

By the Committee on Finance and Tax; and Senator Fasano

593-04945-10

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1                   A bill to be entitled  
2           An act relating to the tax on sales, use, and other  
3           transactions; amending s. 212.05, F.S.; deleting a  
4           requirement that a specified penalty is mandatory and  
5           may not be waived by the Department of Revenue;  
6           deleting authorization to return certain aircraft to  
7           the state for repairs without liability for taxes and  
8           penalties under certain circumstances; amending s.  
9           212.08, F.S.; exempting from the use tax aircraft that  
10          are owned by nonresidents and that enter and remain in  
11          the state for certain purposes under certain  
12          circumstances; providing an effective date.

13  
14 Be It Enacted by the Legislature of the State of Florida:

15  
16           Section 1. Paragraph (a) of subsection (1) of section  
17           212.05, Florida Statutes, is amended to read:

18           212.05 Sales, storage, use tax.—It is hereby declared to be  
19           the legislative intent that every person is exercising a taxable  
20           privilege who engages in the business of selling tangible  
21           personal property at retail in this state, including the  
22           business of making mail order sales, or who rents or furnishes  
23           any of the things or services taxable under this chapter, or who  
24           stores for use or consumption in this state any item or article  
25           of tangible personal property as defined herein and who leases  
26           or rents such property within the state.

27           (1) For the exercise of such privilege, a tax is levied on  
28           each taxable transaction or incident, which tax is due and  
29           payable as follows:

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30 (a)1.a. At the rate of 6 percent of the sales price of each  
31 item or article of tangible personal property when sold at  
32 retail in this state, computed on each taxable sale for the  
33 purpose of remitting the amount of tax due the state, and  
34 including each and every retail sale.

35 b. Each occasional or isolated sale of an aircraft, boat,  
36 mobile home, or motor vehicle of a class or type which is  
37 required to be registered, licensed, titled, or documented in  
38 this state or by the United States Government shall be subject  
39 to tax at the rate provided in this paragraph. The department  
40 shall by rule adopt any nationally recognized publication for  
41 valuation of used motor vehicles as the reference price list for  
42 any used motor vehicle which is required to be licensed pursuant  
43 to s. 320.08(1), (2), (3)(a), (b), (c), or (e), or (9). If any  
44 party to an occasional or isolated sale of such a vehicle  
45 reports to the tax collector a sales price which is less than 80  
46 percent of the average loan price for the specified model and  
47 year of such vehicle as listed in the most recent reference  
48 price list, the tax levied under this paragraph shall be  
49 computed by the department on such average loan price unless the  
50 parties to the sale have provided to the tax collector an  
51 affidavit signed by each party, or other substantial proof,  
52 stating the actual sales price. Any party to such sale who  
53 reports a sales price less than the actual sales price is guilty  
54 of a misdemeanor of the first degree, punishable as provided in  
55 s. 775.082 or s. 775.083. The department shall collect or  
56 attempt to collect from such party any delinquent sales taxes.  
57 In addition, such party shall pay any tax due and any penalty  
58 and interest assessed plus a penalty equal to twice the amount

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59 of the additional tax owed. Notwithstanding any other provision  
60 of law, the Department of Revenue may waive or compromise any  
61 penalty imposed pursuant to this subparagraph.

62 2. This paragraph does not apply to the sale of a boat or  
63 aircraft by or through a registered dealer under this chapter to  
64 a purchaser who, at the time of taking delivery, is a  
65 nonresident of this state, does not make his or her permanent  
66 place of abode in this state, and is not engaged in carrying on  
67 in this state any employment, trade, business, or profession in  
68 which the boat or aircraft will be used in this state, or is a  
69 corporation none of the officers or directors of which is a  
70 resident of, or makes his or her permanent place of abode in,  
71 this state, or is a noncorporate entity that has no individual  
72 vested with authority to participate in the management,  
73 direction, or control of the entity's affairs who is a resident  
74 of, or makes his or her permanent abode in, this state. For  
75 purposes of this exemption, either a registered dealer acting on  
76 his or her own behalf as seller, a registered dealer acting as  
77 broker on behalf of a seller, or a registered dealer acting as  
78 broker on behalf of the purchaser may be deemed to be the  
79 selling dealer. This exemption shall not be allowed unless:

80 a. The purchaser removes a qualifying boat, as described in  
81 sub-subparagraph f., from the state within 90 days after the  
82 date of purchase or extension, or the purchaser removes a  
83 nonqualifying boat or an aircraft from this state within 10 days  
84 after the date of purchase or, when the boat or aircraft is  
85 repaired or altered, within 20 days after completion of the  
86 repairs or alterations;

87 b. The purchaser, within 30 days from the date of

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88 departure, shall provide the department with written proof that  
89 the purchaser licensed, registered, titled, or documented the  
90 boat or aircraft outside the state. If such written proof is  
91 unavailable, within 30 days the purchaser shall provide proof  
92 that the purchaser applied for such license, title,  
93 registration, or documentation. The purchaser shall forward to  
94 the department proof of title, license, registration, or  
95 documentation upon receipt;

96 c. The purchaser, within 10 days of removing the boat or  
97 aircraft from Florida, shall furnish the department with proof  
98 of removal in the form of receipts for fuel, dockage, slippage,  
99 tie-down, or hangaring from outside of Florida. The information  
100 so provided must clearly and specifically identify the boat or  
101 aircraft;

102 d. The selling dealer, within 5 days of the date of sale,  
103 shall provide to the department a copy of the sales invoice,  
104 closing statement, bills of sale, and the original affidavit  
105 signed by the purchaser attesting that he or she has read the  
106 provisions of this section;

107 e. The seller makes a copy of the affidavit a part of his  
108 or her record for as long as required by s. 213.35; and

109 f. Unless the nonresident purchaser of a boat of 5 net tons  
110 of admeasurement or larger intends to remove the boat from this  
111 state within 10 days after the date of purchase or when the boat  
112 is repaired or altered, within 20 days after completion of the  
113 repairs or alterations, the nonresident purchaser shall apply to  
114 the selling dealer for a decal which authorizes 90 days after  
115 the date of purchase for removal of the boat. The nonresident  
116 purchaser of a qualifying boat may apply to the selling dealer

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117 within 60 days after the date of purchase for an extension decal  
118 that authorizes the boat to remain in this state for an  
119 additional 90 days, but not more than a total of 180 days,  
120 before the nonresident purchaser is required to pay the tax  
121 imposed by this chapter. The department is authorized to issue  
122 decals in advance to dealers. The number of decals issued in  
123 advance to a dealer shall be consistent with the volume of the  
124 dealer's past sales of boats which qualify under this sub-  
125 subparagraph. The selling dealer or his or her agent shall mark  
126 and affix the decals to qualifying boats in the manner  
127 prescribed by the department, prior to delivery of the boat.

128 (I) The department is hereby authorized to charge dealers a  
129 fee sufficient to recover the costs of decals issued, except the  
130 extension decal shall cost \$425.

131 (II) The proceeds from the sale of decals will be deposited  
132 into the administrative trust fund.

133 (III) Decals shall display information to identify the boat  
134 as a qualifying boat under this sub-subparagraph, including, but  
135 not limited to, the decal's date of expiration.

136 (IV) The department is authorized to require dealers who  
137 purchase decals to file reports with the department and may  
138 prescribe all necessary records by rule. All such records are  
139 subject to inspection by the department.

140 (V) Any dealer or his or her agent who issues a decal  
141 falsely, fails to affix a decal, mismarks the expiration date of  
142 a decal, or fails to properly account for decals will be  
143 considered prima facie to have committed a fraudulent act to  
144 evade the tax and will be liable for payment of the tax plus a  
145 mandatory penalty of 200 percent of the tax, and shall be liable

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146 for fine and punishment as provided by law for a conviction of a  
147 misdemeanor of the first degree, as provided in s. 775.082 or s.  
148 775.083.

149 (VI) Any nonresident purchaser of a boat who removes a  
150 decal prior to permanently removing the boat from the state, or  
151 defaces, changes, modifies, or alters a decal in a manner  
152 affecting its expiration date prior to its expiration, or who  
153 causes or allows the same to be done by another, will be  
154 considered prima facie to have committed a fraudulent act to  
155 evade the tax and will be liable for payment of the tax plus a  
156 mandatory penalty of 200 percent of the tax, and shall be liable  
157 for fine and punishment as provided by law for a conviction of a  
158 misdemeanor of the first degree, as provided in s. 775.082 or s.  
159 775.083.

160 (VII) The department is authorized to adopt rules necessary  
161 to administer and enforce this subparagraph and to publish the  
162 necessary forms and instructions.

163 (VIII) The department is hereby authorized to adopt  
164 emergency rules pursuant to s. 120.54(4) to administer and  
165 enforce the provisions of this subparagraph.  
166

167 If the purchaser fails to remove the qualifying boat from this  
168 state within the maximum 180 days after purchase or a  
169 nonqualifying boat or an aircraft from this state within 10 days  
170 after purchase or, when the boat or aircraft is repaired or  
171 altered, within 20 days after completion of such repairs or  
172 alterations, or permits the boat or aircraft to return to this  
173 state within 6 months from the date of departure, except as  
174 provided in s. 212.08(7) (ggg), or if the purchaser fails to

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175 furnish the department with any of the documentation required by  
176 this subparagraph within the prescribed time period, the  
177 purchaser shall be liable for use tax on the cost price of the  
178 boat or aircraft and, in addition thereto, payment of a penalty  
179 to the Department of Revenue equal to the tax payable. This  
180 penalty shall be in lieu of the penalty imposed by s. 212.12(2)  
181 ~~and is mandatory and shall not be waived by the department.~~ The  
182 maximum 180-day period following the sale of a qualifying boat  
183 tax-exempt to a nonresident may not be tolled for any reason.  
184 ~~Notwithstanding other provisions of this paragraph to the~~  
185 ~~contrary, an aircraft purchased in this state under the~~  
186 ~~provisions of this paragraph may be returned to this state for~~  
187 ~~repairs within 6 months after the date of its departure without~~  
188 ~~being in violation of the law and without incurring liability~~  
189 ~~for the payment of tax or penalty on the purchase price of the~~  
190 ~~aircraft if the aircraft is removed from this state within 20~~  
191 ~~days after the completion of the repairs and if such removal can~~  
192 ~~be demonstrated by invoices for fuel, tie-down, hangar charges~~  
193 ~~issued by out-of-state vendors or suppliers, or similar~~  
194 ~~documentation.~~

195 Section 2. Paragraph (ggg) is added to subsection (7) of  
196 section 212.08, Florida Statutes, to read:

197 212.08 Sales, rental, use, consumption, distribution, and  
198 storage tax; specified exemptions.—The sale at retail, the  
199 rental, the use, the consumption, the distribution, and the  
200 storage to be used or consumed in this state of the following  
201 are hereby specifically exempt from the tax imposed by this  
202 chapter.

203 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any

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204 entity by this chapter do not inure to any transaction that is  
205 otherwise taxable under this chapter when payment is made by a  
206 representative or employee of the entity by any means,  
207 including, but not limited to, cash, check, or credit card, even  
208 when that representative or employee is subsequently reimbursed  
209 by the entity. In addition, exemptions provided to any entity by  
210 this subsection do not inure to any transaction that is  
211 otherwise taxable under this chapter unless the entity has  
212 obtained a sales tax exemption certificate from the department  
213 or the entity obtains or provides other documentation as  
214 required by the department. Eligible purchases or leases made  
215 with such a certificate must be in strict compliance with this  
216 subsection and departmental rules, and any person who makes an  
217 exempt purchase with a certificate that is not in strict  
218 compliance with this subsection and the rules is liable for and  
219 shall pay the tax. The department may adopt rules to administer  
220 this subsection.

221 (ggg) Aircraft temporarily in the state.-

222 1. An aircraft owned by a nonresident is exempt from the  
223 use tax imposed under this chapter if the aircraft enters and  
224 remains in this state for less than a total of 21 days during  
225 the 6-month period after the date of purchase. The temporary use  
226 of the aircraft and subsequent removal from this state may be  
227 proven by invoices for fuel, tie-down, or hangar charges issued  
228 by out-of-state vendors or suppliers or similar documentation  
229 that clearly and specifically identifies the aircraft. The  
230 exemption created by this subparagraph is in addition to the  
231 exemptions provided in subparagraph 2. and s. 212.05(1)(a).

232 2. An aircraft owned by a nonresident is exempt from the

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233 use tax imposed under this chapter if the aircraft enters or  
234 remains in this state exclusively for the purpose of flight  
235 training, repairs, alterations, refitting, or modification. Such  
236 purposes must be supported by written documentation issued by  
237 in-state vendors or suppliers which clearly and specifically  
238 identifies the aircraft. The exemption created by this  
239 subparagraph is in addition to the exemptions provided in  
240 subparagraph 1. and s. 212.05(1)(a).

241 Section 3. This act shall take effect July 1, 2010.