

By Senator Ostalkiewicz

12-1535-98

1 A bill to be entitled
2 An act relating to taxes on sales, use, and
3 other transactions (RAB); amending s. 212.0506,
4 F.S.; revising guidelines for tax liability of
5 service warranties; amending s. 212.0515, F.S.;
6 providing tax liability for sales of nonfood
7 items from vending machines; revising
8 eligibility for rewards; amending s. 212.054,
9 F.S.; revising guidelines for determination of
10 exemption from partial sales surtaxes; amending
11 s. 212.0598, F.S.; revising provisions relating
12 to determination of air carriers' tax
13 liability; amending s. 212.06, F.S.; revising
14 guidelines for determining tax liability of
15 certain personal property; providing a
16 presumption with respect to tax liability for
17 sales of motor vehicles; providing for a use
18 tax on certain aircraft; defining the terms
19 "real property," "fixtures," and "improvements
20 to real property," for purposes of determining
21 when a person is improving real property;
22 providing guidelines for determining tax
23 liability on rock, shell, fill dirt, and
24 similar materials; amending s. 213.30, F.S.;
25 revising eligibility for rewards for
26 information on tax law violations; providing an
27 effective date.

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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (8) of section 212.0506, Florida
2 Statutes, is amended, present subsection (10) of that section
3 is renumbered as subsection (11), and a new subsection (10) is
4 added to that section, to read:

5 212.0506 Taxation of service warranties.--

6 (8) If a transaction involves both the issuance of a
7 service warranty that ~~which~~ is subject to such tax and the
8 issuance of a warranty, guaranty, extended warranty or
9 extended guaranty, contract, agreement, or other written
10 promise that ~~which~~ is not subject to such tax, the
11 consideration shall be separately identified and stated with
12 respect to the taxable and nontaxable portions of the
13 transaction. If the consideration is separately apportioned
14 and identified in good faith, such tax shall apply to the
15 transaction to the extent that the consideration received or
16 to be received in connection with the transaction is payment
17 for a service warranty subject to such tax. If the
18 consideration is not apportioned in good faith, the department
19 may reform the contract; such reformation by the department is
20 to be considered prima facie correct, and the burden to show
21 the contrary rests upon the dealer. If the consideration for
22 such a transaction is not separately identified and stated,
23 the entire transaction is taxable.

24 (10) Materials and supplies used in the performance of
25 a factory or manufacturer's warranty are exempt if the
26 contract is furnished at no extra charge with the new
27 equipment guaranteed thereunder and such materials and
28 supplies are paid for by the factory or manufacturer.

29 Section 2. Subsections (1), (2), (3), and (6) of
30 section 212.0515, Florida Statutes, are amended to read:

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1 212.0515 Sales from vending machines; sales to vending
2 machine operators; special provisions; registration; quarterly
3 reports; penalties.--

4 (1) As used in this section:

5 (a) "Vending machine" means a machine, operated by
6 coin, currency, credit card, slug, token, coupon, or similar
7 device, which dispenses food, beverages, or other ~~or beverage~~
8 items of tangible personal property.

9 (b) "Operator" means any person who possesses a
10 vending machine for the purpose of generating sales through
11 that machine and who maintains the inventory in and removes
12 the receipts from that vending machine.

13 (2) Notwithstanding any other provision of law, the
14 amount of the tax to be paid on food, beverages, or other ~~and~~
15 ~~beverage~~ items of tangible personal property that are sold in
16 vending machines shall be calculated by dividing the gross
17 receipts from such sales for the applicable reporting period
18 by a divisor, determined as provided in this subsection, to
19 compute gross taxable sales, and then subtracting gross
20 taxable sales from gross receipts to arrive at the amount of
21 tax due. The divisor shall be equal to the sum of 1.0665 for
22 ~~beverage items, or~~ 1.0645 for food items, or 1.0659 for other
23 items of tangible personal property, except that for counties
24 with a 0.5 percent sales surtax rate the divisor shall be
25 equal to the sum of 1.0707 for beverages and other ~~beverage~~
26 items of tangible personal property, ~~or~~ 1.0686 for food items,
27 for counties with a 1 percent sales surtax rate the divisor
28 shall be equal to the sum of 1.0749 for beverages and other
29 ~~beverage~~ items of tangible personal property, ~~or~~ 1.0726 for
30 food items, and for counties with a 1.5 percent sales surtax
31 rate the divisor shall be equal to the sum of 1.0791 for

1 beverages and other ~~beverage~~ items of tangible personal
2 property or 1.0767 for food items. However, the amount of the
3 tax to be paid on natural fluid milk, homogenized milk,
4 pasteurized milk, whole milk, chocolate milk, or similar milk
5 products, natural fruit juices, or natural vegetable juices
6 shall be calculated using the divisor that is specified for
7 food items. If an operator cannot account for each type of
8 item sold through a vending machine, the highest tax rate
9 shall be used for all products sold through that machine.

10 (3)(a) An operator of a vending machine may not
11 operate or cause to be operated in this state any vending
12 machine until the operator has registered with the department,
13 has obtained a separate registration certificate for each
14 county in which such machines are located,and has affixed a
15 notice to each vending machine which states the operator's
16 name, address, and Federal Employer Identification (FEI)
17 number. If the operator is not required to have an FEI
18 number, the notice shall include the operator's sales tax
19 registration number. The notice must be conspicuously
20 displayed on the vending machine when it is being operated in
21 this state and shall contain the following language in
22 conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES
23 THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING
24 MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE
25 NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD.

26 (b) The department shall establish a toll-free number
27 to report any violations of this section. Upon a
28 determination that a violation has occurred, the department
29 shall pay the informant a reward of up to 10 percent of
30 previously unpaid taxes recovered as a result of the
31 information provided. A person who receives information

1 concerning a violation of this section from an employee as
2 specified in s. 213.30 is not eligible for a cash reward.

3 (6) The provisions of this section do not apply to
4 vending machines owned and operated by churches, ~~or~~
5 synagogues, or nonprofit or charitable organizations exempt
6 pursuant to s. 212.08(7)(2).

7 Section 3. Paragraph (b) of subsection (2) of section
8 212.054, Florida Statutes, is amended to read:

9 212.054 Discretionary sales surtax; limitations,
10 administration, and collection.--

11 (2)

12 (b) However:

13 1. The tax on any sales amount above \$5,000 on any
14 item of tangible personal property and on long-distance
15 telephone service shall not be subject to the surtax. For
16 purposes of administering the \$5,000 limitation on an item of
17 tangible personal property, if two or more taxable items of
18 tangible personal property are sold to the same purchaser at
19 the same time and, under generally accepted business practice
20 or industry standards or usage, are normally sold in bulk or
21 are items that, when assembled, comprise a working unit or
22 part of a working unit, such items must be considered a single
23 item for purposes of the \$5,000 limitation when supported by a
24 charge ticket, sales slip, invoice, or other tangible evidence
25 of a single sale or rental. The limitation provided in this
26 subparagraph does not apply to the sale of any other service.

27 2. In the case of utility, telecommunication, or
28 television system program services billed on or after the
29 effective date of any such surtax, the entire amount of the
30 tax for utility, telecommunication, or television system
31 program services shall be subject to the surtax. In the case

1 of utility, telecommunication, or television system program
2 services billed after the last day the surtax is in effect,
3 the entire amount of the tax on said items shall not be
4 subject to the surtax.

5 3. In the case of written contracts which are signed
6 prior to the effective date of any such surtax for the
7 construction of improvements to real property or for
8 remodeling of existing structures, the surtax shall be paid by
9 the contractor responsible for the performance of the
10 contract. However, the contractor may apply for one refund of
11 any such surtax paid on materials necessary for the completion
12 of the contract. Any application for refund shall be made no
13 later than 15 months following initial imposition of the
14 surtax in that county. The application for refund shall be in
15 the manner prescribed by the department by rule. A complete
16 application shall include proof of the written contract and of
17 payment of the surtax. The application shall contain a sworn
18 statement, signed by the applicant or its representative,
19 attesting to the validity of the application. The department
20 shall, within 30 days after approval of a complete
21 application, certify to the county information necessary for
22 issuance of a refund to the applicant. Counties are hereby
23 authorized to issue refunds for this purpose and shall set
24 aside from the proceeds of the surtax a sum sufficient to pay
25 any refund lawfully due. Any person who fraudulently obtains
26 or attempts to obtain a refund pursuant to this subparagraph,
27 in addition to being liable for repayment of any refund
28 fraudulently obtained plus a mandatory penalty of 100 percent
29 of the refund, is guilty of a felony of the third degree,
30 punishable as provided in s. 775.082, s. 775.083, or s.
31 775.084.

1 4. In the case of any vessel, railroad, or motor
2 vehicle common carrier entitled to partial exemption from tax
3 imposed under this chapter pursuant to s. 212.08(4), (8), or
4 (9), the basis for imposition of surtax shall be the same as
5 provided in s. 212.08 and the ratio shall be applied each
6 month to total purchases in this state of property qualified
7 for proration which is delivered or sold in the taxing county
8 to establish the portion used and consumed in intracounty
9 movement and subject to surtax.

10 Section 4. Subsection (2) of section 212.0598, Florida
11 Statutes, is amended to read:

12 212.0598 Special provisions; air carriers.--

13 (2) The basis of the tax shall be the ratio of Florida
14 mileage to total mileage as determined pursuant to chapter 220
15 and this section. The ratio shall be determined at the close
16 of the carrier's preceding fiscal year. However, during the
17 fiscal year in which the air carrier begins initial operations
18 in this state, the carrier may determine its mileage
19 apportionment factor based on an estimated ratio of
20 anticipated revenue miles in this state to anticipated total
21 revenue miles. In such cases, the air carrier shall pay
22 additional tax or apply for a refund based on the actual ratio
23 for that year.The applicable ratio shall be applied each
24 month to the carrier's total systemwide gross purchases of
25 tangible personal property and services otherwise taxable in
26 Florida. Additionally, the ratio shall be applied each month
27 to the carrier's total systemwide payments for the lease or
28 rental of, or license in, real property used by the carrier
29 substantially for aircraft maintenance if that carrier
30 employed, on average, during the previous calendar quarter in
31 excess of 3,000 full-time equivalent maintenance or repair

1 employees at one maintenance base that it leases, rents, or
2 has a license in, in this state. In all other instances, the
3 tax on real property leased, rented, or licensed by the
4 carrier shall be as provided in s. 212.031.

5 Section 5. Present paragraph (d) of subsection (1) of
6 section 212.06, Florida Statutes, is redesignated as paragraph
7 (e) and a new paragraph (d) is added to that subsection,
8 subsections (7) and (10) of that section are amended, and
9 subsections (13), (14), and (15) are added to that section, to
10 read:

11 212.06 Sales, storage, use tax; collectible from
12 dealers; "dealer" defined; dealers to collect from purchasers;
13 legislative intent as to scope of tax.--

14 (1)

15 (d) For purposes of paragraph (b), the department may
16 establish a cost price amount for industry groups that
17 manufacture, produce, compound, process, or fabricate tangible
18 personal property for their own use in the performance of
19 contracts for improvements to real property. Such cost price
20 amount must be established as a percentage, rounded to the
21 nearest whole number, of the total contract price charged for
22 the improvement. The cost price percentages established must
23 be adopted by rule pursuant to the procedures provided in s.
24 120.54, upon petition of a majority of the members of an
25 industry group or by a statewide association that represents
26 such industry group, and must be based on a reasonable
27 estimate of average costs incurred by members of the
28 petitioning industry group. The department is required to
29 adopt a cost price percentage only if sufficient information
30 is available to determine such percentage. The information
31 considered by the department to establish the cost price

1 percentage must be that set forth in the petition or that
2 which is otherwise made available to the department. Any cost
3 price percentage so established must be available only by
4 election of a member of the industry group for which the
5 percentage was established and may apply only to such periods
6 or contracts for which the election is made. The election must
7 be made by the taxpayer by timely accruing and remitting tax
8 on the contract using the established percentage figure. If
9 the taxpayer does not timely accrue and remit the use tax due
10 for a contract using the percentage figure, the taxpayer may
11 not later use this method of calculating the use tax due for
12 that contract. Taxpayers must maintain adequate records
13 showing the accrual of tax using the percentage figure on
14 actual cost price. Any cost price so established must remain
15 available for use for a period of at least 5 years from the
16 date of its adoption and must be reviewed and be subject to
17 adjustment by the department no more frequently than at 5-year
18 intervals. The provisions of this paragraph are not available
19 to persons subject to paragraph (c).

20 (7) The provisions of this chapter do not apply in
21 respect to the use or consumption of tangible personal
22 property or services, or distribution or storage of tangible
23 personal property for use or consumption in this state, upon
24 which a like tax equal to or greater than the amount imposed
25 by this chapter has been lawfully imposed and paid in another
26 state, territory of the United States, or the District of
27 Columbia. The proof of payment of such tax shall be made
28 according to rules and regulations of the department. If the
29 amount of tax paid in another state, territory of the United
30 States, or the District of Columbia is not equal to or greater
31 than the amount of tax imposed by this chapter, then the

1 dealer shall pay to the department an amount sufficient to
2 make the tax paid in the other state, territory of the United
3 States, or the District of Columbia and in this state equal to
4 the amount imposed by this chapter.

5 (10) No title certificate may be issued on any boat,
6 mobile home, motor vehicle, or other vehicle, or, if no title
7 is required by law, no license or registration may be issued
8 for any boat, mobile home, motor vehicle, or other vehicle,
9 unless there is filed with such application for title
10 certificate or license or registration certificate a receipt,
11 issued by an authorized dealer or a designated agent of the
12 Department of Revenue, evidencing the payment of the tax
13 imposed by this chapter where the same is payable. A
14 presumption of sales and use tax applicability is created if
15 the motor vehicle is registered in this state. For the
16 purpose of enforcing this provision, all county tax collectors
17 and all persons or firms authorized to sell or issue boat,
18 mobile home, and motor vehicle licenses are hereby designated
19 agents of the department and are required to perform such duty
20 in the same manner and under the same conditions prescribed
21 for their other duties by the constitution or any statute of
22 this state. All transfers of title to boats, mobile homes,
23 motor vehicles, and other vehicles are taxable transactions,
24 unless expressly exempt under this chapter.

25 (13) Registered aircraft dealers who purchase aircraft
26 exclusively for resale and do not pay sales tax on the
27 purchase price at the time of purchase shall pay a use tax
28 computed on 1 percent of the value of the aircraft each
29 calendar month that the aircraft is used by the dealer.
30 Payment of such tax shall commence in the month during which
31 the aircraft is first used for any purpose for which income is

1 received by the dealer. A dealer may pay the sales tax on the
2 purchase of the aircraft in lieu of the monthly use tax. The
3 value of the aircraft shall include its acquisition cost and
4 the cost of reconditioning that enhances the value of the
5 aircraft and shall generally be the value shown on the books
6 of the dealer in accordance with generally accepted accounting
7 principles. Notwithstanding the payment by the dealer of tax
8 computed on 1 percent of the value of any aircraft, if the
9 aircraft is leased or rented, the dealer shall collect from
10 the customer and remit the tax that is due on the lease or
11 rental of the aircraft; such payments do not diminish or
12 offset any use tax due from the dealer.

13 (14) For the purpose of determining whether a person
14 is improving real property, the term:

15 (a) "Real property" means the land and improvements
16 thereto and fixtures and is synonymous with the terms "realty"
17 and "real estate."

18 (b) "Fixtures" means items that are an accessory to a
19 building, other structure, or land and that do not lose their
20 identity as accessories when installed but that do become
21 permanently attached to realty. However, the term does not
22 include the following items, whether or not such items are
23 attached to real property in a permanent manner: trade
24 fixtures; property of a type that is required to be
25 registered, licensed, titled, or documented by this state or
26 by the United States Government, including, but not limited
27 to, mobile homes, except mobile homes assessed as real
28 property; or machinery or equipment. For an item to be
29 considered a fixture, it is not necessary that the owner of
30 the item also own the real property to which it is attached.
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1 (c) "Improvements to real property" includes the
2 activities of building, erecting, constructing, altering,
3 improving, repairing, or maintaining real property.

4 (15)(a) When a contractor secures the rock, shell,
5 fill dirt, and similar materials he or she uses in a real
6 property improvement contract from a quarry, pit, or other
7 location that he or she owns or leases, the contractor is the
8 ultimate consumer of such materials and is liable for use tax
9 thereon. The basis upon which the contractor shall remit the
10 tax is the fair retail market value determined by establishing
11 either the price he or she would have to pay for it on the
12 open market or the price he or she would regularly charge if
13 he or she sold it to other contractors or users.

14 (b) When a contractor does not own or lease the land
15 but has entered into an agreement to purchase fill dirt, rock,
16 shell, or similar materials for his or her own use and wherein
17 the contractor will excavate and remove the material, the
18 taxable basis shall include the cost of the material plus all
19 costs of clearing, excavating, and removing, including labor
20 and all other costs incurred by the contractor.

21 (c) In lieu of the method described in paragraph (a)
22 for determining the taxable basis on rock, shell, fill dirt,
23 and similar materials a contractor uses in performing a
24 contract for the improvement of real property, the taxable
25 basis may be calculated as the land cost plus all costs of
26 clearing, excavating, and loading, including labor, power,
27 blasting, etc.

28 (d) No tax is applicable when the Department of
29 Transportation furnishes without charge the borrow materials
30 or the pits where materials are to be extracted for use on a
31 road contract.

