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 Commerce and Tourism Committee

BILL:	CS/SB 1548
INTRODUCER:	Commerce and Tourism Committee and Senator Lynn
SUBJECT:	Streamlined Sales and Use Tax Agreement
DATE:	April 6, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hrdlicka	Cooper	CM	**Fav/CS**
2.			BC	
3.				
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

CS/SB 1548 (the bill) implements the requirements of the Streamlined Sales and Use Tax Agreement by making substantial changes to Florida's sales and use tax laws in chs. 212 and 213, F.S. Such changes are meant to simplify Florida's sales and use tax system and qualify the state for participation in the Sales and Use Tax Agreement, thereby making it easier for out-of-state businesses to voluntarily collect and remit taxes to Florida.

This bill amends the following sections of Florida Statutes: 212.02, 212.03, 212.0306, 212.031, 212.04, 212.05, 212.0506, 212.054, 212.055, 212.06, 212.07, 212.08, 212.12, 212.15, 212.17, 212.18, 212.20, 213.256, 11.45, 196.012, 202.18, 203.01, 212.052, 212.081, 212.13, 218.245, 218.65, 288.1045, 288.11621, 288.1169, 551.102, and 790.0655.

This bill creates the following sections of Florida Statutes: 212.094, 213.052, 213.0521, 213.215, 213.2562, and 213.2567.

This bill repeals s. 212.0596, F.S.

II. Present Situation:

Because Florida has no personal state income tax, the state is primarily dependent on consumption-based taxes for its general revenue. Sales tax collections make up over 70 percent of general revenue.[1] Forty-five states and the District of Columbia impose sales and use taxes.[2] States that do not have a personal income tax – Alaska, Florida, Nevada, New Hampshire, South Dakota, Tennessee, Texas, Washington, and Wyoming – rely most heavily on sales tax collections.

Florida Sales and Use Tax

Chapter 212, F.S., contains the state's statutory provisions authorizing the levying and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. A 6 percent sales and use tax is levied on most tangible personal property, admissions, storage, transient rentals, commercial rentals, motor vehicles, and a limited number of services.[3] The statutes currently provide more than 200 different exemptions.[4]

A sales tax of 6 percent is levied on the sales prices of tangible personal property sold at retail in Florida.[5] Sales tax is added to the price of the taxable goods or service and collected from the purchaser at the time of sale.

A use tax of 6 percent is levied on the cost price of tangible personal property when it is used, consumed, distributed, or stored, rather than sold, in Florida.[6] This is levied when sales tax was not paid at the time of purchase. For example, use tax is owed when a person buys:[7]

- A taxable item in Florida and doesn't pay sales tax;
- An item tax-exempt intending to resell it, and then the item is used in a business or for personal use; or
- A taxable item outside Florida and brings or has it delivered into the state within 6 months of the purchase date, and sales tax was not paid on the item.

The use tax attempts to provide a level playing field between in-state retailers and out-of-state vendors. 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.

If the item brought into Florida is subject to tax, a credit is allowed for taxes paid to another state, a U.S. territory, or Washington, D.C. Credit is not given for taxes paid to another country.

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[1] See Florida Revenue Estimating Conference (REC), 2011 Florida Tax Handbook including Fiscal Impact of Potential Changes, available at http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2011.pdf (last visited 4/5/2011).

[2] Alaska, Delaware, Montana, New Hampshire, and Oregon do not impose a state sales and use tax, although Alaska permits local governments to impose sales and use taxes.

[3] Of the limited services that are taxable, some, such as cable, are taxed at a higher rate.

[4] For a list of exemptions and history, see REC, 2011 Florida Tax Handbook. Exemptions were estimated to total about $10 billion in FY 2011-12.

[5] Section 212.05(1)(a)1.a., F.S.

[6] Section 212.05(1)(b), F.S.

[7] DOR, Florida's Sales and Use Tax, GT-800013, last revised 7/2009, available at http://dor.myflorida.com/dor/forms/2009/gt800013.pdf (last visited 4/5/2011).

The Florida Department of Revenue (DOR) is responsible for administering, collecting, and enforcing all sales taxes. Collections of discretionary sales surtaxes received by DOR are returned monthly to the county imposing the tax. Further, there are several state-shared revenue programs that allocate some portion of the state sales and use tax to local governments. A few revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria. While general law restricts the use of some shared revenues, proceeds derived from other shared revenues may be used for the general revenue needs of local governments.[8]

Local Discretionary Sales Surtax

A "surtax" is an extra tax or charge.[9] Sections 212.054 and 212.055, F.S., authorize Florida counties to charge a discretionary sales surtax on all transactions subject to the state sales and use tax. Only those surtaxes specifically designated may be levied.

Section 212.055, F.S., authorizes counties to impose eight local discretionary sales surtaxes on all transactions occurring in the county subject to the state tax imposed on sales, use, services, rental, admissions, and other transactions and on communications services, defined in ch. 202, F.S. Table 1 identifies the eight taxes, the rate limits, and the number of counties authorized to impose and the number imposing the tax.[10]

Table 1: Local Discretionary Sales Surtaxes

Tax	Authorized Levy (%)	# Counties Authorized to Levy Tax	# Counties Levying Tax
Charter County Transportation System Surtax	up to 1%	31	2
Local Government Infrastructure Surtax	0.5% or 1%	67	20
Small County Surtax	0.5% or 1%	31	28
Indigent Care & Trauma Center Surtax	up to 0.25%, or up to 0.5%	65	1
County Public Hospital Surtax	0.5%	1 (Miami-Dade County)	1
School Capital Outlay Surtax	up to 0.5%	67	16
Voter-Approved Indigent Care Surtax	0.5% or 1%	60	4
Emergency Fire Rescue Services and Facilities Surtax[11]	up to 1%	65	0

Source: REC, 2011 Local Government Financial Information Handbook

[8] For more information see REC, 2011 Local Government Financial Information Handbook, October 2010, available at http://edr.state.fl.us/Content/local-government/reports/lgfih10.pdf (last visited 4/5/2011).
[9] Black's Law Dictionary (9th ed., 2009), tax.
[10] The tax rates, duration of the surtax, method of imposition, and proceed uses are individually specified in s. 212.055, F.S. General limitations, administration, and collection procedures are set forth in s. 212.054, F.S.
[11] Created in 2009 by ch. 2009-182, L.O.F. (Effective July 1, 2009).

The maximum discretionary sales surtax that any county can levy depends upon the county's eligibility for the taxes listed in s. 212.055, F.S.; currently, the maximum ranges between 2 percent and 3.5 percent for Florida's 67 counties. In general, the levy of a particular tax is subject to county voter approval.

The discretionary sales surtax is based on the rate in the county where the taxable goods or services are sold, or delivered into, and is levied in addition to the state taxes. The sales amount is not subject to the tax if the property or service is delivered within a county that does not impose a surtax. The surtax does not apply to a sales amount above $5,000 on any item of tangible personal property. This $5,000 cap does not apply to the sale of any service, rentals of real property, or transient rentals.

Internet Sales and Out of State Vendors

Under Florida law, each sale is subject to sales tax unless such transaction is specifically exempt. Chapter 212, F.S., provides no exemptions for sales over the internet. 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.[12] Out-of-state vendors, not wanting to be tax collectors for states and local governments, argue that states have no jurisdiction over them. A state's ability to compel an out-of-state seller to collect and remit sales tax is limited by the Commerce Clause and the Due Process Clause of the U.S. Constitution.[13] The U.S. Supreme Court has held that the state's disparate state and local sales tax systems make collecting taxes an undue burden on out-of-state retailers.[14]

In order for sales occurring over the internet to be subject to the sales tax, there must be sufficient nexus between the seller and the state. Nexus has been found to exist when a seller:

- Has agents in this state who solicit or transact business on behalf of the seller and as a result receive orders for merchandise to be delivered to the purchaser in this state;
- Has a physical location in this state;
- Delivers merchandise into this state in vehicles which are leased or owned by the seller;
- Owns land or buildings located in this state;
- Stores merchandise in this state for sale or use; or
- Rents or leases merchandise that is located in Florida in the possession of a lessee.[15]

If the person selling the property into this state does not have sufficient nexus or is not registered with DOR as a dealer to collect sales tax, and the goods are delivered in Florida, then use tax applies and is due from the purchaser.

[12] See DOR, Florida Consumer Information website on remitting use tax for internet sales, available at http://dor.myflorida.com/dor/taxes/consumer.html (last visited 4/5/2011).
[13] Due Process requires some minimal contact with the taxing state for a taxing statute to be upheld. Upholding a statute against a Commerce Clause challenge is dependent upon satisfaction of a 4-part test: (1) the tax is applied to an activity with a substantial nexus with the taxing state; (2) the tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to a service provided by the taxing state.
[14] See Closing the Online Tax Loophole, Blackston, Michelle, NCSL's State Legislatures, April 2008.
[15] Depending on the jurisdiction, courts have found that these things satisfy nexus while others have found that they were insufficient alone.

According to the U.S. Census Bureau about 70 percent of U.S. households have internet access.[16] The U.S. Census Bureau estimated the total internet or "e-commerce" sales for 2010 at $165.4 billion, an increase of 14.8 percent (±2.3%) from 2009. "Total retail sales in 2010 increased 7.0 percent (±0.5%) from 2009. E-commerce sales in 2010 accounted for 4.2 percent of total sales. E-commerce sales in 2009 accounted for 3.9 percent of total sales."[17]

The issue of sales and use taxes on e-commerce is important to the states for three main reasons:

- The continued 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 state and local governments;
- Since out-of-state sellers do not have to collect sales and use taxes, except in states where they have "nexus," they enjoy a competitive advantage over "brick and mortar" 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.[18]

A study updated in 2009 estimated that for 2012, Florida would lose out on about $1.484 billion in uncollected sales tax revenue from out of state transitions.[19] With 67 different state and local taxing jurisdictions in Florida, an out-of-state retailer may find it difficult to collect and remit sales taxes. There are about 7,500 different taxing jurisdictions at the state and local levels in the U.S.

Internet Tax Freedom Act

In response to the Internet explosion, Congress enacted the Internet Tax Freedom Act 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 and multiple or discriminatory taxes on electronic commerce. This moratorium has been extended several times and currently expires November 1, 2014.[20]

Streamlined Sales Tax Project

Because of the rise of e-commerce, a group was formed in 2000 with the National Conference of State Legislatures (NCSL), consisting of legislators, tax administrators, and private sector representatives, to design and implement a simplified sales tax collection system that could be used by traditional brick-and-mortar businesses and businesses involved in e-commerce. In response to this effort, the Florida Legislature passed ch. 2000-355, L.O.F., creating a provision in s. 213.27, F.S., which grants DOR authority to enter into contracts with public or private

[16] 2009 data available at http://www.census.gov/population/www/socdemo/computer.html (last visited 4/5/2011).
[17] Quarterly Retail E-Commerce Sales, 4th Quarter 2010, available at http://www.census.gov/retail/mrts/www/data/pdf/ec_current.pdf (last visited 4/5/2011).
[18] Graham Williams, "Streamlined Sales Tax for the New Economy," National Conference of State Legislatures, Nov./Dec. 2000, Vol. 8, No. 44.
[19] Data collected by the National Conference of State Legislatures (NCSL); Donald Bruce and William F. Fox, Center for Business and Research, University of Tennessee, State and Local Sales Tax Revenue Losses from E-Commerce Estimates as of April 2009, available at http://www.ncsl.org/default.aspx?TabId=20274 (last visited 4/5/2011).
[20] Created by Pub. L. No. 105-277; Extended to November 2003 by Pub. L. No. 107-75; Extended to November 2007 by Pub. L. No. 108-435; Extended to November 2014 by Pub. L. No. 110-108.

vendors to develop and implement a voluntary system for sales and use tax collection and administration.

In 2001, the Uniform Sales and Use Tax Administration Act and the Streamlined Sales Tax Agreement were approved and 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. The Florida Legislature passed ch. 2001-225, L.O.F., 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.

The result of the Streamlined Sales Tax Project is the Streamlined Sales and Use Tax Agreement (SSUTA). It proposes an effort to "modernize" states' sales and use tax structures to create a uniform, simplified taxing system that would apply to all businesses collecting sales and use taxes. Participation in collecting sales tax under the agreement is voluntary for sellers who do not have a physical presence or "nexus" within a state. However, an end goal of the effort is for Congress to require collection from all sellers for all types of commerce.

Streamlined Sales and Use Tax Agreement

SSUTA is a multi-state project intended to simplify the administration of sales and use taxes. One of the goals of the legislation is to encourage sellers who do not have a physical presence in a particular state (such as mail order and internet vendors) to nevertheless collect sales and use taxes from their customers. Among other things, SSUTA provides for the certification of third-party tax collection agents who will assume a vendor's sales tax collection obligations and also provides for the certification of tax collection software.

Key features of SSUTA include:[21]

- 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-level 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 will not be liable for uncollected tax when they sell something tax exempt to a purchaser who

[21] See Streamlined Sales Tax Governing Board, Inc., Frequently Asked Questions, available at http://www.streamlinedsalestax.org/index.php?page=faqs (last visited 4/5/2011).

should have been charged the sales 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 pay the cost of collecting the tax for businesses without a physical presence in the state.

Currently, 20 states are full members of SSUTA because they have state laws which are in compliance with the agreement. These states are: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Vermont, Washington, West Virginia, Wisconsin, and Wyoming. There are 4 states that are associate members, meaning that the state is in compliance with SSUTA, but their laws, rules, regulations, and policies to bring the state into compliance are not in effect but are scheduled to take effect no later than 12 months after becoming an associate member. These states include Georgia, Ohio, Tennessee, and Utah. Also, currently, over 1,000 businesses have voluntarily agreed to collect taxes on out-of-state sales.

III. Effect of Proposed Changes:

CS/SB 1548 (the bill) implements the requirements of SSUTA by making substantial changes to Florida's sales and use tax laws in chs. 212 and 213, F.S. Such changes are meant to simplify Florida's sales and use tax system and qualify the state for participation in the SSUTA, thereby making it easier for out-of-state businesses to voluntarily collect and remit taxes to Florida

SSUTA Conforming Changes

Section 1 amends current definitions and creates new ones in s. 212.02, F.S., to conform to the definitions adopted in the SSUTA in Appendix C – Library of Definitions.

Bracket System and Rounding
The SSUTA does not allow any member state to require a dealer to collect tax based upon a bracket system, which Florida currently uses. Section 15 amends s. 212.12, F.S., to repeal Florida law relating to bracketing. Instead, a provision is added to compute taxes based upon the SSUTA. The SSUTA provides for rounding up and is based upon tax computations to the third decimal place.

Additionally, Section 3 (s. 212.0306(6), F.S.), Section 6 (s. 212.04(1)(b), F.S.), Section 7 (s. 212.05(4), F.S.), and Section 8 (s. 212.0506(6), F.S.), remove references to Florida bracket system.

Sourcing
In order to meet the requirements of the SSUTA, the bill sets forth specific methods for determining where a sale took place, referred to in the SSUTA as "sourcing." Section 9 amends s. 212.054(3), F.S., to set forth the sourcing guidelines of the SSUTA for:
- Retail sales of tangible personal property, excluding leases or rentals;
- Lease or rental of tangible person property;
- Lease or rental of motor vehicles or aircraft;
- Retail sales of transportation equipment, including leases or rentals;

- Retail sale of modular or manufactured homes, excluding mobile homes;
- Retail sale of motor vehicles or mobile homes, excluding leases or rentals;
- Admission charged for an event;
- Lease or rental of real property;
- Retail sale of aircraft, excluding lease or rental;
- Purchase, use, consumption, distribution, or storage of motor vehicles or mobile homes;
- Transient rentals;
- Coin-operated amusement or vending machines; and
- Orders taken by florists.

The bill also amends s. 212.05(1)(e)1.a., F.S., which sets forth special provisions related to the taxation of charges for prepaid calling cards, depending upon where the sale took place, to meet the new sourcing guidelines.

Taxability Matrix

The SSUTA requires each member state to complete a taxability matrix approved by the governing board of the SSUTA. Dealers and certified service providers[22] must be relieved from liability for having charged and collected the incorrect amount of sales and use tax based on erroneous data provided by the state in the taxability matrix. Further, purchasers are also to be held harmless when relying on an erroneous taxability matrix provided by the state. Section 12 amends s. 212.07, F.S., to meet these requirements.

Vendor Databases

The SSUTA requires states that permit local jurisdictions to levy a sales and use tax to maintain or make available (through a vendor) a database that meets the following requirements:

- Describes the boundaries and boundary changes for all taxing jurisdictions, including the effective dates;
- Provides all sales and use tax rates by jurisdiction;
- For areas that include more than one tax rate, the rates assigned to each 5-digit and 9-digit zip code that applies the lowest combined rate to each zip code; and
- Optionally include address-based boundary database records for assigning taxing jurisdictions and associated tax rates.

The database may be a state-provided database or a state-certified database. A dealer or certified service provider will be held harmless from any tax, interest, or penalties due solely because of reliance on erroneous data in the database. If the 9-digit zip code is unavailable or unknown to a dealer, then the dealer or certified service provider may apply the tax rate for the 5-digit zip code.

The bill creates s. 212.054(8), F.S. to meet these requirements (Section 9).

[22] "Certified service provider" is defined in s. 213.256, F.S., as an agent certified to perform all of a dealer's sales tax functions other than the dealer's obligation to remit tax on its own purchases. See Section 23 of the bill for clarifying amendments to this definition.

Effective and Termination Dates of Taxes
Current law provides that discretionary sales surtaxes must take effect January 1 and terminate on December 31. The bill provides that any adoption, repeal, or rate change must take effect April 1, and the governing body adopting the tax must notify DOR of the change within 10 days of the decision, but no later than October 20 preceding the next April 1. DOR must notify dealers of the change by February 1 preceding the April 1 effective date. Additionally, the termination of a surtax may only be effective on March 31, including for termination dates set prior to January 1, 2012. These changes in Section 9 meet the requirements of the SSUTA.

Section 10 also repeals a reference to an effective date of a tax for emergency fire and rescue services and facilities in s. 212.055(8)(i), F.S.

Section 20 creates s. 213.052, F.S., to create provisions in Florida law that meet the effective date requirements of the SSUTA for sales and use taxes. Section 213.052, F.S., provides that a sales and use tax rate change is required to take effect on January 1, April 1, July 1, or October 1. Additionally, DOR must give dealers notice of the rate change at least 60 days before the effective date of the rate change. However, the provision specifies that failure of a dealer to receive notice does not relieve it from collecting sales and use tax.

Section 21 creates s. 213.0521, F.S., to establish the effect of a rate change. It provides that for a rate increase, the new rate applies to the first billing period starting on or after the effective date. For a rate decrease, the new rate applies to bills rendered on or after the effective date.

Liability to Pay Tax
Further, the bill provides a rebuttable presumption that the dealer or certified service provider exercised due diligence if it used state-certified software. Dealers or certified service providers may become liable if they do not use the state database. A dealer is not liable for failing to collect tax at a new rate under certain conditions. Additionally, purchasers are held harmless from tax, interest, and penalties for failing to pay the correct tax due as a result of relying on erroneous data or the dealer or certified service provider relying on erroneous data. See s. 212.054(8), (9), and (10), F.S., in Section 9 of the bill.

Collection Allowance
Section 15 amends s. 212.12, F.S., to conform Florida collection allowance laws to the Streamlined Sales and Use Tax Agreement. The bill provides for the calculation of a collection allowance and limits the amount of collection allowance allowed each year based upon the total amount of taxes remitted by dealers in the previous year. Collection allowances are also permitted for small remote sellers. The bill provides for a reduction of the permitted collection allowances if collections from remote sellers are not of a certain amount to be established by the Revenue Estimating Conference. DOR is permitted to provide collection allowances to certified service providers and voluntary sellers under the SSUTA.

Amnesty
The SSUTA requires member states to provide amnesty for sales and use taxes not collected or paid for dealers who register to pay or to collect and remit applicable sales or use tax on sales made to purchasers in the state in accordance with the terms of the SSUTA, provided that the dealer was not so registered in the state in the 12-month period preceding the effective date of

the state's participation in the SSUTA. Section 22 creates s. 213.215, F.S., in order to meet this requirement of the SSUTA. If a dealer registers with DOR within 12 months after the effective date of Florida's participation in the SSUTA, then the amnesty is provided for uncollected or unpaid sales and use tax and any interest or penalties accrued. The dealer must remain registered and continue collection and remittance of taxes for at least 36 months for the amnesty to apply.

However, there are two situations in which amnesty is specifically not available:

- When a dealer received notice of the commencement of an audit and the audit is not complete, including any related administrative or judicial processes; and
- For taxes already paid to the state or taxes already collected by the dealer.

Discretionary Sales Surtax

Section 9 amends s. 212.054, F.S., which provides the administrative provisions for discretionary sales surtaxes authorized for counties.

It caps the maximum taxable amount of a sale of tangible personal property at $5,000 for each individual item. Under the bill, this cap is limited to sales of motor vehicles, aircraft, boards, manufactured homes, modular homes, or mobile homes.

This section is amended to conform the application of surtax rate changes to utility services to the SSUTA. It provides that the new rate applies:

- In the case of a rate adoption or increase, to the first billing period starting on or after the effective date of the adoption or increase.
- In the case of a rate termination or decrease, to bills rendered on or after the effective date of the termination or decrease.

Sales and Use Tax Exemptions

The statutes currently provide more than 200 different exemptions, many of which are in s. 212.08, F.S.

Section 13 of the bill amends s. 212.08, F.S., to change Florida's current sales and use tax exemptions to conform to the requirements of the SSUTA.

Under the SSUTA, taxation of food is determined by the composition of the item. The bill exempts and defines the following items: food and food ingredients, bakery products sold without utensils, dietary supplements, and bottled water. The bill provides that the exemption does not apply to the following terms: prepared food, soft drinks (does 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), vending machine food, candy (not including candy that includes flour and does not require refrigeration), and tobacco. These changes result in an expansion of some items that are exempt from sales tax under current law, such as ice cream and juice containing between 50 and 100 percent fruit juice, and the restriction of others, such as caramel corn.

Under current law, medical items that are exempt from taxation in Florida are designated by the Department of Health. The bill brings the list of exempt medical items into compliance with the SSUTA. Exempt items include prescription drugs, mobility-enhancing equipment, prosthetic

devices, durable medical equipment, hypodermic needles, over-the-counter drugs (not including grooming and hygiene products), band-aids and the like, and funerals. The bill defines these terms for purposes of the exemptions. The bill repeals language directing the Department of Health to advise DOR as to the taxability of medical items (s. 212.08(14), F.S.).

Section 212.08(5)(g), F.S., currently provides an exemption for building materials used in the rehabilitation of real property in an enterprise zone. Only one exemption through a refund of previously paid taxes is permitted for any single parcel unless there is a change in ownership, a new lessor, or a new lessee of the property. The bill would amend this paragraph to provide that only one exemption through a refund of previously paid taxes is permitted for any single building. Also the bill adds definitions for "full-time employee" and "temporary employee."

Currently the definition of "lease," "let," or "rental" excludes hourly, daily, or mileage charges subject to the jurisdiction of the Interstate Commerce Commission and certain payments to owners of high-voltage bulk transmission facilities. Due to changes made to bring the current law definitions into compliance with SSUTA, these exclusions were struck. The bill restores these exclusions as exemptions from the sales and use tax in s. 212.08(14), F.S.

Mail Order

The SSUTA contains specific provisions related to mail order sales. The bill makes several changes to conform to the agreement, including:

- Section 7 amends s. 212.05, F.S. to remove a reference to "mail order."
- Section 11 amends s. 212.06(2)(c), F.S., to strike "a retailer who transacts a mail order sale" from the definition of "dealer."
- Section 11 amends s. 212.06(3)(b), F.S., to conform to SSUTA guidelines to the sales of advertising, promotional direct mail, and other direct mail, including guidelines on sourcing the sale (and deletes provisions related to mail order sales in s. 212.06(5)(a)2., F.S.).
- Section 15 amends s. 212.12, F.S., to remove references to "mail order" and a provision authorizing DOR to negotiate collection allowances with dealers who make mail order sales.
- Section 18 amends s. 212.18, F.S., to remove a provision related to mail orders.
- Section 19 amends s. 212.20(4), F.S., to remove a provision related to mail orders.
- Section 42 repeals s. 212.0596, F.S., which relates to taxation of mail order sales.

Motor Vehicles

The SSUTA contains specific provisions related to the lease or rental of motor vehicles. Section 7 amends s. 212.05(1)(c), F.S., to remove special provisions related to the lease or rental of motor vehicles from the provisions related to the tax of the lease or rental of tangible personal property.

Coin-operated Amusement Machines

Section 7 amends s. 212.05(1)(h), F.S., to raise the tax on coin operated machines from 4 to 6 percent and amends the divisors to be used to calculate the tax.

Dealer Registration
Section 18 amends s. 212.18, F.S., to allow DOR to waive the $5 registration fee for applications submitted through the multistate electronic registration system. The SSUTA requires each member state to participate in an online sales and use tax registration system in cooperation with the other member states.

Refunds
Section 14 creates s. 212.094, F.S., related to purchaser requests for refunds. Under current law, a purchaser who has overpaid tax to a dealer, or who has paid tax to a dealer when no tax is due, must seek a refund from the dealer, not DOR. There is no requirement that a purchaser must provide a written request to the dealer.

The bill provides that in order to obtain a refund or credit for a tax collected by a dealer, the purchaser must submit a request in writing to the dealer. The purchaser is not permitted to take any other action for 60 days after the dealer receives the completed, written request. This does not apply to refunds resulting from a return of merchandise to a dealer.

Section 17 deals with credits or refunds for dealers who remit taxes on transactions that ultimately turn out to be unpaid bad debts. The bill amends s. 212.17(3), F.S., to conform to the SSUTA provisions on dealer recovery of bad debts. Changes include:

- Specifying that the calculation of bad debt may not include financing charges or interest, sales tax, uncollectable amounts on property that remain in the possession of the selling dealer, expenses incurred in collection efforts, and repossessed property.
- Requiring a refund claim to be filed within 12 months after the due date of the return on which the bad debt could be claimed when the amount of bad debt exceeds the amount of taxable sales for the period of write-off.
- Allowing a certified service provider to file a claim on behalf of a dealer when the provider has assumed the filing responsibilities of the dealer. The certified service provider is required to credit or refund the full amount of any bad debt recovery to the dealer.
- Allowing a dealer or certified service provider to allocate the bad debts across different states when the books and records of the dealer or certified service provider support this.

Implementation Costs
In Section 19, the bill amends s. 212.20(5), F.S., which relates to the distribution of proceeds collected under ch. 212, F.S.

Under current law, a portion of the proceeds are transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund.[23] The Local Government Half-cent Sales Tax Program generates the largest amount of revenue for local governments among the state-shared revenue sources currently authorized by the Legislature. The program includes three distributions of state sales tax revenues collected pursuant to ch. 212, F.S. The *ordinary* distribution to eligible county and municipal governments is possible due to the transfer of 8.814 percent of net sales tax proceeds to the Local Government Half-cent Sales Tax Clearing Trust Fund. Only those county and municipal governments that meet the eligibility requirements for revenue sharing pursuant to s.

[23] For more information see REC, 2011 Local Government Financial Information Handbook.

218.23, F.S., are permitted to participate in the program and be eligible to receive a distribution from the trust fund.

The bill directs the Revenue Estimating Conference to estimate the implementation costs of the bill by October 1, 2011. The Local Government Half-cent Sales Tax Trust Fund will be reduced by that amount in an attempt to make the act revenue neutral.

Simplified Sales and Use Tax Administration Act
The Simplified Sales and Use Tax Administration Act (the act) is set forth in s. 213.256, F.S. Section 23 makes changes to this section of law to conform to the updated SSUTA.

As used in ss. 213.256 and 213.2567, F.S., the bill adds definitions to the act, including:

- "Agent" means a person appointed by a seller to represent the seller before DOR.
- "Dealer" means any person making sales, leases, or rentals of personal property or services.
- "Model 1 seller" means a dealer that has selected a certified service provider as its agent to perform all the dealer's sales and use tax functions.
- "Model 2 seller" means a dealer 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 dealer 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 dealer. This could also mean an affiliated group of dealers using the same proprietary system.
- "Model 4 seller" means a dealer who is registered under SSUTA but is not one of the other models of sellers.
- "Registered under this agreement" means registration by a dealer with the member states under the central registration system.

DOR is authorized to prepare and submit reports and certifications as necessary according to the terms of the SSUTA, and to enter into agreements with the governing board of the SSUTA, member states, and service providers to facilitate the administration of the tax laws in Florida.

Section 24 creates s. 213.2562, F.S., to permit DOR to review and approve software submitted to the governing board of the SSUTA as a certified automated system that accurately reflects the taxability of products.

Section 25 creates s. 213.2567, F.S., related to registration, certification, liability, and audit under the SSUTA.

A dealer that registers pursuant to the SSUTA agrees to collect and remit sales and use taxes for all taxable sales into the member states. A dealer selects which model to remit tax under when registering, and may be registered by an agent if the registration is submitted in writing to a member state. With respect to liability and audits:

- A model 1 seller may contract with a certified service provider to act as its agent and to collect and remit sales and use taxes. As the model 1 seller's agent, the certified service

provider is also liable for sales and use tax due on all sales transactions it processes for the model 1 seller. A dealer selecting this model is also liable for any tax, interest, or penalty due in Florida. The state may audit the dealer and its certified service provider under Florida law or may audit the certified service provider jointly with other member states.

- A model 2 seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax. However, a model 2 seller is not responsible for errors in reliance on the certified automated system.
- A model 3 seller is liable for the failure of the proprietary system to meet the performance standard. DOR is permitted to adopt rules to establish sales tax performance standards for model 3 sellers.

A person who provides a certified automated system is not liable for errors in the software that was approved by DOR and certified to the governing board of the SSUTA. However, such person is responsible for the proper functioning of the system, liable to the state for underpayments of tax due to errors in the functioning of the software, and liable for misclassifications of items or transactions that are not corrected within 10 days of notice by DOR.

A person may be certified as certified service provider by DOR if the person:

- Uses a certified automated system;
- Integrates that system with the system of a dealer so that tax can be calculated at the time of sale;
- Agrees to remit taxes, file returns, and protect the privacy of tax information pursuant to Florida law; and
- Enters into an agreement with DOR concerning the disclosure of information.

DOR is directed to review software submitted to the governing board of the SSUTA as a certified automated system and certify approval of the system if the software meets certain standards for calculating taxes and reporting.

Disclosure of confidential tax information may only be made according to a written agreement between DOR and the certified service provider. Breach of confidentiality by a certified service provider is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.

Other Changes

Food or Drink Concessionaire Services

Section 4 amends s. 212.031(1)(a)10., F.S. Under current law, this section provides that a person is not engaging in a taxable privilege when renting, leasing, letting, or granting a license to use real property if the real property is leased, subleased, licensed, or rented to a person providing food and drink concessionaire service within the premises of certain facilities listed in the section. The bill adds a provision that the exception to the tax for property used for food or drink concessionaire services applies only to the space used exclusively for selling and distributing food and drink. Section 5 of the bill provides that this amendment operates retroactively and is remedial in nature. This section states that the retroactivity does not create the right to a refund or

require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before January 1, 2012.

Admissions Charges
Section 6 amends s. 212.04(2)(a)2.b., F.S. Under current law, this section provides an exemption for admission charges to events that are sponsored by a governmental entity, sports authority, or sports commission when held in a facility. The exemption only applies when the governmental entity, sports authority, or sports commission is responsible for 100 percent of the risk of success or failure of the event and owns 100 percent of the funds at risk for the event. The event may not exclusively use student or faculty talent. The terms "sports authority" and "sports commission" mean a nonprofit organization that is exempt from federal income tax under s. 501(c)(3) of the Internal Revenue Code, and contracts with a county or municipal government for the purpose of promoting and attracting sports-tourism events to the community with which it contracts.

The bill eliminates the exemption for a sponsor that is a "sports authority" or "sports commission" and rewords the sub-subparagraph. The bill clarifies the exemption by replacing "governmental entity" with "a state college, state university, or community college."

Emergency Rules
Section 26 authorizes DOR to adopt emergency rules to implement this act.

Legislative Joint Select Committee
Section 27 directs the President of the Senate and the Speaker of the House of Representatives to create a joint select committee to study alternatives for the modernization, simplification, and streamlining of taxes in Florida, including the communications services tax. The committee is also directed to study how sales and use tax exemptions may be used to encourage economic development and how the state's corporate income tax may be reviewed to ensure fairness to all businesses.

Cross-References
Section 2 (s. 212.03(7)(c), F.S.), Section 28 (s. 11.45(5)(a), F.S.), Section 16 (s. 212.15(1), F.S.), Section 29 (s. 196.012(6), F.S.), Section 30 (s. 202.18(1)(b) and (2)(b), F.S.), Section 31 (s. 203.01(1), F.S.), Section 32 (s. 212.052(1), F.S.), Section 33 (s. 212.13(3), F.S.), Section 34 (s. 212.081, F.S.), Section 35 (s. 218.245(3), F.S.), Section 36 (s. 218.65(5), (6), and (7), F.S.), Section 37 (s. 288.1045(1)(s), F.S.), Section 38 (s. 288.11621(3)(a) and (d), F.S.), Section 39 (s. 288.1169(6), F.S.), Section 40 (s. 551.102(8), F.S.), and Section 41 (s. 790.0655(1)(a), F.S.) make amendments to conform to changes made by the bill and correct cross-references.

Effective Date
Section 43 provides an effective date of January 1, 2012.

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 s.18, Art VII, of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 5 of the bill provides that changes made in Section 4 of the bill to s. 212.031(1)(a)10., F.S., are remedial in nature and shall apply retroactively. Retroactive application of legislation can implicate the due process provisions of the constitution.[24] As a general matter, statutes which do not alter vested rights but relate only to remedies or procedure can be applied retroactively.[25]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The purpose of SSUTA is to simplify Florida sales and use tax such that out-of-state dealers can voluntarily remit taxes to Florida through the simplified system. 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 Florida is indeterminate, but could be significant once the Streamlined Sales and Use Tax Agreement is fully implemented.

A version of this bill was reviewed by the Revenue Estimating Conference in February 2005.

> Estimates were done by issue. The changes in the definitions of "fruit drinks," "ice cream," "medical exemptions," and "farm equipment" made by this act will result in a loss of sales tax revenue. Changing the method used to calculate sales taxes from brackets to rounding will also lead to a decrease in sales tax revenue. The change in the definition of "sales price" to include all delivery charges will result in an increase in sales tax revenue. The removal of the local option sales surtax cap for certain

[24] *See* State Department of Transportation v. Knowles, 402 So.2d 1155 (Fla. 1981).
[25] *See* Metropolitan Dade County v. Chase Federal Housing Corporation, 737 So.2d. 494 (Fla. 1999). *See also* City of Orlando v. Desjardins, 493 So.2d 1027, 1028 (Fla. 1986)(citations omitted) ("If a statute is found to be remedial in nature, it can and should be retroactively applied in order to serve its intended purposes.").

> tangible personal property will increase local revenue. The net impact of the committee substitute [was] negative.[26]

The 2005 staff analysis contained the following data:

Streamlining Fiscal Impact (*millions of dollars*) (2005)

	State		Local		Total	
Issues	**Cash**	**Recurr.**	**Cash**	**Recurr.**	**Cash**	**Recurr.**
Rounding	(16.5)	(39.5)	(3.4)	(8.3)	(19.9)	(47.8)
Farm Equipment	(3.1)	(7.5)	(0.7)	(1.6)	(3.8)	(9.1)
Fruit Drinks Containing 50% or more juice	(1.0)	(2.4)	(0.2)	(0.5)	(1.2)	(2.9)
Frozen Dairy and non-dairy	(3.6)	(8.5)	(0.7)	(1.7)	(4.3)	(10.2)
Medical Exemptions	(1.2)	(2.9)	(0.2)	(0.6)	(1.4)	(3.5)
Delivery Charges	5.5	13.4	1.2	2.8	6.7	16.2
Candy/Food	2.5	5.9	0.5	1.3	3.0	7.2
Local Option			20.7	49.7	20.7	49.7
Total	(17.4)	(41.5)	17.2	41.1	(0.2)	(0.4)

B. Private Sector Impact:

The implementation of the SSUTA should reduce the costs of collecting and remitting state and local sales and use taxes for dealers doing business in Florida and in other member states in the long-term.

Additionally, DOR has pointed out short-term costs that dealers may incur to meet the requirements of the SSUTA:[27]

> Due to the multiple changes to ch. 212, F.S., proposed by this bill, the bill could potentially affect every dealer with an active Florida sales and use tax registration (553,934 dealers). Taxpayers may incur costs in retraining employees or in reprogramming computers to properly tax or exempt various products and to calculate the correct amount of tax. Dealers may also incur additional costs in hiring certified service providers to collect and remit the dealer's tax, or in purchasing or leasing certified tax software or in creating proprietary tax software, both of which would be used to calculate tax due from the dealer.

[26] See Senate Staff Analysis and Economic Impact Statement for CS/SB 56, March 7, 2005, on file with the Senate Commerce and Tourism Committee.

[27] DOR, 2011 Bill Analysis, on file with the Senate Commerce and Tourism Committee. See ss. 120.54(3)(b) and 120.541, F.S.

C. Government Sector Impact:

DOR has estimated the cost of implementing the provisions of the bill to conform Florida to the SSUTA.[28] DOR estimated costs of $96,000 for FY 2010-11; $1.181 million for FY 2011-12; $449,486 for FY 2012-13; and $203,215 for FY 2013-14. Estimated costs include:

- For FY 2010-11: nonrecurring costs of $96,000 for SUNTAX programming costs related to operating as a member of the SSUTA;
- For FY 2011-12:
  - $252,175 in nonrecurring costs for two Tax Information Publications to be sent to the 554,000 dealers in Florida;
  - $53,000 in nonrecurring costs to hire temporary staff to provide taxpayer services;
  - $250,000 in nonrecurring costs and $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA;
  - $526,080 in nonrecurring costs for SUNTAX programming costs related to operating as a member of the SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA;
- For FY 2012-13:
  - $225,240 in nonrecurring costs for Tax Information Publications to be sent to dealers in Florida related to the implementation of the SSUTA;
  - $74,557 in nonrecurring costs and $49,669 in recurring costs for return and revenue processing;
  - $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA;
- For FY 2013-14:
  - $99,338 in nonrecurring costs and $3,877 in recurring costs for return and revenue processing; and
  - $50,000 in recurring costs related to the required rate and jurisdictional database of SSUTA; and
  - $50,000 in recurring costs for the annual fee to participate as a member state in SSUTA.

Additionally, DOR has stated that the SSUTA was amended in 2010 to provide a new formula for rate of compensation (also known as collection allowance) for dealers registered with the SSUTA. Florida law currently caps collection allowance at $30 per month; however, under the new SSUTA provisions, dealers may be eligible for amounts greater than the current cap in Florida.

VI. Technical Deficiencies:

None.

[28] DOR, Fiscal Impact Analysis – 2011 Session, on file with the Senate Commerce and Tourism Committee.

VII. Related Issues:

In its analysis of the bill, DOR highlighted provisions that were problematic or needed to be amended to conform to the current SSUTA. Additionally, DOR has stated with regard to administrative rules needed to implement the bill:[29]

> It is anticipated that the statement of estimated regulatory costs may exceed $1 million in the aggregate within 5 years of implementation and may require ratification of any proposed rules and forms by the Legislature. If this occurs, it could take until after the 2012 Legislative Session for the amended rules to take effect.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Committee Substitute by Commerce and Tourism on April 5, 2011:
The CS differs from the bill as filed by:

- Conforming the definition of "bundled transaction" to the requirements of the SSUTA;
- Correcting a scribner's error and strikes a definition that was moved within the subsection ("agricultural commodity");
- Clarifying that the exemption from admissions tax applies to state colleges and state universities;
- Defining "electronically delivered" as used in the SSUTA;
- Restoring an exemption for prescriptions by veterinarians;
- Conforming Florida collection allowance laws to the SSUTA by providing for the calculation of a collection allowance and limiting the amount of collection allowance allowed each year; permitting allowances for small remote sellers; and providing for a reduction of the collection allowance under certain circumstances; and
- Directing the REC to estimate the implementation costs of the act by October 1, 2011 and reducing the Local Government Half-cent Sales Tax Trust Fund by that amount.

B. Amendments:

None.

[29] DOR, 2011 Bill Analysis, on file with the Senate Commerce and Tourism Committee. See ss. 120.54(3)(b) and 120.541, F.S.