STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

DESCRIPTION OF BILL
A. Fund or Tax Affected
   Sales Tax; General Revenue Fund

B. Principal Agency Affected
   Department of Revenue

C. Narrative Summary
   The 1986 Legislature passed Chapter 86-166, Laws of Florida, repealing the sales tax exemption for all services and for 44 non-service exemptions effective July 1, 1987. This bill provides for the administration of the tax on services, provides exemptions from the tax and reinstates some of the non-service exemptions which were repealed.

Section 1. Imposes the 5% sales and use tax on services. Sales are presumed to be Florida sales when the service is primarily performed in this state. Services are subject to the use tax when the sale is outside of the state but the service is used in Florida. Taxes are due when consideration is received or when the sale is made, at the election of the sales tax dealer. However, if the transaction involves the sale of taxable tangible property, the tax is due at the time of the sale. Interstate transportation services are taxed based on Florida mileage.

Section 2. Contains the rules of construction for the sales and use tax on services. The rules include clarification of the meaning of references to the Standard Industrial Classification; how transactions involving either exempt property or services and taxable services are taxed; and clarification that this bill shall not inadvertently exempt transactions now taxed.

The rules of construction further provide a set of presumptions as to where a service is used or consumed.

For individuals the presumptions are:
   a. Services benefiting real property are used where the property is located.
   b. Services are used where the service is performed, based on cost of performance.

For business, the presumptions are:
   a. Services benefiting real property are used where the property is located.
   b. Services which benefit tangible personal property are used where the property has acquired business situs.
   c. Services directly involving sales to a local market are used where the local market exists.
STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

1. Multi-state businesses who purchase services which do not meet the tests above will be presumed to use services in Florida to the extent that they do business here. The corporate apportionment formula will establish the extent to which business is done in Florida.

2. Services not meeting a. through d. are used where the business is located.

3. Interstate transportation services are apportioned to Florida based on mileage.

Section 3. Provides for specific exemptions from the sales and use tax. These exemptions include:

1. Services purchased in Florida but used outside of Florida.
2. Employee services to an employer;
3. Occasional or isolated sales;
4. Sales by a partner to the partnership;
5. Sales of services between members of an affiliated group of corporations.
6. Agricultural services--The bill exempts all sales of services covered by SIC code 07, except animal specialty services in 0752 not related to agricultural products and landscape and horticultural services in 078.
7. Transportation and warehousing of food products, phosphate, and fertilizers--The bill exempts all transportation of agricultural products, phosphate rock, nitrogenous and phosphatic fertilizers, sulfur and potash. Also exempted are the services of food brokers dealing in agricultural commodities that have retained their original identity;
8. Forestry--The bill exempts all forestry services covered by SIC code 085 and forestry transportation services in 241;
9. Educational services--The bill exempts all educational services covered by SIC code 82 except for specialized non-degree granting schools covered by 8299;
10. Governmental services--The bill exempts all fees and charges for services imposed by those governmental entities covered by SIC codes 43, 91, 92, 93, 94, 95, 96, and 97, except charges for utility and sanitary services. Also, services performed by the FDIC and FSLIC are exempt.
11. Financial services are exempt except for a specific list of taxable transactions. Services which would be taxed when performed by a non-financial institution will be taxed when performed by a financial institution.
In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

12. Health services--The bill exempts all health services covered by SIC code 80 as well as specifically exempting services provided by licensed pharmacists, acupuncturists, respiratory therapists, speech pathologists, physical therapists, opticians, hearing aid specialists, home health agencies, and hospices.

13. Insurance services--The bill exempts insurance and annuities as defined in the Insurance Code, and insurance agents services covered by SIC code 64.

14. Interest--Interest charges including points and credit card interest would be exempt under the bill.

15. Coin operated laundry and drycleaning establishments.

16. Maintenance fees--The bill exempts maintenance fees paid by an association member to a homeowners association, a residential condominium, property, mobile home, or cooperative association.

17. Membership organization fees and dues--Fees and dues of non-profit membership organizations covered by SIC codes 863, 864, 865, 866, and 869 would be exempt. This includes labor organizations, civic, social, and fraternal organizations, political organizations, religious organizations and other membership organizations.

18. Motion picture production--The bill exempts qualified production services.

19. Trucking services enumerated in SIC Group #421.

20. Passenger transportation--Local, suburban, intercity, and rural passenger transportation covered by SIC codes 4111 and 413 would be exempt. This includes bus and rail passenger transit. Also exempt are ambulance services and hearse rentals.

21. Water transportation services which are performed at ports.

22. Sanitary services--Residential sanitary services (sewer and garbage collection, SIC code 495), refuse transportation (SIC code 4212) and septic tank cleaning services (SIC code 7699) would be exempt.

23. Security and commodity brokerage services.

24. Social Services--Social services covered by SIC code 83 would be exempt. This includes adoption services, day care, job training, residential care, and other services.

25. Sports services--The bill exempts athletes’ services in athletic events, services of owners of greyhounds and racehorses in parimutuel events, and broadcast rights for athletic events.
STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

Section 4. This section sets forth the general administrative rules for the sales tax exemption for services used outside Florida. The use tax is required to be self-accrued by the purchaser if the seller is a multistate business. Florida service providers selling services to multistate purchasers are absolved from collecting the tax if the purchaser has obtained an exempt purchase permit from the Department of Revenue. Multistate purchasers will self-accrue any taxes due on services based on the extent to which their benefit is enjoyed in Florida. Florida service providers selling to purchasers without any nexus in Florida are absolved from collecting the tax if the purchaser executes an affidavit stating that the purchaser has no Florida nexus. The purpose of these provisions is to relieve the seller of the burden of determining where the service will be used. If a purchaser otherwise exempt, makes a purchase and pays tax, he may apply for a refund.

Section 5. Special provisions are included for the taxing of construction services.

Prime contractors are responsible for remitting the sales tax to the state on the services of their subcontractors. The tax is due at the time consideration is paid to the subcontractor.

Prime contractors of new construction are considered to be the final consumer of the construction services consumed in improving realty. New construction means improvements to realty for which a building permit is required. The prime contractor is required to remit the tax based on the cost of the service without deduction for costs of materials, labor, services, or transportation charges. Amounts paid to subcontractors upon which sales tax has already been paid are deducted from the costs. Tax must be paid prior to the issuance of a certificate of occupancy.

Section 6. This section provides special rules which govern the collection of the tax on advertising. In general, advertising will be taxed in Florida based on market coverage. Taxes on the services of ad agencies will exclude the cost of the advertising obtained on behalf of the advertiser. Advertisers will self-accrue the use tax when the advertising is not sold in this state.

Section 7. Definitions:

1. Affiliated group: defined by reference to Section 1504 of the Internal Revenue Code as includable members of a group eligible to file a consolidated return.

2. Cost price: redefined to recognize services and strike unnecessary language.

3. Cost of performance: direct costs incurred by a seller in carrying out his trade or business.

4. Employee: person who is subject to federal income tax withholding, tax under the Federal Insurance Contributions Act, or under the Federal Unemployment Tax Act.
STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

5. Employer: person who collects the taxes enumerated under the definition of employee.

6. In this state; definition made to conform with Florida Constitution's definition of state boundaries.

7. Lease: excludes charges subject to the jurisdiction of the Interstate Commerce Commission when paid by railroads for use of another railroad's tracks. Serves to reinstate the non-service exemption for railroad mileage and per diem charges.

8. Real property: excludes condominium recreational lease and associated payments and property used in the production of qualified motion picture production services from the current definition.

9. Retail sale: includes sale of services but fee sharing between real estate agents is not considered a retail sale.

10. Exempt resale of services:
   a. The service provides a direct and identifiable benefit to the purchaser's customer.
   b. The purchaser's contract with the seller identifies the purchaser's client.
   c. The purchaser separately states the value of the service when he resells it to the client.
   d. The purchaser is engaged in the business of selling services, not tangible personal property.
   e. The service will be taxed when resold.

11. Expands the definition of a sale to include the transfer, provision, or rendering of services for a consideration.

12. Sales price: defined to include tangible personal property which is part of the service.

13. Service: any activity engaged in for a consideration. However, for the period from July 1, 1987, to June 30, 1988, services shall mean those usually provided by establishments under specifically listed SIC classifications.


15. Use of service: consumption or enjoyment of the benefit of the service.

Section 8. Reinstates the non-service exemption for condominium recreational leases. Exempts property used in the production of qualified motion picture production services.
In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

Section 9. Reinstates the exemption for admissions to the Super Bowl.

Section 10. Reinstates the exemption for the sale and repair of boats for out-of-state residents.

Repeals paragraphs (i) and (j) of section 212.05(1) which imposed the sales tax on laundry, dry cleaning, garment and all other services as they are now taxed in Section 1 of the act.

Section 11. For all local option sales surtaxes, the sale of a service is taxable when the dealer is located in a county imposing the surtax.

Section 12. Exempts motion picture and video in-house fabrication labor.

Expands the definition of "dealer" to include persons selling services.

Explicitly imposes the use tax on imported services. The section grants a partial exemption for those services when a tax has been paid in another state.

Section 13. Mandates that the sales and use tax on services shall be collected by the dealer from the consumer unless otherwise provided.

Section 14. Creates an exemption for orthopedic shoes. Alphabetizes the list of miscellaneous exemptions. The exemption for film rental when an admission is charged is moved into the list of miscellaneous exemptions. The section also exempts the sale of services by churches. It deletes the 10% dealer collection allowance for manufacturers of flyable aircraft.

Section 15. Requires description of services, invoice, and location of sale, when a request for a refund is made.

Section 16. Exempts new sales tax dealers from the estimated payments provision.

Section 17. Clarifies that the dealer collection allowance is to be computed on the total amount of taxes due. The section authorizes dealer collection allowances for vendors of services and requires the Department to collect information necessary to administer the tax. It provides for the same penalties for non-compliance, delinquency and brackets for service dealers as are applicable to the dealers of tangible personal property.

Section 18. Requires records to be kept, inspection and audit procedure for service dealers.

Section 19. Provides for the Department's powers with respect to enforcement of the tax.

Section 20. Allows a credit for returned payments for services.
STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

Section 21. Requires dealers of services to register with the department.

Section 22. Amends Legislative Intent to tax every service which is subject to the provisions of section 1 of this act.

Section 23. Technical cross-references in s. 212.61 corrected.

Section 24. Creates the Local Government Infrastructure Trust Fund. Deposits 2% of the general revenue share of sales tax collections into the Local Government Infrastructure Trust Fund. Total distributions are capped at $150 million per fiscal year.

Section 25. Reinstates the following non-service exemptions:

-- Subleases for conventions and trade shows;
-- Volunteer fire department equipment and supplies;
-- Resource Recovery Equipment for local governments;
-- State Theater Program Facilities;
-- Partial exemption for autos sold to out-of-state residents;
-- Partial exemption for flyable aircraft sold to out-of-state residents;
-- Enterprize zone credits.

Section 26. Technical cross-reference in s. 212.0821 corrected.

Section 27. Allows universities to retain the sales tax on athletic events used to support women's athletics.

Section 28. Exempts international currency and barter exchanges.

Sections 29 & 30. Technical cross-references in ss. 290.007 and 564.02 corrected.

Section 31. An exemption is provided for services purchased by prime contractors under the terms of a written contract for construction services when the contract was entered into prior to April 1, 1987. This exemption applies only for taxes to be remitted by the prime contractor and only when they cannot legally be passed on to the purchaser. The exemption expires on July 1, 1988.

Section 32. Repeals the Department rule which allows purchasers of tangible personal property to self accrue sales and use tax. This will help insure that local governments receive proper credit for sales in their counties.

Section 33. Authorizes the Department of Revenue to adopt emergency rules to implement the tax on services which shall remain effective for six months.
In compliance with Rule 716, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

Section 34. Mandates waiver of penalties associated with the tax on services for the first three months after the tax takes effect.

Section 35. Provides transition rules for exempting services purchased prior to April 1, 1987, and performed after July 1, 1987. Also provides rules for taxing services provided before July 1, 1987, or continuing through that period when consideration is received after July 1, 1987.

Sections 36, 37 & 38. Increases the excise tax on special fuel by 5.5 cents per gallon from July 1, 1987 through June 30, 1988. Thereafter, the tax is increased by 7.5 cents per gallon. All proceeds from the increased tax will be deposited in the Local Government Infrastructure Trust Fund.

Section 39. Expands "Florida Equal Access to Justice Act" to provide for payment of attorney fees to a prevailing business party in a legal action to contest the legality of a tax assessment with regard to the tax on services.

Section 40. Amends the Administrative Procedures Act (Chapter 120) to exempt certain taxpayer contest proceedings from the general rules of procedure applicable to determination of decisions which affect substantial interests (s. 120.57 hearings).

Section 41. Amends the Administrative Procedures Act to provide for special procedures with respect to legal actions contesting the tax on services. Provides for issuance of an order on the tax issue within 30 days of the hearing. Provides that the order is final agency action not subject to modification by the agency head.

Section 42. Provides for a panel of three hearing officers in cases involving the tax on services.

Section 43. Directs the Department to identify services which are not taxable because of the specific enumeration of SIC classifications but which constitute services within the statutory definition of "service".

Section 44. Severability clause.

Section 45. Provides effective date.
STATE & LOCAL GOVERNMENT IMPACT

In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

II. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS

A. Non-Recurring or First Year Start-up Effects

In Fiscal Year 1987-88, the tax on services and other repealed exemptions will increase total sales tax receipts by approximately $748.4 million.

The 5.5 cent increase in the tax on diesel fuel will raise approximately $39.6 million.

The impact on state funds will be as follows:

<table>
<thead>
<tr>
<th>F.Y. 1987-88</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL REVENUE FUND</td>
</tr>
<tr>
<td>G.R. - Sales Tax on Services</td>
</tr>
<tr>
<td>Reversion from T.F.</td>
</tr>
<tr>
<td>Total Increased General Revenue</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LOCAL GOVERNMENT INFRASTRUCTURE TRUST FUND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Motor Fuel Tax - 5.5 cents</td>
</tr>
<tr>
<td>2% of Additional Sales Tax</td>
</tr>
<tr>
<td>Total LGITF</td>
</tr>
<tr>
<td>Less Transfer to General Revenue</td>
</tr>
<tr>
<td>Net LGITF</td>
</tr>
</tbody>
</table>

B. Recurring or Annualized Continuation Effects

In Fiscal Year 1988-89, the tax on services and other repealed exemptions will increase total sales tax receipts by approximately $1201.2 million.

The 7.5 cent increase in the tax on diesel fuel will raise approximately $59.1 million.

The impact on state funds will be as follows:

<table>
<thead>
<tr>
<th>F.Y. 1988-89</th>
</tr>
</thead>
<tbody>
<tr>
<td>GENERAL REVENUE FUND</td>
</tr>
<tr>
<td>General Revenue Sales Tax</td>
</tr>
<tr>
<td>Reversions from T.F.</td>
</tr>
<tr>
<td>Total General Revenue Impact</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LOCAL GOVERNMENT INFRASTRUCTURE TRUST FUND</th>
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<td>Motor Fuel Tax</td>
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<td>2% Additional</td>
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</tr>
<tr>
<td>Net LGITF</td>
</tr>
</tbody>
</table>
In compliance with Rule 7.16, there is hereby submitted a fiscal note on the above listed bill relative to the effect on revenues, expenditures, or fiscal liability of the State, and of Local Governments as a whole.

C. Long Run Effects other than Normal Growth
   None

D. Appropriations Consequences/Source of Funds
   The Local Government Infrastructure Trust Fund will be fully funded at $150 million and available for spending.

III. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE
   A. Non-Recurring or First Year Start-up Effects
      The first year impact on local governments of the increased sales tax receipts will be approximately $60.5 million.

   B. Recurring or Annualized Continuation Effects
      In F.Y. 1988-89 distributions will increase by approximately $102.5 million to local governments.

   C. Long Run Effects other than Normal Growth
      None

IV. COMMENTS:

[Signature]
Analyst

[Signature]
Staff Director
A bill to be entitled An act relating to taxation: creating s. 212.059, F.S.; providing for levy of the tax on sales, use and other transactions on the sale and use of services; providing for collecting and remitting thereof; providing for apportionment of the tax on interstate transportation services; creating s. 212.0591, F.S.; providing rules of construction with respect to said tax; creating s. 212.0592, F.S.; providing exemptions from said tax; creating s. 212.0593, F.S.; providing for administration of the exemption for services sold in this state for use outside this state; providing for exempt purchase permits and affidavits; requiring dealers to maintain monthly logs and providing for submission to the Department of Revenue and for application of certain timeliness and penalty provisions; providing for refunds; creating s. 212.0594, F.S.; providing special provisions applicable to the tax on construction services; prohibiting issuance of certificate of occupancy unless proof of payment of certain tax is provided; creating s. 212.0595, F.S.; providing special provisions applicable to tax on advertising; amending s. 212.02, F.S.; providing definitions; excluding certain hourly, daily, or mileage charges from the meaning of "lease"; specifying when the sale of a service is a sale for resale; specifying

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those activities included within the meaning of "services" for a specified period; excluding factory-built buildings from the meaning of "tangible personal property"; amending s. 212.031, F.S., relating to exemptions from tax on lease or rental of real property; reenacting an exemption for lease payments on recreational property or the common elements of a condominium; exempting property used as an integral part of the performance of certain qualified production services; reenacting and amending s. 212.04(2)(a), F.S.; deleting exemptions for admissions to athletic and other events sponsored by certain institutions, for dues, memberships fees, and admission charges imposed by certain nonprofit organizations, and for certain admissions paid by students; reenacting the exemption for admissions to National Football League championship games; amending ss. 212.05 and 212.054, F.S., to conform; reenacting the exemption for boats removed from the state after purchase or repair and the penalty for violation; amending ss. 212.06 and 212.07, F.S., relating to dealers and collection of the tax, and penalties for violations, to include tax on services; exempting certain fabrication labor relating to video tapes and motion pictures; exempting certain qualified production services; amending s. 212.08, F.S.; reenacting provisions relating to medical exemptions and providing an

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additional exemption; revising the exemption
for sales to political subdivisions;
restructuring other exemptions; reenacting
exemptions for resource recovery equipment,
State Theater Program facilities, and volunteer
fire departments; reenacting the partial
exemption for sales of flyable aircraft and
removing a deduction allowed manufacturers;
amending s. 212.095, F.S., relating to refunds,
to conform; amending s. 212.11, F.S.; revising
provisions relating to estimated tax liability;
amending s. 212.12, F.S.; including the tax on
services within enforcement and collection
provisions; providing application of the
dealer's credit to persons who remit taxes or
fees reported on the same documents utilized
for sales and use tax; requiring certain
information on returns; amending ss. 212.13,
212.14, 212.17, 212.18, and 212.21, F.S.,
relating to recordkeeping and inspection,
hearings and enforcement regarding unpaid
taxes, credits for worthless accounts and
returns, dealer registration, legislative
intent, and related penalties, to conform;
amending s. 212.61, F.S.; correcting a
reference; creating s. 212.235, F.S.; providing
for deposit of a portion of funds collected
under part I of chapter 212 in a Local
Government Infrastructure Trust Fund; providing
a limitation; amending s. 8 of chapter 86-166,
Laws of Florida; deleting the repeal scheduled

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for July 1, 1987, of exemptions relating to
certain convention hall subleases, certain
admissions, volunteer fire departments,
resource recovery equipment, State Theater
Program facilities, motor vehicles sold to
residents of another state, flyable aircraft,
and electrical energy, building materials, and
business property used in, and jobs created in,
enterprise zones; amending ss. 212.0821,
290.007, and 564.02, F.S.; correcting
references; amending s. 240.533, F.S.;
providing for retention of sales tax collected
on admission to athletic events by institutions
in the State University System to support
women's athletics; amending s. 288.185, F.S.,
relating to international currency and barter
exchanges; reenacting an exemption for
transaction amounts; providing for refund of
the tax on services with respect to certain
improvements to real property or remodeling;
providing penalties; repealing Rule 12A-
1.091(6) of the Department of Revenue, relating
to self-acrual; providing for emergency rules;
providing for waiver of penalties with respect
to the tax on services for a specified period;
providing for application of the tax to
services provided prior to the effective date
of the act, certain prepaid services, and
services provided over a specified period;
amending s. 206.87, F.S.; providing for the
levy of an additional tax on special fuels for

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specified periods; providing an exception; providing for collection of the tax; amending s. 206.875, F.S.; providing for payment of the proceeds from such additional tax into the Local Government Infrastructure Trust Fund; amending s. 207.026, F.S., relating to allocation of the tax on commercial motor vehicles, to conform; amending s. 57.111, F.S.; expanding the definition of "small business party" with respect to civil actions or administrative proceedings initiated by state agencies to include certain persons contesting the legality of any assessment of tax imposed for the sale or use of services; amending s. 120.57, F.S.; providing an exception to procedure in a formal proceeding on a decision which affects substantial interests for any proceeding to contest the legality of such tax; amending s. 120.575, F.S.; providing procedure for taxpayer contest proceedings to contest the legality of any assessment of such tax; amending s. 120.65, F.S.; providing for the appointment of a three-member panel to be the hearing officer in such taxpayer contest proceedings; directing the Department of Revenue to study and identify taxable services and report to the Governor and Legislature; providing for severability; providing effective dates.

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

CODING: Words stricken are deletions; words underlined are additions.
Section 1. Section 212.059, Florida Statutes, is created to read:

212.059 Sales and use tax on services.—It is hereby declared to be the legislative intent to levy an excise tax on the sale of services in this state as hereinafter provided. It is further declared to be the legislative intent to levy a complementary excise tax on the use of services in this state as hereinafter provided.

(1)(a) A tax is hereby imposed on the sale at retail of any service in this state at the rate of 5 percent of the sales price of the service. The tax shall be computed on each taxable sale of a service for the purpose of remitting the amount of tax due the state, and shall include each and every retail sale of a service.

(b) The sale of a service is in this state for purposes of this part if the service is performed wholly within this state, or if the service is performed partly within and partly outside this state but the greater proportion of the service is performed within this state, based on costs of performance as defined in s. 212.02.

(2) A tax is hereby imposed on the use of any service in this state when the sale of the service is at retail outside this state, at the rate of 5 percent of the cost price of the service. The use of a service is in this state for purposes of this part if the benefit of the service is enjoyed in this state.

(3)(a) The sales and use tax on services imposed by this section shall be collected by the dealer as defined in this part and remitted by him to the state at the time and in the manner as provided in this part. However, the tax on

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services rendered by travel agents shall be remitted by the purchaser of the service.

(b) If the seller of the service is a multistate business and the sale is outside this state, any applicable use tax shall be remitted by the purchaser of the service. However, this paragraph shall not apply to interstate transportation services.

(4)(a) The sales and use tax on services imposed by this section shall be due and payable according to the brackets set forth in s. 212.12 at the time of the sale or use of the service unless the dealer elects to remit the tax pursuant to paragraph (b).

(b) A dealer may elect to remit the tax on a service at the time consideration is paid for such service and on the amount of consideration paid. If such election is made, it shall be applicable to all transactions of such dealer taxed under this section. Such election shall be made and may be changed by the dealer pursuant to procedures established by rule of the department.

(c) However, if a transaction involves both the sale or use of services and the sale or use of tangible personal property, and the tangible personal property is not an inconsequential element of the transaction, the sales and use tax on services shall be due and payable at the time of the sale or use regardless of the time consideration is paid for such services.

(5) Notwithstanding other provisions of this section to the contrary:

(a) Interstate transportation services shall be considered sold or used in this state to the extent that the

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sales price or cost price of the service is apportioned to this state pursuant to paragraph (b).

(b) The sales price of the sale of interstate transportation services, or the cost price of the use of interstate transportation services, shall be apportioned to the state as provided in this paragraph. There shall be included in the measure of the tax imposed by this part on the sale or use of interstate transportation services that proportion of the sales price or cost price of the Florida service provider which is equal to the proportion of mileage within Florida to the total United States mileage of the Florida service provider for the service transaction in question. For purposes of this paragraph, "Florida service provider" means the person providing transportation services in Florida regardless of the commercial domicile of such person.

Section 2. Section 212.0591, Florida Statutes, is created to read:

212.0591 Rules of construction.--For purposes of the sales and use tax on services, the following rules of construction shall apply:

(1) Unless a provision of this part clearly provides otherwise, references to the Standard Industrial Classification are intended to describe activities or services and not establishments. Such references shall not be construed to tax or exempt a service solely because it is performed by a person in a referenced establishment. Neither shall such references be construed to preclude taxation or an exemption for a service solely because it is performed by a person not in a referenced establishment.

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(2) If the entire sales price of the sale of a service or if the entire cost price of the use of a service cannot be included within the measure of the tax imposed by this part under the Constitution or laws of the United States, there shall be apportioned to the state and included in the measure of the tax imposed by this part on the sale or use of services that proportion of the sales price or cost price that fairly reflects the benefit of the services enjoyed within the state.

(3) The sales and use tax on services imposed by this part is in addition to all other taxes, whether levied in the form of excise, license, or privilege taxes, and shall be in addition to all other fees and taxes levied.

(4) The sales and use tax on services imposed by this part shall not be construed to impose an additional tax on transactions to the extent that they are already taxed under other provisions of this chapter.

(5) No exemption from the sales and use tax on services imposed by s. 212.059(1) or (2) shall be deemed to exempt transactions that were subject to taxation pursuant to other provisions of this part on January 1, 1987.

(6) If a transaction involves both the sale or use of a service taxable under this part and the sale or use of intangible or real property not taxable under this part, the charges shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. The tax imposed by this part shall apply to the transaction to the extent that the consideration paid in connection with the transaction is payment for the sale or use of services. Failure to separately state the charges shall create a presumption that the entire transaction is taxable.

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(7) If a transaction involves both the sale or use of a service taxable under this part and the sale or use of a service exempt under this part, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

(8) Neither the taxation of services nor the assessment or collection of taxes under this part shall be construed as making lawful the transaction or incident which is the subject of the tax.

(9) For purposes of determining where a service is used or consumed and where the benefit of the service is enjoyed, the following provisions shall be applicable:

(a) If the purchaser is an individual, and:

1. If the service directly relates to real property, the benefit of the service shall be presumed to be enjoyed in the state where the real property is located; or

2. If subparagraph 1. is not applicable, the benefit of the service shall be presumed to be enjoyed in the state where the greater proportion of the service is performed, based on costs of performance; or

3. Notwithstanding subparagraphs 1. and 2., if the purchaser can demonstrate to the satisfaction of the department that the benefit of the service was enjoyed in a state, the service shall be deemed used or consumed in that state.

(b) If the purchaser is a business, and:

1. If the service directly relates to real property, the benefit of the service shall be presumed to be enjoyed in the state where the real property is located; or
2. If the service directly relates to tangible personal property, the benefit of the service shall be presumed to be enjoyed in the state where the property has acquired a business situs if the property has acquired such situs; or

3. If the service directly involves sales to a local market, the benefit of the service shall be presumed to be enjoyed in the state where the purchaser's local market exists; or

4. If subparagraphs 1., 2., and 3. are not applicable, and the purchaser of the service is doing business in this state and in one or more other states, the service shall be presumed to be enjoyed in this state to the extent that the purchaser is doing business in this state. For purposes of determining the extent of the purchaser's business in this state, the apportionment formulas set forth in part IV of chapter 214, as modified by s. 220.15(4), shall be utilized. If the purchaser is a member of an affiliated group, the affiliated group, as defined in s. 212.02(2), shall be considered the purchaser for purposes of this subparagraph; or

5. If the provisions of subparagraphs 1., 2., 3., and 4. are not applicable, the benefit of the service shall be presumed to be enjoyed in the state where the purchaser is exclusively doing business; or

6. Notwithstanding subparagraphs 1., 2., 3., 4. and 5., if the purchaser can demonstrate to the satisfaction of the department that the benefit of the service was enjoyed in a state, the service shall be deemed used or consumed in that state; or

7. Notwithstanding subparagraphs 1., 2., 3., 4., 5., and 6., interstate transportation services shall be presumed

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to be enjoyed in this state to the extent that the sales price
or cost price of such services is apportioned to this state
pursuant to s. 212.059(5).

Section 1. Section 212.0592, Florida Statutes, is
created to read:

212.0592 Exemptions from sales or use tax on
services.--There shall be exempt from the tax on the sale or
use of services imposed by ss. 212.059(1) or (2), 212.0594,
and 212.0595 the following:

(1)(a) Services sold in this state for use outside of
this state.

(b) A service shall be deemed to be purchased for use
in the state where the benefit of the service is enjoyed.

(c) In order to qualify for this exemption, the
provisions of s. 212.0593 shall be met.

(2) The sale or use of services by an employee to an
employer. This subsection shall not be construed to limit in
any respect the scope of s. 212.06(1)(b).

(3) The occasional or isolated sale of services by a
person who does not hold himself out as engaged in business or
the use of services purchased in a transaction that is an
isolated sale.

(4) The services that partners who are natural persons
render to their partnerships, unless the partner renders his
services to the partnership in the capacity of an independent
contractor.

(5) The sale or use of services between members of an
affiliated group of corporations, as defined in s. 212.02(2).

However, this exemption shall not apply to the sale or use of
any service between any such members who are not included in
the affiliated group for purposes of this part.

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provisions in s. 212.0591(6). If the exemption provided in
this subsection is not applicable, the sales price or cost
price of the service shall be based upon the fair market value
of the service. The sale or use of services between divisions
that may be separate taxpayers within the same corporation
shall be exempt.

(6) The sale or use of agricultural services
enumerated in Standard Industrial Classification Major Group
07. However, this exemption shall not apply to animal
specialty services (Industry Number 0752), except honey
straining, or to landscape and horticultural services (Group
Number 078).

(7)(a) The sale or use of transportation and
warehousing services enumerated in Standard Industrial
Classification Major Groups 40, 42, 44, 45 and 47 for
agricultural commodities that have retained their original
identity, phosphate rock as defined in s. 211.30(9), potash as
described in Standard Industrial Classification Industry
Number 1474, sulfur as described in Standard Industrial
Classification Industry Number 1477, nitrogenous fertilizers
as enumerated in Standard Industrial Classification Industry
Number 2873, and phosphatic fertilizers as enumerated in
Standard Industrial Classification Industry Number 2874.

(b) The sale or use of food broker services for
agricultural commodities that have retained their original
identity.

(c) For purposes of this subsection, an agricultural
commodity retains its original identity if the transportation
of such product is not subject to federal regulation pursuant
to s. 303(b)(6) of Title 49, United States Code.
(8) The sale or use of forestry services enumerated in Standard Industrial Classification Group Number 085, and timber cutting, harvesting, estimating and transportation services enumerated in Standard Industrial Classification Group Number 241.

(9) Educational services enumerated in Standard Industrial Classification Major Group 82, except those services enumerated in Industry Number 8299.

(10) Fees or other charges for services imposed by governmental entities enumerated in Standard Industrial Classification Major Groups 43, 91, 92, 93, 94, 95, 96, and 97, and fees or other charges by the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation. However, this exemption shall not apply to charges for utility or sanitary services.

(11)(a) Financial services performed by financial institutions enumerated in Standard Industrial Classification Major Groups 60 and 61.

(b) However, this exemption shall not apply to:

charges for use of safety deposit boxes; charges for use of night deposit services; charges for issuing cashier's checks; charges for issuing traveler's checks; charges for issuing money orders; charges for preparation of tax returns; charges for copies of documents; stop payment charges; charges imposed for below-minimum balances; return check charges, unless due to insufficient funds; charges for service as personal representative of estates of decedents; credit information and reporting services; overdraft charges; collection fees; hold mail fees; guardianship fees; credit card membership fees; cash vault fees; or wire transfer services.

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(c) This exemption shall not apply if similar or comparable services are subject to the tax on the sale or use of services when performed by persons other than financial institutions.

(12) The sale or use of health services enumerated in Standard Industrial Classification Major Group 80 and health services provided by pharmacists licensed pursuant to chapter 465, acupuncturists certified pursuant to chapter 457, respiratory therapists and respiratory therapy technicians registered or certified pursuant to chapter 468, audiologists and speech-language pathologists certified pursuant to chapter 468, physical therapists and physical therapist assistants licensed pursuant to chapter 486, opticians licensed pursuant to chapter 484, hearing aid specialists licensed pursuant to chapter 484, and home health agencies and hospices licensed pursuant to chapter 400.

(13) The sale or use of insurance services of agents and brokers as enumerated in Standard Industrial Classification Major Group 64, and consideration paid for insurance, including annuities, as defined under the Florida Insurance Code. However, consideration paid for title insurance that is in excess of 110 percent of the risk premium rate promulgated pursuant to s. 627.782 shall not be exempt as consideration paid for insurance.

(14) Interest and "points" that constitute prepayment of interest, paid as consideration for loans, including credit card interest.

(15) Coin-operated laundries and coin-operated dry cleaning establishments enumerated in Standard Industrial Classification Number 7215.
(16) Maintenance assessments or fees paid by an association member to a homeowners association, residential condominium owners association, residential property owners association, residential mobile homeowners association, or residential cooperative association.

(17) Membership dues or membership fees paid to membership organizations enumerated in Standard Industrial Classification Group Numbers 863, 864, 865, 866 and 869, provided such organizations are not-for-profit corporations under chapter 617 or a comparable law of another state or are exempt organizations under the Internal Revenue Code, and membership dues or other fees paid to regulatory athletic associations.

(18) The sale or use of qualified production services performed by any person for a person principally engaged in the business of producing qualified motion pictures or for a person who owns or leases property used primarily for the production of qualified motion pictures. For purposes of this subsection:

(a) "Qualified production services" means any activity or service performed directly in connection with the production of qualified motion pictures, and includes:

1. Photography, recording, casting, shooting, creation of special effects, animation, adaptation (language, media, electronic or otherwise), technological modifications, computer graphics, set and stage support, wardrobe, acting, consulting, writing, directing, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing and distributing;

2. The design, planning, engineering, construction, alteration, repair and maintenance of real or personal
property including stages, sets, props, models, paintings, and
facilities principally required for the performance of those
services listed in subparagraph 1.; and
3. Property management services directly related to
property used in connection with the services described in
subparagraphs 1. and 2.
(b) "Qualified motion picture" means all or any part
of a series of related images, either on film, tape or other
embodiment, including, but not limited to, all items
comprising part of the original work and film-related products
derived therefrom as well as duplicates and prints thereof and
all sound recordings created to accompany a motion picture,
which is produced, adapted or altered for exploitation in, on
or through any medium or device and at any location, primarily
for entertainment, industrial or educational purposes.
(19) The sale or use of local and long distance
trucking services enumerated in Standard Industrial
Classification Group Number 421.
(20) The sale or use of local and suburban passenger
transportation services enumerated in Standard Industrial
Classification Industry Number 4111, ambulance services and
hearse rental services enumerated in Standard Industrial
Classification Industry Number 4119, and intercity and rural
highway passenger transportation services enumerated in
Standard Industrial Classification Group Number 413.
(21) Water transportation services enumerated in the
following Standard Industrial Classifications: towing and
tugboat services in Industry Number 4454; marine cargo
handling services in Industry Number 4463; piloting, ship
cleaning, steamship leasing, marine surveyors, and ship repair
services in Industry Number 4469; and services related to

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processing and accessorizing automobiles that are imported into Florida through Florida ports for export outside the State of Florida.

(22) Sanitary services enumerated in Standard Industrial Classification Group Number 495, garbage, refuse and debris transportation services enumerated in Standard Industrial Classification Industry Number 4212, and septic tank cleaning services enumerated in Standard Industrial Classification Industry Number 7699, if such services are sold to residential households or owners of residential models.

(23) Security and commodity brokerage services enumerated in Standard Industrial Classification Major Group 62. However, this exemption shall not be construed to exempt a financial service if a similar or comparable service is taxable when performed by another person.

(24) Social services enumerated in Standard Industrial Classification Major Group 83 and other social services rendered pursuant to any contract between a social service provider and a governmental entity.

(25) Remuneration paid to athletes for services related to their participation in athletic or sports events, and remuneration paid to owners of greyhounds or racehorses for participation in pari-mutuel events, and consideration paid for the right to broadcast athletic or sports events at which admission is charged.

Section 4. Section 212.0593, Florida Statutes, is created to read:

212.0593 Administration of s. 212.0592(1).

(1) Each multistate business having tax nexus in this state under this part shall obtain from the department an exempt purchase permit prior to claiming an exemption under s.
212.0592(1). Upon purchasing a service from a dealer registered under this part, presentation by said multistate business of a valid exempt purchase permit shall absolve the selling dealer from the responsibility of collecting any sales tax which may be due on the service. The purchaser shall self-accrue any taxes which may be due on the service and remit them to the department in the manner and under the requirements applicable to dealers under this part, subject to such additional reporting requirements as the department may prescribe.

(2) Any business or group of businesses without tax nexus in this state under this part, and any individual resident in another state claiming an exemption under s. 212.0592(1), shall execute and present to the selling dealer an exempt purchase affidavit on a form prescribed by the department. The affidavit shall include the federal employer identification number of the business or social security number of the individual, the purchaser’s location and mailing address, a statement that the business does not have tax nexus in this state under this part or that the individual is not a resident of this state, the name and registration number of the selling dealer, and a statement of consent by the purchaser to be subject to the jurisdiction of this state solely for the purpose of enforcement of the sales tax on services. The affidavit shall also contain such other information as the department may prescribe. Acceptance of a valid exempt purchase affidavit shall absolve the selling dealer from the responsibility of collecting any sales tax which may be due on the service.

(3) Each dealer shall maintain a monthly log showing each transaction for which sales tax was not collected because
of the presentation of an exempt purchase permit or exempt purchase affidavit under this section. The log shall identify the purchaser, the exempt purchase permit number if applicable, the service sold, the price of the service and such other information as the department may prescribe. The logs and all affidavits accepted by the dealer shall be submitted to the department quarterly and shall be subject to the same requirements and penalties for timeliness and completeness as returns required under this part.

(4) If a purchaser fails to obtain an exempt purchase permit or execute an exempt purchase affidavit, but otherwise qualifies for an exemption pursuant to s. 212.0592(1), the purchaser may apply to the department for a refund of taxes paid on the exempt amount of the purchase. The application for refund shall be accompanied by an exempt purchase affidavit and shall be submitted within 1 year of the purchaser's payment of the tax. A refund authorized by the department pursuant to this subsection shall be reduced by the amount of any applicable dealer collection allowance previously allowed on the transaction.

Section 5. Section 212.0594, Florida Statutes, is created to read:

212.0594 Construction services; special provisions.—Notwithstanding other provisions of this part to the contrary:

(1) Subcontractors shall not be required to collect the tax on construction services.

(2) The tax on construction services purchased by prime contractors shall be due and payable by the prime contractor at the time consideration is paid for such services, subject to the provisions of subsection (6).
(3) Prime contractors for new construction shall be considered the final consumer of construction services consumed in improving realty. The owner of the affected real property shall be considered the final consumer of construction services other than those related to new construction. The prime contractor or subcontractor who purchases or uses building materials shall be considered the final consumer thereof.

(4) The provisions of s. 212.0592(3) shall not apply to construction services.

(5) The provisions of s. 212.0219(3) relating to the sale of a service for resale shall not apply to construction services.

(6) The tax on purchases of construction services by prime contractors shall be based on the total consideration paid to the subcontractor. However, if the contract between the prime contractor and the subcontractor specifically describes and itemizes the building materials purchased by the subcontractor and incorporated into the realty in fulfillment of his responsibilities under the contract, at the regular retail price thereof, the tax may be based on the total consideration less the price of said building materials.

(7) The tax on the purchase of construction services, other than new construction, shall be based on the total consideration paid to the prime contractor less any consideration paid by the prime contractor to subcontractors with respect to the project in question. However, if the contract between the owner of the real estate and the prime contractor specifically describes and itemizes the building materials purchased by the prime contractor and incorporated into the realty in fulfillment of his responsibilities under

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the contract, at the regular retail price thereof, the tax may be based on the taxable consideration further reduced by the price of said building materials.

(8) There is hereby imposed a tax on the construction services any prime contractor provides with respect to new construction for himself or others. The tax shall be based upon the cost price to the prime contractor of the services he provides, without any deduction therefrom on account of the cost of materials or supplies used, labor costs, service costs, or transportation charges, notwithstanding the provisions of s. 212.02(5) defining "cost price." However, the cost of building materials purchased by the prime contractor and incorporated into the new construction, and amounts paid to subcontractors upon which a sales tax has been paid, shall not be included in the cost price. The tax shall be due and payable as otherwise provided in this part at the time the contract for new construction is fulfilled or the certificate of occupancy is issued, whichever is sooner. The retail sale of new construction for which the prime contractor has paid tax pursuant to this subsection shall be exempt from the tax imposed by this section.

(9) No unit of local government shall issue a certificate of occupancy for new construction unless the prime contractor provides proof that taxes due under subsection (8) have been paid.

(10) For purposes of this section:

(a) "Prime contractor" means a person entering into a contract for the improvement of realty with the person for whose benefit the realty is being improved, and means any person who manufactures factory-built buildings. When new construction is undertaken on speculation or for one's own
use, the person responsible for the undertaking shall be considered the prime contractor.

(b) "Subcontractor" means a person entering into a contract for the improvement of realty with a prime contractor or with another subcontractor.

(c) "New construction" means factory-built buildings and any improvement to realty, but does not include any addition or further improvement to existing improvements to realty unless a building permit is required for such addition or further improvements.

(d) "Building materials" means tangible personal property physically incorporated into improvements to realty whether through new construction or addition or repair.

(e) "Construction services" means services directly related to improvements to realty.

Section 6. Section 212.0595, Florida Statutes, is created to read:

212.0595 Advertising; special provisions.-- Notwithstanding the provisions of ss. 212.059-212.0593, the following special provisions shall be applicable to the sales and use tax on advertising:

(1) A tax is hereby imposed on advertising sold or used in this state. The tax shall be at the rate of 5 percent of the sales price or cost price of the advertising.

(2) Advertising shall be deemed to have been sold in this state if the greater proportion of the advertising is performed within this state based on costs of performance as defined in s. 212.02(6).

(3) Advertising shall be deemed to have been used in this state if it was sold outside this state for consumption in this state. Advertising shall be presumed to be consumed...
in this state to the extent the cost price is apportioned to
this state pursuant to subsection (4).

(4)(a) The sales price of the sale of advertising, or
the cost price of the use of advertising, shall be apportioned
to the state as provided in this subsection. There shall be
included in the measure of the tax imposed by this section
that proportion of the sales price or cost price which is
equal to the proportion of market coverage within Florida to
the total United States market coverage for the most recently
completed accounting year of the service provider. However,
in the case of new or restructured service providers, the
department may prescribe by rule another time period or
proportion that fairly reflects Florida market coverage.

(b) For purposes of this subsection, "market coverage"
means average daily circulation, in the case of print media,
and means population within the signal reception area of the
broadcaster, in the case of broadcast media, measured as
prescribed by the department by rule.

(c) For advertising other than print or broadcast
media, the department shall establish by rule a method for
fairly apportioning advertising sold or used in this state.

(5) If advertising is sold in this state, the sales
tax imposed by this section shall be collected and remitted by
the advertising media provider.

(6) If advertising is not sold in this state, but is
used in this state, the advertiser shall self-accrue the use
tax imposed by this section and remit the tax directly to the
department.

(7) When advertising is purchased and resold, the
person reselling the advertising may deduct the consideration

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paid for the advertising from his charges for purposes of
calculating any tax due under this part.

7.9

Section 7. Section 212.02, Florida Statutes, 1986
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Supplement, as amended by chapters 86-152 and 86-166, Laws of
Florida, is amended to read:
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212.02 Definitions.--The following terms and phrases
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when used in this chapter have the meanings ascribed to them
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in this section, except where the context clearly indicates a
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different meaning:

(1) "Admissions" means and includes the
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net sum of money after deduction of any federal taxes for
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admitting a person or vehicle or persons to any place of
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amusement, sport, or recreation or for the privilege of
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entering or staying in any place of amusement, sport, or
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recreation, including, but not limited to, theaters, outdoor
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theaters, shows, exhibitions, games, races, or any place where
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charge is made by way of sale of tickets, gate charges, seat
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charges, box charges, season pass charges, cover charges,
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greens fees, participation fees, entrance fees, or other fees
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or receipts of anything of value measured on an admission or
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entrance or length of stay or seat box accommodations in any
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place where there is any exhibition, amusement, sport, or
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recreation, and all dues paid to private clubs providing
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recreational facilities, including but not limited to golf,
tennis, swimming, yachting, and boating facilities.
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(2) "Affiliated group" means an affiliated group of
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corporations, as defined in s. 1504(a) of the Internal Revenue
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Code, whose members are includable under s. 1504(b) of the
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Internal Revenue Code, and are eligible to file a consolidated
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tax return for Federal corporate income tax
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purposes.
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"Business" means any activity engaged in by any person, or caused to be engaged in by him, with the object of private or public gain, benefit, or advantage, either direct or indirect. Except for the sales of any aircraft, boat, mobile home, or motor vehicle, the term "business" shall not be construed in this chapter to include occasional or isolated sales or transactions involving tangible personal property or services by a person who does not hold himself out as engaged in business, but includes other charges for the sale or rental of tangible personal property, sales of services taxable under this part, sales of or charges of admission, communication services, all rentals and leases of living quarters, other than low-rent housing operated under chapter 421, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, and all rentals of or licenses in real property, other than low-rent housing operated under chapter 421, all leases or rentals of or licenses in parking lots or garages for motor vehicles, docking or storage spaces for boats in boat docks or marinas as defined in this chapter and made subject to a tax imposed by this chapter. Any tax on such sales, charges, rentals, admissions, or other transactions made subject to the tax imposed by this chapter shall be collected by the state, county, municipality, any political subdivision, agency, bureau, or department, or other state or local governmental instrumentality in the same manner as other dealers, unless specifically exempted by this chapter.

The terms "cigarettes," "tobacco," or "tobacco products" referred to in this chapter include all such products as are defined or may be hereafter defined by the laws of the state.

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(5) "Cost price" means the actual cost of articles of tangible personal property or services without any deductions therefrom-on-account-of-the-cost-of-materials-used-in-labor-or service-costa-transportation-charges-or-any-expenses whatsoever.

(6) "Costs of performance" means direct costs determined in a manner consistent with generally accepted accounting principles and in accordance with accepted conditions or practices in the type of trade or business in which the taxpayer engages.

(7) The term "department" means the Department of Revenue.

(8) "Employee" means any person who is not an independent contractor and whose wages or remuneration are subject to tax under the Federal Insurance Contributions Act or under the Federal Unemployment Tax Act, or whose wages or remuneration are subject to withholding for federal income tax purposes.

(9) "Employer" means any person who must pay taxes on wages under the Federal Insurance Contributions Act or under the Federal Unemployment Tax Act, or who must withhold taxes from wages for federal income tax purposes.

(10) "Enterprise zone" means an area of the state authorized to be an enterprise zone pursuant to s. 290.0055 and approved by the secretary of the Department of Community Affairs pursuant to s. 290.0065. This subsection shall expire and be void on December 31, 1994.

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

(12) "In this state" or "in the state" means
within the state boundaries of Florida as defined in s. 1.

Art. II of the Constitution of the State exterior-limits of
Florida and includes all territory within these limits owned
by or ceded to the United States.

(13) The term "intoxicating beverages" or
"alcoholic beverages" referred to in this chapter includes all
such beverages as are so defined or may be hereafter defined
by the laws of the state.

(14) "Lease," "let," or "rental" means leasing or
renting of living quarters or sleeping or housekeeping
accommodations in hotels, apartment houses, roominghouses,
tourist or trailer camps and real property, the same being
defined as follows:

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

(b) Any building, or part thereof, where separate
accommodations for two or more families living independently
of each other are supplied to transient or permanent guests or

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tenants shall for the purpose of this chapter be deemed an
apartment house.
   (c) Every house, boat, vehicle, motor court, trailer
court, or other structure or any place or location kept, used,
maintained, or advertised as, or held out to the public to be,
a place where living quarters or sleeping or housekeeping
accommodations are supplied for pay to transient or permanent
guests or tenants, whether in one or adjoining buildings,
shall for the purpose of this chapter be deemed a
roominghouse.
   (d) In all hotels, apartment houses, and roominghouses
within the meaning of this chapter, the parlor, dining room,
sleeping porches, kitchen, office, and sample rooms shall be
construed to mean "rooms."
   (e) A "tourist camp" is a place where two or more
tents, tent houses, or camp cottages are located and offered
by a person or municipality for sleeping or eating
accommodations, most generally to the transient public for
either a direct money consideration or an indirect benefit to
the lessor or owner in connection with a related business.
   (f) A "trailer camp," "mobile home park," or
"recreational vehicle park" is a place where space is offered,
with or without service facilities, by any persons or
municipality to the public for the parking and accommodation
of two or more automobile trailers, mobile homes, or
recreational vehicles which are used for lodging, for either a
direct money consideration or an indirect benefit to the
lessor or owner in connection with a related business, such
space being hereby defined as living quarters, and the rental
price thereof shall include all service charges paid to the
lessor.
(g) "Lease," "let," or "rental" also means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein. The term "lease," "let," or "rental" does not mean hourly, daily, or mileage charges, to the extent that such charges are subject to the jurisdiction of the United States Interstate Commerce Commission, when such charges are paid by reason of the presence of railroad cars owned by another on the tracks of the taxpayer.

(h) "Real property" means any interest in the surface of real property unless the property is:

1. Assessed as agricultural property under s. 193.461.
2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).
4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5. A public or private street or right-of-way occupied or used by a utility for utility purposes.
6. A public street or road which is used for transportation purposes.

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

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

9. Property used as an integral part of the performance of qualified production services as defined in s. 212.0592(18)(a).

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

(15) "Motor fuel" means and includes what is commonly known and sold as gasoline and fuels containing a mixture of gasoline and other products.

(16) "Nurseryman" or "grower" means any person engaged in the production of nursery stock or horticultural plants.

(17) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and includes any political subdivision, municipality, state agency, bureau, or department and the plural as well as the singular number.
"Retailer" means and includes every person engaged in the business of making sales at retail, or for distribution, or use, or consumption, or storage to be used or consumed in this state.

(a) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than resale in the form of tangible personal property or services, and includes all such transactions that may be made in lieu of retail sales or sales at retail. "Retail sale" does not include fee-sharing between real estate agents and real estate brokers. A sale of a service shall be considered a sale for resale only if:

1. The service provides a direct and identifiable benefit to a single client or customer of the purchaser;

2. The purchaser of the service buys the service pursuant to a written contract with the seller and such contract identifies the client or customer for whom the purchaser is buying the service;

3. The purchaser of the service separately states the value of the service purchased at the purchase price in his charge for the service on its subsequent sale;

4. The service, with its value separately stated, will be taxed under this part in a subsequent sale; and

5. The service is purchased pursuant to a service resale permit by a person who is primarily engaged in the business of selling services. The department shall provide by rule for the issuance of such resale permits.

However, a sale, to other than an end user, of telecommunication services consisting of a right of access for
which an access charge, as defined in s. 203.012(1), is imposed, is a sale for resale.

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

(c) "Retail sales," "sale at retail," "use," "storage," and "consumption" do not include materials, containers, labels, sacks, or bags intended to be used only for packaging tangible personal property for sale or for packaging in the process of providing a service taxable under this part and do not include the sale, use, storage, or consumption of industrial materials, including chemicals and fuels except as provided herein, for future processing, manufacture, or conversion into articles of tangible personal property for resale when such industrial materials, including chemicals and fuels except as provided herein, become a component or ingredient of the finished product. However, said terms include the sale, use, storage, or consumption of tangible personal property, including machinery and equipment or parts thereof, purchased electricity, and fuels used to power machinery, when said items are used and dissipated in fabricating, converting, or processing tangible personal property for sale, even though they may become ingredients or components of the tangible personal property for sale through accident, wear, tear, erosion, corrosion, or similar means.

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

(20) "Sale" means and includes:
(a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.
(b) The rental of living quarters or sleeping or housekeeping accommodations in hotels, apartment houses or roominghouses, or tourist or trailer camps, as hereinafter defined in this chapter.
(c) The producing, fabricating, processing, printing, or imprinting of tangible personal property for a consideration for consumers who furnish either directly or indirectly the materials used in the producing, fabricating, processing, printing, or imprinting.
(d) The furnishing, preparing, or serving for a consideration of any tangible personal property for consumption on or off the premises of the person furnishing, preparing, or serving such tangible personal property which includes the sale of meals or prepared food by an employer to his employees.
(e) A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price.
(f) Any transfer, provision, or rendering of services for a consideration.

(21) "Sales price" means the total amount paid for tangible personal property or services, including any services.
that are a part of the sale and any tangible personal property that is part of the service, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires labor or material to alter, remodel, maintain, adjust, or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this subsection.

"Solar-energy-system" means equipment and requisite hardware which provide and are used for the collection, transfer, storage, and use of incident solar energy for water-heating, space-heating, cooling, or other application which would otherwise require the use of a conventional energy source of energy, such as petroleum products, natural gas, manufactured gas, or electricity. This subsection is repealed effective June 30, 1984.

(22)(a) "Service" means any activity engaged in for a consideration. This part shall include

(b) Notwithstanding the provisions of paragraph (a), from July 1, 1987, to June 30, 1988, unless clearly indicated otherwise, the term "service" or "services" as used in this part shall include the services usually provided for consideration by the following establishments listed in the standard industrial classification manual:

1. Agricultural Services (Major Group Number 07).
2. Forestry Services (Major Group Number 085).
3. Metal Mining Services (Group Number 108).

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4. Oil and Gas Field Services (Group Number 138).
7. Construction other than Building Construction-General Contractors (Major Group Number 16).
8. Construction-Special Trade Contractors (Major Group Number 17).
10. Coating, Engraving, and Allied Services (Group Number 347).
11. Railroad Transportation (Major Group Number 40).
12. Local and Suburban Transit and Interurban Highway Passenger Transportation (Major Group Number 41).
13. Motor Freight Transportation and Warehousing (Major Group Number 42).
14. U.S. Postal Service (Major Group Number 43).
15. Water Transportation (Major Group Number 44).
16. Transportation by Air (Major Group Number 45).
17. Pipelines, except Natural Gas (Major Group Number 46).
18. Transportation Services (Major Group Number 47).
19. Communications (Major Group Number 48).
22. Banking (Major Group Number 60).
23. Credit Agencies other than Banks (Major Group Number 61).

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25. Insurance (Major Group Number 63).

26. Insurance Agents, Brokers, and Service (Major Group Number 64).

27. Real Estate (Major Group Number 65).


29. Holding and other Investment Offices (Major Group Number 67).

30. Personal Services (Major Group Number 72).

31. Business Services (Major Group Number 73).

32. Automotive Repair, Services, and Garages (Major Group Number 75).

33. Miscellaneous Repair Services (Major Group Number 76).

34. Motion Pictures (Major Group Number 78).

35. Amusement and Recreation Services, except Motion Pictures (Major Group Number 79).

36. Health Services (Major Group Number 80).

37. Legal Services (Major Group Number 81).

38. Educational Services (Major Group Number 82).

39. Social Services (Major Group Number 83).

40. Museums, Art Galleries, Botanical and Zoological Gardens (Major Group Number 84).

41. Membership Organizations (Major Group Number 86).

42. Miscellaneous Services (Major Group Number 89).

43. Legislative, Judicial, Administrative and Regulatory Activities of Federal, State, Local and International Governments (Major Group Numbers 91, 92, 93, 94.

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In addition, the terms shall include the services of any independent broker of tangible personal property. The tax shall be repealed July 1, 1988.

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


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

(26) "Tangible personal property" means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles. The term "tangible personal property" does not include stocks, bonds, notes, insurance, or other obligations.

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or securities; intangibles as defined by the intangible tax
law of the state; or pari-mutuel tickets sold or issued under
the racing laws of the state; or factory-built buildings
during construction or thereafter.

(27)+8 The use means and includes the exercise of any
right or power over tangible personal property incident to the
ownership thereof, or interest therein, except that it does
not include the sale at retail of that property in the regular
course of business. "Use" also means the consumption or
enjoyment of the benefit of services.

(28)+13 The term "use tax" referred to in this
chapter includes the use, the consumption, the distribution,
and the storage as herein defined of tangible personal
property or services.

Section 8. Paragraph (a) of subsection (1) of section
212.031, Florida Statutes, 1986 Supplement, as amended by
chapters 86-152 and 86-166, Laws of Florida, is amended to
read:

212.031 Lease or rental of or license in real
property.--

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

1. Assessed as agricultural property under s. 193.461.
2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking, or
storage spaces under s. 212.03(6).
4. Recreational property or the common elements of a
condominium when subject to a lease between the developer or

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owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5.45 A public or private street or right-of-way occupied or used by a utility for utility purposes.

6.5 A public street or road which is used for transportation purposes.

7.6 A property used at an airport exclusively for the purpose of aircraft landing or aircraft taxing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

8.7 A property used at a port authority as defined in s. 315.02(2) exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such a vessel, or property used at a port authority for fueling such vessels.

9. Property used as an integral part of the performance of qualified production services as defined in s. 212.0592(18)(a).

Section 9. Paragraph (a) of subsection (2) of section 212.04, Florida Statutes, 1986 Supplement, is reenacted and amended to read:

212.04 Admissions tax; rate, procedure, enforcement.--
(2)(a) No tax shall be levied on admissions to athletic or other events sponsored by elementary schools.
junior-high-schools-middle-schools-high-schools-community
colleges-public-or-private-colleges-and-universities-deaf
and-blind-schools-facilities-of-the-youth-services-programs
and-the-Department-of-Health-and-Rehabilitative-Services-and
state-correctional-institutions-when-only-student-facility-or
inmate-talent-is-utilized

No-tax-shall-be-levied-on-dues-membership-fees
and-admission-charges-imposed-by-not-for-profit-sponsoring
organizations-or-community-or-recreational-facilities-...

receive-this-exemption-the-sponsoring-organization-or
facility-must-qualify-as-a-not-for-profit-entity-under-the
provisions-of-75-581et3of-the-united-states-internat
Revenue-code-of-1954-as-amended

No-tax-shall-be-levied-on-an-admission-paid-by-a
student-or-on-his-behalf-to-any-required-place-of-sport-or
recreation-if-the-student's-participation-in-the-sport-or
recreational-activity-is-required-as-a-part-of-a-program-or
activity-sponsored-by-and-under-the-jurisdiction-of-the
student's-educational-institution-provided-his-attendance-is
as-a-participant-and-not-as-a-spectator

No tax shall be levied on admissions to the
National Football League championship game.

Section 10. Section 212.05, Florida Statutes, 1986
Supplement, as amended by chapters 86-152, 86-155, and 86-166,
Laws of Florida, is amended to read:

212.05 Sales, storage, use tax.—It is hereby declared

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this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

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

(a)1.a. At the rate of 5 percent of the sales price of each item or article of tangible personal property when sold at retail in this state, computed on each taxable sale for the purpose of remitting the amount of tax due the state, and including each and every retail sale.

b. Each occasional or isolated sale of an aircraft, boat, or mobile home, or motor vehicle of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government shall be subject to tax at the rate provided in this paragraph. The department shall, by rule, adopt the NADA Official Used Car Guide as the reference price list for any used motor vehicle which is required to be licensed pursuant to s. 320.08(1), (2), (3)(a), (b), (c), or (f), or (9). If any party to an occasional or isolated sale of such a vehicle reports to the tax collector a sales price which is less than 80 percent of the average loan price for the specified model and year of such vehicle as listed in the most recent reference price list, the tax levied under this paragraph shall be computed by the department on such average loan price unless the parties to the sale have provided to the tax collector an affidavit signed by each party, or other substantial proof, stating the actual sales price. Any party to such sale who reports a sales price less than the actual sales price is guilty of a misdemeanor of the second degree.
punishable as provided in s. 775.083. The department shall collect or attempt to collect from such party any delinquent sales taxes. In addition, such party shall pay any tax due and any penalty and interest assessed, plus a penalty equal to twice the amount of the additional tax owed. Notwithstanding any other provision of law, the Department of Revenue may waive or compromise any penalty imposed after July 1, 1985, pursuant to this sub-subparagraph. For purposes of this sub-subparagraph, an occasional or isolated sale is one in which the seller is not a motor vehicle dealer as defined in s. 320.27(1)(c).

2. This paragraph does not apply to the sale of a boat by or through a registered dealer under this chapter to a purchaser who removes such boat from this state within 10 days after the date of purchase or, when the boat is repaired or altered, within 10 days after completion of such repairs or alterations. In no event shall the boat remain in this state more than 90 days after the date of purchase. This exemption shall not be allowed unless the seller:

a. Obtains from the purchaser within 90 days from the date of sale written proof that the purchaser licensed, registered, or documented the boat outside the state;

b. Requires the purchaser to sign an affidavit that he has read the provisions of this section; and

c. Makes the affidavit a part of his permanent record.

In the event the purchaser fails to remove the boat from this state within 10 days after purchase or, when the boat is repaired or altered, within 10 days after completion of such repairs or alterations, or permits the boat to return to this state within 6 months from the date of departure, the

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The purchaser shall be liable for use tax on the cost price of the boat and, in addition thereto, payment of a penalty to the Department of Revenue equal to the tax payable. This penalty shall be in lieu of the penalty imposed by s. 212.12(2) and is mandatory and shall not be waived by the department.

(b) At the rate of 5 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state.

c) At the rate of 5 percent of the gross proceeds derived from the lease or rental of tangible personal property, as defined herein—except-the-rental-of-motion-picture-film-when-an-admission-fee-charged-for-viewing-such-film-when-the-lease-or-rental-of-such-property-is-an-established-business-or-part-of-an-established-business-or-the-same-is-incidental-or-germane-to-such-business.

d) At the rate of 5 percent of the lease or rental price paid by a lessee or rentee, or contracted or agreed to be paid by a lessee or rentee, to the owner of the tangible personal property.

e) At the rate of 5 percent on charges for all telegraph messages and long distance telephone calls beginning and terminating in this state; on charges for telecommunication service as defined in s. 203.012 and for those services described in s. 203.012(2)(a); on recurring charges to regular subscribers for wired television service; on all charges for the installation of telecommunication, wired television, and telegraphic equipment; and on all charges for electrical power or energy. For purposes of this subparagraph, the term "telecommunication service" does not include local service provided through a pay telephone. The
provisions of s. 212.17(3), regarding credit for tax paid on
charges subsequently found to be worthless, shall be equally
applicable to any tax paid under the provisions of this
section on charges for telecommunication or telegraph services
or electric power subsequently found to be uncollectible. The
word "charges" in this paragraph does not include any excise
or similar tax levied by the Federal Government, any political
subdivision of the state, or any municipality upon the
purchase or sale of telecommunication, wired television, or
telegraph service or electric power, which tax is collected by
the seller from the purchaser.

2. Telegraph messages and telecommunication services
which originate or terminate in this state, other than
interstate private communication services, and are billed to a
customer, telephone number, or device located within this
state are taxable under this paragraph. Interstate private
communication services are taxable under this paragraph as
follows:

a. One hundred percent of the charge imposed at each
channel termination point within this state;

b. One hundred percent of the charge imposed for the
total channel mileage between each channel termination point
within this state; and

c. Fifty percent of the charge imposed for the total
channel mileage between the first channel termination point
inside this state and the nearest channel termination point
outside this state.

3. The tax imposed pursuant to this paragraph shall
not exceed $50,000 per calendar year on charges to any person
for interstate telecommunication services defined in s.
203.012(4) and (7)(b), if the majority of such services used
by such person are for communications originating outside of this state and terminating in this state. This exemption shall only be granted to holders of a direct pay permit issued pursuant to this subparagraph. No refunds shall be given for taxes paid prior to receiving a direct pay permit. Upon application, the department may issue a direct pay permit to the purchaser of telecommunications services authorizing such purchaser to pay tax on such services directly to the department. Any vendor furnishing telecommunications services to the holder of a valid direct pay permit shall be relieved of the obligation to collect and remit the tax on such service. Tax payments and returns pursuant to a direct pay permit shall be monthly. For purposes of this subparagraph, the term "person" shall be limited to a single legal entity and shall not be construed as meaning a group or combination of affiliated entities or entities controlled by one person or group of persons. For purposes of this subparagraph, for calendar year 1986, the term "calendar year" means the last 6 months of 1986.

(f) At the rate of 5 percent on the sale, rental, use, consumption, or storage for use in this state of machines and equipment and parts and accessories therefor used in manufacturing, processing, compounding, producing, mining, or quarrying personal property for sale or to be used in furnishing communications, transportation, or public utility services.

(g) At the rate of 5 percent of the price, as determined pursuant to part II, of each gallon of motor fuel or special fuel taxable pursuant to that part, except that motor fuel and special fuel expressly taxable under this part shall be taxed as provided in paragraphs (a) and (b).
(h) Any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his own use to provide himself with telephone service or telecommunication service which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communication path is exercising a taxable privilege and shall register with the Department of Revenue and pay into the State Treasury a yearly amount equal to 5 percent of the actual cost of operating such system, notwithstanding the provisions of s. 212.081(3)(b). "Actual cost" includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this paragraph, the depreciation expense to be included in actual cost shall be the depreciation expense claimed for federal income tax purposes.

The total amount of any payment required by a lease or rental contract or agreement shall be included within the actual cost. The provisions of this paragraph do not apply to the use by any local telephone company or any telecommunication carrier of its own telephone system or telecommunication system to conduct a telecommunication service for hire. If a system described in this paragraph is located in more than one state, the actual cost of such system for purposes of this paragraph shall be the actual cost of the system's equipment located in Florida.

At-the-rate-of-5-percent-on-charges-for-cleaning- laundry-and-garment-services-as-defined-in-group-721-of-the

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At the rate of 5 percent of the consideration for performing or providing any service.

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

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

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

Section 11. Paragraph (a) of subsection (3) of section 212.054, Florida Statutes, 1986 Supplement, is amended to read:

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

(3) For the purpose of this section, a transaction shall be deemed to have occurred in a county imposing the surtax when:

(a) The dealer is located in the county and the sale includes tangible personal property or services, except as otherwise provided herein provided-in-paragraph-feet;
(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02(5) defining "cost price." However, the tax levied under this paragraph shall not be imposed upon any person who manufactures or produces electrical power or energy, steam energy, or other energy, when such power or energy is used directly and exclusively in the operation of machinery or equipment that is used to manufacture, process, compound, produce, fabricate, or prepare for shipment tangible personal property for sale or to operate pollution control equipment, maintenance equipment, or monitoring or control equipment used in such operations. The manufacturing or production of electrical power or energy that is used for space heating, lighting, office equipment, or air conditioning or any other nonmanufacturing, nonprocessing, noncompounding, nonproducing, nonfabricating, or nonshipping activity is taxable. Electrical power or energy consumed or dissipated in the transmission or distribution of electrical power or energy for resale is also not taxable. Fabrication labor shall not be taxable when a person is using his own equipment and his own personnel, for his own account, as a producer, subproducer, or coproducer of video tapes or motion pictures prepared for showing on screens or through television, for either theatrical, commercial, advertising, or educational purposes. Qualified production services, as defined in s. 212.0592(18)(a), performed by a person in connection with the

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manufacture, production, compounding, processing, or fabrication of a qualified motion picture, as defined in s. 212.0592(18)(b), shall not be taxable.

(2)

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

(k) "Dealer" also means any person who sells, provides, or performs a taxable service for consideration taxable under this part. "Dealer" also means any person who purchases, uses, or consumes a service taxable under this part who cannot prove that the tax levied by this part has been paid to the seller of the taxable service.

(4) On all tangible personal property imported or caused to be imported from other states, territories, the District of Columbia, or any foreign country, and used by him, and on all services purchased in other states, territories, the District of Columbia, or any foreign country, and used by him, the dealer as herein defined, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, and on all services so purchased and
used, the same as if such articles or services had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail; and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event.

(7) The provisions of this chapter do not apply in respect to the use or consumption of tangible personal property or services, or distribution or storage of tangible personal property or services for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state. The proof of payment of such tax shall be made according to rules and regulations of the department.

If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this chapter.

Section 13. Paragraph (a) of subsection (1) and subsections (2), (4), and (9) of section 212.07, Florida Statutes, 1986 Supplement, are amended to read:

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

(1)(a) The privilege tax herein levied measured by retail sales shall be collected by the dealers from the purchaser or consumer. Except as otherwise specifically

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provided, the sales and use tax on services herein levied
measured by retail sales shall likewise be collected by the
dealers from the purchaser or consumer.

(2) A dealer shall, as far as practicable, add the
amount of the tax imposed under this chapter to the sale
price, and the amount of the tax shall be separately stated as
Florida tax on any charge ticket, sales slip, invoice, or
other tangible evidence of sale. Such tax shall constitute a
part of such price, charge, or proof of sale which shall be a
debt from the purchaser or consumer to the dealer, until paid,
and shall be recoverable at law in the same manner as other
debts. Where it is impracticable, due to the nature of the
business practices within an industry, to separately state
Florida tax on any charge ticket, sales slip, invoice, or
other tangible evidence of sale, the department may establish
an effective tax rate for such industry. The department may
also amend this effective tax rate as the industry's pricing
or practices change. Except as otherwise specifically
provided, any dealer who neglects, fails, or refuses to
collect the tax herein provided upon any, every, and all
retail sales made by him or his agents or employees of
tangible personal property or services which are subject to
the tax imposed by this chapter shall be liable for and pay
the tax himself.

(4) A dealer engaged in any business or in selling any
services taxable under this chapter may not advertise or hold
out to the public, in any manner, directly or indirectly, that
he will absorb all or any part of the tax, or that he will
relieve the purchaser of the payment of all or any part of the
tax, or that the tax will not be added to the selling price of
the property or services sold or released or, when added, that

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it or any part thereof will be refunded either directly or 
indirectly by any method whatsoever. A person who violates 
this provision with respect to advertising or refund is guilty 
of a misdemeanor of the second degree, punishable as provided 
in s. 775.082 or s. 775.083. A second or subsequent offense 
constitutes a misdemeanor of the first degree, punishable as 
provided in s. 775.082 or s. 775.083.

(9) Any person who has purchased at retail, used, 
consumed, distributed, or stored for use or consumption in 
this state tangible personal property, admissions,
communication or other services taxable under this part, or 
leased tangible personal property, or who has leased, 
occupied, or used or was entitled to use any real property, 
space or spaces in parking lots or garages for motor vehicles 
or docking or storage space, or spaces for boats in boat docks 
or marinas and cannot prove that the tax levied by this 
chapter has been paid to his vendor, lessor, or other person 
is directly liable to the state for any tax, interest, or 
penalty due on any such taxable transactions.

Section 14. Subsections (6) and (7) and paragraph (b) 
of subsection (12) of section 212.08, Florida Statutes, 1986 
Supplement, and paragraph (a) of subsection (2) of said 
section, as amended by chapters 86-152 and 86-166, Laws of 
Florida, are amended, paragraphs (f), (n), and (g) of 
subsection (7) are reenacted and redesignated, and subsection 
(ll) of said section is reenacted and amended, to read:

212.08 Sales, rental, use, consumption, distribution, 
and storage tax; specified exemptions.—The sale at retail, 
the rental, the use, the consumption, the distribution, and 
the storage to be used or consumed in this state of the

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following are hereby specifically exempt from the tax imposed by part I of this chapter.

(2) EXEMPTIONS; MEDICAL.--

(a) There shall be exempt from the tax imposed by this chapter any product, supply, or medicine dispensed in a retail establishment by a pharmacist licensed by the state, according to an individual prescription or prescriptions written by a prescriber authorized by law to prescribe medicinal drugs; hypodermic needles; hypodermic syringes; chemical compounds and test kits used for the diagnosis or treatment of human disease, illness, or injury; and common household remedies recommended and generally sold for internal or external use in the cure, mitigation, treatment, or prevention of illness or disease in human beings, but not including cosmetics or toilet articles, notwithstanding the presence of medicinal ingredients therein, according to a list prescribed and approved by the Department of Health and Rehabilitative Services, which list shall be certified to the Department of Revenue from time to time and included in the rules promulgated by the Department of Revenue. There shall also be exempt from the tax imposed by this chapter artificial eyes and limbs; orthopedic shoes; prescription eyeglasses and items incidental thereto or which become a part thereof; dentures; hearing aids; crutches; prosthetic and orthopedic appliances; and funerals. Funeral directors shall pay tax on all tangible personal property used by them in their business.

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS;

COMMUNICATIONS.--There are also exempt from the tax imposed by this chapter sales made to the United States Government, the state, or any county, municipality, or political subdivision of this state when payment is made directly to the dealer by

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the governmental entity. This exemption shall not inure to 17.24
any transaction otherwise taxable under this chapter when 17.25
payment is made by a government employee by any means, 17.27
including, but not limited to, cash, check, or credit card 17.27
when that employee is subsequently reimbursed by the 17.27
governmental entity.—provided This exemption does not include 17.29
sales of tangible personal property made to contractors 17.30
employed either directly or as agents of any such government 17.31
or political subdivision thereof when such tangible personal 17.32
property goes into or becomes a part of public works owned by 17.33
such government or political subdivision thereof, except 17.34
public works in progress or for which bonds or revenue 17.34
certificates have been validated on or before August 1, 1959.—7 17.36
and—further—provided This exemption does not include sales, 17.36
rental, use, consumption, or storage for use in any political 17.37
subdivision or municipality in this state of machines and 17.38
equipment and parts and accessories therefor used in the 17.39
generation, transmission, or distribution of electrical energy 17.40
by systems owned and operated by a political subdivision in 17.41
this state except sales, rental, use, consumption, or storage 17.42
for which bonds or revenue certificates are validated on or 17.43
before January 1, 1973, for transmission or distribution 1:10s
expansion. Likewise—exempt—are—furniture—rentals—when—an 17.45
admission—is—charged—for—viewing—such—furniture. 17.46
(7) MISCELLANEOUS EXEMPTIONS.— 17.47
(a)† Artificial commemoritive flowers.—Exempt Also 17.48
exempted from the tax imposed by this chapter is the sale of 17.50
artificial commemoritive flowers by bona fide nationally 17.52
chartered veterans' organizations. 17.53
(b)† Boiler fuels.—When purchased for use as a 17.54
combustible fuel, purchases of natural gas, residual oil, 17.55

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recycled oil, waste oil, solid waste material, coal, sulfur, wood, wood residues or wood bark used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state are exempt from the taxes imposed by this chapter; however, such exemption shall not be allowed unless the purchaser signs a certificate stating that the fuel to be exempted is for the exclusive use designated herein. This exemption does not apply to the use of boiler fuels that are not used in manufacturing, processing, compounding, or producing items of tangible personal property for sale, or to the use of boiler fuels used by any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation. (c)†† Crustacea bait.—Also exempt from the tax imposed by this chapter is the purchase by commercial fishermen of bait intended solely for use in the entrapment of Callinectes sapidus and Menippe mercenaria. (d)†‡ Feed.—Feeds for poultry and livestock, including racehorses and dairy cows, are exempt. (e) Film rentals.—Film rentals are exempt when an admission is charged for viewing such film. (f)†‡ Flags.—Also exempt are sales of the flag of the United States and the official state flag of Florida. (g)†‡ Florida Retired Educators Association and its local chapters.—Also exempt from payment of the tax imposed by this chapter are purchases of office supplies, equipment, and publications made by the Florida Retired Educators Association and its local chapters. (h)†‡ Guide dogs for the blind.—Also exempt are the sale or rental of guide dogs for the blind, commonly referred
to as "seeing-eye dogs," and the sale of food or other items
for such guide dogs.

1. The department shall issue a consumer's certificate
of exemption to any blind person who holds an identification
 card as provided for in s. 413.091 and who either owns or
rents, or contemplates the ownership or rental of, a guide dog
for the blind. The consumer's certificate of exemption shall
be issued without charge and shall be of such size as to be
capable of being carried in a wallet or billfold.

2. The department shall make such rules concerning
items exempt from tax under the provisions of this paragraph
as may be necessary to provide that any person authorized to
have a consumer's certificate of exemption need only present
such a certificate at the time of paying for exempt goods and
shall not be required to pay any tax thereon.

Hospital meals and rooms.--Also exempt from
payment of the tax imposed by this chapter on rentals and
meals are patients and inmates of any hospital or other
physical plant or facility designed and operated primarily for
the care of persons who are ill, aged, infirm, mentally or
physically incapacitated, or otherwise dependent on special
care or attention.

Household fuels.--Also exempt from payment of
the tax imposed by this chapter are sales of utilities to
residential households or owners of residential models in this
state by utility companies who pay the gross receipts tax
imposed under s. 203.01, and sales of fuel to residential
households or owners of residential models, including oil,
kerosene, liquefied petroleum gas, coal, wood, and other fuel
products used in the household or residential model for the
purposes of heating, cooking, lighting, and refrigeration,
regardless of whether such sales of utilities and fuels are
separately metered and billed direct to the residents or are
metered and billed to the landlord. If any part of the
utility or fuel is used for a nonexempt purpose, the entire
sale is taxable. The landlord shall provide a separate meter
for non exempt utility or fuel consumption.

(k) Meals provided by certain nonprofit
organizations.—There is exempt from the tax imposed by this
chapter the sale of prepared meals by a nonprofit volunteer
organization to handicapped, elderly, or indigent persons when
such meals are delivered as a charitable function by the
organization to such persons at their places of residence.

(l) Military museums; Specified nonprofit
corporations.—Also exempt are sales to nonprofit corporations
which hold current exemptions from federal corporate income
tax pursuant to s. 501(c)(3), U.S. Internal Revenue Code,
1954, as amended, and whose primary purpose is to raise money
for military museums.

(m) Nonprofit corporation; home for the aged,
nursing home, or hospice.—Nonprofit corporations which hold
current exemptions from federal corporate income tax pursuant
to s. 501(c)(3), U.S. Internal Revenue Code, 1954, as amended,
and which either qualify as homes for the aged pursuant to s.
196.1975(2) or are licensed as a nursing home or hospice under
the provisions of chapter 400, are exempt from the tax imposed
by this chapter.

(n) Organizations providing special educational,
cultural, recreational, and social benefits to minors.—There
shall be exempt from the tax imposed by this part nonprofit
organizations which are incorporated pursuant to chapter 617
or which hold a current exemption from federal corporate

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income tax pursuant to s. 501(c)(3) of the Internal Revenue
Code the primary purpose of which is providing activities that
contribute to the development of good character or good
sportsmanship, or to the educational or cultural development,
of minors in this state. This exemption is extended only to
that level of the organization located in this state that has
a salaried executive officer or an elected nonsalaried
executive officer.

Religious, charitable, scientific, educational,
and veterans' institutions and organizations.--

1. There are exempt from the tax imposed by part I of
this chapter transactions involving:

a. Sales or leases directly to churches or sales or
leases of tangible personal property or services by churches;

b. Sales or leases to nonprofit religious, nonprofit
charitable, nonprofit scientific, or nonprofit educational
institutions when used in carrying on their customary
nonprofit religious, nonprofit charitable, nonprofit
scientific, or nonprofit educational activities, including
church cemeteries; and

c. Sales or leases to the state headquarters of
qualified veterans' organizations and the state headquarters
of their auxiliaries when used in carrying on their customary
veterans' organization activities. If a qualified veterans'
or its auxiliary does not maintain a permanent
state headquarters, then transactions involving sales or
leases to such organization and used to maintain the office of
the highest ranking state official are exempt from the tax
imposed by this part.

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2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

   a. "Religious institutions" means churches, synagogues, and established physical places for worship in this state at which nonprofit religious services and activities are regularly conducted and carried on. The term "religious institutions" includes nonprofit corporations the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees. The term "religious institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of religious organizations or members within the state or district organization.

   b. "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), United States Internal Revenue Code, 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

      (I) Medical aid for the relief of disease, injury, or disability;

      (II) Regular provision of physical necessities such as food, clothing, or shelter;

      (III) Services for the prevention of, or rehabilitation of persons from, alcoholism or drug abuse;

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prevention of suicide; or the alleviation of mental, physical, or sensory health problems;

(IV) Social welfare services including adoption placement, child care, community care for the elderly, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;

(V) Medical research for the relief of disease, injury, or disability;

(VI) Legal services; or

(VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

and the term includes groups providing volunteer manpower to organizations designated as charitable institutions hereunder.

c. "Scientific organizations" means scientific organizations in this state which hold current exemptions from federal income tax under s. 501(c)(3) of the Internal Revenue Code and also means organizations the purpose of which is to protect air and water quality in this state or the purpose of which is to protect wildlife in this state and which hold current exemptions from the federal income tax under s. 501(c)(3) of the Internal Revenue Code.

d. "Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities which conduct regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, the Department of Education, the Florida Council of Independent Schools, or the Florida Association of Christian Colleges and

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Schools, Inc., or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association or the American Dental Association.

Nonprofit libraries, art galleries, and museums open to the public are defined as educational institutions and are eligible for exemption. The term "educational institutions" includes private nonprofit organizations the purpose of which is to raise funds for schools teaching grades kindergarten through high school, colleges, and universities located in this state. The term "educational institutions" includes any educational television or radio network or system established pursuant to s. 229.805 or s. 229.8051 and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term "educational institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members within the state or district organization.

e. "Veterans' organizations" means nationally chartered or recognized veterans' organizations, including, but not limited to, Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., and Jewish War Veterans of the U.S.A. and the Disabled American Veterans, Department of Florida, Inc., which hold current exemptions from federal income tax under s. 501(c)(4) or s. 501(c)(19) of the Internal Revenue Code.

Resource recovery equipment.—Also exempt is resource recovery equipment which is owned and operated by or on behalf of any county or municipality, certified by the

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Department of Environmental Regulation under the provisions of s. 403.715.

School books and school lunches.--This exemption applies to school books used in regularly prescribed courses of study, and to school lunches served to students, in public, parochial, or nonprofit schools operated for and attended by pupils of grades 1 through 12. School books and food sold or served at community colleges and other institutions of higher learning are taxable.

Theater Program facilities.--Nonprofit organizations incorporated in accordance with chapter 617 which have qualified under s. 501(c)(3) of the Internal Revenue Code of 1954, as amended, and which have been designated as State Theater Program facilities as provided in s. 265.287 are exempt from the tax imposed by this chapter.

Volunteer fire departments.--Also exempt are firefighting and rescue service equipment and supplies purchased by volunteer fire departments, duly chartered under the Florida Statutes as corporations not for profit.

PARTIAL EXEMPTION; FLYABLE AIRCRAFT.--

(a) The tax imposed on the sale by a manufacturer of flyable aircraft, who designs such aircraft, which sale may include necessary equipment and modifications placed on such flyable aircraft prior to delivery by the manufacturer, shall be an amount equal to the sales tax which would be imposed on such sale under the laws of the state in which the aircraft will be domiciled.

(b) This partial exemption applies only if the purchaser is a resident of another state who will not use the aircraft in this state, or if the purchaser is a resident of

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another state and uses the aircraft in interstate or foreign commerce, or if the purchaser is a resident of a foreign country. 

(c) The maximum tax collectible under this subsection may not exceed 5 percent of the sales price of such aircraft. No Florida tax may be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled does not allow Florida sales or use tax to be credited against its sales or use tax. Furthermore, no tax may be imposed on the sale of such aircraft if the state in which the aircraft will be domiciled has enacted a sales and use tax exemption for flyable aircraft or if the aircraft will be domiciled outside the United States.

(d) The purchaser shall execute a sworn affidavit attesting that he is not a resident of this state and stating where the aircraft will be domiciled. If the aircraft is subsequently used in this state within 6 months of the time of purchase, in violation of the intent of this subsection, the purchaser shall be liable for payment of the full use tax imposed by this chapter and shall be subject to the penalty imposed by s. 212.12(2), which penalty shall be mandatory.


(12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS, OR VIDEO TAPES.--

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

CODING: Words stricken are deletions; words underlined are additions.
1. "Amounts paid for the tangible elements" does not include any amounts paid for the copyrightable, artistic, or other intangible elements of such master tapes, records, films, or video tapes, whether designated as royalties or otherwise, including, but not limited to, services rendered in producing, fabricating, processing, or imprinting tangible personal property or any other services or production expenses in connection therewith which may otherwise be construed as constituting a "sale" under s. 212.02(20)(f)2.  

2. "Master films or master video tapes" means films or video tapes utilized by the motion picture and television production industries in making visual images for reproduction.  

3. "Master tapes or master records embodying sound" means tapes, records, and other devices utilized by the recording industry in making recordings embodying sound.  

4. "Motion picture or television studio" means a facility in which film or video tape productions or parts of productions are made and which contains the necessary equipment and personnel for this purpose and includes a mobile unit or vehicle that is equipped in much the same manner as a stationary studio and used in the making of film or video tape productions.  

5. "Recording studio" means a place where, by means of mechanical or electronic devices, voices, music, or other sounds are transmitted to tapes, records, or other devices capable of reproducing sound.  

6. "Recording industry" means any person engaged in an occupation or business of making recordings embodying sound for a livelihood or for a profit. 

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7. "Motion picture or television production industry" means any person engaged in an occupation or business for a livelihood or for profit of making visual motion picture or television visual images for showing on screen or television for theatrical, commercial, advertising, or educational purposes.

Section 15. Paragraph (a) of subsection (3), paragraph (c) of subsection (4), and paragraph (a) of subsection (6) of section 212.095, Florida Statutes, are amended to read:

212.095 Refunds.--

(3)(a) When a sale is made to a person who claims to be entitled to a refund under this section, the seller shall make out a sales invoice, which shall contain the following information:

1. The name and business address of the purchaser.
2. A description of the item or services sold.
3. The date on which the purchase was made.
4. The price and amount of tax paid for the item or services.
5. The name and place of business of the seller at which the sale was made.
6. The refund permit number of the purchaser.

(4)

(c) Refund application forms shall include at a minimum the following information:

1. The name and address of the person claiming the refund.
2. The refund permit number of such person.
3. The location at which the items or services for which a refund is claimed are used.

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4. A description of each such item or service and the purpose for which such item or service was acquired.

5. Copies of the sales invoices of items or services for which a refund is being claimed.

(6)(a) Each registered dealer shall, in accordance with the requirements of the department, keep at his principal place of business in this state or at the location where the sale is made a complete record or duplicate sales tickets of all items or services sold by him for which a refund provided in this section may be claimed, which records shall contain the information required in paragraph (3)(a). No licensed dealer or his agent or employee may acknowledge or assist in the preparation of any claim for tax refund.

Section 16. Paragraph (a) of subsection (1) of section 212.11, Florida Statutes, 1986 Supplement, is amended to read:

212.11 Tax returns and regulations.—

(1)(a)1. Except as provided in subparagraph 3., each dealer shall calculate his estimated tax liability for any month by one of the following methods:

a. Sixty-six percent of the current month’s liability pursuant to this part as shown on the tax return;

b. Sixty-six percent of the tax reported on the tax return pursuant to this part by a dealer for the taxable transactions occurring during the corresponding month of the preceding calendar year; or

c. Sixty-six percent of the average tax liability pursuant to this part for those months during the preceding calendar year in which the dealer reported taxable transactions.

2. Any estimated tax liability greater than or equal to the threshold amount specified in subsection (5) shall be
due, payable, and remitted by the 20th day of the month for
which the liability applies. The difference between the
estimated tax liability paid and the actual amount and taxes
due under this part for such month shall become due and
payable by the first day of the following month and shall be
remitted by the 20th day thereof.

3. For any dealer who has an estimated tax liability
of less than the threshold amount specified in subsection (5)
or who was not registered for sales tax purposes for the
corresponding month of the preceding year or who first remits
taxes to the department on or after the effective date of this
section, the current taxes levied pursuant to this part shall
be due and payable monthly on the first day of the following
month and shall be remitted by the 20th day thereof.

Section 17. The introductory paragraph of subsection
(1), paragraph (b) of subsection (5), and subsections (7) and
(9) of section 212.12, Florida Statutes, 1986 Supplement, are
amended, and, effective January 1, 1988, paragraph (b) of
subsection (1) of said section is amended, to read:

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

(1) Notwithstanding any other provision of law and for
the purpose of compensating persons granting licenses for and
the lessors of real and personal property taxed hereunder, for
the purpose of compensating dealers in tangible personal
property, for the purpose of compensating dealers providing
communication services and taxable services, and for the
purpose of compensating owners of places where admissions are
collected, and for the purpose of compensating remitters of

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any taxes or fees reported on the same documents utilized for
the sales and use tax, as compensation for the keeping of
prescribed records and the proper accounting and remitting of
taxes by them, such seller, person, lessor, dealer, and owner
and remitter shall be allowed 3 percent of the amount of the
tax due and accounted for and remitted to the department, in
the form of a deduction in submitting his report and paying
the amount due by him; and the department shall allow such
deduction of 3 percent of the amount of the tax to the person
paying the same for remitting the tax in the manner herein
provided, for paying the amount due to be paid by him, and as
further compensation to dealers in tangible personal property
for the keeping of prescribed records and for collection of
taxes and remitting the same. However, if the amount of the
tax due and remitted to the department for the reporting
period exceeds $1,000, the 3-percent allowance shall be
reduced to 1 percent for all amounts in excess of $1,000.
   (a) The collection allowance may not be granted, nor
may any deduction be permitted, if the tax is delinquent at
the time of payment.
   (b) The Department of Revenue may reduce the
collection allowance by 10 percent or $50, whichever is less,
if a taxpayer files an incomplete return.
       1. An "incomplete return" is, for purposes of this
chapter, a return which is lacking such uniformity,
completeness, and arrangement that the physical handling,
verification, or review of the return may not be readily
accomplished.
       2. The department shall adopt rules requiring such
information as it may deem necessary to ensure that the tax
levied hereunder is properly collected, reviewed, compiled.

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and enforced, including, but not limited to: the amount of  
gross sales; the amount of taxable sales; the amount of  
taxable purchases; the amount of tax collected or due; the  
amount of lawful refunds, deductions, or credits claimed; the  
amount claimed as the dealer's collection allowance; the  
amount of penalty and interest; the amount due with the  
return; and such other information as the Department of  
Revenue may specify. The department shall require that the  
amounts of gross sales, taxable sales, taxable purchases, and  
tax collected or due shall be reported by major sales tax  
source: services; tangible personal property; admissions;  
transient rentals; commercial leases or licenses; and  
aricultural equipment.

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

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

(9) Taxes imposed by this chapter upon the privilege of the use, consumption, storage for consumption, or sale of tangible personal property, admissions, license fees, rentals, and communication services, and upon the sale or use of services as herein taxed shall be collected upon the basis of an addition of the tax imposed by this chapter to the total price of such admissions, license fees, rentals, communication or other services, or sale price of such article or articles that are purchased, sold, or leased at any one time by or to a customer or buyer; and the dealer, or person charged herein, is required to pay a privilege tax in the amount of the tax imposed by this chapter on the total of his gross sales of

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tangible personal property, admissions, license fees, rentals, and communication services or to collect a tax upon the sale or use of services, and such person or dealer shall add the tax imposed by this chapter to the price, license fee, rental, or admissions, and communication or other services and collect the total sum from the purchaser, admittee, licensee, lessee, or consumer. Notwithstanding the rate of taxes imposed upon the privilege of sales, admissions, license fees, rentals, and communication services, or upon the sale or use of services, the following brackets shall be applicable to all transactions taxable at the rate of 5 percent:

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

(b) On single sales in amounts from 10 cents to 20 cents, both inclusive, 1 cent shall be added for taxes.

(c) On sales in amounts from 21 cents to 40 cents, both inclusive, 2 cents shall be added for taxes.

(d) On sales in amounts from 41 cents to 60 cents, both inclusive, 3 cents shall be added for taxes.

(e) On sales in amounts from 61 cents to 80 cents, both inclusive, 4 cents shall be added for taxes.

(f) On sales in amounts from 81 cents to $1, both inclusive, 5 cents shall be added for taxes.

(g) On sales in amounts of more than $1, 5 percent shall be charged upon each dollar of price, plus the appropriate bracket charge upon any fractional part of a dollar.

Section 18. Subsections (2), (3), and (4) of section 212.13, Florida Statutes, are amended to read:

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

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(2) Each dealer, as defined in this chapter, shall secure, maintain, and keep for a period of 3 years a complete record of tangible personal property or services received, used, sold at retail, distributed or stored, leased or rented by said dealer, together with invoices, bills of lading, gross receipts from such sales, and other pertinent records and papers as may be required by the department for the reasonable administration of this chapter; and all such records which are located or maintained in this state shall be open for inspection by the department at all reasonable hours at such dealer's store, sales office, general office, warehouse, or place of business located in this state. Any dealer who maintains such books and records at a point outside this state must make such books and records available for inspection by the department where the general records are kept. Any dealer subject to the provisions of this chapter who violates these provisions is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(3) For the purpose of enforcement of this chapter, every manufacturer and seller of tangible personal property or services licensed within this state is required to permit the department to examine his books and records at all reasonable hours; and, upon his refusal, the department may require him to permit such examination by resort to the circuit courts of this state, subject however to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept, provided further that such person's books and records are kept within the state.

(4) For the further purpose of enforcement of this chapter, every wholesaler of tangible personal property or

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services licensed within this state is required to permit the
department to examine his books and records at all reasonable
hours. He must also maintain such books and records for a
period of not less than 3 years in order to disclose the sales
of all goods or services sold, and to whom sold, and also the
amount of items sold, in such form and in such manner as the
department may reasonably require, and so as to permit the
department to determine the volume of goods or services sold
by wholesalers to dealers, as defined under this chapter, and
the dates and amounts of sales made. The department may
require any manufacturer or wholesaler who refuses to keep
such records or to permit such inspection through the circuit
courts of Florida to submit to such inspection, subject
however to the right of removal of the cause as hereinbefore
provided in this section.

Section 19. Subsection (1) of section 212.14, Florida
Statutes, 1986 Supplement, is amended to read:

212.14 Departmental powers; hearings, subpoena;
distress warrants; time for assessments.--

(1) Any person required to pay a tax imposed under
this chapter, or to make a return, either or both, and who
renders a return or makes a payment of a tax with intent to
deceive or defraud the state, and to prevent the state from
collecting the amount of taxes imposed by this chapter, or
otherwise fails to comply with the provisions of this chapter
for the taxable period for which any return is made, or any
tax is paid, or any report is made to the department, may be
required by the department to show cause at a time and place
to be set by the department, after 10 days' notice in writing
requiring such books, records, or papers as the department may
require relating to the business of such person for such tax

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period, and the department may require such person, or
persons, or their employee or employees to give testimony
under oath and answer interrogatories by the department, or an
assistant, respecting the sale, use, consumption,
distribution, or storage rental or license for use of real or
personal property or services within the state, or admissions
collected therein, or the failure to make a true report
thereof, as provided by this chapter, or failure to pay the
ture amount of the tax required to be paid under this chapter.
At said hearing, in the event such person fails to produce
such books, records, or papers, or to appear and answer
questions within the scope of investigation relating to
matters concerning taxes to be imposed under this chapter, or
prevents or impedes his or her agents or employees from giving
testimony, then the department is authorized under this
chapter to estimate any unpaid deficiencies in taxes to be
assessed against such person upon such information as may be
available to it and to issue a distress warrant for the
collection of such taxes, interest, or penalties estimated by
him to be due and payable, and such assessment shall be deemed
prima facie correct. In such cases said warrant shall be
issued to any sheriff in the state where such person owns or
possesses any property and such property as may be required to
satisfy any such taxes, interest, or penalties shall be by
such sheriff seized and sold under said distress warrant in
the same manner as property is permitted to be seized and sold
under distress warrants issued to secure the payments of
delinquent taxes as hereinafter provided, and the department
shall also have the right to writ of garnishment to subject
any indebtedness due to the delinquent dealer by a third
person in any goods, money, chattels, or effects of the
delinquent dealer in the hands, possession, or control of the third person in the manner provided by law. Respecting the place for the holding of a hearing by the department or its agents as provided in this section, the person whose tax return or report being investigated may by written request to the department require the hearing be set at a place within the judicial circuit of Florida wherein the person's business is located or within the judicial circuit of Florida wherein such person's books and records are kept.

Section 20. Subsections (3) and (7) of section 212.17, Florida Statutes, 1986 Supplement, are amended to read:

212.17 Credits for returned goods, returned payments for services, rentals, or admissions; additional powers of department.--

(3) A dealer who has paid the tax imposed by this chapter on tangible personal property or services may take a credit or obtain a refund for any tax paid by him on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly.

(7) The department, where admissions, license fees, or rental payments or payments for services are made and thereafter returned to the payers after the taxes thereon have been paid, shall return or credit the taxpayer for taxes so paid on the moneys returned in the same manner as is provided for returns or credits of taxes where purchases or tangible personal property are returnable to a dealer.

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Section 21. Subsection (3) of section 212.18, Florida Statutes, 1986 Supplement, is amended to read:

(3) Every person desiring to engage in or conduct business in this state as a dealer, as defined in this chapter, or to lease, rent, or let or grant licenses in living quarters or sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, or real property, as defined in this chapter, and every person who sells or receives anything of value by way of admissions, shall file with the department an application for a certificate of registration for each place of business, showing the names of the persons who have interests in such business and their residences, the address of the business, and such other data as the department may reasonably require.

The application shall be made to the department before the person, firm, copartnership, or corporation may engage in such business; and it shall be accompanied by a registration fee of $5. The department, upon receipt of such application, will grant to the applicant a separate certificate of registration for each place of business, which certificate may be canceled by the department or its designated assistants for any failure by the certificateholder to comply with any of the provisions of this chapter. The certificate shall not be assignable and shall be valid only for the person, firm, copartnership, or corporation to which issued; and such certificate shall be placed in a conspicuous place in the business or businesses for which it is issued and shall be so displayed at all times. No person shall engage in business as a dealer or in leasing, renting, or letting of or granting licenses in living quarters or sleeping or housekeeping accommodations in hotels.
apartment houses, roominghouses, tourist or trailer camps, or
real property as hereinbefore defined, nor shall any person
sell or receive anything of value by way of admissions,
without first having obtained such a certificate or after such
certificate has been canceled; and no person shall receive any
license from any authority within the state to engage in any
such business without first having obtained such a certificate
or after such certificate has been canceled. The engaging in
the business of selling or leasing tangible personal property
or services or as a dealer, as defined in this chapter, or the
engaging in leasing, renting, or letting of or granting
licenses in living quarters or sleeping or housekeeping
accommodations in hotels, apartment houses, roominghouses,
tourist or trailer camps, or real property as hereinbefore
defined, or the engaging in the business of selling or
receiving anything of value by way of admissions, without such
certificate first being obtained or after such certificate has
been canceled by the department is prohibited. The failure or
refusal of any person, firm, copartnership, or corporation to
so qualify when required hereunder is a misdemeanor of the
second degree, punishable as provided in s. 775.082, s.
775.083, or s. 775.084, or subject to injunctive proceedings
as provided by law.

Section 22. Subsection (3) of section 212.21, Florida
Statutes, is amended to read:

212.21 Declaration of legislative intent.--
(3) It is further declared to be the specific
legislative intent to exempt from the tax or taxes or from the
operation or the imposition thereof only such sales,
admissions, uses, storages, consumption or rentals in relation
to or in respect of the things set forth by this chapter as

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exempted from the tax to the extent that such exemptions are
in accordance with the provisions of the constitutions of the
state and of the United States. It is further declared to be
the specific legislative intent to tax each and every taxable
privilege made subject to the tax or taxes, and each and every
taxable service made subject to the tax or taxes, except such
sales, admissions, uses, storages, consumptions or rentals as
are specifically exempted therefrom by this chapter to the
extent that such exemptions are in accordance with the
provisions of the constitutions of the state and of the United
States.

Section 23. Section 212.61, Florida Statutes, is
amended to read:

212.61 Definitions.--As used in this part, the term:
(1) "Dealer" means any person who holds a valid
license as a dealer of special fuel, issued by the department
pursuant to s. 206.89, and who:
(a) Imports and sells at wholesale, retail, or
otherwise within this state any special fuel;
(b) Imports, or causes to be imported, and withdraws
for use within this state by himself or others any special
fuel from the tank car, truck, or other original container or
package in which it was imported into this state;
(c) Exports special fuel from this state to another
state or foreign country;
(d) Manufactures, refines, produces, or compounds any
special fuel within this state and sells such fuel at
wholesale, retail, or otherwise within this state;
(e) Imports into this state from any other state or
foreign country, or receives by any means into this state and
keeps in storage in this state for a period of 24 hours or

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more after the fuel loses interstate character as a shipment
in interstate commerce, any special fuel which is intended to
be used in this state;

(f) is primarily liable under the special fuel tax
laws of this state for the payment of special fuel taxes;

(g) Purchases or receives in this state special fuel
in bulk quantities for resale to service stations, to a user
or another dealer, or to the ultimate consumer for nontaxable
consumption upon which the tax has not been paid; or

(h) Has both a taxable use and nontaxable consumption
of the same special fuel in this state. However, this
paragraph does not require that a person be a dealer when his
only purchases of special fuel are delivered into reservoirs
attached to motor vehicles to fuel internal combustion engines
attached to such motor vehicles.

(2) "Refiner," "importer," or "wholesaler" means any
person who holds a valid license as a refiner, importer, or
wholesaler, as defined in s. 206.01, of motor fuel, issued by
the department pursuant to ss. 206.02 and 206.03.

(3) "Retail dealer" means any person who is licensed
pursuant to chapter 206 to sell motor fuel or special fuel at
retail to the general public at posted retail prices.

The definitions contained in s. 212.02(3), (7), (12), (15),
(17), (18), (19), (20), (21), (23), (25), (27), and (28) of
212.02 apply to the same terms as used in this
part.

Section 24. Section 212.235, Florida Statutes, is
created to read:

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212.235 Local Government Infrastructure Trust Fund:

deposits.--

(1) Notwithstanding the provisions of ss. 212.20(1) and 218.61, an amount equal to 2 percent of the proceeds remitted pursuant to this act by a dealer shall be deposited into the Local Government Infrastructure Trust Fund, which is created in the State Treasury. "Proceeds" means all funds collected and received by the Department of Revenue, including any interest and penalties. However, any unobligated balance in the trust fund in excess of $150 million shall revert to the General Revenue Fund.

(2) For any fiscal year the authorized expenditures from the Local Government Infrastructure Trust Fund shall not exceed $150 million.

Section 25. Section 8 of chapter 86-166, Laws of Florida, is amended to read:

Section 8. Subsections (5), (6), (7), and (8) of section 212.031, Florida Statutes, and paragraphs (a), (d), (e), (f), (g), (h), (i), and (p) of subsection (7) of subsection (5) of section 212.08, Florida Statutes, and subsections (e) and (f) of section 212.082, Florida Statutes, and paragraphs (i), (j), and (k) of subsection (9) of subsection (5) of section 212.082, Florida Statutes, as amended by chapters 84-956 and 85-342, Laws of Florida, are repealed July 1, 1987.

Section 26. Subsection (2) of section 212.0821,

Florida Statutes, is amended to read:

212.0821 Legislative intent that political subdivisions and public libraries use their sales tax exemption certificates for purchases on behalf of specified groups.--It is the intent of the Legislature that the

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political subdivisions of the state and the public libraries utilize their sales tax exemption certificates to purchase, with funds provided by the following groups, services, equipment, supplies, and items necessary for the operation of such groups, in addition to the normal exempt purchases that political subdivisions and libraries are empowered to make:

(2) Counties and municipalities shall purchase necessary goods and services requested by REACT groups, neighborhood crime watch groups, and state or locally recognized organizations solely engaged in youth activities identical to those discussed in s. 212.08(7)(m)++.

Section 27. Paragraph (c) of subsection (4) of section 240.533, Florida Statutes, is amended to read:

240.533, Florida Statutes, is amended to read:

240.533 Women's intercollegiate athletics.--

(4) FUNDING.--

(c) In addition to the above amount, an amount equal to the sales taxes which would be collected from admission to athletic events sponsored by an institution within the State University System shall be retained and remitted to the state if the exemption provided in s. 212.08(7)(a) did not apply shall be utilized by each institution to support women's athletics.

Section 28. Subsection (13) of section 288.385, Florida Statutes, 1986 Supplement, as amended by chapter 86-166, Laws of Florida, is amended to read:

288.385 International currency and barter exchanges.--

(13) The exchange formed under the provisions of this section shall not be subject to any state or local taxes or fees which are measured by income, transaction amounts, or gross receipts, nor shall such exchange be required to report in respect to such income or transactions under state law and

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local law. Nothing in this subsection shall be construed to
give any member of the exchange any tax exemption. The
exemption granted by this subsection does not apply to any tax
imposed under part II of chapter 212 or under chapter 220.

Section 29. Paragraph (g) of subsection (1) of section
290.007, Florida Statutes, is amended to read:

290.007 Incentives and programs available in
enterprise zones.--

(1) STATE INCENTIVES AND PROGRAMS.--The following
incentives and programs are provided by the state to encourage
the revitalization of enterprise zones:

(g) The sales tax exemption for electrical energy used
in an enterprise zone provided in s. 212.08(15)(4).

Section 30. Paragraph (b) of subsection (3) of section
564.02, Florida Statutes, 1986 Supplement, is amended to read:

564.02 License fees; vendors; manufacturers and
distributors.--

(3)

(b) A bona fide religious order, monastery, church, or
religious body that has a tax-exempt status as a religious
organization as provided by s. 212.08(7)(e), may be licensed
as a distributor under this subsection if its sales and
distribution are limited to wines sold solely for religious or
sacramental purposes to holders of valid permits obtained
under s. 564.03; and such religious order, monastery, church,
or religious body shall pay a state license tax of $50 for
each and every such distribution establishment to be operated
by the licensee.

Section 31. In the case of written contracts which are
signed prior to April 1, 1987, for constructing improvements
to real property or for remodeling existing structures, the

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contractor responsible for performing the contract shall pay any tax levied pursuant to s. 212.0594, Florida Statutes. However, the contractor may apply before December 31, 1988, for one refund of any such tax paid before June 30, 1988, on the purchase of any service necessary to complete such contract when the tax cannot be legally collected from the final purchaser and cannot be included in the price charged to the final purchaser under the terms of the contract. The application for the refund shall be in the manner approved by the Department of Revenue by rule. A complete application shall include proof of the written contract and of payment of the tax levied pursuant to s. 212.0594, Florida Statutes. The application shall contain a sworn statement, signed by the applicant or his representative, attesting to the validity of the application. The department shall, within 30 days after approving a completed application, certify to the Comptroller the information necessary for issuing the refund. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this section shall, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, Florida Statutes.

Section 32. Rule 12A-1.091(6) of the Department of Revenue is hereby repealed.

Section 33. The Legislature hereby finds that the failure to promptly implement the provisions of this act would present an immediate threat to the welfare of the state because revenues needed for operation of the state would not be collected. Therefore, the executive director of the Department of Revenue is hereby authorized to adopt emergency
rules pursuant to s. 120.54(9), Florida Statutes, for purposes of implementing this act. Notwithstanding any other provision of law, such emergency rules shall remain effective for 6 months from the date of adoption.

Section 34. Any penalties provided for pursuant to s. 212.12(2), Florida Statutes, shall be waived by the executive director of the Department of Revenue for returns due for the tax on services newly imposed by this act. The waiver shall apply with respect to returns for taxes due and payable for the period between July 1, 1987, and September 30, 1987.

Section 35. When a service that is taxable beginning July 1, 1987, is provided prior to that date, it shall not be taxed, notwithstanding that compensation for the service is paid or payable on or after that date. When a service that is taxable beginning July 1, 1987, is provided on or after that date, the service shall be taxed unless it was prepaid in full prior to April 1, 1987. When a service that is taxable beginning on July 1, 1987, is provided over a period of time beginning prior to that date and ending after that date, the service shall be taxed only upon that portion of the service provided on or after July 1, 1987.

Section 36. Subsection (1) of section 206.87, Florida Statutes, 1986 Supplement, is amended to read:

206.87 Levy of tax.--

(1)(a) An excise tax of 4 cents per gallon is hereby imposed upon every gallon of special fuel used or sold in this state for use, except alternative fuels which are subject to the fee imposed by s. 206.877. Unless expressly provided to the contrary in this part, every sale shall be deemed to be for use in this state. This levy of tax shall be paid upon the first sale or transfer of title within this state by a

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dealer, except as expressly provided in this part, who shall act as agent for the state in the collection of such tax whether he is the ultimate seller or not.

(b) In addition to the excise tax levied under paragraph (a) an excise tax of 5.5 cents for the period of July 1, 1987, through June 30, 1988, and 7.5 cents thereafter is hereby imposed upon every gallon of special fuel used or sold in this state for use, except alternative fuels which are subject to the fee imposed by s. 206.877. Unless expressly provided to the contrary in this part, every sale shall be deemed to be for use in this state. This levy of tax shall be paid upon the first sale or transfer of title within this state by a dealer, except as expressly provided in this part, who shall act as agent for the state in the collection of such tax whether he is the ultimate seller or not.

Section 37. Subsection (3) is added to section 206.875, Florida Statutes, to read:

206.875 Allocation of tax.--

(3) Notwithstanding the provisions of subsections (1) and (2), the department shall pay over to the State Treasurer all funds received and collected by it under the provisions of s. 206.877(1)(b) to be credited to the account of the Local Government Infrastructure Trust Fund established pursuant to s. 212.235.

Section 38. Section 207.026, Florida Statutes, is amended to read:

207.026 Allocation of tax.--All moneys derived from the taxes and fees imposed by this chapter shall be paid into the State Treasury by the department for deposit in the Gas Tax Collection Trust Fund, from which the following transfers shall be made: After withholding $50,000 from the proceeds CODING: Words struck are deletions; words underlined are additions.
therefrom, to be used as a revolving cash balance, the funds
for the purpose of conducting the study as set forth in s. 4
of chapter 80-415, Laws of Florida, and the amount of funds
necessary for the administration and enforcement of this tax,
all other moneys shall be transferred in the same manner and
for the same purpose as provided in ss. 206.41, 206.45,
206.60, 206.605, 206.875, and 212.69.

Section 39. Paragraph (d) of subsection (3) of section
57.111, Florida Statutes, is amended to read:
57.111 Civil actions and administrative proceedings
initiated by state agencies; attorneys' fees and costs.--
(3) As used in this section:
(d) The term "small business party" means:
1. A sole proprietor of an unincorporated business,
including a professional practice, whose principal office is
in this state, who is domiciled in this state, and whose
business or professional practice has, at the time the action
is initiated by a state agency, not more than 25 full-time
employees or a net worth of not more than $2 million,
including both personal and business investments; or
2. A partnership or corporation, including a
professional practice, which has its principal office in this
state and has at the time the action is initiated by a state
agency not more than 25 full-time employees or a net worth of
not more than $2 million.

3. Either of the above, without regard to the number
of its employees or its net worth, in any action under s.
72.011 or administrative proceeding under that section and s.
120.575(1)(b) to contest the legality of any assessment of tax
imposed for the sale or use of services as provided in chapter
212, or interest thereon, or penalty therefore.

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Section 40. Paragraph (b) of subsection (1) of section 120.57, Florida Statutes, 1986 Supplement, is amended to read:

120.57 Decisions which affect substantial interests.--
The provisions of this section apply in all proceedings in which the substantial interests of a party are determined by an agency, unless such proceedings are exempt pursuant to subsection (5). Unless waived by all parties, subsection (1) applies whenever the proceeding involves a disputed issue of material fact. Unless otherwise agreed, subsection (2) applies in all other cases.

(1) FORMAL PROCEEDINGS.--

(b) In any case to which this subsection is applicable, the following procedures apply:

1. A request for a hearing shall be granted or denied within 15 days of receipt.

2. All parties shall be afforded an opportunity for a hearing after reasonable notice of not less than 14 days; however, the 14-day notice requirement may be waived with the consent of all parties. In a preliminary hearing for the revocation of parole, no less than 7 days' notice shall be given. In a hearing involving a student disciplinary suspension or expulsion conducted by an educational unit, the 14-day notice requirement may be waived by the agency head or the hearing officer without the consent of the parties. The notice shall include:

a. A statement of the time, place, and nature of the hearing.

b. A statement of the legal authority and jurisdiction under which the hearing is to be held.

c. A reference to the particular sections of the statutes and rules involved.
d. Except for any hearing before an unemployment compensation appeals referee, a short and plain statement of the matters asserted by the agency and by all parties of record at the time notice is given. If the agency or any party is unable to state the matters in sufficient detail at the time initial notice is given, the notice may be limited to a statement of the issues involved, and thereafter, upon a timely written application, a more definite and detailed statement shall be furnished not less than 3 days prior to the date set for the hearing.

3. Except for any proceeding conducted as prescribed in s. 120.54(4), or s. 120.56, or s. 120.575(1)(b), a petition or request for a hearing under this section shall be filed with the agency. If the agency elects to request a hearing officer from the division, it shall so notify the division within 10 days of receipt of the petition or request. When the Florida Land and Water Adjudicatory Commission receives a notice of appeal pursuant to s. 380.07, the commission shall notify the division within 60 days of receipt of the notice of appeal if the commission elects to request the assignment of a hearing officer. On the request of any agency, the division shall assign a hearing officer with due regard to the expertise required for the particular matter. The referring agency shall take no further action with respect to the formal proceeding, except as a party litigant, as long as the division has jurisdiction over the formal proceeding. Any party may request the disqualification of the hearing officer by filing an affidavit with the division prior to the taking of evidence at a hearing, stating the grounds with particularity.

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4. All parties shall have an opportunity to respond, to present evidence and argument on all issues involved, to conduct cross-examination and submit rebuttal evidence, to submit proposed findings of facts and orders, to file exceptions to any order or hearing officer's recommended order, and to be represented by counsel. When appropriate, the general public may be given an opportunity to present oral or written communications. If the agency proposes to consider such material, then all parties shall be given an opportunity to cross-examine or challenge or rebut it.

5. All pleadings, motions, or other papers filed in the proceeding must be signed by a party, the party's attorney, or the party's qualified representative. The signature of a party, a party's attorney, or a party's qualified representative constitutes a certificate that he has read the pleading, motion, or other paper and that, to the best of his knowledge, information, and belief formed after reasonable inquiry, it is not interposed for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. If a pleading, motion, or other paper is signed in violation of these requirements, the hearing officer, upon motion or his own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

6. The record in a case governed by this subsection shall consist only of:
a. All notices, pleadings, motions, and intermediate rulings;

b. Evidence received or considered;

c. A statement of matters officially recognized;

d. Questions and proffers of proof and objections and rulings thereon;

e. Proposed findings and exceptions;

f. Any decision, opinion, proposed or recommended order, or report by the officer presiding at the hearing;

g. All staff memoranda or data submitted to the hearing officer during the hearing or prior to its disposition, after notice of the submission to all parties, except communications by advisory staff as permitted under s. 120.66(1), if such communications are public records;

h. All matters placed on the record after an ex parte communication pursuant to s. 120.66(2); and

i. The official transcript.

7. The agency shall accurately and completely preserve all testimony in the proceeding, and, on the request of any party, it shall make a full or partial transcript available at no more than actual cost. In any proceeding before a hearing officer initiated by a consumptive use permit applicant pursuant to subparagraph 13., the applicant shall bear the cost of accurately and completely preserving all testimony and providing full or partial transcripts to the water management district. At the request of any other party, full or partial transcripts shall be provided at no more than cost.

8. Findings of fact shall be based exclusively on the evidence of record and on matters officially recognized.

9. Except as provided in subparagraph 12., the hearing officer shall complete and submit to the agency and all

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parties a recommended order consisting of his findings of
fact, conclusions of law, interpretation of administrative
rules, and recommended penalty, if applicable, and any other
information required by law or agency rule to be contained in
the final order. The agency shall allow each party at least
10 days in which to submit written exceptions to the
recommended order.

10. The agency may adopt the recommended order as the
final order of the agency. The agency in its final order may
reject or modify the conclusions of law and interpretation of
administrative rules in the recommended order, but may not
reject or modify the findings of fact unless the agency first
determines from a review of the complete record, and states
with particularity in the order, that the findings of fact
were not based upon competent substantial evidence or that the
proceedings on which the findings were based did not comply
with essential requirements of law. The agency may accept the
recommended penalty in a recommended order, but may not reduce
or increase it without a review of the complete record and
without stating with particularity its reasons therefor in the
order, by citing to the record in justifying the action. When
there is an appeal, the court in its discretion may award
reasonable attorney's fees and costs to the prevailing party
if the court finds that the appeal was frivolous, meritless,
or an abuse of the appellate process or that the agency action
which precipitated the appeal was a gross abuse of the
agency's discretion.

11. If the hearing officer assigned to a hearing
becomes unavailable, the division shall assign another hearing
officer who shall use any existing record and receive any

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additional evidence or argument, if any, which the new hearing
officer finds necessary.

12. A hearing officer who is a member of an agency
head may participate in the formulation of the final order of
the agency, provided he has completed all his duties as
hearing officer.

13. In any application for a license or merger
pursuant to title XXXVIII which is referred by the agency to
the division for hearing pursuant to this section, the hearing
officer shall complete and submit to the agency and to all
parties a written report consisting of findings of fact and
rulings on evidentiary matters. The agency shall allow each
party at least 10 days in which to submit written exceptions
to the report.

14. In any application for a consumptive use permit
pursuant to part II of chapter 373, the water management
district on its own motion may, or, at the request of the
applicant for the permit, shall, refer the matter to the
division for the appointment of a hearing officer to conduct a
hearing under this section.

Section 41. Subsection (1) of section 120.575, Florida
Statutes, is amended to read:

120.575 Taxpayer contest proceedings.--

(1)(a) In any administrative proceeding brought
pursuant to chapter 120 as authorized in s. 72.011(1), the
taxpayer or other substantially affected party shall be
designated the "petitioner" and the Department of Revenue
shall be designated the "respondent."

(b) In any such administrative proceeding brought
pursuant to s. 120.57(1) as authorized in s. 72.011(1) to
contest the legality of any assessment of tax imposed for the

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sale or use of services as provided in chapter 212, or
interest thereon, or penalty therefor, the following
procedures shall apply, any provisions of this chapter to the
contrary notwithstanding:

1. The petition shall be filed with the division,
which shall forward a copy to the department immediately upon
receipt of the petition.

2. The panel provided in s. 120.65(5) shall conduct
all proceedings under this paragraph.

3. Within 10 days after receiving the petition, the
panel shall accept or deny the petition and, if accepted,
shall conduct a hearing thereon, unless the petition is
withdrawn.

4. Within 30 days after the hearing or receipt of the
hearing transcript, whichever is later, the panel shall issue
its order, which shall consist of findings of fact,
conclusions of law, interpretation of administrative rules,
and any other information required by law or rule to be
contained in the final order. Such order shall affirm or deny
the assessment, interest, or penalty, and shall determine the
amount of any assessment, interest, or penalty.

5. The order of the panel shall be final agency
action.

Section 42. Subsections (5), (6), (7), (8), and (9) of
section 120.65, Florida Statutes, 1986 Supplement, are
redesignated as subsections (6), (7), (8), (9), and (10),
respectively, and a new subsection (5) is added to said
section to read:

120.65 Hearing officers.—

(5) The director shall appoint, from among the full-
time hearing officers of the division, a panel consisting of

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three members to be the hearing officer in all proceedings brought as provided in s. 120.575(1)(b). Such appointments shall be made with due regard to the expertise required for determination of such proceedings. Service as a member of such panel shall be at the pleasure of the director, and such service may be in addition to other duties of employment by the division.

Section 43. The Department of Revenue is directed to undertake a study of service transactions for the purpose of identifying those transactions not taxable pursuant to the definition of service in s. 212.02(22)(b), Florida Statutes, but taxable pursuant to the definition of service in s. 212.02(22)(a), Florida Statutes. On or before March 1, 1988, the department shall report to the Governor and the Legislature all service transactions so identified. This section shall not be construed to preclude taxation after July 1, 1989, of any service neither described in s. 212.02(22)(b), Florida Statutes, nor identified by the department in its report.

Section 44. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 45. Except as otherwise provided herein, this act shall take effect July 1, 1987.