

1 A bill to be entitled
2 An act relating to the Streamlined Sales and Use Tax
3 Agreement; amending s. 212.02, F.S.; revising definitions;
4 amending s. 212.03, F.S.; specifying certain facilities
5 that are exempt from the transient rentals tax; amending
6 ss. 212.0306, 212.04, and 212.0506, F.S.; deleting the
7 application of brackets for the calculation of sales and
8 use taxes; amending s. 212.05, F.S.; deleting criteria
9 establishing circumstances under which taxes on the lease
10 or rental of a motor vehicle are due; revising criteria
11 establishing circumstances under which taxes on the sale
12 of a prepaid calling arrangement are due; deleting the
13 application of brackets for the calculation of sales and
14 use taxes; amending s. 212.054, F.S.; limiting the \$5,000
15 cap on discretionary sales surtax to the sale of motor
16 vehicles, aircraft, boats, manufactured homes, modular
17 homes, and mobile homes; specifying the time at which
18 changes in surtaxes may take effect; providing criteria to
19 determine the situs of certain sales; providing for
20 databases to identify taxing jurisdictions; providing
21 criteria to hold purchasers harmless for failure to pay
22 the correct amount of tax; holding sellers harmless for
23 failing to collect a tax at a new rate under certain
24 circumstances; amending s. 212.06, F.S.; defining terms;
25 deleting provisions relating to mail-order sales to
26 conform; requiring purchasers of direct mail to use
27 direct-mail forms; providing criteria for determining the
28 location of transactions involving tangible personal

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

57 | changes; creating s. 213.215, F.S.; providing amnesty for
 58 | uncollected or unpaid sales and use taxes for sellers who
 59 | register under the Streamlined Sales and Use Tax
 60 | Agreement; providing exceptions to the amnesty; amending
 61 | s. 213.256, F.S.; providing and revising definitions;
 62 | providing for entry into agreements with other states to
 63 | simplify and facilitate compliance with sales tax laws;
 64 | providing for certification of compliance with agreements;
 65 | creating s. 213.2562, F.S.; providing for the department
 66 | to review software submitted to the governing board for
 67 | certification as a certified automated system; creating s.
 68 | 213.2567, F.S.; providing for the registration of sellers,
 69 | the certification of a person as a certified service
 70 | provider, and the certification of a software program as a
 71 | certified automated system by the governing board under
 72 | the Streamlined Sales and Use Tax Agreement; declaring
 73 | legislative intent; providing for the adoption of
 74 | emergency rules; amending ss. 11.45, 196.012, 202.18,
 75 | 203.01, 212.031, 212.052, 212.055, 212.13, 212.15,
 76 | 213.015, 218.245, 218.65, 288.1045, 288.1169, 551.102, and
 77 | 790.0655, F.S.; conforming cross-references; repealing s.
 78 | 212.0596, F.S., relating to provisions pertaining to the
 79 | taxation of mail-order sales; providing an effective date.

80 |
 81 | Be It Enacted by the Legislature of the State of Florida:

82 |
 83 | Section 1. Section 212.02, Florida Statutes, is amended to
 84 | read:

85 212.02 Definitions.--The following terms and phrases when
 86 used in this chapter have the meanings ascribed to them in this
 87 section, except where the context clearly indicates a different
 88 meaning. The term:

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

107 (2) "Agricultural commodity" means horticultural,
 108 aquacultural, poultry and farm products, and livestock and
 109 livestock products.

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

113 other practices necessary to accomplish production through the
114 harvest phase, which includes aquaculture, horticulture,
115 floriculture, viticulture, forestry, dairy, livestock, poultry,
116 bees, and all other forms of farm products and farm production.

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

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

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

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

134 b. A product provided free of charge with the required
135 purchase of another product. A product is provided free of
136 charge if the sales price of the product purchased does not vary
137 depending on the inclusion of the product provided free of
138 charge.

139 2. "One non-itemized price" does not include a price that
140 is separately identified by product on binding sales or other

141 supporting sales-related documentation made available to the
142 customer in paper or electronic form, including, but not limited
143 to, an invoice, bill of sale, receipt, contract, service
144 agreement, lease agreement, periodic notice of rates and
145 services, rate card, or price list.

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

149 a. Sellers shall use the purchase price or sales price of
150 the products to determine if the taxable products are de
151 minimis. Sellers may not use a combination of the purchase price
152 and sales price of the products to determine if the taxable
153 products are de minimis.

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

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

159 a. The retail sale of tangible personal property and a
160 service in which the tangible personal property is essential to
161 the use of the service, is provided exclusively in connection
162 with the service, and the true object of the transaction is the
163 service;

164 b. The retail sale of services in which one service is
165 provided which is essential to the use or receipt of a second
166 service and the first service is provided exclusively in
167 connection with the second service and the true object of the
168 transaction is the second service;

169 c. A transaction that includes taxable products and
170 nontaxable products and the purchase price or sales price of the
171 taxable products is de minimis; or

172 d. The retail sale of exempt tangible personal property
173 and taxable personal property in which:

174 (I) The transaction includes food and food ingredients,
175 drugs, durable medical equipment, mobility-enhancing equipment,
176 over-the-counter drugs, prosthetic devices, or medical supplies;
177 and

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

184 2.a. Sellers shall use the purchase price or sales price
185 of the products to determine if the taxable products are de
186 minimis. Sellers may not use a combination of the purchase price
187 and sales price of the products to determine if the taxable
188 products are de minimis.

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

191 (5)-(2) "Business" means any activity engaged in by any
192 person, or caused to be engaged in by him or her, with the
193 object of private or public gain, benefit, or advantage, either
194 direct or indirect. Except for the sales of any aircraft, boat,
195 mobile home, or motor vehicle, the term "business" shall not be
196 construed in this chapter to include occasional or isolated

197 sales or transactions involving tangible personal property or
198 services by a person who does not hold himself or herself out as
199 engaged in business or sales of unclaimed tangible personal
200 property under s. 717.122, but includes other charges for the
201 sale or rental of tangible personal property, sales of services
202 taxable under this chapter, sales of or charges of admission,
203 communication services, all rentals and leases of living
204 quarters, other than low-rent housing operated under chapter
205 421, sleeping or housekeeping accommodations in hotels,
206 apartment houses, roominghouses, tourist or trailer camps, and
207 all rentals of or licenses in real property, other than low-rent
208 housing operated under chapter 421, all leases or rentals of or
209 licenses in parking lots or garages for motor vehicles, docking
210 or storage spaces for boats in boat docks or marinas as defined
211 in this chapter and made subject to a tax imposed by this
212 chapter. The term "business" shall not be construed in this
213 chapter to include the leasing, subleasing, or licensing of real
214 property by one corporation to another if all of the stock of
215 both such corporations is owned, directly or through one or more
216 wholly owned subsidiaries, by a common parent corporation; the
217 property was in use prior to July 1, 1989, title to the property
218 was transferred after July 1, 1988, and before July 1, 1989,
219 between members of an affiliated group, as defined in s. 1504(a)
220 of the Internal Revenue Code of 1986, which group included both
221 such corporations and there is no substantial change in the use
222 of the property following the transfer of title; the leasing,
223 subleasing, or licensing of the property was required by an
224 unrelated lender as a condition of providing financing to one or

225 more members of the affiliated group; and the corporation to
 226 which the property is leased, subleased, or licensed had sales
 227 subject to the tax imposed by this chapter of not less than \$667
 228 million during the most recent 12-month period ended June 30.
 229 Any tax on such sales, charges, rentals, admissions, or other
 230 transactions made subject to the tax imposed by this chapter
 231 shall be collected by the state, county, municipality, any
 232 political subdivision, agency, bureau, or department, or other
 233 state or local governmental instrumentality in the same manner
 234 as other dealers, unless specifically exempted by this chapter.

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

237 ~~(7)-(3) The terms "Cigarettes," "tobacco," or "tobacco~~
 238 ~~products" referred to in this chapter include all such products~~
 239 ~~as are defined or may be hereafter defined by the laws of the~~
 240 ~~state.~~

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

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

251 (10) "Computer software" means a set of coded instructions
 252 designed to cause a computer or automatic data processing

253 equipment to perform a task.

254 (11)-(4) "Cost price" means the actual cost of articles of
 255 tangible personal property without any deductions therefrom on
 256 account of the cost of materials used, labor or service costs,
 257 transportation charges, or any expenses whatsoever.

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

269 (a) A percentage based on the total sales price of the
 270 taxable property compared to the sales price of all property in
 271 the shipment; or

272 (b) A percentage based on the total weight of the taxable
 273 property compared to the total weight of all property in the
 274 shipment.

275 (13)-(5) ~~The term~~ "Department" means the Department of
 276 Revenue.

277 (14) "Diesel fuel" means any liquid product, gas product,
 278 or any combination thereof, which is used in an internal
 279 combustion engine or motor to propel any form of vehicle,
 280 machine, or mechanical contrivance. The term includes, but is

281 not limited to, all forms of fuel commonly or commercially known
282 or sold as diesel fuel or kerosene. However, the term does not
283 include butane gas, propane gas, or any other form of liquefied
284 petroleum gas or compressed natural gas.

285 (15) "Direct mail" means printed material delivered or
286 distributed by the United States Postal Service or other
287 delivery service to a mass audience or to addressees on a
288 mailing list provided by the purchaser or at the direction of
289 the purchaser when the cost of the items are not billed directly
290 to the recipients. The term includes tangible personal property
291 supplied directly or indirectly by the purchaser to the direct
292 mail seller for inclusion in the package containing the printed
293 material. The term does not include multiple items of printed
294 material delivered to a single address.

295 (16) "Electronic" means relating to technology having
296 electrical, digital, magnetic, wireless, optical,
297 electromagnetic, or similar capabilities.

298 (17)~~(6)~~ "Enterprise zone" means an area of the state
299 designated pursuant to s. 290.0065. This subsection expires on
300 the date specified in s. 290.016 for the expiration of the
301 Florida Enterprise Zone Act.

302 (18)~~(7)~~ "Factory-built building" means a structure
303 manufactured in a manufacturing facility for installation or
304 erection as a finished building; "factory-built building"
305 includes, but is not limited to, residential, commercial,
306 institutional, storage, and industrial structures.

307 (19) "Farmer" means a person who is directly engaged in
308 the business of producing crops, livestock, or other

309 agricultural commodities. The term includes, but is not limited
 310 to, horse breeders, nurserymen, dairy farmers, poultry farmers,
 311 cattle ranchers, apiarists, and persons raising fish.

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

315 (21)-(8) "In this state" or "in the state" means within the
 316 state boundaries of Florida as defined in s. 1, Art. II of the
 317 State Constitution and includes all territory within these
 318 limits owned by or ceded to the United States.

319 (22)-(9) ~~The term~~ "Intoxicating beverages" or "alcoholic
 320 beverages" referred to in this chapter includes all such
 321 beverages as are so defined or may be hereafter defined by the
 322 laws of the state.

323 (23)-(10) "Lease," "let," or "rental" means leasing or
 324 renting of living quarters or sleeping or housekeeping
 325 accommodations in hotels, apartment houses, roominghouses,
 326 tourist or trailer camps and real property, the same being
 327 defined as follows:

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

337 the purpose of this chapter, be deemed a hotel.

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

343 (c) Every house, boat, vehicle, motor court, trailer
 344 court, or other structure or any place or location kept, used,
 345 maintained, or advertised as, or held out to the public to be, a
 346 place where living quarters or sleeping or housekeeping
 347 accommodations are supplied for pay to transient or permanent
 348 guests or tenants, whether in one or adjoining buildings, shall
 349 for the purpose of this chapter be deemed a roominghouse.

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

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

360 (f) A "trailer camp," "mobile home park," or "recreational
 361 vehicle park" is a place where space is offered, with or without
 362 service facilities, by any persons or municipality to the public
 363 for the parking and accommodation of two or more automobile
 364 trailers, mobile homes, or recreational vehicles which are used

365 for lodging, for either a direct money consideration or an
366 indirect benefit to the lessor or owner in connection with a
367 related business, such space being hereby defined as living
368 quarters, and the rental price thereof shall include all service
369 charges paid to the lessor.

370 (g)1. "Lease," "let," or "rental" also means any transfer
371 of possession or control of tangible personal property for a
372 fixed or indeterminate term for consideration. A clause for a
373 future option to purchase or to extend an agreement does not
374 preclude an agreement from being a lease or rental. This
375 definition shall be used for purposes of the sales and use tax
376 regardless of whether a transaction is characterized as a lease
377 or rental under generally accepted accounting principles, the
378 Internal Revenue Code, the Uniform Commercial Code, or any other
379 provisions of federal, state, or local law. These terms include
380 agreements covering motor vehicles and trailers if the amount of
381 consideration may be increased or decreased by reference to the
382 amount realized upon sale or disposition of the property as
383 provided in 26 U.S.C. s. 7701(h) (1). These terms do not include:

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

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

392 c. The provision of tangible personal property along with

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

402 2. ~~The term~~ "Lease," "let," or "rental" does not include
 403 ~~mean~~ hourly, daily, or mileage charges, to the extent that such
 404 charges are subject to the jurisdiction of the United States
 405 Interstate Commerce Commission, if ~~when~~ such charges are paid by
 406 reason of the presence of railroad cars owned by another on the
 407 tracks of the taxpayer, or charges made pursuant to car service
 408 agreements.

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

420 (h) "Real property" means the surface land, improvements

421 thereto, and fixtures, and is synonymous with "realty" and "real
422 estate."

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

427 (j) Privilege, franchise, or concession fees, or fees for
428 a license to do business, paid to an airport are not payments
429 for leasing, letting, renting, or granting a license for the use
430 of real property.

431 (24) "Livestock" includes all animals of the equine,
432 bovine, or swine class, including goats, sheep, mules, horses,
433 hogs, cattle, ostriches, and other grazing animals raised for
434 commercial purposes. The term also includes fish raised for
435 commercial purposes.

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

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

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

442 ~~(26)-(11)~~ "Motor fuel" means and includes what is commonly
443 known and sold as gasoline and fuels containing a mixture of
444 gasoline and other products.

445 ~~(27)-(12)~~ "Person" includes any individual, firm,
446 copartnership, joint adventure, association, corporation,
447 estate, trust, business trust, receiver, syndicate, or other
448 group or combination acting as a unit and also includes any

449 political subdivision, municipality, state agency, bureau, or
450 department and includes the plural as well as the singular
451 number.

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

457 (29) "Prewritten computer software" means computer
458 software, including prewritten upgrades, which is not designed
459 and developed by the author or other creator to the
460 specifications of a specific purchaser. The combining of two or
461 more prewritten computer software programs or prewritten
462 portions of such programs does not cause the combination to be
463 other than prewritten computer software. Prewritten computer
464 software includes software designed and developed by the author
465 or other creator to the specifications of a specific purchaser
466 when such software is sold to a person other than the specific
467 purchaser. Where a person modifies or enhances computer software
468 of which the person is not the author or creator, the person
469 shall be deemed to be the author or creator only of such
470 person's modifications or enhancements. Prewritten computer
471 software or a prewritten portion of such software which is
472 modified or enhanced to any degree, if such modification or
473 enhancement is designed and developed to the specifications of a
474 specific purchaser, remains prewritten computer software.
475 However, prewritten computer software does not include software
476 that has been modified or enhanced for a particular purchaser if

477 the charge for the enhancement is reasonable and separately
478 stated on the invoice or other statement of price given to the
479 purchaser.

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

483 (31) "Qualified aircraft" means any aircraft having a
484 maximum certified takeoff weight of less than 10,000 pounds and
485 equipped with twin turbofan engines that meet Stage IV noise
486 requirements which is used by a business operating as an on-
487 demand air carrier under Federal Aviation Administration
488 Regulation Title 14, chapter I, part 135, Code of Federal
489 Regulations, which owns or leases and operates a fleet of at
490 least 25 of such aircraft in this state.

491 (32)~~(13)~~ "Retailer" means and includes every person
492 engaged in the business of making sales at retail or for
493 distribution, or use, or consumption, or storage to be used or
494 consumed in this state.

495 (33)~~(14)~~(a) "Retail sale" or a "sale at retail" means a
496 sale to a consumer or to any person for any purpose other than
497 for resale in the form of tangible personal property or services
498 taxable under this chapter, and includes all such transactions
499 that may be made in lieu of retail sales or sales at retail. A
500 sale for resale includes a sale of qualifying property. As used
501 in this paragraph, the term "qualifying property" means tangible
502 personal property, other than electricity, which is used or
503 consumed by a government contractor in the performance of a
504 qualifying contract as defined in s. 212.08(17)(c), to the

505 extent that the cost of the property is allocated or charged as
506 a direct item of cost to such contract, title to which property
507 vests in or passes to the government under the contract. The
508 term "government contractor" includes prime contractors and
509 subcontractors. As used in this paragraph, a cost is a "direct
510 item of cost" if it is a "direct cost" as defined in 48 C.F.R.
511 s. 9904.418-30(a)(2), or similar successor provisions, including
512 costs identified specifically with a particular contract.

513 (b) ~~The terms~~ "Retail sales," "sales at retail," "use,"
514 "storage," and "consumption" include the sale, use, storage, or
515 consumption of all tangible advertising materials imported or
516 caused to be imported into this state. Tangible advertising
517 material includes displays, display containers, brochures,
518 catalogs, price lists, point-of-sale advertising, and technical
519 manuals or any tangible personal property which does not
520 accompany the product to the ultimate consumer.

521 (c) "Retail sales," "sale at retail," "use," "storage,"
522 and "consumption" do not include materials, containers, labels,
523 sacks, bags, or similar items intended to accompany a product
524 sold to a customer without which delivery of the product would
525 be impracticable because of the character of the contents and be
526 used one time only for packaging tangible personal property for
527 sale or for the convenience of the customer or for packaging in
528 the process of providing a service taxable under this chapter.
529 When a separate charge for packaging materials is made, the
530 charge shall be considered part of the sales price or rental
531 charge for purposes of determining the applicability of tax. The
532 terms do not include the sale, use, storage, or consumption of

533 industrial materials, including chemicals and fuels except as
 534 provided herein, for future processing, manufacture, or
 535 conversion into articles of tangible personal property for
 536 resale when such industrial materials, including chemicals and
 537 fuels except as provided herein, become a component or
 538 ingredient of the finished product. However, the terms include
 539 the sale, use, storage, or consumption of tangible personal
 540 property, including machinery and equipment or parts thereof,
 541 purchased electricity, and fuels used to power machinery, when
 542 such items are used and dissipated in fabricating, converting,
 543 or processing tangible personal property for sale, even though
 544 they may become ingredients or components of the tangible
 545 personal property for sale through accident, wear, tear,
 546 erosion, corrosion, or similar means. The terms do not include
 547 the sale of materials to a registered repair facility for use in
 548 repairing a motor vehicle, airplane, or boat, when such
 549 materials are incorporated into and sold as part of the repair.
 550 Such a sale shall be deemed a purchase for resale by the repair
 551 facility, even though every material is not separately stated or
 552 separately priced on the repair invoice.

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

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

559 (34)~~(15)~~ "Sale" means and includes:

560 (a) Any transfer of title or possession, or both,

561 exchange, barter, license, lease, or rental, conditional or
 562 otherwise, in any manner or by any means whatsoever, of tangible
 563 personal property for a consideration.

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

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

573 (d) The furnishing, preparing, or serving for a
 574 consideration of any tangible personal property for consumption
 575 on or off the premises of the person furnishing, preparing, or
 576 serving such tangible personal property which includes the sale
 577 of meals or prepared food by an employer to his or her
 578 employees.

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

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

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

589 2. The cost of materials used, labor or service cost,
 590 interest, losses, all costs of transportation to the seller, all
 591 taxes imposed on the seller, and any other expense of the
 592 seller;

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

595 4. Delivery charges; or

596 5. Installation charges.

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

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

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

604 3. Interest, financing, and carrying charges from credit
 605 extended on the sale of personal property or services, if the
 606 amount is separately stated on the invoice, bill of sale, or
 607 similar document given to the purchaser;

608 4. Any taxes legally imposed directly on the consumer
 609 which are separately stated on the invoice, bill of sale, or
 610 similar document given to the purchaser; or ~~means the total~~
 611 ~~amount paid for tangible personal property, including any~~
 612 ~~services that are a part of the sale, valued in money, whether~~
 613 ~~paid in money or otherwise, and includes any amount for which~~
 614 ~~credit is given to the purchaser by the seller, without any~~
 615 ~~deduction therefrom on account of the cost of the property sold,~~
 616 ~~the cost of materials used, labor or service cost, interest~~

617 ~~charged, losses, or any other expense whatsoever. "Sales price"~~
618 ~~also includes the consideration for a transaction which requires~~
619 ~~both labor and material to alter, remodel, maintain, adjust, or~~
620 ~~repair tangible personal property. Trade ins or discounts~~
621 ~~allowed and taken at the time of sale shall not be included~~
622 ~~within the purview of this subsection. "Sales price" also~~
623 ~~includes the full face value of any coupon used by a purchaser~~
624 ~~to reduce the price paid to a retailer for an item of tangible~~
625 ~~personal property; where the retailer will be reimbursed for~~
626 ~~such coupon, in whole or in part, by the manufacturer of the~~
627 ~~item of tangible personal property; or whenever it is not~~
628 ~~practicable for the retailer to determine, at the time of sale,~~
629 ~~the extent to which reimbursement for the coupon will be made.~~
630 ~~The term "sales price" does not include federal excise taxes~~
631 ~~imposed upon the retailer on the sale of tangible personal~~
632 ~~property. The term "sales price" does include federal~~
633 ~~manufacturers' excise taxes, even if the federal tax is listed~~
634 ~~as a separate item on the invoice. To the extent required by~~
635 ~~federal law, the term "sales price" does not include~~

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

643 (36) "Sea trial" means a voyage for the purpose of testing
644 repair or modification work, which is in length and scope

645 reasonably necessary to test repairs or modifications, or a
646 voyage for the purpose of ascertaining the seaworthiness of a
647 vessel. If the sea trial is to test repair or modification work,
648 the owner or repair facility shall certify, in a form required
649 by the department, what repairs have been tested. The owner and
650 the repair facility may also be required to certify that the
651 length and scope of the voyage were reasonably necessary to test
652 the repairs or modifications.

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

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

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

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

668 ~~(17) "Diesel fuel" means any liquid product, gas product,~~
669 ~~or combination thereof used in an internal combustion engine or~~
670 ~~motor to propel any form of vehicle, machine, or mechanical~~
671 ~~contrivance. This term includes, but is not limited to, all~~
672 ~~forms of fuel commonly or commercially known or sold as diesel~~

673 ~~fuel or kerosene. However, the term "diesel fuel" does not~~
 674 ~~include butane gas, propane gas, or any other form of liquefied~~
 675 ~~petroleum gas or compressed natural gas.~~

676 ~~(41)-(18)~~ "Storage" means and includes any keeping or
 677 retention in this state of tangible personal property for use or
 678 consumption in this state or for any purpose other than sale at
 679 retail in the regular course of business.

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

682 ~~(43)-(19)~~ "Tangible personal property" means and includes
 683 personal property which may be seen, weighed, measured, or
 684 touched or is in any manner perceptible to the senses, including
 685 electric power or energy, water, gas, steam, prewritten computer
 686 software, boats, motor vehicles and mobile homes as defined in
 687 s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all
 688 other types of vehicles. The term "tangible personal property"
 689 does not include stocks, bonds, notes, insurance, ~~or~~ other
 690 obligations or securities, any product transferred
 691 electronically, or pari-mutuel tickets sold or issued under the
 692 racing laws of the state.

693 ~~(44)-(20)~~ "Use" means and includes the exercise of any
 694 right or power over tangible personal property incident to the
 695 ownership thereof, or interest therein, except that it does not
 696 include the sale at retail of that property in the regular
 697 course of business. The term "use" does not include:

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

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

703 (45) (21) ~~The term "Use tax" referred to in this chapter~~
 704 includes the use, the consumption, the distribution, and the
 705 storage as herein defined.

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

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

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

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

722 ~~(25) "Sea trial" means a voyage for the purpose of testing~~
 723 ~~repair or modification work, which is in length and scope~~
 724 ~~reasonably necessary to test repairs or modifications, or a~~
 725 ~~voyage for the purpose of ascertaining the seaworthiness of a~~
 726 ~~vessel. If the sea trial is to test repair or modification work,~~
 727 ~~the owner or repair facility shall certify, in a form required~~
 728 ~~by the department, what repairs have been tested. The owner and~~

729 ~~the repair facility may also be required to certify that the~~
730 ~~length and scope of the voyage were reasonably necessary to test~~
731 ~~the repairs or modifications.~~

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

739 ~~(27) "Agricultural commodity" means horticultural,~~
740 ~~aquacultural, poultry and farm products, and livestock and~~
741 ~~livestock products.~~

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

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

752 ~~(30) "Power farm equipment" means moving or stationary~~
753 ~~equipment that contains within itself the means for its own~~
754 ~~propulsion or power and moving or stationary equipment that is~~
755 ~~dependent upon an external power source to perform its~~
756 ~~functions.~~

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

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

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

776 Section 2. Paragraph (c) of subsection (7) of section
 777 212.03, Florida Statutes, is amended to read:

778 212.03 Transient rentals tax; rate, procedure,
 779 enforcement, exemptions.--

780 (7)

781 (c) The rental of facilities in a trailer camp, mobile
 782 home park, or recreational vehicle park facilities, as defined
 783 in s. 212.02 (23) ~~(10)~~ (f), which are intended primarily for rental
 784 as a principal or permanent place of residence is exempt from

785 the tax imposed by this chapter. The rental of such facilities
786 that primarily serve transient guests is not exempt by this
787 subsection. In the application of this law, or in making any
788 determination against the exemption, the department shall
789 consider the facility as primarily serving transient guests
790 unless the facility owner makes a verified declaration on a form
791 prescribed by the department that more than half of the total
792 rental units available are occupied by tenants who have a
793 continuous residence in excess of 3 months. The owner of a
794 facility declared to be exempt by this paragraph must make a
795 determination of the taxable status of the facility at the end
796 of the owner's accounting year using any consecutive 3-month
797 period at least one month of which is in the accounting year.
798 The owner must use a selected consecutive 3-month period during
799 each annual redetermination. In the event that an exempt
800 facility no longer qualifies for exemption by this paragraph,
801 the owner must notify the department on a form prescribed by the
802 department by the 20th day of the first month of the owner's
803 next succeeding accounting year that the facility no longer
804 qualifies for such exemption. The tax levied by this section
805 shall apply to the rental of facilities that no longer qualify
806 for exemption under this paragraph beginning the first day of
807 the owner's next succeeding accounting year. The provisions of
808 this paragraph do not apply to mobile home lots regulated under
809 chapter 723.

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

812 212.0306 Local option food and beverage tax; procedure for

813 levying; authorized uses; administration.--

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

820 Section 4. Paragraph (b) of subsection (1) of section
 821 212.04, Florida Statutes, is amended to read:

822 212.04 Admissions tax; rate, procedure, enforcement.--

823 (1)

824 (b) For the exercise of such privilege, a tax is levied at
 825 the rate of 6 percent of sales price, or the actual value
 826 received from such admissions, which 6 percent shall be added to
 827 and collected with all such admissions from the purchaser
 828 thereof, and such tax shall be paid for the exercise of the
 829 privilege as defined in the preceding paragraph. Each ticket
 830 must show on its face the actual sales price of the admission,
 831 or each dealer selling the admission must prominently display at
 832 the box office or other place where the admission charge is made
 833 a notice disclosing the price of the admission, and the tax
 834 shall be computed and collected on the basis of the actual price
 835 of the admission charged by the dealer. The sale price or actual
 836 value of admission shall, for the purpose of this chapter, be
 837 that price remaining after deduction of federal taxes and state
 838 or locally imposed or authorized seat surcharges, taxes, or
 839 fees, if any, imposed upon such admission. The sale price or
 840 actual value does not include separately stated ticket service

841 charges that are imposed by a facility ticket office or a
842 ticketing service and added to a separately stated, established
843 ticket price. ~~The rate of tax on each admission shall be~~
844 ~~according to the brackets established by s. 212.12(9).~~

845 Section 5. Subsections (6) through (11) of section
846 212.0506, Florida Statutes, are amended to read:

847 212.0506 Taxation of service warranties.--

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

850 (6)~~(7)~~ This tax shall not apply to any portion of the
851 consideration received by any person in connection with the
852 issuance of any service warranty contract upon which such person
853 is required to pay any premium tax imposed under the Florida
854 Insurance Code or under s. 634.313(1).

855 (7)~~(8)~~ If a transaction involves both the issuance of a
856 service warranty that is subject to such tax and the issuance of
857 a warranty, guaranty, extended warranty or extended guaranty,
858 contract, agreement, or other written promise that is not
859 subject to such tax, the consideration shall be separately
860 identified and stated with respect to the taxable and nontaxable
861 portions of the transaction. If the consideration is separately
862 apportioned and identified in good faith, such tax shall apply
863 to the transaction to the extent that the consideration received
864 or to be received in connection with the transaction is payment
865 for a service warranty subject to such tax. If the consideration
866 is not apportioned in good faith, the department may reform the
867 contract; such reformation by the department is to be considered
868 prima facie correct, and the burden to show the contrary rests

869 upon the dealer. If the consideration for such a transaction is
 870 not separately identified and stated, the entire transaction is
 871 taxable.

872 (8)~~(9)~~ Any claim which arises under a service warranty
 873 taxable under this section, which claim is paid directly by the
 874 person issuing such warranty, is not subject to any tax imposed
 875 under this chapter.

876 (9)~~(10)~~ Materials and supplies used in the performance of
 877 a factory or manufacturer's warranty are exempt if the contract
 878 is furnished at no extra charge with the equipment guaranteed
 879 thereunder and such materials and supplies are paid for by the
 880 factory or manufacturer.

881 (10)~~(11)~~ Any duties imposed by this chapter upon dealers
 882 of tangible personal property with respect to collecting and
 883 remitting taxes; making returns; keeping books, records, and
 884 accounts; and complying with the rules and regulations of the
 885 department apply to all dealers as defined in s. 212.06(2)(1).

886 Section 6. Section 212.05, Florida Statutes, is amended to
 887 read:

888 212.05 Sales, storage, use tax.--It is hereby declared to
 889 be the legislative intent that every person is exercising a
 890 taxable privilege who engages in the business of selling
 891 tangible personal property at retail in this state, ~~including~~
 892 ~~the business of making mail order sales,~~ or who rents or
 893 furnishes any of the things or services taxable under this
 894 chapter, or who stores for use or consumption in this state any
 895 item or article of tangible personal property as defined herein
 896 and who leases or rents such property within the state.

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

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

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

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

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

950 a. The purchaser removes a qualifying boat, as described
 951 in sub-subparagraph f., from the state within 90 days after the
 952 date of purchase or extension, or the purchaser removes a

953 nonqualifying boat or an aircraft from this state within 10 days
 954 after the date of purchase or, when the boat or aircraft is
 955 repaired or altered, within 20 days after completion of the
 956 repairs or alterations;

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

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

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

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

979 f. Unless the nonresident purchaser of a boat of 5 net
 980 tons of admeasurement or larger intends to remove the boat from

981 | this state within 10 days after the date of purchase or when the
 982 | boat is repaired or altered, within 20 days after completion of
 983 | the repairs or alterations, the nonresident purchaser shall
 984 | apply to the selling dealer for a decal which authorizes 90 days
 985 | after the date of purchase for removal of the boat. The
 986 | nonresident purchaser of a qualifying boat may apply to the
 987 | selling dealer within 60 days after the date of purchase for an
 988 | extension decal that authorizes the boat to remain in this state
 989 | for an additional 90 days, but not more than a total of 180
 990 | days, before the nonresident purchaser is required to pay the
 991 | tax imposed by this chapter. The department is authorized to
 992 | issue decals in advance to dealers. The number of decals issued
 993 | in advance to a dealer shall be consistent with the volume of
 994 | the dealer's past sales of boats which qualify under this sub-
 995 | subparagraph. The selling dealer or his or her agent shall mark
 996 | and affix the decals to qualifying boats in the manner
 997 | prescribed by the department, prior to delivery of the boat.

998 | (I) The department is hereby authorized to charge dealers
 999 | a fee sufficient to recover the costs of decals issued, except
 1000 | the extension decal shall cost \$425.

1001 | (II) The proceeds from the sale of decals will be
 1002 | deposited into the administrative trust fund.

1003 | (III) Decals shall display information to identify the
 1004 | boat as a qualifying boat under this sub-subparagraph,
 1005 | including, but not limited to, the decal's date of expiration.

1006 | (IV) The department is authorized to require dealers who
 1007 | purchase decals to file reports with the department and may
 1008 | prescribe all necessary records by rule. All such records are

1009 subject to inspection by the department.

1010 (V) Any dealer or his or her agent who issues a decal
 1011 falsely, fails to affix a decal, mismarks the expiration date of
 1012 a decal, or fails to properly account for decals will be
 1013 considered prima facie to have committed a fraudulent act to
 1014 evade the tax and will be liable for payment of the tax plus a
 1015 mandatory penalty of 200 percent of the tax, and shall be liable
 1016 for fine and punishment as provided by law for a conviction of a
 1017 misdemeanor of the first degree, as provided in s. 775.082 or s.
 1018 775.083.

1019 (VI) Any nonresident purchaser of a boat who removes a
 1020 decal prior to permanently removing the boat from the state, or
 1021 defaces, changes, modifies, or alters a decal in a manner
 1022 affecting its expiration date prior to its expiration, or who
 1023 causes or allows the same to be done by another, will be
 1024 considered prima facie to have committed a fraudulent act to
 1025 evade the tax and will be liable for payment of the tax plus a
 1026 mandatory penalty of 200 percent of the tax, and shall be liable
 1027 for fine and punishment as provided by law for a conviction of a
 1028 misdemeanor of the first degree, as provided in s. 775.082 or s.
 1029 775.083.

1030 (VII) The department is authorized to adopt rules
 1031 necessary to administer and enforce this subparagraph and to
 1032 publish the necessary forms and instructions.

1033 (VIII) The department is hereby authorized to adopt
 1034 emergency rules pursuant to s. 120.54(4) to administer and
 1035 enforce the provisions of this subparagraph.

1036

HB 165

2010

1037 If the purchaser fails to remove the qualifying boat from this
1038 state within the maximum 180 days after purchase or a
1039 nonqualifying boat or an aircraft from this state within 10 days
1040 after purchase or, when the boat or aircraft is repaired or
1041 altered, within 20 days after completion of such repairs or
1042 alterations, or permits the boat or aircraft to return to this
1043 state within 6 months from the date of departure, or if the
1044 purchaser fails to furnish the department with any of the
1045 documentation required by this subparagraph within the
1046 prescribed time period, the purchaser shall be liable for use
1047 tax on the cost price of the boat or aircraft and, in addition
1048 thereto, payment of a penalty to the Department of Revenue equal
1049 to the tax payable. This penalty shall be in lieu of the penalty
1050 imposed by s. 212.12(2) and is mandatory and shall not be waived
1051 by the department. The maximum 180-day period following the sale
1052 of a qualifying boat tax-exempt to a nonresident may not be
1053 tolled for any reason. Notwithstanding other provisions of this
1054 paragraph to the contrary, an aircraft purchased in this state
1055 under the provisions of this paragraph may be returned to this
1056 state for repairs within 6 months after the date of its
1057 departure without being in violation of the law and without
1058 incurring liability for the payment of tax or penalty on the
1059 purchase price of the aircraft if the aircraft is removed from
1060 this state within 20 days after the completion of the repairs
1061 and if such removal can be demonstrated by invoices for fuel,
1062 tie-down, hangar charges issued by out-of-state vendors or
1063 suppliers, or similar documentation.

1064 (b) At the rate of 6 percent of the cost price of each

1065 item or article of tangible personal property when the same is
 1066 not sold but is used, consumed, distributed, or stored for use
 1067 or consumption in this state; however, for tangible property
 1068 originally purchased exempt from tax for use exclusively for
 1069 lease and which is converted to the owner's own use, tax may be
 1070 paid on the fair market value of the property at the time of
 1071 conversion. If the fair market value of the property cannot be
 1072 determined, use tax at the time of conversion shall be based on
 1073 the owner's acquisition cost. Under no circumstances may the
 1074 aggregate amount of sales tax from leasing the property and use
 1075 tax due at the time of conversion be less than the total sales
 1076 tax that would have been due on the original acquisition cost
 1077 paid by the owner.

1078 (c) At the rate of 6 percent of the gross proceeds derived
 1079 from the lease or rental of tangible personal property, as
 1080 defined herein; ~~however, the following special provisions apply~~
 1081 ~~to the lease or rental of motor vehicles:~~

1082 ~~1. When a motor vehicle is leased or rented for a period~~
 1083 ~~of less than 12 months:~~

1084 ~~a. If the motor vehicle is rented in Florida, the entire~~
 1085 ~~amount of such rental is taxable, even if the vehicle is dropped~~
 1086 ~~off in another state.~~

1087 ~~b. If the motor vehicle is rented in another state and~~
 1088 ~~dropped off in Florida, the rental is exempt from Florida tax.~~

1089 ~~2. Except as provided in subparagraph 3., for the lease or~~
 1090 ~~rental of a motor vehicle for a period of not less than 12~~
 1091 ~~months, sales tax is due on the lease or rental payments if the~~
 1092 ~~vehicle is registered in this state; provided, however, that no~~

1093 ~~tax shall be due if the taxpayer documents use of the motor~~
 1094 ~~vehicle outside this state and tax is being paid on the lease or~~
 1095 ~~rental payments in another state.~~

1096 ~~3. The tax imposed by this chapter does not apply to the~~
 1097 ~~lease or rental of a commercial motor vehicle as defined in s.~~
 1098 ~~316.003(66)(a) to one lessee or rentee for a period of not less~~
 1099 ~~than 12 months when tax was paid on the purchase price of such~~
 1100 ~~vehicle by the lessor. To the extent tax was paid with respect~~
 1101 ~~to the purchase of such vehicle in another state, territory of~~
 1102 ~~the United States, or the District of Columbia, the Florida tax~~
 1103 ~~payable shall be reduced in accordance with the provisions of s.~~
 1104 ~~212.06(7). This subparagraph shall only be available when the~~
 1105 ~~lease or rental of such property is an established business or~~
 1106 ~~part of an established business or the same is incidental or~~
 1107 ~~germane to such business.~~

1108 (d) At the rate of 6 percent of the lease or rental price
 1109 paid by a lessee or rentee, or contracted or agreed to be paid
 1110 by a lessee or rentee, to the owner of the tangible personal
 1111 property.

1112 (e)1. At the rate of 6 percent on charges for:

1113 a. Prepaid calling arrangements. The tax on charges for
 1114 prepaid calling arrangements shall be collected at the time of
 1115 sale and remitted by the selling dealer.

1116 (I) "Prepaid calling arrangement" means the separately
 1117 stated retail sale by advance payment of communications services
 1118 that consist exclusively of telephone calls originated by using
 1119 an access number, authorization code, or other means that may be
 1120 manually, electronically, or otherwise entered and that are sold

1121 in predetermined units or dollars whose number declines with use
 1122 in a known amount.

1123 (II) The sale or recharge of the prepaid calling
 1124 arrangement is deemed to take place in accordance with s.
 1125 212.06(17) (d) If the sale or recharge of the prepaid calling
 1126 arrangement does not take place at the dealer's place of
 1127 business, it shall be deemed to take place at the customer's
 1128 shipping address or, if no item is shipped, at the customer's
 1129 address or the location associated with the customer's mobile
 1130 telephone number.

1131 (III) The sale or recharge of a prepaid calling
 1132 arrangement shall be treated as a sale of tangible personal
 1133 property for purposes of this chapter, whether or not a tangible
 1134 item evidencing such arrangement is furnished to the purchaser,
 1135 and such sale within this state subjects the selling dealer to
 1136 the jurisdiction of this state for purposes of this subsection.

1137 b. The installation of telecommunication and telegraphic
 1138 equipment.

1139 c. Electrical power or energy, except that the tax rate
 1140 for charges for electrical power or energy is 7 percent.

1141 2. The provisions of s. 212.17(3), regarding credit for
 1142 tax paid on charges subsequently found to be worthless, shall be
 1143 equally applicable to any tax paid under the provisions of this
 1144 section on charges for prepaid calling arrangements,
 1145 telecommunication or telegraph services, or electric power
 1146 subsequently found to be uncollectible. The word "charges" in
 1147 this paragraph does not include any excise or similar tax levied
 1148 by the Federal Government, any political subdivision of the

1149 | state, or any municipality upon the purchase, sale, or recharge
 1150 | of prepaid calling arrangements or upon the purchase or sale of
 1151 | telecommunication, television system program, or telegraph
 1152 | service or electric power, which tax is collected by the seller
 1153 | from the purchaser.

1154 | (f) At the rate of 6 percent on the sale, rental, use,
 1155 | consumption, or storage for use in this state of machines and
 1156 | equipment, and parts and accessories therefor, used in
 1157 | manufacturing, processing, compounding, producing, mining, or
 1158 | quarrying personal property for sale or to be used in furnishing
 1159 | communications, transportation, or public utility services.

1160 | (g)1. At the rate of 6 percent on the retail price of
 1161 | newspapers and magazines sold or used in Florida.

1162 | 2. Notwithstanding other provisions of this chapter,
 1163 | inserts of printed materials which are distributed with a
 1164 | newspaper or magazine are a component part of the newspaper or
 1165 | magazine, and neither the sale nor use of such inserts is
 1166 | subject to tax when:

1167 | a. Printed by a newspaper or magazine publisher or
 1168 | commercial printer and distributed as a component part of a
 1169 | newspaper or magazine, which means that the items after being
 1170 | printed are delivered directly to a newspaper or magazine
 1171 | publisher by the printer for inclusion in editions of the
 1172 | distributed newspaper or magazine;

1173 | b. Such publications are labeled as part of the designated
 1174 | newspaper or magazine publication into which they are to be
 1175 | inserted; and

1176 | c. The purchaser of the insert presents a resale

HB 165

2010

1177 certificate to the vendor stating that the inserts are to be
1178 distributed as a component part of a newspaper or magazine.

1179 (h)1. A tax is imposed at the rate of 4 percent on the
1180 charges for the use of coin-operated amusement machines. The tax
1181 shall be calculated by dividing the gross receipts from such
1182 charges for the applicable reporting period by a divisor,
1183 determined as provided in this subparagraph, to compute gross
1184 taxable sales, and then subtracting gross taxable sales from
1185 gross receipts to arrive at the amount of tax due. For counties
1186 that do not impose a discretionary sales surtax, the divisor is
1187 equal to 1.04; for counties that impose a 0.5 percent
1188 discretionary sales surtax, the divisor is equal to 1.045; for
1189 counties that impose a 1 percent discretionary sales surtax, the
1190 divisor is equal to 1.050; and for counties that impose a 2
1191 percent sales surtax, the divisor is equal to 1.060. If a county
1192 imposes a discretionary sales surtax that is not listed in this
1193 subparagraph, the department shall make the applicable divisor
1194 available in an electronic format or otherwise. Additional
1195 divisors shall bear the same mathematical relationship to the
1196 next higher and next lower divisors as the new surtax rate bears
1197 to the next higher and next lower surtax rates for which
1198 divisors have been established. When a machine is activated by a
1199 slug, token, coupon, or any similar device which has been
1200 purchased, the tax is on the price paid by the user of the
1201 device for such device.

1202 2. As used in this paragraph, the term "operator" means
1203 any person who possesses a coin-operated amusement machine for
1204 the purpose of generating sales through that machine and who is

1205 responsible for removing the receipts from the machine.

1206 a. If the owner of the machine is also the operator of it,
 1207 he or she shall be liable for payment of the tax without any
 1208 deduction for rent or a license fee paid to a location owner for
 1209 the use of any real property on which the machine is located.

1210 b. If the owner or lessee of the machine is also its
 1211 operator, he or she shall be liable for payment of the tax on
 1212 the purchase or lease of the machine, as well as the tax on
 1213 sales generated through the machine.

1214 c. If the proprietor of the business where the machine is
 1215 located does not own the machine, he or she shall be deemed to
 1216 be the lessee and operator of the machine and is responsible for
 1217 the payment of the tax on sales, unless such responsibility is
 1218 otherwise provided for in a written agreement between him or her
 1219 and the machine owner.

1220 3.a. An operator of a coin-operated amusement machine may
 1221 not operate or cause to be operated in this state any such
 1222 machine until the operator has registered with the department
 1223 and has conspicuously displayed an identifying certificate
 1224 issued by the department. The identifying certificate shall be
 1225 issued by the department upon application from the operator. The
 1226 identifying certificate shall include a unique number, and the
 1227 certificate shall be permanently marked with the operator's
 1228 name, the operator's sales tax number, and the maximum number of
 1229 machines to be operated under the certificate. An identifying
 1230 certificate shall not be transferred from one operator to
 1231 another. The identifying certificate must be conspicuously
 1232 displayed on the premises where the coin-operated amusement

1233 machines are being operated.

1234 b. The operator of the machine must obtain an identifying
1235 certificate before the machine is first operated in the state
1236 and by July 1 of each year thereafter. The annual fee for each
1237 certificate shall be based on the number of machines identified
1238 on the application times \$30 and is due and payable upon
1239 application for the identifying device. The application shall
1240 contain the operator's name, sales tax number, business address
1241 where the machines are being operated, and the number of
1242 machines in operation at that place of business by the operator.
1243 No operator may operate more machines than are listed on the
1244 certificate. A new certificate is required if more machines are
1245 being operated at that location than are listed on the
1246 certificate. The fee for the new certificate shall be based on
1247 the number of additional machines identified on the application
1248 form times \$30.

1249 c. A penalty of \$250 per machine is imposed on the
1250 operator for failing to properly obtain and display the required
1251 identifying certificate. A penalty of \$250 is imposed on the
1252 lessee of any machine placed in a place of business without a
1253 proper current identifying certificate. Such penalties shall
1254 apply in addition to all other applicable taxes, interest, and
1255 penalties.

1256 d. Operators of coin-operated amusement machines must
1257 obtain a separate sales and use tax certificate of registration
1258 for each county in which such machines are located. One sales
1259 and use tax certificate of registration is sufficient for all of
1260 the operator's machines within a single county.

1261 4. The provisions of this paragraph do not apply to coin-
 1262 operated amusement machines owned and operated by churches or
 1263 synagogues.

1264 5. In addition to any other penalties imposed by this
 1265 chapter, a person who knowingly and willfully violates any
 1266 provision of this paragraph commits a misdemeanor of the second
 1267 degree, punishable as provided in s. 775.082 or s. 775.083.

1268 6. The department may adopt rules necessary to administer
 1269 the provisions of this paragraph.

1270 (i)1. At the rate of 6 percent on charges for all:

1271 a. Detective, burglar protection, and other protection
 1272 services (NAICS National Numbers 561611, 561612, 561613, and
 1273 561621). Any law enforcement officer, as defined in s. 943.10,
 1274 who is performing approved duties as determined by his or her
 1275 local law enforcement agency in his or her capacity as a law
 1276 enforcement officer, and who is subject to the direct and
 1277 immediate command of his or her law enforcement agency, and in
 1278 the law enforcement officer's uniform as authorized by his or
 1279 her law enforcement agency, is performing law enforcement and
 1280 public safety services and is not performing detective, burglar
 1281 protection, or other protective services, if the law enforcement
 1282 officer is performing his or her approved duties in a
 1283 geographical area in which the law enforcement officer has
 1284 arrest jurisdiction. Such law enforcement and public safety
 1285 services are not subject to tax irrespective of whether the duty
 1286 is characterized as "extra duty," "off-duty," or "secondary
 1287 employment," and irrespective of whether the officer is paid
 1288 directly or through the officer's agency by an outside source.

1289 The term "law enforcement officer" includes full-time or part-
 1290 time law enforcement officers, and any auxiliary law enforcement
 1291 officer, when such auxiliary law enforcement officer is working
 1292 under the direct supervision of a full-time or part-time law
 1293 enforcement officer.

1294 b. Nonresidential cleaning and nonresidential pest control
 1295 services (NAICS National Numbers 561710 and 561720).

1296 2. As used in this paragraph, "NAICS" means those
 1297 classifications contained in the North American Industry
 1298 Classification System, as published in 2007 by the Office of
 1299 Management and Budget, Executive Office of the President.

1300 3. Charges for detective, burglar protection, and other
 1301 protection security services performed in this state but used
 1302 outside this state are exempt from taxation. Charges for
 1303 detective, burglar protection, and other protection security
 1304 services performed outside this state and used in this state are
 1305 subject to tax.

1306 4. If a transaction involves both the sale or use of a
 1307 service taxable under this paragraph and the sale or use of a
 1308 service or any other item not taxable under this chapter, the
 1309 consideration paid must be separately identified and stated with
 1310 respect to the taxable and exempt portions of the transaction or
 1311 the entire transaction shall be presumed taxable. The burden
 1312 shall be on the seller of the service or the purchaser of the
 1313 service, whichever applicable, to overcome this presumption by
 1314 providing documentary evidence as to which portion of the
 1315 transaction is exempt from tax. The department is authorized to
 1316 adjust the amount of consideration identified as the taxable and

1317 exempt portions of the transaction; however, a determination
1318 that the taxable and exempt portions are inaccurately stated and
1319 that the adjustment is applicable must be supported by
1320 substantial competent evidence.

1321 5. Each seller of services subject to sales tax pursuant
1322 to this paragraph shall maintain a monthly log showing each
1323 transaction for which sales tax was not collected because the
1324 services meet the requirements of subparagraph 3. for out-of-
1325 state use. The log must identify the purchaser's name, location
1326 and mailing address, and federal employer identification number,
1327 if a business, or the social security number, if an individual,
1328 the service sold, the price of the service, the date of sale,
1329 the reason for the exemption, and the sales invoice number. The
1330 monthly log shall be maintained pursuant to the same
1331 requirements and subject to the same penalties imposed for the
1332 keeping of similar records pursuant to this chapter.

1333 (j)1. Notwithstanding any other provision of this chapter,
1334 there is hereby levied a tax on the sale, use, consumption, or
1335 storage for use in this state of any coin or currency, whether
1336 in circulation or not, when such coin or currency:

1337 a. Is not legal tender;

1338 b. If legal tender, is sold, exchanged, or traded at a
1339 rate in excess of its face value; or

1340 c. Is sold, exchanged, or traded at a rate based on its
1341 precious metal content.

1342 2. Such tax shall be at a rate of 6 percent of the price
1343 at which the coin or currency is sold, exchanged, or traded,
1344 except that, with respect to a coin or currency which is legal

1345 tender of the United States and which is sold, exchanged, or
 1346 traded, such tax shall not be levied.

1347 3. There are exempt from this tax exchanges of coins or
 1348 currency which are in general circulation in, and legal tender
 1349 of, one nation for coins or currency which are in general
 1350 circulation in, and legal tender of, another nation when
 1351 exchanged solely for use as legal tender and at an exchange rate
 1352 based on the relative value of each as a medium of exchange.

1353 4. With respect to any transaction that involves the sale
 1354 of coins or currency taxable under this paragraph in which the
 1355 taxable amount represented by the sale of such coins or currency
 1356 exceeds \$500, the entire amount represented by the sale of such
 1357 coins or currency is exempt from the tax imposed under this
 1358 paragraph. The dealer must maintain proper documentation, as
 1359 prescribed by rule of the department, to identify that portion
 1360 of a transaction which involves the sale of coins or currency
 1361 and is exempt under this subparagraph.

1362 (k) At the rate of 6 percent of the sales price of each
 1363 gallon of diesel fuel not taxed under chapter 206 purchased for
 1364 use in a vessel.

1365 (l) Florists located in this state are liable for sales
 1366 tax on sales to retail customers regardless of where or by whom
 1367 the items sold are to be delivered. Florists located in this
 1368 state are not liable for sales tax on payments received from
 1369 other florists for items delivered to customers in this state.

1370 (m) Operators of game concessions or other concessionaires
 1371 who customarily award tangible personal property as prizes may,
 1372 in lieu of paying tax on the cost price of such property, pay

1373 tax on 25 percent of the gross receipts from such concession
 1374 activity.

1375 (2) The tax shall be collected by the dealer, as defined
 1376 herein, and remitted by the dealer to the state at the time and
 1377 in the manner as hereinafter provided.

1378 (3) The tax so levied is in addition to all other taxes,
 1379 whether levied in the form of excise, license, or privilege
 1380 taxes, and in addition to all other fees and taxes levied.

1381 ~~(4) The tax imposed pursuant to this chapter shall be due~~
 1382 ~~and payable according to the brackets set forth in s. 212.12.~~

1383 Section 7. Section 212.054, Florida Statutes, is amended
 1384 to read:

1385 212.054 Discretionary sales surtax; limitations,
 1386 administration, and collection.--

1387 (1) A ~~No~~ general excise tax on sales may not shall be
 1388 levied by the governing body of any county unless specifically
 1389 authorized in s. 212.055. Any general excise tax on sales
 1390 authorized pursuant to said section shall be administered and
 1391 collected exclusively as provided in this section.

1392 (2) (a) The tax imposed by the governing body of any county
 1393 authorized to so levy pursuant to s. 212.055 shall be a
 1394 discretionary surtax on all transactions occurring in the county
 1395 which transactions are subject to the state tax imposed on
 1396 sales, use, services, rentals, admissions, and other
 1397 transactions by this chapter and communications services as
 1398 defined for purposes of chapter 202. The surtax, if levied,
 1399 shall be computed as the applicable rate or rates authorized
 1400 pursuant to s. 212.055 times the amount of taxable sales and

1401 taxable purchases representing such transactions. If the surtax
 1402 is levied on the sale of an item of tangible personal property
 1403 or on the sale of a service, the surtax shall be computed by
 1404 multiplying the rate imposed by the county within which the sale
 1405 occurs by the amount of the taxable sale. The sale of an item of
 1406 tangible personal property or the sale of a service is not
 1407 subject to the surtax if the property, the service, or the
 1408 tangible personal property representing the service is delivered
 1409 within a county that does not impose a discretionary sales
 1410 surtax.

1411 (b) However:

1412 1. The sales amount above \$5,000 on a motor vehicle,
 1413 aircraft, boat, manufactured home, modular home, or mobile home
 1414 is any item of tangible personal property shall not be subject
 1415 to the surtax. However, ~~charges for prepaid calling~~
 1416 ~~arrangements, as defined in s. 212.05(1)(c)1.a., shall be~~
 1417 ~~subject to the surtax. For purposes of administering the \$5,000~~
 1418 ~~limitation on an item of tangible personal property, if two or~~
 1419 ~~more taxable items of tangible personal property are sold to the~~
 1420 ~~same purchaser at the same time and, under generally accepted~~
 1421 ~~business practice or industry standards or usage, are normally~~
 1422 ~~sold in bulk or are items that, when assembled, comprise a~~
 1423 ~~working unit or part of a working unit, such items must be~~
 1424 ~~considered a single item for purposes of the \$5,000 limitation~~
 1425 ~~when supported by a charge ticket, sales slip, invoice, or other~~
 1426 ~~tangible evidence of a single sale or rental.~~

1427 2. In the case of utility services covering a period
 1428 starting before and ending after the effective date of the

1429 surtax, the rate applies as follows:

1430 a. In the case of a rate adoption or increase, the new
1431 rate applies to the first billing period starting on or after
1432 the effective date of the surtax adoption or increase.

1433 b. In the case of a rate decrease or termination, the new
1434 rate applies to bills rendered on or after the effective date of
1435 the rate change billed on or after the effective date of any
1436 such surtax, the entire amount of the charge for utility
1437 services shall be subject to the surtax. In the case of utility
1438 services billed after the last day the surtax is in effect, the
1439 entire amount of the charge on said items shall not be subject
1440 to the surtax. "Utility service," as used in this section, does
1441 not include any communications services as defined in chapter
1442 202.

1443 3. In the case of written contracts which are signed prior
1444 to the effective date of any such surtax for the construction of
1445 improvements to real property or for remodeling of existing
1446 structures, the surtax shall be paid by the contractor
1447 responsible for the performance of the contract. However, the
1448 contractor may apply for one refund of any such surtax paid on
1449 materials necessary for the completion of the contract. Any
1450 application for refund shall be made no later than 15 months
1451 following initial imposition of the surtax in that county. The
1452 application for refund shall be in the manner prescribed by the
1453 department by rule. A complete application shall include proof
1454 of the written contract and of payment of the surtax. The
1455 application shall contain a sworn statement, signed by the
1456 applicant or its representative, attesting to the validity of

1457 the application. The department shall, within 30 days after
 1458 approval of a complete application, certify to the county
 1459 information necessary for issuance of a refund to the applicant.
 1460 Counties are hereby authorized to issue refunds for this purpose
 1461 and shall set aside from the proceeds of the surtax a sum
 1462 sufficient to pay any refund lawfully due. Any person who
 1463 fraudulently obtains or attempts to obtain a refund pursuant to
 1464 this subparagraph, in addition to being liable for repayment of
 1465 any refund fraudulently obtained plus a mandatory penalty of 100
 1466 percent of the refund, is guilty of a felony of the third
 1467 degree, punishable as provided in s. 775.082, s. 775.083, or s.
 1468 775.084.

1469 4. In the case of any vessel, railroad, or motor vehicle
 1470 common carrier entitled to partial exemption from tax imposed
 1471 under this chapter pursuant to s. 212.08(4), (8), or (9), the
 1472 basis for imposition of surtax shall be the same as provided in
 1473 s. 212.08 and the ratio shall be applied each month to total
 1474 purchases in this state of property qualified for proration
 1475 which is delivered or sold in the taxing county to establish the
 1476 portion used and consumed in intracounty movement and subject to
 1477 surtax.

1478 (3) Except as otherwise provided in this section, a surtax
 1479 applies to a retail sale, lease, or rental of tangible personal
 1480 property, a digital good, or a service when, under s.
 1481 212.06(17), the transaction occurs in a county that imposes a
 1482 surtax under s. 212.055.

1483 (4) ~~(3)~~ To determine whether a transaction occurs in a
 1484 county imposing a surtax, the following provisions apply ~~For the~~

1485 ~~purpose of this section, a transaction shall be deemed to have~~
 1486 ~~occurred in a county imposing the surtax when:~~

1487 (a)1. The retail sale of a modular or manufactured home,
 1488 not including a mobile home, occurs in the county to which the
 1489 house is delivered ~~includes an item of tangible personal~~
 1490 ~~property, a service, or tangible personal property representing~~
 1491 ~~a service, and the item of tangible personal property, the~~
 1492 ~~service, or the tangible personal property representing the~~
 1493 ~~service is delivered within the county. If there is no~~
 1494 ~~reasonable evidence of delivery of a service, the sale of a~~
 1495 ~~service is deemed to occur in the county in which the purchaser~~
 1496 ~~accepts the bill of sale.~~

1497 (b)2. The retail sale, excluding a lease or rental, of any
 1498 motor vehicle that does not qualify as transportation equipment,
 1499 as defined in s. 212.06(17)(g), or the retail sale of a ~~of any~~
 1500 ~~motor vehicle or mobile home of a class or type that which is~~
 1501 ~~required to be registered in this state or in any other state is~~
 1502 ~~shall be deemed to occur have occurred only~~ in the county
 1503 identified from ~~as~~ the ~~residence~~ address of the purchaser on the
 1504 registration or title document for the ~~such~~ property.

1505 (c)(b) Admission charged for an event occurs ~~The event for~~
 1506 ~~which an admission is charged is located in the county in which~~
 1507 the event is held.

1508 (d)(e) A lease or rental of real property occurs in the
 1509 county in which the real property is located. ~~The consumer of~~
 1510 ~~utility services is located in the county.~~

1511 (e)(d)1. The retail sale, excluding a lease or rental, of
 1512 any aircraft that does not qualify as transportation equipment,

1513 as defined in s. 212.06(17) (g), or of any boat of a class or
 1514 type that is required to be registered, licensed, titled, or
 1515 documented in this state or by the United States Government
 1516 occurs in the county to which the aircraft or boat is delivered.

1517 2. The user of any aircraft or boat of a class or type
 1518 that ~~which~~ is required to be registered, licensed, titled, or
 1519 documented in this state or by the United States Government
 1520 imported into the county for use, consumption, distribution, or
 1521 storage to be used or consumed occurs in the county in which the
 1522 user is located ~~in the county~~.

1523 ~~3.2.~~ However, it shall be presumed that such items used
 1524 outside the county imposing the surtax for 6 months or longer
 1525 before being imported into the county were not purchased for use
 1526 in the county, except as provided in s. 212.06(8) (b).

1527 ~~4.3.~~ This paragraph does not apply to the use or
 1528 consumption of items upon which a like tax of equal or greater
 1529 amount has been lawfully imposed and paid outside the county.

1530 ~~(f)(e)~~ The purchase purchaser of any motor vehicle or
 1531 mobile home of a class or type that ~~which~~ is required to be
 1532 registered in this state occurs in the county identified from
 1533 the residential address of the purchaser ~~is a resident of the~~
 1534 ~~taxing county as determined by the address appearing on or to be~~
 1535 ~~reflected~~ on the registration document for the ~~such~~ property.

1536 (g)(f)1. The use, consumption, distribution, or storage of
 1537 a ~~Any~~ motor vehicle or mobile home of a class or type that ~~which~~
 1538 is required to be registered in this state and that is imported
 1539 from another state occurs in the county to which it is imported
 1540 ~~into the taxing county by a user residing therein for the~~

1541 ~~purpose of use, consumption, distribution, or storage in the~~
 1542 ~~taxing county.~~

1543 2. However, it shall be presumed that such items used
 1544 outside the taxing county for 6 months or longer before being
 1545 imported into the county were not purchased for use in the
 1546 county.

1547 ~~(g) The real property which is leased or rented is located~~
 1548 ~~in the county.~~

1549 (h) A The transient rental transaction occurs in the
 1550 county in which the rental property is located.

1551 ~~(i) The delivery of any aircraft or boat of a class or~~
 1552 ~~type which is required to be registered, licensed, titled, or~~
 1553 ~~documented in this state or by the United States Government is~~
 1554 ~~to a location in the county. However, this paragraph does not~~
 1555 ~~apply to the use or consumption of items upon which a like tax~~
 1556 ~~of equal or greater amount has been lawfully imposed and paid~~
 1557 ~~outside the county.~~

1558 ~~(i)-(j)~~ A transaction occurs in a county imposing the
 1559 surtax if the dealer owing a use tax on purchases or leases is
 1560 located in that the county.

1561 ~~(k) The delivery of tangible personal property other than~~
 1562 ~~that described in paragraph (d), paragraph (e), or paragraph (f)~~
 1563 ~~is made to a location outside the county, but the property is~~
 1564 ~~brought into the county within 6 months after delivery, in which~~
 1565 ~~event, the owner must pay the surtax as a use tax.~~

1566 ~~(j)-(l)~~ The use of a coin-operated amusement or vending
 1567 machine occurs is located in the county in which the machine is
 1568 located.

1569 ~~(k)-(m)~~ An ~~The florist taking the~~ original order to sell
 1570 tangible personal property taken by a florist occurs ~~is located~~
 1571 in the county in which the florist taking the order is located,
 1572 ~~notwithstanding any other provision of this section.~~

1573 ~~(5)-(4)~~(a) The department shall administer, collect, and
 1574 enforce the tax authorized under s. 212.055 pursuant to the same
 1575 procedures used in the administration, collection, and
 1576 enforcement of the general state sales tax imposed under the
 1577 provisions of this chapter, except as provided in this section.
 1578 The provisions of this chapter regarding interest and penalties
 1579 on delinquent taxes shall apply to the surtax. Discretionary
 1580 sales surtaxes shall not be included in the computation of
 1581 estimated taxes pursuant to s. 212.11. Notwithstanding any other
 1582 provision of law, a dealer need not separately state the amount
 1583 of the surtax on the charge ticket, sales slip, invoice, or
 1584 other tangible evidence of sale. For the purposes of this
 1585 section and s. 212.055, the "proceeds" of any surtax means all
 1586 funds collected and received by the department pursuant to a
 1587 specific authorization and levy under s. 212.055, including any
 1588 interest and penalties on delinquent surtaxes.

1589 (b) The proceeds of a discretionary sales surtax collected
 1590 by the selling dealer located in a county which imposes the
 1591 surtax shall be returned, less the cost of administration, to
 1592 the county where the selling dealer is located. The proceeds
 1593 shall be transferred to the Discretionary Sales Surtax Clearing
 1594 Trust Fund. A separate account shall be established in such
 1595 trust fund for each county imposing a discretionary surtax. The
 1596 amount deducted for the costs of administration shall not exceed

1597 3 percent of the total revenue generated for all counties
 1598 levying a surtax authorized in s. 212.055. The amount deducted
 1599 for the costs of administration shall be used only for those
 1600 costs which are solely and directly attributable to the surtax.
 1601 The total cost of administration shall be prorated among those
 1602 counties levying the surtax on the basis of the amount collected
 1603 for a particular county to the total amount collected for all
 1604 counties. No later than March 1 of each year, the department
 1605 shall submit a written report which details the expenses and
 1606 amounts deducted for the costs of administration to the
 1607 President of the Senate, the Speaker of the House of
 1608 Representatives, and the governing authority of each county
 1609 levying a surtax. The department shall distribute the moneys in
 1610 the trust fund each month to the appropriate counties, unless
 1611 otherwise provided in s. 212.055.

1612 (c)1. Any dealer located in a county that does not impose
 1613 a discretionary sales surtax but who collects the surtax due to
 1614 sales of tangible personal property or services delivered
 1615 outside the county shall remit monthly the proceeds of the
 1616 surtax to the department to be deposited into an account in the
 1617 Discretionary Sales Surtax Clearing Trust Fund which is separate
 1618 from the county surtax collection accounts. The department shall
 1619 distribute funds in this account using a distribution factor
 1620 determined for each county that levies a surtax and multiplied
 1621 by the amount of funds in the account and available for
 1622 distribution. The distribution factor for each county equals the
 1623 product of:

1624 a. The county's latest official population determined

1625 pursuant to s. 186.901;

1626 b. The county's rate of surtax; and

1627 c. The number of months the county has levied a surtax

1628 during the most recent distribution period;

1629

1630 divided by the sum of all such products of the counties levying

1631 the surtax during the most recent distribution period.

1632 2. The department shall compute distribution factors for

1633 eligible counties once each quarter and make appropriate

1634 quarterly distributions.

1635 3. A county that fails to timely provide the information

1636 required by this section to the department authorizes the

1637 department, by such action, to use the best information

1638 available to it in distributing surtax revenues to the county.

1639 If this information is unavailable to the department, the

1640 department may partially or entirely disqualify the county from

1641 receiving surtax revenues under this paragraph. A county that

1642 fails to provide timely information waives its right to

1643 challenge the department's determination of the county's share,

1644 if any, of revenues provided under this paragraph.

1645 ~~(5) No discretionary sales surtax or increase or decrease~~

1646 ~~in the rate of any discretionary sales surtax shall take effect~~

1647 ~~on a date other than January 1. No discretionary sales surtax~~

1648 ~~shall terminate on a day other than December 31.~~

1649 (6) The governing body of any county levying a

1650 discretionary sales surtax shall enact an ordinance levying the

1651 surtax in accordance with the procedures described in s.

1652 125.66(2).

HB 165

2010

1653 (7) (a) Any adoption, repeal, or rate change of the surtax
 1654 by the governing body of any county levying a discretionary
 1655 sales surtax or the school board of any county levying the
 1656 school capital outlay surtax authorized by s. 212.055(6) is
 1657 effective on April 1. A county or school board adopting,
 1658 repealing, or changing the rate of such surtax shall notify the
 1659 department within 10 days after final adoption by ordinance or
 1660 referendum of an adoption, repeal, imposition, termination, or
 1661 rate change of the surtax, but no later than October 20
 1662 immediately preceding such April 1 ~~November 16~~ prior to the
 1663 ~~effective date~~. The notice must specify the time period during
 1664 which the surtax will be in effect and the rate and must include
 1665 a copy of the ordinance and such other information as the
 1666 department requires by rule. Failure to timely provide such
 1667 notification to the department shall result in the delay of the
 1668 effective date for a period of 1 year.

1669 (b) In addition to the notification required by paragraph
 1670 (a), the governing body of any county proposing to levy a
 1671 discretionary sales surtax or the school board of any county
 1672 proposing to levy the school capital outlay surtax authorized by
 1673 s. 212.055(6) shall notify the department by October 1 if the
 1674 referendum or consideration of the ordinance that would result
 1675 in imposition, termination, or rate change of the surtax is
 1676 scheduled to occur on or after October 1 of that year. Failure
 1677 to timely provide such notification to the department shall
 1678 result in the delay of the effective date for a period of 1
 1679 year.

1680 (c) The department shall provide notice of the adoption,

1681 repeal, or rate change of the surtax to affected sellers by
 1682 February 1 immediately preceding the April 1 effective date.

1683 (d) Notwithstanding the date set in an ordinance for the
 1684 termination of a surtax, a surtax terminates only on March 31. A
 1685 surtax imposed before January 1, 2010, for which an ordinance
 1686 provides a different termination date, also terminates on the
 1687 March 31 following the termination date established in the
 1688 ordinance.

1689 (8) With respect to any motor vehicle or mobile home of a
 1690 class or type which is required to be registered in this state,
 1691 the tax due on a transaction occurring in the taxing county as
 1692 herein provided shall be collected from the purchaser or user
 1693 incident to the titling and registration of such property,
 1694 irrespective of whether such titling or registration occurs in
 1695 the taxing county.

1696 (9) The department may certify vendor databases, and shall
 1697 purchase or otherwise make available a database or databases,
 1698 singly or in combination, which describe boundary changes for
 1699 all taxing jurisdictions, including a description of the change
 1700 and the effective date of a boundary change; provide all sales
 1701 and use tax rates by jurisdiction; assign to each five-digit and
 1702 nine-digit zip code the proper rate and jurisdiction and apply
 1703 the lowest combined rate imposed in the zip code area, if the
 1704 area includes more than one tax rate in any level of taxing
 1705 jurisdiction; and use address-based boundary database records
 1706 for assigning taxing jurisdictions and associated tax rates.

1707 (a) A seller or certified service provider that collects
 1708 and remits the state tax and any local tax imposed by this

1709 chapter shall be held harmless from any tax, interest, and
1710 penalties due solely as a result of relying on erroneous data on
1711 tax rates, boundaries, or taxing jurisdiction assignments
1712 provided by the state if the seller or certified service
1713 provider exercises due diligence in applying one or more of the
1714 following methods to determine the taxing jurisdiction and tax
1715 rate for a transaction:

1716 1. Employing an electronic database provided by the
1717 department under this subsection; or

1718 2. Employing a state-certified database.

1719 (b) If a seller or certified service provider is unable to
1720 determine the applicable rate and jurisdiction using an address-
1721 based database record after exercising due diligence, the seller
1722 or certified service provider may apply the nine-digit zip code
1723 designation applicable to a purchaser.

1724 (c) If a nine-digit zip code designation is not available
1725 for a street address or if a seller or certified service
1726 provider is unable to determine the nine-digit zip code
1727 designation applicable to a purchase after exercising due
1728 diligence to determine the designation, the seller or certified
1729 service provider may apply the rate for the five-digit zip code
1730 area.

1731 (d) There is a rebuttable presumption that a seller or
1732 certified service provider has exercised due diligence if the
1733 seller or certified service provider has attempted to determine
1734 the tax rate and jurisdiction by using state-certified software
1735 that makes this assignment from the address and zip code
1736 information applicable to the purchase.

1737 (e) There is a rebuttable presumption that a seller or
1738 certified service provider has exercised due diligence if the
1739 seller or certified service provider has attempted to determine
1740 the nine-digit zip code designation by using state-certified
1741 software that makes this designation from the street address and
1742 the five-digit zip code applicable to a purchase.

1743 (f) If a seller or certified service provider does not use
1744 one of the methods specified in paragraph (a), the seller or
1745 certified service provider may be held liable to the department
1746 for tax, interest, and penalties that are due for charging and
1747 collecting the incorrect amount of tax.

1748 (10) A purchaser shall be held harmless from tax,
1749 interest, and penalties for having failed to pay the correct
1750 amount of sales or use tax due solely as a result of any of the
1751 following circumstances:

1752 (a) The seller or certified service provider relied on
1753 erroneous data on tax rates, boundaries, or taxing jurisdiction
1754 assignments provided by the department;

1755 (b) A purchaser holding a direct-pay permit relied on
1756 erroneous data on tax rates, boundaries, or taxing jurisdiction
1757 assignments provided by the department; or

1758 (c) A purchaser relied on erroneous data supplied in a
1759 database described in paragraph (9) (a).

1760 (11) A seller is not liable for failing to collect tax at
1761 the new tax rate if:

1762 (a) The new rate takes effect within 30 days after the new
1763 rate is enacted;

1764 (b) The seller collected the tax at the preceding rate;

1765 (c) The seller's failure to collect the tax at the new
 1766 rate does not extend beyond 30 days after the enactment of the
 1767 new rate; and

1768 (d) The seller did not fraudulently fail to collect at the
 1769 new rate or solicit purchasers based on the preceding rate.

1770 Section 8. Paragraph (c) of subsection (2) and subsections
 1771 (3) and (5) of section 212.06, Florida Statutes, are amended,
 1772 and subsection (17) is added to that section, to read:

1773 212.06 Sales, storage, use tax; collectible from dealers;
 1774 "dealer" defined; dealers to collect from purchasers;
 1775 legislative intent as to scope of tax.--

1776 (2)

1777 (c) The term "dealer" is further defined to mean every
 1778 person, as used in this chapter, who sells at retail or who
 1779 offers for sale at retail, or who has in his or her possession
 1780 for sale at retail; or for use, consumption, or distribution; or
 1781 for storage to be used or consumed in this state, tangible
 1782 personal property as defined herein, ~~including a retailer who~~
 1783 ~~transacts a mail order sale.~~

1784 (3) (a) Except as provided in paragraph (b), every dealer
 1785 making sales, whether within or outside the state, of tangible
 1786 personal property for distribution, storage, or use or other
 1787 consumption, in this state, shall, at the time of making sales,
 1788 collect the tax imposed by this chapter from the purchaser.

1789 (b)1. Notwithstanding subsection (17), a purchaser of
 1790 direct mail which is not a holder of a direct-pay permit shall
 1791 provide to the seller in conjunction with the purchase a direct-
 1792 mail form or information to show the jurisdictions to which the

1793 direct mail is delivered to recipients. Upon receipt of the
 1794 direct-mail form, the seller is relieved of all obligations to
 1795 collect, pay, or remit the applicable tax, and the purchaser is
 1796 obligated to pay or remit the applicable tax on a direct-pay
 1797 basis. A direct-mail form remains in effect for all future sales
 1798 of direct mail by the seller to the purchaser until it is
 1799 revoked in writing.

1800 2. Upon receipt of information from the purchaser showing
 1801 the jurisdictions to which the direct mail is delivered to
 1802 recipients, the seller shall collect the tax according to the
 1803 delivery information provided by the purchaser. In the absence
 1804 of bad faith, the seller is relieved of any further obligation
 1805 to collect tax on any transaction for which the seller has
 1806 collected tax pursuant to the delivery information provided by
 1807 the purchaser.

1808 3. If the purchaser of direct mail does not have a direct-
 1809 pay permit and does not provide the seller with a direct-mail
 1810 form or delivery information as required by subparagraph 1., the
 1811 seller shall collect the tax according to subparagraph (17) (d) 5.
 1812 This paragraph does not limit a purchaser's obligation to remit
 1813 sales or use tax to any state to which the direct mail is
 1814 delivered.

1815 4. If a purchaser of direct mail provides the seller with
 1816 documentation of direct-pay authority, the purchaser is not
 1817 required to provide a direct-mail form or delivery information
 1818 to the seller. A purchaser of printed materials shall have sole
 1819 responsibility for the taxes imposed by this chapter on those
 1820 materials when the printer of the materials delivers them to the

1821 ~~United States Postal Service for mailing to persons other than~~
 1822 ~~the purchaser located within and outside this state. Printers of~~
 1823 ~~materials delivered by mail to persons other than the purchaser~~
 1824 ~~located within and outside this state shall have no obligation~~
 1825 ~~or responsibility for the payment or collection of any taxes~~
 1826 ~~imposed under this chapter on those materials. However, printers~~
 1827 ~~are obligated to collect the taxes imposed by this chapter on~~
 1828 ~~printed materials when all, or substantially all, of the~~
 1829 ~~materials will be mailed to persons located within this state.~~
 1830 ~~For purposes of the printer's tax collection obligation, there~~
 1831 ~~is a rebuttable presumption that all materials printed at a~~
 1832 ~~facility are mailed to persons located within the same state as~~
 1833 ~~that in which the facility is located. A certificate provided by~~
 1834 ~~the purchaser to the printer concerning the delivery of the~~
 1835 ~~printed materials for that purchase or all purchases shall be~~
 1836 ~~sufficient for purposes of rebutting the presumption created~~
 1837 ~~herein.~~

1838 5.2. The Department of Revenue is authorized to adopt
 1839 rules and forms to implement the provisions of this paragraph.

1840 (5) (a)1. ~~Except as provided in subparagraph 2., It is not~~
 1841 ~~the intention of This chapter~~ does not ~~to~~ levy a tax upon
 1842 tangible personal property imported, produced, or manufactured
 1843 in this state for export:

1844 1. ~~If, provided that tangible personal property may not be~~
 1845 ~~considered as being imported, produced, or manufactured for~~
 1846 ~~export unless the importer, producer, or manufacturer:~~

1847 a. Delivers the tangible personal property ~~same~~ to a
 1848 licensed exporter for exporting or to a common carrier for

1849 shipment outside the state or mails the same by United States
 1850 mail to a destination outside the state; ~~or, in the case of~~
 1851 ~~aircraft being exported under their own power to a destination~~
 1852 ~~outside the continental limits of the United States, by~~
 1853 ~~submission~~

1854 b. Submits to the department ~~of~~ a duly signed and
 1855 validated United States customs declaration, showing the
 1856 departure of an ~~the~~ aircraft from the continental United States
 1857 ~~and; and further with respect to aircraft,~~ the canceled United
 1858 States registry of the said aircraft for an aircraft that is
 1859 exported under its own power to a destination outside of the
 1860 continental United States; or in the case of

1861 c. Submits documentation as required by rule to the
 1862 department showing the departure of an aircraft of foreign
 1863 registry from the continental United States on which parts and
 1864 equipment have been installed on aircraft of foreign registry,
 1865 ~~by submission to the department of documentation, the extent of~~
 1866 ~~which shall be provided by rule, showing the departure of the~~
 1867 ~~aircraft from the continental United States; or nor is it the~~
 1868 ~~intention of this chapter to levy a tax on any sale which~~

1869 2. If the state is prohibited from taxing the sale under
 1870 the Constitution or laws of the United States.

1871
 1872 Every retail sale made to a person physically present at the
 1873 time of sale shall be presumed to have been delivered in this
 1874 state.

1875 ~~2.a. Notwithstanding subparagraph 1., a tax is levied on~~
 1876 ~~each sale of tangible personal property to be transported to a~~

1877 ~~cooperating state as defined in sub-subparagraph c., at the rate~~
1878 ~~specified in sub-subparagraph d. However, a Florida dealer will~~
1879 ~~be relieved from the requirements of collecting taxes pursuant~~
1880 ~~to this subparagraph if the Florida dealer obtains from the~~
1881 ~~purchaser an affidavit setting forth the purchaser's name,~~
1882 ~~address, state taxpayer identification number, and a statement~~
1883 ~~that the purchaser is aware of his or her state's use tax laws,~~
1884 ~~is a registered dealer in Florida or another state, or is~~
1885 ~~purchasing the tangible personal property for resale or is~~
1886 ~~otherwise not required to pay the tax on the transaction. The~~
1887 ~~department may, by rule, provide a form to be used for the~~
1888 ~~purposes set forth herein.~~

1889 ~~b. For purposes of this subparagraph, "a cooperating~~
1890 ~~state" is one determined by the executive director of the~~
1891 ~~department to cooperate satisfactorily with this state in~~
1892 ~~collecting taxes on mail order sales. No state shall be so~~
1893 ~~determined unless it meets all the following minimum~~
1894 ~~requirements:~~

1895 ~~(I) It levies and collects taxes on mail order sales of~~
1896 ~~property transported from that state to persons in this state,~~
1897 ~~as described in s. 212.0596, upon request of the department.~~

1898 ~~(II) The tax so collected shall be at the rate specified~~
1899 ~~in s. 212.05, not including any local option or tourist or~~
1900 ~~convention development taxes collected pursuant to s. 125.0104~~
1901 ~~or this chapter.~~

1902 ~~(III) Such state agrees to remit to the department all~~
1903 ~~taxes so collected no later than 30 days from the last day of~~
1904 ~~the calendar quarter following their collection.~~

1905 ~~(IV) Such state authorizes the department to audit dealers~~
 1906 ~~within its jurisdiction who make mail order sales that are the~~
 1907 ~~subject of s. 212.0596, or makes arrangements deemed adequate by~~
 1908 ~~the department for auditing them with its own personnel.~~

1909 ~~(V) Such state agrees to provide to the department records~~
 1910 ~~obtained by it from retailers or dealers in such state showing~~
 1911 ~~delivery of tangible personal property into this state upon~~
 1912 ~~which no sales or use tax has been paid in a manner similar to~~
 1913 ~~that provided in sub-subparagraph g.~~

1914 ~~e. For purposes of this subparagraph, "sales of tangible~~
 1915 ~~personal property to be transported to a cooperating state"~~
 1916 ~~means mail order sales to a person who is in the cooperating~~
 1917 ~~state at the time the order is executed, from a dealer who~~
 1918 ~~receives that order in this state.~~

1919 ~~d. The tax levied by sub-subparagraph a. shall be at the~~
 1920 ~~rate at which such a sale would have been taxed pursuant to the~~
 1921 ~~cooperating state's tax laws if consummated in the cooperating~~
 1922 ~~state by a dealer and a purchaser, both of whom were physically~~
 1923 ~~present in that state at the time of the sale.~~

1924 ~~e. The tax levied by sub-subparagraph a., when collected,~~
 1925 ~~shall be held in the State Treasury in trust for the benefit of~~
 1926 ~~the cooperating state and shall be paid to it at a time agreed~~
 1927 ~~upon between the department, acting for this state, and the~~
 1928 ~~cooperating state or the department or agency designated by it~~
 1929 ~~to act for it; however, such payment shall in no event be made~~
 1930 ~~later than 30 days from the last day of the calendar quarter~~
 1931 ~~after the tax was collected. Funds held in trust for the benefit~~
 1932 ~~of a cooperating state shall not be subject to the service~~

1933 ~~charges imposed by s. 215.20.~~

1934 ~~f. The department is authorized to perform such acts and~~
 1935 ~~to provide such cooperation to a cooperating state with~~
 1936 ~~reference to the tax levied by sub-subparagraph a. as is~~
 1937 ~~required of the cooperating state by sub-subparagraph b.~~

1938 ~~g. In furtherance of this act, dealers selling tangible~~
 1939 ~~personal property for delivery in another state shall make~~
 1940 ~~available to the department, upon request of the department,~~
 1941 ~~records of all tangible personal property so sold. Such records~~
 1942 ~~shall include a description of the property, the name and~~
 1943 ~~address of the purchaser, the name and address of the person to~~
 1944 ~~whom the property was sent, the purchase price of the property,~~
 1945 ~~information regarding whether sales tax was paid in this state~~
 1946 ~~on the purchase price, and such other information as the~~
 1947 ~~department may by rule prescribe.~~

1948 (b)1. Notwithstanding the provisions of paragraph (a), it
 1949 is not the intention of this chapter to levy a tax on the sale
 1950 of tangible personal property to a nonresident dealer who does
 1951 not hold a Florida sales tax registration, provided such
 1952 nonresident dealer furnishes the seller a statement declaring
 1953 that the tangible personal property will be transported outside
 1954 this state by the nonresident dealer for resale and for no other
 1955 purpose. The statement shall include, but not be limited to, the
 1956 nonresident dealer's name, address, applicable passport or visa
 1957 number, arrival-departure card number, and evidence of authority
 1958 to do business in the nonresident dealer's home state or
 1959 country, such as his or her business name and address,
 1960 occupational license number, if applicable, or any other

1961 suitable requirement. The statement shall be signed by the
 1962 nonresident dealer and shall include the following sentence:
 1963 "Under penalties of perjury, I declare that I have read the
 1964 foregoing, and the facts alleged are true to the best of my
 1965 knowledge and belief."

1966 2. The burden of proof of subparagraph 1. rests with the
 1967 seller, who must retain the proper documentation to support the
 1968 exempt sale. The exempt transaction is subject to verification
 1969 by the department.

1970 (c) Notwithstanding the provisions of paragraph (a), it is
 1971 not the intention of this chapter to levy a tax on the sale by a
 1972 printer to a nonresident print purchaser of material printed by
 1973 that printer for that nonresident print purchaser when the print
 1974 purchaser does not furnish the printer a resale certificate
 1975 containing a sales tax registration number but does furnish to
 1976 the printer a statement declaring that such material will be
 1977 resold by the nonresident print purchaser.

1978 (17) This subsection shall be used to determine the
 1979 location where a transaction occurs for purposes of applying the
 1980 tax imposed by this chapter.

1981 (a) For purposes of this subsection, the terms "receive"
 1982 and "receipt" mean:

- 1983 1. Taking possession of tangible personal property;
- 1984 2. Making first use of services; or
- 1985 3. Taking possession or making first use of digital goods,
 1986 whichever occurs first.

1987
 1988 The terms do not include possession by a shipping company on

1989
1990
1991
1992
1993
1994
1995
1996
1997
1998
1999
2000
2001
2002
2003
2004
2005
2006
2007
2008
2009
2010
2011
2012
2013
2014
2015
2016

behalf of the purchaser.

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

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

1. The retail sale or transfer of a boat, modular home, manufactured home, or mobile home.
2. The retail sale, excluding a lease or rental, of a motor vehicle or aircraft that does not qualify as transportation equipment, as defined in paragraph (g). The lease or rental of these items shall be deemed to have occurred in accordance with paragraph (f).
3. The retail sale of tangible personal property by a florist.

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

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

2017 available from the business records of the seller which are
 2018 maintained in the ordinary course of the seller's business, if
 2019 use of this address does not constitute bad faith;

2020 4. When subparagraphs 1., 2., and 3. do not apply, at the
 2021 location indicated by an address for the purchaser obtained
 2022 during the consummation of the sale, including the address of a
 2023 purchaser's payment instrument, if no other address is
 2024 available, if use of this address does not constitute bad faith;
 2025 or

2026 5. When subparagraphs 1., 2., 3., and 4. do not apply,
 2027 including when the seller is without sufficient information to
 2028 apply the previous subparagraphs, at the address from which
 2029 tangible personal property was shipped, from which the digital
 2030 good or the computer software delivered electronically was first
 2031 available for transmission by the seller, or from which the
 2032 service was provided, disregarding any location that merely
 2033 provided the digital transfer of the product sold.

2034 (e) The lease or rental of tangible personal property,
 2035 other than property identified in paragraphs (f) and (g), shall
 2036 be deemed to have occurred as follows:

2037 1. For a lease or rental that requires recurring periodic
 2038 payments, the first periodic payment is deemed to take place in
 2039 accordance with paragraph (d), notwithstanding the exclusion of
 2040 lease or rental in paragraph (d). Subsequent periodic payments
 2041 are deemed to have occurred at the primary property location for
 2042 each period covered by the payment. The primary property
 2043 location is determined by an address for the property provided
 2044 by the lessee which is available to the lessor from its records

2045 maintained in the ordinary course of business, if use of this
2046 address does not constitute bad faith. The property location is
2047 not altered by intermittent use of the property at different
2048 locations, such as use of business property that accompanies
2049 employees on business trips and service calls.

2050 2. For a lease or rental that does not require recurring
2051 periodic payments, the payment is deemed to take place in
2052 accordance with paragraph (d), notwithstanding the exclusion of
2053 a lease or rental in paragraph (d).

2054 3. This paragraph does not affect the imposition or
2055 computation of sales or use tax on leases or rentals based on a
2056 lump sum or accelerated basis or on the acquisition of property
2057 for lease.

2058 (f) The lease or rental of a motor vehicle or aircraft
2059 that does not qualify as transportation equipment, as defined in
2060 paragraph (g), shall be sourced as follows:

2061 1. For a lease or rental that requires recurring periodic
2062 payments, each periodic payment is deemed to take place at the
2063 primary property location. The primary property location shall
2064 be determined by an address for the property provided by the
2065 lessee which is available to the lessor from its records
2066 maintained in the ordinary course of business, if use of this
2067 address does not constitute bad faith. This location may not be
2068 altered by intermittent use at different locations.

2069 2. For a lease or rental that does not require recurring
2070 periodic payments, the payment is deemed to take place in
2071 accordance with paragraph (d), notwithstanding the exclusion of
2072 a lease or rental in paragraph (d).

2073 3. This paragraph does not affect the imposition or
 2074 computation of sales or use tax on leases or rentals based on a
 2075 lump sum or accelerated basis or on the acquisition of property
 2076 for lease.

2077 (g) The retail sale, including a lease or rental, of
 2078 transportation equipment shall be deemed to take place in
 2079 accordance with paragraph (d), notwithstanding the exclusion of
 2080 a lease or rental in paragraph (d). The term "transportation
 2081 equipment" means:

2082 1. Locomotives and rail cars that are used for the
 2083 carriage of persons or property in interstate commerce;

2084 2. Trucks and truck tractors with a gross vehicle weight
 2085 rating (GVWR) of 10,001 pounds or greater, trailers,
 2086 semitrailers, or passenger buses that are registered through the
 2087 International Registration Plan and operated under authority of
 2088 a carrier authorized and certificated by the United States
 2089 Department of Transportation or another federal authority to
 2090 engage in the carriage of persons or property in interstate
 2091 commerce;

2092 3. Aircraft that are operated by air carriers authorized
 2093 and certificated by the United States Department of
 2094 Transportation or another federal or a foreign authority to
 2095 engage in the carriage of persons or property in interstate or
 2096 foreign commerce; or

2097 4. Containers designed for use on and component parts
 2098 attached or secured on the items set forth in subparagraphs 1.-

2099 3.

2100 Section 9. Paragraph (c) of subsection (1) of section

2101 212.07, Florida Statutes, is amended, and subsection (10) is
 2102 added that section, to read:

2103 212.07 Sales, storage, use tax; tax added to purchase
 2104 price; dealer not to absorb; liability of purchasers who cannot
 2105 prove payment of the tax; penalties; general exemptions.--

2106 (1)

2107 (c) Unless the purchaser of tangible personal property
 2108 that is incorporated into tangible personal property
 2109 manufactured, produced, compounded, processed, or fabricated for
 2110 one's own use and subject to the tax imposed under s.

2111 212.06(1)(b) or is purchased for export under s. 212.06(5)(a)~~1~~.
 2112 extends a certificate in compliance with the rules of the
 2113 department, the dealer shall himself or herself be liable for
 2114 and pay the tax.

2115 (10)(a) The executive director is authorized to maintain
 2116 and publish a taxability matrix in a downloadable format that
 2117 has been approved by the governing board of the Streamlined
 2118 Sales and Use Tax Agreement.

2119 (b) The state shall provide notice of changes to the
 2120 taxability of the products or services listed in the taxability
 2121 matrix.

2122 (c) A seller or certified service provider who collects
 2123 and remits the state and local tax imposed by this chapter shall
 2124 be held harmless from tax, interest, and penalties for having
 2125 charged and collected the incorrect amount of sales or use tax
 2126 due solely as a result of relying on erroneous data provided by
 2127 the state in the taxability matrix.

2128 (d) A purchaser shall be held harmless from penalties for

2129 having failed to pay the correct amount of sales or use tax due
 2130 solely as a result of any of the following circumstances:

2131 1. The seller or certified service provider relied on
 2132 erroneous data provided by the state in the taxability matrix
 2133 completed by the state;

2134 2. A purchaser relied on erroneous data provided by the
 2135 state in the taxability matrix completed by the state; or

2136 3. A purchaser holding a direct-pay permit relied on
 2137 erroneous data provided by the state in the taxability matrix
 2138 completed by the state.

2139 (e) A purchaser shall be held harmless from tax and
 2140 interest for having failed to pay the correct amount of sales or
 2141 use tax due solely as a result of the state's erroneous
 2142 classification in the taxability matrix of terms included in the
 2143 library of definitions as "taxable" or "exempt," "included in
 2144 sales price" or "excluded from sales price," or "included in the
 2145 definition" or "excluded from the definition."

2146 Section 10. Subsections (1) and (2) and paragraphs (b) and
 2147 (c) of subsection (17) of section 212.08, Florida Statutes, are
 2148 amended to read:

2149 212.08 Sales, rental, use, consumption, distribution, and
 2150 storage tax; specified exemptions.--The sale at retail, the
 2151 rental, the use, the consumption, the distribution, and the
 2152 storage to be used or consumed in this state of the following
 2153 are hereby specifically exempt from the tax imposed by this
 2154 chapter.

2155 (1) EXEMPTIONS; GENERAL GROCERIES.--

2156 (a) Food and food ingredients ~~products~~ for human

2157 consumption are exempt from the tax imposed by this chapter.

2158 (b) For the purpose of this chapter, as used in this
 2159 subsection, the term "food and food ingredients products" means
 2160 substances, whether in liquid, concentrated, solid, frozen,
 2161 dried, or dehydrated form, which are sold for ingestion or
 2162 chewing by humans and are consumed for their taste or
 2163 nutritional value ~~edible commodities, whether processed, cooked,~~
 2164 ~~raw, canned, or in any other form, which are generally regarded~~
 2165 ~~as food.~~ This includes, but is not limited to, all of the
 2166 following:

2167 1. ~~Cereals and cereal products, baked goods,~~
 2168 ~~oleomargarine, meat and meat products, fish and seafood~~
 2169 ~~products, frozen foods and dinners, poultry, eggs and egg~~
 2170 ~~products, vegetables and vegetable products, fruit and fruit~~
 2171 ~~products, spices, salt, sugar and sugar products, milk and dairy~~
 2172 ~~products, and products intended to be mixed with milk.~~

2173 2. ~~Natural fruit or vegetable juices or their concentrates~~
 2174 ~~or reconstituted natural concentrated fruit or vegetable juices,~~
 2175 ~~whether frozen or unfrozen, dehydrated, powdered, granulated,~~
 2176 ~~sweetened or unsweetened, seasoned with salt or spice, or~~
 2177 ~~unseasoned; coffee, coffee substitutes, or cocoa; and tea,~~
 2178 ~~unless it is sold in a liquid form.~~

2179 1.3. Bakery products sold by bakeries, pastry shops, or
 2180 like establishments, if sold without eating utensils. For
 2181 purposes of this subparagraph, bakery products include bread,
 2182 rolls, buns, biscuits, bagels, croissants, pastries, doughnuts,
 2183 danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and
 2184 tortillas ~~that do not have eating facilities.~~

2185 2. Dietary supplements. The term "dietary supplements"
 2186 means any product, other than tobacco, intended to supplement
 2187 the diet which contains one or more of the following dietary
 2188 ingredients: a vitamin; a mineral; an herb or other botanical;
 2189 an amino acid; a dietary substance for use by humans to
 2190 supplement the diet by increasing the total dietary intake; or a
 2191 concentrate, metabolite, constituent, extract, or combination of
 2192 any ingredient described in this subparagraph which is intended
 2193 for ingestion in tablet, capsule, powder, softgel, gelcap, or
 2194 liquid form or, if not intended for ingestion in such a form, is
 2195 not represented as conventional food and is not represented for
 2196 use as a sole item of a meal or of the diet, and which is
 2197 required to be labeled as a dietary supplement, identifiable by
 2198 the supplemental facts panel found on the label and as required
 2199 pursuant to 21 C.F.R. s. 101.36.

2200 (c) The exemption provided by this subsection does not
 2201 apply:

2202 ~~1. When the food products are sold as meals for~~
 2203 ~~consumption on or off the premises of the dealer.~~

2204 ~~2. When the food products are furnished, prepared, or~~
 2205 ~~served for consumption at tables, chairs, or counters or from~~
 2206 ~~trays, glasses, dishes, or other tableware, whether provided by~~
 2207 ~~the dealer or by a person with whom the dealer contracts to~~
 2208 ~~furnish, prepare, or serve food products to others.~~

2209 ~~3. When the food products are ordinarily sold for~~
 2210 ~~immediate consumption on the seller's premises or near a~~
 2211 ~~location at which parking facilities are provided primarily for~~
 2212 ~~the use of patrons in consuming the products purchased at the~~

2213 ~~location, even though such products are sold on a "take out" or~~
 2214 ~~"to go" order and are actually packaged or wrapped and taken~~
 2215 ~~from the premises of the dealer.~~

2216 ~~4. To sandwiches sold ready for immediate consumption on~~
 2217 ~~or off the seller's premises.~~

2218 ~~5. When the food products are sold ready for immediate~~
 2219 ~~consumption within a place, the entrance to which is subject to~~
 2220 ~~an admission charge.~~

2221 1.6. To food and food ingredients sold as prepared food.
 2222 The term "prepared food" means:

2223 a. Food sold in a heated state or heated by the seller;

2224 b. Two or more food ingredients mixed or combined by the
 2225 seller for sale as a single item; or

2226 c. Food sold with eating utensils provided by the seller,
 2227 including plates, knives, forks, spoons, glasses, cups, napkins,
 2228 or straws. A plate does not include a container or packaging
 2229 used to transport food.

2230
 2231 Prepared food does not include food that is only cut,
 2232 repackaged, or pasteurized by the seller, eggs, fish, meat,
 2233 poultry, and foods containing these raw animal foods requiring
 2234 cooking by the consumer as recommended by the Food and Drug
 2235 Administration in chapter 3, part 4011 of its food code so as to
 2236 prevent food-borne illness. ~~When the food products are sold as~~
 2237 ~~hot prepared food products.~~

2238 ~~2.7. To soft drinks, which include, but are not limited~~
 2239 ~~to, any nonalcoholic beverage, any preparation or beverage~~
 2240 ~~commonly referred to as a "soft drink," or any noncarbonated~~

2241 ~~drink made from milk derivatives or tea, when sold in cans or~~
 2242 ~~similar containers. The term "soft drinks" means nonalcoholic~~
 2243 ~~beverages that contain natural or artificial sweeteners. Soft~~
 2244 ~~drinks do not include beverages that contain milk or milk~~
 2245 ~~products, soy, rice, or similar milk substitutes, or greater~~
 2246 ~~than 50 percent of vegetable or fruit juice by volume.~~

2247 ~~8. To ice cream, frozen yogurt, and similar frozen dairy~~
 2248 ~~or nondairy products in cones, small cups, or pints, popsicles,~~
 2249 ~~frozen fruit bars, or other novelty items, whether or not sold~~
 2250 ~~separately.~~

2251 ~~9. To food prepared, whether on or off the premises, and~~
 2252 ~~sold for immediate consumption. This does not apply to food~~
 2253 ~~prepared off the premises and sold in the original sealed~~
 2254 ~~container, or the slicing of products into smaller portions.~~

2255 ~~3.10. When the food and food ingredients products are sold~~
 2256 ~~through a vending machine, pushcart, motor vehicle, or any other~~
 2257 ~~form of vehicle.~~

2258 ~~4.11. To candy and any similar product regarded as candy~~
 2259 ~~or confection, based on its normal use, as indicated on the~~
 2260 ~~label or advertising thereof. The term "candy" means a~~
 2261 ~~preparation of sugar, honey, or other natural or artificial~~
 2262 ~~sweeteners in combination with chocolate, fruits, nuts, or other~~
 2263 ~~ingredients or flavorings in the form of bars, drops, or pieces.~~
 2264 ~~Candy does not include any preparation that contains flour and~~
 2265 ~~does not require refrigeration.~~

2266 ~~5. To tobacco.~~

2267 ~~12. To bakery products sold by bakeries, pastry shops, or~~
 2268 ~~like establishments that have eating facilities, except when~~

2269 ~~sold for consumption off the seller's premises.~~

2270 ~~13. When food products are served, prepared, or sold in or~~
 2271 ~~by restaurants, lunch counters, cafeterias, hotels, taverns, or~~
 2272 ~~other like places of business.~~

2273 ~~(d) As used in this subsection, the term:~~

2274 ~~1. "For consumption off the seller's premises" means that~~
 2275 ~~the food or drink is intended by the customer to be consumed at~~
 2276 ~~a place away from the dealer's premises.~~

2277 ~~2. "For consumption on the seller's premises" means that~~
 2278 ~~the food or drink sold may be immediately consumed on the~~
 2279 ~~premises where the dealer conducts his or her business. In~~
 2280 ~~determining whether an item of food is sold for immediate~~
 2281 ~~consumption, there shall be considered the customary consumption~~
 2282 ~~practices prevailing at the selling facility.~~

2283 ~~3. "Premises" shall be construed broadly, and means, but~~
 2284 ~~is not limited to, the lobby, aisle, or auditorium of a theater;~~
 2285 ~~the seating, aisle, or parking area of an arena, rink, or~~
 2286 ~~stadium; or the parking area of a drive-in or outdoor theater.~~
 2287 ~~The premises of a caterer with respect to catered meals or~~
 2288 ~~beverages shall be the place where such meals or beverages are~~
 2289 ~~served.~~

2290 ~~4. "Hot prepared food products" means those products,~~
 2291 ~~items, or components which have been prepared for sale in a~~
 2292 ~~heated condition and which are sold at any temperature that is~~
 2293 ~~higher than the air temperature of the room or place where they~~
 2294 ~~are sold. "Hot prepared food products," for the purposes of this~~
 2295 ~~subsection, includes a combination of hot and cold food items or~~
 2296 ~~components where a single price has been established for the~~

2297 ~~combination and the food products are sold in such combination,~~
 2298 ~~such as a hot meal, a hot specialty dish or serving, or a hot~~
 2299 ~~sandwich or hot pizza, including cold components or side items.~~

2300 (d)~~(e)~~1. Food or drinks not exempt under paragraphs (a),
 2301 (b), and (c), ~~and (d)~~ shall be exempt, notwithstanding those
 2302 paragraphs, when purchased with food coupons or Special
 2303 Supplemental Food Program for Women, Infants, and Children
 2304 vouchers issued under authority of federal law.

2305 2. This paragraph is effective only while federal law
 2306 prohibits a state's participation in the federal food coupon
 2307 program or Special Supplemental Food Program for Women, Infants,
 2308 and Children if there is an official determination that state or
 2309 local sales taxes are collected within that state on purchases
 2310 of food or drinks with such coupons.

2311 3. This paragraph does ~~shall~~ not apply to any food or
 2312 drinks on which federal law permits ~~shall permit~~ sales taxes
 2313 without penalty, such as termination of the state's
 2314 participation.

2315 (e) Dietary supplements that are sold as prepared food are
 2316 not exempt.

2317 (2) EXEMPTIONS; MEDICAL.--

2318 (a) There shall be exempt from the tax imposed by this
 2319 chapter:

2320 1. Drugs.

2321 2. Durable medical equipment, mobility-enhancing
 2322 equipment, or prosthetic devices ~~any medical products and~~
 2323 ~~supplies or medicine~~ dispensed according to an individual
 2324 prescription or prescriptions. ~~written by a prescriber~~

2325 ~~authorized by law to prescribe medicinal drugs;~~
 2326 3. Hypodermic needles. ~~hypodermic syringes;~~
 2327 4. Chemical compounds and test kits used for the diagnosis
 2328 or treatment of human disease, illness, or injury and intended
 2329 for one-time use.~~;~~
 2330 5. Over-the-counter drugs and common household remedies
 2331 recommended and generally sold for internal or external use in
 2332 the cure, mitigation, treatment, or prevention of illness or
 2333 disease in human beings, but not including grooming and hygiene
 2334 products.
 2335 6. Band-aids, gauze, bandages, and adhesive tape.
 2336 7. Funerals. However, tangible personal property used by
 2337 funeral directors in their business is taxable. ~~cosmetics or~~
 2338 ~~toilet articles, notwithstanding the presence of medicinal~~
 2339 ~~ingredients therein, according to a list prescribed and approved~~
 2340 ~~by the Department of Health, which list shall be certified to~~
 2341 ~~the Department of Revenue from time to time and included in the~~
 2342 ~~rules promulgated by the Department of Revenue. There shall also~~
 2343 ~~be exempt from the tax imposed by this chapter artificial eyes~~
 2344 ~~and limbs; orthopedic shoes; prescription eyeglasses and items~~
 2345 ~~incidental thereto or which become a part thereof; dentures;~~
 2346 ~~hearing aids; crutches; prosthetic and orthopedic appliances;~~
 2347 ~~and funerals. In addition, any~~
 2348 8. Items intended for one-time use which transfer
 2349 essential optical characteristics to contact lenses. ~~shall be~~
 2350 ~~exempt from the tax imposed by this chapter;~~ However, this
 2351 exemption applies shall apply only after \$100,000 of the tax
 2352 imposed by this chapter on such items has been paid in any

2353 | calendar year by a taxpayer who claims the exemption in such
 2354 | year. ~~Funeral directors shall pay tax on all tangible personal~~
 2355 | ~~property used by them in their business.~~

2356 | (b) For the purposes of this subsection, the term:

2357 | 1. "Drug" means a compound, substance, or preparation, and
 2358 | any component of a compound, substance, or preparation, other
 2359 | than food and food ingredients, dietary supplements, and
 2360 | alcoholic beverages, which is:

2361 | a. Recognized in the official United States Pharmacopoeia,
 2362 | official Homeopathic Pharmacopoeia of the United States, or
 2363 | official National Formulary, or the supplement to any of them;

2364 | b. Intended for use in the diagnosis, cure, mitigation,
 2365 | treatment, or prevention of disease; or

2366 | c. Intended to affect the structure or any function of the
 2367 | body.

2368 | 2. "Durable medical equipment" means equipment, including
 2369 | repair and replacement parts to such equipment, but excluding
 2370 | mobility-enhancing equipment, which can withstand repeated use,
 2371 | is primarily and customarily used to serve a medical purpose,
 2372 | generally is not useful to a person in the absence of illness or
 2373 | injury, and is not worn on or in the body.

2374 | 3. "Mobility-enhancing equipment" means equipment,
 2375 | including repair and replacement parts to such equipment, but
 2376 | excluding durable medical equipment, which:

2377 | a. Is primarily and customarily used to provide or
 2378 | increase the ability to move from one place to another and which
 2379 | is appropriate for use in a home or a motor vehicle.

2380 | b. Is not generally used by persons with normal mobility.

2381 c. Does not include any motor vehicle or any equipment on
 2382 a motor vehicle normally provided by a motor vehicle
 2383 manufacturer.

2384 4. "Prosthetic device" means a replacement, corrective, or
 2385 supportive device, including repair or replacement parts to such
 2386 equipment, which is worn on or in the body to:

2387 a. Artificially replace a missing portion of the body;

2388 b. Prevent or correct physical deformity or malfunction;

2389 or

2390 c. Support a weak or deformed portion of the body.

2391 5. "Grooming and hygiene products" mean soaps and cleaning
 2392 solutions, shampoo, toothpaste, mouthwash, antiperspirants, and
 2393 suntan lotions and screens, regardless of whether the items meet
 2394 the definition of an over-the-counter drug.

2395 6. "Over-the-counter drug" means a drug the packaging for
 2396 which contains a label that identifies the product as a drug as
 2397 required by 21 C.F.R. s. 201.66. The over-the-counter drug label
 2398 includes a drug-facts panel or a statement of the active
 2399 ingredients, with a list of those ingredients contained in the
 2400 compound, substance, or preparation. ~~"Prosthetic and orthopedic~~
 2401 ~~appliances" means any apparatus, instrument, device, or~~
 2402 ~~equipment used to replace or substitute for any missing part of~~
 2403 ~~the body, to alleviate the malfunction of any part of the body,~~
 2404 ~~or to assist any disabled person in leading a normal life by~~
 2405 ~~facilitating such person's mobility. Such apparatus, instrument,~~
 2406 ~~device, or equipment shall be exempted according to an~~
 2407 ~~individual prescription or prescriptions written by a physician~~
 2408 ~~licensed under chapter 458, chapter 459, chapter 460, chapter~~

2409 ~~461, or chapter 466, or according to a list prescribed and~~
 2410 ~~approved by the Department of Health, which list shall be~~
 2411 ~~certified to the Department of Revenue from time to time and~~
 2412 ~~included in the rules promulgated by the Department of Revenue.~~

2413 ~~2. "Cosmetics" means articles intended to be rubbed,~~
 2414 ~~poured, sprinkled, or sprayed on, introduced into, or otherwise~~
 2415 ~~applied to the human body for cleansing, beautifying, promoting~~
 2416 ~~attractiveness, or altering the appearance and also means~~
 2417 ~~articles intended for use as a compound of any such articles,~~
 2418 ~~including, but not limited to, cold creams, suntan lotions,~~
 2419 ~~makeup, and body lotions.~~

2420 ~~3. "Toilet articles" means any article advertised or held~~
 2421 ~~out for sale for grooming purposes and those articles that are~~
 2422 ~~customarily used for grooming purposes, regardless of the name~~
 2423 ~~by which they may be known, including, but not limited to, soap,~~
 2424 ~~toothpaste, hair spray, shaving products, colognes, perfumes,~~
 2425 ~~shampoo, deodorant, and mouthwash.~~

2426 7.4. "Prescription" means an order, formula, or recipe
 2427 issued in any form of oral, written, electronic, or other means
 2428 of transmission by a practitioner licensed under chapter 458,
 2429 chapter 459, chapter 460, chapter 461, or chapter 466. The term
 2430 also includes an orally transmitted order by the lawfully
 2431 designated agent of such practitioner. The term also includes an
 2432 order written or transmitted by a practitioner licensed to
 2433 practice in a jurisdiction other than this state, but only if
 2434 the pharmacist called upon to dispense the order determines, in
 2435 the exercise of his or her professional judgment, that the order
 2436 is valid and necessary for the treatment of a chronic or

2437 recurrent illness. ~~includes any order for drugs or medicinal~~
 2438 ~~supplies written or transmitted by any means of communication by~~
 2439 ~~a duly licensed practitioner authorized by the laws of the state~~
 2440 ~~to prescribe such drugs or medicinal supplies and intended to be~~
 2441 ~~dispensed by a pharmacist. The term also includes an orally~~
 2442 ~~transmitted order by the lawfully designated agent of such~~
 2443 ~~practitioner. The term also includes an order written or~~
 2444 ~~transmitted by a practitioner licensed to practice in a~~
 2445 ~~jurisdiction other than this state, but only if the pharmacist~~
 2446 ~~called upon to dispense such order determines, in the exercise~~
 2447 ~~of his or her professional judgment, that the order is valid and~~
 2448 ~~necessary for the treatment of a chronic or recurrent illness.~~
 2449 ~~The term also includes a pharmacist's order for a product~~
 2450 ~~selected from the formulary created pursuant to s. 465.186. A~~
 2451 ~~prescription may be retained in written form, or the pharmacist~~
 2452 ~~may cause it to be recorded in a data processing system,~~
 2453 ~~provided that such order can be produced in printed form upon~~
 2454 ~~lawful request.~~

2455 (c) Chlorine is ~~shall~~ not be exempt from the tax imposed
 2456 by this chapter when used for the treatment of water in swimming
 2457 pools.

2458 ~~(d) Lithotripters are exempt.~~

2459 (d)(e) Human organs are exempt.

2460 ~~(f) Sales of drugs to or by physicians, dentists,~~
 2461 ~~veterinarians, and hospitals in connection with medical~~
 2462 ~~treatment are exempt.~~

2463 ~~(g) Medical products and supplies used in the cure,~~
 2464 ~~mitigation, alleviation, prevention, or treatment of injury,~~

2465 ~~disease, or incapacity which are temporarily or permanently~~
 2466 ~~incorporated into a patient or client by a practitioner of the~~
 2467 ~~healing arts licensed in the state are exempt.~~

2468 ~~(h) The purchase by a veterinarian of commonly recognized~~
 2469 ~~substances possessing curative or remedial properties which are~~
 2470 ~~ordered and dispensed as treatment for a diagnosed health~~
 2471 ~~disorder by or on the prescription of a duly licensed~~
 2472 ~~veterinarian, and which are applied to or consumed by animals~~
 2473 ~~for alleviation of pain or the cure or prevention of sickness,~~
 2474 ~~disease, or suffering are exempt. Also exempt are the purchase~~
 2475 ~~by a veterinarian of antiseptics, absorbent cotton, gauze for~~
 2476 ~~bandages, lotions, vitamins, and worm remedies.~~

2477 ~~(i) X-ray opaques, also known as opaque drugs and~~
 2478 ~~radiopaque, such as the various opaque dyes and barium sulphate,~~
 2479 ~~when used in connection with medical X rays for treatment of~~
 2480 ~~bodies of humans and animals, are exempt.~~

2481 ~~(e)~~ (j) Parts, special attachments, special lettering, and
 2482 other like items that are added to or attached to tangible
 2483 personal property so that a handicapped person can use them are
 2484 exempt when such items are purchased by a person pursuant to an
 2485 individual prescription.

2486 ~~(f)~~ (k) This subsection shall be strictly construed and
 2487 enforced.

2488 (17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.--

2489 (b) As used in this subsection, the term "overhead
 2490 materials" means all tangible personal property, other than
 2491 qualifying property as defined in s. 212.02 (33) ~~(14)~~ (a) and
 2492 electricity, which is used or consumed in the performance of a

2493 qualifying contract, title to which property vests in or passes
 2494 to the government under the contract.

2495 (c) As used in this subsection and in s.
 2496 212.02 ~~(33)~~ ~~(14)~~ (a), the term "qualifying contract" means a
 2497 contract with the United States Department of Defense or the
 2498 National Aeronautics and Space Administration, or a subcontract
 2499 thereunder, but does not include a contract or subcontract for
 2500 the repair, alteration, improvement, or construction of real
 2501 property, except to the extent that purchases under such a
 2502 contract would otherwise be exempt from the tax imposed by this
 2503 chapter.

2504 Section 11. Section 212.094, Florida Statutes, is created
 2505 to read:

2506 212.094 Purchaser request for refund or credit from
 2507 dealer.--

2508 (1) If a purchaser seeks from a dealer a refund of or
 2509 credit against a tax collected under this chapter by that
 2510 dealer, the purchaser shall submit a written request for the
 2511 refund or credit to the dealer in accordance with this section.
 2512 The request must contain all the information necessary for the
 2513 dealer to determine the validity of the purchaser's request.

2514 (2) The purchaser may not take any other action against
 2515 the dealer with respect to the requested refund or credit until
 2516 the dealer has had 60 days after receiving a completed request
 2517 in which to respond.

2518 (3) This section does not affect a person's standing to
 2519 claim a refund.

2520 (4) This section does not apply to refunds resulting from

2521 merchandise returned by a customer to a dealer.

2522 Section 12. Section 212.12, Florida Statutes, is amended
2523 to read:

2524 212.12 Dealer's credit for collecting tax; penalties for
2525 noncompliance; powers of Department of Revenue in dealing with
2526 delinquents; ~~brackets applicable to taxable transactions;~~
2527 records required.--

2528 (1) Notwithstanding any other provision of law and for the
2529 purpose of compensating persons granting licenses for and the
2530 lessors of real and personal property taxed hereunder, for the
2531 purpose of compensating dealers in tangible personal property,
2532 for the purpose of compensating dealers providing communication
2533 services and taxable services, for the purpose of compensating
2534 owners of places where admissions are collected, and for the
2535 purpose of compensating remitters of any taxes or fees reported
2536 on the same documents utilized for the sales and use tax, as
2537 compensation for the keeping of prescribed records, filing
2538 timely tax returns, and the proper accounting and remitting of
2539 taxes by them, such seller, person, lessor, dealer, owner, and
2540 remitter ~~(except dealers who make mail order sales)~~ shall be
2541 allowed 2.5 percent of the amount of the tax due and accounted
2542 for and remitted to the department, in the form of a deduction
2543 in submitting his or her report and paying the amount due by him
2544 or her; the department shall allow such deduction of 2.5 percent
2545 of the amount of the tax to the person paying the same for
2546 remitting the tax and making of tax returns in the manner herein
2547 provided, for paying the amount due to be paid by him or her,
2548 and as further compensation to dealers in tangible personal

2549 | property for the keeping of prescribed records and for
 2550 | collection of taxes and remitting the same. However, if the
 2551 | amount of the tax due and remitted to the department for the
 2552 | reporting period exceeds \$1,200, no allowance shall be allowed
 2553 | for all amounts in excess of \$1,200. ~~The executive director of~~
 2554 | ~~the department is authorized to negotiate a collection~~
 2555 | ~~allowance, pursuant to rules promulgated by the department, with~~
 2556 | ~~a dealer who makes mail order sales. The rules of the department~~
 2557 | ~~shall provide guidelines for establishing the collection~~
 2558 | ~~allowance based upon the dealer's estimated costs of collecting~~
 2559 | ~~the tax, the volume and value of the dealer's mail order sales~~
 2560 | ~~to purchasers in this state, and the administrative and legal~~
 2561 | ~~costs and likelihood of achieving collection of the tax absent~~
 2562 | ~~the cooperation of the dealer. However, in no event shall the~~
 2563 | ~~collection allowance negotiated by the executive director exceed~~
 2564 | ~~10 percent of the tax remitted for a reporting period.~~

2565 | (a) The Department of Revenue may deny the collection
 2566 | allowance if a taxpayer files an incomplete return or if the
 2567 | required tax return or tax is delinquent at the time of payment.

2568 | 1. An "incomplete return" is, for purposes of this
 2569 | chapter, a return which is lacking such uniformity,
 2570 | completeness, and arrangement that the physical handling,
 2571 | verification, review of the return, or determination of other
 2572 | taxes and fees reported on the return may not be readily
 2573 | accomplished.

2574 | 2. The department shall adopt rules requiring such
 2575 | information as it may deem necessary to ensure that the tax
 2576 | levied hereunder is properly collected, reviewed, compiled,

2577 reported, and enforced, including, but not limited to: the
 2578 amount of gross sales; the amount of taxable sales; the amount
 2579 of tax collected or due; the amount of lawful refunds,
 2580 deductions, or credits claimed; the amount claimed as the
 2581 dealer's collection allowance; the amount of penalty and
 2582 interest; the amount due with the return; and such other
 2583 information as the Department of Revenue may specify. The
 2584 department shall require that transient rentals and agricultural
 2585 equipment transactions be separately shown. Sales made through
 2586 vending machines as defined in s. 212.0515 must be separately
 2587 shown on the return. Sales made through coin-operated amusement
 2588 machines as defined by s. 212.02 and the number of machines
 2589 operated must be separately shown on the return or on a form
 2590 prescribed by the department. If a separate form is required,
 2591 the same penalties for late filing, incomplete filing, or
 2592 failure to file as provided for the sales tax return shall apply
 2593 to said form.

2594 (b) The collection allowance and other credits or
 2595 deductions provided in this chapter shall be applied
 2596 proportionally to any taxes or fees reported on the same
 2597 documents used for the sales and use tax.

2598 (c)1. A dealer entitled to the collection allowance
 2599 provided in this section may elect to forego the collection
 2600 allowance and direct that said amount be transferred into the
 2601 Educational Enhancement Trust Fund. Such an election must be
 2602 made with the timely filing of a return and may not be rescinded
 2603 once made. If a dealer who makes such an election files a
 2604 delinquent return, underpays the tax, or files an incomplete

HB 165

2010

2605 return, the amount transferred into the Educational Enhancement
2606 Trust Fund shall be the amount of the collection allowance
2607 remaining after resolution of liability for all of the tax,
2608 interest, and penalty due on that return or underpayment of tax.
2609 The Department of Education shall distribute the remaining
2610 amount from the trust fund to the school districts that have
2611 adopted resolutions stating that those funds will be used to
2612 ensure that up-to-date technology is purchased for the
2613 classrooms in the district and that teachers are trained in the
2614 use of that technology. Revenues collected in districts that do
2615 not adopt such a resolution shall be equally distributed to
2616 districts that have adopted such resolutions.

2617 2. This paragraph applies to all taxes, surtaxes, and any
2618 local option taxes administered under this chapter and remitted
2619 directly to the department. This paragraph does not apply to any
2620 locally imposed and self-administered convention development
2621 tax, tourist development tax, or tourist impact tax administered
2622 under this chapter.

2623 3. Revenues from the dealer-collection allowances shall be
2624 transferred quarterly from the General Revenue Fund to the
2625 Educational Enhancement Trust Fund. The Department of Revenue
2626 shall provide to the Department of Education quarterly
2627 information about such revenues by county to which the
2628 collection allowance was attributed.

2629
2630 Notwithstanding any provision of chapter 120 to the contrary,
2631 the Department of Revenue may adopt rules to carry out the
2632 amendment made by chapter 2006-52, Laws of Florida, to this

2633 section.

2634 (d) Notwithstanding paragraphs (a) and (b), a Model 1
 2635 seller under the Streamlined Sales and Use Tax Agreement is not
 2636 entitled to the collection allowance described in paragraphs (a)
 2637 and (b).

2638 (e)1. In addition to any collection allowance that may be
 2639 provided under this subsection, the department may provide the
 2640 monetary allowances required to be provided by the state to
 2641 certified service providers and voluntary sellers pursuant to
 2642 Article VI of the Streamlined Sales and Use Tax Agreement, as
 2643 amended.

2644 2. Such monetary allowances must be in the form of
 2645 collection allowances that certified service providers or
 2646 voluntary sellers are permitted to retain from the tax revenues
 2647 collected on remote sales to be remitted to the state pursuant
 2648 to this chapter.

2649 3. For purposes of this paragraph, the term "voluntary
 2650 seller" or "volunteer seller" means a seller that is not
 2651 required to register in this state to collect a tax. The term
 2652 "remote sales" means revenues generated by such a seller for
 2653 this state for which the seller is not required to register to
 2654 collect the tax imposed by this chapter.

2655 (2) (a) When any person required hereunder to make any
 2656 return or to pay any tax or fee imposed by this chapter either
 2657 fails to timely file such return or fails to pay the tax or fee
 2658 shown due on the return within the time required hereunder, in
 2659 addition to all other penalties provided herein and by the laws
 2660 of this state in respect to such taxes or fees, a specific

HB 165

2010

2661 penalty shall be added to the tax or fee in the amount of 10
2662 percent of either the tax or fee shown on the return that is not
2663 timely filed or any tax or fee not paid timely. The penalty may
2664 not be less than \$50 for failure to timely file a tax return
2665 required by s. 212.11(1) or timely pay the tax or fee shown due
2666 on the return except as provided in s. 213.21(10). If a person
2667 fails to timely file a return required by s. 212.11(1) and to
2668 timely pay the tax or fee shown due on the return, only one
2669 penalty of 10 percent, which may not be less than \$50, shall be
2670 imposed.

2671 (b) When any person required under this section to make a
2672 return or to pay a tax or fee imposed by this chapter fails to
2673 disclose the tax or fee on the return within the time required,
2674 excluding a noncompliant filing event generated by situations
2675 covered in paragraph (a), in addition to all other penalties
2676 provided in this section and by the laws of this state in
2677 respect to such taxes or fees, a specific penalty shall be added
2678 to the additional tax or fee owed in the amount of 10 percent of
2679 any such unpaid tax or fee not paid timely if the failure is for
2680 not more than 30 days, with an additional 10 percent of any such
2681 unpaid tax or fee for each additional 30 days, or fraction
2682 thereof, while the failure continues, not to exceed a total
2683 penalty of 50 percent, in the aggregate, of any unpaid tax or
2684 fee.

2685 (c) Any person who knowingly and with a willful intent to
2686 evade any tax imposed under this chapter fails to file six
2687 consecutive returns as required by law commits a felony of the
2688 third degree, punishable as provided in s. 775.082 or s.

HB 165

2010

2689 775.083.

2690 (d) Any person who makes a false or fraudulent return with

2691 a willful intent to evade payment of any tax or fee imposed

2692 under this chapter; any person who, after the department's

2693 delivery of a written notice to the person's last known address

2694 specifically alerting the person of the requirement to register

2695 the person's business as a dealer, intentionally fails to

2696 register the business; and any person who, after the

2697 department's delivery of a written notice to the person's last

2698 known address specifically alerting the person of the

2699 requirement to collect tax on specific transactions,

2700 intentionally fails to collect such tax, shall, in addition to

2701 the other penalties provided by law, be liable for a specific

2702 penalty of 100 percent of any unreported or any uncollected tax

2703 or fee and, upon conviction, for fine and punishment as provided

2704 in s. 775.082, s. 775.083, or s. 775.084. Delivery of written

2705 notice may be made by certified mail, or by the use of such

2706 other method as is documented as being necessary and reasonable

2707 under the circumstances. The civil and criminal penalties

2708 imposed herein for failure to comply with a written notice

2709 alerting the person of the requirement to register the person's

2710 business as a dealer or to collect tax on specific transactions

2711 shall not apply if the person timely files a written challenge

2712 to such notice in accordance with procedures established by the

2713 department by rule or the notice fails to clearly advise that

2714 failure to comply with or timely challenge the notice will

2715 result in the imposition of the civil and criminal penalties

2716 imposed herein.

2717 1. If the total amount of unreported or uncollected taxes
 2718 or fees is less than \$300, the first offense resulting in
 2719 conviction is a misdemeanor of the second degree, the second
 2720 offense resulting in conviction is a misdemeanor of the first
 2721 degree, and the third and all subsequent offenses resulting in
 2722 conviction is a misdemeanor of the first degree, and the third
 2723 and all subsequent offenses resulting in conviction are felonies
 2724 of the third degree.

2725 2. If the total amount of unreported or uncollected taxes
 2726 or fees is \$300 or more but less than \$20,000, the offense is a
 2727 felony of the third degree.

2728 3. If the total amount of unreported or uncollected taxes
 2729 or fees is \$20,000 or more but less than \$100,000, the offense
 2730 is a felony of the second degree.

2731 4. If the total amount of unreported or uncollected taxes
 2732 or fees is \$100,000 or more, the offense is a felony of the
 2733 first degree.

2734 (e) A person who willfully attempts in any manner to evade
 2735 any tax, surcharge, or fee imposed under this chapter or the
 2736 payment thereof is, in addition to any other penalties provided
 2737 by law, liable for a specific penalty in the amount of 100
 2738 percent of the tax, surcharge, or fee, and commits a felony of
 2739 the third degree, punishable as provided in s. 775.082, s.
 2740 775.083, or s. 775.084.

2741 (f) When any person, firm, or corporation fails to timely
 2742 remit the proper estimated payment required under s. 212.11, a
 2743 specific penalty shall be added in an amount equal to 10 percent
 2744 of any unpaid estimated tax. Beginning with January 1, 1985,

2745 returns, the department, upon a showing of reasonable cause, is
 2746 authorized to waive or compromise penalties imposed by this
 2747 paragraph. However, other penalties and interest shall be due
 2748 and payable if the return on which the estimated payment was due
 2749 was not timely or properly filed.

2750 (g) A dealer who files a consolidated return pursuant to
 2751 s. 212.11(1)(e) is subject to the penalty established in
 2752 paragraph (e) unless the dealer has paid the required estimated
 2753 tax for his or her consolidated return as a whole without regard
 2754 to each location. If the dealer fails to pay the required
 2755 estimated tax for his or her consolidated return as a whole,
 2756 each filing location shall stand on its own with respect to
 2757 calculating penalties pursuant to paragraph (f).

2758 (3) When any dealer, or other person charged herein, fails
 2759 to remit the tax, or any portion thereof, on or before the day
 2760 when such tax is required by law to be paid, there shall be
 2761 added to the amount due interest at the rate of 1 percent per
 2762 month of the amount due from the date due until paid. Interest
 2763 on the delinquent tax shall be calculated beginning on the 21st
 2764 day of the month following the month for which the tax is due,
 2765 except as otherwise provided in this chapter.

2766 (4) All penalties and interest imposed by this chapter
 2767 shall be payable to and collectible by the department in the
 2768 same manner as if they were a part of the tax imposed. The
 2769 department may settle or compromise any such interest or
 2770 penalties pursuant to s. 213.21.

2771 (5) (a) The department is authorized to audit or inspect
 2772 the records and accounts of dealers defined herein, ~~including~~

2773 ~~audits or inspections of dealers who make mail order sales to~~
 2774 ~~the extent permitted by another state,~~ and to correct by credit
 2775 any overpayment of tax, and, in the event of a deficiency, an
 2776 assessment shall be made and collected. No administrative
 2777 finding of fact is necessary prior to the assessment of any tax
 2778 deficiency.

2779 (b) In the event any dealer or other person charged herein
 2780 fails or refuses to make his or her records available for
 2781 inspection so that no audit or examination has been made of the
 2782 books and records of such dealer or person, fails or refuses to
 2783 register as a dealer, fails to make a report and pay the tax as
 2784 provided by this chapter, makes a grossly incorrect report or
 2785 makes a report that is false or fraudulent, then, in such event,
 2786 it shall be the duty of the department to make an assessment
 2787 from an estimate based upon the best information then available
 2788 to it for the taxable period of retail sales of such dealer, the
 2789 gross proceeds from rentals, the total admissions received,
 2790 amounts received from leases of tangible personal property by
 2791 such dealer, or of the cost price of all articles of tangible
 2792 personal property imported by the dealer for use or consumption
 2793 or distribution or storage to be used or consumed in this state,
 2794 or of the sales or cost price of all services the sale or use of
 2795 which is taxable under this chapter, together with interest,
 2796 plus penalty, if such have accrued, as the case may be. Then the
 2797 department shall proceed to collect such taxes, interest, and
 2798 penalty on the basis of such assessment which shall be
 2799 considered prima facie correct, and the burden to show the
 2800 contrary shall rest upon the dealer, seller, owner, or lessor,

HB 165

2010

2801 as the case may be.

2802 (6) (a) The department is given the power to prescribe the
2803 records to be kept by all persons subject to taxes imposed by
2804 this chapter. It shall be the duty of every person required to
2805 make a report and pay any tax under this chapter, every person
2806 receiving rentals or license fees, and owners of places of
2807 admission, to keep and preserve suitable records of the sales,
2808 leases, rentals, license fees, admissions, or purchases, as the
2809 case may be, taxable under this chapter; such other books of
2810 account as may be necessary to determine the amount of the tax
2811 due hereunder; and other information as may be required by the
2812 department. It shall be the duty of every such person so charged
2813 with such duty, moreover, to keep and preserve as long as
2814 required by s. 213.35 all invoices and other records of goods,
2815 wares, and merchandise; records of admissions, leases, license
2816 fees and rentals; and records of all other subjects of taxation
2817 under this chapter. All such books, invoices, and other records
2818 shall be open to examination at all reasonable hours to the
2819 department or any of its duly authorized agents.

2820 (b) For the purpose of this subsection, if a dealer does
2821 not have adequate records of his or her retail sales or
2822 purchases, the department may, upon the basis of a test or
2823 sampling of the dealer's available records or other information
2824 relating to the sales or purchases made by such dealer for a
2825 representative period, determine the proportion that taxable
2826 retail sales bear to total retail sales or the proportion that
2827 taxable purchases bear to total purchases. This subsection does
2828 not affect the duty of the dealer to collect, or the liability

HB 165

2010

2829 of any consumer to pay, any tax imposed by or pursuant to this
2830 chapter.

2831 (c)1. If the records of a dealer are adequate but
2832 voluminous in nature and substance, the department may sample
2833 such records and project the audit findings derived therefrom
2834 over the entire audit period to determine the proportion that
2835 taxable retail sales bear to total retail sales or the
2836 proportion that taxable purchases bear to total purchases. In
2837 order to conduct such a sample, the department must first make a
2838 good faith effort to reach an agreement with the dealer, which
2839 agreement provides for the means and methods to be used in the
2840 sampling process. In the event that no agreement is reached, the
2841 dealer is entitled to a review by the executive director. In the
2842 case of fixed assets, a dealer may agree in writing with the
2843 department for adequate but voluminous records to be
2844 statistically sampled. Such an agreement shall provide for the
2845 methodology to be used in the statistical sampling process. The
2846 audit findings derived therefrom shall be projected over the
2847 period represented by the sample in order to determine the
2848 proportion that taxable purchases bear to total purchases. Once
2849 an agreement has been signed, it is final and conclusive with
2850 respect to the method of sampling fixed assets, and the
2851 department may not conduct a detailed audit of fixed assets, and
2852 the taxpayer may not request a detailed audit after the
2853 agreement is reached.

2854 2. For the purposes of sampling pursuant to subparagraph
2855 1., the department shall project any deficiencies and
2856 overpayments derived therefrom over the entire audit period. In

HB 165

2010

2857 determining the dealer's compliance, the department shall reduce
2858 any tax deficiency as derived from the sample by the amount of
2859 any overpayment derived from the sample. In the event the
2860 department determines from the sample results that the dealer
2861 has a net tax overpayment, the department shall provide the
2862 findings of this overpayment to the Chief Financial Officer for
2863 repayment of funds paid into the State Treasury through error
2864 pursuant to s. 215.26.

2865 3.a. A taxpayer is entitled, both in connection with an
2866 audit and in connection with an application for refund filed
2867 independently of any audit, to establish the amount of any
2868 refund or deficiency through statistical sampling when the
2869 taxpayer's records are adequate but voluminous. In the case of
2870 fixed assets, a dealer may agree in writing with the department
2871 for adequate but voluminous records to be statistically sampled.
2872 Such an agreement shall provide for the methodology to be used
2873 in the statistical sampling process. The audit findings derived
2874 therefrom shall be projected over the period represented by the
2875 sample in order to determine the proportion that taxable
2876 purchases bear to total purchases. Once an agreement has been
2877 signed, it is final and conclusive with respect to the method of
2878 sampling fixed assets, and the department may not conduct a
2879 detailed audit of fixed assets, and the taxpayer may not request
2880 a detailed audit after the agreement is reached.

2881 b. Alternatively, a taxpayer is entitled to establish any
2882 refund or deficiency through any other sampling method agreed
2883 upon by the taxpayer and the department when the taxpayer's
2884 records, other than those regarding fixed assets, are adequate

2885 but voluminous. Whether done through statistical sampling or any
2886 other sampling method agreed upon by the taxpayer and the
2887 department, the completed sample must reflect both overpayments
2888 and underpayments of taxes due. The sample shall be conducted
2889 through:

2890 (I) A taxpayer request to perform the sampling through the
2891 certified audit program pursuant to s. 213.285;

2892 (II) Attestation by a certified public accountant as to
2893 the adequacy of the sampling method utilized and the results
2894 reached using such sampling method; or

2895 (III) A sampling method that has been submitted by the
2896 taxpayer and approved by the department before a refund claim is
2897 submitted. This sub-sub-subparagraph does not prohibit a
2898 taxpayer from filing a refund claim prior to approval by the
2899 department of the sampling method; however, a refund claim
2900 submitted before the sampling method has been approved by the
2901 department cannot be a complete refund application pursuant to
2902 s. 213.255 until the sampling method has been approved by the
2903 department.

2904 c. The department shall prescribe by rule the procedures
2905 to be followed under each method of sampling. Such procedures
2906 shall follow generally accepted auditing procedures for
2907 sampling. The rule shall also set forth other criteria regarding
2908 the use of sampling, including, but not limited to, training
2909 requirements that must be met before a sampling method may be
2910 utilized and the steps necessary for the department and the
2911 taxpayer to reach agreement on a sampling method submitted by
2912 the taxpayer for approval by the department.

2913 (7) In the event the dealer has imported tangible personal
 2914 property and he or she fails to produce an invoice showing the
 2915 cost price of the articles, as defined in this chapter, which
 2916 are subject to tax, or the invoice does not reflect the true or
 2917 actual cost price as defined herein, then the department shall
 2918 ascertain, in any manner feasible, the true cost price, and
 2919 assess and collect the tax thereon with interest plus penalties,
 2920 if such have accrued on the true cost price as assessed by it.
 2921 The assessment so made shall be considered prima facie correct,
 2922 and the duty shall be on the dealer to show to the contrary.

2923 (8) In the case of the lease or rental of tangible
 2924 personal property, or other rentals or license fees as herein
 2925 defined and taxed, if the consideration given or reported by the
 2926 lessor, person receiving rental or license fee, or dealer does
 2927 not, in the judgment of the department, represent the true or
 2928 actual consideration, then the department is authorized to
 2929 ascertain the same and assess and collect the tax thereon in the
 2930 same manner as above provided, with respect to imported tangible
 2931 property, together with interest, plus penalties, if such have
 2932 accrued.

2933 ~~(9)~~ Taxes imposed by this chapter upon the privilege of
 2934 the use, consumption, storage for consumption, or sale of
 2935 tangible personal property, admissions, license fees, rentals,
 2936 communication services, and upon the sale or use of services as
 2937 herein taxed shall be collected upon the basis of an addition of
 2938 the tax imposed by this chapter to the total price of such
 2939 admissions, license fees, rentals, communication or other
 2940 services, or sale price of such article or articles that are

2941 purchased, sold, or leased at any one time by or to a customer
 2942 or buyer; the dealer, or person charged herein, is required to
 2943 pay a privilege tax in the amount of the tax imposed by this
 2944 chapter on the total of his or her gross sales of tangible
 2945 personal property, admissions, license fees, rentals, and
 2946 communication services or to collect a tax upon the sale or use
 2947 of services, and such person or dealer shall add the tax imposed
 2948 by this chapter to the price, license fee, rental, or
 2949 admissions, and communication or other services and collect the
 2950 total sum from the purchaser, admittee, licensee, lessee, or
 2951 consumer. In computing the tax due or to be collected as the
 2952 result of any transaction, the seller may elect to compute the
 2953 tax due on a transaction on a per-item basis or on an invoice
 2954 basis. The tax rate shall be the sum of the applicable state and
 2955 local rates, if any, and the tax computation shall be carried to
 2956 the third decimal place. Whenever the third decimal place is
 2957 greater than four, the tax shall be rounded to the next whole
 2958 cent. ~~The department shall make available in an electronic~~
 2959 ~~format or otherwise the tax amounts and the following brackets~~
 2960 ~~applicable to all transactions taxable at the rate of 6 percent:~~
 2961 ~~(a) On single sales of less than 10 cents, no tax shall be~~
 2962 ~~added.~~
 2963 ~~(b) On single sales in amounts from 10 cents to 16 cents,~~
 2964 ~~both inclusive, 1 cent shall be added for taxes.~~
 2965 ~~(c) On sales in amounts from 17 cents to 33 cents, both~~
 2966 ~~inclusive, 2 cents shall be added for taxes.~~
 2967 ~~(d) On sales in amounts from 34 cents to 50 cents, both~~
 2968 ~~inclusive, 3 cents shall be added for taxes.~~

2969 ~~(e) On sales in amounts from 51 cents to 66 cents, both~~
 2970 ~~inclusive, 4 cents shall be added for taxes.~~

2971 ~~(f) On sales in amounts from 67 cents to 83 cents, both~~
 2972 ~~inclusive, 5 cents shall be added for taxes.~~

2973 ~~(g) On sales in amounts from 84 cents to \$1, both~~
 2974 ~~inclusive, 6 cents shall be added for taxes.~~

2975 ~~(h) On sales in amounts of more than \$1, 6 percent shall~~
 2976 ~~be charged upon each dollar of price, plus the appropriate~~
 2977 ~~bracket charge upon any fractional part of a dollar.~~

2978 ~~(10) In counties which have adopted a discretionary sales~~
 2979 ~~surtax at the rate of 1 percent, the department shall make~~
 2980 ~~available in an electronic format or otherwise the tax amounts~~
 2981 ~~and the following brackets applicable to all taxable~~
 2982 ~~transactions that would otherwise have been transactions taxable~~
 2983 ~~at the rate of 6 percent:~~

2984 ~~(a) On single sales of less than 10 cents, no tax shall be~~
 2985 ~~added.~~

2986 ~~(b) On single sales in amounts from 10 cents to 14 cents,~~
 2987 ~~both inclusive, 1 cent shall be added for taxes.~~

2988 ~~(c) On sales in amounts from 15 cents to 28 cents, both~~
 2989 ~~inclusive, 2 cents shall be added for taxes.~~

2990 ~~(d) On sales in amounts from 29 cents to 42 cents, both~~
 2991 ~~inclusive, 3 cents shall be added for taxes.~~

2992 ~~(e) On sales in amounts from 43 cents to 57 cents, both~~
 2993 ~~inclusive, 4 cents shall be added for taxes.~~

2994 ~~(f) On sales in amounts from 58 cents to 71 cents, both~~
 2995 ~~inclusive, 5 cents shall be added for taxes.~~

2996 ~~(g) On sales in amounts from 72 cents to 85 cents, both~~

2997 ~~inclusive, 6 cents shall be added for taxes.~~

2998 ~~(h) On sales in amounts from 86 cents to \$1, both~~
 2999 ~~inclusive, 7 cents shall be added for taxes.~~

3000 ~~(i) On sales in amounts from \$1 up to, and including, the~~
 3001 ~~first \$5,000 in price, 7 percent shall be charged upon each~~
 3002 ~~dollar of price, plus the appropriate bracket charge upon any~~
 3003 ~~fractional part of a dollar.~~

3004 ~~(j) On sales in amounts of more than \$5,000 in price, 7~~
 3005 ~~percent shall be added upon the first \$5,000 in price, and 6~~
 3006 ~~percent shall be added upon each dollar of price in excess of~~
 3007 ~~the first \$5,000 in price, plus the bracket charges upon any~~
 3008 ~~fractional part of a dollar as provided for in subsection (9).~~

3009 ~~(11) The department shall make available in an electronic~~
 3010 ~~format or otherwise the tax amounts and brackets applicable to~~
 3011 ~~all taxable transactions that occur in counties that have a~~
 3012 ~~surtax at a rate other than 1 percent which transactions would~~
 3013 ~~otherwise have been transactions taxable at the rate of 6~~
 3014 ~~percent. Likewise, the department shall make available in an~~
 3015 ~~electronic format or otherwise the tax amounts and brackets~~
 3016 ~~applicable to transactions taxable at 7 percent pursuant to s.~~
 3017 ~~212.05(1)(c) and on transactions which would otherwise have been~~
 3018 ~~so taxable in counties which have adopted a discretionary sales~~
 3019 ~~surtax.~~

3020 (10)~~(12)~~ It is hereby declared to be the legislative
 3021 intent that, whenever in the construction, administration, or
 3022 enforcement of this chapter there may be any question respecting
 3023 a duplication of the tax, the end consumer, or last retail sale,
 3024 be the sale intended to be taxed and insofar as may be

3025 practicable there be no duplication or pyramiding of the tax.
 3026 (11)~~(13)~~ In order to aid the administration and
 3027 enforcement of the provisions of this chapter with respect to
 3028 the rentals and license fees, each lessor or person granting the
 3029 use of any hotel, apartment house, roominghouse, tourist or
 3030 trailer camp, real property, or any interest therein, or any
 3031 portion thereof, inclusive of owners; property managers;
 3032 lessors; landlords; hotel, apartment house, and roominghouse
 3033 operators; and all licensed real estate agents within the state
 3034 leasing, granting the use of, or renting such property, shall be
 3035 required to keep a record of each and every such lease, license,
 3036 or rental transaction which is taxable under this chapter, in
 3037 such a manner and upon such forms as the department may
 3038 prescribe, and to report such transaction to the department or
 3039 its designated agents, and to maintain such records as long as
 3040 required by s. 213.35, subject to the inspection of the
 3041 department and its agents. Upon the failure by such owner;
 3042 property manager; lessor; landlord; hotel, apartment house,
 3043 roominghouse, tourist or trailer camp operator; or real estate
 3044 agent to keep and maintain such records and to make such reports
 3045 upon the forms and in the manner prescribed, such owner;
 3046 property manager; lessor; landlord; hotel, apartment house,
 3047 roominghouse, tourist or trailer camp operator; receiver of rent
 3048 or license fees; or real estate agent is guilty of a misdemeanor
 3049 of the second degree, punishable as provided in s. 775.082 or s.
 3050 775.083, for the first offense; for subsequent offenses, they
 3051 are each guilty of a misdemeanor of the first degree, punishable
 3052 as provided in s. 775.082 or s. 775.083. If, however, any

3053 subsequent offense involves intentional destruction of such
3054 records with an intent to evade payment of or deprive the state
3055 of any tax revenues, such subsequent offense shall be a felony
3056 of the third degree, punishable as provided in s. 775.082 or s.
3057 775.083.

3058 ~~(14) If it is determined upon audit that a dealer has~~
3059 ~~collected and remitted taxes by applying the applicable tax rate~~
3060 ~~to each transaction as described in subsection (9) and rounding~~
3061 ~~the tax due to the nearest whole cent rather than applying the~~
3062 ~~appropriate bracket system provided by law or department rule,~~
3063 ~~the dealer shall not be held liable for additional tax, penalty,~~
3064 ~~and interest resulting from such failure if:~~

3065 ~~(a) The dealer acted in a good faith belief that rounding~~
3066 ~~to the nearest whole cent was the proper method of determining~~
3067 ~~the amount of tax due on each taxable transaction.~~

3068 ~~(b) The dealer timely reported and remitted all taxes~~
3069 ~~collected on each taxable transaction.~~

3070 ~~(c) The dealer agrees in writing to future compliance with~~
3071 ~~the laws and rules concerning brackets applicable to the~~
3072 ~~dealer's transactions.~~

3073 Section 13. Subsection (3) of section 212.17, Florida
3074 Statutes, is amended to read:

3075 212.17 Credits for returned goods, rentals, or admissions;
3076 goods acquired for dealer's own use and subsequently resold;
3077 additional powers of department.--

3078 (3) A dealer who has paid the tax imposed by this chapter
3079 on tangible personal property or services may take a credit or
3080 obtain a refund for any tax paid by the dealer on the unpaid

3081 balance due on worthless accounts within 12 months following the
3082 month in which the bad debt has been charged off for federal
3083 income tax purposes. A dealer that has paid the tax imposed by
3084 this chapter on tangible personal property or services and that
3085 is not required to file federal income tax returns may take a
3086 credit against or obtain a refund for any tax paid by the dealer
3087 on the unpaid balance due on worthless accounts within 12 months
3088 following the month in which the bad debt is written off as
3089 uncollectible in the dealer's books and records and would be
3090 eligible for a bad-debt deduction for federal income tax
3091 purposes if the dealer was required to file a federal income tax
3092 return.

3093 (a) A dealer that is taking a credit against or obtaining
3094 a refund on worthless accounts shall base the bad-debt-recovery
3095 calculation in accordance with 26 U.S.C. s. 166.

3096 (b) When the amount of bad debt exceeds the amount of
3097 taxable sales for the period during which the bad debt is
3098 written off, a refund claim must be filed, notwithstanding s.
3099 215.26(2), within 3 years after the due date of the return on
3100 which the bad debt could first be claimed.

3101 (c) If any accounts so charged off for which a credit or
3102 refund has been obtained are thereafter in whole or in part paid
3103 to the dealer, the amount so paid shall be included in the first
3104 return filed after such collection and the tax paid accordingly.

3105 (d) If filing responsibilities have been assumed by a
3106 certified service provider, the certified service provider shall
3107 claim, on behalf of the seller, any bad-debt allowance provided
3108 by this subsection. The certified service provider shall credit

3109 | or refund to the seller the full amount of any bad-debt
 3110 | allowance or refund received.

3111 | (e) For the purposes of reporting a payment received on a
 3112 | previously claimed bad debt, any payments made on a debt or
 3113 | account shall first be applied proportionally to the taxable
 3114 | price of the property or service and the sales tax on such
 3115 | property, and second to any interest, service charges, and any
 3116 | other charges.

3117 | (f) In situations in which the books and records of the
 3118 | party claiming the bad-debt allowance support an allocation of
 3119 | the bad debts among states that are members of the Streamlined
 3120 | Sales and Use Tax Agreement, the allocation is permitted among
 3121 | those states.

3122 | Section 14. Paragraphs (a) and (e) of subsection (3) of
 3123 | section 212.18, Florida Statutes, are amended to read:

3124 | 212.18 Administration of law; registration of dealers;
 3125 | rules.--

3126 | (3) (a) Every person desiring to engage in or conduct
 3127 | business in this state as a dealer, as defined in this chapter,
 3128 | or to lease, rent, or let or grant licenses in living quarters
 3129 | or sleeping or housekeeping accommodations in hotels, apartment
 3130 | houses, roominghouses, or tourist or trailer camps that are
 3131 | subject to tax under s. 212.03, or to lease, rent, or let or
 3132 | grant licenses in real property, as defined in this chapter, and
 3133 | every person who sells or receives anything of value by way of
 3134 | admissions, must file with the department an application for a
 3135 | certificate of registration for each place of business, showing
 3136 | the names of the persons who have interests in such business and

HB 165

2010

3137 their residences, the address of the business, and such other
3138 data as the department may reasonably require. However, owners
3139 and operators of vending machines or newspaper rack machines are
3140 required to obtain only one certificate of registration for each
3141 county in which such machines are located. The department, by
3142 rule, may authorize a dealer that uses independent sellers to
3143 sell its merchandise to remit tax on the retail sales price
3144 charged to the ultimate consumer in lieu of having the
3145 independent seller register as a dealer and remit the tax. The
3146 department may appoint the county tax collector as the
3147 department's agent to accept applications for registrations. The
3148 application must be made to the department before the person,
3149 firm, copartnership, or corporation may engage in such business,
3150 and it must be accompanied by a registration fee of \$5. ~~However,~~
3151 ~~a registration fee is not required to accompany an application~~
3152 ~~to engage in or conduct business to make mail order sales.~~ The
3153 department may waive the registration fee for applications
3154 submitted through the department's Internet registration process
3155 or central electronic registration system provided by member
3156 states of the Streamlined Sales and Use Tax Agreement.

3157 (e) As used in this paragraph, the term "exhibitor" means
3158 a person who enters into an agreement authorizing the display of
3159 tangible personal property or services at a convention or a
3160 trade show. The following provisions apply to the registration
3161 of exhibitors as dealers under this chapter:

3162 1. An exhibitor whose agreement prohibits the sale of
3163 tangible personal property or services subject to the tax
3164 imposed in this chapter is not required to register as a dealer.

3165 2. An exhibitor whose agreement provides for the sale at
 3166 wholesale only of tangible personal property or services subject
 3167 to the tax imposed in this chapter must obtain a resale
 3168 certificate from the purchasing dealer but is not required to
 3169 register as a dealer.

3170 3. An exhibitor whose agreement authorizes the retail sale
 3171 of tangible personal property or services subject to the tax
 3172 imposed in this chapter must register as a dealer and collect
 3173 the tax imposed under this chapter on such sales.

3174 ~~4. Any exhibitor who makes a mail order sale pursuant to~~
 3175 ~~s. 212.0596 must register as a dealer.~~

3176
 3177 Any person who conducts a convention or a trade show must make
 3178 their exhibitor's agreements available to the department for
 3179 inspection and copying.

3180 Section 15. Section 212.20, Florida Statutes, is amended
 3181 to read:

3182 212.20 Funds collected, disposition; additional powers of
 3183 department; operational expense; refund of taxes adjudicated
 3184 unconstitutionally collected.--

3185 (1) The department shall pay over to the Chief Financial
 3186 Officer of the state all funds received and collected by it
 3187 under the provisions of this chapter, to be credited to the
 3188 account of the General Revenue Fund of the state.

3189 (2) The department is authorized to employ all necessary
 3190 assistants to administer this chapter properly and is also
 3191 authorized to purchase all necessary supplies and equipment
 3192 which may be required for this purpose.

3193 (3) The estimated amount of money needed for the
 3194 administration of this chapter shall be included by the
 3195 department in its annual legislative budget request for the
 3196 operation of its office.

3197 ~~(4) When there has been a final adjudication that any tax~~
 3198 ~~pursuant to s. 212.0596 was levied, collected, or both, contrary~~
 3199 ~~to the Constitution of the United States or the State~~
 3200 ~~Constitution, the department shall, in accordance with rules,~~
 3201 ~~determine, based upon claims for refund and other evidence and~~
 3202 ~~information, who paid such tax or taxes, and refund to each such~~
 3203 ~~person the amount of tax paid. For purposes of this subsection,~~
 3204 ~~a "final adjudication" is a decision of a court of competent~~
 3205 ~~jurisdiction from which no appeal can be taken or from which the~~
 3206 ~~official or officials of this state with authority to make such~~
 3207 ~~decisions has or have decided not to appeal.~~

3208 (4)~~(5)~~ For the purposes of this section, the term:

3209 (a) "Proceeds" means all tax or fee revenue collected or
 3210 received by the department, including interest and penalties.

3211 (b) "Reallocate" means reduction of the accounts of
 3212 initial deposit and redeposit into the indicated account.

3213 (5)~~(6)~~ Distribution of all proceeds under this chapter and
 3214 s. 202.18(1)(b) and (2)(b) shall be as follows:

3215 (a) Proceeds from the convention development taxes
 3216 authorized under s. 212.0305 shall be reallocated to the
 3217 Convention Development Tax Clearing Trust Fund.

3218 (b) Proceeds from discretionary sales surtaxes imposed
 3219 pursuant to ss. 212.054 and 212.055 shall be reallocated to the
 3220 Discretionary Sales Surtax Clearing Trust Fund.

3221 (c) Proceeds from the fees imposed under ss.
 3222 212.05(1)(h)3. and 212.18(3) shall remain with the General
 3223 Revenue Fund.

3224 (d) The proceeds of all other taxes and fees imposed
 3225 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
 3226 and (2)(b) shall be distributed as follows:

3227 1. In any fiscal year, the greater of \$500 million, minus
 3228 an amount equal to 4.6 percent of the proceeds of the taxes
 3229 collected pursuant to chapter 201, or 5.2 percent of all other
 3230 taxes and fees imposed pursuant to this chapter or remitted
 3231 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
 3232 monthly installments into the General Revenue Fund.

3233 2. After the distribution under subparagraph 1., 8.814
 3234 percent of the amount remitted by a sales tax dealer located
 3235 within a participating county pursuant to s. 218.61 shall be
 3236 transferred into the Local Government Half-cent Sales Tax
 3237 Clearing Trust Fund. Beginning July 1, 2003, the amount to be
 3238 transferred shall be reduced by 0.1 percent, and the department
 3239 shall distribute this amount to the Public Employees Relations
 3240 Commission Trust Fund less \$5,000 each month, which shall be
 3241 added to the amount calculated in subparagraph 3. and
 3242 distributed accordingly.

3243 3. After the distribution under subparagraphs 1. and 2.,
 3244 0.095 percent shall be transferred to the Local Government Half-
 3245 cent Sales Tax Clearing Trust Fund and distributed pursuant to
 3246 s. 218.65.

3247 4. After the distributions under subparagraphs 1., 2., and
 3248 3., 2.0440 percent of the available proceeds shall be

3249 transferred monthly to the Revenue Sharing Trust Fund for
 3250 Counties pursuant to s. 218.215.

3251 5. After the distributions under subparagraphs 1., 2., and
 3252 3., 1.3409 percent of the available proceeds shall be
 3253 transferred monthly to the Revenue Sharing Trust Fund for
 3254 Municipalities pursuant to s. 218.215. If the total revenue to
 3255 be distributed pursuant to this subparagraph is at least as
 3256 great as the amount due from the Revenue Sharing Trust Fund for
 3257 Municipalities and the former Municipal Financial Assistance
 3258 Trust Fund in state fiscal year 1999-2000, no municipality shall
 3259 receive less than the amount due from the Revenue Sharing Trust
 3260 Fund for Municipalities and the former Municipal Financial
 3261 Assistance Trust Fund in state fiscal year 1999-2000. If the
 3262 total proceeds to be distributed are less than the amount
 3263 received in combination from the Revenue Sharing Trust Fund for
 3264 Municipalities and the former Municipal Financial Assistance
 3265 Trust Fund in state fiscal year 1999-2000, each municipality
 3266 shall receive an amount proportionate to the amount it was due
 3267 in state fiscal year 1999-2000.

3268 6. Of the remaining proceeds:

3269 a. In each fiscal year, the sum of \$29,915,500 shall be
 3270 divided into as many equal parts as there are counties in the
 3271 state, and one part shall be distributed to each county. The
 3272 distribution among the several counties must begin each fiscal
 3273 year on or before January 5th and continue monthly for a total
 3274 of 4 months. If a local or special law required that any moneys
 3275 accruing to a county in fiscal year 1999-2000 under the then-
 3276 existing provisions of s. 550.135 be paid directly to the

3277 district school board, special district, or a municipal
 3278 government, such payment must continue until the local or
 3279 special law is amended or repealed. The state covenants with
 3280 holders of bonds or other instruments of indebtedness issued by
 3281 local governments, special districts, or district school boards
 3282 before July 1, 2000, that it is not the intent of this
 3283 subparagraph to adversely affect the rights of those holders or
 3284 relieve local governments, special districts, or district school
 3285 boards of the duty to meet their obligations as a result of
 3286 previous pledges or assignments or trusts entered into which
 3287 obligated funds received from the distribution to county
 3288 governments under then-existing s. 550.135. This distribution
 3289 specifically is in lieu of funds distributed under s. 550.135
 3290 before July 1, 2000.

3291 b. The department shall distribute \$166,667 monthly
 3292 pursuant to s. 288.1162 to each applicant that has been
 3293 certified as a "facility for a new professional sports
 3294 franchise" or a "facility for a retained professional sports
 3295 franchise" pursuant to s. 288.1162. Up to \$41,667 shall be
 3296 distributed monthly by the department to each applicant that has
 3297 been certified as a "facility for a retained spring training
 3298 franchise" pursuant to s. 288.1162; however, not more than
 3299 \$416,670 may be distributed monthly in the aggregate to all
 3300 certified facilities for a retained spring training franchise.
 3301 Distributions must begin 60 days following such certification
 3302 and shall continue for not more than 30 years. This paragraph
 3303 may not be construed to allow an applicant certified pursuant to
 3304 s. 288.1162 to receive more in distributions than actually

3305 expended by the applicant for the public purposes provided for
 3306 in s. 288.1162(6).

3307 c. Beginning 30 days after notice by the Office of
 3308 Tourism, Trade, and Economic Development to the Department of
 3309 Revenue that an applicant has been certified as the professional
 3310 golf hall of fame pursuant to s. 288.1168 and is open to the
 3311 public, \$166,667 shall be distributed monthly, for up to 300
 3312 months, to the applicant.

3313 d. Beginning 30 days after notice by the Office of
 3314 Tourism, Trade, and Economic Development to the Department of
 3315 Revenue that the applicant has been certified as the
 3316 International Game Fish Association World Center facility
 3317 pursuant to s. 288.1169, and the facility is open to the public,
 3318 \$83,333 shall be distributed monthly, for up to 168 months, to
 3319 the applicant. This distribution is subject to reduction
 3320 pursuant to s. 288.1169. A lump sum payment of \$999,996 shall be
 3321 made, after certification and before July 1, 2000.

3322 7. All other proceeds must remain in the General Revenue
 3323 Fund.

3324 Section 16. Section 213.052, Florida Statutes, is created
 3325 to read:

3326 213.052 Notice of state sales and use tax rate changes.--

3327 (1) A sales or use tax rate change imposed under chapter
 3328 212 is effective on January 1, April 1, July 1, or October 1.
 3329 The Department of Revenue shall provide notice of such rate
 3330 change to all affected sellers 60 days before the effective date
 3331 of the rate change.

3332 (2) Failure of a seller to receive notice does not relieve

3333 the seller of its obligation to collect sales or use tax.

3334 Section 17. Section 213.0521, Florida Statutes, is created
3335 to read:

3336 213.0521 Effective date of state sales and use tax rate
3337 changes.--The effective date for services covering a period
3338 starting before and ending after the statutory effective date is
3339 as follows:

3340 (1) For a rate increase, the new rate applies to the first
3341 billing period starting on or after the effective date.

3342 (2) For a rate decrease, the new rate applies to bills
3343 rendered on or after the effective date.

3344 Section 18. Section 213.215, Florida Statutes, is created
3345 to read:

3346 213.215 Sales and use tax amnesty upon registration in
3347 accordance with the Streamlined Sales and Use Tax Agreement.--

3348 (1) Amnesty shall be provided for uncollected or unpaid
3349 sales or use tax to a seller who registers to pay or to collect
3350 and remit applicable sales or use tax in accordance with the
3351 terms of the Streamlined Sales and Use Tax Agreement authorized
3352 under s. 213.256, if the seller was not registered with the
3353 Department of Revenue in the 12-month period preceding the
3354 effective date of participation in the agreement by this state.

3355 (2) The amnesty precludes assessment for uncollected or
3356 unpaid sales or use tax, together with penalty or interest for
3357 sales made during the period the seller was not registered with
3358 the Department of Revenue, if registration occurs within 12
3359 months after the effective date of this state's participation in
3360 the agreement.

3361 (3) The amnesty is not available to a seller with respect
 3362 to any matter for which the seller received notice of the
 3363 commencement of an audit if the audit is not yet finally
 3364 resolved, including any related administrative and judicial
 3365 processes.

3366 (4) The amnesty is not available for sales or use taxes
 3367 already paid or remitted to the state or to taxes collected by
 3368 the seller.

3369 (5) The amnesty is fully effective, absent the seller's
 3370 fraud or intentional misrepresentation of a material fact, as
 3371 long as the seller continues registration and continues payment
 3372 or collection and remittance of applicable sales or use taxes
 3373 for at least 36 months.

3374 (6) The amnesty applies only to sales or use taxes due
 3375 from a seller in its capacity as a seller and not to sales or
 3376 use taxes due from a seller in its capacity as a buyer.

3377 Section 19. Subsections (1) and (2) of section 213.256,
 3378 Florida Statutes, are amended to read:

3379 213.256 Simplified Sales and Use Tax Administration Act.--

3380 (1) As used in this section and ss. 213.2562 and 213.2567,
 3381 the term:

3382 (a) "Agent" means, for purposes of carrying out the
 3383 responsibilities placed on a dealer, a person appointed by the
 3384 seller to represent the seller before the department.

3385 ~~"Department" means the Department of Revenue.~~

3386 (b) "Agreement" means the Streamlined Sales and Use Tax
 3387 Agreement as amended and adopted on January 27, 2001, by the
 3388 Executive Committee of the National Conference of State

3389 ~~Legislatures.~~

3390 (c) "Certified automated system" means software certified
 3391 ~~jointly by the state states that are signatories to the~~
 3392 ~~agreement~~ to calculate the tax imposed by each jurisdiction on a
 3393 transaction, determine the amount of tax to remit to the
 3394 appropriate state, and maintain a record of the transaction.

3395 (d) "Certified service provider" means an agent certified
 3396 ~~jointly by the states that are signatories to the agreement to~~
 3397 perform all of the seller's sales tax functions other than the
 3398 seller's obligation to remit tax on its own purchases.

3399 (e) "Department" means the Department of Revenue.

3400 (f) "Governing board" means the governing board of the
 3401 agreement.

3402 (g)1. "Model 1 seller" means a seller that has selected a
 3403 certified service provider as the seller's agent to perform all
 3404 of the seller's sales and use tax functions other than the
 3405 seller's obligation to remit tax on the seller's purchases.

3406 2. "Model 2 seller" means a seller that has selected a
 3407 certified automated system to perform part of the seller's sales
 3408 and use tax functions, but retains responsibility for remitting
 3409 the tax.

3410 3. "Model 3 seller" means a seller that has sales in at
 3411 least five member states, has total annual sales revenue of at
 3412 least \$500 million, has a proprietary system that calculates the
 3413 amount of tax due each jurisdiction, and has entered into a
 3414 performance agreement with the member states which establishes a
 3415 tax performance standard for the seller.

3416

3417 As used in this paragraph, a seller includes an affiliated group
 3418 of sellers using the same proprietary system.

3419 (h)~~(e)~~ "Person" means an individual, trust, estate,
 3420 fiduciary, partnership, limited liability company, limited
 3421 liability partnership, corporation, or any other legal entity.

3422 (i) "Registered under this agreement" means registration
 3423 by a seller with the member states under the central
 3424 registration system.

3425 (j)~~(f)~~ "Sales tax" means the tax levied under chapter 212.

3426 (k)~~(g)~~ "Seller" means any person making sales, leases, or
 3427 rentals of personal property or services.

3428 (l)~~(h)~~ "State" means any state of the United States and
 3429 the District of Columbia.

3430 (m)~~(i)~~ "Use tax" means the tax levied under chapter 212.

3431 (2) (a) The executive director of the department is
 3432 authorized to ~~shall~~ enter into an agreement ~~the Streamlined~~
 3433 ~~Sales and Use Tax Agreement~~ with one or more states to simplify
 3434 and modernize sales and use tax administration in order to
 3435 substantially reduce the burden of tax compliance for all
 3436 sellers and for all types of commerce. In furtherance of the
 3437 agreement, the executive director of the department or his or
 3438 her designee shall act jointly with other states that are
 3439 members of the agreement to establish standards for
 3440 certification of a certified service provider and certified
 3441 automated systems ~~system~~ and central registration systems
 3442 ~~establish performance standards for multistate sellers.~~

3443 (b) The executive director of the department or his or her
 3444 designee shall take other actions reasonably required to

3445 administer this section. Other actions authorized by this
 3446 section include, but are not limited to, the adoption of rules
 3447 and the joint procurement, with other member states, of goods
 3448 and services in furtherance of the cooperative agreement.

3449 (c) The executive director of the department or his or her
 3450 designee may represent this state before the other states that
 3451 are signatories to the agreement.

3452 (d) The executive director of the department or his or her
 3453 designee is authorized to prepare and submit from time to time
 3454 such reports and certifications as may be determined necessary
 3455 according to the terms of an agreement and to enter into such
 3456 other agreements with the governing board, member states, and
 3457 service providers as are determined by the executive director to
 3458 facilitate the administration of the tax laws of this state.

3459 Section 20. Section 213.2562, Florida Statutes, is created
 3460 to read:

3461 213.2562 Approval of software to calculate tax.--The
 3462 department shall review software submitted to the governing
 3463 board for certification as a certified automated system. If the
 3464 software accurately reflects the taxability of product
 3465 categories included in the program, the department shall certify
 3466 the approval of the software to the governing board.

3467 Section 21. Section 213.2567, Florida Statutes, is created
 3468 to read:

3469 213.2567 Simplified Sales and Use Tax Agreement
 3470 registration, certification, liability, and audit.--

3471 (1) A seller that registers under the agreement agrees to
 3472 collect and remit sales and use taxes for all taxable sales into

HB 165

2010

3473 the member states, including member states joining after the
3474 seller's registration. Withdrawal or revocation of this state
3475 does not relieve a seller of its responsibility to remit taxes
3476 previously or subsequently collected on behalf of the state.

3477 (a) When registering, the seller may select a model 1,
3478 model 2, or model 3 method of remittance or other method allowed
3479 by state law to remit the taxes collected.

3480 (b) A seller may be registered by an agent. Such an
3481 appointment must be in writing and submitted to a member state.

3482 (2) (a) A certified service provider is the agent of a
3483 model 1 seller with whom the certified service provider has
3484 contracted for the collection and remittance of sales and use
3485 taxes. As the model 1 seller's agent, the certified service
3486 provider is liable for sales and use tax due this state on all
3487 sales transactions it processes for the model 1 seller, except
3488 as set out in paragraph (b).

3489 (b) A model 1 seller is not liable to the state for sales
3490 or use tax due on transactions processed by the certified
3491 service provider unless the model 1 seller has misrepresented
3492 the type of items it sells or has committed fraud. In the
3493 absence of probable cause to believe that the model 1 seller has
3494 committed fraud or made a material misrepresentation, the model
3495 1 seller is not subject to audit on the transactions processed
3496 by the certified service provider. A model 1 seller is subject
3497 to audit for transactions that have not been processed by the
3498 certified service provider. The member states acting jointly may
3499 perform a system check of the model 1 seller and review the
3500 model 1 seller's procedures to determine if the certified

3501 service provider's system is functioning properly and to
 3502 determine the extent to which the model 1 seller's transactions
 3503 are being processed by the certified service provider.

3504 (3) A model 2 seller that uses a certified automated
 3505 system remains responsible and is liable to this state for
 3506 reporting and remitting tax. However, a model 2 seller is not
 3507 responsible for errors in reliance on a certified automated
 3508 system.

3509 (4) A model 3 seller is liable for the failure of the
 3510 proprietary system to meet the performance standard.

3511 (5) A person that provides a certified automated system is
 3512 not liable for errors contained in software that was approved by
 3513 the department and certified to the governing board. However,
 3514 such person:

3515 (a) Is responsible for the proper functioning of that
 3516 system;

3517 (b) Is liable to this state for underpayments of tax
 3518 attributable to errors in the functioning of the certified
 3519 automated system; and

3520 (c) Is liable for the misclassification of an item or
 3521 transaction that is not corrected within 10 days following the
 3522 receipt of notice from the department.

3523 (6) The executive director of the department or his or her
 3524 designee may certify a person as a certified service provider if
 3525 the person meets all of the following requirements:

3526 (a) Uses a certified automated system;

3527 (b) Integrates its certified automated system with the
 3528 system of a seller for whom the person collects tax so that the

3529 tax due on a sale is determined at the time of the sale;
 3530 (c) Agrees to remit the taxes it collects at the time and
 3531 in the manner specified by chapter 212;
 3532 (d) Agrees to file returns on behalf of the sellers for
 3533 whom it collects tax;
 3534 (e) Agrees to protect the privacy of tax information it
 3535 obtains in accordance with s. 213.053; and
 3536 (f) Enters into a contract with the department and agrees
 3537 to comply with the terms of the contract.
 3538 (7) The department shall review software submitted to the
 3539 governing board for certification as a certified automated
 3540 system. The executive director of the department shall certify
 3541 the approval of the software to the governing board if the
 3542 software:
 3543 (a) Determines the applicable state and local sales and
 3544 use tax rate for a transaction in accordance with s. 212.06(3)
 3545 and (4);
 3546 (b) Determines whether an item is exempt from tax;
 3547 (c) Determines the amount of tax to be remitted for each
 3548 taxpayer for a reporting period; and
 3549 (d) Can generate reports and returns as required by the
 3550 governing board.
 3551 (8) The department may by rule establish one or more sales
 3552 tax performance standards for model 3 sellers.
 3553 (9) Disclosure of information necessary under this section
 3554 must be made according to a written agreement between the
 3555 executive director of the department or his or her designee and
 3556 the certified service provider. The certified service provider

HB 165

2010

3557 is bound by the same requirements of confidentiality as the
3558 department employees. Breach of confidentiality is a misdemeanor
3559 of the first degree, punishable as provided in s. 775.082 or s.
3560 775.083.

3561 Section 22. It is the intent of the Legislature to urge
3562 the United States Congress to consider adequate protections for
3563 small businesses engaging in both offline and online
3564 transactions from added costs, administrative burdens, and
3565 requirements imposed on intermediaries relating to the
3566 collection and remittance of sales and use tax.

3567 Section 23. The executive director of the Department of
3568 Revenue may adopt emergency rules to implement this act.
3569 Notwithstanding any other law, the emergency rules shall remain
3570 effective for 6 months after the date of adoption and may be
3571 renewed during the pendency of procedures to adopt rules
3572 addressing the subject of the emergency rules.

3573 Section 24. Paragraph (a) of subsection (5) of section
3574 11.45, Florida Statutes, is amended to read:

3575 11.45 Definitions; duties; authorities; reports; rules.--

3576 (5) PETITION FOR AN AUDIT BY THE AUDITOR GENERAL.--

3577 (a) The Legislative Auditing Committee shall direct the
3578 Auditor General to make an audit of any municipality whenever
3579 petitioned to do so by at least 20 percent of the registered
3580 electors in the last general election of that municipality
3581 pursuant to this subsection. The supervisor of elections of the
3582 county in which the municipality is located shall certify
3583 whether or not the petition contains the signatures of at least
3584 20 percent of the registered electors of the municipality. After

3585 the completion of the audit, the Auditor General shall determine
 3586 whether the municipality has the fiscal resources necessary to
 3587 pay the cost of the audit. The municipality shall pay the cost
 3588 of the audit within 90 days after the Auditor General's
 3589 determination that the municipality has the available resources.
 3590 If the municipality fails to pay the cost of the audit, the
 3591 Department of Revenue shall, upon certification of the Auditor
 3592 General, withhold from that portion of the distribution pursuant
 3593 to s. 212.20 (5) ~~(6)~~ (d) 5. which is distributable to such
 3594 municipality, a sum sufficient to pay the cost of the audit and
 3595 shall deposit that sum into the General Revenue Fund of the
 3596 state.

3597 Section 25. Subsection (6) of section 196.012, Florida
 3598 Statutes, is amended to read:

3599 196.012 Definitions.--For the purpose of this chapter, the
 3600 following terms are defined as follows, except where the context
 3601 clearly indicates otherwise:

3602 (6) Governmental, municipal, or public purpose or function
 3603 shall be deemed to be served or performed when the lessee under
 3604 any leasehold interest created in property of the United States,
 3605 the state or any of its political subdivisions, or any
 3606 municipality, agency, special district, authority, or other
 3607 public body corporate of the state is demonstrated to perform a
 3608 function or serve a governmental purpose which could properly be
 3609 performed or served by an appropriate governmental unit or which
 3610 is demonstrated to perform a function or serve a purpose which
 3611 would otherwise be a valid subject for the allocation of public
 3612 funds. For purposes of the preceding sentence, an activity

HB 165

2010

3613 | undertaken by a lessee which is permitted under the terms of its
3614 | lease of real property designated as an aviation area on an
3615 | airport layout plan which has been approved by the Federal
3616 | Aviation Administration and which real property is used for the
3617 | administration, operation, business offices and activities
3618 | related specifically thereto in connection with the conduct of
3619 | an aircraft full service fixed base operation which provides
3620 | goods and services to the general aviation public in the
3621 | promotion of air commerce shall be deemed an activity which
3622 | serves a governmental, municipal, or public purpose or function.
3623 | Any activity undertaken by a lessee which is permitted under the
3624 | terms of its lease of real property designated as a public
3625 | airport as defined in s. 332.004(14) by municipalities,
3626 | agencies, special districts, authorities, or other public bodies
3627 | corporate and public bodies politic of the state, a spaceport as
3628 | defined in s. 331.303, or which is located in a deepwater port
3629 | identified in s. 403.021(9)(b) and owned by one of the foregoing
3630 | governmental units, subject to a leasehold or other possessory
3631 | interest of a nongovernmental lessee that is deemed to perform
3632 | an aviation, airport, aerospace, maritime, or port purpose or
3633 | operation shall be deemed an activity that serves a
3634 | governmental, municipal, or public purpose. The use by a lessee,
3635 | licensee, or management company of real property or a portion
3636 | thereof as a convention center, visitor center, sports facility
3637 | with permanent seating, concert hall, arena, stadium, park, or
3638 | beach is deemed a use that serves a governmental, municipal, or
3639 | public purpose or function when access to the property is open
3640 | to the general public with or without a charge for admission. If

3641 | property deeded to a municipality by the United States is
 3642 | subject to a requirement that the Federal Government, through a
 3643 | schedule established by the Secretary of the Interior, determine
 3644 | that the property is being maintained for public historic
 3645 | preservation, park, or recreational purposes and if those
 3646 | conditions are not met the property will revert back to the
 3647 | Federal Government, then such property shall be deemed to serve
 3648 | a municipal or public purpose. The term "governmental purpose"
 3649 | also includes a direct use of property on federal lands in
 3650 | connection with the Federal Government's Space Exploration
 3651 | Program or spaceport activities as defined in s. 212.02~~(22)~~.
 3652 | Real property and tangible personal property owned by the
 3653 | Federal Government or Space Florida and used for defense and
 3654 | space exploration purposes or which is put to a use in support
 3655 | thereof shall be deemed to perform an essential national
 3656 | governmental purpose and shall be exempt. "Owned by the lessee"
 3657 | as used in this chapter does not include personal property,
 3658 | buildings, or other real property improvements used for the
 3659 | administration, operation, business offices and activities
 3660 | related specifically thereto in connection with the conduct of
 3661 | an aircraft full service fixed based operation which provides
 3662 | goods and services to the general aviation public in the
 3663 | promotion of air commerce provided that the real property is
 3664 | designated as an aviation area on an airport layout plan
 3665 | approved by the Federal Aviation Administration. For purposes of
 3666 | determination of "ownership," buildings and other real property
 3667 | improvements which will revert to the airport authority or other
 3668 | governmental unit upon expiration of the term of the lease shall

HB 165

2010

3669 be deemed "owned" by the governmental unit and not the lessee.
 3670 Providing two-way telecommunications services to the public for
 3671 hire by the use of a telecommunications facility, as defined in
 3672 s. 364.02~~(15)~~, and for which a certificate is required under
 3673 chapter 364 does not constitute an exempt use for purposes of s.
 3674 196.199, unless the telecommunications services are provided by
 3675 the operator of a public-use airport, as defined in s. 332.004,
 3676 for the operator's provision of telecommunications services for
 3677 the airport or its tenants, concessionaires, or licensees, or
 3678 unless the telecommunications services are provided by a public
 3679 hospital.

3680 Section 26. Paragraph (b) of subsection (1) and paragraph
 3681 (b) of subsection (2) of section 202.18, Florida Statutes, are
 3682 amended to read:

3683 202.18 Allocation and disposition of tax proceeds.--The
 3684 proceeds of the communications services taxes remitted under
 3685 this chapter shall be treated as follows:

3686 (1) The proceeds of the taxes remitted under s.
 3687 202.12(1)(a) shall be divided as follows:

3688 (b) The remaining portion shall be distributed according
 3689 to s. 212.20(5)~~(6)~~.

3690 (2) The proceeds of the taxes remitted under s.
 3691 202.12(1)(b) shall be divided as follows:

3692 (b) Sixty-three percent of the remainder shall be
 3693 allocated to the state and distributed pursuant to s.
 3694 212.20(5)~~(6)~~, except that the proceeds allocated pursuant to s.
 3695 212.20(5)~~(6)~~(d)2. shall be prorated to the participating
 3696 counties in the same proportion as that month's collection of

3697 the taxes and fees imposed pursuant to chapter 212 and paragraph
 3698 (1) (b) .

3699 Section 27. Paragraphs (f), (g), (h), and (i) of
 3700 subsection (1) of section 203.01, Florida Statutes, are amended
 3701 to read:

3702 203.01 Tax on gross receipts for utility and
 3703 communications services.--

3704 (1)

3705 (f) Any person who imports into this state electricity,
 3706 natural gas, or manufactured gas, or severs natural gas, for
 3707 that person's own use or consumption as a substitute for
 3708 purchasing utility, transportation, or delivery services taxable
 3709 under this chapter and who cannot demonstrate payment of the tax
 3710 imposed by this chapter must register with the Department of
 3711 Revenue and pay into the State Treasury each month an amount
 3712 equal to the cost price of such electricity, natural gas, or
 3713 manufactured gas times the rate set forth in paragraph (b),
 3714 reduced by the amount of any like tax lawfully imposed on and
 3715 paid by the person from whom the electricity, natural gas, or
 3716 manufactured gas was purchased or any person who provided
 3717 delivery service or transportation service in connection with
 3718 the electricity, natural gas, or manufactured gas. For purposes
 3719 of this paragraph, the term "cost price" has the meaning
 3720 ascribed in s. 212.02~~(4)~~. The methods of demonstrating proof of
 3721 payment and the amount of such reductions in tax shall be made
 3722 according to rules of the Department of Revenue.

3723 (g) Electricity produced by cogeneration or by small power
 3724 producers which is transmitted and distributed by a public

3725 utility between two locations of a customer of the utility
3726 pursuant to s. 366.051 is subject to the tax imposed by this
3727 section. The tax shall be applied to the cost price of such
3728 electricity as provided in s. 212.02~~(4)~~ and shall be paid each
3729 month by the producer of such electricity.

3730 (h) Electricity produced by cogeneration or by small power
3731 producers during the 12-month period ending June 30 of each year
3732 which is in excess of nontaxable electricity produced during the
3733 12-month period ending June 30, 1990, is subject to the tax
3734 imposed by this section. The tax shall be applied to the cost
3735 price of such electricity as provided in s. 212.02~~(4)~~ and shall
3736 be paid each month, beginning with the month in which total
3737 production exceeds the production of nontaxable electricity for
3738 the 12-month period ending June 30, 1990. For purposes of this
3739 paragraph, "nontaxable electricity" means electricity produced
3740 by cogeneration or by small power producers which is not subject
3741 to tax under paragraph (g). Taxes paid pursuant to paragraph (g)
3742 may be credited against taxes due under this paragraph.
3743 Electricity generated as part of an industrial manufacturing
3744 process which manufactures products from phosphate rock, raw
3745 wood fiber, paper, citrus, or any agricultural product shall not
3746 be subject to the tax imposed by this paragraph. "Industrial
3747 manufacturing process" means the entire process conducted at the
3748 location where the process takes place.

3749 (i) Any person other than a cogenerator or small power
3750 producer described in paragraph (h) who produces for his or her
3751 own use electrical energy which is a substitute for electrical
3752 energy produced by an electric utility as defined in s. 366.02

3753 is subject to the tax imposed by this section. The tax shall be
 3754 applied to the cost price of such electrical energy as provided
 3755 in s. 212.02~~(4)~~ and shall be paid each month. The provisions of
 3756 this paragraph do not apply to any electrical energy produced
 3757 and used by an electric utility.

3758 Section 28. Paragraph (a) of subsection (1) of section
 3759 212.031, Florida Statutes, is amended to read:

3760 212.031 Tax on rental or license fee for use of real
 3761 property.--

3762 (1) (a) It is declared to be the legislative intent that
 3763 every person is exercising a taxable privilege who engages in
 3764 the business of renting, leasing, letting, or granting a license
 3765 for the use of any real property unless such property is:

- 3766 1. Assessed as agricultural property under s. 193.461.
- 3767 2. Used exclusively as dwelling units.
- 3768 3. Property subject to tax on parking, docking, or storage
 3769 spaces under s. 212.03(6).

3770 4. Recreational property or the common elements of a
 3771 condominium when subject to a lease between the developer or
 3772 owner thereof and the condominium association in its own right
 3773 or as agent for the owners of individual condominium units or
 3774 the owners of individual condominium units. However, only the
 3775 lease payments on such property shall be exempt from the tax
 3776 imposed by this chapter, and any other use made by the owner or
 3777 the condominium association shall be fully taxable under this
 3778 chapter.

3779 5. A public or private street or right-of-way and poles,
 3780 conduits, fixtures, and similar improvements located on such

3781 streets or rights-of-way, occupied or used by a utility or
 3782 provider of communications services, as defined by s. 202.11,
 3783 for utility or communications or television purposes. For
 3784 purposes of this subparagraph, the term "utility" means any
 3785 person providing utility services as defined in s. 203.012. This
 3786 exception also applies to property, wherever located, on which
 3787 the following are placed: towers, antennas, cables, accessory
 3788 structures, or equipment, not including switching equipment,
 3789 used in the provision of mobile communications services as
 3790 defined in s. 202.11. For purposes of this chapter, towers used
 3791 in the provision of mobile communications services, as defined
 3792 in s. 202.11, are considered to be fixtures.

3793 6. A public street or road which is used for
 3794 transportation purposes.

3795 7. Property used at an airport exclusively for the purpose
 3796 of aircraft landing or aircraft taxiing or property used by an
 3797 airline for the purpose of loading or unloading passengers or
 3798 property onto or from aircraft or for fueling aircraft.

3799 8.a. Property used at a port authority, as defined in s.
 3800 315.02(2), exclusively for the purpose of oceangoing vessels or
 3801 tugs docking, or such vessels mooring on property used by a port
 3802 authority for the purpose of loading or unloading passengers or
 3803 cargo onto or from such a vessel, or property used at a port
 3804 authority for fueling such vessels, or to the extent that the
 3805 amount paid for the use of any property at the port is based on
 3806 the charge for the amount of tonnage actually imported or
 3807 exported through the port by a tenant.

3808 b. The amount charged for the use of any property at the

3809 | port in excess of the amount charged for tonnage actually
 3810 | imported or exported shall remain subject to tax except as
 3811 | provided in sub-subparagraph a.

3812 | 9. Property used as an integral part of the performance of
 3813 | qualified production services. As used in this subparagraph, the
 3814 | term "qualified production services" means any activity or
 3815 | service performed directly in connection with the production of
 3816 | a qualified motion picture, as defined in s. 212.06(1)(b), and
 3817 | includes:

3818 | a. Photography, sound and recording, casting, location
 3819 | managing and scouting, shooting, creation of special and optical
 3820 | effects, animation, adaptation (language, media, electronic, or
 3821 | otherwise), technological modifications, computer graphics, set
 3822 | and stage support (such as electricians, lighting designers and
 3823 | operators, greensmen, prop managers and assistants, and grips),
 3824 | wardrobe (design, preparation, and management), hair and makeup
 3825 | (design, production, and application), performing (such as
 3826 | acting, dancing, and playing), designing and executing stunts,
 3827 | coaching, consulting, writing, scoring, composing,
 3828 | choreographing, script supervising, directing, producing,
 3829 | transmitting dailies, dubbing, mixing, editing, cutting,
 3830 | looping, printing, processing, duplicating, storing, and
 3831 | distributing;

3832 | b. The design, planning, engineering, construction,
 3833 | alteration, repair, and maintenance of real or personal property
 3834 | including stages, sets, props, models, paintings, and facilities
 3835 | principally required for the performance of those services
 3836 | listed in sub-subparagraph a.; and

HB 165

2010

3837 c. Property management services directly related to
3838 property used in connection with the services described in sub-
3839 subparagraphs a. and b.

3840
3841 This exemption will inure to the taxpayer upon presentation of
3842 the certificate of exemption issued to the taxpayer under the
3843 provisions of s. 288.1258.

3844 10. Leased, subleased, licensed, or rented to a person
3845 providing food and drink concessionaire services within the
3846 premises of a convention hall, exhibition hall, auditorium,
3847 stadium, theater, arena, civic center, performing arts center,
3848 publicly owned recreational facility, or any business operated
3849 under a permit issued pursuant to chapter 550. A person
3850 providing retail concessionaire services involving the sale of
3851 food and drink or other tangible personal property within the
3852 premises of an airport shall be subject to tax on the rental of
3853 real property used for that purpose, but shall not be subject to
3854 the tax on any license to use the property. For purposes of this
3855 subparagraph, the term "sale" shall not include the leasing of
3856 tangible personal property.

3857 11. Property occupied pursuant to an instrument calling
3858 for payments which the department has declared, in a Technical
3859 Assistance Advisement issued on or before March 15, 1993, to be
3860 nontaxable pursuant to rule 12A-1.070(19)(c), Florida
3861 Administrative Code; provided that this subparagraph shall only
3862 apply to property occupied by the same person before and after
3863 the execution of the subject instrument and only to those
3864 payments made pursuant to such instrument, exclusive of renewals

3865 and extensions thereof occurring after March 15, 1993.

3866 12. Rented, leased, subleased, or licensed to a
 3867 concessionaire by a convention hall, exhibition hall,
 3868 auditorium, stadium, theater, arena, civic center, performing
 3869 arts center, or publicly owned recreational facility, during an
 3870 event at the facility, to be used by the concessionaire to sell
 3871 souvenirs, novelties, or other event-related products. This
 3872 subparagraph applies only to that portion of the rental, lease,
 3873 or license payment which is based on a percentage of sales and
 3874 not based on a fixed price. This subparagraph is repealed July
 3875 1, 2009.

3876 13. Property used or occupied predominantly for space
 3877 flight business purposes. As used in this subparagraph, "space
 3878 flight business" means the manufacturing, processing, or
 3879 assembly of a space facility, space propulsion system, space
 3880 vehicle, satellite, or station of any kind possessing the
 3881 capacity for space flight, as defined by s. 212.02~~(23)~~, or
 3882 components thereof, and also means the following activities
 3883 supporting space flight: vehicle launch activities, flight
 3884 operations, ground control or ground support, and all
 3885 administrative activities directly related thereto. Property
 3886 shall be deemed to be used or occupied predominantly for space
 3887 flight business purposes if more than 50 percent of the
 3888 property, or improvements thereon, is used for one or more space
 3889 flight business purposes. Possession by a landlord, lessor, or
 3890 licensor of a signed written statement from the tenant, lessee,
 3891 or licensee claiming the exemption shall relieve the landlord,
 3892 lessor, or licensor from the responsibility of collecting the

3893 tax, and the department shall look solely to the tenant, lessee,
 3894 or licensee for recovery of such tax if it determines that the
 3895 exemption was not applicable.

3896 Section 29. Paragraph (b) of subsection (1) of section
 3897 212.052, Florida Statutes, is amended to read:

3898 212.052 Research or development costs; exemption.--

3899 (1) For the purposes of the exemption provided in this
 3900 section:

3901 (b) The term "costs" means cost price as defined in s.
 3902 212.02~~(4)~~.

3903 Section 30. Paragraph (c) of subsection (2), paragraph (c)
 3904 of subsection (3), and paragraphs (c) and (i) of subsection (8)
 3905 of section 212.055, Florida Statutes, are amended to read:

3906 212.055 Discretionary sales surtaxes; legislative intent;
 3907 authorization and use of proceeds.--It is the legislative intent
 3908 that any authorization for imposition of a discretionary sales
 3909 surtax shall be published in the Florida Statutes as a
 3910 subsection of this section, irrespective of the duration of the
 3911 levy. Each enactment shall specify the types of counties
 3912 authorized to levy; the rate or rates which may be imposed; the
 3913 maximum length of time the surtax may be imposed, if any; the
 3914 procedure which must be followed to secure voter approval, if
 3915 required; the purpose for which the proceeds may be expended;
 3916 and such other requirements as the Legislature may provide.
 3917 Taxable transactions and administrative procedures shall be as
 3918 provided in s. 212.054.

3919 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.--

3920 (c) Pursuant to s. 212.054~~(4)~~, the proceeds of the surtax

HB 165

2010

3921 levied under this subsection shall be distributed to the county
 3922 and the municipalities within such county in which the surtax
 3923 was collected, according to:

3924 1. An interlocal agreement between the county governing
 3925 authority and the governing bodies of the municipalities
 3926 representing a majority of the county's municipal population,
 3927 which agreement may include a school district with the consent
 3928 of the county governing authority and the governing bodies of
 3929 the municipalities representing a majority of the county's
 3930 municipal population; or

3931 2. If there is no interlocal agreement, according to the
 3932 formula provided in s. 218.62.

3933
 3934 Any change in the distribution formula must take effect on the
 3935 first day of any month that begins at least 60 days after
 3936 written notification of that change has been made to the
 3937 department.

3938 (3) SMALL COUNTY SURTAX.--

3939 (c) Pursuant to s. 212.054~~(4)~~, the proceeds of the surtax
 3940 levied under this subsection shall be distributed to the county
 3941 and the municipalities within the county in which the surtax was
 3942 collected, according to:

3943 1. An interlocal agreement between the county governing
 3944 authority and the governing bodies of the municipalities
 3945 representing a majority of the county's municipal population,
 3946 which agreement may include a school district with the consent
 3947 of the county governing authority and the governing bodies of
 3948 the municipalities representing a majority of the county's

HB 165

2010

3949 municipal population; or

3950 2. If there is no interlocal agreement, according to the
3951 formula provided in s. 218.62.

3952
3953 Any change in the distribution formula shall take effect on the
3954 first day of any month that begins at least 60 days after
3955 written notification of that change has been made to the
3956 department.

3957 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES
3958 SURTAX.--

3959 (c) Pursuant to s. 212.054~~(4)~~, the proceeds of the
3960 discretionary sales surtax collected under this subsection, less
3961 an administrative fee that may be retained by the Department of
3962 Revenue, shall be distributed by the department to the county.
3963 The county shall distribute the proceeds it receives from the
3964 department to the participating jurisdictions that have entered
3965 into an interlocal agreement with the county under this
3966 subsection. The county may also charge an administrative fee for
3967 receiving and distributing the surtax in the amount of the
3968 actual costs incurred, not to exceed 2 percent of the surtax
3969 collected.

3970 (i) Surtax collections shall be initiated on January 1 of
3971 the year following a successful referendum ~~in order to coincide~~
3972 ~~with s. 212.054(5)~~.

3973 Section 31. Subsection (3) of section 212.13, Florida
3974 Statutes, is amended to read:

3975 212.13 Records required to be kept; power to inspect;
3976 audit procedure.--

3977 (3) For the purpose of enforcement of this chapter, every
 3978 manufacturer and seller of tangible personal property or
 3979 services licensed within this state is required to permit the
 3980 department to examine his or her books and records at all
 3981 reasonable hours, and, upon his or her refusal, the department
 3982 may require him or her to permit such examination by resort to
 3983 the circuit courts of this state, subject however to the right
 3984 of removal of the cause to the judicial circuit wherein such
 3985 person's business is located or wherein such person's books and
 3986 records are kept, provided further that such person's books and
 3987 records are kept within the state. When the dealer has made an
 3988 allocation or attribution pursuant to the definition of sales
 3989 price in s. 212.02~~(16)~~, the department may prescribe by rule the
 3990 books and records that must be made available during an audit of
 3991 the dealer's books and records and examples of methods for
 3992 determining the reasonableness thereof. Books and records kept
 3993 in the regular course of business include, but are not limited
 3994 to, general ledgers, price lists, cost records, customer
 3995 billings, billing system reports, tariffs, and other regulatory
 3996 filings and rules of regulatory authorities. Such record may be
 3997 required to be made available to the department in an electronic
 3998 format when so kept by the dealer. The dealer may support the
 3999 allocation of charges with books and records kept in the regular
 4000 course of business covering the dealer's entire service area,
 4001 including territories outside this state. During an audit, the
 4002 department may reasonably require production of any additional
 4003 books and records found necessary to assist in its
 4004 determination.

4005 Section 32. Subsection (1) of section 212.15, Florida
 4006 Statutes, is amended to read:

4007 212.15 Taxes declared state funds; penalties for failure
 4008 to remit taxes; due and delinquent dates; judicial review.--

4009 (1) The taxes imposed by this chapter shall, ~~except as~~
 4010 ~~provided in s. 212.06(5)(a)2.e.,~~ become state funds at the
 4011 moment of collection and shall for each month be due to the
 4012 department on the first day of the succeeding month and be
 4013 delinquent on the 21st day of such month. All returns postmarked
 4014 after the 20th day of such month are delinquent.

4015 Section 33. Subsection (3) of section 213.015, Florida
 4016 Statutes, is amended to read:

4017 213.015 Taxpayer rights.--There is created a Florida
 4018 Taxpayer's Bill of Rights to guarantee that the rights, privacy,
 4019 and property of Florida taxpayers are adequately safeguarded and
 4020 protected during tax assessment, collection, and enforcement
 4021 processes administered under the revenue laws of this state. The
 4022 Taxpayer's Bill of Rights compiles, in one document, brief but
 4023 comprehensive statements which explain, in simple, nontechnical
 4024 terms, the rights and obligations of the Department of Revenue
 4025 and taxpayers. Section 192.0105 provides additional rights
 4026 afforded to payors of property taxes and assessments. The rights
 4027 afforded taxpayers to ensure that their privacy and property are
 4028 safeguarded and protected during tax assessment and collection
 4029 are available only insofar as they are implemented in other
 4030 parts of the Florida Statutes or rules of the Department of
 4031 Revenue. The rights so guaranteed Florida taxpayers in the
 4032 Florida Statutes and the departmental rules are:

4033 (3) The right to be represented or advised by counsel or
 4034 other qualified representatives at any time in administrative
 4035 interactions with the department, the right to procedural
 4036 safeguards with respect to recording of interviews during tax
 4037 determination or collection processes conducted by the
 4038 department, the right to be treated in a professional manner by
 4039 department personnel, and the right to have audits, inspections
 4040 of records, and interviews conducted at a reasonable time and
 4041 place except in criminal and internal investigations (see ss.
 4042 198.06, 199.218, 201.11(1), 203.02, 206.14, 211.125(3),
 4043 211.33(3), 212.0305(3), 212.12(5)(a), (6)(a), and (11) ~~(13)~~,
 4044 212.13(5), 213.05, 213.21(1)(a) and (c), and 213.34).

4045 Section 34. Subsection (3) of section 218.245, Florida
 4046 Statutes, is amended to read:

4047 218.245 Revenue sharing; apportionment.--

4048 (3) Revenues attributed to the increase in distribution to
 4049 the Revenue Sharing Trust Fund for Municipalities pursuant to s.
 4050 212.20 (5) ~~(6)~~ (d) 5. from 1.0715 percent to 1.3409 percent provided
 4051 in chapter 2003-402, Laws of Florida, shall be distributed to
 4052 each eligible municipality and any unit of local government that
 4053 is consolidated as provided by s. 9, Art. VIII of the State
 4054 Constitution of 1885, as preserved by s. 6(e), Art. VIII, 1968
 4055 revised constitution, as follows: each eligible local
 4056 government's allocation shall be based on the amount it received
 4057 from the half-cent sales tax under s. 218.61 in the prior state
 4058 fiscal year divided by the total receipts under s. 218.61 in the
 4059 prior state fiscal year for all eligible local governments.
 4060 However, for the purpose of calculating this distribution, the

4061 amount received from the half-cent sales tax under s. 218.61 in
 4062 the prior state fiscal year by a unit of local government which
 4063 is consolidated as provided by s. 9, Art. VIII of the State
 4064 Constitution of 1885, as amended, and as preserved by s. 6(e),
 4065 Art. VIII, of the Constitution as revised in 1968, shall be
 4066 reduced by 50 percent for such local government and for the
 4067 total receipts. For eligible municipalities that began
 4068 participating in the allocation of half-cent sales tax under s.
 4069 218.61 in the previous state fiscal year, their annual receipts
 4070 shall be calculated by dividing their actual receipts by the
 4071 number of months they participated, and the result multiplied by
 4072 12.

4073 Section 35. Subsections (5), (6), and (7) of section
 4074 218.65, Florida Statutes, are amended to read:

4075 218.65 Emergency distribution.--

4076 (5) At the beginning of each fiscal year, the Department
 4077 of Revenue shall calculate a base allocation for each eligible
 4078 county equal to the difference between the current per capita
 4079 limitation times the county's population, minus prior year
 4080 ordinary distributions to the county pursuant to ss.
 4081 212.20 (5) ~~(6)~~ (d) 2., 218.61, and 218.62. If moneys deposited into
 4082 the Local Government Half-cent Sales Tax Clearing Trust Fund
 4083 pursuant to s. 212.20 (5) ~~(6)~~ (d) 3., excluding moneys appropriated
 4084 for supplemental distributions pursuant to subsection (8), for
 4085 the current year are less than or equal to the sum of the base
 4086 allocations, each eligible county shall receive a share of the
 4087 appropriated amount proportional to its base allocation. If the
 4088 deposited amount exceeds the sum of the base allocations, each

4089 county shall receive its base allocation, and the excess
 4090 appropriated amount, less any amounts distributed under
 4091 subsection (6), shall be distributed equally on a per capita
 4092 basis among the eligible counties.

4093 (6) If moneys deposited in the Local Government Half-cent
 4094 Sales Tax Clearing Trust Fund pursuant to s. 212.20 (5) ~~(6)~~ (d) 3.
 4095 exceed the amount necessary to provide the base allocation to
 4096 each eligible county, the moneys in the trust fund may be used
 4097 to provide a transitional distribution, as specified in this
 4098 subsection, to certain counties whose population has increased.
 4099 The transitional distribution shall be made available to each
 4100 county that qualified for a distribution under subsection (2) in
 4101 the prior year but does not, because of the requirements of
 4102 paragraph (2) (a), qualify for a distribution in the current
 4103 year. Beginning on July 1 of the year following the year in
 4104 which the county no longer qualifies for a distribution under
 4105 subsection (2), the county shall receive two-thirds of the
 4106 amount received in the prior year, and beginning July 1 of the
 4107 second year following the year in which the county no longer
 4108 qualifies for a distribution under subsection (2), the county
 4109 shall receive one-third of the amount it received in the last
 4110 year it qualified for the distribution under subsection (2). If
 4111 insufficient moneys are available in the Local Government Half-
 4112 cent Sales Tax Clearing Trust Fund to fully provide such a
 4113 transitional distribution to each county that meets the
 4114 eligibility criteria in this section, each eligible county shall
 4115 receive a share of the available moneys proportional to the
 4116 amount it would have received had moneys been sufficient to

HB 165

2010

4117 fully provide such a transitional distribution to each eligible
4118 county.

4119 (7) There is hereby annually appropriated from the Local
4120 Government Half-cent Sales Tax Clearing Trust Fund the
4121 distribution provided in s. 212.20(5)~~(6)~~(d)3. to be used for
4122 emergency and supplemental distributions pursuant to this
4123 section.

4124 Section 36. Paragraph (s) of subsection (1) of section
4125 288.1045, Florida Statutes, is amended to read:

4126 288.1045 Qualified defense contractor and space flight
4127 business tax refund program.--

4128 (1) DEFINITIONS.--As used in this section:

4129 (s) "Space flight business" means the manufacturing,
4130 processing, or assembly of space flight technology products,
4131 space flight facilities, space flight propulsion systems, or
4132 space vehicles, satellites, or stations of any kind possessing
4133 the capability for space flight, as defined by s. 212.02~~(23)~~, or
4134 components thereof, and includes, in supporting space flight,
4135 vehicle launch activities, flight operations, ground control or
4136 ground support, and all administrative activities directly
4137 related to such activities. The term does not include products
4138 that are designed or manufactured for general commercial
4139 aviation or other uses even if those products may also serve an
4140 incidental use in space flight applications.

4141 Section 37. Subsection (6) of section 288.1169, Florida
4142 Statutes, is amended to read:

4143 288.1169 International Game Fish Association World Center
4144 facility.--

4145 (6) The Department of Commerce must recertify every 10
 4146 years that the facility is open, that the International Game
 4147 Fish Association World Center continues to be the only
 4148 international administrative headquarters, fishing museum, and
 4149 Hall of Fame in the United States recognized by the
 4150 International Game Fish Association, and that the project is
 4151 meeting the minimum projections for attendance or sales tax
 4152 revenues as required at the time of original certification. If
 4153 the facility is not recertified during this 10-year review as
 4154 meeting the minimum projections, then funding shall be abated
 4155 until certification criteria are met. If the project fails to
 4156 generate \$1 million of annual revenues pursuant to paragraph
 4157 (2) (e), the distribution of revenues pursuant to s.
 4158 212.20 (5) (d) 6.d. ~~s. 212.02 (6) (d) 6.d.~~ shall be reduced to an
 4159 amount equal to \$83,333 multiplied by a fraction, the numerator
 4160 of which is the actual revenues generated and the denominator of
 4161 which is \$1 million. Such reduction remains in effect until
 4162 revenues generated by the project in a 12-month period equal or
 4163 exceed \$1 million.

4164 Section 38. Subsection (8) of section 551.102, Florida
 4165 Statutes, is amended to read:

4166 551.102 Definitions.--As used in this chapter, the term:

4167 (8) "Slot machine" means any mechanical or electrical
 4168 contrivance, terminal that may or may not be capable of
 4169 downloading slot games from a central server system, machine, or
 4170 other device that, upon insertion of a coin, bill, ticket,
 4171 token, or similar object or upon payment of any consideration
 4172 whatsoever, including the use of any electronic payment system

4173 | except a credit card or debit card, is available to play or
 4174 | operate, the play or operation of which, whether by reason of
 4175 | skill or application of the element of chance or both, may
 4176 | deliver or entitle the person or persons playing or operating
 4177 | the contrivance, terminal, machine, or other device to receive
 4178 | cash, billets, tickets, tokens, or electronic credits to be
 4179 | exchanged for cash or to receive merchandise or anything of
 4180 | value whatsoever, whether the payoff is made automatically from
 4181 | the machine or manually. The term includes associated equipment
 4182 | necessary to conduct the operation of the contrivance, terminal,
 4183 | machine, or other device. Slot machines may use spinning reels,
 4184 | video displays, or both. A slot machine is not a "coin-operated
 4185 | amusement machine" as defined in s. 212.02~~(24)~~ or an amusement
 4186 | game or machine as described in s. 849.161, and slot machines
 4187 | are not subject to the tax imposed by s. 212.05(1)(h).

4188 | Section 39. Paragraph (a) of subsection (1) of section
 4189 | 790.0655, Florida Statutes, is amended to read:

4190 | 790.0655 Purchase and delivery of handguns; mandatory
 4191 | waiting period; exceptions; penalties.--

4192 | (1)(a) There shall be a mandatory 3-day waiting period,
 4193 | which shall be 3 days, excluding weekends and legal holidays,
 4194 | between the purchase and the delivery at retail of any handgun.
 4195 | "Purchase" means the transfer of money or other valuable
 4196 | consideration to the retailer. "Handgun" means a firearm capable
 4197 | of being carried and used by one hand, such as a pistol or
 4198 | revolver. "Retailer" means and includes every person engaged in
 4199 | the business of making sales at retail or for distribution, or
 4200 | use, or consumption, or storage to be used or consumed in this

HB 165

2010

4201 state, as defined in s. 212.02~~(13)~~.

4202 Section 40. Section 212.0596, Florida Statutes, is
4203 repealed.

4204 Section 41. This act shall take effect January 1, 2011.