

Bill No. CS for SB's 128 & 1598

Amendment No. Barcode 250420

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

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

14 On page 1, between lines 30 and 31,

15

16 insert:

17 Section 2. Effective July 1, 2001, paragraph (a) of
18 subsection (4) of section 212.08, Florida Statutes, is amended
19 to read:

20 212.08 Sales, rental, use, consumption, distribution,
21 and storage tax; specified exemptions.--The sale at retail,
22 the rental, the use, the consumption, the distribution, and
23 the storage to be used or consumed in this state of the
24 following are hereby specifically exempt from the tax imposed
25 by this chapter.

26 (4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES,
27 ETC.--

28 (a) Also exempt are:

29 1. Water delivered to the purchaser through pipes or
30 conduits or delivered for irrigation purposes. The sale of
31 drinking water in bottles, cans, or other containers,

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1 including water that contains minerals or carbonation in its
2 natural state or water to which minerals have been added at a
3 water treatment facility regulated by the Department of
4 Environmental Protection or the Department of Health, is
5 exempt. This exemption does not apply to the sale of drinking
6 water in bottles, cans, or other containers if carbonation,
7 ~~minerals~~, or flavorings, except those added at a water
8 treatment facility, have been added. Water that has been
9 enhanced by the addition of minerals and that does not contain
10 any added carbonation or flavorings is also exempt.

11 2. All fuels used by a public or private utility,
12 including any municipal corporation or rural electric
13 cooperative association, in the generation of electric power
14 or energy for sale. Fuel other than motor fuel and diesel
15 fuel is taxable as provided in this chapter with the exception
16 of fuel expressly exempt herein. Motor fuels and diesel fuels
17 are taxable as provided in chapter 206, with the exception of
18 those motor fuels and diesel fuels used by railroad
19 locomotives or vessels to transport persons or property in
20 interstate or foreign commerce, which are taxable under this
21 chapter only to the extent provided herein. The basis of the
22 tax shall be the ratio of intrastate mileage to interstate or
23 foreign mileage traveled by the carrier's railroad locomotives
24 or vessels that were used in interstate or foreign commerce
25 and that had at least some Florida mileage during the previous
26 fiscal year of the carrier, such ratio to be determined at the
27 close of the fiscal year of the carrier. This ratio shall be
28 applied each month to the total Florida purchases made in this
29 state of motor and diesel fuels to establish that portion of
30 the total used and consumed in intrastate movement and subject
31 to tax under this chapter. The basis for imposition of any

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1 discretionary surtax shall be set forth in s. 212.054. Fuels
2 used exclusively in intrastate commerce do not qualify for the
3 proration of tax.

4 3. The transmission or wheeling of electricity.

5 Section 3. Subsection (8) is added to section 201.02,
6 Florida Statutes, to read:

7 201.02 Tax on deeds and other instruments relating to
8 real property or interests in real property.--

9 (8) The taxes imposed by this section do not apply to
10 deeds, instruments, or writings whereby any lands, tenements,
11 or other real property, or any interest therein, is granted,
12 assigned, transferred, or otherwise conveyed from an electric
13 utility to a regional transmission organization under the
14 jurisdiction of the Federal Energy Regulatory Commission.

15 Section 4. Paragraph (g) of subsection (10) of section
16 212.02, Florida Statutes, is amended to read:

17 212.02 Definitions.--The following terms and phrases
18 when used in this chapter have the meanings ascribed to them
19 in this section, except where the context clearly indicates a
20 different meaning:

21 (10) "Lease," "let," or "rental" means leasing or
22 renting of living quarters or sleeping or housekeeping
23 accommodations in hotels, apartment houses, roominghouses,
24 tourist or trailer camps and real property, the same being
25 defined as follows:

26 (g) "Lease," "let," or "rental" also means the leasing
27 or rental of tangible personal property and the possession or
28 use thereof by the lessee or rentee for a consideration,
29 without transfer of the title of such property, except as
30 expressly provided to the contrary herein. The term "lease,"
31 "let," or "rental" does not mean hourly, daily, or mileage

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1 charges, to the extent that such charges are subject to the
 2 jurisdiction of the Surface Transportation Board ~~United States~~
 3 ~~Interstate Commerce Commission~~, when such charges are paid by
 4 reason of the presence of railroad cars owned by another on
 5 the tracks of the taxpayer, or charges made pursuant to car
 6 service agreements. The terms "lease," "let," "rental," or
 7 "license" do not include payments by a regional transmission
 8 organization operating under the jurisdiction of the Federal
 9 Energy Regulatory Commission which are made to an electric
 10 utility in connection with the regional transmission
 11 organization's use or control of the utility's high-voltage
 12 bulk transmission facilities. However, where two taxpayers, in
 13 connection with the interchange of facilities, rent or lease
 14 property, each to the other, for use in providing or
 15 furnishing any of the services mentioned in s. 166.231, the
 16 term "lease or rental" means only the net amount of rental
 17 involved.

18 Section 5. Paragraph (a) of subsection (1) of section
 19 212.031, Florida Statutes, is amended to read:

20 212.031 Lease or rental of or license in real
 21 property.--

22 (1)

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

- 28 1. Assessed as agricultural property under s. 193.461.
- 29 2. Used exclusively as dwelling units.
- 30 3. Property subject to tax on parking, docking, or
- 31 storage spaces under s. 212.03(6).

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1 aircraft.

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

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

15 9. Property used as an integral part of the
16 performance of qualified production services. As used in this
17 subparagraph, the term "qualified production services" means
18 any activity or service performed directly in connection with
19 the production of a qualified motion picture, as defined in s.
20 212.06(1)(b), and includes:

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

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1 choreographing, script supervising, directing, producing,
2 transmitting dailies, dubbing, mixing, editing, cutting,
3 looping, printing, processing, duplicating, storing, and
4 distributing;

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

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

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

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

30 11. Property occupied pursuant to an instrument
31 calling for payments which the department has declared, in a

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

9 12. Rented, leased, subleased, or licensed to a
 10 concessionaire by a convention hall, exhibition hall,
 11 auditorium, stadium, theater, arena, civic center, performing
 12 arts center, or publicly owned recreational facility, during
 13 an event at the facility, to be used by the concessionaire to
 14 sell souvenirs, novelties, or other event-related products.
 15 This subparagraph applies only to that portion of the rental,
 16 lease, or license payment which is based on a percentage of
 17 sales and not based on a fixed price.

18 13. Property used or occupied predominantly for space
 19 flight business purposes. As used in this subparagraph, "space
 20 flight business" means the manufacturing, processing, or
 21 assembly of a space facility, space propulsion system, space
 22 vehicle, satellite, or station of any kind possessing the
 23 capacity for space flight, as defined by s. 212.02(23), or
 24 components thereof, and also means the following activities
 25 supporting space flight: vehicle launch activities, flight
 26 operations, ground control or ground support, and all
 27 administrative activities directly related thereto. Property
 28 shall be deemed to be used or occupied predominantly for space
 29 flight business purposes if more than 50 percent of the
 30 property, or improvements thereon, is used for one or more
 31 space flight business purposes. Possession by a landlord,

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1 lessor, or licensor of a signed written statement from the
2 tenant, lessee, or licensee claiming the exemption shall
3 relieve the landlord, lessor, or licensor from the
4 responsibility of collecting the tax, and the department shall
5 look solely to the tenant, lessee, or licensee for recovery of
6 such tax if it determines that the exemption was not
7 applicable.

8 Section 6. Effective July 1, 2003, paragraph (a) of
9 subsection (1) of section 212.031, Florida Statutes, as
10 amended by section 3 of chapter 2000-345, Laws of Florida, is
11 amended to read:

12 212.031 Lease or rental of or license in real
13 property.--

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

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

20 2. Used exclusively as dwelling units.

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

23 4. Recreational property or the common elements of a
24 condominium when subject to a lease between the developer or
25 owner thereof and the condominium association in its own right
26 or as agent for the owners of individual condominium units or
27 the owners of individual condominium units. However, only the
28 lease payments on such property shall be exempt from the tax
29 imposed by this chapter, and any other use made by the owner
30 or the condominium association shall be fully taxable under
31 this chapter.

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1 5. A public or private street or right-of-way and
2 poles, conduits, fixtures, and similar improvements located on
3 such streets or rights-of-way, occupied or used by a utility
4 or franchised cable television company for utility or
5 communications or television purposes. For purposes of this
6 subparagraph, the term "utility" means any person providing
7 utility services as defined in s. 203.012 and includes a
8 regional transmission organization operating under the
9 jurisdiction of the Federal Energy Regulatory Commission. This
10 exception also applies to property, wherever located, on which
11 the following are placed: towers, antennas, cables, accessory
12 structures, or equipment, not including switching equipment,
13 used in the provision of mobile communications services as
14 defined in s. 202.11. For purposes of this chapter, towers
15 used in the provision of mobile communications services, as
16 defined in s. 202.11, are considered to be fixtures.

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 at the port is based on the charge for the amount of tonnage

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1 actually imported or exported through the port by a tenant.

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

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

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

27 b. The design, planning, engineering, construction,
28 alteration, repair, and maintenance of real or personal
29 property including stages, sets, props, models, paintings, and
30 facilities principally required for the performance of those
31 services listed in sub-subparagraph a.; and

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

4
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
9 10. Leased, subleased, licensed, or rented to a person
10 providing food and drink concessionaire services within the
11 premises of a convention hall, exhibition hall, auditorium,
12 stadium, theater, arena, civic center, performing arts center,
13 publicly owned recreational facility, or any business operated
14 under a permit issued pursuant to chapter 550. A person
15 providing retail concessionaire services involving the sale of
16 food and drink or other tangible personal property within the
17 premises of an airport shall be subject to tax on the rental
18 of real property used for that purpose, but shall not be
19 subject to the tax on any license to use the property. For
20 purposes of this subparagraph, the term "sale" shall not
21 include the leasing of tangible personal property.

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

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1 12. Property used or occupied predominantly for space
2 flight business purposes. As used in this subparagraph, "space
3 flight business" means the manufacturing, processing, or
4 assembly of a space facility, space propulsion system, space
5 vehicle, satellite, or station of any kind possessing the
6 capacity for space flight, as defined by s. 212.02(23), or
7 components thereof, and also means the following activities
8 supporting space flight: vehicle launch activities, flight
9 operations, ground control or ground support, and all
10 administrative activities directly related thereto. Property
11 shall be deemed to be used or occupied predominantly for space
12 flight business purposes if more than 50 percent of the
13 property, or improvements thereon, is used for one or more
14 space flight business purposes. Possession by a landlord,
15 lessor, or licensor of a signed written statement from the
16 tenant, lessee, or licensee claiming the exemption shall
17 relieve the landlord, lessor, or licensor from the
18 responsibility of collecting the tax, and the department shall
19 look solely to the tenant, lessee, or licensee for recovery of
20 such tax if it determines that the exemption was not
21 applicable.

22

23 (Redesignate subsequent sections.)

24

25

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

27 And the title is amended as follows:

28 On page 1, line 6, after the semicolon

29

30 and insert:

31 amending s. 212.08, F.S.; revising the

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1 application of the sales tax exemption for the
2 sale of drinking water in bottles or other
3 containers; amending s. 201.02, F.S., relating
4 to the tax on deeds and other instruments;
5 exempting deeds and other instruments from the
6 tax if property is conveyed from an electric
7 utility to a regional transmission
8 organization; amending s. 212.02, F.S. ;
9 excluding from the definition of "lease,"
10 "let," "rental," or "license" certain payments
11 made by a regional transmission organization to
12 an electric utility; amending s. 212.031, F.S. ;
13 exempting property occupied or used by certain
14 regional transmission organizations from the
15 tax on the lease or rental of or license in
16 real property;

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