

By the Committee on Fiscal Resource and Senators Saunders and Clary

314-2201-00

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
17 application and issuance of a certificate of
18 exemption for qualified production companies;
19 requiring the Office of the Film Commissioner
20 to keep specified records; requiring an annual
21 report to the Legislature; amending s. 212.031,
22 F.S., relating to the tax on the lease or
23 rental of or license in real property;
24 providing that the exemption for property used
25 as an integral part of the performance of
26 qualified production services inures to the
27 taxpayer upon presentation of a certificate of
28 exemption issued under s. 288.1258, F.S.;
29 amending s. 212.06, F.S.; providing that the
30 exemption for fabrication labor used in the
31 production of a qualified motion picture inures

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

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

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

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

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

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

1 Department of Revenue to be approved by the Office of the Film
2 Commissioner as a qualified production company for the purpose
3 of receiving a sales and use tax certificate of exemption from
4 the Department of Revenue.

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

10 (2) APPLICATION PROCEDURE.--

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

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

23 3. Upon determination by the Office of the Film
24 Commissioner that a production company meets the established
25 approval criteria and qualifies for exemption, the Office of
26 the Film Commissioner shall return the approved application or
27 application renewal or extension to the Department of Revenue,
28 which shall issue a certificate of exemption.

29 4. The Office of the Film Commissioner shall deny an
30 application or application for renewal or extension from a
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1 production company if it determines that the production
2 company does not meet the established approval criteria.

3 (b) The Office of the Film Commissioner shall develop,
4 with the cooperation of the Department of Revenue and local
5 government entertainment industry promotion agencies, a
6 standardized application form for use in approving qualified
7 production companies.

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

29 2. The application form may be distributed to
30 applicants by the Office of the Film Commissioner or local
31 film commissions.

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

4 (d) In the event that the Department of Revenue
5 determines that a production company no longer qualifies for a
6 certificate of exemption, or has used a certificate of
7 exemption for purposes other than those authorized by this
8 section and chapter 212, the Department of Revenue shall
9 revoke the certificate of exemption of that production
10 company, and any sales or use taxes exempted on items
11 purchased or leased by the production company during the time
12 such company did not qualify for a certificate of exemption or
13 improperly used a certificate of exemption shall become
14 immediately due to the Department of Revenue, along with
15 interest and penalty as provided by s. 212.12. In addition to
16 the other penalties imposed by law, any person who knowingly
17 and willfully falsifies an application, or uses a certificate
18 of exemption for purposes other than those authorized by this
19 section and chapter 212, commits a felony of the third degree,
20 punishable as provided in s. 775.082, s. 775.083, and s.
21 775.084.

22 (3) CATEGORIES.--

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

1 state, at which time the certificate shall be surrendered to
2 the Department of Revenue.

3 2. The Office of the Film Commissioner shall develop a
4 method by which a qualified production company may annually
5 renew a 1-year certificate of exemption for a period of up to
6 5 years without requiring the production company to resubmit a
7 new application during that 5-year period.

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

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

20 2. Any production company may submit a new application
21 for a 90-day certificate of exemption upon the expiration of
22 that company's certificate of exemption.

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

24 (a) The Department of Revenue shall review the initial
25 application and notify the applicant of any omissions and
26 request additional information if needed. An application is
27 complete upon receipt of all requested information. The
28 Department of Revenue shall forward all complete applications
29 to the Office of the Film Commissioner within 10 working days
30 after the receipt of a properly completed application.

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1 (b) The Department of Revenue shall issue a numbered
2 certificate of exemption to a qualified production company
3 within 5 working days of the receipt of an approved
4 application, application renewal, or application extension
5 from the Office of the Film Commissioner.

6 (c) The Department of Revenue may adopt such rules and
7 prescribe and publish such forms as are necessary to
8 effectuate the purposes of this section or any of the sales
9 tax exemptions which are reasonably related to the provisions
10 of this section.

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

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

28 Section 2. Paragraph (a) of subsection (1) of section
29 212.031, Florida Statutes, is amended to read:

30 212.031 Lease or rental of or license in real
31 property.--

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

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

7 2. Used exclusively as dwelling units.

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

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

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

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1 6. A public street or road which is used for
2 transportation purposes.

3 7. Property used at an airport exclusively for the
4 purpose of aircraft landing or aircraft taxiing or property
5 used by an airline for the purpose of loading or unloading
6 passengers or property onto or from aircraft or for fueling
7 aircraft.

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

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

21 9. Property used as an integral part of the
22 performance of qualified production services. As used in this
23 subparagraph, the term "qualified production services" means
24 any activity or service performed directly in connection with
25 the production of a qualified motion picture, as defined in s.
26 212.06(1)(b), and includes:

27 a. Photography, sound and recording, casting, location
28 managing and scouting, shooting, creation of special and
29 optical effects, animation, adaptation (language, media,
30 electronic, or otherwise), technological modifications,
31 computer graphics, set and stage support (such as

1 electricians, lighting designers and operators, greensmen,
2 prop managers and assistants, and grips), wardrobe (design,
3 preparation, and management), hair and makeup (design,
4 production, and application), performing (such as acting,
5 dancing, and playing), designing and executing stunts,
6 coaching, consulting, writing, scoring, composing,
7 choreographing, script supervising, directing, producing,
8 transmitting dailies, dubbing, mixing, editing, cutting,
9 looping, printing, processing, duplicating, storing, and
10 distributing;

11 b. The design, planning, engineering, construction,
12 alteration, repair, and maintenance of real or personal
13 property including stages, sets, props, models, paintings, and
14 facilities principally required for the performance of those
15 services listed in sub-subparagraph a.; and

16 c. Property management services directly related to
17 property used in connection with the services described in
18 sub-subparagraphs a. and b.

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20 This exemption will inure to the taxpayer upon presentation of
21 the certificate of exemption issued to the taxpayer under the
22 provisions of s. 288.1258.

23 10. Leased, subleased, licensed, or rented to a person
24 providing food and drink concessionaire services within the
25 premises of a convention hall, exhibition hall, auditorium,
26 stadium, theater, arena, civic center, performing arts center,
27 recreational facility, or any business operated under a permit
28 issued pursuant to chapter 550. A person providing retail
29 concessionaire services involving the sale of food and drink
30 or other tangible personal property within the premises of an
31 airport shall be subject to tax on the rental of real property

1 used for that purpose, but shall not be subject to the tax on
2 any license to use the property. For purposes of this
3 subparagraph, the term "sale" shall not include the leasing of
4 tangible personal property.

5 11. Property occupied pursuant to an instrument
6 calling for payments which the department has declared, in a
7 Technical Assistance Advisement issued on or before March 15,
8 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
9 Florida Administrative Code; provided that this subparagraph
10 shall only apply to property occupied by the same person
11 before and after the execution of the subject instrument and
12 only to those payments made pursuant to such instrument,
13 exclusive of renewals and extensions thereof occurring after
14 March 15, 1993.

15 Section 3. Paragraph (b) of subsection (1) of section
16 212.06, Florida Statutes, is amended to read:

17 212.06 Sales, storage, use tax; collectible from
18 dealers; "dealer" defined; dealers to collect from purchasers;
19 legislative intent as to scope of tax.--

20 (1)

21 (b) Except as otherwise provided, any person who
22 manufactures, produces, compounds, processes, or fabricates in
23 any manner tangible personal property for his or her own use
24 shall pay a tax upon the cost of the product manufactured,
25 produced, compounded, processed, or fabricated without any
26 deduction therefrom on account of the cost of material used,
27 labor or service costs, or transportation charges,
28 notwithstanding the provisions of s. 212.02 defining "cost
29 price." However, the tax levied under this paragraph shall
30 not be imposed upon any person who manufactures or produces
31 electrical power or energy, steam energy, or other energy at a

1 single location, when such power or energy is used directly
2 and exclusively at such location, or at other locations if the
3 energy is transferred through facilities of the owner in the
4 operation of machinery or equipment that is used to
5 manufacture, process, compound, produce, fabricate, or prepare
6 for shipment tangible personal property for sale or to operate
7 pollution control equipment, maintenance equipment, or
8 monitoring or control equipment used in such operations. The
9 manufacture or production of electrical power or energy that
10 is used for space heating, lighting, office equipment, or
11 air-conditioning or any other nonmanufacturing, nonprocessing,
12 noncompounding, nonproducing, nonfabricating, or nonshipping
13 activity is taxable. Electrical power or energy consumed or
14 dissipated in the transmission or distribution of electrical
15 power or energy for resale is also not taxable. Fabrication
16 labor shall not be taxable when a person is using his or her
17 own equipment and personnel, for his or her own account, as a
18 producer, subproducer, or coproducer of a qualified motion
19 picture. For purposes of this chapter, the term "qualified
20 motion picture" means all or any part of a series of related
21 images, either on film, tape, or other embodiment, including,
22 but not limited to, all items comprising part of the original
23 work and film-related products derived therefrom as well as
24 duplicates and prints thereof and all sound recordings created
25 to accompany a motion picture, which is produced, adapted, or
26 altered for exploitation in, on, or through any medium or
27 device and at any location, primarily for entertainment,
28 commercial, industrial, or educational purposes. This
29 exemption for fabrication labor associated with production of
30 a qualified motion picture will inure to the taxpayer upon
31 presentation of the certificate of exemption issued to the

1 taxpayer under the provisions of s. 288.1258.A person who
2 manufactures factory-built buildings for his or her own use in
3 the performance of contracts for the construction or
4 improvement of real property shall pay a tax only upon the
5 person's cost price of items used in the manufacture of such
6 buildings.

7 Section 4. Paragraph (f) of subsection (5) and
8 subsection (12) of section 212.08, Florida Statutes, are
9 amended to read:

10 212.08 Sales, rental, use, consumption, distribution,
11 and storage tax; specified exemptions.--The sale at retail,
12 the rental, the use, the consumption, the distribution, and
13 the storage to be used or consumed in this state of the
14 following are hereby specifically exempt from the tax imposed
15 by this chapter.

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

17 (f) Motion picture or video equipment used in motion
18 picture or television production activities and sound
19 recording equipment used in the production of master tapes and
20 master records.--

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

31 ~~Notwithstanding the provisions of s. 212.095, such refund~~

1 ~~shall be made within 30 days of formal application, which~~
2 ~~application may be made after the completion of production~~
3 ~~activities or on a quarterly basis. Notwithstanding the~~
4 ~~provisions of chapter 213, the department shall provide the~~
5 ~~Department of Commerce with a copy of each refund application~~
6 ~~and the amount of such refund, if any.~~

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

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

23 b. "Production activities" means activities directed
24 toward the preparation of a:

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

26 (II) Motion picture or television production which is
27 produced for theatrical, commercial, advertising, or
28 educational purposes and utilizes live or animated actions or
29 a combination of live and animated actions. The motion picture
30 or television production shall be commercially produced for
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1 sale or for showing on screens or broadcasting on television
2 and may be on film or video tape.

3 (12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS,
4 OR VIDEO TAPES.--

5 (a) There are exempt from the taxes imposed by this
6 chapter the gross receipts from the sale or lease of, and the
7 storage, use, or other consumption in this state of, master
8 tapes or master records embodying sound, or master films or
9 master video tapes; except that amounts paid to recording
10 studios or motion picture or television studios for the
11 tangible elements of such master tapes, records, films, or
12 video tapes are taxable as otherwise provided in this chapter.
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 (b) For the purposes of this subsection, the term:

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

26 2. "Master films or master video tapes" means films or
27 video tapes utilized by the motion picture and television
28 production industries in making visual images for
29 reproduction.

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

4 4. "Motion picture or television studio" means a
5 facility in which film or video tape productions or parts of
6 productions are made and which contains the necessary
7 equipment and personnel for this purpose and includes a mobile
8 unit or vehicle that is equipped in much the same manner as a
9 stationary studio and used in the making of film or video tape
10 productions.

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

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

18 7. "Motion picture or television production industry"
19 means any person engaged in an occupation or business for a
20 livelihood or for profit of making visual motion picture or
21 television visual images for showing on screen or television
22 for theatrical, commercial, advertising, or educational
23 purposes.

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

27 213.053 Confidentiality and information sharing.--

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

30 (r) Information relative to the tax exemptions under
31 ss. 212.031, 212.06, and 212.08 for those persons qualified

1 under s. 288.1258 to the Office of the Film Commissioner. The
2 Department of Revenue shall provide the Office of the Film
3 Commissioner with information in the aggregate.

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5 Disclosure of information under this subsection shall be
6 pursuant to a written agreement between the executive director
7 and the agency. Such agencies, governmental or
8 nongovernmental, shall be bound by the same requirements of
9 confidentiality as the Department of Revenue. Breach of
10 confidentiality is a misdemeanor of the first degree,
11 punishable as provided by s. 775.082 or s. 775.083.

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

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15 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
16 COMMITTEE SUBSTITUTE FOR
17 SB 804

18 The Committee Substitute transferred from the Office of the
19 Film Commissioner to the Department of Revenue, the following
duties:

- 20 - Review of all submitted applications;
21 - Forwarding of completed applications to the Office of the
22 Film Commissioner; and
23 - Issuance of numbered certificates of exemption.
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