



137532

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2010	.	
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	.	
	.	

The Committee on Finance and Tax (Ring) recommended the following:

Senate Amendment (with title amendment)

Before line 14
insert:

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

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



137532

13 stores for use or consumption in this state any item or article
14 of tangible personal property as defined herein and who leases
15 or rents such property within the state.

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

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

24 b. Each occasional or isolated sale of an aircraft, boat,
25 mobile home, or motor vehicle of a class or type which is
26 required to be registered, licensed, titled, or documented in
27 this state or by the United States Government shall be subject
28 to tax at the rate provided in this paragraph. The department
29 shall by rule adopt any nationally recognized publication for
30 valuation of used motor vehicles as the reference price list for
31 any used motor vehicle which is required to be licensed pursuant
32 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any
33 party to an occasional or isolated sale of such a vehicle
34 reports to the tax collector a sales price which is less than 80
35 percent of the average loan price for the specified model and
36 year of such vehicle as listed in the most recent reference
37 price list, the tax levied under this paragraph shall be
38 computed by the department on such average loan price unless the
39 parties to the sale have provided to the tax collector an
40 affidavit signed by each party, or other substantial proof,
41 stating the actual sales price. Any party to such sale who



137532

42 reports a sales price less than the actual sales price is guilty
43 of a misdemeanor of the first degree, punishable as provided in
44 s. 775.082 or s. 775.083. The department shall collect or
45 attempt to collect from such party any delinquent sales taxes.
46 In addition, such party shall pay any tax due and any penalty
47 and interest assessed plus a penalty equal to twice the amount
48 of the additional tax owed. Notwithstanding any other provision
49 of law, the Department of Revenue may waive or compromise any
50 penalty imposed pursuant to this subparagraph.

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

69 a. The purchaser removes a qualifying boat, as described in
70 sub-subparagraph f., from the state within 90 days after the



137532

71 date of purchase or extension, or the purchaser removes a
72 nonqualifying boat or an aircraft from this state within 10 days
73 after the date of purchase or, when the boat or aircraft is
74 repaired or altered, within 20 days after completion of the
75 repairs or alterations;

76 b. The purchaser, within 30 days from the date of
77 departure, shall provide the department with written proof that
78 the purchaser licensed, registered, titled, or documented the
79 boat or aircraft outside the state. If such written proof is
80 unavailable, within 30 days the purchaser shall provide proof
81 that the purchaser applied for such license, title,
82 registration, or documentation. The purchaser shall forward to
83 the department proof of title, license, registration, or
84 documentation upon receipt;

85 c. The purchaser, within 10 days of removing the boat or
86 aircraft from Florida, shall furnish the department with proof
87 of removal in the form of receipts for fuel, dockage, slippage,
88 tie-down, or hangaring from outside of Florida. The information
89 so provided must clearly and specifically identify the boat or
90 aircraft;

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

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

98 f. Unless the nonresident purchaser of a boat of 5 net tons
99 of admeasurement or larger intends to remove the boat from this



137532

100 state within 10 days after the date of purchase or when the boat
101 is repaired or altered, within 20 days after completion of the
102 repairs or alterations, the nonresident purchaser shall apply to
103 the selling dealer for a decal which authorizes 90 days after
104 the date of purchase for removal of the boat. The nonresident
105 purchaser of a qualifying boat may apply to the selling dealer
106 within 60 days after the date of purchase for an extension decal
107 that authorizes the boat to remain in this state for an
108 additional 90 days, but not more than a total of 180 days,
109 before the nonresident purchaser is required to pay the tax
110 imposed by this chapter. The department is authorized to issue
111 decals in advance to dealers. The number of decals issued in
112 advance to a dealer shall be consistent with the volume of the
113 dealer's past sales of boats which qualify under this sub-
114 subparagraph. The selling dealer or his or her agent shall mark
115 and affix the decals to qualifying boats in the manner
116 prescribed by the department, prior to delivery of the boat.

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

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

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

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



137532

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

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

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

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

155
156 If the purchaser fails to remove the qualifying boat from this
157 state within the maximum 180 days after purchase or a



137532

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

184
185 ===== T I T L E A M E N D M E N T =====

186 And the title is amended as follows:



137532

187 Delete lines 3 - 10
188 and insert:
189 transactions; amending s. 212.05, F.S.; deleting a
190 requirement that a certain penalty is mandatory and
191 not waivable by the Department of Revenue; deleting
192 authorization to return certain aircraft to the state
193 for repairs without liability for taxes and penalties
194 under certain circumstances; amending s. 212.08, F.S.;
195 exempting from the use tax aircraft that are owned by
196 nonresidents and that enter and remain in the state
197 for certain purposes under certain circumstances;
198 providing an effective date.