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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 certain penalty is mandatory and not
 5 able to be waived by the Department of Revenue; deleting
 6 authorization to return certain aircraft to the state for
 7 repairs without liability for taxes and penalty under
 8 certain circumstances; amending s. 212.08, F.S.; exempting
 9 from the use tax aircraft owned by nonresidents and
 10 entering and remaining in the state for certain purposes
 11 under certain circumstances; providing an effective date;
 12 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
 19 be the legislative intent that every person is exercising a
 20 taxable privilege who engages in the business of selling
 21 tangible personal property at retail in this state, including
 22 the business of making mail order sales, or who rents or
 23 furnishes any of the things or services taxable under this
 24 chapter, or who stores for use or consumption in this state any
 25 item or article of tangible personal property as defined herein
 26 and who leases or rents such property within the state.

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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:

30 (a)1.a. At the rate of 6 percent of the sales price of
 31 each 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

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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
 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
 81 in sub-subparagraph f., from the state within 90 days after the
 82 date of purchase or extension, or the purchaser removes a

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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
 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
 110 tons of admeasurement or larger intends to remove the boat from

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111 | this state within 10 days after the date of purchase or when the
 112 | boat is repaired or altered, within 20 days after completion of
 113 | the repairs or alterations, the nonresident purchaser shall
 114 | apply to the selling dealer for a decal which authorizes 90 days
 115 | after the date of purchase for removal of the boat. The
 116 | nonresident purchaser of a qualifying boat may apply to the
 117 | selling dealer within 60 days after the date of purchase for an
 118 | extension decal that authorizes the boat to remain in this state
 119 | for an additional 90 days, but not more than a total of 180
 120 | days, before the nonresident purchaser is required to pay the
 121 | tax imposed by this chapter. The department is authorized to
 122 | issue decals in advance to dealers. The number of decals issued
 123 | in advance to a dealer shall be consistent with the volume of
 124 | the 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
 129 | a fee sufficient to recover the costs of decals issued, except
 130 | the extension decal shall cost \$425.

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

133 | (III) Decals shall display information to identify the
 134 | boat as a qualifying boat under this sub-subparagraph,
 135 | including, but 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

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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
 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
 161 necessary to administer and enforce this subparagraph and to
 162 publish the 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.

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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
 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~~

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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
 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.

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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
 233 use tax imposed under this chapter if the aircraft enters or
 234 remains in this state exclusively for purpose of flight
 235 training, repairs, alterations, refitting, or modification. Such
 236 purposes shall 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.