

By Senator Lynn

7-00467-09

20091134\_\_

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  
4           definitions; amending s. 212.03, F.S.; specifying  
5           certain facilities that are exempt from the transient  
6           rentals tax; amending ss. 212.0306, 212.04, and  
7           212.0506, F.S.; deleting the application of brackets  
8           for the calculation of sales and use taxes; amending  
9           s. 212.05, F.S.; deleting criteria establishing  
10          circumstances under which taxes on the lease or rental  
11          of a motor vehicle are due; revising criteria  
12          establishing circumstances under which taxes on the  
13          sale of a prepaid calling arrangement are due;  
14          increasing the tax on charges for the use of coin-  
15          operated amusement machines; deleting the application  
16          of brackets for the calculation of sales and use  
17          taxes; amending s. 212.054, F.S.; limiting the \$5,000  
18          cap on discretionary sales surtax to the sale of motor  
19          vehicles, aircraft, boats, motor homes, manufactured  
20          homes, modular homes, and mobile homes; specifying the  
21          time at which changes in surtaxes may take effect;  
22          providing criteria to determine the situs of certain  
23          sales; providing for databases to identify taxing  
24          jurisdictions; providing criteria to hold purchasers  
25          harmless for failure to pay the correct amount of tax;  
26          holding sellers harmless for failing to collect a tax  
27          at a new rate under certain circumstances; amending s.  
28          212.06, F.S.; defining terms; deleting provisions  
29          relating to mail-order sales to conform; requiring

7-00467-09

20091134\_\_

30 purchasers of direct mail to use direct mail forms;  
31 providing criteria for determining the location of  
32 transactions involving tangible personal property,  
33 digital goods, or services and for the lease or rental  
34 of tangible personal property; amending s. 212.07,  
35 F.S.; providing for the creation of a taxability  
36 matrix; providing immunity from liability for acts in  
37 reliance of the taxability matrix; amending s. 212.08,  
38 F.S.; revising exemptions from sales and use tax for  
39 food and medical products; creating s. 212.094, F.S.;  
40 providing a procedure for a purchaser to obtain a  
41 refund of tax collected by a dealer; amending s.  
42 212.12, F.S.; authorizing collection allowances for  
43 certified service providers in accordance with the  
44 Streamlined Sales and Use Tax Agreement; providing for  
45 the computation of taxes due based on rounding instead  
46 of brackets; amending s. 212.17, F.S.; providing  
47 additional criteria for a dealer to claim a credit for  
48 taxes paid relating to worthless accounts; amending s.  
49 212.18, F.S.; authorizing the Department of Revenue to  
50 waive the dealer registration fee for applications  
51 submitted through the central electronic registration  
52 system provided by member states of the Streamlined  
53 Sales and Use Tax Agreement; amending s. 212.20, F.S.;  
54 deleting procedures for refunds of tax paid on mail-  
55 order sales; creating s. 213.052, F.S.; providing for  
56 notice of state sales or use tax changes; creating s.  
57 213.0521, F.S.; providing the effective date for state  
58 sales and use tax changes; creating 213.215, F.S.;

7-00467-09

20091134\_\_

59 providing amnesty for uncollected or unpaid sales and  
60 use taxes for sellers who register under the  
61 Streamlined Sales and Use Tax Agreement; providing  
62 exceptions to the amnesty; amending s. 213.256, F.S.;  
63 providing definitions; providing for entry into  
64 agreements with other states to simplify and  
65 facilitate compliance with sales tax laws; providing  
66 for certification of compliance with agreements;  
67 creating s. 213.2562, F.S.; providing for the  
68 department to review software submitted to the  
69 governing board for certification as a certified  
70 automated system; creating s. 213.2567, F.S.;  
71 providing for the registration of sellers, the  
72 certification of a person as a certified service  
73 provider, and the certification of a software program  
74 as a certified automated system by the governing board  
75 under the Streamlined Sales and Use Tax Agreement;  
76 declaring legislative intent; providing for the  
77 adoption of emergency rules; amending ss. 11.45,  
78 196.012, 202.18, 203.01, 212.031, 212.055, 212.15,  
79 213.015, 218.245, 218.65, 288.1045, 288.1169, 551.102,  
80 and 790.0655, F.S.; conforming cross-references;  
81 repealing s. 212.0596, F.S., relating to provisions  
82 pertaining to the taxation of mail-order sales;  
83 providing an effective date.

84

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

86

87 Section 1. Section 212.02, Florida Statutes, is amended to

7-00467-09

20091134\_\_

88 read:

89 212.02 Definitions.—The following terms and phrases when  
90 used in this chapter have the meanings ascribed to them in this  
91 section, except where the context clearly indicates a different  
92 meaning. The term:

93 (1) ~~The term~~ "Admissions" means and includes the net sum of  
94 money after deduction of any federal taxes for admitting a  
95 person or vehicle or persons to any place of amusement, sport,  
96 or recreation or for the privilege of entering or staying in any  
97 place of amusement, sport, or recreation, including, but not  
98 limited to, theaters, outdoor theaters, shows, exhibitions,  
99 games, races, or any place where charge is made by way of sale  
100 of tickets, gate charges, seat charges, box charges, season pass  
101 charges, cover charges, greens fees, participation fees,  
102 entrance fees, or other fees or receipts of anything of value  
103 measured on an admission or entrance or length of stay or seat  
104 box accommodations in any place where there is any exhibition,  
105 amusement, sport, or recreation, and all dues and fees paid to  
106 private clubs and membership clubs providing recreational or  
107 physical fitness facilities, including, but not limited to,  
108 golf, tennis, swimming, yachting, boating, athletic, exercise,  
109 and fitness facilities, except physical fitness facilities owned  
110 or operated by any hospital licensed under chapter 395.

111 (2) "Agricultural commodity" means horticultural,  
112 aquacultural, poultry and farm products, and livestock and  
113 livestock products.

114 (3) "Agricultural production" means the production of  
115 plants and animals useful to humans, including the preparation,  
116 planting, cultivating, or harvesting of these products or any

7-00467-09

20091134

117 other practices necessary to accomplish production through the  
118 harvest phase, which includes aquaculture, horticulture,  
119 floriculture, viticulture, forestry, dairy, livestock, poultry,  
120 bees, and all other forms of farm products and farm production.

121 (4) "Bundled transaction" means the retail sale of two or  
122 more products, except real property and services to real  
123 property, in which the products are otherwise distinct and  
124 identifiable and the products are sold for one non-itemized  
125 price. A bundled transaction does not include the sale of any  
126 products in which the sales price varies, or is negotiable,  
127 based on the selection by the purchaser of the products included  
128 in the transaction.

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

130 1. "Distinct and identifiable products" does not include:

131 a. Packaging, such as containers, boxes, sacks, bags, and  
132 bottles or other materials, such as wrapping, labels, tags, and  
133 instruction guides, which accompany the retail sale of the  
134 products and are incidental or immaterial to the retail sale of  
135 the products. Examples of packing that is incidental or  
136 immaterial include grocery sacks, shoeboxes, dry cleaning  
137 garment bags, and express delivery envelopes and boxes.

138 b. A product provided free of charge with the required  
139 purchase of another product. A product is provided free of  
140 charge if the sales price of the product purchased does not vary  
141 depending on the inclusion of the product provided free of  
142 charge.

143 2. "One non-itemized price" does not include a price that  
144 is separately identified by product on binding sales or other  
145 supporting sales-related documentation made available to the

7-00467-09

20091134\_\_

146 customer in paper or electronic form, including, but not limited  
147 to, an invoice, bill of sale, receipt, contract, service  
148 agreement, lease agreement, periodic notice of rates and  
149 services, rate card, or price list.

150 3. "De minimis" means that the seller's purchase price or  
151 sales price of the taxable products is 10 percent or less of the  
152 total purchase price or sales price of the bundled products.

153 a. Sellers shall use the purchase price or sales price of  
154 the products to determine if the taxable products are de  
155 minimus. Sellers may not use a combination of the purchase price  
156 and sales price of the products to determine if the taxable  
157 products are de minimus.

158 b. Sellers shall use the full term of a service contract to  
159 determine if the taxable products are de minimis.

160 (b)1. A transaction that otherwise satisfies the definition  
161 of a bundled transaction, as defined in this subsection, is not  
162 a bundled transaction if it is:

163 a. The retail sale of tangible personal property and a  
164 service in which the tangible personal property is essential to  
165 the use of the service, is provided exclusively in connection  
166 with the service, and the true object of the transaction is the  
167 service;

168 b. The retail sale of services in which one service is  
169 provided which is essential to the use or receipt of a second  
170 service and the first service is provided exclusively in  
171 connection with the second service and the true object of the  
172 transaction is the second service;

173 c. A transaction that includes taxable products and  
174 nontaxable products and the purchase price or sales price of the

7-00467-09

20091134\_\_

175 taxable products is de minimis; or

176 d. The retail sale of exempt tangible personal property and  
177 taxable personal property in which:

178 (I) The transaction includes food and food ingredients,  
179 drugs, durable medical equipment, mobility-enhancing equipment,  
180 over-the-counter drugs, prosthetic devices, or medical supplies;  
181 and

182 (II) The seller's purchase price or sales price of the  
183 taxable tangible personal property is 50 percent or less of the  
184 total purchase price or sales price of the bundled tangible  
185 personal property. Sellers may not use a combination of the  
186 purchase price and sales price of the tangible personal property  
187 to make the determination required in this paragraph.

188 2.a. Sellers shall use the purchase price or sales price of  
189 the products to determine if the taxable products are de  
190 minimus. Sellers may not use a combination of the purchase price  
191 and sales price of the products to determine if the taxable  
192 products are de minimus.

193 b. Sellers shall use the full term of a service contract to  
194 determine if the taxable products are de minimis.

195 (5)-~~2~~ "Business" means any activity engaged in by any  
196 person, or caused to be engaged in by him or her, with the  
197 object of private or public gain, benefit, or advantage, either  
198 direct or indirect. Except for the sales of any aircraft, boat,  
199 mobile home, or motor vehicle, the term "business" shall not be  
200 construed in this chapter to include occasional or isolated  
201 sales or transactions involving tangible personal property or  
202 services by a person who does not hold himself or herself out as  
203 engaged in business or sales of unclaimed tangible personal

7-00467-09

20091134\_\_

204 property under s. 717.122, but includes other charges for the  
205 sale or rental of tangible personal property, sales of services  
206 taxable under this chapter, sales of or charges of admission,  
207 communication services, all rentals and leases of living  
208 quarters, other than low-rent housing operated under chapter  
209 421, sleeping or housekeeping accommodations in hotels,  
210 apartment houses, roominghouses, tourist or trailer camps, and  
211 all rentals of or licenses in real property, other than low-rent  
212 housing operated under chapter 421, all leases or rentals of or  
213 licenses in parking lots or garages for motor vehicles, docking  
214 or storage spaces for boats in boat docks or marinas as defined  
215 in this chapter and made subject to a tax imposed by this  
216 chapter. The term "business" shall not be construed in this  
217 chapter to include the leasing, subleasing, or licensing of real  
218 property by one corporation to another if all of the stock of  
219 both such corporations is owned, directly or through one or more  
220 wholly owned subsidiaries, by a common parent corporation; the  
221 property was in use prior to July 1, 1989, title to the property  
222 was transferred after July 1, 1988, and before July 1, 1989,  
223 between members of an affiliated group, as defined in s. 1504(a)  
224 of the Internal Revenue Code of 1986, which group included both  
225 such corporations and there is no substantial change in the use  
226 of the property following the transfer of title; the leasing,  
227 subleasing, or licensing of the property was required by an  
228 unrelated lender as a condition of providing financing to one or  
229 more members of the affiliated group; and the corporation to  
230 which the property is leased, subleased, or licensed had sales  
231 subject to the tax imposed by this chapter of not less than \$667  
232 million during the most recent 12-month period ended June 30.



7-00467-09

20091134

233 Any tax on such sales, charges, rentals, admissions, or other  
234 transactions made subject to the tax imposed by this chapter  
235 shall be collected by the state, county, municipality, any  
236 political subdivision, agency, bureau, or department, or other  
237 state or local governmental instrumentality in the same manner  
238 as other dealers, unless specifically exempted by this chapter.

239 (6) "Certified service provider" has the same meaning as  
240 provided in s. 213.256.

241 (7) ~~(3)~~ The terms "cigarettes," "tobacco," or "tobacco  
242 products" referred to in this chapter include all such products  
243 as are defined or may be hereafter defined by the laws of the  
244 state.

245 (8) "Coin-operated amusement machine" means any machine  
246 operated by coin, slug, token, coupon, or similar device for the  
247 purposes of entertainment or amusement. The term includes, but  
248 is not limited to, coin-operated pinball machines, music  
249 machines, juke boxes, mechanical games, video games, arcade  
250 games, billiard tables, moving picture viewers, shooting  
251 galleries, and all other similar amusement devices.

252 (9) "Computer" means an electronic device that accepts  
253 information in digital or similar form and manipulates such  
254 information for a result based on a sequence of instructions.

255 (10) "Computer software" means a set of coded instructions  
256 designed to cause a computer or automatic data processing  
257 equipment to perform a task.

258 (11) ~~(4)~~ "Cost price" means the actual cost of articles of  
259 tangible personal property without any deductions therefrom on  
260 account of the cost of materials used, labor or service costs,  
261 transportation charges, or any expenses whatsoever.

7-00467-09

20091134\_\_

262       (12) "Delivery charges" means charges by the seller of  
263 personal property or services for preparation and delivery to a  
264 location designated by the purchaser of such property or  
265 services, including, but not limited to, transportation,  
266 shipping, postage, handling, crating, and packing. The term does  
267 not include the charges for delivery of direct mail if the  
268 charges are separately stated on an invoice or similar billing  
269 document given to the purchaser. If a shipment includes exempt  
270 property and taxable property, the seller shall tax only the  
271 percentage of the delivery charge allocated to the taxable  
272 property. The seller may allocate the delivery charge by using:

273       (a) A percentage based on the total sales price of the  
274 taxable property compared to the sales price of all property in  
275 the shipment; or

276       (b) A percentage based on the total weight of the taxable  
277 property compared to the total weight of all property in the  
278 shipment.

279       (13)~~(5)~~ The term "Department" means the Department of  
280 Revenue.

281       (14) "Diesel fuel" means any liquid product, gas product,  
282 or any combination thereof, which is used in an internal  
283 combustion engine or motor to propel any form of vehicle,  
284 machine, or mechanical contrivance. The term includes, but is  
285 not limited to, all forms of fuel commonly or commercially known  
286 or sold as diesel fuel or kerosene. However, the term does not  
287 include butane gas, propane gas, or any other form of liquefied  
288 petroleum gas or compressed natural gas.

289       (15) "Direct mail" means printed material delivered or  
290 distributed by the United States Postal Service or other

7-00467-09

20091134\_\_

291 delivery service to a mass audience or to addressees on a  
292 mailing list provided by the purchaser or at the direction of  
293 the purchaser when the cost of the items are not billed directly  
294 to the recipients. The term includes tangible personal property  
295 supplied directly or indirectly by the purchaser to the direct  
296 mail seller for inclusion in the package containing the printed  
297 material. The term does not include multiple items of printed  
298 material delivered to a single address.

299 (16) "Electronic" means relating to technology having  
300 electrical, digital, magnetic, wireless, optical,  
301 electromagnetic, or similar capabilities.

302 (17)-(6) "Enterprise zone" means an area of the state  
303 designated pursuant to s. 290.0065. This subsection expires on  
304 the date specified in s. 290.016 for the expiration of the  
305 Florida Enterprise Zone Act.

306 (18)-(7) "Factory-built building" means a structure  
307 manufactured in a manufacturing facility for installation or  
308 erection as a finished building; "factory-built building"  
309 includes, but is not limited to, residential, commercial,  
310 institutional, storage, and industrial structures.

311 (19) "Farmer" means a person who is directly engaged in the  
312 business of producing crops, livestock, or other agricultural  
313 commodities. The term includes, but is not limited to, horse  
314 breeders, nurserymen, dairy farmers, poultry farmers, cattle  
315 ranchers, apiarists, and persons raising fish.

316 (20) "Forest" means the land stocked by trees of any size  
317 used in the production of forest products, or formerly having  
318 such tree cover, and not currently developed for nonforest use.

319 (21)-(8) "In this state" or "in the state" means within the

7-00467-09

20091134

320 state boundaries of Florida as defined in s. 1, Art. II of the  
321 State Constitution and includes all territory within these  
322 limits owned by or ceded to the United States.

323 (22)~~(9)~~ The term "intoxicating beverages" or "alcoholic  
324 beverages" referred to in this chapter includes all such  
325 beverages as are so defined or may be hereafter defined by the  
326 laws of the state.

327 (23)~~(10)~~ "Lease," "let," or "rental" means leasing or  
328 renting of living quarters or sleeping or housekeeping  
329 accommodations in hotels, apartment houses, roominghouses,  
330 tourist or trailer camps and real property, the same being  
331 defined as follows:

332 (a) Every building or other structure kept, used,  
333 maintained, or advertised as, or held out to the public to be, a  
334 place where sleeping accommodations are supplied for pay to  
335 transient or permanent guests or tenants, in which 10 or more  
336 rooms are furnished for the accommodation of such guests, and  
337 having one or more dining rooms or cafes where meals or lunches  
338 are served to such transient or permanent guests; such sleeping  
339 accommodations and dining rooms or cafes being conducted in the  
340 same building or buildings in connection therewith, shall, for  
341 the purpose of this chapter, be deemed a hotel.

342 (b) Any building, or part thereof, where separate  
343 accommodations for two or more families living independently of  
344 each other are supplied to transient or permanent guests or  
345 tenants shall for the purpose of this chapter be deemed an  
346 apartment house.

347 (c) Every house, boat, vehicle, motor court, trailer court,  
348 or other structure or any place or location kept, used,

7-00467-09

20091134\_\_

349 maintained, or advertised as, or held out to the public to be, a  
350 place where living quarters or sleeping or housekeeping  
351 accommodations are supplied for pay to transient or permanent  
352 guests or tenants, whether in one or adjoining buildings, shall  
353 for the purpose of this chapter be deemed a roominghouse.

354 (d) In all hotels, apartment houses, and roominghouses  
355 within the meaning of this chapter, the parlor, dining room,  
356 sleeping porches, kitchen, office, and sample rooms shall be  
357 construed to mean "rooms."

358 (e) A "tourist camp" is a place where two or more tents,  
359 tent houses, or camp cottages are located and offered by a  
360 person or municipality for sleeping or eating accommodations,  
361 most generally to the transient public for either a direct money  
362 consideration or an indirect benefit to the lessor or owner in  
363 connection with a related business.

364 (f) A "trailer camp," "mobile home park," or "recreational  
365 vehicle park" is a place where space is offered, with or without  
366 service facilities, by any persons or municipality to the public  
367 for the parking and accommodation of two or more automobile  
368 trailers, mobile homes, or recreational vehicles which are used  
369 for lodging, for either a direct money consideration or an  
370 indirect benefit to the lessor or owner in connection with a  
371 related business, such space being hereby defined as living  
372 quarters, and the rental price thereof shall include all service  
373 charges paid to the lessor.

374 (g) 1. "Lease," "let," or "rental" also means any transfer  
375 of possession or control of tangible personal property for a  
376 fixed or indeterminate term for consideration. A clause for a  
377 future option to purchase or to extend an agreement does not

7-00467-09

20091134\_\_

378 preclude an agreement from being a lease or rental. This  
379 definition shall be used for purposes of the sales and use tax  
380 regardless of whether a transaction is characterized as a lease  
381 or rental under generally accepted accounting principles, the  
382 Internal Revenue Code, the Uniform Commercial Code, or any other  
383 provisions of federal, state, or local law. These terms include  
384 agreements covering motor vehicles and trailers if the amount of  
385 consideration may be increased or decreased by reference to the  
386 amount realized upon sale or disposition of the property as  
387 provided in 26 U.S.C. s. 7701(h) (1). These terms do not include:

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

391 b. A transfer of possession or control of property under an  
392 agreement that requires the transfer of title upon completion of  
393 required payments and payment of an option price does not exceed  
394 the greater of \$100 or 1 percent of the total required payments;  
395 or

396 c. The provision of tangible personal property along with  
397 an operator for a fixed or indeterminate period of time. A  
398 condition of this exclusion is that the operator is necessary  
399 for the equipment to perform as designed. For the purpose of  
400 this sub-subparagraph, an operator must do more than maintain,  
401 inspect, or set up the tangible personal property ~~the leasing or~~  
402 ~~rental of tangible personal property and the possession or use~~  
403 ~~thereof by the lessee or rentee for a consideration, without~~  
404 ~~transfer of the title of such property, except as expressly~~  
405 ~~provided to the contrary herein.~~

406 2. The term "lease," "let," or "rental" does not include

7-00467-09

20091134\_\_

407 ~~mean~~ hourly, daily, or mileage charges, to the extent that such  
408 charges are subject to the jurisdiction of the United States  
409 Interstate Commerce Commission, if ~~when~~ such charges are paid by  
410 reason of the presence of railroad cars owned by another on the  
411 tracks of the taxpayer, or charges made pursuant to car service  
412 agreements.

413 3. The term "lease," "let," "rental," or "license" does not  
414 include payments made to an owner of high-voltage bulk  
415 transmission facilities in connection with the possession or  
416 control of such facilities by a regional transmission  
417 organization, independent system operator, or similar entity  
418 under the jurisdiction of the Federal Energy Regulatory  
419 Commission. However, where two taxpayers, in connection with the  
420 interchange of facilities, rent or lease property, each to the  
421 other, for use in providing or furnishing any of the services  
422 mentioned in s. 166.231, the term "lease or rental" means only  
423 the net amount of rental involved.

424 (h) "Real property" means the surface land, improvements  
425 thereto, and fixtures, and is synonymous with "realty" and "real  
426 estate."

427 (i) "License," ~~as used in this chapter~~ with reference to  
428 the use of real property, means the granting of a privilege to  
429 use or occupy a building or a parcel of real property for any  
430 purpose.

431 (j) Privilege, franchise, or concession fees, or fees for a  
432 license to do business, paid to an airport are not payments for  
433 leasing, letting, renting, or granting a license for the use of  
434 real property.

435 (24) "Livestock" includes all animals of the equine,

7-00467-09

20091134

436 bovine, or swine class, including goats, sheep, mules, horses,  
437 hogs, cattle, ostriches, and other grazing animals raised for  
438 commercial purposes. The term also includes fish raised for  
439 commercial purposes.

440 (25) (a) "Model 1 seller" has the same meaning as provided  
441 in s. 213.256.

442 (b) "Model 2 seller" has the same meaning as provided in s.  
443 213.256.

444 (c) "Model 3 seller" has the same meaning as provided in s.  
445 213.256.

446 (26) ~~(11)~~ "Motor fuel" means and includes what is commonly  
447 known and sold as gasoline and fuels containing a mixture of  
448 gasoline and other products.

449 (27) ~~(12)~~ "Person" includes any individual, firm,  
450 copartnership, joint adventure, association, corporation,  
451 estate, trust, business trust, receiver, syndicate, or other  
452 group or combination acting as a unit and also includes any  
453 political subdivision, municipality, state agency, bureau, or  
454 department and includes the plural as well as the singular  
455 number.

456 (28) "Power farm equipment" means moving or stationary  
457 equipment that contains within itself the means for its own  
458 propulsion or power and moving or stationary equipment that is  
459 dependent upon an external power source to perform its  
460 functions.

461 (29) "Prewritten computer software" means computer  
462 software, including prewritten upgrades, which is not designed  
463 and developed by the author or other creator to the  
464 specifications of a specific purchaser. The combining of two or



7-00467-09

20091134

465 more prewritten computer software programs or prewritten  
466 portions of such programs does not cause the combination to be  
467 other than prewritten computer software. Prewritten computer  
468 software includes software designed and developed by the author  
469 or other creator to the specifications of a specific purchaser  
470 when such software is sold to a person other than the specific  
471 purchaser. Where a person modifies or enhances computer software  
472 of which the person is not the author or creator, the person  
473 shall be deemed to be the author or creator only of such  
474 person's modifications or enhancements. Prewritten computer  
475 software or a prewritten portion of such software which is  
476 modified or enhanced to any degree, if such modification or  
477 enhancement is designed and developed to the specifications of a  
478 specific purchaser, remains prewritten computer software.  
479 However, prewritten computer software does not include software  
480 that has been modified or enhanced for a particular purchaser if  
481 the charge for the enhancement is reasonable and separately  
482 stated on the invoice or other statement of price given to the  
483 purchaser.

484 (30) "Product transferred electronically" means a product,  
485 except computer software, which was obtained by a purchaser by  
486 means other than the purchase of tangible storage media.

487 (31) "Qualified aircraft" means any aircraft having a  
488 maximum certified takeoff weight of less than 10,000 pounds and  
489 equipped with twin turbofan engines that meet Stage IV noise  
490 requirements which is used by a business operating as an on-  
491 demand air carrier under Federal Aviation Administration  
492 Regulation Title 14, chapter I, part 135, Code of Federal  
493 Regulations, which owns or leases and operates a fleet of at

7-00467-09

20091134\_\_

494 least 25 of such aircraft in this state.

495 (32)~~(13)~~ "Retailer" means and includes every person engaged  
496 in the business of making sales at retail or for distribution,  
497 or use, or consumption, or storage to be used or consumed in  
498 this state.

499 (33)~~(14)~~(a) "Retail sale" or a "sale at retail" means a  
500 sale to a consumer or to any person for any purpose other than  
501 for resale in the form of tangible personal property or services  
502 taxable under this chapter, and includes all such transactions  
503 that may be made in lieu of retail sales or sales at retail. A  
504 sale for resale includes a sale of qualifying property. As used  
505 in this paragraph, the term "qualifying property" means tangible  
506 personal property, other than electricity, which is used or  
507 consumed by a government contractor in the performance of a  
508 qualifying contract as defined in s. 212.08(17)(c), to the  
509 extent that the cost of the property is allocated or charged as  
510 a direct item of cost to such contract, title to which property  
511 vests in or passes to the government under the contract. The  
512 term "government contractor" includes prime contractors and  
513 subcontractors. As used in this paragraph, a cost is a "direct  
514 item of cost" if it is a "direct cost" as defined in 48 C.F.R.  
515 s. 9904.418-30(a)(2), or similar successor provisions, including  
516 costs identified specifically with a particular contract.

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

7-00467-09

20091134\_\_

523 manuals or any tangible personal property which does not  
524 accompany the product to the ultimate consumer.

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

7-00467-09

20091134\_\_

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

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

561 ~~(e) The term "Retail sale" includes a mail order sale, as~~  
562 ~~defined in s. 212.0596(1).~~

563 (34)~~(15)~~ "Sale" means and includes:

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

568 (b) The rental of living quarters or sleeping or  
569 housekeeping accommodations in hotels, apartment houses or  
570 roominghouses, or tourist or trailer camps, as hereinafter  
571 defined in this chapter.

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

577 (d) The furnishing, preparing, or serving for a  
578 consideration of any tangible personal property for consumption  
579 on or off the premises of the person furnishing, preparing, or  
580 serving such tangible personal property which includes the sale

7-00467-09

20091134\_\_

581 of meals or prepared food by an employer to his or her  
582 employees.

583 (e) A transaction whereby the possession of property is  
584 transferred but the seller retains title as security for the  
585 payment of the price.

586 (35) (a) ~~(16)~~ "Sales price" applies to the measure subject to  
587 the tax imposed by this chapter and means the total amount of  
588 consideration, including cash, credit, property, and services,  
589 for which tangible personal property or personal services are  
590 sold, leased, or rented, valued in money, whether received in  
591 money or otherwise, without any deduction for the following:

592 1. The seller's cost of the property sold;

593 2. The cost of materials used, labor or service cost,  
594 interest, losses, all costs of transportation to the seller, all  
595 taxes imposed on the seller, and any other expense of the  
596 seller;

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

599 4. Delivery charges; or

600 5. Installation charges.

601 (b) "Sales price" does not include:

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

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

608 3. Interest, financing, and carrying charges from credit  
609 extended on the sale of personal property or services, if the

7-00467-09

20091134\_\_

610 amount is separately stated on the invoice, bill of sale, or  
611 similar document given to the purchaser;

612 4. Any taxes legally imposed directly on the consumer which  
613 are separately stated on the invoice, bill of sale, or similar  
614 document given to the purchaser; or ~~means the total amount paid~~  
615 ~~for tangible personal property, including any services that are~~  
616 ~~a part of the sale, valued in money, whether paid in money or~~  
617 ~~otherwise, and includes any amount for which credit is given to~~  
618 ~~the purchaser by the seller, without any deduction therefrom on~~  
619 ~~account of the cost of the property sold, the cost of materials~~  
620 ~~used, labor or service cost, interest charged, losses, or any~~  
621 ~~other expense whatsoever. "Sales price" also includes the~~  
622 ~~consideration for a transaction which requires both labor and~~  
623 ~~material to alter, remodel, maintain, adjust, or repair tangible~~  
624 ~~personal property. Trade-ins or discounts allowed and taken at~~  
625 ~~the time of sale shall not be included within the purview of~~  
626 ~~this subsection. "Sales price" also includes the full face value~~  
627 ~~of any coupon used by a purchaser to reduce the price paid to a~~  
628 ~~retailer for an item of tangible personal property; where the~~  
629 ~~retailer will be reimbursed for such coupon, in whole or in~~  
630 ~~part, by the manufacturer of the item of tangible personal~~  
631 ~~property; or whenever it is not practicable for the retailer to~~  
632 ~~determine, at the time of sale, the extent to which~~  
633 ~~reimbursement for the coupon will be made. The term "sales~~  
634 ~~price" does not include federal excise taxes imposed upon the~~  
635 ~~retailer on the sale of tangible personal property. The term~~  
636 ~~"sales price" does include federal manufacturers' excise taxes,~~  
637 ~~even if the federal tax is listed as a separate item on the~~  
638 ~~invoice. To the extent required by federal law, the term "sales~~

7-00467-09

20091134\_\_

639 ~~price" does not include~~

640 5. Charges for Internet access services which are not  
641 itemized on the customer's bill, but which can be reasonably  
642 identified from the selling dealer's books and records kept in  
643 the regular course of business. The dealer may support the  
644 allocation of charges with books and records kept in the regular  
645 course of business covering the dealer's entire service area,  
646 including territories outside this state.

647 (36) "Sea trial" means a voyage for the purpose of testing  
648 repair or modification work, which is in length and scope  
649 reasonably necessary to test repairs or modifications, or a  
650 voyage for the purpose of ascertaining the seaworthiness of a  
651 vessel. If the sea trial is to test repair or modification work,  
652 the owner or repair facility shall certify, in a form required  
653 by the department, what repairs have been tested. The owner and  
654 the repair facility may also be required to certify that the  
655 length and scope of the voyage were reasonably necessary to test  
656 the repairs or modifications.

657 (37) "Seller" means a person making sales, leases, or  
658 rentals of personal property or services.

659 (38) "Solar energy system" means the equipment and  
660 requisite hardware that provide and are used for collecting,  
661 transferring, converting, storing, or using incident solar  
662 energy for water heating, space heating, cooling, or other  
663 applications that would otherwise require the use of a  
664 conventional source of energy such as petroleum products,  
665 natural gas, manufactured gas, or electricity.

666 (39) "Space flight" means any flight designed for  
667 suborbital, orbital, or interplanetary travel of a space

7-00467-09

20091134\_\_

668 vehicle, satellite, or station of any kind.

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

672 ~~(17) "Diesel fuel" means any liquid product, gas product,~~  
673 ~~or combination thereof used in an internal combustion engine or~~  
674 ~~motor to propel any form of vehicle, machine, or mechanical~~  
675 ~~contrivance. This term includes, but is not limited to, all~~  
676 ~~forms of fuel commonly or commercially known or sold as diesel~~  
677 ~~fuel or kerosene. However, the term "diesel fuel" does not~~  
678 ~~include butane gas, propane gas, or any other form of liquefied~~  
679 ~~petroleum gas or compressed natural gas.~~

680 (41)~~(18)~~ "Storage" means and includes any keeping or  
681 retention in this state of tangible personal property for use or  
682 consumption in this state or for any purpose other than sale at  
683 retail in the regular course of business.

684 (42) "Streamlined Sales and Use Tax Agreement" has the same  
685 meaning as in s. 213.256.

686 (43)~~(19)~~ "Tangible personal property" means and includes  
687 personal property which may be seen, weighed, measured, or  
688 touched or is in any manner perceptible to the senses, including  
689 electric power or energy, water, gas, steam, prewritten computer  
690 software, boats, motor vehicles and mobile homes as defined in  
691 s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all  
692 other types of vehicles. The term "tangible personal property"  
693 does not include stocks, bonds, notes, insurance, ~~or~~ other  
694 obligations or securities, any product transferred  
695 electronically, or pari-mutuel tickets sold or issued under the  
696 racing laws of the state.



7-00467-09

20091134\_\_

697        (44)~~(20)~~ "Use" means and includes the exercise of any right  
698 or power over tangible personal property incident to the  
699 ownership thereof, or interest therein, except that it does not  
700 include the sale at retail of that property in the regular  
701 course of business. The term "use" does not include:

702        (a) The loan of an automobile by a motor vehicle dealer to  
703 a high school for use in its driver education and safety  
704 program. ~~The term "use" does not include; or~~

705        (b) A contractor's use of "qualifying property" as defined  
706 by paragraph (33) (a) ~~paragraph (14) (a)~~.

707        (45)~~(21)~~ The term "Use tax" referred to in this chapter  
708 includes the use, the consumption, the distribution, and the  
709 storage as herein defined.

710        (46) "Voluntary seller" or "volunteer seller" means a  
711 seller that is not required to register in this state to collect  
712 the tax imposed by this chapter.

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

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

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

7-00467-09

20091134\_\_

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

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

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

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

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

7-00467-09

20091134\_\_

755 ~~fish raised for commercial purposes.~~

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

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

780 Section 2. Paragraph (c) of subsection (7) of section  
781 212.03, Florida Statutes, is amended to read:

782 212.03 Transient rentals tax; rate, procedure, enforcement,  
783 exemptions.-

7-00467-09

20091134\_\_

784 (7)

785 (c) The rental of facilities in a trailer camp, mobile home

786 park, or recreational vehicle park facilities, as defined in s.

787 212.02(23) ~~s. 212.02(10)(f)~~, which are intended primarily for

788 rental as a principal or permanent place of residence is exempt

789 from the tax imposed by this chapter. The rental of such

790 facilities that primarily serve transient guests is not exempt

791 by this subsection. In the application of this law, or in making

792 any determination against the exemption, the department shall

793 consider the facility as primarily serving transient guests

794 unless the facility owner makes a verified declaration on a form

795 prescribed by the department that more than half of the total

796 rental units available are occupied by tenants who have a

797 continuous residence in excess of 3 months. The owner of a

798 facility declared to be exempt by this paragraph must make a

799 determination of the taxable status of the facility at the end

800 of the owner's accounting year using any consecutive 3-month

801 period at least one month of which is in the accounting year.

802 The owner must use a selected consecutive 3-month period during

803 each annual redetermination. In the event that an exempt

804 facility no longer qualifies for exemption by this paragraph,

805 the owner must notify the department on a form prescribed by the

806 department by the 20th day of the first month of the owner's

807 next succeeding accounting year that the facility no longer

808 qualifies for such exemption. The tax levied by this section

809 shall apply to the rental of facilities that no longer qualify

810 for exemption under this paragraph beginning the first day of

811 the owner's next succeeding accounting year. The provisions of

812 this paragraph do not apply to mobile home lots regulated under

7-00467-09

20091134\_\_

813 chapter 723.

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

816 212.0306 Local option food and beverage tax; procedure for  
817 levying; authorized uses; administration.-

818 (6) Any county levying a tax authorized by this section  
819 must locally administer the tax using the powers and duties  
820 enumerated for local administration of the tourist development  
821 tax by s. 125.0104, 1992 Supplement to the Florida Statutes  
822 1991. ~~The county's ordinance shall also provide for brackets~~  
823 ~~applicable to taxable transactions.~~

824 Section 4. Paragraph (b) of subsection (1) of section  
825 212.04, Florida Statutes, is amended to read:

826 212.04 Admissions tax; rate, procedure, enforcement.-

827 (1)

828 (b) For the exercise of such privilege, a tax is levied at  
829 the rate of 6 percent of sales price, or the actual value  
830 received from such admissions, which 6 percent shall be added to  
831 and collected with all such admissions from the purchaser  
832 thereof, and such tax shall be paid for the exercise of the  
833 privilege as defined in the preceding paragraph. Each ticket  
834 must show on its face the actual sales price of the admission,  
835 or each dealer selling the admission must prominently display at  
836 the box office or other place where the admission charge is made  
837 a notice disclosing the price of the admission, and the tax  
838 shall be computed and collected on the basis of the actual price  
839 of the admission charged by the dealer. The sale price or actual  
840 value of admission shall, for the purpose of this chapter, be  
841 that price remaining after deduction of federal taxes and state

7-00467-09

20091134\_\_

842 or locally imposed or authorized seat surcharges, taxes, or  
843 fees, if any, imposed upon such admission. The sale price or  
844 actual value does not include separately stated ticket service  
845 charges that are imposed by a facility ticket office or a  
846 ticketing service and added to a separately stated, established  
847 ticket price. ~~The rate of tax on each admission shall be~~  
848 ~~according to the brackets established by s. 212.12(9).~~

849 Section 5. Subsections (6), (7), (8), (9), (10), and (11)  
850 of section 212.0506, Florida Statutes, are amended to read:

851 212.0506 Taxation of service warranties.-

852 ~~(6) This tax shall be due and payable according to the~~  
853 ~~brackets set forth in s. 212.12.~~

854 (6)~~(7)~~ This tax shall not apply to any portion of the  
855 consideration received by any person in connection with the  
856 issuance of any service warranty contract upon which such person  
857 is required to pay any premium tax imposed under the Florida  
858 Insurance Code or under s. 634.313(1).

859 (7)~~(8)~~ If a transaction involves both the issuance of a  
860 service warranty that is subject to such tax and the issuance of  
861 a warranty, guaranty, extended warranty or extended guaranty,  
862 contract, agreement, or other written promise that is not  
863 subject to such tax, the consideration shall be separately  
864 identified and stated with respect to the taxable and nontaxable  
865 portions of the transaction. If the consideration is separately  
866 apportioned and identified in good faith, such tax shall apply  
867 to the transaction to the extent that the consideration received  
868 or to be received in connection with the transaction is payment  
869 for a service warranty subject to such tax. If the consideration  
870 is not apportioned in good faith, the department may reform the

7-00467-09

20091134\_\_

871 contract; such reformation by the department is to be considered  
872 prima facie correct, and the burden to show the contrary rests  
873 upon the dealer. If the consideration for such a transaction is  
874 not separately identified and stated, the entire transaction is  
875 taxable.

876 (8)~~(9)~~ Any claim which arises under a service warranty  
877 taxable under this section, which claim is paid directly by the  
878 person issuing such warranty, is not subject to any tax imposed  
879 under this chapter.

880 (9)~~(10)~~ Materials and supplies used in the performance of a  
881 factory or manufacturer's warranty are exempt if the contract is  
882 furnished at no extra charge with the equipment guaranteed  
883 thereunder and such materials and supplies are paid for by the  
884 factory or manufacturer.

885 (10)~~(11)~~ Any duties imposed by this chapter upon dealers of  
886 tangible personal property with respect to collecting and  
887 remitting taxes; making returns; keeping books, records, and  
888 accounts; and complying with the rules and regulations of the  
889 department apply to all dealers as defined in s. 212.06(2)(1).

890 Section 6. Section 212.05, Florida Statutes, is amended to  
891 read:

892 212.05 Sales, storage, use tax.—It is hereby declared to be  
893 the legislative intent that every person is exercising a taxable  
894 privilege who engages in the business of selling tangible  
895 personal property at retail in this state, ~~including the~~  
896 ~~business of making mail order sales,~~ or who rents or furnishes  
897 any of the things or services taxable under this chapter, or who  
898 stores for use or consumption in this state any item or article  
899 of tangible personal property as defined herein and who leases

7-00467-09

20091134\_\_

900 or rents such property within the state.

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

904 (a)1.a. At the rate of 6 percent of the sales price of each  
905 item or article of tangible personal property when sold at  
906 retail in this state, computed on each taxable sale for the  
907 purpose of remitting the amount of tax due the state, and  
908 including each and every retail sale.

909 b. Each occasional or isolated sale of an aircraft, boat,  
910 mobile home, or motor vehicle of a class or type which is  
911 required to be registered, licensed, titled, or documented in  
912 this state or by the United States Government shall be subject  
913 to tax at the rate provided in this paragraph. The department  
914 shall by rule adopt any nationally recognized publication for  
915 valuation of used motor vehicles as the reference price list for  
916 any used motor vehicle which is required to be licensed pursuant  
917 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any  
918 party to an occasional or isolated sale of such a vehicle  
919 reports to the tax collector a sales price which is less than 80  
920 percent of the average loan price for the specified model and  
921 year of such vehicle as listed in the most recent reference  
922 price list, the tax levied under this paragraph shall be  
923 computed by the department on such average loan price unless the  
924 parties to the sale have provided to the tax collector an  
925 affidavit signed by each party, or other substantial proof,  
926 stating the actual sales price. Any party to such sale who  
927 reports a sales price less than the actual sales price is guilty  
928 of a misdemeanor of the first degree, punishable as provided in



7-00467-09

20091134\_\_

929 s. 775.082 or s. 775.083. The department shall collect or  
930 attempt to collect from such party any delinquent sales taxes.  
931 In addition, such party shall pay any tax due and any penalty  
932 and interest assessed plus a penalty equal to twice the amount  
933 of the additional tax owed. Notwithstanding any other provision  
934 of law, the Department of Revenue may waive or compromise any  
935 penalty imposed pursuant to this subparagraph.

936 2. This paragraph does not apply to the sale of a boat or  
937 aircraft by or through a registered dealer under this chapter to  
938 a purchaser who, at the time of taking delivery, is a  
939 nonresident of this state, does not make his or her permanent  
940 place of abode in this state, and is not engaged in carrying on  
941 in this state any employment, trade, business, or profession in  
942 which the boat or aircraft will be used in this state, or is a  
943 corporation none of the officers or directors of which is a  
944 resident of, or makes his or her permanent place of abode in,  
945 this state, or is a noncorporate entity that has no individual  
946 vested with authority to participate in the management,  
947 direction, or control of the entity's affairs who is a resident  
948 of, or makes his or her permanent abode in, this state. For  
949 purposes of this exemption, either a registered dealer acting on  
950 his or her own behalf as seller, a registered dealer acting as  
951 broker on behalf of a seller, or a registered dealer acting as  
952 broker on behalf of the purchaser may be deemed to be the  
953 selling dealer. This exemption shall not be allowed unless:

954 a. The purchaser removes a qualifying boat, as described in  
955 sub-subparagraph f., from the state within 90 days after the  
956 date of purchase or the purchaser removes a nonqualifying boat  
957 or an aircraft from this state within 10 days after the date of

7-00467-09

20091134\_\_

958 purchase or, when the boat or aircraft is repaired or altered,  
959 within 20 days after completion of the repairs or alterations;

960       b. The purchaser, within 30 days from the date of  
961 departure, shall provide the department with written proof that  
962 the purchaser licensed, registered, titled, or documented the  
963 boat or aircraft outside the state. If such written proof is  
964 unavailable, within 30 days the purchaser shall provide proof  
965 that the purchaser applied for such license, title,  
966 registration, or documentation. The purchaser shall forward to  
967 the department proof of title, license, registration, or  
968 documentation upon receipt.

969       c. The purchaser, within 10 days of removing the boat or  
970 aircraft from Florida, shall furnish the department with proof  
971 of removal in the form of receipts for fuel, dockage, slippage,  
972 tie-down, or hangaring from outside of Florida. The information  
973 so provided must clearly and specifically identify the boat or  
974 aircraft;

975       d. The selling dealer, within 5 days of the date of sale,  
976 shall provide to the department a copy of the sales invoice,  
977 closing statement, bills of sale, and the original affidavit  
978 signed by the purchaser attesting that he or she has read the  
979 provisions of this section;

980       e. The seller makes a copy of the affidavit a part of his  
981 or her record for as long as required by s. 213.35; and

982       f. Unless the nonresident purchaser of a boat of 5 net tons  
983 of admeasurement or larger intends to remove the boat from this  
984 state within 10 days after the date of purchase or when the boat  
985 is repaired or altered, within 20 days after completion of the  
986 repairs or alterations, the nonresident purchaser shall apply to

7-00467-09

20091134

987 the selling dealer for a decal which authorizes 90 days after  
988 the date of purchase for removal of the boat. The department is  
989 authorized to issue decals in advance to dealers. The number of  
990 decals issued in advance to a dealer shall be consistent with  
991 the volume of the dealer's past sales of boats which qualify  
992 under this sub-subparagraph. The selling dealer or his or her  
993 agent shall mark and affix the decals to qualifying boats in the  
994 manner prescribed by the department, prior to delivery of the  
995 boat.

996 (I) The department is hereby authorized to charge dealers a  
997 fee sufficient to recover the costs of decals issued.

998 (II) The proceeds from the sale of decals will be deposited  
999 into the administrative trust fund.

1000 (III) Decals shall display information to identify the boat  
1001 as a qualifying boat under this sub-subparagraph, including, but  
1002 not limited to, the decal's date of expiration.

1003 (IV) The department is authorized to require dealers who  
1004 purchase decals to file reports with the department and may  
1005 prescribe all necessary records by rule. All such records are  
1006 subject to inspection by the department.

1007 (V) Any dealer or his or her agent who issues a decal  
1008 falsely, fails to affix a decal, mismarks the expiration date of  
1009 a decal, or fails to properly account for decals will be  
1010 considered prima facie to have committed a fraudulent act to  
1011 evade the tax and will be liable for payment of the tax plus a  
1012 mandatory penalty of 200 percent of the tax, and shall be liable  
1013 for fine and punishment as provided by law for a conviction of a  
1014 misdemeanor of the first degree, as provided in s. 775.082 or s.  
1015 775.083.

7-00467-09

20091134\_\_

1016 (VI) Any nonresident purchaser of a boat who removes a  
1017 decal prior to permanently removing the boat from the state, or  
1018 defaces, changes, modifies, or alters a decal in a manner  
1019 affecting its expiration date prior to its expiration, or who  
1020 causes or allows the same to be done by another, will be  
1021 considered prima facie to have committed a fraudulent act to  
1022 evade the tax and will be liable for payment of the tax plus a  
1023 mandatory penalty of 200 percent of the tax, and shall be liable  
1024 for fine and punishment as provided by law for a conviction of a  
1025 misdemeanor of the first degree, as provided in s. 775.082 or s.  
1026 775.083.

1027 (VII) The department is authorized to adopt rules necessary  
1028 to administer and enforce this subparagraph and to publish the  
1029 necessary forms and instructions.

1030 (VIII) The department is hereby authorized to adopt  
1031 emergency rules pursuant to s. 120.54(4) to administer and  
1032 enforce the provisions of this subparagraph.  
1033

1034 If the purchaser fails to remove the qualifying boat from this  
1035 state within 90 days after purchase or a nonqualifying boat or  
1036 an aircraft from this state within 10 days after purchase or,  
1037 when the boat or aircraft is repaired or altered, within 20 days  
1038 after completion of such repairs or alterations, or permits the  
1039 boat or aircraft to return to this state within 6 months from  
1040 the date of departure, or if the purchaser fails to furnish the  
1041 department with any of the documentation required by this  
1042 subparagraph within the prescribed time period, the purchaser  
1043 shall be liable for use tax on the cost price of the boat or  
1044 aircraft and, in addition thereto, payment of a penalty to the

7-00467-09

20091134

1045 Department of Revenue equal to the tax payable. This penalty  
1046 shall be in lieu of the penalty imposed by s. 212.12(2) and is  
1047 mandatory and shall not be waived by the department. The 90-day  
1048 period following the sale of a qualifying boat tax-exempt to a  
1049 nonresident may not be tolled for any reason. Notwithstanding  
1050 other provisions of this paragraph to the contrary, an aircraft  
1051 purchased in this state under the provisions of this paragraph  
1052 may be returned to this state for repairs within 6 months after  
1053 the date of its departure without being in violation of the law  
1054 and without incurring liability for the payment of tax or  
1055 penalty on the purchase price of the aircraft if the aircraft is  
1056 removed from this state within 20 days after the completion of  
1057 the repairs and if such removal can be demonstrated by invoices  
1058 for fuel, tie-down, hangar charges issued by out-of-state  
1059 vendors or suppliers, or similar documentation.

1060 (b) At the rate of 6 percent of the cost price of each item  
1061 or article of tangible personal property when the same is not  
1062 sold but is used, consumed, distributed, or stored for use or  
1063 consumption in this state; however, for tangible property  
1064 originally purchased exempt from tax for use exclusively for  
1065 lease and which is converted to the owner's own use, tax may be  
1066 paid on the fair market value of the property at the time of  
1067 conversion. If the fair market value of the property cannot be  
1068 determined, use tax at the time of conversion shall be based on  
1069 the owner's acquisition cost. Under no circumstances may the  
1070 aggregate amount of sales tax from leasing the property and use  
1071 tax due at the time of conversion be less than the total sales  
1072 tax that would have been due on the original acquisition cost  
1073 paid by the owner.

7-00467-09

20091134\_\_

1074 (c) At the rate of 6 percent of the gross proceeds derived  
1075 from the lease or rental of tangible personal property, as  
1076 defined herein.; ~~however, the following special provisions apply~~  
1077 ~~to the lease or rental of motor vehicles:~~

1078 1. ~~When a motor vehicle is leased or rented for a period of~~  
1079 ~~less than 12 months:~~

1080 a. ~~If the motor vehicle is rented in Florida, the entire~~  
1081 ~~amount of such rental is taxable, even if the vehicle is dropped~~  
1082 ~~off in another state.~~

1083 b. ~~If the motor vehicle is rented in another state and~~  
1084 ~~dropped off in Florida, the rental is exempt from Florida tax.~~

1085 2. ~~Except as provided in subparagraph 3., for the lease or~~  
1086 ~~rental of a motor vehicle for a period of not less than 12~~  
1087 ~~months, sales tax is due on the lease or rental payments if the~~  
1088 ~~vehicle is registered in this state; provided, however, that no~~  
1089 ~~tax shall be due if the taxpayer documents use of the motor~~  
1090 ~~vehicle outside this state and tax is being paid on the lease or~~  
1091 ~~rental payments in another state.~~

1092 3. ~~The tax imposed by this chapter does not apply to the~~  
1093 ~~lease or rental of a commercial motor vehicle as defined in s.~~  
1094 ~~316.003(66)(a) to one lessee or rentee for a period of not less~~  
1095 ~~than 12 months when tax was paid on the purchase price of such~~  
1096 ~~vehicle by the lessor. To the extent tax was paid with respect~~  
1097 ~~to the purchase of such vehicle in another state, territory of~~  
1098 ~~the United States, or the District of Columbia, the Florida tax~~  
1099 ~~payable shall be reduced in accordance with the provisions of s.~~  
1100 ~~212.06(7). This subparagraph shall only be available when the~~  
1101 ~~lease or rental of such property is an established business or~~  
1102 ~~part of an established business or the same is incidental or~~

7-00467-09

20091134\_\_

1103 ~~germane to such business.~~

1104 (d) At the rate of 6 percent of the lease or rental price  
1105 paid by a lessee or rentee, or contracted or agreed to be paid  
1106 by a lessee or rentee, to the owner of the tangible personal  
1107 property.

1108 (e)

1109 1. At the rate of 6 percent on charges for:

1110 a. Prepaid calling arrangements. The tax on charges for  
1111 prepaid calling arrangements shall be collected at the time of  
1112 sale and remitted by the selling dealer.

1113 (I) "Prepaid calling arrangement" means the separately  
1114 stated retail sale by advance payment of communications services  
1115 that consist exclusively of telephone calls originated by using  
1116 an access number, authorization code, or other means that may be  
1117 manually, electronically, or otherwise entered and that are sold  
1118 in predetermined units or dollars whose number declines with use  
1119 in a known amount.

1120 (II) The sale or recharge of the prepaid calling  
1121 arrangement is deemed to take place in accordance with s.  
1122 212.06(17) (d). ~~If the sale or recharge of the prepaid calling~~  
1123 ~~arrangement does not take place at the dealer's place of~~  
1124 ~~business, it shall be deemed to take place at the customer's~~  
1125 ~~shipping address or, if no item is shipped, at the customer's~~  
1126 ~~address or the location associated with the customer's mobile~~  
1127 ~~telephone number.~~

1128 (III) The sale or recharge of a prepaid calling arrangement  
1129 shall be treated as a sale of tangible personal property for  
1130 purposes of this chapter, whether or not a tangible item  
1131 evidencing such arrangement is furnished to the purchaser, and

7-00467-09

20091134\_\_

1132 such sale within this state subjects the selling dealer to the  
1133 jurisdiction of this state for purposes of this subsection.

1134 b. The installation of telecommunication and telegraphic  
1135 equipment.

1136 c. Electrical power or energy, except that the tax rate for  
1137 charges for electrical power or energy is 7 percent.

1138 2. The provisions of s. 212.17(3), regarding credit for tax  
1139 paid on charges subsequently found to be worthless, shall be  
1140 equally applicable to any tax paid under the provisions of this  
1141 section on charges for prepaid calling arrangements,  
1142 telecommunication or telegraph services, or electric power  
1143 subsequently found to be uncollectible. The word "charges" in  
1144 this paragraph does not include any excise or similar tax levied  
1145 by the Federal Government, any political subdivision of the  
1146 state, or any municipality upon the purchase, sale, or recharge  
1147 of prepaid calling arrangements or upon the purchase or sale of  
1148 telecommunication, television system program, or telegraph  
1149 service or electric power, which tax is collected by the seller  
1150 from the purchaser.

1151 (f) At the rate of 6 percent on the sale, rental, use,  
1152 consumption, or storage for use in this state of machines and  
1153 equipment, and parts and accessories therefor, used in  
1154 manufacturing, processing, compounding, producing, mining, or  
1155 quarrying personal property for sale or to be used in furnishing  
1156 communications, transportation, or public utility services.

1157 (g)1. At the rate of 6 percent on the retail price of  
1158 newspapers and magazines sold or used in Florida.

1159 2. Notwithstanding other provisions of this chapter,  
1160 inserts of printed materials which are distributed with a



7-00467-09

20091134\_\_

1161 newspaper or magazine are a component part of the newspaper or  
 1162 magazine, and neither the sale nor use of such inserts is  
 1163 subject to tax when:

1164 a. Printed by a newspaper or magazine publisher or  
 1165 commercial printer and distributed as a component part of a  
 1166 newspaper or magazine, which means that the items after being  
 1167 printed are delivered directly to a newspaper or magazine  
 1168 publisher by the printer for inclusion in editions of the  
 1169 distributed newspaper or magazine;

1170 b. Such publications are labeled as part of the designated  
 1171 newspaper or magazine publication into which they are to be  
 1172 inserted; and

1173 c. The purchaser of the insert presents a resale  
 1174 certificate to the vendor stating that the inserts are to be  
 1175 distributed as a component part of a newspaper or magazine.

1176 (h)1. A tax is imposed at the rate of 6 4 percent on the  
 1177 charges for the use of coin-operated amusement machines. The tax  
 1178 shall be calculated by dividing the gross receipts from such  
 1179 charges for the applicable reporting period by a divisor,  
 1180 determined as provided in this subparagraph, to compute gross  
 1181 taxable sales, and then subtracting gross taxable sales from  
 1182 gross receipts to arrive at the amount of tax due. For counties  
 1183 that do not impose a discretionary sales surtax, the divisor is  
 1184 equal to 1.06 ~~1.04~~; for counties that impose a 0.5 percent  
 1185 discretionary sales surtax, the divisor is equal to 1.065 ~~1.045~~;  
 1186 for counties that impose a 1 percent discretionary sales surtax,  
 1187 the divisor is equal to 1.07 ~~1.050~~; and for counties that impose  
 1188 a 2 percent sales surtax, the divisor is equal to 1.08 ~~1.060~~. If  
 1189 a county imposes a discretionary sales surtax that is not listed

7-00467-09

20091134

1190 in this subparagraph, the department shall make the applicable  
1191 divisor available in an electronic format or otherwise.  
1192 Additional divisors shall bear the same mathematical  
1193 relationship to the next higher and next lower divisors as the  
1194 new surtax rate bears to the next higher and next lower surtax  
1195 rates for which divisors have been established. When a machine  
1196 is activated by a slug, token, coupon, or any similar device  
1197 which has been purchased, the tax is on the price paid by the  
1198 user of the device for such device.

1199 2. As used in this paragraph, the term "operator" means any  
1200 person who possesses a coin-operated amusement machine for the  
1201 purpose of generating sales through that machine and who is  
1202 responsible for removing the receipts from the machine.

1203 a. If the owner of the machine is also the operator of it,  
1204 he or she shall be liable for payment of the tax without any  
1205 deduction for rent or a license fee paid to a location owner for  
1206 the use of any real property on which the machine is located.

1207 b. If the owner or lessee of the machine is also its  
1208 operator, he or she shall be liable for payment of the tax on  
1209 the purchase or lease of the machine, as well as the tax on  
1210 sales generated through the machine.

1211 c. If the proprietor of the business where the machine is  
1212 located does not own the machine, he or she shall be deemed to  
1213 be the lessee and operator of the machine and is responsible for  
1214 the payment of the tax on sales, unless such responsibility is  
1215 otherwise provided for in a written agreement between him or her  
1216 and the machine owner.

1217 3.a. An operator of a coin-operated amusement machine may  
1218 not operate or cause to be operated in this state any such

7-00467-09

20091134\_\_

1219 machine until the operator has registered with the department  
1220 and has conspicuously displayed an identifying certificate  
1221 issued by the department. The identifying certificate shall be  
1222 issued by the department upon application from the operator. The  
1223 identifying certificate shall include a unique number, and the  
1224 certificate shall be permanently marked with the operator's  
1225 name, the operator's sales tax number, and the maximum number of  
1226 machines to be operated under the certificate. An identifying  
1227 certificate shall not be transferred from one operator to  
1228 another. The identifying certificate must be conspicuously  
1229 displayed on the premises where the coin-operated amusement  
1230 machines are being operated.

1231       b. The operator of the machine must obtain an identifying  
1232 certificate before the machine is first operated in the state  
1233 and by July 1 of each year thereafter. The annual fee for each  
1234 certificate shall be based on the number of machines identified  
1235 on the application times \$30 and is due and payable upon  
1236 application for the identifying device. The application shall  
1237 contain the operator's name, sales tax number, business address  
1238 where the machines are being operated, and the number of  
1239 machines in operation at that place of business by the operator.  
1240 No operator may operate more machines than are listed on the  
1241 certificate. A new certificate is required if more machines are  
1242 being operated at that location than are listed on the  
1243 certificate. The fee for the new certificate shall be based on  
1244 the number of additional machines identified on the application  
1245 form times \$30.

1246       c. A penalty of \$250 per machine is imposed on the operator  
1247 for failing to properly obtain and display the required

7-00467-09

20091134\_\_

1248 identifying certificate. A penalty of \$250 is imposed on the  
1249 lessee of any machine placed in a place of business without a  
1250 proper current identifying certificate. Such penalties shall  
1251 apply in addition to all other applicable taxes, interest, and  
1252 penalties.

1253 d. Operators of coin-operated amusement machines must  
1254 obtain a separate sales and use tax certificate of registration  
1255 for each county in which such machines are located. One sales  
1256 and use tax certificate of registration is sufficient for all of  
1257 the operator's machines within a single county.

1258 4. The provisions of this paragraph do not apply to coin-  
1259 operated amusement machines owned and operated by churches or  
1260 synagogues.

1261 5. In addition to any other penalties imposed by this  
1262 chapter, a person who knowingly and willfully violates any  
1263 provision of this paragraph commits a misdemeanor of the second  
1264 degree, punishable as provided in s. 775.082 or s. 775.083.

1265 6. The department may adopt rules necessary to administer  
1266 the provisions of this paragraph.

1267 (i)1. At the rate of 6 percent on charges for all:

1268 a. Detective, burglar protection, and other protection  
1269 services (SIC Industry Numbers 7381 and 7382). Any law  
1270 enforcement officer, as defined in s. 943.10, who is performing  
1271 approved duties as determined by his or her local law  
1272 enforcement agency in his or her capacity as a law enforcement  
1273 officer, and who is subject to the direct and immediate command  
1274 of his or her law enforcement agency, and in the law enforcement  
1275 officer's uniform as authorized by his or her law enforcement  
1276 agency, is performing law enforcement and public safety services

7-00467-09

20091134

1277 and is not performing detective, burglar protection, or other  
1278 protective services, if the law enforcement officer is  
1279 performing his or her approved duties in a geographical area in  
1280 which the law enforcement officer has arrest jurisdiction. Such  
1281 law enforcement and public safety services are not subject to  
1282 tax irrespective of whether the duty is characterized as "extra  
1283 duty," "off-duty," or "secondary employment," and irrespective  
1284 of whether the officer is paid directly or through the officer's  
1285 agency by an outside source. The term "law enforcement officer"  
1286 includes full-time or part-time law enforcement officers, and  
1287 any auxiliary law enforcement officer, when such auxiliary law  
1288 enforcement officer is working under the direct supervision of a  
1289 full-time or part-time law enforcement officer.

1290 b. Nonresidential cleaning and nonresidential pest control  
1291 services (SIC Industry Group Number 734).

1292 2. As used in this paragraph, "SIC" means those  
1293 classifications contained in the Standard Industrial  
1294 Classification Manual, 1987, as published by the Office of  
1295 Management and Budget, Executive Office of the President.

1296 3. Charges for detective, burglar protection, and other  
1297 protection security services performed in this state but used  
1298 outside this state are exempt from taxation. Charges for  
1299 detective, burglar protection, and other protection security  
1300 services performed outside this state and used in this state are  
1301 subject to tax.

1302 4. If a transaction involves both the sale or use of a  
1303 service taxable under this paragraph and the sale or use of a  
1304 service or any other item not taxable under this chapter, the  
1305 consideration paid must be separately identified and stated with

7-00467-09

20091134\_\_

1306 respect to the taxable and exempt portions of the transaction or  
1307 the entire transaction shall be presumed taxable. The burden  
1308 shall be on the seller of the service or the purchaser of the  
1309 service, whichever applicable, to overcome this presumption by  
1310 providing documentary evidence as to which portion of the  
1311 transaction is exempt from tax. The department is authorized to  
1312 adjust the amount of consideration identified as the taxable and  
1313 exempt portions of the transaction; however, a determination  
1314 that the taxable and exempt portions are inaccurately stated and  
1315 that the adjustment is applicable must be supported by  
1316 substantial competent evidence.

1317         5. Each seller of services subject to sales tax pursuant to  
1318 this paragraph shall maintain a monthly log showing each  
1319 transaction for which sales tax was not collected because the  
1320 services meet the requirements of subparagraph 3. for out-of-  
1321 state use. The log must identify the purchaser's name, location  
1322 and mailing address, and federal employer identification number,  
1323 if a business, or the social security number, if an individual,  
1324 the service sold, the price of the service, the date of sale,  
1325 the reason for the exemption, and the sales invoice number. The  
1326 monthly log shall be maintained pursuant to the same  
1327 requirements and subject to the same penalties imposed for the  
1328 keeping of similar records pursuant to this chapter.

1329         (j)1. Notwithstanding any other provision of this chapter,  
1330 there is hereby levied a tax on the sale, use, consumption, or  
1331 storage for use in this state of any coin or currency, whether  
1332 in circulation or not, when such coin or currency:

1333             a. Is not legal tender;

1334             b. If legal tender, is sold, exchanged, or traded at a rate

7-00467-09

20091134\_\_

1335 in excess of its face value; or

1336 c. Is sold, exchanged, or traded at a rate based on its  
1337 precious metal content.

1338 2. Such tax shall be at a rate of 6 percent of the price at  
1339 which the coin or currency is sold, exchanged, or traded, except  
1340 that, with respect to a coin or currency which is legal tender  
1341 of the United States and which is sold, exchanged, or traded,  
1342 such tax shall not be levied.

1343 3. There are exempt from this tax exchanges of coins or  
1344 currency which are in general circulation in, and legal tender  
1345 of, one nation for coins or currency which are in general  
1346 circulation in, and legal tender of, another nation when  
1347 exchanged solely for use as legal tender and at an exchange rate  
1348 based on the relative value of each as a medium of exchange.

1349 4. With respect to any transaction that involves the sale  
1350 of coins or currency taxable under this paragraph in which the  
1351 taxable amount represented by the sale of such coins or currency  
1352 exceeds \$500, the entire amount represented by the sale of such  
1353 coins or currency is exempt from the tax imposed under this  
1354 paragraph. The dealer must maintain proper documentation, as  
1355 prescribed by rule of the department, to identify that portion  
1356 of a transaction which involves the sale of coins or currency  
1357 and is exempt under this subparagraph.

1358 (k) At the rate of 6 percent of the sales price of each  
1359 gallon of diesel fuel not taxed under chapter 206 purchased for  
1360 use in a vessel.

1361 (l) Florists located in this state are liable for sales tax  
1362 on sales to retail customers regardless of where or by whom the  
1363 items sold are to be delivered. Florists located in this state

7-00467-09

20091134

1364 are not liable for sales tax on payments received from other  
1365 florists for items delivered to customers in this state.

1366 (m) Operators of game concessions or other concessionaires  
1367 who customarily award tangible personal property as prizes may,  
1368 in lieu of paying tax on the cost price of such property, pay  
1369 tax on 25 percent of the gross receipts from such concession  
1370 activity.

1371 (2) The tax shall be collected by the dealer, as defined  
1372 herein, and remitted by the dealer to the state at the time and  
1373 in the manner as hereinafter provided.

1374 (3) The tax so levied is in addition to all other taxes,  
1375 whether levied in the form of excise, license, or privilege  
1376 taxes, and in addition to all other fees and taxes levied.

1377 ~~(4) The tax imposed pursuant to this chapter shall be due  
1378 and payable according to the brackets set forth in s. 212.12.~~

1379 Section 7. Section 212.054, Florida Statutes, is amended to  
1380 read:

1381 212.054 Discretionary sales surtax; limitations,  
1382 administration, and collection.—

1383 (1) A ~~No~~ general excise tax on sales may not shall be  
1384 levied by the governing body of any county unless specifically  
1385 authorized in s. 212.055. Any general excise tax on sales  
1386 authorized pursuant to said section shall be administered and  
1387 collected exclusively as provided in this section.

1388 (2) (a) The tax imposed by the governing body of any county  
1389 authorized to so levy pursuant to s. 212.055 shall be a  
1390 discretionary surtax on all transactions occurring in the county  
1391 which transactions are subject to the state tax imposed on  
1392 sales, use, services, rentals, admissions, and other



7-00467-09

20091134\_\_

1393 transactions by this chapter and communications services as  
1394 defined for purposes of chapter 202. The surtax, if levied,  
1395 shall be computed as the applicable rate or rates authorized  
1396 pursuant to s. 212.055 times the amount of taxable sales and  
1397 taxable purchases representing such transactions. If the surtax  
1398 is levied on the sale of an item of tangible personal property  
1399 or on the sale of a service, the surtax shall be computed by  
1400 multiplying the rate imposed by the county within which the sale  
1401 occurs by the amount of the taxable sale. The sale of an item of  
1402 tangible personal property or the sale of a service is not  
1403 subject to the surtax if the property, the service, or the  
1404 tangible personal property representing the service is delivered  
1405 within a county that does not impose a discretionary sales  
1406 surtax.

1407 (b) However:

1408 1. The sales amount above \$5,000 on a motor vehicle,  
1409 aircraft, boat, manufactured home, modular home, or mobile home  
1410 is any item of tangible personal property shall not be subject  
1411 to the surtax. However, charges for prepaid calling  
1412 arrangements, as defined in s. 212.05(1)(c)1.a., shall be  
1413 subject to the surtax. For purposes of administering the \$5,000  
1414 limitation on an item of tangible personal property, if two or  
1415 more taxable items of tangible personal property are sold to the  
1416 same purchaser at the same time and, under generally accepted  
1417 business practice or industry standards or usage, are normally  
1418 sold in bulk or are items that, when assembled, comprise a  
1419 working unit or part of a working unit, such items must be  
1420 considered a single item for purposes of the \$5,000 limitation  
1421 when supported by a charge ticket, sales slip, invoice, or other

7-00467-09

20091134\_\_

1422 ~~tangible evidence of a single sale or rental.~~

1423       2. In the case of utility services covering a period  
1424 starting before and ending after the effective date of the  
1425 surtax, the rate applies as follows:

1426       a. In the case of a rate adoption or increase, the new rate  
1427 applies to the first billing period starting on or after the  
1428 effective date of the surtax adoption or increase.

1429       b. In the case of a rate decrease or termination, the new  
1430 rate applies to bills rendered on or after the effective date of  
1431 the rate change billed on or after the effective date of any  
1432 such surtax, the entire amount of the charge for utility  
1433 services shall be subject to the surtax. In the case of utility  
1434 services billed after the last day the surtax is in effect, the  
1435 entire amount of the charge on said items shall not be subject  
1436 to the surtax. "Utility service," as used in this section, does  
1437 not include any communications services as defined in chapter  
1438 202.

1439       3. In the case of written contracts which are signed prior  
1440 to the effective date of any such surtax for the construction of  
1441 improvements to real property or for remodeling of existing  
1442 structures, the surtax shall be paid by the contractor  
1443 responsible for the performance of the contract. However, the  
1444 contractor may apply for one refund of any such surtax paid on  
1445 materials necessary for the completion of the contract. Any  
1446 application for refund shall be made no later than 15 months  
1447 following initial imposition of the surtax in that county. The  
1448 application for refund shall be in the manner prescribed by the  
1449 department by rule. A complete application shall include proof  
1450 of the written contract and of payment of the surtax. The

7-00467-09

20091134\_\_

1451 application shall contain a sworn statement, signed by the  
1452 applicant or its representative, attesting to the validity of  
1453 the application. The department shall, within 30 days after  
1454 approval of a complete application, certify to the county  
1455 information necessary for issuance of a refund to the applicant.  
1456 Counties are hereby authorized to issue refunds for this purpose  
1457 and shall set aside from the proceeds of the surtax a sum  
1458 sufficient to pay any refund lawfully due. Any person who  
1459 fraudulently obtains or attempts to obtain a refund pursuant to  
1460 this subparagraph, in addition to being liable for repayment of  
1461 any refund fraudulently obtained plus a mandatory penalty of 100  
1462 percent of the refund, is guilty of a felony of the third  
1463 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
1464 775.084.

1465 4. In the case of any vessel, railroad, or motor vehicle  
1466 common carrier entitled to partial exemption from tax imposed  
1467 under this chapter pursuant to s. 212.08(4), (8), or (9), the  
1468 basis for imposition of surtax shall be the same as provided in  
1469 s. 212.08 and the ratio shall be applied each month to total  
1470 purchases in this state of property qualified for proration  
1471 which is delivered or sold in the taxing county to establish the  
1472 portion used and consumed in intracounty movement and subject to  
1473 surtax.

1474 (3) Except as otherwise provided in this section, a surtax  
1475 applies to a retail sale, lease, or rental of tangible personal  
1476 property, a digital good, or a service when, under s. 212.06(3),  
1477 the transaction occurs in a county that imposes a surtax under  
1478 s. 212.055.

1479 (4)-(3) To determine whether a transaction occurs in a

7-00467-09

20091134\_\_

1480 county imposing a surtax, the following provisions apply ~~For the~~  
1481 ~~purpose of this section, a transaction shall be deemed to have~~  
1482 ~~occurred in a county imposing the surtax when:~~

1483 (a)~~1~~. The retail sale of a modular or manufactured home,  
1484 not including a mobile home, occurs in the county to which the  
1485 house is delivered includes an item of tangible personal  
1486 property, a service, or tangible personal property representing  
1487 a service, and the item of tangible personal property, the  
1488 service, or the tangible personal property representing the  
1489 service is delivered within the county. If there is no  
1490 reasonable evidence of delivery of a service, the sale of a  
1491 service is deemed to occur in the county in which the purchaser  
1492 accepts the bill of sale.

1493 (b)~~2~~. The retail sale, excluding a lease or rental, of any  
1494 motor vehicle that does not qualify as transportation equipment,  
1495 as defined in s. 212.06(3)(g), or the retail sale of a ~~of any~~  
1496 motor vehicle or mobile home of a class or type that which is  
1497 required to be registered in this state or in any other state is  
1498 shall be deemed to occur ~~have occurred only~~ in the county  
1499 identified from as the ~~residence~~ address of the purchaser on the  
1500 registration or title document for the ~~such~~ property.

1501 (c)~~(b)~~ Admission charged for an event occurs ~~The event for~~  
1502 ~~which an admission is charged is located in the county in which~~  
1503 the event is held.

1504 (d)~~(c)~~ A lease or rental of real property occurs in the  
1505 county in which the real property is located. ~~The consumer of~~  
1506 ~~utility services is located in the county.~~

1507 (e)~~(d)~~1. The retail sale, excluding a lease or rental, of  
1508 any aircraft that does not qualify as transportation equipment,

7-00467-09

20091134\_\_

1509 as defined in s. 212.06(3)(g), or of any boat of a class or type  
1510 that is required to be registered, licensed, titled, or  
1511 documented in this state or by the United States Government  
1512 occurs in the county to which the aircraft or boat is delivered.

1513 2. The user of any aircraft or boat of a class or type that  
1514 ~~which~~ is required to be registered, licensed, titled, or  
1515 documented in this state or by the United States Government  
1516 imported into the county for use, consumption, distribution, or  
1517 storage to be used or consumed occurs in the county in which the  
1518 user is located ~~in the county~~.

1519 ~~3.2.~~ However, it shall be presumed that such items used  
1520 outside the county imposing the surtax for 6 months or longer  
1521 before being imported into the county were not purchased for use  
1522 in the county, except as provided in s. 212.06(8)(b).

1523 ~~4.3.~~ This paragraph does not apply to the use or  
1524 consumption of items upon which a like tax of equal or greater  
1525 amount has been lawfully imposed and paid outside the county.

1526 ~~(f)(e)~~ The purchase ~~purchaser~~ of any motor vehicle or  
1527 mobile home of a class or type that ~~which~~ is required to be  
1528 registered in this state occurs in the county identified from  
1529 the residential address of the purchaser ~~is a resident of the~~  
1530 ~~taxing county as determined by the address appearing on or to be~~  
1531 ~~reflected~~ on the registration document for the ~~such~~ property.

1532 ~~(g)(f)~~1. The use, consumption, distribution, or storage of  
1533 a ~~Any~~ motor vehicle or mobile home of a class or type that ~~which~~  
1534 is required to be registered in this state and that is imported  
1535 from another state occurs in the county to which it is imported  
1536 ~~into the taxing county by a user residing therein for the~~  
1537 ~~purpose of use, consumption, distribution, or storage in the~~

7-00467-09

20091134\_\_

1538 ~~taxing county.~~

1539       2. However, it shall be presumed that such items used  
1540 outside the taxing county for 6 months or longer before being  
1541 imported into the county were not purchased for use in the  
1542 county.

1543       ~~(g) The real property which is leased or rented is located~~  
1544 ~~in the county.~~

1545       (h) A ~~The~~ transient rental transaction occurs in the county  
1546 in which the rental property is located.

1547       ~~(i) The delivery of any aircraft or boat of a class or type~~  
1548 ~~which is required to be registered, licensed, titled, or~~  
1549 ~~documented in this state or by the United States Government is~~  
1550 ~~to a location in the county. However, this paragraph does not~~  
1551 ~~apply to the use or consumption of items upon which a like tax~~  
1552 ~~of equal or greater amount has been lawfully imposed and paid~~  
1553 ~~outside the county.~~

1554       ~~(i)-(j)~~ A transaction occurs in a county imposing the surtax  
1555 if the dealer owing a use tax on purchases or leases is located  
1556 in that ~~the~~ county.

1557       ~~(k) The delivery of tangible personal property other than~~  
1558 ~~that described in paragraph (d), paragraph (e), or paragraph (f)~~  
1559 ~~is made to a location outside the county, but the property is~~  
1560 ~~brought into the county within 6 months after delivery, in which~~  
1561 ~~event, the owner must pay the surtax as a use tax.~~

1562       ~~(j)-(l)~~ (j) The coin-operated amusement or vending machine is  
1563 located in the county.

1564       ~~(k)-(m)~~ An ~~The florist taking the original order to sell~~  
1565 tangible personal property taken by a florist occurs ~~is located~~  
1566 in the county in which the florist taking the order is located,

7-00467-09

20091134\_\_

1567 ~~notwithstanding any other provision of this section.~~

1568       (5)~~(4)~~(a) The department shall administer, collect, and  
1569 enforce the tax authorized under s. 212.055 pursuant to the same  
1570 procedures used in the administration, collection, and  
1571 enforcement of the general state sales tax imposed under the  
1572 provisions of this chapter, except as provided in this section.  
1573 The provisions of this chapter regarding interest and penalties  
1574 on delinquent taxes shall apply to the surtax. Discretionary  
1575 sales surtaxes shall not be included in the computation of  
1576 estimated taxes pursuant to s. 212.11. Notwithstanding any other  
1577 provision of law, a dealer need not separately state the amount  
1578 of the surtax on the charge ticket, sales slip, invoice, or  
1579 other tangible evidence of sale. For the purposes of this  
1580 section and s. 212.055, the "proceeds" of any surtax means all  
1581 funds collected and received by the department pursuant to a  
1582 specific authorization and levy under s. 212.055, including any  
1583 interest and penalties on delinquent surtaxes.

1584       (b) The proceeds of a discretionary sales surtax collected  
1585 by the selling dealer located in a county which imposes the  
1586 surtax shall be returned, less the cost of administration, to  
1587 the county where the selling dealer is located. The proceeds  
1588 shall be transferred to the Discretionary Sales Surtax Clearing  
1589 Trust Fund. A separate account shall be established in such  
1590 trust fund for each county imposing a discretionary surtax. The  
1591 amount deducted for the costs of administration shall not exceed  
1592 3 percent of the total revenue generated for all counties  
1593 levying a surtax authorized in s. 212.055. The amount deducted  
1594 for the costs of administration shall be used only for those  
1595 costs which are solely and directly attributable to the surtax.

7-00467-09

20091134\_\_

1596 The total cost of administration shall be prorated among those  
1597 counties levying the surtax on the basis of the amount collected  
1598 for a particular county to the total amount collected for all  
1599 counties. No later than March 1 of each year, the department  
1600 shall submit a written report which details the expenses and  
1601 amounts deducted for the costs of administration to the  
1602 President of the Senate, the Speaker of the House of  
1603 Representatives, and the governing authority of each county  
1604 levying a surtax. The department shall distribute the moneys in  
1605 the trust fund each month to the appropriate counties, unless  
1606 otherwise provided in s. 212.055.

1607 (c)1. Any dealer located in a county that does not impose a  
1608 discretionary sales surtax but who collects the surtax due to  
1609 sales of tangible personal property or services delivered  
1610 outside the county shall remit monthly the proceeds of the  
1611 surtax to the department to be deposited into an account in the  
1612 Discretionary Sales Surtax Clearing Trust Fund which is separate  
1613 from the county surtax collection accounts. The department shall  
1614 distribute funds in this account using a distribution factor  
1615 determined for each county that levies a surtax and multiplied  
1616 by the amount of funds in the account and available for  
1617 distribution. The distribution factor for each county equals the  
1618 product of:

- 1619 a. The county's latest official population determined  
1620 pursuant to s. 186.901;
- 1621 b. The county's rate of surtax; and
- 1622 c. The number of months the county has levied a surtax  
1623 during the most recent distribution period;
- 1624



7-00467-09

20091134

1625 divided by the sum of all such products of the counties levying  
1626 the surtax during the most recent distribution period.

1627 2. The department shall compute distribution factors for  
1628 eligible counties once each quarter and make appropriate  
1629 quarterly distributions.

1630 3. A county that fails to timely provide the information  
1631 required by this section to the department authorizes the  
1632 department, by such action, to use the best information  
1633 available to it in distributing surtax revenues to the county.  
1634 If this information is unavailable to the department, the  
1635 department may partially or entirely disqualify the county from  
1636 receiving surtax revenues under this paragraph. A county that  
1637 fails to provide timely information waives its right to  
1638 challenge the department's determination of the county's share,  
1639 if any, of revenues provided under this paragraph.

1640 ~~(5) No discretionary sales surtax or increase or decrease~~  
1641 ~~in the rate of any discretionary sales surtax shall take effect~~  
1642 ~~on a date other than January 1. No discretionary sales surtax~~  
1643 ~~shall terminate on a day other than December 31.~~

1644 (6) The governing body of any county levying a  
1645 discretionary sales surtax shall enact an ordinance levying the  
1646 surtax in accordance with the procedures described in s.  
1647 125.66(2).

1648 (7) (a) Any adoption, repeal, or rate change of the surtax  
1649 by the governing body of any county levying a discretionary  
1650 sales surtax or the school board of any county levying the  
1651 school capital outlay surtax authorized by s. 212.055(6) is  
1652 effective on April 1. A county or school board adopting,  
1653 repealing, or changing the rate of such surtax shall notify the

7-00467-09

20091134

1654 department within 10 days after final adoption by ordinance or  
1655 referendum of an adoption, repeal, imposition, termination, or  
1656 rate change of the surtax, but no later than October 20  
1657 immediately preceding such April 1 ~~November 16~~ prior to the  
1658 ~~effective date~~. The notice must specify the time period during  
1659 which the surtax will be in effect and the rate and must include  
1660 a copy of the ordinance and such other information as the  
1661 department requires by rule. Failure to timely provide such  
1662 notification to the department shall result in the delay of the  
1663 effective date for a period of 1 year.

1664 (b) In addition to the notification required by paragraph  
1665 (a), the governing body of any county proposing to levy a  
1666 discretionary sales surtax or the school board of any county  
1667 proposing to levy the school capital outlay surtax authorized by  
1668 s. 212.055(6) shall notify the department by October 1 if the  
1669 referendum or consideration of the ordinance that would result  
1670 in imposition, termination, or rate change of the surtax is  
1671 scheduled to occur on or after October 1 of that year. Failure  
1672 to timely provide such notification to the department shall  
1673 result in the delay of the effective date for a period of 1  
1674 year.

1675 (c) The department shall provide notice of the adoption,  
1676 repeal, or rate change of the surtax to affected sellers by  
1677 February 1 immediately preceding the April 1 effective date.

1678 (d) Notwithstanding the date set in an ordinance for the  
1679 termination of a surtax, a surtax terminates only on March 31. A  
1680 surtax imposed before January 1, 2010, for which an ordinance  
1681 provides a different termination date, also terminates on the  
1682 March 31 following the termination date established in the

7-00467-09

20091134\_\_

1683 ordinance.

1684 (8) With respect to any motor vehicle or mobile home of a  
1685 class or type which is required to be registered in this state,  
1686 the tax due on a transaction occurring in the taxing county as  
1687 herein provided shall be collected from the purchaser or user  
1688 incident to the titling and registration of such property,  
1689 irrespective of whether such titling or registration occurs in  
1690 the taxing county.

1691 (9) The department may certify vendor databases and to  
1692 purchase, or otherwise make available, a database, or databases,  
1693 singly or in combination, which describe boundary changes for  
1694 all taxing jurisdictions, including a description of the change  
1695 and the effective date of a boundary change; provide all sales  
1696 and use tax rates by jurisdiction; that assign to each five-  
1697 digit and nine-digit zip code the proper rate and jurisdiction  
1698 and apply the lowest combined rate imposed in the zip code area,  
1699 if the area includes more than one tax rate in any level of  
1700 taxing jurisdiction; and that use address-based boundary  
1701 database records for assigning taxing jurisdictions and  
1702 associated tax rates.

1703 (a) A seller or certified service provider that collects  
1704 and remits the state tax and any local tax imposed by this  
1705 chapter shall be held harmless from any tax, interest, and  
1706 penalties due solely as a result of relying on erroneous data on  
1707 tax rates, boundaries, or taxing jurisdiction assignments  
1708 provided by the state if the seller or certified service  
1709 provider exercises due diligence in applying one or more of the  
1710 following methods to determine the taxing jurisdiction and tax  
1711 rate for a transaction:

7-00467-09

20091134

1712 1. Employing an electronic database provided by the  
1713 department under this subsection; or

1714 2. Employing a state-certified database.

1715 (b) If a seller or certified service provider is unable to  
1716 determine the applicable rate and jurisdiction using an address-  
1717 based database record after exercising due diligence, the seller  
1718 or certified service provider may apply the nine-digit zip code  
1719 designation applicable to a purchaser.

1720 (c) If a nine-digit zip code designation is not available  
1721 for a street address or if a seller or certified service  
1722 provider is unable to determine the nine-digit zip code  
1723 designation applicable to a purchase after exercising due  
1724 diligence to determine the designation, the seller or certified  
1725 service provider may apply the rate for the five-digit zip code  
1726 area.

1727 (d) There is a rebuttable presumption that a seller or  
1728 certified service provider has exercised due diligence if the  
1729 seller or certified service provider has attempted to determine  
1730 the tax rate and jurisdiction by using state-certified software  
1731 that makes this assignment from the address and zip code  
1732 information applicable to the purchase.

1733 (e) There is a rebuttable presumption that a seller or  
1734 certified service provider has exercised due diligence if the  
1735 seller has attempted to determine the nine-digit zip code  
1736 designation by using state-certified software that makes this  
1737 designation from the street address and the five-digit zip code  
1738 applicable to a purchase.

1739 (f) If a seller or certified service provider does not use  
1740 one of the methods specified in paragraph (a), the seller or

7-00467-09

20091134

1741 certified service provider may be held liable to the department  
1742 for tax, interest, and penalties that are due for charging and  
1743 collecting the incorrect amount of tax.

1744 (10) A purchaser shall be held harmless from tax, interest,  
1745 and penalties for having failed to pay the correct amount of  
1746 sales or use tax due solely as a result of any of the following  
1747 circumstances:

1748 (a) The seller or certified service provider relied on  
1749 erroneous data on tax rates, boundaries, or taxing jurisdiction  
1750 assignments provided by the department;

1751 (b) A purchaser holding a direct-pay permit relied on  
1752 erroneous data on tax rates, boundaries, or taxing jurisdiction  
1753 assignments provided by the department or

1754 (c) A purchaser relied on erroneous data supplied in a  
1755 database described in paragraph (9) (a).

1756 (11) A seller is not liable for failing to collect tax at  
1757 the new tax rate if:

1758 (a) The new rate takes effect within 30 days after the new  
1759 rate is enacted;

1760 (b) The seller collected the tax at the preceding rate;

1761 (c) The seller's failure to collect the tax at the new rate  
1762 does not extend beyond 30 days after the enactment of the new  
1763 rate; and

1764 (d) The seller did not fraudulently fail to collect at the  
1765 new rate or solicit purchasers based on the preceding rate.

1766 Section 8. Paragraph (c) of subsection (2) and subsections  
1767 (3) and (5) of section 212.06, Florida Statutes, are amended,  
1768 and subsection (17) is added to that section, to read:

1769 212.06 Sales, storage, use tax; collectible from dealers;

7-00467-09

20091134\_\_

1770 "dealer" defined; dealers to collect from purchasers;  
1771 legislative intent as to scope of tax.-

1772 (2)

1773 (c) The term "dealer" is further defined to mean every  
1774 person, as used in this chapter, who sells at retail or who  
1775 offers for sale at retail, or who has in his or her possession  
1776 for sale at retail; or for use, consumption, or distribution; or  
1777 for storage to be used or consumed in this state, tangible  
1778 personal property as defined herein, ~~including a retailer who~~  
1779 ~~transacts a mail order sale.~~

1780 (3) (a) Except as provided in paragraph (b), every dealer  
1781 making sales, whether within or outside the state, of tangible  
1782 personal property for distribution, storage, or use or other  
1783 consumption, in this state, shall, at the time of making sales,  
1784 collect the tax imposed by this chapter from the purchaser.

1785 (b)1. Notwithstanding subsection (17), a purchaser of  
1786 direct mail which is not a holder of a direct-pay permit shall  
1787 provide to the seller in conjunction with the purchase a direct-  
1788 mail form or information to show the jurisdictions to which the  
1789 direct mail is delivered to recipients. Upon receipt of the  
1790 direct-mail form, the seller is relieved of all obligations to  
1791 collect, pay, or remit the applicable tax, and the purchaser is  
1792 obligated to pay or remit the applicable tax on a direct-pay  
1793 basis. A direct-mail form remains in effect for all future sales  
1794 of direct mail by the seller to the purchaser until it is  
1795 revoked in writing.

1796 2. Upon receipt of information from the purchaser showing  
1797 the jurisdictions to which the direct mail is delivered to  
1798 recipients, the seller shall collect the tax according to the

7-00467-09

20091134

1799 delivery information provided by the purchaser. In the absence  
1800 of bad faith, the seller is relieved of any further obligation  
1801 to collect tax on any transaction for which the seller has  
1802 collected tax pursuant to the delivery information provided by  
1803 the purchaser.

1804 3. If the purchaser of direct mail does not have a direct-  
1805 pay permit and does not provide the seller with a direct-mail  
1806 form or delivery information as required by subparagraph 1., the  
1807 seller shall collect the tax according to subparagraph (17) (d)5.  
1808 This paragraph does not limit a purchaser's obligation to remit  
1809 sales or use tax to any state to which the direct mail is  
1810 delivered.

1811 4. If a purchaser of direct mail provides the seller with  
1812 documentation of direct-pay authority, the purchaser is not  
1813 required to provide a direct-mail form or delivery information  
1814 to the seller. A purchaser of printed materials shall have sole  
1815 responsibility for the taxes imposed by this chapter on those  
1816 materials when the printer of the materials delivers them to the  
1817 United States Postal Service for mailing to persons other than  
1818 the purchaser located within and outside this state. Printers of  
1819 materials delivered by mail to persons other than the purchaser  
1820 located within and outside this state shall have no obligation  
1821 or responsibility for the payment or collection of any taxes  
1822 imposed under this chapter on those materials. However, printers  
1823 are obligated to collect the taxes imposed by this chapter on  
1824 printed materials when all, or substantially all, of the  
1825 materials will be mailed to persons located within this state.  
1826 For purposes of the printer's tax collection obligation, there  
1827 is a rebuttable presumption that all materials printed at a

7-00467-09

20091134\_\_

1828 ~~facility are mailed to persons located within the same state as~~  
1829 ~~that in which the facility is located. A certificate provided by~~  
1830 ~~the purchaser to the printer concerning the delivery of the~~  
1831 ~~printed materials for that purchase or all purchases shall be~~  
1832 ~~sufficient for purposes of rebutting the presumption created~~  
1833 ~~herein.~~

1834 5.2. The Department of Revenue is authorized to adopt rules  
1835 and forms to implement the provisions of this paragraph.

1836 (5) (a) ~~1. Except as provided in subparagraph 2., It is not~~  
1837 ~~the intention of This chapter~~ does not ~~to~~ levy a tax upon  
1838 tangible personal property imported, produced, or manufactured  
1839 in this state for export if, ~~provided that tangible personal~~  
1840 ~~property may not be considered as being imported, produced, or~~  
1841 ~~manufactured for export unless the importer, producer, or~~  
1842 ~~manufacturer:~~

1843 1. Delivers the tangible personal property ~~same~~ to a  
1844 licensed exporter for exporting or to a common carrier for  
1845 shipment outside the state or mails the same by United States  
1846 mail to a destination outside the state; ~~or, in the case of~~  
1847 ~~aircraft being exported under their own power to a destination~~  
1848 ~~outside the continental limits of the United States, by~~  
1849 submission

1850 2. Submits to the department ~~of~~ a duly signed and validated  
1851 United States customs declaration, ~~showing the departure of an~~  
1852 ~~the aircraft from the continental United States~~ and; ~~and further~~  
1853 ~~with respect to aircraft,~~ the canceled United States registry of  
1854 the said aircraft for an aircraft that is exported under its own  
1855 power to a destination outside of the continental United States;  
1856 ~~or in the case of~~



7-00467-09

20091134\_\_

1857       3. Submits documentation as required by rule to the  
1858 department showing the departure of an aircraft of foreign  
1859 registry from the continental United States on which parts and  
1860 equipment have been installed on aircraft of foreign registry,  
1861 by submission to the department of documentation, the extent of  
1862 which shall be provided by rule, showing the departure of the  
1863 aircraft from the continental United States; or nor is it the  
1864 intention of this chapter to levy a tax on any sale which

1865       4. If the state is prohibited from taxing the sale under  
1866 the Constitution or laws of the United States.

1867  
1868 Every retail sale made to a person physically present at the  
1869 time of sale shall be presumed to have been delivered in this  
1870 state.

1871       ~~2.a. Notwithstanding subparagraph 1., a tax is levied on~~  
1872 ~~each sale of tangible personal property to be transported to a~~  
1873 ~~cooperating state as defined in sub-subparagraph c., at the rate~~  
1874 ~~specified in sub-subparagraph d. However, a Florida dealer will~~  
1875 ~~be relieved from the requirements of collecting taxes pursuant~~  
1876 ~~to this subparagraph if the Florida dealer obtains from the~~  
1877 ~~purchaser an affidavit setting forth the purchaser's name,~~  
1878 ~~address, state taxpayer identification number, and a statement~~  
1879 ~~that the purchaser is aware of his or her state's use tax laws,~~  
1880 ~~is a registered dealer in Florida or another state, or is~~  
1881 ~~purchasing the tangible personal property for resale or is~~  
1882 ~~otherwise not required to pay the tax on the transaction. The~~  
1883 ~~department may, by rule, provide a form to be used for the~~  
1884 ~~purposes set forth herein.~~

1885       ~~b. For purposes of this subparagraph, "a cooperating state"~~

7-00467-09

20091134\_\_

1886 ~~is one determined by the executive director of the department to~~  
1887 ~~cooperate satisfactorily with this state in collecting taxes on~~  
1888 ~~mail order sales. No state shall be so determined unless it~~  
1889 ~~meets all the following minimum requirements:~~

1890 ~~(I) It levies and collects taxes on mail order sales of~~  
1891 ~~property transported from that state to persons in this state,~~  
1892 ~~as described in s. 212.0596, upon request of the department.~~

1893 ~~(II) The tax so collected shall be at the rate specified in~~  
1894 ~~s. 212.05, not including any local option or tourist or~~  
1895 ~~convention development taxes collected pursuant to s. 125.0104~~  
1896 ~~or this chapter.~~

1897 ~~(III) Such state agrees to remit to the department all~~  
1898 ~~taxes so collected no later than 30 days from the last day of~~  
1899 ~~the calendar quarter following their collection.~~

1900 ~~(IV) Such state authorizes the department to audit dealers~~  
1901 ~~within its jurisdiction who make mail order sales that are the~~  
1902 ~~subject of s. 212.0596, or makes arrangements deemed adequate by~~  
1903 ~~the department for auditing them with its own personnel.~~

1904 ~~(V) Such state agrees to provide to the department records~~  
1905 ~~obtained by it from retailers or dealers in such state showing~~  
1906 ~~delivery of tangible personal property into this state upon~~  
1907 ~~which no sales or use tax has been paid in a manner similar to~~  
1908 ~~that provided in sub-subparagraph g.~~

1909 ~~e. For purposes of this subparagraph, "sales of tangible~~  
1910 ~~personal property to be transported to a cooperating state"~~  
1911 ~~means mail order sales to a person who is in the cooperating~~  
1912 ~~state at the time the order is executed, from a dealer who~~  
1913 ~~receives that order in this state.~~

1914 ~~d. The tax levied by sub-subparagraph a. shall be at the~~

7-00467-09

20091134

1915 ~~rate at which such a sale would have been taxed pursuant to the~~  
1916 ~~cooperating state's tax laws if consummated in the cooperating~~  
1917 ~~state by a dealer and a purchaser, both of whom were physically~~  
1918 ~~present in that state at the time of the sale.~~

1919 ~~e. The tax levied by sub-subparagraph a., when collected,~~  
1920 ~~shall be held in the State Treasury in trust for the benefit of~~  
1921 ~~the cooperating state and shall be paid to it at a time agreed~~  
1922 ~~upon between the department, acting for this state, and the~~  
1923 ~~cooperating state or the department or agency designated by it~~  
1924 ~~to act for it; however, such payment shall in no event be made~~  
1925 ~~later than 30 days from the last day of the calendar quarter~~  
1926 ~~after the tax was collected. Funds held in trust for the benefit~~  
1927 ~~of a cooperating state shall not be subject to the service~~  
1928 ~~charges imposed by s. 215.20.~~

1929 ~~f. The department is authorized to perform such acts and to~~  
1930 ~~provide such cooperation to a cooperating state with reference~~  
1931 ~~to the tax levied by sub-subparagraph a. as is required of the~~  
1932 ~~cooperating state by sub-subparagraph b.~~

1933 ~~g. In furtherance of this act, dealers selling tangible~~  
1934 ~~personal property for delivery in another state shall make~~  
1935 ~~available to the department, upon request of the department,~~  
1936 ~~records of all tangible personal property so sold. Such records~~  
1937 ~~shall include a description of the property, the name and~~  
1938 ~~address of the purchaser, the name and address of the person to~~  
1939 ~~whom the property was sent, the purchase price of the property,~~  
1940 ~~information regarding whether sales tax was paid in this state~~  
1941 ~~on the purchase price, and such other information as the~~  
1942 ~~department may by rule prescribe.~~

1943 (b)1. Notwithstanding the provisions of paragraph (a), it

7-00467-09

20091134

1944 is not the intention of this chapter to levy a tax on the sale  
1945 of tangible personal property to a nonresident dealer who does  
1946 not hold a Florida sales tax registration, provided such  
1947 nonresident dealer furnishes the seller a statement declaring  
1948 that the tangible personal property will be transported outside  
1949 this state by the nonresident dealer for resale and for no other  
1950 purpose. The statement shall include, but not be limited to, the  
1951 nonresident dealer's name, address, applicable passport or visa  
1952 number, arrival-departure card number, and evidence of authority  
1953 to do business in the nonresident dealer's home state or  
1954 country, such as his or her business name and address,  
1955 occupational license number, if applicable, or any other  
1956 suitable requirement. The statement shall be signed by the  
1957 nonresident dealer and shall include the following sentence:  
1958 "Under penalties of perjury, I declare that I have read the  
1959 foregoing, and the facts alleged are true to the best of my  
1960 knowledge and belief."

1961 2. The burden of proof of subparagraph 1. rests with the  
1962 seller, who must retain the proper documentation to support the  
1963 exempt sale. The exempt transaction is subject to verification  
1964 by the department.

1965 (c) Notwithstanding the provisions of paragraph (a), it is  
1966 not the intention of this chapter to levy a tax on the sale by a  
1967 printer to a nonresident print purchaser of material printed by  
1968 that printer for that nonresident print purchaser when the print  
1969 purchaser does not furnish the printer a resale certificate  
1970 containing a sales tax registration number but does furnish to  
1971 the printer a statement declaring that such material will be  
1972 resold by the nonresident print purchaser.

7-00467-09

20091134\_\_

1973       (17) This subsection shall be used to determine the  
 1974 location where a transaction occurs for purposes of applying the  
 1975 tax imposed by this chapter.

1976       (a) For purposes of this subsection, the terms "receive"  
 1977 and "receipt" mean:

- 1978       1. Taking possession of tangible personal property;  
 1979       2. Making first use of services; or  
 1980       3. Taking possession or making first use of digital goods,  
 1981 whichever occurs first.

1982  
 1983 The terms do not include possession by a shipping company on  
 1984 behalf of the purchaser.

1985       (b) For purposes of this subsection, the term "product"  
 1986 means tangible personal property, a digital good, or a service.

1987       (c) This section does not apply to the sales or use taxes  
 1988 levied on:

- 1989       1. The retail sale or transfer of a boat, modular home,  
 1990 manufactured home, or mobile home.  
 1991       2. The retail sale, excluding a lease or rental, of a motor  
 1992 vehicle or aircraft that does not qualify as transportation  
 1993 equipment, as defined in paragraph (g). The lease or rental of  
 1994 these items shall be deemed to have occurred in accordance with  
 1995 paragraph (f).

1996       3. The retail sale of tangible personal property by a  
 1997 florist.

1998  
 1999 Such retail sales are deemed to take place at the location  
 2000 determined under s. 212.054(4).

2001       (d) The retail sale of a product, excluding a lease or

7-00467-09

20091134

rental, shall be deemed to take place:

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

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

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

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

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

(e) The lease or rental of tangible personal property,

7-00467-09

20091134

2031 other than property identified in paragraphs (f) and (g), shall  
2032 be deemed to have occurred as follows:

2033 1. For a lease or rental that requires recurring periodic  
2034 payments, the first periodic payment is deemed to take place in  
2035 accordance with paragraph (d), notwithstanding the exclusion of  
2036 lease or rental in paragraph (d). Subsequent periodic payments  
2037 are deemed to have occurred at the primary property location for  
2038 each period covered by the payment. The primary property  
2039 location is determined by an address for the property provided  
2040 by the lessee which is available to the lessor from its records  
2041 maintained in the ordinary course of business, if use of this  
2042 address does not constitute bad faith. The property location is  
2043 not altered by intermittent use of the property at different  
2044 locations, such as use of business property that accompanies  
2045 employees on business trips and service calls.

2046 2. For a lease or rental that does not require recurring  
2047 periodic payments, the payment is deemed to take place in  
2048 accordance with paragraph (d), notwithstanding the exclusion of  
2049 a lease or rental in paragraph (d).

2050 3. This paragraph does not affect the imposition or  
2051 computation of sales or use tax on leases or rentals based on a  
2052 lump sum or accelerated basis or on the acquisition of property  
2053 for lease.

2054 (f) The lease or rental of a motor vehicle or aircraft that  
2055 does not qualify as transportation equipment, as defined in  
2056 paragraph (g), shall be sourced as follows:

2057 1. For a lease or rental that requires recurring periodic  
2058 payments, each periodic payment is deemed to take place at the  
2059 primary property location. The primary property location shall

7-00467-09

20091134

2060 be determined by an address for the property provided by the  
2061 lessee which is available to the lessor from its records  
2062 maintained in the ordinary course of business, if use of this  
2063 address does not constitute bad faith. This location may not be  
2064 altered by intermittent use at different locations.

2065 2. For a lease or rental that does not require recurring  
2066 periodic payments, the payment is deemed to take place in  
2067 accordance with paragraph (d), notwithstanding the exclusion of  
2068 a lease or rental in paragraph (d).

2069 3. This paragraph does not affect the imposition or  
2070 computation of sales or use tax on leases or rentals based on a  
2071 lump sum or accelerated basis or on the acquisition of property  
2072 for lease.

2073 (g) The retail sale, including a lease or rental, of  
2074 transportation equipment shall be deemed to take place in  
2075 accordance with paragraph (d), notwithstanding the exclusion of  
2076 a lease or rental in paragraph (d). The term "transportation  
2077 equipment" means:

2078 1. Locomotives and rail cars that are used for the carriage  
2079 of persons or property in interstate commerce;

2080 2. Trucks and truck tractors with a Gross Vehicle Weight  
2081 Rating (GVWR) of 10,001 pounds or greater, trailers,  
2082 semitrailers, or passenger buses that are registered through the  
2083 International Registration Plan and operated under authority of  
2084 a carrier authorized and certificated by the United States  
2085 Department of Transportation or another federal authority to  
2086 engage in the carriage of persons or property in interstate  
2087 commerce;

2088 3. Aircraft that are operated by air carriers authorized



7-00467-09

20091134\_\_

2089 and certificated by the United States Department of  
2090 Transportation or another federal or a foreign authority to  
2091 engage in the carriage of persons or property in interstate or  
2092 foreign commerce; or

2093 4. Containers designed for use on and component parts  
2094 attached or secured on the items set forth in subparagraphs 1.  
2095 through 3.

2096 Section 9. Paragraph (c) of subsection (1) of section  
2097 212.07, Florida Statutes, is amended, and subsection (10) is  
2098 added that section, to read:

2099 212.07 Sales, storage, use tax; tax added to purchase  
2100 price; dealer not to absorb; liability of purchasers who cannot  
2101 prove payment of the tax; penalties; general exemptions.—

2102 (1)

2103 (c) Unless the purchaser of tangible personal property that  
2104 is incorporated into tangible personal property manufactured,  
2105 produced, compounded, processed, or fabricated for one's own use  
2106 and subject to the tax imposed under s. 212.06(1)(b) or is  
2107 purchased for export under 212.06(5)(a) ~~s. 212.06(5)(a)1.~~  
2108 extends a certificate in compliance with the rules of the  
2109 department, the dealer shall himself or herself be liable for  
2110 and pay the tax.

2111 (10)(a) The executive director is authorized to maintain  
2112 and publish a taxability matrix in a downloadable format that  
2113 has been approved by the governing board of the Steamlined Sales  
2114 and Use Tax Agreement.

2115 (b) The state shall provide notice of changes to the  
2116 taxability of the products or services listed in the taxability  
2117 matrix.

7-00467-09

20091134\_\_

2118       (c) A seller or certified service provider who collects and  
2119 remits the state and local tax imposed by this chapter shall be  
2120 held harmless from tax, interest, and penalties for having  
2121 charged and collected the incorrect amount of sales or use tax  
2122 due solely as a result of relying on erroneous data provided by  
2123 the state in the taxability matrix.

2124       (d) A purchaser shall be held harmless from penalties for  
2125 having failed to pay the correct amount of sales or use tax due  
2126 solely as a result of any of the following circumstances:

2127           1. The seller or certified service provider relied on  
2128 erroneous data provided by the state in the taxability matrix  
2129 completed by the state;

2130           2. A purchaser relied on erroneous data provided by the  
2131 state in the taxability matrix completed by the state; or

2132           3. A purchaser holding a direct-pay permit relied on  
2133 erroneous data provided by the state in the taxability matrix  
2134 completed by the state.

2135       (e) A purchaser shall be held harmless from tax and  
2136 interest for having failed to pay the correct amount of sales or  
2137 use tax due solely as a result of the state's erroneous  
2138 classification in the taxability matrix of terms included in the  
2139 library of definitions as "taxable" or "exempt," "included in  
2140 sales price" or "excluded from sales price," or "included in the  
2141 definition" or "excluded from the definition."

2142       Section 10. Subsections (1) and (2) and paragraphs (b) and  
2143 (c) of subsection (17) of section 212.08, Florida Statutes, are  
2144 amended to read:

2145       212.08 Sales, rental, use, consumption, distribution, and  
2146 storage tax; specified exemptions.—The sale at retail, the

7-00467-09

20091134\_\_

2147 rental, the use, the consumption, the distribution, and the  
 2148 storage to be used or consumed in this state of the following  
 2149 are hereby specifically exempt from the tax imposed by this  
 2150 chapter.

2151 (1) EXEMPTIONS; GENERAL GROCERIES.—

2152 (a) Food and food ingredients ~~products~~ for human  
 2153 consumption are exempt from the tax imposed by this chapter.

2154 (b) For the purpose of this chapter, as used in this  
 2155 subsection, the term "food and food ingredients ~~products~~" means  
 2156 substances, whether in liquid, concentrated, solid, frozen,  
 2157 dried, or dehydrated form, which are sold for ingestion or  
 2158 chewing by humans and are consumed for their taste or  
 2159 nutritional value ~~edible commodities, whether processed, cooked,~~  
 2160 ~~raw, canned, or in any other form, which are generally regarded~~  
 2161 ~~as food.~~ This includes, but is not limited to, all of the  
 2162 following:

2163 1. ~~Cereals and cereal products, baked goods, oleomargarine,~~  
 2164 ~~meat and meat products, fish and seafood products, frozen foods~~  
 2165 ~~and dinners, poultry, eggs and egg products, vegetables and~~  
 2166 ~~vegetable products, fruit and fruit products, spices, salt,~~  
 2167 ~~sugar and sugar products, milk and dairy products, and products~~  
 2168 ~~intended to be mixed with milk.~~

2169 2. ~~Natural fruit or vegetable juices or their concentrates~~  
 2170 ~~or reconstituted natural concentrated fruit or vegetable juices,~~  
 2171 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~  
 2172 ~~sweetened or unsweetened, seasoned with salt or spice, or~~  
 2173 ~~unseasoned; coffee, coffee substitutes, or cocoa; and tea,~~  
 2174 ~~unless it is sold in a liquid form.~~

2175 1.3. Bakery products sold by bakeries, pastry shops, or

7-00467-09

20091134\_\_

2176 like establishments, if sold without eating utensils. For  
2177 purposes of this subparagraph, bakery products include bread,  
2178 rolls, buns, biscuits, bagels, croissants, pastries, doughnuts,  
2179 danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and  
2180 tortillas ~~that do not have eating facilities.~~

2181 2. Dietary supplements. The term "dietary supplements"  
2182 means any product, other than tobacco, intended to supplement  
2183 the diet which contains one or more of the following dietary  
2184 ingredients: a vitamin; a mineral; an herb or other botanical;  
2185 an amino acid; a dietary substance for use by humans to  
2186 supplement the diet by increasing the total dietary intake; or a  
2187 concentrate, metabolite, constituent, extract, or combination of  
2188 any ingredient described in this subparagraph which is intended  
2189 for ingestion in tablet, capsule, powder, softgel, gelcap, or  
2190 liquid form or, if not intended for ingestion in such a form, is  
2191 not represented as conventional food and is not represented for  
2192 use as a sole item of a meal or of the diet, and which is  
2193 required to be labeled as a dietary supplement, identifiable by  
2194 the supplemental facts panel found on the label and as required  
2195 pursuant to 21 C.F.R. s. 101.36.

2196 (c) The exemption provided by this subsection does not  
2197 apply:

2198 ~~1. When the food products are sold as meals for consumption~~  
2199 ~~on or off the premises of the dealer.~~

2200 ~~2. When the food products are furnished, prepared, or~~  
2201 ~~served for consumption at tables, chairs, or counters or from~~  
2202 ~~trays, glasses, dishes, or other tableware, whether provided by~~  
2203 ~~the dealer or by a person with whom the dealer contracts to~~  
2204 ~~furnish, prepare, or serve food products to others.~~

7-00467-09

20091134\_\_

2205 ~~3. When the food products are ordinarily sold for immediate~~  
2206 ~~consumption on the seller's premises or near a location at which~~  
2207 ~~parking facilities are provided primarily for the use of patrons~~  
2208 ~~in consuming the products purchased at the location, even though~~  
2209 ~~such products are sold on a "take out" or "to go" order and are~~  
2210 ~~actually packaged or wrapped and taken from the premises of the~~  
2211 ~~dealer.~~

2212 ~~4. To sandwiches sold ready for immediate consumption on or~~  
2213 ~~off the seller's premises.~~

2214 ~~5. When the food products are sold ready for immediate~~  
2215 ~~consumption within a place, the entrance to which is subject to~~  
2216 ~~an admission charge.~~

2217 1.6. To food and food ingredients sold as prepared food.

2218 The term "prepared food" means:

- 2219 a. Food sold in a heated state or heated by the seller;  
2220 b. Two or more food ingredients mixed or combined by the  
2221 seller for sale as a single item; or  
2222 c. Food sold with eating utensils provided by the seller,  
2223 including plates, knives, forks, spoons, glasses, cups, napkins,  
2224 or straws. A plate does not include a container or packaging  
2225 used to transport food. Prepared food does not include food that  
2226 is only cut, repackaged, or pasteurized by the seller, eggs,  
2227 fish meat, poultry, and foods containing these raw animal foods  
2228 requiring cooking by the consumer as recommended by the Food and  
2229 Drug Administration in chapter 3, part 4011 of its food code so  
2230 as to prevent food-borne illness. ~~When the food products are~~  
2231 ~~sold as hot prepared food products.~~

2232 ~~2.7. To soft drinks, which include, but are not limited to,~~  
2233 ~~any nonalcoholic beverage, any preparation or beverage commonly~~

7-00467-09

20091134

2234 ~~referred to as a "soft drink," or any noncarbonated drink made~~  
2235 ~~from milk derivatives or tea, when sold in cans or similar~~  
2236 ~~containers.~~ The term "soft drinks" means nonalcoholic beverages  
2237 that contain natural or artificial sweeteners. Soft drinks do  
2238 not include beverages that contain milk or milk products, soy,  
2239 rice, or similar milk substitutes, or greater than 50 percent of  
2240 vegetable or fruit juice by volume.

2241 ~~8. To ice cream, frozen yogurt, and similar frozen dairy or~~  
2242 ~~nondairy products in cones, small cups, or pints, popsicles,~~  
2243 ~~frozen fruit bars, or other novelty items, whether or not sold~~  
2244 ~~separately.~~

2245 ~~9. To food prepared, whether on or off the premises, and~~  
2246 ~~sold for immediate consumption. This does not apply to food~~  
2247 ~~prepared off the premises and sold in the original sealed~~  
2248 ~~container, or the slicing of products into smaller portions.~~

2249 ~~3.10. When the food and food ingredients products are sold~~  
2250 ~~through a vending machine, pushcart, motor vehicle, or any other~~  
2251 ~~form of vehicle.~~

2252 ~~4.11. To candy and any similar product regarded as candy or~~  
2253 ~~confection, based on its normal use, as indicated on the label~~  
2254 ~~or advertising thereof.~~ The term "candy" means a preparation of  
2255 sugar, honey, or other natural or artificial sweeteners in  
2256 combination with chocolate, fruits, nuts, or other ingredients  
2257 or flavorings in the form of bars, drops, or pieces. Candy does  
2258 not include any preparation that contains flour and does not  
2259 require refrigeration.

2260 5. To tobacco.

2261 ~~12. To bakery products sold by bakeries, pastry shops, or~~  
2262 ~~like establishments that have eating facilities, except when~~

7-00467-09

20091134

2263 ~~sold for consumption off the seller's premises.~~

2264 ~~13. When food products are served, prepared, or sold in or~~  
2265 ~~by restaurants, lunch counters, cafeterias, hotels, taverns, or~~  
2266 ~~other like places of business.~~

2267 ~~(d) As used in this subsection, the term:~~

2268 ~~1. "For consumption off the seller's premises" means that~~  
2269 ~~the food or drink is intended by the customer to be consumed at~~  
2270 ~~a place away from the dealer's premises.~~

2271 ~~2. "For consumption on the seller's premises" means that~~  
2272 ~~the food or drink sold may be immediately consumed on the~~  
2273 ~~premises where the dealer conducts his or her business. In~~  
2274 ~~determining whether an item of food is sold for immediate~~  
2275 ~~consumption, there shall be considered the customary consumption~~  
2276 ~~practices prevailing at the selling facility.~~

2277 ~~3. "Premises" shall be construed broadly, and means, but is~~  
2278 ~~not limited to, the lobby, aisle, or auditorium of a theater;~~  
2279 ~~the seating, aisle, or parking area of an arena, rink, or~~  
2280 ~~stadium; or the parking area of a drive in or outdoor theater.~~  
2281 ~~The premises of a caterer with respect to catered meals or~~  
2282 ~~beverages shall be the place where such meals or beverages are~~  
2283 ~~served.~~

2284 ~~4. "Hot prepared food products" means those products,~~  
2285 ~~items, or components which have been prepared for sale in a~~  
2286 ~~heated condition and which are sold at any temperature that is~~  
2287 ~~higher than the air temperature of the room or place where they~~  
2288 ~~are sold. "Hot prepared food products," for the purposes of this~~  
2289 ~~subsection, includes a combination of hot and cold food items or~~  
2290 ~~components where a single price has been established for the~~  
2291 ~~combination and the food products are sold in such combination,~~

7-00467-09

20091134

2292 ~~such as a hot meal, a hot specialty dish or serving, or a hot~~  
 2293 ~~sandwich or hot pizza, including cold components or side items.~~

2294 (d)~~(e)~~1. Food or drinks not exempt under paragraphs (a),  
 2295 (b), and (c), ~~and (d)~~ shall be exempt, notwithstanding those  
 2296 paragraphs, when purchased with food coupons or Special  
 2297 Supplemental Food Program for Women, Infants, and Children  
 2298 vouchers issued under authority of federal law.

2299 2. This paragraph is effective only while federal law  
 2300 prohibits a state's participation in the federal food coupon  
 2301 program or Special Supplemental Food Program for Women, Infants,  
 2302 and Children if there is an official determination that state or  
 2303 local sales taxes are collected within that state on purchases  
 2304 of food or drinks with such coupons.

2305 3. This paragraph does ~~shall~~ not apply to any food or  
 2306 drinks on which federal law permits ~~shall permit~~ sales taxes  
 2307 without penalty, such as termination of the state's  
 2308 participation.

2309 (e) Dietary supplements that are sold as prepared food are  
 2310 not exempt.

2311 (2) EXEMPTIONS; MEDICAL.—

2312 (a) There shall be exempt from the tax imposed by this  
 2313 chapter:

2314 1. Drugs.

2315 2. Durable medical equipment, mobility-enhancing equipment,  
 2316 or prosthetic devices ~~any medical products and supplies or~~  
 2317 ~~medicine~~ dispensed according to an individual prescription or  
 2318 prescriptions. written by a prescriber authorized by law to  
 2319 ~~prescribe medicinal drugs;~~

2320 3. Hypodermic needles. ~~hypodermic syringes;~~



7-00467-09

20091134

2321 4. Chemical compounds and test kits used for the diagnosis  
2322 or treatment of ~~human~~ disease, illness, or injury and intended  
2323 for one-time use.

2324 5. Over-the-counter drugs and common household remedies  
2325 recommended and generally sold for internal or external use in  
2326 the cure, mitigation, treatment, or prevention of illness or  
2327 disease in human beings, but not including grooming and hygiene  
2328 products.

2329 6. Band-aids, gauze, bandages, and adhesive tape.

2330 7. Funerals. However, tangible personal property used by  
2331 funeral directors in their business is taxable. ~~cosmetics or~~  
2332 toilet articles, notwithstanding the presence of medicinal  
2333 ingredients therein, according to a list prescribed and approved  
2334 by the Department of Health, which list shall be certified to  
2335 the Department of Revenue from time to time and included in the  
2336 rules promulgated by the Department of Revenue. There shall also  
2337 be exempt from the tax imposed by this chapter artificial eyes  
2338 and limbs; orthopedic shoes; prescription eyeglasses and items  
2339 incidental thereto or which become a part thereof; dentures;  
2340 hearing aids; crutches; prosthetic and orthopedic appliances;  
2341 and funerals. In addition, any

2342 8. Items intended for one-time use which transfer essential  
2343 optical characteristics to contact lenses. ~~shall be exempt from~~  
2344 the tax imposed by this chapter; However, this exemption applies  
2345 shall apply only after \$100,000 of the tax imposed by this  
2346 chapter on such items has been paid in any calendar year by a  
2347 taxpayer who claims the exemption in such year. ~~Funeral~~  
2348 directors shall pay tax on all tangible personal property used  
2349 by them in their business.

7-00467-09

20091134\_\_

- 2350 (b) For the purposes of this subsection, the term:
- 2351 1. "Drug" means a compound, substance, or preparation, and
- 2352 any component of a compound, substance, or preparation, other
- 2353 than food and food ingredients, dietary supplements, and
- 2354 alcoholic beverages, which is:
- 2355 a. Recognized in the official United States Pharmacopoeia,
- 2356 official Homeopathic Pharmacopoeia of the United States, or
- 2357 official National Formulary, or the supplement to any of them;
- 2358 b. Intended for use in the diagnosis, cure, mitigation,
- 2359 treatment, or prevention of disease; or
- 2360 c. Intended to affect the structure or any function of the
- 2361 body.
- 2362 2. "Durable medical equipment" means equipment, including
- 2363 repair and replacement parts to such equipment, but excluding
- 2364 mobility-enhancing equipment, which can withstand repeated use,
- 2365 is primarily and customarily used to serve a medical purpose,
- 2366 generally is not useful to a person in the absence of illness or
- 2367 injury, and is not worn on or in the body.
- 2368 3. "Mobility-enhancing equipment" means equipment,
- 2369 including repair and replacement parts to such equipment, but
- 2370 excluding durable medical equipment, which:
- 2371 a. Is primarily and customarily used to provide or increase
- 2372 the ability to move from one place to another and which is
- 2373 appropriate for use in a home or a motor vehicle.
- 2374 b. Is not generally used by persons with normal mobility.
- 2375 c. Does not include any motor vehicle or any equipment on a
- 2376 motor vehicle normally provided by a motor vehicle manufacturer.
- 2377 4. "Prosthetic device" means a replacement, corrective, or
- 2378 supportive device, including repair or replacement parts to such

7-00467-09

20091134\_\_

2379 equipment, which is worn on or in the body to:

2380 a. Artificially replace a missing portion of the body;

2381 b. Prevent or correct physical deformity or malfunction; or

2382 c. Support a weak or deformed portion of the body.

2383 5. "Grooming and hygiene products" mean soaps and cleaning  
2384 solutions, shampoo, toothpaste, mouthwash, antiperspirants, and  
2385 suntan lotions and screens, regardless of whether the items meet  
2386 the definition of an over-the-counter drug.

2387 6. "Over-the-counter drug" means a drug the packaging for  
2388 which contains a label that identifies the product as a drug as  
2389 required by 21 C.F.R. s. 201.66. The over-the-counter drug label  
2390 includes a drug-facts panel or a statement of the active  
2391 ingredients, with a list of those ingredients contained in the  
2392 compound, substance, or preparation. "Prosthetic and orthopedic  
2393 appliances" means any apparatus, instrument, device, or  
2394 equipment used to replace or substitute for any missing part of  
2395 the body, to alleviate the malfunction of any part of the body,  
2396 or to assist any disabled person in leading a normal life by  
2397 facilitating such person's mobility. Such apparatus, instrument,  
2398 device, or equipment shall be exempted according to an  
2399 individual prescription or prescriptions written by a physician  
2400 licensed under chapter 458, chapter 459, chapter 460, chapter  
2401 461, or chapter 466, or according to a list prescribed and  
2402 approved by the Department of Health, which list shall be  
2403 certified to the Department of Revenue from time to time and  
2404 included in the rules promulgated by the Department of Revenue.

2405 2. "Cosmetics" means articles intended to be rubbed,  
2406 poured, sprinkled, or sprayed on, introduced into, or otherwise  
2407 applied to the human body for cleansing, beautifying, promoting

7-00467-09

20091134\_\_

2408 ~~attractiveness, or altering the appearance and also means~~  
2409 ~~articles intended for use as a compound of any such articles,~~  
2410 ~~including, but not limited to, cold creams, suntan lotions,~~  
2411 ~~makeup, and body lotions.~~

2412 ~~3. "Toilet articles" means any article advertised or held~~  
2413 ~~out for sale for grooming purposes and those articles that are~~  
2414 ~~customarily used for grooming purposes, regardless of the name~~  
2415 ~~by which they may be known, including, but not limited to, soap,~~  
2416 ~~toothpaste, hair spray, shaving products, colognes, perfumes,~~  
2417 ~~shampoo, deodorant, and mouthwash.~~

2418 7.4. "Prescription" means an order, formula, or recipe  
2419 issued in any form of oral, written, electronic, or other means  
2420 of transmission by a practitioner licensed under chapter 458,  
2421 chapter 459, chapter 460, chapter 461, or chapter 466. The term  
2422 also includes an orally transmitted order by the lawfully  
2423 designated agent of such practitioner. The term also includes an  
2424 order written or transmitted by a practitioner licensed to  
2425 practice in a jurisdiction other than this state, but only if  
2426 the pharmacist called upon to dispense the order determines, in  
2427 the exercise of his or her professional judgment, that the order  
2428 is valid and necessary for the treatment of a chronic or  
2429 recurrent illness. ~~includes any order for drugs or medicinal~~  
2430 ~~supplies written or transmitted by any means of communication by~~  
2431 ~~a duly licensed practitioner authorized by the laws of the state~~  
2432 ~~to prescribe such drugs or medicinal supplies and intended to be~~  
2433 ~~dispensed by a pharmacist. The term also includes an orally~~  
2434 ~~transmitted order by the lawfully designated agent of such~~  
2435 ~~practitioner. The term also includes an order written or~~  
2436 ~~transmitted by a practitioner licensed to practice in a~~

7-00467-09

20091134

2437 ~~jurisdiction other than this state, but only if the pharmacist~~  
2438 ~~called upon to dispense such order determines, in the exercise~~  
2439 ~~of his or her professional judgment, that the order is valid and~~  
2440 ~~necessary for the treatment of a chronic or recurrent illness.~~  
2441 ~~The term also includes a pharmacist's order for a product~~  
2442 ~~selected from the formulary created pursuant to s. 465.186. A~~  
2443 ~~prescription may be retained in written form, or the pharmacist~~  
2444 ~~may cause it to be recorded in a data processing system,~~  
2445 ~~provided that such order can be produced in printed form upon~~  
2446 ~~lawful request.~~

2447 (c) Chlorine is ~~shall~~ not be exempt from the tax imposed by  
2448 this chapter when used for the treatment of water in swimming  
2449 pools.

2450 ~~(d) Lithotripters are exempt.~~

2451 (d) ~~(e)~~ Human organs are exempt.

2452 ~~(f) Sales of drugs to or by physicians, dentists,~~  
2453 ~~veterinarians, and hospitals in connection with medical~~  
2454 ~~treatment are exempt.~~

2455 ~~(g) Medical products and supplies used in the cure,~~  
2456 ~~mitigation, alleviation, prevention, or treatment of injury,~~  
2457 ~~disease, or incapacity which are temporarily or permanently~~  
2458 ~~incorporated into a patient or client by a practitioner of the~~  
2459 ~~healing arts licensed in the state are exempt.~~

2460 ~~(h) The purchase by a veterinarian of commonly recognized~~  
2461 ~~substances possessing curative or remedial properties which are~~  
2462 ~~ordered and dispensed as treatment for a diagnosed health~~  
2463 ~~disorder by or on the prescription of a duly licensed~~  
2464 ~~veterinarian, and which are applied to or consumed by animals~~  
2465 ~~for alleviation of pain or the cure or prevention of sickness,~~

7-00467-09

20091134

2466 ~~disease, or suffering are exempt. Also exempt are the purchase~~  
2467 ~~by a veterinarian of antiseptics, absorbent cotton, gauze for~~  
2468 ~~bandages, lotions, vitamins, and worm remedies.~~

2469 ~~(i) X ray opaques, also known as opaque drugs and~~  
2470 ~~radiopaque, such as the various opaque dyes and barium sulphate,~~  
2471 ~~when used in connection with medical X rays for treatment of~~  
2472 ~~bodies of humans and animals, are exempt.~~

2473 ~~(e)-(j)~~ Parts, special attachments, special lettering, and  
2474 other like items that are added to or attached to tangible  
2475 personal property so that a handicapped person can use them are  
2476 exempt when such items are purchased by a person pursuant to an  
2477 individual prescription.

2478 ~~(f)-(k)~~ This subsection shall be strictly construed and  
2479 enforced.

2480 (17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.—

2481 (b) As used in this subsection, the term "overhead  
2482 materials" means all tangible personal property, other than  
2483 qualifying property as defined in s. 212.02(33)(a) ~~s.~~  
2484 ~~212.02(14)(a)~~ and electricity, which is used or consumed in the  
2485 performance of a qualifying contract, title to which property  
2486 vests in or passes to the government under the contract.

2487 (c) As used in this subsection and in s. 212.02(33)(a) ~~s.~~  
2488 ~~212.02(14)(a)~~, the term "qualifying contract" means a contract  
2489 with the United States Department of Defense or the National  
2490 Aeronautics and Space Administration, or a subcontract  
2491 thereunder, but does not include a contract or subcontract for  
2492 the repair, alteration, improvement, or construction of real  
2493 property, except to the extent that purchases under such a  
2494 contract would otherwise be exempt from the tax imposed by this

7-00467-09

20091134

2495 chapter.

2496 Section 11. Section 212.094, Florida Statutes, is created  
2497 to read:

2498 212.094 Purchaser requests for refunds from dealers.-

2499 (1) If a purchaser seeks from a dealer a refund of or  
2500 credit against a tax collected under this chapter by that  
2501 dealer, the purchaser shall submit a written request for the  
2502 refund or credit to the dealer in accordance with this section.  
2503 The request must contain all the information necessary for the  
2504 dealer to determine the validity of the purchaser's request.

2505 (2) The purchaser may not take any other action against the  
2506 dealer with respect to the requested refund or credit until the  
2507 dealer has had 60 days following receipt of a completed request  
2508 in which to respond.

2509 (3) This section does not affect a person's standing to  
2510 claim a refund.

2511 (4) This section does not apply to refunds resulting from  
2512 merchandise returned by a customer to a dealer.

2513 Section 12. Section 212.12, Florida Statutes, is amended to  
2514 read:

2515 212.12 Dealer's credit for collecting tax; penalties for  
2516 noncompliance; powers of Department of Revenue in dealing with  
2517 delinquents; ~~brackets applicable to taxable transactions;~~  
2518 records required.-

2519 (1) Notwithstanding any other provision of law and for the  
2520 purpose of compensating persons granting licenses for and the  
2521 lessors of real and personal property taxed hereunder, for the  
2522 purpose of compensating dealers in tangible personal property,  
2523 for the purpose of compensating dealers providing communication

7-00467-09

20091134

2524 services and taxable services, for the purpose of compensating  
2525 owners of places where admissions are collected, and for the  
2526 purpose of compensating remitters of any taxes or fees reported  
2527 on the same documents utilized for the sales and use tax, as  
2528 compensation for the keeping of prescribed records, filing  
2529 timely tax returns, and the proper accounting and remitting of  
2530 taxes by them, such seller, person, lessor, dealer, owner, and  
2531 remitter ~~(except dealers who make mail order sales)~~ shall be  
2532 allowed 2.5 percent of the amount of the tax due and accounted  
2533 for and remitted to the department, in the form of a deduction  
2534 in submitting his or her report and paying the amount due by him  
2535 or her; the department shall allow such deduction of 2.5 percent  
2536 of the amount of the tax to the person paying the same for  
2537 remitting the tax and making of tax returns in the manner herein  
2538 provided, for paying the amount due to be paid by him or her,  
2539 and as further compensation to dealers in tangible personal  
2540 property for the keeping of prescribed records and for  
2541 collection of taxes and remitting the same. However, if the  
2542 amount of the tax due and remitted to the department for the  
2543 reporting period exceeds \$1,200, no allowance shall be allowed  
2544 for all amounts in excess of \$1,200. ~~The executive director of~~  
2545 ~~the department is authorized to negotiate a collection~~  
2546 ~~allowance, pursuant to rules promulgated by the department, with~~  
2547 ~~a dealer who makes mail order sales. The rules of the department~~  
2548 ~~shall provide guidelines for establishing the collection~~  
2549 ~~allowance based upon the dealer's estimated costs of collecting~~  
2550 ~~the tax, the volume and value of the dealer's mail order sales~~  
2551 ~~to purchasers in this state, and the administrative and legal~~  
2552 ~~costs and likelihood of achieving collection of the tax absent~~



7-00467-09

20091134\_\_

2553 ~~the cooperation of the dealer. However, in no event shall the~~  
2554 ~~collection allowance negotiated by the executive director exceed~~  
2555 ~~10 percent of the tax remitted for a reporting period.~~

2556 (a) The Department of Revenue may deny the collection  
2557 allowance if a taxpayer files an incomplete return or if the  
2558 required tax return or tax is delinquent at the time of payment.

2559 1. An "incomplete return" is, for purposes of this chapter,  
2560 a return which is lacking such uniformity, completeness, and  
2561 arrangement that the physical handling, verification, review of  
2562 the return, or determination of other taxes and fees reported on  
2563 the return may not be readily accomplished.

2564 2. The department shall adopt rules requiring such  
2565 information as it may deem necessary to ensure that the tax  
2566 levied hereunder is properly collected, reviewed, compiled,  
2567 reported, and enforced, including, but not limited to: the  
2568 amount of gross sales; the amount of taxable sales; the amount  
2569 of tax collected or due; the amount of lawful refunds,  
2570 deductions, or credits claimed; the amount claimed as the  
2571 dealer's collection allowance; the amount of penalty and  
2572 interest; the amount due with the return; and such other  
2573 information as the Department of Revenue may specify. The  
2574 department shall require that transient rentals and agricultural  
2575 equipment transactions be separately shown. Sales made through  
2576 vending machines as defined in s. 212.0515 must be separately  
2577 shown on the return. Sales made through coin-operated amusement  
2578 machines as defined by s. 212.02 and the number of machines  
2579 operated must be separately shown on the return or on a form  
2580 prescribed by the department. If a separate form is required,  
2581 the same penalties for late filing, incomplete filing, or

7-00467-09

20091134\_\_

2582 failure to file as provided for the sales tax return shall apply  
2583 to said form.

2584 (b) The collection allowance and other credits or  
2585 deductions provided in this chapter shall be applied  
2586 proportionally to any taxes or fees reported on the same  
2587 documents used for the sales and use tax.

2588 (c)1. A dealer entitled to the collection allowance  
2589 provided in this section may elect to forego the collection  
2590 allowance and direct that said amount be transferred into the  
2591 Educational Enhancement Trust Fund. Such an election must be  
2592 made with the timely filing of a return and may not be rescinded  
2593 once made. If a dealer who makes such an election files a  
2594 delinquent return, underpays the tax, or files an incomplete  
2595 return, the amount transferred into the Educational Enhancement  
2596 Trust Fund shall be the amount of the collection allowance  
2597 remaining after resolution of liability for all of the tax,  
2598 interest, and penalty due on that return or underpayment of tax.  
2599 The Department of Education shall distribute the remaining  
2600 amount from the trust fund to the school districts that have  
2601 adopted resolutions stating that those funds will be used to  
2602 ensure that up-to-date technology is purchased for the  
2603 classrooms in the district and that teachers are trained in the  
2604 use of that technology. Revenues collected in districts that do  
2605 not adopt such a resolution shall be equally distributed to  
2606 districts that have adopted such resolutions.

2607 2. This paragraph applies to all taxes, surtaxes, and any  
2608 local option taxes administered under this chapter and remitted  
2609 directly to the department. This paragraph does not apply to any  
2610 locally imposed and self-administered convention development

7-00467-09

20091134\_\_

2611 tax, tourist development tax, or tourist impact tax administered  
2612 under this chapter.

2613 3. Revenues from the dealer-collection allowances shall be  
2614 transferred quarterly from the General Revenue Fund to the  
2615 Educational Enhancement Trust Fund. The Department of Revenue  
2616 shall provide to the Department of Education quarterly  
2617 information about such revenues by county to which the  
2618 collection allowance was attributed.

2619  
2620 Notwithstanding any provision of chapter 120 to the contrary,  
2621 the Department of Revenue may adopt rules to carry out the  
2622 amendment made by chapter 2006-52, Laws of Florida, to this  
2623 section.

2624 (d) Notwithstanding paragraphs (a) and (b), a Model 1  
2625 seller under the Streamlined Sales and Use Tax Agreement is not  
2626 entitled to the collection allowance described in paragraphs (a)  
2627 and (b).

2628 (e)1. In addition to any collection allowance that may be  
2629 provided under this subsection, the department may provide the  
2630 monetary allowances required to be provided by the state to  
2631 certified service providers and voluntary sellers pursuant to  
2632 Article VI of the Streamlined Sales and Use Tax Agreement, as  
2633 amended.

2634 2. Such monetary allowances must be in the form of  
2635 collection allowances that certified service providers or  
2636 voluntary sellers are permitted to retain from the tax revenues  
2637 collected on remote sales to be remitted to the state pursuant  
2638 to this chapter.

2639 3. For purposes of this paragraph, the term "voluntary

7-00467-09

20091134\_\_

2640 seller" or "volunteer seller" means a seller that is not  
2641 required to register in this state to collect a tax. The term  
2642 "remote sales" means revenues generated by such a seller for  
2643 this state for which the seller is not required to register to  
2644 collect the tax imposed by this chapter.

2645 (2) (a) When any person required hereunder to make any  
2646 return or to pay any tax or fee imposed by this chapter either  
2647 fails to timely file such return or fails to pay the tax or fee  
2648 shown due on the return within the time required hereunder, in  
2649 addition to all other penalties provided herein and by the laws  
2650 of this state in respect to such taxes or fees, a specific  
2651 penalty shall be added to the tax or fee in the amount of 10  
2652 percent of either the tax or fee shown on the return that is not  
2653 timely filed or any tax or fee not paid timely. The penalty may  
2654 not be less than \$50 for failure to timely file a tax return  
2655 required by s. 212.11(1) or timely pay the tax or fee shown due  
2656 on the return except as provided in s. 213.21(10). If a person  
2657 fails to timely file a return required by s. 212.11(1) and to  
2658 timely pay the tax or fee shown due on the return, only one  
2659 penalty of 10 percent, which may not be less than \$50, shall be  
2660 imposed.

2661 (b) When any person required under this section to make a  
2662 return or to pay a tax or fee imposed by this chapter fails to  
2663 disclose the tax or fee on the return within the time required,  
2664 excluding a noncompliant filing event generated by situations  
2665 covered in paragraph (a), in addition to all other penalties  
2666 provided in this section and by the laws of this state in  
2667 respect to such taxes or fees, a specific penalty shall be added  
2668 to the additional tax or fee owed in the amount of 10 percent of

7-00467-09

20091134\_\_

2669 any such unpaid tax or fee not paid timely if the failure is for  
2670 not more than 30 days, with an additional 10 percent of any such  
2671 unpaid tax or fee for each additional 30 days, or fraction  
2672 thereof, while the failure continues, not to exceed a total  
2673 penalty of 50 percent, in the aggregate, of any unpaid tax or  
2674 fee.

2675 (c) Any person who knowingly and with a willful intent to  
2676 evade any tax imposed under this chapter fails to file six  
2677 consecutive returns as required by law commits a felony of the  
2678 third degree, punishable as provided in s. 775.082 or s.  
2679 775.083.

2680 (d) Any person who makes a false or fraudulent return with  
2681 a willful intent to evade payment of any tax or fee imposed  
2682 under this chapter; any person who, after the department's  
2683 delivery of a written notice to the person's last known address  
2684 specifically alerting the person of the requirement to register  
2685 the person's business as a dealer, intentionally fails to  
2686 register the business; and any person who, after the  
2687 department's delivery of a written notice to the person's last  
2688 known address specifically alerting the person of the  
2689 requirement to collect tax on specific transactions,  
2690 intentionally fails to collect such tax, shall, in addition to  
2691 the other penalties provided by law, be liable for a specific  
2692 penalty of 100 percent of any unreported or any uncollected tax  
2693 or fee and, upon conviction, for fine and punishment as provided  
2694 in s. 775.082, s. 775.083, or s. 775.084. Delivery of written  
2695 notice may be made by certified mail, or by the use of such  
2696 other method as is documented as being necessary and reasonable  
2697 under the circumstances. The civil and criminal penalties

7-00467-09

20091134\_\_

2698 imposed herein for failure to comply with a written notice  
2699 alerting the person of the requirement to register the person's  
2700 business as a dealer or to collect tax on specific transactions  
2701 shall not apply if the person timely files a written challenge  
2702 to such notice in accordance with procedures established by the  
2703 department by rule or the notice fails to clearly advise that  
2704 failure to comply with or timely challenge the notice will  
2705 result in the imposition of the civil and criminal penalties  
2706 imposed herein.

2707         1. If the total amount of unreported or uncollected taxes  
2708 or fees is less than \$300, the first offense resulting in  
2709 conviction is a misdemeanor of the second degree, the second  
2710 offense resulting in conviction is a misdemeanor of the first  
2711 degree, and the third and all subsequent offenses resulting in  
2712 conviction is a misdemeanor of the first degree, and the third  
2713 and all subsequent offenses resulting in conviction are felonies  
2714 of the third degree.

2715         2. If the total amount of unreported or uncollected taxes  
2716 or fees is \$300 or more but less than \$20,000, the offense is a  
2717 felony of the third degree.

2718         3. If the total amount of unreported or uncollected taxes  
2719 or fees is \$20,000 or more but less than \$100,000, the offense  
2720 is a felony of the second degree.

2721         4. If the total amount of unreported or uncollected taxes  
2722 or fees is \$100,000 or more, the offense is a felony of the  
2723 first degree.

2724         (e) A person who willfully attempts in any manner to evade  
2725 any tax, surcharge, or fee imposed under this chapter or the  
2726 payment thereof is, in addition to any other penalties provided

7-00467-09

20091134

2727 by law, liable for a specific penalty in the amount of 100  
2728 percent of the tax, surcharge, or fee, and commits a felony of  
2729 the third degree, punishable as provided in s. 775.082, s.  
2730 775.083, or s. 775.084.

2731 (f) When any person, firm, or corporation fails to timely  
2732 remit the proper estimated payment required under s. 212.11, a  
2733 specific penalty shall be added in an amount equal to 10 percent  
2734 of any unpaid estimated tax. Beginning with January 1, 1985,  
2735 returns, the department, upon a showing of reasonable cause, is  
2736 authorized to waive or compromise penalties imposed by this  
2737 paragraph. However, other penalties and interest shall be due  
2738 and payable if the return on which the estimated payment was due  
2739 was not timely or properly filed.

2740 (g) A dealer who files a consolidated return pursuant to s.  
2741 212.11(1)(e) is subject to the penalty established in paragraph  
2742 (e) unless the dealer has paid the required estimated tax for  
2743 his or her consolidated return as a whole without regard to each  
2744 location. If the dealer fails to pay the required estimated tax  
2745 for his or her consolidated return as a whole, each filing  
2746 location shall stand on its own with respect to calculating  
2747 penalties pursuant to paragraph (f).

2748 (3) When any dealer, or other person charged herein, fails  
2749 to remit the tax, or any portion thereof, on or before the day  
2750 when such tax is required by law to be paid, there shall be  
2751 added to the amount due interest at the rate of 1 percent per  
2752 month of the amount due from the date due until paid. Interest  
2753 on the delinquent tax shall be calculated beginning on the 21st  
2754 day of the month following the month for which the tax is due,  
2755 except as otherwise provided in this chapter.

7-00467-09

20091134\_\_

2756 (4) All penalties and interest imposed by this chapter  
2757 shall be payable to and collectible by the department in the  
2758 same manner as if they were a part of the tax imposed. The  
2759 department may settle or compromise any such interest or  
2760 penalties pursuant to s. 213.21.

2761 (5) (a) The department is authorized to audit or inspect the  
2762 records and accounts of dealers defined herein, ~~including audits~~  
2763 ~~or inspections of dealers who make mail order sales to the~~  
2764 ~~extent permitted by another state,~~ and to correct by credit any  
2765 overpayment of tax, and, in the event of a deficiency, an  
2766 assessment shall be made and collected. No administrative  
2767 finding of fact is necessary prior to the assessment of any tax  
2768 deficiency.

2769 (b) In the event any dealer or other person charged herein  
2770 fails or refuses to make his or her records available for  
2771 inspection so that no audit or examination has been made of the  
2772 books and records of such dealer or person, fails or refuses to  
2773 register as a dealer, fails to make a report and pay the tax as  
2774 provided by this chapter, makes a grossly incorrect report or  
2775 makes a report that is false or fraudulent, then, in such event,  
2776 it shall be the duty of the department to make an assessment  
2777 from an estimate based upon the best information then available  
2778 to it for the taxable period of retail sales of such dealer, the  
2779 gross proceeds from rentals, the total admissions received,  
2780 amounts received from leases of tangible personal property by  
2781 such dealer, or of the cost price of all articles of tangible  
2782 personal property imported by the dealer for use or consumption  
2783 or distribution or storage to be used or consumed in this state,  
2784 or of the sales or cost price of all services the sale or use of



7-00467-09

20091134\_\_

2785 which is taxable under this chapter, together with interest,  
2786 plus penalty, if such have accrued, as the case may be. Then the  
2787 department shall proceed to collect such taxes, interest, and  
2788 penalty on the basis of such assessment which shall be  
2789 considered prima facie correct, and the burden to show the  
2790 contrary shall rest upon the dealer, seller, owner, or lessor,  
2791 as the case may be.

2792 (6) (a) The department is given the power to prescribe the  
2793 records to be kept by all persons subject to taxes imposed by  
2794 this chapter. It shall be the duty of every person required to  
2795 make a report and pay any tax under this chapter, every person  
2796 receiving rentals or license fees, and owners of places of  
2797 admission, to keep and preserve suitable records of the sales,  
2798 leases, rentals, license fees, admissions, or purchases, as the  
2799 case may be, taxable under this chapter; such other books of  
2800 account as may be necessary to determine the amount of the tax  
2801 due hereunder; and other information as may be required by the  
2802 department. It shall be the duty of every such person so charged  
2803 with such duty, moreover, to keep and preserve as long as  
2804 required by s. 213.35 all invoices and other records of goods,  
2805 wares, and merchandise; records of admissions, leases, license  
2806 fees and rentals; and records of all other subjects of taxation  
2807 under this chapter. All such books, invoices, and other records  
2808 shall be open to examination at all reasonable hours to the  
2809 department or any of its duly authorized agents.

2810 (b) For the purpose of this subsection, if a dealer does  
2811 not have adequate records of his or her retail sales or  
2812 purchases, the department may, upon the basis of a test or  
2813 sampling of the dealer's available records or other information

7-00467-09

20091134

2814 relating to the sales or purchases made by such dealer for a  
2815 representative period, determine the proportion that taxable  
2816 retail sales bear to total retail sales or the proportion that  
2817 taxable purchases bear to total purchases. This subsection does  
2818 not affect the duty of the dealer to collect, or the liability  
2819 of any consumer to pay, any tax imposed by or pursuant to this  
2820 chapter.

2821 (c)1. If the records of a dealer are adequate but  
2822 voluminous in nature and substance, the department may sample  
2823 such records and project the audit findings derived therefrom  
2824 over the entire audit period to determine the proportion that  
2825 taxable retail sales bear to total retail sales or the  
2826 proportion that taxable purchases bear to total purchases. In  
2827 order to conduct such a sample, the department must first make a  
2828 good faith effort to reach an agreement with the dealer, which  
2829 agreement provides for the means and methods to be used in the  
2830 sampling process. In the event that no agreement is reached, the  
2831 dealer is entitled to a review by the executive director. In the  
2832 case of fixed assets, a dealer may agree in writing with the  
2833 department for adequate but voluminous records to be  
2834 statistically sampled. Such an agreement shall provide for the  
2835 methodology to be used in the statistical sampling process. The  
2836 audit findings derived therefrom shall be projected over the  
2837 period represented by the sample in order to determine the  
2838 proportion that taxable purchases bear to total purchases. Once  
2839 an agreement has been signed, it is final and conclusive with  
2840 respect to the method of sampling fixed assets, and the  
2841 department may not conduct a detailed audit of fixed assets, and  
2842 the taxpayer may not request a detailed audit after the

7-00467-09

20091134\_\_

2843 agreement is reached.

2844         2. For the purposes of sampling pursuant to subparagraph  
2845 1., the department shall project any deficiencies and  
2846 overpayments derived therefrom over the entire audit period. In  
2847 determining the dealer's compliance, the department shall reduce  
2848 any tax deficiency as derived from the sample by the amount of  
2849 any overpayment derived from the sample. In the event the  
2850 department determines from the sample results that the dealer  
2851 has a net tax overpayment, the department shall provide the  
2852 findings of this overpayment to the Chief Financial Officer for  
2853 repayment of funds paid into the State Treasury through error  
2854 pursuant to s. 215.26.

2855         3.a. A taxpayer is entitled, both in connection with an  
2856 audit and in connection with an application for refund filed  
2857 independently of any audit, to establish the amount of any  
2858 refund or deficiency through statistical sampling when the  
2859 taxpayer's records are adequate but voluminous. In the case of  
2860 fixed assets, a dealer may agree in writing with the department  
2861 for adequate but voluminous records to be statistically sampled.  
2862 Such an agreement shall provide for the methodology to be used  
2863 in the statistical sampling process. The audit findings derived  
2864 therefrom shall be projected over the period represented by the  
2865 sample in order to determine the proportion that taxable  
2866 purchases bear to total purchases. Once an agreement has been  
2867 signed, it is final and conclusive with respect to the method of  
2868 sampling fixed assets, and the department may not conduct a  
2869 detailed audit of fixed assets, and the taxpayer may not request  
2870 a detailed audit after the agreement is reached.

2871         b. Alternatively, a taxpayer is entitled to establish any

7-00467-09

20091134\_\_

2872 refund or deficiency through any other sampling method agreed  
2873 upon by the taxpayer and the department when the taxpayer's  
2874 records, other than those regarding fixed assets, are adequate  
2875 but voluminous. Whether done through statistical sampling or any  
2876 other sampling method agreed upon by the taxpayer and the  
2877 department, the completed sample must reflect both overpayments  
2878 and underpayments of taxes due. The sample shall be conducted  
2879 through:

2880 (I) A taxpayer request to perform the sampling through the  
2881 certified audit program pursuant to s. 213.285;

2882 (II) Attestation by a certified public accountant as to the  
2883 adequacy of the sampling method utilized and the results reached  
2884 using such sampling method; or

2885 (III) A sampling method that has been submitted by the  
2886 taxpayer and approved by the department before a refund claim is  
2887 submitted. This sub-sub-subparagraph does not prohibit a  
2888 taxpayer from filing a refund claim prior to approval by the  
2889 department of the sampling method; however, a refund claim  
2890 submitted before the sampling method has been approved by the  
2891 department cannot be a complete refund application pursuant to  
2892 s. 213.255 until the sampling method has been approved by the  
2893 department.

2894 c. The department shall prescribe by rule the procedures to  
2895 be followed under each method of sampling. Such procedures shall  
2896 follow generally accepted auditing procedures for sampling. The  
2897 rule shall also set forth other criteria regarding the use of  
2898 sampling, including, but not limited to, training requirements  
2899 that must be met before a sampling method may be utilized and  
2900 the steps necessary for the department and the taxpayer to reach

7-00467-09

20091134\_\_

2901 agreement on a sampling method submitted by the taxpayer for  
2902 approval by the department.

2903 (7) In the event the dealer has imported tangible personal  
2904 property and he or she fails to produce an invoice showing the  
2905 cost price of the articles, as defined in this chapter, which  
2906 are subject to tax, or the invoice does not reflect the true or  
2907 actual cost price as defined herein, then the department shall  
2908 ascertain, in any manner feasible, the true cost price, and  
2909 assess and collect the tax thereon with interest plus penalties,  
2910 if such have accrued on the true cost price as assessed by it.  
2911 The assessment so made shall be considered prima facie correct,  
2912 and the duty shall be on the dealer to show to the contrary.

2913 (8) In the case of the lease or rental of tangible personal  
2914 property, or other rentals or license fees as herein defined and  
2915 taxed, if the consideration given or reported by the lessor,  
2916 person receiving rental or license fee, or dealer does not, in  
2917 the judgment of the department, represent the true or actual  
2918 consideration, then the department is authorized to ascertain  
2919 the same and assess and collect the tax thereon in the same  
2920 manner as above provided, with respect to imported tangible  
2921 property, together with interest, plus penalties, if such have  
2922 accrued.

2923 (9) Taxes imposed by this chapter upon the privilege of the  
2924 use, consumption, storage for consumption, or sale of tangible  
2925 personal property, admissions, license fees, rentals,  
2926 communication services, and upon the sale or use of services as  
2927 herein taxed shall be collected upon the basis of an addition of  
2928 the tax imposed by this chapter to the total price of such  
2929 admissions, license fees, rentals, communication or other

7-00467-09

20091134\_\_

2930 services, or sale price of such article or articles that are  
2931 purchased, sold, or leased at any one time by or to a customer  
2932 or buyer; the dealer, or person charged herein, is required to  
2933 pay a privilege tax in the amount of the tax imposed by this  
2934 chapter on the total of his or her gross sales of tangible  
2935 personal property, admissions, license fees, rentals, and  
2936 communication services or to collect a tax upon the sale or use  
2937 of services, and such person or dealer shall add the tax imposed  
2938 by this chapter to the price, license fee, rental, or  
2939 admissions, and communication or other services and collect the  
2940 total sum from the purchaser, admittee, licensee, lessee, or  
2941 consumer. In computing the tax due or to be collected as the  
2942 result of any transaction, the seller may elect to compute the  
2943 tax due on a transaction on an per-item basis or on an invoice  
2944 basis. The tax rate shall be the sum of the applicable state and  
2945 local rates, if any, and the tax computation shall be carried to  
2946 the third decimal place. Whenever the third decimal place is  
2947 greater than four, the tax shall be rounded to the next whole  
2948 cent. ~~The department shall make available in an electronic~~  
2949 ~~format or otherwise the tax amounts and the following brackets~~  
2950 ~~applicable to all transactions taxable at the rate of 6 percent:~~  
2951       ~~(a) On single sales of less than 10 cents, no tax shall be~~  
2952 ~~added.~~  
2953       ~~(b) On single sales in amounts from 10 cents to 16 cents,~~  
2954 ~~both inclusive, 1 cent shall be added for taxes.~~  
2955       ~~(c) On sales in amounts from 17 cents to 33 cents, both~~  
2956 ~~inclusive, 2 cents shall be added for taxes.~~  
2957       ~~(d) On sales in amounts from 34 cents to 50 cents, both~~  
2958 ~~inclusive, 3 cents shall be added for taxes.~~

7-00467-09

20091134\_\_

- 2959       ~~(e) On sales in amounts from 51 cents to 66 cents, both~~  
2960 ~~inclusive, 4 cents shall be added for taxes.~~
- 2961       ~~(f) On sales in amounts from 67 cents to 83 cents, both~~  
2962 ~~inclusive, 5 cents shall be added for taxes.~~
- 2963       ~~(g) On sales in amounts from 84 cents to \$1, both~~  
2964 ~~inclusive, 6 cents shall be added for taxes.~~
- 2965       ~~(h) On sales in amounts of more than \$1, 6 percent shall be~~  
2966 ~~charged upon each dollar of price, plus the appropriate bracket~~  
2967 ~~charge upon any fractional part of a dollar.~~
- 2968       ~~(10) In counties which have adopted a discretionary sales~~  
2969 ~~surtax at the rate of 1 percent, the department shall make~~  
2970 ~~available in an electronic format or otherwise the tax amounts~~  
2971 ~~and the following brackets applicable to all taxable~~  
2972 ~~transactions that would otherwise have been transactions taxable~~  
2973 ~~at the rate of 6 percent:~~
- 2974       ~~(a) On single sales of less than 10 cents, no tax shall be~~  
2975 ~~added.~~
- 2976       ~~(b) On single sales in amounts from 10 cents to 14 cents,~~  
2977 ~~both inclusive, 1 cent shall be added for taxes.~~
- 2978       ~~(c) On sales in amounts from 15 cents to 28 cents, both~~  
2979 ~~inclusive, 2 cents shall be added for taxes.~~
- 2980       ~~(d) On sales in amounts from 29 cents to 42 cents, both~~  
2981 ~~inclusive, 3 cents shall be added for taxes.~~
- 2982       ~~(e) On sales in amounts from 43 cents to 57 cents, both~~  
2983 ~~inclusive, 4 cents shall be added for taxes.~~
- 2984       ~~(f) On sales in amounts from 58 cents to 71 cents, both~~  
2985 ~~inclusive, 5 cents shall be added for taxes.~~
- 2986       ~~(g) On sales in amounts from 72 cents to 85 cents, both~~  
2987 ~~inclusive, 6 cents shall be added for taxes.~~

7-00467-09

20091134

2988 ~~(h) On sales in amounts from 86 cents to \$1, both~~  
2989 ~~inclusive, 7 cents shall be added for taxes.~~

2990 ~~(i) On sales in amounts from \$1 up to, and including, the~~  
2991 ~~first \$5,000 in price, 7 percent shall be charged upon each~~  
2992 ~~dollar of price, plus the appropriate bracket charge upon any~~  
2993 ~~fractional part of a dollar.~~

2994 ~~(j) On sales in amounts of more than \$5,000 in price, 7~~  
2995 ~~percent shall be added upon the first \$5,000 in price, and 6~~  
2996 ~~percent shall be added upon each dollar of price in excess of~~  
2997 ~~the first \$5,000 in price, plus the bracket charges upon any~~  
2998 ~~fractional part of a dollar as provided for in subsection (9).~~

2999 ~~(11) The department shall make available in an electronic~~  
3000 ~~format or otherwise the tax amounts and brackets applicable to~~  
3001 ~~all taxable transactions that occur in counties that have a~~  
3002 ~~surtax at a rate other than 1 percent which transactions would~~  
3003 ~~otherwise have been transactions taxable at the rate of 6~~  
3004 ~~percent. Likewise, the department shall make available in an~~  
3005 ~~electronic format or otherwise the tax amounts and brackets~~  
3006 ~~applicable to transactions taxable at 7 percent pursuant to s.~~  
3007 ~~212.05(1)(c) and on transactions which would otherwise have been~~  
3008 ~~so taxable in counties which have adopted a discretionary sales~~  
3009 ~~surtax.~~

3010 (10)~~(12)~~ It is hereby declared to be the legislative intent  
3011 that, whenever in the construction, administration, or  
3012 enforcement of this chapter there may be any question respecting  
3013 a duplication of the tax, the end consumer, or last retail sale,  
3014 be the sale intended to be taxed and insofar as may be  
3015 practicable there be no duplication or pyramiding of the tax.

3016 (11)~~(13)~~ In order to aid the administration and enforcement



7-00467-09

20091134

3017 of the provisions of this chapter with respect to the rentals  
3018 and license fees, each lessor or person granting the use of any  
3019 hotel, apartment house, roominghouse, tourist or trailer camp,  
3020 real property, or any interest therein, or any portion thereof,  
3021 inclusive of owners; property managers; lessors; landlords;  
3022 hotel, apartment house, and roominghouse operators; and all  
3023 licensed real estate agents within the state leasing, granting  
3024 the use of, or renting such property, shall be required to keep  
3025 a record of each and every such lease, license, or rental  
3026 transaction which is taxable under this chapter, in such a  
3027 manner and upon such forms as the department may prescribe, and  
3028 to report such transaction to the department or its designated  
3029 agents, and to maintain such records as long as required by s.  
3030 213.35, subject to the inspection of the department and its  
3031 agents. Upon the failure by such owner; property manager;  
3032 lessor; landlord; hotel, apartment house, roominghouse, tourist  
3033 or trailer camp operator; or real estate agent to keep and  
3034 maintain such records and to make such reports upon the forms  
3035 and in the manner prescribed, such owner; property manager;  
3036 lessor; landlord; hotel, apartment house, roominghouse, tourist  
3037 or trailer camp operator; receiver of rent or license fees; or  
3038 real estate agent is guilty of a misdemeanor of the second  
3039 degree, punishable as provided in s. 775.082 or s. 775.083, for  
3040 the first offense; for subsequent offenses, they are each guilty  
3041 of a misdemeanor of the first degree, punishable as provided in  
3042 s. 775.082 or s. 775.083. If, however, any subsequent offense  
3043 involves intentional destruction of such records with an intent  
3044 to evade payment of or deprive the state of any tax revenues,  
3045 such subsequent offense shall be a felony of the third degree,

7-00467-09

20091134\_\_

3046 punishable as provided in s. 775.082 or s. 775.083.

3047 ~~(14) If it is determined upon audit that a dealer has~~  
3048 ~~collected and remitted taxes by applying the applicable tax rate~~  
3049 ~~to each transaction as described in subsection (9) and rounding~~  
3050 ~~the tax due to the nearest whole cent rather than applying the~~  
3051 ~~appropriate bracket system provided by law or department rule,~~  
3052 ~~the dealer shall not be held liable for additional tax, penalty,~~  
3053 ~~and interest resulting from such failure if:~~

3054 ~~(a) The dealer acted in a good faith belief that rounding~~  
3055 ~~to the nearest whole cent was the proper method of determining~~  
3056 ~~the amount of tax due on each taxable transaction.~~

3057 ~~(b) The dealer timely reported and remitted all taxes~~  
3058 ~~collected on each taxable transaction.~~

3059 ~~(c) The dealer agrees in writing to future compliance with~~  
3060 ~~the laws and rules concerning brackets applicable to the~~  
3061 ~~dealer's transactions.~~

3062 Section 13. Subsection (3) of section 212.17, Florida  
3063 Statutes, is amended to read:

3064 212.17 Credits for returned goods, rentals, or admissions;  
3065 goods acquired for dealer's own use and subsequently resold;  
3066 additional powers of department.-

3067 (3) A dealer who has paid the tax imposed by this chapter  
3068 on tangible personal property or services may take a credit or  
3069 obtain a refund for any tax paid by the dealer on the unpaid  
3070 balance due on worthless accounts within 12 months following the  
3071 month in which the bad debt has been charged off for federal  
3072 income tax purposes. A dealer that has paid the tax imposed by  
3073 this chapter on tangible personal property or services and that  
3074 is not required to file federal income tax returns may take a

7-00467-09

20091134\_\_

3075 credit against or obtain a refund for any tax paid by the dealer  
3076 on the unpaid balance due on worthless accounts within 12 months  
3077 following the month in which the bad debt is written off as  
3078 uncollectible in the dealer's books and records and would be  
3079 eligible for a bad-debt deduction for federal income tax  
3080 purposes if the dealer was required to file a federal income tax  
3081 return.

3082 (a) A dealer that is taking a credit against or obtaining a  
3083 refund on worthless accounts shall base the bad-debt-recovery  
3084 calculation in accordance with 26 U.S.C. s. 166.

3085 (b) When the amount of bad debt exceeds the amount of  
3086 taxable sales for the period during which the bad debt is  
3087 written off, a refund claim must be filed, notwithstanding s.  
3088 215.26(2), within 3 years after the due date of the return on  
3089 which the bad debt could first be claimed.

3090 (c) If any accounts so charged off for which a credit or  
3091 refund has been obtained are thereafter in whole or in part paid  
3092 to the dealer, the amount so paid shall be included in the first  
3093 return filed after such collection and the tax paid accordingly.

3094 (d) If filing responsibilities have been assumed by a  
3095 certified service provider, the certified service provider shall  
3096 claim, on behalf of the seller, any bad-debt allowance provided  
3097 by this subsection. The certified service provider shall credit  
3098 or refund to the seller the full amount of any bad-debt  
3099 allowance or refund received.

3100 (e) For the purposes of reporting a payment received on a  
3101 previously claimed bad debt, any payments made on a debt or  
3102 account shall first be applied proportionally to the taxable  
3103 price of the property or service and the sales tax on such

7-00467-09

20091134

3104 property, and second to any interest, service charges, and any  
3105 other charges.

3106 (f) In situations in which the books and records of the  
3107 party claiming the bad-debt allowance support an allocation of  
3108 the bad debts among states that are members of the Streamlined  
3109 Sales and Use Tax Agreement, the allocation is permitted among  
3110 those states.

3111 Section 14. Paragraph (a) of subsection (3) of section  
3112 212.18, Florida Statutes, is amended to read:

3113 212.18 Administration of law; registration of dealers;  
3114 rules.-

3115 (3) (a) Every person desiring to engage in or conduct  
3116 business in this state as a dealer, as defined in this chapter,  
3117 or to lease, rent, or let or grant licenses in living quarters  
3118 or sleeping or housekeeping accommodations in hotels, apartment  
3119 houses, roominghouses, or tourist or trailer camps that are  
3120 subject to tax under s. 212.03, or to lease, rent, or let or  
3121 grant licenses in real property, as defined in this chapter, and  
3122 every person who sells or receives anything of value by way of  
3123 admissions, must file with the department an application for a  
3124 certificate of registration for each place of business, showing  
3125 the names of the persons who have interests in such business and  
3126 their residences, the address of the business, and such other  
3127 data as the department may reasonably require. However, owners  
3128 and operators of vending machines or newspaper rack machines are  
3129 required to obtain only one certificate of registration for each  
3130 county in which such machines are located. The department, by  
3131 rule, may authorize a dealer that uses independent sellers to  
3132 sell its merchandise to remit tax on the retail sales price

7-00467-09

20091134\_\_

3133 charged to the ultimate consumer in lieu of having the  
3134 independent seller register as a dealer and remit the tax. The  
3135 department may appoint the county tax collector as the  
3136 department's agent to accept applications for registrations. The  
3137 application must be made to the department before the person,  
3138 firm, copartnership, or corporation may engage in such business,  
3139 and it must be accompanied by a registration fee of \$5. ~~However,~~  
3140 ~~a registration fee is not required to accompany an application~~  
3141 ~~to engage in or conduct business to make mail order sales.~~ The  
3142 department may waive the registration fee for applications  
3143 submitted through the department's Internet registration process  
3144 or central electronic registration system provided by member  
3145 states of the Streamlined Sales and Use Tax Agreement.

3146 Section 15. Section 212.20, Florida Statutes, is amended to  
3147 read:

3148 212.20 Funds collected, disposition; additional powers of  
3149 department; operational expense; refund of taxes adjudicated  
3150 unconstitutionally collected.—

3151 (1) The department shall pay over to the Chief Financial  
3152 Officer of the state all funds received and collected by it  
3153 under the provisions of this chapter, to be credited to the  
3154 account of the General Revenue Fund of the state.

3155 (2) The department is authorized to employ all necessary  
3156 assistants to administer this chapter properly and is also  
3157 authorized to purchase all necessary supplies and equipment  
3158 which may be required for this purpose.

3159 (3) The estimated amount of money needed for the  
3160 administration of this chapter shall be included by the  
3161 department in its annual legislative budget request for the

7-00467-09

20091134\_\_

3162 operation of its office.

3163 ~~(4) When there has been a final adjudication that any tax~~  
3164 ~~pursuant to s. 212.0596 was levied, collected, or both, contrary~~  
3165 ~~to the Constitution of the United States or the State~~  
3166 ~~Constitution, the department shall, in accordance with rules,~~  
3167 ~~determine, based upon claims for refund and other evidence and~~  
3168 ~~information, who paid such tax or taxes, and refund to each such~~  
3169 ~~person the amount of tax paid. For purposes of this subsection,~~  
3170 ~~a "final adjudication" is a decision of a court of competent~~  
3171 ~~jurisdiction from which no appeal can be taken or from which the~~  
3172 ~~official or officials of this state with authority to make such~~  
3173 ~~decisions has or have decided not to appeal.~~

3174 ~~(4)~~(5) For the purposes of this section, the term:

3175 (a) "Proceeds" means all tax or fee revenue collected or  
3176 received by the department, including interest and penalties.

3177 (b) "Reallocate" means reduction of the accounts of initial  
3178 deposit and redeposit into the indicated account.

3179 ~~(5)~~(6) Distribution of all proceeds under this chapter and  
3180 s. 202.18(1)(b) and (2)(b) shall be as follows:

3181 (a) Proceeds from the convention development taxes  
3182 authorized under s. 212.0305 shall be reallocated to the  
3183 Convention Development Tax Clearing Trust Fund.

3184 (b) Proceeds from discretionary sales surtaxes imposed  
3185 pursuant to ss. 212.054 and 212.055 shall be reallocated to the  
3186 Discretionary Sales Surtax Clearing Trust Fund.

3187 (c) Proceeds from the fees imposed under ss. 212.05(1)(h)3.  
3188 and 212.18(3) shall remain with the General Revenue Fund.

3189 (d) The proceeds of all other taxes and fees imposed  
3190 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)

7-00467-09

20091134\_\_

3191 and (2) (b) shall be distributed as follows:

3192       1. In any fiscal year, the greater of \$500 million, minus  
3193 an amount equal to 4.6 percent of the proceeds of the taxes  
3194 collected pursuant to chapter 201, or 5 percent of all other  
3195 taxes and fees imposed pursuant to this chapter or remitted  
3196 pursuant to s. 202.18(1) (b) and (2) (b) shall be deposited in  
3197 monthly installments into the General Revenue Fund.

3198       2. Two-tenths of one percent shall be transferred to the  
3199 Ecosystem Management and Restoration Trust Fund to be used for  
3200 water quality improvement and water restoration projects.

3201       3. After the distribution under subparagraphs 1. and 2.,  
3202 8.814 percent of the amount remitted by a sales tax dealer  
3203 located within a participating county pursuant to s. 218.61  
3204 shall be transferred into the Local Government Half-cent Sales  
3205 Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to  
3206 be transferred pursuant to this subparagraph to the Local  
3207 Government Half-cent Sales Tax Clearing Trust Fund shall be  
3208 reduced by 0.1 percent, and the department shall distribute this  
3209 amount to the Public Employees Relations Commission Trust Fund  
3210 less \$5,000 each month, which shall be added to the amount  
3211 calculated in subparagraph 4. and distributed accordingly.

3212       4. After the distribution under subparagraphs 1., 2., and  
3213 3., 0.095 percent shall be transferred to the Local Government  
3214 Half-cent Sales Tax Clearing Trust Fund and distributed pursuant  
3215 to s. 218.65.

3216       5. After the distributions under subparagraphs 1., 2., 3.,  
3217 and 4., 2.0440 percent of the available proceeds pursuant to  
3218 this paragraph shall be transferred monthly to the Revenue  
3219 Sharing Trust Fund for Counties pursuant to s. 218.215.

7-00467-09

20091134\_\_

3220           6. After the distributions under subparagraphs 1., 2., 3.,  
3221 and 4., 1.3409 percent of the available proceeds pursuant to  
3222 this paragraph shall be transferred monthly to the Revenue  
3223 Sharing Trust Fund for Municipalities pursuant to s. 218.215. If  
3224 the total revenue to be distributed pursuant to this  
3225 subparagraph is at least as great as the amount due from the  
3226 Revenue Sharing Trust Fund for Municipalities and the former  
3227 Municipal Financial Assistance Trust Fund in state fiscal year  
3228 1999-2000, no municipality shall receive less than the amount  
3229 due from the Revenue Sharing Trust Fund for Municipalities and  
3230 the former Municipal Financial Assistance Trust Fund in state  
3231 fiscal year 1999-2000. If the total proceeds to be distributed  
3232 are less than the amount received in combination from the  
3233 Revenue Sharing Trust Fund for Municipalities and the former  
3234 Municipal Financial Assistance Trust Fund in state fiscal year  
3235 1999-2000, each municipality shall receive an amount  
3236 proportionate to the amount it was due in state fiscal year  
3237 1999-2000.

3238           7. Of the remaining proceeds:

3239           a. In each fiscal year, the sum of \$29,915,500 shall be  
3240 divided into as many equal parts as there are counties in the  
3241 state, and one part shall be distributed to each county. The  
3242 distribution among the several counties shall begin each fiscal  
3243 year on or before January 5th and shall continue monthly for a  
3244 total of 4 months. If a local or special law required that any  
3245 moneys accruing to a county in fiscal year 1999-2000 under the  
3246 then-existing provisions of s. 550.135 be paid directly to the  
3247 district school board, special district, or a municipal  
3248 government, such payment shall continue until such time that the



7-00467-09

20091134\_\_

3249 local or special law is amended or repealed. The state covenants  
3250 with holders of bonds or other instruments of indebtedness  
3251 issued by local governments, special districts, or district  
3252 school boards prior to July 1, 2000, that it is not the intent  
3253 of this subparagraph to adversely affect the rights of those  
3254 holders or relieve local governments, special districts, or  
3255 district school boards of the duty to meet their obligations as  
3256 a result of previous pledges or assignments or trusts entered  
3257 into which obligated funds received from the distribution to  
3258 county governments under then-existing s. 550.135. This  
3259 distribution specifically is in lieu of funds distributed under  
3260 s. 550.135 prior to July 1, 2000.

3261       b. The department shall distribute \$166,667 monthly  
3262 pursuant to s. 288.1162 to each applicant that has been  
3263 certified as a "facility for a new professional sports  
3264 franchise" or a "facility for a retained professional sports  
3265 franchise" pursuant to s. 288.1162. Up to \$41,667 shall be  
3266 distributed monthly by the department to each applicant that has  
3267 been certified as a "facility for a retained spring training  
3268 franchise" pursuant to s. 288.1162; however, not more than  
3269 \$416,670 may be distributed monthly in the aggregate to all  
3270 certified facilities for a retained spring training franchise.  
3271 Distributions shall begin 60 days following such certification  
3272 and shall continue for not more than 30 years. Nothing contained  
3273 in this paragraph shall be construed to allow an applicant  
3274 certified pursuant to s. 288.1162 to receive more in  
3275 distributions than actually expended by the applicant for the  
3276 public purposes provided for in s. 288.1162(6).

3277       c. Beginning 30 days after notice by the Office of Tourism,

7-00467-09

20091134

3278 Trade, and Economic Development to the Department of Revenue  
3279 that an applicant has been certified as the professional golf  
3280 hall of fame pursuant to s. 288.1168 and is open to the public,  
3281 \$166,667 shall be distributed monthly, for up to 300 months, to  
3282 the applicant.

3283 d. Beginning 30 days after notice by the Office of Tourism,  
3284 Trade, and Economic Development to the Department of Revenue  
3285 that the applicant has been certified as the International Game  
3286 Fish Association World Center facility pursuant to s. 288.1169,  
3287 and the facility is open to the public, \$83,333 shall be  
3288 distributed monthly, for up to 168 months, to the applicant.  
3289 This distribution is subject to reduction pursuant to s.  
3290 288.1169. A lump sum payment of \$999,996 shall be made, after  
3291 certification and before July 1, 2000.

3292 8. All other proceeds shall remain with the General Revenue  
3293 Fund.

3294 Section 16. Section 213.052, Florida Statutes, is created  
3295 to read:

3296 213.052 Notice of state sales and use tax rate changes.—

3297 (1) A sales or use tax rate change imposed under chapter  
3298 212 is effective on January 1, April 1, July 1, or October 1.  
3299 The Department of Revenue shall provide notice of such rate  
3300 change to all affected sellers 60 days before the effective date  
3301 of the rate change.

3302 (2) Failure of a seller to receive notice does not relieve  
3303 the seller of its obligation to collect sales or use tax.

3304 Section 17. Section 213.0521, Florida Statutes, is created  
3305 to read:

3306 213.0521 Effective date of state sales and use tax rate

7-00467-09

20091134

3307 changes.—The effective date for services covering a period  
3308 starting before and ending after the statutory effective date is  
3309 as follows:

3310 (1) For a rate increase, the new rate applies to the first  
3311 billing period starting on or after the effective date.

3312 (2) For a rate decrease, the new rate applies to bills  
3313 rendered on or after the effective date.

3314 Section 18. Section 213.215, Florida Statutes, is created  
3315 to read:

3316 213.215 Sales and use tax amnesty upon registration in  
3317 accordance with Streamlined Sales and Use Tax Agreement.—

3318 (1) Amnesty shall be provided for uncollected or unpaid  
3319 sales or use tax to a seller who registers to pay or to collect  
3320 and remit applicable sales or use tax in accordance with the  
3321 terms of the Streamlined Sales and Use Tax Agreement authorized  
3322 under s. 213.256, if the seller was not registered with the  
3323 Department of Revenue in the 12-month period preceding the  
3324 effective date of participation in the agreement by this state.

3325 (2) The amnesty precludes assessment for uncollected or  
3326 unpaid sales or use tax, together with penalty or interest for  
3327 sales made during the period the seller was not registered with  
3328 the Department of Revenue, if registration occurs within 12  
3329 months after the effective date of this state's participation in  
3330 the agreement.

3331 (3) The amnesty is not available to a seller with respect  
3332 to any matter for which the seller received notice of the  
3333 commencement of an audit if the audit is not yet finally  
3334 resolved, including any related administrative and judicial  
3335 processes.

7-00467-09

20091134

3336       (4) The amnesty is not available for sales or use taxes  
3337 already paid or remitted to the state or to taxes collected by  
3338 the seller.

3339       (5) The amnesty is fully effective, absent the seller's  
3340 fraud or intentional misrepresentation of a material fact, as  
3341 long as the seller continues registration and continues payment  
3342 or collection and remittance of applicable sales or use taxes  
3343 for at least 36 months.

3344       (6) The amnesty applies only to sales or use taxes due from  
3345 a seller in its capacity as a seller and not to sales or use  
3346 taxes due from a seller in its capacity as a buyer.

3347       Section 19. Subsections (1) and (2) of section 213.256,  
3348 Florida Statutes, are amended to read:

3349       213.256 Simplified Sales and Use Tax Administration Act.—

3350       (1) As used in this section and s. 213.2567, the term:

3351       (a) "Agent" means, for purposes of carrying out the  
3352 responsibilities placed on a dealer, a person appointed by the  
3353 seller to represent the seller before the department.

3354       ~~"Department" means the Department of Revenue.~~

3355       (b) "Agreement" means the Streamlined Sales and Use Tax  
3356 Agreement as amended and adopted on January 27, 2001, by the  
3357 Executive Committee of the National Conference of State  
3358 Legislatures.

3359       (c) "Certified automated system" means software certified  
3360 jointly by the state states that are signatories to the  
3361 agreement to calculate the tax imposed by each jurisdiction on a  
3362 transaction, determine the amount of tax to remit to the  
3363 appropriate state, and maintain a record of the transaction.

3364       (d) "Certified service provider" means an agent certified

7-00467-09

20091134

3365 ~~jointly by the states that are signatories to the agreement to~~  
3366 perform all of the seller's sales tax functions other than the  
3367 seller's obligation to remit tax on its own purchases.

3368 (e) "Department" means the Department of Revenue.

3369 (f) "Governing board" means the governing board of the  
3370 agreement.

3371 (g)1. "Model 1 seller" means a seller that has selected a  
3372 certified service provider as the seller's agent to perform all  
3373 of the seller's sales and use tax functions other than the  
3374 seller's obligation to remit tax on the seller's purchases.

3375 2. "Model 2 seller" means a seller that has selected a  
3376 certified automated system to perform part of the seller's sales  
3377 and use tax functions, but retains responsibility for remitting  
3378 the tax.

3379 3. "Model 3 seller" means a seller that has sales in at  
3380 least five member states, has total annual sales revenue of at  
3381 least \$500 million, has a proprietary system that calculates the  
3382 amount of tax due each jurisdiction, and has entered into a  
3383 performance agreement with the member states which establishes a  
3384 tax performance standard for the seller. As used in this  
3385 paragraph, a seller includes an affiliated group of sellers  
3386 using the same proprietary system.

3387 (h)~~(e)~~ "Person" means an individual, trust, estate,  
3388 fiduciary, partnership, limited liability company, limited  
3389 liability partnership, corporation, or any other legal entity.

3390 (i) "Registered under this agreement" means registration by  
3391 a seller with the member states under the central registration  
3392 system.

3393 (j)~~(f)~~ "Sales tax" means the tax levied under chapter 212.

7-00467-09

20091134

3394        (k)~~(g)~~ "Seller" means any person making sales, leases, or  
3395 rentals of personal property or services.

3396        (l)~~(h)~~ "State" means any state of the United States and the  
3397 District of Columbia.

3398        (m)~~(i)~~ "Use tax" means the tax levied under chapter 212.

3399        (2) (a) The executive director of the department is  
3400 authorized to ~~shall~~ enter into an agreement ~~the Streamlined~~  
3401 ~~Sales and Use Tax Agreement~~ with one or more states to simplify  
3402 and modernize sales and use tax administration in order to  
3403 substantially reduce the burden of tax compliance for all  
3404 sellers and for all types of commerce. In furtherance of the  
3405 agreement, the executive director of the department or his or  
3406 her designee shall act jointly with other states that are  
3407 members of the agreement to establish standards for  
3408 certification of a certified service provider and certified  
3409 automated systems ~~system~~ and central registration systems  
3410 ~~establish performance standards for multistate sellers.~~

3411        (b) The executive director of the department or his or her  
3412 designee shall take other actions reasonably required to  
3413 administer this section. Other actions authorized by this  
3414 section include, but are not limited to, the adoption of rules  
3415 and the joint procurement, with other member states, of goods  
3416 and services in furtherance of the cooperative agreement.

3417        (c) The executive director of the department or his or her  
3418 designee may represent this state before the other states that  
3419 are signatories to the agreement.

3420        (d) The executive director of the department or his or her  
3421 designee is authorized to prepare and submit from time to time  
3422 such reports and certifications as may be determined necessary

7-00467-09

20091134

3423 according to the terms of an agreement and to enter into such  
3424 other agreements with the governing board, member states, and  
3425 service providers as are determined by the executive director to  
3426 facilitate the administration of the tax laws of this state.

3427 Section 20. Section 213.2562, Florida Statutes, is created  
3428 to read:

3429 213.2562 Approval of software to calculate tax.—The  
3430 department shall review software submitted to the governing  
3431 board for certification as a certified automated system. If the  
3432 software accurately reflects the taxability of product  
3433 categories included in the program, the department shall certify  
3434 the approval of the software to the governing board.

3435 Section 21. Section 213.2567, Florida Statutes, is created  
3436 to read:

3437 213.2567 Simplified Sales and Use Tax registration,  
3438 certification, liability, and audit.—

3439 (1) A seller that registers under the agreement agrees to  
3440 collect and remit sales and use taxes for all taxable sales into  
3441 the member states, including member states joining after the  
3442 seller's registration. Withdrawal or revocation of this state  
3443 does not relieve a seller of its responsibility to remit taxes  
3444 previously or subsequently collected on behalf of the state.

3445 (a) When registering, the seller may select a model 1,  
3446 model 2, or model 3 method of remittance or other method allowed  
3447 by state law to remit the taxes collected.

3448 (b) A seller may be registered by an agent. Such an  
3449 appointment must be in writing and submitted to a member state.

3450 (2) (a) A certified service provider is the agent of a model  
3451 1 seller with whom the certified service provider has contracted

7-00467-09

20091134\_\_

3452 for the collection and remittance of sales and use taxes. As the  
3453 model 1 seller's agent, the certified service provider is liable  
3454 for sales and use tax due this state on all sales transactions  
3455 it processes for the model 1 seller, except as set out in  
3456 paragraph (b).

3457 (b) A model 1 seller is not liable to the state for sales  
3458 or use tax due on transactions processed by the certified  
3459 service provider unless the model 1 seller has misrepresented  
3460 the type of items it sells or has committed fraud. In the  
3461 absence of probable cause to believe that the model 1 seller has  
3462 committed fraud or made a material misrepresentation, the model  
3463 1 seller is not subject to audit on the transactions processed  
3464 by the certified service provider. A model 1 seller is subject  
3465 to audit for transactions that have not been processed by the  
3466 certified service provider. The member states acting jointly may  
3467 perform a system check of the model 1 seller and review the  
3468 model 1 seller's procedures to determine if the certified  
3469 service provider's system is functioning properly and to  
3470 determine the extent to which the model 1 seller's transactions  
3471 are being processed by the certified service provider.

3472 (3) A model 2 seller that uses a certified automated system  
3473 remains responsible and is liable to this state for reporting  
3474 and remitting tax. However, a model 2 seller is not responsible  
3475 for errors in reliance on a certified automated system.

3476 (4) A model 3 seller is liable for the failure of the  
3477 proprietary system to meet the performance standard.

3478 (5) A person that provides a certified automated system is  
3479 not liable for errors contained in software that was approved by  
3480 the department and certified to the governing board. However,



7-00467-09

20091134\_\_

3481 such person:

3482 (a) Is responsible for the proper functioning of that  
3483 system;

3484 (b) Is liable to this state for underpayments of tax  
3485 attributable to errors in the functioning of the certified  
3486 automated system; and

3487 (c) Is liable for the misclassification of an item or  
3488 transaction that is not corrected within 10 days following the  
3489 receipt of notice from the department.

3490 (6) The executive director of the department or his or her  
3491 designee may certify a person as a certified service provider if  
3492 the person meets all of the following requirements:

3493 (a) Uses a certified automated system;

3494 (b) Integrates its certified automated system with the  
3495 system of a seller for whom the person collects tax so that the  
3496 tax due on a sale is determined at the time of the sale;

3497 (c) Agrees to remit the taxes it collects at the time and  
3498 in the manner specified by chapter 212;

3499 (d) Agrees to file returns on behalf of the sellers for  
3500 whom it collects tax;

3501 (e) Agrees to protect the privacy of tax information it  
3502 obtains in accordance with s. 213.053; and

3503 (f) Enters into a contract with the department and agrees  
3504 to comply with the terms of the contract.

3505 (7) The department shall review software submitted to the  
3506 governing board for certification as a certified automated  
3507 system. The executive director of the department shall certify  
3508 the approval of the software to the governing board if the  
3509 software:

7-00467-09

20091134\_\_

3510 (a) Determines the applicable state and local sales and use  
3511 tax rate for a transaction in accordance with s. 212.06(3) and  
3512 (4);

3513 (b) Determines whether an item is exempt from tax;

3514 (c) Determines the amount of tax to be remitted for each  
3515 taxpayer for a reporting period; and

3516 (d) Can generate reports and returns as required by the  
3517 governing board.

3518 (8) The department may by rule establish one or more sales  
3519 tax performance standards for model 3 sellers.

3520 (9) Disclosure of information necessary under this section  
3521 must be made according to a written agreement between the  
3522 executive director of the department or his or her designee and  
3523 the certified service provider. The certified service provider  
3524 is bound by the same requirements of confidentiality as the  
3525 department employees. Breach of confidentiality is a misdemeanor  
3526 of the first degree, punishable as provided in s. 775.082 or s.  
3527 775.083.

3528 Section 22. It is the intent of the Legislature to urge the  
3529 United States Congress to consider adequate protections for  
3530 small businesses engaging in both offline and online  
3531 transactions from added costs, administrative burdens, and  
3532 requirements imposed on intermediaries relating to the  
3533 collection and remittance of sales and use tax.

3534 Section 23. The executive director of the Department of  
3535 Revenue may adopt emergency rules to implement this act.  
3536 Notwithstanding any other law, the emergency rules shall remain  
3537 effective for 6 months after the date of adoption and may be  
3538 renewed during the pendency of procedures to adopt rules

7-00467-09

20091134

3539 addressing the subject of the emergency rules.

3540 Section 24. Paragraph (a) of subsection (5) of section  
3541 11.45, Florida Statutes, is amended to read:

3542 11.45 Definitions; duties; authorities; reports; rules.—

3543 (5) PETITION FOR AN AUDIT BY THE AUDITOR GENERAL.—

3544 (a) The Legislative Auditing Committee shall direct the  
3545 Auditor General to make an audit of any municipality whenever  
3546 petitioned to do so by at least 20 percent of the registered  
3547 electors in the last general election of that municipality  
3548 pursuant to this subsection. The supervisor of elections of the  
3549 county in which the municipality is located shall certify  
3550 whether or not the petition contains the signatures of at least  
3551 20 percent of the registered electors of the municipality. After  
3552 the completion of the audit, the Auditor General shall determine  
3553 whether the municipality has the fiscal resources necessary to  
3554 pay the cost of the audit. The municipality shall pay the cost  
3555 of the audit within 90 days after the Auditor General's  
3556 determination that the municipality has the available resources.  
3557 If the municipality fails to pay the cost of the audit, the  
3558 Department of Revenue shall, upon certification of the Auditor  
3559 General, withhold from that portion of the distribution pursuant  
3560 to s. 212.20(5)(d)6. ~~s. 212.20(6)(d)6.~~ which is distributable to  
3561 such municipality, a sum sufficient to pay the cost of the audit  
3562 and shall deposit that sum into the General Revenue Fund of the  
3563 state.

3564 Section 25. Subsection (6) of section 196.012, Florida  
3565 Statutes, is amended to read:

3566 196.012 Definitions.—For the purpose of this chapter, the  
3567 following terms are defined as follows, except where the context

7-00467-09

20091134\_\_

3568 clearly indicates otherwise:

3569       (6) Governmental, municipal, or public purpose or function  
3570 shall be deemed to be served or performed when the lessee under  
3571 any leasehold interest created in property of the United States,  
3572 the state or any of its political subdivisions, or any  
3573 municipality, agency, special district, authority, or other  
3574 public body corporate of the state is demonstrated to perform a  
3575 function or serve a governmental purpose which could properly be  
3576 performed or served by an appropriate governmental unit or which  
3577 is demonstrated to perform a function or serve a purpose which  
3578 would otherwise be a valid subject for the allocation of public  
3579 funds. For purposes of the preceding sentence, an activity  
3580 undertaken by a lessee which is permitted under the terms of its  
3581 lease of real property designated as an aviation area on an  
3582 airport layout plan which has been approved by the Federal  
3583 Aviation Administration and which real property is used for the  
3584 administration, operation, business offices and activities  
3585 related specifically thereto in connection with the conduct of  
3586 an aircraft full service fixed base operation which provides  
3587 goods and services to the general aviation public in the  
3588 promotion of air commerce shall be deemed an activity which  
3589 serves a governmental, municipal, or public purpose or function.  
3590 Any activity undertaken by a lessee which is permitted under the  
3591 terms of its lease of real property designated as a public  
3592 airport as defined in s. 332.004(14) by municipalities,  
3593 agencies, special districts, authorities, or other public bodies  
3594 corporate and public bodies politic of the state, a spaceport as  
3595 defined in s. 331.303, or which is located in a deepwater port  
3596 identified in s. 403.021(9)(b) and owned by one of the foregoing

7-00467-09

20091134

3597 governmental units, subject to a leasehold or other possessory  
3598 interest of a nongovernmental lessee that is deemed to perform  
3599 an aviation, airport, aerospace, maritime, or port purpose or  
3600 operation shall be deemed an activity that serves a  
3601 governmental, municipal, or public purpose. The use by a lessee,  
3602 licensee, or management company of real property or a portion  
3603 thereof as a convention center, visitor center, sports facility  
3604 with permanent seating, concert hall, arena, stadium, park, or  
3605 beach is deemed a use that serves a governmental, municipal, or  
3606 public purpose or function when access to the property is open  
3607 to the general public with or without a charge for admission. If  
3608 property deeded to a municipality by the United States is  
3609 subject to a requirement that the Federal Government, through a  
3610 schedule established by the Secretary of the Interior, determine  
3611 that the property is being maintained for public historic  
3612 preservation, park, or recreational purposes and if those  
3613 conditions are not met the property will revert back to the  
3614 Federal Government, then such property shall be deemed to serve  
3615 a municipal or public purpose. The term "governmental purpose"  
3616 also includes a direct use of property on federal lands in  
3617 connection with the Federal Government's Space Exploration  
3618 Program or spaceport activities as defined in s. 212.02 ~~s.~~  
3619 ~~212.02(22)~~. Real property and tangible personal property owned  
3620 by the Federal Government or Space Florida and used for defense  
3621 and space exploration purposes or which is put to a use in  
3622 support thereof shall be deemed to perform an essential national  
3623 governmental purpose and shall be exempt. "Owned by the lessee"  
3624 as used in this chapter does not include personal property,  
3625 buildings, or other real property improvements used for the

7-00467-09

20091134\_\_

3626 administration, operation, business offices and activities  
3627 related specifically thereto in connection with the conduct of  
3628 an aircraft full service fixed based operation which provides  
3629 goods and services to the general aviation public in the  
3630 promotion of air commerce provided that the real property is  
3631 designated as an aviation area on an airport layout plan  
3632 approved by the Federal Aviation Administration. For purposes of  
3633 determination of "ownership," buildings and other real property  
3634 improvements which will revert to the airport authority or other  
3635 governmental unit upon expiration of the term of the lease shall  
3636 be deemed "owned" by the governmental unit and not the lessee.  
3637 Providing two-way telecommunications services to the public for  
3638 hire by the use of a telecommunications facility, as defined in  
3639 s. 364.02 ~~s. 364.02(15)~~, and for which a certificate is required  
3640 under chapter 364 does not constitute an exempt use for purposes  
3641 of s. 196.199, unless the telecommunications services are  
3642 provided by the operator of a public-use airport, as defined in  
3643 s. 332.004, for the operator's provision of telecommunications  
3644 services for the airport or its tenants, concessionaires, or  
3645 licensees, or unless the telecommunications services are  
3646 provided by a public hospital.

3647 Section 26. Paragraph (b) of subsection (1) and paragraph  
3648 (b) of subsection (2) of section 202.18, Florida Statutes, are  
3649 amended to read:

3650 202.18 Allocation and disposition of tax proceeds.—The  
3651 proceeds of the communications services taxes remitted under  
3652 this chapter shall be treated as follows:

3653 (1) The proceeds of the taxes remitted under s.  
3654 202.12(1) (a) shall be divided as follows:

7-00467-09

20091134\_\_

3655 (b) The remaining portion shall be distributed according to  
3656 s. 212.20(5) ~~s. 212.20(6)~~.

3657 (2) The proceeds of the taxes remitted under s.  
3658 202.12(1)(b) shall be divided as follows:

3659 (b) Sixty-three percent of the remainder shall be allocated  
3660 to the state and distributed pursuant to s. 212.20(5) ~~s.~~  
3661 ~~212.20(6)~~, except that the proceeds allocated pursuant to s.  
3662 212.20(5)(d)3. ~~s. 212.20(6)(d)3.~~ shall be prorated to the  
3663 participating counties in the same proportion as that month's  
3664 collection of the taxes and fees imposed pursuant to chapter 212  
3665 and paragraph (1)(b).

3666 Section 27. Paragraphs (f), (g), (h), and (i) of subsection  
3667 (1) of section 203.01, Florida Statutes, are amended to read:

3668 203.01 Tax on gross receipts for utility and communications  
3669 services.—

3670 (1)

3671 (f) Any person who imports into this state electricity,  
3672 natural gas, or manufactured gas, or severs natural gas, for  
3673 that person's own use or consumption as a substitute for  
3674 purchasing utility, transportation, or delivery services taxable  
3675 under this chapter and who cannot demonstrate payment of the tax  
3676 imposed by this chapter must register with the Department of  
3677 Revenue and pay into the State Treasury each month an amount  
3678 equal to the cost price of such electricity, natural gas, or  
3679 manufactured gas times the rate set forth in paragraph (b),  
3680 reduced by the amount of any like tax lawfully imposed on and  
3681 paid by the person from whom the electricity, natural gas, or  
3682 manufactured gas was purchased or any person who provided  
3683 delivery service or transportation service in connection with

7-00467-09

20091134

3684 the electricity, natural gas, or manufactured gas. For purposes  
3685 of this paragraph, the term "cost price" has the meaning  
3686 ascribed in s. 212.02 ~~s. 212.02(4)~~. The methods of demonstrating  
3687 proof of payment and the amount of such reductions in tax shall  
3688 be made according to rules of the Department of Revenue.

3689 (g) Electricity produced by cogeneration or by small power  
3690 producers which is transmitted and distributed by a public  
3691 utility between two locations of a customer of the utility  
3692 pursuant to s. 366.051 is subject to the tax imposed by this  
3693 section. The tax shall be applied to the cost price of such  
3694 electricity as provided in s. 212.02 ~~s. 212.02(4)~~ and shall be  
3695 paid each month by the producer of such electricity.

3696 (h) Electricity produced by cogeneration or by small power  
3697 producers during the 12-month period ending June 30 of each year  
3698 which is in excess of nontaxable electricity produced during the  
3699 12-month period ending June 30, 1990, is subject to the tax  
3700 imposed by this section. The tax shall be applied to the cost  
3701 price of such electricity as provided in s. 212.02 ~~s. 212.02(4)~~  
3702 and shall be paid each month, beginning with the month in which  
3703 total production exceeds the production of nontaxable  
3704 electricity for the 12-month period ending June 30, 1990. For  
3705 purposes of this paragraph, "nontaxable electricity" means  
3706 electricity produced by cogeneration or by small power producers  
3707 which is not subject to tax under paragraph (g). Taxes paid  
3708 pursuant to paragraph (g) may be credited against taxes due  
3709 under this paragraph. Electricity generated as part of an  
3710 industrial manufacturing process which manufactures products  
3711 from phosphate rock, raw wood fiber, paper, citrus, or any  
3712 agricultural product shall not be subject to the tax imposed by



7-00467-09

20091134\_\_

3713 this paragraph. "Industrial manufacturing process" means the  
3714 entire process conducted at the location where the process takes  
3715 place.

3716 (i) Any person other than a cogenerator or small power  
3717 producer described in paragraph (h) who produces for his or her  
3718 own use electrical energy which is a substitute for electrical  
3719 energy produced by an electric utility as defined in s. 366.02  
3720 is subject to the tax imposed by this section. The tax shall be  
3721 applied to the cost price of such electrical energy as provided  
3722 in s. 212.02 ~~s. 212.02(4)~~ and shall be paid each month. The  
3723 provisions of this paragraph do not apply to any electrical  
3724 energy produced and used by an electric utility.

3725 Section 28. Paragraph (a) of subsection (1) of section  
3726 212.031, Florida Statutes, is amended to read:

3727 212.031 Tax on rental or license fee for use of real  
3728 property.—

3729 (1)(a) It is declared to be the legislative intent that  
3730 every person is exercising a taxable privilege who engages in  
3731 the business of renting, leasing, letting, or granting a license  
3732 for the use of any real property unless such property is:

3733 1. Assessed as agricultural property under s. 193.461.

3734 2. Used exclusively as dwelling units.

3735 3. Property subject to tax on parking, docking, or storage  
3736 spaces under s. 212.03(6).

3737 4. Recreational property or the common elements of a  
3738 condominium when subject to a lease between the developer or  
3739 owner thereof and the condominium association in its own right  
3740 or as agent for the owners of individual condominium units or  
3741 the owners of individual condominium units. However, only the

7-00467-09

20091134\_\_

3742 lease payments on such property shall be exempt from the tax  
3743 imposed by this chapter, and any other use made by the owner or  
3744 the condominium association shall be fully taxable under this  
3745 chapter.

3746 5. A public or private street or right-of-way and poles,  
3747 conduits, fixtures, and similar improvements located on such  
3748 streets or rights-of-way, occupied or used by a utility or  
3749 provider of communications services, as defined by s. 202.11,  
3750 for utility or communications or television purposes. For  
3751 purposes of this subparagraph, the term "utility" means any  
3752 person providing utility services as defined in s. 203.012. This  
3753 exception also applies to property, wherever located, on which  
3754 the following are placed: towers, antennas, cables, accessory  
3755 structures, or equipment, not including switching equipment,  
3756 used in the provision of mobile communications services as  
3757 defined in s. 202.11. For purposes of this chapter, towers used  
3758 in the provision of mobile communications services, as defined  
3759 in s. 202.11, are considered to be fixtures.

3760 6. A public street or road which is used for transportation  
3761 purposes.

3762 7. Property used at an airport exclusively for the purpose  
3763 of aircraft landing or aircraft taxiing or property used by an  
3764 airline for the purpose of loading or unloading passengers or  
3765 property onto or from aircraft or for fueling aircraft.

3766 8.a. Property used at a port authority, as defined in s.  
3767 315.02(2), exclusively for the purpose of oceangoing vessels or  
3768 tugs docking, or such vessels mooring on property used by a port  
3769 authority for the purpose of loading or unloading passengers or  
3770 cargo onto or from such a vessel, or property used at a port

7-00467-09

20091134\_\_

3771 authority for fueling such vessels, or to the extent that the  
3772 amount paid for the use of any property at the port is based on  
3773 the charge for the amount of tonnage actually imported or  
3774 exported through the port by a tenant.

3775         b. The amount charged for the use of any property at the  
3776 port in excess of the amount charged for tonnage actually  
3777 imported or exported shall remain subject to tax except as  
3778 provided in sub-subparagraph a.

3779         9. Property used as an integral part of the performance of  
3780 qualified production services. As used in this subparagraph, the  
3781 term "qualified production services" means any activity or  
3782 service performed directly in connection with the production of  
3783 a qualified motion picture, as defined in s. 212.06(1)(b), and  
3784 includes:

3785         a. Photography, sound and recording, casting, location  
3786 managing and scouting, shooting, creation of special and optical  
3787 effects, animation, adaptation (language, media, electronic, or  
3788 otherwise), technological modifications, computer graphics, set  
3789 and stage support (such as electricians, lighting designers and  
3790 operators, greensmen, prop managers and assistants, and grips),  
3791 wardrobe (design, preparation, and management), hair and makeup  
3792 (design, production, and application), performing (such as  
3793 acting, dancing, and playing), designing and executing stunts,  
3794 coaching, consulting, writing, scoring, composing,  
3795 choreographing, script supervising, directing, producing,  
3796 transmitting dailies, dubbing, mixing, editing, cutting,  
3797 looping, printing, processing, duplicating, storing, and  
3798 distributing;

3799         b. The design, planning, engineering, construction,

7-00467-09

20091134\_\_

3800 alteration, repair, and maintenance of real or personal property  
3801 including stages, sets, props, models, paintings, and facilities  
3802 principally required for the performance of those services  
3803 listed in sub-subparagraph a.; and

3804 c. Property management services directly related to  
3805 property used in connection with the services described in sub-  
3806 subparagraphs a. and b.

3807

3808 This exemption will inure to the taxpayer upon presentation of  
3809 the certificate of exemption issued to the taxpayer under the  
3810 provisions of s. 288.1258.

3811 10. Leased, subleased, licensed, or rented to a person  
3812 providing food and drink concessionaire services within the  
3813 premises of a convention hall, exhibition hall, auditorium,  
3814 stadium, theater, arena, civic center, performing arts center,  
3815 publicly owned recreational facility, or any business operated  
3816 under a permit issued pursuant to chapter 550. A person  
3817 providing retail concessionaire services involving the sale of  
3818 food and drink or other tangible personal property within the  
3819 premises of an airport shall be subject to tax on the rental of  
3820 real property used for that purpose, but shall not be subject to  
3821 the tax on any license to use the property. For purposes of this  
3822 subparagraph, the term "sale" shall not include the leasing of  
3823 tangible personal property.

3824 11. Property occupied pursuant to an instrument calling for  
3825 payments which the department has declared, in a Technical  
3826 Assistance Advisement issued on or before March 15, 1993, to be  
3827 nontaxable pursuant to rule 12A-1.070(19)(c), Florida  
3828 Administrative Code; provided that this subparagraph shall only

7-00467-09

20091134

3829 apply to property occupied by the same person before and after  
3830 the execution of the subject instrument and only to those  
3831 payments made pursuant to such instrument, exclusive of renewals  
3832 and extensions thereof occurring after March 15, 1993.

3833 12. Rented, leased, subleased, or licensed to a  
3834 concessionaire by a convention hall, exhibition hall,  
3835 auditorium, stadium, theater, arena, civic center, performing  
3836 arts center, or publicly owned recreational facility, during an  
3837 event at the facility, to be used by the concessionaire to sell  
3838 souvenirs, novelties, or other event-related products. This  
3839 subparagraph applies only to that portion of the rental, lease,  
3840 or license payment which is based on a percentage of sales and  
3841 not based on a fixed price. This subparagraph is repealed July  
3842 1, 2009.

3843 13. Property used or occupied predominantly for space  
3844 flight business purposes. As used in this subparagraph, "space  
3845 flight business" means the manufacturing, processing, or  
3846 assembly of a space facility, space propulsion system, space  
3847 vehicle, satellite, or station of any kind possessing the  
3848 capacity for space flight, as defined by s. 212.02 ~~s.~~  
3849 ~~212.02(23)~~, or components thereof, and also means the following  
3850 activities supporting space flight: vehicle launch activities,  
3851 flight operations, ground control or ground support, and all  
3852 administrative activities directly related thereto. Property  
3853 shall be deemed to be used or occupied predominantly for space  
3854 flight business purposes if more than 50 percent of the  
3855 property, or improvements thereon, is used for one or more space  
3856 flight business purposes. Possession by a landlord, lessor, or  
3857 licensor of a signed written statement from the tenant, lessee,

7-00467-09

20091134

3858 or licensee claiming the exemption shall relieve the landlord,  
 3859 lessor, or licensor from the responsibility of collecting the  
 3860 tax, and the department shall look solely to the tenant, lessee,  
 3861 or licensee for recovery of such tax if it determines that the  
 3862 exemption was not applicable.

3863 Section 29. Paragraph (c) of subsection (2) and paragraph  
 3864 (c) of subsection (3) of section 212.055, Florida Statutes, are  
 3865 amended to read:

3866 212.055 Discretionary sales surtaxes; legislative intent;  
 3867 authorization and use of proceeds.—It is the legislative intent  
 3868 that any authorization for imposition of a discretionary sales  
 3869 surtax shall be published in the Florida Statutes as a  
 3870 subsection of this section, irrespective of the duration of the  
 3871 levy. Each enactment shall specify the types of counties  
 3872 authorized to levy; the rate or rates which may be imposed; the  
 3873 maximum length of time the surtax may be imposed, if any; the  
 3874 procedure which must be followed to secure voter approval, if  
 3875 required; the purpose for which the proceeds may be expended;  
 3876 and such other requirements as the Legislature may provide.  
 3877 Taxable transactions and administrative procedures shall be as  
 3878 provided in s. 212.054.

3879 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

3880 (c) Pursuant to s. 212.054 ~~s. 212.054(4)~~, the proceeds of  
 3881 the surtax levied under this subsection shall be distributed to  
 3882 the county and the municipalities within such county in which  
 3883 the surtax was collected, according to:

3884 1. An interlocal agreement between the county governing  
 3885 authority and the governing bodies of the municipalities  
 3886 representing a majority of the county's municipal population,

7-00467-09

20091134

3887 which agreement may include a school district with the consent  
3888 of the county governing authority and the governing bodies of  
3889 the municipalities representing a majority of the county's  
3890 municipal population; or

3891 2. If there is no interlocal agreement, according to the  
3892 formula provided in s. 218.62.

3893  
3894 Any change in the distribution formula must take effect on the  
3895 first day of any month that begins at least 60 days after  
3896 written notification of that change has been made to the  
3897 department.

3898 (3) SMALL COUNTY SURTAX.—

3899 (c) Pursuant to s. 212.054 ~~s. 212.054(4)~~, the proceeds of  
3900 the surtax levied under this subsection shall be distributed to  
3901 the county and the municipalities within the county in which the  
3902 surtax was collected, according to:

3903 1. An interlocal agreement between the county governing  
3904 authority and the governing bodies of the municipalities  
3905 representing a majority of the county's municipal population,  
3906 which agreement may include a school district with the consent  
3907 of the county governing authority and the governing bodies of  
3908 the municipalities representing a majority of the county's  
3909 municipal population; or

3910 2. If there is no interlocal agreement, according to the  
3911 formula provided in s. 218.62.

3912  
3913 Any change in the distribution formula shall take effect on the  
3914 first day of any month that begins at least 60 days after  
3915 written notification of that change has been made to the

7-00467-09

20091134\_\_

3916 department.

3917 Section 30. Subsection (3) of section 212.13, Florida  
3918 Statutes, is amended to read:

3919 212.13 Records required to be kept; power to inspect; audit  
3920 procedure.—

3921 (3) For the purpose of enforcement of this chapter, every  
3922 manufacturer and seller of tangible personal property or  
3923 services licensed within this state is required to permit the  
3924 department to examine his or her books and records at all  
3925 reasonable hours, and, upon his or her refusal, the department  
3926 may require him or her to permit such examination by resort to  
3927 the circuit courts of this state, subject however to the right  
3928 of removal of the cause to the judicial circuit wherein such  
3929 person's business is located or wherein such person's books and  
3930 records are kept, provided further that such person's books and  
3931 records are kept within the state. When the dealer has made an  
3932 allocation or attribution pursuant to the definition of sales  
3933 price in s. 212.02 ~~s. 212.02(16)~~, the department may prescribe  
3934 by rule the books and records that must be made available during  
3935 an audit of the dealer's books and records and examples of  
3936 methods for determining the reasonableness thereof. Books and  
3937 records kept in the regular course of business include, but are  
3938 not limited to, general ledgers, price lists, cost records,  
3939 customer billings, billing system reports, tariffs, and other  
3940 regulatory filings and rules of regulatory authorities. Such  
3941 record may be required to be made available to the department in  
3942 an electronic format when so kept by the dealer. The dealer may  
3943 support the allocation of charges with books and records kept in  
3944 the regular course of business covering the dealer's entire



7-00467-09

20091134

3945 service area, including territories outside this state. During  
3946 an audit, the department may reasonably require production of  
3947 any additional books and records found necessary to assist in  
3948 its determination.

3949 Section 31. Subsection (1) of section 212.15, Florida  
3950 Statutes, is amended to read:

3951 212.15 Taxes declared state funds; penalties for failure to  
3952 remit taxes; due and delinquent dates; judicial review.—

3953 (1) The taxes imposed by this chapter shall, ~~except as~~  
3954 ~~provided in s. 212.06(5)(a)2.e.,~~ become state funds at the  
3955 moment of collection and shall for each month be due to the  
3956 department on the first day of the succeeding month and be  
3957 delinquent on the 21st day of such month. All returns postmarked  
3958 after the 20th day of such month are delinquent.

3959 Section 32. Subsection (3) of section 213.015, Florida  
3960 Statutes, is amended to read:

3961 213.015 Taxpayer rights.—There is created a Florida  
3962 Taxpayer's Bill of Rights to guarantee that the rights, privacy,  
3963 and property of Florida taxpayers are adequately safeguarded and  
3964 protected during tax assessment, collection, and enforcement  
3965 processes administered under the revenue laws of this state. The  
3966 Taxpayer's Bill of Rights compiles, in one document, brief but  
3967 comprehensive statements which explain, in simple, nontechnical  
3968 terms, the rights and obligations of the Department of Revenue  
3969 and taxpayers. Section 192.0105 provides additional rights  
3970 afforded to payors of property taxes and assessments. The rights  
3971 afforded taxpayers to ensure that their privacy and property are  
3972 safeguarded and protected during tax assessment and collection  
3973 are available only insofar as they are implemented in other

7-00467-09

20091134

3974 parts of the Florida Statutes or rules of the Department of  
 3975 Revenue. The rights so guaranteed Florida taxpayers in the  
 3976 Florida Statutes and the departmental rules are:

3977 (3) The right to be represented or advised by counsel or  
 3978 other qualified representatives at any time in administrative  
 3979 interactions with the department, the right to procedural  
 3980 safeguards with respect to recording of interviews during tax  
 3981 determination or collection processes conducted by the  
 3982 department, the right to be treated in a professional manner by  
 3983 department personnel, and the right to have audits, inspections  
 3984 of records, and interviews conducted at a reasonable time and  
 3985 place except in criminal and internal investigations (see ss.  
 3986 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3),  
 3987 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (11)  
 3988 ~~212.12(5)(a), (6)(a), and (13)~~, 212.13(5), 213.05, 213.21(1)(a)  
 3989 and (c), and 213.34).

3990 Section 33. Subsection (3) of section 218.245, Florida  
 3991 Statutes, is amended to read:

3992 218.245 Revenue sharing; apportionment.—

3993 (3) Revenues attributed to the increase in distribution to  
 3994 the Revenue Sharing Trust Fund for Municipalities pursuant to s.  
 3995 212.20(5)(d)5. ~~s. 212.20(6)(d)6.~~ from 1.0715 percent to 1.3409  
 3996 percent provided in chapter 2003-402, Laws of Florida, shall be  
 3997 distributed to each eligible municipality and any unit of local  
 3998 government which is consolidated as provided by s. 9, Art. VIII  
 3999 of the State Constitution of 1885, as preserved by s. 6(e), Art.  
 4000 VIII, 1968 revised constitution, as follows: each eligible local  
 4001 government's allocation shall be based on the amount it received  
 4002 from the half-cent sales tax under s. 218.61 in the prior state

7-00467-09

20091134\_\_

4003 fiscal year divided by the total receipts under s. 218.61 in the  
4004 prior state fiscal year for all eligible local governments;  
4005 provided, however, for the purpose of calculating this  
4006 distribution, the amount received from the half-cent sales tax  
4007 under s. 218.61 in the prior state fiscal year by a unit of  
4008 local government which is consolidated as provided by s. 9, Art.  
4009 VIII of the State Constitution of 1885, as amended, and as  
4010 preserved by s. 6(e), Art. VIII, of the Constitution as revised  
4011 in 1968, shall be reduced by 50 percent for such local  
4012 government and for the total receipts. For eligible  
4013 municipalities that began participating in the allocation of  
4014 half-cent sales tax under s. 218.61 in the previous state fiscal  
4015 year, their annual receipts shall be calculated by dividing  
4016 their actual receipts by the number of months they participated,  
4017 and the result multiplied by 12.

4018 Section 34. Subsections (5), (6), and (7) of section  
4019 218.65, Florida Statutes, are amended to read:

4020 218.65 Emergency distribution.—

4021 (5) At the beginning of each fiscal year, the Department of  
4022 Revenue shall calculate a base allocation for each eligible  
4023 county equal to the difference between the current per capita  
4024 limitation times the county's population, minus prior year  
4025 ordinary distributions to the county pursuant to ss.

4026 212.20(5)(d)3. ~~212.20(6)(d)3.~~, 218.61, and 218.62. If moneys  
4027 deposited into the Local Government Half-cent Sales Tax Clearing  
4028 Trust Fund pursuant to s. 212.20(5)(d)4. ~~s. 212.20(6)(d)4.~~,  
4029 excluding moneys appropriated for supplemental distributions  
4030 pursuant to subsection (8), for the current year are less than  
4031 or equal to the sum of the base allocations, each eligible

7-00467-09

20091134\_\_

4032 county shall receive a share of the appropriated amount  
4033 proportional to its base allocation. If the deposited amount  
4034 exceeds the sum of the base allocations, each county shall  
4035 receive its base allocation, and the excess appropriated amount,  
4036 less any amounts distributed under subsection (6), shall be  
4037 distributed equally on a per capita basis among the eligible  
4038 counties.

4039 (6) If moneys deposited in the Local Government Half-cent  
4040 Sales Tax Clearing Trust Fund pursuant to s. 212.20(5)(d)4. ~~s.~~  
4041 ~~212.20(6)(d)4.~~ exceed the amount necessary to provide the base  
4042 allocation to each eligible county, the moneys in the trust fund  
4043 may be used to provide a transitional distribution, as specified  
4044 in this subsection, to certain counties whose population has  
4045 increased. The transitional distribution shall be made available  
4046 to each county that qualified for a distribution under  
4047 subsection (2) in the prior year but does not, because of the  
4048 requirements of paragraph (2)(a), qualify for a distribution in  
4049 the current year. Beginning on July 1 of the year following the  
4050 year in which the county no longer qualifies for a distribution  
4051 under subsection (2), the county shall receive two-thirds of the  
4052 amount received in the prior year, and beginning July 1 of the  
4053 second year following the year in which the county no longer  
4054 qualifies for a distribution under subsection (2), the county  
4055 shall receive one-third of the amount it received in the last  
4056 year it qualified for the distribution under subsection (2). If  
4057 insufficient moneys are available in the Local Government Half-  
4058 cent Sales Tax Clearing Trust Fund to fully provide such a  
4059 transitional distribution to each county that meets the  
4060 eligibility criteria in this section, each eligible county shall

7-00467-09

20091134\_\_

4061 receive a share of the available moneys proportional to the  
4062 amount it would have received had moneys been sufficient to  
4063 fully provide such a transitional distribution to each eligible  
4064 county.

4065 (7) There is hereby annually appropriated from the Local  
4066 Government Half-cent Sales Tax Clearing Trust Fund the  
4067 distribution provided in s. 212.20(5)(d)4. ~~s. 212.20(6)(d)4.~~ to  
4068 be used for emergency and supplemental distributions pursuant to  
4069 this section.

4070 Section 35. Paragraph (s) of subsection (1) of section  
4071 288.1045, Florida Statutes, is amended to read:

4072 288.1045 Qualified defense contractor and space flight  
4073 business tax refund program.—

4074 (1) DEFINITIONS.—As used in this section:

4075 (s) "Space flight business" means the manufacturing,  
4076 processing, or assembly of space flight technology products,  
4077 space flight facilities, space flight propulsion systems, or  
4078 space vehicles, satellites, or stations of any kind possessing  
4079 the capability for space flight, as defined by s. 212.02 ~~s.~~  
4080 ~~212.02(23)~~, or components thereof, and includes, in supporting  
4081 space flight, vehicle launch activities, flight operations,  
4082 ground control or ground support, and all administrative  
4083 activities directly related to such activities. The term does  
4084 not include products that are designed or manufactured for  
4085 general commercial aviation or other uses even if those products  
4086 may also serve an incidental use in space flight applications.

4087 Section 36. Subsection (6) of section 288.1169, Florida  
4088 Statutes, is amended to read:

4089 288.1169 International Game Fish Association World Center

7-00467-09

20091134

4090 facility.-

4091 (6) The Department of Commerce must recertify every 10  
4092 years that the facility is open, that the International Game  
4093 Fish Association World Center continues to be the only  
4094 international administrative headquarters, fishing museum, and  
4095 Hall of Fame in the United States recognized by the  
4096 International Game Fish Association, and that the project is  
4097 meeting the minimum projections for attendance or sales tax  
4098 revenues as required at the time of original certification. If  
4099 the facility is not recertified during this 10-year review as  
4100 meeting the minimum projections, then funding will be abated  
4101 until certification criteria are met. If the project fails to  
4102 generate \$1 million of annual revenues pursuant to paragraph  
4103 (2) (e), the distribution of revenues pursuant to  
4104 212.20 (5) (d) 7.d. ~~s. 212.20 (6) (d) 7.d.~~ shall be reduced to an  
4105 amount equal to \$83,333 multiplied by a fraction, the numerator  
4106 of which is the actual revenues generated and the denominator of  
4107 which is \$1 million. Such reduction shall remain in effect until  
4108 revenues generated by the project in a 12-month period equal or  
4109 exceed \$1 million.

4110 Section 37. Subsection (8) of section 551.102, Florida  
4111 Statutes, is amended to read:

4112 551.102 Definitions.—As used in this chapter, the term:

4113 (8) "Slot machine" means any mechanical or electrical  
4114 contrivance, terminal that may or may not be capable of  
4115 downloading slot games from a central server system, machine, or  
4116 other device that, upon insertion of a coin, bill, ticket,  
4117 token, or similar object or upon payment of any consideration  
4118 whatsoever, including the use of any electronic payment system

7-00467-09

20091134

4119 except a credit card or debit card, is available to play or  
4120 operate, the play or operation of which, whether by reason of  
4121 skill or application of the element of chance or both, may  
4122 deliver or entitle the person or persons playing or operating  
4123 the contrivance, terminal, machine, or other device to receive  
4124 cash, billets, tickets, tokens, or electronic credits to be  
4125 exchanged for cash or to receive merchandise or anything of  
4126 value whatsoever, whether the payoff is made automatically from  
4127 the machine or manually. The term includes associated equipment  
4128 necessary to conduct the operation of the contrivance, terminal,  
4129 machine, or other device. Slot machines may use spinning reels,  
4130 video displays, or both. A slot machine is not a "coin-operated  
4131 amusement machine" as defined in s. 212.02 ~~s. 212.02(24)~~ or an  
4132 amusement game or machine as described in s. 849.161, and slot  
4133 machines are not subject to the tax imposed by s. 212.05(1)(h).

4134 Section 38. Paragraph (a) of subsection (1) of section  
4135 790.0655, Florida Statutes, is amended to read:

4136 790.0655 Purchase and delivery of handguns; mandatory  
4137 waiting period; exceptions; penalties.-

4138 (1) (a) There shall be a mandatory 3-day waiting period,  
4139 which shall be 3 days, excluding weekends and legal holidays,  
4140 between the purchase and the delivery at retail of any handgun.  
4141 "Purchase" means the transfer of money or other valuable  
4142 consideration to the retailer. "Handgun" means a firearm capable  
4143 of being carried and used by one hand, such as a pistol or  
4144 revolver. "Retailer" means and includes every person engaged in  
4145 the business of making sales at retail or for distribution, or  
4146 use, or consumption, or storage to be used or consumed in this  
4147 state, as defined in s. 212.02 ~~s. 212.02(13)~~.

7-00467-09

20091134\_\_

4148           Section 39. Section 212.0596, Florida Statutes, is  
4149 repealed.

4150           Section 40. This act shall take effect January 1, 2010.