738 taxpayer under ~~the provisions of~~ s. 288.1258.

3739 10. Leased, subleased, licensed, or rented to a person
 3740 providing food and drink concessionaire services within the
 3741 premises of a convention hall, exhibition hall, auditorium,
 3742 stadium, theater, arena, civic center, performing arts center,
 3743 publicly owned recreational facility, or any business operated
 3744 under a permit issued pursuant to chapter 550. A person
 3745 providing retail concessionaire services involving the sale of
 3746 food and drink or other tangible personal property within the
 3747 premises of an airport is ~~shall be~~ subject to tax on the rental
 3748 of real property used for that purpose, but is ~~shall~~ not be
 3749 subject to the tax on any license to use the property. For
 3750 purposes of this subparagraph, the term "sale" does ~~shall~~ not
 3751 include the leasing of tangible personal property.

3752 11. Property occupied pursuant to an instrument calling
 3753 for payments which the department has declared, in a Technical
 3754 Assistance Advisement issued on or before March 15, 1993, to be
 3755 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
 3756 Administrative Code; however, ~~provided that~~ this subparagraph
 3757 applies ~~shall~~ only ~~apply~~ to property occupied by the same person
 3758 before and after the execution of the subject instrument and
 3759 only to those payments made pursuant to the ~~such~~ instrument,

3760 exclusive of renewals and extensions ~~thereof~~ occurring after
 3761 March 15, 1993.

3762 12. Rented, leased, subleased, or licensed to a
 3763 concessionaire by a convention hall, exhibition hall,
 3764 auditorium, stadium, theater, arena, civic center, performing
 3765 arts center, or publicly owned recreational facility, during an
 3766 event at the facility, to be used by the concessionaire to sell
 3767 souvenirs, novelties, or other event-related products. This
 3768 subparagraph applies only to that portion of the rental, lease,
 3769 or license payment which is based on a percentage of sales and
 3770 not based on a fixed price. This subparagraph is repealed July
 3771 1, 2009.

3772 13. Property used or occupied predominantly for space
 3773 flight business purposes. As used in this subparagraph, "space
 3774 flight business" means the manufacturing, processing, or
 3775 assembly of a space facility, space propulsion system, space
 3776 vehicle, satellite, or station of any kind possessing the
 3777 capacity for space flight, as defined in s. 212.02 ~~by s.~~
 3778 ~~212.02(23)~~, or components thereof, and also means the following
 3779 activities supporting space flight: vehicle launch activities,
 3780 flight operations, ground control or ground support, and all
 3781 administrative activities directly related thereto. Property
 3782 shall be deemed to be used or occupied predominantly for space
 3783 flight business purposes if more than 50 percent of the
 3784 property, or improvements thereon, is used for one or more space
 3785 flight business purposes. Possession by a landlord, lessor, or
 3786 licensor of a signed written statement from the tenant, lessee,
 3787 or licensee claiming the exemption shall relieve the landlord,

3788 lessor, or licensor from the responsibility of collecting the
 3789 tax, and the department shall look solely to the tenant, lessee,
 3790 or licensee for recovery of the ~~such~~ tax if it determines that
 3791 the exemption was not applicable.

3792 Section 22. Paragraph (b) of subsection (1) of section
 3793 212.052, Florida Statutes, is amended to read:

3794 212.052 Research or development costs; exemption.--

3795 (1) For the purposes of the exemption provided in this
 3796 section:

3797 (b) The term "costs" means cost price as defined in s.
 3798 212.02 ~~s. 212.02(4)~~.

3799 Section 23. Subsections (2) and (6) of section 212.0596,
 3800 Florida Statutes, are amended to read:

3801 212.0596 Taxation of mail order sales.--

3802 (2) Every dealer ~~as defined in s. 212.06(2)(c)~~ who makes a
 3803 mail order sale is subject to the power of this state to levy
 3804 and collect the tax imposed by this chapter if ~~when~~:

3805 (a) The dealer is a corporation doing business under the
 3806 laws of this state or a person domiciled in, ~~a resident of, or a~~
 3807 ~~citizen of,~~ this state;

3808 (b) The dealer maintains retail establishments or offices
 3809 in this state, whether the mail order sales ~~thus~~ subject to
 3810 taxation by this state result from or are related in any ~~other~~
 3811 way to the activities of the ~~such~~ establishments or offices;

3812 (c) The dealer has agents in this state who solicit
 3813 business or transact business on behalf of the dealer, whether
 3814 the mail order sales ~~thus~~ subject to taxation by this state
 3815 result from or are related in any ~~other~~ way to the ~~such~~

3816 solicitation or transaction of business, except that a printer
 3817 who mails or delivers for an out-of-state print purchaser
 3818 material the printer printed for it ~~is shall not be deemed to be~~
 3819 the print purchaser's agent for purposes of this paragraph;

3820 (d) The property was delivered in this state in
 3821 fulfillment of a sales contract that was entered into in this
 3822 state, in accordance with applicable conflict of laws rules, if
 3823 ~~when~~ a person in this state accepted an offer by ordering the
 3824 property;

3825 (e) The dealer, by purposefully or systematically
 3826 exploiting the market provided by this state by any media-
 3827 assisted, media-facilitated, or media-solicited means,
 3828 including, but not limited to, direct mail advertising,
 3829 unsolicited distribution of catalogs, computer-assisted
 3830 shopping, television, radio, or other electronic media, or
 3831 magazine or newspaper advertisements or other media, creates
 3832 nexus with this state;

3833 (f) Through compact or reciprocity with another
 3834 jurisdiction of the United States, that jurisdiction uses its
 3835 taxing power and its jurisdiction over the retailer in support
 3836 of this state's taxing power;

3837 (g) The dealer consents, expressly or by implication, to
 3838 the imposition of the tax imposed by this chapter;

3839 (h) The dealer is subject to service of process under s.
 3840 48.181;

3841 (i) The dealer's mail order sales are subject to the power
 3842 of this state to tax sales or to require the dealer to collect

3843 use taxes under a federal statute ~~or statutes of the United~~
 3844 ~~States;~~

3845 (j) The dealer owns real property or tangible personal
 3846 property that is physically in this state, except that a dealer
 3847 whose only property in this state, including ~~(including~~ property
 3848 owned by an affiliate, affiliate) ~~in this state~~ is located at
 3849 the premises of a printer with which the vendor has contracted
 3850 for printing, and is ~~either~~ a final printed product, ~~or~~ property
 3851 that ~~which~~ becomes a part of the final printed product, or
 3852 property from which the printed product is produced, is not
 3853 deemed to own such property for purposes of this paragraph;

3854 (k) The dealer, while not having nexus with this state on
 3855 any of the bases described in paragraphs (a)-(j) or paragraph
 3856 (l), is a corporation that is a member of an affiliated group of
 3857 corporations, as defined in s. 1504(a) of the Internal Revenue
 3858 Code, whose members are includable under s. 1504(b) of the
 3859 Internal Revenue Code and whose members are eligible to file a
 3860 consolidated tax return for federal corporate income tax
 3861 purposes and any parent or subsidiary corporation in the
 3862 affiliated group has nexus with this state on one or more of the
 3863 bases described in paragraphs (a)-(j) or paragraph (l); or

3864 (l) The dealer or the dealer's activities have sufficient
 3865 connection with or relationship to this state or its residents
 3866 of some type other than those described in paragraphs (a)-(k) to
 3867 create nexus empowering this state to tax its mail order sales
 3868 or to require the dealer to collect sales tax or accrue use tax.

3869 (6) Notwithstanding other provisions of law, a dealer who
 3870 makes a mail order sale in this state is exempt from collecting

HB 1393

2008

3871 and remitting any local option surtax on the sale, unless the
 3872 dealer is located in a county that imposes a discretionary
 3873 surtax within the meaning of s. 212.054 ~~s. 212.054(3)(a)~~, the
 3874 order is placed through the dealer's location in the ~~such~~
 3875 county, and the property purchased is delivered into such county
 3876 or into another county in this state that levies the surtax, in
 3877 which case the provisions of s. 212.053(3) ~~s. 212.054(3)(a)~~ are
 3878 applicable.

3879 Section 24. Section 212.081, Florida Statutes, is amended
 3880 to read:

3881 212.081 Legislative intent.--It is ~~hereby declared to be~~
 3882 the legislative intent of the amendments to ss. 212.11(1),
 3883 212.12(9) ~~212.12(10)~~, and 212.20 by chapter 57-398, Laws of
 3884 Florida:

3885 (1) To aid in the enforcement of this chapter by
 3886 recognizing the effect of court rulings involving ~~such~~
 3887 enforcement and to incorporate herein substantial rulings of the
 3888 department which have been recognized as necessary to supplement
 3889 the interpretation of some of the terms used in this section.

3890 (2) To arrange the exemptions allowed in this section in
 3891 more orderly categories thereby eliminating some of the
 3892 confusion attendant upon the present arrangement where cross-
 3893 exemptions frequently occur.

3894 (a) It is ~~further declared to be~~ the legislative intent
 3895 that the tax levied by this chapter and imposed by this section
 3896 is not a tax on motor vehicles as property but a tax on the
 3897 privilege to sell, ~~to~~ rent, ~~to~~ use or ~~to~~ store for use in this
 3898 state motor vehicles; that such tax is separate from and in

HB 1393

2008

3899 addition to any license tax imposed on motor vehicles; and that
 3900 such tax is not intended as an ad valorem tax on motor vehicles
 3901 as prohibited by the Constitution.

3902 (b) It is also the legislative intent that there ~~shall~~ be
 3903 no pyramiding or duplication of excise taxes levied by the state
 3904 under this chapter and no municipality shall levy any excise tax
 3905 upon any privilege, admission, lease, rental, sale, use or
 3906 storage for use or consumption which is subject to a tax under
 3907 this chapter unless permitted by general law; ~~provided~~, however,
 3908 ~~that~~ this provision does ~~shall~~ not impair valid municipal
 3909 ordinances that ~~which~~ are in effect and under which a municipal
 3910 tax is being levied and collected on July 1, 1957.

3911 (3) It is ~~hereby declared to be~~ the legislative intent
 3912 that all purchases made by banks are subject to state sales tax
 3913 in the same manner as is provided by law for all other
 3914 purchasers. It is also ~~further declared to be~~ the legislative
 3915 intent that if ~~for any reason~~ the sales tax on federal banks is
 3916 declared invalid, that sales tax does ~~shall~~ not apply or be
 3917 applicable to purchases made by state banks.

3918 Section 25. Subsection (3) of section 212.13, Florida
 3919 Statutes, is amended to read:

3920 212.13 Records required to be kept; power to inspect;
 3921 audit procedure.--

3922 (3) For the purpose of enforcement of this chapter, every
 3923 manufacturer and seller of tangible personal property or
 3924 services licensed within this state must allow ~~is required to~~
 3925 ~~permit~~ the department to examine his or her books and records at
 3926 all reasonable hours, and, upon ~~his or her~~ refusal, the

3927 department may require him or her to allow ~~permit~~ such
 3928 examination by resort to the circuit courts of this state,
 3929 subject however to the ~~right of~~ removal of the cause to the
 3930 judicial circuit where the ~~wherein such~~ person's business is
 3931 located or ~~wherein such person's~~ books and records are kept, if
 3932 the ~~provided further that such~~ person's books and records are
 3933 kept within the state. If ~~When~~ the dealer has made an allocation
 3934 or attribution pursuant to the definition of sales price in s.
 3935 212.02 ~~s. 212.02(16)~~, the department may prescribe by rule the
 3936 books and records that must be made available during an audit ~~of~~
 3937 ~~the dealer's books and records~~ and examples of methods for
 3938 determining the reasonableness thereof. Books and records kept
 3939 in the regular course of business include, but are not limited
 3940 to, general ledgers, price lists, cost records, customer
 3941 billings, billing system reports, tariffs, and other regulatory
 3942 filings and rules of regulatory authorities. The records ~~Such~~
 3943 ~~record~~ may be ~~required to be~~ made available to the department in
 3944 an electronic format if ~~when~~ so kept by the dealer. The dealer
 3945 may support the allocation of charges with books and records
 3946 kept in the regular course of business covering the dealer's
 3947 entire service area, including territories outside this state.
 3948 During an audit, the department may reasonably require
 3949 production of any additional books and records found necessary
 3950 to assist in its determination.

3951 Section 26. Subsection (3) of section 213.015, Florida
 3952 Statutes, is amended to read:

3953 213.015 Taxpayer rights.--There is created a Florida
 3954 Taxpayer's Bill of Rights to guarantee that the rights, privacy,

3955 and property of Florida taxpayers are adequately safeguarded and
 3956 protected during tax assessment, collection, and enforcement
 3957 processes administered under the revenue laws of this state. The
 3958 Taxpayer's Bill of Rights compiles, in one document, brief but
 3959 comprehensive statements which explain, in simple, nontechnical
 3960 terms, the rights and obligations of the Department of Revenue
 3961 and taxpayers. Section 192.0105 provides additional rights
 3962 afforded to payors of property taxes and assessments. The rights
 3963 afforded taxpayers to ensure that their privacy and property are
 3964 safeguarded and protected during tax assessment and collection
 3965 are available only insofar as they are implemented in other
 3966 parts of the Florida Statutes or rules of the Department of
 3967 Revenue. The rights so guaranteed Florida taxpayers in the
 3968 Florida Statutes and the departmental rules are:

3969 (3) The right to be represented or advised by counsel or
 3970 other qualified representatives at any time in administrative
 3971 interactions with the department, the right to procedural
 3972 safeguards with respect to recording of interviews during tax
 3973 determination or collection processes conducted by the
 3974 department, the right to be treated in a professional manner by
 3975 department personnel, and the right to have audits, inspections
 3976 of records, and interviews conducted at a reasonable time and
 3977 place except in criminal and internal investigations (see ss.
 3978 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3),
 3979 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (11) ~~(13)~~,
 3980 212.13(5), 213.05, 213.21(1)(a) and (c), and 213.34).

3981 Section 27. Subsection (8) of section 551.102, Florida
 3982 Statutes, is amended to read:

HB 1393

2008

3983 551.102 Definitions.--As used in this chapter, the term:
 3984 (8) "Slot machine" means any mechanical or electrical
 3985 contrivance, terminal that may or may not be capable of
 3986 downloading slot games from a central server system, machine, or
 3987 other device that, upon insertion of a coin, bill, ticket,
 3988 token, or similar object or upon payment of any consideration
 3989 ~~whatsoever~~, including the use of an ~~any~~ electronic payment
 3990 system except a credit card or debit card, is available to play
 3991 or operate, the play or operation of which, whether by reason of
 3992 skill or application of the element of chance, or both, may
 3993 deliver or entitle the person or persons playing or operating
 3994 the contrivance, terminal, machine, or other device to receive
 3995 cash, billets, tickets, tokens, or electronic credits to be
 3996 exchanged for cash or to receive merchandise or anything of
 3997 value whatsoever, whether the payoff is made automatically from
 3998 the machine or manually. The term includes associated equipment
 3999 necessary to operate ~~conduct the operation of~~ the contrivance,
 4000 terminal, machine, or other device. Slot machines may use
 4001 spinning reels, video displays, or both. A slot machine is not a
 4002 "coin-operated amusement machine" as defined in s. 212.02 ~~s.~~
 4003 ~~212.02(24)~~ or an amusement game or machine as described in s.
 4004 849.161, and slot machines are not subject to the tax imposed by
 4005 s. 212.05(1)(h).

4006 Section 28. Paragraph (a) of subsection (1) of section
 4007 790.0655, Florida Statutes, is amended to read:

4008 790.0655 Purchase and delivery of handguns; mandatory
 4009 waiting period; exceptions; penalties.--

4010 (1) (a) There shall be a mandatory 3-day waiting period,
 4011 which shall be 3 days, excluding weekends and legal holidays,
 4012 between the purchase and the delivery at retail of any handgun.
 4013 "Purchase" means the transfer of money or other valuable
 4014 consideration to the retailer. "Handgun" means a firearm capable
 4015 of being carried and used by one hand, such as a pistol or
 4016 revolver. "Retailer" has the same meaning as in s. 212.02 ~~means~~
 4017 ~~and includes every person engaged in the business of making~~
 4018 ~~sales at retail or for distribution, or use, or consumption, or~~
 4019 ~~storage to be used or consumed in this state, as defined in s.~~
 4020 ~~212.02(13).~~

4021 Section 29. Subsection (6) of section 212.0596, Florida
 4022 Statutes, is repealed.

4023 Section 30. It is the intent of the Legislature to urge
 4024 the United States Congress to consider providing adequate
 4025 protections to small businesses engaging in both offline and
 4026 online transactions from added costs, administrative burdens,
 4027 and requirements imposed on intermediaries relating to the
 4028 collection and remittance of sales and use tax.

4029 Section 31. Emergency rules.--The executive director of
 4030 the Department of Revenue is authorized, and all conditions are
 4031 deemed met, to adopt emergency rules, under ss. 120.536(1) and
 4032 120.54(4), Florida Statutes, to implement this act.
 4033 Notwithstanding any other law, the emergency rules shall remain
 4034 effective for 6 months after the date of adoption and may be
 4035 renewed during the pendency of procedures to adopt rules
 4036 addressing the subject of the emergency rules.

4037 Section 32. This act shall take effect July 1, 2008.