

By Representative Albright

1 A bill to be entitled
2 An act relating to tax on sales, use, and other
3 transactions; amending s. 212.05, F.S.;
4 providing an exemption for the sale of a
5 thoroughbred horse to a nonresident; providing
6 requirements with respect thereto; providing an
7 effective date.

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

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11 Section 1. Paragraph (a) of subsection (1) of section
12 212.05, Florida Statutes, 1998 Supplement, is amended to read:

13 212.05 Sales, storage, use tax.--It is hereby declared
14 to be the legislative intent that every person is exercising a
15 taxable privilege who engages in the business of selling
16 tangible personal property at retail in this state, including
17 the business of making mail order sales, or who rents or
18 furnishes any of the things or services taxable under this
19 chapter, or who stores for use or consumption in this state
20 any item or article of tangible personal property as defined
21 herein and who leases or rents such property within the state.

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

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

30 b. Each occasional or isolated sale of an aircraft,
31 boat, mobile home, or motor vehicle of a class or type which

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

27 2. This paragraph does not apply to the sale of a boat
28 or airplane by or through a registered dealer under this
29 chapter to a purchaser who, at the time of taking delivery, is
30 a nonresident of this state, does not make his or her
31 permanent place of abode in this state, and is not engaged in

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

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

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

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

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

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

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

28 (I) The department is hereby authorized to charge
29 dealers a fee sufficient to recover the costs of decals
30 issued.

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

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

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

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

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

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

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

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

1 the repairs and if such removal can be demonstrated by
2 invoices for fuel, tie-down, hangar charges issued by
3 out-of-state vendors or suppliers, or similar documentation.

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

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

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16 HOUSE SUMMARY

17 Provides a sales tax exemption for the sale of a
18 thoroughbred horse to a nonresident if the horse is
19 removed from the state within 10 days.

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