

By the Committee on Ways and Means; and Senator Ostalkiewicz

301-2070-98

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; providing an effective date.

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

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28           Section 1. Subsection (8) of section 212.0506, Florida  
29 Statutes, is amended, present subsection (10) of that section  
30 is renumbered as subsection (11), and a new subsection (10) is  
31 added to that section, to read:

1           212.0506 Taxation of service warranties.--  
2           (8) If a transaction involves both the issuance of a  
3 service warranty that ~~which~~ is subject to such tax and the  
4 issuance of a warranty, guaranty, extended warranty or  
5 extended guaranty, contract, agreement, or other written  
6 promise that ~~which~~ is not subject to such tax, the  
7 consideration shall be separately identified and stated with  
8 respect to the taxable and nontaxable portions of the  
9 transaction. If the consideration is separately apportioned  
10 and identified in good faith, such tax shall apply to the  
11 transaction to the extent that the consideration received or  
12 to be received in connection with the transaction is payment  
13 for a service warranty subject to such tax. If the  
14 consideration is not apportioned in good faith, the department  
15 may reform the contract; such reformation by the department is  
16 to be considered prima facie correct, and the burden to show  
17 the contrary rests upon the dealer. If the consideration for  
18 such a transaction is not separately identified and stated,  
19 the entire transaction is taxable.

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

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

27           212.0515 Sales from vending machines; sales to vending  
28 machine operators; special provisions; registration; quarterly  
29 reports; penalties.--

30           (1) As used in this section:

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

5 (b) "Operator" means any person who possesses a  
6 vending machine for the purpose of generating sales through  
7 that machine and who maintains the inventory in and removes  
8 the receipts from that vending machine.

9 (2) Notwithstanding any other provision of law, the  
10 amount of the tax to be paid on food, beverages, or other ~~and~~  
11 ~~beverage~~ items of tangible personal property that are sold in  
12 vending machines shall be calculated by dividing the gross  
13 receipts from such sales for the applicable reporting period  
14 by a divisor, determined as provided in this subsection, to  
15 compute gross taxable sales, and then subtracting gross  
16 taxable sales from gross receipts to arrive at the amount of  
17 tax due. The divisor shall be equal to the sum of 1.0665 for  
18 beverage items, ~~or~~ 1.0645 for food items, or 1.0659 for other  
19 items of tangible personal property, except that for counties  
20 with a 0.5 percent sales surtax rate the divisor shall be  
21 equal to the sum of 1.0707 for beverages and other ~~beverage~~  
22 items of tangible personal property, ~~or~~ 1.0686 for food items,  
23 for counties with a 1 percent sales surtax rate the divisor  
24 shall be equal to the sum of 1.0749 for beverages and other  
25 ~~beverage~~ items of tangible personal property, or 1.0726 for  
26 food items, and for counties with a 1.5 percent sales surtax  
27 rate the divisor shall be equal to the sum of 1.0791 for  
28 beverages and other ~~beverage~~ items of tangible personal  
29 property or 1.0767 for food items. However, the amount of the  
30 tax to be paid on natural fluid milk, homogenized milk,  
31 pasteurized milk, whole milk, chocolate milk, or similar milk

1 products, natural fruit juices, or natural vegetable juices  
2 shall be calculated using the divisor that is specified for  
3 food items. If an operator cannot account for each type of  
4 item sold through a vending machine, the highest tax rate  
5 shall be used for all products sold through that machine.

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

22 (b) The department shall establish a toll-free number  
23 to report any violations of this section. Upon a  
24 determination that a violation has occurred, the department  
25 shall pay the informant a reward of up to 10 percent of  
26 previously unpaid taxes recovered as a result of the  
27 information provided. A person who receives information  
28 concerning a violation of this section from an employee as  
29 specified in s. 213.30 is not eligible for a cash reward.

30 (6) The provisions of this section do not apply to  
31 vending machines owned and operated by churches,~~or~~

1 synagogues, or nonprofit or charitable organizations exempt  
2 pursuant to s. 212.08(7)(z).

3 Section 3. Paragraph (b) of subsection (2) of section  
4 212.054, Florida Statutes, is amended to read:

5 212.054 Discretionary sales surtax; limitations,  
6 administration, and collection.--

7 (2)

8 (b) However:

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

23 2. In the case of utility, telecommunication, or  
24 television system program services billed on or after the  
25 effective date of any such surtax, the entire amount of the  
26 tax for utility, telecommunication, or television system  
27 program services shall be subject to the surtax. In the case  
28 of utility, telecommunication, or television system program  
29 services billed after the last day the surtax is in effect,  
30 the entire amount of the tax on said items shall not be  
31 subject to the surtax.

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

28           4. In the case of any vessel, railroad, or motor  
29 vehicle common carrier entitled to partial exemption from tax  
30 imposed under this chapter pursuant to s. 212.08(4), (8), or  
31 (9), the basis for imposition of surtax shall be the same as

1 provided in s. 212.08 and the ratio shall be applied each  
2 month to total purchases in this state of property qualified  
3 for proration which is delivered or sold in the taxing county  
4 to establish the portion used and consumed in intracounty  
5 movement and subject to surtax.

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

8 212.0598 Special provisions; air carriers.--

9 (2) The basis of the tax shall be the ratio of Florida  
10 mileage to total mileage as determined pursuant to chapter 220  
11 and this section. The ratio shall be determined at the close  
12 of the carrier's preceding fiscal year. However, during the  
13 fiscal year in which the air carrier begins initial operations  
14 in this state, the carrier may determine its mileage  
15 apportionment factor based on an estimated ratio of  
16 anticipated revenue miles in this state to anticipated total  
17 revenue miles. In such cases, the air carrier shall pay  
18 additional tax or apply for a refund based on the actual ratio  
19 for that year.The applicable ratio shall be applied each  
20 month to the carrier's total systemwide gross purchases of  
21 tangible personal property and services otherwise taxable in  
22 Florida. Additionally, the ratio shall be applied each month  
23 to the carrier's total systemwide payments for the lease or  
24 rental of, or license in, real property used by the carrier  
25 substantially for aircraft maintenance if that carrier  
26 employed, on average, during the previous calendar quarter in  
27 excess of 3,000 full-time equivalent maintenance or repair  
28 employees at one maintenance base that it leases, rents, or  
29 has a license in, in this state. In all other instances, the  
30 tax on real property leased, rented, or licensed by the  
31 carrier shall be as provided in s. 212.031.

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

7           212.06 Sales, storage, use tax; collectible from  
8 dealers; "dealer" defined; dealers to collect from purchasers;  
9 legislative intent as to scope of tax.--

10           (1)

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

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

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

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

21           (13) Registered aircraft dealers who purchase aircraft  
22 exclusively for resale and do not pay sales tax on the  
23 purchase price at the time of purchase shall pay a use tax  
24 computed on 1 percent of the value of the aircraft each  
25 calendar month that the aircraft is used by the dealer.  
26 Payment of such tax shall commence in the month during which  
27 the aircraft is first used for any purpose for which income is  
28 received by the dealer. A dealer may pay the sales tax on the  
29 purchase of the aircraft in lieu of the monthly use tax. The  
30 value of the aircraft shall include its acquisition cost and  
31 the cost of reconditioning that enhances the value of the

1 aircraft and shall generally be the value shown on the books  
2 of the dealer in accordance with generally accepted accounting  
3 principles. Notwithstanding the payment by the dealer of tax  
4 computed on 1 percent of the value of any aircraft, if the  
5 aircraft is leased or rented, the dealer shall collect from  
6 the customer and remit the tax that is due on the lease or  
7 rental of the aircraft; such payments do not diminish or  
8 offset any use tax due from the dealer.

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

11 (a) "Real property" means the land and improvements  
12 thereto and fixtures and is synonymous with the terms "realty"  
13 and "real estate."

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

27 (c) "Improvements to real property" includes the  
28 activities of building, erecting, constructing, altering,  
29 improving, repairing, or maintaining real property.

30 (15)(a) When a contractor secures rock, shell, fill  
31 dirt, or similar materials from a location that he or she owns

1 or leases and uses such materials to fulfill a real property  
2 contract on the property of another person, the contractor is  
3 the ultimate consumer of such materials and is liable for use  
4 tax thereon. This paragraph does not apply to a person who  
5 secures such materials from a location that he or she owns for  
6 use on his or her own property. The basis upon which the  
7 contractor shall remit the tax is the fair retail market value  
8 determined by establishing either the price he or she would  
9 have to pay for it on the open market or the price he or she  
10 would regularly charge if he or she sold it to other  
11 contractors or users.

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

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

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

30 Section 6. This act shall take effect July 1, 1998.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1690

The following substantial change is made in the committee substitute:

1. The provision stating that any person receiving information from a Department of Revenue employee is not eligible for any cash award for all taxes covered by chapter 213, F.S., is removed from the bill. The bill's effect is limited to awards dealing with vending machines, which was the extent of the rule the Department found to be without authority.