

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.; providing an  
 4           alternative rate of taxation on sales of aircraft;  
 5           amending s. 212.08, F.S.; exempting from the use tax  
 6           aircraft owned by nonresidents and entering and remaining  
 7           in the state for certain purposes under certain  
 8           circumstances; providing an effective date.

9  
 10   Be It Enacted by the Legislature of the State of Florida:

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 12           Section 1. Paragraph (a) of subsection (1) of section  
 13   212.05, Florida Statutes, is amended to read:

14           212.05 Sales, storage, use tax.--It is hereby declared to  
 15   be the legislative intent that every person is exercising a  
 16   taxable privilege who engages in the business of selling  
 17   tangible personal property at retail in this state, including  
 18   the business of making mail order sales, or who rents or  
 19   furnishes any of the things or services taxable under this  
 20   chapter, or who stores for use or consumption in this state any  
 21   item or article of tangible personal property as defined herein  
 22   and who leases or rents such property within the state.

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

26           (a)1.a. At the rate of 6 percent of the sales price of  
 27   each item or article of tangible personal property when sold at  
 28   retail in this state, computed on each taxable sale for the

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29 | purpose of remitting the amount of tax due the state, and  
30 | including each and every retail sale, except that the tax rate  
31 | on sales of aircraft shall be at the rate of 3 percent of the  
32 | sales price of the aircraft.

33 |       b. Each occasional or isolated sale of an aircraft, boat,  
34 | mobile home, or motor vehicle of a class or type which is  
35 | required to be registered, licensed, titled, or documented in  
36 | this state or by the United States Government shall be subject  
37 | to tax at the rate provided in this paragraph. The department  
38 | shall by rule adopt any nationally recognized publication for  
39 | valuation of used motor vehicles as the reference price list for  
40 | any used motor vehicle which is required to be licensed pursuant  
41 | to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any  
42 | party to an occasional or isolated sale of such a vehicle  
43 | reports to the tax collector a sales price which is less than 80  
44 | percent of the average loan price for the specified model and  
45 | year of such vehicle as listed in the most recent reference  
46 | price list, the tax levied under this paragraph shall be  
47 | computed by the department on such average loan price unless the  
48 | parties to the sale have provided to the tax collector an  
49 | affidavit signed by each party, or other substantial proof,  
50 | stating the actual sales price. Any party to such sale who  
51 | reports a sales price less than the actual sales price is guilty  
52 | of a misdemeanor of the first degree, punishable as provided in  
53 | s. 775.082 or s. 775.083. The department shall collect or  
54 | attempt to collect from such party any delinquent sales taxes.  
55 | In addition, such party shall pay any tax due and any penalty  
56 | and interest assessed plus a penalty equal to twice the amount

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57 | of the additional tax owed. Notwithstanding any other provision  
58 | of law, the Department of Revenue may waive or compromise any  
59 | penalty imposed pursuant to this subparagraph.

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

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

84           b. The purchaser, within 30 days from the date of  
85 departure, shall provide the department with written proof that  
86 the purchaser licensed, registered, titled, or documented the  
87 boat or aircraft outside the state. If such written proof is  
88 unavailable, within 30 days the purchaser shall provide proof  
89 that the purchaser applied for such license, title,  
90 registration, or documentation. The purchaser shall forward to  
91 the department proof of title, license, registration, or  
92 documentation upon receipt.

93           c. The purchaser, within 10 days of removing the boat or  
94 aircraft from Florida, shall furnish the department with proof  
95 of removal in the form of receipts for fuel, dockage, slippage,  
96 tie-down, or hangaring from outside of Florida. The information  
97 so provided must clearly and specifically identify the boat or  
98 aircraft;

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

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

106           f. Unless the nonresident purchaser of a boat of 5 net  
107 tons of admeasurement or larger intends to remove the boat from  
108 this state within 10 days after the date of purchase or when the  
109 boat is repaired or altered, within 20 days after completion of  
110 the repairs or alterations, the nonresident purchaser shall  
111 apply to the selling dealer for a decal which authorizes 90 days

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112 after the date of purchase for removal of the boat. The  
113 department is authorized to issue decals in advance to dealers.  
114 The number of decals issued in advance to a dealer shall be  
115 consistent with the volume of the dealer's past sales of boats  
116 which qualify under this sub-subparagraph. The selling dealer or  
117 his or her agent shall mark and affix the decals to qualifying  
118 boats in the manner prescribed by the department, prior to  
119 delivery of the boat.

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

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

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

127 (IV) The department is authorized to require dealers who  
128 purchase decals to file reports with the department and may  
129 prescribe all necessary records by rule. All such records are  
130 subject to inspection by the department.

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

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

151 (VII) The department is authorized to adopt rules  
152 necessary to administer and enforce this subparagraph and to  
153 publish the necessary forms and instructions.

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

157  
158 If the purchaser fails to remove the qualifying boat from this  
159 state within 90 days after purchase or a nonqualifying boat or  
160 an aircraft from this state within 10 days after purchase or,  
161 when the boat or aircraft is repaired or altered, within 20 days  
162 after completion of such repairs or alterations, or permits the  
163 boat or aircraft to return to this state within 6 months from  
164 the date of departure, or if the purchaser fails to furnish the  
165 department with any of the documentation required by this  
166 subparagraph within the prescribed time period, the purchaser  
167 shall be liable for use tax on the cost price of the boat or

168 aircraft and, in addition thereto, payment of a penalty to the  
 169 Department of Revenue equal to the tax payable. This penalty  
 170 shall be in lieu of the penalty imposed by s. 212.12(2) and is  
 171 mandatory and shall not be waived by the department. The 90-day  
 172 period following the sale of a qualifying boat tax-exempt to a  
 173 nonresident may not be tolled for any reason. Notwithstanding  
 174 other provisions of this paragraph to the contrary, an aircraft  
 175 purchased in this state under the provisions of this paragraph  
 176 may be returned to this state for repairs within 6 months after  
 177 the date of its departure without being in violation of the law  
 178 and without incurring liability for the payment of tax or  
 179 penalty on the purchase price of the aircraft if the aircraft is  
 180 removed from this state within 20 days after the completion of  
 181 the repairs and if such removal can be demonstrated by invoices  
 182 for fuel, tie-down, hangar charges issued by out-of-state  
 183 vendors or suppliers, or similar documentation.

184 Section 2. Paragraph (ggg) is added to subsection (7) of  
 185 section 212.08, Florida Statutes, to read:

186 212.08 Sales, rental, use, consumption, distribution, and  
 187 storage tax; specified exemptions.--The sale at retail, the  
 188 rental, the use, the consumption, the distribution, and the  
 189 storage to be used or consumed in this state of the following  
 190 are hereby specifically exempt from the tax imposed by this  
 191 chapter.

192 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any  
 193 entity by this chapter do not inure to any transaction that is  
 194 otherwise taxable under this chapter when payment is made by a  
 195 representative or employee of the entity by any means,

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196 including, but not limited to, cash, check, or credit card, even  
197 when that representative or employee is subsequently reimbursed  
198 by the entity. In addition, exemptions provided to any entity by  
199 this subsection do not inure to any transaction that is  
200 otherwise taxable under this chapter unless the entity has  
201 obtained a sales tax exemption certificate from the department  
202 or the entity obtains or provides other documentation as  
203 required by the department. Eligible purchases or leases made  
204 with such a certificate must be in strict compliance with this  
205 subsection and departmental rules, and any person who makes an  
206 exempt purchase with a certificate that is not in strict  
207 compliance with this subsection and the rules is liable for and  
208 shall pay the tax. The department may adopt rules to administer  
209 this subsection.

210 (ggg) Aircraft temporarily in the state.--

211 1. An aircraft owned by a person who is not a resident of  
212 this state is exempt from the use tax imposed under this chapter  
213 if the aircraft enters and remains in this state for less than a  
214 total of 21 days during the 6-month period after the date of  
215 purchase. The temporary use of the aircraft and subsequent  
216 removal from this state may be proven by invoices for fuel or  
217 tie-down or hangar charges issued by out-of-state vendors or  
218 suppliers or similar documentation that clearly and specifically  
219 identifies the aircraft. The exemption provided by this  
220 subparagraph shall be in addition to the provisions of  
221 subparagraph 2. and s. 212.05(1) (a).

222 2. An aircraft owned by a person who is not a resident of  
223 this state is exempt from the use tax imposed under this chapter



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224 if the aircraft enters or remains in this state exclusively for  
225 purposes of flight training, repairs, alterations, refitting, or  
226 modification. Such flight training, repairs, alterations,  
227 refitting, or modification shall be supported by written  
228 documentation issued by in-state vendors or suppliers which  
229 clearly and specifically identifies the aircraft. The exemption  
230 provided by this subparagraph shall be in addition to the  
231 provisions of subparagraph 1. and s. 212.05(1)(a).

232 Section 3. This act shall take effect July 1, 2009.