MEMORANDUM

TO: Joe Mellichamp

FROM: John Griffin

DATE: November 4, 1987

RE: DOR Emergency Rules Amendments

The Governor and Cabinet voted on November 3, 1987, to endorse the Department of Revenue's adoption of various amendments to its emergency rules implementing the services tax. The motion adopted by the Governor and Cabinet requires DOR to adopt the proposed amendments only in conjunction with review by this office.

Attached is a copy of the report provided to the Governor and Cabinet in which DOR specifies the five (5) groups or categories in which emergency rule changes might be accomplished. As a result of the November 3, 1987 vote, DOR has been authorized to act on the various groups in the following fashion:

A) Groups I and I -- proceed in conjunction with review by this office;

B) Group III -- proceed only upon approval by House and Senate leadership and in conjunction with review by this office; and

C) Groups IV and V -- continue to study; no amendments to be filed.

DOR has been advised that this office will not review proposed amendments to emergency rules in Group III until the legislative leadership has given approval.
Attached is a copy of the proposed amendments to the emergency rules in Groups I and II that has been provided to this office by DOR. Also attached for your information is a copy of a memo prepared by the Opinions Section which contains a tentative analysis of DOR's legal authority to adopt the amendments. The memo prepared by Opinions is based on a review of the above-mentioned DOR report provided the Governor and Cabinet and is not based on a review of the proposed amendments which have only subsequently been provided.

The Attorney General requests that you review the proposed emergency rule amendments to Groups I and II for the purpose of determining DOR's legal authority to adopt the amendments and for the purpose of insuring that the adoption would not place this office in an untenable position with respect to ongoing litigation in which we represent DOR. You are requested to communicate directly with Bill Townsend at DOR and please inform me of any issue that you and Bill are unable to mutually agree upon. Time is of the essence.

If you have any questions, do not hesitate to contact me.

/dmm
TO: Honorable Bob Martinez
    Governor
    The Capitol
    Tallahassee, Florida 32301

Honorable Betty Castor
Commissioner of Education
The Capitol
Tallahassee, Florida 32301

Honorable Jim Smith
Secretary of State
The Capitol
Tallahassee, Florida 32301

Honorable Bill Gunter
Insurance Commissioner & Treasurer
The Capitol
Tallahassee, Florida 32301

Honorable Bob Butterworth
Attorney General
The Capitol
Tallahassee, Florida 32301

Honorable Gerald Lewis
Comptroller
The Capitol
Tallahassee, Florida 32301

Honorable Doyle Conner
Commissioner of Agriculture
The Capitol
Tallahassee, Florida 32301

October 29, 1987

On October 20, 1987, Commissioner Castor requested the staff of the Department of Revenue to provide a report to you concerning the Department's Emergency Rules on the sales tax on services together with a list of recommendations for further emergency rule changes directed at ameliorating administrative problems encountered by the Department and taxpayers since the promulgation of the first emergency rules.

As you are aware, administrative rule making is always a process of evolution. The Department of Revenue is constantly reviewing its permanent rules on all taxes to correct problems, simplify procedures, reflect changes in policy, and respond to new manners of doing business devised by taxpayers. The sales tax on tangible personal property has been the subject of numerous rule changes since its imposition in 1949. It is, therefore, not unusual or unexpected that modifications in the emergency rules would be necessitated.
You will recall that the sales tax on services became law on April 23 and was scheduled to be effective on July 1, 1987. In order to have rules to provide some guidance to taxpayers beyond the statute and to advise them of certain administrative matters not clearly set forth in Ch. 87-6, L.O.F., as amended by Chs. 87-72 and 87-101, L.O.F., it was necessary for the Department to operate within a very short time frame to develop and publish emergency rules as required by those chapters and Ch. 120, F.S.

Working rapidly but with limited information in a field never before taxed in this state or taxed in a like manner in other states, and with limited input from taxpayers regarding their administrative concerns, the Department promulgated a first set of rudimentary rules. It was contemplated the Department would continue issuing emergency rules to address various problem areas in the administration of the tax, as well as address areas of concern which were not addressed in the original emergency rules.

As a part of the emergency rules, the Department provided a mechanism for taxpayers to request individualized information by writing for Temporary Technical Assistance Advisements (TTAA's). Additionally, after promulgation of these first emergency rules, the Department participated in over 200 private seminars and meetings with different business groups.

Through the requests for TTAA's and the seminars much valuable information and input has been received by the Department about methods of doing business in the service sector of the economy.

It would be an administrative and economic burden upon the Department to provide copies of all of the TTAA's to all taxpayers, and no mechanism exists other than by rule to advise taxpayers of these responses which, it is reasonable to believe, affect more than the one taxpayer making the request, i.e., the numerous manufacturers's representatives in this state.

As a state agency, the Department is required to fairly administer the law it is authorized to enforce. This mandate has led the Department to frequently adjust reporting and like requirements to reflect taxpayer input and to lessen the administrative burdens imposed upon those collecting and remitting taxes.
Governor and Members of the Cabinet
Page Three
October 29, 1987

The following groups of Departmental recommendations recognize all of the foregoing principles of administrative rule making. The grouping has been arranged to: 1) reflect the varying ability of the Department to administratively solve the problem area and 2) the relative fiscal impact which would result from the solution. The final attachment is a brief memorandum of law outlining the legal authority of the Department to make these changes.

Sincerely,

[Signature]

Randy Miller
Executive Director

RM/t/mlf
GROUP I

The following represent changes to be made by the Department in new emergency rules. They have only a minimal or no fiscal impact on the revenue estimates for the tax on services.

1. **Services sold to Credit Unions.** Federal law exempts federally chartered credit unions from all sales taxes on purchasers. Section 213.21, F.S., requires the same treatment for state chartered credit unions. The previous emergency rules did not address this issue. Services sold by or passed through to clients by credit unions will, of course, be taxed as provided by statute for all financial institutions.

2. **Financial Services.** The Department is constrained by decisional law to recognize the judicially developed doctrine of merger. Pursuant to that doctrine, service items purchased by financial institutions to be used in rendering an exempt financial service will only be taxed upon their purchase.

3. **Foreign Status Certificate.** Purchases of financial services by non-resident persons in international financial transactions are statutorily exempt. No funding for preparation of forms to identify these transactions was made during the legislative session. Accordingly, the Department will provide by rule for allowing financial institutions to utilize an existing Federal banking form (W-8) to demonstrate the exempt nature of such international banking transaction.

4. **Resale Certificate.** For the administrative ease of taxpayers as well as the Department, the use of the Department's standard "Blanket Certificate of Resale" will be authorized for service transactions including those combined transactions involving repairs of tangible personal property.
5. **Livestock.** After consultation with the Department of Agriculture, a more comprehensive definition of agriculture has been agreed upon encompassing equines, bovines and swine.

6. **Veterinarian.** Sales of drugs by veterinarians for livestock are to be included in the definition of health services.

7. **Employee Leasing.** Recognizing methods of computation of tax to be similar to that done for federal income and withholding tax, the Department will allow businesses leasing employees to calculate the tax based on quarterly business figures for the previous quarter.

8. **Cooperative Marketing Agreements.** Cooperative Marketing Agreements are primarily used by manufacturers of tangible personal property to provide discounts to high volume retailers. As such, the consideration does not represent payment for a service.

9. **Trading Stamps.** The Department will clarify its position that trading stamp charges are taxable as services only if the charge is in excess of the actual cash or redemption value.

10. **Manufacturing/Construction.** Those contractors who purchase raw materials and fabricate them for their own use will be allowed to take a credit for the taxes paid on those materials when remitting tax on the cost of the manufacturing.

11. **Pre-May 1 Construction Contracts.** Recognizing the ruling in the Advisory Opinion rendered by the Florida Supreme Court, the Department will waive the two year completion time limit.
12. **Sanitary and Water Supply Services.** The Department will follow the long accepted policy of the state and recognize an exemption where there is a master meter and the entity involved is 51% or more residential in nature.

13. **Manufacturers' Representatives.** Services performed by these individuals are specifically taxable under the law. For administrative purposes, and as a result of the holding in *Tyler Pipe vs. Washington*, the Department will hold the manufacturer liable for the tax imposed on these services.

14. **Exempt Purchase Permit: Alternative Use.** The Department believes that it is administratively necessary to change its rules to allow the optional use of the exempt purchase permit by multi-state businesses. This change would allow the Department to recognize the way businesses purchase services and ameliorates certain hardships encountered by large multi-state entities. An example of this change would be to allow a multi-state business to purchase a service, i.e., janitorial services, for a location in Florida, and pay the tax to the vendor as opposed to require that business to accrue the "use" tax and remit it at a later date. Thus the bookkeeping of the multi-state corporation would be reduced and the State of Florida would receive the tax money earlier.

15. **Exempt Purchase Permit: Single State User.** Many multi-state businesses have a unified accounting system which makes it difficult for members of the affiliated group who are solely within Florida to adequately administer this tax by allowing the use of the exempt purchase permit by the single state members of these affiliated groups. The collection of this tax would be enhanced both for the state in terms of accuracy and the taxpayer by ease of administration.
GROUP II

The following represent changes the Department recommends be accomplished pursuant to rulemaking. These have a moderate fiscal impact.

1. "Leased" Medical Employees. The Department recommends that these be treated as are nursing or doctor services and be declared to be exempt even though furnished by "leasing companies".

FISCAL IMPACT: -2.5 million

2. Residential Management. Currently the Legislature allows an exemption for certain types of Homeowner Associations. The Department recommends recognition of the legislative intent that the terms Homeowner Association, Condominium Association and Mobile Home Associations be read broadly to recognize similar functionally equivalent entities performing the same functions vis a vis maintenance fees, etc.

FISCAL IMPACT: -0.7 million

3. Educational Services by Non-Schools. Certain classifications utilized by the SIC manual have confused the application of the tax to certain educational services. The SIC manual refers specifically to "schools" implying an organized business maintaining a facility and engaging in a business. The Department will clarify its position that "school" implies such an institution and that therefore the tax would not be applied to tutoring or music instruction where no occupational license tax is imposed and the service is provided in the house of either the teacher or the student.

FISCAL IMPACT: -0.9 million
GROUP III

The following represent changes which should be considered. These may be accomplished through the Department's rulemaking authority. They have fiscal impact as noted.

1. **Construction Related Services.** Services purchased by a prime contractor or subcontractor which are ancillary to a contract for the improvement, construction, alteration or repair of real property should be taxed in accordance with the provisions relating to construction services.

FISCAL IMPACT: -8.1 million

2. **Repairs of Real Property.** Allow contractors who enter into a contract for less than $5,000 to repair real property to claim a credit against taxes on such repair work for taxes previously paid in material used in such repair.

FISCAL IMPACT: -8.3 million

3. **Use of Allocation by Multi-state Business Entities.** Where the purchaser is a multi-state entity, the statute recognizes that geographically isolating use or consumption is fact specific. The statutory provisions governing such determinations [S. 212.0591(9)] are expressly set out as presumptions, which can be overcome by a fact-based determination of where the benefits of use or consumption are actually enjoyed.

The proposed rule amendment clarifies the Department's general position under the authority of S. 212.0591(9)(b)6., as to what representations a taxpayer must make to overcome the statutory presumptions, and as to what is a reasonable method of establishing Florida use or consumption under such circumstances.

FISCAL IMPACT: -10 million
GROUP IV

Due to inherent conflicts between S. 212.12 and the provisions of Chapter 87-6 as amended by Chapters 87-72, and 87-101, the Department is continuing to evaluate the administration of the "sale for resale" provisions of the law. There appears to be some statutory authority for the Department to make an administrative determination that certain aspects of the "sale for resale" could be modified to reduce some pyramiding.

FISCAL IMPACT: -52.9 million

GROUP V

Due to an apparent drafting error in Chapter 87-101, L.O.F., (glitch bill) the Department promulgated emergency rules to clarify legislative intent to tax construction services purchased by exempt entities (i.e. governments and other exempt entities) and labor only contracts in a manner consistent with full service construction contracts. The fiscal impact of these provisions are of such magnitude, it is felt that the legislature is the appropriate body to address any changes in this application of the law.

FISCAL IMPACT: Exempt Entity Construction - 37.1 million
Labor only Contracts - 27 million
The Authority of the Florida Department of Revenue to Revise Its Emergency Rules

During the regular 1987 legislative session, the authority to adopt emergency rules to administer the new sales tax on services was conferred upon the Executive Director of the Florida Department of Revenue for a period of six months. At a special session of the Legislature later in the year, this effective period was extended to June 30, 1988. This specific authority to adopt emergency rules is in addition to the general authority of the Department to adopt such rules as are necessary to carry out the intent and purposes of the sales tax law and to amend those rules even in the absence of legislative amendment.

As a general rule, administrative authority may be utilized to implement and carry out laws enacted by the Legislature so long as the line between administration and legislation is adhered to and sufficient legislative standards to guide the authority in making such decisions is provided to avoid an unconstitutional delegation of legislative power.

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1Chapters 86-166, 87-6, 87-72, 87-101, Laws of Florida.
2Section 33, Chapter 87-6, Laws of Florida.
3Chapter 87-539, Laws of Florida.
4Section 213.06, as made applicable to sales tax by s. 213.05, F.S.
5Section 213.06, F.S.
6Florida Jur. 2nd, Administrative Law, Vol. 1, s. 31, pp. 578.
Where lawful rulemaking authority is clearly conferred or fairly implied, and it is consistent with the general statutory duties of the agency, a wide discretion is accorded it in the exercise of such authority. State ex rel Railroad Com'rs v. Atlantic C.L.R. Co., 54 So. 394 (Fla. 1910). Rules, regulations, and orders of administrative agencies are deemed prima facie reasonable and just. State ex rel Burr v. Jacksonville Terminal Co., 106 So. 576 (Fla. 1925). The validity of rules passed under statutory authority to make such rules will be sustained so long as they are reasonably related to the purposes of the enabling legislation and are not arbitrary or capricious. Florida Beverage Corp. v. Wynne, 306 So.2d 200 ( Fla. 1 DCA 1975). See also General Telephone Co. v. Florida Public Service Commission, 446 So.2d 1063 (Fla. 1984); Grove Island Ltd. vs. Florida DER, 454 So.2d 571 ( Fla. 1 DCA 1984). A capricious action is one which is taken without thought or reason or irrationally. An arbitrary decision is one not supported by facts or logic, or despotic. Agrico Chemical Co. v. State DER, 365 So.2d 759 (Fla. 1 DCA 1978).

On June 30, 1987, the Department of Revenue adopted its emergency rules to implement the new sales tax on services. These, and any amendments to them, were made effective through June 30, 1988.7

As a general rule, an administrative agency has the power to amend or to repeal its rules.8 Indeed, the Florida Administrative Procedures Act definition of "rule" includes the amending or repealing of a rule.9

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7Chapter 87-539, Laws of Florida, provides that: "All rules heretofore or hereafter adopted pursuant to s. 120.54(9), Florida Statutes, for the purposes of implementing Chapter 87-6 or 87-101, Laws of Florida, shall remain effective through June 30, 1988 ...."(e.s.)

8Am. Jur. 2d, Administrative Law, ss. 310, 311.

9Section 120.52(14), Florida Statutes.
How, as a practical matter, does the authority to amend its emergency rules affect any policy changes or administrative interpretation by the Department of Revenue? The emergency rulemaking authority, s. 120.54(9), Florida Statutes, as specially modified by the Legislature for the emergency rules to implement the sales tax on services, authorizes the Department to amend its emergency rules and, so long as they are reasonably related to the legislative purpose and are not arbitrary or capricious, the amendments will be upheld by the courts. The burden is on the challenger of such amendments to prove, by a preponderance of the evidence, that they are arbitrary or capricious. Agrico v. Florida D.E.R., 365 So.2d 759 (Fla. 1 DCA 1978).
MEMORANDUM

To: Robert A. Butterworth, Attorney General
From: Joslyn Wilson, Opinions Section
Re: Proposed Department of Revenue Rules
Date: November 3, 1987

Administrative agencies possess such powers as have been delegated by statute. An agency cannot by rule expand its statutory authority. Thus, while the Department of Revenue (DOR) has been granted specific rulemaking authority to adopt emergency rules, it cannot through the adoption of such rules expand its authority or create exemptions not contemplated by the statutes. Section 212.0591(10), F.S. states that it is the intent of the Legislature to exempt from the services tax only those services for which exemptions are expressly provided.

The fact that the Legislature enacted (or attempted to enact) legislation amending the statute is evidence that any such changes should be done legislatively rather than by administrative rule. While such actions by the Legislature are not conclusive in interpreting the statutes and DOR's powers, they are persuasive, since it should never be presumed that the Legislature intended to enact purposeless and therefore useless legislation. However, an examination of the proposed rule changes indicates that a number of the changes were not considered by the Legislature during the special session.

While the issue of a budget shortfall resulting from implementation of proposed rules may be an appropriate consideration for the Administration Commission, the pertinent question that must be addressed in considering approval of these rules is whether DOR is acting within the scope of its authority under the statute rather than the fiscal impact of such rules.
Group I

1. Services Sold to Credit Unions.

Section 213.12(2) provides that state chartered credit unions shall have the same immunity from taxation as federally chartered credit unions. Applying the doctrine of statutory construction that statutes should be read in harmony, it appears that if federally chartered credit unions are in fact exempt from all sales taxes on purchasers, state chartered credit unions may enjoy a similar immunity. Cf., AGO 73-144.

2. Financial Services.

In the absence of more specific information, I am unable to comment upon DOR's authority or responsibilities in this area.

3. Foreign Status Certificate.

This office has not been presented with the federal form and therefore cannot assess whether such a form provides the necessary information to properly identify the transaction. Generally, however, it would not appear to be outside the scope of DOR's authority to prescribe forms.

4. Resale Certificate.

See comment in §3.

5. Livestock.

Section 212.0592(6) provides an exemption for "agricultural services." The statute refers to s. 618.01(1) defining "agricultural products" which include livestock. Therefore, it appears that DOR may adopt such a provision.

6. Veterinarian.

Section 212.0592(12) provides an exemption for health services enumerated in SIC Major Group 80. The services enumerated therein relate to the treatment of human beings. It is therefore questionable whether DOR may expand the statutory definition to include medical services provided to animals.

7. Employee Leasing.

Section 212.059(4)(a) requires that the services tax be computed on the sales price or cost price of the service at the time of
sale. Subsection (b), however, provides that a dealer may elect to ascertain the amount of the tax payable on the basis of cash receipts for all taxable transactions under this section. The department has the authority to prescribe the procedures for making (or changing) such an election.

Section 212.11(1)(d) states that DOR may authorize a quarterly return for dealers registered as service providers and remitting the tax solely from the provision of services. The statute, however, provides that such returns are authorized only for dealers whose monthly tax collections are less than $500 in each month for the previous 3 months.

DOR's authority to adopt a rule permitting businesses leasing employees to calculate the tax based on quarterly business figures for the previous quarter appears to be limited by the above provisions.

8. Cooperative Marketing Agreements.

This office has not been presented with sufficient information to effectively analyze this issue.


See §8 above.

10. Manufacturing/Construction.

DOR proposes to grant those contractors who purchase raw materials and fabricate them for their own use to take a credit for the taxes paid on those materials when remitting the tax on the cost of the manufacturing.

This office has not been advised of any provision authorizing DOR to grant such a credit. Compare, s. 212.0594(2)(b) providing that for new construction undertaken for the prime contractor's own use, or on a speculative basis and not sold within 6 months of completion, the tax shall be based upon 50 percent of the cost price.

11. Pre-May 1 Construction Contracts.

The Supreme Court of Florida in In re Advisory Opinion to the Governor, 509 So.2d 292 (Fla. 1987), held that s. 31, Ch. 87-6, Laws of Florida, imposing the services tax on written construction contracts signed prior to the enactment of the
statute if the contractor fails to complete performance prior to a future date violated the state constitutional prohibition against laws impairing the obligation of contract.

DOR proposes to administratively recognize this judicial construction of the statute.


Additional information is needed in order for this office to assess the "long accepted policy of the state" and DOR's authority to "recognize" an exemption. See, s. 212.0592(22), providing an exemption for sanitary services enumerated in SIC Group Number 495 if such services are sold to residential households or owners of residential models and for water supply services enumerated in SIC Group Number 494 (which includes domestic, commercial and industrial use). [CS for CS/SB 5-3 proposed to repeal subsection (22).]


This office has not been provided with sufficient time to assess the U.S. Supreme Court's decision in Tyler Pipe v. Washington, 107 S.Ct. 2810 (1987).


DOR proposes to amend its rules to allow the optional use of the exempt purchase permit by multistate businesses. Section 212.0593 provides that each multistate business shall obtain an exempt purchase permit prior to claiming an exemption under s. 212.0592(1). The statute would not appear to authorize DOR to permit the optional use of such permits by multistate businesses.

CS for CS/SB 5-3 proposed to amend the statutes relating to the taxation of multistate businesses to allow an option for apportionment methodology or allocation of certain services.

It appears unlikely that such a change could be accomplished administratively but rather would need legislation.


This office has been not been provided with sufficient information to properly assess DOR's proposal.
Group II

1. "Leased" medical service employees.

Section 212.0592(12) provides an exemption for health services enumerated in SIC Major Group 80 which includes services of licensed physicians and nurses.

DOR proposes to exempt "leased" medical services. I cannot conclude that such a proposal falls outside of the scope of DOR's authority. In the absence of any explanatory language, the distinction between a "sale" of services as opposed to a "lease" of services appears to be unclear. See, s. 212.02(20), defining "sale" to mean, among other things, any transfer, provision or rendering of services for a consideration.

2. Residential management.

Section 212.0592(16) provides an exemption for maintenance assessments/fees paid by an association member to a homeowners association, residential condominium owners association, residential property association, residential mobile homeowners association, or residential cooperative association.

DOR proposes to interpret the statute broadly to encompass any entity performing the same functions regarding maintenance fees, for example to a boarding house, etc. There would appear to be a substantial question whether DOR may by rulemaking so extend the exemption.

3. Educational service by non-schools.

Section 212.0592(9) exempts from the services tax educational services enumerated in SIC Group Number 82, except for those services enumerated in SIC Industry Number 8299 (with the exception of bible schools). [The bill adopted by the Legislature during the special session and vetoed by the Governor would have repealed subsection (9).]

DOR's new rule would limit the exception to the exemption to "schools," i.e., an institution maintaining a facility and engaging in a business. Thus the tax would not be applicable to tutoring or music instruction where no occupational license tax is imposed and the service is provided in either the house of the teacher or the student.
According to the current emergency rule, 12AER 87-11(7)(c), the SIC manual refers to taxable educational services offered by "schools." While educational services would appear to include tutoring or music instruction, in light of the statutory reference to the SIC group and industry numbers which apparently use the term "school," DOR may be able to adopt a rule limiting the exception to "schools." See, 78 C.J.S. Schools and School Districts, s. 1, defining "school" as an institution or place for instruction, or the collective body of instructors or pupils in any such institution.

Group III

1. Construction related services.

Section 212.0594(1)(c) defines "construction services" to mean any activity "directly involving the construction, alteration, improvement or repair of realty. (e.s.)"

DOR proposes to have ancillary services purchased by a prime contractor or subcontractor taxed in accordance with the provisions relating to construction services. Such a proposal is questionable in light of the above statute.

2. Repairs of real property.

Section 212.0594(2)(e) provides for construction other than new construction, i.e., the repair of realty for which the contract price, including building materials used, is less than $5000. In such cases, the tax is imposed upon the total contract price, less the amount paid by the prime contractor for building materials incorporated into the realty if he has already paid the tax on such materials and the written contract or invoice itemizes the materials and the price paid.

DOR may not act in a manner inconsistent from the above scheme. The statute does not authorize the contractor to claim a credit but rather specifies that the building materials used shall be taken into consideration in determining the tax.

3. Use of allocation by multi-state business entities.

Section 212.0591(9)(b)6. provides that notwithstanding the previous subparagraphs which establish certain presumptions and formulas, if the purchaser demonstrates to the satisfaction of the department that the benefit of the service was enjoyed
outside of the state, the service shall be deemed to be used or consumed outside of the state.

DOR seeks to clarify what representations a taxpayer must make to overcome the statutory presumptions and what is a reasonable method of establishing Florida use or consumption under such circumstances.

In light of the above statute, it appears that DOR has the general authority to adopt a rule specifying the procedures and methods to be used.

Group IV

Section 212.02(19)(a) in defining "retail sale" or "sale at retail," excludes a "sale for resale" and specifies the conditions for a sale for resale. Section 212.059(1)(a) provides that the services tax shall be imposed upon the sale at retail of any services in this state.

DOR claims that it may make an administrative determination that certain aspects of the "sale for resale" could be modified to reduce some pyramiding. Such a claim is questionable unless DOR strictly complies with the provisions of s. 212.02(19)(a) defining that term.

Group V

Construction services purchased by exempt entities.

CS/CS for SB 5-B passed during the special session sought to create an exemption for construction services performed pursuant to a contact with certain exempt entities. The bill was vetoed by the Governor.

Action by the Legislature would appear to be necessary to create such an exemption.

1 See, e.g., Lewis Oil Co., Inc. v. Alachua County, 496 So.2d 184 (1st D.C.A. Fla., 1986).
2 See, e.g., Island Harbor Beach Club, Ltd. v. Department of Resources, 495 So.2d 209 (1 D.C.A. Fla., 1986) (an agency cannot by defining a statutory term expand its authority beyond that authorized in the statute).

3 See, s. 33, Ch. 87-6, Laws of Florida, authorizing the executive director of DOR to adopt emergency rules pursuant to s. 120.54(9), F.S.

4 Section 212.0592(10) was created by s. 2, Ch. 87-72, Laws of Florida. And see, 12AER 87-11, providing that rules promulgated by the DOR cannot be construed to extend exemptions beyond the scope of those intended by the statute.

5 See, Neu v. Miami Herald Publishing Co., 462 So.2d 821, 825 (Fla. 1985); Sharer v. Hotel Corporation of America, 144 So.2d 813, 817 (Fla. 1962).

6 See, s. 216.221, F.S.
TO: William D. Townsend, Esq., General Counsel

FROM: Buzz McKown

SUBJECT: Emergency Rules Amendments

This relates to the memorandum of October 29 from the Executive Director to the Governor and Cabinet, recommending amendments to our emergency rules that were promulgated during June. Since we understanding they have approved the Group I and Group II amendments, attached are excerpts of revised emergency rules that would implement those amendments.

GROUP I

1. Services sold to Credit Unions. Proposed revised Rule 12AER87-128 (p. 184), attached would implement this recommendation.

2. Financial Services. Recommendation would be implemented by highlighted language of revised rule 12AER87-139 (p. 213), attached.

3. Foreign Status Certificate. Recommendation would be implemented by highlighted language of revised Rule 12AER87-139 (p. 209), attached.

4. Resale Certificate. Recommendation would be implemented by highlighted language of revised Rule 12AER87-100 (p. 37), attached.


6. Veterinarian. Highlighted language on p. 120 of the gore-going rule, together with the inserted parenthetical language, assures that sales of drugs by veterinarians is recognized as exempt. Added emphasis is provided by highlighted language on p. 2 of proposed permanent rule 12A-1.020, attached.

8. **Cooperative Marketing Agreements.** Recommendation would be implemented by highlighted language of revised rule 12AER87-127 (p. 183), attached.

9. **Trading Stamps.** Recommendation would be implemented by highlighted language of revised rule 12AER87-193 (p. 348), attached.

10. **Manufacturing/Construction.**

11. **Pre-May 2 Construction Contracts.**

12. **Sanitary and Water Supply Services.** Recommendation would be implemented by highlighted language of revised rule 12AER87-185 (p. 330), attached.

13. **Manufacturers' Representatives.** Recommendation would be implemented by Rule 12AER87-164, attached.

14. **Exempt Purchase Permit: Alternative Use.** Recommendation would be implemented by Rule 12AER87-95, attached, especially by underlined (new) language therein.

15. **Exempt Purchase Permit: Single State User.** Recommendation would be implemented by highlighted language (including handwritten insertion) of revised Rule 12AER87-95 (p. 2), attached.

**GROUP II**

1. **"Leased" Medical Employees.** Recommendation would be implemented by inserting a new subsection (9) in Rule 12AER87-21 (original emergency rule), as shown by p. 60, attached.

2. **Residential Management.** Recommendation would be implemented by revised Rule 12AER87-163, attached, especially its underlined (new) language.

3. **Educational Services by Non-Schools.** Recommendation would be implemented by adding a new paragraph (e) to Rule 12AER87-11(7)--original emergency rule--., as shown by p. 25, attached. In addition, an amendment should be made to original emergency rule 12AER87-20(Flying Services), as shown by p. 59, attached.