



School of Law  
UNIVERSITY OF GEORGIA

Prepare.  
Connect.  
Lead.

## Digital Commons @ University of Georgia School of Law

---

Walter Hellerstein Papers

Faculty Collections

---

8-25-1986

### The Impact of Ch. 86-166, Laws of Florida, 1986

Florida Department of Revenue

---

#### Recommended Citation

Florida Department of Revenue, "The Impact of Ch. 86-166, Laws of Florida, 1986" (1986). *Walter Hellerstein Papers*. 4.  
<https://digitalcommons.law.uga.edu/hellerstein/4>

This Article is brought to you for free and open access by the Faculty Collections at Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Walter Hellerstein Papers by an authorized administrator of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#) For more information, please contact [tstriepe@uga.edu](mailto:tstriepe@uga.edu).

August 25, 1986

THE IMPACT OF CH. 86-166

LAWS OF FLOPIDA, 1986

Introduction

This document was prepared by Department of Revenue staff as an initial examination of the impact of the enactment of Ch. 86-166, Laws of Florida which removed the exemption for professional, insurance and personal services and imposed a sales tax on "any service" performed or provided for a consideration, effective July 1, 1987. It is not intended to be an exhaustive treatise, nor could it be at this stage. It is intended to communicate the scope of Ch. 86-166 as it is presently understood along with some of the issues which have arisen during the initial examination of Ch. 86-166 and the systems of other states which levy an exise tax on services.

Contents

In addressing the Impact of Ch. 86-166, this document first gives an overview followed by a detailed summary of the sales tax prior to Ch. 86-166. It then discusses the sales tax after Ch. 86-166 and enumerates resulting legal issues which should be addressed. Finally some policy considerations are stated.

An appendix is provided containing a list of potentially affected services, definitions contained in §212. 02, F.S., and a brief description of the taxing systems of states which tax services; e.g. Hawaii, New Mexico, Iowa and South Dakota.

## Overview

Florida responded to its initial post war surge in growth with the special session enactment of the Florida Revenue Act of 1949 (Ch. 26319, Laws of Florida, 1949) to meet the increasing demand for governmental services created by the growth. Known today as the "sales tax," it has remained fundamentally unchanged since its enactment. See Florida State and Local Taxes, Vol. 1, Ch. 14, pg. 667, The Florida Bar, 1984, Barnett & Kirkwood.

Interestingly, the initial and foremost case challenging the sales tax was a habeas corpus proceeding brought for the release of an innkeeper named Gaulden against a sheriff who arrested him for failure to collect and remit the newly enacted sales tax on his room rents. Gaulden v. Kirk, 47 So. 2d 567, (Fla. 1950). Against assertions that the tax was unconstitutional as an income tax, inter alia, the Florida Supreme Court held:

The tax which is provided in said act is levied upon the privilege of engaging in certain businesses or occupations although it is computed upon the sales price of the commodity sold or upon the price charged for the service rendered. (at page 572)

\* \* \* \*

Moreover, the tax here involved is not an income tax. Although the tax is determined upon the price charged for the merchandise or services, it is not a tax upon the property or services, but on the privilege of selling the same, and it is measured by the extent to which the privilege is enjoyed. (at page 574)

As enacted in 1949 and subsequently upheld as constitutional by the Florida Supreme Court in 1950, the sales tax law has been characterized as a "law by exemption." State and Local Taxes, supra, pg. 668. Numerous occupations, and transactions attendant to occupations, are expressly exempted, chief among which is the exemption of "professional, insurance and

personal service transactions which involve sales as inconsequential elements for which no separate charges are made." §212.08(7)(d), F.S., 1985.

Significantly, since Ch. 212 contained no express provision taxing these services unassociated with the transfer of property, or otherwise, the question arises as to whether there are any services unassociated with the transfer of property and if as so would an attempt to tax them within Ch. 212 significantly alter the character of the Ch. 212 tax?

Beginning in the 1970's and continuing to date, Florida has experienced unprecedented growth. Growth management has become a concern of the State as the State's resources, both governmental and natural, are strained to accommodate the population influx. Not unpredictably, the legislature in its 1986 session acted to raise additional required revenue.

The vehicle the legislature chose to raise the additional revenue was the repeal or sunset of the sales tax exemptions. It began with Ch. 86-166, Laws of Florida, 1986 which repealed, effective July 1, 1987 the above mentioned exemption of professional, insurance and personal services. While the wisdom of this repeal may be questioned by many, given Florida's constitutional prohibition against an income tax contained in Article VII §5, the legislature had few choices available to it. Furthermore, Florida's economy is service oriented. In a national environment which is experiencing a shift towards a service economy, Florida's historic exemption of services from its sales tax translates into a diminishing segment of the community bearing an increasingly heavier tax burden brought on by growth.

Ch. 86-166, Laws of Florida, 1986, accomplished two things pertinent here. First, it ~~repealed~~, effective July 1, 1987, the exemption of "professional, insurance, and personal services which involve sales as inconsequential elements for which no separate charge is made." §212.08(7)(d), F.S. Second, it enacted, effective July 1, 1987 a tax

(assuming Ch. 86-166 levies a tax) <"at the rate of 5 percent of the consideration for performing or providing any service.">

It should be understood that the above quoted language appears to be all encompassing and calls into question the scope of Ch. 212 prior to the enactment of the above quoted "any service" language\*. Did Ch. 212 prior to the enactment of the "any service" language contained in Ch. 86-166 envision the universe as containing 2 or 3 sets of services as follows:

- 1) services involving sales as inconsequential elements
- 2) services involving sales as consequential elements
- 3) services not involving sales as an element

Assuming that the pre- Ch. 86-166 concept did not include the third set (services not involving sales as an element), and that third set exists, then certainly Ch. 86-166 includes the third set in the universe of services.

This is significant for the reason that it could function to separate Ch. 212 into a property related (real and tangible) and a non-property related privilege tax and add fuel to assertions that the tax on services is a new and distinct animal without precedent. This would in turn be significant in that it could arguably require ~~significant legislation~~ to tailor the tax on services to the nuances of the sales tax law such as sale for resale, credits for bad debts, traditional exemptions (scientific, religious) and so on since any services now covered could arguably be those other than the third set.

\*Ch. 212 previously exempted service transactions involving sales as inconsequential elements for which no separate charges are made. Arguably then, if the professional service did contain a charge for an inconsequential sale (assuming sale to mean sale of tangible personal property, or possibly any property?), then would the service have been taxable? What if the professional service contained a sale which was a consequential element which was not separately charged? Would it have been taxable? On all types of services?

services,  
supper, then  
specified, then  
mobile

service transactions are exempt from tax unless the service is a part of the sale of taxable tangible personal property, i.e., labor services to repair taxable tangible personal property, freight service to deliver taxable tangible personal property, etc. §212.02(4)(5), §212.08(7)(d), F.S. The basic rule being that if the property is exempt from tax, so is the service associated with the sale of the property. However, there are exceptions to this rule. Example: if a seller contracts to sell taxable property F.O.B. Origin, the title to the property passes at such point to the buyer and the buyer pays the transportation, even though the transportation charges is shown on the same invoice with the sale of the taxable property. The transportation services are rendered to the buyer and are not part of the taxable selling price. In this example, the vendor would have both taxable and exempt transactions on the same invoice. §212.02(4), §212.06(1), F.S. Service transactions which involve sales as inconsequential elements for which no separate charge is made, have in the past, been exempt from tax.

In an effort to make sure that no duplicating or pyramiding of the tax is levied on the same item, the Florida legislature has, as have most other states, except Hawaii, provided a specific exemption on items purchased for resale and raw materials purchased and incorporated into a finished product. This is administered with the use of a resale certificate. §212.02(3)(a), (c), §212.07(1)(b), F.S. Hawaii taxes wholesale transactions at .5 percent as well as the ultimate sale at retail. This same posture does not necessarily hold true for services. Hawaii's law does not provide for a pass through or a sale for resale of services. New Mexico's law provides that a service may be resold only once.

In addition to the sale for resale and items incorporated into the finished products, Florida sales tax law provide other exclusions and exemptions.

Two major types of sales are not subject to tax, either as a result of the definition of taxable sales or by specific exemptions in the act. The first category consist of specified classes of goods, such as the occasional or isolated sales by one individual to another individual who are not in the business of selling good, (except no exemption is allowed for aircraft, boats, motor vehicles or mobile homes), purchases of raw materials to be incorporated into finished products, packaging materials for one time use only in packaging tangible personal property for sale or for providing a service, sale of intangibles, such as stocks or bonds, sale of itmes for resale, etc. §212.02(3), (9), (12), F.S. The second category consist of specific exemptions, that is, items that are out-right exempt from tax, exempt based on account of use or exempt as to who they are used by. Examples of transactions that are out right exempt from the tax are: the sale of water, general grocery items, flags of the United States and Florida, personal and professional services (until 7-1-87), hospital meals and rooms, etc. Examples of transactions that may be sold tax exempt based on account of use are: purchases of machinery and equipment for use in a new or expanding business; seed, fertilizer and insecticides for agriculture use, boiler fuels; household utilities; etc. §212.08, F.S.

All transactions involving sales and leases to the federal, state or local governmental entities, and certain organizations, such as, religious, charitable, scientific, educational and veteran's institutions and

organizations that are issued a consumer certificate of exemption (except the federal government which is not required to have a consumer certificate of exemption) are currently exempt under §212.08(6), (7), F.S. Sales to contractors employed by such governmental entities or organizations for the construction or improvement of real property under a lump sum, cost plus, or fixed fee contract are taxable. As such, sales of services to these organizations and institutions most likely will not be affected by the enactment of Ch. 86-166 with the exception of services associated with the construction or repairs to real property.

The omission of the word "use" in the title of the original bill enacting the sales tax in 1949 resulted in the case Thompson v. Intercounty Tel. & Tel., 62 So 2d 16 (Fla. 1953) holding that purchases from out-of-state suppliers were not taxable. That defect was corrected by the 1951 legislature.

A use tax, as stated in the Florida sales and use tax act, is imposed on the use, consumption, distribution and storage for distribution or consumption in this state of tangible personal property purchased in such a manner that a sales tax would not be applicable at the time of purchase. §212.02(13), F.S. This most often happens in interstate transactions. The two taxes, sales and use, stand as comple<sup>e</sup>ments to each other and taken together provide a uniform tax on either sales at retail or the use of property purchased irrespective of where the property may have been purchased or leased.

Although the sales tax is computed on the sales price of the item or service sold, the sales tax isn't a tax upon the item or service but upon the privilege of selling the items or services. Gaulden v. Kirk, supra. Accordingly, the sales tax is in the nature of a privilege tax to do



business (a vendor's tax), even though the vendor is required to collect the tax from the ultimate consumer. Likewise, use tax is a tax levied on the privilege of using, storing, or consuming property purchased. Scripto, Inc. v. Carson, supra. The intention of the statutes is to make one tax complement the other, the use tax being aimed at preventing evasion of the sales tax by the purchases of goods or services from out of the state. United States Gypsum Co. v. Gteew, supra. Without the use tax, substantial taxes would be lost and local business potentially could suffer unduly from the operation of a sales tax.

Numerous statutory provisions are designed to prevent multiple taxation on the same items. The statute also states that it is the intent of the legislature that there will be no pyramiding or duplicating of excess taxes levied by the state under the sales and use tax statutes. §212.081(3)(b), F.S. Whenever in the construction, administration or enforcement of the sales tax statute<sup>†</sup> there is any questions respecting a duplication of the tax, it is the legislative intent that the end consumer, on the last retail sale, is the sale intended to be taxed and, insofar as may be practicable, there must be no duplication or pyramiding of the tax. §212.12(12), F.S.

### After Ch. 86-166

In the event that Chapter 86-166, L.O.F., respecting to taxing services, does not get amended the following issues will need to be addressed:

#### Number of Accounts

1) The attached Exhibit A list of vendors that provide services will be required to register with the Florida Department of Revenue. This is not an all inclusive list and other names and entities will be added as they are discovered.

Many firms, such as repair shops, are already registered as dealers and at present must distinguish between sales and services. Taxing these firm's entire receipts is relatively simple and would have a relatively minor impact administratively. This is not the case, however, for barber and beauty shops, professionals, pest control and other service industries. Currently, there are 382,685 active sales tax registrations. The addition of commercial services (excluding professional services) will increase the number of registrations by about 149,000. With professional services included, as in New Mexico, the number of registrants will increase by 298,000. If all businesses at all stages and all services are taxed, as in Hawaii, the increase may be as much as 596,000.

#### Services for Resale and Use

Section 212.02(3)(a), F.S., provides that a "resale sale" means a sale to a consumer or any person for the purpose other than resale in the form of tangible personal property and includes such transactions that may be made in lieu of retail sales for sales at retail. This section was not expanded to include services. However, under Section 212.081(3)(b), F.S., the <sup>r</sup>statutes provides that there will be no pyramiding or duplication of excise taxes.

The issue as to what items of tangible personal property, if any, and what services, if any, may be purchased tax exempt for use in providing, performing, or furnishing a taxable service should be addressed.

§212.02(3)(a)(b), §212.07(1), F.S.,

#### Real Property Contractors

Currently, as a general rule, neither real property, labor service, or other professional services used to improve real property is taxable. Rule 12A-1.051, Florida Administrative Code. Contractors (prime or subs) are regarded as consumers of the materials, supplies, and equipment used in performing real property contracts. Contractors are generally not registered for sales tax purposes, and pay tax on all purchases, including those of building supplies and materials. Since they are not selling tangible personal property, they do not bill the customer for tax as such, though the tax presumably is reflected as a overhead cost in the contract bid.

Given that labor service and other professional services used to improve real property will be taxable, effective July 1, 1987, the entire prime contract price would be taxable. The question then becomes whether a credit for the tax paid on supplies and materials and a deduction for the amount paid to subcontractors would be provided for?

### Use Tax on Services

Currently the statute does not provide for a use tax on services provided outside this state but "brought into the state" or "performed, provided, or furnished for one's own use." This would encourage some people to obtain services outside the state. §212.02(8), §212.06(1)(2)(3)(4)(5), §212.07(9), F.S. Likewise firms would be encouraged to provide services using their own employees instead of obtaining them from outside firms. For example, if a business places a lawyer on its staff, the tax would not apply unless services of employees are taxable, whereas payment for legal services of a law firm would be taxable.

Section 212.02(8), F.S., defines use to mean and include the exercise of any right or power over any tangible personal property incident to the ownership thereof or interest therein, except that it does not include sale at retail of that property in the regular course of the business. Paragraph (13) of Section 212.02 defines the term "use tax" to include the use, the consumption, the distribution, and the storage as herein defined. Again, these sections were not expanded or amended under Chapter 86-166, L.O.F., to include the use of services.

~~If it is decided that the use does apply to services, then there are~~ other questions that will need to be resolved. They are: a) Whether or not the use tax is subject proration based on amount of service performed in this state vs. total services performed. Example: An accounting firm located in Georgia audits the books and records of a business firm located in Florida. The Georgia accounting firm comes into Florida and does preliminary audit work which includes counting of inventories, etc. Once the information is gathered the accounting firm carries the information back

to Georgia where the actual accounting functions are performed and completed, the accounting firm bills the Florida firm for services rendered. The questions raised are: Is the out-of-state accounting firm required to register as a Florida dealer? Is the service tax on the total charge for the amount of time spent in Georgia and Florida or is only the time that is spent performing services in Florida subject to the tax? Suppose that the accounting firm was located in Florida and the business firm was located in another state, what would be the tax impact on services under that situation using the same scenario.

#### Refunds

If a person providing the service does not get paid for their services and has remitted the tax on the services, could the person seek a credit or refund of taxes paid into the state? Section 212.17(3), F.S., refers to credit on bad debts written off regarding tangible personal property only.

The following is a partial list of issues raised by the enactment Ch. 86-166, Laws of Florida, 1986:

Issues

1. Will the sunset of the services exemption limit the precedential value of the 1950 Florida Supreme Court decision, Gaulden v. Kirk, 47 So. 2d 567 (Fla. 1950), the progenitor of Florida decisional laws construing the Ch. 212 sales tax where that court held, that pursuant to a habeus corpus proceeding to free an innkeeper jailed for refusal to collect and remit the sales tax on his business of renting rooms:

Moreover, the tax here involved is not an income tax. Although the tax is determined upon the price charged for the merchandise or services, it is not a tax upon the personal property or services, but upon the privilege of selling the same and it is measured by the extent to which the privilege is enjoyed. Lott v. Ross & Co., 38 Ala. 156; Nachman v. State Tax Commission, 233 Ala. 628, 193 So. 25 (test 31) and cases therein cited.

No.

2. Given that §212.08(7)(d) exempted only services "which involve sales as inconsequential elements for which no separate charges are made:

1. Did Ch. 212 tax services which did not involve sales (of tangible personal property) as an element of the service?

No.

2. Are there any services which are pure services, e.g., services which involve no elements of the sale of tangible personal property.

YES

3. Did Ch. 212 tax professional, insurance, and personal services prior to Ch. 86-166 making the §212.08(7)(d) exemption functional?

No

3. Does the inclusion of the provision in Ch. 86-166, Laws of Florida (§212.05(1)(j), F.S.) "at the rate of 5 percent of the consideration for performing or providing any service" alter the Ch. 212 tax in such a manner as to render Gaulden v. Kirk, 47 So 2d 567 (Fla. 1950) without precedential value to the question of whether or not §212.05(1)(j), F.S. is an

unconstitutional income tax?

4. Does the enactment in Ch. 86-166, Laws of Florida of §212.05(1)(j) "at the rate of 5 percent of the consideration for performing or providing any service" levy a tax? On all services or just those associated with the transfer of property?

5. Could a court hold that the sunset of the services exemption transforms the Ch. 212 sales tax into an unconstitutional <income tax> as to all transactions or as to service transactions where §212.07 requires that:

(1) The privilege tax herein levied measured by retail sales shall be collected by the purchaser or consumer.

(2) A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of the tax shall be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale; and such tax shall constitute a part of such price, charge, or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Any dealer who neglects, fails, or refuses to collect the tax herein provided upon any, ever, and all retail sales made by him or his agents or employees of tangible personal property which is subject to the tax imposed by this chapter shall be liable for and pay the tax himself.

(3) A dealer engaged in any business taxable under this chapter may not advertise or hold out to the public, in any manner, directly or indirectly, that he will absorb all or any part of the tax, or that he will relieve the purchaser of the payment of all or any part of the tax, or that the tax will not be added to the selling price of the property sold or released or, when added, that it or any part thereof will be refunded either directly or indirectly by any method whatsoever. A person who violates this provision with respect to advertising or refund is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. A second or subsequent offense constitutes a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

6. Given the general rule of law applicable in Florida that taxing statutes, where ambiguous, are to be strictly construed against the taxing authority and exemption statutes, where ambiguous, are to be strictly construed against the taxpayer seeking the exemption, would it be more efficient, equitable, and constitutionally secure to tax all services subject to specific exemptions rather than tax less than all services by providing a limited definition of services?

7. Does the tax at the rate of 5 percent of the consideration for the performing or providing any service impose the tax on employees (wage earners) for the services they render to their employers?

8. If it does, is there a rational basis to exempt them?

9. Does the tax on any service (as is) impute a §212.06(1)(b) use tax on the recipient of the service associated with the production of property? Unassociated with the production of property? In the case of the employer?

No

10. Would additional statutory language be required to levy a §212.06(1)(b) use tax on services? Yes

11. Does the language prohibiting an income tax in the Florida Constitution as amended in 1971 prohibit an income tax similar to the federal income tax or income taxes of sister states or does it prohibit any income tax?

12. Is the historic prohibition against an income tax (prior to 1971) broader than the current prohibition so as to distinguish State v. Keller, 191 So. 542 (Fla. 1939)?

13. How broadly can "any service" be construed? Aren't all payments determined by law to be "consideration," other than those for the exchange of property, payments for services rendered?

14. To what extent can the Legislature tax less than all services without violating its equal protection of the laws? Are there broad classes of services beyond commercial and non-commercial, and professional and non-professional, into which services can be classified?

15. To have an equitable and efficient tax on services, should the Legislature classify services for exemption or exception purposes, and what level of rationality would be required for the classification to survive a legal challenge? Would it differ from tangible personal property?



16. Is the tax limited to a business which sells services as indicated in §212.02(9), F.S., or to "any service" for a consideration as provided in §212.05(1)(j), F.S.?

17. How broadly can "services" be construed in the case of industries selling intangible as well as services, such as stockbrokers, insurance agents and lending institutions? For example, does service include the total cost of insurance premiums, or just the agent's commission or somewhere in between?

18. Would it be required to separately identify the service component of a transaction so as to tax the transaction as a service?

19. In what circumstances would less than an entire transaction involving a service be taxable?

20. How broadly can a taxable service be construed in the case of industries selling otherwise non-taxable items such as real property, transportation, or exempt items of tangible personal property with attendant services?

21. To what extent does Ch. 86-166 as enacted tax the self-provision of services (e.g., in-house legal, accounting, or like services)? How could §212.06(1)(b) be amended to include self-provision of services? To avoid taxing them?

22. Would a limitation of taxable services to "outside" services be discriminatory?

23. How would the tax on in-house services be computed? Would all or a part of the salary of such an in-house service provider be subject to the service tax?

24. Would commissions received by sales personnel selling property, tangible, intangible or real, be taxable where the commissions are a component of a taxable sales price of the property? An exempt sales price? Where they are not a component of the sales price?

25. Does Ch. 86-166 tax intermediate services of non-employees, such as a draftsman performing work for an architect who provides a taxable service for a client. Is there a pass through or credit provided? How can one be provided?

26. Does the law as enacted tax non-commercial services of any kind? How could it be drafted to avoid taxing non-commercial services (occasional and isolated sales)?

27. To what extent will the decisional law construing the Chapter 212, F.S., tax on sales of tangible personal property, have precedential value in construing questions surrounding the tax on services?

28. To what extent does the fact that services are not tangible impact commerce and due-process clause consideration? What factors determine the taxable nexus of service? To what extent would nexus requirements for services differ from those required for tangible personal property? Are there apportionment or allocation considerations and what would be their basis?

29. What limitations under the delegation doctrine exist to govern administrative rule-making within a statutory scheme which does not define a service? Within one that does define (or classify) services? To what extent would the legislature have to define "services" in order for the Department of Revenue to exercise its rulemaking authority under §212.17(6), F.S., §212.18(2), F.S., and §212.06, F.S.?

30. Is the provider of a service who uses tangible personal property to perform that service a consumer of that tangible personal property? The ultimate consumer? Does it matter whether the tangible personal property is inconsequential or consequential?

31. If a sales tax based on the room rents of a motel owner or on the sales prices of articles sold by a merchant is not an income tax, what would support an argument that a sales tax based on legal or medical fees charged by a lawyer or doctor is an income tax?

32. When does the incidence of the tax on services occur? When the service is performed, when paid for, or when both occur? Would failure of consideration nullify the tax?

### Policy Considerations

With the passage of ch. 86-166, Laws of Florida, the sales tax has broadened its base considerably. By including a tax based on "the consideration for performing or providing any service," it arguably covers nearly all payments of money or "in-kind" other than those for the exchange of property.

Functionally, this broad tax on "any service" forms an equitable base. Given the rule of law in Florida that taxing statutes (where ambiguous) are strictly construed against imposing the tax, the ch. 86-166 taxing statute on "any service" is unambiguously broad. With the inverse of the above rule applying to exemption statutes (ambiguity is construed against granting the exemption), it permits the legislature (assuming it wants to tax less than all services) to exempt only those services it deems appropriate. This is significant in that it places the power of taxation clearly in the legislature where it belongs, not in the judiciary or in quasi-judicial executive bodies. It would reduce "judge-made" taxes and exemptions through minimizing taxes and exemption by implication. However, given the likelihood that the legislature may wish to tax less than "all services," certain exemptions require consideration.

A common service exemption is that performed by employees for their employer. The usual rationale for this exemption is that employees are not really exercising the privilege of engaging in a business or occupation, at least in the entrepreneurial sense.

The strength of this rationale may be questioned, especially in the case of entrepreneurs performing professional services. They would argue that the exemption of employees would encourage "in-house" self provision of services, especially by larger businesses, thus placing a heavier burden on smaller enterprises who can't afford to hire in-house professional staff. Additionally, they would argue that their clientele would be reduced since businesses would have an incentive to utilize in-house services rather than outside services, thus reducing the demand for outside services.

One way to address this problem would be to amend §212.06(1)(b) to include services in the use tax provision contained therein. §212.06(1)(b), taxes the cost price of a product fabricated in house for use by the business. The concept is that if the business did not fabricate the item, it would have purchased it in the marketplace subject to the tax. The same rationale could be utilized for in-house services with the tax being imposed on the business who uses its own services.

(To Be Continued)

AGRICULTURE SERVICES

Persons engaged in the business of performing the following agricultural services for others would be exercising a taxable privilege:

1. Soil Preparations Services which include chemical treatment of soil, fertilizer application, lime spreading, plowing, and weed control.
2. Crop Services which would include aerial dusting and spraying; bracing of orchard trees, citrus grove cultivation and disease control.
3. Crop Harvesting which would include harvesting, picking, and combining of crops, and related activities (may require migrant workers to register as dealers).
4. Veterinary Services which would be licensed practitioners engaged in the practice of veterinary medicine.
5. Animal Services which would exclude persons licensed to practice veterinary medicine, but include milk testing, slaughtering, dog grooming, breeding, livestock spraying.
6. Farm Labor and Management Services which would include supplying labor for agricultural production or harvesting. (See #3 above)
7. Landscape and Horticultural Services which would include lawn fertilizing, lawn mowing, landscape planning, horticultural counseling, tree trimming.

FORESTRY SERVICES

Persons engaged in the business of performing for others, forestry services related to timber production, wood technology, forestry economics and marketing, such as cruising timber, fire fighting, and reforestation, would be exercising a taxable privilege.

## MINING, OIL AND GAS EXTRACTION, AND SIMILAR SERVICES

Persons engaged in the business of performing for others on a contract or fee basis, mining, oil, gas extraction and similar services, such as boring test holes, strip mining, and well drilling, would be exercising a taxable privilege.

## PRINTING TRADE SERVICES

Persons engaged in the business of performing printing trade services for others, such as typesetting, hand composition, machine composition, photocomposition, and typographic composition, would be engaging in a taxable privilege.

## TRANSPORTATION, COMMUNICATIONS, GAS AND SANITARY SERVICES

Persons engaged in the business of providing transportation, communication, gas, and sanitary services, would be engaging in a taxable privilege. Such services would include:

1. Railroad transportation
2. Local and suburban passenger transportation such as bus line transportation, ambulance service, hearse and limousine rentals with drivers and taxicabs.
3. Freight Transportation such as furniture moving, garbage and refuse collecting and transporting, package and parcel delivery and freight hauling.
4. Water Transportation such as the operation of ferries, towing and tugboat service, transporting freight and passengers, and docking and undocking of vessels.
5. Air Transportation.
6. Pipe lines such as gasoline pipe lines.
7. Transportation services such as freight forwarding, travel agencies, toll roads, and toll bridges.

8. Communication such as radio broadcasting, television broadcasting, and stock ticker service.

**Interstate Commerce May Prohibit Taxation of  
Certain Transportation Services & Communications**

9. Sanitary services such as sewage systems, garbage collecting, mosquito eradication, and road sweeping.

**FINANCE, INSURANCE, AND REAL ESTATE SERVICES**

Person engaged in the business fields of finance, insurance, and real estate would be exercising a taxable privilege. Such persons include:

1. Banks taxable services would include service charges, check cashing fees, money order fees, travel check fees, clearing house fees. There is some question as to whether the interest earned by the bank or paid by the bank to its customers is taxable.

2. Security and Commodity Brokers taxable services would include investment advisory services, investment counseling, quotation services, exchange clearing house services.

3. Insurance such taxable services would include inspection and investigation, reporting, research, claim processing, loss prevention, appraisal, consulting, agents commission.

4. Real Estate such taxable services would include appraiser fees, broker fees, management fees, title search fees.

**BUILDING CONTRACTING SERVICES**

1. General Contractors -  
Residential buildings;  
Industrial buildings & Warehouse
2. Operative buildings
3. Highway & street, including bridge & tunnel



4. Water, sewer, pipe line & communication & power lines
5. Blasting
6. Harbor construction
7. Land clearing
8. Missile facility construction
9. Plumbing, heating & air conditioning
10. Painting, paper hanging & decorating
11. Electrical work
12. Masonry, stonework, tile, setting & plastering
13. Carpentering & flooring
14. Roofing & sheet metal work
15. Concrete work
16. Water well drilling
17. Glass & glazing work
18. Excavating & foundation work
19. Wrecking & demolition work

#### Social Services

Persons providing social services and rehabilitation services on a contract or fee basis to those persons with social or personal problems requiring special services and to the handicapped and the disadvantaged would be exercising a taxable privilege. Such services include adoption, day care, centers for senior citizens, counseling centers, disaster centers, marriage counseling, halfway houses, foster homes, united fund councils.

#### Engineering, Architectural, and Surveying Services

Persons performing services in the fields of engineering, architecture, and land surveying, would be exercising a taxable privilege.

### Health Services

Persons furnishing medical, surgical and other health services such as physicians, dentists, chiropractors, optometrists, nurses, and hospitals would be exercising a taxable privilege.

### Legal Services

Persons offering legal advice or legal services would be exercising a taxable privilege.

### Educational Services

Persons furnishing formal academic or technical courses, correspondence schools, job training, commercial and trade schools and libraries would be exercising a taxable privilege. This would tax tuitions from all schools.

### Accounting, Auditing, and Bookkeeping Services

Persons engaged in furnishing accounting, auditing, and bookkeeping services would be exercising a taxable privilege.

### MISCELLANEOUS PERSONAL SERVICES

**Persons providing or performing the following services would be exercising a taxable privilege:**

1. Beauty and barber.
2. Babysitting
3. Car title and tag
4. Dating
5. Escort
6. Health clubs or spas
7. Marriage
8. Massage parlors
9. Porter service
10. Reducing salons

11. Tattoo parlors
12. Tax return preparation
13. Advertising consultants
14. Billboard advertising
15. Newspaper, radio and television advertising
16. Credit reporting
17. Collection of claims
18. Addressing mail
19. Letter writing
20. Typing
21. Court reporting
22. Disinfecting
23. Fumigating
24. Pest control
25. Window cleaning
26. Janitorial
27. Employment
28. Labor or manpower pools
29. Computer
30. Engineering
31. Agricultural research
32. Food research
33. Business consultants
34. Business, management, and training consulting
35. Efficiency reports
36. Industrial development planning
37. Market analysis or research
38. Merchandising counsels

39. Merger, acquisition and reorganization studies
40. Opinion research
41. Personnel management, training and consulting
42. Site locators
43. Testing of Products and personnel
44. Armored car
45. Detective agencies
46. Finger printing
47. Lie detection
48. Security watches
49. Trading stamp promotion
50. Bail bonding
51. Copyright protection
52. Coupon redemption
53. Decoration service
54. Demonstration service, separate from sale
55. Fund raising
56. Interior decorators
57. Messenger
58. Notary public
59. Repossession
60. Speaking
61. Swimming pool cleaning and maintenance
62. Switchboard operation
63. Tax Collection agencies collecting for a city, county or the state.
64. Telephone message service
65. Telephone solicitation

- 66. Water softener
- 67. Car washing
- 68. Towing
- 69. Motion picture casting, editing and titling
- 70. Entertainment including concerts and orchestras
- 71. Fortune tellers
- 72. Judo instruction
- 73. Dance instruction
- 74. Karate instruction
- 75. Sporting instruction, i.e., golf, skiing, swimming
- 76. Domestic

## 212.02 Definitions

212.02(2)(a), F.S., as amended by Chapter 86-152, L.O.F., effective July 1, 1986, provides:

"(2) 'Sale' means and includes:

"(a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration."

212.02(3)(a), F.S., as amended by Chapter 86-152, L.O.F., effective July 1, 1986, provides:

"'Retail sale' or a 'sale at retail' means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property and includes all such transactions that may be made in lieu of retail sales or sales at retail."

212.02(3)(b), F.S., (1985), provides:

"The terms 'retail sales,' 'sales at retail,' 'use,' 'storage,' and 'consumption' include the sale, use, storage, or consumption of all tangible advertising materials imported or caused to be imported into this state. Tangible advertising material includes displays, display containers, brochures, catalogs, pricelists, point-of-sale advertising, and technical manuals or any tangible personal property which does not accompany the product to the ultimate consumer."

212.02(3)(c), F.S., as amended by Chapters 86-152 and 86-166, L.O.F., effective July 1, 1986, provides:

"'Retail sales,' 'sale at retail,' 'use,' 'storage,' and 'consumption' do not include materials, containers, labels, sacks, or bags intended to be used one time only for packaging tangible personal property for sale or in the process of providing a service taxable under this part, and do not include the sale, use, storage, or consumption of industrial materials, including chemicals and fuels except as provided herein, for future processing, manufacture, or conversion into articles of tangible personal property for resale when such industrial materials, including chemicals and fuels except as provided herein, become a component or ingredient of the finished product. However, said terms include the sale, use, storage, or consumption of tangible personal property, including machinery and equipment or parts thereof, purchased electricity, and fuels used to power machinery, when said items are used and dissipated in fabricating, converting, or processing tangible personal property for sale, even though they may become ingredients or components of the tangible personal property for sale through accident, wear, tear, erosion, corrosion or similar means."

212.02(4), F.S., as amended by Chapter 86-166, L.O.F., effective July 1, 1987, provides:

"'Sale price' means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. 'Sales price' also includes the consideration for a transaction which requires ~~both~~ labor or ~~and~~ material to alter, remodel, maintain, adjust, or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this subsection."

(Words ~~stricken~~ are deletions effective July 1, 1987, words underlined are additions effective July 1, 1987.

212.02(8), F.S., (1985), provides:

"'Use' means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it does not include the sale at retail of that property in the regular course of business."

212.02(9), F.S., as amended by Chapter 86-166, L.O.F., effective July 1, 1986, provides:

"'Business' means any activity engaged in by any person, or caused to be engaged in by him, with the object of private or public gain, benefit, or advantage, either direct or indirect. Except for the sales of any aircraft, boat, mobile home, or motor vehicle, the term 'business' shall not be construed in this chapter to include occasional or isolated sales or transactions involving tangible personal property by a person who does not hold himself out as engaged in business, but includes other charges for the sale or rental of tangible personal property, sales of services taxable under this part, sales of or charges of admission, communication services, all rentals and leases of living quarters, other than low-rent housing operated under chapter 421, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, and all rentals of real property, other than low-rent housing operated under chapter 421, all leases or rentals of parking lots or garages for motor vehicles, docking or storage spaces for boats in boat docks or marinas as defined in this chapter and made subject to a tax imposed by this chapter. Any tax on such sales, charges, rentals, admissions, or other transactions made subject to the tax imposed by this chapter shall be collected by the state,

county, municipality, any political subdivision, agency, bureau, or department, or other state or local governmental instrumentality in the same manner as other dealers, unless specifically exempted by this chapter."

212.02(12), F.S., as amended by Chapter 86-152, L.O.F., effective July 1, 1986, provides:

"'Tangible personal property' means and includes personal property which may be seen, weighed, measured, or touched or is in any manner perceptible to the senses, including electric power or energy, boats, motor vehicles and mobile homes as defined in s. 320.01(1) and (2), aircraft as defined in s. 330.27, and all other types of vehicles. The term 'tangible personal property' does not include stocks, bonds, notes, insurance, or other obligations or securities; intangibles as defined by the intangible tax law of the state; or pari-mutuel tickets sold or issued under the racing laws of the state."

212.02(13), F.S., (1985), provides:

"The term 'use tax' referred to in this chapter includes the use, the consumption, the distribution, and the storage as herein defined."

#### **212.05 Sales, Storage, Use Tax.**

212.05(1)(i) and (j), F.S., as amended by Chapter 86-152, L.O.F., effective July 1, 1986 and Section 212.05(1)(j), F.S., effective July 1, 1987, provide:

"It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

"(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

"(i) 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.

"(j) At the rate of 5 percent of the consideration for performing or providing any service."

212.05(2), F.S., (1985), provides:

"The tax shall be collected by the dealer, as defined herein, and remitted by him to the state at the time and in the manner as hereinafter provided."



**212.06 Sales, storage, use tax; collectible from dealers;  
"dealer" defined dealers to collect from purchasers;  
legislative intent as to scope of tax**

212.06(1)(a) and (b), F.S., as amended by Chapter 86-166, L.O.F., provides:

"(1)(a) The aforesaid tax at the rate of 5 percent of the retail sales price as of the moment of sale, 5 percent of the cost price as of the moment of purchase, or 5 percent of the cost price as of the moment of commingling with the general mass of property in this state, as the case may be, shall be collectible from all dealers as herein defined on the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state of tangible personal property or services taxable under this part. The full amount of the tax on a credit sale, installment sale, or sale made on any kind of deferred payment plan shall be due at the moment of the transaction in the same manner as on a cash sale.

"(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material use, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02(5) defining 'cost price.' However, the tax levied under this paragraph shall not be imposed upon any person who manufactures or produces electrical power or energy, steam energy, or other energy, when such power or energy is used directly and exclusively in the operation of machinery or equipment that is used to manufacture, process, compound, produce, fabricate, or prepare for shipment tangible personal property for sale or to operate pollution control equipment, maintenance equipment, or monitoring or control equipment used in such operations. The manufacturing or production of electrical power or energy that is used for space heating, lighting, office equipment, or air conditioning or any other nonmanufacturing, nonprocessing, noncompounding, nonproducing, nonfabricating, or nonshipping activity is taxable. Electrical power or energy consumed or dissipated in the transmission or distribution of electrical power or energy for resale is also not taxable."

212.06(2)(a), (b), (c), (d), (f), (g), (h), (i), and (j), F.S., (1985), provides:

"(2)(a) The term 'dealer' as used in this chapter includes every person who manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

"(b) The term 'dealer' is further defined to mean every person, as used in this chapter, who imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use,

consumption, or distribution; or for storage to be used or consumed in this state.

"(c) The term 'dealer' is further defined to mean every person, as used in this chapter, who sells at retail, or who offers for sale at retail, or who has in his possession for sale at retail, or for use, consumption, or distribution, or for storage to be used or consumed in this state tangible personal property as defined herein.

"(d) The term 'dealer' is further defined to mean any person who has sold at retail, or used, or consumed, or distributed, or stored for use or consumption in this state tangible personal property and who cannot prove that the tax levied by this chapter has been paid on the sale at retail, the use, the consumption, the distribution, or the storage of such tangible personal property.

"(f) The term 'dealer' is further defined to mean any person as used in this chapter, who maintains or has within this state, directly or by a subsidiary, an office, distributing house, salesroom, or house, warehouse, or other place of business.

"(g) 'Dealer' also means and includes every person who solicits business either by direct representatives, indirect representatives, or manufacturers' agents or by distribution of catalogs or other advertising matter or by any other means whatsoever and by reason thereof receives orders for tangible personal property from consumers for use, consumption, distribution, and storage for use or consumption in the state; and such dealer shall collect the tax imposed by this chapter from the purchaser, and no action either in law or in equity on a sale or transaction as provided by the terms of this chapter may be had in this state by any such dealer unless it is affirmatively shown that the provisions of this chapter have been fully complied with.

"(h) 'Dealer' also means and includes every person who, as a representative, agent, or solicitor of an out-of-state principal or principals, solicits, receives, and accepts orders from consumers in the state for future delivery and whose principal refuses to register as a dealer.

"(i) 'Dealer' also means and includes the state, county, municipality, any political subdivision, agency, bureau or department or other state or local governmental instrumentality.

"(j) The term 'dealer' is further defined to mean any person who has leased living quarters, sleeping or housekeeping accommodations in hotels, apartment houses, roominghouses, tourist or trailer camps, real property, space or spaces in parking lots or garages for motor vehicles or docking or storage space or spaces for boats in boat docks or marinas, or who has purchased communication services or electric power or energy, and who cannot prove that the tax levied by this chapter has been paid to the vendor or lessor on any such transactions."

212.06(2)(k), F.S., as amended by Chapter 86-166, L.O.F., effective July 1, 1986, provides:

"'Dealer' also means any person who provides or performs a taxable service for consideration."

212.06(3) and (4), F.S., (1985), provides:

"(3) Every dealer making sales, whether within or outside the state, of tangible personal property for distribution, storage, or use or other consumption, in this state, shall, at the time of making sales, collect the tax imposed by this chapter from the purchaser.

"(4) On all tangible personal property imported or caused to be imported from other states, territories, the District of Columbia, or any foreign country, and used by him, the dealer as herein defined, shall pay the tax imposed by this chapter on all articles of tangible personal property so imported and used, the same as if such articles had been sold at retail for use or consumption in this state. For the purposes of this chapter, the use, or consumption, or distribution, or storage to be used or consumed in this state of tangible personal property shall each be equivalent to a sale at retail; and the tax shall thereupon immediately levy and be collected in the manner provided herein, provided there shall be no duplication of the tax in any event."

212.06(5)(a), F.S., as amended by Chapter 86-166, L.O.F., effective July 1, 1987, provides:

"It is not the intention of this chapter to levy a tax upon tangible personal property imported, produced, or manufactured in this state for export, provided that tangible personal property may not be considered as being imported, produced, or manufactured for export unless the importer, producer, or manufacturer delivers the same to a licensed exporter for exporting or to a common carrier for shipment outside the state or mails the same by United States mail to a destination outside the state; or, in the case of aircraft being exported under their own power to a destination outside the continental limits of the United States, by submission to the department of a duly signed and validated United States customs declaration, showing the departure of the aircraft from the continental United States; and further with respect to aircraft, the canceled United States registry of said aircraft; or in the case of parts and equipment installed on aircraft of foreign registry, by submission to the department of documentation, the extent of which shall be provided by rule, showing the departure of the aircraft from the continental United States; nor is it the intention of this chapter to levy a tax on any sale which the state is prohibited from taxing under the Constitution or laws of the United States. Every retail sale made to a person physically present at the time of sale shall be presumed to have been delivered in this state."

212.06(6), (7) and (8), F.S., (1985), provide:

"(6) It is however, the intention of this chapter to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state of tangible personal property after it has come to rest in this state and has become a part of the mass property of this state.

"(7) The provisions of this chapter do not apply in respect to the use or consumption of tangible personal property, or distribution or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state. The proof of payment of such tax shall be made according to rules and regulations of the department. If the amount of tax paid in another state is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state and in this state equal to the amount imposed by this chapter.

"(8) Use tax will apply and be due on tangible personal property imported or caused to be imported into this state for use, consumption, distribution, or storage to be used or consumed in this state; provided, however, that it shall be presumed that tangible personal property used in another state for 6 months or longer before being imported into this state was not purchased for use in this state. The rental or lease of tangible personal property which is used or stored in this state shall be taxable without regard to its prior use or tax paid on purchase outside this state."

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

212.07(1), (2) and (9), F.S., as amended by Chapter 86-152, L.O.F., effective July 1, 1986, provides:

"(1)(a) The privilege tax herein levied measured by retail sales shall be collected by the dealer from the purchaser or consumer.

"(b) A resale must be in strict compliance with the rules and regulations, and any dealer who makes a sale for resale which is not in strict compliance with the rules and regulations shall himself be liable for and pay the tax. A dealer may, through the informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The Department of Revenue shall adopt rules which shall provide that valid resale certificates and consumer certificates of exemption executed by those dealers or exempt entities which were registered with the department

at the time of sale shall be accepted by the department when submitted during the protest period but may not be accepted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.

"(2) A dealer shall, as far as practicable, add the amount of the tax imposed under this chapter to the sale price, and the amount of the tax shall be separately stated as Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale; and such tax shall constitute a part of such price, charge, or proof of sale which shall be a debt from the purchaser or consumer to the dealer, until paid, and shall be recoverable at law in the same manner as other debts. Where it is impracticable, due to the nature of the business practices within an industry, to separately state Florida tax on any charge ticket, sales slip, invoice, or other tangible evidence of sale, the department may establish an effective tax rate for such industry. The department may also amend this effective tax rate as the industry's pricing or practices change. Any dealer who neglects, fails, or refuses to collect the tax herein provided upon any, every, and all retail sales made by him or his agents or employees of tangible personal property which is subject to the tax imposed by this chapter shall be liable for and pay the tax himself.

"(9) Any person who has purchased at retail, used, consumed, distributed, or stored for use or consumption in this state tangible personal property, admissions, communication services, or leased tangible personal property, or who has leased, occupied, or used or was entitled to use any real property, space or spaces in parking lots or garages for motor vehicles or docking or storage space, or spaces for boats in boat docks or marinas and cannot prove that the tax levied by this chapter has been paid to his vendor, lessor, or other person is directly liable to the state for any tax, interest, or penalty due on any such taxable transactions."

**212.08 Sales, rental, use, consumption, distribution,  
and storage tax; specified exemptions.**

212.08(7)(d), F.S., as amended by Chapter 86-166, L.O.F., effective July 1, 1986, is repealed effective July 1, 1987, currently provides:

"1. also exempted are professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made. However, services taxable under s. 212.05(1)(i) shall not be included in this exemption.

"2. The above-exempted personal service transactions do not exempt the sale of information services involving the furnishing of printed, mimeographed, or multigraphed matter, or matter duplicating written or printed matter in any other manner, other than professional services and

services of employees, agents, or other persons acting in a representative or fiduciary capacity or information services furnished to newspapers and radio and television stations. The term 'information services' means and includes the services of collecting, compiling, or analyzing information of any kind of nature and furnishing reports thereof to other persons."

#### **212.081 Legislative intent.**

212.081(3)(d), F.S., (1985), provides:

"(3) To arrange the exemptions allowed in this section in more orderly categories thereby eliminating some of the confusion attendant upon the present arrangement where cross-exemptions frequently occur.

"(b) It is also the legislative intent that there shall be no pyramiding or duplication of excise taxes levied by the state under this chapter and no municipality shall levy any excise tax upon any privilege, admission, lease, rental, sale, use or storage for use or consumption which is subject to a tax under this chapter unless permitted by general law; provided, however, that this provision shall not impair valid municipal ordinances which are in effect and under which a municipal tax is being levied and collected on July 1, 1957."

#### **212.12 Dealer's credit for collecting tax; penalties for non-compliance; powers of Department of Revenue in dealing with delinquents; brackets applicable to taxable transactions; records required.**

212.12(12), F.S., (1985), provides:

"It is hereby declared to be the legislative intent that, whenever in the construction, administration, or enforcement of this chapter there may be any question respecting a duplication of the tax, the end consumer, or last retail sale, by the sale intended to be taxed and insofar as may be practicable there be no duplication or pyramiding of the tax."

#### **212.17 Credits for returned goods, rentals or admissions; additional powers of department.**

212.17(3), F.S., (1985), provides:

"A dealer who has paid the tax imposed by this chapter on tangible personal property may take a credit or obtain a refund for any tax paid by him on the unpaid balance due on worthless accounts within 12 months following the month in which the bad debt has been charged off for federal income tax purposes. If any accounts so charged off for which a credit or refund has been obtained are thereafter in whole or in part paid to the dealer, the amount so paid shall be included in the first return filed after such collection and the tax paid accordingly."

Iowa

Taken from Commerce Clearing House & Prentice Hall -

Iowa levies a Sales, Receipts or Use Tax. The sales and receipts tax is imposed on the sale of tangible personal property and the rendering, furnishing or performance of selected services, measured on the gross receipts from all taxable sales or services.

The purchase of tangible personal property and services for use in Iowa is subject to a complementary use tax measured on the purchase price such property or service.

Services are defined by law as follows:

Section 422.42. \*\*\*13. "Services" means all acts or services rendered, furnished, or performed, other than services performed on tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property delivered into interstate commerce, or services used in processing of tangible personal property for use in taxable retail sales or services, for an "employer" as defined in section 422.4, subsection 15, for a valuable consideration by any person engaged in any business or occupation, specifically enumerated in this division. The tax shall be due and collectible when the service is rendered, furnished, or performed for the ultimate user thereof.

"Services used in the processing of tangible personal property" includes the reconditioning or repairing of tangible personal property of the type normally sold in the regular course of the retailer's business and which is held for sale upon which the gross receipts tax under this division or the use tax under chapter 423 will be paid when the tangible personal property is sold.

"User" is defined by law as follows:

Section 422.42.\*\*\*14. "User" means the immediate recipient of the services who is entitled to exercise a right of power over the product of such services.

"Value of Services" is defined by law as follows:

Section 422.42.\*\*\* 15. "Value of services" means the price to the user exclusive of any direct tax imposed by the federal government or by this division.

"Gross Taxable Services" is defined as follows:

Section 422.42.\*\*\* 16. "Gross taxable services" means the total amount received in money, credits, property, or other consideration, valued in money, from services rendered, furnished, or performed in this state except where such service is performed on tangible personal property delivered into interstate commerce or is used in processing of tangible personal property for use in taxable retail sales or services and embraced within the provisions of this division. However, the taxpayer may take credit in his report of gross taxable

services for an amount equal to the value of services rendered, furnished, or performed when the full value of such services thereof is refunded either in cash or by credit. Taxes paid on gross taxable services represented by accounts found to be worthless and actually charged off for income tax purposes may be credited upon a subsequent payment of the tax due hereunder, but if any such accounts are thereafter collected by the taxpayer, a tax shall be paid upon the amounts so collected.

"Taxable Services" as provided for by law are as follows:

Section 422.43. \*\*\* There is imposed a tax \*\*\* upon the gross receipts from the rendering, furnishing, or performing of services as defined in section 422.42.\*\*\*

11. The following enumerated services are subject to the tax imposed on gross taxable services: alteration and garment repair; armored car; automobile repair; battery, tire and allied [service]; investment counseling, excluding investment services of trust department; bank service charges; barber and beauty; boat repair; car wash and wax; carpentry; roof shingle, and glass repair; dance schools and dance studios; dry cleaning, pressing, dyeing, and laundering; electrical and electronic repair and installation; rental of tangible personal property; excavating and grading; farm implement repair of all kinds; flying service except agricultural aerial application services and aerial commercial and charter transportation services; furniture, rug, upholstery repair and cleaning; fur storage and repair; golf and country clubs and all commercial recreation; house and building moving; household appliance, television, and radio repair; jewelry and watch repair; machine operator; machine repair of all kinds; motor repair; motorcycle, scooter, and bicycle repair; oilers and lubricators; office and business machine repair; painting, papering, and interior decorating; parking facilities; pipe fitting and plumbing; wood preparation; licensed executive search agencies; private employment agencies, excluding services for placing a person in employment where the principal place of employment of that person is to be located outside of the state; sewing and stitching; shoe repair and shoeshine; storage warehousing of raw agricultural products; telephone answering service; test laboratories, except tests on humans; termite, bug, roach, and pest eradicators; tin and sheet metal repair; turkish baths, massage, and reducing salons; weighing; welding; well drilling; wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl and vegetables; wrecking service; wrecker and towing; cable television; campgrounds; carpet and upholstery cleaning; gun and camera repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; and water conditioning and softening. For purposes of this subsection, gross taxable services from rental includes rents, royalties, and copyright and license fees.

Certain services are specially exempt by law. Such services include:

1. Services used in processing of tangible personal property for use in taxable retail sales or services;
2. Services performed on tangible personal property delivered into interstate commerce;



Iowa (continued)

3. Services rendered, furnished or performed for governmental entities;
4. Services rendered, furnished, or performed by specialized flying implements of husbandry used for agricultural aerial spraying and aerial commercial and charter transportation services; and
5. Services on or connected with new construction, reconstruction, alteration or remodeling of a building or structure, or the services of a general building, architect or engineer.

**South Dakota**  
Taken from Commerce Clearing House & Prentice Hall

South Dakota levies a Retail Sales and Service and Use Tax. The retail sales and service tax is imposed on the privilege of engaging in businesses, professions, occupations, and pursuits measured by the gross receipts from sales of tangible personal property and the gross receipts of certain service occupations and professions.

The use tax is imposed on the privilege of the use, storage and consumption in South Dakota of tangible personal property which has not been subject to the retail sales tax and the use of services in South Dakota.

The use tax for the privilege of using services in South Dakota is measured on the value of the services at the time they are rendered. However, the use tax is not imposed on certain services rendered by related corporations for use by certain financial institutions. Services rendered by an employee for his employer are likewise not taxable.

The tax as a whole and the tax on gross receipts of services and professions has withstood constitutional challenges. In the case State ex rel. Borkin v. Welsh (1933) 61 SD. 593, 251 NW 189 the court held valid the imposition of the excise tax on the privilege of engaging in business, professions, occupations and pursuits, measured by gross receipts. It didn't violate South Dakota's Constitution, Art. 11 which permits taxation of privileges, nor preclude legislative resort to other sources of revenue under Art. 11, section 1, nor does it effect inequality nor prescribed unreasonable or arbitrary classifications and exemptions in violation of Art. 6, section 17. But in so far as it attempted to reach gross receipts of transactions in interstate commerce, it was held void. In Berdahl v. Gills, (1965) 81 SD. 436; 136 NW 2d 633, the court held taxing the privilege of practicing a profession for fee or retainer and not privilege of being employed in rendering such services for wages is constitutional. Exclusions of persons engaged in practice of healing arts and veterinarians are not discriminatory. The legislature may select some occupations for taxation and exclude others, provided the selection is reasonable. The South Dakota Constitutional empowers the Legislature to impose taxes upon incomes and occupations.

"Retail sale" or "sale at retail" is defined by law to mean "the sale of either tangible personal property or services, or both tangible personal property and services to the consumer or user thereof, or to any person for any purpose other than for resale; the sale of natural or artificial gas, electric energy, water, and communication service to consumers or user; and the sale of tickets or admissions to places of amusement or athletic contests."

"Service" is defined by law to mean "all activities engaged in for other persons for a fee, retainer, commission, or other monetary charge, which activities involve predominately the performance of a service as distinguished from selling property. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. If receipts from sales of tangible personal property are included in the measure of tax imposed upon the seller, the amount of such receipts may be excluded from the measure of tax imposed upon the contractor. For the purposes of this chapter services rendered by an employee for his employer are not taxable."

## South Dakota (continued)

The law impose the tax on services and professions as follows:

Section 10-45-4. "There is hereby imposed a tax at the same rate as that imposed upon sales of tangible personal property in this state upon the gross receipts of any persons from the engaging or continuing in the practice of any business in which a service is rendered."

Section 10-45-5. "There is imposed a tax at the rate of three percent upon the gross receipts of any person from engaging in the business of leasing farm machinery or irrigation equipment used for agricultural purposes and four percent upon the gross receipts of any person from engaging or continuing in any of the following businesses or services in this state: abstracters; accountants; architects; barbers; beauty shops; bill collection services; blacksmith shops; car washing; dry cleaning; dyeing; exterminators; garage and service stations; garment alteration, cleaning and pressing; janitorial services and supplies; specialty cleaners; laundry; linen and towel supply; membership or entrance fees for the use of a facility or for the right to purchase tangible personal property or services; photography; photo developing and enlarging; tire recapping; welding and all repair services; cable televisions; and rentals of tangible personal property except leases of tangible personal property between one telephone company and another telephone company, motor vehicles as defined by §32-5-1 leased under a single contract for more than twenty-eight days and mobile homes provided, however, that the specific enumeration of businesses and professions made in this section is not intended to, in any way, limited the scope and effect of §10-45-4."

Section 10-45-5.2 "The following services enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the office of management and budget, office of the President, are specifically subject to the tax levied by this chapter: metal mining services (group no. 108); anthracite mining services (industry no. 1112); bituminous coal and lignite mining services (industry no. 1213); oil and gas field services (group no. 138), nonmetallic minerals (except fuels) services (group no. 148); service industries for the printing trade (group no. 279); coating, engraving and allied services (group no. 347); communication, electric and gas services (division E); hotels, motels, and tourist courts (group no. 701); rooming and boarding houses (group no. 702); camps and trailering parks (group no. 703); personal services (major group 72); business services (major group 73); automotive repair, services, and garages (major group 75); miscellaneous repair services (major group 76); amusement and recreation services, (major group 79); legal services (major group 81); engineering, architectural, and surveying services (group no. 891); landscape and horticultural services (group no. 078); and accounting, auditing, and bookkeeping services (group no. 893). In addition, the following services are also specifically subject to the tax levied on this chapter: livestock slaughtering services; dog grooming services; abstractor's services; veterinarians services; collection agent's services; real estate agent's services; all appraiser's services; funeral service and crematories (group no. 726) except that purchases of goods or services with money advanced as an accommodation are retail purchases and are not includable in gross receipts for funeral services and fees paid or donated for religious ceremonies are not includable in gross receipts for funeral services and loan broker's services. The services enumerated in this section shall not be construed as a comprehensive list of taxable services but rather as a representative list of services intended to be taxable under this chapter."

## South Dakota (Continued)

The law exempts the the following services:

Section 10-45-20. "The exemptions from sales tax relative to sales of tangible personal property shall apply to services included in Sections. 10-45-4 and 10-45-5."

Section 10-45-12.1. "The following services enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the office of amangement and budget, office of the President are exempt from the provision of this chapter; health services (major group 80); educational services (major group 82); social services (major group 83); agricultural services (major group 07); forestry services (group no. 085); radio and television broadcasting (industry no. 483); railroad transportation (major group 40); local and suburban passenger transportation (group 411); taxicabs (group 412); intercity and rural highway passenger transportation (group 413); passenger transportation charger service (group 414); school busses (group 415); establishments primarily engaged in trucking, local and long distance (group 421); farm product warehousing and storage (industry no. 4221); establishment primarily engaged in transportation on rivers and canals (group 444); establishment primaily engaged in air transportation, certified carriers (group 451); establishments primarily engaged in air transportation, noncertified carriers (group 452); pipe lines, except natural gas (major group 46); freight forwarding (group 471); arrangement of transportation (group 472); rental of railroad cars (group 474); water supply (industry no. 4941); sewerage systems (industry no. 4952); and refuse systems (industry no. 4953). The following are also specifically exempt from the provisions of this chapter: financial services including loan origination fees, late payment charges, nonsufficient fund check charges, stop payment charges, safe deposit box rent, exchange charges, commission on travelers checks, and charges for administration of trusts; interest charges, and "points" charged on loans; commission earned or service fees paid by an insurance company to an agent or representative for the sale of a policy; stock and commodity brokers service; services of brokers and agents licensed under Title 47; the sale of trading stamps; veterinarians services; construction services (division C); rentals of motor vehicles as defined by § 32-5-1 leased under a single contract for more than twentyeight days; advertising services; services provided by an corporation to another corporation which is centrally assessed having identical ownership and services provided by any corporation to a wholly owned subsidiary which is centrally assessed; newspaper sales and subscriptions and motion picture rentals; bill collection services or collection agent's service, if the debt was incurred out of state and the client does not reside within the state."

Section 10-45-13.1 "Membership organizations, major group 86, as enumerated in the Standard Industrial Classification Manual, 1972, as prepared by the statistical policy division of the office of management and budget, office of the President, are exempt from the tax imposed by this chapter on receipts from sales of services by them and their membership fees. This exemption does not apply to the tax imposed upon the gross receipts of sales of tangible personal property by such organizations. This Act does not exempt the gross receipts of a retailer which are the result of sales to organizations in major group 86 or exempt such organizations from payment of use tax on goods and services used in the conduct of their activities."

New Mexico  
Taken from Commerce Clearing House, Prentice Hall,  
& Data Furnished by the State of New Mexico

New Mexico levies a Gross Receipts and Compensating Tax. The gross receipts tax is an excise tax imposed for the privilege of engaging in the business of selling property in New Mexico, leasing property employed in New Mexico, or from performing services in New Mexico.

"Property" is defined to mean real property, tangible personal property, licenses, franchise, patents, trademarks and copyrights.

The compensating (use) tax is an excise tax imposed for the privilege of using, consuming, or storing of property or services in New Mexico. The use tax applies to the purchase of property or services in New Mexico on which no gross receipts tax has been paid but which are used in New Mexico.

Certain persons, transactions or items are either wholly or partially exempt from the gross receipts and compensating tax. For example, a deduction is allowed for receipts from selling property or performing services, if the purchaser issues the seller or provides a resale certificate. The selling of property or service by banks and financial corporations in the course of their regular functions is not subject to the gross receipts tax. Banks are subject to tax on their sales of checks and similar items.

The term "service" is defined to mean:

"...all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling property. 'Service' includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. 'Service' includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;..."

New Mexico's law provides for a "pass-through" or a sale for resale of services. A service may only be resold only once. The next sale is subject to tax.

The gross receipts tax is imposed on the gross receipts of all persons, corporations, or associations selling products or furnishing services in New Mexico, with exceptions for governmental agencies and charitable institutions. The amounts due may be adjusted to reflect sales of products for resale, for use in manufacturing, or to buyers whose purchases are otherwise exempt from the tax. The constitutionality of the gross receipts tax was sustained by the New Mexico Supreme Court in Lougee vs. New Mexico Bureau of Revenue, (1938), 42 NM 115, 76 P2d6.

New Mexico (continued)

Sales to or purchases by certain buyers and sellers are specifically exempt from tax. Among the specific exemptions are:

1. Wages
2. Receipts of the government
3. Livestock feeding or pasturing
4. Charitable organizations
5. Oil and gas
6. Natural gas
7. Gross premiums of insurance companies
8. Sales of vehicles subject to license and registration fees
9. Interest and stock dividends
10. Occasional sales
11. Sales of gasoline or special fuel
12. Household effects
13. Electricity production
14. Railroad equipment
15. Ministers
16. Horseracing
17. Films and tapes
18. Timber and metals

Several credits are allowed against the gross receipts and compensating tax. Among these credits are:

1. Sales tax paid to another state;
2. Investment for equipment used in a new manufacturing operation in New Mexico; and
3. Taxes paid to another state under the Multistate Tax Compact.

The Law provides the Gross Receipts Tax is imposed as follows:

7-9-4. Imposition and rate of tax --Denomination as "gross receipts tax."--A. For the privilege of engaging in business, an excise tax equal to

New Mexico (continued)

four and three-fourths percent of gross receipts is imposed on any person engaging in business in New Mexico.

The Law provides the Compensating Tax is imposed as follows:

7-9-7. Imposition and rate of tax--Denomination as "compensating tax."--A. For the privilege of using property in New Mexico, there is imposed on the person using property an excise tax equal to four and three-fourths percent of the value, at the time of acquisition or of introduction into the state, whichever is later, or of conversion to use by the manufacturer of property that was:

(1) manufactured by the person using the property in the state;

(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to three and three-fourths percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction which was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

The term "Gross Receipts" is defined as follows:

7-9-3. F. "gross receipts" means the total amount of money or the value of other consideration, received from selling property in New Mexico, from leasing property employed in New Mexico or from performing services in New Mexico, and includes any receipts from sales of tangible personal property handled on consignment but excludes cash discounts allowed and taken, New Mexico gross receipts tax payable on transactions for the reporting period and taxes imposed pursuant to the provisions of the County Sales Tax Act [7-21-1 to 7-21-7 NMSA 1978], the County Fire Protection Excise Tax Act [7-20A-1 to 7-20A-9 NMSA 1978], the County Gross Receipts Tax Act, the Municipal Gross Receipts Tax Act [7-19-1 to 7-19-3, 7-19-5 to 7-19-9 NMSA 1978] of the Supplemental Municipal Gross Receipts Tax Act, which are payable on transactions for the reporting period and any type of time-price differential. Also excluded from "gross receipts" are any gross receipts or sales taxes imposed by an Indian tribe or pueblo, provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States and provided further that the gross receipts or sales tax imposed by the Indian tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions.

## New Mexico (continued)

In an exchange in which the money or other consideration received does not represent the value of the property or service exchanged, "gross receipts" means the reasonable value of the property or service exchanged.

When the sales of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, he shall pay the gross receipts tax upon the full sale or leasing contract amount, excluding any type of time-price differential.

"Gross receipts," for the purposes of the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker, on a commission or fee basis, of any property, service, stock, bond or security, includes only the total commission or fees derived from the business.

"Gross receipts" also includes amounts paid by members of any cooperative association or similar organization for sales or leases of personal property or performance of services by such organization;

If the taxpayer lists the amounts of his gross receipts tax separately on his books and the total amount of the tax due on the balance of his receipts is less than the tax listed, the excess listed must be included in his gross receipts and the tax paid on it.

The taxpayer is the payor, not the collector, of the gross receipts tax from the purchaser. Even if he collects the tax from the purchaser, the tax is imposed on his receipts without regard to the amount of tax he collects.

The Law relating to separately stating the tax provides:

7-9-6. When the gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

If the taxpayer has "passed on" the gross receipts tax in his selling price, he is not required to pay the tax on the amount of tax passed on, he is permitted to divide his gross receipts by the tax rate.

The gross receipts and the compensating tax are applicable to receipts derived from the sales of lease of property. The term property means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights.

Receipts for services rendered by persons engaged in business in New Mexico are subject to the gross receipts tax.



## New Mexico (continued)

Construction contractors or builders are subject to the gross receipts tax on the proceeds of their projects. Construction services provided to construction contractors or builders are not subject to the gross receipts tax if the results of the services are incorporated into a project to which the gross receipts tax is applicable. Sales to construction contractors of property that constitutes a "fixture" or that becomes an ingredient or component of the completed construction project are similarly not subject to the gross receipts tax. Sales of construction projects are not exempt sales of real property.

A real estate broker or agent may deduct that portion of the commission he earned on a real estate transaction that is attributable to the portion of the transaction that is subject to the gross receipts tax. "Commissions on that portion of the transaction subject to the gross receipts tax" means that portion of the commission which bears the same relationship to the total commission as the amount of the transaction subject to gross receipts tax does to the total purchase price. Only that portion of the receipts from the sale of real property that is attributable to improvements constructed on real property by the seller in the ordinary course of his construction business is subject to the gross receipts tax.

Hawaii  
Taken from Commerce Clearing House, Prentice Hall,  
and Data Furnished by the State of Hawaii

Hawaii levies a General Excise (Gross Income) and Use Tax. The excise tax is a privilege tax measured by the gross income, value of products or gross proceeds of sales by persons engaged within Hawaii in business or professional activities. The tax is imposed on income from all sources (except salaries, insurance, evidences of indebtedness, and proceeds from the sales of land) and includes occupations in addition to sales and services. Though this tax closely resembles a sales tax in its application, it is differentiated by its taxation of income from other activities. Every sale of tangible personal property is taxed excluding "casual sales," and a determination if a sale is at wholesale or retail is significant only in determining the tax rate.

The tax is levied on the person receiving the gross income for the privilege of engaging in business and is not a sales tax imposed directly on the consumer. The tax may or may not be passed on to the ultimate consumer. However, a person engaging in business shall not advertise or hold out to the public that the tax is not considered as an element in the price to the consumer.

The general excise tax is supplemented by a use tax at the rate of 4 percent on tangible personal property only that is imported or brought from unlicensed sellers.

Certain transactions are exempt from the use tax. Such transactions exempt from use tax include: a licensed wholesaler or jobber importing or purchasing for resale; a licensed manufacturer importing or buying materials for manufacturing finished goods to be sold (with tax) by it as a manufacturer of wholesaler but not at retail; property received as a gift; private automobiles imported for personal use; and newspapers and certain subscription periodicals. However, use tax does apply to material used for a project by a contractor.

Manufacturer's producers and wholesalers are taxed at the rate of  $\frac{1}{2}$  of 1 percent on their gross proceeds of sales or value of the products manufactured or produced. If there are a series of sales for resale transactions, each wholesale transaction is taxed at the rate of  $\frac{1}{2}$  of 1 percent.

Businesses selling tangible personal property, business operating theaters, amusements, radio broadcasting stations, sale representatives, persons engaging in the practice of a profession, including religious doctrines of any church, technicians who supply dentist or physicians with medical items for particular patients and other service business are taxable at the rate of 4 percent on their gross income.

Contractors are taxed at the rate of 4 percent. Hawaii's tax law does not provide for a sale for resale of services. Therefore, subcontractors employed by a prime contractor must remit the tax at the rate of 4 percent on their total receipts from the prime contractor. The prime contractor in computing the tax on the total contract may deduct the subcontractor's amount since the subcontractor has paid the tax on his gross receipts.

Insurance agents' commissions, unlike others who work on a commission basis, is taxed at the rate of .15 percent of the commission due. (This was the result of a special study required by the Legislature in 1977)

Hawaii (continued)

There are basically two types of exemptions from tax. They are (1) persons or business exempt from tax and (2) amounts that are not taxable.

Examples of persons or businesses exempt from tax include:

- (1) Banks taxable under chapter 241;
- (2) Public service companies (as that term is defined in section 239-2);
- (3) Public utilities owned and operated by the State or any county or other political subdivision thereof;
- (4) Insurance companies which pay the State a tax upon their gross premiums under chapter 431;
- (5) Fraternal benefit societies, orders, or associations, operating under the lodge system, or for the exclusive benefit of the members of the fraternity itself;
- (6) Corporations, associations, trust, or societies organized and operated exclusively for religious, charitable, scientific, or educational purposes, as well as that of operating senior citizens housing facilities qualifying for a loan under the laws of the United States as authorized by section 202 of the Housing Act of 1959;
- (7) Business leagues, chambers of commerce, boards of trade, civic leagues, and organizations operated exclusively for the benefit of the community and for the promotion of social welfare, which shall include the operation of a prepaid legal service plan, and from which no profit inures to the benefit of any private stockholder or individual ;
- (8) Hospitals, infirmaries, and sanitararia;
- (9) Cooperative associations now or hereafter incorporated under the pursuant to chapter 421 or 422;
- (10) Building and loan association taxable under chapter 241;
- (11) Persons affected with Hansen's disease and kokuas, with respect to business within the County of Kalawao;
- (12) Corporations, companies, associations or trust organized for the establishment and conduct of cemeteries no part of the net earnings of which inures to the financial benefit or any private stockholder or individual, (provided, that the exemption shall apply only to the activities of such persons in the conduct of cemeteries and not to any activity the primary purpose of which is to produce income;
- (13) Industrial loan companies taxable under chapter 241;
- (14) Businesses which are organized for the purpose of broadcasting radio programs to areas outside of the state to promote the Hawaiian tourist industry and which are solely supported by state funds;

Hawaii (continued)

(15) Development companies taxable under chapter 241;

(16) Non-profit shippers associations operating under part 296 of the Civil Aeronautics Board Economic Regulations;

(17) Small business investment companies taxable under chapter 241.

Amounts not subject to tax include:

(1) Amounts received under life insurance policies and contracts paid by reason of the death of life insured;

(2) Amounts received (other than amounts paid by reason of death of the insured) under life insurance, endowment or annuity contracts, either during the term or at maturity, or upon surrender of the contract;

(3) Amounts received under any accident insurance or health insurance policy or contract or under workers' compensation acts;

(4) The value of all property of every kind and sort acquired by gift, bequest or devise, and the value of all property acquired by descent or inheritance;

(5) Amounts received by any person as compensatory damages for any tort injury to him, or to his character or reputation, or received as compensatory damages for any tort injury to or destruction of property;

(6) Amounts received as salaries or wages for services rendered by an employee to an employer;

(7) Amounts received as alimony and other similar payments and settlements;

(8) Amounts collected by distributors as fuel taxes on "liquid fuel" imposed by chapter 243;

(9) Taxes on liquor imposed by chapter 244 on dealers holding permits under that chapter;

(10) The amounts of taxes on tobacco products imposed by chapter 245 on wholesalers or dealers holding licenses under that chapter and selling the product at wholesale;

(11) Federal excise taxes imposed on articles sold at retail and collected from the purchasers thereof and paid to the federal government by the retailer;

(12) The amounts of federal taxes under chapter 37 of the Internal Revenue Code, or similar federal taxes, imposed on sugar manufactured in the State, paid by the manufacturer to the federal government;

(13) An amount up to, but not in excess of \$2,000 a year of gross income received by any blind, deaf or totally disabled person engaging, or continuing, in any business, trade, activity, occupation, or calling within the State;

Hawaii (continued)

(14) Amounts received by an organization enumerated under section 237-23(a)(5) to (8) from the sale of brooms which are manufactured by blind persons working at the adult blind broom shop;

(15) Amounts received by a producer of sugarcane from the manufacturer to whom he sells the sugarcane, where the producer is an independent cane farmer, so classed by the secretary of agriculture under the Sugar Act of 1948 (61 Stat. 922, Chapter 519) as the Act may be amended or supplemented, and the value of the sugar, and other products manufactured from the sugarcane, is included in the measure of the tax levied on the manufacturer under section 237-13(1), and the producer's gross proceeds of sales are dependent upon the actual value of the products manufactured therefrom or the average value of all similar products manufactured by the manufacturer, and the producer's gross proceeds of sales are reduced by reason of the tax on the value of the manufactured products;

(16) Money paid by the state or eleemosynary child-placing organizations to foster parents for their care of children in foster homes;

(17) Amounts received by a cooperative housing corporation from its shareholders in reimbursement of funds paid by the corporation for lease rental, real property taxes and other expenses of operating and maintaining the cooperative land and improvements, provided that such a cooperative housing corporation is a corporation:

(A) Having one and only one class of stock outstanding;

(B) Each of the stockholders of which is entitled solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building owned or leased by the corporation;

(C) No stockholder of which is entitled to receive any distribution not out of earnings and profits of the corporation except in a complete or partial liquidation of the corporation.

(18) Amounts received from the loading transportation, and unloading of agricultural commodities shipped for a producer or produce dealer on one island of this State to a person, firm, or organization on another island of the State;

(19) Amounts received from sales of (A) intoxicating liquor as defined in chapter 244, (B) tobacco products as defined in chapter 245, and (C) agricultural, meat, or fish products grown, raised, or caught in Hawaii, when such sales are made to any person or common carrier in interstate or foreign commerce, or both, whether ocean-going or air, for consumption out-of-state by such person, crew, or passengers on such shipper's vessels or airplanes;

(20) Amounts received by the manager or board of directors of an association of apartment owners of a horizontal property.

Other exemptions includes sales of tangible personal property to the United States, certain scientific contracts with the United States, exemption for certain petroleum refiners, sale of gasohol, air pollution control facility, manufacturer of pulp and paper from bagasse fibre (5 year exemption) and producers of motion picture and television.

## Hawaii (continued)

In order to reach certain persons, professions or transactions the following definitions were provided: Casual sale; Comptroller; Penalty or penalties; Person or company; Prepaid legal service plan; Purchasing agent; Representative; Sale or sales; Taxpayer; Tax year or taxable year; Business; Engaging; Gross income; Gross proceeds of sale; Wholesaler or jobber; Contractor; Federal cost-plus contractor; and Service business or calling.