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CS/HB 173

2010 Legislature

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

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Paragraph (a) of subsection (1) of section
16 212.05, Florida Statutes, is amended to read:

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

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

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

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

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57 | and interest assessed plus a penalty equal to twice the amount
58 | of the additional tax owed. Notwithstanding any other provision
59 | of law, the Department of Revenue may waive or compromise any
60 | penalty imposed pursuant to this subparagraph.

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

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

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84 repaired or altered, within 20 days after completion of the
85 repairs or alterations;

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

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

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

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

108 f. Unless the nonresident purchaser of a boat of 5 net
109 tons of admeasurement or larger intends to remove the boat from
110 this state within 10 days after the date of purchase or when the
111 boat is repaired or altered, within 20 days after completion of

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

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

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.

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

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

196 212.08 Sales, rental, use, consumption, distribution, and
197 storage tax; specified exemptions.—The sale at retail, the
198 rental, the use, the consumption, the distribution, and the
199 storage to be used or consumed in this state of the following
200 are hereby specifically exempt from the tax imposed by this
201 chapter.

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

220 (ggg) Aircraft temporarily in the state.—

221 1. An aircraft owned by a nonresident is exempt from the

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222 use tax imposed under this chapter if the aircraft enters and
223 remains in this state for less than a total of 21 days during
224 the 6-month period after the date of purchase. The temporary use
225 of the aircraft and subsequent removal from this state may be
226 proven by invoices for fuel, tie-down, or hangar charges issued
227 by out-of-state vendors or suppliers or similar documentation
228 that clearly and specifically identifies the aircraft. The
229 exemption provided in this subparagraph is in addition to the
230 exemptions provided in subparagraph 2. and s. 212.05(1)(a).

231 2. An aircraft owned by a nonresident is exempt from the
232 use tax imposed under this chapter if the aircraft enters or
233 remains in this state exclusively for purposes of flight
234 training, repairs, alterations, refitting, or modification. Such
235 purposes shall be supported by written documentation issued by
236 in-state vendors or suppliers which clearly and specifically
237 identifies the aircraft. The exemption provided in this
238 subparagraph is in addition to the exemptions provided in
239 subparagraph 1. and s. 212.05(1)(a).

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