

By Senator Ring

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1 A bill to be entitled
 2 An act relating to discretionary sales surtaxes;
 3 amending s. 212.054, F.S.; providing that a county
 4 hospital sales surtax applies to sales amounts greater
 5 than \$5,000; providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Section 212.054, Florida Statutes, is amended to
 10 read:

11 212.054 Discretionary sales surtax; limitations,
 12 administration, and collection.—

13 (1) No general excise tax on sales shall be levied by the
 14 governing body of any county unless specifically authorized in
 15 s. 212.055. Any general excise tax on sales authorized pursuant
 16 to said section shall be administered and collected exclusively
 17 as provided in this section.

18 (2) (a) The tax imposed by the governing body of any county
 19 authorized to so levy pursuant to s. 212.055 shall be a
 20 discretionary surtax on all transactions occurring in the county
 21 which transactions are subject to the state tax imposed on
 22 sales, use, services, rentals, admissions, and other
 23 transactions by this chapter and communications services as
 24 defined for purposes of chapter 202. The surtax, if levied,
 25 shall be computed as the applicable rate or rates authorized
 26 pursuant to s. 212.055 times the amount of taxable sales and
 27 taxable purchases representing such transactions. If the surtax
 28 is levied on the sale of an item of tangible personal property
 29 or on the sale of a service, the surtax shall be computed by

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30 multiplying the rate imposed by the county within which the sale
31 occurs by the amount of the taxable sale. The sale of an item of
32 tangible personal property or the sale of a service is not
33 subject to the surtax if the property, the service, or the
34 tangible personal property representing the service is delivered
35 within a county that does not impose a discretionary sales
36 surtax.

37 (b) However:

38 1. The sales amount above \$5,000 on any item of tangible
39 personal property shall not be subject to the surtax. However,
40 charges for prepaid calling arrangements, as defined in s.
41 212.05(1)(e)1.a., shall be subject to the surtax. For purposes
42 of administering the \$5,000 limitation on an item of tangible
43 personal property, if two or more taxable items of tangible
44 personal property are sold to the same purchaser at the same
45 time and, under generally accepted business practice or industry
46 standards or usage, are normally sold in bulk or are items that,
47 when assembled, comprise a working unit or part of a working
48 unit, such items must be considered a single item for purposes
49 of the \$5,000 limitation when supported by a charge ticket,
50 sales slip, invoice, or other tangible evidence of a single sale
51 or rental. This subparagraph does not apply to a county hospital
52 surtax levied pursuant to s. 212.055.

53 2. In the case of utility services billed on or after the
54 effective date of any such surtax, the entire amount of the
55 charge for utility services shall be subject to the surtax. In
56 the case of utility services billed after the last day the
57 surtax is in effect, the entire amount of the charge on said
58 items shall not be subject to the surtax. "Utility service," as

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59 used in this section, does not include any communications
60 services as defined in chapter 202.

61 3. In the case of written contracts which are signed prior
62 to the effective date of any such surtax for the construction of
63 improvements to real property or for remodeling of existing
64 structures, the surtax shall be paid by the contractor
65 responsible for the performance of the contract. However, the
66 contractor may apply for one refund of any such surtax paid on
67 materials necessary for the completion of the contract. Any
68 application for refund shall be made no later than 15 months
69 following initial imposition of the surtax in that county. The
70 application for refund shall be in the manner prescribed by the
71 department by rule. A complete application shall include proof
72 of the written contract and of payment of the surtax. The
73 application shall contain a sworn statement, signed by the
74 applicant or its representative, attesting to the validity of
75 the application. The department shall, within 30 days after
76 approval of a complete application, certify to the county
77 information necessary for issuance of a refund to the applicant.
78 Counties are hereby authorized to issue refunds for this purpose
79 and shall set aside from the proceeds of the surtax a sum
80 sufficient to pay any refund lawfully due. Any person who
81 fraudulently obtains or attempts to obtain a refund pursuant to
82 this subparagraph, in addition to being liable for repayment of
83 any refund fraudulently obtained plus a mandatory penalty of 100
84 percent of the refund, is guilty of a felony of the third
85 degree, punishable as provided in s. 775.082, s. 775.083, or s.
86 775.084.

87 4. In the case of any vessel, railroad, or motor vehicle

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88 common carrier entitled to partial exemption from tax imposed
89 under this chapter pursuant to s. 212.08(4), (8), or (9), the
90 basis for imposition of surtax shall be the same as provided in
91 s. 212.08 and the ratio shall be applied each month to total
92 purchases in this state of property qualified for proration
93 which is delivered or sold in the taxing county to establish the
94 portion used and consumed in intracounty movement and subject to
95 surtax.

96 (3) For the purpose of this section, a transaction shall be
97 deemed to have occurred in a county imposing the surtax when:

98 (a)1. The sale includes an item of tangible personal
99 property, a service, or tangible personal property representing
100 a service, and the item of tangible personal property, the
101 service, or the tangible personal property representing the
102 service is delivered within the county. If there is no
103 reasonable evidence of delivery of a service, the sale of a
104 service is deemed to occur in the county in which the purchaser
105 accepts the bill of sale.

106 2. The sale of any motor vehicle or mobile home of a class
107 or type which is required to be registered in this state or in
108 any other state shall be deemed to have occurred only in the
109 county identified as the residence address of the purchaser on
110 the registration or title document for such property.

111 (b) The event for which an admission is charged is located
112 in the county.

113 (c) The consumer of utility services is located in the
114 county.

115 (d)1. The user of any aircraft or boat of a class or type
116 which is required to be registered, licensed, titled, or

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117 documented in this state or by the United States Government
118 imported into the county for use, consumption, distribution, or
119 storage to be used or consumed in the county is located in the
120 county.

121 2. However, it shall be presumed that such items used
122 outside the county for 6 months or longer before being imported
123 into the county were not purchased for use in the county, except
124 as provided in s. 212.06(8)(b).

125 3. This paragraph does not apply to the use or consumption
126 of items upon which a like tax of equal or greater amount has
127 been lawfully imposed and paid outside the county.

128 (e) The purchaser of any motor vehicle or mobile home of a
129 class or type which is required to be registered in this state
130 is a resident of the taxing county as determined by the address
131 appearing on or to be reflected on the registration document for
132 such property.

133 (f)1. Any motor vehicle or mobile home of a class or type
134 which is required to be registered in this state is imported
135 from another state into the taxing county by a user residing
136 therein for the purpose of use, consumption, distribution, or
137 storage in the taxing county.

138 2. However, it shall be presumed that such items used
139 outside the taxing county for 6 months or longer before being
140 imported into the county were not purchased for use in the
141 county.

142 (g) The real property which is leased or rented is located
143 in the county.

144 (h) The transient rental transaction occurs in the county.

145 (i) The delivery of any aircraft or boat of a class or type

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146 which is required to be registered, licensed, titled, or
147 documented in this state or by the United States Government is
148 to a location in the county. However, this paragraph does not
149 apply to the use or consumption of items upon which a like tax
150 of equal or greater amount has been lawfully imposed and paid
151 outside the county.

152 (j) The dealer owing a use tax on purchases or leases is
153 located in the county.

154 (k) The delivery of tangible personal property other than
155 that described in paragraph (d), paragraph (e), or paragraph (f)
156 is made to a location outside the county, but the property is
157 brought into the county within 6 months after delivery, in which
158 event, the owner must pay the surtax as a use tax.

159 (l) The coin-operated amusement or vending machine is
160 located in the county.

161 (m) The florist taking the original order to sell tangible
162 personal property is located in the county, notwithstanding any
163 other provision of this section.

164 (4) (a) The department shall administer, collect, and
165 enforce the tax authorized under s. 212.055 pursuant to the same
166 procedures used in the administration, collection, and
167 enforcement of the general state sales tax imposed under the
168 provisions of this chapter, except as provided in this section.
169 The provisions of this chapter regarding interest and penalties
170 on delinquent taxes shall apply to the surtax. Discretionary
171 sales surtaxes shall not be included in the computation of
172 estimated taxes pursuant to s. 212.11. Notwithstanding any other
173 provision of law, a dealer need not separately state the amount
174 of the surtax on the charge ticket, sales slip, invoice, or

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175 other tangible evidence of sale. For the purposes of this
176 section and s. 212.055, the "proceeds" of any surtax means all
177 funds collected and received by the department pursuant to a
178 specific authorization and levy under s. 212.055, including any
179 interest and penalties on delinquent surtaxes.

180 (b) The proceeds of a discretionary sales surtax collected
181 by the selling dealer located in a county which imposes the
182 surtax shall be returned, less the cost of administration, to
183 the county where the selling dealer is located. The proceeds
184 shall be transferred to the Discretionary Sales Surtax Clearing
185 Trust Fund. A separate account shall be established in such
186 trust fund for each county imposing a discretionary surtax. The
187 amount deducted for the costs of administration shall not exceed
188 3 percent of the total revenue generated for all counties
189 levying a surtax authorized in s. 212.055. The amount deducted
190 for the costs of administration shall be used only for those
191 costs which are solely and directly attributable to the surtax.
192 The total cost of administration shall be prorated among those
193 counties levying the surtax on the basis of the amount collected
194 for a particular county to the total amount collected for all
195 counties. No later than March 1 of each year, the department
196 shall submit a written report which details the expenses and
197 amounts deducted for the costs of administration to the
198 President of the Senate, the Speaker of the House of
199 Representatives, and the governing authority of each county
200 levying a surtax. The department shall distribute the moneys in
201 the trust fund each month to the appropriate counties, unless
202 otherwise provided in s. 212.055.

203 (c)1. Any dealer located in a county that does not impose a

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204 discretionary sales surtax but who collects the surtax due to
205 sales of tangible personal property or services delivered
206 outside the county shall remit monthly the proceeds of the
207 surtax to the department to be deposited into an account in the
208 Discretionary Sales Surtax Clearing Trust Fund which is separate
209 from the county surtax collection accounts. The department shall
210 distribute funds in this account using a distribution factor
211 determined for each county that levies a surtax and multiplied
212 by the amount of funds in the account and available for
213 distribution. The distribution factor for each county equals the
214 product of:

215 a. The county's latest official population determined
216 pursuant to s. 186.901;

217 b. The county's rate of surtax; and

218 c. The number of months the county has levied a surtax
219 during the most recent distribution period;

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221 divided by the sum of all such products of the counties levying
222 the surtax during the most recent distribution period.

223 2. The department shall compute distribution factors for
224 eligible counties once each quarter and make appropriate
225 quarterly distributions.

226 3. A county that fails to timely provide the information
227 required by this section to the department authorizes the
228 department, by such action, to use the best information
229 available to it in distributing surtax revenues to the county.
230 If this information is unavailable to the department, the
231 department may partially or entirely disqualify the county from
232 receiving surtax revenues under this paragraph. A county that

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233 fails to provide timely information waives its right to
234 challenge the department's determination of the county's share,
235 if any, of revenues provided under this paragraph.

236 (5) No discretionary sales surtax or increase or decrease
237 in the rate of any discretionary sales surtax shall take effect
238 on a date other than January 1. No discretionary sales surtax
239 shall terminate on a day other than December 31.

240 (6) The governing body of any county levying a
241 discretionary sales surtax shall enact an ordinance levying the
242 surtax in accordance with the procedures described in s.
243 125.66(2).

244 (7) (a) The governing body of any county levying a
245 discretionary sales surtax or the school board of any county
246 levying the school capital outlay surtax authorized by s.
247 212.055(6) shall notify the department within 10 days after
248 final adoption by ordinance or referendum of an imposition,
249 termination, or rate change of the surtax, but no later than
250 November 16 prior to the effective date. The notice must specify
251 the time period during which the surtax will be in effect and
252 the rate and must include a copy of the ordinance and such other
253 information as the department requires by rule. Failure to
254 timely provide such notification to the department shall result
255 in the delay of the effective date for a period of 1 year.

256 (b) In addition to the notification required by paragraph
257 (a), the governing body of any county proposing to levy a
258 discretionary sales surtax or the school board of any county
259 proposing to levy the school capital outlay surtax authorized by
260 s. 212.055(6) shall notify the department by October 1 if the
261 referendum or consideration of the ordinance that would result

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262 in imposition, termination, or rate change of the surtax is
263 scheduled to occur on or after October 1 of that year. Failure
264 to timely provide such notification to the department shall
265 result in the delay of the effective date for a period of 1
266 year.

267 (8) With respect to any motor vehicle or mobile home of a
268 class or type which is required to be registered in this state,
269 the tax due on a transaction occurring in the taxing county as
270 herein provided shall be collected from the purchaser or user
271 incident to the titling and registration of such property,
272 irrespective of whether such titling or registration occurs in
273 the taxing county.

274 Section 2. This act shall take effect July 1, 2009.