

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

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.

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, except as provided in s. 212.08(7) (ggg),
 165 or if the purchaser fails to furnish the department with any of
 166 the documentation required by this subparagraph within the
 167 prescribed time period, the purchaser shall be liable for use

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

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

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

193 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 194 entity by this chapter do not inure to any transaction that is
 195 otherwise taxable under this chapter when payment is made by a

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

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

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

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223 2. An aircraft owned by a person who is not a resident of
224 this state is exempt from the use tax imposed under this chapter
225 if the aircraft enters or remains in this state exclusively for
226 purposes of flight training, repairs, alterations, refitting, or
227 modification. Such flight training, repairs, alterations,
228 refitting, or modification shall be supported by written
229 documentation issued by in-state vendors or suppliers which
230 clearly and specifically identifies the aircraft. The exemption
231 provided by this subparagraph shall be in addition to the
232 provisions of subparagraph 1. and s. 212.05(1) (a).

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