

By Senator Kirkpatrick

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A bill to be entitled  
An act relating to the tax on sales, use, and  
other transactions; amending s. 212.05, F.S.;  
providing an exemption on the sale of a  
thoroughbred horse to a nonresident of this  
state; providing conditions that must be met by  
the purchaser and the seller; providing an  
effective date.

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

Section 1. Paragraph (a) of subsection (1) of section  
212.05, Florida Statutes, 1998 Supplement, is amended to read:

212.05 Sales, storage, use tax.--It is hereby declared  
to be the legislative intent that every person is exercising a  
taxable privilege who engages in the business of selling  
tangible personal property at retail in this state, including  
the business of making mail order sales, or who rents or  
furnishes any of the things or services taxable under this  
chapter, or who stores for use or consumption in this state  
any item or article of tangible personal property as defined  
herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is  
levied on each taxable transaction or incident, which tax is  
due and payable as follows:

(a)1.a. At the rate of 6 percent of the sales price of  
each item or article of tangible personal property when sold  
at retail in this state, computed on each taxable sale for the  
purpose of remitting the amount of tax due the state, and  
including each and every retail sale.

1           b. Each occasional or isolated sale of an aircraft,  
2 boat, mobile home, or motor vehicle of a class or type which  
3 is required to be registered, licensed, titled, or documented  
4 in this state or by the United States Government shall be  
5 subject to tax at the rate provided in this paragraph. The  
6 department shall by rule adopt any nationally recognized  
7 publication for valuation of used motor vehicles as the  
8 reference price list for any used motor vehicle which is  
9 required to be licensed pursuant to s. 320.08(1), (2), (3)(a),  
10 (b), (c), or (e), or (9). If any party to an occasional or  
11 isolated sale of such a vehicle reports to the tax collector a  
12 sales price which is less than 80 percent of the average loan  
13 price for the specified model and year of such vehicle as  
14 listed in the most recent reference price list, the tax levied  
15 under this paragraph shall be computed by the department on  
16 such average loan price unless the parties to the sale have  
17 provided to the tax collector an affidavit signed by each  
18 party, or other substantial proof, stating the actual sales  
19 price. Any party to such sale who reports a sales price less  
20 than the actual sales price is guilty of a misdemeanor of the  
21 first degree, punishable as provided in s. 775.082 or s.  
22 775.083. The department shall collect or attempt to collect  
23 from such party any delinquent sales taxes. In addition, such  
24 party shall pay any tax due and any penalty and interest  
25 assessed plus a penalty equal to twice the amount of the  
26 additional tax owed. Notwithstanding any other provision of  
27 law, the Department of Revenue may waive or compromise any  
28 penalty imposed pursuant to this subparagraph.

29           2. This paragraph does not apply to the sale of a boat  
30 or airplane by or through a registered dealer under this  
31 chapter to a purchaser who, at the time of taking delivery, is

1 a nonresident of this state, does not make his or her  
2 permanent place of abode in this state, and is not engaged in  
3 carrying on in this state any employment, trade, business, or  
4 profession in which the boat will be used in this state, or is  
5 a corporation none of the officers or directors of which is a  
6 resident of, or makes his or her permanent place of abode in,  
7 this state, or is a noncorporate entity that has no individual  
8 vested with authority to participate in the management,  
9 direction, or control of the entity's affairs who is a  
10 resident of, or makes his or her permanent abode in, this  
11 state. For purposes of this exemption, either a registered  
12 dealer acting on his or her own behalf as seller, a registered  
13 dealer acting as broker on behalf of a seller, or a registered  
14 dealer acting as broker on behalf of the purchaser may be  
15 deemed to be the selling dealer. This exemption shall not be  
16 allowed unless:

17 a. The purchaser removes a qualifying boat, as  
18 described in sub-subparagraph f., from the state within 90  
19 days after the date of purchase or the purchaser removes a  
20 nonqualifying boat or an airplane from this state within 10  
21 days after the date of purchase or, when the boat or airplane  
22 is repaired or altered, within 20 days after completion of the  
23 repairs or alterations;

24 b. The purchaser, within 30 days from the date of  
25 departure, shall provide the department with written proof  
26 that the purchaser licensed, registered, titled, or documented  
27 the boat or airplane outside the state. If such written proof  
28 is unavailable, within 30 days the purchaser shall provide  
29 proof that the purchaser applied for such license, title,  
30 registration, or documentation. The purchaser shall forward

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1 to the department proof of title, license, registration, or  
2 documentation upon receipt.

3 c. The purchaser, within 10 days of removing the boat  
4 or airplane from Florida, shall furnish the department with  
5 proof of removal in the form of receipts for fuel, dockage,  
6 slippage, tie-down, or hangaring from outside of Florida. The  
7 information so provided must clearly and specifically identify  
8 the boat or aircraft;

9 d. The selling dealer, within 5 days of the date of  
10 sale, shall provide to the department a copy of the sales  
11 invoice, closing statement, bills of sale, and the original  
12 affidavit signed by the purchaser attesting that he or she has  
13 read the provisions of this section;

14 e. The seller makes a copy of the affidavit a part of  
15 his or her record for as long as required by s. 213.35; and

16 f. Unless the nonresident purchaser of a boat of 5 net  
17 tons of admeasurement or larger intends to remove the boat  
18 from this state within 10 days after the date of purchase or  
19 when the boat is repaired or altered, within 20 days after  
20 completion of the repairs or alterations, the nonresident  
21 purchaser shall apply to the selling dealer for a decal which  
22 authorizes 90 days after the date of purchase for removal of  
23 the boat. The department is authorized to issue decals in  
24 advance to dealers. The number of decals issued in advance to  
25 a dealer shall be consistent with the volume of the dealer's  
26 past sales of boats which qualify under this sub-subparagraph.  
27 The selling dealer or his or her agent shall mark and affix  
28 the decals to qualifying boats in the manner prescribed by the  
29 department, prior to delivery of the boat.

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1           (I) The department is hereby authorized to charge  
2 dealers a fee sufficient to recover the costs of decals  
3 issued.

4           (II) The proceeds from the sale of decals will be  
5 deposited into the administrative trust fund.

6           (III) Decals shall display information to identify the  
7 boat as a qualifying boat under this sub-subparagraph,  
8 including, but not limited to, the decal's date of expiration.

9           (IV) The department is authorized to require dealers  
10 who purchase decals to file reports with the department and  
11 may prescribe all necessary records by rule. All such records  
12 are subject to inspection by the department.

13           (V) Any dealer or his or her agent who issues a decal  
14 falsely, fails to affix a decal, mismarks the expiration date  
15 of a decal, or fails to properly account for decals will be  
16 considered prima facie to have committed a fraudulent act to  
17 evade the tax and will be liable for payment of the tax plus a  
18 mandatory penalty of 200 percent of the tax, and shall be  
19 liable for fine and punishment as provided by law for a  
20 conviction of a misdemeanor of the first degree, as provided  
21 in s. 775.082 or s. 775.083.

22           (VI) Any nonresident purchaser of a boat who removes a  
23 decal prior to permanently removing the boat from the state,  
24 or defaces, changes, modifies, or alters a decal in a manner  
25 affecting its expiration date prior to its expiration, or who  
26 causes or allows the same to be done by another, will be  
27 considered prima facie to have committed a fraudulent act to  
28 evade the tax and will be liable for payment of the tax plus a  
29 mandatory penalty of 200 percent of the tax, and shall be  
30 liable for fine and punishment as provided by law for a  
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1 conviction of a misdemeanor of the first degree, as provided  
2 in s. 775.082 or s. 775.083.

3 (VII) The department is authorized to adopt rules  
4 necessary to administer and enforce this subparagraph and to  
5 publish the necessary forms and instructions.

6 (VIII) The department is hereby authorized to adopt  
7 emergency rules pursuant to s. 120.54(4) to administer and  
8 enforce the provisions of this subparagraph.

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10 If the purchaser fails to remove the qualifying boat from this  
11 state within 90 days after purchase or a nonqualifying boat or  
12 an airplane from this state within 10 days after purchase or,  
13 when the boat or airplane is repaired or altered, within 20  
14 days after completion of such repairs or alterations, or  
15 permits the boat or airplane to return to this state within 6  
16 months from the date of departure, or if the purchaser fails  
17 to furnish the department with any of the documentation  
18 required by this subparagraph within the prescribed time  
19 period, the purchaser shall be liable for use tax on the cost  
20 price of the boat or airplane and, in addition thereto,  
21 payment of a penalty to the Department of Revenue equal to the  
22 tax payable. This penalty shall be in lieu of the penalty  
23 imposed by s. 212.12(2) and is mandatory and shall not be  
24 waived by the department. The 90-day period following the  
25 sale of a qualifying boat tax exempt to a nonresident may not  
26 be tolled for any reason. Notwithstanding other provisions of  
27 this paragraph to the contrary, an aircraft purchased in this  
28 state under the provisions of this paragraph may be returned  
29 to this state for repairs within 6 months after the date of  
30 its departure without being in violation of the law and  
31 without incurring liability for the payment of tax or penalty

1 on the purchase price of the aircraft if the aircraft is  
2 removed from this state within 20 days after the completion of  
3 the repairs and if such removal can be demonstrated by  
4 invoices for fuel, tie-down, hangar charges issued by  
5 out-of-state vendors or suppliers, or similar documentation.

6 3. This paragraph does not apply to the sale to a  
7 nonresident of this state of any thoroughbred horse that is  
8 removed from the state within 10 days after purchase. The  
9 purchaser must execute an affidavit stating that the horse  
10 will be removed from this state and must provide to the seller  
11 proof of such removal in the form of shipping invoices, bills  
12 of lading, or similar documentation. The seller must keep the  
13 affidavit and other proof of removal as business records for  
14 as long as records are required to be kept under s. 213.35.

15 Section 2. This act shall take effect July 1, 1999.

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18 SENATE SUMMARY

19 Provides an exemption to the tax on sales, storage, and  
20 use which is imposed by s. 212.05(1)(a), F.S., for the  
21 sale of a thoroughbred horse to a nonresident of Florida.  
22 Provides conditions that must be met by the buyer and by  
23 the seller.  
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