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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 deleting a requirement that a certain penalty is mandatory
6 and not able to be waived by the Department of Revenue;
7 deleting authorization to return certain aircraft to the
8 state for repairs without liability for taxes and penalty
9 under certain circumstances; amending s. 212.08, F.S.;
10 exempting from the use tax aircraft owned by nonresidents
11 and entering and remaining in the state for certain
12 purposes under certain circumstances; providing an
13 effective date.

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

16
17 Section 1. Paragraph (a) of subsection (1) of section
18 212.05, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

112 f. Unless the nonresident purchaser of a boat of 5 net
113 tons of admeasurement or larger intends to remove the boat from
114 this state within 10 days after the date of purchase or when the
115 boat is repaired or altered, within 20 days after completion of
116 the repairs or alterations, the nonresident purchaser shall
117 apply to the selling dealer for a decal which authorizes 90 days
118 after the date of purchase for removal of the boat. The
119 nonresident purchaser of a qualifying boat may apply to the
120 selling dealer within 60 days after the date of purchase for an
121 extension decal that authorizes the boat to remain in this state
122 for an additional 90 days, but not more than a total of 180
123 days, before the nonresident purchaser is required to pay the
124 tax imposed by this chapter. The department is authorized to
125 issue decals in advance to dealers. The number of decals issued
126 in advance to a dealer shall be consistent with the volume of
127 the dealer's past sales of boats which qualify under this sub-
128 subparagraph. The selling dealer or his or her agent shall mark
129 and affix the decals to qualifying boats in the manner
130 prescribed by the department, prior to delivery of the boat.

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

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

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

139 (IV) The department is authorized to require dealers who
140 purchase decals to file reports with the department and may
141 prescribe all necessary records by rule. All such records are
142 subject to inspection by the department.

143 (V) Any dealer or his or her agent who issues a decal
144 falsely, fails to affix a decal, mismarks the expiration date of
145 a decal, or fails to properly account for decals will be
146 considered prima facie to have committed a fraudulent act to
147 evade the tax and will be liable for payment of the tax plus a
148 mandatory penalty of 200 percent of the tax, and shall be liable
149 for fine and punishment as provided by law for a conviction of a
150 misdemeanor of the first degree, as provided in s. 775.082 or s.
151 775.083.

152 (VI) Any nonresident purchaser of a boat who removes a
153 decal prior to permanently removing the boat from the state, or
154 defaces, changes, modifies, or alters a decal in a manner
155 affecting its expiration date prior to its expiration, or who
156 causes or allows the same to be done by another, will be
157 considered prima facie to have committed a fraudulent act to
158 evade the tax and will be liable for payment of the tax plus a
159 mandatory penalty of 200 percent of the tax, and shall be liable
160 for fine and punishment as provided by law for a conviction of a
161 misdemeanor of the first degree, as provided in s. 775.082 or s.
162 775.083.

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163 (VII) The department is authorized to adopt rules
 164 necessary to administer and enforce this subparagraph and to
 165 publish the necessary forms and instructions.

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

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

191 ~~being in violation of the law and without incurring liability~~
 192 ~~for the payment of tax or penalty on the purchase price of the~~
 193 ~~aircraft if the aircraft is removed from this state within 20~~
 194 ~~days after the completion of the repairs and if such removal can~~
 195 ~~be demonstrated by invoices for fuel, tie-down, hangar charges~~
 196 ~~issued by out-of-state vendors or suppliers, or similar~~
 197 ~~documentation.~~

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

200 212.08 Sales, rental, use, consumption, distribution, and
 201 storage tax; specified exemptions.--The sale at retail, the
 202 rental, the use, the consumption, the distribution, and the
 203 storage to be used or consumed in this state of the following
 204 are hereby specifically exempt from the tax imposed by this
 205 chapter.

206 (7) MISCELLANEOUS EXEMPTIONS.--Exemptions provided to any
 207 entity by this chapter do not inure to any transaction that is
 208 otherwise taxable under this chapter when payment is made by a
 209 representative or employee of the entity by any means,
 210 including, but not limited to, cash, check, or credit card, even
 211 when that representative or employee is subsequently reimbursed
 212 by the entity. In addition, exemptions provided to any entity by
 213 this subsection do not inure to any transaction that is
 214 otherwise taxable under this chapter unless the entity has
 215 obtained a sales tax exemption certificate from the department
 216 or the entity obtains or provides other documentation as
 217 required by the department. Eligible purchases or leases made
 218 with such a certificate must be in strict compliance with this

219 subsection and departmental rules, and any person who makes an
 220 exempt purchase with a certificate that is not in strict
 221 compliance with this subsection and the rules is liable for and
 222 shall pay the tax. The department may adopt rules to administer
 223 this subsection.

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

225 1. An aircraft owned by a person who is not a resident of
 226 this state is exempt from the use tax imposed under this chapter
 227 if the aircraft enters and remains in this state for less than a
 228 total of 21 days during the 6-month period after the date of
 229 purchase. The temporary use of the aircraft and subsequent
 230 removal from this state may be proven by invoices for fuel or
 231 tie-down or hangar charges issued by out-of-state vendors or
 232 suppliers or similar documentation that clearly and specifically
 233 identifies the aircraft. The exemption provided by this
 234 subparagraph shall be in addition to the provisions of
 235 subparagraph 2. and s. 212.05(1) (a).

236 2. An aircraft owned by a person who is not a resident of
 237 this state is exempt from the use tax imposed under this chapter
 238 if the aircraft enters or remains in this state exclusively for
 239 purposes of flight training, repairs, alterations, refitting, or
 240 modification. Such flight training, repairs, alterations,
 241 refitting, or modification shall be supported by written
 242 documentation issued by in-state vendors or suppliers which
 243 clearly and specifically identifies the aircraft. The exemption
 244 provided by this subparagraph shall be in addition to the
 245 provisions of subparagraph 1. and s. 212.05(1) (a).

246 Section 3. This act shall take effect July 1, 2010.