

By the Committee on Commerce and Tourism; and Senators Detert and Margolis

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1 A bill to be entitled
2 An act relating to taxes; amending s. 202.12, F.S.;
3 reducing the tax rate applied to the sale of
4 communications services; reducing the tax rate applied
5 to retail sales of direct-to-home satellite services;
6 amending s. 202.12001, F.S.; conforming rates to the
7 reduction of the communications services tax; amending
8 s. 203.001, F.S.; conforming rates to the reduction of
9 the communications services tax; amending s. 212.0596,
10 F.S.; revising the term "mail order sale" to
11 specifically include sales of tangible personal
12 property ordered through the Internet; deleting
13 certain provisions that specify dealer activities or
14 other circumstances that subject mail order sales to
15 this state's power to levy and collect the sales and
16 use tax; providing that certain persons who make mail
17 order sales and who have a nexus with this state are
18 subject to this state's power to levy and collect the
19 sales and use tax when they engage in certain
20 enumerated activities; specifying that dealers are not
21 required to collect and remit sales and use tax unless
22 certain circumstances exist; creating a rebuttable
23 presumption that a dealer is subject to the state's
24 power to levy and collect the sales or use tax under
25 specified circumstances; specifying evidentiary proof
26 that may be submitted to rebut the presumption;
27 amending s. 212.06, F.S.; revising the definition of
28 the term "dealer"; amending s. 212.08, F.S.; revising
29 the sales tax exemption from the sales tax for certain

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30 business purchases of industrial machinery and
31 equipment and spaceport activities; deleting certain
32 limitations on, and procedural requirements relating
33 to, the exemption; conforming cross-references;
34 requiring that the Department of Revenue develop a
35 tracking system, in consultation with the Revenue
36 Estimating Conference, to determine the amount of
37 sales tax remitted by out-of-state dealers who would
38 otherwise not be required to collect and remit sales
39 taxes but for the amendments made by the act;
40 requiring that the department submit a report to the
41 Governor and Legislature by a specified date each
42 year; requiring that the Revenue Estimating Conference
43 use such report to determine the amount of sales taxes
44 remitted in the previous calendar year by such out-of-
45 state dealers and estimate the amount that may be
46 expected in the following fiscal year; requiring that
47 the Legislature use the information to reduce tax
48 rates for other taxes as deemed appropriate; providing
49 effective dates.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Effective January 1, 2014, paragraphs (a) and
54 (b) of subsection (1) of section 202.12, Florida Statutes, are
55 amended to read:

56 202.12 Sales of communications services.—The Legislature
57 finds that every person who engages in the business of selling
58 communications services at retail in this state is exercising a

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59 taxable privilege. It is the intent of the Legislature that the
60 tax imposed by chapter 203 be administered as provided in this
61 chapter.

62 (1) For the exercise of such privilege, a tax is levied on
63 each taxable transaction, and the tax is due and payable as
64 follows:

65 (a) Except as otherwise provided in this subsection, at a
66 rate of 5.65 percent ~~6.65 percent~~ applied to the sales price of
67 the communications service which:

- 68 1. Originates and terminates in this state, or
- 69 2. Originates or terminates in this state and is charged to
70 a service address in this state,

71
72 when sold at retail, computed on each taxable sale for the
73 purpose of remitting the tax due. The gross receipts tax imposed
74 by chapter 203 shall be collected on the same taxable
75 transactions and remitted with the tax imposed by this
76 paragraph. If no tax is imposed by this paragraph by reason of
77 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
78 be collected and remitted in the manner and at the time
79 prescribed for tax collections and remittances under this
80 chapter.

81 (b) At the rate of 9.8 percent ~~10.8 percent~~ on the retail
82 sales price of any direct-to-home satellite service received in
83 this state. The proceeds of the tax imposed under this paragraph
84 shall be accounted for and distributed in accordance with s.
85 202.18(2). The gross receipts tax imposed by chapter 203 shall
86 be collected on the same taxable transactions and remitted with
87 the tax imposed by this paragraph.

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88 Section 2. Effective January 1, 2014, section 202.12001,
89 Florida Statutes, is amended to read:

90 202.12001 Combined rate for tax collected pursuant to ss.
91 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
92 2010-149, Laws of Florida, the dealer of communication services
93 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
94 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
95 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
96 provider properly reflects the tax collected with respect to the
97 two provisions as required in the return to the Department of
98 Revenue.

99 Section 3. Effective January 1, 2014, section 203.001,
100 Florida Statutes, is amended to read:

101 203.001 Combined rate for tax collected pursuant to ss.
102 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
103 2010-149, Laws of Florida, the dealer of communication services
104 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
105 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
106 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
107 provider properly reflects the tax collected with respect to the
108 two provisions as required in the return to the Department of
109 Revenue.

110 Section 4. Section 212.0596, Florida Statutes, is amended
111 to read:

112 212.0596 Taxation of mail order sales.—

113 (1) For purposes of this chapter, a "mail order sale" is a
114 sale of tangible personal property, ordered by mail, the
115 Internet, or other means of communication, from a dealer who
116 receives the order in another state ~~of the United States,~~ or in

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117 a commonwealth, territory, or other area under the jurisdiction
118 of the United States, and transports the property or causes the
119 property to be transported, whether or not by mail, from any
120 jurisdiction of the United States, including this state, to a
121 person in this state, including the person who ordered the
122 property.

123 (2) Every dealer as defined in s. 212.06(2)(c) who makes a
124 mail order sale is subject to the power of this state to levy
125 and collect the tax imposed by this chapter if ~~when~~:

126 (a) The dealer is ~~a corporation~~ doing business under the
127 laws of this state or is ~~a person~~ domiciled in, a resident of,
128 or a citizen of, this state;

129 (b) The dealer maintains retail establishments or offices
130 in this state, whether the mail order sales ~~thus~~ subject to
131 taxation by this state result from or are related in any other
132 way to the activities of such establishments or offices;

133 (c) The dealer has agents or representatives in this state
134 who solicit business or transact business on behalf of the
135 dealer, whether the mail order sales ~~thus~~ subject to taxation by
136 this state result from or are related in any other way to such
137 solicitation or transaction of business, except that a printer
138 who mails or delivers for an out-of-state print purchaser
139 material the printer printed for it is ~~shall~~ not be deemed to be
140 the print purchaser's agent or representative for purposes of
141 this paragraph;

142 ~~(d) The property was delivered in this state in fulfillment~~
143 ~~of a sales contract that was entered into in this state, in~~
144 ~~accordance with applicable conflict of laws rules, when a person~~
145 ~~in this state accepted an offer by ordering the property;~~

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146 ~~(e) The dealer, by purposefully or systematically~~
147 ~~exploiting the market provided by this state by any media-~~
148 ~~assisted, media-facilitated, or media-solicited means,~~
149 ~~including, but not limited to, direct mail advertising,~~
150 ~~unsolicited distribution of catalogs, computer-assisted~~
151 ~~shopping, television, radio, or other electronic media, or~~
152 ~~magazine or newspaper advertisements or other media, creates~~
153 ~~nexus with this state;~~

154 ~~(f) Through compact or reciprocity with another~~
155 ~~jurisdiction of the United States, that jurisdiction uses its~~
156 ~~taxing power and its jurisdiction over the retailer in support~~
157 ~~of this state's taxing power;~~

158 (d)~~(g)~~ The dealer consents, expressly or by implication, to
159 the imposition of the tax imposed by this chapter;

160 ~~(h) The dealer is subject to service of process under s.~~
161 ~~48.181;~~

162 (e)~~(i)~~ The dealer's mail order sales are subject to the
163 power of this state to tax sales or to require the dealer to
164 collect use taxes pursuant to federal law ~~under a statute or~~
165 ~~statutes of the United States;~~

166 (f)~~(j)~~ The dealer owns real property or tangible personal
167 property that is physically in this state, except that a dealer
168 whose only property, including property owned by an affiliate,
169 in this state is located at the premises of a printer with which
170 the vendor has contracted for printing, and is ~~either~~ a final
171 printed product, ~~or~~ property that ~~which~~ becomes a part of the
172 final printed product, or property from which the printed
173 product is produced, is not deemed to own such property for
174 purposes of this paragraph;

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175 (g)~~(k)~~ The dealer, while not having nexus with this state
176 on any of the bases described in paragraphs (a)-(f) ~~(a)-(j)~~ or
177 paragraphs (h)-(i) ~~paragraph (l)~~, is a corporation that is a
178 member of an affiliated group of corporations, as defined in s.
179 1504(a) of the Internal Revenue Code, whose members are
180 includable under s. 1504(b) of the Internal Revenue Code and
181 whose members are eligible to file a consolidated tax return for
182 federal corporate income tax purposes and any parent or
183 subsidiary corporation in the affiliated group has nexus with
184 this state on one or more of the bases described in paragraphs
185 (a)-(f) ~~(a)-(j)~~ or paragraphs (h)-(i) ~~paragraph (l)~~; or

186 (h) A person, other than a person acting in the capacity of
187 a common carrier, has nexus with this state and:

188 1. Sells a similar line of products as the dealer and does
189 so under the same or a similar business name;

190 2. Maintains an office, distribution facility, warehouse,
191 storage place, or similar place of business in this state to
192 facilitate the delivery of property or services sold by the
193 dealer to the dealer's customers;

194 3. Uses trademarks, service marks, or trade names in this
195 state which are the same or substantially similar to those used
196 by the dealer;

197 4. Delivers, installs, assembles, or performs maintenance
198 services for the dealer's customers in this state;

199 5. Facilitates the dealer's delivery of property to
200 customers in this state by allowing the dealer's customers to
201 pick up property sold by the dealer at an office, distribution
202 facility, warehouse, storage place, or similar place of business
203 maintained by the person in this state; or

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204 6. Conducts any other activities in this state which are
205 significantly associated with the dealer's ability to establish
206 and maintain a market in this state for the dealer's sales; or

207 (i)~~(l)~~ The dealer or the dealer's activities have
208 sufficient connection with or relationship to this state or its
209 residents of some type other than those described in paragraphs
210 (a)-(h) ~~(a)-(k)~~ to create a nexus empowering this state to tax
211 its mail order sales or to require the dealer to collect sales
212 tax or accrue use tax.

213
214 Notwithstanding other provisions of law, a dealer is not
215 required to collect and remit sales or use tax under this
216 subsection unless the dealer has a physical presence in this
217 state or the activities conducted in this state on the dealer's
218 behalf are significantly associated with the dealer's ability to
219 establish and maintain a market for sales in this state.

220 (3) (a) Notwithstanding other provisions of law or this
221 section, there is a rebuttable presumption that every dealer, as
222 defined in s. 212.06, who makes a mail order sale is also
223 subject to the power of this state to levy and collect the tax
224 imposed by this chapter if the dealer enters into an agreement
225 with one or more residents of this state under which the
226 resident, for a commission or other consideration, directly or
227 indirectly refers potential customers, whether by a link on an
228 Internet website, an in-person oral presentation, telemarketing,
229 or otherwise, to the dealer, if the cumulative gross receipts
230 from sales by the dealer to customers in this state who are
231 referred to the dealer by all residents having this type of an
232 agreement with the dealer is in excess of \$10,000 during the 12

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233 months immediately before the rebuttable presumption arose.

234 (b) The presumption in paragraph (a) may be rebutted by the
235 submission of evidence proving that the residents with whom the
236 dealer has an agreement did not engage in any activity within
237 this state which was significantly associated with the dealer's
238 ability to establish or maintain the dealer's market in this
239 state during the 12 months immediately before the rebuttable
240 presumption arose. The evidence may consist of sworn affidavits,
241 obtained and given in good faith, from each resident with whom
242 the dealer has an agreement attesting that he or she did not
243 engage in any solicitation in this state on the dealer's behalf
244 during the previous year.

245 (4)(3) A Every dealer engaged in the business of making
246 mail order sales is subject to the requirements of this chapter
247 for cooperation of dealers in collection of taxes and in
248 administration of this chapter, except that a no fee may not
249 ~~shall~~ be imposed upon such dealer for carrying out any required
250 activity.

251 (5)(4) The department shall, with the consent of another
252 jurisdiction of the United States whose cooperation is needed,
253 enforce this chapter in that jurisdiction, ~~either~~ directly or,
254 at the option of that jurisdiction, through its officers or
255 employees.

256 (6)(5) The tax required under this section to be collected
257 and any amount unreturned to a purchaser which that is not tax
258 but was collected from the purchaser under the representation
259 that it was tax constitute funds of this the state ~~of Florida~~
260 from the moment of collection.

261 (7)(6) Notwithstanding other provisions of law, a dealer

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262 who makes a mail order sale in this state is exempt from
263 collecting and remitting any local option surtax on the sale,
264 unless the dealer is located in a county that imposes a surtax
265 within the meaning of s. 212.054(3)(a), the order is placed
266 through the dealer's location in such county, and the property
267 purchased is delivered into such county or into another county
268 in this state which ~~that~~ levies the surtax, in which case the
269 provisions of s. 212.054(3)(a) are applicable.

270 (8) ~~(7)~~ The department may establish by rule procedures for
271 collecting the use tax from unregistered persons who but for
272 their mail order purchases would not be required to remit sales
273 or use tax directly to the department. The procedures may
274 provide for waiver of registration and registration fees,
275 provisions for irregular remittance of tax, elimination of the
276 collection allowance, and nonapplication of local option
277 surtaxes.

278 Section 5. Subsection (2) of section 212.06, Florida
279 Statutes, is amended to read:

280 212.06 Sales, storage, use tax; collectible from dealers;
281 "dealer" defined; dealers to collect from purchasers;
282 legislative intent as to scope of tax.-

283 (2) ~~(a)~~ The term "dealer," as used in this chapter, means a
284 ~~includes every~~ person who:

285 (a) Manufactures or produces tangible personal property for
286 sale at retail; for use, consumption, or distribution; or for
287 storage to be used or consumed in this state.

288 ~~(b) The term "dealer" is further defined to mean every~~
289 ~~person, as used in this chapter, who~~ Imports, or causes to be
290 imported, tangible personal property from any state or foreign

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291 country for sale at retail; for use, consumption, or
292 distribution; or for storage to be used or consumed in this
293 state.

294 ~~(c) The term "dealer" is further defined to mean every~~
295 ~~person, as used in this chapter, who Sells at retail or who~~
296 ~~offers for sale at retail, or who has in his or her possession~~
297 ~~for sale at retail; or for use, consumption, or distribution; or~~
298 ~~for storage to be used or consumed in this state, tangible~~
299 ~~personal property as defined herein, including a retailer who~~
300 ~~transacts a mail order sale.~~

301 ~~(d) The term "dealer" is further defined to mean any person~~
302 ~~who Has sold at retail; or used, or consumed, or distributed; or~~
303 ~~stored for use or consumption in this state, tangible personal~~
304 ~~property and who cannot prove that the tax levied by this~~
305 ~~chapter has been paid on the sale at retail, the use, the~~
306 ~~consumption, the distribution, or the storage of such tangible~~
307 ~~personal property. However, The term "dealer" does not include~~
308 ~~mean a person who is not a "dealer" as otherwise defined in~~
309 ~~under the definition of any other paragraph of this subsection~~
310 ~~and whose only owned or leased property, (including property~~
311 ~~owned or leased by an affiliate,) in this state is located at~~
312 ~~the premises of a printer with which it has contracted for~~
313 ~~printing, if such property consists of the final printed~~
314 ~~product, property which becomes a part of the final printed~~
315 ~~product, or property from which the printed product is produced.~~

316 ~~(e) The term "dealer" is further defined to mean any~~
317 ~~person, as used in this chapter, who Leases or rents tangible~~
318 ~~personal property, as defined in this chapter, for a~~
319 ~~consideration, permitting the use or possession of such property~~

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320 without transferring title thereto, except as expressly provided
321 in this chapter ~~for to the contrary herein.~~

322 (f) ~~The term "dealer" is further defined to mean any~~
323 ~~person, as used in this chapter, who~~ Maintains or uses ~~has~~
324 within this state, ~~directly or by a subsidiary,~~ an office,
325 distributing house, salesroom, or house, warehouse, or other
326 place of business operated by any person other than a common
327 carrier acting in the capacity of a common carrier.

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

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

346 (i) Constitutes ~~"Dealer" also means and includes~~ the state
347 or any, county, municipality, district ~~any political~~
348 ~~subdivision,~~ agency, bureau, or department, or other state or

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349 local governmental instrumentality.

350 (j) ~~The term "dealer" is further defined to mean any person~~
351 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
352 living quarters, sleeping or housekeeping accommodations in
353 hotels, apartment houses, roominghouses, tourist or trailer
354 camps, real property, space or spaces in parking lots or garages
355 for motor vehicles, docking or storage space or spaces for boats
356 in boat docks or marinas, or tie-down or storage space or spaces
357 for aircraft at airports. The term includes ~~"dealer" also means~~
358 any person who has leased, occupied, or used or was entitled to
359 use any living quarters, sleeping or housekeeping accommodations
360 in hotels, apartment houses, roominghouses, tourist or trailer
361 camps, real property, space or spaces in parking lots or garages
362 for motor vehicles, or docking or storage space or spaces for
363 boats in boat docks or marinas, or who has purchased
364 communication services or electric power or energy, and who
365 cannot prove that the tax levied by this chapter has been paid
366 to the vendor or lessor on ~~any~~ such transactions. The term
367 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,
368 or grants a license to use, occupy, or enter upon any living
369 quarters, sleeping quarters, or housekeeping accommodations in
370 apartment houses, roominghouses, tourist camps, or trailer
371 camps, and who exclusively enters into a bona fide written
372 agreement for continuous residence for longer than 6 months ~~in~~
373 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is
374 granted a license to use such property.

375 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
376 performs a service taxable under this chapter. The term includes
377 a ~~"Dealer" also means any person who~~ purchases, uses, or

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378 consumes a service taxable under this chapter who cannot prove
379 that the tax levied by this chapter has been paid to the seller
380 of the taxable service.

381 (1) ~~"Dealer" also means any person who~~ Solicits, offers,
382 provides, enters into, issues, or delivers any service warranty
383 taxable under this chapter, or who receives, on behalf of such a
384 person, any consideration from a service warranty holder.

385 Section 6. Paragraphs (b), (d), and (h) of subsection (5)
386 of section 212.08, Florida Statutes, are amended to read:

387 212.08 Sales, rental, use, consumption, distribution, and
388 storage tax; specified exemptions.—The sale at retail, the
389 rental, the use, the consumption, the distribution, and the
390 storage to be used or consumed in this state of the following
391 are hereby specifically exempt from the tax imposed by this
392 chapter.

393 (5) EXEMPTIONS; ACCOUNT OF USE.—

394 (b) Industrial machinery and equipment used by
395 manufacturers or used exclusively in spaceport activities ~~to~~
396 ~~increase productive output.~~—

397 1. Industrial machinery and equipment purchased for
398 ~~exclusive use~~ in businesses that manufacture, process, compound,
399 or produce for sale items of tangible personal property at fixed
400 locations or for exclusive use ~~by a new business~~ in spaceport
401 activities as defined by s. 212.02 ~~or for use in new businesses~~
402 ~~that manufacture, process, compound, or produce for sale items~~
403 ~~of tangible personal property at fixed locations~~ are exempt from
404 the tax imposed by this chapter if, at the time of purchase, the
405 purchaser furnishes the seller with a signed certificate stating
406 that the items to be exempted are for exclusive use as provided

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407 in this paragraph. The certificate relieves the seller of the
408 responsibility of collecting the tax on the sale of such items
409 and the department shall look solely to the purchaser for
410 recovery of the tax if it determines that the purchaser was not
411 entitled to the exemption upon an affirmative showing by the
412 taxpayer to the satisfaction of the department that such items
413 are used in a new business in this state. Such purchases must be
414 made before the date the business first begins its productive
415 operations, and delivery of the purchased item must be made
416 within 12 months after that date.

417 ~~2. Industrial machinery and equipment purchased for~~
418 ~~exclusive use by an expanding facility which is engaged in~~
419 ~~spaceport activities as defined by s. 212.02 or for use in~~
420 ~~expanding manufacturing facilities or plant units which~~
421 ~~manufacture, process, compound, or produce for sale items of~~
422 ~~tangible personal property at fixed locations in this state are~~
423 ~~exempt from any amount of tax imposed by this chapter upon an~~
424 ~~affirmative showing by the taxpayer to the satisfaction of the~~
425 ~~department that such items are used to increase the productive~~
426 ~~output of such expanded facility or business by not less than 5~~
427 ~~percent.~~

428 ~~3.a. To receive an exemption provided by subparagraph 1. or~~
429 ~~subparagraph 2., a qualifying business entity shall apply to the~~
430 ~~department for a temporary tax exemption permit. The application~~
431 ~~shall state that a new business exemption or expanded business~~
432 ~~exemption is being sought. Upon a tentative affirmative~~
433 ~~determination by the department pursuant to subparagraph 1. or~~
434 ~~subparagraph 2., the department shall issue such permit.~~

435 ~~b. The applicant shall maintain all necessary books and~~

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436 ~~records to support the exemption. Upon completion of purchases~~
437 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
438 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
439 ~~to the department or returned to the department by certified or~~
440 ~~registered mail.~~

441 ~~e. If, in a subsequent audit conducted by the department,~~
442 ~~it is determined that the machinery and equipment purchased as~~
443 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
444 ~~criteria mandated by this paragraph or if commencement of~~
445 ~~production did not occur, the amount of taxes exempted at the~~
446 ~~time of purchase shall immediately be due and payable to the~~
447 ~~department by the business entity, together with the appropriate~~
448 ~~interest and penalty, computed from the date of purchase, in the~~
449 ~~manner prescribed by this chapter.~~

450 ~~d. If a qualifying business entity fails to apply for a~~
451 ~~temporary exemption permit or if the tentative determination by~~
452 ~~the department required to obtain a temporary exemption permit~~
453 ~~is negative, a qualifying business entity shall receive the~~
454 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
455 ~~a refund of previously paid taxes. No refund may be made for~~
456 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
457 ~~subparagraph 2. have been met and commencement of production has~~
458 ~~occurred.~~

459 ~~4. The department shall adopt rules governing applications~~
460 ~~for, issuance of, and the form of temporary tax exemption~~
461 ~~permits; provisions for recapture of taxes; and the manner and~~
462 ~~form of refund applications, and may establish guidelines as to~~
463 ~~the requisites for an affirmative showing of increased~~
464 ~~productive output, commencement of production, and qualification~~

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465 ~~for exemption.~~

466 ~~2.5.~~ The exemption does ~~exemptions provided in~~
467 ~~subparagraphs 1. and 2.~~ do not apply to machinery or equipment
468 purchased or used by electric utility companies, communications
469 companies, oil or gas exploration or production operations,
470 publishing firms that do not export at least 50 percent of their
471 finished product out of the state, any firm subject to
472 regulation by the Division of Hotels and Restaurants of the
473 Department of Business and Professional Regulation, or any firm
474 that does not manufacture, process, compound, or produce for
475 sale items of tangible personal property or that does not use
476 such machinery and equipment in spaceport activities as required
477 by this paragraph. The exemption does apply ~~exemptions provided~~
478 ~~in subparagraphs 1. and 2.~~ shall apply to machinery and
479 equipment purchased for use in phosphate or other solid minerals
480 severance, mining, or processing operations.

481 ~~3.6.~~ For the purposes of the exemption, the term ~~exemptions~~
482 ~~provided in subparagraphs 1. and 2.,~~ these terms have the
483 ~~following meanings:~~

484 a. "industrial machinery and equipment" means tangible
485 personal property or other property that has a depreciable life
486 of 3 years or more and ~~that~~ is used as an integral part in the
487 manufacturing, processing, compounding, or production of
488 tangible personal property for sale or is exclusively used in
489 spaceport activities. A building and its structural components
490 are not industrial machinery and equipment unless the building
491 or structural component is so closely related to the industrial
492 machinery and equipment that it houses or supports that the
493 building or structural component can be expected to be replaced

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494 when the machinery and equipment are replaced. Heating and air-
495 conditioning systems are not industrial machinery and equipment
496 unless the sole justification for their installation is to meet
497 the requirements of the production process, even though the
498 system may provide incidental comfort to employees or serve, to
499 an insubstantial degree, nonproduction activities. The term
500 includes parts and accessories for industrial machinery and
501 equipment only to the extent that the exemption thereof is
502 consistent with the provisions of this paragraph.

503 ~~b. "Productive output" means the number of units actually~~
504 ~~produced by a single plant, operation, or product line in a~~
505 ~~single continuous 12-month period, irrespective of sales.~~
506 ~~Increases in productive output shall be measured by the output~~
507 ~~for 12 continuous months selected by the expanding business~~
508 ~~after completion of the installation of such machinery or~~
509 ~~equipment over the output for the 12 continuous months~~
510 ~~immediately preceding such installation. However, in no case may~~
511 ~~such time period begin later than 2 years after completion of~~
512 ~~the installation of the new machinery and equipment. The units~~
513 ~~used to measure productive output shall be physically comparable~~
514 ~~between the two periods, irrespective of sales.~~

515 (d) *Machinery and equipment used under federal procurement*
516 *contract.*—

517 1. Industrial machinery and equipment purchased by an
518 expanding business that ~~which~~ manufactures tangible personal
519 property pursuant to federal procurement regulations at fixed
520 locations in this state are exempt from the tax imposed in this
521 chapter upon an affirmative showing by the taxpayer to the
522 satisfaction of the department that such items are used to

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523 increase the implicit productive output of the expanded business
524 by not less than 10 percent. The percentage of increase is
525 measured as deflated implicit productive output for the calendar
526 year during which the installation of the machinery or equipment
527 is completed or during which commencement of production
528 utilizing such items is begun divided by the implicit productive
529 output for the preceding calendar year. ~~In no case may~~ The
530 commencement of production may not begin later than 2 years
531 after completing ~~following completion of~~ installation of the
532 machinery or equipment.

533 2. The amount of the exemption allowed must ~~shall~~ equal the
534 taxes otherwise imposed by this chapter on qualifying industrial
535 machinery or equipment reduced by the percentage of gross
536 receipts from cost-reimbursement type contracts attributable to
537 the plant or operation to total gross receipts so attributable,
538 accrued for the year of completion or commencement.

539 3. The exemption provided by this paragraph shall inure to
540 the taxpayer only through a refund of previously paid taxes.
541 Such refund shall be made within 30 days after ~~of~~ formal
542 approval by the department of the taxpayer's application, which
543 application may be made on an annual basis following
544 installation of the machinery or equipment.

545 4. For the purposes of this paragraph, the term:

546 a. "Cost-reimbursement type contracts" has the same meaning
547 as in 32 C.F.R. s. 3-405.

548 b. "Deflated implicit productive output" means the product
549 of implicit productive output times the quotient of the national
550 defense implicit price deflator for the preceding calendar year
551 divided by the deflator for the year of completion or

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552 commencement.

553 c. "Eligible costs" means the total direct and indirect
554 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
555 general and administrative costs, selling expenses, and profit,
556 defined by the uniform cost-accounting standards adopted by the
557 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
558 2168.

559 d. "Implicit productive output" means the annual eligible
560 costs attributable to all contracts or subcontracts subject to
561 federal procurement regulations of the single plant or operation
562 at which the machinery or equipment is used.

563 e. "Industrial machinery and equipment" means tangible
564 personal property or other property that has a depreciable life
565 of 3 years or more, that qualifies as an eligible cost under
566 federal procurement regulations, and that is used as an integral
567 part of the process of production of tangible personal property.
568 A building and its structural components are not industrial
569 machinery and equipment unless the building or structural
570 component is so closely related to the industrial machinery and
571 equipment that it houses or supports that the building or
572 structural component can be expected to be replaced when the
573 machinery and equipment are replaced. Heating and air-
574 conditioning systems are not industrial machinery and equipment
575 unless the sole justification for their installation is to meet
576 the requirements of the production process, even though the
577 system may provide incidental comfort to employees or serve, to
578 an insubstantial degree, nonproduction activities. The term
579 includes parts and accessories only to the extent that the
580 exemption of such parts and accessories is consistent with the

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581 provisions of this paragraph.

582 f. "National defense implicit price deflator" means the
583 national defense implicit price deflator for the gross national
584 product as determined by the Bureau of Economic Analysis of the
585 United States Department of Commerce.

586 5. The exclusions provided in subparagraph (b) 2. ~~(b) 5.~~
587 apply to this exemption. This exemption applies only to
588 machinery or equipment purchased pursuant to production
589 contracts with the United States Department of Defense and Armed
590 Forces, the National Aeronautics and Space Administration, and
591 other federal agencies for which the contracts are classified
592 for national security reasons. ~~In no event shall~~ The provisions
593 of this paragraph do not apply to an ~~any~~ expanding business
594 whose ~~the~~ increase in productive output is measurable ~~of which~~
595 ~~could be measured under the provisions of sub-subparagraph~~
596 ~~(b) 6.b. as physically comparable between the two periods. As~~
597 used in this subparagraph, the term "productive output" means
598 the number of units actually produced by a single plant,
599 operation, or product line in a single continuous 12-month
600 period, irrespective of sales. Increases in productive output
601 shall be measured by dividing the output for 12 continuous
602 months selected by the expanding business after completing the
603 installation of machinery or equipment by the output for the 12
604 continuous months immediately preceding such installation.
605 However, such time period may not commence 2 years after
606 completing the installation. The units used to measure
607 productive output must be physically comparable between the two
608 periods, irrespective of sales.

609 (h) *Business property used in an enterprise zone.*—

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610 1. Business property purchased for use by businesses
611 located in an enterprise zone which is subsequently used in an
612 enterprise zone is ~~shall be~~ exempt from the tax imposed by this
613 chapter. This exemption inures to the business only through a
614 refund of previously paid taxes. A refund shall be authorized
615 upon an affirmative showing by the taxpayer, to the satisfaction
616 of the department, that the requirements of this paragraph have
617 been met.

618 2. To receive a refund, the business must file ~~under oath~~
619 with the governing body or enterprise zone development agency
620 having jurisdiction over the enterprise zone where the business
621 is located, as applicable, an application, under oath, which
622 includes:

623 a. The name and address of the business claiming the
624 refund.

625 b. The identifying number assigned pursuant to s. 290.0065
626 to the enterprise zone in which the business is located.

627 c. A specific description of the property for which a
628 refund is sought, including its serial number or other permanent
629 identification number.

630 d. The location of the property.

631 e. The sales invoice or other proof of purchase of the
632 property, showing the amount of sales tax paid, the date of
633 purchase, and the name and address of the sales tax dealer from
634 whom the property was purchased.

635 f. Whether the business is a small business as defined in
636 ~~by~~ s. 288.703.

637 g. If applicable, the name and address of each permanent
638 employee of the business, including, for each employee who is a

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639 resident of an enterprise zone, the identifying number assigned
640 pursuant to s. 290.0065 to the enterprise zone in which the
641 employee resides.

642 3. Within 10 working days after receipt of an application,
643 the governing body or enterprise zone development agency shall
644 review the application to determine if it contains all the
645 information required pursuant to subparagraph 2. and meets the
646 criteria set out in this paragraph. The governing body or agency
647 shall certify all applications that contain the information
648 required pursuant to subparagraph 2. and meet the criteria set
649 out in this paragraph as eligible to receive a refund. If
650 applicable, the governing body or agency shall also certify if
651 20 percent of the employees of the business are residents of an
652 enterprise zone, excluding temporary and part-time employees.
653 The certification must ~~shall~~ be in writing, and a copy of the
654 certification must ~~shall~~ be transmitted to the executive
655 director of the Department of Revenue. The business is ~~shall be~~
656 responsible for forwarding a certified application to the
657 department within the time specified in subparagraph 4.

658 4. An application for a refund pursuant to this paragraph
659 must be submitted to the department within 6 months after the
660 tax is due on the business property that is purchased.

661 5. The amount refunded on purchases of business property
662 under this paragraph shall be the lesser of 97 percent of the
663 sales tax paid on such business property or \$5,000, or, if up to
664 ~~no less than~~ 20 percent of the employees of the business are
665 residents of an enterprise zone, excluding temporary and part-
666 time employees, the amount ~~refunded on purchases of business~~
667 ~~property under this paragraph~~ shall be the lesser of 97 percent

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668 of the sales tax paid on such business property or \$10,000. A
669 refund must ~~approved pursuant to this paragraph shall~~ be made
670 within 30 days after formal approval by the department of the
671 application for the refund. A refund may not be granted ~~under~~
672 ~~this paragraph~~ unless the amount to be refunded exceeds \$100 in
673 sales tax paid on purchases made within a 60-day time period.

674 6. The department shall adopt rules governing the manner
675 and form of refund applications and may establish guidelines as
676 to the requisites for an affirmative showing of qualification
677 for exemption under this paragraph.

678 7. If the department determines that the business property
679 is used outside an enterprise zone within 3 years after ~~from~~ the
680 date of purchase, the amount of taxes refunded to the business
681 purchasing such business property is ~~shall~~ immediately be due
682 and payable to the department by the business, together with the
683 appropriate interest and penalty, computed from the date of
684 purchase, in the manner provided by this chapter.
685 Notwithstanding this subparagraph, business property used
686 exclusively in:

- 687 a. Licensed commercial fishing vessels,
- 688 b. Fishing guide boats, or
- 689 c. Ecotourism guide boats

690
691 that leave and return to a fixed location within an area
692 designated under s. 379.2353, Florida Statutes 2010, are
693 eligible for the exemption ~~provided under this paragraph~~ if all
694 requirements of this paragraph are met. Such vessels and boats
695 must be owned by a business that is eligible to receive the
696 exemption ~~provided under this paragraph~~. This exemption does not

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697 apply to the purchase of a vessel or boat.

698 8. The department shall deduct an amount equal to 10
699 percent of each refund granted under this paragraph from the
700 amount transferred into the Local Government Half-cent Sales Tax
701 Clearing Trust Fund pursuant to s. 212.20 for the county area in
702 which the business property is located and shall transfer that
703 amount to the General Revenue Fund.

704 9. For the purposes of this exemption, the term "business
705 property" means new or used property defined as "recovery
706 property" in s. 168(c) of the Internal Revenue Code of 1954, as
707 amended, except:

708 a. Property classified as 3-year property under s.
709 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

710 b. Industrial machinery and equipment as defined in
711 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for
712 exemption under paragraph (b);

713 c. Building materials as defined in sub-subparagraph
714 (g)8.a.; and

715 d. Business property having a sales price of under \$5,000
716 per unit.

717 10. This paragraph expires on the date specified in s.
718 290.016 for the expiration of the Florida Enterprise Zone Act.

719 Section 7. (1) The Department of Revenue shall develop a
720 tracking system, in consultation with the Revenue Estimating
721 Conference, to determine the amount of sales taxes remitted by
722 out-of-state dealers who would otherwise not be required to
723 collect and remit sales taxes in the absence of the amendments
724 made to s. 212.0596, Florida Statutes, in section 1 of this act.
725 By February 1 of each year, the Department of Revenue shall

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726 submit a report to the Governor, the President of the Senate,
727 and the Speaker of the House of Representatives which sets forth
728 the amount of sales taxes collected and remitted by such dealers
729 in the previous calendar year and the methodology used to
730 determine the amount.

731 (2) By March 1 of each year, the Revenue Estimating
732 Conference shall use the information provided by the Department
733 of Revenue pursuant to subsection (1) to determine the amount of
734 sales taxes remitted in the previous calendar year by such out-
735 of-state dealers who would otherwise not be required to collect
736 and remit sales taxes and estimate the amount that may be
737 expected in the following fiscal year.

738 (3) The Legislature shall use the information provided by
739 the Department of Revenue and the Revenue Estimating Conference
740 to develop legislation designed to return the amount of those
741 sales taxes collected to the taxpayers of this state. The
742 Legislature shall reduce taxes in an amount not less than the
743 amount determined by the Revenue Estimating Conference. Such
744 reduction shall take into account reductions already provided in
745 this act in sections 3, 4, 5, and 6 of this act. If the amount
746 collected is determined to be of a recurring nature and
747 sufficient to lower tax rates, the Legislature may provide other
748 permanent tax relief as it deems appropriate.

749 Section 8. Except as otherwise expressly provided in this
750 act and except for this section, which shall take effect upon
751 this act becoming a law, this act shall take effect July 1,
752 2013.