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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
04/01/2013	.	
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The Committee on Commerce and Tourism (Hays) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (j) through (m) of subsection (1) of section 212.05, Florida Statutes, are redesignated as paragraphs (i) through (l), respectively, and present paragraph (i) of that subsection 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



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13 business of making mail order sales, or who rents or furnishes
14 any of the things or services taxable under this chapter, or who
15 stores for use or consumption in this state any item or article
16 of tangible personal property as defined herein and who leases
17 or rents such property within the state.

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

21 ~~(i)1. At the rate of 6 percent on charges for all:~~

22 ~~a. Detective, burglar protection, and other protection~~
23 ~~services (NAICS National Numbers 561611, 561612, 561613, and~~
24 ~~561621). Any law enforcement officer, as defined in s. 943.10,~~
25 ~~who is performing approved duties as determined by his or her~~
26 ~~local law enforcement agency in his or her capacity as a law~~
27 ~~enforcement officer, and who is subject to the direct and~~
28 ~~immediate command of his or her law enforcement agency, and in~~
29 ~~the law enforcement officer's uniform as authorized by his or~~
30 ~~her law enforcement agency, is performing law enforcement and~~
31 ~~public safety services and is not performing detective, burglar~~
32 ~~protection, or other protective services, if the law enforcement~~
33 ~~officer is performing his or her approved duties in a~~
34 ~~geographical area in which the law enforcement officer has~~
35 ~~arrest jurisdiction. Such law enforcement and public safety~~
36 ~~services are not subject to tax irrespective of whether the duty~~
37 ~~is characterized as "extra duty," "off duty," or "secondary~~
38 ~~employment," and irrespective of whether the officer is paid~~
39 ~~directly or through the officer's agency by an outside source.~~
40 ~~The term "law enforcement officer" includes full-time or part-~~
41 ~~time law enforcement officers, and any auxiliary law enforcement~~



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42 ~~officer, when such auxiliary law enforcement officer is working~~
43 ~~under the direct supervision of a full-time or part-time law~~
44 ~~enforcement officer.~~

45 ~~b. nonresidential cleaning, excluding cleaning of the~~
46 ~~interiors of transportation equipment, and nonresidential~~
47 ~~building pest control services (NAICS National Numbers 561710~~
48 ~~and 561720).~~

49 ~~2. As used in this paragraph, "NAICS" means those~~
50 ~~classifications contained in the North American Industry~~
51 ~~Classification System, as published in 2007 by the Office of~~
52 ~~Management and Budget, Executive Office of the President.~~

53 ~~3. Charges for detective, burglar protection, and other~~
54 ~~protection security services performed in this state but used~~
55 ~~outside this state are exempt from taxation. Charges for~~
56 ~~detective, burglar protection, and other protection security~~
57 ~~services performed outside this state and used in this state are~~
58 ~~subject to tax.~~

59 ~~4. If a transaction involves both the sale or use of a~~
60 ~~service taxable under this paragraph and the sale or use of a~~
61 ~~service or any other item not taxable under this chapter, the~~
62 ~~consideration paid must be separately identified and stated with~~
63 ~~respect to the taxable and exempt portions of the transaction or~~
64 ~~the entire transaction shall be presumed taxable. The burden~~
65 ~~shall be on the seller of the service or the purchaser of the~~
66 ~~service, whichever applicable, to overcome this presumption by~~
67 ~~providing documentary evidence as to which portion of the~~
68 ~~transaction is exempt from tax. The department is authorized to~~
69 ~~adjust the amount of consideration identified as the taxable and~~
70 ~~exempt portions of the transaction; however, a determination~~



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71 ~~that the taxable and exempt portions are inaccurately stated and~~
72 ~~that the adjustment is applicable must be supported by~~
73 ~~substantial competent evidence.~~

74 ~~5. Each seller of services subject to sales tax pursuant to~~
75 ~~this paragraph shall maintain a monthly log showing each~~
76 ~~transaction for which sales tax was not collected because the~~
77 ~~services meet the requirements of subparagraph 3. for out-of-~~
78 ~~state use. The log must identify the purchaser's name, location~~
79 ~~and mailing address, and federal employer identification number,~~
80 ~~if a business, or the social security number, if an individual,~~
81 ~~the service sold, the price of the service, the date of sale,~~
82 ~~the reason for the exemption, and the sales invoice number. The~~
83 ~~monthly log shall be maintained pursuant to the same~~
84 ~~requirements and subject to the same penalties imposed for the~~
85 ~~keeping of similar records pursuant to this chapter.~~

86 Section 2. Subsection (4) of section 212.0501, Florida
87 Statutes, is amended to read:

88 212.0501 Tax on diesel fuel for business purposes;
89 purchase, storage, and use.-

90 (4) Except as otherwise provided in s. 212.05 (1)(j)
91 ~~212.05(1)(k)~~, a licensed sales tax dealer may elect to collect
92 such tax pursuant to this chapter on all sales to each person
93 who purchases diesel fuel for consumption, use, or storage by a
94 trade or business. If ~~When~~ the licensed sales tax dealer has not
95 elected to collect such tax on all such sales, the purchaser or
96 ultimate consumer is ~~shall be~~ liable for the payment of tax
97 directly to the state.

98 Section 3. Paragraph (v) of subsection (7) of section
99 212.08, Florida Statutes, is amended to read:



100 212.08 Sales, rental, use, consumption, distribution, and
101 storage tax; specified exemptions.—The sale at retail, the
102 rental, the use, the consumption, the distribution, and the
103 storage to be used or consumed in this state of the following
104 are hereby specifically exempt from the tax imposed by this
105 chapter.

106 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
107 entity by this chapter do not inure to any transaction that is
108 otherwise taxable under this chapter when payment is made by a
109 representative or employee of the entity by any means,
110 including, but not limited to, cash, check, or credit card, even
111 when that representative or employee is subsequently reimbursed
112 by the entity. In addition, exemptions provided to any entity by
113 this subsection do not inure to any transaction that is
114 otherwise taxable under this chapter unless the entity has
115 obtained a sales tax exemption certificate from the department
116 or the entity obtains or provides other documentation as
117 required by the department. Eligible purchases or leases made
118 with such a certificate must be in strict compliance with this
119 subsection and departmental rules, and any person who makes an
120 exempt purchase with a certificate that is not in strict
121 compliance with this subsection and the rules is liable for and
122 shall pay the tax. The department may adopt rules to administer
123 this subsection.

124 (v) *Professional services.*—

125 ~~1.~~ Also exempted are professional, insurance, or personal
126 service transactions that involve sales as inconsequential
127 elements for which no separate charges are made.

128 ~~1.2.~~ The personal service transactions exempted under this



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129 ~~paragraph pursuant to subparagraph 1.~~ do not include ~~exempt~~ the
130 sale of information services involving the furnishing of
131 printed, mimeographed, or multigraphed matter, or matter
132 duplicating written or printed matter in any other manner, other
133 than professional services and services of employees, agents, or
134 other persons acting in a representative or fiduciary capacity
135 or information services furnished to newspapers and radio and
136 television stations. As used in this subparagraph, the term
137 "information services" includes the services of collecting,
138 compiling, or analyzing information of any kind or nature and
139 furnishing reports thereof to other persons.

140 ~~2.3.~~ This exemption does not apply to any service warranty
141 transaction taxable under s. 212.0506.

142 ~~4. This exemption does not apply to any service transaction~~
143 ~~taxable under s. 212.05(1)(i).~~

144 Section 4. This act shall take effect July 1, 2013.

145

146 ===== T I T L E A M E N D M E N T =====

147 And the title is amended as follows:

148 Delete everything before the enacting clause
149 and insert:

150 A bill to be entitled
151 An act relating to the sales and use tax on services;
152 amending s. 212.05, F.S.; deleting provisions relating
153 to the imposition and application of the sales and use
154 tax to detective, burglar protection, and other
155 protection services, nonresidential cleaning services,
156 and nonresidential building pest control services;
157 amending ss. 212.0501 and 212.08, F.S.; conforming



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cross-references; providing an effective date.