

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. 212.02, F.S.; defining the term "fractional
 6 aircraft ownership program"; creating s. 212.0597, F.S.;
 7 providing a maximum tax on the sale or use of fractional
 8 aircraft ownership interests; providing applicability;
 9 amending s. 212.08, F.S.; exempting from the use tax
 10 aircraft owned by nonresidents and entering and remaining
 11 in the state for certain purposes under certain
 12 circumstances; providing tax exemptions on the sale or use
 13 of aircraft primarily used in a fractional aircraft
 14 ownership program and any parts and labor used in the
 15 completion, maintenance, repair, and overhaul of such
 16 aircraft; providing an effective date.

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 18 Be It Enacted by the Legislature of the State of Florida:
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20 Section 1. Paragraph (a) of subsection (1) of section
 21 212.05, Florida Statutes, is amended to read:

22 212.05 Sales, storage, use tax.--It is hereby declared to
 23 be the legislative intent that every person is exercising a
 24 taxable privilege who engages in the business of selling
 25 tangible personal property at retail in this state, including
 26 the business of making mail order sales, or who rents or
 27 furnishes any of the things or services taxable under this
 28 chapter, or who stores for use or consumption in this state any

29 | item or article of tangible personal property as defined herein
30 | and who leases or rents such property within the state.

31 | (1) For the exercise of such privilege, a tax is levied on
32 | each taxable transaction or incident, which tax is due and
33 | payable as follows:

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

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

57 affidavit signed by each party, or other substantial proof,
58 stating the actual sales price. Any party to such sale who
59 reports a sales price less than the actual sales price is guilty
60 of a misdemeanor of the first degree, punishable as provided in
61 s. 775.082 or s. 775.083. The department shall collect or
62 attempt to collect from such party any delinquent sales taxes.
63 In addition, such party shall pay any tax due and any penalty
64 and interest assessed plus a penalty equal to twice the amount
65 of the additional tax owed. Notwithstanding any other provision
66 of law, the Department of Revenue may waive or compromise any
67 penalty imposed pursuant to this subparagraph.

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

84 broker on behalf of the purchaser may be deemed to be the
85 selling dealer. This exemption shall not be allowed unless:

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

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

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

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

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

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

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

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

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

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

139 (V) Any dealer or his or her agent who issues a decal
140 falsely, fails to affix a decal, mismarks the expiration date of
141 a decal, or fails to properly account for decals will be
142 considered prima facie to have committed a fraudulent act to
143 evade the tax and will be liable for payment of the tax plus a
144 mandatory penalty of 200 percent of the tax, and shall be liable
145 for fine and punishment as provided by law for a conviction of a
146 misdemeanor of the first degree, as provided in s. 775.082 or s.
147 775.083.

148 (VI) Any nonresident purchaser of a boat who removes a
149 decal prior to permanently removing the boat from the state, or
150 defaces, changes, modifies, or alters a decal in a manner
151 affecting its expiration date prior to its expiration, or who
152 causes or allows the same to be done by another, will be
153 considered prima facie to have committed a fraudulent act to
154 evade the tax and will be liable for payment of the tax plus a
155 mandatory penalty of 200 percent of the tax, and shall be liable
156 for fine and punishment as provided by law for a conviction of a
157 misdemeanor of the first degree, as provided in s. 775.082 or s.
158 775.083.

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

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

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166 If the purchaser fails to remove the qualifying boat from this
167 state within 90 days after purchase or a nonqualifying boat or
168 an aircraft from this state within 10 days after purchase or,
169 when the boat or aircraft is repaired or altered, within 20 days
170 after completion of such repairs or alterations, or permits the
171 boat or aircraft to return to this state within 6 months from
172 the date of departure, except as provided in s. 212.08(7)(ggg),
173 or if the purchaser fails to furnish the department with any of
174 the documentation required by this subparagraph within the
175 prescribed time period, the purchaser shall be liable for use
176 tax on the cost price of the boat or aircraft and, in addition
177 thereto, payment of a penalty to the Department of Revenue equal
178 to the tax payable. This penalty shall be in lieu of the penalty
179 imposed by s. 212.12(2) and is mandatory and shall not be waived
180 by the department. The 90-day period following the sale of a
181 qualifying boat tax-exempt to a nonresident may not be tolled
182 for any reason. Notwithstanding other provisions of this
183 paragraph to the contrary, an aircraft purchased in this state
184 under the provisions of this paragraph may be returned to this
185 state for repairs within 6 months after the date of its
186 departure without being in violation of the law and without
187 incurring liability for the payment of tax or penalty on the
188 purchase price of the aircraft if the aircraft is removed from
189 this state within 20 days after the completion of the repairs
190 and if such removal can be demonstrated by invoices for fuel,
191 tie-down, hangar charges issued by out-of-state vendors or
192 suppliers, or similar documentation.

193 Section 2. Subsection (34) is added to section 212.02,

194 Florida Statutes, to read:

195 212.02 Definitions.--The following terms and phrases when
 196 used in this chapter have the meanings ascribed to them in this
 197 section, except where the context clearly indicates a different
 198 meaning:

199 (34) "Fractional aircraft ownership program" means a
 200 program that meets the requirements of 14 C.F.R. part 91,
 201 subpart K, relating to fractional ownership operations, except
 202 the program must include a minimum of 25 aircraft owned or
 203 leased by the business or affiliated group, as defined by s.
 204 1504(a) of the Internal Revenue Code, providing the program.
 205 Such aircraft must be used in the fractional aircraft ownership
 206 program providing the program.

207 Section 3. Section 212.0597, Florida Statutes, is created
 208 to read:

209 212.0597 Maximum tax on fractional aircraft ownership
 210 interests.--The tax imposed under this chapter, including any
 211 discretionary sales surtax under s. 212.055, is limited to \$300
 212 on the sale or use in this state of a fractional ownership
 213 interest in aircraft pursuant to a fractional aircraft ownership
 214 program. This maximum tax applies to the total consideration
 215 paid for the fractional ownership interest, including any
 216 amounts paid by the fractional owner as monthly management or
 217 maintenance fees. The maximum tax applies only if the fractional
 218 ownership interest is sold by or to the operator of the
 219 fractional aircraft ownership program or if the fractional
 220 ownership interest is transferred upon the approval of the
 221 operator of the fractional aircraft ownership program.

222 Section 4. Paragraphs (ggg) and (hhh) are added to
 223 subsection (7) of section 212.08, Florida Statutes, to read:

224 212.08 Sales, rental, use, consumption, distribution, and
 225 storage tax; specified exemptions.--The sale at retail, the
 226 rental, the use, the consumption, the distribution, and the
 227 storage to be used or consumed in this state of the following
 228 are hereby specifically exempt from the tax imposed by this
 229 chapter.

230 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 231 entity by this chapter do not inure to any transaction that is
 232 otherwise taxable under this chapter when payment is made by a
 233 representative or employee of the entity by any means,
 234 including, but not limited to, cash, check, or credit card, even
 235 when that representative or employee is subsequently reimbursed
 236 by the entity. In addition, exemptions provided to any entity by
 237 this subsection do not inure to any transaction that is
 238 otherwise taxable under this chapter unless the entity has
 239 obtained a sales tax exemption certificate from the department
 240 or the entity obtains or provides other documentation as
 241 required by the department. Eligible purchases or leases made
 242 with such a certificate must be in strict compliance with this
 243 subsection and departmental rules, and any person who makes an
 244 exempt purchase with a certificate that is not in strict
 245 compliance with this subsection and the rules is liable for and
 246 shall pay the tax. The department may adopt rules to administer
 247 this subsection.

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

249 1. An aircraft owned by a person who is not a resident of

250 this state is exempt from the use tax imposed under this chapter
251 if the aircraft enters and remains in this state for less than a
252 total of 21 days during the 6-month period after the date of
253 purchase. The temporary use of the aircraft and subsequent
254 removal from this state may be proven by invoices for fuel or
255 tie-down or hangar charges issued by out-of-state vendors or
256 suppliers or similar documentation that clearly and specifically
257 identifies the aircraft. The exemption provided by this
258 subparagraph shall be in addition to the provisions of
259 subparagraph 2. and s. 212.05(1) (a).

260 2. An aircraft owned by a person who is not a resident of
261 this state is exempt from the use tax imposed under this chapter
262 if the aircraft enters or remains in this state exclusively for
263 purposes of flight training, repairs, alterations, refitting, or
264 modification. Such flight training, repairs, alterations,
265 refitting, or modification shall be supported by written
266 documentation issued by in-state vendors or suppliers which
267 clearly and specifically identifies the aircraft. The exemption
268 provided by this subparagraph shall be in addition to the
269 provisions of subparagraph 1. and s. 212.05(1) (a).

270 (hhh) Fractional aircraft ownership programs.--Also exempt
271 from the tax imposed by this chapter is the sale or use of
272 aircraft primarily used in a fractional aircraft ownership
273 program and any parts or labor used in the completion,
274 maintenance, repair, or overhaul of such aircraft. The exemption
275 is not allowed unless the purchaser or lessee furnishes the
276 dealer with a certificate stating that the lease, purchase,
277 repair, or maintenance to be exempted is for aircraft primarily

278 | used in a fractional aircraft ownership program and that the
279 | purchaser or lessee qualifies for the exemption. If a purchaser
280 | or lessee makes tax-exempt purchases on a continual basis, the
281 | purchaser or lessee may allow the dealer to keep the certificate
282 | on file. The purchaser or lessee must inform the dealer that has
283 | the certificate on file if the purchaser or lessee no longer
284 | qualifies for the exemption. The department shall determine the
285 | format of the certificate.

286 | Section 5. This act shall take effect July 1, 2009.