

Bill No. CS for CS for CS for SB 1338

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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11 Senator Saunders moved the following amendment:

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13 **Senate Amendment (with title amendment)**

14 On page 164, before line 1,

15
16 and insert:

17 Section 60. Section 288.1258, Florida Statutes, is
18 created to read:

19 288.1258 Entertainment industry qualified production
20 companies; application procedure; categories; duties of the
21 Department of Revenue; records and reports.--

22 (1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.--

23 (a) Any production company engaged in this state in
24 the production of motion pictures, made-for-TV motion
25 pictures, television series, commercial advertising, music
26 videos, or sound recordings may submit an application to the
27 Department of Revenue to be approved by the Office of the Film
28 Commissioner as a qualified production company for the purpose
29 of receiving a sales and use tax certificate of exemption from
30 the Department of Revenue.

31 (b) For the purposes of this section, the term

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1 "qualified production company" means any production company
2 that has submitted a properly completed application to the
3 Department of Revenue and that is subsequently qualified by
4 the Office of the Film Commissioner.

5 (2) APPLICATION PROCEDURE.--

6 (a)1. The Department of Revenue will review all
7 submitted applications for the required information within 10
8 working days after the receipt of a properly completed
9 application, and the Department of Revenue will forward the
10 completed application to the Office of the Film Commissioner
11 for approval.

12 2. The Office of the Film Commissioner shall establish
13 a process by which an entertainment industry production
14 company may be approved by the office as a qualified
15 production company and may receive a certificate of exemption
16 from the Department of Revenue for the sales and use tax
17 exemptions under ss. 212.031, 212.06, and 212.08.

18 3. Upon determination by the Office of the Film
19 Commissioner that a production company meets the established
20 approval criteria and qualifies for exemption, the Office of
21 the Film Commissioner shall return the approved application or
22 application renewal or extension to the Department of Revenue,
23 which shall issue a certificate of exemption.

24 4. The Office of the Film Commissioner shall deny an
25 application or application for renewal or extension from a
26 production company if it determines that the production
27 company does not meet the established approval criteria.

28 (b) The Office of the Film Commissioner shall develop,
29 with the cooperation of the Department of Revenue and local
30 government entertainment industry promotion agencies, a
31 standardized application form for use in approving qualified

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1 production companies.

2 1. The application form shall include, but not be
3 limited to, production-related information on employment,
4 proposed budgets, planned purchases of items exempted from
5 sales and use taxes under ss. 212.031, 212.06, and 212.08, a
6 signed affirmation from the applicant that any items purchased
7 for which the applicant is seeking a tax exemption are
8 intended for use exclusively as an integral part of
9 entertainment industry preproduction, production, or
10 postproduction activities engaged-in primarily in this state,
11 and a signed affirmation from the Office of the Film
12 Commissioner that the information on the application form has
13 been verified and is correct. In lieu of information on
14 projected employment, proposed budgets, or planned purchases
15 of exempted items, a production company seeking a 1-year
16 certificate of exemption may submit summary historical data on
17 employment, production budgets, and purchases of exempted
18 items related to production activities in this state. Any
19 information gathered from production companies for the
20 purposes of this section shall be considered confidential
21 taxpayer information and shall be disclosed only as provided
22 in s. 213.053.

23 2. The application form may be distributed to
24 applicants by the Office of the Film Commissioner or local
25 film commissions.

26 (c) All applications, renewals, and extensions for
27 designation as a qualified production company shall be
28 processed by the Office of the Film Commissioner.

29 (d) In the event that the Department of Revenue
30 determines that a production company no longer qualifies for a
31 certificate of exemption, or has used a certificate of

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1 exemption for purposes other than those authorized by this
2 section and chapter 212, the Department of Revenue shall
3 revoke the certificate of exemption of that production
4 company, and any sales or use taxes exempted on items
5 purchased or leased by the production company during the time
6 such company did not qualify for a certificate of exemption or
7 improperly used a certificate of exemption shall become
8 immediately due to the Department of Revenue, along with
9 interest and penalty as provided by s. 212.12. In addition to
10 the other penalties imposed by law, any person who knowingly
11 and willfully falsifies an application, or uses a certificate
12 of exemption for purposes other than those authorized by this
13 section and chapter 212, commits a felony of the third degree,
14 punishable as provided in s. 775.082, s. 775.083, and s.
15 775.084.

16 (3) CATEGORIES.--

17 (a)1. A production company may be qualified for
18 designation as a qualified production company for a period of
19 1 year if the company has operated a business in Florida at a
20 permanent address for a period of 12 consecutive months. Such
21 a qualified production company shall receive a single 1-year
22 certificate of exemption from the Department of Revenue for
23 the sales and use tax exemptions under ss. 212.031, 212.06,
24 and 212.08, which certificate shall expire 1 year after
25 issuance or upon the cessation of business operations in the
26 state, at which time the certificate shall be surrendered to
27 the Department of Revenue.

28 2. The Office of the Film Commissioner shall develop a
29 method by which a qualified production company may annually
30 renew a 1-year certificate of exemption for a period of up to
31 5 years without requiring the production company to resubmit a

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1 new application during that 5-year period.

2 3. Any qualified production company may submit a new
3 application for a 1-year certificate of exemption upon the
4 expiration of that company's certificate of exemption.

5 (b)1. A production company may be qualified for
6 designation as a qualified production company for a period of
7 90 days. Such production company shall receive a single 90-day
8 certificate of exemption from the Department of Revenue for
9 the sales and use tax exemptions under ss. 212.031, 212.06,
10 and 212.08, which certificate shall expire 90 days after
11 issuance, with extensions contingent upon approval of the
12 Office of the Film Commissioner. The certificate shall be
13 surrendered to the Department of Revenue upon its expiration.

14 2. Any production company may submit a new application
15 for a 90-day certificate of exemption upon the expiration of
16 that company's certificate of exemption.

17 (4) DUTIES OF THE DEPARTMENT OF REVENUE.--

18 (a) The Department of Revenue shall review the initial
19 application and notify the applicant of any omissions and
20 request additional information if needed. An application is
21 complete upon receipt of all requested information. The
22 Department of Revenue shall forward all complete applications
23 to the Office of the Film Commissioner within 10 working days
24 after the receipt of a properly completed application.

25 (b) The Department of Revenue shall issue a numbered
26 certificate of exemption to a qualified production company
27 within 5 working days of the receipt of an approved
28 application, application renewal, or application extension
29 from the Office of the Film Commissioner.

30 (c) The Department of Revenue may adopt such rules and
31 prescribe and publish such forms as are necessary to

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1 effectuate the purposes of this section or any of the sales
2 tax exemptions which are reasonably related to the provisions
3 of this section.

4 (d) The Department of Revenue is authorized to
5 establish audit procedures in accordance with the provisions
6 of ss. 212.12, 212.13, and 213.34 which relate to the sales
7 tax exemption provisions of this section.

8 (5) RELATIONSHIP OF TAX EXEMPTIONS TO INDUSTRY GROWTH;
9 REPORT TO THE LEGISLATURE.--The Office of the Film
10 Commissioner shall keep annual records from the information
11 provided on taxpayer applications for tax exemption
12 certificates beginning January 1, 2001. These records shall
13 reflect a percentage comparison of the annual amount of funds
14 exempted to the estimated amount of funds expended in relation
15 to entertainment industry products. In addition, the office
16 shall maintain data showing annual growth in Florida-based
17 entertainment industry companies and entertainment industry
18 employment and wages. The Office of the Film Commissioner
19 shall report this information to the Legislature by no later
20 than December 1 of each year.

21 Section 61. Effective January 1, 2001, paragraph (a)
22 of subsection (1) of section 212.031, Florida Statutes, is
23 amended to read:

24 212.031 Lease or rental of or license in real
25 property.--

26 (1)(a) It is declared to be the legislative intent
27 that every person is exercising a taxable privilege who
28 engages in the business of renting, leasing, letting, or
29 granting a license for the use of any real property unless
30 such property is:

31 1. Assessed as agricultural property under s. 193.461.

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1 2. Used exclusively as dwelling units.

2 3. Property subject to tax on parking, docking, or
3 storage spaces under s. 212.03(6).

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

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

25 6. A public street or road which is used for
26 transportation purposes.

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

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1 8.a. Property used at a port authority, as defined in
 2 s. 315.02(2), exclusively for the purpose of oceangoing
 3 vessels or tugs docking, or such vessels mooring on property
 4 used by a port authority for the purpose of loading or
 5 unloading passengers or cargo onto or from such a vessel, or
 6 property used at a port authority for fueling such vessels, or
 7 to the extent that the amount paid for the use of any property
 8 at the port is based on the charge for the amount of tonnage
 9 actually imported or exported through the port by a tenant.

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

14 9. Property used as an integral part of the
 15 performance of qualified production services. As used in this
 16 subparagraph, the term "qualified production services" means
 17 any activity or service performed directly in connection with
 18 the production of a qualified motion picture, as defined in s.
 19 212.06(1)(b), and includes:

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

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1 transmitting dailies, dubbing, mixing, editing, cutting,
2 looping, printing, processing, duplicating, storing, and
3 distributing;

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

9 c. Property management services directly related to
10 property used in connection with the services described in
11 sub-subparagraphs a. and b.

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13 This exemption will inure to the taxpayer upon presentation of
14 the certificate of exemption issued to the taxpayer under the
15 provisions of s. 288.1258.

16 10. Leased, subleased, licensed, or rented to a person
17 providing food and drink concessionaire services within the
18 premises of a convention hall, exhibition hall, auditorium,
19 stadium, theater, arena, civic center, performing arts center,
20 recreational facility, or any business operated under a permit
21 issued pursuant to chapter 550. A person providing retail
22 concessionaire services involving the sale of food and drink
23 or other tangible personal property within the premises of an
24 airport shall be subject to tax on the rental of real property
25 used for that purpose, but shall not be subject to the tax on
26 any license to use the property. For purposes of this
27 subparagraph, the term "sale" shall not include the leasing of
28 tangible personal property.

29 11. Property occupied pursuant to an instrument
30 calling for payments which the department has declared, in a
31 Technical Assistance Advisement issued on or before March 15,

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1 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
 2 Florida Administrative Code; provided that this subparagraph
 3 shall only apply to property occupied by the same person
 4 before and after the execution of the subject instrument and
 5 only to those payments made pursuant to such instrument,
 6 exclusive of renewals and extensions thereof occurring after
 7 March 15, 1993.

8 Section 62. Effective January 1, 2001, paragraph (b)
 9 of subsection (1) of section 212.06, Florida Statutes, is
 10 amended to read:

11 212.06 Sales, storage, use tax; collectible from
 12 dealers; "dealer" defined; dealers to collect from purchasers;
 13 legislative intent as to scope of tax.--

14 (1)

15 (b) Except as otherwise provided, any person who
 16 manufactures, produces, compounds, processes, or fabricates in
 17 any manner tangible personal property for his or her own use
 18 shall pay a tax upon the cost of the product manufactured,
 19 produced, compounded, processed, or fabricated without any
 20 deduction therefrom on account of the cost of material used,
 21 labor or service costs, or transportation charges,
 22 notwithstanding the provisions of s. 212.02 defining "cost
 23 price." However, the tax levied under this paragraph shall
 24 not be imposed upon any person who manufactures or produces
 25 electrical power or energy, steam energy, or other energy at a
 26 single location, when such power or energy is used directly
 27 and exclusively at such location, or at other locations if the
 28 energy is transferred through facilities of the owner in the
 29 operation of machinery or equipment that is used to
 30 manufacture, process, compound, produce, fabricate, or prepare
 31 for shipment tangible personal property for sale or to operate

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1 pollution control equipment, maintenance equipment, or
2 monitoring or control equipment used in such operations. The
3 manufacture or production of electrical power or energy that
4 is used for space heating, lighting, office equipment, or
5 air-conditioning or any other nonmanufacturing, nonprocessing,
6 noncompounding, nonproducing, nonfabricating, or nonshipping
7 activity is taxable. Electrical power or energy consumed or
8 dissipated in the transmission or distribution of electrical
9 power or energy for resale is also not taxable. Fabrication
10 labor shall not be taxable when a person is using his or her
11 own equipment and personnel, for his or her own account, as a
12 producer, subproducer, or coproducer of a qualified motion
13 picture. For purposes of this chapter, the term "qualified
14 motion picture" means all or any part of a series of related
15 images, either on film, tape, or other embodiment, including,
16 but not limited to, all items comprising part of the original
17 work and film-related products derived therefrom as well as
18 duplicates and prints thereof and all sound recordings created
19 to accompany a motion picture, which is produced, adapted, or
20 altered for exploitation in, on, or through any medium or
21 device and at any location, primarily for entertainment,
22 commercial, industrial, or educational purposes. This
23 exemption for fabrication labor associated with production of
24 a qualified motion picture will inure to the taxpayer upon
25 presentation of the certificate of exemption issued to the
26 taxpayer under the provisions of s. 288.1258. A person who
27 manufactures factory-built buildings for his or her own use in
28 the performance of contracts for the construction or
29 improvement of real property shall pay a tax only upon the
30 person's cost price of items used in the manufacture of such
31 buildings.

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1 Section 63. Effective January 1, 2001, paragraph (f)
2 of subsection (5) and subsection (12) of section 212.08,
3 Florida Statutes, are amended to read:

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

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

11 (f) Motion picture or video equipment used in motion
12 picture or television production activities and sound
13 recording equipment used in the production of master tapes and
14 master records.--

15 1. Motion picture or video equipment and sound
16 recording equipment purchased or leased for use in this state
17 in production activities is exempt from the tax imposed by
18 this chapter ~~upon an affirmative showing by the purchaser or~~
19 ~~lessee to the satisfaction of the department that the~~
20 ~~equipment will be used for production activities.~~ The
21 exemption provided by this paragraph shall inure to the
22 taxpayer upon presentation of the certificate of exemption
23 issued to the taxpayer under the provisions of s. 288.1258.
24 ~~only through a refund of previously paid taxes.~~
25 ~~Notwithstanding the provisions of s. 212.095, such refund~~
26 ~~shall be made within 30 days of formal application, which~~
27 ~~application may be made after the completion of production~~
28 ~~activities or on a quarterly basis. Notwithstanding the~~
29 ~~provisions of chapter 213, the department shall provide the~~
30 ~~Department of Commerce with a copy of each refund application~~
31 ~~and the amount of such refund, if any.~~

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1 2. For the purpose of the exemption provided in
2 subparagraph 1.:

3 a. "Motion picture or video equipment" and "sound
4 recording equipment" includes only equipment meeting the
5 definition of "section 38 property" as defined in s.
6 48(a)(1)(A) and (B)(i) of the Internal Revenue Code that is
7 used by the lessee or purchaser exclusively as an integral
8 part of production activities; however, motion picture or
9 video equipment and sound recording equipment does not include
10 supplies, tape, records, film, or video tape used in
11 productions or other similar items; vehicles or vessels; or
12 general office equipment not specifically suited to production
13 activities. In addition, the term does not include equipment
14 purchased or leased by television or radio broadcasting or
15 cable companies licensed by the Federal Communications
16 Commission.

17 b. "Production activities" means activities directed
18 toward the preparation of a:

19 (I) Master tape or master record embodying sound; or

20 (II) Motion picture or television production which is
21 produced for theatrical, commercial, advertising, or
22 educational purposes and utilizes live or animated actions or
23 a combination of live and animated actions. The motion picture
24 or television production shall be commercially produced for
25 sale or for showing on screens or broadcasting on television
26 and may be on film or video tape.

27 (12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS,
28 OR VIDEO TAPES.--

29 (a) There are exempt from the taxes imposed by this
30 chapter the gross receipts from the sale or lease of, and the
31 storage, use, or other consumption in this state of, master

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1 tapes or master records embodying sound, or master films or
2 master video tapes; except that amounts paid to recording
3 studios or motion picture or television studios for the
4 tangible elements of such master tapes, records, films, or
5 video tapes are taxable as otherwise provided in this chapter.
6 This exemption will inure to the taxpayer upon presentation of
7 the certificate of exemption issued to the taxpayer under the
8 provisions of s. 288.1258.

9 (b) For the purposes of this subsection, the term:

10 1. "Amounts paid for the tangible elements" does not
11 include any amounts paid for the copyrightable, artistic, or
12 other intangible elements of such master tapes, records,
13 films, or video tapes, whether designated as royalties or
14 otherwise, including, but not limited to, services rendered in
15 producing, fabricating, processing, or imprinting tangible
16 personal property or any other services or production expenses
17 in connection therewith which may otherwise be construed as
18 constituting a "sale" under s. 212.02.

19 2. "Master films or master video tapes" means films or
20 video tapes utilized by the motion picture and television
21 production industries in making visual images for
22 reproduction.

23 3. "Master tapes or master records embodying sound"
24 means tapes, records, and other devices utilized by the
25 recording industry in making recordings embodying sound.

26 4. "Motion picture or television studio" means a
27 facility in which film or video tape productions or parts of
28 productions are made and which contains the necessary
29 equipment and personnel for this purpose and includes a mobile
30 unit or vehicle that is equipped in much the same manner as a
31 stationary studio and used in the making of film or video tape

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1 productions.

2 5. "Recording studio" means a place where, by means of
3 mechanical or electronic devices, voices, music, or other
4 sounds are transmitted to tapes, records, or other devices
5 capable of reproducing sound.

6 6. "Recording industry" means any person engaged in an
7 occupation or business of making recordings embodying sound
8 for a livelihood or for a profit.

9 7. "Motion picture or television production industry"
10 means any person engaged in an occupation or business for a
11 livelihood or for profit of making visual motion picture or
12 television visual images for showing on screen or television
13 for theatrical, commercial, advertising, or educational
14 purposes.

15 Section 64. Paragraph (r) is added to subsection (7)
16 of section 213.053, Florida Statutes, to read:

17 213.053 Confidentiality and information sharing.--

18 (7) Notwithstanding any other provision of this
19 section, the department may provide:

20 (r) Information relative to the tax exemptions under
21 ss. 212.031, 212.06, and 212.08 for those persons qualified
22 under s. 288.1258 to the Office of the Film Commissioner. The
23 Department of Revenue shall provide the Office of the Film
24 Commissioner with information in the aggregate.

25
26 Disclosure of information under this subsection shall be
27 pursuant to a written agreement between the executive director
28 and the agency. Such agencies, governmental or
29 nongovernmental, shall be bound by the same requirements of
30 confidentiality as the Department of Revenue. Breach of
31 confidentiality is a misdemeanor of the first degree,

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1 punishable as provided by s. 775.082 or s. 775.083.

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3 (Redesignate subsequent sections.)

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6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 On page 9, line 7, after the semicolon

9

10 and insert:

11 creating s. 288.1258, F.S.; authorizing
 12 entertainment industry production companies to
 13 apply for approval by the Office of the Film
 14 Commissioner as a qualified production company
 15 for the purpose of receiving sales tax
 16 exemptions; directing the office to develop
 17 application procedures; providing for denial
 18 and revocation of a certificate of exemption;
 19 providing a penalty for falsification of an
 20 application or unauthorized use of a
 21 certificate of exemption; providing categories
 22 of qualification for a certificate of
 23 exemption; providing duties of the Department
 24 of Revenue with respect to application and
 25 issuance of a certificate of exemption for
 26 qualified production companies; requiring the
 27 Office of the Film Commissioner to keep
 28 specified records; requiring an annual report
 29 to the Legislature; amending s. 212.031, F.S.,
 30 relating to the tax on the lease or rental of
 31 or license in real property; providing that the

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1 exemption for property used as an integral part
2 of the performance of qualified production
3 services inures to the taxpayer upon
4 presentation of a certificate of exemption
5 issued under s. 288.1258, F.S.; amending s.
6 212.06, F.S.; providing that the exemption for
7 fabrication labor used in the production of a
8 qualified motion picture inures to the taxpayer
9 upon presentation of a certificate of exemption
10 issued under s. 288.1258, F.S.; amending s.
11 212.08, F.S.; providing that the exemption for
12 certain motion picture or video equipment and
13 sound recording equipment shall be a point of
14 sale exemption rather than by refund; providing
15 that the exemption inures to the taxpayer upon
16 presentation of a certificate of exemption
17 issued under s. 288.1258, F.S.; providing that
18 the partial exemption for master tapes,
19 records, films, or video tapes inures to the
20 taxpayer upon presentation of a certificate of
21 exemption issued under s. 288.1258, F.S.;
22 amending s. 213.053, F.S.; authorizing the
23 Department of Revenue to share certain
24 information with the Office of the Film
25 Commissioner;

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