

Amendment No. 001 (for drafter's use only)

	<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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The Committee on Finance & Taxation offered the following:

**Amendment (with title amendment)**

On page 2,  
remove from the bill: everything after the enacting clause  
and insert in lieu thereof:

Section 1. Effective July 1, 2000, section 288.1258,  
Florida Statutes, is created to read:

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

(1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.--

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

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1           (b) For the purposes of this section, "qualified  
2 production company" means any production company that has  
3 submitted a properly completed application to the Department  
4 of Revenue and that is subsequently qualified by the Office of  
5 the Film Commissioner.

6           (2) APPLICATION PROCEDURE.--

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

13           (b)1. The Office of the Film Commissioner shall  
14 establish a process by which an entertainment industry  
15 production company may be approved by the office as a  
16 qualified production company and may receive a certificate of  
17 exemption from the Department of Revenue for the sales and use  
18 tax exemptions under ss. 212.031, 212.06, and 212.08.

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

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

29           (c) The Office of the Film Commissioner shall develop,  
30 with the cooperation of the Department of Revenue and local  
31 government entertainment industry promotion agencies, a

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1 standardized application form for use in approving qualified  
2 production companies.

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

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

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

30 (e) In the event that the Department of Revenue  
31 determines that a production company no longer qualifies for a

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1 certificate of exemption, or has used a certificate of  
2 exemption for purposes other than those authorized by this  
3 section and chapter 212, the Department of Revenue shall  
4 revoke the certificate of exemption of that production  
5 company, and any sales or use taxes exempted on items  
6 purchased or leased by the production company during the time  
7 such company did not qualify for a certificate of exemption or  
8 improperly used a certificate of exemption shall become  
9 immediately due to the Department of Revenue, along with  
10 interest and penalty as provided by s. 212.12. In addition to  
11 the other penalties imposed by law, any person who knowingly  
12 and willfully falsifies an application, or uses a certificate  
13 of exemption for purposes other than those authorized by this  
14 section and chapter 212, commits a felony of the third degree,  
15 punishable as provided in s. 775.082, s. 775.083, and s.  
16 775.084.

17 (3) CATEGORIES.--

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

29 2. The Office of the Film Commissioner shall develop a  
30 method by which a qualified production company may annually  
31 renew a 1-year certificate of exemption for a period of up to

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1 5 years without requiring the production company to resubmit a  
2 new application during that 5-year period.

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

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

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

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

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

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

31 (c) The Department of Revenue may promulgate such

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1 rules and shall prescribe and publish such forms as may be  
2 necessary to effectuate the purposes of this section or any of  
3 the sales tax exemptions which are reasonably related to the  
4 provisions of this section.

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

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

22 Section 2. Paragraph (a) of subsection (1) of section  
23 212.031, Florida Statutes, is 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 3. Paragraph (b) of subsection (1) of section  
9 212.06, Florida Statutes, is amended to read:

10 212.06 Sales, storage, use tax; collectible from  
11 dealers; "dealer" defined; dealers to collect from purchasers;  
12 legislative intent as to scope of tax.--

13 (1)

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

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

31 Section 4. Paragraph (f) of subsection (5) and

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1 subsection (12) of section 212.08, Florida Statutes, are  
2 amended to read:

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

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

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

14           1. Motion picture or video equipment and sound  
15 recording equipment purchased or leased for use in this state  
16 in production activities is exempt from the tax imposed by  
17 this chapter ~~upon an affirmative showing by the purchaser or~~  
18 ~~lessee to the satisfaction of the department that the~~  
19 ~~equipment will be used for production activities.~~ The  
20 exemption provided by this paragraph shall inure to the  
21 taxpayer upon presentation of the certificate of exemption  
22 issued to the taxpayer under the provisions of s. 288.1258.  
23 ~~only through a refund of previously paid taxes.~~

24 ~~Notwithstanding the provisions of s. 212.095, such refund~~  
25 ~~shall be made within 30 days of formal application, which~~  
26 ~~application may be made after the completion of production~~  
27 ~~activities or on a quarterly basis. Notwithstanding the~~  
28 ~~provisions of chapter 213, the department shall provide the~~  
29 ~~Department of Commerce with a copy of each refund application~~  
30 ~~and the amount of such refund, if any.~~

31           2. For the purpose of the exemption provided in

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1 subparagraph 1.:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

14           Section 5. Effective July 1, 2000, paragraph (r) is  
15 added to subsection (7) of section 213.053, Florida Statutes,  
16 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.

2 Section 6. Except as otherwise provided herein, this  
3 act shall take effect January 1, 2001.

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5

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 1, line 2, through  
9 Page 2, line 17

10 remove from the title of the bill: all of said lines

11

12 and insert in lieu thereof:

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



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

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