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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; revising
8 exemption standards for water; exempting
9 disinfectants, pesticides, weed killers,
10 certain seeds, cuttings, seedlings, plants, and
11 specified packaging items in agricultural use;
12 exempting paint color cards and other color
13 samples available at no charge; providing
14 guidelines for determining applicability of
15 exemption for sales to a governmental entity to
16 sales of tangible personal property to
17 contractors for incorporation into public
18 works; providing guidelines for determining
19 applicability of sales surtaxes to certain
20 transactions; authorizing aircraft to be
21 returned to the state under specified
22 circumstances without incurring tax liability;
23 providing an effective date.
24

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

27 Section 1. Subsections (3), (6), and (9), paragraph
28 (a) of subsection (4), paragraph (a) of subsection (5), and
29 paragraph (d) of subsection (11) of section 212.08, Florida
30 Statutes, are amended, and paragraph (k) is added to
31 subsection (5) of that section, to read:

1 212.08 Sales, rental, use, consumption, distribution,
2 and storage tax; specified exemptions.--The sale at retail,
3 the rental, the use, the consumption, the distribution, and
4 the storage to be used or consumed in this state of the
5 following are hereby specifically exempt from the tax imposed
6 by this chapter.

7 (3) EXEMPTIONS, PARTIAL; CERTAIN FARM
8 EQUIPMENT.--There shall be taxable at the rate of 3 percent
9 the sale, use, consumption, or storage for use in this state
10 of self-propelled or power-drawn farm equipment used
11 exclusively by a farmer on a farm owned, leased, or
12 sharecropped by the farmer in plowing, planting, cultivating,
13 or harvesting crops or for fire prevention and suppression
14 work. The rental of self-propelled or power-drawn farm
15 equipment shall be taxed at the rate of 6 percent.

16 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES,
17 ETC.--

18 (a) Also exempt are:

19 1. Water delivered to the purchaser through pipes or
20 conduits or delivered for irrigation purposes. The sale of
21 drinking water in bottles, cans, or other containers,
22 including water that contains minerals or carbonation in its
23 natural state or water to which minerals have been added at a
24 water treatment facility regulated by the Department of
25 Environmental Protection, is exempt. This exemption does not
26 apply to the sale of drinking water in bottles, cans, or other
27 containers if carbonation, minerals, or flavorings, except
28 those added at a water treatment facility, have been added.

29 ~~(not exempting mineral water or carbonated water).~~

30 2. All fuels used by a public or private utility,
31 including any municipal corporation or rural electric

1 cooperative association, in the generation of electric power
2 or energy for sale. Fuel other than motor fuel and diesel
3 fuel is taxable as provided in this chapter with the exception
4 of fuel expressly exempt herein. Motor fuels and diesel fuels
5 are taxable as provided in chapter 206, with the exception of
6 those motor fuels and diesel fuels used by railroad
7 locomotives or vessels to transport persons or property in
8 interstate or foreign commerce, which are taxable under this
9 chapter only to the extent provided herein. The basis of the
10 tax shall be the ratio of intrastate mileage to interstate or
11 foreign mileage traveled by the carrier's railroad locomotives
12 or vessels that were used in interstate or foreign commerce
13 and that had at least some Florida mileage during the previous
14 fiscal year of the carrier, such ratio to be determined at the
15 close of the fiscal year of the carrier. This ratio shall be
16 applied each month to the total Florida purchases made in this
17 state of motor and diesel fuels to establish that portion of
18 the total used and consumed in intrastate movement and subject
19 to tax under this chapter. The basis for imposition of any
20 discretionary surtax shall be set forth in s. 212.054. Fuels
21 used exclusively in intrastate commerce do not qualify for the
22 proration of tax.

23 3. The transmission or wheeling of electricity.

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

25 (a) Items in agricultural use and certain nets.--There
26 are exempt from the tax imposed by this chapter nets designed
27 and used exclusively by commercial fisheries; disinfectants,
28 fertilizers, insecticides, pesticides, herbicides, and
29 fungicides, and weed killers used for application on crops or
30 groves, including commercial nurseries and home vegetable
31 gardens, used in dairy barns or on poultry farms for the

1 purpose of protecting poultry or livestock, or used directly
2 on poultry or livestock; portable containers used for
3 processing farm products; field and garden seeds, including
4 flower seeds; nursery stock, seedlings, cuttings, or other
5 propagative material purchased for growing stock; seeds,
6 seedlings, cuttings, and plants used to produce food for human
7 consumption; cloth, plastic, and other similar materials used
8 for shade, mulch, or protection from frost or insects on a
9 farm; and liquefied petroleum gas or other fuel used to heat a
10 structure in which started pullets or broilers are raised;
11 however, such exemption shall not be allowed unless the
12 purchaser or lessee signs a certificate stating that the item
13 to be exempted is for the exclusive use designated herein.
14 Also exempt are cellophane wrappers, glue for tin and glass
15 (apiarists), mailing cases for honey, shipping cases, window
16 cartons, and baling wire and twine used for baling hay, when
17 used by a farmer to contain, produce, or process an
18 agricultural commodity.

19 (k) Samples.--Paint color card samples, flooring and
20 wall samples, fabric swatch samples, window covering samples,
21 and similar samples, when such samples serve no useful purpose
22 other than as a comparison of color, texture, or design, are
23 provided by the manufacturer to a dealer or ultimate consumer
24 for no charge, and are given away by the dealer to the
25 ultimate consumer for no charge, are exempt.

26 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
27 also exempt from the tax imposed by this chapter sales made to
28 the United States Government, a state, or any county,
29 municipality, or political subdivision of a state when payment
30 is made directly to the dealer by the governmental entity.
31 This exemption shall not inure to any transaction otherwise

1 taxable under this chapter when payment is made by a
2 government employee by any means, including, but not limited
3 to, cash, check, or credit card when that employee is
4 subsequently reimbursed by the governmental entity. This
5 exemption does not include sales of tangible personal property
6 made to contractors employed either directly or as agents of
7 any such government or political subdivision thereof when such
8 tangible personal property goes into or becomes a part of
9 public works owned by such government or political
10 subdivision. A determination whether a particular transaction
11 is properly characterized as an exempt sale to a government
12 entity or a taxable sale to a contractor shall be based on the
13 substance of the transaction rather than the form in which the
14 transaction is cast. The department shall adopt rules that
15 give special consideration to factors that govern the status
16 of the tangible personal property before its affixation to
17 real property. In developing these rules, assumption of the
18 risk of damage or loss is of paramount consideration in the
19 determination.~~This exemption does not include sales of~~
20 ~~tangible personal property made to contractors employed either~~
21 ~~directly or as agents of any such government or political~~
22 ~~subdivision thereof when such tangible personal property goes~~
23 ~~into or becomes a part of public works owned by such~~
24 ~~government or political subdivision thereof.~~This exemption
25 does not include sales, rental, use, consumption, or storage
26 for use in any political subdivision or municipality in this
27 state of machines and equipment and parts and accessories
28 therefor used in the generation, transmission, or distribution
29 of electrical energy by systems owned and operated by a
30 political subdivision in this state for transmission or
31 distribution expansion. Likewise exempt are charges for

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

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

27 (a) Railroads which are licensed as common carriers by
28 the Interstate Commerce Commission and parts thereof used to
29 transport persons or property in interstate or foreign
30 commerce are subject to tax imposed in this chapter only to
31 the extent provided herein. The basis of the tax shall be the

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

15 (b) Motor vehicles which are engaged in interstate
16 commerce as common carriers, and parts thereof, used to
17 transport persons or property in interstate or foreign
18 commerce are subject to tax imposed in this chapter only to
19 the extent provided herein. The basis of the tax shall be the
20 ratio of intrastate mileage to interstate or foreign mileage
21 traveled by the carrier's motor vehicles which were used in
22 interstate or foreign commerce and which had at least some
23 Florida mileage during the previous fiscal year of the
24 carrier. Such ratio is to be determined at the close of the
25 carrier's fiscal year. This ratio shall be applied each month
26 to the total purchases of such motor vehicles and parts
27 thereof which are used in this state to establish that portion
28 of the total used and consumed in intrastate movement and
29 subject to tax under this chapter. The basis for imposition of
30 any discretionary surtax is set forth in s. 212.054.Motor
31 vehicles which are engaged in interstate commerce, and parts

1 thereof, used to transport persons or property in interstate
2 and foreign commerce are hereby determined to be susceptible
3 to a distinct and separate classification for taxation under
4 the provisions of this chapter. Motor vehicles and parts
5 thereof used exclusively in intrastate commerce do not qualify
6 for the proration of tax. For purposes of this paragraph,
7 parts of a motor vehicle engaged in interstate commerce
8 include a separate tank not connected to the fuel supply
9 system of the motor vehicle into which diesel fuel is placed
10 to operate a refrigeration unit or other equipment.

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

12 (d) The purchaser shall execute a sworn affidavit
13 attesting that he or she is not a resident of this state and
14 stating where the aircraft will be domiciled. If the aircraft
15 is subsequently used in this state within 6 months of the time
16 of purchase, in violation of the intent of this subsection,
17 the purchaser shall be liable for payment of the full use tax
18 imposed by this chapter and shall be subject to the penalty
19 imposed by s. 212.12(2), which penalty shall be mandatory.

20 Notwithstanding the provisions of this paragraph, the owner of
21 an aircraft purchased pursuant to this subsection may permit
22 the aircraft to be returned to this state for repairs within 6
23 months after the date of sale without the aircraft being in
24 violation of the law and without incurring liability for
25 payment of tax or penalty on the purchase price of the
26 aircraft, so long as the aircraft is removed from this state
27 within 20 days after the completion of the repairs and such
28 removal can be proven by invoices for fuel, tie-down, or
29 hangar charges issued by out-of-state vendors or suppliers or
30 similar documentation.

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