

1 A bill to be entitled
 2 An act relating to the tax on sales, use, and other
 3 transactions; amending s. 212.05, F.S.; reducing the tax
 4 rate for sales and use of aircraft; revising the criteria
 5 for the sales and use tax exemption for sales of aircraft
 6 removed from the state; deleting a provision authorizing a
 7 return of certain aircraft to the state for repairs
 8 without violating any law or incurring any tax liability
 9 under certain circumstances; amending s. 212.06, F.S.;
 10 providing a presumption that certain aircraft are not
 11 purchased for use in this state under certain
 12 circumstances; providing an effective date.

13

14 Be It Enacted by the Legislature of the State of Florida:

15

16 Section 1. Paragraph (a) of subsection (1) of section
 17 212.05, Florida Statutes, is amended to read:

18 212.05 Sales, storage, use tax.--It is hereby declared to
 19 be the legislative intent that every person is exercising a
 20 taxable privilege who engages in the business of selling
 21 tangible personal property at retail in this state, including
 22 the business of making mail order sales, or who rents or
 23 furnishes any of the things or services taxable under this
 24 chapter, or who stores for use or consumption in this state any
 25 item or article of tangible personal property as defined herein
 26 and who leases or rents such property within the state.

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27 (1) For the exercise of such privilege, a tax is levied on
28 each taxable transaction or incident, which tax is due and
29 payable as follows:

30 (a)1.a. At the rate of 6 percent of the sales price of
31 each item or article of tangible personal property, except that
32 the tax rate on sales of aircraft shall be 3 percent of the
33 sales price of the aircraft, when sold at retail in this state,
34 computed on each taxable sale for the purpose of remitting the
35 amount of tax due the state, and including each and every retail
36 sale.

37 b. Each occasional or isolated sale of an aircraft, boat,
38 mobile home, or motor vehicle of a class or type which is
39 required to be registered, licensed, titled, or documented in
40 this state or by the United States Government shall be subject
41 to tax at the rate provided in this paragraph. The department
42 shall by rule adopt any nationally recognized publication for
43 valuation of used motor vehicles as the reference price list for
44 any used motor vehicle which is required to be licensed pursuant
45 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
46 party to an occasional or isolated sale of such a vehicle
47 reports to the tax collector a sales price which is less than 80
48 percent of the average loan price for the specified model and
49 year of such vehicle as listed in the most recent reference
50 price list, the tax levied under this paragraph shall be
51 computed by the department on such average loan price unless the
52 parties to the sale have provided to the tax collector an
53 affidavit signed by each party, or other substantial proof,
54 stating the actual sales price. Any party to such sale who

55 reports a sales price less than the actual sales price commits
56 ~~is guilty of~~ a misdemeanor of the first degree, punishable as
57 provided in s. 775.082 or s. 775.083. The department shall
58 collect or attempt to collect from such party any delinquent
59 sales taxes. In addition, such party shall pay any tax due and
60 any penalty and interest assessed plus a penalty equal to twice
61 the amount of the additional tax owed. Notwithstanding any other
62 provision of law, the Department of Revenue may waive or
63 compromise any penalty imposed pursuant to this subparagraph.

64 2. This paragraph does not apply to the sale of a boat or
65 aircraft by or through a registered dealer under this chapter to
66 a purchaser who, at the time of taking delivery, is a
67 nonresident of this state, does not make his or her permanent
68 place of abode in this state, and is not engaged in carrying on
69 in this state any employment, trade, business, or profession in
70 which the boat or aircraft will be used in this state, or is a
71 corporation none of the officers or directors of which is a
72 resident of, or makes his or her permanent place of abode in,
73 this state, or is a noncorporate entity that has no individual
74 vested with authority to participate in the management,
75 direction, or control of the entity's affairs who is a resident
76 of, or makes his or her permanent abode in, this state. For
77 purposes of this exemption, either a registered dealer acting on
78 his or her own behalf as seller, a registered dealer acting as
79 broker on behalf of a seller, or a registered dealer acting as
80 broker on behalf of the purchaser may be deemed to be the
81 selling dealer. This exemption shall not be allowed unless:

82 a. The purchaser removes a qualifying boat, as described
83 in sub-subparagraph f., from the state within 90 days after the
84 date of purchase or the purchaser removes a nonqualifying boat
85 ~~or an aircraft~~ from this state within 10 days after the date of
86 purchase or, when the boat ~~or aircraft~~ is repaired or altered,
87 within 20 days after completion of the repairs or alterations;

88 b. The purchaser, within 30 days from the date of
89 departure, or in the case of an aircraft purchase within 30 days
90 after the date of purchase, shall provide the department with
91 written proof that the purchaser licensed, registered, titled,
92 or documented the boat or aircraft outside the state. If such
93 written proof is unavailable, within 30 days the purchaser shall
94 provide proof that the purchaser applied for such license,
95 title, registration, or documentation. The purchaser shall
96 forward to the department proof of title, license, registration,
97 or documentation upon receipt.

98 c. The purchaser, within 10 days of removing the boat ~~or~~
99 ~~aircraft~~ from the state Florida, shall furnish the department
100 with proof of removal in the form of receipts for fuel, dockage,
101 or ~~slippage, tie down, or hangaring~~ from outside the state of
102 ~~Florida~~. The information so provided must clearly and
103 specifically identify the boat ~~or aircraft~~;

104 d. The selling dealer, within 5 days of the date of sale,
105 shall provide to the department a copy of the sales invoice,
106 closing statement, bills of sale, and the original affidavit
107 signed by the purchaser attesting that he or she has read the
108 provisions of this section;

109 e. The seller makes a copy of the affidavit a part of his
 110 or her record for as long as required by s. 213.35; and

111 f. Unless the nonresident purchaser of a boat of 5 net
 112 tons of admeasurement or larger intends to remove the boat from
 113 this state within 10 days after the date of purchase or when the
 114 boat is repaired or altered, within 20 days after completion of
 115 the repairs or alterations, the nonresident purchaser shall
 116 apply to the selling dealer for a decal which authorizes 90 days
 117 after the date of purchase for removal of the boat. The
 118 department is authorized to issue decals in advance to dealers.
 119 The number of decals issued in advance to a dealer shall be
 120 consistent with the volume of the dealer's past sales of boats
 121 which qualify under this sub-subparagraph. The selling dealer or
 122 his or her agent shall mark and affix the decals to qualifying
 123 boats in the manner prescribed by the department, prior to
 124 delivery of the boat.

125 (I) The department is hereby authorized to charge dealers
 126 a fee sufficient to recover the costs of decals issued.

127 (II) The proceeds from the sale of decals shall ~~will~~ be
 128 deposited into the Administrative Trust Fund ~~administrative~~
 129 ~~trust fund~~.

130 (III) Decals shall display information to identify the
 131 boat as a qualifying boat under this sub-subparagraph,
 132 including, but not limited to, the decal's date of expiration.

133 (IV) The department is authorized to require dealers who
 134 purchase decals to file reports with the department and may
 135 prescribe all necessary records by rule. All such records are
 136 subject to inspection by the department.

137 (V) Any dealer or his or her agent who issues a decal
138 falsely, fails to affix a decal, mismarks the expiration date of
139 a decal, or fails to properly account for decals shall ~~will~~ be
140 considered prima facie to have committed a fraudulent act to
141 evade the tax and shall ~~will~~ be liable for payment of the tax
142 plus a mandatory penalty of 200 percent of the tax, and shall be
143 liable for fine and punishment as provided by law for a
144 conviction of a misdemeanor of the first degree, as provided in
145 s. 775.082 or s. 775.083.

146 (VI) Any nonresident purchaser of a boat who removes a
147 decal prior to permanently removing the boat from the state, or
148 defaces, changes, modifies, or alters a decal in a manner
149 affecting its expiration date prior to its expiration, or who
150 causes or allows the same to be done by another, shall ~~will~~ be
151 considered prima facie to have committed a fraudulent act to
152 evade the tax and shall ~~will~~ be liable for payment of the tax
153 plus a mandatory penalty of 200 percent of the tax, and shall be
154 liable for fine and punishment as provided by law for a
155 conviction of a misdemeanor of the first degree, as provided in
156 s. 775.082 or s. 775.083.

157 (VII) The department is authorized to adopt rules
158 necessary to administer and enforce this subparagraph and to
159 publish the necessary forms and instructions.

160 (VIII) The department is ~~hereby~~ authorized to adopt
161 emergency rules pursuant to s. 120.54(4) to administer and
162 enforce the provisions of this subparagraph.

163

164 If the purchaser fails to remove the qualifying boat from this
 165 state within 90 days after purchase or a nonqualifying boat ~~or~~
 166 ~~an aircraft~~ from this state within 10 days after purchase or,
 167 when the boat ~~or aircraft~~ is repaired or altered, within 20 days
 168 after completion of such repairs or alterations, or permits the
 169 boat ~~or aircraft~~ to return to this state within 6 months from
 170 the date of departure, or if the purchaser fails to furnish the
 171 department with any of the documentation required by this
 172 subparagraph within the prescribed time period, the purchaser
 173 shall be liable for use tax on the cost price of the boat ~~or~~
 174 ~~aircraft~~ and, in addition thereto, payment of a penalty to the
 175 Department of Revenue equal to the tax payable. This penalty
 176 shall be in lieu of the penalty imposed by s. 212.12(2) and is
 177 mandatory and shall not be waived by the department. The 90-day
 178 period following the sale of a qualifying boat tax-exempt to a
 179 nonresident may not be tolled for any reason. ~~Notwithstanding~~
 180 ~~other provisions of this paragraph to the contrary, an aircraft~~
 181 ~~purchased in this state under the provisions of this paragraph~~
 182 ~~may be returned to this state for repairs within 6 months after~~
 183 ~~the date of its departure without being in violation of the law~~
 184 ~~and without incurring liability for the payment of tax or~~
 185 ~~penalty on the purchase price of the aircraft if the aircraft is~~
 186 ~~removed from this state within 20 days after the completion of~~
 187 ~~the repairs and if such removal can be demonstrated by invoices~~
 188 ~~for fuel, tie down, hangar charges issued by out of state~~
 189 ~~vendors or suppliers, or similar documentation.~~

190 Section 2. Subsection (8) of section 212.06, Florida
 191 Statutes, is amended to read:

192 212.06 Sales, storage, use tax; collectible from dealers;
 193 "dealer" defined; dealers to collect from purchasers;
 194 legislative intent as to scope of tax.--

195 (8) (a) Use tax shall ~~will~~ apply and be due on tangible
 196 personal property imported or caused to be imported into this
 197 state for use, consumption, distribution, or storage to be used
 198 or consumed in this state; provided, however, that, except as
 199 provided in paragraph (b), it shall be presumed that tangible
 200 personal property used in another state, territory of the United
 201 States, or the District of Columbia for 6 months or longer
 202 before being imported into this state was not purchased for use
 203 in this state. It shall also be presumed that an aircraft used
 204 in another state, territory of the United States, or the
 205 District of Columbia for less than 6 months before being
 206 imported into this state was not purchased for use in this state
 207 if the aircraft is licensed, registered, titled, or documented
 208 outside the state. The rental or lease of tangible personal
 209 property which is used or stored in this state shall be taxable
 210 without regard to its prior use or tax paid on purchase outside
 211 this state.

212 (b) The presumption that tangible personal property used
 213 in another state, territory of the United States, or the
 214 District of Columbia for 6 months or longer before being
 215 imported into this state was not purchased for use in this state
 216 does not apply to any boat for which a saltwater fishing license
 217 fee is required to be paid pursuant to s. 372.57(7), either
 218 directly or indirectly, for the purpose of taking, attempting to
 219 take, or possessing any saltwater fish for noncommercial

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220 purposes. Use tax shall apply and be due on such a boat as
221 provided in this paragraph, and proof of payment of such tax
222 must be presented prior to the first such licensure of the boat,
223 registration of the boat pursuant to chapter 328, and titling of
224 the boat pursuant to chapter 328. A boat that is first licensed
225 within 1 year after purchase shall be subject to use tax on the
226 full amount of the purchase price; a boat that is first licensed
227 in the second year after purchase shall be subject to use tax on
228 90 percent of the purchase price; a boat that is first licensed
229 in the third year after purchase shall be subject to use tax on
230 80 percent of the purchase price; a boat that is first licensed
231 in the fourth year after purchase shall be subject to use tax on
232 70 percent of the purchase price; a boat that is first licensed
233 in the fifth year after purchase shall be subject to use tax on
234 60 percent of the purchase price; and a boat that is first
235 licensed in the sixth year after purchase, or later, shall be
236 subject to use tax on 50 percent of the purchase price. If the
237 purchaser fails to provide the purchase invoice on such boat,
238 the fair market value of the boat at the time of importation
239 into this state shall be used to compute the tax.

240 Section 3. This act shall take effect July 1, 2008.