



# The Florida Senate

Interim Project Report 2006-128

October 2005

Committee on Government Efficiency Appropriations

Senator Jeffrey H. "Jeff" Atwater, Chair

## REWRITE OF SECTION 212.20(6)(D), F.S., SALES TAX DISTRIBUTIONS

### SUMMARY

Chapter 212, F.S., imposes taxes on sales, use and other transactions. Section 212.20(6)(d), F.S., governs distributions of most of these funds collected by the Department of Revenue. These distributions are many and can be difficult to calculate because some distributions depend upon calculations made earlier. The purpose of this interim report is to re-write the sales tax distribution statute in order to make sales tax distributions easier to understand and calculate.

### BACKGROUND

Chapter 212, F.S., imposes taxes on sales, use and other transactions. Section 212.20(6)(d), F.S., governs distributions of most of those funds collected by the Department of Revenue. Chapter 202, imposes a tax on the sales of communication services. The proceeds of the communications services taxes remitted pursuant to s. 202.18(1)(b)<sup>1</sup> and (2)(b)<sup>2</sup>, F.S., are distributed according to s. 212.20(6), F.S. Pursuant to s. 212.20(6)(d), F.S., sales tax distributions are made in the following manner:

*212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.—*

<sup>1</sup> At a rate of 6.8 percent applied to the sales price of the communications service which: 1) originates and terminates in this state; or 2) originates and terminates in this state and is charged to a service address in this state.

<sup>2</sup> Sixty-three percent of the 10.8 percent on the retail sales price of direct-to-home satellite service received in this state.

*(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:*

*(a) Proceeds from the convention development taxes authorized under s. 212.0305 shall be reallocated to the Convention Development Tax Clearing Trust Fund.*

*(b) Proceeds from discretionary sales surtaxes imposed pursuant to ss. 212.054 and 212.055 shall be reallocated to the Discretionary Sales Surtax Clearing Trust Fund.*

*(c) Proceeds from the fees imposed under ss. 212.05(1)(h)3. and 212.18(3) shall remain with the General Revenue Fund.*

*(d) The proceeds of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be distributed as follows:*

*1. In any fiscal year, the greater of \$500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201, or 5 percent of all other taxes and fees imposed pursuant to this chapter or remitted pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in monthly installments into the General Revenue Fund.*

*2. Two-tenths of one percent shall be transferred to the Ecosystem Management and Restoration Trust Fund to be used for water quality improvement and water restoration projects.*

3. After the distribution under subparagraphs 1. and 2., 8.814 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.61 shall be transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to be transferred pursuant to this subparagraph to the Local Government Half-cent Sales Tax Clearing Trust Fund shall be reduced by 0.1 percent, and the department shall distribute this amount to the Public Employees Relations Commission Trust Fund less \$5,000 each month, which shall be added to the amount calculated in subparagraph 4. and distributed accordingly.

4. After the distribution under subparagraphs 1., 2., and 3., 0.095 percent shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and distributed pursuant to s. 218.65.

5. After the distributions under subparagraphs 1., 2., 3., and 4., 2.0440 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Counties pursuant to s. 218.215.

6. After the distributions under subparagraphs 1., 2., 3., and 4., 1.3409 percent of the available proceeds pursuant to this paragraph shall be transferred monthly to the Revenue Sharing Trust Fund for Municipalities pursuant to s. 218.215. If the total revenue to be distributed pursuant to this subparagraph is at least as great as the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, no municipality shall receive less than the amount due from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000. If the total proceeds to be distributed are less than the amount received in combination from the Revenue Sharing Trust Fund for Municipalities and the former Municipal Financial Assistance Trust Fund in state fiscal year 1999-2000, each municipality shall receive an amount proportionate to the amount it was due in state fiscal year 1999-2000.

7. Of the remaining proceeds:

a. In each fiscal year, the sum of \$29,915,500 shall be divided into as many equal parts as there are counties in the state, and one part shall be distributed to each county. The distribution among the several counties shall begin each fiscal year on or before January 5th and shall continue monthly for a total of 4 months. If a local or special law required that any moneys accruing to a county in fiscal year 1999-2000 under the then-existing provisions of s. 550.135 be paid directly to the district school board, special district, or a municipal government, such payment shall continue until such time that the local or special law is amended or repealed. The state covenants with holders of bonds or other instruments of indebtedness issued by local governments, special districts, or district school boards prior to July 1, 2000, that it is not the intent of this subparagraph to adversely affect the rights of those holders or relieve local governments, special districts, or district school boards of the duty to meet their obligations as a result of previous pledges or assignments or trusts entered into which obligated funds received from the distribution to county governments under then-existing s. 550.135. This distribution specifically is in lieu of funds distributed under s. 550.135 prior to July 1, 2000.

b. The department shall distribute \$166,667 monthly pursuant to s. 288.1162 to each applicant that has been certified as a "facility for a new professional sports franchise" or a "facility for a retained professional sports franchise" pursuant to s. 288.1162.<sup>3</sup> Up to \$41,667 shall be distributed monthly by the department to each applicant that has been certified as a "facility for a retained spring training franchise" pursuant to s. 288.1162;

---

<sup>3</sup> Distributions are made to the following franchises: Pro Player Stadium, home of the Florida Marlins; Alltel Stadium, home of the Jacksonville Jaguars; Tropicana Field, home of the Tampa Bay Devil Rays; St. Pete Times Forum, home of the Tampa Bay Lightning; Home Depot Stadium, home of the Florida Panthers; Raymond James Stadium, home of the Tampa Bay Buccaneers; and American Airlines Arena, home of the Miami Heat.

however, not more than \$208,335 may be distributed monthly in the aggregate to all certified facilities for a retained spring training franchise.<sup>4</sup> Distributions shall begin 60 days following such certification and shall continue for not more than 30 years. Nothing contained in this paragraph shall be construed to allow an applicant certified pursuant to s. 288.1162 to receive more in distributions than actually expended by the applicant for the public purposes provided for in s. 288.1162(6). However, a certified applicant is entitled to receive distributions up to the maximum amount allowable and undistributed under this section for additional renovations and improvements to the facility for the franchise without additional certification.

c. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that an applicant has been certified as the professional golf hall of fame pursuant to s. 288.1168 and is open to the public, \$166,667 shall be distributed monthly, for up to 300 months, to the applicant.

d. Beginning 30 days after notice by the Office of Tourism, Trade, and Economic Development to the Department of Revenue that the applicant has been certified as the International Game Fish Association World Center facility pursuant to s. 288.1169, and the facility is open to the public, \$83,333 shall be distributed monthly, for up to 168 months, to the applicant. This distribution is subject to reduction pursuant to s. 288.1169. A lump sum payment of \$999,996 shall be made, after certification and before July 1, 2000.

8. All other proceeds shall remain with the General Revenue Fund.

<sup>4</sup> Distributions are made to the following franchises: Philadelphia Phillies, Clearwater; L.A. Dodgers, Indian River County; Toronto Blue Jays, Dunedin; Detroit Tigers, Lakeland; and Houston Astros, Osceola County.

**Legislative History**

Florida’s sales tax was created in 1949 by ch. 26319, Laws of Florida. Subsection (6) of s. 212.20, F.S., was created by s. 39, ch. 89-356, L.O.F. Chapter 89-356, L. O. F., provided that proceeds from all taxes and fees imposed under chapter 212, except for proceeds from the convention development taxes,<sup>5</sup> the discretionary sales surtaxes,<sup>6</sup> the tax on controlled and other substances,<sup>7</sup> the tax imposed on mail order sales,<sup>8</sup> and the proceeds from the solid waste management fee<sup>9</sup>, are for deposit as follows:

1. The greater of five percent or the sums sufficient to provide the maximum amount specified in s. 212.235(1) shall be transferred to the State Infrastructure Fund.
2. Two-tenths of one percent shall be transferred to the Solid Waste Management Trust Fund.
3. Of the remaining proceeds, 9.888 percent of the amount remitted by a sales tax dealer located within a participating county pursuant to s. 218.64 shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund.
4. All other proceeds shall remain with the General Revenue Fund.

There have been many changes to the statutory sales tax distribution section over the years. The result is difficult to understand, especially so because six of the calculations depend on previous calculations. Significant changes are as follows:

- A transfer to the State Infrastructure Fund was deleted and replaced with a monthly distribution to the General Revenue Fund of the greater of \$500 million, minus an amount equal to 4.6 percent of the proceeds of the taxes collected pursuant to chapter 201,<sup>10</sup> or 5

<sup>5</sup> Section 212.0305, F.S.

<sup>6</sup> Sections 212.054 and 212.055, F.S.

<sup>7</sup> Section 212.0505, F.S., repealed by s. 8 of ch. 95-140, L.O.F.

<sup>8</sup> Section 212.06(5)(a)2., F.S. This provision was deleted effective October 1, 2001 by s. 29 of ch. 2001-140, L.O.F.

<sup>9</sup> Section 212.18(5), F.S.

<sup>10</sup> Documentary Stamp Tax

percent of all other taxes and fees imposed pursuant to chapter 212 along with the communication services taxes distributed in ch. 212.<sup>11</sup>

- Beginning July 1, 1992, \$166,667 of sales tax revenues was distributed monthly to each applicant certified as a “facility for a new professional sports franchise” and \$41,667 was distributed monthly to each applicant certified as a “new spring training franchise facility,” for a period of 30 years.<sup>12</sup>
- Beginning October 1, 1992, the Half-cent sales tax distribution to local governments was reduced from 9.888 percent to 9.664 percent and beginning July 1, 1993, the rate was set at 9.653 percent.<sup>13</sup>
- The 1993 Legislature approved a monthly sales tax distribution of \$166,667 for 30 years to an applicant that has been certified as the professional golf hall of fame facility.<sup>14</sup>
- In 1994, the emergency distribution to counties was changed from an annual General Revenue appropriation of not less than \$5.5 million to 0.054 percent of remaining sales tax collections after the preceding distributions are made to the General Revenue Fund, Solid Waste Management Trust Fund, and the Local Government Half-cent Sales Tax Clearing Trust Fund.<sup>15</sup>
- Also in 1994, the sports rebates for a “facility for a new professional sports franchise” and a “new spring training franchise facility” were expanded to include additional renovations and improvements to current sports franchises.<sup>16</sup>
- The 1995 Legislature expanded the professional sports franchise rebate to include a “facility for a retained professional sports franchise.”<sup>17</sup>
- In 1996, the Legislature approved a monthly sales tax distribution of \$83,333 for 180 months to an applicant that has been certified

as the International Game Fish Association World Center.<sup>18</sup>

- The 2000 Legislature repealed the sharing of intangibles tax revenues with counties and provided for a distribution of sales tax to the Revenue Sharing Trust Fund for Counties to replace the revenue. Beginning with proceeds received after July 1, 2000, and after preceding distributions, 2.25 percent is transferred to the trust fund. In addition, the Emergency distribution was increased from 0.054 percent to 0.065 percent.<sup>19</sup>
- Also in 2000, the Legislature repealed the Municipal Financial Assistance Trust Fund, transferring the portion of cigarette tax that previously funded the trust fund to the General Revenue Fund. The Legislature also restructured the Revenue Sharing Trust Fund for Municipalities by providing a distribution, in lieu of cigarette taxes redirected to General Revenue, from sales and use tax to the Revenue Sharing Trust Fund for Municipalities of 1.0715 percent after previous distributions are made.<sup>20</sup>
- In addition, the 2000 Legislature replaced the \$29,915,500 paid annually to counties from the Pari-mutuel Wagering Trust Fund with an equivalent payment from sales tax.<sup>21</sup>
- Section 1 of ch. 2000-186, L.O.F., capped the number of “retained spring training franchise facilities” at five.
- Section 1 of ch. 2003-404, L.O.F., reduced the sales tax distribution to the Local Government Half-cent Clearing Trust Fund by 0.1 percent, effective July 1, 2003. The 0.1 percent of sales and use tax collections is distributed to the Public Employees Relations Commission Trust Fund, less \$5,000 each month. The \$5,000 each month is distributed to qualified counties pursuant to s. 218.65, emergency distribution.
- In 2003, the sales tax distributions were changed in order to provide funding for the judicial system. Effective July 1, 2004,

<sup>11</sup> Section 4 of ch. 91-79, L.O.F.

<sup>12</sup> Section 1 of ch. 91-274, L.O.F.

<sup>13</sup> Section 18 of ch. 92-319, L.O.F.

<sup>14</sup> Section 1 of ch. 93-233, L. O. F.

<sup>15</sup> Section 1 of ch. 94-245, L.O.F.

<sup>16</sup> Section 36 of ch. 94-338, L.O.F.

<sup>17</sup> Section 1 of ch. 95-304, L.O.F.

<sup>18</sup> Section 1 of ch. 96-415, L.O.F.

<sup>19</sup> Section 9 of ch. 2000-173, L.O.F.

<sup>20</sup> Section 29 of ch. 2000-355, L.O.F.

<sup>21</sup> Section 2 of ch. 2000-354, L.O.F.

distributions were changed as follows: the Local Government Half-cent Sales Tax Clearing Trust Fund distribution was reduced from 9.653 percent to 8.814 percent; the Emergency distribution was increased from 0.065 percent to 0.095 percent; the County Revenue Sharing Trust Fund distribution was reduced from 2.25 percent to 2.0440 percent; and the Municipal Revenue Sharing Trust Fund was increased from 1.0715 percent to 1.3409 percent.<sup>22</sup>

**Local Government Half-cent Sales Tax Program**

The Local Government Half-cent Sales Tax program, which was created in 1982, generates the largest amount of revenue for local governments among the state-shared revenue sources authorized by the Legislature.<sup>23</sup> Monies remitted by a sales tax dealer located within the county and transferred into the Local Government Half-cent Sales Tax Clearing Trust Fund (trust fund) are earmarked for distribution to the governing body of the county and of each municipality within that county.<sup>24</sup> The program’s primary purpose is to provide relief from ad valorem and utility taxes in addition to providing counties and municipalities with revenues for local programs.<sup>25</sup> Only those counties and municipal governments that meet eligibility requirements for revenue sharing pursuant to s. 218.23, F.S., may participate in the program.<sup>26</sup> The program consists of three distributions to the trust fund; the “ordinary” distribution, 8.714 percent of net sales tax proceeds; and the “emergency and supplemental” distributions, 0.095 percent of net sales tax proceeds. For the local fiscal year ending September 30, 2005, the ordinary distribution to qualified counties and municipalities totaled \$1,458.9 million.<sup>27</sup> The emergency distribution is

available to counties meeting the following requirements:

1. If the county has a population of 65,000 or more:
  - a. In any year from 1977 to 1981, inclusive, the value of net construction and additions placed on the tax roll for that year was less than 2 percent of the taxable value for school purposes on the roll for that year, exclusive of such net value; or
  - b. The percentage increase in county taxable value from 1979 to 1980, 1980 to 1981, or 1981 to 1982 was less than 3 percent.
2. The prior year per capita Half-cent distributions to the county were less than \$26.40 adjusted for inflation since 1988.<sup>28</sup>

The following counties qualified for emergency distributions totaling \$15.1 million for the local fiscal year ending September 30, 2005: Baker; Bradford; Calhoun; De Soto; Dixie; Flagler; Gadsden; Gilchrist; Glades; Gulf; Hamilton; Hardee; Holmes; Jackson; Jefferson; Lafayette; Levy; Liberty; Madison; Sumter; Suwannee; Taylor; Union; and Wakulla.<sup>29</sup>

Any county having an inmate population greater than 7 percent of the total population is eligible for the “supplemental” distribution.<sup>30</sup> The following counties qualified for the “supplemental” distribution totaling \$592,958 for the local fiscal year ending September 30, 2005: Baker; Bradford; Calhoun; Dixie; Gulf; Hamilton; Holmes; Jackson; Lafayette; Liberty; Madison; Sumter; Taylor; and Union.<sup>31</sup>

**METHODOLOGY**

Review the legislative history of each distribution and propose changes to the sales tax distributions in order to simplify s. 212.20(6)(d), F.S.

<sup>22</sup> Section 92 of ch. 2003-402, L.O.F.

<sup>23</sup> Section 10 of ch. 82-154, L.O.F.

<sup>24</sup> Section 218.61(2), F.S.

<sup>25</sup> Florida Legislative Committee on Intergovernmental Relations (FLCIR), 2004 Local Government Financial Information Handbook, p. 63.

<sup>26</sup> Section 218.63(1), F.S.

<sup>27</sup> FLCIR, pages 70-84.

<sup>28</sup> Section 218.65(2), F.S.

<sup>29</sup> FLCIR, pages 70-84.

<sup>30</sup> Section 218.65(7), F.S.

<sup>31</sup> FLCIR, pages 70-84.

## FINDINGS

The majority of the current sales and use tax distributions cannot be calculated until preceding distributions are made. This results in unnecessarily complicated distribution formulas. For example, if the Legislature proposes a percentage change in the Half-cent sales tax, each percentage distribution following the half-cent distribution, (the emergency, county and municipal revenue sharing distributions) must be changed in order to retain revenue neutrality. As currently in statute, Table 1 shows in what order the sales and use tax distributions must be calculated.

**Table 1**  
**Sales and Use Tax Distributions**  
**Applied to Current Law**

| Sequence of Distributions  | %       | 2006-07<br>(millions) |
|--|---------|-----------------------|
| Distributions<br>[Applied to total collections]  |         | \$ 21,803.3           |
| (1) Direct to General Revenue<br>[Total collections]   | 5.0%    | 1,090.2               |
| (2) Solid Waste Mgmt. TF<br>[Total collections]  | 0.2%    | 43.6                  |
| (3) Half-cent Sales Tax Program<br>[93.4% of total collections<br>less distributions (1) & (2)<br>less 0.1% to PERC] | 8.8140% | 1,699.9               |
| (4) Emergency Distribution<br>[Total collections less<br>distributions (1), (2) & (3),<br>plus \$5,000 per month]    | 0.0950% | 18.1                  |
| PERC<br>[Half-cent calculation<br>less \$5,000 per month]  | 0.1%    | 1.6                   |
| (5) County Revenue Sharing<br>[Total collections less<br>distributions (1), (2), (3) & (4)]                          | 2.0440% | 387.4                 |
| (6) Municipal Revenue Sharing<br>[Total collections less<br>distributions (1), (2), (3) & (4)]                       | 1.3409% | 254.1                 |

**Table 1**  
**Continued**

| Sequence of Distributions         | % | 2006-07<br>(millions) |
|-----------------------------------|---|-----------------------|
| Fixed County Distributions        |   | 29.9                  |
| Sports Facilities Distributions * |   | 19.5                  |
| Other GR                          |   | 18,259.0              |
| Total GR                          |   | \$ 19,349             |

Source: GR Consensus Estimating Conference, Spring 2005, adjusted for 2005 session action

\* Includes all sports franchise distributions and the distributions to the Professional Golf Hall of Fame and the International Game Fish Association World Center.

In order to simplify sales tax distributions, percentages are calculated on total collections to produce distributions that are revenue neutral. Thus each distribution can stand alone. This will help avoid mistakes affecting numerous distributions. Additionally, if future Legislatures make changes in one sales tax distribution, no other distribution percentage need be changed. Table 2 shows the distribution percentages applied to total collections required to keep revenues unchanged.

**Table 2**  
**Sales and Use Tax Distributions**  
**Proposed Changes**

| Distributions          | Revenue<br>Neutral<br>Percentages | Revenue<br>2006-07<br>(millions) |
|------------------------|-----------------------------------|----------------------------------|
| Total Collections      |                                   | \$ 21,803.3                      |
| Solid Waste Mgmt.      | 0.200%                            | 43.6                             |
| Half-cent              | 7.797%                            | 1,699.9                          |
| Emergency              | 0.083%                            | 18.1                             |
| PERC                   | 0.007%                            | 1.6                              |
| County Rev. Sharing    | 1.777%                            | 387.4                            |
| Municipal Rev. Sharing | 1.165%                            | 254.1                            |
| Fixed County           |                                   | 29.9                             |
| Sports Facilities      |                                   | 19.5                             |
| Total GR               |                                   | \$ 19,349                        |

## **RECOMMENDATIONS**

It is the recommendation of this report that legislation be filed during the 2006 Legislative Session to simplify sales tax distributions, by rewriting s. 212.20(6)(d), F.S., so that distributions are calculated as a percent of total collections using the percentages calculated herein.