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BROADENING THE SALES TAX BASE: ANSWERING ONE QUESTION LEADS TO OTHERS

ROBERT A. PIERCE* AND CAROL D. PEACOCK**

Florida's peculiar tax structure, built upon a narrow-based sales tax, has proved unusually prone to erratic swings in revenue, jeopardizing the delivery of state services. To bring stability to state government, policymakers for several years have discussed expanding the sales tax base. In this Article, the authors review the 1986 legislation eliminating certain sales tax exemptions and providing for the future repeal of others. They compare key provisions of Florida's emerging broad-based sales tax with those of other states. They conclude that the Florida Legislature needs to refine several provisions, including the expansion of the sales tax to include services.

THE AMOUNT of revenue generated by any state's tax base is affected by many factors. Economic conditions, such as inflation and business activity, have a major effect on the revenue that flows into a state treasury.¹ So do exemptions and exclusions. "As the tax base of a state expands, either naturally or through overt legislative action, a government is fiscally better off; as it contracts for whatever reason, it becomes more difficult to meet the cost of public operations."²

In recent years, the idea of broadening the base of Florida's sales and use tax—the largest single source of state revenue—has become increasingly popular. Several justifications have been suggested for this policy change. One reason offered for broadening the tax base is to increase revenue without increasing the tax rate or, alternatively, to reduce the rate without a reduction in revenue. A second reason is to make the tax more progressive and to promote economic development.³ A third and perhaps more important reason is that a "broader tax base could make the sales tax, historically subject to wide variation in growth rates from year to year, a

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1. Phares, *The Fiscal Status of the State-Local Sector: A Look to the 1980's*, in FINANCING STATE AND LOCAL GOVERNMENTS IN THE 1980'S: ISSUES AND TRENDS 162 (1981).

2. *Id.* at 161-62.

3. FLORIDA TAX WATCH, INC., SALES TAX EXEMPTIONS 6-7 (1986) [hereinafter cited as SALES TAX EXEMPTIONS].

more stable and reliable tax source."⁴ Aside from these reasons, critics of Florida's sales and use tax have observed that no comprehensive evaluation has ever been undertaken of the myriad exemptions. A systematic review, these critics have argued, could result in the elimination of illogical and contradictory exemptions, and "ensure that exemptions comport with state policy."⁵

During its 1986 Regular Session, the Florida Legislature repealed several exemptions and mandated the review and repeal of many others unless contrary action is taken during the 1987 Regular Session. The purpose of this Article is to trace the sales tax exemption bills considered by the legislature in 1986 and to analyze the key provisions of the new law.

I. SALES TAXATION IN OTHER STATES

In 1932, Mississippi became the first state to adopt a sales tax.⁶ Since then, the general sales tax has become an increasingly important source of state revenue. State sales tax revenue increased "from approximately 4.3 billion dollars a year in 1960 to approximately 24.8 billion dollars in 1975, an increase of 476 percent."⁷ State sales tax rates range from a low of three percent to a high of seven and one-half percent.⁸ Only Alaska, Delaware, Montana, New Hampshire, and Oregon have not imposed a sales tax.⁹ Of the states which have a sales tax, most impose a general tax on retail sales of tangible personal property. Exemptions vary greatly from state to state.¹⁰

4. FLORIDA DEP'T OF REVENUE, *FLORIDA TAX SOURCES: FISCAL IMPACT OF POTENTIAL CHANGES 1986-1987*, at 33 (1986) [hereinafter cited as *TAX SOURCES*]. See generally Zingale & Davies, *Why Florida's Tax Revenues Go Boom or Bust, and Why We Can't Afford It Anymore*, 14 FLA. ST. U.L. REV. 433 (1986).

5. SALES TAX EXEMPTIONS, *supra* note 3, at 2-4; see also Fla. H.R., Comm. on Fin. & Tax., tape recording of proceedings (Apr. 23, 1986) (on file with committee) (statements of Rep. Watt) [hereinafter cited as *H.R. Fin. & Tax. Tape*].

6. Ch. 90, 1932 Miss. Laws 176; ch. 91, 1932 Miss. Laws 196. See J. DUE & J. MIKESSELL, *SALES TAXATION—STATE AND LOCAL STRUCTURE AND ADMINISTRATION* 2 (1983).

7. R. DWORAK, *TAXPAYERS, TAXES, AND GOVERNMENT SPENDING—PERSPECTIVES ON THE TAXPAYER REVOLT* 25 (1980).

8. See, e.g., **Colorado**: COLO. REV. STAT. § 39-26-106 (1985) (3%); **Connecticut**: CONN. GEN. STAT. ANN. § 12-411 (1986) (7.5%); **Florida**: FLA. STAT. § 212.05 (1985) (5%); **Hawaii**: HAWAII REV. STAT. § 237-13(2)-(16), (8) (1984) (4%); **New Mexico**: N.M. STAT. ANN. § 7-9-4 (1986-87) (4.75%); **South Dakota**: S.D. CODIFIED LAWS ANN. §§ 10-45-2, 10-45-4 (1986) (4%).

9. FLA. S., COMM. ON FIN., TAX. & CLAIMS, *FLORIDA TAX HANDBOOK* 1985, at 100 (1985).

10. 2 CCH STATE TAX GUIDE 6013 (Oct. 7, 1986). For a thorough discussion of the exemptions of all states imposing a sales and use tax, see generally 2 CCH STATE TAX GUIDE

Hawaii, New Mexico, and South Dakota impose broad-based sales taxes that include many services, as contrasted with other states which tax few, if any, services.¹¹ Hawaii taxes the gross income of every person engaging in "any service business" and every person engaging in the practice of a profession.¹² "Service business" includes "all activities engaged in for other persons for a consideration which involve the rendering of a service," but not services rendered by an employee to an employer.¹³ New Mexico and South Dakota also tax gross receipts of a person engaged in a service business and provide that services rendered by an employee to an employer are not taxable.¹⁴ The three states also provide either an exemption, deduction, or reduced rate of tax for the sale of a service for resale.¹⁵ New Mexico does not impose a tax upon the casual sale of services.¹⁶

New Mexico and South Dakota exempt other services in addition to those performed for an employer and sales of a service for resale. In New Mexico, receipts for performing services other than legal, accounting, or architectural services will not be taxed in transactions involving an out-of-state buyer or when the service is performed outside of New Mexico.¹⁷ South Dakota provides an exemption "if the beneficial use of the service occurs entirely outside the state."¹⁸ The two states also exempt certain payments between members of a controlled group.¹⁹

(Oct. 7, 1986). See also BUSINESS RESEARCH BUREAU, UNIV. OF S.D., SOUTH DAKOTA SALES AND USE TAX SURVEY REPORT (Summer 1984).

11. SALES TAX EXEMPTIONS, *supra* note 3, at 8-9.

12. HAWAII REV. STAT. § 237-13(6), (8) (1984).

13. *Id.* § 237-7.

14. **New Mexico:** N.M. STAT. ANN. § 7-9-17 (1986-87); **South Dakota:** S.D. CODIFIED LAWS ANN. § 10-45-4, 4.1 (1986).

15. **Hawaii:** HAWAII REV. STAT. § 237-13(6) (1984); **New Mexico:** N.M. STAT. ANN. § 7-9-48 (1986-87); **South Dakota:** S.D. CODIFIED LAWS ANN. § 10-45-1(5) (1986).

16. N.M. STAT. ANN. § 7-9-28 (1986-87). New Mexico law provides that "the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service" is exempt from the tax. *Id.*

17. *Id.* § 7-9-57.

18. S.D. CODIFIED LAWS ANN. § 10-45-12.3 (1986).

19. *Id.* § 10-45-20.1. In New Mexico, for example, a corporation may deduct receipts for administrative services performed by the corporation for a wholly owned subsidiary on a nonprofit or cash basis. N.M. STAT. ANN. § 7-9-69 (1986-87).

II. HISTORY OF THE FLORIDA SALES TAX

The Florida Revenue Act of 1949 was the beginning of the state's sales tax.²⁰ The Act has been amended frequently but it remains essentially a privilege tax on "sales" and "retail sales."²¹ The tax is imposed upon the privilege of engaging in the business of selling tangible personal property²² or rendering certain taxable sales and services "at retail,"²³ as well as providing commercial rentals,²⁴ transient rentals,²⁵ admissions,²⁶ and fabrication of tangible personal property for some purposes.²⁷ The tax falls upon the ultimate consumer with the "dealer"²⁸ obligated to collect and remit the appropriate tax, retaining a "dealer's collection allowance."²⁹

Florida law has generally precluded the taxing of pure services except those involving a transfer of tangible personal property,³⁰ or transactions defined as, or stated to be, taxable sales.³¹ Not subject to tax have been professional, insurance, and personal services which involve a transfer of tangible personal property as only an inconsequential element of the service and for which there is no separate charge.³² However, a taxable sale by definition includes transactions which require both labor and materials to "alter, remodel, maintain, adjust, or repair tangible personal property."³³

20. Ch. 26319, 1949 Fla. Laws 9 (codified as amended in scattered sections of FLA. STAT. ch. 212 (1985)).

21. FLA. STAT. § 212.05 (1985) declares it the intent of the legislature that every person who engages in the business of selling tangible personal property at retail in Florida, or who rents or furnishes any of the things or services made taxable, or who stores for use or consumption in Florida, or who leases or rents any item defined as tangible personal property under the chapter is exercising a taxable privilege. "Retail sale," "sales at retail," and "sale" are defined in FLA. STAT. § 212.02(2)-(3) (1985).

22. "Tangible personal property" is defined in FLA. STAT. § 212.02(12) (1985) to include all personal property which may be seen, weighed, measured, touched, or is perceptible to the senses, including electric power and energy, boats, motor vehicles, mobile homes, and other vehicles. Tangible personal property is defined to exclude intangibles, securities, and pari-mutuel tickets.

23. See *supra* note 21.

24. FLA. STAT. § 212.031 (1985).

25. *Id.* § 212.03.

26. *Id.* § 212.04.

27. *Id.* § 212.06(1)(b).

28. The term "dealer" has multiple definitions under FLA. STAT. § 212.06(2) (1985) and provides additional parameters as to taxable sales, use, rentals, and admissions.

29. FLA. STAT. § 212.12(1) (1985).

30. *Id.* §§ 212.02(4), .08(7)(d)(1).

31. *Id.* §§ 212.02(2)(c), .05(1)(e)(1).

32. *Id.* § 212.08(7)(d)(1).

33. *Id.* § 212.02(4).

Florida also imposes a use tax equivalent to the sales tax, thereby taxing those who store for use or consumption in Florida any item or article of tangible personal property.³⁴

There are numerous exceptions and exemptions from the sales tax under chapter 212. Nontaxable status is established under chapter 212 by noninclusion of an item within a definition,³⁵ exclusion of an item from definitions,³⁶ or an exemption.³⁷ By definition, certain items are excluded from taxation, notably materials which become a component or an ingredient of a finished product. Similarly, sales in interstate and foreign commerce are excluded or subject to a proration of the tax.³⁸ Florida law provides that the sales tax applies to transactions within Florida unless prohibited by the United States Constitution or by a statutory exemption.³⁹ Sales to governmental agencies are exempt,⁴⁰ and properly documented sales for resale are not subject to tax.⁴¹ Service transactions not defined as taxable sales are not subject to tax as they do not fall within the definitions of chapter 212, or the tax imposition provisions.⁴²

34. *Id.* § 212.05. The tax is imposed “[a]t the rate of 5 percent of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state.” *Id.* § 212.05(1)(b). A use tax is imposed on machines, equipment, parts, and accessories used in the manufacturing process or to furnish communication, transportation, or public utility services, as well as telecommunication bypass systems. *Id.* § 212.05(1)(f), (h). *See also* FLA. STAT. § 212.02(7)-(8) (1985) (definitions of “storage” and “use”).

For ease of discussion, the sales and use tax will be called simply the sales tax in this Article unless some distinction is necessary.

35. Noninclusion occurs when a definition does not include a broad enough definition to encompass the taxation of an item of tangible personal property. For example, “pure” services other than those exempted by FLA. STAT. § 212.08(7)(d) (1985) are not subject to tax because they do not fall within the definitions of sales, retail sales, sales price, or tangible personal property. *See id.* § 212.02(2)-(4), (12). FLA. STAT. § 212.05(1)(a)(1)(a) (1985) covers only tangible personal property sold at retail in Florida. If an item is sold at wholesale or outside of Florida, no tax is due.

36. *E.g.*, FLA. STAT. § 212.02(3)(c) (1985) (defining “retail sales,” “sale at retail,” and equivalent terms as not including packaging materials).

37. *See* FLA. STAT. § 212.08 (1985). Note that not all exemptions are included within the provisions of FLA. STAT. § 212.08 (1985). *See, e.g.*, FLA. STAT. § 212.03(4) (1985).

38. *See, e.g.*, FLA. STAT. §§ 212.05(1)(a)2, 212.06, 212.08(8) (1985).

39. FLA. STAT. § 212.21(3) (1985).

40. *Id.* § 212.08(6).

41. FLA. STAT. § 212.02(3)(a) (1985).

A general listing of existing exclusions, nontaxability provisions, and exemptions is included in the Appendix, arranged to show their status under the 1986 legislation.

42. *See supra* note 35 and accompanying text.

III. LEGISLATIVE HISTORY OF CHAPTER 86-166

To address the possibility of broadening the sales tax base, Senate Bill 46 and House Bill 1307 were introduced in the Florida Legislature during the 1986 Regular Session. The bills provided for the immediate repeal of certain exemptions and for certain exemptions to be "sunsetted."⁴³ Those exemptions subject to sunset would have been repealed automatically at a future date unless the legislature re-enacted them.⁴⁴ Both provided for the creation of a commission to review the exemptions and submit recommendations to the legislature on retaining, modifying, or repealing them.⁴⁵ Both bills also provided for the taxation of certain goods or transactions not previously taxed. As passed by the respective houses, however, the Senate and House bills differed in several respects.

A. Sales Tax Exemptions

Committee Substitute for House Bill 1307, as passed by the House, would have immediately extended the sales tax to services by beauty parlors and barber shops, to pet shop services not performed by or under the supervision of a veterinarian, and to cleaning, laundry, and garment services.⁴⁶ The bill also would have removed exemptions for swimming pool chlorine and candy costing less than twenty-five cents.⁴⁷ In contrast, Committee Substitute for Senate Bill 46, as passed, did not provide for the repeal of any exemptions in fiscal year 1986-87.⁴⁸

Committee Substitute for House Bill 1307 provided for sunset of the exemptions for advertising, newspapers, magazines, and all services including medical services in fiscal year 1987-88.⁴⁹ Committee

43. Fla. SB 46 (1986); Fla. HB 1307 (1986). Under the "sunset" process, the legislature provides for the automatic repeal at a future date of a regulatory program, an agency, or a law but provides itself enough time to review the statute and enact saving legislation. See Deffenbaugh & Hayman, *Motor Carrier Deregulation in Florida: Before, During and After*, 8 FLA. ST. U.L. REV. 681, 681 n.5 (1980).

44. Fla. CS for SB 46, sec. 14 (1986); Fla. CS for HB 1307, sec. 6 (1986).

45. Fla. SB 46, sec. 9 (1986); Fla. HB 1307, sec. 5 (1986).

46. Fla. CS for HB 1307, sec. 2 (1986). The bill also provided for taxation "[a]t the rate of five percent of the consideration for performing or providing any service," *id.*, however, the current exemption for services would not have been sunsetted until July 1, 1987. *Id.*, sec. 6.

47. *Id.*, sec. 4. Fla. CS for SB 46 (1986) would have removed the exemption for inexpensive candy, effective July 1, 1987. See Fla. CS for SB 46, sec. 9 (1986) (First Engrossed).

48. Fla. CS for SB 46, sec. 14 (1986) (First Engrossed).

49. Fla. CS for HB 1307, secs. 4-6 (1986).

Substitute for Senate Bill 46 also provided for sunset of exemptions for advertising, newspapers, and magazines,⁵⁰ but it would not have repealed the exemptions of medical services.⁵¹ The Senate bill provided for the sunset of numerous other exemptions, such as those on boat sales to nonresidents, on solar energy equipment, and on admission charges to cultural and nonprofit organization events and the Super Bowl.⁵²

In the initial draft of Senate Bill 46, all affected exemptions were to be sunsetted on July 1, 1988.⁵³ During hearings in the Senate Finance, Taxation and Claims Committee, Senator W.D. Childers⁵⁴ offered an amendment to advance the sunset date to July 1, 1987.⁵⁵ Senator Crawford,⁵⁶ the Chairman of the Committee and the sponsor of the bill, expressed concern over whether the study of exemptions to be conducted by the commission could be completed in one year. But Senator Childers argued that 1987 would be a preferable date for the legislative decision on whether to retain existing exemptions because 1988 will be an election year when legislators

50. Fla. CS for SB 46, sec. 9 (1986) (First Engrossed).

51. *Id.*

52. *Id.* These exemptions would not have been sunsetted under the House bill. They were added to Fla. CS for HB 1307 (1986) by the Conference Committee. Also not sunsetted under the House bill but added in conference were exemptions for: per diem and mileage charges by railroad companies, FLA. STAT. § 212.06(g) (1985); charges for admission onto fishing boats, *id.* § 212.02(16); condominium recreational leases, *id.* § 212.031(1)(a)(4); merchants' association, trade show subleases, midway operator leases, and movie theater space rental, *id.* § 212.031(5)-(8); labor costs of factory-built houses, *id.* § 212.06(1)(b); feminine hygiene products, *id.* § 212.08(2)(a); job creation credit, *id.* § 212.096; building materials and electricity used in enterprise zones, *id.* §§ 212.08(5)(g), (h), (15); purchases by volunteer fire departments, *id.* § 212.08(7)(f); resource recovery equipment purchased by local governments, *id.* § 212.08(7)(n); state theater purchases, *id.* § 212.08(7)(q); certain motor vehicle lease charges, *id.* § 212.05(1)(c); charges for admission to school events, *id.* § 212.04(2)(a); dues and membership fees imposed by nonprofit organizations, *id.* § 212.04(2)(a); production of videotapes and motion pictures, *id.* § 212.06(1)(b); partial exemption on car sales to nonresidents, *id.* § 212.08(10); and partial exemption of flyable aircraft, *id.* § 212.08(11). Compare Fla. CS for HB 1307 (1986) with ch. 86-166, 1986 Fla. Laws 816.

The following exemptions, which would have been sunsetted under Fla. CS for SB 46 (1986) but would not have been under Fla. CS for HB 1307 (1986), were left out of the conference report: charges for motion picture rental when admission is taxed, FLA. STAT. § 212.08(6) (1985); funerals, *id.* § 212.08(2); purchases by governments, *id.* § 212.08(6); flags and artificial commemorative flowers, *id.* § 212.08(7)(i),(l); crab bait, *id.* § 212.08(7)(j); prepared meals by certain nonprofit organizations, *id.* § 212.08(7)(k); and purchases by the Florida Retired Educators' Association, *id.* § 212.08(7)(r). Compare Fla. CS for SB 46 (1986) with ch. 86-166, 1986 Fla. Laws 816.

53. Fla. SB 46, sec. 10 (1986).

54. Dem., Pensacola.

55. Fla. S., Comm. on Fin., Tax. & Claims, tape recording of proceedings (Feb. 5, 1986) (on file with committee) [hereinafter cited as S. Fin., Tax. & Claims Tape].

56. Dem., Winter Haven.

will be under more political pressure. The amendment was adopted without objection.⁵⁷

Taxing beauty and barber services, and laundry, dry cleaning, and garment services in fiscal year 1986-87 was estimated to generate \$35.4 million; taxing swimming pool chlorine would generate an estimated \$0.3 million.⁵⁸ The fiscal note for House Bill 1307 estimated that if the exemptions for all services, including advertising, pool chlorine, inexpensive candy, and the sale of newspapers and magazines were repealed in fiscal year 1986-87, an additional \$1.18 billion in recurring revenue would be generated.⁵⁹ The economic impact statement for Committee Substitute for Senate Bill 46 estimated that sales tax changes proposed by that measure, if in effect in fiscal year 1986-87, would have generated \$921 million in additional general revenue.⁶⁰ Both the House fiscal note and the Senate economic impact statement were considered conservative because reliable estimates were not available for some exemptions.⁶¹ However, "[t]here are also a number of administrative problems which, if not effectively addressed, could reduce revenue increases from exemption removals, especially in the first year or two."⁶² The biggest problem noted was the identification of new taxpayers, especially for services where "few of those who would collect the tax are now sales tax dealers. Providers of the service would have to be identified, rules written for their industry and the dealers educated in [the rules'] application."⁶³

B. The Review Commission

Committee Substitute for Senate Bill 46 provided for the creation, before October 1, 1986, of a fifteen-member review commission consisting of five members appointed by the president of the Senate, five members appointed by the speaker of the House, and four members appointed by the governor, with the fifteenth member being the executive director of the Department of Revenue.⁶⁴ The House proposal for the review commission had only twelve

57. S. Fin., Tax. & Claims Tape, *supra* note 55.

58. TAX SOURCES, *supra* note 4, at 28-33.

59. Staff of Fla. H.R. Comm. on Fin. & Tax., HB 1307 (1986) Fiscal Note 1 (Apr. 29, 1986) (on file with committee).

60. Staff of Fla. S. Comm. on Fin., Tax. & Claims, CS for SB 46 (1986) Staff Analysis 2 (Feb. 5, 1986) (on file with committee).

61. *E.g., id.*

62. TAX SOURCES, *supra* note 4, at 33.

63. *Id.*

64. Fla. CS for SB 46, sec. 12 (1986).

members, six appointed by the president of the Senate and six by the speaker of the House, with the commission to be established before January 1, 1987.⁶⁵

As proposed by Committee Substitute for Senate Bill 46, the commission was to "review the public policy and fiscal impact of exemptions from the sales tax [to be] amended or repealed" by the bill.⁶⁶ The commission also was to review exemptions from the cigarette tax under section 212.05, Florida Statutes, and submit a report by 1987 with recommendations on whether to allow the amendment or repeal of the exemptions to remain effective.⁶⁷ Committee Substitute for House Bill 1307 provided that the commission report on the exemptions for services, including advertising, and sales of newspapers and magazines, before the 1987 Regular Session. The commission was then to evaluate all remaining sales tax exemptions and report to the legislature prior to the 1988 Regular Session. Under House Bill 1307, the reports to the legislature also were to contain recommendations on retaining, modifying, or repealing the remaining exemptions.⁶⁸

During the Senate Finance, Taxation and Claims Committee hearing on Senate Bill 46, Senator Dunn⁶⁹ expressed concern that this bill, unlike those that sunset regulatory laws, contained no standards or criteria to evaluate the exemptions. Senator Crawford responded that, as drafted, the bill would not restrict the commission. The charge to the commission would be broad. The commission would be asked to study the sales tax and the exemptions and return with an analysis of the exemptions, and recommendations on how the exemptions might be changed and how any changes would be administered.⁷⁰ When Senator Myers⁷¹ also expressed concern about the absence of review criteria during the Senate floor debate, Senator Crawford responded that the imposition of

65. Fla. CS for HB 1307, sec. 7 (1986).

66. Fla. CS for SB 46, sec. 12 (1986) (First Engrossed). The initial version of Fla. SB 46 (1986) provided that the commission also was to review exemptions not amended or repealed by the measure, such as those for religious, charitable, educational, scientific, or veterans organizations and groceries, medicine, and medical services. Fla. SB 46, sec. 9 (1986).

67. Fla. CS for SB 46, sec. 12 (1986) (First Engrossed). Initially, Fla. SB 46 (1986) provided that the commission was to report to the legislature during the 1988 Regular Session. The date for reporting to the legislature was later changed to the 1987 Regular Session to conform with the 1987 sunset date. FLA. S. JOUR. 136 (Reg. Sess. Apr. 22, 1986) (amendment 2 to SB 46).

68. Fla. CS for HB 1307, sec. 7 (1986).

69. Dem., Ormond Beach, 1974-1986.

70. S. Fin., Tax. & Claims Tape, *supra* note 55.

71. Repub., Hobe Sound.

specific criteria would limit the commission when evaluating exemptions.⁷² In contrast, Committee Substitute for House Bill 1307 contained criteria to be used by the commission when evaluating the exemptions.⁷³

C. *Sunset versus Review*

Repealing certain exemptions immediately while subjecting others to sunset unless the legislature retained them was not unanimously accepted as the best course of action.⁷⁴ In both the House and the Senate, in committee hearings and during floor debate, opponents argued that sales tax exemptions should be merely reviewed rather than repealed or sunsetted. Senator Dunn suggested that the exemptions undergo a review which would continue for one or two years, and then have the commission report to the legislature.⁷⁵ Representatives Dudley⁷⁶ and Easley⁷⁷ offered similar amendments, which would have placed the exemptions that were repealed or sunsetted merely in the review process. Both amendments failed.⁷⁸

One argument favoring simple review without a provision for automatic repeal of existing exemptions was that sunset might complicate business judgments, hindering economic growth.⁷⁹ A second argument was that the sunset concept initially was intended to force a periodic review of a provision eight or ten years in the future, not one year later.⁸⁰ In the House, it was argued that the commission should be permitted to examine all exemptions including those scheduled for repeal in fiscal year 1986-87 before making recommendations.⁸¹ In the Senate, Senator Myers pointed out that if the legislature did not, during the 1987 Regular Session, retain any exemptions subject to sunset on July 1, 1987, an additional \$1

72. Fla. S., tape recording of proceedings (Apr. 22, 1986) (on file with Secretary) [hereinafter cited as April 22 Senate Debate].

73. Fla. CS for HB 1307, sec. 7 (1986). See *infra* note 103 and accompanying text.

74. The reluctance was demonstrated by the vote on the bills in the respective chambers. Fla. CS for SB 46 (1986) passed the Senate by a vote of 23-to-17. FLA. S. JOUR. 137 (Reg. Sess. Apr. 22, 1986). Fla. CS for HB 1307 (1986) passed the House by a vote of 86-to-27. FLA. H.R. JOUR. 483 (Reg. Sess. May 21, 1986).

75. S. Fin., Tax. & Claims Tape, *supra* note 55.

76. Repub., Cape Coral, 1982-1986; Sen., 1986-

77. Repub., Largo, 1974-1986.

78. H.R. Fin. & Tax. Tape, *supra* note 5 (amendment 4 to HB 1307); FLA. H.R. JOUR. 480 (Reg. Sess. May 21, 1986) (amendment 1 to CS for HB 1307).

79. S. Fin., Tax. & Claims Tape, *supra* note 55 (remarks of Sen. Frank).

80. April 22 Senate Debate, *supra* note 72 (remarks of Sen. Scott).

81. H.R. Fin. & Tax. Tape, *supra* note 5 (remarks of Rep. Dudley).

billion in taxes would be collected, an amount he thought was excessive.⁸²

Representative Ogden argued that sunset had proved successful in other areas by forcing legislators to review statutes to determine whether they are in the public interest.⁸³ He reminded his colleagues that subjecting a provision to sunset does not guarantee that it will be repealed; the legislature may re-enact any exemption it chooses to retain.⁸⁴ Arguing in favor of the sunset provision, Senator Crawford stated that where subjecting an exemption to sunset would have a negative effect on business judgments, that exemption could be placed in a category subject to review without automatic repeal.⁸⁵

As it was passed by the Senate, Committee Substitute for Senate Bill 46 was never taken up by the House.⁸⁶ Committee Substitute House Bill 1307, as passed by the House, was received by the Senate on May 28, 1986.⁸⁷ When neither house proved willing to accept the other's version of the bill, a conference committee was appointed.⁸⁸

The Committee, working from Committee Substitute for House Bill 1307, made several changes, deleting some provisions and incorporating others from the Senate version. The Conference Committee disapproved exemptions for admission charges to cultural events, nonprofit organization events, and boarding a boat for the privilege of fishing. The Committee adopted the Senate's removal of exemptions for certain motor vehicle leases, feminine hygiene products, and sales of boats to purchasers who take them out of the state within ten days. The Committee also deleted the language that imposed a tax on beauty parlor, barber shop, and pet

82. April 22 Senate Debate, *supra* note 72 (remarks of Sen. Myers).

Florida Tax Watch, Inc., reported that Florida relies on the sales tax more heavily than most other states, due in large part to the fact that tourists pay an estimated \$900 million in sales taxes annually. However, "[changes] in exemption policy will have little significant effect on exportability. Those goods and services that tourists use and consume heavily . . . are already taxed. Whatever current exemptions are repealed, the burden of paying sales tax on more items will fall overwhelmingly on Floridians." SALES TAX EXEMPTIONS, *supra* note 3, at 13.

83. Fla. H.R. tape recording of proceedings (May 21, 1986) (on file with Clerk) (remarks of Rep. Ogden).

84. H.R. Fin. & Tax Tape, *supra* note 5 (remarks of Rep. Ogden).

85. S. Fin., Tax & Claims Tape, *supra* note 55 (remarks of Sen. Crawford).

86. FLA. LEGIS., HISTORY OF LEGISLATION, 1986 REGULAR SESSION, HISTORY OF SENATE BILLS at 34, SB 46.

87. FLA. S. JOUR. 448 (Reg. Sess. May 28, 1986).

88. FLA. S. JOUR. 491 (Reg. Sess. May 29, 1986); FLA. H.R. JOUR. 612 (Reg. Sess. May 30, 1986).

grooming services.⁸⁹ The conference report was adopted by the Senate by 30-to-7⁹⁰ and by the House by 88-to-23.⁹¹

IV. THE NEW LAW

Chapter 86-166 extends the sales tax to chlorine for swimming pools.⁹² It also removes the exemption for candy selling for less than twenty-five cents⁹³ and imposes a tax on charges for certain laundry and cleaning services.⁹⁴ These provisions became effective July 1, 1986.

The tax on chlorine and the removal of the exemption for inexpensive candy dealt with sales of tangible personal property; however, the inclusion of laundry and cleaning services initiated the extension of the tax to service transactions. On services, the provisions effective July 1, 1986, simply impose a privilege tax as follows: "At the rate of 5 percent on charges for cleaning, laundry, and garment services as defined in group 721 of the 1972 Standard Industrial Classification Manual as published by the Executive Office of the President, Office of Management and Budget."⁹⁵

The Act imposes a sales tax on all services except those specifically exempt, providing that such services shall be taxed "[a]t the rate of 5 percent of the consideration for performing or providing" the service.⁹⁶ This imposition of a tax on services other than laundry and dry cleaning will be effective upon the July 1, 1987, repeal of the existing exemption for "professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made."⁹⁷ The effect of this provision is that service transactions will, for the first time, be taxed in Florida. Within the list of taxable items are transactions which require labor or material to alter, maintain, adjust, or repair

89. FLA. H.R. JOUR. 1149-53 (Reg. Sess. June 6, 1986); FLA. S. JOUR. 899-903 (Reg. Sess. June 6, 1986).

90. FLA. S. JOUR. 903 (Reg. Sess. June 6, 1986).

91. FLA. H.R. JOUR. 1153-54 (Reg. Sess. June 6, 1986).

92. Ch. 86-166, § 5, 1986 Fla. Laws 822, 823 (to be codified at FLA. STAT. § 212.08(2)(c)). This provision overrules an administrative determination that chlorine purchased for use in swimming pools was exempt from sales tax under FLA. ADMIN. CODE R. 12A-1.20(11)(b).

93. Ch. 86-166, § 5, 1986 Fla. Laws 822 (amending FLA. STAT. § 212.08(1) (1985)).

94. *Id.* § 3, 1986 Fla. Laws at 820 (to be codified at FLA. STAT. § 212.05(1)(i)); *id.* § 5, 1986 Fla. Laws at 824 (amending FLA. STAT. § 212.08(7)(d)(1) (1985)).

95. *Id.* § 3, 1986 Fla. Laws at 820 (amending FLA. STAT. § 212.05(1) (1985)).

96. *Id.* (to be codified at FLA. STAT. § 212.05 (j)).

97. *Id.* § 5, 1986 Fla. Laws at 824 (amending FLA. STAT. § 212.05(7)(d) (1985)); *id.* § 8, 1986 Fla. Laws at 825.

tangible personal property.⁹⁸ The Act also removes certain exemptions for services. The services made taxable as of July 1, 1986, may be easily identified. This is not necessarily so for the tax impositions effective July 1, 1987. The statutory provisions which impose a tax on services next year provide no definition of service.⁹⁹

The Act requires that by October 1, 1986, a twenty-one member commission be appointed by the president of the Senate, speaker of the House, and the governor to review the public policy and fiscal impact of sales tax exemptions. The commission is to prepare for the legislature at its 1987 Regular Session a report containing recommendations on retaining or modifying any of the exemptions subject to sunset by the Act or allowing the sunset of the exemptions to remain effective as of July 1, 1987.¹⁰⁰ The commission also may examine the applicability of the use tax and the definition of the tax base on certain service industries, and review the exemptions from the cigarette tax under section 210.05, Florida Statutes. The report is to include recommendations on these items.¹⁰¹ Prior to the 1988 Regular Session, the commission must evaluate all remaining exemptions from the tax imposed by chapter 212, part I, other than motor fuel (special fuel sales tax), which was not made subject to sunset, and submit a report to the legislature.¹⁰²

The Act sets forth criteria to be used in evaluating the exemptions. These include: the economic impact of each exemption, that is, whether additional jobs have been created or businesses have moved to or expanded in Florida because of the exemption; the effect of the exemption on other statutory policy; the exemption's consistency with state tax policy; whether the legislature would appropriate money to fund the exemption; whether granting a sales tax exemption is the most efficient way to provide a more favored status for an industry or group; the continuing validity of the reasons for granting an exemption; and whether an exemption should be subject to periodic review or repeal.¹⁰³

V. ANALYSIS OF THE LEGISLATION

The Act makes immediate changes in the sales tax, but these changes are minimal when compared to the sweeping revisions ef-

98. FLA. STAT. § 212.02(4) (1985).

99. Ch. 86-166, § 3, 1986 Fla. Laws 816, 820.

100. *Id.* § 9(3)(a), 1986 Fla. Laws at 826.

101. *Id.* § 9(3)(b), 1986 Fla. Laws at 826.

102. *Id.* § 9(4), 1986 Fla. Laws at 826-27.

103. *Id.* § 9(3)(a)(1)-(7), 1986 Fla. Laws at 826.

fective July 1, 1987. The 1987 date provides time for the legislature to review the report of the commission and evaluate the modifications. The legislation eliminates numerous exemptions which will directly impact previously exempt consumers, yet it is the expansion of the tax base and the imposition of a tax on the "consideration for performing or providing any services" that raises the most troublesome questions. If the enlarged tax base is to be effective and constitutionally valid, the legislature must evaluate the new law closely and carefully. If the legislature fails to address the nature of the tax on services and the details of its implementation, the tax may be almost impossible to administer and apply.

Historically, taxable "retail sales" meant those relating to tangible personal property. Services not involving the transfer of property were not generally considered to be retail sales and thus were not subject to tax, probably on the theory that a tax on services would be a tax on labor. Currently, however, commentators argue for treating the purchase of services like the purchase of goods. Many advisory groups and scholars who have examined the desirability of including services in a sales tax base have favored doing so because: "(1) service inclusion alleviates regressivity and improves neutrality; (2) inclusion makes the sales tax income more elastic; (3) service inclusion can raise much revenue; and (4) inclusion is administratively feasible."¹⁰⁴ Because tangible goods are the result of a series of operations or services, "a tax on barber services [for example] is no more a tax on labor than is a tax on bread."¹⁰⁵ Also affecting the shift in thinking is the fact that services represent an increasing proportion of economic activity. If the sales tax is not imposed on service transactions, a sales tax base will be diminished because a decreasing proportion of economic activity will be taxed.¹⁰⁶

Unfortunately, the Act provides no definition of "service" so as to restrict the tax to retail sales of services, or to sales of services to the ultimate consumer. All services appear to be taxable, no matter to whom they are rendered. This provision leaves several questions unanswered.

For example, what treatment is appropriate for services rendered in the performance of other service transactions? How should the state tax the routine services that secretaries perform

104. D. MORGAN, *RETAIL SALES TAX—AN APPRAISAL OF NEW ISSUES* 127 (1964).

105. *Id.* at 121.

106. See *SALES TAX EXEMPTIONS*, *supra* note 3, at 2.

for their employers? Did the legislature really intend to tax *all* services—including employee services—even though it appeared only to repeal the exemption of professional and personal services?

If employee services are not to be taxable, one legislative alternative would be to require our hypothetical secretary to register with the Department of Revenue, receive a sales tax number, and issue to the employer a resale certificate similar to those required in wholesale transactions of tangible personal property intended for resale.¹⁰⁷ Another alternative would be to exclude employee services from taxation altogether as a component of the services to be provided to the ultimate consumer.¹⁰⁸ Another course would be to exclude such services from the definition of taxable service. If employee services are not taxable, the question of whether the tax would fall on similar services provided by independent contractors may be raised,¹⁰⁹ implicating the equal protection clause.

Of course, another alternative would be to assert that the tax falls on all employee services, regardless of the ultimate consumer. Such an imposition would buttress the arguments of those who would characterize this levy as an income tax. One commentator has suggested that only services performed primarily for households be taxed because services performed for businesses become "a component of the cost of the business product and [are] included ultimately in the taxable retail-sales base."¹¹⁰ Imposing the tax only on services performed primarily for households, however, would lead to problems in determining whether the service is of a type primarily performed for households or primarily performed for businesses. Such a limitation also would result in the continuation of many of the exemptions so recently repealed. For example, the exemption for professional services, which is repealed effective July 1, 1987, would have to remain in effect for those professional services determined to be performed primarily for businesses.

Another issue requiring consideration is the treatment of tangible personal property consumed by service providers. For example, should secretarial typewriters, typing paper, legal pads, and type-

107. See FLA. STAT. § 212.02(3)(a) (1985).

108. Hawaii law, for example, provides that "[a]mounts received as salaries or wages for services rendered by an employee to an employer" are not subject to tax. In addition, Hawaii law provides that "services rendered by an employee to his employer" are not included within the definition of "service business or calling." HAWAII REV. STAT. § 237-7, -24(6) (1984). See also **New Mexico**: N.M. STAT. ANN. § 7-9-17 (1986-87); **South Dakota**: S.D. CODIFIED LAWS ANN. § 10-45-4.1 (1986).

109. See N.M. G.R. & COMP. TAX REGS. § 3(K):3 (1984).

110. D. MORGAN, *supra* note 104, at 122.

writer ribbons be excluded from taxation because they are consumed in the process of providing a taxable service to the ultimate consumer? Items of tangible personal property which become component parts of tangible personal property sold to the ultimate consumer are excluded from tax.¹¹¹ The same theory could apply to providers of services.¹¹² A determination would need to be made as to what part of the tangible personal property consumed by the service provider became part of the ultimate service provided. The costs of acquiring knowledge to provide a taxable service may require similar treatment. The sale of knowledge as a service, if taxable, should—for the sake of uniformity of application—be treated like a sale of tangible personal property.

Should the “occasional and isolated” sales rules, which exclude nondealer sales from tax, apply to services?¹¹³ If tax treatment of property and services is to be consistent, and many different types of services are rendered by the same service provider, a determination must be made as to which services are rendered by the service provider as a dealer and which are occasional and isolated sales not subject to tax. To avoid the factual determination of whether the service rendered by the provider is exempt because it was occasional and isolated, all services provided by any registered dealer

111. FLA. STAT. § 212.02(3)(a) (1985).

112. The Act amends FLA. STAT. § 212.02(3)(c) (1985) to provide that the term “retail sales” does not include “materials, containers, labels, sacks, or bags intended to be used one time only . . . in the process of providing a service taxable under this part.” Ch. 86-166, § 1, 1986 Fla. Laws 816.

South Dakota defines “retail sale” as the sale of tangible personal property or services for any purpose other than resale. S.D. CODIFIED LAWS § 10-45-1(5) (1986). The administrative code provides that items such as shampoos, rinses, and clippers consumed by barber and beauty shops, photography developing and finishing equipment and supplies used by photo developers, and solvents and cleaning fluids consumed by dry cleaners are taxable when purchased by an operator of such a business and used to provide the service. However, bags, hangers, and other items “*which ultimately pass to the customer as part of the taxable charge may be purchased exempt from tax when purchased*” by the persons providing the service. S.D. ADMIN. R. 64:06:02:07, 16, 52 (1984) (emphasis added).

113. See FLA. STAT. § 212.02(9) (1985). Occasional and isolated sales are sales made by a person who does not hold himself out as engaged in the business of selling tangible personal property. Such sales are exempt from both the sales tax and the use tax. 53 FLA. JUR. 2d *Taxation* § 37.105. “For example, sales by a person of his household furniture or by a farmer of his farm machinery, or by a grocery store of its fixtures are exempt because such persons are not engaged in the business of selling tangible personal property of a similar type.” FLA. ADMIN. CODE R. 12A- 1.37 (1986). However, sales made by persons holding themselves out as engaged in a retail business are not exempt, “notwithstanding the fact that their sales may be few and infrequent.” *Id.* For examples of provisions exempting occasional or isolated sales of services from tax, see *New Mexico*: N.M. STAT. ANN. § 7-9-28 (1986-87); *South Dakota*: S.D. CODIFIED LAWS ANN. § 10-45-1(6), 20 (1986).

could be subject to tax regardless of whether that dealer was engaged in the business of providing all the services at retail as a dealer in those services. If an occasional and isolated sales provision is made applicable to services, the minimum frequency or the minimum amount of services rendered by a service provider before he becomes "engaged" in retail business will need to be established.

Unlike tangible personal property, services have no tangible aspect which can be tracked or followed throughout intrastate and interstate commerce. There are no trucks, boats, airplanes, common carriers, or other interstate or intrastate transportation companies which transport services and can be stopped at the state line or traced by invoices and bills of lading. Tracking of services will require ingenuity by the Department of Revenue to establish a paper trail that will result in taxing nontangible services and auditing service providers who are subject to tax.

Where are services provided? If all services provided in Florida become subject to the sales tax, there should, for enforcement and symmetry, be a complementary use tax on all services provided to a Florida consumer. Without the tax also falling on in-state consumers of services rendered by out-of-state providers, tax avoidance would increase and in-state providers would be placed at a competitive disadvantage. All service providers could be required to register as dealers if they provide services within Florida. If part of the service is provided in Florida and part outside the state, a determination would have to be made as to the value or portion of the services provided within Florida. If proration is found to be required or preferred, it could be based on the amount of time involved in Florida, the value of the services rendered, the ultimate bill submitted by the provider, or on a formula similar to the allocation and apportionment provisions¹¹⁴ of the Florida corporate income tax code.¹¹⁴

How should services provided or consumed in the production or manufacture of tangible personal property be taxed? These services could be treated as a component of the tangible personal

114. FLA. STAT. § 214.71 (1985). Hawaii provides that if an apportionment is required, the portion of gross income derived from activities within the state shall be subject to tax. If an apportionment cannot be made accurately by using separate accounting methods, the amount subject to tax is that "proportion of the total gross income, so requiring apportionment, which the cost of doing business within the State, applicable to the gross income, bears to the cost of doing business both within and without the State, applicable to the gross income." HAWAII REV. STAT. § 237-21 (1984).

property sold to the ultimate consumer and not be taxed at all. Alternatively, they could be subjected to tax because the services theoretically could be characterized as not becoming part of the item sold to the ultimate consumer. In the tangible personal property area, items that become components of a resold product are free from tax while items dissipated and not resold are subject to tax on a use tax basis to the manufacturer.¹¹⁵ Finally, a combination of both theories could be applied, requiring a determination as to which portion of the service became a component of the manufactured item of tangible personal property sold to the ultimate consumer and which did not. Conceptually, the only item sold is an item of tangible personal property which has an established sales price encompassing all the sales at retail that could be subjected to tax. The tax is based on the consideration received and the sales price encompasses consideration received.

Each legal and factual issue that can arise in the taxation of tangible personal property can arise in a service-based sales tax. The more the legislature refines the 1986 Act, the greater the certainty, effectiveness, and revenue collection potential of the new law. If all services ultimately are taxable, perhaps the foremost concern will be that the Department of Revenue devise a system for registering and monitoring the multitude of new dealers who would be subject to the tax.¹¹⁶ It would require many more auditors to establish and monitor not only the audit program, but also a training program and a public information program. The latter would be necessary to educate in-state and out-of-state entities as to the taxation of services in Florida. Determinations would have to be made not only as to how many more auditors would be required to carry out such programs, but also as to whether such a number of auditors could be found and trained in time to implement the programs effectively.

Without further direction from the legislature, it is difficult to characterize the nature of the tax on services, its incidence, or the scope of its intended coverage. This dearth of detail about the tax leaves it vulnerable to challenge as an unconstitutional personal income tax. Even with precise detailing of the characteristics and nature of the tax, such a challenge might not be avoided. This

115. FLA. STAT. § 212.02 (3)(i) (1985).

116. One approach that might be considered with regard to registering some service providers such as barbers and beauticians who become subject to tax would be to require that each shop have one sales tax license, as opposed to having each beautician or barber in the shop issued a sales tax license. See S.D. ADMIN. R. 64:06:02:07 (1984).

leads to the much-traveled yet never thoroughly satisfying expositions by those skilled in the semantic battles of the courts and tax bar. It has been considered since the first discussions of a sales tax on services, and it is currently the subject of capable colloquy.¹¹⁷ Great debate and extensive litigation will arise unless the legislature carefully describes what it intends by the taxation of the "consideration for performing or providing any service."¹¹⁸

VI. CONCLUSION

The 1986 sales tax legislation seems likely to have a profound effect on state government. If all the sales tax exemptions affected by the Act had not been in effect in fiscal year 1986-87, the sales tax would have generated at least an additional \$1.3 billion in general revenue.¹¹⁹ Due to the impact of the Act, particularly on those not previously subject to the tax, the Florida Legislature should carefully consider the many questions raised by the prospect of imposing the sales tax on services. The issue should be resolved of whether all services should be taxed or whether some services, such as employee services which are not retail sales of services to the ultimate consumer, should be exempt from the tax. Also, the legislature should settle, among many others, the issues of whether service transactions will be treated similarly to sales of tangible personal property with regard to tangible personal property consumed by the service provider, occasional and isolated sales, and application of a use tax. Finally, there are administrative concerns, such as effectively identifying and registering taxpayers who were not previously sales tax dealers.

New Mexico, South Dakota, and Hawaii have implemented broad-based sales taxes that cover many services. Although each state's sales and use tax provisions vary, the basic theory of taxation of tangible personal property and services, if determined to be taxed on a sales tax basis, should be consistent unless a separate tax is to be imposed on the service components. The Florida Legislature should pay close attention to the application of sales and use tax provisions in other states and in all events address the nature, scope, and application of the tax to ensure that everyone who lawfully owes tax pays it, and that the revenue reaches the state treasury.

117. See Jacobs, *Florida's New "Income" Tax*, 14 FLA. ST. U.L. REV. 493 (1986).

118. Ch. 86-166, § 3, 1986 Fla. Laws 819, 829 (to be codified at FLA. STAT. § 212.05 (j)).

119. Compare ch. 86-166, 1986 Fla. Laws 816, with TAX SOURCES, *supra* note 4, at 28-34.

APPENDIX

**FLORIDA SALES TAX EXEMPTIONS (CHAPTER 212,
FLORIDA STATUTES, PART I) ORGANIZED AS AFFECTED
BY CHAPTER 86-166**

**Sales Tax Exemptions Repealed Effective July 1, 1986, and Year
of Original Enactment:**

- | | |
|-----------------|---|
| § 212.02(6)(g) | Per diem and mileage charges paid by railroad companies to owners of railroad cars. (1949) |
| § 212.02(16) | Any charge imposed for the privilege of boarding a boat for the purpose of fishing. (1980) |
| § 212.02(16) | Charges for admission to cultural events. (1963, 1978) |
| § 212.031(1)(a) | Condominium recreational leases; effective October 1, 1986. (1985) |
| § 212.05(1)(a) | Sales of boats to out-of-state residents. (1976) |
| § 212.05(1)(c) | Lease charges for a motor vehicle leased to the same individual for more than twelve months, if sales tax was paid on the vehicle when originally purchased by the lessor. (1971) |
| § 212.06(1)(b) | The creation or production of video tapes and motion pictures. (1969) |
| § 212.06(1)(b) | Portion of the retail price of factory built building attributable to labor costs. (1982) |
| § 212.06(5)(a) | Charges associated with radio and television broadcasting. (1949, 1970) |
| § 212.08(1) | Candy priced at 25 cents or less. (1957) |
| § 212.08(2)(a) | Feminine hygiene products. (1977) |
| § 212.08(6) | Sales of newspapers. (1949) |

Sales Tax Exemptions Repealed Effective July 1, 1987, and Year of Original Enactment:

- § 212.031(5) Amounts required to be paid to merchants' associations by businesses. (1977)
- § 212.031(6) Charges for convention or tradeshow subleases. (1978)
- § 212.031(7) Lease between agricultural fair association and midway operator. (1982)
- § 212.031(8) Rental of space to concessionaire operator by a movie theater owner. (1983)
- § 212.04(2)(a) Charges for admission to K-12 school, community college, HRS youth program, and correctional facility events when only student, faculty, or inmate talent is used. (1949, 1974)
- § 212.04(2)(a) Dues, membership fees, and admission charges imposed by nonprofit organizations. (1978)
- § 212.04(2)(a) Charges for admission paid by a student to participate in a required sport or recreation. (1980)
- § 212.04(2)(a) Admission charges to the Super Bowl football championship game. (1981)
- § 212.08(5)(g) Building materials used in the rehabilitation of real property located in an enterprise zone, effective January 1, 1987. (1984)
- § 212.08(5)(h) Business property used in an enterprise zone, effective January 1, 1987. (1984)
- § 212.08(7)(d) Charges for professional services such as legal fees. (1949)
- § 212.08(7)(d) Charges for personal services such as hair cuts or pest control. (1949)
- § 212.08(7)(d) Charges for insurance services. (1949)

- § 212.08(7)(e) Charges for magazine subscriptions of more than twelve months duration. (1963)
- § 212.08(7)(f) Purchases of fire-fighting equipment by volunteer fire departments. (1969)
- § 212.08(7)(n) Purchases of boiler fuels for use in industrial manufacturing, processing, or production processes. (1978)
- § 212.08(7)(o) Purchases of "resource recovery equipment" by local governments. (1978)
- § 212.08(7)(p) Sales of solar energy systems and components. (1980)
- § 212.08(8)(q) Purchases by State Theatre Program Facilities. (1982)
- § 212.08(10) Partial exemption on sales of motor vehicles to out-of-state residents. (1977)
- § 212.08(11) Partial exemption on sales of "flyable aircraft" by a Florida manufacturer. (1978)
- § 212.08(15) Electrical energy used in an enterprise zone, effective January 1, 1987. (1984)
- § 212.096 Credit for job creation in enterprise zones, effective January 1, 1987. (1984)

Sales Tax Exemptions to be Evaluated by the Review Commission Prior to the 1988 Regular Session and Year of Original Enactment:

- § 212.02(3)(a) Items of personal property purchased for subsequent resale. (1949)
- § 212.02(3)(c) Materials used for packaging tangible personal property for subsequent resale. (1949)
- § 212.02(3)(c) Materials which become a component or ingredient of processed or manufactured goods. (1949)

- § 212.02(9) Occasional or isolated sales by someone who is not normally engaged in "business." (1949)
- § 212.02(9) Charges for low-rent housing operated pursuant to chapter 421, Florida Statutes. (1970)
- § 212.02(12) Intangible personal property including stocks, bonds, notes, insurance, securities, or any intangible defined in chapter 199, Florida Statutes. (1949)
- § 212.02(16) That portion of any admission price which is attributable to federal tax. (1949)
- § 212.03(4) Charges for rent when a person has resided in the same dwelling for longer than six months, or has executed a lease for longer than six months. (1949, 1979)
- § 212.03(7)(a) Rent charges paid by full-time students enrolled in post-secondary educational institutions. (1979)
- § 212.03(7)(a) Rent charges paid by military personnel on active duty in Florida. (1979)
- § 212.03(7)(a) Rent charges paid by permanent residents, when the building is intended primarily for lease as permanent place of residence. (1972)
- § 212.03(7)(c) Charges for rent paid by residents in a facility where it is intended primarily for rental as a principal or permanent place of residence. (1972)
- § 212.03(7)(d) Rent charges for living accommodations in migrant labor camps. (1979)
- § 212.031(1)(a) Charges for renting property assessed as agricultural. (1969)
- § 212.04(2)(c) That portion of an admission charge which is attributable to the pari-

- mutuel admissions tax imposed by section 550.09. (1963)
- § 212.05(1)(c) Charges for rental of motion picture film when an admission is imposed for viewing such film. (1949)
- § 212.05(1)(e) Charges for residential interstate telephone and telegraph services. (1969, 1985)
- § 212.05(1)(e) That portion of charges for utility services attributable to federal, state, or local taxes. (1969)
- § 212.052 Items fabricated for use in research and development activities. (1982)
- § 212.06(1)(b) Partial exemption of cogenerated energy. (1984)
- § 212.06(5)(a) Tangible personal property imported, processed or manufactured for subsequent exportation. (1949)
- § 212.06(5)(a) Aircraft being exported outside the U.S. (1949, 1965)
- § 212.06(5)(b) Nonresident dealers purchasing items for resale in their overseas retail establishments. (1983)
- § 212.06(5)(c) Charges associated with the launching or operation of any telecommunication satellite. (1974)
- § 212.06(7) Items or transactions upon which an equal or larger sales tax has been paid in another state or partial exemption equal to the sales tax paid in another state if less than Florida's rate. (1949, 1965)
- § 212.06(8) Items brought into this state if first used in another state for at least six months. (1969)
- § 212.06(9) Sales of religious items. (1949)

- § 212.07(5) Sales of livestock, poultry, fruits, vegetables and other farm products sold directly by the producer. (1949)
- § 212.07(6) Agricultural products consumed on the farm. (1949)
- § 212.07(7) Purchases of agricultural products for the purpose of further processing for subsequent resale. (1949)
- § 212.08(1) Groceries purchased for human consumption. (1949)
- § 212.08(2)(a) Prescription and nonprescription medicines. (1949)
- § 212.08(2)(a) Medical supplies and products such as syringes and diabetes test kits. (1949, 1981)
- § 212.08(2)(a) & (b) Medical, prosthetic, and orthopedic appliances. (1949, 1977)
- § 212.08(3) Two percent partial exemption on sales of farm equipment. (1963)
- § 212.08(4)(a) Purchases of water (except mineral and carbonated water). (1949)
- § 212.08(4)(a) Purchases of fuel by public and private utilities. (1969)
- § 212.08(4)(a) Pro rata exemption on purchases of fuel by vehicles and vessels engaged in interstate or foreign commerce. (1963)
- § 212.08(5)(a) Purchase of commercial fishing equipment. (1949)
- § 212.08(5)(a) Purchase of agricultural items (feeds, seeds, fertilizers, etc.). (1949, 1978)
- § 212.08(5)(a) Fuels used to heat poultry structures. (1978)
- § 212.08(5)(b) Purchases of machinery and equipment by businesses which are new to Florida. (1978)

- § 212.08(5)(b) Partial exemption for machinery and equipment purchased by expanding businesses. (1978)
- § 212.08(5)(c) Machinery and equipment used in the production of electrical or steam energy by manufacturers if boiler fuels other than residual oil are used. (1980)
- § 212.08(5)(d) Partially exempts machinery and equipment purchased pursuant to federal procurement regulations. (1983)
- § 212.08(5)(e) Butane, propane, and other gases when used for agricultural purposes. (1983)
- § 212.08(5)(f) Purchase or lease of motion picture, video, or sound recording equipment used solely for commercial production endeavors. (1984)
- § 212.08(6) Purchases made directly by federal, state, and local governments (except purchases by local governments of electrical generating equipment). (1949)
- § 212.08(7)(a) Transactions involving a sale or lease directly to churches, or a sale or lease of tangible personal property to churches. (1949)
- § 212.08(7)(a) Items purchased by nonprofit scientific organizations. (1983)
- § 212.08(7)(a) Nonprofit educational television and radio systems. (1949)
- § 212.08(7)(a) Transactions involving a sale or lease to nonprofit educational institutions. (1949)
- § 212.08(7)(a) Transactions involving a sale or lease to nonprofit charitable organizations. (1949)
- § 212.08(7)(a) Transactions involving a sale or lease to schools which conduct classes accepted for continuing education credit by the American Medical

- Association or the American Dental Association. (1984)
- § 212.08(7)(a) Transaction involving a sale or lease to non-profit libraries, art galleries, museums open to the public, and private organizations raising funds for schools teaching grades kindergarten through high school. (1984)
- § 212.08(7)(a) Transactions involving a sale or lease to nonprofit veterans' organizations. (1978)
- § 212.08(7)(a) Nonprofit corporations providing free transportation to church members. (1984)
- § 212.08(7)(b) K-12 schoolbooks and lunches. (1963)
- § 212.08(7)(c) Charges for hospital meals and rooms. (1963)
- § 212.08(7)(d) Charges for medical services. (1949)
- § 212.08(7)(g) Purchases of and supplies for guide dogs for the blind. (1971)
- § 212.08(7)(h) Purchases of utilities by residential households. (1972)
- § 212.08(7)(h) Utilities purchased for use in a residential model. (1980)
- § 212.08(7)(i) Sales of United States and State flags. (1974)
- § 212.08(7)(j) Purchases of crab bait by commercial fisherman. (1974)
- § 212.08(7)(k) Charges for meals provided by nonprofit organizations to the handicapped, elderly, or ill. (1978)
- § 212.08(7)(l) Sales of artificial commemorative flowers by veterans organizations. (1978)
- § 212.08(7)(r) Purchases of office supplies and equipment by the Florida Retired Educators' Association. (1982)

- § 212.08(7)(s) Feed for poultry and livestock, including racehorses and dairy cows. (1949)
- § 212.08(7)(t) Purchases by organizations providing educational, cultural, recreational, and social benefits to minors. (1983)
- § 212.08(7)(u) Purchases by qualified nursing homes and homes for the aged. (1985)
- § 212.08 Pro rata exemption on sales of vessels (and parts and other items for such vessels) used in interstate or foreign commerce. (1957, 1961)
- § 212.08(9) Pro rata exemption on sales of railroads and vehicles (and parts for such vehicles) used in interstate or foreign commerce. (1957, 1961)
- § 212.08(12) Partial exemption on the sale of master tapes, records, films, or video tapes. (1984)
- § 212.08(14) Electrical energy used in an enterprise zone effective January 1, 1987. (1984)
- § 212.0821(a) Goods and services bought by Parent-Teacher Organizations through school districts. (1984)
- § 212.0821(2) Goods and services bought by REACT groups, neighborhood crime watch groups, and eligible youth organizations through counties and municipalities. (1984)
- § 212.0821(3) Goods and services bought by groups which are solely engaged in fund raising activities for such libraries through public libraries. (1984)
- § 212.09 The value of trade-in or discounts. (1949)