

1                                   A bill to be entitled  
2           An act relating to bottled water excise tax; revising  
3           the title of ch. 211, F.S.; creating part III of ch.  
4           211, F.S., entitled "Tax on Extraction of Water for  
5           Bottling"; creating s. 211.41, F.S.; defining terms;  
6           creating s. 211.42, F.S.; imposing an excise tax upon  
7           bottled water operators; specifying the rate of the  
8           tax and the trust fund where tax proceeds are to be  
9           deposited; requiring that tax proceeds be separately  
10          accounted for and used for certain purposes; creating  
11          s. 211.43, F.S.; specifying requirements for bottled  
12          water operators in filing monthly returns with the  
13          Department of Revenue; authorizing the department to  
14          grant extensions for filing and payment under certain  
15          circumstances; specifying the department's rulemaking  
16          authority; creating s. 211.44, F.S.; specifying  
17          interest payable on unpaid taxes; specifying the  
18          delinquency penalty for failure to timely file a  
19          return; specifying the penalty for the substantial  
20          underpayment of taxes; providing construction;  
21          authorizing the department to settle or compromise  
22          taxes in accordance with certain provisions; creating  
23          s. 211.45, F.S.; authorizing the department to adopt  
24          rules; requiring local governments to cooperate with  
25          the department and furnish information without cost to

26 | the department for certain purposes; specifying  
 27 | recordkeeping requirements for bottled water  
 28 | operators; specifying the department's authority to  
 29 | inspect, examine, and audit bottled water operator  
 30 | books, records, and papers, issue subpoenas, require  
 31 | testimony under oaths or affirmations administered by  
 32 | certain persons, and apply for certain judicial  
 33 | orders; specifying requirements and procedures for the  
 34 | department in conducting audits and examinations,  
 35 | assessing deficiencies, and crediting or refunding  
 36 | overpayments; specifying procedures and requirements  
 37 | for claiming refunds; providing that amounts due  
 38 | remain a lien on certain property, assets, and  
 39 | effects; specifying requirements and procedures for  
 40 | warrants and alias tax executions issued by the  
 41 | department; authorizing certain department employees  
 42 | to make and sign certain assessments, warrants, and  
 43 | satisfactions; requiring that suits brought by the  
 44 | department for violations be brought in circuit court;  
 45 | creating s. 211.46, F.S.; providing criminal penalties  
 46 | for certain violations; providing an effective date.

47 |

48 | Be It Enacted by the Legislature of the State of Florida:

49 |

50 | Section 1. Chapter 211, Florida Statutes, entitled "Tax on

51 Production of Oil and Gas and Severance of Solid Minerals," is  
 52 retitled "Tax on Production of Oil and Gas, Severance of Solid  
 53 Minerals, and Extraction of Water for Bottling."

54 Section 2. The Division of Law Revision is directed to  
 55 create part III of chapter 211, Florida Statutes, consisting of  
 56 ss. 211.41-211.46, Florida Statutes, to be entitled "Tax on  
 57 Extraction of Water for Bottling."

58 Section 3. Section 211.41, Florida Statutes, is created to  
 59 read:

60 211.41 Definitions.—As used in this part, the term:

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

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

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

69 Section 4. Section 211.42, Florida Statutes, is created to  
 70 read:

71 211.42 Bottled water excise tax; distribution and use of  
 72 tax proceeds.—

73 (1) An excise tax is levied upon every bottled water  
 74 operator at a rate of 12.5 cents per gallon of water extracted  
 75 from waters of the state.

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

84       Section 5. Section 211.43, Florida Statutes, is created to  
85 read:

86       211.43 Returns; filing requirements.-

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

99       (a) The return must include a statement of the tax due  
100 under this part and such other information as the department may

101 reasonably require.

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

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

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

114 Section 6. Section 211.44, Florida Statutes, is created to  
 115 read:

116 211.44 Interest and penalties; failure to pay tax or file  
 117 return.—

118 (1) If any part of the tax imposed by this part is not  
 119 paid on or before the due date, interest shall be added to the  
 120 amount due at the rate of 12 percent per year from the due date  
 121 until the date of payment.

122 (2) A bottled water operator who fails to file the return  
 123 required under s. 211.43 by the due date shall pay a delinquency  
 124 penalty. If tax is due with the return, the delinquency penalty  
 125 is 10 percent for each month, or portion thereof, of the amount

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126 of tax due with the return, not to exceed 50 percent. If no tax  
127 is due with the return, the delinquency penalty is \$50 for each  
128 month, or portion thereof, during which the return was not  
129 filed, not to exceed \$300 in aggregate. The amount of tax due  
130 with a return must be reduced by amounts properly creditable  
131 against the tax liability shown on the return on the date the  
132 return was due.

133 (3) A bottled water operator who makes a substantial  
134 underpayment of the tax due under this part shall pay a penalty  
135 of 30 percent of the underpayment in addition to the delinquency  
136 penalty imposed under subsection (2). For purposes of this  
137 subsection, the term "a substantial underpayment of tax due"  
138 means a deficiency of tax in an amount exceeding 35 percent of  
139 the total tax due for a month.

140 (4) Any penalty or interest imposed by this section is  
141 deemed assessed upon the assessment of the tax and must be  
142 collected and paid in the same manner as the tax.

143 (5) Any penalty imposed by this section may be settled or  
144 compromised by the department for reasonable cause in accordance  
145 with s. 213.21. Interest imposed by this section may be settled  
146 or compromised only as authorized by s. 213.21.

147 Section 7. Section 211.45, Florida Statutes, is created to  
148 read:

149 211.45 Administration and enforcement; books and records;  
150 refunds.—

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151       (1) The department may adopt rules to administer this  
152 part, including prescribing the form and content of returns and  
153 reports.

154       (2) All state, county, or municipal agencies, boards,  
155 bureaus, departments, or districts shall cooperate with the  
156 department and furnish any information the department deems  
157 necessary, without cost to the department, for the purposes of  
158 administering, collecting, or enforcing the tax imposed under  
159 this part.

160       (3)(a) A bottled water operator shall keep suitable books,  
161 records, and papers relating to the extraction of taxable waters  
162 of the state to enable the department to determine the amount of  
163 tax due under this part. Such books and records must be  
164 preserved as long as required by s. 213.35.

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

172       1. The department may issue subpoenas to compel third  
173 parties to testify or to produce books, records, papers, or  
174 other evidence in their possession.

175       2. Any duly authorized representative of the department

176 may administer an oath or affirmation.

177 3. If a bottled water operator fails to comply with a  
178 request of the department to inspect or examine the bottled  
179 water operator's books, records, or papers; fails to testify or  
180 respond to competent questions; or fails to comply with a  
181 subpoena, upon application by the department, a circuit court  
182 having jurisdiction over such bottled water operator may issue  
183 orders necessary to secure compliance.

184 (c) All books, records, and papers required to be kept  
185 under this subsection must be available for inspection or  
186 examination by the department upon written request during normal  
187 business hours.

188 (4) The department may audit or examine the books,  
189 records, or papers of a bottled water operator to determine  
190 whether returns have been properly filed and taxes have been  
191 properly paid. An audit or examination may be commenced for any  
192 month for which the power of the department to make an  
193 assessment of amounts due under this part is available. An audit  
194 or examination must be commenced by service, in person, or by  
195 certified mail, upon the bottled water operator of a written  
196 notice of intent to audit or examine. The date the bottled water  
197 operator receives such notice, or the postmark date if such  
198 notice is mailed by certified mail, governs the period subject  
199 to audit or examination. If there is jeopardy to the revenue and  
200 jeopardy is asserted in or with an assessment, the department



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201 must proceed in the manner specified for jeopardy assessment in  
202 s. 213.732.

203 (5) (a) The department may assess, with or without an audit  
204 or examination, any deficiency resulting from nonpayment or  
205 underpayment of the tax, interest, or penalties imposed by this  
206 part. The department shall inform the bottled water operator by  
207 written notice of the amount of any deficiency or overpayment  
208 revealed by an audit or examination, including the tax,  
209 interest, or penalties due, and shall explain the basis for the  
210 determination.

211 (b) The department may make an assessment under this part  
212 based upon the best information available to it. The department  
213 may make an assessment based upon an estimate of amounts due  
214 under this part if a bottled water operator fails to file a  
215 return, files a grossly incorrect or fraudulent return, or  
216 refuses to permit inspection of its books, records, or papers.  
217 An assessment of the amounts due under this part is deemed prima  
218 facie correct and the bottled water operator has the burden of  
219 showing any error in such assessment.

220 (c) In the event of a deficiency, the department shall  
221 issue its written notice to a bottled water operator for the  
222 tax, penalties, or interest due. Full payment of the total  
223 amount assessed must be made in the manner prescribed by the  
224 department in such notice.

225 (6) (a) The department may credit or refund any

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226 overpayments of amounts due under this part which are revealed  
227 by an audit or examination or for which a timely claim for  
228 refund has been properly filed.

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

231 (c) A claim for refund must be signed by the bottled water  
232 operator or the bottled water operator's duly authorized  
233 representative, successor, or assignee and must include  
234 information the department requires to determine the correctness  
235 of the claim.

236 (7)(a) Amounts due under this part remain a lien upon the  
237 property, assets, and effects of a bottled water operator until  
238 paid or until collection of such amounts is barred under s.  
239 95.091. Amounts due may be recovered by the department, on  
240 behalf of the state, by an action in any county where the  
241 property, assets, or effects of the bottled water operator are  
242 located.

243 (b) When any tax imposed by this part becomes delinquent  
244 or is otherwise in jeopardy, the department may issue a warrant  
245 for the full amount due or estimated to be due, including the  
246 tax, penalties, interest, and costs of collection. The warrant  
247 must be directed to the sheriff in each county where the bottled  
248 water operator's property is located and may be recorded with  
249 the clerk of the circuit court in any county where the bottled  
250 water operator's property is located. Upon recording, the clerk

251 shall execute the warrant in the same manner prescribed by law  
252 for executions upon judgments and is entitled to the same fees  
253 for this service. Upon payment of the warrant, the department  
254 shall satisfy the lien of record within 30 days. Thereafter, any  
255 interested person may compel the department to satisfy the lien  
256 of record.

257 (c) An alias tax execution may be issued whenever the  
258 department deems it necessary. Each alias tax execution must be  
259 so designated on its face and has the same force and effect as  
260 the original.

261 (d) Tax executions may be levied upon any third party who  
262 is in possession or control of any assets of a delinquent  
263 bottled water operator or who is indebted to a delinquent  
264 bottled water operator. Such tax executions have the force and  
265 effect of a writ of garnishment. The third party shall pay the  
266 debt or deliver the assets of the delinquent bottled water  
267 operator to the department, and receipt by the department  
268 discharges the third party completely to the extent of the debt  
269 paid or assets surrendered to the department.

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

273 (8) Any employee of the department may be designated by  
274 the executive director or his or her designee to make and sign  
275 assessments, tax warrants, and satisfactions of tax warrants.

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

278       Section 8. Section 211.46, Florida Statutes, is created to  
279 read:

280       211.46 Criminal penalties.-

281       (1) A bottled water operator who willfully fails to file a  
282 return or keep suitable books, records, and papers relating to  
283 the extraction of waters of the state which is taxable under  
284 this part; who files a fraudulent return; who willfully fails or  
285 refuses to produce the books, records, or papers; or who  
286 willfully violates any provision of this part or any rule  
287 adopted by the department under this part commits a misdemeanor  
288 of the first degree, punishable as provided in s. 775.082 or s.  
289 775.083.

290       (2) A bottled water operator who withholds tax due under  
291 this part and willfully fails to remit the tax as required by  
292 this part or who purports to make payments of tax due under this  
293 part but willfully fails to remit the tax because the remittance  
294 fails to clear the bank or depository institution against which  
295 it is drawn commits a felony of the third degree, punishable as  
296 provided in s. 775.082, s. 775.083, or s. 775.084.

297       Section 9. This act shall take effect July 1, 2022.