

By Senator Saunders

25-440A-00

See HB

1                                   A bill to be entitled  
2           An act relating to entertainment industry  
3           incentives; creating s. 288.1258, F.S.;  
4           authorizing entertainment industry production  
5           companies to apply for approval by the Office  
6           of the Film Commissioner as a qualified  
7           production company for the purpose of receiving  
8           sales tax exemptions; directing the office to  
9           develop application procedures; providing for  
10          denial and revocation of a certificate of  
11          exemption; providing a penalty for  
12          falsification of an application or unauthorized  
13          use of a certificate of exemption; providing  
14          categories of qualification for a certificate  
15          of exemption; providing duties of the  
16          Department of Revenue with respect to issuance  
17          of a certificate of exemption for qualified  
18          production companies; requiring the Office of  
19          the Film Commissioner to keep specified  
20          records; requiring an annual report to the  
21          Legislature; amending s. 212.031, F.S.,  
22          relating to the tax on the lease or rental of  
23          or license in real property; providing that the  
24          exemption for property used as an integral part  
25          of the performance of qualified production  
26          services inures to the taxpayer upon  
27          presentation of a certificate of exemption  
28          issued under s. 288.1258, F.S.; amending s.  
29          212.06, F.S.; providing that the exemption for  
30          fabrication labor used in the production of a  
31          qualified motion picture inures to the taxpayer

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

18  
19 Be It Enacted by the Legislature of the State of Florida:

20  
21           Section 1. Effective July 1, 2000, section 288.1258,  
22 Florida Statutes, is created to read:

23           288.1258 Entertainment industry qualified production  
24 companies; application procedure; categories; duties of the  
25 Department of Revenue; records and reports.--

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

27           (a) Any production company engaged in this state in  
28 the production of motion pictures, made-for-TV motion  
29 pictures, television series, commercial advertising, music  
30 videos, or sound recordings may submit an application to the  
31 Office of the Film Commissioner to be approved as a qualified

1 production company for the purpose of receiving a sales and  
2 use tax certificate of exemption from the Department of  
3 Revenue.

4 (b) For the purposes of this section, the term  
5 "qualified production company" means any production company  
6 that has submitted a properly completed application to the  
7 Office of the Film Commissioner and that is subsequently  
8 qualified by that office.

9 (2) APPLICATION PROCEDURE.--

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

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

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

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

31

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

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

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

28           (d) In the event that the Department of Revenue  
29 determines that a production company no longer qualifies for a  
30 certificate of exemption, or has used a certificate of  
31 exemption for purposes other than those authorized by this

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

15 (3) CATEGORIES.--

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

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

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

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

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

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

17           (a) The Department of Revenue shall issue a numbered  
18 certificate of exemption to a qualified production company  
19 within 5 working days of the receipt of a properly completed  
20 and approved application, application renewal, or application  
21 extension from the Office of the Film Commissioner.

22           (b) The Department of Revenue may adopt such rules and  
23 prescribe and publish such forms as are necessary to  
24 effectuate the purposes of this section or any of the sales  
25 tax exemptions which are reasonably related to the provisions  
26 of this section.

27           (c) The Department of Revenue is authorized to  
28 establish audit procedures in accordance with the provisions  
29 of ss. 212.12, 212.13, and 213.34 which relate to the sales  
30 tax exemption provisions of this section.

31

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

14           Section 2. Paragraph (a) of subsection (1) of section  
15 212.031, Florida Statutes, is amended to read:

16           212.031 Lease or rental of or license in real  
17 property.--

18           (1)(a) It is declared to be the legislative intent  
19 that every person is exercising a taxable privilege who  
20 engages in the business of renting, leasing, letting, or  
21 granting a license for the use of any real property unless  
22 such property is:

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

24           2. Used exclusively as dwelling units.

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

27           4. Recreational property or the common elements of a  
28 condominium when subject to a lease between the developer or  
29 owner thereof and the condominium association in its own right  
30 or as agent for the owners of individual condominium units or  
31 the owners of individual condominium units. However, only the

1 lease payments on such property shall be exempt from the tax  
2 imposed by this chapter, and any other use made by the owner  
3 or the condominium association shall be fully taxable under  
4 this chapter.

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

17           6. A public street or road which is used for  
18 transportation purposes.

19           7. Property used at an airport exclusively for the  
20 purpose of aircraft landing or aircraft taxiing or property  
21 used by an airline for the purpose of loading or unloading  
22 passengers or property onto or from aircraft or for fueling  
23 aircraft.

24           8.a. Property used at a port authority, as defined in  
25 s. 315.02(2), exclusively for the purpose of oceangoing  
26 vessels or tugs docking, or such vessels mooring on property  
27 used by a port authority for the purpose of loading or  
28 unloading passengers or cargo onto or from such a vessel, or  
29 property used at a port authority for fueling such vessels, or  
30 to the extent that the amount paid for the use of any property  
31



1 at the port is based on the charge for the amount of tonnage  
2 actually imported or exported through the port by a tenant.

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

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

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

28 b. The design, planning, engineering, construction,  
29 alteration, repair, and maintenance of real or personal  
30 property including stages, sets, props, models, paintings, and  
31

1 facilities principally required for the performance of those  
2 services listed in sub-subparagraph a.; and

3 c. Property management services directly related to  
4 property used in connection with the services described in  
5 sub-subparagraphs a. and b.

6

7 This exemption will inure to the taxpayer upon presentation of  
8 the certificate of exemption issued to the taxpayer under the  
9 provisions of s. 288.1258.

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

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

31

1 exclusive of renewals and extensions thereof occurring after  
2 March 15, 1993.

3 Section 3. Paragraph (b) of subsection (1) of section  
4 212.06, Florida Statutes, is amended to read:

5 212.06 Sales, storage, use tax; collectible from  
6 dealers; "dealer" defined; dealers to collect from purchasers;  
7 legislative intent as to scope of tax.--

8 (1)

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

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

26 Section 4. Paragraph (f) of subsection (5) and  
27 subsection (12) of section 212.08, Florida Statutes, are  
28 amended to read:

29 212.08 Sales, rental, use, consumption, distribution,  
30 and storage tax; specified exemptions.--The sale at retail,  
31 the rental, the use, the consumption, the distribution, and

1 the storage to be used or consumed in this state of the  
2 following are hereby specifically exempt from the tax imposed  
3 by this chapter.

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

5 (f) Motion picture or video equipment used in motion  
6 picture or television production activities and sound  
7 recording equipment used in the production of master tapes and  
8 master records.--

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

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

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

28 a. "Motion picture or video equipment" and "sound  
29 recording equipment" includes only equipment meeting the  
30 definition of "section 38 property" as defined in s.  
31 48(a)(1)(A) and (B)(i) of the Internal Revenue Code that is

1 used by the lessee or purchaser exclusively as an integral  
2 part of production activities; however, motion picture or  
3 video equipment and sound recording equipment does not include  
4 supplies, tape, records, film, or video tape used in  
5 productions or other similar items; vehicles or vessels; or  
6 general office equipment not specifically suited to production  
7 activities. In addition, the term does not include equipment  
8 purchased or leased by television or radio broadcasting or  
9 cable companies licensed by the Federal Communications  
10 Commission.

11 b. "Production activities" means activities directed  
12 toward the preparation of a:

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

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

21 (12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS,  
22 OR VIDEO TAPES.--

23 (a) There are exempt from the taxes imposed by this  
24 chapter the gross receipts from the sale or lease of, and the  
25 storage, use, or other consumption in this state of, master  
26 tapes or master records embodying sound, or master films or  
27 master video tapes; except that amounts paid to recording  
28 studios or motion picture or television studios for the  
29 tangible elements of such master tapes, records, films, or  
30 video tapes are taxable as otherwise provided in this chapter.  
31 This exemption will inure to the taxpayer upon presentation of

1 the certificate of exemption issued to the taxpayer under the  
2 provisions of s. 288.1258.

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

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

13 2. "Master films or master video tapes" means films or  
14 video tapes utilized by the motion picture and television  
15 production industries in making visual images for  
16 reproduction.

17 3. "Master tapes or master records embodying sound"  
18 means tapes, records, and other devices utilized by the  
19 recording industry in making recordings embodying sound.

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

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

31

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

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

10           Section 5. Effective July 1, 2000, paragraph (r) is  
11 added to subsection (7) of section 213.053, Florida Statutes,  
12 to read:

13           213.053 Confidentiality and information sharing.--

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

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

21  
22 Disclosure of information under this subsection shall be  
23 pursuant to a written agreement between the executive director  
24 and the agency. Such agencies, governmental or  
25 nongovernmental, shall be bound by the same requirements of  
26 confidentiality as the Department of Revenue. Breach of  
27 confidentiality is a misdemeanor of the first degree,  
28 punishable as provided by s. 775.082 or s. 775.083.

29           Section 6. Except as otherwise provided in this act,  
30 this act shall take effect January 1, 2001.

31



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31

\*\*\*\*\*

LEGISLATIVE SUMMARY

Authorizes entertainment industry production companies to apply to the Office of the Film Commissioner for approval to receive a sales tax exemption certificate for purposes of the exemptions for property used as an integral part of the performance of qualified production services, fabrication labor used in the production of a qualified motion picture, certain motion picture or video equipment and sound recording equipment, and master tapes, records, films, and video tapes. Directs the office to establish a standard application form and approval procedures. Directs the Department of Revenue to issue an exemption certificate upon receipt of an application approved by the office. Specifies periods for which such exemption certificates are valid and provides for renewal. Provides a penalty for falsifying an application or misuse of a certificate.

Specifies that such exemptions will inure to the taxpayer upon presentation of the exemption certificate, and removes provisions that specify that the exemption for certain motion picture or video equipment and sound recording equipment inures only through a refund.