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2 An act relating to tax on sales, use, and other  
3 transactions; amending s. 212.031, F.S.;  
4 providing that the tax on the lease or rental  
5 of or license in real property does not apply  
6 when the property is a public or private street  
7 or right-of-way used by a utility or franchised  
8 cable television company for utility,  
9 television, or communication purposes;  
10 providing a definition for the term "utility";  
11 amending s. 212.05, F.S.; providing that the  
12 sales tax on prepaid calling cards will be  
13 assessed at the point of sale of the card;  
14 providing an effective date.

15

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

17

18 Section 1. Paragraph (a) of subsection (1) of section  
19 212.031, Florida Statutes, 1998 Supplement, is amended to  
20 read:21 212.031 Lease or rental of or license in real  
22 property.--23 (1)(a) It is declared to be the legislative intent  
24 that every person is exercising a taxable privilege who  
25 engages in the business of renting, leasing, letting, or  
26 granting a license for the use of any real property unless  
27 such property is:

- 28 1. Assessed as agricultural property under s. 193.461.
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- 29 2. Used exclusively as dwelling units.
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- 30 3. Property subject to tax on parking, docking, or
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- 31 storage spaces under s. 212.03(6).

1           4. Recreational property or the common elements of a  
2 condominium when subject to a lease between the developer or  
3 owner thereof and the condominium association in its own right  
4 or as agent for the owners of individual condominium units or  
5 the owners of individual condominium units. However, only the  
6 lease payments on such property shall be exempt from the tax  
7 imposed by this chapter, and any other use made by the owner  
8 or the condominium association shall be fully taxable under  
9 this chapter.

10           5. A public or private street or right-of-way and  
11 poles, conduits, fixtures, and similar improvements located on  
12 such streets or rights-of-way, occupied or used by a utility  
13 or franchised cable television company for utility or  
14 communications or television purposes. For purposes of this  
15 subparagraph, the term "utility" means any person providing  
16 utility services as defined in s. 203.012. This exception also  
17 applies to property, excluding buildings, wherever located, on  
18 which antennas, cables, adjacent accessory structures, or  
19 adjacent accessory equipment used in the provision of  
20 cellular, enhanced specialized mobile radio, or personal  
21 communications services are placed.

22           6. A public street or road which is used for  
23 transportation purposes.

24           7. Property used at an airport exclusively for the  
25 purpose of aircraft landing or aircraft taxiing or property  
26 used by an airline for the purpose of loading or unloading  
27 passengers or property onto or from aircraft or for fueling  
28 aircraft.

29           8.a. Property used at a port authority, as defined in  
30 s. 315.02(2), exclusively for the purpose of oceangoing  
31 vessels or tugs docking, or such vessels mooring on property

1 used by a port authority for the purpose of loading or  
2 unloading passengers or cargo onto or from such a vessel, or  
3 property used at a port authority for fueling such vessels, or  
4 to the extent that the amount paid for the use of any property  
5 at the port is based on the charge for the amount of tonnage  
6 actually imported or exported through the port by a tenant.

7         b. The amount charged for the use of any property at  
8 the port in excess of the amount charged for tonnage actually  
9 imported or exported shall remain subject to tax except as  
10 provided in sub-subparagraph a.

11         9. Property used as an integral part of the  
12 performance of qualified production services. As used in this  
13 subparagraph, the term "qualified production services" means  
14 any activity or service performed directly in connection with  
15 the production of a qualified motion picture, as defined in s.  
16 212.06(1)(b), and includes:

17         a. Photography, sound and recording, casting, location  
18 managing and scouting, shooting, creation of special and  
19 optical effects, animation, adaptation (language, media,  
20 electronic, or otherwise), technological modifications,  
21 computer graphics, set and stage support (such as  
22 electricians, lighting designers and operators, greensmen,  
23 prop managers and assistants, and grips), wardrobe (design,  
24 preparation, and management), hair and makeup (design,  
25 production, and application), performing (such as acting,  
26 dancing, and playing), designing and executing stunts,  
27 coaching, consulting, writing, scoring, composing,  
28 choreographing, script supervising, directing, producing,  
29 transmitting dailies, dubbing, mixing, editing, cutting,  
30 looping, printing, processing, duplicating, storing, and  
31 distributing;

1           b. The design, planning, engineering, construction,  
2 alteration, repair, and maintenance of real or personal  
3 property including stages, sets, props, models, paintings, and  
4 facilities principally required for the performance of those  
5 services listed in sub-subparagraph a.; and

6           c. Property management services directly related to  
7 property used in connection with the services described in  
8 sub-subparagraphs a. and b.

9           10. Leased, subleased, or rented to a person providing  
10 food and drink concessionaire services within the premises of  
11 a movie theater, a business operated under a permit issued  
12 pursuant to chapter 550, or any publicly owned arena, sports  
13 stadium, convention hall, exhibition hall, auditorium, or  
14 recreational facility. A person providing retail  
15 concessionaire services involving the sale of food and drink  
16 or other tangible personal property within the premises of an  
17 airport shall be subject to tax on the rental of real property  
18 used for that purpose, but shall not be subject to the tax on  
19 any license to use the property. For purposes of this  
20 subparagraph, the term "sale" shall not include the leasing of  
21 tangible personal property.

22           11. Property occupied pursuant to an instrument  
23 calling for payments which the department has declared, in a  
24 Technical Assistance Advisement issued on or before March 15,  
25 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),  
26 Florida Administrative Code; provided that this subparagraph  
27 shall only apply to property occupied by the same person  
28 before and after the execution of the subject instrument and  
29 only to those payments made pursuant to such instrument,  
30 exclusive of renewals and extensions thereof occurring after  
31 March 15, 1993.

1           Section 2. Paragraph (e) of subsection (1) of section  
2 212.05, Florida Statutes, 1998 Supplement, is amended to read:

3           212.05 Sales, storage, use tax.--It is hereby declared  
4 to be the legislative intent that every person is exercising a  
5 taxable privilege who engages in the business of selling  
6 tangible personal property at retail in this state, including  
7 the business of making mail order sales, or who rents or  
8 furnishes any of the things or services taxable under this  
9 chapter, or who stores for use or consumption in this state  
10 any item or article of tangible personal property as defined  
11 herein and who leases or rents such property within the state.

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

15           (e)1. At the rate of 6 percent on charges for:

16           a. All telegraph messages and long-distance telephone  
17 calls beginning and terminating in this state,  
18 telecommunication service as defined in s. 203.012, and those  
19 services described in s. 203.012(2)(a), except that the tax  
20 rate for charges for telecommunication service is 7 percent.  
21 The tax on calls made with a prepaid telephone calling card  
22 shall be collected at the time of sale and remitted by the  
23 dealer selling or recharging a prepaid telephone card.

24           (I) A prepaid telephone card or authorization number  
25 means the right to exclusively make telephone calls that must  
26 be paid for in advance and that enable the origination of  
27 calls using an access number, prepaid mobile account, or  
28 authorization code, whether manually or electronically dialed.

29           (II) If the sale or recharge of the prepaid telephone  
30 calling card does not take place at the dealer's place of  
31 business, it shall be deemed to take place at the customer's

1 shipping address or, if no item is shipped, at the customer's  
2 address or the location associated with the customer's mobile  
3 telephone number.

4 (III) The prepaid phone card constitutes property in  
5 this state and subjects the selling dealer to the jurisdiction  
6 of this state for purposes of this subsection.

7 b. Any television system program service.

8 c. The installation of telecommunication and  
9 telegraphic equipment.

10 d. Electrical power or energy, except that the tax  
11 rate for charges for electrical power or energy is 7 percent.

12 2. For purposes of this chapter, "television system  
13 program service" means the transmitting, by any means, of any  
14 audio or video signal to a subscriber for other than  
15 retransmission, or the installing, connecting, reconnecting,  
16 disconnecting, moving, or changing of any equipment related to  
17 such service. For purposes of this chapter, the term  
18 "telecommunication service" does not include local service  
19 provided through a pay telephone. The provisions of s.  
20 212.17(3), regarding credit for tax paid on charges  
21 subsequently found to be worthless, shall be equally  
22 applicable to any tax paid under the provisions of this  
23 section on charges for telecommunication or telegraph services  
24 or electric power subsequently found to be uncollectible. The  
25 word "charges" in this paragraph does not include any excise  
26 or similar tax levied by the Federal Government, any political  
27 subdivision of the state, or any municipality upon the  
28 purchase or sale of telecommunication, television system  
29 program, or telegraph service or electric power, which tax is  
30 collected by the seller from the purchaser.

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1           3. Telegraph messages and telecommunication services  
2 which originate or terminate in this state, other than  
3 interstate private communication services, and are billed to a  
4 customer, telephone number, or device located within this  
5 state are taxable under this paragraph. Interstate private  
6 communication services are taxable under this paragraph as  
7 follows:

8           a. One hundred percent of the charge imposed at each  
9 channel termination point within this state;

10           b. One hundred percent of the charge imposed for the  
11 total channel mileage between each channel termination point  
12 within this state; and

13           c. The portion of the interstate interoffice channel  
14 mileage charge as determined by multiplying said charge times  
15 a fraction, the numerator of which is the air miles between  
16 the last channel termination point in this state and the  
17 vertical and horizontal coordinates, 7856 and 1756,  
18 respectively, and the denominator of which is the air miles  
19 between the last channel termination point in this state and  
20 the first channel termination point outside this state. The  
21 denominator of this fraction shall be adjusted, if necessary,  
22 by adding the numerator of said fraction to similarly  
23 determined air miles in the state in which the other channel  
24 termination point is located, so that the summation of the  
25 apportionment factor for this state and the apportionment  
26 factor for the other state is not greater than one, to ensure  
27 that no more than 100 percent of the interstate interoffice  
28 channel mileage charge can be taxed by this state and another  
29 state.

30           4. The tax imposed pursuant to this paragraph shall  
31 not exceed \$50,000 per calendar year on charges to any person

1 for interstate telecommunications services defined in s.  
2 203.012(4) and (7)(b), if the majority of such services used  
3 by such person are for communications originating outside of  
4 this state and terminating in this state. This exemption  
5 shall only be granted to holders of a direct pay permit issued  
6 pursuant to this subparagraph. No refunds shall be given for  
7 taxes paid prior to receiving a direct pay permit. Upon  
8 application, the department may issue a direct pay permit to  
9 the purchaser of telecommunications services authorizing such  
10 purchaser to pay tax on such services directly to the  
11 department. Any vendor furnishing telecommunications services  
12 to the holder of a valid direct pay permit shall be relieved  
13 of the obligation to collect and remit the tax on such  
14 service. Tax payments and returns pursuant to a direct pay  
15 permit shall be monthly. For purposes of this subparagraph,  
16 the term "person" shall be limited to a single legal entity  
17 and shall not be construed as meaning a group or combination  
18 of affiliated entities or entities controlled by one person or  
19 group of persons.

20           5. If the sale of a television system program service,  
21 as defined in this paragraph, also involves the sale of an  
22 item exempt under s. 212.08(7)(j), the tax shall be applied to  
23 the value of the taxable service when it is sold separately.  
24 If the company does not offer this service separately, the  
25 consideration paid shall be separately identified and stated  
26 with respect to the taxable and exempt portions of the  
27 transaction as a condition of the exemption, except that the  
28 amount identified as taxable shall not be less than the cost  
29 of the service.

30           Section 3. This act shall take effect July 1, 1999.

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