

By Senator Taddeo

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1 A bill to be entitled
2 An act relating to a bottled water excise tax;
3 revising the title of ch. 211, F.S.; creating part III
4 of ch. 211, F.S., entitled "Tax on Extraction of Water
5 for Bottling"; creating s. 211.40, F.S.; defining
6 terms; creating s. 211.41, F.S.; imposing an excise
7 tax upon bottled water operators; specifying the rate
8 of the tax and the trust fund where tax proceeds are
9 to be deposited; requiring that tax proceeds be
10 separately accounted for and be used for certain
11 purposes; creating s. 211.42, F.S.; specifying
12 requirements for bottled water operators in filing
13 monthly returns and declarations of estimated tax
14 with, and remitting estimated taxes to, the Department
15 of Revenue; authorizing the department to provide for
16 credits of overpaid taxes and to grant extensions for
17 filing and payment under certain circumstances;
18 specifying the department's rulemaking authority;
19 creating s. 211.43, F.S.; specifying interest payable
20 on unpaid taxes; specifying the delinquency penalty
21 for failure to timely file a return; specifying the
22 penalty for the substantial underpayment of taxes;
23 specifying the interest payable on underpayments of
24 estimated taxes; providing that a penalty or interest
25 for underpayment of estimated tax may not be imposed
26 under certain circumstances; providing construction;
27 authorizing the department to settle or compromise
28 taxes in accordance with certain provisions; creating
29 s. 211.44, F.S.; authorizing the department to adopt

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30 rules; requiring local governments to cooperate with
31 the department and furnish information without cost to
32 the department for certain purposes; specifying
33 recordkeeping requirements for bottled water
34 operators; specifying the department's authority to
35 inspect, examine, and audit bottled water operator
36 books and records, issue subpoenas, require testimony
37 under oath or affirmation of certain persons, and
38 apply for certain judicial orders; specifying
39 requirements and procedures for the department in
40 conducting audits, assessing deficiencies, and
41 crediting or refunding overpayments; specifying
42 procedures and requirements for claiming refunds;
43 providing that amounts due remain a lien on certain
44 property; specifying requirements and procedures for
45 warrants and alias tax executions issued by the
46 department; requiring that suits brought by the
47 department for violations be brought in circuit court;
48 creating s. 211.45, F.S.; providing criminal penalties
49 for certain violations; providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

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53 Section 1. Chapter 211, Florida Statutes, entitled "Tax on
54 Production of Oil and Gas and Severance of Solid Minerals," is
55 retitled "Tax on Production of Oil and Gas, Severance of Solid
56 Minerals, and Extraction of Water for Bottling."

57 Section 2. The Division of Law Revision is directed to
58 create part III of chapter 211, Florida Statutes, consisting of

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59 ss. 211.40-211.45, Florida Statutes, to be entitled "Tax on
60 Extraction of Water for Bottling."

61 Section 3. Section 211.40, Florida Statutes, is created to
62 read:

63 211.40 Definitions.—As used in this part, the term:

64 (1) "Bottled water operator" means a person engaged in the
65 business of bottling or packaging for sale water extracted from
66 waters of the state. The term does not include a person who
67 bottles or packages water from a public water system as defined
68 in s. 403.852(2).

69 (2) "Department" means the Department of Revenue.

70 (3) "Waters of the state" has the same meaning as the term
71 "waters" as defined in s. 403.031(13).

72 Section 4. Section 211.41, Florida Statutes, is created to
73 read:

74 211.41 Bottled water excise tax; distribution and use of
75 tax proceeds.—

76 (1) An excise tax is levied upon every person who acts as a
77 bottled water operator at a rate of 12.5 cents per gallon of
78 water extracted from waters of the state.

79 (2) The proceeds of the tax imposed by this section must be
80 deposited in the Wastewater Treatment and Stormwater Management
81 Revolving Loan Trust Fund and must be accounted for separately
82 within the fund. The tax proceeds must be used to provide grants
83 and loans to local governmental agencies pursuant to s.
84 403.1835, with priority to projects to connect existing onsite
85 sewage treatment and disposal systems to central sewerage
86 systems.

87 Section 5. Section 211.42, Florida Statutes, is created to

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88 read:

89 211.42 Returns; filing requirements; estimated tax
90 declarations.-

91 (1) Each bottled water operator shall prepare and submit to
92 the department a return on or before the 25th day of each month
93 showing the total amount of water extracted from waters of the
94 state during the previous month, the source and county of
95 extraction, the location of all facilities from which taxable
96 water was extracted, and other information required by
97 department rule. The department shall prescribe the form of the
98 return by rule. The return must be filed on or before the last
99 day prescribed for payment of the tax and must be signed and
100 verified under oath by the bottled water operator or the bottled
101 water operator's authorized representative.

102 (a) The return must include a statement of the tax due
103 under this part and such other information as the department may
104 reasonably require.

105 (b) A return must be filed even though no tax is due. Any
106 tax, penalty, or interest due must be remitted with the return.

107 (2) (a) Each bottled water operator subject to the tax under
108 this part shall file, on a form prescribed by the department, a
109 declaration of estimated tax on or before the 25th day of the
110 month following the month taxable water extraction occurred and
111 shall remit to the department an amount equal to 90 percent of
112 the estimated tax.

113 (b) The declaration may be amended under rules prescribed
114 by the department. The installment due must be increased or
115 decreased to reflect the change in estimated tax occasioned by
116 the amendment.

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117 (c) The department may provide for credit of any
118 overpayment of amounts due under this part which the department
119 determines to have been made against the installment required
120 under this subsection.

121 (d) Any estimated tax paid for a month is deemed assessed
122 upon the last date for payment of the tax imposed under this
123 part.

124 (3) If any due date prescribed by this section falls on a
125 Saturday, Sunday, or state or federal holiday, the last date
126 prescribed for filing or payment is the next day that is not a
127 Saturday, Sunday, or holiday. The date of receipt by the
128 department, or the postmark date if mailed, determines the
129 timeliness of payment or filing.

130 (4) The department may grant an extension of time for
131 payment or filing of a return upon written request submitted on
132 or before the due date.

133 Section 6. Section 211.43, Florida Statutes, is created to
134 read:

135 211.43 Interest and penalties; failure to pay tax or file
136 return; estimated tax underpayments.-

137 (1) If any part of the tax imposed by this part is not paid
138 on or before the due date, interest must be added to the amount
139 due at the rate of 12 percent per year from the due date until
140 the date of payment.

141 (2) A bottled water operator who fails to file the return
142 required under s. 211.42 by the due date shall pay a delinquency
143 penalty. If tax is due with the return, the delinquency penalty
144 is 10 percent for each month, or portion thereof, of the amount
145 of tax due with the return, not to exceed 50 percent. If no tax

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146 is due with the return, the delinquency penalty is \$50 for each
147 month, or portion thereof, during which the return was not
148 filed, not to exceed \$300 in aggregate. The amount of tax due
149 with a return must be reduced by amounts properly creditable
150 against the tax liability shown on the return on the date the
151 return was due.

152 (3) A bottled water operator who makes a substantial
153 underpayment of the tax due under this part shall pay a penalty
154 of 30 percent of the underpayment in addition to the delinquency
155 penalty imposed under subsection (2). For purposes of this
156 subsection, a substantial underpayment of tax is a deficiency of
157 tax in an amount exceeding 35 percent of the total tax due for a
158 month.

159 (4) (a) Except as provided in paragraph (c), a bottled water
160 operator is liable for interest at the rate of 12 percent per
161 year and a penalty at the rate of 12 percent per year on any
162 underpayment of estimated tax determined under this subsection.

163 (b) An underpayment of estimated tax is the excess of:

164 1. An amount equal to 90 percent of the tax for a month
165 which is shown to be due on a return or, if no return is filed,
166 90 percent of the tax finally due for the month, over

167 2. The amount, if any, paid on or before the due date of
168 the installment.

169 (c) The period of underpayment of estimated tax begins on
170 the date the installment is due and ends on the date the
171 underpayment is paid. A payment of estimated tax is deemed a
172 payment of a previous underpayment only to the extent the
173 payment exceeds the amount of estimated tax installment due
174 under subparagraph (b)1.

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175 (d) A penalty or interest for underpayment of estimated tax
176 may not be imposed if the total amount of estimated tax paid on
177 or before the installment due date equals or exceeds the lesser
178 of:

179 1. Ninety percent of the tax finally due for the month; or
180 2. The amount of tax determined by the tax rate applicable
181 for the month times the taxable production for the previous
182 month.

183 (5) Any penalty or interest imposed under this section is
184 deemed assessed upon the assessment of the tax and must be
185 collected and paid in the same manner as the tax.

186 (6) Any penalty imposed by this section may be settled or
187 compromised by the department for reasonable cause in accordance
188 with s. 213.21. Interest imposed by this section may be settled
189 or compromised only as authorized by s. 213.21.

190 Section 7. Section 211.44, Florida Statutes, is created to
191 read:

192 211.44 Administration and enforcement; books and records;
193 refunds.—

194 (1) The department may adopt rules to administer this part,
195 including prescribing the form and content of returns and
196 reports.

197 (2) All state, county, or municipal agencies, boards,
198 bureaus, departments, or districts shall cooperate with the
199 department and furnish any information the department deems
200 necessary, without cost to the department, for the purposes of
201 administering, collecting, or enforcing the tax imposed under
202 this part.

203 (3) (a) Each bottled water operator shall keep suitable

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204 books and records relating to the extraction of taxable waters
205 of the state to enable the department to determine the amount of
206 tax due under this part. Such books and records must be
207 preserved until the time within which the department may make an
208 assessment with respect thereto has expired in accordance with
209 s. 213.35.

210 (b) The department may inspect or examine the books,
211 records, or papers of any bottled water operator which are
212 reasonably required for the purposes of this part and may
213 require such person to testify under oath or affirmation or to
214 answer competent questions regarding such person's business or
215 extraction of taxable waters of the state.

216 1. The department may issue subpoenas to compel third
217 parties to testify or to produce records or other evidence held
218 by them.

219 2. Any duly authorized representative of the department may
220 administer an oath or affirmation.

221 3. If any person fails to comply with a request of the
222 department for the inspection of records, fails to give
223 testimony or respond to competent questions, or fails to comply
224 with a subpoena, a circuit court having jurisdiction over such
225 person may, upon application by the department, issue orders
226 necessary to secure compliance.

227 (c) All books and records required to be kept under this
228 subsection must be available for inspection by the department
229 upon written request during normal business hours.

230 (4) The department may audit or examine the books and
231 records of a bottled water operator to determine whether returns
232 have been properly filed and tax has been properly paid. An

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233 audit may be commenced for any month for which the power of the
234 department to make an assessment of amounts due under this part
235 is available. An audit must be commenced by service of a written
236 notice of intent to audit upon the bottled water operator,
237 either in person or by certified mail. The date of personal
238 contact or the date of the notice governs the period subject to
239 audit. If there is jeopardy to the revenue and jeopardy is
240 asserted in or with an assessment, the department must proceed
241 in the manner specified for jeopardy assessment in s. 213.732.

242 (5) (a) The department may assess, with or without an audit,
243 any deficiency resulting from nonpayment or underpayment of the
244 tax, interest, or penalties imposed by this part. The department
245 shall inform the bottled water operator by written notice of the
246 amount of any deficiency or overpayment revealed by an audit,
247 including the tax, interest, or penalties due, and shall explain
248 the basis for the determination.

249 (b) The department may make an assessment under this part
250 based upon the best information available to it. The department
251 may make an assessment based upon an estimate of amounts due
252 under this part if a bottled water operator fails to file a
253 return, files a grossly incorrect or fraudulent return, or
254 refuses to permit inspection of records. An assessment of the
255 amounts due under this part is deemed prima facie correct and
256 the bottled water operator has the burden of showing any error
257 in it.

258 (c) In the event of a deficiency, the department shall
259 issue its written notice to a bottled water operator for the
260 tax, penalties, or interest due. Full payment of the total
261 amount assessed must be made in the manner prescribed by the

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262 department in its notice.

263 (6) (a) The department may credit or refund any overpayments
264 of amounts due under this part which are revealed by an audit or
265 for which a timely claim for refund has been properly filed.

266 (b) A claim for refund may be filed within the period
267 specified in s. 215.26(2).

268 (c) A claim for refund must be signed by the bottled water
269 operator or the bottled water operator's duly authorized
270 representative, successor, or assignee and must include
271 information the department requires to determine the correctness
272 of the claim.

273 (7) (a) Amounts due under this part remain a lien upon the
274 property, assets, and effects of a bottled water operator until
275 paid or until collection thereof is barred under s. 95.091 and
276 may be recovered by the department, on behalf of the state, by
277 an action in any county where the property, assets, or effects
278 of the bottled water operator are located.

279 (b) When any tax imposed by this part becomes delinquent or
280 is otherwise in jeopardy, the department may issue a warrant for
281 the full amount due or estimated to be due, including the tax,
282 penalties, interest, and costs of collection. The warrant must
283 be directed to each sheriff and may be recorded with the clerk
284 of the circuit court in any county where the bottled water
285 operator's property is located. Upon recording, the clerk of the
286 circuit court shall execute the warrant in the same manner
287 prescribed by law for executions upon judgments and is entitled
288 to the same fees for this service. Upon payment of the warrant,
289 the department shall satisfy the lien of record within 30 days.
290 Thereafter, any interested person may compel the department to

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291 satisfy the lien of record.

292 (c) An alias tax execution may be issued whenever the
293 department deems it necessary. Each alias tax execution must be
294 so designated on its face and has the same force and effect as
295 the original.

296 (d) Tax executions may be levied upon any third party who
297 is in possession or control of any assets of a delinquent
298 bottled water operator or who is indebted to a delinquent
299 bottled water operator. Such tax executions have the force and
300 effect of a writ of garnishment. The third party shall pay the
301 debt or deliver the assets of the delinquent bottled water
302 operator to the department, and receipt by the department
303 discharges the third party completely to the extent of the debt
304 paid or assets surrendered to the department.

305 (e) When any tax execution becomes void, the department may
306 cancel it of record and shall do so upon the request of any
307 interested person.

308 (8) Any employee of the department may be designated by the
309 executive director to make and sign assessments, tax warrants,
310 and satisfactions of tax warrants.

311 (9) Any suit brought by the department against any person
312 for violating this part must be brought in circuit court.

313 Section 8. Section 211.45, Florida Statutes, is created to
314 read:

315 211.45 Criminal penalties.—

316 (1) A person who willfully fails to file a return or keep
317 books or records on the extraction of taxable waters of the
318 state, who files a fraudulent return, who willfully fails or
319 refuses to produce books or records, or who willfully violates

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320 any provision of this part or any rule adopted by the department
321 under this part commits a misdemeanor of the first degree,
322 punishable as provided in s. 775.082 or s. 775.083.

323 (2) A person who withholds tax due under this part and
324 willfully fails to make remittance as required by this part or
325 who purports to make payments due under this part but willfully
326 fails to do so because the remittance fails to clear the bank or
327 depository institution against which it is drawn commits a
328 felony of the third degree, punishable as provided in s.
329 775.082, s. 775.083, or s. 775.084.

330 Section 9. This act shall take effect July 1, 2020.