

By Senator Hargrett

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A bill to be entitled
An act relating to the tax on sale, use, and
other transactions; amending s. 212.07, F.S.;
defining the terms "agricultural commodity,"
"farmer," and "livestock" for purposes of
determining applicability of the taxes imposed
under ch. 212, F.S.; providing an effective
date.

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

Section 1. Section 212.07, Florida Statutes, is
amended to read:

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.--

(1)(a) The privilege tax herein levied measured by
retail sales shall be collected by the dealers 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 or herself 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
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

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

5 (2) A dealer shall, as far as practicable, add the
6 amount of the tax imposed under this chapter to the sale
7 price, and the amount of the tax shall be separately stated as
8 Florida tax on any charge ticket, sales slip, invoice, or
9 other tangible evidence of sale. Such tax shall constitute a
10 part of such price, charge, or proof of sale which shall be a
11 debt from the purchaser or consumer to the dealer, until paid,
12 and shall be recoverable at law in the same manner as other
13 debts. Where it is impracticable, due to the nature of the
14 business practices within an industry, to separately state
15 Florida tax on any charge ticket, sales slip, invoice, or
16 other tangible evidence of sale, the department may establish
17 an effective tax rate for such industry. The department may
18 also amend this effective tax rate as the industry's pricing
19 or practices change. Except as otherwise specifically
20 provided, any dealer who neglects, fails, or refuses to
21 collect the tax herein provided upon any, every, and all
22 retail sales made by the dealer or the dealer's agents or
23 employees of tangible personal property or services which are
24 subject to the tax imposed by this chapter shall be liable for
25 and pay the tax himself or herself.

26 (3) Any dealer who fails, neglects, or refuses to
27 collect the tax herein provided, either by himself or herself
28 or through the dealer's agents or employees, is, in addition
29 to the penalty of being liable for and paying the tax himself
30 or herself, guilty of a misdemeanor of the first degree,
31 punishable as provided in s. 775.082 or s. 775.083.

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

15 (5) The gross proceeds derived from the sale in this
16 state of livestock, poultry, and other farm products direct
17 from the farm are exempted from the tax levied by this chapter
18 provided such sales are made directly by the producers. The
19 producers shall be entitled to such exemptions although the
20 livestock so sold in this state may have been registered with
21 a breeders' or registry association prior to the sale and
22 although the sale takes place at a livestock show or race
23 meeting, so long as the sale is made by the original producer
24 and within this state. When sales of livestock, poultry, or
25 other farm products are made to consumers by any person, as
26 defined herein, other than a producer, they are not exempt
27 from the tax imposed by this chapter. The foregoing exemption
28 does not apply to ornamental nursery stock offered for retail
29 sale by the producer.

30 (6) It is specifically provided that the use tax as
31 defined herein does not apply to livestock and livestock

1 products, to poultry and poultry products, or to farm and
2 agricultural products, when produced by the farmer and used by
3 him or her and members of the farmer's family and his or her
4 employees on the farm.

5 (7) Provided, however, that each and every
6 agricultural commodity sold by any person, other than a
7 producer, to any other person who purchases not for direct
8 consumption but for the purpose of acquiring raw products for
9 use or for sale in the process of preparing, finishing, or
10 manufacturing such agricultural commodity for the ultimate
11 retail consumer trade shall be and is exempted from any and
12 all provisions of this chapter, including payment of the tax
13 applicable to the sale, storage, use, or transfer, or any
14 other utilization or handling thereof, except when such
15 agricultural commodity is actually sold as a marketable or
16 finished product to the ultimate consumer; in no case shall
17 more than one tax be exacted.

18 (8) As used in this section, the term:

19 (a) "Agricultural commodity," ~~for the purposes hereof,~~
20 means horticultural, aquacultural, poultry and farm products,
21 and livestock and livestock products.

22 (b) "Farmer" means a person who is directly engaged in
23 the business of producing crops, livestock, or other
24 agricultural commodities.

25 (c) "Livestock" means any animals raised for
26 commercial purposes other than for use as a display in a zoo,
27 carnival, circus, or other similar facility.

28 (9) Any person who has purchased at retail, used,
29 consumed, distributed, or stored for use or consumption in
30 this state tangible personal property, admissions,
31 communication or other services taxable under this chapter, or

1 leased tangible personal property, or who has leased,
2 occupied, or used or was entitled to use any real property,
3 space or spaces in parking lots or garages for motor vehicles,
4 docking or storage space or spaces for boats in boat docks or
5 marinas, and cannot prove that the tax levied by this chapter
6 has been paid to his or her vendor, lessor, or other person is
7 directly liable to the state for any tax, interest, or penalty
8 due on any such taxable transactions.

9 Section 2. This act shall take effect July 1, 1998.

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SENATE SUMMARY

Defines the terms "agricultural commodity," "farmer," and
"livestock" for purposes of determining the applicability
of the taxes imposed under ch. 212, F.S.