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.)

Prepared By: Government Efficiency Appropriations Committee

BILL: CS/SB 56

SPONSOR: Government Efficiency Appropriations Committee and Senator Campbell

SUBJECT: Streamlined Sales and Use Tax

DATE: January 27, 2005 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	GE	**Fav/CS**
2.			CM	
3.			WM	
4.				
5.				
6.				

I. Summary:

The bill is designed to bring Florida law into compliance with the provisions of the Streamlined Sales and Use Tax Agreement (Agreement) and to enable Florida to petition for membership in the Agreement. The Streamlined Sales Tax Project (Project) is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project proposes that states change their sales and use tax laws to conform to the simplifications as proposed by the project. Thus, the simplifications would apply to all sellers. Participation in the Streamlined Sales Tax System is voluntary for sellers who do not have a physical presence or "nexus".

All forty-five states that impose a sales and use tax and the District of Columbia are involved in the Project. Forty states and the District of Columbia had their legislatures enact enabling legislation. These states make up the Streamlined Sales Tax Implementing States. Florida is one of the Implementing States. On November 12, 2002, the Streamlined Sales Tax Agreement was approved. The key features found within the Agreement which are included in this bill are:

- Uniform definitions within tax laws.
- State tax administration of all state and local taxes.
- Uniform sourcing rules.
- Simplified exemption administration for use-and entity-based exemptions.
- Uniform audit procedures.
- State funding of the system.

When at least 10 states representing 20 percent of the U.S. population have amended their laws to comply with the Agreement, administration of the Agreement will switch to the governing states.

As of January 2005, twenty-one states representing over 35 percent of the total population of the United States, have enacted legislation to reform their sales tax administration in accordance with the provisions of the Agreement and make up the governing states. These states are: Arkansas; Indiana; Iowa; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; Tennessee; Texas; Utah; Vermont; Washington; West Virginia; and Wyoming.[1]

This bill substantially amends sections 212.02, 212.0306, 212.04, 212.05, 212.0506, 212.054, 212.055, 212.06, 212.08, 212.095, 212.12, 12.17, 212.18, 213.21, and 213.256 and creates sections 212.094, 213.052, 213.0521, and 213.2567 and repeals subsection (6) of section 212.0596 of the Florida Statutes.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes:

II. Present Situation:

Sales and Use Taxes

Florida relies heavily on its 6 percent sales and use tax. In fiscal year 2003-04, sales and use tax collections accounted for 72% of the receipts into the General Revenue Fund.[2] 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 imposed, at the time of purchase, primarily 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 or purchasers must remit the tax themselves. Out-of-state vendors, not wanting to be tax collectors for states and local governments, 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

[1] Streamlined Sales Tax Project, Executive Summary, January 2005 at http://www.streamlinedsalestax.org/execsum0105.pdf.
[2] *See* November 2004 Revenue Estimating Conference, changes in estimate (11/12/2004) at http://www.state.fl.us/edr/conferences/generalrevenue/grconference.htm

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 out of a total of $120 billion in state sales taxes was viewed as a relatively small problem.[3]

E-Commerce

The advent of e-commerce has caused a dramatic increase in remote sales. According to research done in the fall of 2003 by Nielson//Net Ratings[4] and NUA Internet Surveys[5], some facts about the Internet are:

- Sixty percent of U.S. households have internet access; and
- Ninety-three percent of internet users have made on-line purchases

On November 19, 2004, the U.S. Department of Commerce reported that the estimate for U.S. retail e-commerce sales for the third quarter of 2004 was $17.1 billion, an increase of 4.7 percent from the second quarter of 2004. Total retail sales for the third quarter were estimated at $916.5 billion, an increase of 1.4 percent from the second quarter of 2004. The third quarter 2004 e-commerce estimate increased 21.5 percent from the third quarter of 2003, while total retail sales increased 6.2 percent in the same period. E-commerce sales in the third quarter accounted for 1.9 percent of total sales.[6]

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

[3] Scott Mackey, "Can the Sales Tax Survive Cyberspace?", State Legislatures, December, 1999.
[4] http://www.nua.net
[5] http://www.nielsen-netratings.com
[6] U.S. Census Bureau, *United States Commerce Department News*, November 19, 2004, *at* http://www.census.gov/mrts/www/current.html.

- 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.[7]

The inability of states to collect existing online sales taxes is estimated to have a dramatic effect on both state and local revenues. A 2001 University of Tennessee study commissioned by the Institute for State Studies found that state and local governments could lose $13.3 billion in 2001, $45.2 billion in 2006 and as much as $54.8 billion in 2011 because of this problem. In Florida alone, the loss could be as high as $932.2 million in 2001, $3.2 billion in 2006 and $3.9 billion in 2011.[8]

Currently, America's sales and use tax system, with roughly 7,500 state and local taxing jurisdictions across the nation, is antiquated, complex, and cumbersome to businesses in today's new economy. One of the problems with so many taxing jurisdictions is that they often have different laws or definitions of what is taxable. That arrangement makes it very difficult for remote retailers, such as mail order companies and e-commerce companies, to collect and remit sales taxes at varying rates to different state and local governments.

Internet Tax Freedom Act

In response to the Internet explosion, Congress enacted the Internet Tax Freedom Act (ITFA) in October 1998. This legislation called for a 3-year moratorium, from October 1, 1998 to October 21, 2001, on state and local taxes on Internet access, unless such tax was generally imposed and actually enforced before October 1, 1998. The ITFA specifically preserves state and local taxing authority. Purchases made via the Internet, if otherwise taxable, are still taxable when purchased over the "net". On November 28, 2001, Congress and the President approved the Internet Tax Nondiscrimination Tax which amended the ITFA by extending the tax moratorium through November 1, 2003. On November 1, 2003, ITFA expired. On December 3, 2004, President Bush signed the Internet Tax Nondiscrimination Act, reinstating and extending until November 1, 2007, the moratorium on taxes on Internet access.

Streamlined Sales Tax Project

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 in March 2000. The goal of the streamlined project is to design and implement a

[7]Graham Williams, "Streamlined Sales Tax for the New Economy", National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.

[8] Donald Bruce and William F. Fox, Center for Business and Research, University of Tennessee, "State and Local Sales Tax Revenue Losses from E-Commerce: Updated Estimates", September, 2001.

simplified sales tax collection system that can be used by traditional brick-and-mortar vendors and vendors involved in e-commerce. In response to this effort, the Florida Legislature passed chapter 2000-355, Laws of Florida, creating s. 213.27(9), F.S., giving the Department of Revenue authority to enter into contracts with public or private vendors to develop and implement a voluntary system for sales and use tax collection and administration.

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 adopted the Uniform Sales and Use Tax Administration Act or had their governors issue executive orders or similar authorizations were 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. In 2001, the Florida Legislature passed chapter 2001-225, Laws of Florida, which among other things, created the Simplified Sales and Use Tax Act, authorizing Florida to participate in the next phase of discussions with other states for the purposes of developing the Project.

All forty-five states that impose a sales and use tax and the District of Columbia are involved in the Project. Forty states and the District of Columbia had their legislatures enact enabling legislation. These states make up the Streamlined Sales Tax Implementing States (SSTIS) On November 12, 2002, the Streamlined Sales Tax Agreement (Agreement) was approved at a meeting of the SSTIS held in Chicago, Illinois. The Agreement was amended on November 19, 2003 and November 16, 2004.

The SSTIS has met over the past two years to review, debate, and approve provisions in the Agreement proposed by the Streamlined Sales Tax Project. The Project conducted its work through a steering committee with co-chairs, four work groups, and a number of sub-groups. Project participants are generally state revenue department administrators in addition to representatives from state legislatures and local governments. Businesses, including national retailers, trade associations, manufacturers, direct marketers, technology companies, and others, have actively participated in the Project.

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project proposes that states change their sales and use tax laws to conform to the simplifications as proposed by the project. Thus, the simplifications would apply to all sellers. Participation in the Streamlined Sales Tax System is voluntary for sellers who do not have a physical presence or "nexus" within a state unless Congress chooses to require collection from all sellers for all types of commerce. Also, registration by sellers to voluntarily collect sales and use taxes will not infer that the business must collect business activity taxes, such as corporate franchise or income tax.

Streamlined Sales and Use Tax Agreement

The key features found within the Streamlined Sales and Use Tax Agreement (Agreement) include:

- Uniform definitions within tax laws. Legislatures still choose what is taxable or exempt in their state. However, participating states will agree to use the common definitions for key items in the tax base and will not deviate from these definitions.

- Rate simplification. States will be allowed one state rate and a second state rate in limited circumstances. Local jurisdictions will be allowed one local rate.

- State tax administration of all state and local taxes. Businesses will no longer file tax returns with each local government where it conducts business in a state. States will be responsible for the administration of all state and local taxes and the distribution of the local taxes to the local governments. State and local governments must have common tax bases.

- Uniform sourcing rules. The states will have uniform and simple rules as to how they will source transactions to state and local governments.

- Simplified exemption administration for use-and entity-based exemptions. Sellers are relieved of the "good faith" requirements that exist in current law and will not be liable for uncollected tax. Purchasers will be responsible for paying the tax, interest and penalties for claiming incorrect exemptions.

- Uniform audit procedures.

- State funding of the system. To reduce the financial burdens on sellers, states will assume responsibility for funding some of the technology models.

When at least 10 states representing 20 percent of the U.S. population have amended their laws to comply with the Agreement, administration of the Agreement will switch to the governing states. As of August 2004, twenty-one states representing over 35 percent of the total population of the United States, have enacted conforming legislation and make up the governing states. These states are: Arkansas; Indiana; Iowa; Kansas; Kentucky; Michigan; Minnesota; Nebraska; Nevada; North Carolina; North Dakota; Ohio; Oklahoma; South Dakota; Tennessee; Texas; Utah; Vermont; Washington; West Virginia; and Wyoming.

The governing board will be comprised of representatives of each member state. Each member state is entitled to one vote on the governing board. The governing board is responsible for interpretations of the Agreement, amendments to the Agreement, and issue resolution. A State and Local Government Advisory Council and a Business and Taxpayer Advisory Council from the private sector will advise the governing board.

In order for Florida to be included in the governing states that will administer the Agreement, legislation was introduced during the 2003 and 2004 Legislative Sessions. The Senate passed CS/CS/SB 1776 (2003) and SB 1072 (2004) which adopted changes to chapter 212, F.S., to comply with the Agreement. Both bills died in House Messages.

Both the House and Senate introduced Streamlined Sales and Use Tax legislation during the 108th Congress, H.R. 3184 and S. 1736. The bills required, after the Governing Board declares the Streamlined Sales Tax system operational, all remote vendors to collect and remit sales tax on behalf of every state that adopts the Streamlined Sales and Use Tax Agreement. Congress failed to pass either bill during 2003-04.

III. Effect of Proposed Changes:

Section 1 amends s. 212.02, F.S., providing definitions adopted by the Streamlined Sales and Use Tax Agreement (Agreement). Specifically, the bill amends the terms "lease", "let", or "rental"; "sales price"; and "tangible personal property" and defines the following new terms: "agent;" "seller"; "model 1 seller"; "model 2 seller"; "model 3 seller"; "certified service provider"; "direct mail"; "prewritten computer software"; and "delivery charges". The definition of "sales price" includes all delivery charges, which is a change from current law. Under current law, delivery charges are taxable if they are part of the sales price, and they are exempt if the customer has a choice to decline having the seller provide delivery.

Section 2 provides that the amendment of the terms "lease", "let", and "rental" in s. 212.02, F.S., made by the bill applies prospectively only, from January 1, 2006, and does not apply retroactively to leases or rentals existing before that date.

Section 3 amends s. 212.0306(6), F.S., deleting reference to brackets.

Section 4 amends s. 212.04(1)(b), F.S., deleting reference to brackets.

Section 5 amends s. 212.05, F.S., to delete the special provisions in subparagraph (1)(c) that apply to the lease or rental of certain motor vehicles. Similar provisions are created in s. 212.06(3), F.S. The bill also amends paragraph (e) providing for the sourcing of the sale or recharge of prepaid calling arrangements pursuant to s. 212.06(3)(d), F.S. In addition, subsection (4) is amended deleting reference to brackets and correcting a cross-reference.

Section 6 amends s. 212.0506(6), F.S., deleting reference to brackets and correcting a cross-reference.

Section 7 amends s. 212.054, F.S., dealing with the discretionary sales surtax.

Section 212.054(2)(b)1., F.S., is amended to remove the $5,000 discretionary sales surtax cap for all retail sales of tangible personal property, except for the sale of motor vehicles, aircraft, boats, modular homes, manufactured homes, or mobile homes.

Section 212.054(2)(b)2., F.S., is amended to provide that tax rate increases on utility services apply to the first billing period starting on or after the effective date of the increase. Tax rate decreases on utility services apply to all bills rendered on or after the rate change. Current law requires tax increases on utility services to apply to utility bills issued after the effective date of the increase. Tax rate decreases apply to utility bills issued after the rate change.

A new s. 212.054(3), F.S., is created to provide that with specified exceptions, s. 212.06(3), F.S., should be used to determine whether a retail sale, lease, or rental of tangible personal property, a digital good, or a service occurs in a county that imposes a discretionary sales surtax. The following are exceptions to the general rule in s. 212.06(3), F.S., to determine whether certain transactions occur in a county imposing a surtax:

- The retail sale of a modular or manufactured home occurs in the county to which the home is delivered.

- The retail sale of certain motor vehicles occurs in the county identified as the residential address of the purchaser on the registration or title document for the vehicle.

The bill deletes existing s. 212.054(5), F.S., which specifies effective dates and termination dates for discretionary sales surtaxes.

Section 212.054(7)(a), F.S., is amended to provide an effective date of April 1 for the adoption, repeal, or rate change of a surtax and requires a county or school board to notify the Department of Revenue by November 16 immediately preceding the April 1 effective date.

A new s. 212.054(7)(c), F.S., is created to provide that the Department of Revenue shall provide notice of the adoption, repeal, or change of a surtax to all affected sellers by the December 1 immediately preceding the April 1 effective date.

A new s. 212.054(7)(d), F.S., is created to extend the termination dates of some county local option sales surtaxes that were adopted before the effective date of the committee substitute. Local option sales surtaxes adopted before January 1, 2006, that are scheduled to terminate on a date other than April 1 will terminate on the April 1 following the original termination date of the tax.

Section 212.054(10), F.S., is created to require the Department of Revenue to provide and maintain a database of all sales and use tax rates for all local taxing jurisdictions pursuant to the provisions of s. 202.22(2), F.S.

Section 212.054(10)(a), F.S., is created to relieve sellers from liability as the result of reliance on erroneous data provided by the database under s. 202.22(2), F.S., or a database approved by the governing board of the Streamlined Sales and Use Tax Agreement on tax rates, boundaries, or taxing jurisdiction assignments.

Section 8 amends s. 212.06, F.S., providing for the determination of a seller's obligation to pay or collect and remit sales or use tax with respect to the seller's retail sale of the product. This section provides sourcing for the following types of transactions:

- The retail sale of a product, excluding a lease or rental;

- The lease or rental of tangible personal property, including motor vehicles, trailers, semi-trailers, or aircraft that do not qualify as transportation equipment;

- The retail sale, including lease or rental, of transportation equipment.
  - The term "transportation equipment" is defined to mean:
    - Locomotives and railcars that are used for the carriage of persons or equipment in interstate commerce;
    - Trucks or truck tractors with a Gross Vehicle Weight of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are registered through the International Registration Plan;
    - Aircraft that are operated by air carriers authorized and certified by the U.S. Department of Transportation; and
    - Containers designed for use on such vehicles.

The bill provides for a multiple points of use (MPU) exemption form to be used at the time of purchase by a business purchaser that is not a holder of a direct-pay permit and that knows at the time of purchase of a digital good, computer software delivered electronically, or a service that the digital good, computer software delivered electronically, or service will be concurrently available for use in more than one jurisdiction. Upon receipt of the MPU exemption form, the seller is relieved of all obligation to collect, pay, or remit the applicable tax, and the purchaser shall be obligated to collect, pay, or remit the applicable tax on a direct-pay basis.

A purchaser of direct mail which is not a holder of a direct-pay permit shall provide to the seller in conjunction with the purchase, either a direct mail form or information to show the jurisdictions to which the direct mail is delivered to recipients. Upon receipt of the direct mail form, the seller is relieved of all obligations to collect, pay, or remit the applicable tax, and the purchaser is obligated to pay or remit the applicable tax on a direct-pay basis.

Section 9 amends s. 212.08, F.S., providing for exemptions from the sales and use tax. This section amends current definitions to conform to the definitions found in the Agreement. The amended definitions do not change current law except for the following:

- Subsection (2) of s. 212.08, F.S., provides for medical exemptions. With the adoption of the Agreement's medical definitions, the following items will be treated differently then they are under current law:
  - Items no longer exempt unless sold with a prescription:
    - Hypodermic syringes;
    - Artificial eyes and limbs, orthopedic shoes, and crutches;
    - Lithotripters; and
    - X-ray opaques used in connection with medical x-rays of humans or animals.
  - Items newly exempt:
    - Chemical compounds and test kits for the diagnosis and treatment of non-human disease, illness or injury; and
    - Cosmetics and toilet articles sold as an over-the-counter drug or with a prescription.

- Under current law, all juice drinks are subject to sales tax, while 100 percent fruit juices are exempt. In the bill, the term "soft drinks" is defined as nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks do not include beverages that contain

milk or milk products, soy, rice, or similar milk substitutes, or greater than 50 percent of vegetable or fruit juice by volume. As a result of this change in definition, fruit juices containing 50 percent or more juice are exempt from the sales tax.

- Under current law, all candy is subject to sales tax. In the bill, candy is redefined to mean a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation that contains flour and requires no refrigeration. This definition will result in candy containing flour becoming exempt from the sales tax and certain chocolate products used for baking becoming taxable.

- Under current law, ice cream, frozen yogurt, and similar frozen dairy or nondairy products sold in cones, small cups, or pints, and popsicles, frozen fruit bars, or other novelty items are taxable. In order to comply with Agreement definitions, these items will become exempt under this bill.

Subsection (3) of s. 212.08, F.S., is amended to provide for a sales tax exemption for certain farm equipment. Under current law such farm equipment is taxed at the rate of 2.5 percent. The Agreement does not allow for differential tax rates, except in certain circumstances.

Section 10 amends s. 212.095, F.S., relating to refunds. The bill removes from current law, the requirement that no person may secure a refund under ch. 212, F.S., unless such person is the holder of an un-revoked refund permit issued by the Department of Revenue before the purchase for which a refund is sought. The bill eliminates the process by which a taxpayer obtains a refund permit and eliminates the requirement under which certain taxpayers are required to execute a corporate surety bond of $1,000.

Section 11 creates s. 212.094, F.S., requiring purchasers to request a refund or credit from the sales tax dealer before applying to the Department of Revenue for a refund.

Section 12 amends s. 212.12(1), F.S., providing language on the dealer collection allowance that conforms to the Agreement. Specifically, the bill provides that:

- A model 1 seller is not entitled to the dealer collection allowance;

- In addition to the dealer collection allowance provide for under subsection (1) of s. 212.12, F.S., the Department of Revenue may provide the monetary allowance required to be provided by the state to certified service providers and voluntary sellers pursuant to Article VI of the Agreement, as amended.
    - The amount of the monetary allowance is still being negotiated by the participating states.

The bill also amends subsection (9) of s. 212.12, F.S., deleting reference to brackets and providing for the computation of tax by rounding, as required by the Agreement.

Section 13 amends s. 212.17, F.S., relating to credit for returned goods. The bill provides that a dealer who has paid the sales tax and who is not required to file federal income tax returns may

take a credit or obtain a refund for any tax paid by the dealer on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt is written off as uncollectible and would be eligible for a bad debt deduction for federal income tax purposes if the dealer was required to file a federal income tax return.

Section 14 amends s. 212.18(3)(a), F.S., authorizing the Department of Revenue to waive the $5 dealer registration fee for applications submitted through the central electronic registration system provided by member states of the Agreement.

Section 15 creates s. 213.052, F.S., relating to notice of state rate changes. A sales and use tax rate change imposed under ch. 212, F.S., is effective on January 1, April 1, July 1, or October 1. The Department of Revenue must provide notice of such rate change to all affected sellers 90 days before the effective date of the rate change.

Section 16 creates s. 213.0521, F.S., relating to the effective date of state rate changes for sales tax on services. The effective date for services covering a period starting before and ending after the statutory effective date shall be as follows:

- For a rate increase, the new rate shall apply to the first billing period starting on or after the effective date.

- For a rate decrease, the new rate shall apply to bills rendered on or after the effective date.

Section 17 amends s. 213.21, F.S., providing that amnesty shall be provided for uncollected or unpaid sales or use tax to a seller who registers to pay or collect and remit applicable sales or use tax on sales made to purchasers in this state in accordance with the terms of the Agreement, if the seller was not so registered in that state in the 12-month period preceding the effective date of the state's participation in the Agreement.

Section 18 amends s. 213.256, F.S., relating to the Simplified Sales and Use Tax Administration Act. As used in ss. 213.256 and 213.2567, F.S., the bill adds the following definitions to the Act:

- "Agent" means a person appointed by a seller to represent the seller before the member states.

- "Model 1 seller" means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions.

- "Model 2 seller" means a seller that has selected a certified automated system to perform part of its sales and use tax functions, but retains responsibility for remitting the tax.

- "Model 3 seller" means a seller that has sales in at least five member states, has total annual sales revenue of at least $500 million, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states which establishes a tax performance standard for the seller.

- "Registered under this agreement" means registration by a seller with the member states under the central registration system.

The bill amends the definition of "Agreement" to mean the Streamlined Sales and Use Tax Agreement as adopted on November 12, 2002 and as amended on November 19, 2003 and November 16, 2004.

In addition, the bill outlines the following powers of the member states in relation to the Agreement:

- The determinations pertaining to the Agreement which are made by the member states are final when rendered and are not subject to any protest, appeal, or review.

- Authority to administer the Agreement shall rest with the governing board comprised of representatives of each member state. Each member state may appoint up to four representatives to the governing board. Florida shall be represented by three delegates, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and the executive director of the Department of Revenue or his or her designee.

- With respect to each member state, the Agreement shall continue in full force and effect until the member state withdraws its membership or is expelled.

- A member state that is found to be out of compliance with the Agreement may be sanctioned, which may include expulsion or other penalties as determined by the governing board.

- Each member state shall annually recertify that the state is in compliance with the Agreement.

Section 19 creates s. 213.2567, F.S., relating to the Simplified Sales and Use Tax registration, certification, liability and audit. A seller that registers pursuant to the Agreement agrees to collect and remit sales and use taxes for all taxable sales into the member states. When registering, the seller may select a model 1, model 2, or model 3 method of remittance or other method allowed by law to remit the taxes collected.

- A certified service provider is the agent of a model 1 seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes and is liable for sales and use tax due each member state on all sales transactions it processes for the model 1 seller.
- A model 2 seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.
- A model 3 seller is liable for the failure of the proprietary system to meet the performance standard.

The governing board is responsible for certification of a certified service provider and a software program as a certified automated system. In addition, the governing board may establish one or more sales tax performance standards for model 3 sellers.

Section 20 amends s. 212.055, F.S., correcting cross references.

Section 21 deletes subsection (6) of section 212.0596, F.S., relating to the exemption from collecting and remitting any local option surtax for certain dealers who make mail order sales.

Section 22 provides that it is the intent of the Legislature to urge the United State Congress to consider adequate protections for small businesses engaging in both offline and online transactions from added costs, administrative burdens, and requirements imposed on intermediaries relating to the collection and remittance of sales and use tax.

Section 23 grants emergency rule making authority to the Department of Revenue.

Section 24 provides that the bill shall take effect January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Streamlined Sales and Use Tax Agreement should improve Florida's sales and use tax by reducing the costs of collecting and remitting state and local sales and use taxes. In particular, the burden of collecting sales and use taxes on remote sales would be reduced by enactment of the Agreement, likely increasing sales and use tax collections for Florida and other member states. The fiscal impact of the collection and remittance of sales and

use taxes by mail-order and e-commerce businesses that currently do not collect such taxes for the state of Florida is indeterminate, but could be significant once the Streamlined Sales and Use Tax Agreement is fully implemented.

During the 2003 Legislative Session, the Revenue Estimating Conference estimated the revenue impact of CS/SB 1776. The changes in the definitions of "candy," "fruit drinks" and "medical exemptions" made by this act will result in a loss of sales tax revenue, while the change in the definition of "sales price" to include all delivery charges will result in an increase in sales tax revenue.

	General Revenue		State Trust		Local Trust		Total	
Issues	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**
Candy/Food	(1.6)	(4.1)	(*)	(*)	(0.3)	(0.8)	(1.9)	(4.9)
Fruit Drinks Contain. 50% or more juice	(0.3)	(0.9)	(*)	(*)	(0.1)	(0.2)	(0.4)	(1.1)
Medical Exemptions	(1.2)	(2.8)	(*)	(*)	(0.3)	(0.6)	(1.5)	(3.4)
Delivery Charges	3.1	8.1	*	*	0.6	1.6	3.7	9.7
Total	0.0	0.3	*	*	(0.1)	0.0	(0.1)	0.3

In addition, CS/SB 56 contains the following issues with fiscal impacts, which have not been review by the Revenue Estimating Conference:

i. Sales tax exemption on farm equipment – estimated $10 million recurring General Revenue loss;

ii. Removal of the discretionary sales surtax $5,000 cap on the retail sale of tangible personal property except for the sale of motor vehicles, aircraft, boats, modular homes, manufactured homes or mobile homes – estimated $100 million increase to local governments in discretionary sales surtax revenues; and

iii. Adoption of rounding as the way to calculate sales and use taxes – estimated $45 million recurring General Revenue loss.

B. Private Sector Impact:

The implementation of the Streamlined Sales and Use Tax Agreement will reduce the costs of collecting and remitting state and local sales and use taxes for sellers doing business in Florida and in other member states.

C. Government Sector Impact:

States are responsible for funding some of the technology models to be used under the Agreement, thus impacting the budget of the Department of Revenue. Estimates are not available at this time of the costs of providing such technology models.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.