

By Senator Geller

31-02574-08

2008962\_\_

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

31-02574-08

2008962\_\_

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

31-02574-08

2008962\_\_

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 of  
84 money after the deduction of any federal taxes for admitting a  
85 person or vehicle ~~or persons~~ to a any place of amusement, sport,  
86 or recreation or for the privilege of entering or staying in a  
87 ~~any~~ place of amusement, sport, or recreation, including, but not

31-02574-08

2008962\_\_

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

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

31-02574-08

2008962\_\_

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 involving  
122 tangible personal property or services by a person who does not  
123 hold himself or herself out as engaged in business or sales of  
124 unclaimed tangible personal property under s. 717.122, but does  
125 include ~~includes other~~ charges for the sale or rental of tangible  
126 personal property, sales of services taxable under this chapter,  
127 sales of or charges of admission, communication services, all  
128 rentals and leases of living quarters, other than low-rent  
129 housing operated under chapter 421, sleeping or housekeeping  
130 accommodations in hotels, apartment houses, roominghouses,  
131 tourist or trailer camps, or mobile home or recreational vehicle  
132 parks, and all rentals of or licenses in real property, other  
133 than low-rent housing operated under chapter 421, all leases or  
134 rentals of or licenses in parking lots or garages for motor  
135 vehicles, docking or storage spaces for boats in boat docks or  
136 marinas ~~as defined in this chapter and~~ made subject to a tax  
137 imposed by this chapter. The term does ~~"business"~~ shall not be  
138 ~~construed in this chapter to~~ include the leasing, subleasing, or  
139 licensing of real property by one corporation to another if all  
140 of the stock of both ~~such~~ corporations is owned, directly or  
141 through one or more wholly owned subsidiaries, by a common parent  
142 corporation; the property was in use before ~~prior to~~ July 1,  
143 1989, title to the property was transferred after July 1, 1988,  
144 and before July 1, 1989, between members of an affiliated group,  
145 as defined in s. 1504(a) of the Internal Revenue Code of 1986,

31-02574-08

2008962\_\_

146 which group included both ~~such~~ corporations, and there is no  
147 substantial change in the use of the property following the  
148 transfer of title; the leasing, subleasing, or licensing of the  
149 property was required by an unrelated lender as a condition of  
150 providing financing to one or more members of the affiliated  
151 group; and the corporation to which the property is leased,  
152 subleased, or licensed had sales subject to the tax imposed by  
153 this chapter of at least ~~not less than~~ \$667 million during the  
154 most recent 12-month period ended June 30. A ~~Any~~ tax on such  
155 sales, charges, rentals, admissions, or other transactions ~~made~~  
156 subject to the tax imposed by this chapter shall be collected by  
157 the state, ~~county, municipality,~~ any political subdivision,  
158 ~~agency, bureau, or department,~~ or other state or local  
159 governmental instrumentality in the same manner as other dealers,  
160 unless specifically exempted by this chapter.

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

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

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

173 (8)(4) "Cost price" means the actual cost of articles of  
174 tangible personal property without any deductions for ~~therefrom~~

31-02574-08

2008962\_\_

175 ~~on account of~~ the cost of materials used, labor or service costs,  
176 transportation charges, or any other expenses ~~whatsoever~~.

177 ~~(9) (5) The term~~ "Department" means the Department of  
178 Revenue.

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

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

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

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

192 (d) Has sold at retail; or used, or consumed, or  
193 distributed; or stored for use or consumption in this state,  
194 tangible personal property and who cannot prove that the tax  
195 levied by this chapter has been paid. However, the term does not  
196 include a person who is not a dealer under any other paragraph of  
197 this subsection and whose only owned or leased property in this  
198 state, including property owned or leased by an affiliate, is  
199 located on the premises of a printer with whom it has contracted  
200 for printing, if the property consists of the final printed  
201 product, property that becomes a part of the final printed  
202 product, or property from which the printed product is produced.

31-02574-08

2008962\_\_

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

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

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

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

225       (i) Leases or grants a license to use, occupy, or enter  
226 upon living quarters, sleeping or housekeeping accommodations in  
227 hotels, apartment houses, roominghouses, tourist or trailer  
228 camps, mobile home or recreational vehicle parks, real property,  
229 space or spaces in parking lots or garages for motor vehicles,  
230 docking or storage space or spaces for boats in boat docks or  
231 marinas, or tie-down or storage space or spaces for aircraft at



31-02574-08

2008962\_\_

232 airports. The term also includes a person who has leased,  
233 occupied, or used or was entitled to use living quarters,  
234 sleeping or housekeeping accommodations in hotels, apartment  
235 houses, roominghouses, tourist or trailer camps, mobile home or  
236 recreational vehicle parks, real property, spaces in parking lots  
237 or garages for motor vehicles or docking or storage spaces for  
238 boats in boat docks or marinas, or who has purchased  
239 communication services or electric power or energy, and who  
240 cannot prove that the tax levied by this chapter has been paid to  
241 the vendor or lessor on any such transactions. The term does not  
242 include a person who leases, lets, rents, or grants a license to  
243 use, occupy, or enter upon living quarters, sleeping quarters, or  
244 housekeeping accommodations in apartment houses, roominghouses,  
245 tourist camps, or trailer camps, mobile home or recreational  
246 vehicle parks, and who exclusively enters into a bona fide  
247 written agreement for continuous residence for longer than 6  
248 months with a person who leases, lets, rents, or is granted a  
249 license to use the property.

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

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

258 (11) "Delivery charges" means charges by the seller of  
259 personal property or services for preparation and delivery to a  
260 location designated by the purchaser of personal property or

31-02574-08

2008962\_\_

261 services, including, but not limited to, transportation,  
262 shipping, postage, handling, crating, and packing. The term does  
263 not include the charges for delivery of direct mail if the  
264 charges are separately stated on an invoice or similar billing  
265 document given to the purchaser.

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

274 (13) "Direct mail" means printed material delivered or  
275 distributed by United States mail or other delivery service to a  
276 mass audience or to addressees on a mailing list provided by the  
277 purchaser or at the direction of the purchaser if the cost of the  
278 items is not billed directly to the recipients. The term includes  
279 tangible personal property supplied directly or indirectly by the  
280 purchaser to the direct mail seller for inclusion in the package  
281 containing the printed material. The term does not include  
282 multiple items of printed material delivered to a single address.

283 (14)~~(6)~~ "Enterprise zone" means an area of the state  
284 designated pursuant to s. 290.0065. This subsection expires on  
285 the date specified in s. 290.016 for the expiration of the  
286 Florida Enterprise Zone Act.

287 (15)~~(7)~~ "Factory-built building" means a structure  
288 manufactured in a manufacturing facility for installation or  
289 erection as a finished building. ~~The term; "factory-built~~

31-02574-08

2008962\_\_

290 ~~building~~" includes, but is not limited to, residential,  
291 commercial, institutional, storage, and industrial structures.

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

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

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

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

308 ~~(19)(9) The term "Intoxicating beverages" or "alcoholic~~  
309 ~~beverages" means referred to in this chapter includes all such~~  
310 ~~beverages as are so defined or may be hereafter defined by the~~  
311 ~~laws of the state.~~

312 ~~(20)(10) "Lease," "let," or "rental" means:~~

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

31-02574-08

2008962\_\_

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

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

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

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

345        5.(e) A "tourist camp" is a place where two or more tents,  
346 tent houses, or camp cottages are located and offered by a person

31-02574-08

2008962\_\_

347 or municipality for sleeping or eating accommodations, most  
348 generally to the transient public for ~~either~~ a direct money  
349 consideration or an indirect benefit to the lessor or owner in  
350 connection with a related business.

351 6.(f) A "trailer camp," "mobile home park," or  
352 "recreational vehicle park" is a place where space is offered,  
353 with or without service facilities, by any person ~~persons~~ or  
354 municipality to the public for the parking and accommodation of  
355 two or more automobile trailers, mobile homes, or recreational  
356 vehicles ~~which are~~ used for lodging, for ~~either~~ a direct money  
357 consideration or an indirect benefit to the lessor or owner in  
358 connection with a related business, such space being ~~hereby~~  
359 ~~defined as~~ living quarters, and the rental price includes ~~thereof~~  
360 ~~shall include~~ all service charges paid to the lessor.

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

31-02574-08

2008962\_\_

376 amount realized upon sale or disposition of the property as  
377 defined in 26 U.S.C. s. 7701(h) (1).

378 1. This paragraph does not apply to:

379 a. A transfer of possession or control of property under a  
380 security agreement or deferred payment plan that requires the  
381 transfer of title upon completion of the required payments;

382 b. A transfer of possession or control of property under an  
383 agreement that requires the transfer of title upon completion of  
384 required payments and payment of an option price that does not  
385 exceed the greater of \$100 or 1 percent of the total required  
386 payments; or

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

393 2. The term "lease," "let," or "rental" does not include:  
394 mean

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

401 b. The term "lease," "let," "rental," or "license" does not  
402 include Payments made to an owner of high-voltage bulk  
403 transmission facilities in connection with the possession or  
404 control of such facilities by a regional transmission

31-02574-08

2008962\_\_

405 organization, independent system operator, or similar entity  
406 under the jurisdiction of the Federal Energy Regulatory  
407 Commission. However, ~~if where~~ two taxpayers, in connection with  
408 the interchange of facilities, rent or lease property, each to  
409 the other, for use in providing or furnishing any of the services  
410 mentioned in s. 166.231, the term "lease or rental" applies ~~means~~  
411 only to the net amount of rental involved.

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

415 1.(i) "License," as used in ~~this chapter with~~ reference to  
416 the use of real property, means the granting of a privilege to  
417 use or occupy a building or a parcel of real property for any  
418 purpose.

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

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

428 (22)-(11) "Motor fuel" means ~~and includes~~ what is commonly  
429 known and sold as gasoline and fuels containing a mixture of  
430 gasoline and other products.

431 (23)-(12) "Person" means an ~~includes any~~ individual, firm,  
432 copartnership, joint adventure, association, corporation, estate,  
433 trust, business trust, receiver, syndicate, or other group or

31-02574-08

2008962\_\_

434 combination acting as a unit and also includes any political  
435 subdivision, ~~municipality~~, state agency, or other public or  
436 quasi-public instrumentality bureau, or department and includes  
437 the plural as well as the singular number.

438 (24) "Power farm equipment" means moving or stationary  
439 equipment that contains within itself the means for its own  
440 propulsion or power and moving or stationary equipment that is  
441 dependent upon an external power source to perform its functions.

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

460 (26) "Qualified aircraft" means aircraft having a maximum  
461 certified takeoff weight of less than 10,000 pounds, equipped  
462 with twin turbofan engines that meet Stage IV noise requirements,



31-02574-08

2008962\_\_

463 and used by a business, operating as an on-demand air carrier  
464 under Federal Aviation Administration Regulation Title 14,  
465 chapter I, part 135, Code of Federal Regulations, which owns or  
466 leases and operates a fleet of at least 25 such aircraft in this  
467 state.

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

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

486 (b) "Improvements to real property" include the activities  
487 of building, erecting, constructing, altering, improving,  
488 repairing, or maintaining real property.

489 (28)~~(13)~~ "Retailer" means ~~and includes~~ every person engaged  
490 in the business of making sales at retail or for distribution, or

31-02574-08

2008962\_\_

491 use, or consumption, or storage to be used or consumed in this  
492 state.

493 ~~(29)(14)(a)~~ "Retail sale" or a "sale at retail" means a  
494 sale of tangible personal property or services taxable under this  
495 chapter to a consumer or to any person for any purpose other than  
496 for resale ~~in the form of tangible personal property or services~~  
497 ~~taxable under this chapter~~, and includes all ~~such~~ transactions  
498 that may be made in lieu of retail sales or sales at retail. The  
499 term includes a mail order sale, as defined in s. 212.0596(1).

500 (a) A sale for resale includes a sale of qualifying  
501 property. As used in this paragraph, the term "qualifying  
502 property" means tangible personal property, other than  
503 electricity, which is used or consumed by a government contractor  
504 in the performance of a qualifying contract, as defined in s.  
505 212.08(17)(c), if ~~to the extent that~~ the cost of the property is  
506 allocated or charged as a direct item of cost to the ~~such~~  
507 contract, title to the ~~which~~ property vests in or passes to the  
508 government under the contract. The term "government contractor"  
509 includes prime contractors and subcontractors. As used in this  
510 paragraph, a cost is a "direct item of cost" if it is a "direct  
511 cost" as defined in 48 C.F.R. s. 9904.418-30(a)(2), or similar  
512 successor provisions, including costs identified specifically  
513 with a particular contract.

514 (b) The terms "retail sales," "sales at retail," "use,"  
515 "storage," and "consumption" include the sale, use, storage, or  
516 consumption of all tangible advertising materials imported or  
517 caused to be imported into this state. Tangible advertising  
518 material includes displays, display containers, brochures,  
519 catalogs, price lists, point-of-sale advertising, and technical

31-02574-08

2008962\_\_

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

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

31-02574-08

2008962\_\_

549 | for use in repairing a motor vehicle, airplane, or boat, if the  
550 | ~~when such~~ materials are incorporated into and sold as part of the  
551 | repair. Such a sale shall be deemed a purchase for resale by the  
552 | repair facility, even though every material is not separately  
553 | stated or separately priced on the repair invoice.

554 | ~~(d) "Gross sales" means the sum total of all sales of~~  
555 | ~~tangible personal property as defined herein, without any~~  
556 | ~~deduction whatsoever of any kind or character, except as provided~~  
557 | ~~in this chapter.~~

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

560 | ~~(30)(15)~~ "Sale" means ~~and includes:~~

561 | (a) Any transfer of title or possession, or both, exchange,  
562 | barter, license, lease, or rental, conditional or otherwise, in  
563 | any manner or by any means whatsoever, of tangible personal  
564 | property for a consideration.

565 | (b) The leasing or rental of living quarters or sleeping or  
566 | housekeeping accommodations ~~in hotels, apartment houses or~~  
567 | ~~roominghouses, or tourist or trailer camps, as hereinafter~~  
568 | ~~defined in this chapter.~~

569 | (c) The producing, fabricating, processing, printing, or  
570 | imprinting of tangible personal property for a consideration for  
571 | consumers who furnish, either directly or indirectly, the  
572 | materials used in the producing, fabricating, processing,  
573 | printing, or imprinting.

574 | (d) The furnishing, preparing, or serving for a  
575 | consideration of ~~any~~ tangible personal property for consumption  
576 | on or off the premises of the person furnishing, preparing, or  
577 | serving the ~~such~~ tangible personal property, which includes the

31-02574-08

2008962\_\_

578 sale of meals or prepared food by an employer to his or her  
579 employees.

580 (e) A transaction whereby the possession of property is  
581 transferred but the seller retains title as security for the  
582 payment of the price.

583 (31)-(16) "Sales price" means the total amount of  
584 consideration, including cash, credit, property, and services,  
585 for which personal property or services are sold, leased, or  
586 rented, valued in money, whether received in money or otherwise,  
587 and applies to the measure subject to the sales tax. ~~paid for~~  
588 ~~tangible personal property, including any services that are a~~  
589 ~~part of the sale, valued in money, whether paid in money or~~  
590 ~~otherwise, and includes any amount for which credit is given to~~  
591 ~~the purchaser by the seller, without any deduction therefrom on~~  
592 ~~account of the cost of the property sold, the cost of materials~~  
593 ~~used, labor or service cost, interest charged, losses, or any~~  
594 ~~other expense whatsoever. "Sales price" also includes the~~  
595 ~~consideration for a transaction which requires both labor and~~  
596 ~~material to alter, remodel, maintain, adjust, or repair tangible~~  
597 ~~personal property. Trade-ins or discounts allowed and taken at~~  
598 ~~the time of sale shall not be included within the purview of this~~  
599 ~~subsection. "Sales price" also includes the full face value of~~  
600 ~~any coupon used by a purchaser to reduce the price paid to a~~  
601 ~~retailer for an item of tangible personal property; where the~~  
602 ~~retailer will be reimbursed for such coupon, in whole or in part,~~  
603 ~~by the manufacturer of the item of tangible personal property; or~~  
604 ~~whenever it is not practicable for the retailer to determine, at~~  
605 ~~the time of sale, the extent to which reimbursement for the~~  
606 ~~coupon will be made. The term "sales price" does not include~~

31-02574-08

2008962\_\_

607 ~~federal excise taxes imposed upon the retailer on the sale of~~  
608 ~~tangible personal property. The term "sales price" does include~~  
609 ~~federal manufacturers' excise taxes, even if the federal tax is~~  
610 ~~listed as a separate item on the invoice. To the extent required~~  
611 ~~by federal law, the term "sales price" does not include charges~~  
612 ~~for Internet access services which are not itemized on the~~  
613 ~~customer's bill, but which can be reasonably identified from the~~  
614 ~~selling dealer's books and records kept in the regular course of~~  
615 ~~business. The dealer may support the allocation of charges with~~  
616 ~~books and records kept in the regular course of business covering~~  
617 ~~the dealer's entire service area, including territories outside~~  
618 ~~this state.~~

619 (a) The sales price may be adjusted to include a deduction  
620 for:

- 621 1. The seller's cost of the property sold.  
622 2. The cost of materials used, labor or service cost,  
623 interest, losses, all costs of transportation to the seller, all  
624 taxes imposed on the seller, and any other expense of the seller.  
625 3. Charges by the seller for services necessary to complete  
626 the sale, other than delivery and installation charges.  
627 4. Delivery charges.  
628 5. Installation charges.

629 (b) The sales price does not include:

- 630 1. Trade-ins allowed and taken at the time of sale if the  
631 amount is separately stated on the invoice, bill of sale, or  
632 similar document given to the purchaser.  
633 2. Discounts, including cash, term, or coupons, which are  
634 not reimbursed by a third party, which are allowed by a seller,  
635 and which are taken by a purchaser at the time of sale.

31-02574-08

2008962\_\_

636 3. Interest, financing, and carrying charges from credit  
637 extended on the sale of personal property or services, if the  
638 amount is separately stated on the invoice, bill of sale, or  
639 similar document given to the purchaser.

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

643 ~~(17) "Diesel fuel" means any liquid product, gas product,~~  
644 ~~or combination thereof used in an internal combustion engine or~~  
645 ~~motor to propel any form of vehicle, machine, or mechanical~~  
646 ~~contrivance. This term includes, but is not limited to, all forms~~  
647 ~~of fuel commonly or commercially known or sold as diesel fuel or~~  
648 ~~kerosene. However, the term "diesel fuel" does not include butane~~  
649 ~~gas, propane gas, or any other form of liquefied petroleum gas or~~  
650 ~~compressed natural gas.~~

651 (32) "Seller" means any person making sales, leases, or  
652 rentals of tangible personal property or services.

653 (33) "Solar energy system" means the equipment and  
654 requisite hardware that provide and are used for collecting,  
655 transferring, converting, storing, or using incident solar energy  
656 for water heating, space heating, cooling, or other applications  
657 that would otherwise require the use of a conventional source of  
658 energy such as petroleum products, natural gas, manufactured gas,  
659 or electricity.

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

31-02574-08

2008962\_\_

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

666           ~~(36)-(18)~~ "Storage" means ~~and includes~~ any keeping or  
667 retention in this state of tangible personal property for use or  
668 consumption in this state or for any purpose other than sale at  
669 retail in the regular course of business.

670           ~~(37)-(19)~~ "Tangible personal property" means ~~and includes~~  
671 personal property that ~~which~~ may be seen, weighed, measured, or  
672 touched or is in any manner perceptible to the senses, including  
673 electric power or energy, water, gas, steam, prewritten computer  
674 software, boats, motor vehicles and mobile homes as defined in s.  
675 320.01(1) and (2), aircraft as defined in s. 330.27, and all  
676 other types of vehicles. The term ~~"tangible personal property"~~  
677 does not include stocks, bonds, notes, insurance, or other  
678 obligations or securities or pari-mutuel tickets sold or issued  
679 under the racing laws of the state.

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

683           (39) "Transportation equipment" means:

684           (a) Locomotives and rail cars that are used for the  
685 carriage of persons or property in interstate commerce;

686           (b) Trucks and truck tractors having a Gross Vehicle Weight  
687 Rating (GVWR) of 10,001 pounds or greater, trailers,  
688 semitrailers, or passenger buses that are registered through the  
689 International Registration Plan and operated under authority of a  
690 carrier authorized and certificated by the United States



31-02574-08

2008962\_\_

691 Department of Transportation or other federal authority to engage  
692 in the carriage of persons or property in interstate commerce;

693 (c) Aircraft that are operated by air carriers authorized  
694 and certificated by the United States Department of  
695 Transportation or other federal or foreign authority to engage in  
696 the carriage of persons or property in interstate or foreign  
697 commerce; or

698 (d) Containers designed for use on and component parts  
699 attached to or secured on the items set forth in paragraphs (a)  
700 through (c).

701 (40)-(20) "Use" means ~~and includes~~ the exercise of any right  
702 or power over tangible personal property incident to the  
703 ownership thereof, or interest therein, except that it does not  
704 include the sale at retail of that property in the regular course  
705 of business. The term "use" does not include the loan of an  
706 automobile by a motor vehicle dealer to a high school for use in  
707 its driver education and safety program. The term "use" does not  
708 include a contractor's use of "qualifying property" as defined by  
709 paragraph (29) (a) ~~(14) (a)~~.

710 (41)-(21) The term "use tax" means the tax imposed for  
711 ~~referred to in this chapter includes~~ the use, the consumption,  
712 the distribution, and the storage of tangible personal property  
713 ~~as herein defined.~~

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

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

31-02574-08

2008962\_\_

720           ~~(24) "Coin-operated amusement machine" means any machine~~  
721 ~~operated by coin, slug, token, coupon, or similar device for the~~  
722 ~~purposes of entertainment or amusement. The term includes, but is~~  
723 ~~not limited to, coin-operated pinball machines, music machines,~~  
724 ~~juke boxes, mechanical games, video games, arcade games, billiard~~  
725 ~~tables, moving picture viewers, shooting galleries, and all other~~  
726 ~~similar amusement devices.~~

727           ~~(25) "Sea trial" means a voyage for the purpose of testing~~  
728 ~~repair or modification work, which is in length and scope~~  
729 ~~reasonably necessary to test repairs or modifications, or a~~  
730 ~~voyage for the purpose of ascertaining the seaworthiness of a~~  
731 ~~vessel. If the sea trial is to test repair or modification work,~~  
732 ~~the owner or repair facility shall certify, in a form required by~~  
733 ~~the department, what repairs have been tested. The owner and the~~  
734 ~~repair facility may also be required to certify that the length~~  
735 ~~and scope of the voyage were reasonably necessary to test the~~  
736 ~~repairs or modifications.~~

737           ~~(26) "Solar energy system" means the equipment and~~  
738 ~~requisite hardware that provide and are used for collecting,~~  
739 ~~transferring, converting, storing, or using incident solar energy~~  
740 ~~for water heating, space heating, cooling, or other applications~~  
741 ~~that would otherwise require the use of a conventional source of~~  
742 ~~energy such as petroleum products, natural gas, manufactured gas,~~  
743 ~~or electricity.~~

744           ~~(27) "Agricultural commodity" means horticultural,~~  
745 ~~aquacultural, poultry and farm products, and livestock and~~  
746 ~~livestock products.~~

747           ~~(28) "Farmer" means a person who is directly engaged in the~~  
748 ~~business of producing crops, livestock, or other agricultural~~

31-02574-08

2008962\_\_

749 commodities. The term includes, but is not limited to, horse  
750 breeders, nurserymen, dairy farmers, poultry farmers, cattle  
751 ranchers, apiarists, and persons raising fish.

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

757 ~~(30) "Power farm equipment" means moving or stationary~~  
758 ~~equipment that contains within itself the means for its own~~  
759 ~~propulsion or power and moving or stationary equipment that is~~  
760 ~~dependent upon an external power source to perform its functions.~~

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

764 ~~(32) "Agricultural production" means the production of~~  
765 ~~plants and animals useful to humans, including the preparation,~~  
766 ~~planting, cultivating, or harvesting of these products or any~~  
767 ~~other practices necessary to accomplish production through the~~  
768 ~~harvest phase, and includes aquaculture, horticulture,~~  
769 ~~floriculture, viticulture, forestry, dairy, livestock, poultry,~~  
770 ~~bees, and any and all forms of farm products and farm production.~~

771 ~~(33) "Qualified aircraft" means any aircraft having a~~  
772 ~~maximum certified takeoff weight of less than 10,000 pounds and~~  
773 ~~equipped with twin turbofan engines that meet Stage IV noise~~  
774 ~~requirements that is used by a business operating as an on-demand~~  
775 ~~air carrier under Federal Aviation Administration Regulation~~  
776 ~~Title 14, chapter I, part 135, Code of Federal Regulations, that~~

31-02574-08

2008962\_\_

777 ~~owns or leases and operates a fleet of at least 25 of such~~  
778 ~~aircraft in this state.~~

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

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

785       212.0306 Local option food and beverage tax; procedure for  
786 levying; authorized uses; administration.--

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

793       Section 4. Paragraph (b) of subsection (1) of section  
794 212.04, Florida Statutes, is amended to read:

795       212.04 Admissions tax; rate, procedure, enforcement.--

796       (1)

797       (b) For the exercise of this such privilege, a tax is  
798 levied at the rate of 6 percent of the sales price, or the actual  
799 value received for ~~from such~~ admissions, which ~~6 percent~~ shall be  
800 added to and collected with all ~~such~~ admissions paid by ~~from~~ the  
801 purchaser thereof, ~~and such tax shall be paid for the exercise of~~  
802 ~~the privilege as defined in the preceding paragraph.~~ Each ticket  
803 must show on its face the actual sales price of the admission, or  
804 each dealer selling the admission must prominently display at the  
805 box office or other place where the admission charge is made a

31-02574-08

2008962\_\_

806 notice disclosing the price of the admission, and the tax shall  
807 be computed and collected on the basis of the actual price of the  
808 admission charged by the dealer. The sale price or actual value  
809 of admission shall, for the purpose of this chapter, be that  
810 price remaining after deduction of federal taxes and state or  
811 locally imposed or authorized seat surcharges, taxes, or fees, if  
812 any, imposed upon such admission. The sale price or actual value  
813 does not include separately stated ticket service charges that  
814 are imposed by a facility ticket office or a ticketing service  
815 and added to a separately stated, established ticket price. The  
816 rate of tax on each admission shall be determined in accordance  
817 with ~~according to the brackets established by~~ s. 212.12(9).

818 Section 5. Paragraphs (c) and (e) of subsection (1) and  
819 subsection (4) of section 212.05, Florida Statutes, are amended  
820 to read:

821 212.05 Sales, storage, use tax.--It is hereby declared to  
822 be the legislative intent that every person is exercising a  
823 taxable privilege who engages in the business of selling tangible  
824 personal property at retail in this state, including the business  
825 of making mail order sales, or who rents or furnishes any of the  
826 things or services taxable under this chapter, or who stores for  
827 use or consumption in this state any item or article of tangible  
828 personal property as defined herein and who leases or rents such  
829 property within the state.

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

833 (c) At the rate of 6 percent of the gross proceeds derived  
834 from the lease or rental of tangible personal property, ~~as~~

31-02574-08

2008962\_\_

835 ~~defined herein; however, the following special provisions apply~~  
836 ~~to the lease or rental of motor vehicles:~~

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

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

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

844 ~~2. Except as provided in subparagraph 3., for the lease or~~  
845 ~~rental of a motor vehicle for a period of not less than 12~~  
846 ~~months, sales tax is due on the lease or rental payments if the~~  
847 ~~vehicle is registered in this state; provided, however, that no~~  
848 ~~tax shall be due if the taxpayer documents use of the motor~~  
849 ~~vehicle outside this state and tax is being paid on the lease or~~  
850 ~~rental payments in another state.~~

851 ~~3. The tax imposed by this chapter does not apply to the~~  
852 ~~lease or rental of a commercial motor vehicle as defined in s.~~  
853 ~~316.003(66) (a) to one lessee or rentee for a period of not less~~  
854 ~~than 12 months when tax was paid on the purchase price of such~~  
855 ~~vehicle by the lessor. To the extent tax was paid with respect to~~  
856 ~~the purchase of such vehicle in another state, territory of the~~  
857 ~~United States, or the District of Columbia, the Florida tax~~  
858 ~~payable shall be reduced in accordance with the provisions of s.~~  
859 ~~212.06(7). This subparagraph shall only be available when the~~  
860 ~~lease or rental of such property is an established business or~~  
861 ~~part of an established business or the same is incidental or~~  
862 ~~germane to such business.~~

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

31-02574-08

2008962\_\_

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

867 (I) "Prepaid calling arrangement" means the separately  
868 stated retail sale by advance payment of communications services  
869 that consist exclusively of telephone calls originated by using  
870 an access number, authorization code, or other means that may be  
871 manually, electronically, or otherwise entered and that are sold  
872 in predetermined units or dollars whose number declines with use  
873 in a known amount.

874 (II) The sale or recharge of the prepaid calling  
875 arrangement is deemed to take place in accordance with paragraph  
876 212.06(2)(d). For a sale of a mobile communications service that  
877 is a prepaid calling arrangement, the retail sale may be sourced  
878 at ~~If the sale or recharge of the prepaid calling arrangement~~  
879 ~~does not take place at the dealer's place of business, it shall~~  
880 ~~be deemed to take place at the customer's shipping address or, if~~  
881 ~~no item is shipped, at the customer's address or the location~~  
882 associated with the customer's mobile telephone number.

883 (III) The sale or recharge of a prepaid calling arrangement  
884 shall be treated as a sale of tangible personal property for  
885 purposes of this chapter, whether or not a tangible item  
886 evidencing such arrangement is furnished to the purchaser, and  
887 the ~~such~~ sale within this state subjects the selling dealer to  
888 the jurisdiction of this state for purposes of this subsection.

889 b. The installation of telecommunication and telegraphic  
890 equipment.

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

31-02574-08

2008962\_\_

893           2. The provisions of s. 212.17(3), regarding credit for tax  
894 paid on charges subsequently found to be worthless, are ~~shall be~~  
895 equally applicable to a ~~any~~ tax paid under ~~the provisions of~~ this  
896 section on charges for prepaid calling arrangements,  
897 telecommunication or telegraph services, or electric power  
898 subsequently found to be uncollectible. The word "charges" in  
899 this paragraph does not include any excise or similar tax levied  
900 by the Federal Government, any political subdivision of the  
901 state, or any municipality upon the purchase, sale, or recharge  
902 of prepaid calling arrangements or upon the purchase or sale of  
903 telecommunication, television system program, or telegraph  
904 service or electric power, which tax is collected by the seller  
905 from the purchaser.

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

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

911           212.0506 Taxation of service warranties.--

912           (6) This tax shall be due and payable according to the  
913 applicable state and local rate provided ~~brackets set forth~~ in s.  
914 212.12.

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

920           Section 7. Section 212.054, Florida Statutes, is amended to  
921 read:



31-02574-08

2008962\_\_

922 212.054 Discretionary sales surtax; limitations,  
923 administration, and collection.--

924 (1) A ~~No~~ general excise tax on sales may not shall be  
925 levied by the governing body of a ~~any~~ county unless specifically  
926 authorized in s. 212.055. Any general excise tax on sales  
927 authorized pursuant to that ~~said~~ section shall be administered  
928 and collected exclusively as provided in this section.

929 (2) ~~(a)~~ The tax imposed by the governing body of a ~~any~~  
930 county ~~authorized to so levy~~ pursuant to s. 212.055 shall be a  
931 discretionary surtax on all transactions occurring in the county  
932 which ~~transactions~~ are subject to the state tax imposed on sales,  
933 use, services, rentals, admissions, and other transactions by  
934 this chapter and on communications services under ~~as defined for~~  
935 ~~purposes of~~ chapter 202.

936 (a) The surtax, if levied, shall be computed as the  
937 applicable rate or rates authorized pursuant to s. 212.055 times  
938 the amount of taxable sales and taxable purchases representing  
939 such transactions. If the surtax is levied on the sale of an item  
940 of tangible personal property or on the sale of a service, the  
941 surtax shall be computed by multiplying the rate imposed by the  
942 county within which the sale occurs by the amount of the taxable  
943 sale. The sale of an item of tangible personal property or the  
944 sale of a service is not subject to the surtax if the property,  
945 the service, or the tangible personal property representing the  
946 service is delivered within a county that does not impose a  
947 discretionary sales surtax.

948 (b) However:

949 1. A ~~The~~ sales amount above \$5,000 on an ~~any~~ item of  
950 tangible personal property is ~~shall~~ not be subject to the surtax.

31-02574-08

2008962\_\_

951 However, charges for prepaid calling arrangements, as described  
952 ~~defined~~ in s. 212.05(1)(e)1.a., are ~~shall be~~ subject to the  
953 surtax. For purposes of administering the \$5,000 limitation ~~on an~~  
954 ~~item of tangible personal property~~, if two or more taxable items  
955 of tangible personal property are sold to the same purchaser at  
956 the same time and, under generally accepted business practice or  
957 industry standards or usage, are normally sold in bulk or are  
958 items that, when assembled, comprise a working unit or part of a  
959 working unit, the such items shall ~~must~~ be considered a single  
960 item for purposes of the \$5,000 limitation if ~~when~~ supported by a  
961 charge ticket, sales slip, invoice, or other tangible evidence of  
962 a single sale or rental.

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

966 a. For a rate adoption or increase, the new rate shall  
967 apply to the first billing period starting on or after the  
968 effective date of the surtax or increase.

969 b. For a rate decrease or termination, the new rate shall  
970 apply to bills rendered on or after the effective date of the  
971 rate change ~~the entire amount of the charge for utility services~~  
972 ~~shall be subject to the surtax. In the case of utility services~~  
973 ~~billed after the last day the surtax is in effect, the entire~~  
974 ~~amount of the charge on said items shall not be subject to the~~  
975 ~~surtax.~~

976  
977 "Utility service," as used in this paragraph ~~section~~, does not  
978 include any communications services as defined in chapter 202.

31-02574-08

2008962\_\_

979           3. For ~~In the case of~~ written contracts that ~~which~~ are  
980 signed before ~~prior to~~ the effective date of the ~~any such~~ surtax  
981 for the construction of improvements to real property or for  
982 remodeling of existing structures, the surtax shall be paid by  
983 the contractor responsible for the performance of the contract.  
984 However, the contractor may apply for one refund of the ~~any such~~  
985 surtax paid on materials necessary for the completion of the  
986 contract. An ~~Any~~ application for refund must ~~shall~~ be made within  
987 ~~no later than~~ 15 months after the ~~following~~ initial imposition of  
988 the surtax in that county. The application for refund shall be in  
989 the manner prescribed by the department by rule. A complete  
990 application must ~~shall~~ include proof of the written contract and  
991 of payment of the surtax, and. ~~The application shall~~ contain a  
992 sworn statement, signed by the applicant or its representative,  
993 attesting to the validity of the application. The department  
994 shall, within 30 days after approval of a complete application,  
995 certify to the county information necessary for issuance of a  
996 refund to the applicant. Counties are ~~hereby~~ authorized to issue  
997 refunds for this purpose and must ~~shall~~ set aside from the  
998 proceeds of the surtax a sum sufficient to pay any refund  
999 lawfully due. Any person who fraudulently obtains or attempts to  
1000 obtain a refund pursuant to this subparagraph, in addition to  
1001 being liable for repayment of any refund fraudulently obtained  
1002 plus a mandatory penalty of 100 percent of the refund, commits ~~is~~  
1003 ~~guilty of~~ a felony of the third degree, punishable as provided in  
1004 s. 775.082, s. 775.083, or s. 775.084.

1005           4. For a ~~In the case of~~ any vessel, railroad, or motor  
1006 vehicle common carrier entitled to a partial exemption from tax  
1007 imposed under this chapter pursuant to s. 212.08(4), (8), or (9),

31-02574-08

2008962\_\_

1008 the basis for imposition of the surtax ~~is shall be~~ the same as  
1009 provided in s. 212.08 and the ratio shall be applied each month  
1010 to total purchases in this state of property qualified for  
1011 proration which is delivered or sold in the taxing county to  
1012 establish the portion used and consumed in intracounty movement  
1013 and subject to surtax.

1014 (3) Except as otherwise provided in this section, a  
1015 discretionary surtax applies to a retail sale, lease, or rental  
1016 of tangible personal property, a digital good, or a service if,  
1017 under s. 212.06(2), the transaction occurs in a county that  
1018 imposes a surtax. ~~For the purpose of this section,~~ A transaction  
1019 shall be deemed to have occurred in a county if ~~imposing the~~  
1020 ~~surtax when:~~

1021 (a)~~1~~. The retail sale of a modular or manufactured home,  
1022 not including a mobile home, occurs in the county where the home  
1023 is delivered. ~~The sale includes an item of tangible personal~~  
1024 ~~property, a service, or tangible personal property representing a~~  
1025 ~~service, and the item of tangible personal property, the service,~~  
1026 ~~or the tangible personal property representing the service is~~  
1027 ~~delivered within the county. If there is no reasonable evidence~~  
1028 ~~of delivery of a service, the sale of a service is deemed to~~  
1029 ~~occur in the county in which the purchaser accepts the bill of~~  
1030 ~~sale.~~

1031 (b)~~2~~. The retail sale, excluding a lease or rental, of a  
1032 motor vehicle that does not qualify as transportation equipment  
1033 or a ~~The sale of any motor vehicle or~~ mobile home of a class or  
1034 type that ~~which~~ is required to be registered in this state or in  
1035 any other state occurs ~~shall be deemed to have occurred only in~~

31-02574-08

2008962\_\_

1036 the county identified as the residence ~~address~~ of the purchaser  
1037 on the registration or title document for the ~~such~~ property.

1038 (c) The lease or rental of real property occurs in the  
1039 county in which the real property is located.

1040 (d) A transient rental transaction occurs in the county in  
1041 which the rental property is located.

1042 (e) ~~(b)~~ ~~The event for which an Admission~~ for an event is  
1043 charged ~~is located~~ in the county in which the event is held.

1044 ~~(c) The consumer of utility services is located in the~~  
1045 ~~county.~~

1046 (f) A transaction made from a coin-operated amusement  
1047 machine or vending machine occurs in the county in which the  
1048 machine is located.

1049 (g) A florist taking the original order to sell tangible  
1050 personal property is located in the county in which the order  
1051 occurs.

1052 (h) The retail sale, excluding the lease or rental, of  
1053 aircraft that does not qualify as transportation equipment, or a  
1054 boat of a class or type that is required to be registered,  
1055 licensed, titled, or documented in this state or by the Federal  
1056 Government occurs in the county in which the aircraft or boat is  
1057 delivered.

1058 (i) ~~(d)1.~~ The use ~~user~~ of any aircraft or boat of a class or  
1059 type that ~~which~~ is required to be registered, licensed, titled,  
1060 or documented in this state or by the Federal ~~United States~~  
1061 Government imported into the county for use, consumption,  
1062 distribution, or storage to be used or consumed occurs in the  
1063 county in which the user is located ~~in the county.~~

31-02574-08

2008962\_\_

1064           2. However, it is ~~shall be~~ presumed that ~~such~~ items used  
1065 outside the county for 6 months or longer before being imported  
1066 into the county were not purchased for use in the county, except  
1067 as provided in s. 212.06(8)(b).

1068           3. This paragraph does not apply to the use or consumption  
1069 of items upon which a like tax of equal or greater amount has  
1070 been lawfully imposed and paid outside the county.

1071           (j) ~~(e)~~ The purchase purchaser of a any motor vehicle or  
1072 mobile home of a class or type that ~~which~~ is required to be  
1073 registered in this state occurs in the county identified as the  
1074 residence of the purchaser ~~is a resident of the taxing county as~~  
1075 ~~determined by the address appearing on or to be reflected on the~~  
1076 registration document for the ~~such~~ property.

1077           (k) ~~(f)~~1. The use, consumption, distribution, or storage of  
1078 a Any motor vehicle or mobile home of a class or type that ~~which~~  
1079 is required to be registered in this state and that is imported  
1080 from another state occurs in the county to which it is imported  
1081 ~~into the taxing county by a user residing therein for the purpose~~  
1082 ~~of use, consumption, distribution, or storage in the taxing~~  
1083 ~~county.~~

1084           2. However, it is ~~shall be~~ presumed that ~~such~~ items used  
1085 outside the taxing county for 6 months or longer before being  
1086 imported into the county were not purchased for use in the  
1087 county.

1088           ~~(g) The real property which is leased or rented is located~~  
1089 ~~in the county.~~

1090           ~~(h) The transient rental transaction occurs in the county.~~

1091           ~~(i) The delivery of any aircraft or boat of a class or type~~  
1092 ~~which is required to be registered, licensed, titled, or~~

31-02574-08

2008962\_\_

1093 ~~documented in this state or by the United States Government is to~~  
1094 ~~a location in the county. However, this paragraph does not apply~~  
1095 ~~to the use or consumption of items upon which a like tax of equal~~  
1096 ~~or greater amount has been lawfully imposed and paid outside the~~  
1097 ~~county.~~

1098 (l)~~(j)~~ The dealer owing a use tax on purchases or leases is  
1099 located in the county.

1100 ~~(k) The delivery of tangible personal property other than~~  
1101 ~~that described in paragraph (d), paragraph (e), or paragraph (f)~~  
1102 ~~is made to a location outside the county, but the property is~~  
1103 ~~brought into the county within 6 months after delivery, in which~~  
1104 ~~event, the owner must pay the surtax as a use tax.~~

1105 ~~(l) The coin-operated amusement or vending machine is~~  
1106 ~~located in the county.~~

1107 ~~(m) The florist taking the original order to sell tangible~~  
1108 ~~personal property is located in the county, notwithstanding any~~  
1109 ~~other provision of this section.~~

1110 (4)(a) The department shall administer, collect, and  
1111 enforce a discretionary surtax ~~the tax~~ authorized under s.  
1112 212.055 pursuant to the same procedures used in the  
1113 administration, collection, and enforcement of the general state  
1114 sales tax imposed under ~~the provisions of~~ this chapter, except as  
1115 provided in this section. The provisions of this chapter  
1116 regarding interest and penalties on delinquent taxes shall also  
1117 apply to the surtax. Discretionary sales surtaxes may ~~shall~~ not  
1118 be included in the computation of estimated taxes pursuant to s.  
1119 212.11. Notwithstanding any other provision of law, ~~a dealer need~~  
1120 ~~not separately state~~ the amount of the surtax does not need to be  
1121 separately stated on the charge ticket, sales slip, invoice, or

31-02574-08

2008962\_\_

1122 other tangible evidence of sale. For the purposes of this section  
1123 and s. 212.055, the "proceeds" of a any surtax means all funds  
1124 collected and received by the department pursuant to a specific  
1125 authorization and levy under s. 212.055, including any interest  
1126 and penalties on delinquent surtaxes.

1127 (a) ~~(b)~~ The proceeds of a discretionary sales surtax  
1128 collected by the selling dealer located in a county that ~~which~~  
1129 imposes the surtax shall be returned, less the cost of  
1130 administration, to the county where the selling dealer is  
1131 located. The proceeds shall be transferred to the Discretionary  
1132 Sales Surtax Clearing Trust Fund. A separate account shall be  
1133 established in the ~~such~~ trust fund for each county imposing a  
1134 discretionary surtax. The amount deducted for the costs of  
1135 administration may ~~shall~~ not exceed 3 percent of the total  
1136 revenue generated for all counties levying a discretionary surtax  
1137 ~~authorized in s. 212.055~~. The amount deducted for the costs of  
1138 administration shall be used only for those costs that ~~which~~ are  
1139 solely and directly attributable to the surtax. The total cost of  
1140 administration shall be prorated among those counties levying the  
1141 surtax on the basis of the amount collected for a particular  
1142 county to the total amount collected for all counties. By ~~No~~  
1143 ~~later than~~ March 1 of each year, the department shall submit a  
1144 written report that ~~which~~ details the expenses and amounts  
1145 deducted for the costs of administration to the President of the  
1146 Senate, the Speaker of the House of Representatives, and the  
1147 governing authority of each county levying a surtax. The  
1148 department shall distribute the moneys in the trust fund each  
1149 month to the appropriate counties pursuant to, ~~unless otherwise~~  
1150 ~~provided in~~ s. 212.055.



31-02574-08

2008962\_\_

1151            (b)(e)1. A Any dealer located in a county that does not  
1152 impose a discretionary sales surtax but who collects the surtax  
1153 due to sales of tangible personal property or services delivered  
1154 outside the county shall remit monthly the proceeds of the surtax  
1155 to the department to be deposited into an account in the  
1156 Discretionary Sales Surtax Clearing Trust Fund which is separate  
1157 from the county surtax collection accounts. The department shall  
1158 distribute funds in this account using a distribution factor  
1159 determined for each county that levies a surtax and multiplied by  
1160 the amount of funds in the account and available for  
1161 distribution.

1162            1. The distribution factor for each county equals the  
1163 product of:

1164            a. The county's latest official population determined  
1165 pursuant to s. 186.901;

1166            b. The county's rate of surtax; and

1167            c. The number of months the county has levied a surtax  
1168 during the most recent distribution period;

1169

1170 divided by the sum of all such products of the counties levying  
1171 the surtax during the most recent distribution period.

1172            2. The department shall compute distribution factors for  
1173 eligible counties once each quarter and make appropriate  
1174 quarterly distributions.

1175            3. A county that fails to timely provide the information  
1176 required by this section to the department authorizes the  
1177 department, ~~by such action,~~ to use the best information available  
1178 to it in distributing surtax revenues to the county. If this  
1179 information is unavailable ~~to the department,~~ the department may

31-02574-08

2008962\_\_

1180 partially or entirely disqualify the county from receiving surtax  
1181 revenues ~~under this paragraph~~. A county that fails to provide  
1182 timely information waives its right to challenge the department's  
1183 determination of the county's share, if any, of revenues provided  
1184 under this paragraph.

1185 ~~(5) No discretionary sales surtax or increase or decrease~~  
1186 ~~in the rate of any discretionary sales surtax shall take effect~~  
1187 ~~on a date other than January 1. No discretionary sales surtax~~  
1188 ~~shall terminate on a day other than December 31.~~

1189 (5)~~(6)~~ The governing body of a ~~any~~ county levying a  
1190 discretionary sales surtax shall enact an ordinance levying the  
1191 surtax in accordance with the procedures described in s.  
1192 125.66(2).

1193 (6)~~(7)~~(a) An adoption, repeal, or rate change of a  
1194 discretionary surtax by the governing body of a ~~any~~ county  
1195 levying a ~~discretionary sales~~ surtax or the school board of a ~~any~~  
1196 county levying the school capital outlay surtax authorized by s.  
1197 212.055(6) is effective on April 1.

1198 (a) A county or school board must ~~shall~~ notify the  
1199 department within 10 days after final adoption by ordinance or  
1200 referendum of an adoption, repeal, ~~imposition, termination,~~ or  
1201 rate change of the surtax, but no later than November 16  
1202 immediately preceding ~~prior to~~ the effective date. The notice  
1203 must specify the time period during which the surtax will be in  
1204 effect and the rate and must include a copy of the ordinance and  
1205 such other information as the department requires by rule.  
1206 Failure to timely provide ~~such~~ notification to the department  
1207 shall result in the delay of the effective date for a period of 1  
1208 year.

31-02574-08

2008962\_\_

1209           (b) A county or school board must also notify the  
1210 department ~~In addition to the notification required by paragraph~~  
1211 ~~(a), the governing body of any county proposing to levy a~~  
1212 ~~discretionary sales surtax or the school board of any county~~  
1213 ~~proposing to levy the school capital outlay surtax authorized by~~  
1214 ~~s. 212.055(6) shall notify the department by October 1 if the~~  
1215 ~~referendum or consideration of the ordinance that would result in~~  
1216 ~~imposition, termination, or rate change of the surtax is~~  
1217 ~~scheduled to occur on or after October 1 of that year. Failure to~~  
1218 ~~timely provide such notification to the department shall result~~  
1219 ~~in the delay of the effective date for a period of 1 year.~~

1220           (c) The department shall provide notice of the adoption,  
1221 repeal, or change to affected sellers by December 1 immediately  
1222 preceding the effective date.

1223           (d) A surtax may be terminated only on April 1. A surtax  
1224 imposed before January 1, 2009, for which an ordinance provides a  
1225 different termination date terminates on April 1 following the  
1226 termination date established in the ordinance.

1227           ~~(7)(8)~~ With respect to a ~~any~~ motor vehicle or mobile home  
1228 of a class or type which is required to be registered in this  
1229 state, the tax due on a transaction occurring in the taxing  
1230 county ~~as herein provided~~ shall be collected from the purchaser  
1231 or user incident to the titling and registration of the ~~such~~  
1232 property, irrespective of whether such titling or registration  
1233 occurs in the taxing county.

1234           (8) For the purpose of the state in providing and  
1235 maintaining a database of all sales and use tax rates for all  
1236 local taxing jurisdictions in accordance with the Streamlined

31-02574-08

2008962\_\_

1237 Sales and Use Tax Agreement under s. 213.256, the provisions of  
1238 s. 202.22(2) apply.

1239 (a) A seller or certified service provider who collects and  
1240 remits the state and local tax imposed by this chapter is held  
1241 harmless from tax, interest, and penalties due solely as a result  
1242 of relying on erroneous data on tax rates, boundaries, or taxing  
1243 jurisdiction assignments provided by the state if the seller or  
1244 certified service provider exercises due diligence in applying  
1245 one or more of the following methods for determining the taxing  
1246 jurisdiction and tax rate for a transaction:

1247 1. Employing an electronic database provided by the  
1248 department under s. 202.22(2); or

1249 2. Employing a database that has been approved by the  
1250 county governing board and developed by a seller or certified  
1251 service provider.

1252 (b) If a seller or certified service provider does not use  
1253 one of the methods specified in paragraph (a), the seller or  
1254 certified service provider may be held liable to the department  
1255 for tax, interest, and penalties that are due for charging and  
1256 collecting the incorrect amount of tax.

1257 Section 8. Section 212.06, Florida Statutes, is amended to  
1258 read:

1259 212.06 Sales, storage, use tax; transaction location;  
1260 ~~collectible from dealers; "dealer" defined;~~ dealers to collect  
1261 from purchasers; mail order sales; legislative intent as to scope  
1262 of tax.--

1263 (1) (a) The ~~aforsaid~~ tax at the rate of 6 percent of the  
1264 retail sales price as of the moment of sale, 6 percent of the  
1265 cost price as of the moment of purchase, or 6 percent of the cost

31-02574-08

2008962\_\_

1266 price as of the moment of commingling with the general mass of  
1267 property in this state, ~~as the case may be,~~ shall be collectible  
1268 from all dealers ~~as herein defined~~ on the sale at retail, the  
1269 use, the consumption, the distribution, and the storage for use  
1270 or consumption in this state of tangible personal property or  
1271 services taxable under this chapter. The full amount of the tax  
1272 on a credit sale, installment sale, or sale made on any kind of  
1273 deferred payment plan is ~~shall be~~ due at the moment of the  
1274 transaction in the same manner as on a cash sale.

1275 (b) Except as otherwise provided, any person who  
1276 manufactures, produces, compounds, processes, or fabricates in  
1277 any manner tangible personal property for his or her own use  
1278 shall pay a tax upon the cost of the product manufactured,  
1279 produced, compounded, processed, or fabricated without any  
1280 deduction for ~~therefrom on account of~~ the cost of material used,  
1281 labor or service costs, or transportation charges,  
1282 notwithstanding ~~the provisions of~~ s. 212.02 defining "cost  
1283 price." However, the tax may ~~levied under this paragraph shall~~  
1284 not be imposed upon any person who manufactures or produces  
1285 electrical power or energy, steam energy, or other energy at a  
1286 single location, if the ~~when such~~ power or energy is used  
1287 directly and exclusively at that ~~such~~ location, or at other  
1288 locations if the energy is transferred through facilities of the  
1289 owner in the operation of machinery or equipment that is used to  
1290 manufacture, process, compound, produce, fabricate, or prepare  
1291 for shipment tangible personal property for sale or to operate  
1292 pollution control equipment, maintenance equipment, or monitoring  
1293 or control equipment used in such operations. The manufacture or  
1294 production of electrical power or energy that is used for space

31-02574-08

2008962\_\_

1295 heating, lighting, office equipment, or air-conditioning or any  
1296 other nonmanufacturing, nonprocessing, noncompounding,  
1297 nonproducing, nonfabricating, or nonshipping activity is taxable.  
1298 Electrical power or energy consumed or dissipated in the  
1299 transmission or distribution of electrical power or energy for  
1300 resale is also not taxable. Fabrication labor is ~~shall~~ not ~~be~~  
1301 taxable if ~~when~~ a person is using his or her own equipment and  
1302 personnel, for his or her own account, as a producer,  
1303 subproducer, or coproducer of a qualified motion picture. For  
1304 purposes of this chapter, the term "qualified motion picture"  
1305 means all or any part of a series of related images, ~~either~~ on  
1306 film, tape, or other embodiment, including, but not limited to,  
1307 all items comprising part of the original work and film-related  
1308 products derived therefrom as well as duplicates and prints  
1309 thereof and all sound recordings created to accompany a motion  
1310 picture, which is produced, adapted, or altered for exploitation  
1311 in, on, or through any medium or device and at any location,  
1312 primarily for entertainment, commercial, industrial, or  
1313 educational purposes. This exemption for fabrication labor  
1314 associated with production of a qualified motion picture inures  
1315 ~~will inure~~ to the taxpayer upon presentation of the certificate  
1316 of exemption issued to the taxpayer under ~~the provisions of~~ s.  
1317 288.1258. A person who manufactures factory-built buildings for  
1318 his or her own use in the performance of contracts for the  
1319 construction or improvement of real property shall pay a tax only  
1320 upon the person's cost price of items used in the manufacture of  
1321 the ~~such~~ buildings.

1322 (c)~~1~~. Notwithstanding ~~the provisions of~~ paragraph (b), the  
1323 use tax on asphalt manufactured for one's own use shall be

31-02574-08

2008962\_\_

1324 calculated ~~with respect to paragraph (b)~~ only upon the cost of  
1325 materials that ~~which~~ become a component part or that ~~which~~ are an  
1326 ingredient of the finished asphalt and upon the cost of the  
1327 transportation of the ~~such~~ components and ingredients. In  
1328 addition, an indexed tax of 38 cents per ton of such manufactured  
1329 asphalt is ~~shall be~~ due at the same time and in the same manner  
1330 as taxes due under ~~pursuant to~~ paragraph (b).

1331 1. Beginning July 1, 1989, the indexed tax must ~~shall~~ be  
1332 adjusted each July 1 to an amount, rounded to the nearest cent,  
1333 equal to the product of 38 cents multiplied by a fraction, the  
1334 numerator of which is the annual average of the "materials and  
1335 components for construction" series of the producer price index,  
1336 as calculated and published by the United States Department of  
1337 Labor, Bureau of Statistics, for the previous calendar year, and  
1338 the denominator of which is the annual average of that ~~said~~  
1339 series for calendar year 1988.

1340 2.a. Beginning July 1, 1999, the indexed tax imposed by  
1341 this paragraph on manufactured asphalt ~~which is~~ used for a ~~any~~  
1342 federal, state, or local government public works project shall be  
1343 reduced by 20 percent.

1344 3.b. Beginning July 1, 2000, the indexed tax imposed by  
1345 this paragraph on manufactured asphalt ~~which is~~ used for a ~~any~~  
1346 federal, state, or local government public works project shall be  
1347 reduced by 40 percent.

1348 (d) For purposes of paragraph (b), the department may  
1349 establish a cost price amount for industry groups that  
1350 manufacture, produce, compound, process, or fabricate tangible  
1351 personal property for their own use in the performance of  
1352 contracts for improvements to real property. The ~~Such~~ cost price

31-02574-08

2008962\_\_

1353 amount must be established as a percentage, rounded to the  
1354 nearest whole number, of the total contract price charged for the  
1355 improvement. The cost price percentages ~~established~~ must be  
1356 adopted by rule pursuant to ~~the procedures provided in~~ s. 120.54,  
1357 upon petition of a majority of the members of an industry group  
1358 or by a statewide association that represents the ~~such~~ industry  
1359 group, and must be based on a reasonable estimate of average  
1360 costs incurred by members of the petitioning industry group. The  
1361 department shall ~~is required to~~ adopt a cost price percentage  
1362 only if sufficient information is available to determine such  
1363 percentage. The information ~~considered by the department to~~  
1364 ~~establish the cost price percentage~~ must be ~~that~~ set forth in the  
1365 petition or ~~that which is~~ otherwise be made available to the  
1366 department. A ~~Any~~ cost price percentage so established shall ~~must~~  
1367 be made available only by election of a member of the industry  
1368 group for which the percentage was established and applies ~~may~~  
1369 ~~apply~~ only to the ~~such~~ periods or contracts for which the  
1370 election is made. The election must be made by the taxpayer by  
1371 timely accruing and remitting tax on the contract using the  
1372 established percentage figure. If the taxpayer does not timely  
1373 accrue and remit the use tax due for a contract using the  
1374 percentage figure, the taxpayer may not later use this method of  
1375 calculating the use tax due for that contract. Taxpayers must  
1376 maintain adequate records showing the accrual of tax using the  
1377 percentage figure on total contract price. A ~~Any~~ cost price so  
1378 established must remain available for use for a period of at  
1379 least 5 years from the date of its adoption and must be reviewed  
1380 and be subject to adjustment by the department no more frequently



31-02574-08

2008962\_\_

1381 than at 5-year intervals. The provisions of this paragraph are  
1382 not available to persons subject to paragraph (c).

1383 (e)~~1.~~ Notwithstanding any other provision of this chapter,  
1384 tax may ~~shall~~ not be imposed on a ~~any~~ vessel registered under s.  
1385 328.52 by a vessel dealer or vessel manufacturer and ~~with respect~~  
1386 ~~to a vessel~~ used solely for demonstration, sales promotional, or  
1387 testing purposes. The term "promotional purposes" includes ~~shall~~  
1388 ~~include~~, but is not ~~be~~ limited to, participation in fishing  
1389 tournaments. For the purposes of this paragraph, "promotional  
1390 purposes" means the entry of the vessel in a marine-related event  
1391 where prospective purchasers would be in attendance, ~~where~~ the  
1392 vessel is entered in the name of the dealer or manufacturer, ~~and~~  
1393 ~~where~~ the vessel is clearly marked as for sale, ~~on which vessel~~  
1394 the name of the dealer or manufacturer is clearly displayed on  
1395 the vessel, and the ~~which~~ vessel has never been transferred into  
1396 the dealer's or manufacturer's accounting books from an inventory  
1397 item to a capital asset for depreciation purposes.

1398 1.2. The provisions of this paragraph do not apply to a ~~any~~  
1399 vessel ~~when~~ used for transporting persons or goods for  
1400 compensation; ~~when~~ offered, let, or rented to another for  
1401 consideration; ~~when~~ offered for rent or hire as a means of  
1402 transportation for compensation; or ~~when~~ offered or used to  
1403 provide transportation for persons solicited through personal  
1404 contact or through advertisement on a "share expense" basis.

1405 2.3. Notwithstanding any other provision of this chapter,  
1406 tax may not be imposed on a ~~any~~ vessel imported into this state  
1407 for the sole purpose of being offered for sale at retail by a  
1408 yacht broker or yacht dealer registered in this state if the  
1409 vessel remains under the care, custody, and control of the

31-02574-08

2008962\_\_

1410 registered broker or dealer and the owner of the vessel does not  
1411 make personal use of the vessel during that time. The provisions  
1412 of this chapter govern the taxability of any sale or use of the  
1413 vessel subsequent to its importation under this provision.

1414 (2) The provisions of this subsection shall be used to  
1415 determine the location where a transaction occurs for purposes of  
1416 applying the tax imposed by this chapter.

1417 (a) For purposes of this subsection, the term:

1418 1. "Receive" and "receipt" means taking possession of  
1419 tangible personal property; making first use of services; or  
1420 taking possession or making first use of digital goods, whichever  
1421 occurs first. The terms do not include possession by a shipping  
1422 company on behalf of the purchaser.

1423 2. "Product" means tangible personal property, a digital  
1424 good, or a service.

1425 (b) The retail sale of a product, excluding a lease or  
1426 rental, shall be sourced as follows:

1427 1. At a business location of the seller, if the product is  
1428 received by the purchaser at that location.

1429 2. If subparagraph 1. does not apply, at the location the  
1430 product is received by the purchaser or the purchaser's donee, as  
1431 designated by the purchaser, including the location indicated by  
1432 delivery instructions known to the seller.

1433 3. If subparagraphs 1. and 2. do not apply, at the  
1434 purchaser's address, which is available from the seller's  
1435 business records maintained in the ordinary course of business,  
1436 if use of this address does not constitute bad faith.

1437 4. If subparagraphs 1., 2., and 3. do not apply, at the  
1438 purchaser's address obtained during the consummation of the sale,

31-02574-08

2008962\_\_

1439 including the address of a purchaser's payment instrument, if no  
1440 other address is available, if use of this address does not  
1441 constitute bad faith.

1442 5. If subparagraphs 1., 2., 3., and 4. do not apply,  
1443 including when the seller is without sufficient information to  
1444 apply the previous paragraphs, the address from which the  
1445 tangible personal property was shipped, the digital good or the  
1446 computer software delivered electronically was first available  
1447 for transmission by the seller, or the service was provided,  
1448 disregarding a location that merely provided the digital transfer  
1449 of the product sold.

1450 (c) The lease or rental of tangible personal property,  
1451 other than property identified in paragraphs (d) and (e), shall  
1452 be sourced as follows:

1453 1. For a lease or rental that requires recurring periodic  
1454 payments, the first payment is deemed to take place in accordance  
1455 with paragraph (b) notwithstanding the exclusion of a lease or  
1456 rental. Subsequent periodic payments are deemed to have occurred  
1457 at the primary property location for each period covered by the  
1458 payment. The primary property location is the address for the  
1459 property provided by the lessee, which is available to the lessor  
1460 from its records maintained in the ordinary course of business,  
1461 if use of this address does not constitute bad faith. The  
1462 property location is not altered by intermittent use of the  
1463 property at different locations, such as the use of business  
1464 property that accompanies employees on business trips and service  
1465 calls.

1466 2. For a lease or rental that does not require recurring  
1467 periodic payments, the payment is deemed to take place in

31-02574-08

2008962\_\_

1468 accordance with paragraph (b) notwithstanding the exclusion of a  
1469 lease or rental.

1470 3. This paragraph does not affect the imposition or  
1471 computation of sales or use tax on leases or rentals based on a  
1472 lump sum or accelerated basis, or on the acquisition of property  
1473 for lease.

1474 (d) The lease or rental of a motor vehicle or aircraft that  
1475 does not qualify as transportation equipment shall be sourced as  
1476 follows:

1477 1. For a lease or rental that requires recurring periodic  
1478 payments, each periodic payment is deemed to take place at the  
1479 primary property location. The primary property location is the  
1480 address for the property provided by the lessee, which is  
1481 available to the lessor from its records maintained in the  
1482 ordinary course of business, if use of this address does not  
1483 constitute bad faith. This location may not be altered by  
1484 intermittent use at different locations.

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 taxes on leases or rentals based on a  
1491 lump-sum or accelerated basis, or on the acquisition of property  
1492 for lease.

1493 (e) The retail sale, including lease or rental, of  
1494 transportation equipment shall be deemed to take place in  
1495 accordance with paragraph (b) notwithstanding the exclusion of a  
1496 lease or rental.

31-02574-08

2008962\_\_

1497 (f) This section does not apply to sales or use taxes  
1498 levied on:

1499 1. The retail sale or transfer of a boat, modular home,  
1500 manufactured home, or mobile home.

1501 2. The retail sale, excluding a lease or rental, of a motor  
1502 vehicle or aircraft that does not qualify as transportation  
1503 equipment. The lease or rental of these items shall be deemed to  
1504 have occurred in accordance with paragraph (d).

1505 3. The retail sale of tangible personal property by a  
1506 florist.

1507

1508 Such retail sales are deemed to take place at the location  
1509 determined under s. 212.054(3).

1510 ~~(a) The term "dealer," as used in this chapter, includes~~  
1511 ~~every person who manufactures or produces tangible personal~~  
1512 ~~property for sale at retail; for use, consumption, or~~  
1513 ~~distribution; or for storage to be used or consumed in this~~  
1514 ~~state.~~

1515 ~~(b) The term "dealer" is further defined to mean every~~  
1516 ~~person, as used in this chapter, who imports, or causes to be~~  
1517 ~~imported, tangible personal property from any state or foreign~~  
1518 ~~country for sale at retail; for use, consumption, or~~  
1519 ~~distribution; or for storage to be used or consumed in this~~  
1520 ~~state.~~

1521 ~~(c) The term "dealer" is further defined to mean every~~  
1522 ~~person, as used in this chapter, who sells at retail or who~~  
1523 ~~offers for sale at retail, or who has in his or her possession~~  
1524 ~~for sale at retail; or for use, consumption, or distribution; or~~  
1525 ~~for storage to be used or consumed in this state, tangible~~

31-02574-08

2008962\_\_

1526 ~~personal property as defined herein, including a retailer who~~  
1527 ~~transacts a mail order sale.~~

1528 ~~(d) The term "dealer" is further defined to mean any person~~  
1529 ~~who has sold at retail; or used, or consumed, or distributed; or~~  
1530 ~~stored for use or consumption in this state, tangible personal~~  
1531 ~~property and who cannot prove that the tax levied by this chapter~~  
1532 ~~has been paid on the sale at retail, the use, the consumption,~~  
1533 ~~the distribution, or the storage of such tangible personal~~  
1534 ~~property. However, the term "dealer" does not mean a person who~~  
1535 ~~is not a "dealer" under the definition of any other paragraph of~~  
1536 ~~this subsection and whose only owned or leased property~~  
1537 ~~(including property owned or leased by an affiliate) in this~~  
1538 ~~state is located at the premises of a printer with which it has~~  
1539 ~~contracted for printing, if such property consists of the final~~  
1540 ~~printed product, property which becomes a part of the final~~  
1541 ~~printed product, or property from which the printed product is~~  
1542 ~~produced.~~

1543 ~~(e) The term "dealer" is further defined to mean any~~  
1544 ~~person, as used in this chapter, who leases or rents tangible~~  
1545 ~~personal property, as defined in this chapter, for a~~  
1546 ~~consideration, permitting the use or possession of such property~~  
1547 ~~without transferring title thereto, except as expressly provided~~  
1548 ~~for to the contrary herein.~~

1549 ~~(f) The term "dealer" is further defined to mean any~~  
1550 ~~person, as used in this chapter, who maintains or has within this~~  
1551 ~~state, directly or by a subsidiary, an office, distributing~~  
1552 ~~house, salesroom, or house, warehouse, or other place of~~  
1553 ~~business.~~

31-02574-08

2008962\_\_

1554       ~~(g) "Dealer" also means and includes every person who~~  
1555 ~~solicits business either by direct representatives, indirect~~  
1556 ~~representatives, or manufacturers' agents; by distribution of~~  
1557 ~~catalogs or other advertising matter; or by any other means~~  
1558 ~~whatsoever, and by reason thereof receives orders for tangible~~  
1559 ~~personal property from consumers for use, consumption,~~  
1560 ~~distribution, and storage for use or consumption in the state;~~  
1561 ~~such dealer shall collect the tax imposed by this chapter from~~  
1562 ~~the purchaser, and no action, either in law or in equity, on a~~  
1563 ~~sale or transaction as provided by the terms of this chapter may~~  
1564 ~~be had in this state by any such dealer unless it is~~  
1565 ~~affirmatively shown that the provisions of this chapter have been~~  
1566 ~~fully complied with.~~

1567       ~~(h) "Dealer" also means and includes every person who, as a~~  
1568 ~~representative, agent, or solicitor of an out-of-state principal~~  
1569 ~~or principals, solicits, receives, and accepts orders from~~  
1570 ~~consumers in the state for future delivery and whose principal~~  
1571 ~~refuses to register as a dealer.~~

1572       ~~(i) "Dealer" also means and includes the state, county,~~  
1573 ~~municipality, any political subdivision, agency, bureau or~~  
1574 ~~department, or other state or local governmental instrumentality.~~

1575       ~~(j) The term "dealer" is further defined to mean any person~~  
1576 ~~who leases, or grants a license to use, occupy, or enter upon,~~  
1577 ~~living quarters, sleeping or housekeeping accommodations in~~  
1578 ~~hotels, apartment houses, roominghouses, tourist or trailer~~  
1579 ~~amps, real property, space or spaces in parking lots or garages~~  
1580 ~~for motor vehicles, docking or storage space or spaces for boats~~  
1581 ~~in boat docks or marinas, or tie-down or storage space or spaces~~  
1582 ~~for aircraft at airports. The term "dealer" also means any person~~

31-02574-08

2008962\_\_

1583 ~~who has leased, occupied, or used or was entitled to use any~~  
1584 ~~living quarters, sleeping or housekeeping accommodations in~~  
1585 ~~hotels, apartment houses, roominghouses, tourist or trailer~~  
1586 ~~camps, real property, space or spaces in parking lots or garages~~  
1587 ~~for motor vehicles or docking or storage space or spaces for~~  
1588 ~~boats in boat docks or marinas, or who has purchased~~  
1589 ~~communication services or electric power or energy, and who~~  
1590 ~~cannot prove that the tax levied by this chapter has been paid to~~  
1591 ~~the vendor or lessor on any such transactions. The term "dealer"~~  
1592 ~~does not include any person who leases, lets, rents, or grants a~~  
1593 ~~license to use, occupy, or enter upon any living quarters,~~  
1594 ~~sleeping quarters, or housekeeping accommodations in apartment~~  
1595 ~~houses, roominghouses, tourist camps, or trailer camps, and who~~  
1596 ~~exclusively enters into a bona fide written agreement for~~  
1597 ~~continuous residence for longer than 6 months in duration with~~  
1598 ~~any person who leases, lets, rents, or is granted a license to~~  
1599 ~~use such property.~~

1600 ~~(k) "Dealer" also means any person who sells, provides, or~~  
1601 ~~performs a service taxable under this chapter. "Dealer" also~~  
1602 ~~means any person who purchases, uses, or consumes a service~~  
1603 ~~taxable under this chapter who cannot prove that the tax levied~~  
1604 ~~by this chapter has been paid to the seller of the taxable~~  
1605 ~~service.~~

1606 ~~(l) "Dealer" also means any person who solicits, offers,~~  
1607 ~~provides, enters into, issues, or delivers any service warranty~~  
1608 ~~taxable under this chapter, or who receives, on behalf of such a~~  
1609 ~~person, any consideration from a service warranty holder.~~

1610 ~~(3)(a) Except as provided in paragraphs (a) and paragraph~~  
1611 ~~(b), every dealer making retail sales, whether within or outside~~



31-02574-08

2008962\_\_

1612 the state, of tangible personal property for distribution,  
1613 storage, or use or other consumption, in this state, shall, at  
1614 the time of making sales, collect the tax imposed by this chapter  
1615 from the purchaser.

1616 (a) A business purchaser who is not a holder of a direct-  
1617 pay permit and who knows at the time of purchase of a digital  
1618 good, computer software delivered electronically, or a service  
1619 that the digital good, computer software, or service is  
1620 concurrently available for use in more than one jurisdiction  
1621 shall deliver to the dealer a multiple-points-of-use (MPU)  
1622 exemption form at the time of purchase.

1623 1. Upon receipt of the MPU exemption form, the seller is  
1624 relieved of all obligation to collect, pay, or remit the  
1625 applicable tax, and the purchaser is obligated to collect, pay,  
1626 or remit the applicable tax on a direct-pay basis.

1627 2. A purchaser delivering the MPU exemption form may use  
1628 any reasonable, consistent, and uniform method of apportioning  
1629 the applicable tax which is supported by the purchaser's business  
1630 records as they exist at the time of the sale.

1631 3. The MPU exemption form remains in effect for all future  
1632 sales by the seller to the purchaser, except as to the subsequent  
1633 sale's specific apportionment, which is governed by subparagraph  
1634 2. and the facts existing at the time of the sale, until the MPU  
1635 exemption form is revoked in writing.

1636 4. A holder of a direct-pay permit is not required to  
1637 deliver an MPU exemption form to the seller and must comply with  
1638 subparagraph 2. in apportioning the tax due on a digital good or  
1639 a service that is concurrently available for use in more than one  
1640 jurisdiction.

31-02574-08

2008962\_\_

1641           (b)~~4~~. A purchaser of direct mail who is not a holder of a  
1642 direct-pay permit shall provide to the seller in conjunction with  
1643 the purchase a direct-mail form or information to show the  
1644 jurisdictions to which the direct mail is delivered to  
1645 recipients.

1646           1. Upon receipt of the direct-mail form, the seller is  
1647 relieved of all obligations to collect, pay, or remit the  
1648 applicable tax, and the purchaser is obligated to pay or remit  
1649 the applicable tax on a direct-pay basis. A direct-mail form  
1650 remains in effect for all future sales of direct mail by the  
1651 seller to the purchaser until it is revoked in writing.

1652           2. Upon receipt of information from the purchaser showing  
1653 the jurisdictions to which the direct mail is delivered to  
1654 recipients, the seller shall collect the tax according to the  
1655 delivery information provided by the purchaser. In the absence of  
1656 bad faith, the seller is relieved of any further obligation to  
1657 collect tax on any transaction for which the seller has collected  
1658 tax pursuant to the delivery information provided by the  
1659 purchaser.

1660           3. If the purchaser of direct mail does not have a direct-  
1661 pay permit and does not provide the seller with a direct-mail  
1662 form or delivery information as required by this paragraph, the  
1663 seller shall collect the tax according to subparagraph (2)(b)5.  
1664 This subparagraph does not limit a purchaser's obligation for  
1665 sales or use tax to any state to which the direct mail is  
1666 delivered.

1667           4. If a purchaser of direct mail provides the seller with  
1668 documentation of direct-pay authority, the purchaser is not  
1669 required to provide a direct-mail form or delivery information to

31-02574-08

2008962\_\_

1670 | ~~the seller. A purchaser of printed materials shall have sole~~  
1671 | ~~responsibility for the taxes imposed by this chapter on those~~  
1672 | ~~materials when the printer of the materials delivers them to the~~  
1673 | ~~United States Postal Service for mailing to persons other than~~  
1674 | ~~the purchaser located within and outside this state. Printers of~~  
1675 | ~~materials delivered by mail to persons other than the purchaser~~  
1676 | ~~located within and outside this state shall have no obligation or~~  
1677 | ~~responsibility for the payment or collection of any taxes imposed~~  
1678 | ~~under this chapter on those materials. However, printers are~~  
1679 | ~~obligated to collect the taxes imposed by this chapter on printed~~  
1680 | ~~materials when all, or substantially all, of the materials will~~  
1681 | ~~be mailed to persons located within this state. For purposes of~~  
1682 | ~~the printer's tax collection obligation, there is a rebuttable~~  
1683 | ~~presumption that all materials printed at a facility are mailed~~  
1684 | ~~to persons located within the same state as that in which the~~  
1685 | ~~facility is located. A certificate provided by the purchaser to~~  
1686 | ~~the printer concerning the delivery of the printed materials for~~  
1687 | ~~that purchase or all purchases shall be sufficient for purposes~~  
1688 | ~~of rebutting the presumption created herein.~~

1689 |       ~~5.2.~~ The department ~~of Revenue~~ is authorized to adopt rules  
1690 | and forms to administer ~~implement the provisions of this~~  
1691 | paragraph.

1692 |       (4) On all tangible personal property imported or caused to  
1693 | be imported from other states, territories, the District of  
1694 | Columbia, or a any foreign country, and used ~~by him or her~~, the  
1695 | dealer, ~~as herein defined~~, shall pay the same tax imposed by this  
1696 | chapter on all articles of tangible personal property so imported  
1697 | and used, ~~the same~~ as if the ~~such~~ articles had been sold at  
1698 | retail for use or consumption in this state. For the purposes of

31-02574-08

2008962\_\_

1699 | this chapter, the use, or consumption, or distribution, or  
1700 | storage to be used or consumed in this state of tangible personal  
1701 | property shall each be equivalent to a sale at retail, and the  
1702 | tax shall ~~thereupon~~ immediately levy and be collected in the  
1703 | manner provided herein, provided that there is ~~there shall be~~ no  
1704 | duplication of the tax ~~in any event~~.

1705 |       (5) (a) 1. Except as provided in subparagraph 2., it is not  
1706 | the intention of this chapter to levy a tax upon tangible  
1707 | personal property imported, produced, or manufactured in this  
1708 | state for export, ~~provided that tangible personal property may~~  
1709 | ~~not be considered as being imported, produced, or manufactured~~  
1710 | ~~for export~~ unless the importer, producer, or manufacturer  
1711 | delivers the same to a licensed exporter for exporting or to a  
1712 | common carrier for shipment outside the state or mails the same  
1713 | by United States mail to a destination outside the state; or, for  
1714 | ~~in the case of~~ aircraft being exported under their own power to a  
1715 | destination outside the continental limits of the United States,  
1716 | by submission to the department of a duly signed and validated  
1717 | United States customs declaration, showing the departure of the  
1718 | aircraft from the continental United States; and further with  
1719 | respect to aircraft, submission to the department of the canceled  
1720 | United States registry of said aircraft; or for ~~in the case of~~  
1721 | parts and equipment installed on aircraft of foreign registry, by  
1722 | submission to the department of documentation, as the extent of  
1723 | ~~which shall be~~ provided by rule, showing the departure of the  
1724 | aircraft from the continental United States. It is also not; nor  
1725 | ~~is it~~ the intention of this chapter to levy a tax on any sale  
1726 | that ~~which~~ the state is prohibited from taxing under the  
1727 | Constitution or laws of the United States. Every retail sale made

31-02574-08

2008962\_\_

1728 | to a person physically present at the time of sale is ~~shall be~~  
1729 | presumed to have been delivered in this state.

1730 |       2.a. Notwithstanding subparagraph 1., a tax is levied on  
1731 | each sale of tangible personal property to be transported to a  
1732 | cooperating state as defined in sub-subparagraph c., at the rate  
1733 | specified in sub-subparagraph d. However, a registered Florida  
1734 | dealer is not required to collect this tax ~~will be relieved from~~  
1735 | ~~the requirements of collecting taxes pursuant to this~~  
1736 | ~~subparagraph~~ if the ~~Florida~~ dealer obtains from the purchaser an  
1737 | affidavit setting forth the purchaser's name, address, state  
1738 | taxpayer identification number, and a statement that the  
1739 | purchaser is aware of his or her state's use tax laws, is a  
1740 | registered dealer in this state ~~Florida~~ or another state, ~~or~~ is  
1741 | purchasing the tangible personal property for resale, or is  
1742 | otherwise not required to pay the tax on the transaction. The  
1743 | department may, by rule, provide a form to be used for this  
1744 | purpose ~~the purposes set forth herein.~~

1745 |       b. For purposes of this subparagraph, "a cooperating state"  
1746 | is one determined by the executive director of the department to  
1747 | cooperate satisfactorily with this state in collecting taxes on  
1748 | mail order sales by meeting. ~~No state shall be so determined~~  
1749 | ~~unless it meets~~ all the following minimum requirements:

1750 |       (I) It levies and collects taxes on mail order sales of  
1751 | property transported from that state to persons in this state, as  
1752 | described in s. 212.0596, upon request of the department.

1753 |       (II) The tax so collected is ~~shall be~~ at the rate specified  
1754 | in s. 212.05, not including any local option or tourist or  
1755 | convention development taxes collected pursuant to s. 125.0104 or  
1756 | this chapter.

31-02574-08

2008962\_\_

1757 (III) The ~~Such~~ state agrees to remit to the department all  
1758 taxes so collected no later than 30 days after ~~from~~ the last day  
1759 of the calendar quarter following their collection.

1760 (IV) The ~~Such~~ state authorizes the department to audit  
1761 dealers within its jurisdiction who make mail order sales that  
1762 are the subject of s. 212.0596, or makes arrangements deemed  
1763 adequate by the department for auditing them with its own  
1764 personnel.

1765 (V) The ~~Such~~ state agrees to provide to the department  
1766 records obtained by it from retailers or dealers in the ~~such~~  
1767 state showing delivery of tangible personal property into this  
1768 state upon which no sales or use tax has been paid in a manner  
1769 similar to that provided in sub-subparagraph g.

1770 c. For purposes of this subparagraph, "sales of tangible  
1771 personal property to be transported to a cooperating state" means  
1772 a mail order sale ~~sales~~ to a person who is in the cooperating  
1773 state at the time the order is executed, from a dealer who  
1774 receives that order in this state.

1775 d. The tax levied by sub-subparagraph a. shall be at the  
1776 rate at which ~~such~~ a sale would have been taxed pursuant to the  
1777 cooperating state's tax laws if consummated in the cooperating  
1778 state by a dealer and a purchaser, both of whom were physically  
1779 present in that state at the time of the sale.

1780 e. The tax levied by sub-subparagraph a., when collected,  
1781 shall be held in the State Treasury in trust for the benefit of  
1782 the cooperating state and shall be paid to it at a time agreed  
1783 upon between the department, acting for this state, and the  
1784 cooperating state or the department or agency designated by it to  
1785 act for it; however, the ~~such~~ payment must be made within ~~shall~~

31-02574-08

2008962\_\_

1786 ~~in no event be made later than~~ 30 days after ~~from~~ the last day of  
1787 the calendar quarter after the tax was collected. Funds held in  
1788 trust for the benefit of a cooperating state are ~~shall~~ not ~~be~~  
1789 subject to the service charges imposed by s. 215.20.

1790 f. The department may ~~is authorized to~~ perform such acts  
1791 and ~~to~~ provide such cooperation to a cooperating state with  
1792 reference to the tax levied by sub-subparagraph a. as is required  
1793 of the cooperating state by sub-subparagraph b.

1794 g. In furtherance of this subparagraph ~~act~~, dealers selling  
1795 tangible personal property for delivery in another state shall  
1796 make available to the department, upon request of the department,  
1797 records of all tangible personal property so sold. The ~~Such~~  
1798 records must ~~shall~~ include a description of the property, the  
1799 name and address of the purchaser, the name and address of the  
1800 person to whom the property was sent, the purchase price of the  
1801 property, information regarding whether sales tax was paid in  
1802 this state on the purchase price, and such other information as  
1803 the department may by rule prescribe.

1804 (b)~~1~~. Notwithstanding ~~the provisions of~~ paragraph (a), it  
1805 is not the intention of this chapter to levy a tax on the sale of  
1806 tangible personal property to a nonresident dealer who does not  
1807 hold a Florida sales tax registration if the, ~~provided such~~  
1808 nonresident dealer furnishes the seller with a statement  
1809 declaring that the tangible personal property will be transported  
1810 outside this state by the nonresident dealer for resale and for  
1811 no other purpose.

1812 1. The statement must ~~shall~~ include, but need not be  
1813 limited to, the nonresident dealer's name, address, applicable  
1814 passport or visa number, arrival-departure card number, and

31-02574-08

2008962\_\_

1815 evidence of authority to do business in the nonresident dealer's  
1816 home state or country, such as his or her business name and  
1817 address, occupational license number, if applicable, or any other  
1818 suitable requirement. The statement must ~~shall~~ be signed by the  
1819 nonresident dealer and must ~~shall~~ include the following sentence:  
1820 "Under penalties of perjury, I declare that I have read the  
1821 foregoing, and the facts alleged are true to the best of my  
1822 knowledge and belief."

1823 2. The burden of proof ~~of subparagraph 1.~~ rests with the  
1824 seller, who must retain the proper documentation to support the  
1825 exempt sale. The exempt transaction is subject to verification by  
1826 the department.

1827 (c) Notwithstanding ~~the provisions of~~ paragraph (a), it is  
1828 not the intention of this chapter to levy a tax on the sale by a  
1829 printer to a nonresident print purchaser of material printed by  
1830 that printer if ~~for that nonresident print purchaser when~~ the  
1831 print purchaser does not furnish to the printer a resale  
1832 certificate containing a sales tax registration number but does  
1833 furnish to the printer a statement declaring that the ~~such~~  
1834 material will be resold by the nonresident print purchaser.

1835 (6) It is ~~however,~~ the intention of this chapter to levy a  
1836 tax on the sale at retail, the use, the consumption, the  
1837 distribution, and the storage to be used or consumed in this  
1838 state of tangible personal property after it has come to rest in  
1839 this state and has become a part of the mass property of this  
1840 state.

1841 (7) The provisions of this chapter do not apply ~~in respect~~  
1842 to the use or consumption of tangible personal property or  
1843 services, or distribution or storage of tangible personal



31-02574-08

2008962\_\_

1844 property for use or consumption in this state, upon which a like  
1845 tax equal to or greater than the amount imposed by this chapter  
1846 has been lawfully imposed and paid in another state, territory of  
1847 the United States, or the District of Columbia. The proof of  
1848 payment of such tax shall be made in accordance with department  
1849 ~~according to rules and regulations of the department~~. If the  
1850 amount of tax paid in another state, territory of the United  
1851 States, or the District of Columbia is not equal to or greater  
1852 than the amount of tax imposed by this chapter, ~~then~~ the dealer  
1853 must ~~shall~~ pay the difference to the department ~~an amount~~  
1854 ~~sufficient to make the tax paid in the other state, territory of~~  
1855 ~~the United States, or the District of Columbia and in this state~~  
1856 ~~equal to the amount imposed by this chapter.~~

1857 (8) (a) Use tax applies ~~will apply~~ and is ~~be~~ due on tangible  
1858 personal property imported or caused to be imported into this  
1859 state for use, consumption, distribution, or storage to be used  
1860 or consumed in this state. ~~; provided, however, that,~~ Except as  
1861 provided in paragraph (b), it is ~~shall be~~ presumed that tangible  
1862 personal property used in another state, territory of the United  
1863 States, or the District of Columbia for 6 months or longer before  
1864 being imported into this state was not purchased for use in this  
1865 state. The rental or lease of tangible personal property that  
1866 ~~which~~ is used or stored in this state is ~~shall be~~ taxable without  
1867 regard to its prior use or tax paid on purchase outside this  
1868 state.

1869 (b) The presumption that tangible personal property used in  
1870 another state, territory of the United States, or the District of  
1871 Columbia for 6 months or longer before being imported into this  
1872 state was not purchased for use in this state does not apply to a a

31-02574-08

2008962\_\_

1873 any boat for which a saltwater vessel ~~fishing~~ license fee is  
1874 required to be paid pursuant to s. 372.57(7), ~~either directly or~~  
1875 ~~indirectly, for the purpose of taking, attempting to take, or~~  
1876 ~~possessing any saltwater fish for noncommercial purposes.~~ Use tax  
1877 applies ~~shall apply~~ and is ~~be~~ due on such a boat as ~~provided in~~  
1878 ~~this paragraph,~~ and proof of payment of the ~~such~~ tax must be  
1879 presented prior to the first ~~such~~ licensure of the boat,  
1880 registration of the boat pursuant to chapter 328, and titling of  
1881 the boat pursuant to chapter 328.

1882 1. A boat that is first licensed within 1 year after  
1883 purchase is ~~shall be~~ subject to use tax on the full amount of the  
1884 purchase price.~~†~~

1885 2. A boat that is first licensed in the second year after  
1886 purchase is ~~shall be~~ subject to use tax on 90 percent of the  
1887 purchase price.~~†~~

1888 3. A boat that is first licensed in the third year after  
1889 purchase is ~~shall be~~ subject to use tax on 80 percent of the  
1890 purchase price.~~†~~

1891 4. A boat that is first licensed in the fourth year after  
1892 purchase is ~~shall be~~ subject to use tax on 70 percent of the  
1893 purchase price.~~†~~

1894 5. A boat that is first licensed in the fifth year after  
1895 purchase is ~~shall be~~ subject to use tax on 60 percent of the  
1896 purchase price.~~†~~ and

1897 6. A boat that is first licensed in the sixth year after  
1898 purchase, or later, is ~~shall be~~ subject to use tax on 50 percent  
1899 of the purchase price.

31-02574-08

2008962\_\_

1900           7. If the purchaser fails to provide the purchase invoice  
1901 on such boat, the fair market value of the boat at the time of  
1902 importation into this state shall be used to compute the tax.

1903           (9) The taxes imposed by this chapter do not apply to the  
1904 use, sale, or distribution of religious publications, bibles,  
1905 hymn books, prayer books, vestments, altar paraphernalia,  
1906 sacramental chalices, and similar ~~like~~ church service and  
1907 ceremonial raiments and equipment.

1908           (10) A ~~No~~ title certificate may not be issued on any boat,  
1909 mobile home, motor vehicle, or other vehicle, or, if a ~~no~~ title  
1910 is not required ~~by law~~, a ~~no~~ license or registration may not be  
1911 issued for any boat, mobile home, motor vehicle, or other  
1912 vehicle, unless there is filed with the ~~such~~ application for  
1913 title certificate, ~~or~~ license, or registration ~~certificate~~ a  
1914 receipt, issued by an authorized dealer or a designated agent of  
1915 the department ~~of Revenue~~, evidencing the payment of the tax  
1916 imposed by this chapter where the tax ~~same~~ is payable. A  
1917 presumption of sales and use tax applicability is created if the  
1918 motor vehicle is registered in this state. For the purpose of  
1919 enforcing this subsection ~~provision~~, all county tax collectors  
1920 and all persons or firms authorized to sell or issue boat, mobile  
1921 home, and motor vehicle licenses are ~~hereby~~ designated agents of  
1922 the department and are required to perform such duty in the same  
1923 manner and under the same conditions prescribed for their other  
1924 duties by the constitution or laws ~~any statute~~ of this state. All  
1925 transfers of title to boats, mobile homes, motor vehicles, and  
1926 other vehicles are taxable transactions, unless expressly exempt  
1927 under this chapter.

31-02574-08

2008962\_\_

1928           (11)~~(a)~~ Notwithstanding any other provision of this  
1929 chapter, the taxes imposed by this chapter may ~~shall~~ not be  
1930 imposed on promotional materials that, ~~which~~ are imported,  
1931 purchased, sold, used, manufactured, fabricated, processed,  
1932 printed, imprinted, assembled, distributed, or stored in this  
1933 state, if the promotional materials are subsequently exported  
1934 outside this state, and, regardless of whether the exportation  
1935 process is continuous and unbroken, a separate consideration is  
1936 charged for the material ~~so~~ exported, or the taxpayer keeps,  
1937 retains, or exercises any right, power, dominion, or control over  
1938 the promotional materials before or for the purpose of  
1939 subsequently transporting them outside this state.

1940           (a) ~~(b)~~ As used in this subsection, the term "promotional  
1941 materials" means tangible personal property that is given away or  
1942 otherwise distributed to promote the sale of a subscription to a  
1943 publication; written or printed advertising material, direct mail  
1944 literature, correspondence, written solicitations, renewal  
1945 notices, and billings for sales connected with or to promote the  
1946 sale of a subscription to a publication; and the component parts  
1947 of each of these types of promotional materials.

1948           (b) ~~(c)~~ ~~After July 1, 1992,~~ This exemption inures to the  
1949 taxpayer only through refund of previously paid taxes or by self-  
1950 accruing taxes as provided in s. 212.183 and applies only where  
1951 the seller of subscriptions to publications sold in the state:

- 1952           1. Is registered with the department pursuant to this  
1953 chapter; and
- 1954           2. Remits the taxes imposed by this chapter on such  
1955 publications.

1956           ~~(d) This subsection applies retroactively to July 1, 1987.~~

31-02574-08

2008962\_\_

1957           (12) In lieu of ~~any~~ other facts that ~~which~~ may indicate  
1958 commingling, a ~~any~~ boat that ~~which~~ remains in this state for more  
1959 than an aggregate of 183 days in any 1-year period, except as  
1960 provided in subsection (8) or s. 212.08(7)(t), is ~~shall be~~  
1961 presumed to be commingled with the general mass of property of  
1962 this state.

1963           (13) Registered aircraft dealers who purchase aircraft  
1964 exclusively for resale and who do not pay sales tax on the  
1965 purchase price at the time of purchase must ~~shall~~ pay a use tax  
1966 computed on 1 percent of the value of the aircraft each calendar  
1967 month that the aircraft is used by the dealer. Payment of the  
1968 ~~such~~ tax shall commence in the month during which the aircraft is  
1969 first used for any purpose for which income is received by the  
1970 dealer. A dealer may pay the sales tax on the purchase of the  
1971 aircraft in lieu of the monthly use tax. The value of the  
1972 aircraft must ~~shall~~ include its acquisition cost and the cost of  
1973 reconditioning that enhances the value of the aircraft and shall  
1974 generally be the value shown on the books of the dealer in  
1975 accordance with generally accepted accounting principles.  
1976 Notwithstanding ~~the~~ payment by the dealer of tax computed on 1  
1977 percent of the value of the ~~any~~ aircraft, if the aircraft is  
1978 leased or rented, the dealer must ~~shall~~ collect from the customer  
1979 and remit the tax that is due on the lease or rental of the  
1980 aircraft; such payments do not diminish or offset any use tax due  
1981 from the dealer.

1982           ~~(14) For the purpose of determining whether a person is~~  
1983 ~~improving real property, the term:~~

31-02574-08

2008962\_\_

1984           ~~(a) "Real property" means the land and improvements thereto~~  
1985 ~~and fixtures and is synonymous with the terms "realty" and "real~~  
1986 ~~estate."~~

1987           ~~(b) "Fixtures" means items that are an accessory to a~~  
1988 ~~building, other structure, or land and that do not lose their~~  
1989 ~~identity as accessories when installed but that do become~~  
1990 ~~permanently attached to realty. However, the term does not~~  
1991 ~~include the following items, whether or not such items are~~  
1992 ~~attached to real property in a permanent manner: property of a~~  
1993 ~~type that is required to be registered, licensed, titled, or~~  
1994 ~~documented by this state or by the United States Government,~~  
1995 ~~including, but not limited to, mobile homes, except mobile homes~~  
1996 ~~assessed as real property, or industrial machinery or equipment.~~  
1997 ~~For purposes of this paragraph, industrial machinery or equipment~~  
1998 ~~is not limited to machinery and equipment used to manufacture,~~  
1999 ~~process, compound, or produce tangible personal property. For an~~  
2000 ~~item to be considered a fixture, it is not necessary that the~~  
2001 ~~owner of the item also own the real property to which it is~~  
2002 ~~attached.~~

2003           ~~(c) "Improvements to real property" includes the activities~~  
2004 ~~of building, erecting, constructing, altering, improving,~~  
2005 ~~repairing, or maintaining real property.~~

2006           ~~(14)-(15)~~ (a) If ~~When~~ a contractor secures rock, shell, fill  
2007 dirt, or similar materials from a location that he or she owns or  
2008 leases and uses such materials to fulfill a real property  
2009 contract on the property of another person, the contractor is the  
2010 ultimate consumer of the ~~such~~ materials and is liable for use tax  
2011 thereon. This paragraph does not apply to a person or a  
2012 corporation or affiliated group as defined by s. 220.03(1)(b) or

31-02574-08

2008962\_\_

2013 (e) who ~~that~~ secures such materials from a location that he, she,  
2014 or it owns for use on his, her, or its own property. The basis  
2015 upon which the contractor shall remit the tax is the fair retail  
2016 market value determined by establishing ~~either~~ the price he or  
2017 she would have to pay for it on the open market or the price he  
2018 or she would regularly charge if he or she sold it to other  
2019 contractors or users.

2020 (b) If ~~When~~ a contractor does not own or lease the land but  
2021 has entered into an agreement to purchase fill dirt, rock, shell,  
2022 or similar materials for his or her own use and ~~wherein~~ the  
2023 contractor will excavate and remove the material, the taxable  
2024 basis includes ~~shall include~~ the cost of the material plus all  
2025 costs of clearing, excavating, and removing, including labor and  
2026 all other costs incurred by the contractor.

2027 (c) In lieu of the method described in paragraph (a) for  
2028 determining the taxable basis on rock, shell, fill dirt, and  
2029 similar materials a contractor uses in performing a contract for  
2030 the improvement of real property, the taxable basis may be  
2031 calculated as the land cost plus all costs of clearing,  
2032 excavating, and loading, including labor, power, blasting, and  
2033 similar costs.

2034 (d) A tax may not be imposed if ~~No tax is applicable when~~  
2035 the Department of Transportation furnishes without charge the  
2036 borrow materials or the pits where materials are ~~to be~~ extracted  
2037 for use on a road contract.

2038 ~~(15)-(16)~~ (a) Notwithstanding other provisions of this  
2039 chapter, the use by the publisher of a newspaper, magazine, or  
2040 periodical of copies for his or her own consumption or to be

31-02574-08

2008962\_\_

2041 given away is taxable at the usual retail price ~~thereof~~, if any,  
2042 or at the "cost price."

2043 (b) For the purposes of this subsection, the term "cost  
2044 price" means the actual cost of printing ~~of~~ newspapers,  
2045 magazines, and other publications, without any deductions for  
2046 ~~therefrom on account of~~ the cost of materials used, labor or  
2047 services cost, transportation charges, or other direct or  
2048 indirect overhead costs that are a part of the printing costs of  
2049 the property. However, the cost of labor to manufacture, produce,  
2050 compound, process, or fabricate expendable items of tangible  
2051 personal property which are directly used by such person in  
2052 printing other tangible personal property for sale or for his or  
2053 her own use is exempt. Authors' royalties, fees, ~~or~~ salaries,  
2054 general overhead, and other costs not directly related to  
2055 printing are ~~shall be~~ deemed to be labor associated with  
2056 manufacturing, producing, compounding, processing, or fabricating  
2057 expendable items.

2058 Section 9. Subsections (1) and (2) and paragraphs (b) and  
2059 (c) of subsection (17) of section 212.08, Florida Statutes, are  
2060 amended to read:

2061 212.08 Sales, rental, use, consumption, distribution, and  
2062 storage tax; specified exemptions.--The sale at retail, the  
2063 rental, the use, the consumption, the distribution, and the  
2064 storage to be used or consumed in this state of the following are  
2065 ~~hereby~~ specifically exempt from the tax imposed by this chapter.

2066 (1) EXEMPTIONS; GENERAL GROCERIES.--

2067 (a) Food and food ingredients ~~products~~ for human  
2068 consumption are exempt from the tax imposed by this chapter.



31-02574-08

2008962\_\_

2069 (b) For the purpose of this chapter, ~~as used in this~~  
2070 ~~subsection,~~ the term "food and food ingredients" mean substances,  
2071 whether in liquid, concentrated, solid, frozen, dried, or  
2072 dehydrated form, which are sold for ingestion or chewing by  
2073 humans and are consumed for their taste or nutritional value  
2074 ~~products" means edible commodities, whether processed, cooked,~~  
2075 ~~raw, canned, or in any other form, which are generally regarded~~  
2076 ~~as food.~~ This includes, but is not limited to, all of the  
2077 following:

2078 1. ~~Cereals and cereal products, baked goods, oleomargarine,~~  
2079 ~~meat and meat products, fish and seafood products, frozen foods~~  
2080 ~~and dinners, poultry, eggs and egg products, vegetables and~~  
2081 ~~vegetable products, fruit and fruit products, spices, salt, sugar~~  
2082 ~~and sugar products, milk and dairy products, and products~~  
2083 ~~intended to be mixed with milk.~~

2084 2. ~~Natural fruit or vegetable juices or their concentrates~~  
2085 ~~or reconstituted natural concentrated fruit or vegetable juices,~~  
2086 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~  
2087 ~~sweetened or unsweetened, seasoned with salt or spice, or~~  
2088 ~~unseasoned; coffee, coffee substitutes, or cocoa; and tea, unless~~  
2089 ~~it is sold in a liquid form.~~

2090 1.3. Bakery products sold by bakeries, pastry shops, or  
2091 like establishments, if sold without eating utensils. The term  
2092 "bakery products" includes bread, rolls, buns, biscuits, bagels,  
2093 croissants, pastries, doughnuts, danish, cakes, tortes, pies,  
2094 tarts, muffins, bars, cookies, and tortillas ~~that do not have~~  
2095 ~~eating facilities.~~

2096 2. Dietary supplements. The term "dietary supplements"  
2097 means any product, other than tobacco, intended to supplement the

31-02574-08

2008962\_\_

2098 diet which contains one or more of the following dietary  
2099 ingredients: a vitamin; a mineral; an herb or other botanical; an  
2100 amino acid; a dietary substance for use by humans to supplement  
2101 the diet by increasing the total dietary intake; or a  
2102 concentrate, metabolite, constituent, extract, or combination of  
2103 any ingredient described in this subparagraph which is intended  
2104 for ingestion in tablet, capsule, powder, softgel, gelcap, or  
2105 liquid form or, if not intended for ingestion in such form, is  
2106 not represented as conventional food and is not represented for  
2107 use as a sole item of a meal or of the diet, and which is  
2108 required to be labeled as a dietary supplement, identifiable by  
2109 the "supplemental facts" box found on the label and as required  
2110 pursuant to 21 C.F.R. s. 101.36.

2111 (c) The exemption provided by this subsection does not  
2112 apply:

2113 ~~1. When the food products are sold as meals for consumption~~  
2114 ~~on or off the premises of the dealer.~~

2115 ~~2. When the food products are furnished, prepared, or~~  
2116 ~~served for consumption at tables, chairs, or counters or from~~  
2117 ~~trays, glasses, dishes, or other tableware, whether provided by~~  
2118 ~~the dealer or by a person with whom the dealer contracts to~~  
2119 ~~furnish, prepare, or serve food products to others.~~

2120 ~~3. When the food products are ordinarily sold for immediate~~  
2121 ~~consumption on the seller's premises or near a location at which~~  
2122 ~~parking facilities are provided primarily for the use of patrons~~  
2123 ~~in consuming the products purchased at the location, even though~~  
2124 ~~such products are sold on a "take out" or "to go" order and are~~  
2125 ~~actually packaged or wrapped and taken from the premises of the~~  
2126 ~~dealer.~~

31-02574-08

2008962\_\_

2127 ~~4. To sandwiches sold ready for immediate consumption on or~~  
2128 ~~off the seller's premises.~~

2129 ~~5. When the food products are sold ready for immediate~~  
2130 ~~consumption within a place, the entrance to which is subject to~~  
2131 ~~an admission charge.~~

2132 1.6. If ~~When~~ the food and food ingredients ~~products~~ are  
2133 sold as ~~hot~~ prepared food ~~products~~. The term "prepared food"  
2134 means food sold in a heated state or heated by the seller; two or  
2135 more food ingredients mixed or combined by the seller for sale as  
2136 a single item; or food sold with eating utensils provided by the  
2137 seller including plates, knives, forks, spoons, glasses, cups,  
2138 napkins, or straws. A plate does not include a container or  
2139 packaging used to transport the food. Prepared food does not  
2140 include food that is only cut, repackaged, or pasteurized by the  
2141 seller and eggs, fish, meat, poultry, and foods containing these  
2142 raw animal foods requiring cooking by the consumer as recommended  
2143 by the Food and Drug Administration in chapter 3, part 401.11 of  
2144 its food code so as to prevent food-borne illnesses. Prepared  
2145 food includes sandwiches sold for immediate consumption and a  
2146 combination of hot and cold food items or components if a single  
2147 price has been established for the combination and the food  
2148 products are sold in such combination, such as a meal; a  
2149 specialty dish or serving; a sandwich or pizza; an ice cream  
2150 cone, sundae, or banana split; or food sold in an unheated state  
2151 by weight or volume as a single item, including cold components  
2152 or side items.

2153 ~~2.7. To soft drinks, which include, but are not limited to,~~  
2154 ~~any nonalcoholic beverage, any preparation or beverage commonly~~  
2155 ~~referred to as a "soft drink," or any noncarbonated drink made~~

31-02574-08

2008962\_\_

2156 ~~from milk derivatives or tea, when sold in cans or similar~~  
2157 ~~containers. The term "soft drinks" means nonalcoholic beverages~~  
2158 ~~that contain natural or artificial sweeteners. Soft drinks do not~~  
2159 ~~include beverages that contain milk or milk products, soy, rice,~~  
2160 ~~or similar milk substitutes, or greater than 50 percent of~~  
2161 ~~vegetable or fruit juice by volume.~~

2162 ~~8. To ice cream, frozen yogurt, and similar frozen dairy or~~  
2163 ~~nondairy products in cones, small cups, or pints, popsicles,~~  
2164 ~~frozen fruit bars, or other novelty items, whether or not sold~~  
2165 ~~separately.~~

2166 ~~9. To food prepared, whether on or off the premises, and~~  
2167 ~~sold for immediate consumption. This does not apply to food~~  
2168 ~~prepared off the premises and sold in the original sealed~~  
2169 ~~container, or the slicing of products into smaller portions.~~

2170 ~~3.10. If When the food and food ingredients products are~~  
2171 ~~sold through a vending machine, pushcart, motor vehicle, or any~~  
2172 ~~other form of vehicle.~~

2173 ~~4.11. To candy and any similar product regarded as candy or~~  
2174 ~~confection, based on its normal use, as indicated on the label or~~  
2175 ~~advertising thereof. The term "candy" means a preparation of~~  
2176 ~~sugar, honey, or other natural or artificial sweeteners in~~  
2177 ~~combination with chocolate, fruits, nuts, or other ingredients or~~  
2178 ~~flavorings in the form of bars, drops, or pieces. Candy does not~~  
2179 ~~include any preparation that contains flour and does not require~~  
2180 ~~refrigeration.~~

2181 ~~5. To tobacco or tobacco products.~~

2182 ~~12. To bakery products sold by bakeries, pastry shops, or~~  
2183 ~~like establishments that have eating facilities, except when sold~~  
2184 ~~for consumption off the seller's premises.~~

31-02574-08

2008962\_\_

2185 ~~13. When food products are served, prepared, or sold in or~~  
2186 ~~by restaurants, lunch counters, cafeterias, hotels, taverns, or~~  
2187 ~~other like places of business.~~

2188 ~~(d) As used in this subsection, the term:~~

2189 ~~1. "For consumption off the seller's premises" means that~~  
2190 ~~the food or drink is intended by the customer to be consumed at a~~  
2191 ~~place away from the dealer's premises.~~

2192 ~~2. "For consumption on the seller's premises" means that~~  
2193 ~~the food or drink sold may be immediately consumed on the~~  
2194 ~~premises where the dealer conducts his or her business. In~~  
2195 ~~determining whether an item of food is sold for immediate~~  
2196 ~~consumption, there shall be considered the customary consumption~~  
2197 ~~practices prevailing at the selling facility.~~

2198 ~~3. "Premises" shall be construed broadly, and means, but is~~  
2199 ~~not limited to, the lobby, aisle, or auditorium of a theater; the~~  
2200 ~~seating, aisle, or parking area of an arena, rink, or stadium; or~~  
2201 ~~the parking area of a drive-in or outdoor theater. The premises~~  
2202 ~~of a caterer with respect to catered meals or beverages shall be~~  
2203 ~~the place where such meals or beverages are served.~~

2204 ~~4. "Hot prepared food products" means those products,~~  
2205 ~~items, or components which have been prepared for sale in a~~  
2206 ~~heated condition and which are sold at any temperature that is~~  
2207 ~~higher than the air temperature of the room or place where they~~  
2208 ~~are sold. "Hot prepared food products," for the purposes of this~~  
2209 ~~subsection, includes a combination of hot and cold food items or~~  
2210 ~~components where a single price has been established for the~~  
2211 ~~combination and the food products are sold in such combination,~~  
2212 ~~such as a hot meal, a hot specialty dish or serving, or a hot~~  
2213 ~~sandwich or hot pizza, including cold components or side items.~~

31-02574-08

2008962\_\_

2214 (d)(e)1. Food or drinks not exempt under paragraph  
2215 ~~paragraphs (a), paragraph (b), or paragraph (c) are, and (d)~~  
2216 ~~shall be exempt if, notwithstanding those paragraphs, when~~  
2217 purchased with food coupons or Special Supplemental Food Program  
2218 for Women, Infants, and Children vouchers issued under authority  
2219 of federal law.

2220 1.2. This paragraph is effective only if ~~while~~ federal law  
2221 prohibits a state's participation in the federal food coupon  
2222 program or Special Supplemental Food Program for Women, Infants,  
2223 and Children if there is an official determination that state or  
2224 local sales taxes are collected within that state on purchases of  
2225 food or drinks with such coupons.

2226 2.3. This paragraph does ~~shall~~ not apply to any food or  
2227 drinks on which federal law allows ~~shall permit~~ sales taxes  
2228 without penalty, such as termination of the state's  
2229 participation.

2230 (e) Dietary supplements that are sold as prepared food are  
2231 not exempt.

2232 (2) EXEMPTIONS; MEDICAL.--

2233 (a) The following are ~~There shall be~~ exempt from the tax  
2234 imposed by this chapter:

2235 1. Any drug. The term "drug" under this subsection means a  
2236 compound, substance, or preparation, and any component of a  
2237 compound, substance, or preparation, other than food and food  
2238 ingredients, dietary supplements, and alcoholic beverages, which  
2239 is:

2240 a. Recognized in the official United States Pharmacopoeia,  
2241 official Homeopathic Pharmacopoeia of the United States, or  
2242 official National Formulary, or the supplement to any of them;

31-02574-08

2008962\_\_

2243 b. Intended for use in the diagnosis, cure, mitigation,  
2244 treatment, or prevention of disease; or

2245 c. Intended to affect the structure or any function of the  
2246 body.

2247 2. Durable medical equipment, mobility-enhancing equipment,  
2248 or prosthetic device ~~any medical products and supplies or~~  
2249 ~~medicine~~ dispensed according to an individual prescription or  
2250 prescriptions.

2251 a. The term "durable medical equipment" under this  
2252 subsection means equipment, including repair and replacement  
2253 parts to such equipment, but excluding mobility-enhancing  
2254 equipment, which can withstand repeated use, is primarily and  
2255 customarily used to serve a medical purpose, generally is not  
2256 useful to a person in the absence of illness or injury, and is  
2257 not worn on or in the body. ~~written by a prescriber authorized by~~  
2258 ~~law to prescribe medicinal drugs;~~

2259 b. The term "mobility-enhancing equipment" under this  
2260 subsection means equipment, including repair and replacement  
2261 parts to such equipment, but excluding durable medical equipment,  
2262 which is primarily and customarily used to provide or increase  
2263 the ability to move from one place to another and which is  
2264 appropriate for use in a home or a motor vehicle; is not  
2265 generally used by persons having normal mobility; and does not  
2266 include any motor vehicle or any equipment on a motor vehicle  
2267 normally provided by a motor vehicle manufacturer.

2268 c. The term "prosthetic device" under this subsection means  
2269 a replacement, corrective, or supportive device, including repair  
2270 or replacement parts to such equipment, other than a hearing aid  
2271 or a dental prosthesis, which is worn on or in the body to

31-02574-08

2008962\_\_

2272 artificially replace a missing portion of the body; prevent or  
2273 correct physical deformity or malfunction; or support a weak or  
2274 deformed portion of the body.

2275 d. The term "prescription" under this subsection means an  
2276 order, formula, or recipe issued in any form of oral, written,  
2277 electronic, or other means of transmission by a duly licensed  
2278 practitioner authorized by chapter 458, chapter 459, chapter 460,  
2279 chapter 461, or chapter 466. The term also includes an orally  
2280 transmitted order by the lawfully designated agent of a  
2281 practitioner. The term also includes an order written or  
2282 transmitted by a practitioner licensed to practice in a  
2283 jurisdiction other than this state, but only if the pharmacist  
2284 called upon to dispense the order determines, in the exercise of  
2285 his or her professional judgment, that the order is valid and  
2286 necessary for the treatment of a chronic or recurrent illness.

2287 3. Hypodermic needles. ~~hypodermic syringes;~~

2288 4. Chemical compounds and test kits used for the diagnosis  
2289 or treatment of human disease, illness, or injury and intended  
2290 for one-time use.

2291 5. Over-the-counter drugs ~~and common household remedies~~  
2292 ~~recommended and generally sold for internal or external use in~~  
2293 ~~the cure, mitigation, treatment, or prevention of illness or~~  
2294 ~~disease in human beings, but not including grooming and hygiene~~  
2295 products. The term "over-the-counter drug" under this subsection  
2296 means a drug the packaging for which contains a label that  
2297 identifies the product as a drug as required by 21 C.F.R. s.  
2298 201.66. The over-the-counter drug label includes a drug facts  
2299 panel or a statement of the active ingredients, with a list of  
2300 those ingredients contained in the compound, substance, or



31-02574-08

2008962\_\_

2301 preparation. The term "grooming and hygiene products" under this  
2302 subsection means soaps and cleaning solutions, shampoo,  
2303 toothpaste, mouthwash, antiperspirants, and suntan lotions and  
2304 screens, regardless of whether the items meet the definition of  
2305 an over-the-counter drug.

2306 6. Band-aids, gauze, bandages, adhesive tape.

2307 7. Hearing aids.

2308 8. Dental prosthesis.

2309 9. Funerals. Funeral directors must pay tax on all tangible  
2310 personal property used by them in their business. ~~cosmetics or~~  
2311 ~~toilet articles, notwithstanding the presence of medicinal~~  
2312 ~~ingredients therein, according to a list prescribed and approved~~  
2313 ~~by the Department of Health, which list shall be certified to the~~  
2314 ~~Department of Revenue from time to time and included in the rules~~  
2315 ~~promulgated by the Department of Revenue. There shall also be~~  
2316 ~~exempt from the tax imposed by this chapter artificial eyes and~~  
2317 ~~limbs; orthopedic shoes; prescription eyeglasses and items~~  
2318 ~~incidental thereto or which become a part thereof; dentures;~~  
2319 ~~hearing aids; crutches; prosthetic and orthopedic appliances; and~~  
2320 ~~funerals. In addition, any~~

2321  
2322 Items intended for one-time use which transfer essential optical  
2323 characteristics to contact lenses are ~~shall be~~ exempt from the  
2324 tax imposed by this chapter; however, this exemption ~~shall apply~~  
2325 applies only after \$100,000 of the tax imposed by this chapter on  
2326 ~~the~~ such items has been paid in any calendar year by a taxpayer  
2327 who claims the exemption in that ~~such~~ year. ~~Funeral directors~~  
2328 ~~shall pay tax on all tangible personal property used by them in~~  
2329 ~~their business.~~

31-02574-08

2008962\_\_

- 2330           ~~(b) For the purposes of this subsection:~~
- 2331           ~~1. "Prosthetic and orthopedic appliances" means any~~
- 2332 ~~apparatus, instrument, device, or equipment used to replace or~~
- 2333 ~~substitute for any missing part of the body, to alleviate the~~
- 2334 ~~malfunction of any part of the body, or to assist any disabled~~
- 2335 ~~person in leading a normal life by facilitating such person's~~
- 2336 ~~mobility. Such apparatus, instrument, device, or equipment shall~~
- 2337 ~~be exempted according to an individual prescription or~~
- 2338 ~~prescriptions written by a physician licensed under chapter 458,~~
- 2339 ~~chapter 459, chapter 460, chapter 461, or chapter 466, or~~
- 2340 ~~according to a list prescribed and approved by the Department of~~
- 2341 ~~Health, which list shall be certified to the Department of~~
- 2342 ~~Revenue from time to time and included in the rules promulgated~~
- 2343 ~~by the Department of Revenue.~~
- 2344           ~~2. "Cosmetics" means articles intended to be rubbed,~~
- 2345 ~~poured, sprinkled, or sprayed on, introduced into, or otherwise~~
- 2346 ~~applied to the human body for cleansing, beautifying, promoting~~
- 2347 ~~attractiveness, or altering the appearance and also means~~
- 2348 ~~articles intended for use as a compound of any such articles,~~
- 2349 ~~including, but not limited to, cold creams, suntan lotions,~~
- 2350 ~~makeup, and body lotions.~~
- 2351           ~~3. "Toilet articles" means any article advertised or held~~
- 2352 ~~out for sale for grooming purposes and those articles that are~~
- 2353 ~~customarily used for grooming purposes, regardless of the name by~~
- 2354 ~~which they may be known, including, but not limited to, soap,~~
- 2355 ~~toothpaste, hair spray, shaving products, colognes, perfumes,~~
- 2356 ~~shampoo, deodorant, and mouthwash.~~
- 2357           ~~4. "Prescription" includes any order for drugs or medicinal~~
- 2358 ~~supplies written or transmitted by any means of communication by~~

31-02574-08

2008962\_\_

2359 ~~a duly licensed practitioner authorized by the laws of the state~~  
2360 ~~to prescribe such drugs or medicinal supplies and intended to be~~  
2361 ~~dispensed by a pharmacist. The term also includes an orally~~  
2362 ~~transmitted order by the lawfully designated agent of such~~  
2363 ~~practitioner. The term also includes an order written or~~  
2364 ~~transmitted by a practitioner licensed to practice in a~~  
2365 ~~jurisdiction other than this state, but only if the pharmacist~~  
2366 ~~called upon to dispense such order determines, in the exercise of~~  
2367 ~~his or her professional judgment, that the order is valid and~~  
2368 ~~necessary for the treatment of a chronic or recurrent illness.~~  
2369 ~~The term also includes a pharmacist's order for a product~~  
2370 ~~selected from the formulary created pursuant to s. 465.186. A~~  
2371 ~~prescription may be retained in written form, or the pharmacist~~  
2372 ~~may cause it to be recorded in a data processing system, provided~~  
2373 ~~that such order can be produced in printed form upon lawful~~  
2374 ~~request.~~

2375 ~~(b)~~(e) Chlorine is ~~shall~~ not be exempt from the tax imposed  
2376 by this chapter if ~~when~~ used for the treatment of water in  
2377 swimming pools.

2378 ~~(d)~~ Lithotripters are exempt.

2379 ~~(c)~~(e) Human organs are exempt from the tax imposed by this  
2380 chapter.

2381 ~~(f)~~ Sales of drugs to or by physicians, dentists,  
2382 veterinarians, and hospitals in connection with medical treatment  
2383 are exempt.

2384 ~~(g)~~ Medical products and supplies used in the cure,  
2385 mitigation, alleviation, prevention, or treatment of injury,  
2386 disease, or incapacity which are temporarily or permanently

31-02574-08

2008962\_\_

2387 ~~incorporated into a patient or client by a practitioner of the~~  
2388 ~~healing arts licensed in the state are exempt.~~

2389 ~~(h) The purchase by a veterinarian of commonly recognized~~  
2390 ~~substances possessing curative or remedial properties which are~~  
2391 ~~ordered and dispensed as treatment for a diagnosed health~~  
2392 ~~disorder by or on the prescription of a duly licensed~~  
2393 ~~veterinarian, and which are applied to or consumed by animals for~~  
2394 ~~alleviation of pain or the cure or prevention of sickness,~~  
2395 ~~disease, or suffering are exempt. Also exempt are the purchase by~~  
2396 ~~a veterinarian of antiseptics, absorbent cotton, gauze for~~  
2397 ~~bandages, lotions, vitamins, and worm remedies.~~

2398 ~~(i) X-ray opaques, also known as opaque drugs and~~  
2399 ~~radiopaque, such as the various opaque dyes and barium sulphate,~~  
2400 ~~when used in connection with medical X rays for treatment of~~  
2401 ~~bodies of humans and animals, are exempt.~~

2402 ~~(d)(j)~~ Parts, special attachments, special lettering, and  
2403 other like items that are added to or attached to tangible  
2404 personal property so that a handicapped person with a disability  
2405 can use them are exempt from the tax imposed under this chapter  
2406 if the when such items are purchased by a person pursuant to an  
2407 individual prescription.

2408 ~~(e)(k)~~ This subsection shall be strictly construed and  
2409 enforced.

2410 (17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.--

2411 (b) As used in this subsection, the term "overhead  
2412 materials" means all tangible personal property, other than  
2413 qualifying property as defined in s. 212.02(29)(a) ~~s.~~  
2414 ~~212.02(14)(a)~~ and electricity, which is used or consumed in the

31-02574-08

2008962\_\_

2415 performance of a qualifying contract, title to which property  
2416 vests in or passes to the government under the contract.

2417 (c) As used in this subsection and in s. 212.02(29)(a) ~~s.~~  
2418 ~~212.02(14)(a)~~, the term "qualifying contract" means a contract  
2419 with the United States Department of Defense or the National  
2420 Aeronautics and Space Administration, or a subcontract  
2421 thereunder, but does not include a contract or subcontract for  
2422 the repair, alteration, improvement, or construction of real  
2423 property, except to the extent that purchases under such a  
2424 contract would otherwise be exempt from the tax imposed by this  
2425 chapter.

2426 Section 10. Section 212.094, Florida Statutes, is created  
2427 to read:

2428 212.094 Purchaser requests for tax refunds from dealers.--

2429 (1) If a purchaser seeks a refund or credit from a dealer  
2430 for a tax collected under this chapter by that dealer, the  
2431 purchaser must submit a written request for the refund or credit  
2432 to the dealer in accordance with this section. The request must  
2433 contain all the information necessary for the dealer to determine  
2434 the validity of the purchaser's request.

2435 (2) The purchaser may not take any other action against the  
2436 dealer with respect to the requested refund or credit until the  
2437 dealer has had 60 days following receipt of a completed request  
2438 to respond.

2439 (3) This section does not change the law regarding standing  
2440 to claim a refund.

2441 Section 11. Section 212.12, Florida Statutes, is amended to  
2442 read:

31-02574-08

2008962\_\_

2443           212.12 Dealer's credit for collecting tax; delinquent  
2444 payments; penalties for noncompliance; powers of department of  
2445 Revenue in dealing with delinquents; computing tax due brackets  
2446 applicable to taxable transactions; records required.--

2447           (1) Notwithstanding any other provision of law and for the  
2448 purpose of compensating persons granting licenses for and the  
2449 lessors of real and personal property taxed under this chapter  
2450 ~~hereunder, for the purpose of~~ compensating dealers in tangible  
2451 personal property, ~~for the purpose of~~ compensating dealers  
2452 providing communication services and taxable services, ~~for the~~  
2453 ~~purpose of~~ compensating owners of places where admissions are  
2454 collected, and ~~for the purpose of~~ compensating remitters of any  
2455 taxes or fees reported on the same documents used ~~utilized~~ for  
2456 the sales and use tax, as compensation for the keeping of  
2457 prescribed records, filing timely tax returns, and the proper  
2458 accounting and remitting of taxes by them, such seller, person,  
2459 lessor, dealer, owner, and remitter, except ~~(except~~ dealers who  
2460 make mail order sales, sales) shall be allowed 2.5 percent of the  
2461 amount of the tax due and accounted for and remitted to the  
2462 department, in the form of a deduction when ~~in~~ submitting his or  
2463 her report and paying the amount due. ~~by him or her~~; The  
2464 department shall allow the ~~such~~ deduction ~~of 2.5 percent of the~~  
2465 ~~amount of the tax to the person paying the same~~ for remitting the  
2466 tax and making of tax returns in the manner herein provided, for  
2467 paying the amount due to be paid ~~by him or her~~, and as further  
2468 compensation to dealers in tangible personal property for the  
2469 keeping of prescribed records and for collection of taxes and  
2470 remitting the same. However, an ~~if the amount of the tax due and~~  
2471 ~~remitted to the department for the reporting period exceeds~~

31-02574-08

2008962\_\_

2472 \$1,200, ~~no~~ allowance is not ~~shall be~~ allowed for all amounts in  
2473 excess of \$1,200.

2474 (a) The executive director of the department may ~~is~~  
2475 ~~authorized to~~ negotiate a collection allowance, pursuant to rules  
2476 adopted ~~promulgated~~ by the department, with a dealer who makes  
2477 mail order sales. The rules ~~of the department~~ shall provide  
2478 guidelines for establishing a ~~the~~ collection allowance based upon  
2479 the dealer's estimated costs of collecting the tax, the volume  
2480 and value of the dealer's mail order sales to purchasers in this  
2481 state, and the administrative and legal costs and likelihood of  
2482 achieving collection of the tax absent the cooperation of the  
2483 dealer. However, ~~in no event shall~~ the collection allowance  
2484 negotiated by the executive director may not exceed 10 percent of  
2485 the tax remitted for a reporting period.

2486 1.(a) The department ~~of Revenue~~ may deny the collection  
2487 allowance if a taxpayer files an incomplete return or if the  
2488 required tax return or tax is delinquent at the time of payment.

2489 1. For the purposes of this subsection, an "incomplete  
2490 return" is, ~~for purposes of this chapter,~~ a return that ~~which~~ is  
2491 lacking such uniformity, completeness, and arrangement so that  
2492 the physical handling, verification, review of the return, or  
2493 determination of other taxes and fees reported on the return  
2494 cannot ~~may not~~ be readily accomplished.

2495 2. The department shall adopt rules specifying the  
2496 ~~requiring such~~ information ~~as it may deem~~ necessary to ensure  
2497 that the tax levied ~~hereunder~~ is properly collected, reviewed,  
2498 compiled, reported, and enforced, including, but not limited to:  
2499 the amount of gross sales; the amount of taxable sales; the  
2500 amount of tax collected or due; the amount of lawful refunds,

31-02574-08

2008962\_\_

2501 | deductions, or credits claimed; the amount claimed as the  
2502 | dealer's collection allowance; the amount of penalty and  
2503 | interest; and the amount due with the return; ~~and such other~~  
2504 | ~~information as the department of Revenue may specify.~~ The  
2505 | department shall require that transient rentals and agricultural  
2506 | equipment transactions be separately shown. Sales made through  
2507 | vending machines, as defined in s. 212.0515, must be separately  
2508 | shown on the return. Sales made through coin-operated amusement  
2509 | machines ~~as defined by s. 212.02~~ and the number of machines  
2510 | operated must be separately shown on the return or on a form  
2511 | prescribed by the department. If a separate form is required, the  
2512 | same penalties for late filing, incomplete filing, or failure to  
2513 | file as provided for the sales tax return ~~shall~~ apply to the said  
2514 | form.

2515 |       (b) The collection allowance and other credits or  
2516 | deductions provided in this chapter shall be applied  
2517 | proportionally to any taxes or fees reported on the same  
2518 | documents used for the sales and use tax.

2519 |       (c) ~~1.~~ A dealer entitled to the collection allowance  
2520 | provided in this section may elect to forego the collection  
2521 | allowance and direct that the said amount be transferred into the  
2522 | Educational Enhancement Trust Fund. Such ~~an~~ election must be made  
2523 | with the timely filing of a return and may not be rescinded once  
2524 | made. If a dealer who makes the ~~such an~~ election files a  
2525 | delinquent return, underpays the tax, or files an incomplete  
2526 | return, the amount transferred into the Educational Enhancement  
2527 | Trust Fund shall be the amount of the collection allowance  
2528 | remaining after resolution of liability for all of the tax,  
2529 | interest, and penalty due on that return or underpayment of tax.



31-02574-08

2008962\_\_

2530 The Department of Education shall distribute the remaining amount  
2531 from the trust fund to ~~the~~ school districts that have adopted  
2532 resolutions stating that those funds are to ~~will~~ be used to  
2533 ensure that up-to-date technology is purchased for the classrooms  
2534 in the district and that teachers are trained in the use of that  
2535 technology. Revenues collected in districts that do not adopt  
2536 ~~such~~ a resolution shall be equally distributed to districts that  
2537 have adopted such resolutions.

2538 1.2. This paragraph applies to all taxes, surtaxes, and any  
2539 local option taxes administered under this chapter and remitted  
2540 directly to the department. It ~~This paragraph~~ does not apply to  
2541 any locally imposed and self-administered convention development  
2542 tax, tourist development tax, or tourist impact tax administered  
2543 under this chapter.

2544 2.3. Revenues from the dealer-collection allowances shall  
2545 be transferred quarterly from the General Revenue Fund to the  
2546 Educational Enhancement Trust Fund. The department ~~of Revenue~~  
2547 shall provide to the Department of Education quarterly  
2548 information about such revenues by county to which the collection  
2549 allowance was attributed.

2550  
2551 Notwithstanding any provision of chapter 120 ~~to the contrary~~, the  
2552 department ~~of Revenue~~ may adopt rules to carry out the amendment  
2553 made by chapter 2006-52, Laws of Florida, to this section.

2554 (d) A Model 1 seller as defined in s. 213.256, under the  
2555 Streamlined Sales and Use Tax Agreement, is not entitled to a  
2556 collection allowance as described in this subsection. However,  
2557 the department may provide the monetary allowance required to be

31-02574-08

2008962\_\_

2558 provided by the state to certified service providers and  
2559 voluntary sellers under the agreement.

2560 1. The monetary allowances must be in a form that certified  
2561 service providers or voluntary sellers are permitted to retain  
2562 from the tax revenue collected on remote sales to be remitted to  
2563 this state pursuant to this chapter.

2564 2. For purposes of this paragraph, "voluntary seller" means  
2565 a seller that is not required to register in this state to  
2566 collect sales tax under this chapter and "remote sales" means  
2567 sales revenue generated by a seller for this state for which the  
2568 seller does not have to register to collect sales tax under this  
2569 chapter.

2570 (2) (a) If ~~When~~ any person required ~~hereunder~~ to make a ~~any~~  
2571 return or to pay any tax or fee imposed by this chapter ~~either~~  
2572 fails to timely file such return or fails to pay the tax or fee  
2573 shown due on the return within the time required ~~hereunder~~, in  
2574 addition to all other penalties provided ~~herein and~~ by law ~~the~~  
2575 ~~laws of this state in respect to such taxes or fees~~, a specific  
2576 penalty shall be added to the tax or fee in the amount of 10  
2577 percent of ~~either~~ the tax or fee shown on the return that is not  
2578 timely filed or any tax or fee not paid timely. The penalty ~~may~~  
2579 ~~not be less than \$50~~ for failure to timely file a tax return  
2580 required by s. 212.11(1) or timely pay the tax or fee shown due  
2581 on the return, except as provided in s. 213.21(10), must be at  
2582 least \$50. If a person fails to timely file a tax return required  
2583 by s. 212.11(1) and to timely pay the tax or fee shown due on the  
2584 return, only one penalty of 10 percent, which is at least ~~may not~~  
2585 ~~be less than \$50~~, shall be imposed.

31-02574-08

2008962\_\_

2586 (b) If ~~When~~ any person required under this section to make  
2587 a return or to pay a tax or fee imposed by this chapter fails to  
2588 disclose the tax or fee on the return within the time required,  
2589 excluding a noncompliant filing event ~~generated by situations~~  
2590 covered in paragraph (a), in addition to all other penalties  
2591 provided ~~in this section and by law the laws of this state in~~  
2592 ~~respect to such taxes or fees~~, a specific penalty shall be added  
2593 to the additional tax or fee owed in the amount of 10 percent of  
2594 any ~~such~~ unpaid tax or fee not paid timely if the failure is for  
2595 up to not more than 30 days, with an additional 10 percent of any  
2596 ~~such~~ unpaid tax or fee for each additional 30 days, or fraction  
2597 thereof, that ~~while~~ the failure continues, not to exceed a total  
2598 penalty of 50 percent, in the aggregate, of any unpaid tax or  
2599 fee.

2600 (c) Any person who knowingly and with a willful intent to  
2601 evade any tax imposed under this chapter fails to file six  
2602 consecutive returns as required by law commits a felony of the  
2603 third degree, punishable as provided in s. 775.082 or s. 775.083.

2604 (d) Any person who makes a false or fraudulent return with  
2605 a willful intent to evade payment of any tax or fee imposed under  
2606 this chapter; any person who, after the department's delivery of  
2607 a written notice to the person's last known address specifically  
2608 alerting the person of the requirement to register the person's  
2609 business as a dealer, intentionally fails to register the  
2610 business; and any person who, after the department's delivery of  
2611 a written notice to the person's last known address specifically  
2612 alerting the person of the requirement to collect tax on specific  
2613 transactions, intentionally fails to collect such tax, shall, in  
2614 addition to the other penalties provided by law, be liable for a

31-02574-08

2008962\_\_

2615 specific penalty of 100 percent of any unreported or any  
2616 uncollected tax or fee and, upon conviction, for fine and  
2617 punishment as provided in s. 775.082, s. 775.083, or s. 775.084.  
2618 Delivery of written notice may be made by certified mail, or by  
2619 the use of such other method as is documented as being necessary  
2620 and reasonable under the circumstances. The civil and criminal  
2621 penalties imposed ~~herein~~ for failure to comply with a written  
2622 notice alerting the person of the requirement to register the  
2623 person's business as a dealer or to collect tax on specific  
2624 transactions does ~~shall~~ not apply if the person timely files a  
2625 written challenge to such notice in accordance with procedures  
2626 established by the department by rule or the notice fails to  
2627 clearly advise that failure to comply with or timely challenge  
2628 the notice will result in the imposition of ~~the~~ civil and  
2629 criminal penalties ~~imposed herein~~.

2630 1. If the total amount of unreported or uncollected taxes  
2631 or fees is less than \$300, the first offense ~~resulting in~~  
2632 ~~conviction~~ is a misdemeanor of the second degree, the second  
2633 offense ~~resulting in conviction~~ is a misdemeanor of the first  
2634 degree, and the third and all subsequent offenses are  
2635 misdemeanors ~~resulting in conviction is a misdemeanor~~ of the  
2636 first degree, and the third and all subsequent offenses ~~resulting~~  
2637 ~~in conviction~~ are felonies of the third degree.

2638 2. If the total amount of unreported or uncollected taxes  
2639 or fees is \$300 or more but less than \$20,000, the offense is a  
2640 felony of the third degree.

2641 3. If the total amount of unreported or uncollected taxes  
2642 or fees is \$20,000 or more but less than \$100,000, the offense is  
2643 a felony of the second degree.

31-02574-08

2008962\_\_

2644 4. If the total amount of unreported or uncollected taxes  
2645 or fees is \$100,000 or more, the offense is a felony of the first  
2646 degree.

2647 (e) A person who willfully attempts in any manner to evade  
2648 any tax, surcharge, or fee imposed under this chapter or the  
2649 payment thereof is, in addition to any other penalties provided  
2650 by law, liable for a specific penalty in the amount of 100  
2651 percent of the tax, surcharge, or fee, and commits a felony of  
2652 the third degree, punishable as provided in s. 775.082, s.  
2653 775.083, or s. 775.084.

2654 (f) If ~~When~~ any person, firm, or corporation fails to  
2655 timely remit the ~~proper~~ estimated payment required under s.  
2656 212.11, a specific penalty shall be added in an amount equal to  
2657 10 percent of the ~~any~~ unpaid estimated tax. ~~Beginning with~~  
2658 ~~January 1, 1985, returns,~~ The department, upon a showing of  
2659 reasonable cause, may ~~is authorized to~~ waive or compromise  
2660 penalties imposed by this paragraph. However, other penalties and  
2661 interest shall be due and payable if the return on which the  
2662 estimated payment is ~~was~~ due is ~~was~~ not timely or properly filed.

2663 (g) A dealer who files a consolidated return pursuant to s.  
2664 212.11(1)(e) is subject to the penalty established in paragraph  
2665 (e) unless the dealer ~~has~~ paid the required estimated tax ~~for his~~  
2666 ~~or her consolidated return~~ as a whole without regard to each  
2667 location. If the dealer fails to pay the required estimated tax  
2668 ~~for his or her consolidated return~~ as a whole, each filing  
2669 location shall stand on its own with respect to calculating  
2670 penalties pursuant to paragraph (f).

2671 (3) If ~~When~~ any dealer, or other person charged ~~herein~~,  
2672 fails to remit the tax, or any portion thereof, on or before the

31-02574-08

2008962\_\_

2673 day when the ~~such~~ tax is required by law to be paid, ~~there shall~~  
2674 ~~be added to the amount due~~ interest at the rate of 1 percent per  
2675 month of the amount due from the date due until paid shall be  
2676 added to the amount due. Interest on the delinquent tax shall be  
2677 calculated beginning on the 21st day of the month following the  
2678 month for which the tax is due, except as otherwise provided in  
2679 this chapter.

2680 (4) All penalties and interest imposed by this chapter  
2681 shall be payable to and collectible by the department in the same  
2682 manner as if they were a part of the tax imposed. The department  
2683 may settle or compromise ~~any~~ such interest or penalties pursuant  
2684 to s. 213.21.

2685 (5) (a) The department is authorized to audit or inspect the  
2686 records and accounts of dealers ~~defined herein~~, including audits  
2687 or inspections of dealers who make mail order sales to the extent  
2688 permitted by another state, and to correct by credit any  
2689 overpayment of tax, and, in the event of a deficiency, an  
2690 assessment shall be made and collected. An ~~No~~ administrative  
2691 finding of fact is not necessary prior to the assessment of a ~~any~~  
2692 tax deficiency.

2693 (b) If ~~In the event~~ any dealer or other person charged  
2694 ~~herein~~ fails or refuses to make his or her records available for  
2695 inspection so that no audit or examination is ~~has been~~ made of  
2696 the books and records ~~of such dealer or person~~, fails or refuses  
2697 to register as a dealer, fails to make a report and pay the tax  
2698 as provided by this chapter, makes a grossly incorrect report or  
2699 makes a report that is false or fraudulent, ~~then, in such event,~~  
2700 ~~it shall be the duty of the department~~ shall ~~to~~ make an  
2701 assessment from an estimate based upon the best information ~~then~~

31-02574-08

2008962\_\_

2702 available to it for the taxable period of retail sales of the  
2703 ~~such~~ dealer, the gross proceeds from rentals, the total  
2704 admissions received, amounts received from leases of tangible  
2705 personal property by the ~~such~~ dealer, or ~~of~~ the cost price of all  
2706 articles of tangible personal property imported by the dealer for  
2707 use or consumption or distribution or storage to be used or  
2708 consumed in this state, or ~~of~~ the sales or cost price of all  
2709 services the sale or use of which is taxable under this chapter,  
2710 together with interest, plus penalty, if such have accrued, ~~as~~  
2711 ~~the case may be.~~ ~~Then~~ The department shall proceed to collect  
2712 such taxes, interest, and penalty on the basis of the ~~such~~  
2713 assessment, which shall be considered prima facie correct, and  
2714 the burden to show the contrary shall rest upon the dealer,  
2715 seller, owner, or lessor, ~~as the case may be.~~

2716 (6) (a) The department may ~~is given the power to~~ prescribe  
2717 the records to be kept by all persons subject to taxes imposed by  
2718 this chapter. ~~It shall be the duty of~~ Every person required to  
2719 make a report and pay any tax under this chapter, every person  
2720 receiving rentals or license fees, and owners of places of  
2721 admission shall, ~~to~~ keep and preserve suitable records of the  
2722 sales, leases, rentals, license fees, admissions, or purchases, ~~as~~  
2723 ~~the case may be,~~ taxable under this chapter; such other books  
2724 of account as may be necessary to determine the amount of the tax  
2725 due ~~hereunder;~~ and other information as may be required by the  
2726 department. ~~It shall be the duty of~~ Every such person shall also  
2727 ~~so charged with such duty, moreover, to~~ keep and preserve, as  
2728 long as required by s. 213.35, all invoices and other records of  
2729 goods, wares, and merchandise; records of admissions, leases,  
2730 license fees and rentals; and records of all other subjects of

31-02574-08

2008962\_\_

2731 | taxation under this chapter. All such books, invoices, and other  
2732 | records must ~~shall~~ be open to examination at all reasonable hours  
2733 | to the department or ~~any of its duly~~ authorized agents.

2734 |       (b) For the purpose of this subsection, if a dealer does  
2735 | not have adequate records of his or her retail sales or  
2736 | purchases, the department may, upon the basis of a test or  
2737 | sampling of the dealer's available records or other information  
2738 | relating to the sales or purchases made by the ~~such~~ dealer for a  
2739 | representative period, determine the proportion that taxable  
2740 | retail sales bear to total retail sales or the proportion that  
2741 | taxable purchases bear to total purchases. This subsection does  
2742 | not affect the duty of the dealer to collect, or the liability of  
2743 | any consumer to pay, any tax imposed by or pursuant to this  
2744 | chapter.

2745 |       (c) ~~1.~~ If the records of a dealer are adequate but  
2746 | voluminous in nature and substance, the department may sample the  
2747 | ~~such~~ records and project the audit findings derived therefrom  
2748 | over the entire audit period to determine the proportion that  
2749 | taxable retail sales bear to total retail sales or the proportion  
2750 | that taxable purchases bear to total purchases.

2751 |       1. In order to conduct ~~such~~ a sample, the department must  
2752 | first make a good faith effort to reach an agreement with the  
2753 | dealer, ~~which agreement provides for~~ the means and methods to be  
2754 | used in the sampling process. If an ~~In the event that no~~  
2755 | agreement is not reached, the dealer is entitled to a review by  
2756 | the executive director. For ~~In the case of~~ fixed assets, a dealer  
2757 | may agree in writing with the department for adequate but  
2758 | voluminous records to be statistically sampled. The ~~Such an~~  
2759 | agreement must ~~shall~~ provide ~~for~~ the methodology to be used in



31-02574-08

2008962\_\_

2760 the statistical sampling process. The audit findings derived  
2761 therefrom shall be projected over the period represented by the  
2762 sample in order to determine the proportion that taxable  
2763 purchases bear to total purchases. Once an agreement has been  
2764 signed, it is final and conclusive with respect to the method of  
2765 sampling fixed assets, and the department may not conduct a  
2766 detailed audit of fixed assets, and the taxpayer may not request  
2767 a detailed audit after the agreement is reached.

2768 2. For the purposes of sampling ~~pursuant to subparagraph~~  
2769 ~~1.~~, the department shall project any deficiencies and  
2770 overpayments derived therefrom over the entire audit period. In  
2771 determining the dealer's compliance, the department shall reduce  
2772 any tax deficiency ~~as~~ derived from the sample by the amount of  
2773 any overpayment derived from the sample. If ~~In the event~~ the  
2774 department determines from the sample ~~results~~ that the dealer has  
2775 a net tax overpayment, the department shall provide the findings  
2776 of this overpayment to the Chief Financial Officer for repayment  
2777 of funds paid into the State Treasury through error pursuant to  
2778 s. 215.26.

2779 3.a. A taxpayer is entitled, both in connection with an  
2780 audit and in connection with an application for refund filed  
2781 independently of any audit, to establish the amount of any refund  
2782 or deficiency through statistical sampling if ~~when~~ the taxpayer's  
2783 records are adequate but voluminous. For ~~In the case of~~ fixed  
2784 assets, the ~~a~~ dealer may agree in writing with the department for  
2785 adequate but voluminous records to be statistically sampled. The  
2786 ~~Such an~~ agreement must ~~shall~~ provide ~~for~~ the methodology to be  
2787 used in the statistical sampling process. The audit findings  
2788 derived therefrom shall be projected over the period represented

31-02574-08

2008962\_\_

2789 | by the sample in order to determine the proportion that taxable  
2790 | purchases bear to total purchases. Once an agreement has been  
2791 | signed, it is final and conclusive with respect to the method of  
2792 | sampling fixed assets, ~~and~~ the department may not conduct a  
2793 | detailed audit of fixed assets, and the taxpayer may not request  
2794 | a detailed audit after the agreement is reached.

2795 |       b. Alternatively, a taxpayer is entitled to establish any  
2796 | refund or deficiency through any other sampling method agreed to  
2797 | ~~upon~~ by the taxpayer and the department if ~~when~~ the taxpayer's  
2798 | records, other than those regarding fixed assets, are adequate  
2799 | but voluminous. Whether done through statistical sampling or any  
2800 | other sampling method agreed upon ~~by the taxpayer and the~~  
2801 | ~~department~~, the completed sample must reflect both overpayments  
2802 | and underpayments of taxes due. The sample shall be conducted  
2803 | through:

2804 |       (I) A taxpayer request to perform the sampling through the  
2805 | certified audit program pursuant to s. 213.285;

2806 |       (II) Attestation by a certified public accountant as to the  
2807 | adequacy of the sampling method used ~~utilized~~ and the results  
2808 | reached using the ~~such~~ sampling method; or

2809 |       (III) A sampling method that has been submitted by the  
2810 | taxpayer and approved by the department before a refund claim is  
2811 | submitted. This sub-sub-subparagraph does not prohibit a taxpayer  
2812 | from filing a refund claim prior to approval by the department of  
2813 | the sampling method; however, a refund claim submitted before the  
2814 | sampling method has been approved is not ~~by the department~~ cannot  
2815 | ~~be~~ a complete refund application pursuant to s. 213.255 until the  
2816 | sampling method has been approved by the department.

31-02574-08

2008962\_\_

2817 c. The department shall prescribe by rule the procedures to  
2818 be followed under each method of sampling. The ~~Such~~ procedures  
2819 must ~~shall~~ follow generally accepted auditing procedures for  
2820 sampling. The rule must ~~shall~~ also set forth other criteria  
2821 regarding the use of sampling, including, but not limited to,  
2822 training requirements that must be met before a sampling method  
2823 may be used ~~utilized~~ and the steps necessary for the department  
2824 and the taxpayer to reach agreement on a sampling method  
2825 submitted by the taxpayer for approval by the department.

2826 (7) If ~~In the event~~ the dealer has imported tangible  
2827 personal property and ~~he or she~~ fails to produce an invoice  
2828 showing the cost price of the articles, ~~as defined in this~~  
2829 ~~chapter,~~ which are subject to tax, or the invoice does not  
2830 reflect the true or actual cost price ~~as defined herein,~~ then the  
2831 department shall ascertain, in any manner feasible, the true cost  
2832 price, and assess and collect the tax thereon with interest plus  
2833 penalties, if such have accrued ~~on the true cost price as~~  
2834 ~~assessed by it.~~ The assessment so made shall be considered prima  
2835 facie correct, and the burden ~~duty~~ shall be on the dealer to show  
2836 to the contrary.

2837 (8) For ~~In the case of~~ the lease or rental of tangible  
2838 personal property, or other rentals or license fees ~~as herein~~  
2839 ~~defined and taxed,~~ if the consideration given or reported by the  
2840 lessor, person receiving rental or license fee, or dealer does  
2841 not, in the judgment of the department, represent the true or  
2842 actual consideration, ~~then~~ the department is authorized to  
2843 ascertain ~~the same~~ and assess and collect the tax ~~thereon~~ in the  
2844 same manner as ~~above~~ provided in subsection (7), ~~with respect to~~

31-02574-08

2008962\_\_

2845 ~~imported tangible property,~~ together with interest, plus  
2846 penalties, if such have accrued.

2847 (9) Taxes imposed by this chapter upon the privilege of the  
2848 use, consumption, storage for consumption, or sale of tangible  
2849 personal property, admissions, license fees, rentals,  
2850 communication services, and upon the sale or use of services ~~as~~  
2851 ~~herein taxed~~ shall be collected by the ~~upon the basis of an~~  
2852 addition of the tax imposed ~~by this chapter~~ to the total price of  
2853 such admissions, license fees, rentals, communication or other  
2854 services, or sale price of such article or articles that are  
2855 purchased, sold, or leased at any one time by or to a customer or  
2856 buyer. ~~The dealer, or person charged herein,~~ is required to pay  
2857 a privilege tax in the amount of the tax imposed by this chapter  
2858 on the total of his or her gross sales of tangible personal  
2859 property, admissions, license fees, rentals, and communication  
2860 services or to collect a tax upon the sale or use of services,  
2861 and such person or dealer shall add the tax imposed ~~by this~~  
2862 ~~chapter~~ to the price, license fee, rental, or admissions, and  
2863 communication or other services and collect the total sum from  
2864 the purchaser, admittee, licensee, lessee, or consumer. In  
2865 computing the tax due or to be collected, the seller may elect to  
2866 compute the tax on an item basis or an invoice basis. The tax  
2867 rate shall be the sum of the applicable state and local rate, if  
2868 any, and the tax computation must be carried to the third decimal  
2869 place. If the third decimal place is greater than four, the tax  
2870 shall be rounded to the next whole cent. The department shall  
2871 ~~make available in an electronic format or otherwise the tax~~  
2872 ~~amounts and the following brackets applicable to all transactions~~  
2873 ~~taxable at the rate of 6 percent:~~

31-02574-08

2008962\_\_

2874           ~~(a) On single sales of less than 10 cents, no tax shall be~~  
2875 ~~added.~~

2876           ~~(b) On single sales in amounts from 10 cents to 16 cents,~~  
2877 ~~both inclusive, 1 cent shall be added for taxes.~~

2878           ~~(c) On sales in amounts from 17 cents to 33 cents, both~~  
2879 ~~inclusive, 2 cents shall be added for taxes.~~

2880           ~~(d) On sales in amounts from 34 cents to 50 cents, both~~  
2881 ~~inclusive, 3 cents shall be added for taxes.~~

2882           ~~(e) On sales in amounts from 51 cents to 66 cents, both~~  
2883 ~~inclusive, 4 cents shall be added for taxes.~~

2884           ~~(f) On sales in amounts from 67 cents to 83 cents, both~~  
2885 ~~inclusive, 5 cents shall be added for taxes.~~

2886           ~~(g) On sales in amounts from 84 cents to \$1, both~~  
2887 ~~inclusive, 6 cents shall be added for taxes.~~

2888           ~~(h) On sales in amounts of more than \$1, 6 percent shall be~~  
2889 ~~charged upon each dollar of price, plus the appropriate bracket~~  
2890 ~~charge upon any fractional part of a dollar.~~

2891           ~~(10) In counties which have adopted a discretionary sales~~  
2892 ~~surtax at the rate of 1 percent, the department shall make~~  
2893 ~~available in an electronic format or otherwise the tax amounts~~  
2894 ~~and the following brackets applicable to all taxable transactions~~  
2895 ~~that would otherwise have been transactions taxable at the rate~~  
2896 ~~of 6 percent:~~

2897           ~~(a) On single sales of less than 10 cents, no tax shall be~~  
2898 ~~added.~~

2899           ~~(b) On single sales in amounts from 10 cents to 14 cents,~~  
2900 ~~both inclusive, 1 cent shall be added for taxes.~~

2901           ~~(c) On sales in amounts from 15 cents to 28 cents, both~~  
2902 ~~inclusive, 2 cents shall be added for taxes.~~

31-02574-08

2008962\_\_

2903 ~~(d) On sales in amounts from 29 cents to 42 cents, both~~  
2904 ~~inclusive, 3 cents shall be added for taxes.~~

2905 ~~(e) On sales in amounts from 43 cents to 57 cents, both~~  
2906 ~~inclusive, 4 cents shall be added for taxes.~~

2907 ~~(f) On sales in amounts from 58 cents to 71 cents, both~~  
2908 ~~inclusive, 5 cents shall be added for taxes.~~

2909 ~~(g) On sales in amounts from 72 cents to 85 cents, both~~  
2910 ~~inclusive, 6 cents shall be added for taxes.~~

2911 ~~(h) On sales in amounts from 86 cents to \$1, both~~  
2912 ~~inclusive, 7 cents shall be added for taxes.~~

2913 ~~(i) On sales in amounts from \$1 up to, and including, the~~  
2914 ~~first \$5,000 in price, 7 percent shall be charged upon each~~  
2915 ~~dollar of price, plus the appropriate bracket charge upon any~~  
2916 ~~fractional part of a dollar.~~

2917 ~~(j) On sales in amounts of more than \$5,000 in price, 7~~  
2918 ~~percent shall be added upon the first \$5,000 in price, and 6~~  
2919 ~~percent shall be added upon each dollar of price in excess of the~~  
2920 ~~first \$5,000 in price, plus the bracket charges upon any~~  
2921 ~~fractional part of a dollar as provided for in subsection (9).~~

2922 ~~(11) The department shall make available in an electronic~~  
2923 ~~format or otherwise the tax amounts and brackets applicable to~~  
2924 ~~all taxable transactions that occur in counties that have a~~  
2925 ~~surtax at a rate other than 1 percent which transactions would~~  
2926 ~~otherwise have been transactions taxable at the rate of 6~~  
2927 ~~percent. Likewise, the department shall make available in an~~  
2928 ~~electronic format or otherwise the tax amounts and brackets~~  
2929 ~~applicable to transactions taxable at 7 percent pursuant to s.~~  
2930 ~~212.05(1)(c) and on transactions which would otherwise have been~~

31-02574-08

2008962\_\_

2931 | ~~so taxable in counties which have adopted a discretionary sales~~  
2932 | ~~surtax.~~

2933 |        (10)-(12) It is hereby declared to be the legislative intent  
2934 | that if, ~~whenever~~ in the construction, administration, or  
2935 | enforcement of this chapter, there is ~~may be~~ any question  
2936 | respecting a duplication of the tax, the end consumer, or last  
2937 | retail sale is, ~~be~~ the sale intended to be taxed and that, as far  
2938 | ~~insofar~~ as ~~may be~~ practicable, there may not be ~~no~~ duplication or  
2939 | pyramiding of the tax.

2940 |        (11)-(13) In order to aid the administration and enforcement  
2941 | of ~~the provisions of~~ this chapter with respect to ~~the~~ rentals and  
2942 | license fees, each lessor or person granting the use of any  
2943 | hotel, apartment house, roominghouse, tourist or trailer camp,  
2944 | mobile home or recreational vehicle parks, real property, or any  
2945 | interest therein, or any portion thereof, inclusive of owners;  
2946 | property managers; lessors; landlords; hotel, apartment house,  
2947 | and roominghouse operators; and all licensed real estate agents  
2948 | within the state leasing, granting the use of, or renting such  
2949 | property, shall ~~be required to~~ keep a record of each ~~and every~~  
2950 | such lease, license, or rental transaction that ~~which~~ is taxable  
2951 | under this chapter, in ~~such~~ a manner and upon such forms as the  
2952 | department may prescribe, ~~and to~~ report such transaction to the  
2953 | department or its designated agents, and ~~to~~ maintain such records  
2954 | as long as required by s. 213.35, subject to the inspection of  
2955 | the department and its agents. Upon the failure by the such  
2956 | owner; property manager; lessor; landlord; hotel, apartment  
2957 | house, roominghouse, tourist or trailer camp operator, or mobile  
2958 | home or recreational vehicle park; or real estate agent to keep  
2959 | and maintain such records and to make ~~such~~ reports upon the forms

31-02574-08

2008962\_\_

2960 and in the manner prescribed, the ~~such~~ owner; property manager;  
2961 lessor; landlord; hotel, apartment house, roominghouse, tourist  
2962 or trailer camp operator, or mobile home or recreational vehicle  
2963 park; receiver of rent or license fees; or real estate agent  
2964 commits ~~is guilty of~~ a misdemeanor of the second degree,  
2965 punishable as provided in s. 775.082 or s. 775.083, for the first  
2966 offense; and for subsequent offenses commits, ~~they are each~~  
2967 ~~guilty of~~ a misdemeanor of the first degree, punishable as  
2968 provided in s. 775.082 or s. 775.083. If, however, any subsequent  
2969 offense involves intentional destruction of ~~such~~ records with an  
2970 intent to evade payment of or deprive the state of any tax  
2971 revenues, a ~~such~~ subsequent offense is ~~shall be~~ a felony of the  
2972 third degree, punishable as provided in s. 775.082 or s. 775.083.

2973 (12) ~~(14)~~ If it is determined upon audit that a dealer has  
2974 collected and remitted taxes by applying the applicable tax rate  
2975 to each transaction as described in subsection (9) and rounding  
2976 the tax due to the nearest whole cent rather than to the third  
2977 decimal place ~~applying the appropriate bracket system provided by~~  
2978 ~~law or department rule~~, the dealer is ~~shall~~ not be held liable  
2979 for additional tax, penalty, and interest resulting from such  
2980 failure if:

2981 (a) The dealer acted in a good faith belief that rounding  
2982 to the nearest whole cent was the proper method of determining  
2983 the amount of tax due on each taxable transaction.

2984 (b) The dealer timely reported and remitted all taxes  
2985 collected on each taxable transaction.

2986 (c) The dealer agrees in writing to future compliance with  
2987 the laws and rules ~~concerning brackets~~ applicable to the dealer's  
2988 transactions.



31-02574-08

2008962\_\_

2989 Section 12. Subsection (3) of section 212.17, Florida  
2990 Statutes, is amended to read:

2991 212.17 Credits for returned goods, rentals, or admissions;  
2992 goods acquired for dealer's own use and subsequently resold;  
2993 additional powers of department.--

2994 (3) A dealer who has paid the tax imposed by this chapter  
2995 on tangible personal property or services may take a credit or  
2996 obtain a refund for any tax paid by the dealer on the unpaid  
2997 balance due on worthless accounts within 12 months following the  
2998 month in which the bad debt has been written ~~charged~~ off for  
2999 federal income tax purposes. A dealer who is not required to file  
3000 a federal income tax return may take a credit or obtain a refund  
3001 for any tax paid by the dealer on the unpaid balance due on  
3002 worthless accounts within 12 months following the month in which  
3003 the bad debt is written off as uncollectible in the dealer's  
3004 books and records and would be eligible for a bad-debt deduction  
3005 for federal income tax purposes if the dealer was required to  
3006 file a federal income tax return.

3007 (a) A dealer who is taking a credit or obtaining a refund  
3008 on worthless accounts shall base the bad-debt-recovery  
3009 calculation in accordance with 26 U.S.C. s. 166.

3010 (b) Notwithstanding paragraph (a), the amount calculated  
3011 pursuant to 26 U.S.C. s. 166 must be adjusted to exclude  
3012 financing charges or interest, sales or use taxes charged on the  
3013 purchase price, uncollectible amounts on property that remains in  
3014 the possession of the seller until the full purchase price is  
3015 paid, expenses incurred in attempting to collect any debt, and  
3016 repossessed property.

31-02574-08

2008962\_\_

3017        (c) Notwithstanding s. 215.26(2), if the amount of bad debt  
3018 exceeds the amount of taxable sales for the period during which  
3019 the bad debt is written off, a refund claim must be filed within  
3020 3 years after the due date of the return on which the bad debt  
3021 could first be claimed.

3022        (d) If any accounts written ~~so~~ charged off for which a  
3023 credit or refund has been obtained are thereafter in whole or in  
3024 part paid to the dealer, the amount ~~so~~ paid must ~~shall~~ be  
3025 included in the first return filed after such collection and the  
3026 tax paid accordingly.

3027        (e) If filing responsibilities have been assumed by a  
3028 certified service provider, the service provider shall claim, on  
3029 behalf of the seller, any bad-debt allowance provided by this  
3030 section. The certified service provider must credit or refund to  
3031 the seller the full amount of any bad-debt allowance or refund  
3032 received.

3033        (f) For the purposes of reporting a payment received on a  
3034 previously claimed bad debt, payments made on a debt or account  
3035 shall be applied proportionally first to the taxable price of the  
3036 property or service and the sales tax thereon, and secondly to  
3037 interest, service charges, and any other charges.

3038        (g) If the books and records of the party claiming the bad-  
3039 debt allowance support an allocation of the bad debt among states  
3040 that are members of the Streamlined Sales and Use Tax Agreement,  
3041 the allocation is authorized among those states.

3042        Section 13. Section 213.052, Florida Statutes, is created  
3043 to read:

3044        213.052 Notice of state tax rate change.--

31-02574-08

2008962\_\_

3045       (1) A sales or use tax rate change imposed under chapter  
3046 212 is effective on January 1, April 1, July 1, or October 1. The  
3047 Department of Revenue shall provide notice of the rate change to  
3048 all affected sellers 90 days before the effective date of the  
3049 rate change.

3050       (2) Failure of a seller to receive notice does not relieve  
3051 the seller of its obligation to collect the sales or use tax.

3052       Section 14. Section 213.0521, Florida Statutes, is created  
3053 to read:

3054       213.0521 Effective date of state tax rate changes applied  
3055 to services.--A tax rate change for taxing services covering a  
3056 period starting before and ending after the effective date of the  
3057 tax is applied as follows:

3058       (1) For a tax rate increase, the new rate applies to the  
3059 first billing period starting on or after the effective date.

3060       (2) For a tax rate decrease, the new rate applies to bills  
3061 rendered on or after the effective date.

3062       Section 15. Subsection (11) is added to section 213.21,  
3063 Florida Statutes, to read:

3064       213.21 Informal conferences; compromises.--

3065       (11) Amnesty shall be provided for uncollected or unpaid  
3066 sales or use taxes to a seller who registers to pay or to collect  
3067 and remit applicable sales or use taxes in accordance with the  
3068 terms of the Streamlined Sales and Use Tax Agreement authorized  
3069 under s. 213.256 if the seller was not registered with the  
3070 Department of Revenue in the 12-month period preceding the  
3071 effective date of participation in the agreement by this state.

3072       (a) The amnesty precludes assessment for uncollected or  
3073 unpaid sales or use taxes, together with penalty or interest for

31-02574-08

2008962\_\_

3074 sales made during the period the seller was not registered with  
3075 the Department of Revenue, if registration occurs within 12  
3076 months after the effective date of this state's participation in  
3077 the agreement.

3078 (b) The amnesty is not available to a seller for any matter  
3079 for which the seller received notice of the commencement of an  
3080 audit if the audit is not yet finally resolved, including any  
3081 related administrative and judicial processes.

3082 (c) The amnesty is not available for sales or use taxes  
3083 already paid or remitted to the state or to taxes collected by  
3084 the seller.

3085 (d) Absent the seller's fraud or intentional  
3086 misrepresentation of a material fact, the amnesty is fully  
3087 effective as long as the seller continues registration and  
3088 payment or collection and remittance of applicable sales or use  
3089 taxes for at least 36 months.

3090 (e) The amnesty applies only to sales or use taxes due from  
3091 a seller in its capacity as a seller and not to sales or use  
3092 taxes due from a seller in its capacity as a buyer.

3093 Section 16. Section 213.256, Florida Statutes, is amended  
3094 to read:

3095 213.256 Simplified Sales and Use Tax Administration Act.--

3096 (1) As used in this section and s. 213.2565, the term:

3097 (a) "Agent" means a person appointed by a seller to  
3098 represent the seller before the member states.

3099 ~~(a) "Department" means the Department of Revenue.~~

3100 (b) "Agreement" means the Streamlined Sales and Use Tax  
3101 Agreement, as amended and adopted on January 27, 2001, by the

31-02574-08

2008962\_\_

3102 Executive Committee of the National Conference of State  
3103 Legislatures.

3104 (c) "Certified automated system" means software certified  
3105 jointly by member ~~the states that are signatories to the~~  
3106 ~~agreement~~ to calculate the tax imposed by each jurisdiction on a  
3107 transaction, determine the amount of tax to remit to the  
3108 appropriate state, and maintain a record of the transaction.

3109 (d) "Certified service provider" means an agent certified  
3110 under ~~jointly by the states that are signatories to the agreement~~  
3111 to perform all of the seller's sales tax functions other than the  
3112 obligation to remit tax on the seller's own purchases.

3113 (e) "Department" means the Department of Revenue.

3114 (f) "Governing board" means the Streamlined Sales Tax  
3115 Governing Board, Inc., composed of member states and responsible  
3116 for administering and operating the agreement.

3117 (g) "Member states" means states that are signatories to  
3118 the agreement.

3119 (h) "Model 1 seller" means a seller that has selected a  
3120 certified service provider as its agent to perform all the  
3121 seller's sales and use tax functions other than the obligation to  
3122 remit tax on the seller's own purchases.

3123 (i) "Model 2 seller" means a seller that has selected a  
3124 certified automated system to perform part of its sales and use  
3125 tax functions, but that retains responsibility for remitting the  
3126 tax.

3127 (j) "Model 3 seller" means a seller that has sales in at  
3128 least five member states, has total annual sales revenue of at  
3129 least \$500 million, has a proprietary system that calculates the  
3130 amount of tax due in each jurisdiction, and has entered into a

31-02574-08

2008962\_\_

3131 performance agreement with the member states which establishes a  
3132 tax performance standard for the seller. As used in this  
3133 paragraph, a "seller" includes an affiliated group of sellers  
3134 using the same proprietary system.

3135 (k)~~(e)~~ "Person" means an individual, trust, estate,  
3136 fiduciary, partnership, limited liability company, limited  
3137 liability partnership, corporation, or any other legal entity.

3138 (l)~~(f)~~ "Sales tax" means the tax levied under chapter 212.

3139 (m)~~(g)~~ "Seller" means any person making sales, leases, or  
3140 rentals of personal property or services.

3141 (n)~~(h)~~ "State" means any state of the United States and the  
3142 District of Columbia.

3143 (o)~~(i)~~ "Use tax" means the tax levied under chapter 212.

3144 (2)~~(a)~~ The executive director of the department shall enter  
3145 into the Streamlined Sales and Use Tax Agreement with one or more  
3146 member states to simplify and modernize sales and use tax  
3147 administration in order to substantially reduce the burden of tax  
3148 compliance for all sellers and for all types of commerce.

3149 (a) ~~In furtherance of the agreement,~~ The executive director  
3150 of the department or his or her designee shall act jointly with  
3151 other member states ~~that are members of the agreement~~ to  
3152 establish standards for certification of a certified service  
3153 provider and certified automated system and establish performance  
3154 standards for multistate sellers.

3155 (b) The executive director of the department or his or her  
3156 designee shall take other actions reasonably required to  
3157 administer this section. Other actions authorized by this section  
3158 include, but are not limited to, the adoption of rules and the

31-02574-08

2008962\_\_

3159 joint procurement, with other member states, of goods and  
3160 services in furtherance of the cooperative agreement.

3161 (c) The executive director of the department or his or her  
3162 designee may represent this state before ~~the other~~ member states  
3163 ~~that are signatories to the agreement.~~

3164 (3) The executive director of the department may not enter  
3165 into the ~~Streamlined Sales and Use Tax~~ agreement unless the  
3166 agreement requires each state to abide by the following  
3167 requirements:

3168 (a) The agreement must set restrictions to limit, over  
3169 time, the number of state tax rates.

3170 (b) The agreement must establish uniform standards for:  
3171 1. The sourcing of transactions to taxing jurisdictions.  
3172 2. The administration of exempt sales.  
3173 3. Sales and use tax returns and remittances.

3174 (c) The agreement must provide a central electronic  
3175 registration system that allows a seller to register to collect  
3176 and remit sales and use taxes for all member ~~signatory~~ states.

3177 (d) The agreement must provide that registration with the  
3178 central registration system and the collection of sales and use  
3179 taxes in the signatory state ~~is will~~ not ~~be~~ used as a factor in  
3180 determining whether the seller has nexus with a state for any  
3181 tax.

3182 (e) The agreement must provide for reduction of the burdens  
3183 of complying with local sales and use taxes through:

3184 1. Restricting variances between the state and local tax  
3185 bases.

3186 2. Requiring states to administer ~~any~~ sales and use taxes  
3187 levied by local jurisdictions within the state so that sellers

31-02574-08

2008962\_\_

3188 | who collect and remit these taxes do ~~will~~ not have to register or  
3189 | file returns with, remit funds to, or be subject to independent  
3190 | audits from local taxing jurisdictions.

3191 |         3. Restricting the frequency of changes in the local sales  
3192 | and use tax rates and setting effective dates for the application  
3193 | of local jurisdictional boundary changes to local sales and use  
3194 | taxes.

3195 |         4. Providing notice of changes in local sales and use tax  
3196 | rates and of local changes in the boundaries of local taxing  
3197 | jurisdictions.

3198 |         (f) The agreement must outline any monetary allowances that  
3199 | are to be provided by the states to sellers or certified service  
3200 | providers. ~~The agreement must allow for a joint study by the  
3201 | public and private sectors, which must be completed by July 1,  
3202 | 2002, of the compliance cost to sellers and certified service  
3203 | providers of collecting sales and use taxes for state and local  
3204 | governments under various levels of complexity.~~

3205 |         (g) The agreement must require each state to certify  
3206 | compliance with the terms of the agreement before joining and to  
3207 | maintain compliance, under the laws of the member state, with all  
3208 | provisions of the agreement while a member.

3209 |         (h) The agreement must require each state to adopt a  
3210 | uniform policy for certified service providers which protects the  
3211 | privacy of consumers and maintains the confidentiality of tax  
3212 | information.

3213 |         (i) The agreement must provide for the appointment of an  
3214 | advisory council of private sector representatives and an  
3215 | advisory council of nonmember state representatives to consult  
3216 | within the administration of the agreement.



31-02574-08

2008962\_\_

3217 (4) For the purposes of reviewing or amending the agreement  
3218 to embody the simplification requirements ~~as~~ set forth in  
3219 subsection (3), this state shall enter into multistate  
3220 discussions. For purposes of such discussions, this state shall  
3221 be represented by three delegates, one appointed by the President  
3222 of the Senate, one appointed by the Speaker of the House of  
3223 Representatives, and the executive director of the department or  
3224 his or her designee.

3225 (5) No provision of the agreement authorized by this  
3226 section in whole or in part invalidates or amends any provision  
3227 of the laws of this state. Adoption of the agreement by this  
3228 state does not amend or modify any law of the state.  
3229 Implementation of any condition of the agreement ~~in this state~~,  
3230 whether adopted before, at, or after membership of this state in  
3231 the agreement, must be by the action of the state.

3232 (6) The agreement ~~authorized by this section~~ is an accord  
3233 among individual cooperating sovereigns in furtherance of their  
3234 governmental functions and. ~~The agreement~~ provides a mechanism  
3235 among the member states to establish and maintain a cooperative,  
3236 simplified system for the application and administration of sales  
3237 and use taxes under the duly adopted law of each member state.

3238 (7) ~~(a)~~ The agreement ~~authorized by this act~~ binds and  
3239 inures only to the benefit of this state and the other member  
3240 states. No person, other than a member state, is an intended  
3241 beneficiary of the agreement. Any benefit to a person other than  
3242 a state is established by the laws of this state and of other  
3243 member states and not by the terms of the agreement.

3244 (a) ~~(b)~~ ~~Consistent with paragraph (a)~~, No person has any  
3245 cause of action or defense under the agreement or by virtue of

31-02574-08

2008962\_\_

3246 this state's approval of the agreement. No person may challenge,  
3247 in any action brought under any provision of law, any action or  
3248 inaction by any department, agency, or other instrumentality of  
3249 this state, or of any political subdivision of this state, on the  
3250 ground that the action or inaction is inconsistent with the  
3251 agreement.

3252 (b) (e) No law of this state, or the application thereof,  
3253 may be declared invalid as to any person or circumstance on the  
3254 ground that the provision or application is inconsistent with the  
3255 agreement.

3256 (c) Determinations pertaining to the agreement which are  
3257 made by the member states are final when rendered and are not  
3258 subject to protest, appeal, or review.

3259 (8) Authority to administer the agreement rests with the  
3260 governing board comprised of representatives of each member  
3261 state. This state shall be represented by three delegates, one  
3262 appointed by the President of the Senate, one appointed by the  
3263 Speaker of the House of Representatives, and the executive  
3264 director of the department or his or her designee.

3265 (9) The agreement shall continue in full force and effect  
3266 in this state until this state withdraws its membership or is  
3267 expelled. The withdrawal by or expulsion of another state does  
3268 not affect the validity of the agreement among this state and  
3269 other member states. The state shall submit notice of its intent  
3270 to withdraw from the agreement to the governing board and the  
3271 chief executive of each member state's tax agency. The state  
3272 shall provide public notice of its intent to withdraw and post  
3273 its notice on the department's Internet website. The state's  
3274 withdrawal or expulsion is not effective until the first day of a

31-02574-08

2008962\_\_

3275 calendar quarter after at least 60 days' notice. The state  
3276 remains liable for its share of any financial or contractual  
3277 obligations that were incurred by the governing board before the  
3278 effective date of that state's withdrawal or expulsion. The  
3279 appropriate share of any financial or contractual obligation  
3280 shall be determined by the state and the governing board in good  
3281 faith based on the relative benefits received and burdens  
3282 incurred by the parties.

3283 (10) As a member state, this state agrees to be subject to  
3284 sanctions that may be imposed upon a member state that is found  
3285 to be out of compliance with the agreement, which include  
3286 expulsion or other penalties as determined by the governing  
3287 board.

3288 ~~(8) (a) A certified service provider is the agent of a~~  
3289 ~~seller with whom the certified service provider has contracted~~  
3290 ~~for the collection and remittance of sales and use taxes. As the~~  
3291 ~~seller's agent, the certified service provider is liable for~~  
3292 ~~sales and use tax due each member state on all sales transactions~~  
3293 ~~it processes for the seller except as set out in this subsection.~~

3294 ~~(b) A seller that contracts with a certified service~~  
3295 ~~provider is not liable to the state for sales or use tax due on~~  
3296 ~~transactions processed by the certified service provider unless~~  
3297 ~~the seller has misrepresented the type of items it sells or has~~  
3298 ~~committed fraud. In the absence of probable cause to believe that~~  
3299 ~~the seller has committed fraud or made a material~~  
3300 ~~misrepresentation, the seller is not subject to audit on the~~  
3301 ~~transactions processed by the certified service provider. A~~  
3302 ~~seller is subject to audit for transactions that have not been~~  
3303 ~~processed by the certified service provider. The member states~~

31-02574-08

2008962\_\_

3304 ~~acting jointly may perform a system check of the seller and~~  
3305 ~~review the seller's procedures to determine if the certified~~  
3306 ~~service provider's system is functioning properly and to~~  
3307 ~~determine the extent to which the seller's transactions are being~~  
3308 ~~processed by the certified service provider.~~

3309 ~~(c) A person that provides a certified automated system is~~  
3310 ~~responsible for the proper functioning of that system and is~~  
3311 ~~liable to the state for underpayments of tax attributable to~~  
3312 ~~errors in the functioning of the certified automated system. A~~  
3313 ~~seller that uses a certified automated system remains responsible~~  
3314 ~~and is liable to the state for reporting and remitting tax.~~

3315 ~~(d) A seller that has a proprietary system for determining~~  
3316 ~~the amount of tax due on transactions and has signed an agreement~~  
3317 ~~establishing a performance standard for that system is liable for~~  
3318 ~~the failure of the system to meet the performance standard.~~

3319 ~~(9) Disclosure of information necessary under this section~~  
3320 ~~must be pursuant to a written agreement between the executive~~  
3321 ~~director of the department or his or her designee and the~~  
3322 ~~certified service provider. The certified service provider is~~  
3323 ~~bound by the same requirements of confidentiality as the~~  
3324 ~~department. Breach of confidentiality is a misdemeanor of the~~  
3325 ~~first degree, punishable as provided in s. 775.082 or s. 775.083.~~

3326 ~~(11)-(10)~~ (11) On or before January 1 annually, the department  
3327 shall provide recommendations to the President of the Senate, the  
3328 Senate Minority Leader, the Speaker of the House of  
3329 Representatives, and the Minority Leader of the House of  
3330 Representatives ~~for provisions to be adopted for inclusion within~~  
3331 ~~the system~~ which are necessary to bring the system ~~it~~ into  
3332 compliance with the Streamlined Sales and Use Tax Agreement.

31-02574-08

2008962\_\_

3333       (12) The state shall annually recertify to the governing  
3334 board that it is in compliance with the agreement on or before  
3335 August 1 after the year of the state's entry. In its annual  
3336 recertification, the state shall include any changes in its laws  
3337 or rules or other authorities which may affect its compliance  
3338 with the terms of the agreement. The recertification shall be  
3339 signed by the executive director of the department. If the state  
3340 cannot recertify its compliance with the agreement, it must  
3341 submit a statement of noncompliance to the governing board. The  
3342 statement of noncompliance must include any action or decision  
3343 that takes the state out of compliance with the agreement and the  
3344 steps it will take to return to compliance. The state shall post  
3345 its annual recertification or statement of noncompliance on the  
3346 department's Internet website.

3347       Section 17. Section 213.2565, Florida Statutes, is created  
3348 to read:

3349       213.2565 Simplified Sales and Use Tax central registration;  
3350 certified service providers; model sellers.--

3351       (1) A seller that registers with the central registration  
3352 system agrees to collect and remit sales and use taxes for all  
3353 taxable sales into member states, including member states joining  
3354 after the seller's registration. Withdrawal or revocation of a  
3355 member state does not relieve a seller of its responsibility to  
3356 remit taxes previously or subsequently collected on behalf of the  
3357 state.

3358       (a) When registering, the seller may select a model 1,  
3359 model 2, or model 3 method of remittance or other method allowed  
3360 by state law to remit the taxes collected.

31-02574-08

2008962\_\_

3361 |       (b) A seller may be registered by an agent. Appointment of  
3362 | the agent must be in writing and a copy submitted to a member  
3363 | state.

3364 |       (2) The governing board may certify a person as a certified  
3365 | service provider if the person meets all of the following  
3366 | requirements:

3367 |           (a) Uses a certified automated system.

3368 |           (b) Integrates its certified automated system with the  
3369 | system of a seller for whom the person collects tax so that the  
3370 | tax due on a sale is determined at the time of the sale.

3371 |           (c) Agrees to remit the taxes it collects at the time and  
3372 | in the manner specified by the member states.

3373 |           (d) Agrees to file returns on behalf of the sellers for  
3374 | whom it collects tax.

3375 |           (e) Agrees to protect the privacy of tax information it  
3376 | obtains in accordance with s. 213.053.

3377 |           (f) Enters into a contract with the member states and  
3378 | agrees to comply with the terms of the contract.

3379 |       (3) The governing board may certify a software program as a  
3380 | certified automated system if the governing board determines that  
3381 | the program meets all of the following requirements:

3382 |           (a) Determines the applicable state and local sales and use  
3383 | tax rate for a transaction in accordance with s. 212.06(2) and

3384 | (3).

3385 |           (b) Determines whether or not an item is exempt from tax.

3386 |           (c) Determines the amount of tax to be remitted for each  
3387 | taxpayer for a reporting period.

3388 |           (d) Is able to generate reports and returns as required by  
3389 | the governing board.

31-02574-08

2008962\_\_

3390 (e) Meets any other requirement set by the governing board.

3391 (4) A certified service provider is liable for all sales  
3392 and use tax due each member state on all sales transactions it  
3393 processes for a model 1 seller unless the model 1 seller has  
3394 misrepresented the type of items it sells or has committed fraud.  
3395 In the absence of probable cause to believe that the seller has  
3396 committed fraud or made a material misrepresentation, the model 1  
3397 seller is not subject to audit on the transactions processed by  
3398 the certified service provider. A model 1 seller is subject to  
3399 audit for transactions that have not been processed by the  
3400 certified service provider. The member states acting jointly may  
3401 perform a system check of the model 1 seller and review the  
3402 seller's procedures to determine if the certified service  
3403 provider's system is functioning properly and to determine the  
3404 extent to which the model 1 seller's transactions are being  
3405 processed by the certified service provider.

3406 (5) A person who provides a certified automated system is  
3407 responsible for the proper functioning of that system and is  
3408 liable to the state for underpayments of tax attributable to  
3409 errors in the functioning of the certified automated system. A  
3410 model 2 seller who uses a certified automated system remains  
3411 responsible and is liable to the state for reporting and  
3412 remitting tax.

3413 (6) A model 3 seller is liable for the failure of its  
3414 proprietary system to meet performance standards. The governing  
3415 board may establish one or more sales tax performance standards  
3416 for model 3 sellers who meet the eligibility criteria set by the  
3417 governing board and who have developed a proprietary system to  
3418 determine the amount of sales and use tax due on transactions.

31-02574-08

2008962\_\_

3419       (7) Disclosure of information necessary under this section  
3420 must be made according to a written agreement between the  
3421 executive director of the department or his or her designee and  
3422 the certified service provider. The certified service provider is  
3423 bound by the same requirements of confidentiality as the  
3424 department. Breach of confidentiality is a misdemeanor of the  
3425 first degree, punishable as provided in s. 775.082 or s. 775.083.

3426           Section 18. Subsection (6) of section 196.012, Florida  
3427 Statutes, is amended to read:

3428           196.012 Definitions.--For the purpose of this chapter, the  
3429 following terms are defined as follows, except where the context  
3430 clearly indicates otherwise:

3431           (6) Governmental, municipal, or public purpose or function  
3432 shall be deemed to be served or performed if ~~when~~ the lessee  
3433 under a ~~any~~ leasehold interest created in property of the United  
3434 States, the state or ~~any of~~ its political subdivisions, ~~or any~~  
3435 ~~municipality, agency, special district, authority,~~ or other  
3436 public body corporate of the state is demonstrated to perform a  
3437 function or serve a governmental purpose that ~~which~~ could  
3438 properly be performed or served by an appropriate governmental  
3439 unit or ~~which is demonstrated to perform a function or serve a~~  
3440 ~~purpose which~~ would otherwise be a valid subject for the  
3441 allocation of public funds. For purposes of this subsection ~~the~~  
3442 ~~preceding sentence,~~ an activity undertaken by a lessee which is  
3443 authorized ~~permitted~~ under the terms of its lease of real  
3444 property designated as an aviation area on an airport layout plan  
3445 that ~~which~~ has been approved by the Federal Aviation  
3446 Administration and which ~~real property~~ is used for the  
3447 administration, operation, business offices and activities



31-02574-08

2008962\_\_

3448 related to ~~specifically thereto in connection with~~ the conduct of  
3449 an aircraft full service fixed base operation that ~~which~~ provides  
3450 goods and services to the general aviation public in the  
3451 promotion of air commerce, shall be deemed an activity that ~~which~~  
3452 serves a governmental, municipal, or public purpose or function.  
3453 Any activity undertaken by a lessee which is authorized ~~permitted~~  
3454 under the terms of its lease of real property designated as a  
3455 public airport as defined in s. 332.004(14) by the state or a  
3456 political subdivision ~~municipalities, agencies, special~~  
3457 ~~districts, authorities,~~ or other public bodies corporate ~~and~~  
3458 ~~public bodies politic of the state,~~ or a spaceport as defined in  
3459 s. 331.303, or which is located in a deepwater port identified in  
3460 s. 403.021(9)(b) and owned by one of the foregoing governmental  
3461 units, subject to a leasehold or other possessory interest of a  
3462 nongovernmental lessee that is deemed to perform an aviation,  
3463 airport, aerospace, maritime, or port purpose or operation shall  
3464 be deemed an activity that serves a governmental, municipal, or  
3465 public purpose or function. The use by a lessee, licensee, or  
3466 management company of real property or a portion thereof as a  
3467 convention center, visitor center, sports facility with permanent  
3468 seating, concert hall, arena, stadium, park, or beach is deemed a  
3469 use that serves a governmental, municipal, or public purpose or  
3470 function if ~~when~~ access to the property is open to the general  
3471 public with or without a charge for admission. If property deeded  
3472 to a municipality by the United States is subject to a  
3473 requirement that the Federal Government, through a schedule  
3474 established by the Secretary of the Interior, determine that the  
3475 property is being maintained for public historic preservation,  
3476 park, or recreational purposes and if those conditions are not

31-02574-08

2008962\_\_

3477 met the property will revert back to the Federal Government, the  
3478 ~~then such~~ property shall be deemed to serve a municipal or public  
3479 purpose. The term "governmental purpose" also includes a direct  
3480 use of property on federal lands in connection with the Federal  
3481 Government's Space Exploration Program or spaceport activities as  
3482 defined in s. 212.02 ~~s. 212.02(22)~~. Real property and tangible  
3483 personal property owned by the Federal Government or Space  
3484 Florida and used for defense and space exploration purposes or  
3485 which is put to a use in support thereof shall be deemed to  
3486 perform an essential national governmental purpose and shall be  
3487 exempt. "Owned by the lessee" as used in this chapter does not  
3488 include personal property, buildings, or other real property  
3489 improvements used for the administration, operation, business  
3490 offices and activities related specifically to ~~thereto in~~  
3491 ~~connection with~~ the conduct of an aircraft full service fixed  
3492 based operation that ~~which~~ provides goods and services to the  
3493 general aviation public in the promotion of air commerce if  
3494 ~~provided that~~ the real property is designated as an aviation area  
3495 on an airport layout plan approved by the Federal Aviation  
3496 Administration. For purposes of determining ownership,  
3497 ~~determination of "ownership,"~~ buildings and other real property  
3498 improvements that ~~which~~ will revert to the airport authority or  
3499 other governmental unit upon expiration of the ~~term of the~~ lease  
3500 shall be deemed "owned" by the governmental unit and not the  
3501 lessee. Providing two-way telecommunications services to the  
3502 public for hire by the use of a telecommunications facility, as  
3503 defined in s. 364.02(15), and for which a certificate is required  
3504 under chapter 364 does not constitute an exempt use for purposes  
3505 of s. 196.199, unless the telecommunications services are

31-02574-08

2008962\_\_

3506 provided by the operator of a public-use airport, as defined in  
3507 s. 332.004, for the ~~operator's~~ provision of telecommunications  
3508 services for the airport or its tenants, concessionaires, or  
3509 licensees, or unless the telecommunications services are provided  
3510 by a public hospital.

3511 Section 19. Paragraphs (f), (g), (h), and (i) of subsection  
3512 (1) of section 203.01, Florida Statutes, are amended to read:

3513 203.01 Tax on gross receipts for utility and communications  
3514 services.--

3515 (1)

3516 (f) Any person who imports into this state electricity,  
3517 natural gas, or manufactured gas, or severs natural gas, for that  
3518 person's own use or consumption as a substitute for purchasing  
3519 utility, transportation, or delivery services taxable under this  
3520 chapter and who cannot demonstrate payment of the tax imposed by  
3521 this chapter must register with the Department of Revenue and pay  
3522 into the State Treasury each month an amount equal to the cost  
3523 price of the ~~such~~ electricity, natural gas, or manufactured gas  
3524 times the rate set forth in paragraph (b), reduced by the amount  
3525 of any like tax lawfully imposed ~~on~~ and paid by the person from  
3526 whom the electricity, natural gas, or manufactured gas was  
3527 purchased or any person who provided delivery service or  
3528 transportation service in connection with the electricity,  
3529 natural gas, or manufactured gas. For purposes of this subsection  
3530 ~~paragraph~~, the term "cost price" has the meaning provided in s.  
3531 212.02 ~~ascribed in s. 212.02(4)~~. The methods of demonstrating  
3532 proof of payment and the amount of ~~such~~ reductions in tax shall  
3533 be made according to rules of the Department of Revenue.

31-02574-08

2008962\_\_

3534 (g) Electricity produced by cogeneration or by small power  
3535 producers which is transmitted and distributed by a public  
3536 utility between two locations of a customer of the utility  
3537 pursuant to s. 366.051 is subject to the tax imposed by this  
3538 section. The tax shall be applied to the cost price of the such  
3539 ~~electricity as provided in s. 212.02(4)~~ and ~~shall~~ be paid each  
3540 month by the producer of such electricity.

3541 (h) Electricity produced by cogeneration or by small power  
3542 producers during the 12-month period ending June 30 ~~of each year~~  
3543 which is in excess of nontaxable electricity produced during the  
3544 12-month period ending June 30, 1990, is subject to the tax  
3545 imposed by this section. The tax shall be applied to the cost  
3546 price of the such electricity ~~as provided in s. 212.02(4)~~ and  
3547 ~~shall~~ be paid each month, beginning with the month in which total  
3548 production exceeds the production of nontaxable electricity for  
3549 the 12-month period ending June 30, 1990. For purposes of this  
3550 paragraph, "nontaxable electricity" means electricity produced by  
3551 cogeneration or by small power producers which is not subject to  
3552 tax under paragraph (g). Taxes paid pursuant to paragraph (g) may  
3553 be credited against taxes due under this paragraph. Electricity  
3554 generated as part of an industrial manufacturing process that  
3555 ~~which~~ manufactures products from phosphate rock, raw wood fiber,  
3556 paper, citrus, or any agricultural product is ~~shall not be~~  
3557 subject to the tax imposed by this paragraph. "Industrial  
3558 manufacturing process" means the entire process conducted at the  
3559 location where the process takes place.

3560 (i) Any person other than a cogenerator or small power  
3561 producer described in paragraph (h) who produces for his or her  
3562 own use electrical energy, which is a substitute for electrical

31-02574-08

2008962\_\_

3563 energy produced by an electric utility as defined in s. 366.02,  
3564 is subject to the tax imposed by this section. The tax shall be  
3565 applied to the cost price of the ~~such~~ electrical energy ~~as~~  
3566 ~~provided in s. 212.02(4)~~ and shall be paid each month. The  
3567 provisions of this paragraph do not apply to ~~any~~ electrical  
3568 energy produced and used by an electric utility.

3569 Section 20. Paragraph (c) of subsection (7) of section  
3570 212.03, Florida Statutes, is amended to read:

3571 212.03 Transient rentals tax; rate, procedure, enforcement,  
3572 exemptions.--

3573 (7)

3574 (c) The rental of facilities in a trailer camp, mobile home  
3575 park, or recreational vehicle park, ~~as defined in s.~~  
3576 ~~212.02(10)(f)~~, which are intended primarily for rental as a  
3577 principal or permanent place of residence, is exempt from the tax  
3578 imposed by this chapter. The rental of such facilities that  
3579 primarily serve transient guests is not exempt by this  
3580 subsection. In the application of this law, or in making a ~~any~~  
3581 determination against the exemption, the department shall  
3582 consider the facility as primarily serving transient guests  
3583 unless the facility owner makes a verified declaration on a form  
3584 prescribed by the department that more than half of the total  
3585 rental units available are occupied by tenants who have a  
3586 continuous residence in excess of 3 months. The owner of a  
3587 facility declared to be exempt by this paragraph must make a  
3588 determination of the taxable status of the facility at the end of  
3589 the owner's accounting year using any consecutive 3-month period  
3590 at least one month of which is in the accounting year. The owner  
3591 must use a selected consecutive 3-month period during each annual

31-02574-08

2008962\_\_

3592 redetermination. If ~~In the event that~~ an exempt facility no  
3593 longer qualifies for the exemption ~~by this paragraph~~, the owner  
3594 must notify the department on a form prescribed by the department  
3595 by the 20th day of the first month of the owner's next succeeding  
3596 accounting year that the facility no longer qualifies for the  
3597 ~~such~~ exemption. The tax levied by this section applies ~~shall~~  
3598 ~~apply~~ to the rental of facilities that no longer qualify for the  
3599 exemption ~~under this paragraph~~ beginning the first day of the  
3600 owner's next succeeding accounting year. The provisions of this  
3601 paragraph do not apply to mobile home lots regulated under  
3602 chapter 723.

3603 Section 21. Paragraph (a) of subsection (1) of section  
3604 212.031, Florida Statutes, is amended to read:

3605 212.031 Tax on rental or license fee for use of real  
3606 property.--

3607 (1) (a) It is ~~declared to be~~ the legislative intent that  
3608 every person is exercising a taxable privilege who engages in the  
3609 business of renting, leasing, letting, or granting a license for  
3610 the use of ~~any~~ real property unless the ~~such~~ property is:

3611 1. Assessed as agricultural property under s. 193.461.

3612 2. Used exclusively as dwelling units.

3613 3. Property subject to tax on parking, docking, or storage  
3614 spaces under s. 212.03(6).

3615 4. Recreational property or the common elements of a  
3616 condominium ~~when~~ subject to a lease between the developer or  
3617 owner ~~thereof~~ and the condominium association in its own right or  
3618 as agent for the owners of individual condominium units or the  
3619 owners of individual condominium units. However, only the lease  
3620 payments on such property are ~~shall be~~ exempt from the tax

31-02574-08

2008962\_\_

3621 imposed by this chapter, and any other use made by the owner or  
3622 the condominium association is ~~shall be~~ fully taxable under this  
3623 chapter.

3624 5. A public or private street or right-of-way and poles,  
3625 conduits, fixtures, and similar improvements located on such  
3626 streets or rights-of-way, occupied or used by a utility or  
3627 provider of communications services, as defined by s. 202.11, for  
3628 utility or communications or television purposes. For purposes of  
3629 this subparagraph, the term "utility" means any person providing  
3630 utility services as defined in s. 203.012. This exception also  
3631 applies to property, wherever located, on which the following are  
3632 placed: towers, antennas, cables, accessory structures, or  
3633 equipment, not including switching equipment, used in the  
3634 provision of mobile communications services as defined in s.  
3635 202.11. For purposes of this chapter, towers used in the  
3636 provision of mobile communications services, as defined in s.  
3637 202.11, are considered to be fixtures.

3638 6. A public street or road that ~~which~~ is used for  
3639 transportation purposes.

3640 7. Property used at an airport exclusively for the purpose  
3641 of aircraft landing or aircraft taxiing or property used by an  
3642 airline for the purpose of loading or unloading passengers or  
3643 property onto or from aircraft or for fueling aircraft.

3644 8.a. Property used at a port authority, as defined in s.  
3645 315.02(2), exclusively for the purpose of oceangoing vessels or  
3646 tugs docking, or such vessels mooring on property used by a port  
3647 authority for the purpose of loading or unloading passengers or  
3648 cargo onto or from such vessels ~~a vessel~~, or property used at a  
3649 port authority for fueling such vessels, or to the extent that

31-02574-08

2008962\_\_

3650 the amount paid for the use of ~~any~~ property at the port is based  
3651 on the charge for the amount of tonnage actually imported or  
3652 exported through the port by a tenant.

3653 b. The amount charged for the use of ~~any~~ property at the  
3654 port in excess of the amount charged for tonnage actually  
3655 imported or exported remains ~~shall remain~~ subject to tax except  
3656 as provided in sub-subparagraph a.

3657 9. Property used as an integral part of the performance of  
3658 qualified production services. As used in this subparagraph, the  
3659 term "qualified production services" means any activity or  
3660 service performed directly in connection with the production of a  
3661 qualified motion picture, as defined in s. 212.06(1)(b), and  
3662 includes:

3663 a. Photography, sound and recording, casting, location  
3664 managing and scouting, shooting, creation of special and optical  
3665 effects, animation, adaptation (language, media, electronic, or  
3666 otherwise), technological modifications, computer graphics, set  
3667 and stage support (such as electricians, lighting designers and  
3668 operators, greensmen, prop managers and assistants, and grips),  
3669 wardrobe (design, preparation, and management), hair and makeup  
3670 (design, production, and application), performing (such as  
3671 acting, dancing, and playing), designing and executing stunts,  
3672 coaching, consulting, writing, scoring, composing,  
3673 choreographing, script supervising, directing, producing,  
3674 transmitting dailies, dubbing, mixing, editing, cutting, looping,  
3675 printing, processing, duplicating, storing, and distributing;

3676 b. The design, planning, engineering, construction,  
3677 alteration, repair, and maintenance of real or personal property  
3678 including stages, sets, props, models, paintings, and facilities



31-02574-08

2008962\_\_

3679 | principally required for the performance of those services listed  
3680 | in sub-subparagraph a.; and

3681 |       c. Property management services directly related to  
3682 | property used in connection with the services described in sub-  
3683 | subparagraphs a. and b.

3684

3685 | This exemption inures ~~will inure~~ to the taxpayer upon  
3686 | presentation of the certificate of exemption issued to the  
3687 | taxpayer under ~~the provisions of~~ s. 288.1258.

3688 |       10. Leased, subleased, licensed, or rented to a person  
3689 | providing food and drink concessionaire services within the  
3690 | premises of a convention hall, exhibition hall, auditorium,  
3691 | stadium, theater, arena, civic center, performing arts center,  
3692 | publicly owned recreational facility, or any business operated  
3693 | under a permit issued pursuant to chapter 550. A person providing  
3694 | retail concessionaire services involving the sale of food and  
3695 | drink or other tangible personal property within the premises of  
3696 | an airport is ~~shall be~~ subject to tax on the rental of real  
3697 | property used for that purpose, but is ~~shall~~ not be subject to  
3698 | the tax on any license to use the property. For purposes of this  
3699 | subparagraph, the term "sale" does ~~shall~~ not include the leasing  
3700 | of tangible personal property.

3701 |       11. Property occupied pursuant to an instrument calling for  
3702 | payments which the department has declared, in a Technical  
3703 | Assistance Advisement issued on or before March 15, 1993, to be  
3704 | nontaxable pursuant to rule 12A-1.070(19)(c), Florida  
3705 | Administrative Code; however, ~~provided that~~ this subparagraph  
3706 | applies ~~shall~~ only apply to property occupied by the same person  
3707 | before and after the execution of the subject instrument and only

31-02574-08

2008962\_\_

3708 | to those payments made pursuant to the ~~such~~ instrument, exclusive  
3709 | of renewals and extensions ~~thereof~~ occurring after March 15,  
3710 | 1993.

3711 |       12. Rented, leased, subleased, or licensed to a  
3712 | concessionaire by a convention hall, exhibition hall, auditorium,  
3713 | stadium, theater, arena, civic center, performing arts center, or  
3714 | publicly owned recreational facility, during an event at the  
3715 | facility, to be used by the concessionaire to sell souvenirs,  
3716 | novelties, or other event-related products. This subparagraph  
3717 | applies only to that portion of the rental, lease, or license  
3718 | payment which is based on a percentage of sales and not based on  
3719 | a fixed price. This subparagraph is repealed July 1, 2009.

3720 |       13. Property used or occupied predominantly for space  
3721 | flight business purposes. As used in this subparagraph, "space  
3722 | flight business" means the manufacturing, processing, or assembly  
3723 | of a space facility, space propulsion system, space vehicle,  
3724 | satellite, or station of any kind possessing the capacity for  
3725 | space flight, as defined in s. 212.02 ~~by s. 212.02(23)~~, or  
3726 | components thereof, and also means the following activities  
3727 | supporting space flight: vehicle launch activities, flight  
3728 | operations, ground control or ground support, and all  
3729 | administrative activities directly related thereto. Property  
3730 | shall be deemed to be used or occupied predominantly for space  
3731 | flight business purposes if more than 50 percent of the property,  
3732 | or improvements thereon, is used for one or more space flight  
3733 | business purposes. Possession by a landlord, lessor, or licensor  
3734 | of a signed written statement from the tenant, lessee, or  
3735 | licensee claiming the exemption shall relieve the landlord,  
3736 | lessor, or licensor from the responsibility of collecting the

31-02574-08

2008962\_\_

3737 tax, and the department shall look solely to the tenant, lessee,  
3738 or licensee for recovery of the ~~such~~ tax if it determines that  
3739 the exemption was not applicable.

3740 Section 22. Paragraph (b) of subsection (1) of section  
3741 212.052, Florida Statutes, is amended to read:

3742 212.052 Research or development costs; exemption.--

3743 (1) For the purposes of the exemption provided in this  
3744 section:

3745 (b) The term "costs" means cost price as defined in s.  
3746 212.02 ~~s. 212.02(4)~~.

3747 Section 23. Subsections (2) and (6) of section 212.0596,  
3748 Florida Statutes, are amended to read:

3749 212.0596 Taxation of mail order sales.--

3750 (2) Every dealer ~~as defined in s. 212.06(2)(c)~~ who makes a  
3751 mail order sale is subject to the power of this state to levy and  
3752 collect the tax imposed by this chapter if ~~when~~:

3753 (a) The dealer is a corporation doing business under the  
3754 laws of this state or a person domiciled in, ~~a resident of, or a~~  
3755 ~~citizen of,~~ this state;

3756 (b) The dealer maintains retail establishments or offices  
3757 in this state, whether the mail order sales ~~thus~~ subject to  
3758 taxation by this state result from or are related in any ~~other~~  
3759 way to the activities of the ~~such~~ establishments or offices;

3760 (c) The dealer has agents in this state who solicit  
3761 business or transact business on behalf of the dealer, whether  
3762 the mail order sales ~~thus~~ subject to taxation by this state  
3763 result from or are related in any ~~other~~ way to the ~~such~~  
3764 solicitation or transaction of business, except that a printer  
3765 who mails or delivers for an out-of-state print purchaser

31-02574-08

2008962\_\_

3766 material the printer printed for it is ~~shall not be deemed to be~~  
3767 the print purchaser's agent for purposes of this paragraph;

3768 (d) The property was delivered in this state in fulfillment  
3769 of a sales contract that was entered into in this state, in  
3770 accordance with applicable conflict of laws rules, if ~~when~~ a  
3771 person in this state accepted an offer by ordering the property;

3772 (e) The dealer, by purposefully or systematically  
3773 exploiting the market provided by this state by any media-  
3774 assisted, media-facilitated, or media-solicited means, including,  
3775 but not limited to, direct mail advertising, unsolicited  
3776 distribution of catalogs, computer-assisted shopping, television,  
3777 radio, or other electronic media, or magazine or newspaper  
3778 advertisements or other media, creates nexus with this state;

3779 (f) Through compact or reciprocity with another  
3780 jurisdiction of the United States, that jurisdiction uses its  
3781 taxing power and its jurisdiction over the retailer in support of  
3782 this state's taxing power;

3783 (g) The dealer consents, expressly or by implication, to  
3784 the imposition of the tax imposed by this chapter;

3785 (h) The dealer is subject to service of process under s.  
3786 48.181;

3787 (i) The dealer's mail order sales are subject to the power  
3788 of this state to tax sales or to require the dealer to collect  
3789 use taxes under a federal statute ~~or statutes of the United~~  
3790 ~~States;~~

3791 (j) The dealer owns real property or tangible personal  
3792 property that is physically in this state, except that a dealer  
3793 whose only property in this state, including ~~(including~~ property  
3794 owned by an affiliate, affiliate) ~~in this state~~ is located at the

31-02574-08

2008962\_\_

3795 premises of a printer with which the vendor has contracted for  
3796 printing, and is ~~either~~ a final printed product, ~~or~~ property that  
3797 ~~which~~ becomes a part of the final printed product, or property  
3798 from which the printed product is produced, is not deemed to own  
3799 such property for purposes of this paragraph;

3800 (k) The dealer, while not having nexus with this state on  
3801 any of the bases described in paragraphs (a)-(j) or paragraph  
3802 (l), is a corporation that is a member of an affiliated group of  
3803 corporations, as defined in s. 1504(a) of the Internal Revenue  
3804 Code, whose members are includable under s. 1504(b) of the  
3805 Internal Revenue Code and whose members are eligible to file a  
3806 consolidated tax return for federal corporate income tax purposes  
3807 and any parent or subsidiary corporation in the affiliated group  
3808 has nexus with this state on one or more of the bases described  
3809 in paragraphs (a)-(j) or paragraph (l); or

3810 (l) The dealer or the dealer's activities have sufficient  
3811 connection with or relationship to this state or its residents of  
3812 some type other than those described in paragraphs (a)-(k) to  
3813 create nexus empowering this state to tax its mail order sales or  
3814 to require the dealer to collect sales tax or accrue use tax.

3815 (6) Notwithstanding other provisions of law, a dealer who  
3816 makes a mail order sale in this state is exempt from collecting  
3817 and remitting any local option surtax on the sale, unless the  
3818 dealer is located in a county that imposes a discretionary surtax  
3819 within the meaning of s. 212.054 ~~s. 212.054(3)(a)~~, the order is  
3820 placed through the dealer's location in the ~~such~~ county, and the  
3821 property purchased is delivered into such county or into another  
3822 county in this state that levies the surtax, in which case the  
3823 provisions of s. 212.053(3) ~~s. 212.054(3)(a)~~ are applicable.

31-02574-08

2008962\_\_

3824 Section 24. Section 212.081, Florida Statutes, is amended  
3825 to read:

3826 212.081 Legislative intent.--It is ~~hereby declared to be~~  
3827 the legislative intent of the amendments to ss. 212.11(1),  
3828 212.12(9) ~~212.12(10)~~, and 212.20 by chapter 57-398, Laws of  
3829 Florida:

3830 (1) To aid in the enforcement of this chapter by  
3831 recognizing the effect of court rulings involving ~~such~~  
3832 enforcement and to incorporate herein substantial rulings of the  
3833 department which have been recognized as necessary to supplement  
3834 the interpretation of some of the terms used in this section.

3835 (2) To arrange the exemptions allowed in this section in  
3836 more orderly categories thereby eliminating some of the confusion  
3837 attendant upon the present arrangement where cross-exemptions  
3838 frequently occur.

3839 (a) It is ~~further declared to be~~ the legislative intent  
3840 that the tax levied by this chapter and imposed by this section  
3841 is not a tax on motor vehicles as property but a tax on the  
3842 privilege to sell, ~~to~~ rent, ~~to~~ use or ~~to~~ store for use in this  
3843 state motor vehicles; that such tax is separate from and in  
3844 addition to any license tax imposed on motor vehicles; and that  
3845 such tax is not intended as an ad valorem tax on motor vehicles  
3846 as prohibited by the Constitution.

3847 (b) It is also the legislative intent that there ~~shall~~ be  
3848 no pyramiding or duplication of excise taxes levied by the state  
3849 under this chapter and no municipality shall levy any excise tax  
3850 upon any privilege, admission, lease, rental, sale, use or  
3851 storage for use or consumption which is subject to a tax under  
3852 this chapter unless permitted by general law; ~~provided,~~ however,

31-02574-08

2008962\_\_

3853 ~~that~~ this provision does ~~shall~~ not impair valid municipal  
3854 ordinances that ~~which~~ are in effect and under which a municipal  
3855 tax is being levied and collected on July 1, 1957.

3856 (3) It is ~~hereby declared to be~~ the legislative intent that  
3857 all purchases made by banks are subject to state sales tax in the  
3858 same manner as is provided by law for all other purchasers. It is  
3859 also ~~further declared to be~~ the legislative intent that if ~~for~~  
3860 ~~any reason~~ the sales tax on federal banks is declared invalid,  
3861 that sales tax does ~~shall~~ not apply or be applicable to purchases  
3862 made by state banks.

3863 Section 25. Subsection (3) of section 212.13, Florida  
3864 Statutes, is amended to read:

3865 212.13 Records required to be kept; power to inspect; audit  
3866 procedure.--

3867 (3) For the purpose of enforcement of this chapter, every  
3868 manufacturer and seller of tangible personal property or services  
3869 licensed within this state must allow ~~is required to permit~~ the  
3870 department to examine his or her books and records at all  
3871 reasonable hours, and, upon ~~his or her~~ refusal, the department  
3872 may require him or her to allow ~~permit~~ such examination by resort  
3873 to the circuit courts of this state, subject however to the ~~right~~  
3874 ~~of~~ removal of the cause to the judicial circuit where the ~~wherein~~  
3875 ~~such~~ person's business is located or ~~wherein such person's~~ books  
3876 and records are kept, if the ~~provided further that~~ such person's  
3877 books and records are kept within the state. If ~~When~~ the dealer  
3878 has made an allocation or attribution pursuant to the definition  
3879 of sales price in s. 212.02 ~~s. 212.02(16)~~, the department may  
3880 prescribe by rule the books and records that must be made  
3881 available during an audit ~~of the dealer's books and records~~ and

31-02574-08

2008962\_\_

3882 examples of methods for determining the reasonableness thereof.  
3883 Books and records kept in the regular course of business include,  
3884 but are not limited to, general ledgers, price lists, cost  
3885 records, customer billings, billing system reports, tariffs, and  
3886 other regulatory filings and rules of regulatory authorities. The  
3887 records ~~Such record~~ may be ~~required to be~~ made available to the  
3888 department in an electronic format if ~~when~~ so kept by the dealer.  
3889 The dealer may support the allocation of charges with books and  
3890 records kept in the regular course of business covering the  
3891 dealer's entire service area, including territories outside this  
3892 state. During an audit, the department may reasonably require  
3893 production of any additional books and records found necessary to  
3894 assist in its determination.

3895 Section 26. Subsection (3) of section 213.015, Florida  
3896 Statutes, is amended to read:

3897 213.015 Taxpayer rights.--There is created a Florida  
3898 Taxpayer's Bill of Rights to guarantee that the rights, privacy,  
3899 and property of Florida taxpayers are adequately safeguarded and  
3900 protected during tax assessment, collection, and enforcement  
3901 processes administered under the revenue laws of this state. The  
3902 Taxpayer's Bill of Rights compiles, in one document, brief but  
3903 comprehensive statements which explain, in simple, nontechnical  
3904 terms, the rights and obligations of the Department of Revenue  
3905 and taxpayers. Section 192.0105 provides additional rights  
3906 afforded to payors of property taxes and assessments. The rights  
3907 afforded taxpayers to ensure that their privacy and property are  
3908 safeguarded and protected during tax assessment and collection  
3909 are available only insofar as they are implemented in other parts  
3910 of the Florida Statutes or rules of the Department of Revenue.



31-02574-08

2008962\_\_

3911 The rights so guaranteed Florida taxpayers in the Florida  
3912 Statutes and the departmental rules are:

3913 (3) The right to be represented or advised by counsel or  
3914 other qualified representatives at any time in administrative  
3915 interactions with the department, the right to procedural  
3916 safeguards with respect to recording of interviews during tax  
3917 determination or collection processes conducted by the  
3918 department, the right to be treated in a professional manner by  
3919 department personnel, and the right to have audits, inspections  
3920 of records, and interviews conducted at a reasonable time and  
3921 place except in criminal and internal investigations (see ss.  
3922 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3),  
3923 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (11) ~~(13)~~,  
3924 212.13(5), 213.05, 213.21(1)(a) and (c), and 213.34).

3925 Section 27. Subsection (8) of section 551.102, Florida  
3926 Statutes, is amended to read:

3927 551.102 Definitions.--As used in this chapter, the term:

3928 (8) "Slot machine" means any mechanical or electrical  
3929 contrivance, terminal that may or may not be capable of  
3930 downloading slot games from a central server system, machine, or  
3931 other device that, upon insertion of a coin, bill, ticket, token,  
3932 or similar object or upon payment of any consideration  
3933 ~~whatsoever~~, including the use of an ~~any~~ electronic payment system  
3934 except a credit card or debit card, is available to play or  
3935 operate, the play or operation of which, whether by reason of  
3936 skill or application of the element of chance, or both, may  
3937 deliver or entitle the person or persons playing or operating the  
3938 contrivance, terminal, machine, or other device to receive cash,  
3939 billets, tickets, tokens, or electronic credits to be exchanged

31-02574-08

2008962\_\_

3940 for cash or to receive merchandise or anything of value  
3941 whatsoever, whether the payoff is made automatically from the  
3942 machine or manually. The term includes associated equipment  
3943 necessary to operate ~~conduct the operation of~~ the contrivance,  
3944 terminal, machine, or other device. Slot machines may use  
3945 spinning reels, video displays, or both. A slot machine is not a  
3946 "coin-operated amusement machine" as defined in s. 212.02 ~~s.~~  
3947 ~~212.02(24)~~ or an amusement game or machine as described in s.  
3948 849.161, and slot machines are not subject to the tax imposed by  
3949 s. 212.05(1)(h).

3950 Section 28. Paragraph (a) of subsection (1) of section  
3951 790.0655, Florida Statutes, is amended to read:

3952 790.0655 Purchase and delivery of handguns; mandatory  
3953 waiting period; exceptions; penalties.--

3954 (1)(a) There shall be a mandatory 3-day waiting period,  
3955 which shall be 3 days, excluding weekends and legal holidays,  
3956 between the purchase and the delivery at retail of any handgun.  
3957 "Purchase" means the transfer of money or other valuable  
3958 consideration to the retailer. "Handgun" means a firearm capable  
3959 of being carried and used by one hand, such as a pistol or  
3960 revolver. "Retailer" has the same meaning as in s. 212.02 ~~means~~  
3961 ~~and includes every person engaged in the business of making sales~~  
3962 ~~at retail or for distribution, or use, or consumption, or storage~~  
3963 ~~to be used or consumed in this state, as defined in s.~~  
3964 ~~212.02(13).~~

3965 Section 29. Subsection (6) of section 212.0596, Florida  
3966 Statutes, is repealed.

3967 Section 30. It is the intent of the Legislature to urge the  
3968 United States Congress to consider providing adequate protections

31-02574-08

2008962\_\_

3969 to small businesses engaging in both offline and online  
3970 transactions from added costs, administrative burdens, and  
3971 requirements imposed on intermediaries relating to the collection  
3972 and remittance of sales and use tax.

3973       Section 31. Emergency rules.--The executive director of the  
3974 Department of Revenue is authorized, and all conditions are  
3975 deemed met, to adopt emergency rules, under ss. 120.536(1) and  
3976 120.54(4), Florida Statutes, to implement this act.  
3977 Notwithstanding any other law, the emergency rules shall remain  
3978 effective for 6 months after the date of adoption and may be  
3979 renewed during the pendency of procedures to adopt rules  
3980 addressing the subject of the emergency rules.

3981       Section 32. This act shall take effect July 1, 2008.