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LEGISLATIVE ACTION

Senate

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House

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Floor: 1/AD/2R

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04/29/2009 02:54 PM

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Senator Garcia moved the following:

Senate Amendment (with title amendment)

Between lines 545 and 546

insert:

Section 2. Subsection (6) of section 166.231, Florida Statutes, is amended to read:

166.231 Municipalities; public service tax.—

(6) A municipality may exempt from the tax imposed by this section any amount up to, and including, the total amount of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, or manufactured gas either metered or bottled purchased per month, or reduce the rate of taxation on



818366

13 the purchase of such electricity or gas when purchased by an
14 industrial consumer which uses the electricity or gas directly
15 in industrial manufacturing, processing, compounding, or a
16 production process, at a fixed location in the municipality, of
17 items of tangible personal property for sale. The municipality
18 shall establish the requirements for qualification for this
19 exemption in the manner prescribed by ordinance. Possession by a
20 seller of a written certification by the purchaser, certifying
21 the purchaser's entitlement to an exemption permitted by this
22 subsection, relieves the seller from the responsibility of
23 collecting the tax on the nontaxable amounts, and the
24 municipality shall look solely to the purchaser for recovery of
25 such tax if it determines that the purchaser was not entitled to
26 the exemption. Any municipality granting an exemption pursuant
27 to this subsection shall grant the exemption to all companies
28 classified in the same five-digit NAICS SIC Industry Major Group
29 Number. As used in this subsection, "NAICS" means those
30 classifications contained in the North American Industry
31 Classification System, as published in 2007 by the Office of
32 Management and Budget, Executive Office of the President.

33 Section 3. Paragraphs (a) and (i) of subsection (1) of
34 section 212.05, Florida Statutes, are amended to read:

35 212.05 Sales, storage, use tax. -It is hereby declared to
36 be the legislative intent that every person is exercising a
37 taxable privilege who engages in the business of selling
38 tangible personal property at retail in this state, including
39 the business of making mail order sales, or who rents or
40 furnishes any of the things or services taxable under this
41 chapter, or who stores for use or consumption in this state any



818366

42 item or article of tangible personal property as defined herein
43 and who leases or rents such property within the state.

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

47 (a)1.a. At the rate of 6 percent of the sales price of each
48 item or article of tangible personal property when sold at
49 retail in this state, computed on each taxable sale for the
50 purpose of remitting the amount of tax due the state, and
51 including each and every retail sale.

52 b. Each occasional or isolated sale of an aircraft, boat,
53 mobile home, or motor vehicle of a class or type which is
54 required to be registered, licensed, titled, or documented in
55 this state or by the United States Government shall be subject
56 to tax at the rate provided in this paragraph. The department
57 shall by rule adopt any nationally recognized publication for
58 valuation of used motor vehicles as the reference price list for
59 any used motor vehicle which is required to be licensed pursuant
60 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
61 party to an occasional or isolated sale of such a vehicle
62 reports to the tax collector a sales price which is less than 80
63 percent of the average loan price for the specified model and
64 year of such vehicle as listed in the most recent reference
65 price list, the tax levied under this paragraph shall be
66 computed by the department on such average loan price unless the
67 parties to the sale have provided to the tax collector an
68 affidavit signed by each party, or other substantial proof,
69 stating the actual sales price. Any party to such sale who
70 reports a sales price less than the actual sales price is guilty



818366

71 of a misdemeanor of the first degree, punishable as provided in
72 s. 775.082 or s. 775.083. The department shall collect or
73 attempt to collect from such party any delinquent sales taxes.
74 In addition, such party shall pay any tax due and any penalty
75 and interest assessed plus a penalty equal to twice the amount
76 of the additional tax owed. Notwithstanding any other provision
77 of law, the Department of Revenue may waive or compromise any
78 penalty imposed pursuant to this subparagraph.

79 2. This paragraph does not apply to the sale of a boat or
80 aircraft by or through a registered dealer under this chapter to
81 a purchaser who, at the time of taking delivery, is a
82 nonresident of this state, does not make his or her permanent
83 place of abode in this state, and is not engaged in carrying on
84 in this state any employment, trade, business, or profession in
85 which the boat or aircraft will be used in this state, or is a
86 corporation none of the officers or directors of which is a
87 resident of, or makes his or her permanent place of abode in,
88 this state, or is a noncorporate entity that has no individual
89 vested with authority to participate in the management,
90 direction, or control of the entity's affairs who is a resident
91 of, or makes his or her permanent abode in, this state. For
92 purposes of this exemption, either a registered dealer acting on
93 his or her own behalf as seller, a registered dealer acting as
94 broker on behalf of a seller, or a registered dealer acting as
95 broker on behalf of the purchaser may be deemed to be the
96 selling dealer. This exemption shall not be allowed unless:

97 a. The purchaser removes a qualifying boat, as described in
98 sub-subparagraph f., from the state within 90 days after the
99 date of purchase or extension, or the purchaser removes a



818366

100 nonqualifying boat or an aircraft from this state within 10 days
101 after the date of purchase or, when the boat or aircraft is
102 repaired or altered, within 20 days after completion of the
103 repairs or alterations;

104 b. The purchaser, within 30 days from the date of
105 departure, shall provide the department with written proof that
106 the purchaser licensed, registered, titled, or documented the
107 boat or aircraft outside the state. If such written proof is
108 unavailable, within 30 days the purchaser shall provide proof
109 that the purchaser applied for such license, title,
110 registration, or documentation. The purchaser shall forward to
111 the department proof of title, license, registration, or
112 documentation upon receipt.

113 c. The purchaser, within 10 days of removing the boat or
114 aircraft from Florida, shall furnish the department with proof
115 of removal in the form of receipts for fuel, dockage, slippage,
116 tie-down, or hangaring from outside of Florida. The information
117 so provided must clearly and specifically identify the boat or
118 aircraft;

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

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

126 f. Unless the nonresident purchaser of a boat of 5 net tons
127 of admeasurement or larger intends to remove the boat from this
128 state within 10 days after the date of purchase or when the boat



818366

129 is repaired or altered, within 20 days after completion of the
130 repairs or alterations, the nonresident purchaser shall apply to
131 the selling dealer for a decal which authorizes 90 days after
132 the date of purchase for removal of the boat. The nonresident
133 purchaser of a qualifying boat may apply to the selling dealer
134 within 60 days after the date of purchase for an extension decal
135 that authorizes the boat to remain in this state for an
136 additional 90 days, but not more than a total of 180 days,
137 before the nonresident purchaser is required to pay the tax
138 imposed by this chapter. The department is authorized to issue
139 decals in advance to dealers. The number of decals issued in
140 advance to a dealer shall be consistent with the volume of the
141 dealer's past sales of boats which qualify under this sub-
142 subparagraph. The selling dealer or his or her agent shall mark
143 and affix the decals to qualifying boats in the manner
144 prescribed by the department, prior to delivery of the boat.

145 (I) The department is hereby authorized to charge dealers a
146 fee sufficient to recover the costs of decals issued, except the
147 extension decal shall cost \$425.

148 (II) The proceeds from the sale of decals will be deposited
149 into the administrative trust fund.

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

153 (IV) The department is authorized to require dealers who
154 purchase decals to file reports with the department and may
155 prescribe all necessary records by rule. All such records are
156 subject to inspection by the department.

157 (V) Any dealer or his or her agent who issues a decal



818366

158 falsely, fails to affix a decal, mismarks the expiration date of
159 a decal, or fails to properly account for decals will be
160 considered prima facie to have committed a fraudulent act to
161 evade the tax and will be liable for payment of the tax plus a
162 mandatory penalty of 200 percent of the tax, and shall be liable
163 for fine and punishment as provided by law for a conviction of a
164 misdemeanor of the first degree, as provided in s. 775.082 or s.
165 775.083.

166 (VI) Any nonresident purchaser of a boat who removes a
167 decal prior to permanently removing the boat from the state, or
168 defaces, changes, modifies, or alters a decal in a manner
169 affecting its expiration date prior to its expiration, or who
170 causes or allows the same to be done by another, will be
171 considered prima facie to have committed a fraudulent act to
172 evade the tax and will be liable for payment of the tax plus a
173 mandatory penalty of 200 percent of the tax, and shall be liable
174 for fine and punishment as provided by law for a conviction of a
175 misdemeanor of the first degree, as provided in s. 775.082 or s.
176 775.083.

177 (VII) The department is authorized to adopt rules necessary
178 to administer and enforce this subparagraph and to publish the
179 necessary forms and instructions.

180 (VIII) The department is hereby authorized to adopt
181 emergency rules pursuant to s. 120.54(4) to administer and
182 enforce the provisions of this subparagraph.

183
184 If the purchaser fails to remove the qualifying boat from this
185 state within the maximum 180 ~~90~~ days after purchase or a
186 nonqualifying boat or an aircraft from this state within 10 days



818366

187 after purchase or, when the boat or aircraft is repaired or
188 altered, within 20 days after completion of such repairs or
189 alterations, or permits the boat or aircraft to return to this
190 state within 6 months from the date of departure, or if the
191 purchaser fails to furnish the department with any of the
192 documentation required by this subparagraph within the
193 prescribed time period, the purchaser shall be liable for use
194 tax on the cost price of the boat or aircraft and, in addition
195 thereto, payment of a penalty to the Department of Revenue equal
196 to the tax payable. This penalty shall be in lieu of the penalty
197 imposed by s. 212.12(2) and is mandatory and shall not be waived
198 by the department. The maximum 180-day ~~90-day~~ period following
199 the sale of a qualifying boat tax-exempt to a nonresident may
200 not be tolled for any reason. Notwithstanding other provisions
201 of this paragraph to the contrary, an aircraft purchased in this
202 state under the provisions of this paragraph may be returned to
203 this state for repairs within 6 months after the date of its
204 departure without being in violation of the law and without
205 incurring liability for the payment of tax or penalty on the
206 purchase price of the aircraft if the aircraft is removed from
207 this state within 20 days after the completion of the repairs
208 and if such removal can be demonstrated by invoices for fuel,
209 tie-down, hangar charges issued by out-of-state vendors or
210 suppliers, or similar documentation.

211 (i)1. At the rate of 6 percent on charges for all:
212 a. Detective, burglar protection, and other protection
213 services (NAICS National SIC Industry Numbers 561611, 561612,
214 561613, 7381 and 561621 7382). Any law enforcement officer, as
215 defined in s. 943.10, who is performing approved duties as



818366

216 determined by his or her local law enforcement agency in his or
217 her capacity as a law enforcement officer, and who is subject to
218 the direct and immediate command of his or her law enforcement
219 agency, and in the law enforcement officer's uniform as
220 authorized by his or her law enforcement agency, is performing
221 law enforcement and public safety services and is not performing
222 detective, burglar protection, or other protective services, if
223 the law enforcement officer is performing his or her approved
224 duties in a geographical area in which the law enforcement
225 officer has arrest jurisdiction. Such law enforcement and public
226 safety services are not subject to tax irrespective of whether
227 the duty is characterized as "extra duty," "off-duty," or
228 "secondary employment," and irrespective of whether the officer
229 is paid directly or through the officer's agency by an outside
230 source. The term "law enforcement officer" includes full-time or
231 part-time law enforcement officers, and any auxiliary law
232 enforcement officer, when such auxiliary law enforcement officer
233 is working under the direct supervision of a full-time or part-
234 time law enforcement officer.

235 b. Nonresidential cleaning and nonresidential pest control
236 services (NAICS National Numbers 561710 and 561720 ~~SIC Industry~~
237 ~~Group Number 734~~).

238 2. As used in this paragraph, "NAICS ~~SIC~~" means those
239 classifications contained in the North American Industry
240 ~~Standard Industrial Classification System Manual, 1987~~, as
241 published in 2007 by the Office of Management and Budget,
242 Executive Office of the President.

243 3. Charges for detective, burglar protection, and other
244 protection security services performed in this state but used



818366

245 outside this state are exempt from taxation. Charges for
246 detective, burglar protection, and other protection security
247 services performed outside this state and used in this state are
248 subject to tax.

249 4. If a transaction involves both the sale or use of a
250 service taxable under this paragraph and the sale or use of a
251 service or any other item not taxable under this chapter, the
252 consideration paid must be separately identified and stated with
253 respect to the taxable and exempt portions of the transaction or
254 the entire transaction shall be presumed taxable. The burden
255 shall be on the seller of the service or the purchaser of the
256 service, whichever applicable, to overcome this presumption by
257 providing documentary evidence as to which portion of the
258 transaction is exempt from tax. The department is authorized to
259 adjust the amount of consideration identified as the taxable and
260 exempt portions of the transaction; however, a determination
261 that the taxable and exempt portions are inaccurately stated and
262 that the adjustment is applicable must be supported by
263 substantial competent evidence.

264 5. Each seller of services subject to sales tax pursuant to
265 this paragraph shall maintain a monthly log showing each
266 transaction for which sales tax was not collected because the
267 services meet the requirements of subparagraph 3. for out-of-
268 state use. The log must identify the purchaser's name, location
269 and mailing address, and federal employer identification number,
270 if a business, or the social security number, if an individual,
271 the service sold, the price of the service, the date of sale,
272 the reason for the exemption, and the sales invoice number. The
273 monthly log shall be maintained pursuant to the same



818366

274 requirements and subject to the same penalties imposed for the
275 keeping of similar records pursuant to this chapter.

276 Section 4. Paragraph (c) of subsection (1) of section
277 212.098, Florida Statutes, is amended to read:

278 212.098 Rural Job Tax Credit Program.—

279 (1) As used in this section, the term:

280 (c) "Qualified area" means any area that is contained
281 within a rural area of critical economic concern designated
282 under s. 288.0656, a county that has a population of fewer than
283 75,000 persons, a ~~or any~~ county that has a population of 125,000
284 ~~100,000~~ or less and is contiguous to a county that has a
285 population of less than 75,000, selected in the following
286 manner: every third year, the Office of Tourism, Trade, and
287 Economic Development shall rank and tier the state's counties
288 according to the following four factors:

289 1. Highest unemployment rate for the most recent 36-month
290 period.

291 2. Lowest per capita income for the most recent 36-month
292 period.

293 3. Highest percentage of residents whose incomes are below
294 the poverty level, based upon the most recent data available.

295 4. Average weekly manufacturing wage, based upon the most
296 recent data available.

297 Section 5. Subparagraph 3. of paragraph (k) of subsection
298 (8) of section 213.053, Florida Statutes, is created to read:

299 213.053 Confidentiality and information sharing.—

300 (8) Notwithstanding any other provision of this section,
301 the department may provide:

302 (k)1. Payment information relative to chapters 199, 201,



818366

303 202, 212, 220, 221, and 624 to the Office of Tourism, Trade, and
304 Economic Development, or its employees or agents that are
305 identified in writing by the office to the department, in the
306 administration of the tax refund program for qualified defense
307 contractors and space flight business contractors authorized by
308 s. 288.1045 and the tax refund program for qualified target
309 industry businesses authorized by s. 288.106.

310 2. Information relative to tax credits taken by a business
311 under s. 220.191 and exemptions or tax refunds received by a
312 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
313 and Economic Development, or its employees or agents that are
314 identified in writing by the office to the department, in the
315 administration and evaluation of the capital investment tax
316 credit program authorized in s. 220.191 and the semiconductor,
317 defense, and space tax exemption program authorized in s.
318 212.08(5)(j).

319 3. Information relative to tax credits taken by a taxpayer
320 pursuant to the tax credit programs created in ss. 193.017;
321 212.08(5)(g), (h), (n), (o) and (p); 212.08(15); 212.096; 212.097;
322 212.098; 220.181; 220.182; 220,183; 220.184; 220.1845; 220.185;
323 220.1895; 220.19; 220.191; 220.192; 220.193; 288.0656; 288.99;
324 290.007; 376.30781; 420.5093; 420.5099; 550.0951; 550.26352;
325 550.2704; 601.155; 624.509; 624.510; 624.5105; and 624.5107 to
326 the Office of Tourism, Trade, and Economic Development, or its
327 employees or agents that are identified in writing by the office
328 to the department, for use in the administration or evaluation
329 of such programs.

330
331 Disclosure of information under this subsection shall be



818366

332 pursuant to a written agreement between the executive director
333 and the agency. Such agencies, governmental or nongovernmental,
334 shall be bound by the same requirements of confidentiality as
335 the Department of Revenue. Breach of confidentiality is a
336 misdemeanor of the first degree, punishable as provided by s.
337 775.082 or s. 775.083.

338 Section 6. Paragraph (b) of subsection (5) of section
339 220.15, Florida Statutes, is amended to read:

340 220.15 Apportionment of adjusted federal income.—

341 (5) The sales factor is a fraction the numerator of which
342 is the total sales of the taxpayer in this state during the
343 taxable year or period and the denominator of which is the total
344 sales of the taxpayer everywhere during the taxable year or
345 period.

346 (b)1. Sales of tangible personal property occur in this
347 state if the property is delivered or shipped to a purchaser
348 within this state, regardless of the f.o.b. point, other
349 conditions of the sale, or ultimate destination of the property,
350 unless shipment is made via a common or contract carrier.
351 However, for industries in NAICS National SIC Industry Number
352 311411 2037, if the ultimate destination of the product is to a
353 location outside this state, regardless of the method of
354 shipment or f.o.b. point, the sale shall not be deemed to occur
355 in this state. As used in this paragraph, "NAICS" means those
356 classifications contained in the North American Industry
357 Classification System, as published in 2007 by the Office of
358 Management and Budget, Executive Office of the President.

359 2. When citrus fruit is delivered by a cooperative for a
360 grower-member, by a grower-member to a cooperative, or by a



818366

361 grower-participant to a Florida processor, the sales factor for
362 the growers for such citrus fruit delivered to such processor
363 shall be the same as the sales factor for the most recent
364 taxable year of that processor. That sales factor, expressed
365 only as a percentage and not in terms of the dollar volume of
366 sales, so as to protect the confidentiality of the sales of the
367 processor, shall be furnished on the request of such a grower
368 promptly after it has been determined for that taxable year.

369 3. Reimbursement of expenses under an agency contract
370 between a cooperative, a grower-member of a cooperative, or a
371 grower and a processor is not a sale within this state.

372 Section 7. Paragraph (a) of subsection (2) of section
373 443.1715, Florida Statutes, is amended to read:

374 443.1715 Disclosure of information; confidentiality.—

375 (2) DISCLOSURE OF INFORMATION.—

376 (a) Subject to restrictions the Agency for Workforce
377 Innovation or the state agency providing unemployment tax
378 collection services adopts by rule, information declared
379 confidential under this section is available to any agency of
380 this or any other state, or any federal agency, charged with the
381 administration of any unemployment compensation law or the
382 maintenance of the one-stop delivery system, or the Bureau of
383 Internal Revenue of the United States Department of the
384 Treasury, the Governor's Office of Tourism, Trade, and Economic
385 Development, or the Florida Department of Revenue. Information
386 obtained in connection with the administration of the one-stop
387 delivery system may be made available to persons or agencies for
388 purposes appropriate to the operation of a public employment
389 service or a job-preparatory or career education or training



818366

390 program. The Agency for Workforce Innovation shall, on a
391 quarterly basis, furnish the National Directory of New Hires
392 with information concerning the wages and unemployment benefits
393 paid to individuals, by the dates, in the format, and containing
394 the information specified in the regulations of the United
395 States Secretary of Health and Human Services. Upon request, the
396 Agency for Workforce Innovation shall furnish any agency of the
397 United States charged with the administration of public works or
398 assistance through public employment, and may furnish to any
399 state agency similarly charged, the name, address, ordinary
400 occupation, and employment status of each recipient of benefits
401 and the recipient's rights to further benefits under this
402 chapter. Except as otherwise provided by law, the receiving
403 agency must retain the confidentiality of this information as
404 provided in this section. The tax collection service provider
405 may request the Comptroller of the Currency of the United States
406 to examine the correctness of any return or report of any
407 national banking association rendered under this chapter and may
408 in connection with that request transmit any report or return
409 for examination to the Comptroller of the Currency of the United
410 States as provided in s. 3305(c) of the federal Internal Revenue
411 Code.

412
413
414 ===== T I T L E A M E N D M E N T =====

415 And the title is amended as follows:

416 Delete line 52

417 and insert:

418 entities for certain purposes; amending s. 166.231, F.S.;



818366

419 revising industry code designations; providing a definition;
420 amending s. 212.05, F.S.; extending the time nonresident
421 purchasers have to remove a boat from the state after purchase;
422 providing for an extension decal to be issued by a dealer;
423 imposing a decal cost; revising industry code designations;
424 amending s. 212.098, F.S.; revising the definition for
425 "qualified area"; amending s. 213.053, F.S.; granting the Office
426 of Tourism, Trade, and Economic Development access to certain
427 confidential and exempt records held by the Department of
428 Revenue and related to certain tax incentive and tax refund
429 programs; amending s. 220.15, F.S.; revising industry code
430 designations; providing a definition; amending s.443.1715, F.S.;
431 granting the Office of Tourism, Trade, and Economic Development
432 access to certain records held by the Agency for Workforce
433 Innovation; amending s. 212.097, F.S.;

434