SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1638

SPONSOR: Finance and Taxation Committee and Senator Carlton

SUBJECT: Sales & Use Tax Administration

DATE: April 10, 2001 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Favorable/CS
2.				
3.				
4.				
5.				
6.				

I. Summary:

The bill creates the "Simplified Sales and Use Tax Administration Act", authorizing Florida to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes. The act:

- Clarifies certain terms used throughout the model legislation.
- Outlines the major simplifications to be adopted.
- Provides that Florida will have three representatives at the multi-state discussions of the next phase of the Streamline Sales Tax Project.
- Clarifies that the Agreement cannot preempt, amend or modify any provision of Florida law.
- Maintains that any relationship between states in furtherance of streamlining their sales and use tax collections systems is voluntary for each state.
- Ensures that if Florida complies with the provisions of the Agreement, the Agreement cannot be used to challenge existing state laws or statutes.
- Ensures that the proper parties are held liable for the collection and remittance of the sales tax collected in Florida once Florida adopts the provisions of the Agreement

This bill repeals s. 213.27(9) and creates s. 213.256 of the Florida Statutes:

II. Present Situation:

Florida relies heavily on its 6 percent sales and use tax. In fiscal year 1999-2000, sales and use tax collections accounted for 73% of General Revenue, and over 48% of all tax revenues. (*2001 Florida Tax Handbook Including Fiscal Impact of Potential Changes*) Forty-five states and the District of Columbia impose sales and use taxes. States that do not have a personal income tax –

Florida, Nevada, South Dakota, Tennessee, Texas, Washington and Wyoming - rely most heavily on sales tax collections.

Sales tax is a tax on consumption and is imposed at the time of purchase on taxable, tangible personal property. To provide a level playing field between in-state retailers and out-of-state vendors, 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. Use taxes are difficult for states to enforce, because they must rely on out-of-state vendors to collect the tax money. Out-of-state vendors, not wanting to be tax collectors for states and local government, argue that states have no jurisdiction over them.

States' attempts to enforce the use tax by requiring out-of-state firms to collect taxes from customers led to the 1967 U.S. Supreme Court decision, *National Bellas Hess, Inc. v. Illinois, 386 U.S. 753 (1967).* In that case, the court ruled that states lack the authority to compel out-of-state firms to collect use taxes unless those firms have "nexus" in the state. Nexus was defined by physical presence, having an office or store, owning property or employing workers in a state. The court decision was rooted in the Commerce Clause of the U.S. Constitution, which gives Congress jurisdiction over issues involving interstate commerce. The Court said that imposing a tax collection obligation on out-of-state sellers would impose an "undue burden" on interstate commerce. *National Bellas Hess* was reaffirmed by the U.S. Supreme Court in *Quill Corp. v. North Dakota, 112 S.CT. 1904 (1992).* In the *Quill* decision, the Court cited the complexity and fluidity of sales tax structures from state-to-state as an undue burden on remote sellers, and thus on interstate commerce.

At the time of the *Quill* case, most remote sales were made through catalogs. A 1994 report by the federal Advisory Commission on Intergovernmental Relations estimated that states lost about $3.3 billion in uncollected use taxes in 1994 on catalog or telephone sales. The report estimated the growth in mail-order sales at about 5 percent per year. Although states were concerned about the revenue loss from mail-order sales, $3.3 billion on a base of $120 billion in states sales taxes was viewed as a relatively small problem. (*Can the Sales Tax Survive Cyberspace?* by Scott Mackey, State Legislatures, December, 1999.)

The advent of e-commerce has caused a dramatic increase in remote sales. According to Marshall Stranburg, Florida Department of Revenue, in an August 16, 2000, presentation to the State Tax Reform Task Force, facts about the internet are:

- Sixty percent of U.S. households have internet access
- Forty percent of internet users have made on-line purchases
- Three in five U. S. companies are using e-commerce to some extent
- More than $4 billion was spent on on-line retail purchases during June 2000, which is a 67% increase from February 2000
- Total on-line retail purchases may approach or exceed $40 billion for 2000
- The worldwide internet economy is projected to reach $6.9 trillion by 2004
    - The U.S. will account for ½ of this amount

As identified by Graham Williams in his article, *Streamlined Sales Tax for the New Economy*, (National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44), the issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The expected growth in e-commerce points to an increasing number of transactions on which sales and use taxes will not be collected, resulting in sales tax revenue losses for states and local governments;
- Since remote sellers do not have to collect sales and use taxes, except in states where they have "nexus", they enjoy a competitive advantage over "Main Street" businesses; and
- Because of loopholes for on-line retailers, consumers who can afford access to the internet escape paying sales and use taxes while forcing those without access to shoulder a heavier burden of the sales tax.

Serious consideration of utilizing modern technology coupled with substantial and substantive law changes to address these e-commerce issues began with the National Tax Association's Communications and Electronic Commerce Tax Project. In that process, state and local government representatives suggested that tax compliance software, in coordination with systems maintained by financial intermediaries, could solve many of these problems. Out of this project emerged the National Conference of State Legislatures (NCSL) Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. In coordinated efforts with governors and tax administrators, NCSL formed the Streamlined Sales Tax Project.

The goal of the streamlined project is to design and implement a simplified sales tax collection system that can be used by traditional brick-and-motor vendors and vendors involved in e-commerce. Twenty-six states are participants and thirteen states are observers in the streamlined project. Pilot projects began in October 2000, in the states of Kansas, Michigan, North Carolina, and Wisconsin.

On January 27, 2001, the NCSL Executive Committee unanimously endorsed the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement, as amended and approved by the Executive Committee's Task Force on State and Local Taxation of Telecommunications and Electronic Commerce. States that adopt the Uniform Sales and Use Tax Administration Act will be authorized to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes.

III. Effect of Proposed Changes:

The bill creates s. 213.256, F.S., creating the "Simplified Sales and Use Tax Administration Act". The Act authorizes Florida to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for the collection and administration of state and local sales and use taxes. The Department of Revenue is authorized to enter into the "Streamlined Sales and Use Tax Agreement" with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The Act:

- Clarifies certain terms used throughout the model legislation.
- Outlines the major simplifications to be adopted.
- Provides that Florida will have three representatives at the multi-state discussions of the next phase of the Streamlined Sales Tax Project.
- Clarifies that the Agreement cannot preempt, amend or modify any provision of Florida law.
- Maintains that any relationship between states in furtherance of streamlining their sales and use tax collections systems is voluntary for each state.
- Ensures that if Florida complies with the provisions of the Agreement, the Agreement cannot be used to challenge existing state laws or statutes.
- Ensures that the proper parties are held liable for the collection and remittance of the sales tax collected in Florida once Florida adopts the provisions of the Agreement

Florida has until July 1, 2003, to adopt the necessary provisions to comply with the Agreement.

Section 1. Section 213.27(9), F.S., provides that the Department of Revenue may enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration. Subsection (9) also provides that the system shall have the capability to determine the taxability of a transaction, the appropriate tax rate to be applied to a taxable transaction, and the total tax due on a transaction, and shall provide a method for remitting the tax to the department. As a result of the creation of the "Simplified Sales and Use Tax Administration Act", subsection (9) of s. 213.27, F.S., is no longer needed and is repealed.

Section 2. Creates s. 213.256, F.S., the "Simplified Sales and Use Tax Administration Act". The bill defines various terms used in the bill. Some of these terms are:

a) "Agreement" means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001.
b) "Certified automated system" means software certified jointly by the states that are signatories to the Agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.
c) "Certified service provider" means an agent certified jointly by the states that are signatories to the Agreement to perform all of the seller's sales tax functions.

Subsection (2) of the Act authorizes and directs the department to enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. The subsection provides that the department shall act jointly with other member states to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multi-state sellers. The department is authorized to take other actions reasonably required to administer the Act.

Subsections (3) of the Act provides conditions that must be met in order for the department to enter into the Streamlined Sales and Use Tax Agreement. The department may not enter into the Agreement unless the Agreement:

- Sets restrictions to limit over time the number of state tax rates.

- Establishes uniform standards for:
  - The sourcing of transactions to taxing jurisdictions.
  - The administration of exempt sales.
  - Sales and use tax returns and remittances.
- Provides a central, electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.
- Provides that registration with the central registration system and the collection of sales and use taxes in the signatory state will not be used as a factor in determining whether the seller has nexus with a state for any tax.
- Provides for reducing the burden of complying with local sales and use taxes through the following:
  - Restricting variances between the state and local tax bases.
  - Requiring states to administer sales and use taxes levied by local jurisdictions within the state so that sellers collecting and remitting these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
  - Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
  - Providing notice of changes in local sales and use tax rates and of local changes in the boundaries of local taxing jurisdictions.
- Outlines any monetary allowances that are to be provided by the states to sellers or certified service providers. The Agreement must allow for a joint public and private sector study of the compliance cost on sellers and certified service providers to collect sales and use taxes for state and local governments under various levels of complexity to be completed by July 1, 2002.
- Requires each state to certify compliance with the terms of the Agreement prior to entering into the Agreement and to maintain compliance, under the laws of the member state, with all provisions of the Agreement while a member.
- Requires each state to adopt a uniform policy for certified service providers that protects the privacy of consumers and maintains the confidentiality of tax information.
- Provides for the appointment of an advisory council of private sector representatives and an advisory council of non-member state representatives to consult within the administration of the Agreement.

Subsection (4) of the Act provides the department with the authority to enter into multi-state discussions in order to review and/or amend the Agreement. For purposes of such discussions, Florida shall be represented by no more than four delegates.

Subsection (5) of the Act provides that no provision of the Agreement invalidates or amends any provisions of the laws of Florida. Implementation of any condition of the Agreement must be by the action of the state.

Subsection (6) provides that the Agreement is an accord among individual cooperating sovereigns in furtherance of their governmental functions.

Subsection (7) provides that implementation of the Agreement binds and inures only to the benefit of Florida and other member states.

Subsection (8) provides that a certified service provider, as the seller's agent, is liable for sales and use tax due each member state on all sales transitions it processes for the seller. Absent misrepresentation, a seller who contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider. A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax. A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standard for that system is liable for the failure of the system to meet the performance standard.

Subsection (9) provides that disclosure of information necessary under this section must be pursuant to a written agreement between the executive director of the department and the certified service provider. The certified service provider is bound by the same requirements of confidentiality as the department.

Subsection (10) provides that on or before January 1 annually, the department must provide recommendations to the Speaker of the House of Representatives, Minority Leader of the House of Representatives, President of the Senate, and Minority Leader of the Senate for provisions to be adopted for inclusion within the system that are necessary to bring it into compliance with the Streamlined Sales and Use Tax Agreement.

Section 3. This act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The adoption of the " Simplified Sales and Use Tax Administration Act" is the first step towards adoption of the Streamlined Sales and Use Tax Agreement in Florida, which will provide retailers with a greatly simplified system of sales tax collection. Under the Agreement, retailers will be able to take advantage of simplified procedures for returns, audits and exemptions, all administered by the state.

C. Government Sector Impact:

This proposal will allow Florida to participate in the next phase of discussions with other states for the purpose of developing a multi-state, voluntary, streamlined system for collection and administration of state and local sales and use taxes. Use taxes should be easier to collect and remit under the "Streamline Sales and Use Tax Agreement".

VI. Technical Deficiencies:

Subsection (4) of s. 213.256, F.S., authorizes the Department of Revenue to enter into multi-state discussions in order to review and/or amend the Agreement. For purposes of such discussions, Florida may be represented by up to four delegates. The bill needs amending to designate who those delegates will be.

VII. Related Issues:

None.

VIII. Amendments:

None.