



Finance and Tax Committee

Wednesday, October 7, 2015

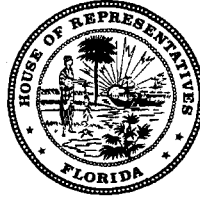
3:30 p.m. – 6:00 p.m.

Morris Hall

MEETING PACKET

The Florida House of Representatives

Finance and Tax Committee



Steve Crisafulli
Speaker

Matt Gaetz
Chair

AGENDA

October 7, 2015
3:30 p.m. – 6:00 p.m.
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. ***Workshop on the following:***
Property Taxes
- IV. Discussion of Potential Work Plan Items
- V. Closing Remarks and Adjournment

House Joint Resolution

1
2 A joint resolution proposing an amendment to Section 9
3 and the creation of Sections 19 and 20 of Article VII
4 and Section 34 of Article XII of the State
5 Constitution limiting ad valorem tax rates to no
6 greater than those rates levied against the 2016 tax
7 roll, providing an exception for tax rates levied by
8 school districts for required local effort, newly
9 created jurisdictions levying for municipal purposes,
10 and newly created independent special districts,
11 creating a taxable value limit for real and tangible
12 personal property not to exceed just value less \$xxx,
13 imposing an additional sales and use tax at a rate not
14 to exceed xx percent to offset local government
15 revenue losses attributable to the limit on taxable
16 value, and providing an effective date and
17 applicability.

18
19 Be It Resolved by the Legislature of the State of Florida:

20
21 That the following amendment to Section 9 and the creation
22 of Sections 19 and 20 of Article VII and Section 34 of Article
23 XII of the State Constitution are agreed to and shall be
24 submitted to the electors of this state for approval or
25 rejection at the next general election or at an earlier special
26 election specifically authorized by law for that purpose:

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ARTICLE VII

FINANCE AND TAXATION

SECTION 9. Local taxes.—

(a) Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution.

(b) Ad valorem taxes, exclusive of taxes levied for the payment of bonds and taxes levied for periods not longer than two years when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation, shall not be levied in excess of the following millages upon the assessed value of real estate and tangible personal property: ~~for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; for water management purposes for the northwest portion of the state lying west of the line between ranges two and three east, 0.05 mill; for water management purposes for the remaining portions of the state, 1.0 mill; and for all other special districts a millage authorized by law approved by vote of the electors who are owners of freeholds therein not wholly exempt from taxation.~~ for all county, municipal, school, and special district purposes the millage rate levied by each jurisdiction against the 2016 tax roll, with the exception of the millage rates levied for school

53 district required local effort pursuant to chapter 1011, Florida
 54 Statutes, as such chapter is amended from time to time, and for
 55 municipal and independent special district purposes by taxing
 56 authorities created on or after January 1, 2017. The millage
 57 rates levied for the school district required local effort shall
 58 not produce an aggregate required local effort, calculated
 59 excluding the impacts of section 19, for all school districts in
 60 excess of the prior fiscal year's aggregate required local
 61 effort plus an adjustment for growth in the statewide taxable
 62 value for school purposes, excluding the impacts of section 19.
 63 The millage levied for municipal purposes by taxing authorities
 64 created on or after January 1, 2017 shall not be in excess of 5
 65 mills. The millage levied by independent special districts
 66 created on or after January 1, 2017, shall be authorized by law
 67 and approved by vote of the electors residing therein. A county
 68 furnishing municipal services may, to the extent authorized by
 69 law, levy additional taxes within the limits fixed for municipal
 70 purposes.

71 SECTION 19. Taxes; Maximum taxable value.-Notwithstanding
 72 other provisions of this article, for purposes of ad valorem
 73 taxation, the taxable value of real property and the taxable
 74 value of tangible personal property shall not exceed the just
 75 value of the property less \$XXX.

76 SECTION 20. Sales and use surtax; offset to reductions in
 77 ad valorem taxes.-By general law and subject to the conditions
 78 specified therein a sales and use surtax on all transactions

79 | subject to the state tax imposed on sales, use, services,
 80 | rentals, admissions and other transactions by chapter 212,
 81 | Florida Statutes, as such chapter is amended from time-to-time,
 82 | shall be authorized at a tax rate not to exceed XX percent of
 83 | the taxable sales and taxable purchases representing such
 84 | transactions. The proceeds of the surtax shall be used solely
 85 | for the purpose of offsetting the reductions in ad valorem tax
 86 | revenue experienced by counties, municipalities, school
 87 | districts and special districts as a direct result of the
 88 | implementation of s. 19. The amount of surtax to be distributed
 89 | to each taxing jurisdiction each year shall be calculated as 96
 90 | percent of the reduction in taxable value attributable to the
 91 | implementation of s. 19 multiplied by the applicable millage
 92 | rate for each taxing jurisdiction. If the sum of surtax
 93 | distributions during a year is greater than the available surtax
 94 | revenues for the same period, then the amounts distributed to
 95 | each jurisdiction shall be reduced on a proportional basis. If
 96 | the sum of surtax distributions during a year is less than the
 97 | available surtax revenues for the same period, then the excess
 98 | surtax revenues shall be reserved for use pursuant to this
 99 | section in a subsequent year.

100 | ARTICLE XII

101 | SCHEDULE

102 | Section 34. Property tax reform.--The amendment to section
 103 | 9 of Article VII relating to the maximum ad valorem millage
 104 | rates, the limitation on taxable value under section 19 of

105 Article VII, and the authorization of the state sales and use
106 surtax under section 20 of Article VII shall take effect January
107 1, 2017.

108 BE IT FURTHER RESOLVED that the following statement be
109 placed on the ballot:

110 CONSTITUTIONAL AMENDMENT

111 ARTICLE VII, SECTIONS 9, 19, 20

112 ARTICLE XII, SECTION 34

113 AD VALOREM TAX RATE AND VALUATION LIMITATION; ADDITIONAL
114 SALES AND USE TAX.--Proposing an amendment to the State
115 Constitution, effective January 1, 2017, limiting ad valorem tax
116 rates to no greater than those levied against the 2016 tax roll,
117 except for certain school, municipal, and special district
118 rates; limiting taxable value for real and tangible personal
119 property to no more than just value less \$xxx; authorizing
120 additional sales tax at a rate not to exceed xx percent to
121 offset revenue losses attributable to the taxable value limit.

Sales Tax Rate Changes to Replace Ad Valorem Revenue--FY 2016-17 (1)

| | 100% Exemption | | | \$1 million Exemption (4) | | | \$750k Exemption (4) | | | \$500k Exemption (4) | | |
|------------------------------------|-----------------------------------|--------------|--------------|-----------------------------------|--------------|--------------|-----------------------------------|--------------|--------------|-----------------------------------|--------------|--------------|
| | Replace Collections Est. (mil \$) | Item (2) | Cumulative | Replace Collections Est. (mil \$) | Item (3) | Cumulative | Replace Collections Est. (mil \$) | Item (3) | Cumulative | Replace Collections Est. (mil \$) | Item (3) | Cumulative |
| Schools: | | | | | | | | | | | | |
| Required Local Effort | 7,996.8 | 1.88% | 1.88% | 5,831.2 | 1.37% | 1.37% | 5,569.5 | 1.31% | 1.31% | 5,134.9 | 1.21% | 1.21% |
| Disc. Local Effort (non-voted) | 1,228.7 | 0.29% | 2.17% | 895.9 | 0.21% | 1.58% | 855.7 | 0.20% | 1.51% | 788.9 | 0.19% | 1.39% |
| Disc. Capital Outlay | 2,459.5 | 0.58% | 2.75% | 1,793.4 | 0.42% | 2.00% | 1,712.9 | 0.40% | 1.91% | 1,579.3 | 0.37% | 1.76% |
| <u>Voted</u> | <u>358.2</u> | 0.08% | 2.83% | <u>261.7</u> | 0.06% | 2.06% | <u>250.0</u> | 0.06% | 1.97% | <u>230.6</u> | 0.05% | 1.82% |
| Total | 12,043.1 | | | 8,782.3 | | | 8,388.1 | | | 7,733.7 | | |
| County & City: | | | | | | | | | | | | |
| Operating | 14,357.8 | 3.38% | 6.21% | 10,587.6 | 2.49% | 4.55% | 10,132.0 | 2.38% | 4.35% | 9,374.6 | 2.20% | 4.02% |
| <u>Debt Service (voted)</u> | <u>186.8</u> | 0.04% | 6.25% | <u>139.6</u> | 0.03% | 4.59% | <u>133.9</u> | 0.03% | 4.39% | <u>124.5</u> | 0.03% | 4.05% |
| Total | 14,544.6 | | | 10,727.2 | | | 10,265.9 | | | 9,499.1 | | |
| Independent Spec. Districts | 1,991.2 | 0.47% | 6.72% | 1,468.3 | 0.35% | 4.93% | 1,405.2 | 0.33% | 4.72% | 1,300.1 | 0.31% | 4.36% |
| Grand Total | 28,579.0 | | | 20,977.8 | | | 20,059.2 | | | 18,532.9 | | |

- (1) Ad valorem revenues estimated assuming current millage rates (2014-15). Full year impacts only.
 (2) Revenue neutral sales tax rates expected to increase over time, assuming current millage rates.
 (3) Revenue neutral sales tax rates expected to decrease over time, assuming current millage rates.
 (4) Proposal is to limit a parcel's taxable value to the lesser of taxable value as calculated under current law, or the parcel's just value minus the exemption amount.

CHAPTER 87-6

Committee Substitute for Senate Bill No. 777

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 and international 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; providing for application of certain 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 under certain circumstances; 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 and car service agreement charges from the meaning of "lease" or "service"; specifying when the sale of a service is a sale for resale; specifying those activities included within the meaning of "services"; 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; exempting certain property leased to a person providing food and drink concessionaire 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; including airplanes in said exemption; exempting lease or rental of certain commercial motor vehicles; 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 motion pictures; amending s. 212.08, F.S.; reenacting provisions relating to medical exemptions and providing an additional exemption; providing an exemption for services related to installation of machinery and equipment in new or expanding industry or used to produce electrical or steam energy; revising the exemption for sales to political subdivisions; restructuring other exemptions; exempting certain license fees and charges for films, videotapes, and transcriptions; 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; providing application to attorneys and accountants; amending s. 212.11, F.S.; revising provisions relating to estimated tax liability; authorizing certain quarterly returns; 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 State Infrastructure Trust Fund; providing a limitation; providing uses of the fund; authorizing issuance of bonds; amending s. 8 of chapter 86-166, Laws of Florida; deleting the repeal scheduled for July 1, 1987, of exemptions relating to certain convention hall subleases, certain leases or rentals by fair associations, 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, 403.715, 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; providing for exemption from the tax on services with respect to certain improvements to real property; providing penalties; repealing Rule 12A-1.091(6) of the Department of Revenue, relating to self-accrual; authorizing certain rules relating thereto; providing for emergency rules; providing for client confidentiality; providing for waiver of penalties and interest 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. 201.02, F.S.; providing for the levy of an additional tax on deeds and other instruments relating to real property; amending s. 201.15, F.S.; providing for payment of such additional tax into the State Infrastructure Trust Fund; revising the current distribution of the tax; amending s. 206.87, F.S.; providing for the levy of an additional tax on special fuels; 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 State Infrastructure Trust Fund; amending s. 207.026, F.S., relating to allocation of the tax on commercial motor vehicles, to conform; amending s. 57.071, F.S.; including sales or use tax on legal services within court costs; 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 undertake a study regarding taxable services and report to the Governor and Legislature; requiring the Department of Revenue to develop and implement a tax amnesty program for certain taxes; providing terms and conditions for such program; amending ss. 95.091, 198.18, 199.232, 211.125, 211.33, 214.50, 214.51, and 220.23, F.S.; repealing ss. 212.14(6) and 214.09, F.S.; providing limitations on actions to collect certain taxes and providing for expiration of tax liens; providing penalties; providing limitations on enforcement of certain tax liens by foreclosure and levy proceedings; amending ss. 199.218, 212.08, and 214.04, F.S.; correcting references; amending ss. 125.0104, 198.37, 198.39, 199.282, 201.17, 201.18, 201.20, 203.01, 203.03, 203.63, 206.04, 206.11, 206.18, 206.426, 206.44, 206.87, 206.877, 206.9931, 207.007, 211.076, 211.25, 212.0305, 212.05, 212.054, 212.07, 212.085, 212.10, 212.12, 212.13, 212.14, 212.15, 212.18, 212.62, 214.40, 214.60, 214.61, and 220.181, F.S.; creating s. 211.335, F.S.; providing penalties for certain tax crimes; creating s. 213.30, F.S.; providing compensation for information concerning tax law violations; creating ss. 213.70, 213.71, 213.72, 213.73, 213.74, 213.75, and 213.76, F.S.; providing for the levy of real and personal property by the Department of Revenue to satisfy certain claims; requiring notice; providing for jeopardy assessments by the department under certain circumstances; providing for the sale of seized property; providing for the transfer of all right, title, and interest in such property; providing the order of payment of obligations from payments to the department; providing for freezing certain assets and obligations; providing a penalty; providing an appropriation; providing application of penalties; directing the Department of Revenue to establish a sales tax hot-line; providing for severability; providing effective dates.

WHEREAS, the Legislature enacted chapter 86-166, Laws of Florida, which repeals the exemption from the sales tax for all services effective July 1, 1987, and

WHEREAS, it is not this Legislature's intent to tax essential services such as medical and health services, agricultural services, social services, or religious or humanitarian services, and

WHEREAS, Florida is one of the nation's fastest growing states and by 1990 will be its fourth largest state and must equitably fund the costs of providing the infrastructure necessitated by such growth, and

WHEREAS, it is the intent of this Legislature to make the sales tax on services fair and equitable by reinstating the sales tax exemptions for essential services, NOW, THEREFORE,

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

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. For purposes of determining where the benefit of the services is enjoyed, s. 212.0591(9) shall apply.

(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.

(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 or international 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 register with the department as a service provider and 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 and international transportation services shall be considered sold or used in this state to the extent that the 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 or international transportation services, or the cost price of the use of interstate or international 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 or international 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 SIC Code 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.

(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 of services that proportion of the sales price which the cost of performing the services within the state bears to the total cost of performing the services, or on the use of services that proportion of the 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.

(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, 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.

(c) Notwithstanding paragraphs (a) and (b), interstate and international transportation services shall be presumed 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 3. 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. For purposes of determining where the benefit of the service is enjoyed, s. 212.0591(9) shall apply.

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

(2) Services by an employee to an employer measured by the compensation or remuneration paid to an employee and including retirement plans, insurance and annuity plans. 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) 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) Services between members of an affiliated group of corporations, as defined in s. 212.02. 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. 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. Nothing herein shall be construed to require the filing of a consolidated return under chapter 220 in order to qualify for the exemption granted by this subsection.

(6) Agricultural services enumerated in SIC Major Group 07. However, this exemption shall not apply to animal specialty services (Industry Number 0752), unless the services relate to agricultural products as defined in s. 618.01(1), or to landscape and horticultural services (Group Number 078).

(7)(a) Transportation and warehousing services enumerated in SIC 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 SIC Industry Number 1474, sulfur as described in SIC Industry Number 1477, nitrogenous fertilizers as enumerated in SIC Industry Number 2873, and phosphatic fertilizers as

enumerated in SIC Industry Number 2874. For purposes of this paragraph, an agricultural commodity retains its original identity unless it is processed, packaged in cans, or frozen. However, produce which is processed but neither canned nor frozen shall be considered an agricultural commodity that has retained its original identity.

(b) Food or other agricultural broker services for agricultural commodities or agricultural products as defined in s. 618.01. For purposes of this paragraph, a food or other agricultural broker is a person who solicits, negotiates, or arranges for the transfer, transportation, purchase, or sale of agricultural commodities, including agricultural commodities in their processed state.

(8) Forestry services enumerated in SIC Group Number 085, and timber cutting, harvesting, estimating and transportation services related to those activities enumerated in SIC Group Numbers 241 and 242.

(9) Educational services enumerated in SIC Group Number 82. However, this exemption shall not apply to educational services enumerated in SIC Industry Number 8299, except those services provided by bible schools. Also included in this exemption shall be the sale of educational services by any nonprofit religious organization described in SIC Industry Number 866.

(10) Fees or other charges for services imposed by governmental entities enumerated in SIC 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) Services of a financial nature, of a type customarily performed by a financial institution.

(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 individual tax returns; charges for copies of documents; stop payment charges; 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 and charge card membership fees; cash vault fees; or data processing services not otherwise exempt, except check processing and check clearing services.

(c) The tax imposed under s. 212.059 shall not apply to a service by a financial institution the charge for which is waived or imputed.

(d) For purposes of this subsection, the term "financial institution" means a financial institution as defined in s. 655.005; any subsidiary thereof; any holding company, other than a diversified savings and loan holding company as defined in s. 408 of the National Housing Act, which controls a financial institution; and any subsidiary of such holding company.

(12) Health services enumerated in SIC 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) Insurance services of agents and brokers as enumerated in SIC Major Group 64, insurance service companies, and consideration paid for insurance, including annuities, as defined under the Florida Insurance Code and chapter 440. 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, and discount charges for the purchase of accounts receivable.

(15) Coin-operated laundries and coin-operated dry cleaning establishments enumerated in SIC 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 SIC Major Group 86, and to arts, historical, and science organizations, 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) 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) Local and long distance trucking and warehousing services enumerated in SIC Major Group 42, except those trucking services related to sanitary services, and except those warehousing services already taxable pursuant to s. 212.031 or s. 212.05.

(20) Local and suburban passenger transportation services enumerated in SIC Industry Number 4111, ambulance services and hearse rental services enumerated in SIC Industry Number 4119, and intercity and rural highway passenger transportation services enumerated in SIC Group Number 413.

(21) Water transportation services described in SIC Group Numbers 441 and 442, towing or tugboat services described in SIC Industry Number 4454, marine cargo handling services described in SIC Industry Number 4463, piloting services, ship cleaning, steamship leasing, marine surveyors and ship repair and maintenance services; storage of cargo at port facilities; transportation services enumerated in SIC Industry Numbers 4712 and 4723, lighterage services, described in SIC Industry Number 4453, and services related to processing and accessorizing of automobiles that are imported through Florida ports. The exemption provided by this subsection also applies to services provided in connection with cargo in international trade by any licensed customhouse broker; any customs bonded warehouse, container freight and examination station, or cartman; or freight consolidator or deconsolidator.

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

(23) Security and commodity brokerage services enumerated in SIC Major Group 62 involving the transfer of securities or commodities. However, this exemption shall not be construed to exempt any financial service taxable under subsection (11), or any accounting or investment services.

(24) Social services enumerated in SIC 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.

(26) Real estate commissions when the property seller affirmatively demonstrates to the realtor responsible for collecting the tax that at the time of signing the listing contract on the real estate offered for sale the property seller resided thereon and was entitled to the homestead exemption pursuant to s. 196.031.

(27)(a) Legal services rendered by an attorney to a client to the extent that the right to counsel guaranteed pursuant to either the Sixth Amendment to the United States Constitution or Article I, Section 16 of the Florida Constitution is applicable to such legal services. However, this exemption shall only be applicable if the criminal charges brought in the case are dismissed or the client is

ultimately adjudicated not guilty by a court of competent jurisdiction. This exemption shall only be granted pursuant to a refund of taxes previously paid on such services.

(b) Legal services, provided to a natural person, which relate to child support, child custody, adoption, divorce, guardianship, juvenile cases, landlord/tenant relations, mobile home rentals, enforcement of civil rights or recovery of past or future medical expenses. However, this exemption shall be limited to \$500 in services per person per calendar year.

(28) Services provided by a banking organization as defined in s. 199.023(9) in the conduct of an international banking transaction as defined in s. 199.023(11).

(29) Services provided by travel agents related to arrangement of transportation and accommodations.

(30) Research and development services. For purposes of this subsection, "research and development services" shall mean those activities described in s. 212.052(1)(a).

(31) Religious services provided by religious organizations, religious institutions, or religious leaders.

(32) Any service performed by or through interstate telecommunications by a holder of direct pay permit issued pursuant to s. 212.05(1)(e).

(33) Taxicab services described in SIC Industry Number 4121.

(34) Payment by a franchisee, or receipt by a franchisor, of royalties for use of intangible property, or contributions to a marketing fund or account administered by such franchisor, pursuant to a franchise agreement, which contributions are used solely for the purchase of advertising benefiting franchisees or for the administration of such fund.

(35) Data processing services performed for a financial institution by a service corporation of a financial institution described in SIC Major Group 61, provided:

(a) The service corporation is organized pursuant to s. 545.74, Rules of the Federal Home Loan Bank Board;

(b) All capital stock of the service corporation may be purchased by only savings and loan associations having operations in this state;

(c) No savings and loan association or savings bank owns, or may own, more than 10 percent of such service corporation's outstanding capital stock;

(d) Every eligible savings and loan association or savings bank may own an equal amount of capital stock or may, on such uniform basis as the service corporation may determine, own an amount of such stock equal to a stated percentage of its assets or savings capital at the time the stock is purchased, or an amount of such stock equal to its pro-rata share of accounts serviced.

(36) Personal laundry services sold to residents of nursing home facilities licensed under part I of chapter 400.

(37) Services used directly and exclusively for maintenance, retrofitting, repair, or replacement of industrial machinery and

equipment at fixed locations, which machinery and equipment is used to manufacture, process, compound, produce, fabricate, or prepare for shipment items of tangible personal property for sale. However, this exemption shall only apply to the tax on such services in excess of \$100,000 of tax per year. The restrictions contained in s. 212.08(5)(b)5. shall apply to this subsection. "Industrial machinery and equipment" shall have the same meaning as in s. 212.08(5)(b)6.a. This subsection shall not be construed to exempt the purchase of services for the maintenance, retrofitting, repair, or replacement related to such industrial machinery and equipment when such services are included as a part of the purchase of tangible personal property or were subject to tax prior to July 1, 1987. The exemptions for maintenance, retrofitting, repair, or replacement services used directly and exclusively for industrial machinery and equipment under this subsection shall not be construed to expand the exemptions provided in s. 212.08(5)(b)1. or 2. beyond their meaning prior to July 1, 1987.

(38) Oil and gas field services enumerated in SIC Group Number 138, and pipeline transportation services enumerated in SIC Group Numbers 461 and 492.

(39) Rail transportation services enumerated in SIC Major Group 40.

(40) Beauty and barber shop services enumerated in SIC Groups 723 and 724.

(41) Employee leasing services enumerated in SIC Industry Number 7369, to the extent that the charge for such services consists of payroll and related employment benefits paid or provided to the leased employees.

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 obtain an exempt purchase permit under subsection (1) and consent to be subject to the jurisdiction of this state solely for the purpose of enforcement of the sales tax on services, or 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 permit or 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 retained by the dealer for 3 years and made available to the department upon request. Failure to maintain these records or to make them available to the department shall subject the dealer to the penalties provided in s. 212.13.

(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 recommended 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. 212.02 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 written proposal, contract, or interim or final invoice of the subcontractor specifically describes, itemizes and states the price paid by the subcontractor for the building materials purchased by the subcontractor and incorporated into the improvement in fulfillment of his responsibilities under the

subcontract, the tax shall 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 the contract, at the regular retail price thereof, the tax shall 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 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 within 30 days after 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 until the prime contractor certifies, on a form promulgated by the department and submitted to the local government, that the new construction is substantially complete. Such forms shall be provided to local governments by the department, and completed forms shall be returned monthly to the department by the local governments.

(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 activity involving the physical fabrication, physical modification, or physical repair of improvements to realty and those services enumerated in SIC Industry

Number 8911, land planning services enumerated in SIC Industry Number 7392, and drafting and interior design services enumerated in SIC Industry Number 7399, when such services directly relate 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.

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

(8) Nothing herein shall be construed to require the advertising media to furnish to the department a listing of persons placing advertising with the advertising media.

(9) Consideration paid pursuant to a written contract for a term in excess of two years, entered into prior to April 1, 1987, and

which involves a transaction taxable under this section, shall be exempt from the tax imposed by this section until the expiration of such contract. This exemption shall not apply to advertising provided pursuant to any extension or renewal of such contract.

Section 7. Section 212.02, Florida Statutes, 1986 Supplement, as amended by chapters 86-152 and 86-166, Laws of Florida, is amended to read:

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

(1){16} The term "admissions" means and includes the net sum of money after deduction of any federal taxes for admitting a person or vehicle or persons to any place of amusement, sport, or recreation or for the privilege of entering or staying in any place of amusement, sport, or recreation, including, but not limited to, theaters, outdoor theaters, shows, exhibitions, games, races, or any place where charge is made by way of sale of tickets, gate charges, seat charges, box charges, season pass charges, cover charges, greens fees, participation fees, entrance fees, or other fees or receipts of anything of value measured on an admission or entrance or length of stay or seat box accommodations in any place where there is any exhibition, amusement, sport, or recreation, and all dues paid to private clubs providing recreational facilities, including but not limited to golf, tennis, swimming, yachting, and boating facilities.

(2) "Affiliated group" means an affiliated group of corporations, as defined in s. 1504(a) of the Internal Revenue Code, whose members are includable under s. 1504(b) of the Internal Revenue Code, and are eligible to file a consolidated tax return for Federal corporate income tax purposes.

(3){9} "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.

(4){15} 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.

(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,--labor--or--service--costs, 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)†11‡ 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)†23‡ "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)†20‡ "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)†17‡ "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)†14‡ 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)†6‡ "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 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," "rental" or "service" 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, or charges made pursuant to car service agreements.

(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.

5.4 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 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.

8.7+ 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).

10. Leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of an airport, a movie theater, a business operated under a permit issued pursuant to chapter 550 or chapter 551, or any publicly owned arena, sports stadium, convention hall, or exhibition hall.

(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)+2+ "Motor fuel" means and includes what is commonly known and sold as gasoline and fuels containing a mixture of gasoline and other products.

(16)+10+ "Nurseryman" or "grower" means any person engaged in the production of nursery stock or horticultural plants.

(17)+1+ "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.

(18)+10+ "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.

(19)+3+(a) "Retail sale" or a "sale at retail" means a sale to a consumer or to any person for any purpose other than for 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 purchaser of the service does not use or consume the service but acts as a broker or intermediary in procuring a service for his client or customer;

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 and periodic renewal every 5 years 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 one time 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.

(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)†2) "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)†4) "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.

~~(19) -- "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 source of energy such as petroleum products, natural gas, manufactured gas, or electricity. This subsection is repeated effective June 30, 1984.~~

(22) The term "service" or "services" as used in this part means those activities usually provided for consideration by the following establishments listed in the SIC Manual:

- (a) Agricultural Services (Major Group Number 07).
- (b) Forestry Services (Major Group Number 085).
- (c) Metal Mining Services (Group Number 108).
- (d) Oil and Gas Field Services (Group Number 138).
- (e) Nonmetallic (Nonfuel) Mineral Services (Group Number 148).
- (f) Building Construction-General Contractors and Operative Builders (Major Group Number 15).
- (g) Construction other than Building Construction-General Contractors (Major Group Number 16).
- (h) Construction-Special Trade Contractors (Major Group Number 17).
- (i) Printing, Publishing, and Allied Services (Major Group Number 27).
- (j) Coating, Engraving, and Allied Services (Group Number 347).
- (k) Railroad Transportation (Major Group Number 40).
- (l) Local and Suburban Transit and Interurban Highway Passenger Transportation (Major Group Number 41).
- (m) Motor Freight Transportation and Warehousing (Major Group Number 42).

- (n) U.S. Postal Service (Major Group Number 43).
- (o) Water Transportation (Major Group Number 44).
- (p) Transportation by Air (Major Group Number 45).
- (q) Pipelines, except Natural Gas (Major Group Number 46).
- (r) Transportation Services (Major Group Number 47).
- (s) Communications (Major Group Number 48).
- (t) Electric, Gas, and Sanitary Services (Major Group Number 49).
- (u) Food Brokers (Industry Number 5141).
- (v) Banking (Major Group Number 60).
- (w) Credit Agencies other than Banks (Major Group Number 61).
- (x) Security and Commodity Brokers, Dealers, Exchanges, and Services (Major Group Number 62).
- (y) Insurance (Major Group Number 63).
- (z) Insurance Agents, Brokers, and Service (Major Group Number 64).
- (aa) Real Estate (Major Group Number 65).
- (bb) Combinations of Real Estate, Insurance, Loans, Law Offices (Major Group Number 66).
- (cc) Holding and other Investment Offices (Major Group Number 67).
- (dd) Personal Services (Major Group Number 72).
- (ee) Business Services (Major Group Number 73).
- (ff) Automotive Repair, Services, and Garages (Major Group Number 75).
- (gg) Miscellaneous Repair Services (Major Group Number 76).
- (hh) Motion Pictures (Major Group Number 78).
- (ii) Amusement and Recreation Services, except Motion Pictures (Major Group Number 79).
- (jj) Health Services (Major Group Number 80).
- (kk) Legal Services (Major Group Number 81).
- (ll) Educational Services (Major Group Number 82).
- (mm) Social Services (Major Group Number 83).
- (nn) Museums, Art Galleries, Botanical and Zoological Gardens (Major Group Number 84).
- (oo) Membership Organizations (Major Group Number 86).
- (pp) Miscellaneous Services (Major Group Number 89).

(gg) Legislative, Judicial, Administrative and Regulatory Activities of Federal, State, Local and International Governments (Major Group Numbers 91, 92, 93, 94, 95, 96, and 97).

In addition, the terms shall include the services of any independent broker of tangible personal property.

(23)+22) "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.

(24) "SIC" means those classifications contained in the Standard Industrial Classification Manual, 1972, as published by the Office of Management and Budget, Executive Office of the President, and as amended in the 1977 Supplement.

(25)+7) "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)+12) "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 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) "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 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.

5.4: 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: 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.

8.7: 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).

10. Leased, subleased, or rented to a person providing food and drink concessionaire services within the premises of an airport, a movie theater, a business operated under a permit issued pursuant to chapter 550 or chapter 551, or any publicly owned arena, sports stadium, convention hall, or exhibition hall.

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) 1. 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 of the Department of Health and Rehabilitative Services, and state correctional institutions when only student, faculty, or inmate talent is utilized.~~

~~2. No tax shall be levied on dues, membership fees, and admission charges imposed by not-for-profit sponsoring organizations or community or recreational facilities. To receive this exemption, the sponsoring organization or facility must qualify as a not-for-profit entity under the provisions of s. 501(c)(3) of the United States Internal Revenue Code of 1954, as amended.~~

~~3. 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.~~

4. 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 to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under this section chapter, or who stores for use or consumption in 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.2. 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 or airplane by or through a registered dealer under this chapter to a purchaser who removes such boat or airplane from this state within 10 days after the date of purchase or, when the boat or airplane is repaired or altered, within 10 days after completion of such repairs or alterations. In no event shall the boat or airplane 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 or airplane 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 or airplane from this state within 10 days after purchase or, when the boat or airplane is repaired or altered, within 10 days after completion of such repairs or alterations, or permits the boat or airplane to return to this state within 6 months from the date of departure, the purchaser shall be liable for use tax on the cost price of the boat or airplane 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 lease or rental of a commercial motor vehicle as defined in s. 316.003(67)(a) to one lessee or rentee for a period of not less than 12 months when tax was paid on the acquisition of such vehicle by the lessor, 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. ~~except the rental of motion picture film when an admission is 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)1. 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 telecommunications 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.

~~{i}--At--the--rate--of--5--percent--on--charges--for--cleaning--laundry--and--garment--services--as--defined--in--group--72i--of--the--1972--Standard--Industrial--Classification--Manual--as--published--by--the--Executive--Office--of--the--President--Office--of--Management--and--Budget--~~

~~{j}--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-(c);

Section 12. Paragraph (b) of subsection (1), paragraphs (g) and (k) of subsection (2), and subsections (4) and (7) of section 212.06, Florida Statutes, 1986 Supplement, are amended to read:

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

(1)

(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 a qualified motion picture as defined in s. 212.0592(18)(b) prepared for showing on screens or through television, for either theatrical, commercial, advertising, or educational purposes.

(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 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 is 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 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. Paragraphs (b), (c), and (d) of subsection (5), 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 (q) of

subsection (7) are reenacted and redesignated, and subsection (11) 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 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.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(b) Machinery and equipment used to increase productive output.--

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations and services directly related to the installation of such machinery and equipment, excluding construction services, are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state and services directly related to the installation of such machinery and equipment, excluding construction services, are exempt from any amount of tax imposed by this chapter in excess of \$100,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded business by not less than 10 percent.

3.a. To receive an exemption provided by subparagraph 1. or subparagraph 2., a qualifying business entity shall apply to the department for a temporary tax exemption permit. The application shall state that a new business exemption or expanded business exemption is being sought. Upon a tentative affirmative

determination by the department pursuant to subparagraph 1. or subparagraph 2., the department shall issue such permit.

b. The applicant shall be required to maintain all necessary books and records to support the exemption. Upon completion of purchases of qualified machinery, and equipment, or services pursuant to subparagraph 1. or subparagraph 2., the temporary tax permit shall be delivered to the department or returned to the department by certified or registered mail. The department shall have 4 years from the date of delivery or date of receipt to perform an audit of such purchases, notwithstanding the provisions of s. 212.14(6).

c. If, in a subsequent audit conducted by the department, it is determined that the machinery, and equipment, or services purchased as exempt under subparagraph 1. or subparagraph 2. did not meet the criteria mandated by this paragraph or if commencement of production did not occur, the amount of taxes exempted at the time of purchase shall immediately be due and payable to the department by the business entity, together with the appropriate interest and penalty, computed from the date of purchase, in the manner prescribed by this chapter.

d. In the event a qualifying business entity fails to apply for a temporary exemption permit or if the tentative determination by the department required to obtain a temporary exemption permit is negative, a qualifying business entity shall receive the exemption provided in subparagraph 1. or subparagraph 2. through a refund of previously paid taxes. No refund may be made for such taxes unless the criteria mandated by subparagraph 1. or subparagraph 2. have been met and commencement of production has occurred.

4. The department shall promulgate rules governing applications for, issuance of, and the form of temporary tax exemption permits; provisions for recapture of taxes; and the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of increased productive output, commencement of production, and qualification for exemption.

5. The exemptions provided in subparagraphs 1. and 2. do not apply to machinery, or equipment, or services purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation, or any firm which does not manufacture, process, compound, or produce for sale items of tangible personal property.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms have the following meanings:

a. "Industrial machinery and equipment" means "section 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, provided "industrial machinery and equipment" shall be construed by regulations adopted by the Department of Revenue to mean tangible property used as an integral part of the manufacturing, processing, compounding, or producing for sale of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

b. "Productive output" means the number of units actually produced by a single plant or operation in a single continuous 12-month period, irrespective of sales. Increases in productive output shall be measured by the output for 12 continuous months immediately

following the completion of installation of such machinery or equipment over the output for the 12 continuous months immediately preceding such installation. However, if a different 12-month continuous period of time would more accurately reflect the increase in productive output of machinery and equipment purchased to facilitate an expansion, the increase in productive output may be measured during that 12-month continuous period of time if such time period is mutually agreed upon by the Department of Revenue and the expanding business prior to the commencement of production; but in no case may such time period begin later than 2 years following the completion of installation of the new machinery and equipment. The units used to measure productive output shall be physically comparable between the two periods, irrespective of sales.

(c) Machinery, and equipment, or services used in production of electrical or steam energy.--The purchase of machinery and equipment for use at a fixed location, which equipment and machinery are necessary in the production of electrical or steam energy resulting from the burning of boiler fuels other than residual oil, and services directly related to the installation of such machinery and equipment, excluding construction services, is are exempt from the tax imposed by this chapter. Such electrical or steam energy must be primarily for use in manufacturing, processing, compounding, or producing for sale items of tangible personal property in this state. However, the exemption provided for in this paragraph shall not be allowed unless the purchaser signs an affidavit stating that the item or items to be exempted are for the exclusive use designated herein. Any person furnishing a false affidavit to the vendor for the purpose of evading payment of any tax imposed under chapter 212 shall be subject to the penalty set forth in s. 212.085 and as otherwise provided by law.

(d) Machinery, and equipment, or services used under federal procurement contract.--

1. Industrial machinery and equipment purchased by an expanding business which manufactures tangible personal property pursuant to federal procurement regulations at fixed locations in this state and services directly related to the installation of such machinery and equipment, excluding construction services, are partially exempt from the tax imposed in this chapter on that portion of the tax which is in excess of \$100,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the implicit productive output of the expanded business by not less than 10 percent. The percentage of increase is measured as deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production utilizing such items is begun divided by the implicit productive output for the preceding calendar year. In no case may the commencement of production begin later than 2 years following completion of installation of the machinery or equipment.

2. The amount of the exemption allowed shall equal the taxes otherwise imposed by this chapter in excess of \$100,000 per calendar year on qualifying industrial machinery, or equipment, or services reduced by the percentage of gross receipts from cost-reimbursement type contracts attributable to the plant or operation to total gross receipts so attributable, accrued for the year of completion or commencement.

3. The exemption provided by this paragraph shall inure to the taxpayer only through refund of previously paid taxes. Such refund shall be made within 30 days of formal approval by the department of

the taxpayer's application, which application may be made on an annual basis following installation of the machinery or equipment.

4. For the purposes of this paragraph, the term:

a. "Cost-reimbursement type contracts" has the same meaning as in 32 C.F.R. s. 3-405.

b. "Deflated implicit productive output" means the product of implicit productive output times the quotient of the national defense implicit price deflator for the preceding calendar year divided by the deflator for the year of completion or commencement.

c. "Eligible costs" means the total direct and indirect costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding general and administrative costs, selling expenses, and profit, defined by the uniform cost-accounting standards adopted by the Cost-Accounting Standards Board created pursuant to 50 U.S.C. s. 2168.

d. "Implicit productive output" means the annual eligible costs attributable to all contracts or subcontracts subject to federal procurement regulations of the single plant or operation at which the machinery or equipment is used.

e. "Industrial machinery and equipment" means "section 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, provided such industrial machinery and equipment qualified as an eligible cost under federal procurement regulations and are used as an integral part of the tangible personal property production process. Such term includes parts and accessories only to the extent that the exemption of such parts and accessories is consistent with the provisions of this paragraph.

f. "National defense implicit price deflator" means the national defense implicit price deflator for the gross national product as determined by the Bureau of Economic Analysis of the United States Department of Commerce.

5. The exclusions provided in subparagraph (b)5. apply to this exemption. This exemption applies only to machinery or equipment purchased pursuant to production contracts with the United States Department of Defense and Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons. In no event shall the provisions of this paragraph apply to any expanding business the increase in productive output of which could be measured under the provisions of sub-subparagraph (b)6.b. as physically comparable between the two periods.

(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 the governmental entity. This exemption shall not inure to any transaction otherwise taxable under this chapter when payment is made by a government employee by any means, including, but not limited to, cash, check, or credit card when that employee is subsequently reimbursed by the governmental entity.7--provided This exemption does not include sales of tangible personal property made to contractors employed either directly or as agents of any such government or political subdivision thereof when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision thereof, except public works in progress or for which bonds or revenue certificates have been validated on or before August 1, 1959,7--and--further--provided

This exemption does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state except sales, rental, use, consumption, or storage for which bonds or revenue certificates are validated on or before January 1, 1973, for transmission or distribution expansion. ~~likewise--exempt--are--film-rentals,--when-an-admission-is-charged-for-viewing-such-film~~

(7) MISCELLANEOUS EXEMPTIONS.--

(a)†† Artificial commemorative flowers.--~~Exempt~~ Also-exempted from the tax imposed by this chapter is the sale of artificial commemorative flowers by bona fide nationally chartered veterans' organizations.

(b)†† Boiler fuels.--When purchased for use as a combustible fuel, purchases of natural gas, residual oil, 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)†† Feeds.--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, and license fees and direct charges for films, videotapes, and transcriptions used by television or radio stations or networks. However, this exemption shall not be construed to exempt the sale or use of advertising.

(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.

~~(i)(c)~~ 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.

~~(j)(h)~~ 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 nonexempt 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)(v)~~ 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)(u)~~ 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)(t)~~ 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 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.

~~(c)~~ 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' organization 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.

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; the 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 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.

~~(p)~~~~(a)~~ 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 Department of Environmental Regulation under the provisions of s. 403.715.

~~(g)~~~~(b)~~ 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.

~~(r)(q)~~--Nonprofit---organizations---designated--as State 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.

~~(s)(f)~~ 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.

(11) 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 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.

~~(e)--The-provisions-of-s.-212-12(1)-notwithstanding,-manufacturers-of-flyable-aircraft-granted-the-partial-sales-tax-exemption-under-this-subsection-shall-be-allowed-to-retain-a-10-percent-deduction-of-the-amount-of-sales-tax-due-on-sales-of-flyable-aircraft-manufactured-by-them-if-such-manufacturers-conform-to-the-provisions-of-this-chapter.~~

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

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

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(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.

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.

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; this provision does not apply to attorneys or to certified public accountants licensed pursuant to chapter 473 when acting for or on behalf of a client.

Section 16. 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.

(b) For the purpose of ascertaining the amount of tax payable under this chapter, it shall be the duty of all dealers to make a return, on or before the 20th day of the month, to the department, upon forms prepared and furnished by it, showing the rentals, admissions, gross sales, or purchases, as the case may be, arising

from all leases, rentals, admissions, sales, or purchases taxable under this chapter during the preceding calendar month.

(c) However, the department may authorize a quarterly return and payment when the tax remitted by the dealer for the preceding quarter did not exceed \$100 and may authorize a semiannual return and payment when the tax remitted by the dealer for the preceding 6 months did not exceed \$200.

(d) Beginning October 1, 1987, the department may authorize a quarterly return and payment for dealers collecting tax solely from the provision of services. Such returns may be authorized only for dealers whose monthly tax collections are less than \$500 in each month for the previous 3 months. Quarterly payments pursuant to this paragraph shall be due and payable in March, June, September, and December of each year.

(e)(d) The department shall accept returns as timely if postmarked on or before the 20th day of the month; if the 20th day falls on a Saturday, Sunday, or federal or state legal holiday, returns shall be accepted as timely if postmarked on the next succeeding workday. Any dealer who operates two or more places of business for which returns are required to be filed with the department and maintains records for such places of business in a central office or place shall have the privilege on each reporting date of filing a consolidated return for all such places of business in lieu of separate returns for each such place of business; however, such consolidated returns must clearly indicate the amounts collected within each county of the state. Any dealer who files a consolidated return shall calculate his estimated tax liability for each county by the same method he uses to calculate his estimated tax liability on the consolidated return as a whole. Each dealer shall file a return for each tax period even though no tax is due for such period.

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 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, 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 agricultural equipment.

(5)

(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 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.--

(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

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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 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 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 true 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.

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

212.18 Administration of law; rules and regulations.--

(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 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

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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 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) ~~or 212.02(1), (2), (3), (4), (7), (8), (9), (10), (11), (13), (17), (21), and (22)~~ apply to the same terms as used in this part.

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

212.235 State Infrastructure Trust Fund; deposits.--

(1) Notwithstanding the provisions of ss. 212.20(1) and 218.61, in fiscal year 1987-1988 an amount equal to 2 percent, and in each fiscal year thereafter an amount equal to 5 percent, of the proceeds remitted pursuant to this part by a dealer, or the sums sufficient to provide the maximum receipts specified herein, shall be deposited into the State 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 receipts of the trust fund, including those received pursuant to ss. 201.15(5) and 206.875(3) and interest earned, in excess of \$200 million in fiscal year 1987-1988, and \$500 million thereafter, shall revert to the General Revenue Fund.

(2) Subject to an appropriation each year by the Legislature, moneys in the fund shall only be used for the purposes of:

- (a) Acquiring the right-of-way for and constructing state highways and bridges;
- (b) Constructing public education capital facilities;
- (c) Financing state projects for beach restoration or renourishment or lake or river restoration;
- (d) Constructing state correctional facilities;
- (e) Constructing other infrastructure projects; or
- (f) Issuing revenue bonds to finance state capital outlay projects authorized by this section. Such bonds shall be payable solely from legislative appropriations from the State Infrastructure Trust Fund and shall not be a debt of the state, and the state shall not be liable thereon. Neither the taxing power, the credit, nor the revenues of the state shall be pledged to pay any obligation issued pursuant to this subsection.

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

Section 8. Subsections (5) ~~and (6) and (7)~~ and (8) of section 212.031, Florida Statutes, and paragraph (a) ~~of subsection (2) of section 212.047, Florida Statutes,~~ paragraphs (d), (e), ~~(f) and (n)~~ (o), and (p) ~~and (q)~~ of subsection (7) ~~and subsections (10) and (11)~~ of section 212.08, Florida Statutes, and ~~section 212.096, Florida Statutes, and paragraphs (g) and (h) of subsection (5) and subsection (15) of section 212.007, Florida Statutes, as amended by chapters 84-356 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 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) ~~(n) and (t)~~.

Section 27. Paragraph (c) of subsection (4) of section 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. 212.04(2) (a) did not apply shall be utilized by each institution to support women's athletics.~~

Section 28. 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)~~(14).

Section 29. Section 403.715, Florida Statutes, is amended to read:

403.715 Certification of resource recovery equipment.--For purposes of implementing the tax exemption provided by s. 212.08(7)~~(p)~~, the department shall establish a system for the examination and certification of resource recovery equipment. Application for certification of equipment shall be submitted to the department on forms prescribed by it which include such pertinent information as the department may require. Within 30 days of receipt of an application by the department, a representative of the department shall inspect the equipment. Within 30 days of such inspection, the department shall issue a written decision granting or denying certification.

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)~~(o)~~ 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. Notwithstanding any other provision of this act, in the case of written contracts which are signed prior to May 1, 1987, for constructing improvements to real property, prime contractors, as defined in s. 212.0594(10), Florida Statutes, responsible for performing the contract shall not be required to remit any tax on services levied pursuant to s. 212.059 or s. 212.0594, Florida Statutes, provided that:

(1) Pursuant to s. 212.0594, Florida Statutes, it is the responsibility of the prime contractor to remit the tax;

(2) The purchase of the services for which the tax is not being remitted is necessary to complete the contract and the tax cannot be legally collected from the final purchaser and cannot be included in the price charged the final purchaser under the terms of the contract;

(3) On the first tax return of the prime contractor in which tax is not remitted pursuant to this section for a specific contract, the prime contractor must submit an application in a manner approved by the Department of Revenue by rule. A complete application shall

include proof of the written contract, the amount of tax not being remitted and a sworn statement, signed by the applicant or his representative, attesting to the validity of the application. Subsequent taxes not remitted pursuant to a specific contract must be identified as to amount and application authority at the time such taxes are not paid; and

- (4) The purchase of the service occurs before June 30, 1988.

Any person who fraudulently does not remit taxes pursuant to this section shall, in addition to being liable for the payment of any taxes fraudulently not remitted plus a mandatory penalty of 100 percent of the taxes not remitted, 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. However, the department is hereby authorized to provide by rule for self-accrual of the sales tax under one or more of the following circumstances:

- (1) Where authorized by law for purchasers of services;
- (2) Where authorized by law for holders of direct pay permits;
- (3) Where tangible personal property is subject to tax on a prorated basis, and the proration factor is based upon characteristics of the purchaser;
- (4) Where types of tangible personal property whose taxable status will be known only upon use because the purchaser, by virtue of the normal characteristics of his trade or business, regularly consumes the type of property as a supply as well as sells it for resale; and
- (5) For commercial rentals where the purchaser rents from a number of independent property owners who, apart from rentals to the purchaser in question, would otherwise not be obligated to register as dealers.

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. Subsection (1) of section 201.02, Florida Statutes, 1986 Supplement, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.--

- (1) On deeds, instruments, or writings whereby any lands, tenements, or other real property, or any interest therein, shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or any other person by his direction, on each \$100 of the consideration therefor the tax shall be 55 50 cents. When the full amount of the consideration for the execution, assignment, transfer, or conveyance is not shown in the face of such deed, instrument, document, or writing, the tax shall be at the rate of 55

50 cents for each \$100 or fractional part thereof of the consideration therefor.

Section 35. Effective August 1, 1987, subsections (1) through (4) of section 201.15, Florida Statutes, are amended, and subsection (5) is added to said section, to read:

201.15 Distribution of taxes collected.--All taxes collected under the provisions of this chapter shall be distributed as follows:

(1) ~~Seventy-four--and--six-tenths~~ percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the General Revenue Fund of the state, to be used and expended for the purposes for which the General Revenue Fund was created and exists by law.

(2) ~~Eleven~~ ~~Twelve~~ and ~~eight-five-tenths~~ percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund. Sums deposited in such fund pursuant to this subsection may be used for any purpose for which funds deposited in the Land Acquisition Trust Fund may lawfully be used and may be used to pay the cost of the collection ~~and~~ enforcement of the tax levied by this chapter.

(3) ~~Three and--one-tenth~~ percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Land Acquisition Trust Fund. Moneys deposited in the trust fund pursuant to this section shall be used for the following purposes:

(a) Sixty percent of the moneys shall be used to acquire coastal lands; and

(b) Forty percent of the moneys shall be used to develop and manage lands acquired with moneys from the Land Acquisition Trust Fund.

(4) ~~Nine~~ and ~~two-eight-tenths~~ percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the Water Management Lands Trust Fund. Sums deposited in that fund may be used for any purpose authorized in s. 373.59 and may be used to pay the cost of the collection and enforcement of the tax levied by this chapter.

(5) Six percent of the total taxes collected under the provisions of this chapter shall be paid into the State Treasury to the credit of the State Infrastructure Trust Fund.

Section 36. 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. If the executive director determines that the interest owed pursuant to s. 214.23, Florida Statutes, will cause an undue hardship on the taxpayer, he may also waive the interest payment. The waiver for penalties and interest shall apply with respect to returns for taxes due and payable for the period between July 1, 1987, and September 30, 1987.

Section 37. 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 38. Except for the purposes of s. 212.0593, Florida Statutes, nothing contained in this act shall require an attorney or a certified public accountant licensed pursuant to chapter 473, Florida Statutes, to reveal the identity of any client for any reason.

Section 39. 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 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 cents 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 40. 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. 206.87(1)(b) to be credited to the account of the State Infrastructure Trust Fund established pursuant to s. 212.235.

Section 41. 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 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 42. Section 57.071, Florida Statutes, is amended to read:

57.071 Costs; what taxable.--If costs are awarded to any party the following shall also be allowed:

(1) The reasonable premiums or expenses paid on all bonds or other security furnished by such party.

(2) The expense of the court reporter for per diem, transcribing proceedings and depositions, including opening statements and arguments by counsel.

(3) Any sales or use tax due on legal services provided to such party, notwithstanding any other provision of law to the contrary.

Section 43. 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 therefor.

Section 44. 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 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.

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 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 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 45. 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 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 46. 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 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 47. 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, Florida Statutes. On or before March 1, 1988, the department shall report to the Governor and the Legislature all service transactions so identified.

Section 48. No later than January 1, 1988, the Department of Revenue shall develop and implement a tax amnesty program for taxpayers subject to the tax laws enumerated in s. 72.011(1), Florida Statutes, except those taxes governed by s. 199.032 and s. 212.0505, Florida Statutes. The tax amnesty program shall be a one-time opportunity for eligible taxpayers to satisfy their tax liabilities under the revenue laws of this state and thereby avoid criminal prosecution and any penalties imposed under such laws. Eligible taxpayers shall have no more than a 6-month period during which to file returns or amended returns and to make full payment of the amount of tax and interest due. An eligible taxpayer may participate in the amnesty program whether or not the taxpayer is under audit or investigation; notwithstanding the fact that the amount due is included in a proposed assessment or an assessment, bill, notice, or demand for payment issued by the department; and without regard to whether the amount due is subject to a pending administrative or judicial proceeding. However, participation in the program shall be conditioned upon the taxpayer's agreement that the right to protest or initiate an administrative or judicial proceeding or to claim any refund of moneys paid under this amnesty program is barred with respect to the amounts paid except as provided in this section. No refund may be made of any penalty paid prior to the date the amnesty program is implemented, and any refund or credit of amounts paid as a result of participation in the amnesty program shall be strictly limited to amounts determined by the department to have been paid in error. A taxpayer who is under a criminal investigation, indictment, information, or prosecution is not eligible to participate in the amnesty program. The department may prescribe such terms, conditions, and methods of payment as it deems necessary for fair and effective administration of the amnesty program, and may establish procedures and guidelines and adopt forms and rules to implement the program. With or without an audit, the department may issue a notice or demand for payment with respect to any tax or interest which it determines to be due with any return filed under the tax amnesty program; such notice and demand for payment shall be prima facie correct in any administrative, judicial, or quasi-judicial proceeding.

Section 49. Subsections (1) and (3) of section 95.091, Florida Statutes, are amended to read:

95.091 Limitation on actions to collect taxes.--

(1)(a) Except in the case of taxes for which certificates have been sold or of taxes enumerated in s. 72.011 levied under chapters 198 and 220, any tax lien granted by law to the state or any of its political subdivisions, any municipality, any public corporation or body politic, or any other entity having authority to levy and collect taxes shall expire 5 years after the date the tax is assessed or becomes delinquent, whichever is later. No action may be begun to collect any tax after the expiration of the lien securing the payment of the tax.

(b) Any tax lien granted by law to the state or any of its political subdivisions for any tax enumerated in s. 72.011 shall expire 20 years after the last date the tax may be assessed, after the tax becomes delinquent, or after the filing of a tax warrant, whichever is later. An action to collect any tax enumerated in s. 72.011 may not be commenced after the expiration of the lien securing the payment of the tax.

(3)(a) With the exception of taxes levied under chapter 198 and tax adjustments made pursuant to s. 220.23, the Department of Revenue may determine and assess the amount of any tax, penalty, or interest due under any tax enumerated in s. 72.011:

1. Within 5 years after the date the tax is due, any return with respect to the tax is due, or such return is filed, whichever occurs later;

2. Within 6 years after the date a taxpayer either makes a substantial underpayment of tax or files a substantially incorrect return;

3. At any time while the right to a refund or credit of the tax is available to the taxpayer;

4. At any time after the taxpayer has failed to make any payment of the tax, has failed to file a required return, or has filed a grossly false or fraudulent return; or

5. In any case in which there has been an erroneous refund of tax, within 5 years after making such refund, or at any time after making such refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

(b) The limitations in this subsection shall be tolled for a period of 2 years if the Department of Revenue has issued a notice of intent to conduct an audit or investigation of the taxpayer's account within the applicable period of time as specified in this subsection. Except as otherwise provided by law, the amount of any tax may be determined and assessed within 3 years after the first day of the month following the date on which the tax becomes due and payable. However, this limitation shall be tolled for a period of 2 years by a request for inspection and examination of a taxpayer's books and records by the taxing authority within that period, in which event the period for which tax due may be determined and assessed shall be the 3 years immediately preceding the first day of the month in which a request for inspection and examination of the books and records has been made by the taxing authority.

Section 50. Effective July 1, 1988, subsection (1) of section 198.18, Florida Statutes, is amended to read:

198.18 Failure to pay tax; penalties; delinquent or deficient taxes, interest.--

(1) If any part of a deficiency in tax due under the provisions of this chapter is due to negligence or intentional disregard of the provisions of this chapter or the rules and regulations issued pursuant hereto, with knowledge thereof but without intent to defraud, there shall be added as a penalty 5 percent per month of the total amount of the deficiency in tax to a maximum of 100 percent of the tax due; and, if any part of such deficiency is willfully made with intent to defraud, there shall be added as a penalty 50 percent of the total amount of such deficiency, which penalty shall become due and payable upon notice and demand by the department. The personal representative shall be liable to the state personally and on his official bond, if any, for any loss to the state accruing under the provisions of this section through his negligence or willful neglect. No interest shall be collected upon the amount of any penalty. The department may settle or compromise such penalties pursuant to s. 213.21.

Section 51. Subsections (1) and (3) of section 199.232, Florida Statutes, 1986 Supplement, are amended to read:

199.232 Powers of department.--

(1)(a) The department may audit the books and records of any person to determine whether annual or nonrecurring tax has been properly paid.

(b) ~~With regard to annual tax, an audit for any year may be commenced:~~

~~1. Within 3 years from the due date for filing the return for the year or from actual filing of the return, whichever is later;~~

~~2. At any time while a right to refund for any tax due during the year is available;~~

~~3. At any time within 6 years of the date a return is filed if a taxpayer has omitted an amount properly includable therein which is in excess of 25 percent of the amount of the total taxable value stated in the return; or~~

~~4. At any time, if a required return is not filed, or if a grossly false or fraudulent return is filed.~~

~~No amount shall be deemed omitted from a return if the amount, or item giving rise to it, is adequately disclosed in the return or statements attached thereto, so that the department was apprised of the nature and amount of the item.~~

~~(c) With regard to nonrecurring tax, an audit may be commenced:~~

~~1. Within 3 years from the due date of the tax; or~~

~~2. At any time while a right to refund for such tax is available.~~

(d) An audit shall be commenced by service of a written notice of intent to audit upon the taxpayer, either in person or by certified mail.

(3) With or without an audit, the department may assess any tax deficiency resulting from nonpayment or underpayment of the tax, as well as any applicable interest and penalties. The department shall

assess on the basis of the best information available to it, including estimates based on the best information available to it if the taxpayer fails to permit inspection of the taxpayer's records, fails to file an annual return, files a grossly incorrect return, or files a false and fraudulent return. ~~To be valid, an assessment must be made within the following time periods:~~

~~(a) -- As to annual tax for any year:~~

~~1. -- Within 3 years from the due date for filing the return or from actual filing of the return, whichever is later;~~

~~2. -- At any time while a right to refund for any tax due during the year is available;~~

~~3. -- Within 6 years of the date a return is filed if the taxpayer has omitted an amount properly includable therein which is in excess of 25 percent of the total taxable value stated in the return; or~~

~~4. -- At any time, if no return is filed, or if a grossly false or fraudulent return is filed.~~

~~(b) -- As to nonrecurring tax:~~

~~1. -- Within 3 years from the due date for payment of the tax; or~~

~~2. -- At any time while a right to refund for such tax is available.~~

~~However, the time for making an assessment shall be stayed during the period of an audit.~~

Section 52. Subsection (1) of section 199.218, Florida Statutes, is amended to read:

199.218 Books and records.--

(1) Each taxpayer shall retain all books and other records necessary to identify the taxpayer's intangible personal property and to determine any tax due under this chapter, as well as all books and other records otherwise required by rule of the department with respect to any such tax, until the department's power to make an assessment with respect to such tax has terminated under s. 95.091(3) ~~199-232(3)~~.

Section 53. Subsection (5) of section 211.125, Florida Statutes, 1986 Supplement, is amended to read:

211.125 Administration of law; books and records; powers of the department; refunds; enforcement provisions; confidentiality.--

(5)(a) The department may assess, with or without an audit, any deficiency resulting from nonpayment or underpayment of the tax, interest, or penalties imposed by this part. The department shall inform the taxpayer, by written notice, of the amount of any deficiency or overpayment revealed by an audit, including the tax, interest, or penalties due, and shall explain the basis for the determination.

~~(b) -- Except as otherwise provided in this subsection, an assessment of amounts due for any month may be made at any time within 3 years after the due date of the return or the actual filing of a return, whichever is later, or for any month for which the right to refund is available.~~

~~(c) If a taxpayer omits from a return an amount in excess of 25 percent of the amount of taxable production stated in the return, an assessment of amounts due under this part may be made at any time within 6 years after the date the return was filed. No amount shall be deemed omitted from a return if the amount, or item giving rise to it, is adequately disclosed in the return or statements attached to the return so that the department was apprised of the nature and amount of the item.~~

~~(d) If a required return is not filed, or if a grossly false or fraudulent return is filed, an assessment may be issued at any time.~~

~~(e) The period for making an assessment under this part shall be tolled during the period required by the department to conduct an audit.~~

(b)(f) The department shall have the power to make an assessment under this part based upon the best information available to it. The department may make an assessment based upon an estimate of amounts due under this part if the taxpayer fails to file a return, files a grossly incorrect or fraudulent return, or refuses to permit inspection of records. An assessment of the amounts due under this part shall be considered prima facie correct, and the taxpayer shall have the burden of showing any error in it.

(c)(g) In the event of a deficiency, the department shall issue its written notice to the taxpayer for the tax, penalties, or interest due. Full payment of the total amount assessed shall be made in the manner prescribed by the department in its notice.

Section 54. Subsections (3) and (4) of section 211.33, Florida Statutes, 1986 Supplement, are amended, and effective July 1, 1988, subsection (2) of said section is amended, to read:

211.33 Administration of the tax; returns; delinquency penalties and interest; departmental inspections of records.--

(2)(a) Every producer shall file an annual return with the department on or before April 1 of each year for the preceding taxable year. The annual return shall be signed by the producer or his duly authorized agent, shall be verified by oath, and shall include the following:

1. The location of each site of severance operated or controlled by the producer during the taxable period and the total number of acres in each site.

2. The kind and quantity of the solid minerals severed within each county political boundary.

(b) Except as provided in subsection (1), the taxpayer shall pay the amount of any tax due for the preceding tax year by April 1.

(c) If a tax return is not filed by April 1 for any taxes due for the preceding year or if any part of a deficiency in the tax due for the preceding tax year is due to negligence or intentional disregard of this part or the rules promulgated pursuant hereto, the department shall levy a delinquency penalty of 5 percent for each month, or portion thereof, on the amount of tax delinquent, not to exceed 100 25 percent of the total tax due.

(d) In addition to the delinquency penalty provided in paragraph (c), the department shall assess interest on the unpaid balance of any such tax which becomes delinquent, without regard to any extensions, at the rate of 12 percent per year, from April 1 to the

date of payment. Interest prescribed by this paragraph shall be deemed assessed upon the assessment of the tax and shall be collected and paid in the same manner.

(e) Any taxpayer who makes a substantial underpayment of any tax due under this part shall pay a penalty of 15 percent of the underpayment in addition to the delinquency penalty imposed under paragraph (c). A substantial underpayment of tax due and payable under this part means a deficiency which exceeds 35 percent of the total tax due for any month.

~~(f)~~(e) The department may settle or compromise any penalty or interest assessed under this subsection pursuant to s. 213.21.

(3)~~(a)~~ Every producer shall keep and preserve suitable records of production of solid minerals and such other books and documents as may be necessary to ensure compliance, ~~for a period of 3 years from April 1 of the year following the taxable year or 3 years from the date of filing the annual return for the taxable year, whichever is later.~~

~~(b) All such records, books, and documents shall be made available to the department or any of its duly authorized agents for inspection, examination, or audit during business hours, upon written request.~~

(4)(a) The department is authorized to audit or inspect the books, records, documents, and returns of producers and to correct by credit or refund any overpayment of tax, or to make assessment of any deficiency revealed, ~~for the same 3-year period for which producers are required to keep and preserve records.~~

~~(b) No audit shall be made after the expiration of 3 years from the due date for filing the annual return or the date of filing, whichever is later, except when a producer has been contacted by written notice of intent to conduct an audit in the future, delivered either personally by an agent of the department or by certified letter from the department directed to the last known address of the producer, before 3 years from the due date for filing the annual return or the date of filing, whichever is later. In this event, the date of personal contact or the date of the certified letter shall govern the period subject to audit.~~

~~(b)~~(e) The department shall inform the producer by written notice of the amount of any overpayment or deficiency determined by an audit, including the basis for determining any tax, penalty, interest, or period subject to credit or refund.

~~(c)~~(d) In the event of a deficiency, the department shall make an assessment of the tax, penalty, and interest determined to be due. Full payment of the total amount assessed shall be made by the producer to the place and within the time specified in the written notice of the deficiency.

Section 55. Section 214.50, Florida Statutes, is amended to read:

214.50 Liens; foreclosure.--In addition to any other remedy provided by the laws of this state, and provided that no hearing or proceedings for review provided by this chapter shall be pending and that the time for the taking of review shall have expired, the department may foreclose in any court of competent jurisdiction any lien on real or personal property for any tax, penalty, or interest to the same extent and in the same manner as in the enforcement of other liens. Any proceeding to foreclose shall be instituted not

more than 20 5 years after the filing, or availability for filing, of the notice of lien under the provisions of s. 214.45.

Section 56. Subsection (1) of section 214.51, Florida Statutes, is amended to read:

214.51 Collection procedures.--

(1) In addition to any other remedy provided by the laws of this state, if any tax imposed by laws made applicable to this chapter is not paid within the time required by this chapter, the department, or someone designated by it, may cause a demand to be made on the taxpayer for the payment thereof. If such tax remains unpaid for 10 days after such demand has been made and no proceedings have been taken to review the same, the department may issue a warrant directed to any sheriff or other person authorized to serve process, commanding said sheriff or other person to levy upon and sell the real and personal property of the taxpayer found within his jurisdiction for the payment of the amount thereof, including penalties, interest, and the cost of executing the warrant. Such warrant shall be returned to the department together with the money collected by virtue thereof within the time therein specified, which shall not be less than 20 nor more than 90 days from the date of the warrant. The sheriff or other person to whom such a warrant shall be directed shall proceed upon the same in all respects and with like effect as is prescribed by law for executions issued against property upon judgments of record, and shall be entitled to the same fees for his services in executing the warrant, to be collected in the same manner. No proceedings for a levy under this section shall be commenced more than 20 5 years after the filing of the notice of lien under the provisions of this part.

Section 57. Paragraph (c) of subsection (2) of section 220.23, Florida Statutes, is amended to read:

220.23 Federal returns.--

(2) In the event the taxable income, any item of income or deduction, or the income tax liability reported in a federal income tax return of any taxpayer for any taxable year is adjusted by amendment of such return or as a result of any other recomputation or redetermination of federal taxable income or loss, if such adjustment would affect any item or items entering into the computation of such taxpayer's net income subject to tax for any taxable year under this code, the following special rules shall apply:

(c) In any case where notification of an adjustment is required under paragraph (a), then notwithstanding any other provision contained in part I of chapter 214:

1. A notice of deficiency may be issued at any time within 5 2 years after the date such notification is given; or
2. If a taxpayer either fails to notify the department or fails to report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, a notice of deficiency may be issued at any time;
3. In either case, the amount of any proposed assessment set forth in such notice shall be limited to the amount of any deficiency resulting under this code from recomputation of the taxpayer's income for the taxable year after giving effect only to the item or items reflected in the adjustment.

Section 58. Effective July 1, 1988, subsection (6) of section 212.14, Florida Statutes, as amended by chapter 85-342, Laws of Florida, and section 214.09, Florida Statutes, as amended by chapter 85-342, Laws of Florida, are hereby repealed.

Section 59. Effective July 1, 1988, paragraph (b) of subsection (5) of section 212.08, Florida Statutes, 1986 Supplement, as amended by this act, is 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 following are hereby specifically exempt from the tax imposed by part I of this chapter.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(b) Machinery and equipment used to increase productive output.--

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations and services directly related to the installation of such machinery and equipment, excluding construction services, are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state and services directly related to the installation of such machinery and equipment, excluding construction services, are exempt from any amount of tax imposed by this chapter in excess of \$100,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded business by not less than 10 percent.

3.a. To receive an exemption provided by subparagraph 1. or subparagraph 2., a qualifying business entity shall apply to the department for a temporary tax exemption permit. The application shall state that a new business exemption or expanded business exemption is being sought. Upon a tentative affirmative determination by the department pursuant to subparagraph 1. or subparagraph 2., the department shall issue such permit.

b. The applicant shall be required to maintain all necessary books and records to support the exemption. Upon completion of purchases of qualified machinery, equipment, or services pursuant to subparagraph 1. or subparagraph 2., the temporary tax permit shall be delivered to the department or returned to the department by certified or registered mail. ~~The department shall have 4 years from the date of delivery or date of receipt to perform an audit of such purchases, notwithstanding the provisions of s. 212.14(6).~~

c. If, in a subsequent audit conducted by the department, it is determined that the machinery, equipment, or services purchased as exempt under subparagraph 1. or subparagraph 2. did not meet the criteria mandated by this paragraph or if commencement of production did not occur, the amount of taxes exempted at the time of purchase shall immediately be due and payable to the department by the

business entity, together with the appropriate interest and penalty, computed from the date of purchase, in the manner prescribed by this chapter.

d. In the event a qualifying business entity fails to apply for a temporary exemption permit or if the tentative determination by the department required to obtain a temporary exemption permit is negative, a qualifying business entity shall receive the exemption provided in subparagraph 1. or subparagraph 2. through a refund of previously paid taxes. No refund may be made for such taxes unless the criteria mandated by subparagraph 1. or subparagraph 2. have been met and commencement of production has occurred.

4. The department shall promulgate rules governing applications for, issuance of, and the form of temporary tax exemption permits; provisions for recapture of taxes; and the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of increased productive output, commencement of production, and qualification for exemption.

5. The exemptions provided in subparagraphs 1. and 2. do not apply to machinery, equipment, or services purchased or used by electric utility companies, communications companies, phosphate or other solid minerals severance, mining, or processing operations, oil or gas exploration or production operations, printing or publishing firms, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business Regulation, or any firm which does not manufacture, process, compound, or produce for sale items of tangible personal property.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms have the following meanings:

a. "Industrial machinery and equipment" means "section 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code, provided "industrial machinery and equipment" shall be construed by regulations adopted by the Department of Revenue to mean tangible property used as an integral part of the manufacturing, processing, compounding, or producing for sale of items of tangible personal property. Such term includes parts and accessories only to the extent that the exemption thereof is consistent with the provisions of this paragraph.

b. "Productive output" means the number of units actually produced by a single plant or operation in a single continuous 12-month period, irrespective of sales. Increases in productive output shall be measured by the output for 12 continuous months immediately following the completion of installation of such machinery or equipment over the output for the 12 continuous months immediately preceding such installation. However, if a different 12-month continuous period of time would more accurately reflect the increase in productive output of machinery and equipment purchased to facilitate an expansion, the increase in productive output may be measured during that 12-month continuous period of time if such time period is mutually agreed upon by the Department of Revenue and the expanding business prior to the commencement of production; but in no case may such time period begin later than 2 years following the completion of installation of the new machinery and equipment. The units used to measure productive output shall be physically comparable between the two periods, irrespective of sales.

Section 60. Effective July 1, 1988, section 214.04, Florida Statutes, is amended to read:

214.04 Limitation on assessment.--No deficiency shall be assessed with respect to a taxable year for which a return was filed unless a notice of deficiency for such year was issued not later than the date prescribed in s. 95.091(3) ~~214.09~~.

Section 61. Effective July 1, 1988, paragraphs (a) and (b) of subsection (8) of section 125.0104, Florida Statutes, 1986 Supplement, are amended to read:

125.0104 Tourist development tax; procedure for levying; authorized uses; referendum; enforcement.--

(8) PROHIBITED ACTS; ENFORCEMENT; PENALTIES.--

(a) Any person who is taxable hereunder who fails or refuses to charge and collect from the person paying any rental or lease the taxes herein provided, either by himself or through his agents or employees, is, in addition to being personally liable for the payment of the tax, guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax, that he will relieve the person paying the rental of the payment of all or any part of the tax, or that the tax will not be added to the rental or lease consideration or, when added, that it or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this subsection is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 62. Effective July 1, 1988, section 198.37, Florida Statutes, is amended to read:

198.37 Failure to make return; penalty.--Any person required under this chapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information for the purposes of the computation, assessment, or collection of any tax imposed by this chapter, who willfully fails to pay such tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, is shall, in addition to other penalties provided by law, be guilty of a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 63. Effective July 1, 1988, section 198.39, Florida Statutes, is amended to read:

198.39 False statement in return; penalty.--Whoever knowingly makes any false statement in any notice or return required to be filed under this chapter is shall be guilty of a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 64. Effective July 1, 1988, subsections (1), (3), and (8) of section 199.282, Florida Statutes, 1986 Supplement, are amended to read:

199.282 Penalties for violation of this chapter.--

(1) Any person willfully violating or failing to comply with any of the provisions of this chapter shall be guilty of a felony of the

third degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

(3)(a) If any annual or nonrecurring tax is not paid by the due date, a delinquency penalty shall be charged. The delinquency penalty shall be 5 percent of the delinquent tax for each calendar month or portion thereof from the due date until paid, up to a limit of 100 25 percent of the total tax not timely paid.

(b) If any annual tax return required by this chapter is not filed by the due date, a penalty of 15 percent of the tax due with the return shall be charged for each year or portion of the year during which the return remains unfiled.

(8) Any person who fails or refuses to file an annual return, or who fails or refuses to make records available for inspection, when requested to do so by the department is shall be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 65. Effective July 1, 1988, subsection (1) of section 201.17, Florida Statutes, is amended to read:

201.17 Penalties for failure to pay tax required.--

(1) Whoever makes, signs, issues, or accepts, or causes to be made, signed, issued, or accepted, any instrument, document, or paper of any kind or description whatsoever, without the full amount of the tax herein imposed thereon being fully paid, or whoever makes use of any adhesive stamp to denote any tax imposed by this chapter without canceling or obliterating such stamps as herein provided, is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 66. Effective July 1, 1988, section 201.18, Florida Statutes, is amended to read:

201.18 Penalties for illegal use of stamps.--

(1) Whoever fraudulently cuts, tears, or removes from any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter, any adhesive stamp used in pursuance of this chapter, or fraudulently uses, joins, fixes, or places to, with, or upon any vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter:

(a) Any adhesive stamp which has been cut, torn, or removed from any other vellum, parchment, paper, instrument, writing, or document, upon which any tax is imposed by this chapter,

(b) Any adhesive stamp of insufficient value, or

(c) Any forged or counterfeited stamp; or

(2) Whoever willfully removes or alters the cancellation or defacing marks of, or otherwise prepares, any adhesive stamp with intent to use or cause the same to be used after it has already been used, or knowingly or willfully buys, sells, offers for sale, or gives away any such washed or restored stamp to any person for use, or knowingly uses the same, or whoever knowingly and without lawful excuse has in possession any washed, restored, or altered stamp which has been removed from any vellum, parchment, paper, instrument, writing, or document; or

(3) Whoever knowingly or willfully prepares, buys, sells, offers for sale, or has in his or its possession any counterfeit stamps,

is guilty of a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 67. Effective July 1, 1988, section 201.20, Florida Statutes, is amended to read:

201.20 Penalties for illegally avoiding tax on notes.--Any person using the provisions of s. 201.09 to avoid the payment of any tax justly due ~~is shall~~ be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 68. Effective July 1, 1988, subsection (7) of section 203.01, Florida Statutes, 1986 Supplement, is amended to read:

203.01 Tax on gross receipts for utility services.--

(7) Any person who provides such services and who fails, neglects, or refuses to collect or remit the tax imposed in this part, either by himself or through his agents or employees, is liable for the tax and is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 69. Effective July 1, 1988, section 203.03, Florida Statutes, is amended to read:

203.03 Penalties.--

(1) Any officer, agent, or representative of any such person who receives any payment for the furnishing of the things or the services above mentioned without first complying with the provisions of this chapter as required, ~~is shall~~ be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

(2) Any person who willfully violates or fails to comply with any of the provisions of this chapter is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 70. Effective July 1, 1988, subsection (3) of section 203.63, Florida Statutes, is amended to read:

203.63 Tax on interstate and international telecommunication services.--

(3) Any person who provides such services and who fails, neglects, or refuses to collect or remit the tax imposed in this part, either by himself or through his agents or employees, is liable for the tax and is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 71. Effective July 1, 1988, section 206.04, Florida Statutes, is amended to read:

206.04 License number and cards; penalties.--Each refiner, importer, and wholesaler shall be assigned a license number upon qualifying for a license hereunder, and the department shall issue to each such licensee separate license cards for each tank truck

operated by that person. Such license card shall indicate the license number so assigned, the motor number of the truck authorized to be operated under such license card, and such other information as the department may prescribe. The license card shall be conspicuously displayed in the vehicle to which it is assigned, and any person operating a tank truck in this state conveying or transporting motor fuel without such license card or, if a common carrier, a bill of lading is shall be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 72. Effective July 1, 1988, subsection (2) of section 206.11, Florida Statutes, is amended to read:

206.11 Penalties.--

(2) Any person:

(a) Who willfully refuses or neglects to make any statement, report, or return required by the provisions of this law;

(b) Who knowingly makes, or assists any other person in making, a false statement in a return or report or in connection with an application for refund of any tax;

(c) Who knowingly collects, or attempts to collect or causes to be paid to him or to any other person, either directly or indirectly, any refund of such tax without being entitled to the same; or

(d) Who violates any of the provisions of part I or part II of this chapter, a penalty for which is not otherwise provided,

is guilty of a misdemeanor--of--the--first--degree, punishable as provided in s. 775.082 or s. 775.083. For a second or further offense, such person is guilty of a felony of the third degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084; and, in addition thereto, the department may revoke or suspend the license of any violator. Each day or part thereof during which any person engages in business without being the holder of an uncanceled license as provided by part I or part II of this chapter shall constitute a separate offense within the meaning of this section. In addition to the penalty imposed by part I or part II of this chapter, the defendant shall be required to pay all gas taxes, interest, and penalties due to the state. The penalties provided in this section shall be in addition to those provided for in s. 206.44.

Section 73. Effective July 1, 1988, subsections (4) and (5) of section 206.18, Florida Statutes, are amended to read:

206.18 Discontinuance or transfer of business; liability of tax, procedure; penalty for violation.--

~~(4) In the event any dealer is delinquent in the payment of the tax herein provided for, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer or owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall within 5 days after receipt of the notice advise the department of all such credits, other personal property, or debts in their possession, under their control, or owing by them. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the~~

~~time they receive the notice until the department consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires earlier, except that the credits, other personal property, or debts which exceed the delinquent amount stipulated in the notice shall not be subject to the provisions of this section wherever held, in any case in which such dealer does not have a prior history of tax delinquencies. All persons notified shall likewise within 5 days advise the department of any subsequent credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which may come within their possession or under their control during the time prescribed by the notice or until the department consents to a transfer or disposition, whichever expires earlier. If such notice seeks to prevent transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall be delivered or mailed to the office of such bank, at which such deposit is carried or at which such credits or personal property is held. If during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, he shall be liable to the state for any indebtedness due under this chapter from the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. All such credits or other personal property or debts are subject to garnishment by the department for satisfaction of the delinquent tax due.~~

(4)(5) Any violation of the provisions of this section is a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 74. Effective July 1, 1988, section 206.426, Florida Statutes, is amended to read:

206.426 Resale and exemption certificates; offenses; penalties.-- Any person who:

(1) Issues or assists in issuing a fraudulent resale or exemption certificate to obtain nontaxed motor fuel from a licensed refiner, importer, or wholesaler;

(2) Has issued a resale or exemption certificate and whose exempt status has become nonexempt and neglects, fails, or refuses to inform the licensed refiner, importer, or wholesaler to whom the certificate was issued of any such change in status;

(3) Has claimed exemption by issuing a license number at the time of purchase to obtain fuel tax exempt when not entitled by provisions of this chapter; or

(4) Has claimed to have exported gallons of motor fuel by affidavit or return and has no proof that said fuel was exported;

is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. In addition, such person shall pay any tax, penalty, and interest assessed, plus a mandatory penalty of not less than \$500, or an amount equal to 100 percent of the tax, whichever is greater.

Section 75. Effective July 1, 1988, subsection (1) of section 206.44, Florida Statutes, 1986 Supplement, is amended to read:

206.44 Penalty and interest for failure to report on time; penalty and interest on tax deficiencies.--

(1) If any refiner, importer, or wholesaler fails to make a report or pay the taxes due as required by this chapter, the department shall add a penalty in the amount of 5 percent of any unpaid tax if the failure is for not more than 1 month, with an additional 5 percent of any unpaid tax for each additional month or fraction thereof during which the failure continues. However, such penalty may not exceed 100 25 percent in the aggregate of any unpaid tax. Furthermore, in no event may the penalty assessed be less than \$5. The department shall collect the tax, together with the penalty and costs, in the same manner as other delinquent taxes are collected.

Section 76. Effective July 1, 1988, subsection (6) of section 206.87, Florida Statutes, 1986 Supplement, is amended to read:

206.87 Levy of tax.--

(6) Any person or dealer who:

(a) Issues or assists in issuing a fraudulent resale or exemption certificate to obtain nontaxed special fuel from a licensed dealer; or

(b) Has issued a resale or exemption certificate and whose exempt status has become nonexempt and who neglects, fails, or refuses to inform the licensed dealer to whom the certificate was issued of such change in status

is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. In addition, such person shall pay any tax due and any penalty and interest assessed, plus a mandatory penalty of not less than \$500 or an amount equal to 100 percent of the tax, whichever is greater.

Section 77. Effective July 1, 1988, subsection (5) of section 206.877, Florida Statutes, 1986 Supplement, is amended to read:

206.877 Motor vehicles fueled by liquefied petroleum gas or compressed natural gas; payment of annual decal fees in lieu of tax.--

(5) Any person who violates the provisions of this section is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, any person who is liable for fueling a vehicle which does not have the proper decal affixed is subject to the provisions of this section and the provisions of s. 206.94.

Section 78. Effective July 1, 1988, subsection (1) of section 206.9931, Florida Statutes, 1986 Supplement, is amended to read:

206.9931 Administrative provisions.--

(1) Any person producing in, importing into, or causing to be imported into this state taxable pollutants for sale, use, or otherwise and who is not registered or licensed pursuant to other parts of this chapter is hereby required to register and become licensed for the purposes of this part. Such person shall register as either a producer or importer of pollutants and shall be subject to all applicable registration and licensing provisions of this chapter, as if fully set out in this part and made expressly

applicable to the taxes imposed herein, including, but not limited to, ss. 206.02, 206.021, 206.022, 206.025, 206.03, 206.04, and 206.05. For the purposes of this section, registrations required exclusively for this part shall be made within 90 days of July 1, 1986, for existing businesses, or prior to the first production or importation of pollutants for businesses created after July 1, 1986. The fee for registration shall be \$30. Failure to timely register is ~~shall be~~ a felony misdemeanor of the ~~third~~ first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 79. Effective July 1, 1988, subsections (1) and (3) of section 207.007, Florida Statutes, are amended to read:

207.007 Offenses; penalties and interest.--

(1) If any motor carrier fails to file a return and pay any tax liability under this chapter within the time required hereunder, the department shall add a delinquency penalty of 5 percent to the amount of the taxes due if the failure is for not more than 30 days, with an additional 5 percent penalty for each additional 30 days, or fraction thereof, during the time which the failure continues, not to exceed a total penalty of 100 ~~25~~ percent in the aggregate. However, in no event shall the penalty be less than \$5.

(3) Any person who:

(a) Willfully refuses or neglects to make any statement, report, or return required by the provisions of this chapter;

(b) Knowingly makes, or assists any other person in making, a false statement in a return or report or in connection with an application for registration under this chapter; or

(c) Violates any of the provisions of this chapter, a penalty for which is not otherwise provided,

is guilty of a felony misdemeanor of the ~~third~~ second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. In addition, ~~for a second or further offense,~~ the department may revoke or suspend the registration of the violator. Each day or part thereof during which a person operates or causes to be operated a commercial motor vehicle without being the holder of an identifying device or having a valid trip permit, emergency permit, or annual permit as required by this chapter constitutes a separate offense within the meaning of this section. In addition to the penalty imposed by this section, the defendant shall be required to pay all taxes, interest, and penalties due to the state.

Section 80. Effective July 1, 1988, subsection (2) of section 211.076, Florida Statutes, 1986 Supplement, is amended to read:

211.076 Interest and penalties; failure to pay tax or file return; estimated tax underpayments.--

(2) Failure to file any return required by this part by the due date shall require payment of a delinquency penalty. If tax is due with the return, the delinquency penalty shall be 5 percent for each month, or portion thereof, of the amount of tax due with the return, not to exceed 100 ~~25~~ percent. If no tax is due with the return, the delinquency penalty shall be \$25 for each month, or portion thereof, during which the return was not filed, not to exceed \$150 in aggregate. The amount of tax due with a return shall be reduced by amounts properly creditable against the tax liability shown on the return on the date the return was due.

Section 81. Effective July 1, 1988, section 211.25, Florida Statutes, 1986 Supplement, is amended to read:

211.25 Tax crimes; punishment for violation of this part.--

(1) Any person who willfully fails to file a return or keep books or records on production of taxable products, or who files a fraudulent return, or who willfully fails or refuses to produce books or records, or who willfully violates any provision of this part or any rule adopted by the department under this part is guilty of a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

(2) Any person who withholds tax due under this part and willfully fails to make remittance as required by this part, or who purports to make payments due under this part but willfully fails to do so because the remittance fails to clear the bank or depository institution against which it is drawn, is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 82. Effective July 1, 1988, paragraphs (i) and (j) of subsection (3) of section 212.0305, Florida Statutes, 1986 Supplement, are amended to read:

212.0305 Convention development taxes; intent; administration; authorization; use of proceeds.--

(3) APPLICATION; ADMINISTRATION; PENALTIES.--

(i) Any person taxable under this section who, either by himself or through his agents or employees, fails or refuses to charge and collect the taxes herein provided from the person paying any rental or lease is, in addition to being personally liable for the payment of the tax, guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(j) No person shall advertise or hold out to the public in any manner, directly or indirectly, that he will absorb all or any part of the tax; that he will relieve the person paying the rental of the payment of all or any part of the tax; or that the tax will not be added to the rental or lease consideration or, if added, that the tax or any part thereof will be refunded or refused, either directly or indirectly, by any method whatsoever. Any person who willfully violates any provision of this paragraph is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 83. Effective July 1, 1988, paragraph (a) of subsection (1) of section 212.05, Florida Statutes, 1986 Supplement, as amended by this act, is amended to read:

212.05 Sales, storage, use tax.--It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under this section, or who stores for use or consumption in 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, 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 felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. 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 or airplane by or through a registered dealer under this chapter to a purchaser who removes such boat or airplane from this state within 10 days after the date of purchase or, when the boat or airplane is repaired or altered, within 10 days after completion of such repairs or alterations. In no event shall the boat or airplane 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 or airplane 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 or airplane from this state within 10 days after purchase or, when the boat or airplane is repaired or altered, within 10 days after completion of such repairs or alterations, or permits the boat or airplane to return to this state within 6 months from the date of departure, the purchaser shall be liable for use tax on the cost price of the boat or airplane 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.

Section 84. Effective July 1, 1988, paragraph (b) of subsection (2) of section 212.054, Florida Statutes, 1986 Supplement, is amended to read:

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

(2)

(b) However:

1. The tax on any sales amount above \$1,000 on any item of tangible personal property and on long distance telephone service shall not be subject to the surtax.

2. In the case of utility, telecommunication, or wired television services billed on or after the effective date of any such surtax, the entire amount of the tax for utility, telecommunication, or wired television services shall be subject to the surtax. In the case of utility, telecommunication, or wired television services billed after the last day the surtax is in effect, the entire amount of the tax on said items shall not be subject to the surtax.

3. In the case of written contracts which are signed prior to the effective date of any such surtax for the construction of improvements to real property or for remodeling of existing structures, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor may apply for one refund of any such surtax paid on materials necessary for the completion of the contract. Any application for refund shall be made no later than 15 months following initial imposition of the surtax in that county. The application for refund shall be in the manner prescribed by the department by rule. A complete application shall include proof of the written contract and of payment of the surtax. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The department shall, within 30 days after approval of a complete application, certify to the county information necessary for issuance of a refund to the applicant. Counties are hereby authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this subparagraph, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 85. Effective July 1, 1988, subsection (3) of section 212.07, Florida Statutes, 1986 Supplement, and subsection (4) of said section, as amended by this act, 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.--

(3) Any dealer who fails, neglects, or refuses to collect the tax herein provided, either by himself or through his agents or employees, is, in addition to the penalty of being liable for and paying the tax himself, guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

(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 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 felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. A second or subsequent offense constitutes a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 86. Effective July 1, 1988, section 212.085, Florida Statutes, is amended to read:

212.085 Fraudulent claim of exemption; penalties.--When any person shall knowingly fraudulently, for the purpose of evading tax, issue to a vendor or to any agent of the state a certificate or statement in writing in which he claims exemption from sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 100 percent of the tax, shall be liable for fine and punishment as provided by law for a conviction of a felony misdemeanor of the third second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 87. Effective July 1, 1988, subsections (3), (4), and (5) of section 212.10, Florida Statutes, are amended to read:

212.10 Sale of business; liability for tax, procedure, penalty for violation.--

~~(3) in the event any dealer is delinquent in the payment of the tax herein provided for, the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such dealer or owing any debts to such dealer at the time of receipt by them of such notice. All persons so notified shall within 5 days after receipt of the notice advise the department of all such credits, other personal property, or debts in their possession, under their control, or owing by them. After receiving the notice, the persons so notified shall neither transfer nor make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the department consents to a transfer or disposition or until 60 days elapse after the receipt of the notice, whichever period expires the earlier, except that the credits, other personal property, or debts which exceed the delinquent amount stipulated in the notice shall not be subject to the provisions of this section, wherever held, in any case in which such dealer does not have a prior history of sales tax delinquencies. All persons notified shall likewise within 5 days advise the department of any subsequent credits or other personal property belonging to such dealer or any debts incurred and owing to such dealer which may come within their possession or under their control during the time prescribed by the notice or until the department consents to a transfer or disposition, whichever expires the earlier, if such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice to be effective shall be delivered or mailed to the office of such bank at which such deposit is carried or at which such credits or personal property is held. If during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld hereunder, he shall be liable to the~~

~~state for any indebtedness due under this chapter from the person with respect to whose obligation the notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. All such credits or other personal property or debts are subject to garnishment by the department for satisfaction of the delinquent tax due.~~

~~(4) After notice by the department of a transferee liability under this section, the dealer shall have 60 days within which to file an action as provided in chapter 72.~~

(3)(5) Any violation of the provisions of this section is a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 88. Effective July 1, 1988, paragraph (a) of subsection (2) and subsection (13) of section 212.12, Florida Statutes, 1986 Supplement, are 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.--

(2)(a) When any person, firm, or corporation required hereunder to make any return or to pay any tax imposed by this chapter fails to timely file such return or fails to pay the tax due within the time required hereunder, in addition to all other penalties provided herein and by the laws of this state in respect to such taxes, a specific penalty shall be added to the tax in the amount of 5 percent of any unpaid tax if the failure is for not more than 30 days, with an additional 5 percent of any unpaid tax for each additional 30 days, or fraction thereof, during the time which the failure continues, not to exceed, however, a total penalty of 100 25 percent, in the aggregate, of any unpaid tax. In no event may the penalty be less than \$5 for failure to timely file a tax return required by s. 212.11. In the case of a false or fraudulent return or a willful intent to evade payment of any tax imposed under this chapter, in addition to the other penalties provided by law, the person making such false or fraudulent return or willfully attempting to evade the payment of such a tax shall be liable to a specific penalty of 50 percent of the tax bill and for fine and punishment as provided by law for a conviction of a felony misdemeanor of the third second degree.

(13) In order to aid the administration and enforcement of the provisions of this chapter with respect to the rentals and license fees, each lessor or person granting the use of any hotel, apartment house, roominghouse, tourist or trailer camp, real property, or any interest therein, or any portion thereof, inclusive of owners, property managers, lessors, landlords, hotel, apartment house, and roominghouse operators and all licensed real estate agents within the state leasing, granting the use of, or renting such property, shall be required to keep a record of each and every such lease, license, or rental transaction which is taxable under this chapter, in such a manner and upon such forms as the department may prescribe, and to report such transaction to the department or its designated agents, and to maintain such records for a period of not less than 3 years, subject to the inspection of the department and its agents; and, upon the failure by such owner, property manager, lessor, landlord, hotel, apartment house, roominghouse, tourist or trailer camp operator, or real estate agent to keep and maintain such records and to make such

reports upon the forms and in the manner prescribed, such owner, property manager, lessor, landlord, hotel, apartment house, roominghouse, tourist or trailer camp operator, receiver of rent or license fees, or real estate agent is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084, for the first offense; and for subsequent offenses, they are each guilty of a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 89. Effective July 1, 1988, subsection (1) of section 212.13, Florida Statutes, and subsection (2) of said section, as amended by this act, are amended to read:

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

(1) For the purpose of enforcing the collection of the tax levied by this chapter, the department is hereby specifically authorized and empowered to examine at all reasonable hours the books, records, and other documents of all transportation companies, agencies, or firms that conduct their business by truck, rail, water, aircraft, or otherwise, in order to determine what dealers, or other persons charged with the duty to report or pay a tax under this chapter, are importing or are otherwise shipping in articles or tangible personal property which are liable for said tax. In the event said transportation company, agency, or firm refuses to permit such examination of its books, records, or other documents by the department as aforesaid, it is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The department shall have the right to proceed in any chancery court to seek a mandatory injunction or other appropriate remedy to enforce its right against the offender, as granted by this section, to require an examination of the books and records of such transportation company or carrier.

(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 felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

Section 90. Effective July 1, 1988, subsection (3) of section 212.14, Florida Statutes, 1986 Supplement, is amended to read:

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

(3) The department may require all reports of taxes to be paid under this chapter to be accompanied with a written statement, of the person or by an officer of any firm or corporation required to pay such taxes setting forth such facts as the department may reasonably require in order to advise the department as to the amount of taxes

that are due and payable upon said return. Filing of return not accompanied by payment is prima facie evidence of conversion of the money due. Any person or any duly authorized corporation officer or agent, members of any firm or incorporated society, or organization who refuses to make a return and pay the taxes due, as required by the department and in the manner and in the form that the department may require, or to state in writing that the return is correct to the best of his knowledge and belief, as so required by the department, shall be subject to a penalty of 6 percent per annum of the amount due and shall upon conviction, be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. The signing of a written return shall have the same legal effect as if made under oath without the necessity of appending such oath thereto.

Section 91. Effective July 1, 1988, subsections (2) and (3) of section 212.15, Florida Statutes, are amended to read:

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

(2) Any person who, with intent to unlawfully deprive or defraud the state of its moneys or the use or benefit thereof, fails to remit taxes collected pursuant to this chapter is guilty of theft of state funds, punishable as follows:

(a) If the total amount of stolen revenue is less than \$100, the offense is a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. Upon a second or subsequent conviction within a 3-year period, the offender is guilty of a felony misdemeanor of the second first degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084. Upon a third or subsequent conviction within a 3-year period, the offender is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) If the total amount of stolen revenue is \$100 or more, the offense is a felony of the second third degree, punishable as provided in s. 775.082, or s. 775.083, or s. 775.084.

(c) If the total amount of stolen revenue is \$20,000 or more, the offense is a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(3) Prosecution of a misdemeanor under this section shall commence no later than 2 years from the date of the offense. Prosecution of a felony under this section shall commence no later than 5 years from the date of the offense.

Section 92. Effective July 1, 1988, subsection (3) of section 212.18, Florida Statutes, 1986 Supplement, as amended by this act, is amended to read:

212.18 Administration of law; rules and regulations.--

(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 felony misdemeanor of the third 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 93. Effective July 1, 1988, paragraph (d) of subsection (2) of section 212.62, Florida Statutes, is amended to read:

212.62 Tax imposed on sale of motor fuel and special fuel; tax upon ultimate consumer; determination by department; notification.--

(2)

(d) Any refiner, importer, wholesaler, dealer, retail dealer, or retailer who violates the provisions of paragraph (b) or paragraph (c) is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 94. Effective July 1, 1988, subsection (1) of section 214.40, Florida Statutes, 1986 Supplement, is amended to read:

214.40 Penalties; failure to file timely returns.--

(1) In case of failure to file any tax return required under laws made applicable to this chapter on the date prescribed therefor, including any extensions thereof, there shall be added as a penalty to the amount of tax due with such return 5 percent of the amount of such tax, if the failure is not for more than 1 month, plus an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 100 25 percent in the aggregate. The department may settle or compromise such penalties pursuant to s. 213.21. For purposes of this section, the

amount of tax due with any return shall be reduced by any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which was properly allowable on the date the return was required to be filed.

Section 95. Effective July 1, 1988, section 214.60, Florida Statutes, is amended to read:

214.60 Willful and fraudulent acts.--Any taxpayer who is subject to the provisions of this chapter and who willfully fails to file a return or keep required books and records, files a fraudulent return, willfully violates any rule or regulation of the department, or willfully attempts in any other manner to evade or defeat any tax imposed by laws made applicable to this chapter or the payment thereof, ~~is shall~~, in addition to other penalties, be guilty of a felony misdemeanor of the third first degree, punishable as provided in s. 775.082, ~~or s. 775.083,~~ or s. 775.084.

Section 96. Effective July 1, 1988, section 214.61, Florida Statutes, is amended to read:

214.61 Willful failure to pay over.--Any person who accepts money from a taxpayer that is due to the department, for the purpose of acting as the taxpayer's agent to make the payment to the department, but who willfully fails to remit such payment to the department when due or who purports to make such payment but willfully fails to do so because his check or other remittance fails to clear the bank or other depository against which it is drawn ~~is shall~~ be guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, ~~or s. 775.083,~~ or s. 775.084.

Section 97. Effective July 1, 1988, subsection (9) of section 220.181, Florida Statutes, 1986 Supplement, is amended to read:

220.181 Enterprise zone jobs credit.--

(9)(a) Any person who fraudulently claims this credit is liable for repayment of the credit, plus a mandatory penalty in the amount of 100 percent of the credit, plus interest at the rate provided in chapter 214, and is guilty of a felony misdemeanor of the third second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person who makes an underpayment of tax as a result of a grossly overstated claim for this credit is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. For purposes of this paragraph, a grossly overstated claim means a claim in an amount in excess of 100 percent of the amount of credit allowable under this section.

Section 98. Effective July 1, 1988, section 211.335, Florida Statutes, is created to read:

211.335 Tax crimes; punishment for violation of this part.--

(1) Any person who willfully fails to file a return or keep books and records on production of taxable products, or who files a grossly false or fraudulent return, or who willfully fails or refuses to produce books and records, or who willfully violates any provision of this part, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(2) Any person who fails to make remittance of the tax as required by this part, or who purports to make payments due under this part but willfully fails to do so because the remittance fails

to clear the bank or depository institution against which it is drawn, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 99. Section 213.30, Florida Statutes, is created to read:

213.30 Compensation for information relating to a violation of the tax laws.--

(1) The executive director of the department, pursuant to rules adopted by the department, is authorized to compensate persons providing information to the department leading to the punishment of, or collection of taxes, penalties, or interest from, any person committing any crime with respect to the taxes enumerated in s. 72.011(1). The amount of any payment made under this subsection may not exceed 10 percent of any tax, penalties, or interest collected as a result of such information.

(2) Any employee of the department or of any other state or federal agency who comes into possession of information relating to a violation of a revenue law while an employee of such agency may not be compensated under this section. Any former employee of the department or any other state or federal agency who came into possession of information relating to a violation of a revenue law while an employee of such agency may not receive compensation under this section.

(3) The names of all persons supplying information to the department under this section are confidential as provided in s. 213.053 in the same manner as other confidential taxpayer information.

Section 100. Effective July 1, 1988, section 213.70, Florida Statutes, is created to read:

213.70 Priority of tax warrants, distress writs, levies, and executions.--

(1) All tax warrants, levies, and executions issued or obtained by the Department of Revenue and filed, recorded or docketed are entitled to first priority as between all judgments and liens, except those creating a security interest in tangible personal property or real property, filed and recorded against the property of the taxpayer prior to the date of the filing of a warrant by the Department of Revenue.

(2) In the event of a levy by any lienholder or judgment creditor, the tax warrant, levy, or execution of the Department of Revenue shall be paid first from any proceeds resulting from such levy or execution upon the property of a taxpayer.

Section 101. Effective July 1, 1988, section 213.71, Florida Statutes, is created to read:

213.71 Seizure of property for collection of taxes.--

(1) If any person who is liable to pay any tax, penalty, or interest under the revenue laws specified in s. 72.011 neglects or refuses to pay the same within 10 days after notice and demand, the executive director or his designee may collect such tax, penalty, or interest, and such further sum as shall be sufficient to cover the expenses of the levy, by levy upon all real property, tangible or intangible personal property, and rights to property belonging to such person on which there is a tax lien.

(2) The term "levy" as used in this section includes the power of distraint and seizure by any means. A levy may extend only to property possessed and obligations existing at the time thereof.

(3) Whenever any property or right to property upon which levy has been made under this section is insufficient to satisfy the claim of the Department of Revenue for which levy is made, the executive director or his designee may, thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property liable to levy of the person against whom such claim exists, until the amount due from him, together with all expenses, is fully paid.

(4) Levy may be made under subsection (1) with respect to any unpaid tax, penalty, or interest only after the executive director or his designee has notified such persons in writing of the department's intention to make such levy. The notice required under subsection (1) shall be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, no less than 10 days before the day of the levy.

(5) If the executive director or his designee makes a finding that the collection of any tax, penalty, or interest will be jeopardized by delay, notice and demand for immediate payment of such tax may be made by the executive director or his designee, and upon failure or refusal to pay such tax, penalty, or interest, collection thereof by levy is lawful without regard to the 10-day period provided in subsection (1).

(6) With respect to a levy described in subsection (1), the executive director or his designee shall promptly release the levy when the liability out of which such levy arose is satisfied or becomes unenforceable by reason of lapse of time, upon the request of the person upon whom the levy was made.

(7) If a levy has been made or is about to be made on any property or right to property, any person having custody or control of any books or records containing evidence or statements relating to the property or right to property subject to levy shall, upon demand of the executive director or his designee, exhibit such books or records to the executive director or his designee.

(8) This section does not authorize the executive director or his designee to levy upon any property subject to exemption under chapter 222.

Section 102. Effective July 1, 1988, section 213.72, Florida Statutes, is created to read:

213.72 Sale of seized property.--

(1) As soon as practicable after seizure of property, notice in writing shall be given by the executive director or his designee to the owner of the property, or, in the case of tangible or intangible personal property, to the possessor thereof. Such notice shall be given in person or left at his dwelling or usual place of business if he has such within the county where the seizure is made. If the owner cannot be readily located, or has no dwelling or place of business within such county, the notice may be mailed to his last known address. Such notice shall specify the sum demanded and shall contain, in the case of tangible or intangible personal property, an inventory of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

(2) The executive director or his designee shall, as soon as practicable after the seizure of property, give notice to the owner, in the manner prescribed in subsection (1), and shall cause a notice to be published in a newspaper published or generally circulated within the county wherein such seizure is made, or if there is no newspaper published or generally circulated in such county, shall post the notice at the post office and county courthouse of the county where the seizure is made. The notice shall specify the property to be sold, and the time, place, manner, and conditions of the sale. Whenever levy is made as a result of a determination of jeopardy under s. 213.71(5), public notice of sale of the property seized shall be made within 5 days after the date of seizure.

(3) The time of sale shall not be less than 10 days nor more than 40 days after the time of giving public notice under this section. The place of sale shall be within the county in which the property is seized, except that the executive director or his designee may by special order direct the sale to be made at another location.

Section 103. Effective July 1, 1988, section 213.73, Florida Statutes, is created to read:

213.73 Manner and conditions of sale of property subject of a levy by the Department of Revenue.--Whenever a levy is made as a result of an execution upon a tax warrant or lien:

(1) Before the sale, the executive director or his designee shall determine a minimum price for which the property shall be sold, and if no person offers at the sale the amount of the minimum price for such property, the sale may be, in the discretion of the executive director or his designee, rescheduled; the property may be declared to be purchased at such price for the state; or the property may be declared to be sold to the highest bidder. In determining the minimum price, the executive director or his designee shall take into account the expense of making the levy and sale.

(2) The department shall by rule prescribe the manner and other conditions of the sale of property seized. Such regulations shall provide:

(a) That the sale may not be conducted in any manner other than by public auction or by public sale under sealed bids.

(b) In the case of the seizure of several items of property, whether such items must be offered separately, in groups, or in the aggregate or whether such property must be offered in any combination thereof, and sold under whichever method produces the highest aggregate amount.

(c) The extent to which methods additional to those prescribed in s. 213.72, including advertising, may be used in giving notice of the sale.

(d) Under what circumstances the executive director or his designee may adjourn the sale from time to time; however, any such adjournment may not exceed 1 month.

(3) Any person whose property has been levied upon may pay the amount due, together with the expenses of the proceeding, if any, to the department at any time prior to the sale, and upon such payment, the department shall restore such property to him, and all further proceedings in connection with the levy on such property shall cease from the date of such payment.

Section 104. Effective July 1, 1988, section 213.74, Florida Statutes, is created to read:

213.74 Certificate of sale; deed of real property; legal effect.--

(1) In the case of property sold as provided in s. 213.72, the executive director or his designee shall give to the purchaser a certificate of sale upon payment in full of the purchase price. Such certificate shall set forth a description of the property purchased, for whose taxes the same was sold, the name of the purchaser, and the price paid therefor.

(2) In the case of any real property sold as provided in s. 213.72, and not redeemed in the manner and within the time provided in s. 213.73, the executive director or his designee shall execute, in accordance with the laws of this state pertaining to the sale of real property under execution, to the purchaser of such real property at such sale, upon his surrender of the certificate of sale, a deed of the real property so purchased by him, reciting the facts set forth in the certificate.

(3) If real property is declared purchased for the state at a sale pursuant to s. 213.72, the executive director or his designee shall present a certificate of sale and execute a deed therefor to the Board of Trustees of the Internal Improvement Trust Fund, and the board of trustees shall, without delay, cause such deed to be duly recorded in the proper clerk's office in the proper manner.

(4) In all cases of sale of tangible or intangible personal property pursuant to s. 213.72, the certificate of sale shall be prima facie evidence of the right of the executive director or his designee to make such sale, and conclusive evidence of the regularity of his proceedings in making the sale and shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold. If such property consists of intangibles such as stock and bonds, the certificate constitutes notice, when received, to any corporation, company, or association of such transfer, and constitutes authority to such corporation, company, or association to record the transfer on its books and records in the same manner as if the intangibles were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not. If the subject of the sale is securities or other evidences of debt, the certificate constitutes a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of such securities or other evidences of debt. If such property consists of a motor vehicle, the certificate constitutes notice when received, to any public official charged with the registration of title of motor vehicles, of such transfer and constitutes authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate of title, which shall be void whether canceled or not.

(5) In the case of the sale of real property pursuant to s. 213.72, the deed of sale given pursuant to this section shall be prima facie evidence of the facts stated therein and if the proceedings by the executive director or his designee have been substantially in accordance with the provisions of this chapter and the rules of the department, such deed constitutes a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the Department of Revenue attached thereto.

Section 105. Effective July 1, 1988, section 213.75, Florida Statutes, is created to read:

213.75 Application of payments.--

(1) Whenever any payment is made to the department with respect to any of the revenue laws of this state, such payment shall be applied as follows:

- (a) First, against the accrued interest, if any;
- (b) The amount, if any, remaining after the application to interest, shall be credited against any accrued penalty; and
- (c) The amount, if any, remaining after application to interest and penalty, shall be credited to any tax due.

(2) If a warrant or lien has been filed and recorded by the department, a payment shall be applied as follows:

- (a) First, against the costs of recordation of the warrant or lien, if any;
- (b) The amount, if any, remaining shall be applied to accrued interest;
- (c) The amount, if any, remaining after the application to interest, shall be credited against any accrued penalty; and
- (d) The amount, if any, remaining after application to costs, interest, and penalty, shall be credited to any tax due.

(3) If a levy has been made by the department, a payment shall be applied as follows:

- (a) First, against the costs of execution of the levy, if any;
- (b) The amount, if any, remaining shall be applied to accrued interest;
- (c) The amount, if any, remaining after the application to interest, shall be credited against any accrued penalty; and
- (d) The amount, if any, remaining after application to costs, interest, and penalty, shall be credited to any tax due.

(4) Any surplus proceeds remaining after the application of subsection (3) shall, upon application and satisfactory proof thereof, be refunded by the Comptroller to the person or persons legally entitled thereto pursuant to s. 215.26.

Section 106. Effective July 1, 1988, section 213.76, Florida Statutes, is created to read:

213.76 Freezing of assets and obligations.--

(1) If any person who is obligated to pay a tax is delinquent in the payment of any of the taxes specified in s. 72.011(1), the department may give notice of the amount of such delinquency by registered mail to all persons having in their possession or under their control any credits or other personal property belonging to such person or owing any debts to such person at the time of receipt by them of such notice. All persons so notified shall, within 5 days after receipt of the notice, advise the department of all such credits, other personal property, or debts in their possession, under

their control, or owing by them. After receiving the notice, the persons so notified may not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive such notice unless the department consents to a transfer or disposition or until 120 days elapse after the receipt of the notice, whichever period expires sooner, except that the credits, other personal property, or debts which exceed the delinquent amount stipulated in the notice are not subject to this section, wherever held, in any case in which such dealer does not have a prior history of sales tax delinquencies. All persons notified shall likewise within 5 days advise the department of any subsequent credits or other personal property belonging to such person or any debts incurred and owing to such person which may come within their possession or under their control during the time prescribed by the notice or until the department consents to a transfer or disposition, whichever expires sooner. If such notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, must be delivered or mailed to the office of such bank at which the deposit is carried or at which the credits or personal property is held. If, during the effective period of the notice to withhold, any person so notified makes any transfer or disposition of the property or debts required to be withheld under this section, such person is liable to the state for any indebtedness due from the person with respect to whose obligation such notice was given to the extent of the value of the property or the amount of the debts thus transferred or paid if, solely by reason of such transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given. All such credits or other personal property or debts are subject to garnishment by the department for satisfaction of the delinquent tax due.

(2) Any violation of this section is a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 107. The Department of Revenue is appropriated the sum of \$600,000 from the General Revenue Fund for the purpose of advertising and providing public notice of the tax amnesty program provided in this act, and in addition, the Department of Revenue is appropriated the sum of \$1.5 million from the General Revenue Fund for personnel and expenses related to the tax amnesty program.

Section 108. Except for violations for which the period of time for bringing an action or enforcing a lien has expired prior to July 1, 1988, the penalties provided by sections 49 through 98 of this act are applicable to the failure to pay taxes which are due before and remain unpaid on July 1, 1988.

Section 109. Effective July 1, 1987, the Department of Revenue is directed to provide for a sales tax hot-line to be operated by the department to provide information to citizens of the state who have questions with respect to the sales tax.

Section 110. 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 111. Except as otherwise provided herein, this act shall take effect July 1, 1987.

Approved by the Governor April 23, 1987.

Filed in Office Secretary of State April 23, 1987.

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Draft Concepts—SOH Recapture

House Joint Resolution

A joint resolution proposing amendments to Section 4 of Article VII and the creation of Section 32 of Article XII of the State Constitution to allow the legislature to additionally limit the growth in the assessed value of homestead property by the growth rate in just value, and to prohibit increases in the assessed value of homestead and specified nonhomestead property if the just value of the property decreases, and provide effective dates.

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

That the following amendments to Section 4 of Article VII and the creation of Section 32 of Article XII of the State Constitution are agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election:

ARTICLE VII

FINANCE AND TAXATION

SECTION 4. Taxation; assessments.—By general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation, provided:

(a) Agricultural land, land producing high water recharge to Florida's aquifers, or land used exclusively for noncommercial recreational purposes may be classified by general law and assessed solely on the basis of character or use.

(b) As provided by general law and subject to conditions, limitations, and reasonable definitions specified therein, land

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29 used for conservation purposes shall be classified by general
 30 law and assessed solely on the basis of character or use.

31 (c) Pursuant to general law tangible personal property
 32 held for sale as stock in trade and livestock may be valued for
 33 taxation at a specified percentage of its value, may be
 34 classified for tax purposes, or may be exempted from taxation.

35 (d) All persons entitled to a homestead exemption under
 36 Section 6 of this Article shall have their homestead assessed at
 37 just value as of January 1 of the year following the effective
 38 date of this amendment. This assessment shall change only as
 39 provided in this subsection.

40 (1) Assessments subject to this subsection shall be
 41 changed annually on January 1st of each year; but those changes
 42 in assessments shall not exceed the lower of the following:

43 a. Three percent (3%) of the assessment for the prior
 44 year.

45 b. The percent change in the Consumer Price Index for all
 46 urban consumers, U.S. City Average, all items 1967=100, or
 47 successor reports for the preceding calendar year as initially
 48 reported by the United States Department of Labor, Bureau of
 49 Labor Statistics.

50 c. If the legislature so provides by general law, the
 51 percent change in the homestead's just value if the change is
 52 greater than or equal to zero.

53 (2) The legislature may provide by general law that,
 54 except for changes, additions, reductions, or improvements to
 55 homestead property assessed as provided in paragraph (6), an
 56 assessment may not increase if the just value of the property is

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57 less than the just value of the property on the preceding
 58 January 1.

59 (3)~~(2)~~ No assessment shall exceed just value.

60 (4)~~(3)~~ After any change of ownership, as provided by
 61 general law, homestead property shall be assessed at just value
 62 as of January 1 of the following year, unless the provisions of
 63 paragraph (9)~~(8)~~ apply. Thereafter, the homestead shall be
 64 assessed as provided in this subsection.

65 (5)~~(4)~~ New homestead property shall be assessed at just
 66 value as of January 1st of the year following the establishment
 67 of the homestead, unless the provisions of paragraph (9)~~(8)~~
 68 apply. That assessment shall only change as provided in this
 69 subsection.

70 (6)~~(5)~~ Changes, additions, reductions, or improvements to
 71 homestead property shall be assessed as provided for by general
 72 law; provided, however, after the adjustment for any change,
 73 addition, reduction, or improvement, the property shall be
 74 assessed as provided in this subsection.

75 (7)~~(6)~~ In the event of a termination of homestead status,
 76 the property shall be assessed as provided by general law.

77 (8)~~(7)~~ The provisions of this amendment are severable. If
 78 any of the provisions of this amendment shall be held
 79 unconstitutional by any court of competent jurisdiction, the
 80 decision of such court shall not affect or impair any remaining
 81 provisions of this amendment.

82 (9)~~(8)~~a. A person who establishes a new homestead as of
 83 January 1, 2009, or January 1 of any subsequent year and who has
 84 received a homestead exemption pursuant to Section 6 of this

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85 Article as of January 1 of either of the two years immediately
 86 preceding the establishment of the new homestead is entitled to
 87 have the new homestead assessed at less than just value. If this
 88 revision is approved in January of 2008, a person who
 89 establishes a new homestead as of January 1, 2008, is entitled
 90 to have the new homestead assessed at less than just value only
 91 if that person received a homestead exemption on January 1,
 92 2007. The assessed value of the newly established homestead
 93 shall be determined as follows:

94 1. If the just value of the new homestead is greater than
 95 or equal to the just value of the prior homestead as of January
 96 1 of the year in which the prior homestead was abandoned, the
 97 assessed value of the new homestead shall be the just value of
 98 the new homestead minus an amount equal to the lesser of
 99 \$500,000 or the difference between the just value and the
 100 assessed value of the prior homestead as of January 1 of the
 101 year in which the prior homestead was abandoned. Thereafter, the
 102 homestead shall be assessed as provided in this subsection.

103 2. If the just value of the new homestead is less than the
 104 just value of the prior homestead as of January 1 of the year in
 105 which the prior homestead was abandoned, the assessed value of
 106 the new homestead shall be equal to the just value of the new
 107 homestead divided by the just value of the prior homestead and
 108 multiplied by the assessed value of the prior homestead.

109 However, if the difference between the just value of the new
 110 homestead and the assessed value of the new homestead calculated
 111 pursuant to this sub-subparagraph is greater than \$500,000, the
 112 assessed value of the new homestead shall be increased so that

CODING: Words stricken are deletions; words underlined are additions.

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113 | the difference between the just value and the assessed value
 114 | equals \$500,000. Thereafter, the homestead shall be assessed as
 115 | provided in this subsection.

116 | b. By general law and subject to conditions specified
 117 | therein, the legislature shall provide for application of this
 118 | paragraph to property owned by more than one person.

119 | (e) The legislature may, by general law, for assessment
 120 | purposes and subject to the provisions of this subsection, allow
 121 | counties and municipalities to authorize by ordinance that
 122 | historic property may be assessed solely on the basis of
 123 | character or use. Such character or use assessment shall apply
 124 | only to the jurisdiction adopting the ordinance. The
 125 | requirements for eligible properties must be specified by
 126 | general law.

127 | (f) A county may, in the manner prescribed by general law,
 128 | provide for a reduction in the assessed value of homestead
 129 | property to the extent of any increase in the assessed value of
 130 | that property which results from the construction or
 131 | reconstruction of the property for the purpose of providing
 132 | living quarters for one or more natural or adoptive grandparents
 133 | or parents of the owner of the property or of the owner's spouse
 134 | if at least one of the grandparents or parents for whom the
 135 | living quarters are provided is 62 years of age or older. Such a
 136 | reduction may not exceed the lesser of the following:

137 | (1) The increase in assessed value resulting from
 138 | construction or reconstruction of the property.

139 | (2) Twenty percent of the total assessed value of the
 140 | property as improved.

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141 (g) For all levies other than school district levies,
 142 assessments of residential real property, as defined by general
 143 law, which contains nine units or fewer and which is not subject
 144 to the assessment limitations set forth in subsections (a)
 145 through (d) shall change only as provided in this subsection.

146 (1) Assessments subject to this subsection shall be
 147 changed annually on the date of assessment provided by law; but
 148 those changes in assessments shall not exceed ten percent (10%)
 149 of the assessment for the prior year. The legislature may
 150 provide by general law that, except for changes, additions,
 151 reductions, or improvements to property assessed as provided in
 152 paragraph (4), an assessment may not increase if the just value
 153 of the property is less than the just value of the property on
 154 the preceding date of assessment provided by law.

155 (2) No assessment shall exceed just value.

156 (3) After a change of ownership or control, as defined by
 157 general law, including any change of ownership of a legal entity
 158 that owns the property, such property shall be assessed at just
 159 value as of the next assessment date. Thereafter, such property
 160 shall be assessed as provided in this subsection.

161 (4) Changes, additions, reductions, or improvements to
 162 such property shall be assessed as provided for by general law;
 163 however, after the adjustment for any change, addition,
 164 reduction, or improvement, the property shall be assessed as
 165 provided in this subsection.

166 (h) For all levies other than school district levies,
 167 assessments of real property that is not subject to the
 168 assessment limitations set forth in subsections (a) through (d)

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169 and (g) shall change only as provided in this subsection.

170 (1) Assessments subject to this subsection shall be
 171 changed annually on the date of assessment provided by law; but
 172 those changes in assessments shall not exceed ten percent (10%)
 173 of the assessment for the prior year. The legislature may
 174 provide by general law that, except for changes, additions,
 175 reductions, or improvements to property assessed as provided in
 176 paragraph (5), an assessment may not increase if the just value
 177 of the property is less than the just value of the property on
 178 the preceding date of assessment provided by law.

179 (2) No assessment shall exceed just value.

180 (3) The legislature must provide that such property shall
 181 be assessed at just value as of the next assessment date after a
 182 qualifying improvement, as defined by general law, is made to
 183 such property. Thereafter, such property shall be assessed as
 184 provided in this subsection.

185 (4) The legislature may provide that such property shall
 186 be assessed at just value as of the next assessment date after a
 187 change of ownership or control, as defined by general law,
 188 including any change of ownership of the legal entity that owns
 189 the property. Thereafter, such property shall be assessed as
 190 provided in this subsection.

191 (5) Changes, additions, reductions, or improvements to
 192 such property shall be assessed as provided for by general law.→
 193 However, after the adjustment for any change, addition,
 194 reduction, or improvement, the property shall be assessed as
 195 provided in this subsection.

196 (i) The legislature, by general law and subject to

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197 conditions specified therein, may prohibit the consideration of
 198 the following in the determination of the assessed value of real
 199 property used for residential purposes:

200 (1) Any change or improvement made for the purpose of
 201 improving the property's resistance to wind damage.

202 (2) The installation of a renewable energy source device.

203 (j) (1) The assessment of the following working waterfront
 204 properties shall be based upon the current use of the property:

205 a. Land used predominantly for commercial fishing
 206 purposes.

207 b. Land that is accessible to the public and used for
 208 vessel launches into waters that are navigable.

209 c. Marinas and drystacks that are open to the public.

210 d. Water-dependent marine manufacturing facilities,
 211 commercial fishing facilities, and marine vessel construction
 212 and repair facilities and their support activities.

213 (2) The assessment benefit provided by this subsection is
 214 subject to conditions and limitations and reasonable definitions
 215 as specified by the legislature by general law.

216 ARTICLE XII

217 SCHEDULE

218 SECTION 32. Property assessments.-This section and the
 219 amendments of Section 4 of Article VII addressing the limitation
 220 on the growth of assessed value for homesteads, and homestead
 221 and specified nonhomestead property having a declining just
 222 value shall take effect January 1, 2017.

223

224 BE IT FURTHER RESOLVED that the following statement be

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225 placed on the ballot:

226 CONSTITUTIONAL AMENDMENT

227 ARTICLE VII, SECTION 4

228 ARTICLE XII, SECTION 34

229 PROPERTY ASSESSMENTS; GROWTH RATE; DECLINING PROPERTY

230 VALUE.—Proposing to amend the State Constitution. Allowing the

231 legislature to add to current growth limitations in a

232 homestead's assessed value, a zero or positive percent change in

233 the parcel's just value. Allowing the legislature to prohibit

234 homestead and specified nonhomestead assessment increases, if a

235 property's just value is less than previous just value, subject

236 to adjustments due to changes to the property. Effective on

237 January 1, 2017.

238

239 BE IT FURTHER RESOLVED that the following statement be

240 placed on the ballot if a court declares the preceding statement

241 defective and the decision of the court is not reversed:

242 CONSTITUTIONAL AMENDMENT

243 ARTICLE VII, SECTION 4

244 ARTICLE XII, SECTION 32

245 PROPERTY TAX LIMITATIONS; GROWTH IN ASSESSED VALUE;

246 PROPERTY VALUE DECLINE.—

247 (1) This would amend Florida Constitution Article VII,

248 Section 4 (Taxation; assessments). It also would add Article

249 XII, Section 32, relating to the Schedule for the amendments.

250 (2) The law limits the growth in the assessed value of

251 homesteaded properties to the lesser of 3% or the inflation

252 rate. In certain circumstances, this could lead to the assessed

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253 value of the homestead growing at a faster rate than the just
 254 value. Therefore this amendment allows the legislature to add an
 255 additional limit to the rate of growth for assessed value of
 256 homestead properties. The growth rate would be limited to the
 257 lesser of 3%, the inflation rate, or the percent change in the
 258 homestead's just value. This amendment takes effect upon
 259 approval by the voters, and shall take effect January 1, 2017.

260 (3) In certain circumstances, the law requires the
 261 assessed value of homestead and specified nonhomestead property
 262 to increase when the just value of the property decreases.
 263 Therefore, this amendment allows the legislature to provide that
 264 the assessment of homestead and specified nonhomestead property
 265 may not increase if the just value of that property is less than
 266 the just value of the property on the preceding January 1,
 267 subject to any adjustment in the assessed value due to changes,
 268 additions, reductions, or improvements to such property which
 269 are assessed as provided for by general law. This amendment
 270 takes effect upon approval by the voters, and shall take effect
 271 January 1, 2017.

FINANCE AND TAX COMMITTEE WORKPLAN CONCEPTS

FINANCE

OPTIMIZATION OF CAPITAL RECOVERY

- Local Governments

AFFORDABLE HOUSING FINANCING

SPECIAL DISTRICTS

- Ethics, transparency and oversight
- Solvency and rating
- Consolidation
- Sunset, reauthorization and review options

CLERKS OF COURTS

- Establish remedies for inadequate financial oversight

LOCAL GOVERNMENT

- Finance fraud protections
- Mandatory, timely responses to DFS
- Audit committee makeup and auditor selection
- Mandatory audit for private entities receiving large sums of public funds

TAXES

AD VALOREM TAXES

TOURIST/CONVENTION DEVELOPMENT TAXES

GEOGRAPHY-BASED TAX PROGRAMS

- Brownfields
- Enterprise Zones
- New Markets
- Rural Job Tax Credits
- Urban High Crime Tax Credits
- Rural Areas of Opportunity
- Community Development Districts

TOBACCO TAXES

- Calculation of “wholesale price”
- Close tobacco tax loopholes
 - Cigar wraps
 - Roll Your Own “Clubs”
- Section 210.20 – emphasis on peer review

COMMUNICATION SERVICES TAX

- Rate
- Uniformity
- Uses by local governments
- Exemptions
- Tax credits for dealers
- Constitutional questions regarding tax disparity between cable and direct-to-home satellite service
- Distinction & interplay between telephone and internet services

CORPORATE INCOME TAX

- Rate
- Amount of exempted corporate income
- Exemptions, generally
- Corporate income tax credit programs

UTILITY GROSS RECEIPT TAXES

- Exemptions
- Tax credit programs

BUSINESS RENT TAX

- Rate
- Economic impact & competitiveness

FUEL TAX

- Aviation fuel credit programs

PARI-MUTUEL TAX

MANUFACTURING MACHINERY & EQUIPMENT TAX CUT

SALES & USE TAXES

COMMUNITY REDEVELOPMENT AGENCIES