

By Senator Ostalkiewicz

12-1534-98

1                                   A bill to be entitled  
2           An act relating to the tax on sales, use, and  
3           other transactions (RAB); amending s. 212.02,  
4           F.S.; defining the terms "itinerant merchant"  
5           and "flea market operator, manager, lessor, or  
6           owner"; amending s. 212.07, F.S.; prescribing  
7           dealer liability for certain tax; prescribing  
8           tax liability for sales of race horses in  
9           claiming races; defining the terms "farmer" and  
10          "livestock"; amending s. 212.08, F.S.;  
11          exempting certain sales of racing dogs;  
12          amending s. 212.09, F.S.; revising provisions  
13          regulating credits for trade-ins; amending s.  
14          212.17, F.S.; providing for reimbursement of  
15          certain taxes paid by dealers; amending s.  
16          212.18, F.S.; prescribing procedures for  
17          remittance of tax on sales at flea markets;  
18          providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22           Section 1. Subsections (27) and (28) are added to  
23 section 212.02, Florida Statutes, to read:

24           212.02 Definitions.--The following terms and phrases  
25 when used in this chapter have the meanings ascribed to them  
26 in this section, except where the context clearly indicates a  
27 different meaning:

28           (27) "Itinerant merchant" means any person, as defined  
29 in this chapter, who solicits, engages in, transacts, or  
30 offers for sale any new or used merchandise either in one  
31 location or while traveling from place to place in this state,

1 who does not intend to become or who does not become a  
2 permanent merchant at any one location, and who for the  
3 purpose of transacting such business rents, hires, leases,  
4 occupies, or uses any building, structure, lot, tract, motor  
5 vehicle, sample case, display case, or any portion thereof,  
6 for the exhibition and sale of goods, wares, or merchandise.  
7 Flea market vendors are included within this definition.  
8 However, an itinerant merchant does not mean any person who  
9 occasionally sells tangible personal property from his place  
10 of residence, if the person does not hold himself out as  
11 engaged in business and if the person does not conduct more  
12 than two sales events per calendar year.

13 (28) A "flea market operator, manager, lessor, or  
14 owner" means any person who provides space to flea market  
15 vendors.

16 Section 2. Paragraph (c) is added to subsection (1) of  
17 section 212.07, Florida Statutes, and subsections (5) and (8)  
18 of that section are amended, to read:

19 212.07 Sales, storage, use tax; tax added to purchase  
20 price; dealer not to absorb; liability of purchasers who  
21 cannot prove payment of the tax; penalties; general  
22 exemptions.--

23 (1)

24 (c) Unless the purchaser of tangible personal property  
25 that is incorporated into tangible personal property  
26 manufactured, produced, compounded, processed, or fabricated  
27 for one's own use and subject to the tax imposed under s.  
28 212.06(1)(b) or is purchased for export under s.  
29 212.06(5)(a)1. extends a certificate in compliance with the  
30 rules of the department, the dealer shall himself or herself  
31 be liable for and pay the tax.

1           (5)(a) The gross proceeds derived from the sale in  
2 this state of livestock, poultry, and other farm products  
3 direct from the farm are exempted from the tax levied by this  
4 chapter provided such sales are made directly by the  
5 producers. The producers shall be entitled to such exemptions  
6 although the livestock so sold in this state may have been  
7 registered with a breeders' or registry association prior to  
8 the sale and although the sale takes place at a livestock show  
9 or race meeting, so long as the sale is made by the original  
10 producer and within this state. When sales of livestock,  
11 poultry, or other farm products are made to consumers by any  
12 person, as defined herein, other than a producer, they are not  
13 exempt from the tax imposed by this chapter. The foregoing  
14 exemption does not apply to ornamental nursery stock offered  
15 for retail sale by the producer.

16           (b) Sales of race horses at claiming races are  
17 taxable; however, if sufficient information is provided by  
18 race track officials to properly administer the tax, sales tax  
19 is due only on the maximum single amount for which a horse is  
20 sold at all races at which it is claimed during an entire  
21 racing season.

22           (8)(a) The term "agricultural commodity," for the  
23 purposes of this section ~~hereof~~, means horticultural, poultry  
24 and farm products, and livestock and livestock products.

25           (b) The term "farmer," for the purposes of this  
26 section, means a person directly engaged in the business of  
27 producing crops, livestock, or other farm products. The term  
28 includes, but is not limited to, horse breeders, nurserymen,  
29 dairymen, poultry men, cattle ranchers, apiarists, and persons  
30 raising fish for human consumption. The term does not include  
31 persons engaged in the business of breeding and raising

1 animals for use as pets, including, but not limited to,  
2 tropical birds and fish, or persons engaged in the business of  
3 raising or displaying exotic animals.

4 (c) The term "livestock," for the purposes of this  
5 section, means any animal raised for commercial purposes other  
6 than for sale or use in a display or show or for sale or use  
7 as a pet.

8 Section 3. Paragraph (qq) is added to subsection (7)  
9 of section 212.08, Florida Statutes, to read:

10 212.08 Sales, rental, use, consumption, distribution,  
11 and storage tax; specified exemptions.--The sale at retail,  
12 the rental, the use, the consumption, the distribution, and  
13 the storage to be used or consumed in this state of the  
14 following are hereby specifically exempt from the tax imposed  
15 by this chapter.

16 (7) MISCELLANEOUS EXEMPTIONS.--

17 (qq) Racing dogs.--The sale of a racing dog by its  
18 owner is exempt if the owner is also the breeder of the  
19 animal.

20 Section 4. Section 212.09, Florida Statutes, is  
21 amended to read:

22 212.09 Trade-ins deducted.--

23 (1) Where used articles, accepted and intended for  
24 resale, are taken in trade, or a series of trades, as a credit  
25 or part payment on the sale of new articles, the tax levied by  
26 this chapter shall be paid on the sales price of the new  
27 article, less the credit for the used article taken in trade.

28 (2) Where used articles, accepted and intended for  
29 resale, are taken in trade, or a series of trades, as a credit  
30 or part payment on the sale of used articles, the tax levied  
31

1 by this chapter shall be paid on the sales price of the used  
2 article less the credit for the used article taken in trade.

3 (3) A person who is not registered with the department  
4 as a seller of aircraft, boats, mobile homes, or vehicles who  
5 is selling an aircraft, boat, mobile home, or vehicle and who  
6 takes in trade an item other than an aircraft, boat, mobile  
7 home, or vehicle may not use the item as a credit against  
8 sales price.

9 Section 5. Section 212.17, Florida Statutes, is  
10 amended to read:

11 212.17 Credits for returned goods, sold goods acquired  
12 for dealer's own use, rentals, or admissions; additional  
13 powers of department.--

14 (1)(a) In the event purchases are returned to a ~~the~~  
15 dealer by the purchaser or consumer after the tax imposed by  
16 this chapter has been collected from or charged to the account  
17 of the consumer or user, the dealer shall be entitled to  
18 reimbursement of the amount of tax collected or charged by the  
19 dealer, in the manner prescribed by the department. ~~and in~~  
20 ~~case~~

21 (b) A registered dealer that purchases property for  
22 the dealer's own use, pays tax on acquisition, and sells the  
23 property subsequent to acquisition without ever having used  
24 the property is entitled to reimbursement, in the manner  
25 prescribed by the department, of the amount of tax paid on the  
26 property's acquisition.

27 (c) If the tax has not been remitted by a ~~the~~ dealer  
28 to the department, the dealer may deduct the same in  
29 submitting his or her return upon receipt of a signed  
30 statement of the dealer as to the gross amount of such refunds  
31 during the period covered by said signed statement, which

1 period shall not be longer than 90 days. The department shall  
2 issue to the dealer an official credit memorandum equal to the  
3 net amount remitted by the dealer for such tax collected or  
4 paid. Such memorandum shall be accepted by the department at  
5 full face value from the dealer to whom it is issued, in the  
6 remittance for subsequent taxes accrued under the provisions  
7 of this chapter. ~~If provided, in cases where~~ a dealer has  
8 retired from business and has filed a final return, a refund  
9 of tax may be made if it can be established to the  
10 satisfaction of the department that the tax was not due.

11 (2) A dealer who has paid the tax imposed by this  
12 chapter on tangible personal property sold under a retained  
13 title, conditional sale, or similar contract, or under a  
14 contract wherein the dealer retains a security interest in the  
15 property pursuant to chapter 679, may take credit or obtain a  
16 refund for the tax paid by the dealer on the unpaid balance  
17 due him or her when he or she repossesses (with or without  
18 judicial process) the property within 12 months following the  
19 month in which the property was repossessed. When such  
20 repossessed property is resold, the sale is subject in all  
21 respects to the tax imposed by this chapter.

22 (3) A dealer who has paid the tax imposed by this  
23 chapter on tangible personal property or services may take a  
24 credit or obtain a refund for any tax paid by the dealer on  
25 the unpaid balance due on worthless accounts within 12 months  
26 following the month in which the bad debt has been charged off  
27 for federal income tax purposes. If any accounts so charged  
28 off for which a credit or refund has been obtained are  
29 thereafter in whole or in part paid to the dealer, the amount  
30 so paid shall be included in the first return filed after such  
31 collection and the tax paid accordingly.

1           (4) The department shall design, prepare, print and  
2 furnish to all dealers, or make available to said dealers, all  
3 necessary forms for filing returns and instructions to ensure  
4 a full collection from dealers and an accounting for the taxes  
5 due, but failure of any dealer to secure such forms shall not  
6 relieve such dealer from the payment of said tax at the time  
7 and in the manner herein provided.

8           (5) The department and its assistants are hereby  
9 authorized and empowered to administer the oath for the  
10 purpose of enforcing and administering the provisions of this  
11 chapter.

12           (6) The department shall have the power to make,  
13 prescribe and publish reasonable rules and regulations not  
14 inconsistent with this chapter, or the other laws, or the  
15 constitution of this state, or the United States, for the  
16 enforcement of the provisions of this chapter and the  
17 collection of revenue hereunder, and such rules and  
18 regulations shall when enforced be deemed to be reasonable and  
19 just.

20           (7) The department, where admissions, license fees, or  
21 rental payments or payments for services are made and  
22 thereafter returned to the payers after the taxes thereon have  
23 been paid, shall return or credit the taxpayer for taxes so  
24 paid on the moneys returned in the same manner as is provided  
25 for returns or credits of taxes where purchases or tangible  
26 personal property are returnable to a dealer.

27           Section 6. Subsection (3) of section 212.18, Florida  
28 Statutes, is amended, and subsection (6) is added to that  
29 section, to read:

30           212.18 Administration of law; registration of dealers;  
31 rules.--

1           (3)(a) Every person desiring to engage in or conduct  
2 business in this state as a dealer, as defined in this  
3 chapter, or to lease, rent, or let or grant licenses in living  
4 quarters or sleeping or housekeeping accommodations in hotels,  
5 apartment houses, roominghouses, or tourist or trailer camps  
6 that are subject to tax under s. 212.03, or to lease, rent, or  
7 let or grant licenses in real property, as defined in this  
8 chapter, and every person who sells or receives anything of  
9 value by way of admissions, must file with the department an  
10 application for a certificate of registration for each place  
11 of business, showing the names of the persons who have  
12 interests in such business and their residences, the address  
13 of the business, and such other data as the department may  
14 reasonably require. However, itinerant merchants selling  
15 exclusively at flea markets may in lieu of registration remit  
16 tax on their sales to the flea market operator in the manner  
17 provided for in subsection (6) provided they fall below the  
18 threshold requirement for individual registration specified in  
19 such subsection.The department may appoint the county tax  
20 collector as the department's agent to accept applications for  
21 registrations. The application must be made to the department  
22 before the person, firm, copartnership, or corporation may  
23 engage in such business, and it must be accompanied by a  
24 registration fee of \$5. However, a registration fee is not  
25 required to accompany an application to engage in or conduct  
26 business to make mail order sales. The department, upon  
27 receipt of such application, will grant to the applicant a  
28 separate certificate of registration for each place of  
29 business, which certificate may be canceled by the department  
30 or its designated assistants for any failure by the  
31 certificateholder to comply with any of the provisions of this



1 chapter. The certificate is not assignable and is valid only  
2 for the person, firm, copartnership, or corporation to which  
3 issued. The certificate must be placed in a conspicuous place  
4 in the business or businesses for which it is issued and must  
5 be displayed at all times. Except as provided in this  
6 paragraph, no person shall engage in business as a dealer or  
7 in leasing, renting, or letting of or granting licenses in  
8 living quarters or sleeping or housekeeping accommodations in  
9 hotels, apartment houses, roominghouses, tourist or trailer  
10 camps, or real property as hereinbefore defined, nor shall any  
11 person sell or receive anything of value by way of admissions,  
12 without first having obtained such a certificate or after such  
13 certificate has been canceled; no person shall receive any  
14 license from any authority within the state to engage in any  
15 such business without first having obtained such a certificate  
16 or after such certificate has been canceled. The engaging in  
17 the business of selling or leasing tangible personal property  
18 or services or as a dealer, as defined in this chapter, or the  
19 engaging in leasing, renting, or letting of or granting  
20 licenses in living quarters or sleeping or housekeeping  
21 accommodations in hotels, apartment houses, roominghouses, or  
22 tourist or trailer camps that are taxable under this chapter,  
23 or real property, or the engaging in the business of selling  
24 or receiving anything of value by way of admissions, without  
25 such certificate first being obtained or after such  
26 certificate has been canceled by the department, is  
27 prohibited. The failure or refusal of any person, firm,  
28 copartnership, or corporation to so qualify when required  
29 hereunder is a misdemeanor of the first degree, punishable as  
30 provided in s. 775.082 or s. 775.083, or subject to injunctive  
31 proceedings as provided by law. Such failure or refusal also

1 subjects the offender to a \$100 initial registration fee in  
2 lieu of the \$5 registration fee authorized in this paragraph.  
3 However, the department may waive the increase in the  
4 registration fee if it is determined by the department that  
5 the failure to register was due to reasonable cause and not to  
6 willful negligence, willful neglect, or fraud.

7 (b) The department may revoke any dealer's certificate  
8 of registration when the dealer fails to comply with this  
9 chapter. Prior to revocation of a dealer's certificate of  
10 registration, the department must schedule an informal  
11 conference at which the dealer may present evidence regarding  
12 the department's intended revocation or enter into a  
13 compliance agreement with the department. The department must  
14 notify the dealer of its intended action and the time, place,  
15 and date of the scheduled informal conference by written  
16 notification sent by U.S. mail to the dealer's last known  
17 address of record furnished by the dealer on a form prescribed  
18 by the department. The dealer is required to attend the  
19 informal conference and present evidence refuting the  
20 department's intended revocation or enter into a compliance  
21 agreement with the department which resolves the dealer's  
22 failure to comply with this chapter. The department shall  
23 issue an administrative complaint under s. 120.60 if the  
24 dealer fails to attend the department's informal conference,  
25 fails to enter into a compliance agreement with the department  
26 resolving the dealer's noncompliance with this chapter, or  
27 fails to comply with the executed compliance agreement.

28 (c)(b) As used in this paragraph, the term "exhibitor"  
29 means a person who enters into an agreement authorizing the  
30 display of tangible personal property or services at a  
31

1 convention or a trade show. The following provisions apply to  
2 the registration of exhibitors as dealers under this chapter:

3 1. An exhibitor whose agreement prohibits the sale of  
4 tangible personal property or services subject to the tax  
5 imposed in this chapter is not required to register as a  
6 dealer.

7 2. An exhibitor whose agreement provides for the sale  
8 at wholesale only of tangible personal property or services  
9 subject to the tax imposed in this chapter must obtain a  
10 resale certificate from the purchasing dealer but is not  
11 required to register as a dealer.

12 3. An exhibitor whose agreement authorizes the retail  
13 sale of tangible personal property or services subject to the  
14 tax imposed in this chapter must register as a dealer and  
15 collect the tax imposed under this chapter on such sales.

16 4. Any exhibitor who makes a mail order sale pursuant  
17 to s. 212.0596 must register as a dealer.

18

19 Any person who conducts a convention or a trade show must make  
20 their exhibitor's agreements available to the department for  
21 inspection and copying.

22 (6)(a) Notwithstanding the requirements of subsection  
23 (3), a flea market operator, manager, lessor, or owner shall:

24 1. Register with the Department of Revenue. Only one  
25 tax number is required for each flea market business location.  
26 The flea market operator, manager, lessor, or owner shall  
27 remit the tax collected on the space rentals and the tax  
28 collected from unregistered flea market vendors under this  
29 number monthly, unless otherwise notified.

30 2. Collect tax on all space rentals from flea market  
31 vendors and remit it to the department. The amount of tax

1 shall be separately stated from the rental charge and must be  
2 shown as Florida tax on any rental agreement, invoice, or  
3 other tangible evidence that authorizes the use of the rental  
4 space.

5 3.a. Obtain from each unregistered flea market vendor  
6 a signed statement declaring that the unregistered flea market  
7 vendor agrees to collect the applicable tax on his sales and  
8 remit it to the flea market operator, manager, lessor, or  
9 owner at the close of each business day. The statement shall  
10 include both the permanent business address, if applicable,  
11 and the residence address of the flea market vendor. Records  
12 of taxes collected and remitted shall be retained for the  
13 period specified in s. 213.35. The flea market operator,  
14 manager, lessor, or owner is not responsible for the failure  
15 of the flea market vendor to properly collect, remit, and  
16 account for the sales tax.

17 b. Provide each unregistered flea market vendor with a  
18 sign no smaller than 8" x 10" with lettering at least 1" high,  
19 which must be displayed in a conspicuous place at the stall or  
20 other place of sale by the vendor and which reads as follows:

21 "Name of vendor" is duly authorized to collect  
22 Florida sales tax for remittance by the flea  
23 market operator to the Department of Revenue.

24 c. Furnish unregistered flea market vendors with tax  
25 envelopes so that the unregistered vendor can record the daily  
26 sales transactions and remit the taxes collected and due to  
27 the flea market operator, manager, lessor, or owner. The  
28 department may adopt necessary rules to prescribe the format  
29 for the tax envelopes.

30 4.a. Obtain from each registered flea market vendor a  
31 photocopy of the vendor's Certificate of Registration or, in

1 lieu thereof, a statement from the registered vendor attesting  
2 that the vendor has a valid Certificate of Registration. The  
3 statement should contain the registration number and the  
4 effective date the number was issued and should be signed by  
5 the vendor.

6 b. Provide each registered flea market vendor with a  
7 sign no smaller than 8" x 10" with lettering at least 1" high,  
8 which must be displayed in a conspicuous place at the stall or  
9 other place of sale by the vendor and which reads as follows:

10 "Name of vendor" is duly authorized to collect  
11 and remit Florida sales tax to the Department  
12 of Revenue.

13 (b) A flea market operator, manager, lessor, or owner  
14 may refuse to lease space to any flea market vendor who fails  
15 to provide the documents required under subparagraph (a)3. or  
16 subparagraph 4. These documents shall be retained for a period  
17 of 5 years.

18 (c) A flea market operator, manager, lessor, or owner  
19 is required to remit the sales tax collected from each  
20 unregistered flea market vendor when the vendor has collected  
21 and remitted the tax to the flea market operator, manager,  
22 lessor, or owner at the same time and on the same tax return  
23 as required for the space rentals. Flea market vendors with an  
24 estimated monthly sales tax liability of \$50 or greater must  
25 register with the department and report their own taxes. Flea  
26 market vendors with an estimated monthly sales tax liability  
27 of less than \$50 must elect to either remit the tax to the  
28 flea market operator, manager, lessor, or owner or to  
29 register, report, and remit their own taxes. Taxes collected  
30 become state funds at the moment of collection. Any person  
31 who, with intent to unlawfully deprive or defraud the state of

1 its moneys or the use or benefit thereof, fails to remit taxes  
2 collected pursuant to chapter 212 is guilty of theft of state  
3 funds, punishable as provided in s. 775.082, s. 775.083, or s.  
4 775.084.

5 (d) A flea market operator, manager, lessor, or owner  
6 shall furnish and post signs at each entrance of the flea  
7 market and in other conspicuous places throughout the flea  
8 market area. Such signs must state that "Florida Law Requires  
9 Sales Tax To Be Collected On All Taxable Sales." The signs  
10 shall have lettering at least 3 inches high.

11 Section 7. This act shall take effect July 1, 1998.

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14 SENATE SUMMARY

15 Defines the terms "itinerant merchant," "flea market  
16 operator, manager, lessor, or owner," "farmer," and  
17 "livestock." Provides that a dealer is personally liable  
18 for tax if he or she has not extended a certificate in  
19 compliance with Department of Revenue rules, unless the  
20 purchase meets specific criteria. Provides that sales of  
21 race horses at claiming races are taxable. Exempts sales  
22 of racing dogs from taxation when the owner is also the  
23 breeder. Provides that persons not registered as dealers  
24 in aircraft, boats, mobile homes, or vehicles may not use  
25 a trade-in of other items as a credit against the sales  
26 price when selling an aircraft, boat, mobile home, or  
27 vehicle. Authorizes reimbursement of sales taxes paid on  
28 items bought for a dealer's own use but subsequently  
29 resold without use. Prescribes conditions under which  
30 persons selling at flea markets must remit the taxes they  
31 collect and conditions under which they may remit through  
the flea market operator, manager, lessor, or owner.