

By Senator Ostalkiewicz

12-1536-98

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions (RAB); amending s. 212.08,
4 F.S.; revising eligibility standards for the
5 partial exemption for farm equipment; providing
6 additional uses to which equipment may be put
7 and be eligible for the exemption; specifying
8 that other uses will result in disallowance of
9 the exemption; revising exemption standards for
10 water; exempting disinfectants, pesticides,
11 weed killers, certain seeds, cuttings,
12 seedlings, plants, and specified packaging
13 items in agricultural use; exempting paint
14 color cards and other color samples available
15 at no charge; providing guidelines for
16 determining applicability of exemption for
17 sales to a governmental entity to sales of
18 tangible personal property to contractors for
19 incorporation into public works; providing
20 guidelines for determining applicability of
21 sales surtaxes to certain transactions;
22 authorizing aircraft to be returned to the
23 state under specified circumstances without
24 incurring tax liability; providing an effective
25 date.

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

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29 Section 1. Subsections (3), (6), and (9), paragraph
30 (a) of subsection (4), paragraph (a) of subsection (5), and
31 paragraph (d) of subsection (11) of section 212.08, Florida

1 Statutes, are amended, and paragraph (k) is added to
2 subsection (5) of that section, to read:

3 212.08 Sales, rental, use, consumption, distribution,
4 and storage tax; specified exemptions.--The sale at retail,
5 the rental, the use, the consumption, the distribution, and
6 the storage to be used or consumed in this state of the
7 following are hereby specifically exempt from the tax imposed
8 by this chapter.

9 (3) EXEMPTIONS, PARTIAL; CERTAIN FARM
10 EQUIPMENT.--There shall be taxable at the rate of 3 percent
11 the sale, use, consumption, or storage for use in this state
12 of self-propelled or power-drawn farm equipment used
13 exclusively by a farmer on a farm owned, leased, or
14 sharecropped by the farmer in plowing, planting, cultivating,
15 or harvesting crops or for fire prevention and suppression
16 work. The rental of self-propelled or power-drawn farm
17 equipment shall be taxed at the rate of 6 percent. The 3
18 percent tax rate provided for machines and farm equipment
19 shall be disallowed when such machines and equipment are used
20 by the farmer for activities other than plowing, planting,
21 cultivating, harvesting crops, or fire prevention and
22 suppression work on a farm owned, leased, or sharecropped by
23 him within 6 months after the date of purchase. The fact that
24 the amount of other use derived from such machines and farm
25 equipment may be relatively insignificant is irrelevant. In
26 such cases, it is the farmer's responsibility to disclose the
27 facts to the Department of Revenue and pay the amount of tax
28 difference due on the basis of 6 percent of the cost price at
29 the time of purchase.

30 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES,
31 ETC.--

1 (a) Also exempt are:

2 1. Water delivered to the purchaser through pipes or
3 conduits or delivered for irrigation purposes. The sale of
4 drinking water in bottles, cans, or other containers,
5 including water that contains minerals or carbonation in its
6 natural state or water to which minerals have been added at a
7 water treatment facility regulated by the Department of
8 Environmental Protection, is exempt. This exemption does not
9 apply to the sale of drinking water in bottles, cans, or other
10 containers if carbonation, minerals, or flavorings, except
11 those added at a water treatment facility, have been added.
12 ~~(not exempting mineral water or carbonated water).~~

13 2. All fuels used by a public or private utility,
14 including any municipal corporation or rural electric
15 cooperative association, in the generation of electric power
16 or energy for sale. Fuel other than motor fuel and diesel
17 fuel is taxable as provided in this chapter with the exception
18 of fuel expressly exempt herein. Motor fuels and diesel fuels
19 are taxable as provided in chapter 206, with the exception of
20 those motor fuels and diesel fuels used by railroad
21 locomotives or vessels to transport persons or property in
22 interstate or foreign commerce, which are taxable under this
23 chapter only to the extent provided herein. The basis of the
24 tax shall be the ratio of intrastate mileage to interstate or
25 foreign mileage traveled by the carrier's railroad locomotives
26 or vessels that were used in interstate or foreign commerce
27 and that had at least some Florida mileage during the previous
28 fiscal year of the carrier, such ratio to be determined at the
29 close of the fiscal year of the carrier. This ratio shall be
30 applied each month to the total Florida purchases made in this
31 state of motor and diesel fuels to establish that portion of

1 the total used and consumed in intrastate movement and subject
2 to tax under this chapter. The basis for imposition of any
3 discretionary surtax shall be set forth in s. 212.054. Fuels
4 used exclusively in intrastate commerce do not qualify for the
5 proration of tax.

6 3. The transmission or wheeling of electricity.

7 (5) EXEMPTIONS; ACCOUNT OF USE.--

8 (a) Items in agricultural use and certain nets.--There
9 are exempt from the tax imposed by this chapter nets designed
10 and used exclusively by commercial fisheries; disinfectants,
11 fertilizers, insecticides, pesticides, herbicides, and
12 fungicides, and weed killers used for application on crops or
13 groves, including commercial nurseries and home vegetable
14 gardens, used in dairy barns or on poultry farms and used
15 directly on livestock for the purpose of protecting livestock;
16 portable containers used for processing farm products; field
17 and garden seeds, including flower seeds; nursery stock,
18 seedlings, cuttings, or other propagative material purchased
19 for growing stock; seeds, seedlings, cuttings, and plants used
20 to produce food for human consumption; cloth, plastic, and
21 other similar materials used for shade, mulch, or protection
22 from frost or insects on a farm; and liquefied petroleum gas
23 or other fuel used to heat a structure in which started
24 pullets or broilers are raised; however, such exemption shall
25 not be allowed unless the purchaser or lessee signs a
26 certificate stating that the item to be exempted is for the
27 exclusive use designated herein. Also exempt are cellophane
28 wrappers, glue for tin and glass (apiarists), mailing cases
29 for honey, shipping cases, window cartons, and baling wire
30 and twine used for baling hay, when used by a farmer to
31 contain, produce, or process an agricultural commodity.

1 (k) Paint color cards.--Paint color cards and other
2 color samples available at no charge are exempt.

3 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
4 also exempt from the tax imposed by this chapter sales made to
5 the United States Government, a state, or any county,
6 municipality, or political subdivision of a state when payment
7 is made directly to the dealer by the governmental entity.
8 This exemption shall not inure to any transaction otherwise
9 taxable under this chapter when payment is made by a
10 government employee by any means, including, but not limited
11 to, cash, check, or credit card when that employee is
12 subsequently reimbursed by the governmental entity. This
13 exemption does not include sales of tangible personal property
14 made to contractors employed either directly or as agents of
15 any such government or political subdivision thereof when such
16 tangible personal property goes into or becomes a part of
17 public works owned by such government or political
18 subdivision. A determination whether a particular transaction
19 is properly characterized as an exempt sale to a government
20 entity or a taxable sale to a contractor shall be based on the
21 substance of the transaction rather than the form in which the
22 transaction is cast. The department shall adopt rules that
23 give special consideration to factors that govern the status
24 of the tangible personal property before its affixation to
25 real property. In developing these rules, assumption of the
26 risk of damage or loss is of paramount consideration in the
27 determination.~~This exemption does not include sales of~~
28 ~~tangible personal property made to contractors employed either~~
29 ~~directly or as agents of any such government or political~~
30 ~~subdivision thereof when such tangible personal property goes~~
31 ~~into or becomes a part of public works owned by such~~

1 ~~government or political subdivision thereof.~~This exemption
2 does not include sales, rental, use, consumption, or storage
3 for use in any political subdivision or municipality in this
4 state of machines and equipment and parts and accessories
5 therefor used in the generation, transmission, or distribution
6 of electrical energy by systems owned and operated by a
7 political subdivision in this state for transmission or
8 distribution expansion. Likewise exempt are charges for
9 services rendered by radio and television stations, including
10 line charges, talent fees, or license fees and charges for
11 films, videotapes, and transcriptions used in producing radio
12 or television broadcasts. The exemption provided in this
13 subsection does not include sales, rental, use, consumption,
14 or storage for use in any political subdivision or
15 municipality in this state of machines and equipment and parts
16 and accessories therefor used in providing two-way
17 telecommunications services to the public for hire by the use
18 of a telecommunications facility, as defined in s. 364.02(13),
19 and for which a certificate is required under chapter 364,
20 which facility is owned and operated by any county,
21 municipality, or other political subdivision of the state.
22 Any immunity of any political subdivision of the state or
23 other entity of local government from taxation of the property
24 used to provide telecommunication services that is taxed as a
25 result of this section is hereby waived. However, the
26 exemption provided in this subsection includes transactions
27 taxable under this part which are for use by the operator of a
28 public-use airport, as defined in s. 322.004, in providing
29 such telecommunications services for the airport or its
30 tenants, concessionaires, or licensees, or which are for use
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1 by a public hospital for the provision of such
2 telecommunications services.

3 (9) PARTIAL EXEMPTIONS; RAILROADS AND MOTOR VEHICLES
4 ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.--

5 (a) Railroads which are licensed as common carriers by
6 the Interstate Commerce Commission and parts thereof used to
7 transport persons or property in interstate or foreign
8 commerce are subject to tax imposed in this chapter only to
9 the extent provided herein. The basis of the tax shall be the
10 ratio of intrastate mileage to interstate or foreign mileage
11 traveled by the carrier during the previous fiscal year of the
12 carrier. Such ratio is to be determined at the close of the
13 carrier's fiscal year. This ratio shall be applied each month
14 to the total purchases of the railroad which are used in this
15 state to establish that portion of the total used and consumed
16 in intrastate movement and subject to tax under this chapter.
17 The basis for imposition of any discretionary surtax is set
18 forth in s. 212.054. Railroads which are licensed as common
19 carriers by the Interstate Commerce Commission and parts
20 thereof used to transport persons or property in interstate
21 and foreign commerce are hereby determined to be susceptible
22 to a distinct and separate classification for taxation under
23 the provisions of this chapter.

24 (b) Motor vehicles which are engaged in interstate
25 commerce as common carriers, and parts thereof, used to
26 transport persons or property in interstate or foreign
27 commerce are subject to tax imposed in this chapter only to
28 the extent provided herein. The basis of the tax shall be the
29 ratio of intrastate mileage to interstate or foreign mileage
30 traveled by the carrier's motor vehicles which were used in
31 interstate or foreign commerce and which had at least some

1 Florida mileage during the previous fiscal year of the
2 carrier. Such ratio is to be determined at the close of the
3 carrier's fiscal year. This ratio shall be applied each month
4 to the total purchases of such motor vehicles and parts
5 thereof which are used in this state to establish that portion
6 of the total used and consumed in intrastate movement and
7 subject to tax under this chapter. The basis for imposition of
8 any discretionary surtax is set forth in s. 212.054. Motor
9 vehicles which are engaged in interstate commerce, and parts
10 thereof, used to transport persons or property in interstate
11 and foreign commerce are hereby determined to be susceptible
12 to a distinct and separate classification for taxation under
13 the provisions of this chapter. Motor vehicles and parts
14 thereof used exclusively in intrastate commerce do not qualify
15 for the proration of tax. For purposes of this paragraph,
16 parts of a motor vehicle engaged in interstate commerce
17 include a separate tank not connected to the fuel supply
18 system of the motor vehicle into which diesel fuel is placed
19 to operate a refrigeration unit or other equipment.

20 (11) PARTIAL EXEMPTION; FLYABLE AIRCRAFT.--

21 (d) The purchaser shall execute a sworn affidavit
22 attesting that he or she is not a resident of this state and
23 stating where the aircraft will be domiciled. If the aircraft
24 is subsequently used in this state within 6 months of the time
25 of purchase, in violation of the intent of this subsection,
26 the purchaser shall be liable for payment of the full use tax
27 imposed by this chapter and shall be subject to the penalty
28 imposed by s. 212.12(2), which penalty shall be mandatory.
29 Notwithstanding the provisions of this paragraph, the owner of
30 an aircraft purchased pursuant to this subsection may permit
31 the aircraft to be returned to this state for repairs within 6

1 months after the date of sale without the aircraft being in
2 violation of the law and without incurring liability for
3 payment of tax or penalty on the purchase price of the
4 aircraft, so long as the aircraft is removed from this state
5 within 20 days after the completion of the repairs and such
6 removal can be proven by invoices for fuel, tie-down, or
7 hangar charges issued by out-of-state vendors or suppliers.

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

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11 SENATE SUMMARY

12 Extends the partial tax exemption for farm equipment to
13 such equipment used for fire prevention and fire
14 suppression work. Disallows the exemption for equipment
15 used for nonapproved purposes. Revises the exemption for
16 water. Exempts additional items used in agriculture and
17 revises the list of agricultural pursuits to which
18 products may be put and retain their exemption. Exempts
19 paint color cards and other color samples when they are
20 available at no charge. Revises standards for
21 determining when a sale is to a political subdivision and
22 thereby exempt or is to a contractor for incorporation
23 into a public work for a political exemption. Allows
24 aircraft to be returned to the state for repairs within 6
25 months after purchase without incurring tax liability.
26 Provides for determination of applicability of surtaxes
27 to certain of these transactions.
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