

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 with the Department of Revenue;  
14      authorizing the department to prescribe certain forms  
15      by rule; authorizing the department to grant  
16      extensions for filing and payment under certain  
17      circumstances; creating s. 211.43, F.S.; specifying  
18      interest payable on unpaid taxes; specifying the  
19      delinquency penalties for failure to timely file a  
20      return; specifying the penalty for the substantial  
21      underpayment of taxes; providing construction;  
22      authorizing the department to settle or compromise  
23      taxes in accordance with certain provisions; creating  
24      s. 211.44, F.S.; authorizing the department to adopt  
25      rules; requiring governmental entities to cooperate  
26      with the department and furnish information without  
27      cost to the department for certain purposes;  
28      specifying recordkeeping requirements for bottled  
29      water operators; specifying the department's authority

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30 to inspect, examine, and audit bottled water operator  
31 books and records, issue subpoenas, require testimony  
32 under oath or affirmation of certain persons, and  
33 apply for certain judicial orders; specifying  
34 requirements and procedures for the department in  
35 conducting audits, assessing deficiencies, and  
36 crediting or refunding overpayments; specifying  
37 procedures and requirements for claiming refunds;  
38 providing that amounts due remain a lien on certain  
39 property; specifying requirements and procedures for  
40 warrants and alias tax executions issued by the  
41 department; requiring that suits brought by the  
42 department for violations be brought in circuit court;  
43 creating s. 211.45, F.S.; providing criminal penalties  
44 for certain violations; providing an effective date.

45  
46 Be It Enacted by the Legislature of the State of Florida:

47  
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:

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

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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 paid  
115 on or before the due date, interest must be added to the amount  
116 due at the rate of 12 percent per year from the due date until

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117 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. The department may settle or compromise interest  
142 imposed by this section 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;

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146 refunds.-

147 (1) The department may adopt rules to administer this part,  
148 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 the operator to testify under oath or affirmation or to  
167 answer competent questions regarding the operator'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 may  
173 administer an oath or affirmation.

174 3. If any person fails to comply with a request of the

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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 audit,  
196 any deficiency resulting from nonpayment or underpayment of the  
197 tax, interest, or penalties imposed by this part. The department  
198 shall inform the bottled water operator by written notice of the  
199 amount of any deficiency or overpayment revealed by an audit,  
200 including the tax, interest, or penalties due, and shall explain  
201 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

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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 allow 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 overpayments  
217 of amounts due under this part which are revealed by an audit or  
218 for which a timely claim for refund has been properly filed.

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

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

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

232 (b) When any tax imposed by this part becomes delinquent or

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

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

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

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

261 (8) Any employee of the department may be designated by the

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262 executive director to make and sign assessments, tax warrants,  
263 and satisfactions of tax warrants.

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

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

268 211.45 Criminal penalties.-

269 (1) A person who willfully fails to file a return or keep  
270 books or records on the extraction of waters of the state which  
271 is taxable under this part, who files a fraudulent return, who  
272 willfully fails or refuses to produce books or records, or who  
273 willfully violates any provision of this part or any rule  
274 adopted by the department under this part commits a misdemeanor  
275 of the first degree, punishable as provided in s. 775.082 or s.  
276 775.083.

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

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