

SPB 7038 by **BFT**; Tax Administration

SPB 7036 by **BFT**; Administration of Property Taxes

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

BUDGET SUBCOMMITTEE ON FINANCE AND TAX
Senator Bogdanoff, Chair
Senator Altman, Vice Chair

MEETING DATE: Thursday, December 8, 2011
TIME: 1:00 —3:00 p.m.
PLACE: 301 Senate Office Building

MEMBERS: Senator Bogdanoff, Chair; Senator Altman, Vice Chair; Senators Alexander, Gardiner, Margolis, Norman, and Sachs

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	Issue Brief 2012-206 (Excise Tax on Other Tobacco Products) Presentation		Presented
2	Interim Project 2012-107 (Application of Florida's Sales Tax to Sales by Out-of-State Retailers) Presentation		Presented
	Workshop on Sales Tax Collections by Out-of-State Retailers - Presentation		Discussed

Consideration of proposed committee bill:

3	SPB 7038	Tax Administration; Subjecting a dealer to monetary and criminal penalties for the willful failure to collect certain taxes or fees after notice of the duty to collect the taxes or fees by the Department of Revenue; deleting provisions relating to the imposition of criminal penalties after notice by the Department of Revenue of requirements to register as a dealer or to collect taxes; making technical and grammatical changes to provisions specifying penalties for making a false or fraudulent return with the intent to evade payment of a tax or fee; authorizing the Department of Revenue to adopt rules relating to requirements for a person to deposit cash, a bond, or other security with the department in order to ensure compliance with sales tax laws, etc.	Submitted as Committee Bill
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(Preliminary Draft Available- final draft will be made available at least 48 hours prior to the meeting)

Consideration of proposed committee bill:

COMMITTEE MEETING EXPANDED AGENDA

Budget Subcommittee on Finance and Tax

Thursday, December 8, 2011, 1:00 —3:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SPB 7036	Administration of Property Taxes; Providing that a taxpayer has a right to have a hearing before the value adjustment board rescheduled if the hearing is not commenced within a certain period after the scheduled time; revising the information that must be included on a real property assessment roll relating to the transfer of ownership of property; deleting a requirement to include information relating to a fiduciary on a real property assessment roll; providing for the apportionment of increases in the value of combined and divided parcels of nonhomestead residential property; deleting provisions requiring that the tax collector report amounts of deferred tax liability to the Department of Revenue, etc.	Submitted as Committee Bill
(Preliminary Draft Available- final draft will be made available at least 48 hours prior to the meeting)			
5	Other Related Meeting Documents		



The Florida Senate

Issue Brief 2012-206

September 2011

Budget Subcommittee on Finance and Tax

EXCISE TAX ON OTHER TOBACCO PRODUCTS

Statement of the Issue

Tobacco products, other than cigarettes and cigars, have been taxed under part II of s. 210, F.S., since 1985.¹ The tax on these products (commonly referred to as other tobacco products or OTP) is imposed at the rate of 25 percent of the wholesale sales price, and the proceeds of this tax are directed to the General Revenue Fund. Since 2009, a surcharge on other tobacco products has been imposed at the rate of 60 percent of the wholesale sales price² and revenue from the surcharge is credited to the Health Care Trust Fund, which is subject to the 8 percent General Revenue Service Charge.

The tax and surcharge on other tobacco products are levied on the wholesale sales price of the products. "Wholesale sales price" is defined as "the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts."³

In 2002, McLane Suneast, Inc. ("McLane"), a distributor of other tobacco products, requested a refund of "excess" taxes it had paid from April 1, 1997, through March 31, 2002. McLane asserted that the tax had been calculated incorrectly because it was based on the sales price paid by McLane to the distributor who had first purchased the product from the manufacturer. McLane's contention was that the tax should have been calculated based on the price paid by the distributor to the manufacturer. The request was denied, and McLane challenged the denial in circuit court.⁴

In 2005, McLane and the State of Florida Department of Business and Professional Regulation ("Department") entered into a settlement agreement which provided that the appropriate tax that McLane should have paid and would pay in the future on purchases from the distributor involved in the case (UST Sales and Marketing) would be based on a formula using the property and payroll of the manufacturer (UST Manufacturing) and its wholly-owned distributor (UST Sales and Marketing). McLane received a refund of some taxes paid, and its future tax liability was reduced. Since then, other OTP distributors that purchase products from UST Sales and Marketing have applied for and received refunds and reduced their future tax liabilities. Through fiscal year 2010-11, \$16 million in refunds have been granted; the recurring annual reduction in OTP tax plus the surcharge has exceeded \$6 million in each of the past two years.

Discussion

Background

On January 1, 1990, United States Tobacco Company, a vertically integrated firm that manufactured and marketed moist smokeless tobacco and other tobacco products, became a holding company of two separate wholly-owned subsidiaries: United States Tobacco Manufacturing Company, Inc., which manufactured the smokeless tobacco products, and United States Tobacco Sales and Marketing Company Inc., which marketed and distributed these products. At that time, United States Tobacco held the number one position in the smokeless tobacco industry. (The

¹ Section 1 of ch. 85-141, L.O.F.

² Section 7 of ch. 2009-79, L.O.F.

³ Section 210.25(13), F.S.

⁴ *McLane Suneast, Inc. v. Florida Department of Business and Professional Regulation*, Case No. 03-CA-290 (Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida.)

company, which remains the world leader in producing and marketing moist smokeless tobacco products,⁵ was acquired by the Altria Group (formerly Philip Morris) in 2009.)

McLane's 2002 request for a refund of "excess" taxes it had paid from April 1, 1997, through March 31, 2002, was based on its interpretation of the statutory definition of "wholesale sales price," in light of the separation of the former United States Tobacco Company into two legally distinct entities. McLane asserted that the tax had been calculated incorrectly because it was based on the sales price paid by McLane to the distributor who had first purchased the product from the manufacturer. McLane contended that the tax should have been calculated based on the price paid by the distributor to the manufacturer. The Department denied the request, and McLane challenged the denial in circuit court.

The tax on other tobacco products is levied at the wholesale level and based on the "wholesale sales price." Generally, the statutory scheme for determining the correct amount of tax works well when the distribution chain of the product goes from manufacturer to distributor to retailer. In this situation, the distributor pays the tax based on the price it paid the manufacturer for the products. However, when the distribution chain includes two or more distributors, the tax determination becomes unclear—is it based on the amount paid by the first distributor in the chain or on the amount paid by the second distributor? This situation is further complicated when the first distributor is a company related by ownership to the manufacturer, because in that case the "price" of the product is not determined by market forces and can be arbitrarily set by the "buyer" and "seller."

In 2005, McLane and the Department entered into a settlement agreement which provided that the appropriate tax that McLane should have paid and would pay in the future on purchases from the distributor involved in the case (UST Sales and Marketing) would be based on a formula using the property and payroll of the manufacturer (UST Manufacturing) and its wholly-owned distributor. Under the formula, the tax rate is applied to the "adjusted transfer price," which is a fraction of the price paid by McLane to the distributor. The numerator of the fraction is the sum of property and payroll of UST Manufacturing, and the denominator is the sum of property and payroll of the UST Manufacturing and UST Sales and Marketing, its wholly-owned distributor. The property and payroll factors used in the formula are determined annually by the department based on information provided in the manufacturer's and distributor's federal tax returns. By agreeing to this formula, the Department attempted to tie the price on which the tax is based to a physical measure of the production inputs provided by the manufacturer as a proportion of the total value of the product.⁶

Since the settlement agreement was reached, the adjusted transfer price has become a larger percentage of the price paid by McLane to the distributor, thereby reducing the impact of the formula.

Adjusted Transfer Price Factor					
2006	2007	2008	2009	2010	2011
55.554%	72.829%	72.957%	73.970%	74.180%	84.240%

The settlement agreement remains in effect; the formula it provides is used to calculate McLane's tax liability and its liability for the surcharge on other tobacco products under s. 210.276, F.S. In addition, other distributors that purchase other tobacco products from the same distributor (UST Sales and Marketing) have requested and received the same treatment as McLane. According to data provided by the Division of Alcoholic Beverages and Tobacco, 20 distributors, in addition to McLane, have requested and been approved to receive refunds of taxes paid on other tobacco products pursuant to the formula in the settlement agreement. Additional requests are pending from other distributors.

⁵ <http://www.us smokeless.com/en/cms/Home/default.aspx>

⁶ Department staff who were involved in the settlement report that the formula was a compromise between McLane's assertion that the tax should be based on the price paid by UST Sales and Marketing to UST Manufacturing, and the department's interpretation of the statute that based the tax on the price paid by McLane. The statute is not 100 percent clear about what is meant by "wholesale sales price" and the settlement prevented a potentially greater revenue loss that might have happened if the case had gone to trial.

Revenue Impact

The settlement agreement provided a refund credit in the sum of \$6,211,857.31 to McLane, to be used as an offset against taxes levied under ch. 210, F.S. (excise taxes on cigarettes and other tobacco products) that are currently owed or may be owed in the future. McLane agreed to limit any claim for the credits for each calendar month to no more than 1/12 of the refund credit and to not apply the credits in such a way as to result in a cash refund. This refund resulted from taxes paid by McLane from April 1, 1997, through March 31, 2002.

McLane was granted an additional tax credit for the “Supplemental Refund Period” (April 1, 2002 through March 31, 2005) to be calculated as the difference between the other tobacco products taxes paid by McLane and the taxes that would have been paid using the “adjusted transfer price” for the supplemental refund period. In 2006 a \$4,203,221 refund credit was approved to cover this period.

Beginning April 1, 2005, the settlement agreement provided that McLane would report and pay other tobacco products taxes based on the “adjusted transfer price” for products purchased from UST Sales and Marketing.

Since the McLane settlement, several distributors of other tobacco products have been granted refunds for taxes paid on products they bought from UST Sales and Marketing. In 2008, \$3,837,764.68 was refunded to 9 different distributors; in 2009, \$848,488.62 was refunded to 5 different distributors; and in 2010, \$251,572.93 was refunded to 2 distributors. The revenue impact of the settlement is not limited to refunds, since the formula is used to compute the adjusted transfer price as the basis of each distributor’s future tax liability.

Additional Impact on Other Tobacco Tax Surcharge Revenue

In 2009 the Florida Legislature enacted the Protecting Florida’s Health Act, which imposed a \$1 per pack surcharge on cigarettes purchased in the state and a surcharge on other tobacco products of 60 percent of the wholesale sales price of the product. The proceeds of these surcharges are directed to the Health Care Trust Fund, subject to an 8 percent General Revenue service charge. The surcharge magnifies the impact of the McLane settlement, since it applies to the same base at 2.4 times the rate of the original tax on other tobacco products.

Total Revenue Impact of Other Tobacco Product Settlement		
	Amount Refunded	Reduction from Factored Wholesale Sales Price
FY 2005-06	\$11,071,596	
FY 2006-07	\$0	\$3,260,991
FY 2007-08	\$872,537	\$2,774,839
FY 2008-09	\$3,196,832	\$3,261,370
FY 2009-10	\$616,844	\$6,130,782
FY 2010-11	\$251,573	\$6,373,568
FY 2011-12 (estimate)	\$89,475	\$6,528,000
Total	\$16,098,857.00	\$28,329,550.00

There are pending challenges to the Department’s methodology for calculating the tax and surcharge on other tobacco products, based on the definition of “wholesale sales price.” If any of these challenges is successful the tax base would be further eroded.

Other Effects of the Settlement Agreement

In addition to the effect on revenue from the tax on other tobacco products and the surcharge, there are other effects of the settlement agreement:

- Other tobacco products from UST Manufacturing are taxed by a variable formula that is not found in Florida Statutes and was never approved by the Legislature, and
- Other tobacco products are subject to disparate tax treatment, depending upon their manufacturer. According to Department representatives, other OTP manufacturers have set up similar arrangements for selling their products to Florida distributors through wholly-owned subsidiaries and have sought tax refunds similar to the McLane settlement, however, since the settlement applies only to purchases from UST Sales and Marketing, the Department has not approved refunds for other manufacturers' products.

Possible Legislative Response

The Legislature may want to consider options that address the three effects of the settlement mentioned in this report: (1) a tax rate based on actions taken by third parties; (2) different OTP tax rates based on the product's manufacturer; and (3) the revenue impacts.

The language of the settlement agreement recognizes that the agreement is based on the existing legal framework and the specific circumstances of the case:

Unless and until there has been a material change in the governing law or facts that formed the basis for the Present Case, the parties shall use the methodology described in this paragraph 12.C. (the "Tax Base Methodology") to compute the Adjusted Transfer Price.⁷

One option that resolves all three issues is to change the statutory definition of "wholesale sales price" to mean *the price paid by the distributor that sells the products to a Florida retailer*. This definition provides equitable treatment for diverse business models, and avoids the problems created by having multiple distributors in the distribution chain.

⁷ Final Judgment, Case No. 03-CA-290 in the Circuit court of the Second Judicial Circuit, in and for Leon County, FL.

Excise Tax on Other Tobacco Products

Review of 2005 Settlement
Agreement

Issue Brief 2012-206

Other Tobacco Products

- Includes all tobacco products except cigarettes and cigars
- Florida tax on these products is 85 percent of the wholesale sales price
 - 25 percent excise tax levied in 1985
 - 60 percent surcharge levied in 2009

Wholesale Sales Price

- The “wholesale sales price” is defined as “ the established price for which a manufacturer sells a tobacco product to a distributor, exclusive of any diminution by volume or other discounts.”
- However, for **some** other tobacco products the “wholesale sales price” is a **fraction** of the price paid by the Florida distributor, as the result of a settlement between DBPR and a distributor.

Why are certain products taxed differently?

- A 2005 settlement between the Department of Business and Professional Regulation and McLane Suneast, Inc., (McLane) a distributor of other tobacco products, provided for taxing products purchased from UST Sales and Marketing.
- It provided a formula that refunded taxes previously paid and reduced future tax payments.
- Non-UST products are not subject to the settlement.

History of Settlement

- Before 1990, United States Tobacco Company manufactured **and** marketed other tobacco products
- In 1990 it became a holding company of 2 wholly-owned subsidiaries:
 - United States Tobacco Manufacturing Company (UST Manufacturing), and
 - United States Tobacco Sales and Marketing Company (UST Sales and Marketing)

History, continued

- In 2002 McLane, a distributor of OTP, requested a refund of “excess” taxes it had paid since April 1, 1997, based on its interpretation of the definition of “wholesale sales price” in light of the separation of United States Tobacco company into 2 entities.
- DBPR denied the request and McLane challenged the denial in circuit court.

Settlement Agreement

- In 2005, McLane and DBPR entered into a settlement agreement that provided for a refund of taxes paid and reduced future taxes.
- Under the agreement, the tax is based on the “adjusted transfer price” --a fraction of the price paid by McLane to the distributor.
- $(\text{UST Manufacturing Property} + \text{Payroll}) / (\text{UST Manufacturing Property} + \text{Payroll}) + (\text{UST Sales and Marketing Property} + \text{Payroll})$

Revenue Impact of Agreement

- Since 2005, other distributors of UST products have applied for tax refunds under the terms of the agreement.
- Their ongoing tax liability is based on the agreement's adjusted transfer price.
- The revenue impact of the agreement increased significantly in 2009 when the surcharge on other tobacco products was enacted.

Amount of Refunds and Tax Reduction FY 2005-06 – FY 2011-12(est.)

Tax Refunds	\$16.1 million
Reduced Tax Payments	\$28.3 million
Total Settlement Impact	\$44.4 million

In FY 2010-11, OTP tax plus surcharge revenue was \$91 million. The settlement adjustments (\$6.6 million) reduced total revenue by 6.7 percent.

Tax Policy Issues

- Formula is not found in Florida Statutes and was never approved by the Legislature
- The formula does not apply to other manufacturers' products

Possible Legislative Response

- Legislature may want to address issue
- Settlement is based on existing legal framework and specific conditions
- One option is to change the statutory definition of “wholesale sales price” to:
the price paid by the distributor that sells the products to a Florida retailer.

New Challenge to OTP Taxation

- In March 2010, DBPR filed an administrative complaint against a distributor of imported tobacco products for failure to collect and remit taxes.
- The distributor requested an administrative hearing, which was decided the issue in DBPR's favor, at which time the distributor appealed to the 2nd DCA.

Interpretation of “Wholesale Sales Price”

- DBPR’s interpretation of the statutory definition of “wholesale sales price:”
 - **the invoice price the distributor paid for the tobacco products, including the cost of any taxes or transportation**
- The distributor’s interpretation:
 - **the price the initial importer paid for the tobacco products**
- If the distributor’s interpretation prevails, there could be significant reductions in OTP revenue.



The Florida Senate

Interim Report 2012-107

August 2011

Budget Subcommittee on Finance and Tax

APPLICATION OF FLORIDA'S SALES TAX TO SALES BY OUT-OF-STATE RETAILERS

Issue Description

Under Florida law, retailers are required to collect sales tax on the sale of taxable items. However, federal constitutional constraints prohibit the applicability of this requirement to out-of-state retailers that do not have “nexus,” or presence, in Florida. Purchases of taxable items from out-of-state retailers continue to grow each year. In recent years, a number of states have explored, and some have enacted, laws to require out-of-state retailers to collect and remit sales tax or to comply with other reporting requirements. This report describes these efforts and their results.

Background

Florida state sales and use tax is imposed at a rate of 6 percent on the retail sale price of tangible personal property.¹ The tax is imposed on all taxable sales, purchases, and uses, whether made through face-to-face store sales or out-of-state retailers. Generally, the sales tax is collected at the time of purchase. When the sales tax is not collected at the time of purchase, states impose “use” taxes. Use taxes require residents who purchase taxable goods in another state to pay the equivalent of a sales tax in their home state. The use tax preserves a key principle of the sales tax - that the tax is due in the state where the product is used or consumed, not necessarily where it is purchased.

Sales taxes due on a Floridian’s purchases from out-of-state retailers are difficult to enforce because the state must rely on the retailers to collect and remit the tax due or on purchasers to remit the tax themselves. Unless the seller has a sufficient physical presence in the state, Florida cannot require the seller to collect and remit the tax. Purchasers often do not comply with remitting use tax because many are unaware of the requirement or ignore it because there is little chance the Department of Revenue will be able to detect the tax avoidance. The department’s ability to enforce the use tax is limited because of the lack of information available on out-of-state retailer purchases. The most practical way for states to collect the sales tax due on out-of-state retailer purchases is to require businesses to collect these taxes at the time of sale and remit them to the department.

In 1967, the Supreme Court ruled in *National Bellas Hess, Inc. v. Illinois*, 386 U.S 753 (1967), that states lack the authority to require out-of-state retailers to collect use taxes unless a retailer has nexus in a state. Under the ruling, nexus was defined as having physical presence, by having an office or store, owning property or employing workers in a state. This decision was based on the Commerce Clause of the U.S Constitution, which gives Congress jurisdiction over issues involving interstate commerce. The court determined that imposing tax collection on out-of-state retailers would impose an “undue burden” on interstate commerce.

The Supreme Court’s decision in *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992) reaffirmed the *Bellas Hess* decision stating that an action by a state that places undue burden on an out-of-state retailer is a violation of the interstate commerce clause. In the *Quill* decision, the Court cited the complexity and potential cost of complying with the state and local sales taxes of the numerous taxing jurisdictions currently in the United States. The U.S. Supreme Court noted in both cases that Congress had the sole authority to take action on these issues.

¹ Most Florida counties also impose a discretionary sales tax rate ranging from 0.5 percent to 1.5 percent.

Trends in E-commerce

At the time of the *Quill* case, most out-of-state retailer sales were made through mail-order catalogs. Since that time, the utilization of internet-based commerce (i.e., “e-commerce”) has increased and continues to grow rapidly as more users gain access to the internet. According to data from the U.S. Census Bureau Annual Retail Trade Survey (2009), recent trends in e-commerce show that:

- From 2004 to 2009, retailers’ e-commerce sales grew 96 percent from \$74.1 billion in 2004 to \$145.2 billion in 2009.²
- From 2002 to 2009, retailers’ e-commerce sales increased by an average of 18.1 percent annually, compared with 2.2 percent for total retail sales.³
- In 2009, e-commerce sales were 4 percent of total retail sales - an increase from 3.6 percent in 2008.⁴

State and Local Government Revenue Losses

The inability of states to collect tax on sales by out-of-state retailers that do not have nexus in Florida is estimated to have an effect on both state and local revenues. Evidence suggests that several hundred million dollars in Florida state and local sales and use tax collections are not being remitted annually; however, the exact magnitude of the loss is uncertain.

The uncertainty stems from a lack of observable data on some key components of the tax loss calculation. The quality and availability of data regarding the volume of out-of-state commerce has improved markedly since 1999. Yet only limited information is available on the portion of such activity that is taxable for a particular state and the extent of compliance with current law. Given these crucial data gaps, estimates of revenue losses rely heavily on “reasonable assumptions”. Consequently, results can vary widely depending on who conducts the analysis and when it is done.

Table 1 provides estimates of Florida-specific revenue losses from e-commerce, based on a few widely cited studies.

Table 1⁵
Selected Estimates of State and Local Government Revenue Losses in Florida from E-commerce
(Millions of \$)

	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>	<u>2012</u>
Bruce & Fox (2009)		511	545	490	608	715	804
Direct Marketing Association (2008)	299						
Eisenach & Litan (2010)			228				281

Both the estimates from the Direct Marketing Association and the more recent estimates from Eisenach & Litan suggest that revenue losses are much lower than the frequently cited Bruce & Fox estimates. The wide range among these estimates demonstrates the effects of having to rely on different assumptions about taxpayer compliance rates and the growth in the volume of overall activity, absent hard data. For example, the assumption regarding the portion of e-commerce that is currently taxable differs among studies. Many retailers, such as Wal-Mart, Best Buy, and Barnes and Noble, sell products online but have a physical presence in Florida that requires them to collect sales tax on purchases

² <http://www.census.gov/econ/estats/2009/historical/2009ht5.pdf>

³ <http://www.census.gov/econ/estats/2009/2009reportfinal.pdf>

⁴ *Ibid*, page 1.

⁵ Bruce, Donald, William Fox, and LeAnn Luna, *State and Local Government Sales Tax Revenue Losses from Electronic Commerce*, University of Tennessee, April 8, 2009; Johnson, Peter A., *Setting the Record Straight: The Modest Effect of E-Commerce on State and Local Sales Tax Collections*, The Direct Marketing Association, January 31, 2008; Eisenach, Jeffrey A., and Robert E. Litan, *Uncollected Sales Taxes on Electronic Commerce: A Reality Check*, Empiris LLC, February 2010.

by Floridians. The actual revenue loss results only from those out-of-state retailers that do not have a physical presence in Florida but sell to Florida residents. Different underlying assumptions regarding tax compliance and growth rates account for the differences in revenue loss estimates. Therefore, it is difficult to accurately predict Florida's revenue loss from sales by out-of-state retailers.

Federal Involvement in the Issue

Since the power to regulate interstate commerce resides at the federal level, as established by *Quill*, federal legislation appears to be the only comprehensive solution for states to have the authority to require out-of-state retailers to collect sales tax.

Since *Quill*, Congress has attempted to pass legislation mandating collection of sales tax from out-of-state retailers, including the Streamlined Sales and Use Tax Act, S.1736, H.R 3184, 108th Congress (2003); Sales Tax Fairness and Simplification Act, S. 2152, 109th Congress (2005); Streamlined Sales Tax Simplification Act, S. 2153, 109th Congress (2005); Sales Tax Fairness and Simplification Act, S. 34, H.R 3396, 100th Congress (2007) and the Main Street Fairness Act, H.R. 5660, 111th Congress (2010). The 112th Congress (2011) recently introduced S.1452 and H.R 2701, a version of the Main Street Fairness Act. Despite numerous attempts to pass legislation, no proposal has been voted on by the House or Senate. At this point, it appears there is limited potential for Congressional action on this issue.

Findings and/or Conclusions

Streamlined Sales and Use Tax Agreement⁶

One of the most noted efforts amongst the states has been the establishment of the Streamlined Sales and Use Tax Agreement (SSUTA). The agreement, adopted in 2002, is a cooperative effort among forty-four states to simplify sales and use tax collection and administration within participating states. The goal is to encourage out-of-state retailers selling over the Internet and by mail order to *voluntarily* collect sales tax on sales to customers located within the participating states. The purpose of the agreement is to reduce the burden of tax compliance by simplifying and modernizing sales and use tax administration. The agreement focuses on sales tax simplification resulting from: uniform tax definitions; uniform and simpler exemption administration; rate simplification; state-level administration of all sales taxes, uniform sourcing polices, and state funding of the administrative cost.

As of July 2011, twenty-four states and the District of Columbia have passed conforming legislation.⁷ Fourteen hundred retailers collect sales tax in the streamlined states under a voluntary system. Out-of-state retailers that do not have a physical presence in a state are not required to collect and remit sales and use taxes, but have the option to voluntarily participate. Florida would likely realize new revenues from sellers voluntarily participating in the system if Florida changed the sales and use tax laws to conform to the requirements of the Streamlined Sales & Use Tax Agreement (SSUTA). However, existing revenues would decline due to the required law changes and it is unclear whether the change in government revenues would be positive, negative or on balance. Although the SSUTA has made progress, its efforts continue to move at a slow speed.

Review of Efforts in Other States

A number of states have taken action to address the out-of-state retailer sales tax issues directly. Ten states are identified as having recently adopted a statute that addresses collection of taxes by Internet retailers such as Amazon.com⁸. While the media has labeled these statutes as "Amazon" laws, none of these statutes specifically reference Amazon.com and the laws take different approaches.

⁶ <http://www.streamlinedsalestax.org/>

⁷ The states that have passed legislation to conform to the SSUTA are Arkansas, Georgia, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.

⁸ The ten states are: New York (2008), North Carolina (2009), Rhode Island (2009), Colorado (2010), Oklahoma (2010),

Affiliate Nexus – Requiring the Internet Retailer to Collect Tax

New York was the first state to adopt an Internet Retailer Law, and its version – which has been adopted by the majority of states to pass legislation – requires the retailers to collect tax on its sales in New York. The New York law appears to rely on *Scripto, Inc. v. Carson*, 362 U.S. 207 (1960) to satisfy the physical presence requirement of the Commerce Clause. Scripto was a Georgia pen manufacturer that made sales to customers based in Florida. The company had contracts with individuals in Florida to solicit sales on its behalf. In return, these in-state individuals received commissions. The U.S. Supreme Court found that the existence of representatives in Florida, regardless of whether they were employees or independent contractors, established enough of a presence, that Florida could require Scripto to collect Florida taxes without offending the Commerce Clause. Although *Scripto* was decided prior to *Quill* and *National Bellas Hess*, the Court, in both decisions, cited *Scripto* approvingly.

The affiliate nexus model applies the Scripto rationale to the 21st century, e-commerce environment. Internet retailers establish commission arrangements (commonly known as “affiliate agreements”) with other websites for referring sales. When one of these “affiliates” is owned by a New York resident and the total sales by the Internet retailer that result from all referrals exceed \$10,000, the New York statute requires the Internet retailer to collect New York tax. The law essentially expands the meaning of “nexus” to include an affiliate relationship.

Other states that have passed affiliate nexus legislation similar to New York include: Arkansas, California, Connecticut, Illinois, North Carolina and Rhode Island. Arkansas, California, North Carolina, and Illinois all set minimum total sales thresholds of \$10,000. Connecticut’s law sets a threshold of \$2,000 and Rhode Island sets a threshold of \$5,000. Total sales by the Internet retailer as a result of referrals to the retailer must exceed these thresholds before tax is required to be collected by the Internet retailer.

Many additional states have proposed legislation to address the out-of-state retailer sales tax collection issue. Arizona, Hawaii, Massachusetts, Minnesota, Mississippi, and Texas have proposed bills with language similar to the New York law where out-of-state retailers must collect sales tax when sales result from referrals to the retailer by in-state “affiliates.”

North Carolina and Rhode Island have introduced bills to repeal the existing affiliate legislation.⁹

Response to Affiliate Nexus laws

As a result of the adoption of the affiliate nexus laws, online retailers have terminated their affiliate agreements in states that have passed affiliate nexus legislation.¹⁰ Without in-state affiliates, states have been unable to collect additional sales tax on sales by the out-of-state retailers. Online retailers have also stated that they will continue to terminate affiliates in states that pass nexus legislation.

In 2008, Amazon.com¹¹ filed suit against New York arguing that the New York law was unconstitutional on the grounds that the New York statute violated the Commerce Clause, the Due Process Clause, and the Equal Protection Clause of the U.S. Constitution, both facially and as the statute is applied to Amazon.¹² The trial court determined that none of the challenges had merit and fully dismissed Amazon’s complaint.¹³

Arkansas (2011), California (2011), Connecticut (2011), Illinois (2011), and South Dakota (2011).

⁹ North Carolina HB 867 (2011), Rhode Island HB 5115 (2011).

¹⁰ Online retailers that have terminated relationships include Amazon.com, Overstock.com, Endless.com, Zappos.com, Diapers.com, Soap.com and CSNStores.com.

¹¹ Overstock.com also joined in the suit against New York.

¹² The Equal Protection Claim was premised on an argument that the law “intentionally targets Amazon.”

¹³ [*Amazon.com, LLC, et al., v. New York State Department of Taxation and Finance, et al.*](#), 2009 NY Slip Op 29007 (Supreme Court, New York County January 12, 2009).

On appeal, Amazon maintained that the statute violates the Commerce, Due Process, and Equal Protection Clauses.¹⁴ In November 2010, the appellate court ruled that the Equal Protection Clause had not been violated in any respect. Furthermore, neither the Commerce Clause nor the Due Process Clause were facially violated by the statute, but that the lower court would need to develop the record further in order to determine whether the New York Statute violates the Commerce Clause or Due Process Clause as the statute applies to Amazon or Overstock.¹⁵ The appellate court remanded the case back to the trial court for further proceedings but the case is still pending.

In July 2011, the Performance Marketing Association filed a lawsuit against the Illinois Department of Revenue challenging the constitutionality of the Illinois affiliate nexus law.¹⁶ Their reasoning is similar to the suit filed in New York, that the Illinois law violates the Commerce Clause of the United States Constitution and the Internet Tax Freedom Act. This case is also pending.

Other Approaches - Require Retailer to Notify Customer that Tax is Due

While the Affiliate Nexus Model uses contractual arrangements between remote sellers and in-state representatives as a basis to require the remote seller to collect tax, other states have passed measures that do not require tax collection by the remote seller. These other approaches are reporting mechanisms that will potentially help the state collect use taxes from individual purchasers.

In 2009, Oklahoma passed a statute which requires every out-of-state retailer that sells property into the state, but is not otherwise required to collect the tax, to “provide notification on its retail Internet website or retail catalog and invoices provided to its customers that use tax is imposed and must be paid by the purchaser”¹⁷ The law also states that no retailer shall advertise on its retail Internet website or retail catalog that no tax is due on the purchases. Similar legislation was passed in Vermont¹⁸ and South Dakota¹⁹ in 2011.

In 2010, Colorado passed a similar but more extensive notification requirement.²⁰ The statute requires every retailer that does not collect Colorado sales tax to provide an annual notice to customers with more than \$500 of annual purchases. The notice must state that sales or use tax is due on purchases made from the retailer and that the state of Colorado requires the purchaser to file a sales or use tax return to report and pay the tax. The retailer must also file an annual summary purchase statement with the total amount of each customer’s purchases to the Colorado Department of Revenue. Failure to provide these notices results in a penalty to the retailer. Legislation was introduced in spring of 2011 to repeal the existing Colorado law.²¹

The Direct Marketing Association filed suit in Colorado challenging the constitutionality of the Colorado notice and reporting law which requires out-of-state retailers to notify purchasers of their sales and use tax liability and requires them to provide the Department of Revenue with a statement of each customer’s purchases. In January 2011, the U.S. District Court for the District of Colorado granted a preliminary injunction, suspending enforcement of the law while the legal challenge proceeds.

¹⁴ At the lower court, Amazon had argued that the New York statute violated the Commerce Clause both facially and “as applied”; however, on appeal, Amazon chose not to pursue the facial Commerce Clause challenge, but rather merely argued that “as applied,” the statute violated the Commerce Clause. Overstock.com, however, who had joined in the suit, still maintained that there was a facial violation of the Commerce Clause. Thus, on appeal both facial and “as applied” challenges were maintained for all three constitutional clauses.

¹⁵ *Amazon.com, LLC. V. New York State Dept. of Taxation and Fin.*, 2010 NY Slip Op 07823 (New York Appellate Division, First Department, November 4, 2010).

¹⁶ *Performance Marketing Association, Inc., V. Brian A. Hammer, Director, Illinois Department of Revenue.*, 2011 ch 26333. (Cook County Circuit Court, Illinois County Department, July 27, 2011)

¹⁷ 2009 Oklahoma HB 2359, Sec. 2.

¹⁸ HB 436 (2011), which can be found at: <http://www.leg.state.vt.us/docs/2012/Acts/ACT045.pdf>

¹⁹ SB 146 (2011), which can be found at: <http://legis.state.sd.us/sessions/2011/Bills/SB146ENR.pdf>.

²⁰ HB 1193 (2010), which can be found at:

http://www.leg.state.co.us/CLICS/CLICS2010A/csl.nsf/fsbillcont3/B30F574193882B4B872576A80026BE0C?Open&file=1193_enr.pdf

²¹ Colorado HB 1318 (2011)

Alternative Action taken by States – Exempt Certain Sellers from Collecting Sales Tax

South Carolina has taken a different approach to collecting sales tax by exempting certain sellers from collecting sales tax. The law, passed in May 2011, specifically targeted Amazon.com, by exempting them from collecting sales tax from South Carolina online purchases until 2016 in exchange a promise to make a \$125 million dollar investment and create 2,000 new jobs.²² The statute granted the ability to create a distribution center within the state but still not have to collect sales tax on sales to residents within the state.²³ However, internet retailers must notify a purchaser in a confirmation email that the purchaser may owe South Carolina use tax on the total sales price.

South Carolina is not the only state where large out-of-state retailers have lobbied for an exemption from collecting sales tax. In both Texas and Tennessee, Amazon.com said it would build distribution centers and create jobs in exchange for an exemption from collecting sales tax on sales in those states. In Texas, Amazon.com recently announced that it would close its distribution center in Irving after the Texas Comptroller sent Amazon a \$269 million tax bill, arguing that the distribution center establishes a legal footprint that requires it to collect sales taxes from Texas customers. Amazon.com argued that the facility is run by a separate subsidiary and therefore does not create nexus for the parent company. In spring 2011, the Texas legislature passed HB 2403 which stated that having a distribution or warehouse center operating in the state creates nexus, as does having a “substantial ownership interest” of at least 50 percent in a subsidiary operating in the state. The bill also included “affiliate nexus” legislation, but the entire bill was vetoed by the governor.

In Tennessee, the former governor entered into an agreement with Amazon.com to build two distribution centers in exchange for free land, job training and property-tax breaks. More recently, they have also requested an exemption from collecting sales tax and have said they will halt construction on their distribution centers in the state if legislation is passed requiring them to collect sales tax. The present governor has stated his support for the current agreement and believes the state should reach an agreement with Amazon.com on the sales tax issue. There have been additional discussions by legislators about legislation that would require out-of-state retailers to collect sales tax since the distribution center would create nexus. Legislation has yet to pass in Tennessee but Amazon.com continues its plans for construction of the distribution centers.

Summary of States’ Efforts

The following table summarizes recent efforts taken by other states to address the out-of-state retailer sales tax issue. As mentioned previously, the majority of legislative efforts have focused on the idea of affiliate nexus, where the in-state affiliate relationship with online retailers establishes nexus such that the out-of-state retailers are required to collect the sales tax. Additionally, many states have required retailers who do not collect sales tax to notify customers of their use tax obligation. In total, twenty two states have proposed legislation regarding sales tax collection on out-of-state retailer sales. Twelve of those states have passed legislation.

²²S 36 (2011), which can be found at http://www.scstatehouse.gov/sess119_2011-2012/bills/36.htm.

²³ In addition to the South Carolina and Tennessee distribution centers under construction, Amazon.com currently has distribution centers located in Arizona, Delaware, Indiana, Kansas, Kentucky, Nevada, Pennsylvania, Texas, Virginia, and Washington. Amazon.com collects sales taxes in Kansas, Kentucky, New York, North Dakota, and Washington. In Arizona, Indiana, Nevada and Pennsylvania, Amazon.com’s distribution centers are operated by Amazon.com subsidiaries that those state governments do not consider to constitute nexus for Amazon itself. Delaware does not have a state sales tax. See locations located at: <http://www.amazon.com/Locations-Careers/b?ie=UTF8&node=239366011>

Table 2
Review of Efforts to Address Out-of-state Retailer Sales Tax Issue in Other States

<i>State</i>	<i>Status</i>	<i>Legislation</i>	<i>Approach</i>	<i>Response by Out-of-State Retailers</i>
Arizona	Proposed	HB 2551 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers ²⁴ have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
Arkansas	Passed	SB 738 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have terminated their affiliates in Arkansas.
California	Passed	AB28X1 (2011) (Budget Amendment)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Amazon terminated their California based affiliates and filed a petition for referendum placing a proposed repeal of the law on the 2012 ballot. Other online retailers have dropped their California based affiliates.
Colorado	Passed	HB 1193 (2010)	Requires retailers who do not collect sales tax to notify customers of use tax obligation annually.	Online retailers have terminated affiliates in Colorado and Direct Marketing Association filed lawsuit challenging the law.
Connecticut	Passed	HB 6624 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have terminated their affiliates in Connecticut.
Hawaii	Proposed	SB 1355 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Amazon dropped its affiliates in 2009 when similar legislation passed. Amazon reinstated its affiliates after the bill was vetoed by the Governor.
Illinois	Passed	HB 3659 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers terminated affiliates and Performance Marketing Association filed lawsuit challenging the law.
Louisiana	Proposed	HB 641 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
Massachusetts	Proposed	HB 1731 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
Minnesota	Proposed	Governor's budget	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
Mississippi	Proposed	HB 363 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
New Mexico	Proposed	SB 95 (2011)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.
New York	Passed	Section 1101(b)(8)(vi), Laws of New York	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Amazon.com and Overstock.com filed a law suit against New York in 2008. Amazon.com maintains its affiliates in New York and collects sales tax while the case is pending.
North Carolina	Passed	S. 27A.3, Session Law 2009-451	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers terminated their affiliates in North Carolina.

²⁴ Online retailers that have terminated relationships within states include Amazon.com, Overstock.com, Endless.com, Zappos.com, Diapers.com, Soap.com and CSNStores.com.

Oklahoma	Passed	HB 2359 (2009)	Requires retailers who do not collect sales tax to notify customers of use tax obligation at time of purchase.	Online retailers post a notice on their invoice and/or website notifying customers of their use tax obligation.
Rhode Island	Passed	S. 8, Art. 16, HB 5938 (2009)	Affiliate nexus – requiring the internet retailer to collect the sales tax.	Online retailers terminated their affiliates in Rhode Island.
South Carolina	Passed	SB 36 (2011)	Exempts certain sellers from collecting sales tax.	Amazon.com announced it will open at least one distribution center in South Carolina, invest at least \$125 million and create at least 2,000 new jobs by December 31, 2013.
South Dakota	Passed	SB 146 (2011)	Requires retailers who do not collect sales tax to notify customers of use tax obligation at time of purchase.	Online retailers post a notice on their invoice and/or website notifying customers of their use tax obligation.
Tennessee	Proposed	proposed amendment	Distribution center establishes nexus or affiliate nexus – requiring the internet retailer to collect the tax.	Amazon has said it will terminate plans to build two distribution centers in Tennessee if legislation passed requiring them to collect sales tax.
Texas	Proposed/ Passed (HR 2403 passed but was vetoed)	HB 2403 (2011) ²⁵ , HB 1317 (2011) , and HB 2719 (2011)	Distribution facility establishes nexus requirement (HB 2403); affiliate nexus (HB 1317); and maintain status quo (HB 2719).	Amazon has said that it will terminate operations at its Texas distribution facility if legislation is passed requiring them to collect sales tax.
Vermont ²⁶	Passed	HB 436 (2011)	Requires retailers who do not collect sales tax to notify customers of use tax obligation at time of purchase.	Online retailers post a notice on their invoice and/or website notifying customers of their use tax obligation.
Virginia	Proposed	SB 660 (2010)	Affiliate nexus – requiring the internet retailer to collect the tax.	Online retailers have stated that they will terminate affiliates in states that pass affiliate nexus legislation.

Multistate Tax Commission

The Multistate Tax Commission (MTC)²⁷, an intergovernmental organization created in 1967 to promote uniformity in state tax laws, has proposed a draft “model” statute. The model statute provides guidance for states attempting to draft out-of-state retailer sales tax legislation and falls along the lines of Colorado’s reporting requirements. Out-of-state retailers who do not collect and remit sales or use tax for a state are required to 1) notify purchasers at the time of the transaction that tax is not being collected and may be due directly to the department, 2) provide an annual report to customers showing their purchases, and 3) provide an annual report to the tax department in that state showing the total dollar amount of each customer’s purchases.²⁸ The statute also provides an exemption for small sellers and those with minimal in-state sales, but establishes penalties for noncompliance.

²⁵ The Texas Legislature passed HB 2403 but it was vetoed by the Governor.

²⁶ HB 436 also has an “affiliate nexus” provision which requires retailers to collect sales tax if the retailer makes sales through in-state affiliates. This provision takes effect on the date on which 15 or more other states have adopted requirements that are the same or substantially similar.

²⁷ <http://www.mtc.gov>

²⁸ See Report of the Hearing Officer, *Model Sales & Use Tax Notice and Reporting Statute*, May 31, 2011, found here:

The model statute has received criticism from some claiming that the reporting requirements place undue burden on the out-of-state retailers. Critics also suggest that the cost of compliance by both the states and the out-of-state retailers would far outweigh any benefits to the states from receiving the reported information.

Retail Industry Perspective

In general, out-of-state retailers do not argue against the collection of sales and use taxes. The problem, which Direct Marketing Association and others argue²⁹, is that states are developing their own individual state-specific requirements and imposing them on out-of-state retailers. They suggest that these approaches result in no new jobs, lost revenues, lost businesses and lawsuits. Out-of-state retailers stand by the *Quill* argument and believe this issue is most appropriately addressed at the federal level. Essentially, Congress should have the ultimate authority to allow for the taxability of sales by out-of-state retailers.

Brick-and-mortar stores, including those that make sales through the internet from out of state, argue that they are at a competitive disadvantage since out-of-state retailers do not have to collect sales tax. The Florida Retail Federation, representing many brick-and-mortar stores, argues that out-of-state retailers should not gain a price advantage simply because they do not collect sales tax.³⁰ They support federal legislation to solve the sales tax collection by out-of-state retailers' issue.

Options and/or Recommendations

States have pursued a variety of approaches to address the out-of-state retailer sales tax issue. The different approaches have been summarized in this report. It is still unclear as to whether any of the approaches solve the out-of-state retailer issue. Generally, these approaches have been unsuccessful in generating additional tax collections. It is also unclear whether the states have the authority to impose these laws under the U.S Constitution. All of the cases against states are currently pending and Congress has yet to pass a resolution.

http://www.mtc.gov/uploadedFiles/Multistate_Tax_Commission/Uniformity/Uniformity_Committee_and_Subcommittees/June_6_2011_Executive_Committee_Meeting/Hearing%20Officer%20Report%20with%20Exhibits.pdf

²⁹ See letters from *Direct Marketing Association*, dated August 10, 2011 and *Performance Marketing Association* dated August 18, 2011, both on file with Senate Budget Subcommittee on Finance and Tax

³⁰ See letter from *Florida Retail Federation*, dated August 19, 2011 on file with the Senate Budget Subcommittee on Finance and Tax.

Application of Florida's Sales Tax to Sales by Out-of-State Retailers

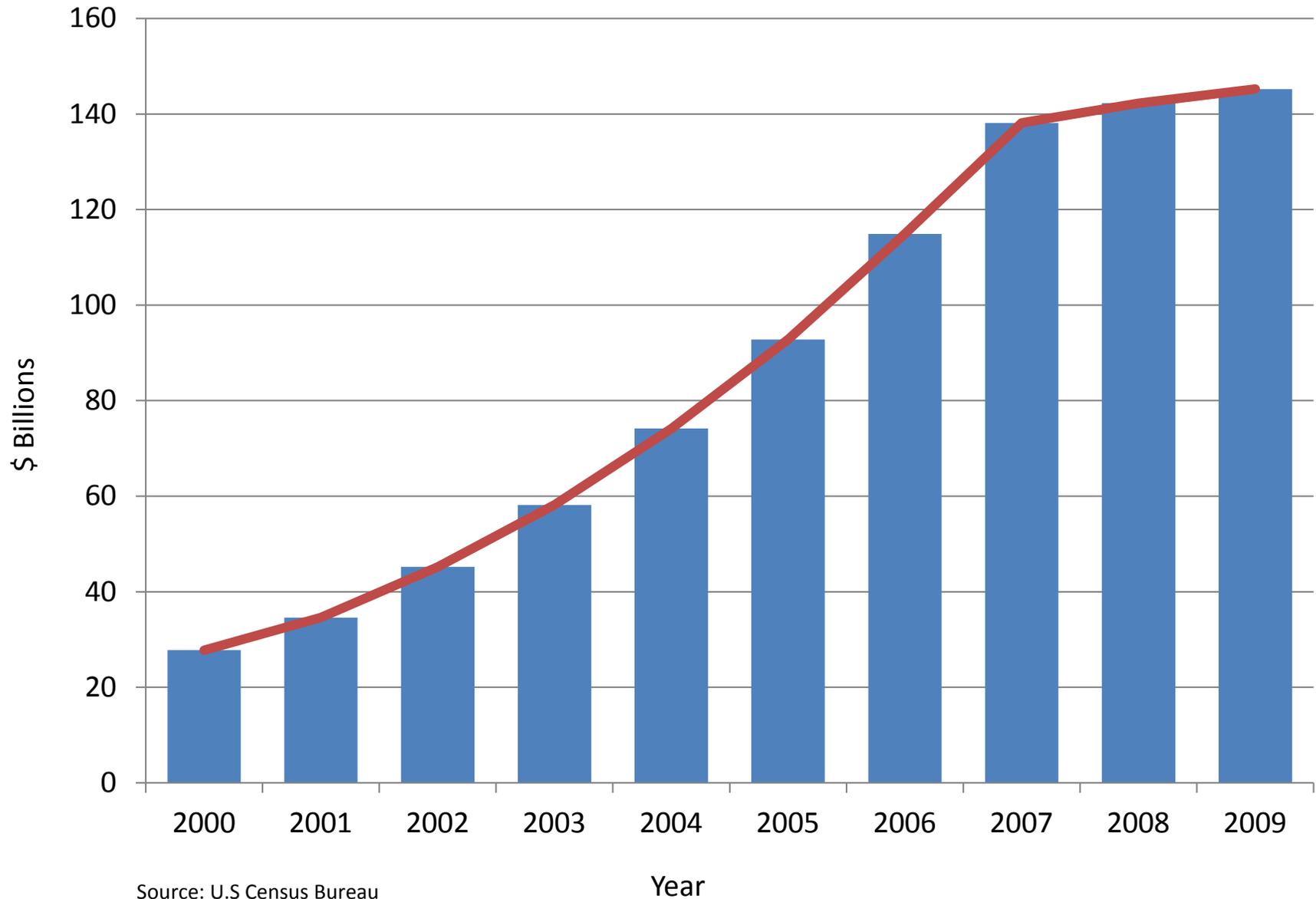
Interim Report 2012-107

The Florida Senate
Budget Subcommittee on Finance and Tax
December 8, 2011

Background

- Florida sales and use tax: 6%
- Sales taxes on purchases from out-of-state retailers are difficult to enforce
- States lack the authority to require out-of-state retailers to collect sales taxes unless a retailer has nexus in a state:
 - *National Bellas Hess, Inc. v. Illinois*, 386 U.S 753 (1967)
 - *Quill Corp. v. North Dakota*, 112 S.Ct. 1904 (1992)

U.S. E-commerce Trend



Source: U.S Census Bureau

Selected Estimates of State and Local Government Revenue Losses in Florida from E-Commerce

(Millions of \$)

	2006	2007	2008	2009	2010	2011	2012
Bruce & Fox (2009)		511	545	490	608	715	804
Direct Marketing Association (2009)	299						
Eisenach & Litan (2010)			228				281
Arduin, Laffer & Moore (2011)					374		450

Recent Federal Legislation

112th Congress (2011-2012)

- **Main Street Fairness Act (S. 1452 and H.R. 2701)**
- **Marketplace Equity Act (H.R. 3179)**
- **Marketplace Fairness Act (S.1832)**

Affiliate Nexus- Requiring the Internet Retailer to Collect Tax

- New York, Arkansas, California, Connecticut, Illinois, North Carolina and Rhode Island
- Expands the meaning of “nexus” to include an affiliate relationship
- Internet retailers establish commission arrangements (“affiliate agreements”) with other websites for referring sales
- Law requires collection of sales tax when an “affiliate agreement” is owned by an in-state resident

Other Approaches – Require Retailer to Notify Customer that Tax is Due

- Oklahoma, Vermont and South Dakota:
 - Internet retailer must provide:
 - notice that tax is due on retail website
- Colorado
 - Internet retailer must provide:
 - Annual notice to customer; and
 - Annual summary statement to Colorado Department of Revenue

Alternative Action –

Exempt Certain Sellers from Collecting Sales Tax

- South Carolina:

- Legislation passed allowing online retailers to be exempt from collecting sales tax until 2016 if they create 2,000 new jobs and make a \$125m investment.

- Tennessee:

- At least one online retailer has negotiated an agreement with the Governor to create jobs and build warehouses in exchange for a sales tax exemption.

Subsidiary Relationship

- Texas:

- Online retailers must collect sales taxes if they own at least 50% of a subsidiary that supports retail operations.

Summary of States' Efforts

- 13 states have passed legislation focused on out-of-state retailers
- At least 12 additional states have proposed language focused on out-of-state retailers
- See table 2 of Interim Report titled *“Review of Efforts to Address Out-of-State Retailer Sales Tax Issue in Other States”*



The Power of Direct
Relevance. Responsibility. Results.

December 7, 2011

Senator Ellyn Bogdanoff
Chair, Senate Budget Subcommittee on Finance and Tax
404 South Monroe St.
Tallahassee, FL 32399-1100

Dear Senator Bogdanoff:

On behalf of the Direct Marketing Association (DMA)* thank you for the opportunity to provide this testimony to the committee as it considers the issue of sales and use tax collection on remote sales.

I. Introduction

A number of states have pursued legislation in the last several years that purports to “level the playing field” with regards to sales tax collection on remote sales. There has been little consistency in the approaches taken. However, there has been consistency in the results – no new revenue, lost jobs, lost businesses and lawsuits. The concept might appear to be easy enough, just have anyone who sells into the state either collect sales tax or inform their customers of the obligation to pay use tax, but, to quote Baltimore journalist and writer H.L. Mencken, “[f]or every complex problem there is an answer that is clear, simple, and wrong.” The so-called “simple” solutions that have been pursued around the country -- tweaking the definition of nexus or requiring notice that tax is due -- to address remote sales tax collections tread into areas of settled and recently reaffirmed law with regards to what burdens states can place on businesses with no physical nexus in a state.

II. Federalism – The Framers of the Constitution Saw This Issue Coming

For the purposes of sales and use tax jurisdiction, borders are extremely important. Defining the appropriate reach of the sovereign authority of state and local governments is central to the American system of government. The Constitutional Convention of 1787 was initially called to address the problem of individual state legislatures imposing taxes and duties on trade with other states, a practice which was pushing the young country into a depression. The solution devised by the Constitution’s Framers was a federal system of dual national and state sovereignty, in which the Commerce Clause served to prevent state and local tax laws from hindering and suppressing the growth of interstate commerce. Needless to say, this plan has worked remarkably well for more than two hundred years.

In the area of state taxes, the federal system works especially well – so long as states respect the territorial limits of their sovereignty. Each state is free to craft how its taxes are structured and

* DMA is the leading global trade association of businesses and nonprofit organizations using and supporting multichannel direct marketing. Founded in 1917, DMA today has over 2,500 member companies.

administered within its own borders. The federal system permits and even invites great variations in tax policy among the states, which is seen in abundance in state sales and use taxes.

There are literally thousands of different sales and use tax jurisdictions in the United States. Of the 30,000 state and local jurisdictions with authority to impose sales and use taxes, more than 7,500 have adopted this kind of tax. These thousands of jurisdictions generate an enormous variety of tax rates, taxable and exempt products, excluded transactions, filing requirements, audit arrangements and appeal procedures. The recognition of jurisdictional boundaries allows the American federal system to accommodate such numerous and varied exercises of state sovereignty.

Federalism does not work, however, when a state or locality attempts to export its tax system across state borders. At that point, the state is visiting its experiment on businesses that have no connection – or nexus – with the taxing state. Such an arrangement is not only chaotic as a matter of both tax administration and compliance (fifty state governments and thousands of localities imposing their myriad different tax systems on businesses in each of the forty-nine other states), but the out-of-state companies have no way to influence the very state tax burdens that are imposed on them. In the most real sense, this is “taxation without representation.”

The burdens of exporting individual state tax systems can be seen in figures from a 2010 report. In just the ten month period from January through October 2010, state and local departments of revenue around the country implemented more than 5,000 sales tax rate and rule changes. In November 2010 alone, taxing authorities in 26 states made 257 changes to their sales tax rates and rules. Foisting the combined sales tax collection systems of all the 7,500 taxing jurisdictions on every remote seller would cripple interstate commerce, exactly what the Framers affirmatively sought to avoid.

III. The Affiliate Nexus Experiment

Several years ago New York adopted a law that redefined nexus for the purposes of requiring collection of sales tax such that if a seller has an agreement with an in-state resident where referrals by the resident (i.e. an affiliate) to the seller result in compensation from the seller to the resident then the seller must collect sales tax on all transactions in the state, not just those from the referrals. The law was targeted at affiliate programs where sellers advertise, typically at the request of the affiliate, on websites or blogs. These affiliates do not create a market in the state for the seller and are nothing more than links from the affiliate's webpage to the seller's. As a result of the adoption of this law, virtually all affiliates in the state who advertised for sellers with no nexus saw their relationships terminated. Only one remote seller began collecting sales tax in New York, but that was solely for the purpose of having standing to sue the state over the law, which it did. The case is still proceeding through the legal process.

A few other states have pursued the affiliate nexus path and have seen even poorer results as affiliate relationships in those states were terminated. The terminated affiliates, in some cases, relocated to nearby states taking with them jobs and income taxes and no new tax revenue materialized for the states. Affiliate nexus laws put between 25-35% of affiliates' income at jeopardy, so it is easy to see why relocation is a viable alternative for them.

IV. The Use Tax Notice and Reporting Experiment

Equally problematic for states are use tax notice and reporting laws. By way of background, in 1992, the United States Supreme Court held in *Quill Corp. v. North Dakota* that a state cannot impose

sales/use tax collection obligations on out-of-state vendors unless those retailers have a “physical presence” in the taxing state. The decision in *Quill* applied the holding of an even earlier decision in a 1967 case, *National Bellas Hess v. Dep’t of Revenue*. So, the notion that states cannot force sales tax collection on remote sellers has been around for more than 40 years.

In January 2011, a federal district court judge in Colorado issued a preliminary injunction enjoining the Colorado Department of Revenue from enforcement of a law enacted last year that required remote sellers to notify customers of their obligation to pay use tax, required annual summaries of customers’ purchases to be sent by the seller to the customer each January and required the seller to report to the department how much each Colorado customer purchased from them in the previous calendar year.

DMA brought suit against Colorado in June 2010 and subsequently filed a motion for preliminary injunction in August. Federal Judge Robert Blackburn determined that the Colorado purchase notice “imposed a notice and reporting burden on [these] out-of-state retailers and that burden is not imposed on in-state retailers.” The concept of this disparate treatment between in-state and out-of-state companies is the basis of legislation of this type and puts it on questionable legal ground. Moreover, Judge Blackburn concluded that “these requirements likely impose on out-of-state retailers use tax-related responsibilities that trigger the safe-harbor provisions of [*Quill Corp. v. North Dakota*].”

Judge Blackburn found that the obligations being placed on remote sellers under the Colorado law, including the notice that use taxes are owed, are tantamount to enhancing the state’s collection of use taxes and are therefore impermissible. While use taxes are indeed owed by residents, that tax relationship is between the taxpayer and the state, and remote sellers should not be conscripted into the process.

V. Conclusion – Ending the Taxing Arms Race

DMA does not argue against use taxes nor are we suggesting that customers do not meet their obligations under state law to remit that tax, much as they do with property taxes or licensing fees or any other monies owed by citizens to the state. The problems come from states’ attempts to export their individual state-specific requirements to companies in the 49 other states. This taxing arms race will ultimately cause problems for all businesses, and there is no way to insulate those companies in a particular state who will have to comply with other states or who might have had to comply with Colorado, for example, but for the preliminary injunction. As the Supreme Court held in *Quill*, this issue is most properly addressed at the federal level, an action that only Congress can take.

Thank you again for the opportunity to provide this information.

Sincerely,



Ron Barnes
Vice President, State Affairs

cc: Members of the Senate Budget Subcommittee on Finance and Tax

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: SPB 7038

INTRODUCER: For consideration by the Budget Subcommittee on Finance and Tax

SUBJECT: Tax Administration

DATE: December 2, 2011 REVISED: 12/8/11 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Diez-Arguelles</u>	_____	Pre-meeting
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill comprises changes in tax administration that were recommended by the Department of Revenue and approved by the Governor and Cabinet. It clearly establishes the department's authority to require security for certain individuals seeking to register new businesses, bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions, allows department staff to verify the identity of business owners by using driver's license photos, provides an incentive for businesses to comply with requests for records for audit purposes, and reduces the interest rate imposed on unemployment tax deficiencies.

This bill substantially amends the following sections of the Florida Statutes: 212.07, 212.12, 212.14, 212.18, 213.13, 213.925, 322.142, 443.131, and 443.141.

II. Present Situation:

The Department of Revenue (department) is charged with ensuring that the taxes it administers are carried out in a fair and equitable manner. Each year the Executive Director seeks approval of proposed legislative concepts by the Governor and Cabinet, in their role as the head of the department. The department's tax administration concepts are proposed to reduce the burden on taxpayers and to ensure that Florida's tax laws are applied in a consistent, cost-effective, and equitable manner.

(See section-by-section analysis below.)

III. Effect of Proposed Changes:

Sections 1, 2 and 4

Present situation: Sections 212.07, 212.12, and 212.18, F.S., contain redundant and potentially confusing language concerning criminal penalties.

Proposed change: These sections are amended to clarify the criminal penalties imposed on a person who:

- Willfully fails to register after receiving notice of the duty to collect a tax or fee.
- Makes a false or fraudulent return with a willful intent to evade payment of taxes or fees.
- Willfully fails to register after the department provides notice of the duty to register.

No new penalties are being created by this language; the language is intended to clarify existing statutory penalties. These sections take effect upon becoming a law.

Section 3

Present situation: Section 212.14(4), F.S., authorizes the Department of Revenue to require a cash deposit, bond, or other security as a condition to a person obtaining or retaining a sales tax dealer's registration. Despite this requirement delinquent sales tax dealers are able to close down their businesses with tax liabilities, and to reopen under a new name, because the current provision does not clearly apply to all of the individuals who were responsible for prior delinquent tax accounts when they seek to register new businesses.

Proposed change: The bill revises s. 212.14(4) to authorize the department to require security for individuals who are responsible for prior delinquent accounts when they seek to register new businesses.

Section 5

Present situation: Ch. 2010-162, L.O.F., changed the remittance date for funds collected by the Clerks of the Court from the 20th day to the 10th day of the month immediately after the month in which the funds are collected. Section 213.13, F.S., which governs the electronic remittance and distribution of funds by the Clerks of the Court, was not amended to conform to the change.

Proposed change: Section 213.13, F.S., is amended to conform to changes made by ch. 2010-162, L.O.F. This section takes effect upon becoming a law.

Section 6

Present situation: Automated sales suppression devices or "zappers" are software programs that falsify the records of electronic cash registers and other point-of-sale systems. These devices alter sales records to reduce the value of sales that are reported for tax purposes in order to evade state and federal taxes. In the case of sales tax the use of these devices results in the theft of taxes that have been collected from a business's customers.

Proposed change: The bill creates s. 213.295, F.S., which makes an automated sales suppression device a contraband article under ss. 932.701-932.706, F.S., and makes it unlawful to willfully and knowingly sell, purchase, install, transfer, or possess in this state any automated sales

suppression device, zapper, or phantom-ware. Any person convicted of violating this law is guilty of a third degree felony and is liable for all taxes, fees, penalties and interest due the state as a result of the use of the device and shall forfeit to the state as an additional penalty all profits associated with the sale or use of the device. The bill provides definitions for “automated sales suppression device,” “zapper,” “electronic cash register,” “phantom-ware,” “transaction data,” and “transaction report.” This section takes effect upon becoming a law.

Section 7

Present situation: The Department of Revenue staff does not have a way to verify the identity of business owners prior to visiting businesses during audits and cannot be sure that the person with whom they are working during field visits is the business owner. Under s. 322.142, F.S., the Department of Highway Safety and Motor Vehicles maintains a file of the digital image and signatures of drivers’ license holders. These records may be shared with the Department of Revenue for child support enforcement purposes but not for other purposes.

Proposed change: The bill amends s. 322.142, F.S., to allow the Department of Revenue to use drivers’ license images to establish positive identification for tax administration proposes.

Section 8

Present situation: Florida law provides a standard unemployment tax rate, and allows many businesses to receive a lower rate if they meet certain criteria, including being in compliance with the law. Section 443.131, F.S., lists the criteria necessary for a business to be in compliance, but it does not explicitly state that a taxpayer must comply with records requests during audits to qualify for the reduced tax rate.

Proposed change: Section 443.131, F.S., is amended to create an additional condition for receiving a lower-than-standard unemployment tax rate. The condition is that the employer has produced records requested by AWI or the department for audit purposes. This section takes effect upon the bill becoming a law.

Section 9

Present situation: Unemployment compensation tax contributions or reimbursements that are unpaid on the due date bear an interest rate of 1 percent per month, an effective annual rate of 12 percent. Other taxes that are administered by the department have an interest rate of prime plus 4 percent, not to exceed an effective rate of 1 percent per month. The interest rate is adjusted twice yearly.

Proposed change: Section 443.141, F.S. is amended to change the interest rate imposed on unemployment compensation tax deficiencies to prime plus 4 percent, not to exceed 1 percent per month, beginning January 1, 2013. This is the rate applied to other taxes administered by the Department of Revenue.

Section 10 provides that except as otherwise expressly provided in this act, and except for this section, which shall take effect upon becoming a law, this act shall take effect July 1, 2012.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The department anticipates that some provisions of this bill will improve enforcement and collection of state tax laws:

- Banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions, should improve the department's ability to collect and enforce the sales tax statutes.
- Improved compliance with unemployment tax reporting is expected to improve the department's audit capability.

The Revenue Estimating Conference has not completed a fiscal impact analysis of these provisions.

B. Private Sector Impact:

This bill has the following effects on the private sector:

- It authorizes the department to require additional persons to provide a cash deposit, bond, or other security as a condition of obtaining or retaining a sales and use tax dealer's certificate of registration.
- It bans the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and provides criminal penalties for these actions.
- It provides that an employer may not qualify for a reduced unemployment tax rate unless the employer has produced all records that were requested by the department or the Agency for Workforce Innovation.
- It reduces the interest rate imposed on unemployment tax deficiencies.

C. Government Sector Impact:

The bill is expected to improve tax administration by banning the sale, purchase, installation, transfer, or possession of automated sales suppression devices, zappers, and phantom-ware, and providing criminal penalties for these actions; by providing a means by which department staff can verify the identity of business owners prior to visiting the business during audits; and by improving compliance with requests for information from employers for unemployment tax purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Budget Subcommittee on Finance and Tax

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1 A bill to be entitled
 2 An act relating to tax administration; amending s.
 3 212.07, F.S.; conforming a cross-reference to changes
 4 made by the act; subjecting a dealer to monetary and
 5 criminal penalties for the willful failure to collect
 6 certain taxes or fees after notice of the duty to
 7 collect the taxes or fees by the Department of
 8 Revenue; amending s. 212.12, F.S.; deleting provisions
 9 relating to the imposition of criminal penalties after
 10 notice by the Department of Revenue of requirements to
 11 register as a dealer or to collect taxes; making
 12 technical and grammatical changes to provisions
 13 specifying penalties for making a false or fraudulent
 14 return with the intent to evade payment of a tax or
 15 fee; amending s. 212.14, F.S.; defining the term
 16 "person"; authorizing the Department of Revenue to
 17 adopt rules relating to requirements for a person to
 18 deposit cash, a bond, or other security with the
 19 department in order to ensure compliance with sales
 20 tax laws; making technical and grammatical changes;
 21 amending s. 212.18, F.S.; subjecting a person to
 22 criminal penalties for willfully failing to register
 23 as a dealer after notice of the duty to register by
 24 the Department of Revenue; making technical and
 25 grammatical changes; amending s. 213.13, F.S.;
 26 revising the due date for funds collected by the
 27 clerks of court to be transmitted to the Department of
 28 Revenue; creating s. 213.295, F.S.; providing
 29 definitions; subjecting a person to criminal penalties

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30 and monetary penalties for knowingly selling an
 31 automated sales suppression device, zipper, or
 32 phantom-ware; defining sales suppression devices and
 33 phantom-ware as contraband articles under the Florida
 34 Contraband Forfeiture Act; amending s. 322.142, F.S.;
 35 authorizing the Department of Highway Safety and Motor
 36 Vehicles to release photographs or digital images to
 37 the Department of Revenue in order to identify
 38 individuals for purposes of tax administration;
 39 amending s. 443.131, F.S.; imposing a requirement on
 40 employers to produce records for the Department of
 41 Economic Opportunity or its tax collection service
 42 provider as a prerequisite for a reduction in the rate
 43 of unemployment tax; amending s. 443.141, F.S.;
 44 providing a method to calculate the interest rate for
 45 past due contributions and reimbursements, and
 46 delinquent, erroneous, incomplete, or insufficient
 47 reports; providing for application; providing
 48 effective dates.

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

51
 52 Section 1. Effective upon this act becoming a law,
 53 subsections (1) and (3) of section 212.07, Florida Statutes, are
 54 amended to read:

55 212.07 Sales, storage, use tax; tax added to purchase
 56 price; dealer not to absorb; liability of purchasers who cannot
 57 prove payment of the tax; penalties; general exemptions.-

58 (1) (a) The privilege tax herein levied measured by retail

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59 sales shall be collected by the dealers from the purchaser or
60 consumer.

61 (b) A resale must be in strict compliance with s. 212.18
62 and the rules and regulations, and any dealer who makes a sale
63 for resale which is not in strict compliance with s. 212.18 and
64 the rules and regulations ~~is shall himself or herself be~~ liable
65 for and shall pay the tax. Any dealer who makes a sale for
66 resale shall document the exempt nature of the transaction, as
67 established by rules promulgated by the department, by retaining
68 a copy of the purchaser's resale certificate. In lieu of
69 maintaining a copy of the certificate, a dealer may document,
70 ~~before~~ ~~prior to~~ the time of sale, an authorization number
71 provided telephonically or electronically by the department, or
72 by such other means established by rule of the department. The
73 dealer may rely on a resale certificate issued pursuant to s.
74 212.18(3)(d) ~~s. 212.18(3)(e)~~, valid at the time of receipt from
75 the purchaser, without seeking annual verification of the resale
76 certificate if the dealer makes recurring sales to a purchaser
77 in the normal course of business on a continual basis. As used
78 in ~~For purposes of~~ this paragraph, the term "recurring sales to
79 a purchaser in the normal course of business" refers to a sale
80 in which the dealer extends credit to the purchaser and records
81 the debt as an account receivable, or in which the dealer sells
82 to a purchaser who has an established cash or C.O.D. account,
83 similar to an open credit account. For purposes of this
84 paragraph, purchases are made from a selling dealer on a
85 continual basis if the selling dealer makes, in the normal
86 course of business, sales to the purchaser at least no less
87 ~~frequently than~~ once in every 12-month period. A dealer may,

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88 through the informal protest provided for in s. 213.21 and the
89 rules of the Department of Revenue, provide the department with
90 evidence of the exempt status of a sale. Consumer certificates
91 of exemption executed by those exempt entities that were
92 registered with the department at the time of sale, resale
93 certificates provided by purchasers who were active dealers at
94 the time of sale, and verification by the department of a
95 purchaser's active dealer status at the time of sale in lieu of
96 a resale certificate shall be accepted by the department when
97 submitted during the protest period, but may not be accepted in
98 any proceeding under chapter 120 or any circuit court action
99 instituted under chapter 72.

100 (c) Unless the purchaser of tangible personal property that
101 is incorporated into tangible personal property manufactured,
102 produced, compounded, processed, or fabricated for one's own use
103 and subject to the tax imposed under s. 212.06(1)(b) or is
104 purchased for export under s. 212.06(5)(a)1. extends a
105 certificate in compliance with the rules of the department, the
106 dealer ~~is shall himself or herself be~~ liable for and shall pay
107 the tax.

108 (3) (a) ~~A~~ Any dealer who fails, neglects, or refuses to
109 collect the tax or fees imposed under this chapter herein
110 ~~provided, either~~ by himself or herself or through the dealer's
111 agents or employees, ~~is~~, in addition to the penalty of being
112 liable for and paying the tax ~~himself or herself~~, commits guilty
113 ~~of~~ a misdemeanor of the first degree, punishable as provided in
114 s. 775.082 or s. 775.083.

115 (b) A dealer who willfully fails to collect a tax or fee
116 after the department provides notice of the duty to collect the

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117 tax or fee is liable for a specific penalty of 100 percent of
 118 the uncollected tax or fee. This penalty is in addition to any
 119 other penalty that may be imposed by law. A dealer who willfully
 120 fails to collect taxes or fees totaling:

121 1. Less than \$300:

122 a. For a first offense, commits a misdemeanor of the second
 123 degree, punishable as provided in s. 775.082 or s. 775.083.

124 b. For a second offense, commits a misdemeanor of the first
 125 degree, punishable as provided in s. 775.082 or s. 775.083.

126 c. For a third or subsequent offense, commits a felony of
 127 the third degree, punishable as provided in s. 775.082, s.
 128 775.083, or s. 775.084.

129 2. An amount equal to \$300 or more, but less than \$20,000,
 130 commits a felony of the third degree, punishable as provided in
 131 s. 775.082, s. 775.083, or s. 775.084.

132 3. An amount equal to \$20,000 or more, but less than
 133 \$100,000, commits a felony of the second degree, punishable as
 134 provided in s. 775.082, s. 775.083, or s. 775.084.

135 4. An amount equal to \$100,000 or more, commits a felony of
 136 the first degree, punishable as provided in s. 775.082, s.
 137 775.083, or s. 775.084.

138 (c) The department shall give written notice of the duty to
 139 collect taxes or fees to the dealer by personal service, by
 140 sending notice to the dealer's last known address by registered
 141 mail, or by both personal service and mail.

142 Section 2. Effective upon this act becoming a law,
 143 paragraph (d) of subsection (2) of section 212.12, Florida
 144 Statutes, is amended to read:
 145 212.12 Dealer's credit for collecting tax; penalties for

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146 noncompliance; powers of Department of Revenue in dealing with
 147 delinquents; brackets applicable to taxable transactions;
 148 records required.-

149 (2)

150 (d) A Any person who makes a false or fraudulent return
 151 with a willful intent to evade payment of any tax or fee imposed
 152 under this chapter ~~is; any person who, after the department's~~
 153 ~~delivery of a written notice to the person's last known address~~
 154 ~~specifically alerting the person of the requirement to register~~
 155 ~~the person's business as a dealer, intentionally fails to~~
 156 ~~register the business; and any person who, after the~~
 157 ~~department's delivery of a written notice to the person's last~~
 158 ~~known address specifically alerting the person of the~~
 159 ~~requirement to collect tax on specific transactions,~~
 160 ~~intentionally fails to collect such tax, shall, in addition to~~
 161 ~~the other penalties provided by law, be liable for a specific~~
 162 ~~penalty of 100 percent of any unreported ~~or any uncollected~~ tax~~
 163 ~~or fee. This penalty is in addition to any other penalty~~
 164 ~~provided by law. A person who makes a false or fraudulent return~~
 165 ~~with a willful intent to evade payment of taxes or fees~~
 166 ~~totaling:~~

167 1. Less than \$300:

168 a. For a first offense, commits a misdemeanor of the second
 169 degree, punishable as provided in s. 775.082 or s. 775.083.

170 b. For a second offense, commits a misdemeanor of the first
 171 degree, punishable as provided in s. 775.082 or s. 775.083.

172 c. For a third or subsequent offense, commits a felony of
 173 the third degree, punishable as provided in s. 775.082, s.
 174 775.083, or s. 775.084.

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175 2. An amount equal to \$300 or more, but less than \$20,000,
 176 commits a felony of the third degree, punishable as provided in
 177 s. 775.082, s. 775.083, or s. 775.084.

178 3. An amount equal to \$20,000 or more, but less than
 179 \$100,000, commits a felony of the second degree, punishable as
 180 provided in s. 775.082, s. 775.083, or s. 775.084.

181 4. An amount equal to \$100,000 or more, commits a felony of
 182 the first degree, punishable and, upon conviction, for fine and
 183 punishment as provided in s. 775.082, s. 775.083, or s. 775.084.
 184 Delivery of written notice may be made by certified mail, or by
 185 the use of such other method as is documented as being necessary
 186 and reasonable under the circumstances. The civil and criminal
 187 penalties imposed herein for failure to comply with a written
 188 notice alerting the person of the requirement to register the
 189 person's business as a dealer or to collect tax on specific
 190 transactions shall not apply if the person timely files a
 191 written challenge to such notice in accordance with procedures
 192 established by the department by rule or the notice fails to
 193 clearly advise that failure to comply with or timely challenge
 194 the notice will result in the imposition of the civil and
 195 criminal penalties imposed herein.

196 ~~1. If the total amount of unreported or uncollected taxes~~
 197 ~~or fees is less than \$300, the first offense resulting in~~
 198 ~~conviction is a misdemeanor of the second degree, the second~~
 199 ~~offense resulting in conviction is a misdemeanor of the first~~
 200 ~~degree, and the third and all subsequent offenses resulting in~~
 201 ~~conviction is a misdemeanor of the first degree, and the third~~
 202 ~~and all subsequent offenses resulting in conviction are felonies~~
 203 ~~of the third degree.~~

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

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

210 ~~4. If the total amount of unreported or uncollected taxes~~
 211 ~~or fees is \$100,000 or more, the offense is a felony of the~~
 212 ~~first degree.~~

213 Section 3. Subsection (4) of section 212.14, Florida
 214 Statutes, is amended to read:

215 212.14 Departmental powers; hearings; distress warrants;
 216 bonds; subpoenas and subpoenas duces tecum.—

217 (4) (a) In all cases where it is necessary to ensure
 218 compliance with the provisions of this chapter, The department
 219 shall require a cash deposit, bond, or other security as a
 220 condition to a person obtaining or retaining a dealer's
 221 certificate of registration under this chapter, if necessary, to
 222 ensure compliance with this chapter. The ~~such~~ bond must ~~shall~~ be
 223 in the form and such amount as the department deems appropriate
 224 under the particular circumstances. A Every person who fails
 225 failing to produce such cash deposit, bond, or other security as
 226 required in this subsection may ~~provided for herein~~ shall not be
 227 entitled to obtain or retain a dealer's certificate of
 228 registration under this chapter. If requested by the department,
 229 and the Department of Legal Affairs may ~~is hereby~~ authorized to
 230 proceed by injunction, ~~when so requested by the Department of~~
 231 Revenue, to prevent the such person from doing business subject
 232 to the provisions of this chapter until the such cash deposit,

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233 bond, or other security is posted with the department. ~~The, and~~
 234 ~~any~~ temporary injunction ~~for this purpose~~ may be granted by any
 235 judge or chancellor authorized by law to grant injunctions. The
 236 department may sell any security ~~required to be~~ deposited
 237 pursuant to this section ~~may be sold by the department~~ at public
 238 sale if ~~it becomes necessary so to do~~ in order to recover any
 239 tax, interest, or penalty due. Notice of ~~the such~~ sale may be
 240 served personally or by mail upon the person who deposited ~~the~~
 241 ~~such~~ security. ~~Notice if~~ by mail is sufficient if the, notice is
 242 sent to the last known address of the person as shown the same
 243 ~~appears~~ on the records of the department ~~shall be sufficient for~~
 244 ~~the purpose of this requirement.~~ Upon the such sale, the
 245 department shall return the surplus, if any, above the amount
 246 ~~due under this chapter shall be returned~~ to the person who
 247 deposited the security.

248 (b) As used in this subsection, the term "person" has the
 249 same meaning as defined in s. 212.02(12) and also includes:

250 1. An individual or entity owning a controlling interest in
 251 an entity;

252 2. An individual or entity who has acquired an ownership
 253 interest or a controlling interest in a business that would be
 254 otherwise liable for posting a cash deposit, bond, or other
 255 security, unless the department has determined that the
 256 individual or entity is not liable for taxes, interest, or
 257 penalties under s. 213.758; or

258 3. An individual or entity seeking to obtain a dealer's
 259 certificate of registration for a business that will be operated
 260 at the same location as a previous business that otherwise would
 261 have been liable for posting a cash deposit, bond, or other

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262 security, and the individual or entity does not provide evidence
 263 that the business was acquired for consideration in an arms-
 264 length transaction.

265 (c) The department may adopt rules to administer this
 266 subsection.

267 Section 4. Effective upon this act becoming a law,
 268 subsection (3) of section 212.18, Florida Statutes, is amended
 269 to read:

270 212.18 Administration of law; registration of dealers;
 271 rules.-

272 (3) (a) Every person desiring to engage in or conduct
 273 business in this state as a dealer, ~~as defined in this chapter,~~
 274 or to lease, rent, or let or grant licenses in living quarters
 275 or sleeping or housekeeping accommodations in hotels, apartment
 276 houses, roominghouses, or tourist or trailer camps that are
 277 subject to tax under s. 212.03, or to lease, rent, or let or
 278 grant licenses in real property, ~~as defined in this chapter,~~ and
 279 every person who sells or receives anything of value by way of
 280 admissions, must file with the department an application for a
 281 certificate of registration for each place of business. The
 282 application must include, ~~showing~~ the names of the persons who
 283 have interests in ~~the such~~ business and their residences, the
 284 address of the business, and ~~such~~ other data reasonably required
 285 by ~~as~~ the department ~~may reasonably require.~~ However, owners and
 286 operators of vending machines or newspaper rack machines are
 287 required to obtain only one certificate of registration for each
 288 county in which ~~the such~~ machines are located. The department,
 289 ~~by rule,~~ may authorize by rule a dealer that uses independent
 290 sellers to sell its merchandise to remit tax on the retail sales

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291 price charged to the ultimate consumer in lieu of having the
 292 independent seller register as a dealer and remit the tax. The
 293 department may appoint the county tax collector as the
 294 department's agent to accept applications for registrations. The
 295 application must be made to the department before the person,
 296 firm, copartnership, or corporation engages ~~may engage~~ in such
 297 business, and it must be accompanied by a registration fee of
 298 \$5. However, a registration fee is not required to accompany an
 299 application to engage in or conduct business to make mail order
 300 sales. The department may waive the registration fee for
 301 applications submitted through the department's Internet
 302 registration process.

303 (b) The department, upon receipt of the ~~such~~ application,
 304 shall will grant to the applicant a separate certificate of
 305 registration for each place of business, which certificate may
 306 be canceled by the department or its designated assistants for
 307 any failure by the certificateholder to comply with any of the
 308 provisions of this chapter. The certificate is not assignable
 309 and is valid only for the person, firm, copartnership, or
 310 corporation to which the certificate is issued. The certificate
 311 must be displayed at all times ~~placed~~ in a conspicuous place in
 312 the business or businesses for which it is issued ~~and must be~~
 313 ~~displayed at all times~~. Except as provided in this subsection, a
 314 ~~no~~ person may not shall engage in the business of selling or
 315 leasing tangible personal property or services or as a dealer or
 316 in leasing, renting, or letting of or granting licenses in
 317 living quarters or sleeping or housekeeping accommodations in
 318 hotels, apartment houses, roominghouses, tourist or trailer
 319 camps, or real property, or in selling as hereinbefore defined,

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320 ~~nor shall any person sell or~~ receiving ~~receive~~ anything of value
 321 by way of admissions, without a valid ~~first having obtained such~~
 322 a certificate. ~~A or after such certificate has been canceled, no~~
 323 person may not shall receive a any license from any authority
 324 within the state to engage in any such business without a valid
 325 certificate ~~first having obtained such a certificate or after~~
 326 ~~such certificate has been canceled. The engaging in the business~~
 327 ~~of selling or leasing tangible personal property or services or~~
 328 ~~as a dealer, as defined in this chapter, or the engaging in~~
 329 ~~leasing, renting, or letting of or granting licenses in living~~
 330 ~~quarters or sleeping or housekeeping accommodations in hotels,~~
 331 ~~apartment houses, roominghouses, or tourist or trailer camps~~
 332 ~~that are taxable under this chapter, or real property, or the~~
 333 ~~engaging in the business of selling or receiving anything of~~
 334 ~~value by way of admissions, without such certificate first being~~
 335 ~~obtained or after such certificate has been canceled by the~~
 336 ~~department, is prohibited.~~

337 (c)1. A ~~The failure or refusal of any person who engages in~~
 338 acts requiring a certificate of registration under this
 339 subsection who fails or refuses to register, commits, ~~firm,~~
 340 ~~copartnership, or corporation to so qualify when required~~
 341 ~~hereunder is~~ a misdemeanor of the first degree, punishable as
 342 provided in s. 775.082 or s. 775.083. Such acts are, ~~or~~ subject
 343 to injunctive proceedings as provided by law. A person who
 344 engages in acts requiring a certificate of registration and who
 345 fails or refuses to register is also subject ~~Such failure or~~
 346 ~~refusal also subjects the offender~~ to a \$100 initial
 347 registration fee in lieu of the \$5 registration fee required by
 348 authorized in paragraph (a). However, the department may waive

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349 the increase in the registration fee if it finds is determined
 350 ~~by the department~~ that the failure to register was due to
 351 reasonable cause and not to willful negligence, willful neglect,
 352 or fraud.

353 2. A person who willfully fails to register as a dealer
 354 after the department provides notice of the duty to register
 355 commits a felony of the third degree, punishable as provided in
 356 s. 775.082, s. 775.083, or s. 775.084. The department shall give
 357 written notice of the duty to register to the person by personal
 358 service, by sending notice by registered mail to the person's
 359 last known address, or by both personal service and mail.

360 (d)(e) In addition to the certificate of registration, the
 361 department shall provide to each newly registered dealer an
 362 initial resale certificate that is will be valid for the
 363 remainder of the period of issuance. The department shall
 364 provide each active dealer with an annual resale certificate. As
 365 used in For purposes of this section, the term "active dealer"
 366 means a person who is currently registered with the department
 367 and who is required to file at least once during each applicable
 368 reporting period.

369 (e)(d) The department may revoke a any dealer's certificate
 370 of registration if when the dealer fails to comply with this
 371 chapter. Before the Prior to revocation of a dealer's
 372 certificate of registration, the department must schedule an
 373 informal conference at which the dealer may present evidence
 374 regarding the department's intended revocation or enter into a
 375 compliance agreement with the department. The department must
 376 notify the dealer of its intended action and the time, place,
 377 and date of the scheduled informal conference by written notice

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378 ~~notification~~ sent by United States mail to the dealer's last
 379 known address of record furnished by the dealer on a form
 380 prescribed by the department. The dealer is required to attend
 381 the informal conference and present evidence refuting the
 382 department's intended revocation or enter into a compliance
 383 agreement with the department which resolves the dealer's
 384 failure to comply with this chapter. The department shall issue
 385 an administrative complaint under s. 120.60 if the dealer fails
 386 to attend the department's informal conference, fails to enter
 387 into a compliance agreement with the department resolving the
 388 dealer's noncompliance with this chapter, or fails to comply
 389 with the executed compliance agreement.

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

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

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

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

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407 4. Any exhibitor who makes a mail order sale pursuant to s.
408 212.0596 must register as a dealer.

409
410 Any person who conducts a convention or a trade show must make
411 ~~his or her their~~ exhibitor's agreements available to the
412 department for inspection and copying.

413 Section 5. Effective upon this act becoming a law,
414 subsection (5) of section 213.13, Florida Statutes, is amended
415 to read:

416 213.13 Electronic remittance and distribution of funds
417 collected by clerks of the court.-

418 (5) All court-related collections, including fees, fines,
419 reimbursements, court costs, and other court-related funds that
420 the clerks must remit to the state pursuant to law, must be
421 transmitted electronically by the 10th ~~20th~~ day of the month
422 immediately following the month in which the funds are
423 collected.

424 Section 6. Effective upon this act becoming a law, section
425 213.295, Florida Statutes, is created to read:

426 213.295 Automated sales suppression devices.-

427 (1) As used in this section, the term:

428 (a) "Automated sales suppression device" or "zapper" means
429 a software program that is carried on a memory stick or
430 removable compact disc and accessed through an Internet link or
431 through any other means and that falsifies the electronic
432 records of electronic cash registers and other point-of-sale
433 systems, including, but not limited to, transaction data and
434 transaction reports.

435 (b) "Electronic cash register" means a device that keeps a

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436 register or supporting documents through the use of an
437 electronic device or computer system designed to record
438 transaction data for the purpose of computing, compiling, or
439 processing retail sales transaction data.

440 (c) "Phantom-ware" means a hidden programming option
441 embedded in the operating system of an electronic cash register
442 or hardwired into the electronic cash register which can be used
443 to create a second set of records or to eliminate or manipulate
444 transaction records, which records may or may not be preserved
445 in a digital format, in order to represent the true or
446 manipulated record of a transaction in the electronic cash
447 register.

448 (d) "Transaction data" includes data identifying an item
449 purchased by a customer; the price for an item; a taxability
450 determination for an item; a segregated tax amount for each
451 taxed item; the amount of cash or credit tendered; the net
452 amount returned to the customer in change; the date and time of
453 the purchase; the name, address, and identification number of
454 the vendor; and the receipt or invoice number of the
455 transaction.

456 (e) "Transaction report" means:

457 1. A report that contains, but is not limited to,
458 documentation of the sales, taxes, or fees collected; media
459 totals; and discount voids at an electronic cash register, and
460 that is printed on a cash register tape at the end of a day or a
461 shift; or

462 2. A report that documents every action at an electronic
463 cash register and that is stored electronically.

464 (2) A person may not knowingly sell, purchase, install,

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465 transfer, or possess in this state any automated sales
 466 suppression device, zipper, or phantom-ware.

467 (3) (a) A person who violates this section commits a felony
 468 of the third degree, punishable as provided in s. 775.082, s.
 469 775.083, or s. 775.084.

470 (b) A person who violates this section is liable for all
 471 taxes, fees, penalties, and interest due the state as a result
 472 of the use of an automated sales suppression device, zipper, or
 473 phantom-ware and shall forfeit to the state as an additional
 474 penalty all profits associated with the sale or use of an
 475 automated sales suppression device, zipper, or phantom-ware.

476 (4) An automated sales suppression device, zipper, phantom-
 477 ware, or any device containing such device or software is a
 478 contraband article under ss. 932.701-932.706, the Florida
 479 Contraband Forfeiture Act.

480 Section 7. Subsection (4) of section 322.142, Florida
 481 Statutes, is amended to read:

482 322.142 Color photographic or digital imaged licenses.-

483 (4) The department may maintain a film negative or print
 484 file. The department shall maintain a record of the digital
 485 image and signature of the licensees, together with other data
 486 required by the department for identification and retrieval.
 487 Reproductions from the file or digital record are exempt from
 488 ~~the provisions of s. 119.07(1) and shall be made and issued only~~
 489 for departmental administrative purposes; for the issuance of
 490 duplicate licenses; in response to law enforcement agency
 491 requests; to the Department of Business and Professional
 492 Regulation pursuant to an interagency agreement for the purpose
 493 of accessing digital images for reproduction of licenses issued

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494 by the Department of Business and Professional Regulation; to
 495 the Department of State pursuant to an interagency agreement to
 496 facilitate determinations of eligibility of voter registration
 497 applicants and registered voters in accordance with ss. 98.045
 498 and 98.075; to the Department of Revenue pursuant to an
 499 interagency agreement for use in establishing paternity and
 500 establishing, modifying, or enforcing support obligations in
 501 Title IV-D cases; to the Department of Revenue for use in
 502 establishing positive identification for tax administration
 503 purposes; to the Department of Children and Family Services
 504 pursuant to an interagency agreement to conduct protective
 505 investigations under part III of chapter 39 and chapter 415; to
 506 the Department of Children and Family Services pursuant to an
 507 interagency agreement specifying the number of employees in each
 508 of that department's regions to be granted access to the records
 509 for use as verification of identity to expedite the
 510 determination of eligibility for public assistance and for use
 511 in public assistance fraud investigations; or to the Department
 512 of Financial Services pursuant to an interagency agreement to
 513 facilitate the location of owners of unclaimed property, the
 514 validation of unclaimed property claims, and the identification
 515 of fraudulent or false claims.

516 Section 8. Effective upon this act becoming a law,
 517 paragraph (h) of subsection (3) of section 443.131, Florida
 518 Statutes, is amended to read:

519 443.131 Contributions.-

520 (3) VARIATION OF CONTRIBUTION RATES BASED ON BENEFIT
 521 EXPERIENCE.-

522 (h) *Additional conditions for variation from the standard*

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523 rate.—An employer's contribution rate may not be reduced below
524 the standard rate under this section unless:

525 1. All contributions, reimbursements, interest, and
526 penalties incurred by the employer for wages paid by him or her
527 in all previous calendar quarters, except the 4 calendar
528 quarters immediately preceding the calendar quarter or calendar
529 year for which the benefit ratio is computed, are paid; ~~and~~

530 2. The employer has produced for inspection and copying all
531 work records in his or her possession, custody, or control which
532 were requested by the Department of Economic Opportunity or its
533 tax collection service provider pursuant to s. 443.171(5); and

534 ~~3.2-~~ The employer has ~~entitled to a rate reduction must~~
535 ~~have~~ at least one annual payroll as defined in subparagraph
536 (b)1. unless the employer is eligible for additional credit
537 under the Federal Unemployment Tax Act. If the Federal
538 Unemployment Tax Act is amended or repealed in a manner
539 affecting credit under the federal act, this section applies
540 only to the extent that additional credit is allowed against the
541 payment of the tax imposed by the Federal Unemployment Tax Act.

542
543 The tax collection service provider shall assign an earned
544 contribution rate to an employer ~~under subparagraph 1.~~ the
545 quarter immediately after the quarter in which all
546 contributions, reimbursements, interest, and penalties are paid
547 in full and all work records requested pursuant to s. 443.171(5)
548 have been produced for inspection and copying to the Department
549 of Economic Opportunity or the tax collection service provider.

550 Section 9. Effective January 1, 2013, and applicable to
551 contributions or reimbursements made on or after that date,

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552 paragraph (a) of subsection (1) of section 443.141, Florida
553 Statutes, is amended to read:

554 443.141 Collection of contributions and reimbursements.—

555 (1) PAST DUE CONTRIBUTIONS AND REIMBURSEMENTS; DELINQUENT,
556 ERRONEOUS, INCOMPLETE, OR INSUFFICIENT REPORTS.—

557 (a) *Interest*.—Contributions or reimbursements unpaid on the
558 date due bear interest at the rate calculated pursuant to s.
559 213.235. However, the rate may not exceed ~~of~~ 1 percent per
560 month. Interest shall accrue ~~from and after that date~~ until
561 payment plus accrued interest is received by the tax collection
562 service provider, unless the service provider finds that the
563 employing unit has good reason for failing to pay the
564 contributions or reimbursements when due. Interest collected
565 under this subsection must be paid into the Special Employment
566 Security Administration Trust Fund.

567 Section 10. Except as otherwise expressly provided in this
568 act and except for this section, which shall take effect upon
569 this act becoming a law, this act shall take effect July 1,
570 2012.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: SPB 7036

INTRODUCER: For consideration by the Budget Subcommittee on Finance and Tax

SUBJECT: Administration of Property Tax

DATE: December 5, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin	Diez-Arguelles		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This bill clarifies ambiguous language and deletes obsolete statutory provisions in the property tax statutes. It also amends statutory requirements for scheduling value adjustment board hearings, and reduces the number of reports that must be submitted to the Department of Revenue. The bill allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: 192.001, 192.0105, 192.117, 193.114, 193.1554, 193.1555, 193.501, 193.503, 193.505, 194.032, 194.034, 195.096, 195.0985, 195.099, 196.031, 196.081, 196.082, 196.091, 196.101, 196.121, 196.202, 196.24, 200.065, 218.12, and 218.125.

II. Present Situation:

Section 195.002, F.S., provides that the Department of Revenue (department) has general supervision of the assessment and valuation of property, tax collection and all other aspects of the administration of property taxes. In its supervisory role, the department from time to time identifies statutory provisions that appear to contain drafting errors, inconsistencies, or inefficiencies. This bill contains recommendations, suggested by the department and approved by the Governor and Cabinet, to address some of these issues.

In 2008, Florida voters approved Amendment 1 to the State Constitution, which increased the homestead exemption, provided portability of the Save Our Home tax limitation, and limited assessment increases for non-homestead property. The Legislature has also made significant

changes to property tax statutes in recent years—imposing limitations on local millage rates, changing the value adjustment board (VAB) process, and changing the burden of proof in assessment challenges. Since these changes have been in effect, it has become apparent that some of the language implementing them contained drafting errors, left certain questions unanswered, or created administrative difficulties. Inconsistencies with other statutory provisions have also been uncovered, creating further challenges in implementing the constitutional and statutory changes.

III. Effect of Proposed Changes:

This bill clarifies ambiguous language and corrects drafting errors that have become apparent since these property tax law changes were implemented. It also amends statutory requirements for scheduling VAB hearings, and reduces the number of reports that must be submitted to the department. It allows certain disabled veterans and other disabled persons to apply for property tax exemptions before they have received required documentation from certain agencies of the federal government, and deletes obsolete statutory provisions.

(See section by section analysis below.)

Section 1

Present situation: Section 192.001, F.S., defines terms used in the statutes imposing ad valorem taxes. Some of these definitions have not been amended to conform to other statutory and constitutional changes.

Proposed change: This bill amends the definition of “assessed value of property” to make it consistent with Article VII of the Florida Constitution, as amended in 2008. It also amends the definition of “complete submission of the rolls” to conform to s. 193.114, F.S., as amended in 2008.

Sections 2 and 10

Present situation: Taxpayers are permitted to protest their property tax assessment through hearings before VABs. Section 194.032(2), F.S., provides guidance regarding the scheduling of hearings, including the taxpayer’s ability to reschedule a hearing once for any reason. The statute also includes an obsolete provision requiring taxpayers to wait a minimum of 4 hours for their VAB hearing before being able to file suit in circuit court. Section 192.0105, F.S., provides taxpayers certain rights with regard to the administration of property taxes, which includes the right to be heard within 4 hours of the scheduled hearing time.

Proposed change: This section repeals the obsolete statutory language providing the 4 hour waiting requirement before filing in circuit court, and it limits the waiting time for petitioners to a “reasonable time, not to exceed 2 hours.” Lastly, this section clarifies that if a taxpayer reschedules a hearing after waiting 2 hours, the taxpayer is not considered to have exercised his or her right to reschedule one time for any reason.

Section 3 repeals s. 192.117, F.S., which created the Property Tax Administration Task Force. This task force was dissolved in 2004.

Section 4

Present situation: Subsection 193.114(2), F.S., lists items that must be included on the real property assessment roll. When this section was amended in 2008, some of the changes made at that time used terms that are inconsistent with established practice and terminology, and this has led to confusion for the property appraisers.

Proposed change: Paragraph (n) of this subsection is amended to change the recorded selling price requirement from the two most recently recorded selling prices to the recorded selling prices required by s. 193.114, F.S., and to replace the term “sale price” with “recorded selling price” to clarify that the price submitted must be the amount indicated by the documentary stamps posted on the transfer document. The term “sale” is replaced with “transfer” to clarify that all real property transfers recorded or otherwise discovered during the period beginning 1 year before the assessment date, and up to the date the roll is submitted to the department, must be included on the assessment roll. “Transfer date” is defined as the date on which the transfer document was signed and notarized, and sale qualification decisions must be recorded on the assessment roll within 3 months after the deed or other transfer instrument is recorded or otherwise discovered.

Paragraph (p) is amended to delete the requirement that the assessment roll contain the name and address of a fiduciary responsible for payment of property taxes.

Sections 5 and 6

Present situation: Amendment 1, approved by the voters in 2008, provided that the assessed value of certain property cannot increase by more than 10 percent over the prior year. Sections 193.1554 and 193.1555, F.S., which implement this provision, require that property be assessed at just (full) value the first year the property is “placed on the tax roll.” It is not clear from the statutory language that “placed on the tax roll” is meant to include property that was already on the roll in a different classification, although the fiscal impact estimates provided at the time were based on that assumption.¹ These sections also provide for assessment of combined or divided parcels, but do not specify how to assess parcels that are combined or divided after the assessment date but before the tax bills are sent.

Proposed change: These sections are amended to clarify that property must be assessed at full value when it is subject to a new limitation, and that parcels combined or divided after January 1 are not considered combined or divided for purposes of assessment until the January 1 that the parcels are first assessed as combined or divided, even though they are combined or divided for purposes of the tax notice. These sections of the bill also clarify that increases in value due to dividing property are apportioned to each parcel pro rata based on just value, and increases in value of property when properties are combined are attributable to the combination.

Sections 7, 8 and 9

Present situation: Sections 193.501, 193.503, 193.505, F.S., provide reduced assessments for lands subject to a conservation easement or other development limitation, historic property used

¹ In *Sommers v. Orange County Property Appraiser, et.al.*, a recent summary judgment issued by the Ninth Judicial Circuit Court, it was ruled that the Sommers were entitled to the 10 % assessment limitation on their previously homesteaded property without first reassessing the home to its full market value. The court based its ruling on constitutional language implemented in section 193,1554(3), F.S. This ruling is being appealed.

for commercial or certain nonprofit purposes, or historically significant property when development rights have been conveyed or historic preservation restrictions have been covenanted, respectively. The statutes require repayment of the reduced tax liabilities if the use is not maintained for the required period, and local tax collectors are required to report this repayment information to the department. These repayments are rare and this information is not needed by the department.

Proposed change: These sections are amended to delete the reporting requirement.

Section 11

Present situation: Section 194.034(2), F.S., requires the VAB clerk to notify taxpayer petitioners, property appraisers, and the department of board decisions.

Proposed changes: This subsection is amended to delete the requirement that the department be notified of every VAB decision. It allows the department to request notification or other information as provided in s. 194.037, F.S.

Sections 12 and 13

Present situation: Sections 195.096 and 195.0985, F.S., require the department to report the results of its in-depth review of the assessment rolls of each county. The findings must be published and copies must be forwarded to legislative staff and county officials. The statutory reporting requirements contain different reporting dates and redundant requirements. Additionally, s. 195.096, F.S., requires that assessment rolls be statistically sampled to ensure a 95 percent level of confidence that the sample is statistically valid. However, in some smaller jurisdictions, there is insufficient data to meet the 95 percent standard.

Proposed change: The bill amends subsections (2) and (3) of s. 195.096 to standardize reporting requirements for the in-depth assessment roll review, and repeals s. 195.0985, F.S., which contains a redundant requirement. In reviewing assessment rolls, the bill requires that generally accepted ratio standards be used when a 95 percent level of confidence cannot be obtained.

Section 14

Present Situation: Section 195.099, F.S., requires the department to review the assessment of new, rebuilt, or expanded businesses in designated enterprise zones or “brownfield” areas.

Proposed change: This section is amended to allow the department to review these assessments as the need arises for such review.

Section 15

Present Situation: Section 196.031, F.S., specifies the order in which various exemptions are applied to homestead property. Under present law, the order of exemptions has the result that some properties are not able to take full advantage of all the exemptions.

Proposed change: This section is amended to require that exemptions be applied in a manner that results in the lowest taxable value.

Sections 16-19 and 21-22

Present situation: Sections 196.081, 196.082, 196.091, and 196.101, 196.202, and 196.24, F.S., provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions. In order to qualify, a taxpayer must obtain a disability letter from the United States government, the United States Department of Veterans Affairs or its predecessor, or the Social Security Administration, and the person may not receive a discount or exemption until the letter is obtained. In some instances, taxpayers have lost the ability to claim discounts and exemptions because the documentation was delayed.

Proposed change: The bill amends these sections to allow a taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made. The refund is only permitted for years that are within the normal 4 year statute of limitations for refunds.

Section 20

Present situation: Section 196.121, F.S., requires the department to furnish printed homestead exemption forms to the property appraisers. This requirement is obsolete since the forms are provided electronically and funding for printed forms has been eliminated.

Proposed change: The bill amends this section to delete the requirement for printed forms and clarify that the department will provide electronic funds.

Section 23

Present situation: In s. 200.065(5), F.S., the statutory language used to limit local governments' millage rates contains a reference to the prior year's rate. In an apparent drafting error, the phrase "is adopted" was used instead of "was adopted" in referring to that rate, causing uncertainty in the phrase's meaning. Also, s. 200.065(10), F.S., requires notice when a district school board levies additional tax pursuant to s. 1011.71(2), F.S. Since, 2008, districts have also been able to levy additional tax pursuant to s. 1011.71(3), F.S. However, the notice requirements in s. 200.065(1), F.S., do not reference those levies.

Proposed change: Section 200.065(5)(a), F.S., is amended in the bill to change the phrase from "is adopted" to "was adopted," and s. 200.065(10), F.S., is amended to also require notice when school districts levy additional property tax pursuant to s. 1011.71(3), F.S.

Sections 24 and 25

Present situation: Sections 218.12 and 218.125, F.S., provide for distributions to fiscally constrained counties for tax losses due to constitutional changes approved by the voters in 2008. There is no provision in the statute for addressing what happens if a county fails to apply for the distribution. The statute also requires counties to report their maximum millage under ch. 200, F.S., but the citation to that chapter is not correct. Finally, distributions under both sections are calculated by multiplying the current year reduction in taxable value by the prior year's millage rate, rather than the current year's rate.

Proposed change: The bill amends these sections to specify that if a county fails to apply for distribution under these sections its share reverts to the fund from which the appropriation is

made. The maximum millage calculation references are corrected, and the calculation of the distribution is based on the current year millage.

Section 26 provides that, except as otherwise provided, this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, section 18(b), of the Florida Constitution, provides that “[e]xcept upon approval of each house of the legislature by two-thirds of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenues in the aggregate, as such authority exists on February 1, 1989.” Since this bill would reduce a county or municipality’s authority to raise revenue in the aggregate, it may require a two-thirds vote of the membership of each house of the Legislature for passage if the magnitude of that reduction is found to be significant for the purposes of this provision.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

Proposed changes to ss. 196.081, 196.082, 196.091, and 196.101, 196.202, and 196.24, F.S., which provide property tax discounts and exemptions for disabled veterans, other disabled persons, widows, widowers, blind persons, persons permanently and totally disabled, and disabled servicemembers or surviving spouses under certain conditions, have the potential to reduce local governments’ property tax revenue. The bill amends these sections to allow a disabled taxpayer to apply for the discount or exemption, with approval contingent upon the taxpayer providing the required documentation. Once the documentation is received by the property appraiser the exemption is granted back to the date of the original application and a refund of excess tax payments is made.

Proposed changes to ss. 193.1554 and 193.1555, F.S., which clarify that property must be assessed at full value when it is subject to a new limitation under these provisions, have the potential to increase local governments’ property tax revenue.

The Revenue Estimating Conference has not evaluated the impact of this bill.

B. Private Sector Impact:

This bill has several provisions that clarify the process by which taxpayers apply for various property tax exemptions and other tax preferences.

C. Government Sector Impact:

This bill reduces the role of the Department of Revenue in receiving various reports and approving property tax refunds, and is expected to provide greater efficiency in its oversight of property tax administration. Other statutory corrections and clarifications should also reduce the department's workload with respect to property tax oversight.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Budget Subcommittee on Finance and Tax

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1 A bill to be entitled
 2 An act relating to the administration of property
 3 taxes; amending s. 192.001, F.S.; revising the
 4 definitions of the terms "assessed value of property"
 5 and "complete submission of the rolls"; amending s.
 6 192.0105, F.S.; providing that a taxpayer has a right
 7 to have a hearing before the value adjustment board
 8 rescheduled if the hearing is not commenced within a
 9 certain period after the scheduled time; repealing s.
 10 192.117, F.S., relating to the Property Tax
 11 Administration Task Force; amending s. 193.114, F.S.;
 12 revising the information that must be included on a
 13 real property assessment roll relating to the transfer
 14 of ownership of property; defining the term "ownership
 15 transfer date"; deleting a requirement to include
 16 information relating to a fiduciary on a real property
 17 assessment roll; amending s. 193.1554, F.S.; deleting
 18 obsolete provisions; providing for the apportionment
 19 of increases in the value of combined and divided
 20 parcels of nonhomestead residential property;
 21 providing for the application of an assessment
 22 limitation to a combined or divided parcel of
 23 nonhomestead residential property; amending s.
 24 193.1555, F.S.; redefining the term "nonresidential
 25 real property" to conform a cross-reference to the
 26 State Constitution; deleting obsolete provisions;
 27 providing for the apportionment of increases in the
 28 value of combined and divided parcels of property;
 29 providing for the application of an assessment

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30 limitation to a combined or divided parcel of
 31 property; amending ss. 193.501, 193.503, and 193.505,
 32 F.S.; deleting provisions requiring that the tax
 33 collector report amounts of deferred tax liability to
 34 the Department of Revenue; amending s. 194.032, F.S.;
 35 requiring that a hearing before the value adjustment
 36 board be rescheduled if the hearing on the
 37 petitioner's petition is not commenced within a
 38 certain time after the scheduled time; making
 39 technical and grammatical changes; amending s.
 40 194.034, F.S.; deleting an exception to a requirement
 41 that a value adjustment board render a written
 42 decision relating to the petitioner's failure to make
 43 a required payment; deleting a requirement that the
 44 Department of Revenue be notified of decisions by the
 45 value adjustment board; requiring that the clerk
 46 notify the Department of Revenue of a decision of the
 47 value adjustment board or information relating to the
 48 tax impact of the decision upon request; making
 49 technical and grammatical changes; amending s.
 50 195.096, F.S.; authorizing the measures in the
 51 findings resulting from an in-depth review of an
 52 assessment roll of a county to be based on a ratio
 53 that is generally accepted by professional appraisal
 54 organizations in developing a statistically valid
 55 sampling plan under certain circumstances; revising
 56 the requirements for the Department of Revenue to
 57 provide certain information concerning its review of
 58 assessment rolls to the Legislature, the appropriate

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59 property appraiser, and county commissions; requiring
 60 that copies of the review data and findings be
 61 provided upon request; repealing s. 195.0985, F.S.,
 62 relating to a requirement that the department publish
 63 annual ratio studies; amending s. 195.099, F.S.;
 64 allowing the department discretion in determining
 65 whether to review the assessments of certain
 66 businesses; amending s. 196.031, F.S.; requiring that
 67 ad valorem tax exemptions be applied in the order that
 68 results in the lowest taxable value of a homestead;
 69 amending s. 196.081, F.S.; authorizing an applicant
 70 for an ad valorem tax exemption for a disabled veteran
 71 or for a surviving spouse to apply for the exemption
 72 before receiving certain documentation from the
 73 Federal Government; requiring refunds of excess taxes
 74 paid under certain circumstances; amending s. 196.082,
 75 F.S.; authorizing an applicant for an ad valorem tax
 76 discount available to disabled veterans to apply for
 77 the discount before receiving certain documentation
 78 from the Federal Government; requiring refunds of
 79 excess taxes paid under certain circumstances;
 80 amending s. 196.091, F.S.; authorizing an applicant
 81 for an ad valorem tax exemption for disabled veterans
 82 confined to a wheelchair to apply for the exemption
 83 before receiving certain documentation from the
 84 Federal Government; requiring refunds of excess taxes
 85 paid under certain circumstances; amending s. 196.101,
 86 F.S.; authorizing an applicant for an ad valorem tax
 87 exemption for totally and permanently disabled persons

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88 to apply for the exemption before receiving certain
 89 documentation from the Federal Government; requiring
 90 refunds of excess taxes paid under certain
 91 circumstances; amending s. 196.121, F.S.; authorizing
 92 the Department of Revenue to provide certain forms
 93 electronically; deleting a requirement that the
 94 department supply printed forms to property
 95 appraisers; amending s. 196.202, F.S.; authorizing an
 96 applicant for an ad valorem exemption for widows,
 97 widowers, blind persons, or persons who are totally
 98 and permanently disabled to apply for the exemption
 99 before receiving certain documentation from the
 100 Federal Government; requiring refunds of excess taxes
 101 paid under certain circumstances; amending s. 196.24,
 102 F.S.; authorizing an applicant for an ad valorem tax
 103 exemption for disabled ex-servicemembers or a
 104 surviving spouse to apply for the exemption before
 105 receiving certain documentation from the Federal
 106 Government; requiring refunds of excess taxes paid
 107 under certain circumstances; amending s. 200.065,
 108 F.S.; deleting obsolete provisions; revising
 109 provisions relating to the calculation of the rolled-
 110 back rate; correcting cross-references to certain
 111 additional taxes; amending ss. 218.12 and 218.125,
 112 F.S.; deleting obsolete provisions; providing for the
 113 reversion of funds appropriated to offset reductions
 114 in ad valorem tax revenue to a fiscally constrained
 115 county if the county fails to apply for a distribution
 116 of funds; providing effective dates.

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117
118 Be It Enacted by the Legislature of the State of Florida:

119
120 Section 1. Subsections (2) and (18) of section 192.001,
121 Florida Statutes, are amended to read:

122 192.001 Definitions.—All definitions set out in chapters 1
123 and 200 that are applicable to this chapter are included herein.
124 In addition, the following definitions shall apply in the
125 imposition of ad valorem taxes:

126 (2) "Assessed value of property" means an annual
127 determination of:

128 (a) The just or fair market value of an item or property;

129 ~~or~~

130 (b) The value of the homestead property as limited by
131 pursuant to s. 4(d), Art. VII of the State Constitution; or

132 (c) The value of property in a classified use or at a
133 fractional value if the a property is assessed solely on the
134 basis of character or use or at a specified percentage of its
135 value under, pursuant to s. 4(a) or 4(e), Art. VII of the State
136 Constitution, its classified use value or fractional value.

137 (18) "Complete submission of the rolls" includes, but is
138 not necessarily limited to, accurate tabular summaries of
139 valuations as prescribed by department rule; an electronic a
140 computer tape copy of the real property assessment roll
141 including for each parcel total value of improvements, land
142 value, the two most recently recorded selling prices, data
143 required for an assessment roll under s. 193.114, the value of
144 any improvement made to the parcel in the 12 months preceding
145 the valuation date, the type and amount of any exemption

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146 granted, and such other information as may be required by
147 department rule; an accurate tabular summary by property class
148 of any adjustments made to recorded selling prices or fair
149 market value in arriving at assessed value, as prescribed by
150 department rule; an electronic a computer tape copy of the
151 tangible personal property assessment roll, including for each
152 entry a unique account number and such other information as may
153 be required by department rule; and an accurate tabular summary
154 of per-acre land valuations used for each class of agricultural
155 property in preparing the assessment roll, as prescribed by
156 department rule.

157 Section 2. Paragraph (d) of subsection (2) of section
158 192.0105, Florida Statutes, is amended to read:

159 192.0105 Taxpayer rights.—There is created a Florida
160 Taxpayer's Bill of Rights for property taxes and assessments to
161 guarantee that the rights, privacy, and property of the
162 taxpayers of this state are adequately safeguarded and protected
163 during tax levy, assessment, collection, and enforcement
164 processes administered under the revenue laws of this state. The
165 Taxpayer's Bill of Rights compiles, in one document, brief but
166 comprehensive statements that summarize the rights and
167 obligations of the property appraisers, tax collectors, clerks
168 of the court, local governing boards, the Department of Revenue,
169 and taxpayers. Additional rights afforded to payors of taxes and
170 assessments imposed under the revenue laws of this state are
171 provided in s. 213.015. The rights afforded taxpayers to assure
172 that their privacy and property are safeguarded and protected
173 during tax levy, assessment, and collection are available only
174 insofar as they are implemented in other parts of the Florida

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175 Statutes or rules of the Department of Revenue. The rights so
 176 guaranteed to state taxpayers in the Florida Statutes and the
 177 departmental rules include:

178 (2) THE RIGHT TO DUE PROCESS.—

179 (d) The right to prior notice of the value adjustment
 180 board's hearing date, ~~and the right to the hearing at the within~~
 181 ~~4 hours of~~ scheduled time, and the right to have the hearing
 182 rescheduled if the hearing is not commenced within a reasonable
 183 time, not to exceed 2 hours, after the scheduled time (see s.
 184 194.032(2)).

185 Section 3. Section 192.117, Florida Statutes, is repealed.

186 Section 4. Paragraphs (n) and (p) of subsection (2) of
 187 section 193.114, Florida Statutes, are amended to read:

188 193.114 Preparation of assessment rolls.—

189 (2) The real property assessment roll shall include:

190 (n) The recorded selling ~~For each sale of the property in~~
 191 ~~the previous year, the sale price, ownership transfer sale date,~~
 192 and official record book and page number or clerk instrument
 193 number for each deed or other instrument transferring ownership
 194 of real property and recorded or otherwise discovered during the
 195 period beginning 1 year before the assessment date and up to the
 196 date the assessment roll is submitted to the department. The
 197 assessment roll shall also include, ~~and the basis for~~
 198 qualification or disqualification of a transfer as an arms-
 199 length transaction. A decision qualifying or disqualifying a
 200 transfer of property as an arms-length transaction ~~sale data~~
 201 ~~must be current on all tax rolls submitted to the department,~~
 202 ~~and sale qualification decisions~~ must be recorded on the
 203 assessment tax roll within 3 months after the sale date that the

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204 deed or other transfer instrument is recorded or otherwise
 205 discovered. Sale or transfer data must be current on all tax
 206 rolls submitted to the department. As used in this paragraph,
 207 the term "ownership transfer date" means the date that the deed
 208 or other transfer instrument is signed and notarized or
 209 otherwise executed.

210 (p) The name and address of the owner ~~or fiduciary~~
 211 ~~responsible for the payment of taxes on the property and an~~
 212 ~~indicator of fiduciary capacity, as appropriate.~~

213 Section 5. Subsections (2), (3), and (7) of section
 214 193.1554, Florida Statutes, are amended to read:

215 193.1554 Assessment of nonhomestead residential property.—

216 (2) For all levies other than school district levies,
 217 nonhomestead residential property shall be assessed at just
 218 value as of January 1 of the year that the property becomes
 219 eligible for assessment pursuant to this section, ~~2008. Property~~
 220 ~~placed on the tax roll after January 1, 2008, shall be assessed~~
 221 ~~at just value as of January 1 of the year in which the property~~
 222 ~~is placed on the tax roll.~~

223 (3) Beginning in ~~2009,~~ ~~or~~ the year following the year the
 224 nonhomestead residential property becomes eligible for
 225 assessment pursuant to this section is placed on the tax roll,
 226 ~~whichever is later,~~ the property shall be reassessed annually on
 227 January 1. Any change resulting from such reassessment may not
 228 exceed 10 percent of the assessed value of the property for the
 229 prior year.

230 (7) Any increase in the value of property assessed under
 231 this section which is attributable to combining or dividing
 232 parcels shall be assessed at just value, and the just value

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233 shall be apportioned among the parcels created.

234 (a) For divided parcels, the amount by which the sum of the
 235 just values of the divided parcels exceeds what the just value
 236 of the parcel would be if undivided shall be attributable to the
 237 division. This amount shall be apportioned to the parcels pro
 238 rata based on their relative just values.

239 (b) For combined parcels, the amount by which the just
 240 value of the combined parcel exceeds what the sum of the just
 241 values of the component parcels would be if they had not been
 242 combined shall be attributable to the combination.

243 (c) A parcel that is created by combining or dividing a
 244 parcel and that is eligible for assessment pursuant to this
 245 section retains such eligibility and shall be assessed as
 246 provided in this subsection. A parcel that is combined or
 247 divided after January 1 and that is included as a combined or
 248 divided parcel on the tax notice is not considered to be a
 249 combined or divided parcel for purposes of this section until
 250 the January 1 on which it is first assessed as a combined or
 251 divided parcel.

252 Section 6. Subsections (1), (2), (3), and (7) of section
 253 193.1555, Florida Statutes, are amended to read:

254 193.1555 Assessment of certain residential and
 255 nonresidential real property.-

256 (1) As used in this section, the term:

257 (a) "Nonresidential real property" means real property that
 258 is not subject to the assessment limitations set forth in
 259 subsection 4(a), (b), (c), (d), or (g), Art. VII of the State
 260 Constitution s. 4(a), (e), (d), or (g), Art. VII of the State
 261 Constitution.

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262 (b) "Improvement" means an addition or change to land or
 263 buildings which increases their value and is more than a repair
 264 or a replacement.

265 (2) For all levies other than school district levies,
 266 nonresidential real property and residential real property that
 267 is not assessed under s. 193.155 or s. 193.1554 shall be
 268 assessed at just value as of January 1 of the year that the
 269 property becomes eligible for assessment pursuant to this
 270 section, 2008. Property placed on the tax roll after January 1,
 271 2008, shall be assessed at just value as of January 1 of the
 272 year in which the property is placed on the tax roll.

273 (3) Beginning in 2009, ~~or~~ the year following the year the
 274 property becomes eligible for assessment pursuant to this
 275 section is placed on the tax roll, whichever is later, the
 276 property shall be reassessed annually on January 1. Any change
 277 resulting from such reassessment may not exceed 10 percent of
 278 the assessed value of the property for the prior year.

279 (7) Any increase in the value of property assessed under
 280 this section which is attributable to combining or dividing
 281 parcels shall be assessed at just value, and the just value
 282 shall be apportioned among the parcels created.

283 (a) For divided parcels, the amount by which the sum of the
 284 just values of the divided parcels exceeds what the just value
 285 of the parcel would be if undivided shall be attributable to the
 286 division. This amount shall be apportioned to the parcels pro
 287 rata based on their relative just values.

288 (b) For combined parcels, the amount by which the just
 289 value of the combined parcel exceeds what the sum of the just
 290 values of the component parcels would be if they had not been

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291 combined shall be attributable to the combination.

292 (c) A parcel that is created by combining or dividing a
 293 parcel that is eligible for assessment pursuant to this section
 294 retains such eligibility and shall be assessed as provided in
 295 this subsection. A parcel that is combined or divided after
 296 January 1 and that is included as a combined or divided parcel
 297 on the tax notice is not considered to be a combined or divided
 298 parcel for purposes of this section until the January 1 on which
 299 it is first assessed as a combined or divided parcel.

300 Section 7. Subsection (7) of section 193.501, Florida
 301 Statutes, is amended to read:

302 193.501 Assessment of lands subject to a conservation
 303 easement, environmentally endangered lands, or lands used for
 304 outdoor recreational or park purposes when land development
 305 rights have been conveyed or conservation restrictions have been
 306 covenanted.—

307 (7) ~~(a)~~ The property appraiser shall report to the
 308 department showing the just value and the classified use value
 309 of property that is subject to a conservation easement under s.
 310 704.06, property assessed as environmentally endangered land
 311 pursuant to this section, and property assessed as outdoor
 312 recreational or park land.

313 ~~(b) The tax collector shall annually report to the~~
 314 ~~department the amount of deferred tax liability collected~~
 315 ~~pursuant to this section.—~~

316 Section 8. Paragraph (d) of subsection (9) of section
 317 193.503, Florida Statutes, is amended to read:

318 193.503 Classification and assessment of historic property
 319 used for commercial or certain nonprofit purposes.—

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320 (9)

321 ~~(d) The tax collector shall annually report to the~~
 322 ~~department the amount of deferred tax liability collected~~
 323 ~~pursuant to this section.—~~

324 Section 9. Paragraph (c) of subsection (9) of section
 325 193.505, Florida Statutes, is amended to read:

326 193.505 Assessment of historically significant property
 327 when development rights have been conveyed or historic
 328 preservation restrictions have been covenanted.—

329 (9)

330 ~~(c) The tax collector shall annually report to the~~
 331 ~~department the amount of deferred tax liability collected~~
 332 ~~pursuant to this section.—~~

333 Section 10. Subsection (2) of section 194.032, Florida
 334 Statutes, is amended to read:

335 194.032 Hearing purposes; timetable.—

336 (2) (a) The clerk of the governing body of the county shall
 337 prepare a schedule of appearances before the board based on
 338 petitions timely filed with him or her. The clerk shall notify
 339 each petitioner of the scheduled time of his or her appearance
 340 at least no less than 25 calendar days before prior to the day
 341 of the such scheduled appearance. If the petitioner checked the
 342 appropriate box on the petition form to request a copy of the
 343 property record card containing relevant information used in
 344 computing the current assessment, the clerk shall provide the
 345 copy of the card along with the notice. Upon receipt of the
 346 notice this notification, the petitioner may shall have the
 347 right to reschedule the hearing a single time by submitting to
 348 the clerk ~~of the governing body of the county~~ a written request

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349 to reschedule, ~~at least no less than~~ 5 calendar days before the
350 day of the originally scheduled hearing.

351 ~~(b) A copy of the property record card containing relevant~~
352 ~~information used in computing the taxpayer's current assessment~~
353 ~~shall be included with such notice, if said card was requested~~
354 ~~by the taxpayer. Such request shall be made by checking an~~
355 ~~appropriate box on the petition form. No petitioner may not~~
356 ~~shall be required to wait for more than a reasonable time, not~~
357 ~~to exceed 2 4 hours, after from the scheduled time for the~~
358 ~~hearing to commence. and, If the hearing is not commenced~~
359 ~~within his or her petition is not heard in that time, the~~
360 ~~petitioner may inform, at his or her option, report to the~~
361 ~~chairperson of the meeting that he or she intends to leave. and,~~
362 ~~If the petitioner leaves he or she is not heard~~
363 ~~immediately, the clerk shall reschedule the hearing, and the~~
364 ~~rescheduling is not considered to be a request to reschedule as~~
365 ~~provided in paragraph (a). petitioner's administrative remedies~~
366 ~~will be deemed to be exhausted, and he or she may seek further~~
367 ~~relief as he or she deems appropriate.~~

368 ~~(c) Failure on three occasions with respect to any single~~
369 ~~tax year to convene at the scheduled time of meetings of the~~
370 ~~board is shall constitute grounds for removal from office by the~~
371 ~~Governor for neglect of duties.~~

372 Section 11. Subsection (2) of section 194.034, Florida
373 Statutes, is amended to read:

374 194.034 Hearing procedures; rules.—

375 (2) In each case, except ~~if the when~~ a complaint is
376 withdrawn by the petitioner or if the complaint, is acknowledged
377 as correct by the property appraiser, ~~or is denied pursuant to~~

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378 ~~s. 194.014(1)(e)~~, the value adjustment board shall render a
379 written decision. All such decisions shall be issued within 20
380 calendar days after ~~of~~ the last day the board is in session
381 under s. 194.032. The decision of the board must shall contain
382 findings of fact and conclusions of law and must shall include
383 reasons for upholding or overturning the determination of the
384 property appraiser. If When a special magistrate has been
385 appointed, the recommendations of the special magistrate shall
386 be considered by the board. The clerk, upon issuance of a a
387 decision the decisions, shall, on a form provided by the
388 Department of Revenue, notify by first-class mail each taxpayer
389 and, the property appraiser, ~~and the department~~ of the decision
390 of the board. If requested by the Department of Revenue, the
391 clerk shall provide to the department a copy of the decision or
392 information relating to the tax impact of the findings and
393 results of the board as described in s. 194.037 in the manner
394 and form requested.

395 Section 12. Effective July 1, 2012, paragraph (f) of
396 subsection (2) and subsection (3) of section 195.096, Florida
397 Statutes, are amended to read:

398 195.096 Review of assessment rolls.—

399 (2) The department shall conduct, no less frequently than
400 once every 2 years, an in-depth review of the assessment rolls
401 of each county. The department need not individually study every
402 use-class of property set forth in s. 195.073, but shall at a
403 minimum study the level of assessment in relation to just value
404 of each classification specified in subsection (3). Such in-
405 depth review may include proceedings of the value adjustment
406 board and the audit or review of procedures used by the counties

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407 to appraise property.

408 (f) Within 120 days ~~after following the~~ receipt of a county
 409 assessment roll by the executive director of the department
 410 pursuant to s. 193.1142(1), or within 10 days after approval of
 411 the assessment roll, whichever is later, the department shall
 412 complete the review for that county and publish the department's
 413 ~~forward its~~ findings. The findings must include, ~~including a~~
 414 statement of the confidence interval for the median and such
 415 other measures as may be appropriate for each classification or
 416 subclassification studied and for the roll as a whole, ~~employing~~
 417 ~~a 95 percent level of confidence,~~ and related statistical and
 418 analytical details. The measures in the findings must be based
 419 on:

420 1. A 95 percent level of confidence; or
 421 2. Ratio study standards that are generally accepted by
 422 professional appraisal organizations in developing a
 423 statistically valid sampling plan if a 95 percent level of
 424 confidence is not attainable to the Senate and the House of
 425 ~~Representatives committees with oversight responsibilities for~~
 426 ~~taxation, and the appropriate property appraiser. Upon releasing~~
 427 ~~its findings, the department shall notify the chairperson of the~~
 428 ~~appropriate county commission or the corresponding official~~
 429 ~~under a consolidated charter that the department's findings are~~
 430 ~~available upon request. The department shall, within 90 days~~
 431 ~~after receiving a written request from the chairperson of the~~
 432 ~~appropriate county commission or the corresponding official~~
 433 ~~under a consolidated charter, forward a copy of its findings,~~
 434 ~~including the confidence interval for the median and such other~~
 435 ~~measures of each classification or subclassification studied and~~

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436 ~~for all the roll as a whole, and related statistical and~~
 437 ~~analytical details, to the requesting party.~~

438 (3) (a) Upon completion of review pursuant to paragraph
 439 (2) (f), the department shall publish the results of reviews
 440 conducted under this section. The results must include all
 441 statistical and analytical measures computed under this section
 442 for the real property assessment roll as a whole, the personal
 443 property assessment roll as a whole, and independently for the
 444 following real property classes if ~~whenever~~ the classes
 445 constituted 5 percent or more of the total assessed value of
 446 real property in a county on the previous tax roll:

- 447 1. Residential property that consists of one primary living
 448 unit, including, but not limited to, single-family residences,
 449 condominiums, cooperatives, and mobile homes.
- 450 2. Residential property that consists of two or more
 451 primary living units.
- 452 3. Agricultural, high-water recharge, historic property
 453 used for commercial or certain nonprofit purposes, and other
 454 use-valued property.
- 455 4. Vacant lots.
- 456 5. Nonagricultural acreage and other undeveloped parcels.
- 457 6. Improved commercial and industrial property.
- 458 7. Taxable institutional or governmental, utility, locally
 459 assessed railroad, oil, gas and mineral land, subsurface rights,
 460 and other real property.

461 If ~~When~~ one of the above classes constituted less than 5 percent
 462 of the total assessed value of all real property in a county on
 463 the previous assessment roll, the department may combine it with

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465 one or more other classes of real property for purposes of
 466 assessment ratio studies or use the weighted average of the
 467 other classes for purposes of calculating the level of
 468 assessment for all real property in a county. The department
 469 shall also publish such results for any subclassifications of
 470 the classes or assessment rolls it may have chosen to study.

471 (b) ~~If when~~ necessary for compliance with s. 1011.62, and
 472 for those counties not being studied in the current year, the
 473 department shall project value-weighted mean levels of
 474 assessment for each county. The department shall make its
 475 projection based upon the best information available, using
 476 ~~utilizing~~ professionally accepted methodology, and shall
 477 separately allocate changes in total assessed value to:

- 478 1. New construction, additions, and deletions.
- 479 2. Changes in the value of the dollar.
- 480 3. Changes in the market value of property other than those
- 481 attributable to changes in the value of the dollar.
- 482 4. Changes in the level of assessment.

483
 484 In lieu of the statistical and analytical measures published
 485 pursuant to paragraph (a), the department shall publish details
 486 concerning the computation of estimated assessment levels and
 487 the allocation of changes in assessed value for those counties
 488 not subject to an in-depth review.

489 (c) Upon publication of data and findings as required by
 490 this subsection, the department shall notify the committees of
 491 the Senate and of the House of Representatives having oversight
 492 responsibility for taxation, the appropriate property appraiser,
 493 and the county commission chair or corresponding official under

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494 a consolidated charter. Copies of the data and findings shall be
 495 provided upon request.

496 Section 13. Section 195.0985, Florida Statutes, is
 497 repealed.

498 Section 14. Section 195.099, Florida Statutes, is amended
 499 to read:

500 195.099 Periodic review.—

501 (1) (a) The department ~~may shall periodically~~ review the
 502 assessments of new, rebuilt, and expanded business reported
 503 according to s. 193.077(3), to ensure parity of level of
 504 assessment with other classifications of property.

505 (b) This subsection shall expire on the date specified in
 506 s. 290.016 for the expiration of the Florida Enterprise Zone
 507 Act.

508 (2) The department ~~may shall~~ review the assessments of new
 509 and expanded businesses granted an exemption pursuant to s.
 510 196.1995 to ensure parity of level of assessment with other
 511 classifications of property.

512 Section 15. Subsection (7) of section 196.031, Florida
 513 Statutes, is amended to read:

514 196.031 Exemption of homesteads.—

515 (7) Unless the homestead property is totally exempt from ad
 516 valorem taxation, the exemptions provided in paragraphs (1) (a)
 517 and (b) and other homestead exemptions shall be applied in the
 518 order that results in the lowest taxable value. as follows:

519 ~~(a) The exemption in paragraph (1) (a) shall apply to the~~
 520 ~~first \$25,000 of assessed value;~~

521 ~~(b) The second \$25,000 of assessed value shall be taxable~~
 522 ~~unless other exemptions, as listed in paragraph (d), are~~

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523 ~~applicable in the order listed;~~

524 ~~(e) The additional homestead exemption in paragraph (1)(b),~~
 525 ~~for levies other than school district levies, shall be applied~~
 526 ~~to the assessed value greater than \$50,000 before any other~~
 527 ~~exemptions are applied to that assessed value; and~~

528 ~~(d) Other exemptions include and shall be applied in the~~
 529 ~~following order: widows, widowers, blind persons, and disabled~~
 530 ~~persons, as provided in s. 196.202; disabled ex-servicemembers~~
 531 ~~and surviving spouses, as provided in s. 196.24, applicable to~~
 532 ~~all levies; the local option low income senior exemption up to~~
 533 ~~\$50,000, applicable to county levies or municipal levies, as~~
 534 ~~provided in s. 196.075; and the veterans percentage discount, as~~
 535 ~~provided in s. 196.082.~~

536 Section 16. Subsection (5) is added to section 196.081,
 537 Florida Statutes, to read:

538 196.081 Exemption for certain permanently and totally
 539 disabled veterans and for surviving spouses of veterans.-

540 (5) An applicant for the exemption under this section may
 541 apply for the exemption before receiving the necessary
 542 documentation from the United States Government or the United
 543 States Department of Veterans Affairs or its predecessor. Upon
 544 receipt of the documentation, the exemption shall be granted as
 545 of the date of the original application, and the excess taxes
 546 paid shall be refunded. Any refund of excess taxes paid shall be
 547 limited to those paid during the 4-year period of limitation set
 548 forth in s. 197.182(1)(e).

549 Section 17. Subsection (6) is added to section 196.082,
 550 Florida Statutes, to read:

551 196.082 Discounts for disabled veterans.-

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552 (6) An applicant for the discount under this section may
 553 apply for the discount before receiving the necessary
 554 documentation from the United States Department of Veterans
 555 Affairs or its predecessor. Upon receipt of the documentation,
 556 the discount shall be granted as of the date of the original
 557 application, and the excess taxes paid shall be refunded. Any
 558 refund of excess taxes paid shall be limited to those paid
 559 during the 4-year period of limitation set forth in s.
 560 197.182(1)(e).

561 Section 18. Subsection (4) is added to section 196.091,
 562 Florida Statutes, to read:

563 196.091 Exemption for disabled veterans confined to
 564 wheelchairs.-

565 (4) An applicant for the exemption under this section may
 566 apply for the exemption before receiving the necessary
 567 documentation from the United States Government or the United
 568 States Department of Veterans Affairs or its predecessor. Upon
 569 receipt of the documentation, the exemption shall be granted as
 570 of the date of the original application, and the excess taxes
 571 paid shall be refunded. Any refund of excess taxes paid shall be
 572 limited to those paid during the 4-year period of limitation set
 573 forth in s. 197.182(1)(e).

574 Section 19. Subsection (8) is added to section 196.101,
 575 Florida Statutes, to read:

576 196.101 Exemption for totally and permanently disabled
 577 persons.-

578 (8) An applicant for the exemption under this section may
 579 apply for the exemption before receiving the necessary
 580 documentation from the United States Department of Veterans

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581 Affairs or its predecessor. Upon receipt of the documentation,
 582 the exemption shall be granted as of the date of the original
 583 application, and the excess taxes paid shall be refunded. Any
 584 refund of excess taxes paid shall be limited to those paid
 585 during the 4-year period of limitation set forth in s.
 586 197.182(1)(e).

587 Section 20. Subsection (1) of section 196.121, Florida
 588 Statutes, is amended to read:

589 196.121 Homestead exemptions; forms.—

590 (1) The Department of Revenue shall provide, by electronic
 591 means or other methods designated by the department, furnish to
 592 the property appraiser of each county a sufficient number of
 593 printed forms to be filed by taxpayers claiming to be entitled
 594 to a homestead ~~said~~ exemption and shall prescribe the content of
 595 such forms by rule.

596 Section 21. Section 196.202, Florida Statutes, is amended
 597 to read:

598 196.202 Property of widows, widowers, blind persons, and
 599 persons totally and permanently disabled.—

600 (1) Property to the value of \$500 of every widow, widower,
 601 blind person, or totally and permanently disabled person who is
 602 a bona fide resident of this state is shall be exempt from
 603 taxation. As used in this section, the term "totally and
 604 permanently disabled person" means a person who is currently
 605 certified by a physician licensed in this state, by the United
 606 States Department of Veterans Affairs or its predecessor, or by
 607 the Social Security Administration to be totally and permanently
 608 disabled.

609 (2) An applicant for the exemption under this section may

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610 apply for the exemption before receiving the necessary
 611 documentation from the United States Department of Veterans
 612 Affairs or its predecessor, or the Social Security
 613 Administration. Upon receipt of the documentation, the exemption
 614 shall be granted as of the date of the original application, and
 615 the excess taxes paid shall be refunded. Any refund of excess
 616 taxes paid shall be limited to those paid during the 4-year
 617 period of limitation set forth in s. 197.182(1)(e).

618 Section 22. Section 196.24, Florida Statutes, is amended to
 619 read:

620 196.24 Exemption for disabled ex-servicemember or surviving
 621 spouse; evidence of disability.—

622 (1) Any ex-servicemember, as defined in s. 196.012, who is
 623 a bona fide resident of the state, who was discharged under
 624 honorable conditions, and who has been disabled to a degree of
 625 10 percent or more by misfortune or while serving during a
 626 period of wartime service as defined in s. 1.01(14), ~~or by~~
 627 misfortune, is entitled to the exemption from taxation provided
 628 for in s. 3(b), Art. VII of the State Constitution as provided
 629 in this section. Property to the value of \$5,000 of such a
 630 person is exempt from taxation. The production by him or her of
 631 a certificate of disability from the United States Government or
 632 the United States Department of Veterans Affairs or its
 633 predecessor before the property appraiser of the county wherein
 634 the ex-servicemember's property lies is prima facie evidence of
 635 the fact that he or she is entitled to the exemption. The
 636 unremarried surviving spouse of such a disabled ex-servicemember
 637 who, on the date of the disabled ex-servicemember's death, had
 638 been married to the disabled ex-servicemember for at least 5

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639 years is also entitled to the exemption.

640 (2) An applicant for the exemption under this section may
 641 apply for the exemption before receiving the necessary
 642 documentation from the United States Government or the United
 643 States Department of Veterans Affairs or its predecessor. Upon
 644 receipt of the documentation, the exemption shall be granted as
 645 of the date of the original application, and the excess taxes
 646 paid shall be refunded. Any refund of excess taxes paid shall be
 647 limited to those paid during the 4-year period of limitation set
 648 forth in s. 197.182(1)(e).

649 Section 23. Effective July 1, 2012, subsection (5) and
 650 paragraph (a) of subsection (10) of section 200.065, Florida
 651 Statutes, are amended to read:

652 200.065 Method of fixing millage.—

653 ~~(5) Beginning in the 2009-2010 fiscal year and~~ In each
 654 fiscal year thereafter:

655 (a) The maximum millage rate that a county, municipality,
 656 special district dependent to a county or municipality,
 657 municipal service taxing unit, or independent special district
 658 may levy is a rolled-back rate based on the amount of taxes
 659 which would have been levied in the prior year if the maximum
 660 millage rate had been applied, adjusted for change in per capita
 661 Florida personal income, unless a higher rate ~~was~~ ~~is~~ adopted, in
 662 which case the maximum is the adopted rate. The maximum millage
 663 rate applicable to a county authorized to levy a county public
 664 hospital surtax under s. 212.055 and which did so in fiscal year
 665 2007 shall exclude the revenues required to be contributed to
 666 the county public general hospital in the current fiscal year
 667 for the purposes of making the maximum millage rate calculation,

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668 but shall be added back to the maximum millage rate allowed
 669 after the roll back has been applied, the total of which shall
 670 be considered the maximum millage rate for such a county for
 671 purposes of this subsection. The revenue required to be
 672 contributed to the county public general hospital for the
 673 upcoming fiscal year shall be calculated as 11.873 percent times
 674 the millage rate levied for countywide purposes in fiscal year
 675 2007 times 95 percent of the preliminary tax roll for the
 676 upcoming fiscal year. A higher rate may be adopted only under
 677 the following conditions:

678 1. A rate of not more than 110 percent of the rolled-back
 679 rate based on the previous year's maximum millage rate, adjusted
 680 for change in per capita Florida personal income, may be adopted
 681 if approved by a two-thirds vote of the membership of the
 682 governing body of the county, municipality, or independent
 683 district; or

684 2. A rate in excess of 110 percent may be adopted if
 685 approved by a unanimous vote of the membership of the governing
 686 body of the county, municipality, or independent district or by
 687 a three-fourths vote of the membership of the governing body if
 688 the governing body has nine or more members, or if the rate is
 689 approved by a referendum.

690 (b) The millage rate of a county or municipality, municipal
 691 service taxing unit of that county, and any special district
 692 dependent to that county or municipality may exceed the maximum
 693 millage rate calculated pursuant to this subsection if the total
 694 county ad valorem taxes levied or total municipal ad valorem
 695 taxes levied do not exceed the maximum total county ad valorem
 696 taxes levied or maximum total municipal ad valorem taxes levied

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 697 respectively. Voted millage and taxes levied by a municipality
 698 or independent special district that has levied ad valorem taxes
 699 for less than 5 years are not subject to this limitation. The
 700 millage rate of a county authorized to levy a county public
 701 hospital surtax under s. 212.055 may exceed the maximum millage
 702 rate calculated pursuant to this subsection to the extent
 703 necessary to account for the revenues required to be contributed
 704 to the county public hospital. Total taxes levied may exceed the
 705 maximum calculated pursuant to subsection (6) as a result of an
 706 increase in taxable value above that certified in subsection (1)
 707 if such increase is less than the percentage amounts contained
 708 in subsection (6) or if the administrative adjustment cannot be
 709 made because the value adjustment board is still in session at
 710 the time the tax roll is extended; otherwise, millage rates
 711 subject to this subsection, s. 200.185, or s. 200.186 may be
 712 reduced so that total taxes levied do not exceed the maximum.
 713

714 Any unit of government operating under a home rule charter
 715 adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State
 716 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the
 717 State Constitution of 1968, which is granted the authority in
 718 the State Constitution to exercise all the powers conferred now
 719 or hereafter by general law upon municipalities and which
 720 exercises such powers in the unincorporated area shall be
 721 recognized as a municipality under this subsection. For a
 722 downtown development authority established before the effective
 723 date of the 1968 State Constitution which has a millage that
 724 must be approved by a municipality, the governing body of that
 725 municipality shall be considered the governing body of the

593-01106A-12 20127036
 726 downtown development authority for purposes of this subsection.
 727 (10) (a) In addition to the notice required in subsection
 728 (3), a district school board shall publish a second notice of
 729 intent to levy additional taxes under s. 1011.71(2) or (3). ~~The~~
 730 ~~Such~~ notice shall specify the projects or number of school buses
 731 anticipated to be funded by the such additional taxes and shall
 732 be published in the size, within the time periods, adjacent to,
 733 and in substantial conformity with the advertisement required
 734 under subsection (3). The projects shall be listed in priority
 735 within each category as follows: construction and remodeling;
 736 maintenance, renovation, and repair; motor vehicle purchases;
 737 new and replacement equipment; payments for educational
 738 facilities and sites due under a lease-purchase agreement;
 739 payments for renting and leasing educational facilities and
 740 sites; payments of loans approved pursuant to ss. 1011.14 and
 741 1011.15; payment of costs of compliance with environmental
 742 statutes and regulations; payment of premiums for property and
 743 casualty insurance necessary to insure the educational and
 744 ancillary plants of the school district; payment of costs of
 745 leasing relocatable educational facilities; and payments to
 746 private entities to offset the cost of school buses pursuant to
 747 s. 1011.71(2) (i). The additional notice shall be in the
 748 following form, except that if the district school board is
 749 proposing to levy the same millage under s. 1011.71(2) or (3)
 750 which it levied in the prior year, the words "continue to" shall
 751 be inserted before the word "impose" in the first sentence, and
 752 except that the second sentence of the second paragraph shall be
 753 deleted if the district is advertising pursuant to paragraph
 754 (3) (e):

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NOTICE OF TAX FOR SCHOOL
CAPITAL OUTLAY

The ...(name of school district)... will soon consider a measure to impose a ...(number)... mill property tax for the capital outlay projects listed herein.

This tax is in addition to the school board's proposed tax of ...(number)... mills for operating expenses and is proposed solely at the discretion of the school board. THE PROPOSED COMBINED SCHOOL BOARD TAX INCREASE FOR BOTH OPERATING EXPENSES AND CAPITAL OUTLAY IS SHOWN IN THE ADJACENT NOTICE.

The capital outlay tax will generate approximately \$...(amount)..., to be used for the following projects:

...(list of capital outlay projects)...

All concerned citizens are invited to a public hearing to be held on ...(date and time)... at ...(meeting place)...

A DECISION on the proposed CAPITAL OUTLAY TAXES will be made at this hearing.

Section 24. Effective July 1, 2012, subsection (2) of section 218.12, Florida Statutes, is amended to read:

218.12 Appropriations to offset reductions in ad valorem tax revenue in fiscally constrained counties.—

(2) On or before November 15 of each year, ~~beginning in 2008~~, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the appropriation and provide documentation supporting the county's

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estimated reduction in ad valorem tax revenue in the form and manner prescribed by the Department of Revenue. The documentation must include an estimate of the reduction in taxable value directly attributable to revisions of Art. VII of the State Constitution for all county taxing jurisdictions within the county and shall be prepared by the property appraiser in each fiscally constrained county. The documentation must also include the county millage rates applicable in all such jurisdictions for both the current year and the prior year; rolled-back rates, determined as provided in s. 200.065, for each county taxing jurisdiction; and maximum millage rates that could have been levied by majority vote pursuant to s. 200.065(5) ~~s. 200.185~~. For purposes of this section, each fiscally constrained county's reduction in ad valorem tax revenue shall be calculated as 95 percent of the estimated reduction in taxable value times the lesser of the 2007 applicable millage rate or the applicable millage rate for each county taxing jurisdiction in the current ~~prior~~ year. If a fiscally constrained county fails to apply for the distribution, its share shall revert to the fund from which the appropriation was made.

Section 25. Effective July 1, 2012, subsection (2) of section 218.125, Florida Statutes, is amended to read:

218.125 Offset for tax loss associated with certain constitutional amendments affecting fiscally constrained counties.—

(2) On or before November 15 of each year, ~~beginning in 2010~~, each fiscally constrained county shall apply to the Department of Revenue to participate in the distribution of the

593-01106A-12

20127036

813 appropriation and provide documentation supporting the county's
814 estimated reduction in ad valorem tax revenue in the form and
815 manner prescribed by the Department of Revenue. The
816 documentation must include an estimate of the reduction in
817 taxable value directly attributable to revisions of Art. VII of
818 the State Constitution for all county taxing jurisdictions
819 within the county and shall be prepared by the property
820 appraiser in each fiscally constrained county. The documentation
821 must also include the county millage rates applicable in all
822 such jurisdictions for the current year and the prior year,
823 rolled-back rates determined as provided in s. 200.065 for each
824 county taxing jurisdiction, and maximum millage rates that could
825 have been levied by majority vote pursuant to s. 200.065(5)
826 ~~200.195~~. For purposes of this section, each fiscally constrained
827 county's reduction in ad valorem tax revenue shall be calculated
828 as 95 percent of the estimated reduction in taxable value
829 multiplied by the lesser of the 2010 applicable millage rate or
830 the applicable millage rate for each county taxing jurisdiction
831 in the current ~~prior~~ year. If a fiscally constrained county
832 fails to apply for the distribution, its share shall revert to
833 the fund from which the appropriation was made.

834 Section 26. Except as otherwise expressly provided in this
835 act, this act shall take effect upon becoming a law.

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12.8-11

Meeting Date

Topic E-FAIRNESS (SALES TAX COLLECTION) Bill Number (if applicable)

Name DAVID HART Amendment Barcode (if applicable)

Job Title EXEC. VP

Address 136 S. BRONOUGH ST Phone 850.521-1288

Street

TALLAHASSEE

City

State

Zip

E-mail dhart@flchamber.com

Speaking: [X] For [] Against [] Information

Representing FL CHAMBER

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-8-11

Meeting Date

Topic workshop on sales tax collections Bill Number (if applicable)

Name Ron Barnes Amendment Barcode (if applicable)

Job Title Vice President, State Affairs, DMA

Address 1615 L St, NW suite 1100 Phone 202-861-2414

Street

Washington

City

DC

State

20036

Zip

E-mail rbarnes@the-dma.org

Speaking: [] For [] Against [X] Information

Representing Direct Marketing Association

Appearing at request of Chair: [X] Yes [] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12/8/2011
Date

Bill Number

Name RICK McAllister

Phone 850-222-4082

Address 227 ADAMS Street

E-mail RICK@FRF.org

Tallahassee, FL 32301
City State Zip

Job Title President/CEO

Speaking: For Against Information

Appearing at request of Chair

Subject E FAIRNESS

Representing Florida Retail Federation

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

S-001 (08/2005)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12.8.2011
Meeting Date

Topic Online Sales Tax Collection Internw
Projects

Bill Number _____
(if applicable)

Name Paul MISNER

Amendment Barcode _____
(if applicable)

Job Title V.P., Global Public Policy

Address 126 C STREET, NW

Phone _____

WASHINGTON DC 20001
City State Zip

E-mail _____

Speaking: For Against Information

Representing Amazon.com

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

12-8-11

Meeting Date

Topic DOR Tax Administration Proposals Bill Number SPB 7036 & SPB 7038
Name Lisa Vickers Amendment Barcode N/A
Job Title Executive Director
Address 2450 Shumard Oak Blvd. Phone (850) 617-8600
Street Tallahassee FL 32399-0100 E-mail vickersl@dor.state.fl.us
City State Zip

Speaking: For Against Information
Representing Department of Revenue
Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12/8/11

Date

Bill Number

Name Walter Toole Phone 407.876-0084
Address 11347 Willow Gardens Dr E-mail 4085549ace
Street WINDERMERE FIA 34786 Job Title President
City State Zip hardware.com

Speaking: For Against Information
Subject E-FAIRNUM Appearing at request of Chair
Representing Ace Hardware - Central Florida (based in Winter Garden)

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

S-001 (08/2005)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12.8.2011 Date

Bill Number

Name RAS NAYEE

Phone 407.454.3549

Address P.O. Box 532073

E-mail rtn@rtnky.com

Street Orlando FL 32853 City State Zip

Job Title Attorney / Family Business

Speaking: [X] For [] Against [] Information

Appearing at request of Chair []

Subject E-FAIRNESS

Representing SUS ELECTRONICS

Lobbyist registered with Legislature: [] Yes [X] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

S-001 (08/2005)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12/8/11 Date

Workshop Bill Number

Name ROSE ANN TORNATOR E

Phone 386.290.0039

Address 2500 SO. NOVA ROAD

E-mail wholesale.light

Street DAYTONA BCH, FLA. 32119 City State Zip

Job Title @CFL.net.com Pres, Owner

Speaking: [X] For [] Against [] Information

Appearing at request of Chair []

Subject Sales Tax / Main Street

Representing WHOLESAL LIGHTING, INC.

Lobbyist registered with Legislature: [] Yes [X] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from .m. to .m.

S-001 (08/2005)

THE FLORIDA SENATE
COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12-8-11

Date

WORKSHOP

Bill Number

Name CATHERINE GARRY

Phone 386-299-5920

Address 19 OLD CREEK CIRCLE

E-mail CATG@CFL.RR.COM

ORMOND BEACH FL 32174
Street City State Zip

Job Title OWNER

Speaking: For Against Information Appearing at request of Chair

Subject INTERNET SALES TAX

Representing Daytona - Best Community Values

Lobbyist registered with Legislature: Yes No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.

S-001 (08/2005)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

Topic _____

Bill Number E-FAIRNESS
WORKSHOP (if applicable)

Name JOSE L. GONZALEZ

Amendment Barcode _____ (if applicable)

Job Title VP GOVERNMENTAL AFFAIRS

Address 516 N. ADAMS STREET

Phone 224-7173

TALLAHASSEE, FL 32361
Street City State Zip

E-mail jgonzalez@AIF.COM

Speaking: For Against Information

Representing ASSOCIATED INDUSTRIES OF FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/20/11)

THE FLORIDA SENATE

COMMITTEE APPEARANCE RECORD

(Submit to Committee Chair or Administrative Assistant)

12/18/11

Date

Bill Number

Name Alan Murphy Jr

Phone 561-055-8553

Address 7410 24th way

E-mail amurphy@pioneer

Street

West Palm Beach

FL

33407

City

State

Zip

Job Title Linensystem

Speaking: [X] For [] Against [] Information

Appearing at request of Chair []

Subject appearing for workshop on main street business

Representing Mainstreet

Lobbyist registered with Legislature: [] Yes [X] No

Pursuant to s. 11.061, Florida Statutes, state, state university, or community college employees are required to file the first copy of this form with the Committee, unless appearance has been requested by the Chair as a witness or for informational purposes.

If designated employee: Time: from _____ .m. to _____ .m.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Budget, *Chair*
Rules, *Vice Chair*
Agriculture
Banking and Insurance
Budget - Subcommittee on Finance and Tax
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Education Pre-K - 12
Rules - Subcommittee on Ethics and Elections

JOINT COMMITTEE:

Legislative Budget Commission, *Chair*

SENATOR JD ALEXANDER

17th District

December 8, 2011

Senator Ellyn Setnor Bogdanoff (R), Chair
Committee On Budget Subcommittee on Finance and Tax
212 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Senator Bogdanoff,

I respectfully request permission to be absent from the Committee on Budget Subcommittee on Finance and Tax, today, December 8, 2011. I will not be able to attend this meeting.

Thank you for your approval in this request.

Sincerely,

A handwritten signature in black ink, appearing to read "JD Alexander".

JD Alexander
Senator, District 17

A handwritten mark or signature in black ink, possibly initials "JD" or a similar mark, enclosed in a circle.

Xc: Jose Diez-Arguelles

REPLY TO:

- 201 Central Avenue West, Suite 115, City Hall Complex, Lake Wales, Florida 33853 (863) 679-4847
- 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5044

Senate's Website: www.flsenate.gov

MIKE HARIDOPOLOS
President of the Senate

MICHAEL S. "MIKE" BENNETT
President Pro Tempore



THE FLORIDA SENATE

Senator Maria Lorts Sachs
Democratic Whip
District 30

Committees:

Regulated Industries,
Vice Chair

Military Affairs, Space &
Domestic Security
Vice Chair

Communications, Energy
& Public Utilities Policy

Reapportionment

Budget Subcommittee on
Transportation, Tourism,
& Economic Development
Appropriations

Budget Subcommittee on
Finance & Tax

Joint Legislative Auditing

STAFF:

Gladys Ferrer
Legislative Assistant

Cesar Fernandez
Legislative Assistant

Dana Gizzi
Legislative Assistant

The Honorable Chair Bogdanoff
212 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

December 6, 2011

Honorable Chair Bogdanoff,

Please excuse my absence from the meeting of the Budget Subcommittee on Finance and Tax scheduled for Thursday, December 8, 2011, as I will be traveling out of the State to attend the Governor's trade mission to Israel. If you have any questions, please call me on my cellular phone at (561)945-8800.

Sincerely,

Maria Lorts Sachs
District 30

CC: Jose Diez-Arguelles
Staff Director
Budget Subcommittee on Finance and Tax

17th Avenue, Suite E, Delray Beach, Florida 33445 (561) 279-1427
Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5091

Senate's Website: www.flsenate.gov