

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 with the Department of Revenue;
14 authorizing the department to grant extensions for
15 filing and payment under certain circumstances;
16 specifying the department's rulemaking authority;
17 creating s. 211.43, F.S.; specifying interest payable
18 on unpaid taxes; specifying the delinquency penalty
19 for failure to timely file a return; specifying the
20 penalty for the substantial underpayment of taxes;
21 providing construction; authorizing the department to
22 settle or compromise taxes in accordance with certain
23 provisions; creating s. 211.44, F.S.; authorizing the
24 department to adopt rules; requiring local governments
25 to cooperate with the department and furnish

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

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46 Be It Enacted by the Legislature of the State of Florida:

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48 Section 1. Chapter 211, Florida Statutes, entitled "Tax on
49 Production of Oil and Gas and Severance of Solid Minerals," is
50 retitled "Tax on Production of Oil and Gas, Severance of Solid

51 Minerals, and Extraction of Water for Bottling."

52 Section 2. The Division of Law Revision is directed to
 53 create part III of chapter 211, Florida Statutes, consisting of
 54 ss. 211.40-211.45, Florida Statutes, to be entitled "Tax on
 55 Extraction of Water for Bottling."

56 Section 3. Section 211.40, Florida Statutes, is created to
 57 read:

58 211.40 Definitions.—As used in this part, the term:

59 (1) "Bottled water operator" means a person engaged in the
 60 business of extracting water from waters of the state and
 61 bottling or packaging the water for sale. The term does not
 62 include a person who extracts and bottles or packages water from
 63 a public water system as defined in s. 403.852(2).

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

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

67 Section 4. Section 211.41, Florida Statutes, is created to
 68 read:

69 211.41 Bottled water excise tax; distribution and use of
 70 tax proceeds.—

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

74 (2) The proceeds of the tax imposed by this section must
 75 be deposited in the Wastewater Treatment and Stormwater

76 Management Revolving Loan Trust Fund and must be accounted for
77 separately within the fund. The tax proceeds must be used to
78 provide grants and loans to local governmental agencies pursuant
79 to s. 403.1835, with priority given to projects that connect
80 existing onsite sewage treatment and disposal systems to central
81 sewerage systems.

82 Section 5. Section 211.42, Florida Statutes, is created to
83 read:

84 211.42 Returns; filing requirements.-

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

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

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

101 (2) If any due date prescribed by this section falls on a
102 Saturday, Sunday, or state or federal holiday, the last date
103 prescribed for filing or payment is the next day that is not a
104 Saturday, Sunday, or holiday. The date of receipt by the
105 department, or the postmark date if mailed, determines the
106 timeliness of payment or filing.

107 (3) The department may grant an extension of time for
108 payment or filing of a return upon written request submitted on
109 or before the due date.

110 Section 6. Section 211.43, Florida Statutes, is created to
111 read:

112 211.43 Interest and penalties; failure to pay tax or file
113 return.—

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

118 (2) A bottled water operator who fails to file the return
119 required under s. 211.42 by the due date shall pay a delinquency
120 penalty. If tax is due with the return, the delinquency penalty
121 is 10 percent for each month, or portion thereof, of the amount
122 of tax due with the return, not to exceed 50 percent. If no tax
123 is due with the return, the delinquency penalty is \$50 for each
124 month, or portion thereof, during which the return was not
125 filed, not to exceed \$300 in aggregate. The amount of tax due

126 with a return must be reduced by amounts properly creditable
127 against the tax liability shown on the return on the date the
128 return was due.

129 (3) A bottled water operator who makes a substantial
130 underpayment of the tax due under this part shall pay a penalty
131 of 30 percent of the underpayment in addition to the delinquency
132 penalty imposed under subsection (2). For purposes of this
133 subsection, a substantial underpayment of tax is a deficiency of
134 tax in an amount exceeding 35 percent of the total tax due for a
135 month.

136 (4) Any penalty or interest imposed under this section is
137 deemed assessed upon the assessment of the tax and must be
138 collected and paid in the same manner as the tax.

139 (5) Any penalty imposed by this section may be settled or
140 compromised by the department for reasonable cause in accordance
141 with s. 213.21. Interest imposed by this section may be settled
142 or compromised only as authorized by s. 213.21.

143 Section 7. Section 211.44, Florida Statutes, is created to
144 read:

145 211.44 Administration and enforcement; books and records;
146 refunds.—

147 (1) The department may adopt rules to administer this
148 part, including prescribing the form and content of returns and
149 reports.

150 (2) All state, county, or municipal agencies, boards,

151 bureaus, departments, or districts shall cooperate with the
152 department and furnish any information the department deems
153 necessary, without cost to the department, for the purposes of
154 administering, collecting, or enforcing the tax imposed under
155 this part.

156 (3) (a) Each bottled water operator shall keep suitable
157 books and records relating to the extraction of taxable waters
158 of the state to enable the department to determine the amount of
159 tax due under this part. Such books and records must be
160 preserved until the time within which the department may make an
161 assessment with respect thereto has expired in accordance with
162 s. 213.35.

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

169 1. The department may issue subpoenas to compel third
170 parties to testify or to produce records or other evidence in
171 their possession.

172 2. Any duly authorized representative of the department
173 may administer an oath or affirmation.

174 3. If any person fails to comply with a request of the
175 department for the inspection of records, fails to give

176 testimony or respond to competent questions, or fails to comply
177 with a subpoena, a circuit court having jurisdiction over such
178 person may, upon application by the department, issue orders
179 necessary to secure compliance.

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

183 (4) The department may audit or examine the books and
184 records of a bottled water operator to determine whether returns
185 have been properly filed and tax has been properly paid. An
186 audit may be commenced for any month for which the power of the
187 department to make an assessment of amounts due under this part
188 is available. An audit must be commenced by service of a written
189 notice of intent to audit upon the bottled water operator,
190 either in person or by certified mail. The date of personal
191 contact or the date of the notice governs the period subject to
192 audit. If there is jeopardy to the revenue and jeopardy is
193 asserted in or with an assessment, the department must proceed
194 in the manner specified for jeopardy assessment in s. 213.732.

195 (5) (a) The department may assess, with or without an
196 audit, any deficiency resulting from nonpayment or underpayment
197 of the tax, interest, or penalties imposed by this part. The
198 department shall inform the bottled water operator by written
199 notice of the amount of any deficiency or overpayment revealed
200 by an audit, including the tax, interest, or penalties due, and

201 shall explain the basis for the determination.

202 (b) The department may make an assessment under this part
203 based upon the best information available to it. The department
204 may make an assessment based upon an estimate of amounts due
205 under this part if a bottled water operator fails to file a
206 return, files a grossly incorrect or fraudulent return, or
207 refuses to permit inspection of records. An assessment of the
208 amounts due under this part is deemed prima facie correct and
209 the bottled water operator has the burden of showing any error
210 in it.

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

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

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

222 (c) A claim for refund must be signed by the bottled water
223 operator or the bottled water operator's duly authorized
224 representative, successor, or assignee and must include
225 information the department requires to determine the correctness

226 of the claim.

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

233 (b) When any tax imposed by this part becomes delinquent
234 or is otherwise in jeopardy, the department may issue a warrant
235 for the full amount due or estimated to be due, including the
236 tax, penalties, interest, and costs of collection. The warrant
237 must be directed to each sheriff and may be recorded with the
238 clerk of the circuit court in any county where the bottled water
239 operator's property is located. Upon recording, the clerk of the
240 circuit court shall execute the warrant in the same manner
241 prescribed by law for executions upon judgments and is entitled
242 to the same fees for this service. Upon payment of the warrant,
243 the department shall satisfy the lien of record within 30 days.
244 Thereafter, any interested person may compel the department to
245 satisfy the lien of record.

246 (c) An alias tax execution may be issued whenever the
247 department deems it necessary. Each alias tax execution must be
248 so designated on its face and has the same force and effect as
249 the original.

250 (d) Tax executions may be levied upon any third party who

251 is in possession or control of any assets of a delinquent
252 bottled water operator or who is indebted to a delinquent
253 bottled water operator. Such tax executions have the force and
254 effect of a writ of garnishment. The third party shall pay the
255 debt or deliver the assets of the delinquent bottled water
256 operator to the department, and receipt by the department
257 discharges the third party completely to the extent of the debt
258 paid or assets surrendered to the department.

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

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

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

267 Section 8. Section 211.45, Florida Statutes, is created to
268 read:

269 211.45 Criminal penalties.—

270 (1) A person who willfully fails to file a return or keep
271 books or records on the extraction of waters of the state which
272 is taxable under this part, who files a fraudulent return, who
273 willfully fails or refuses to produce books or records, or who
274 willfully violates any provision of this part or any rule
275 adopted by the department under this part commits a misdemeanor

HB 1237

2021

276 of the first degree, punishable as provided in s. 775.082 or s.
277 775.083.

278 (2) A person who withholds tax due under this part and
279 willfully fails to make remittance as required by this part or
280 who purports to make payments due under this part but willfully
281 fails to do so because the remittance fails to clear the bank or
282 depository institution against which it is drawn commits a
283 felony of the third degree, punishable as provided in s.
284 775.082, s. 775.083, or s. 775.084.

285 Section 9. This act shall take effect July 1, 2021.