

HB 4055

2013

1 A bill to be entitled
2 An act relating to the sales and use tax on services;
3 amending s. 212.05, F.S.; deleting provisions relating
4 to the imposition and application of the sales and use
5 tax to detective, burglar protection, and other
6 protection services, nonresidential cleaning services,
7 and nonresidential building pest control services;
8 amending ss. 212.0501 and 212.08, F.S.; conforming
9 cross-references; providing an effective date.

10
11 Be It Enacted by the Legislature of the State of Florida:

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13 Section 1. Paragraphs (j) through (m) of subsection (1) of
14 section 212.05, Florida Statutes, are redesignated as paragraphs
15 (i) through (l), respectively, and present paragraph (i) of that
16 subsection 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 ~~(i)1. At the rate of 6 percent on charges for all:~~
30 ~~a. Detective, burglar protection, and other protection~~
31 ~~services (NAICS National Numbers 561611, 561612, 561613, and~~
32 ~~561621). Any law enforcement officer, as defined in s. 943.10,~~
33 ~~who is performing approved duties as determined by his or her~~
34 ~~local law enforcement agency in his or her capacity as a law~~
35 ~~enforcement officer, and who is subject to the direct and~~
36 ~~immediate command of his or her law enforcement agency, and in~~
37 ~~the law enforcement officer's uniform as authorized by his or~~
38 ~~her law enforcement agency, is performing law enforcement and~~
39 ~~public safety services and is not performing detective, burglar~~
40 ~~protection, or other protective services, if the law enforcement~~
41 ~~officer is performing his or her approved duties in a~~
42 ~~geographical area in which the law enforcement officer has~~
43 ~~arrest jurisdiction. Such law enforcement and public safety~~
44 ~~services are not subject to tax irrespective of whether the duty~~
45 ~~is characterized as "extra duty," "off-duty," or "secondary~~
46 ~~employment," and irrespective of whether the officer is paid~~
47 ~~directly or through the officer's agency by an outside source.~~
48 ~~The term "law enforcement officer" includes full-time or part-~~
49 ~~time law enforcement officers, and any auxiliary law enforcement~~
50 ~~officer, when such auxiliary law enforcement officer is working~~
51 ~~under the direct supervision of a full-time or part-time law~~
52 ~~enforcement officer.~~

53 ~~b. nonresidential cleaning, excluding cleaning of the~~
54 ~~interiors of transportation equipment, and nonresidential~~
55 ~~building pest control services (NAICS National Numbers 561710~~
56 ~~and 561720).~~

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

61 ~~3. Charges for detective, burglar protection, and other~~
62 ~~protection security services performed in this state but used~~
63 ~~outside this state are exempt from taxation. Charges for~~
64 ~~detective, burglar protection, and other protection security~~
65 ~~services performed outside this state and used in this state are~~
66 ~~subject to tax.~~

67 ~~4. If a transaction involves both the sale or use of a~~
68 ~~service taxable under this paragraph and the sale or use of a~~
69 ~~service or any other item not taxable under this chapter, the~~
70 ~~consideration paid must be separately identified and stated with~~
71 ~~respect to the taxable and exempt portions of the transaction or~~
72 ~~the entire transaction shall be presumed taxable. The burden~~
73 ~~shall be on the seller of the service or the purchaser of the~~
74 ~~service, whichever applicable, to overcome this presumption by~~
75 ~~providing documentary evidence as to which portion of the~~
76 ~~transaction is exempt from tax. The department is authorized to~~
77 ~~adjust the amount of consideration identified as the taxable and~~
78 ~~exempt portions of the transaction; however, a determination~~
79 ~~that the taxable and exempt portions are inaccurately stated and~~
80 ~~that the adjustment is applicable must be supported by~~
81 ~~substantial competent evidence.~~

82 ~~5. Each seller of services subject to sales tax pursuant~~
83 ~~to this paragraph shall maintain a monthly log showing each~~
84 ~~transaction for which sales tax was not collected because the~~

85 ~~services meet the requirements of subparagraph 3. for out-of-~~
 86 ~~state use. The log must identify the purchaser's name, location~~
 87 ~~and mailing address, and federal employer identification number,~~
 88 ~~if a business, or the social security number, if an individual,~~
 89 ~~the service sold, the price of the service, the date of sale,~~
 90 ~~the reason for the exemption, and the sales invoice number. The~~
 91 ~~monthly log shall be maintained pursuant to the same~~
 92 ~~requirements and subject to the same penalties imposed for the~~
 93 ~~keeping of similar records pursuant to this chapter.~~

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

96 212.0501 Tax on diesel fuel for business purposes;
 97 purchase, storage, and use.—

98 (4) Except as otherwise provided in s. 212.05 (1) (j)
 99 ~~212.05(1)(k)~~, a licensed sales tax dealer may elect to collect
 100 such tax pursuant to this chapter on all sales to each person
 101 who purchases diesel fuel for consumption, use, or storage by a
 102 trade or business. When the licensed sales tax dealer has not
 103 elected to collect such tax on all such sales, the purchaser or
 104 ultimate consumer shall be liable for the payment of tax
 105 directly to the state.

106 Section 3. Paragraph (v) of subsection (7) of section
 107 212.08, Florida Statutes, is amended to read:

108 212.08 Sales, rental, use, consumption, distribution, and
 109 storage tax; specified exemptions.—The sale at retail, the
 110 rental, the use, the consumption, the distribution, and the
 111 storage to be used or consumed in this state of the following
 112 are hereby specifically exempt from the tax imposed by this

113 chapter.

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

132 (v) Professional services.—

133 1. Also exempted are professional, insurance, or personal
134 service transactions that involve sales as inconsequential
135 elements for which no separate charges are made.

136 2. The personal service transactions exempted pursuant to
137 subparagraph 1. do not exempt the sale of information services
138 involving the furnishing of printed, mimeographed, or
139 multigraphed matter, or matter duplicating written or printed
140 matter in any other manner, other than professional services and

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141 services of employees, agents, or other persons acting in a
142 representative or fiduciary capacity or information services
143 furnished to newspapers and radio and television stations. As
144 used in this subparagraph, the term "information services"
145 includes the services of collecting, compiling, or analyzing
146 information of any kind or nature and furnishing reports thereof
147 to other persons.

148 3. This exemption does not apply to any service warranty
149 transaction taxable under s. 212.0506.

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

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