CHAPTER 98-141

Committee Substitute for Senate Bill No. 1690

An act relating to taxes on sales, use, and other transactions (RAB); amending s. 212.0506, F.S.; revising guidelines for tax liability of service warranties; amending s. 212.0515, F.S.; providing tax liability for sales of nonfood items from vending machines; revising eligibility for rewards; amending s. 212.054, F.S.; revising guidelines for determination of exemption from partial sales surtaxes; amending s. 212.0598, F.S.; revising provisions relating to determination of air carriers' tax liability; amending s. 212.06, F.S.; revising guidelines for determining tax liability of certain personal property; providing a presumption with respect to tax liability for sales of motor vehicles; providing for a use tax on certain aircraft; defining the terms "real property," "fixtures," and "improvements to real property," for purposes of determining when a person is improving real property; providing guidelines for determining tax liability on rock, shell, fill dirt, and similar materials; providing an effective date.

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

Section 1. Subsection (8) of section 212.0506, Florida Statutes, is amended, present subsection (10) of that section is renumbered as subsection (11), and a new subsection (10) is added to that section, to read:

212.0506 Taxation of service warranties.—

(8) If a transaction involves both the issuance of a service warranty that ~~which~~ is subject to such tax and the issuance of a warranty, guaranty, extended warranty or extended guaranty, contract, agreement, or other written promise that ~~which~~ is not subject to such tax, the consideration shall be separately identified and stated with respect to the taxable and nontaxable portions of the transaction. If the consideration is separately apportioned and identified in good faith, such tax shall apply to the transaction to the extent that the consideration received or to be received in connection with the transaction is payment for a service warranty subject to such tax. If the consideration is not apportioned in good faith, the department may reform the contract; such reformation by the department is to be considered prima facie correct, and the burden to show the contrary rests upon the dealer. If the consideration for such a transaction is not separately identified and stated, the entire transaction is taxable.

(10) Materials and supplies used in the performance of a factory or manufacturer's warranty are exempt if the contract is furnished at no extra charge with the equipment guaranteed thereunder and such materials and supplies are paid for by the factory or manufacturer.

Section 2. Subsections (1), (2), (3), and (6) of section 212.0515, Florida Statutes, are amended to read:

212.0515 Sales from vending machines; sales to vending machine operators; special provisions; registration; quarterly reports; penalties.—

(1) As used in this section:

(a) "Vending machine" means a machine, operated by coin, currency, credit card, slug, token, coupon, or similar device, which dispenses food, beverages, or other ~~or beverage~~ items of tangible personal property.

(b) "Operator" means any person who possesses a vending machine for the purpose of generating sales through that machine and who maintains the inventory in and removes the receipts from that vending machine.

(2) Notwithstanding any other provision of law, the amount of the tax to be paid on food, beverages, or other ~~and beverage~~ items of tangible personal property that are sold in vending machines shall be calculated by dividing the gross receipts from such sales for the applicable reporting period by a divisor, determined as provided in this subsection, to compute gross taxable sales, and then subtracting gross taxable sales from gross receipts to arrive at the amount of tax due. The divisor shall be equal to the sum of 1.0665 for beverage items, ~~or~~ 1.0645 for food items, or 1.0659 for other items of tangible personal property, except that for counties with a 0.5 percent sales surtax rate the divisor shall be equal to the sum of 1.0707 for beverages and other ~~beverage~~ items of tangible personal property, ~~or~~ 1.0686 for food items, for counties with a 1 percent sales surtax rate the divisor shall be equal to the sum of 1.0749 for beverages and other ~~beverage~~ items of tangible personal property, or 1.0726 for food items, and for counties with a 1.5 percent sales surtax rate the divisor shall be equal to the sum of 1.0791 for beverages and other ~~beverage~~ items of tangible personal property or 1.0767 for food items. However, the amount of the tax to be paid on natural fluid milk, homogenized milk, pasteurized milk, whole milk, chocolate milk, or similar milk products, natural fruit juices, or natural vegetable juices shall be calculated using the divisor that is specified for food items. If an operator cannot account for each type of item sold through a vending machine, the highest tax rate shall be used for all products sold through that machine.

(3)(a) An operator of a vending machine may not operate or cause to be operated in this state any vending machine until the operator has registered with the department, has obtained a separate registration certificate for each county in which such machines are located, and has affixed a notice to each vending machine selling food or beverages which states the operator's name, address, and Federal Employer Identification (FEI) number. If the operator is not required to have an FEI number, the notice shall include the operator's sales tax registration number. The notice must be conspicuously displayed on the vending machine when it is being operated in this state and shall contain the following language in conspicuous type: NOTICE TO CUSTOMER: FLORIDA LAW REQUIRES THIS NOTICE TO BE POSTED ON ALL FOOD AND BEVERAGE VENDING MACHINES. REPORT ANY MACHINE WITHOUT A NOTICE TO (TOLL-FREE NUMBER). YOU MAY BE ELIGIBLE FOR A CASH REWARD.

(b) The department shall establish a toll-free number to report any violations of this section. Upon a determination that a violation has occurred, the

department shall pay the informant a reward of up to 10 percent of previously unpaid taxes recovered as a result of the information provided. A person who receives information concerning a violation of this section from an employee as specified in s. 213.30 is not eligible for a cash reward.

(6) The provisions of this section do not apply to vending machines owned and operated by churches, ~~or~~ synagogues, or nonprofit or charitable organizations exempt pursuant to s. 212.08(7)(z).

Section 3. Paragraph (b) of subsection (2) of section 212.054, Florida Statutes, is amended to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(2)

(b) However:

1. The tax on any sales amount above $5,000 on any item of tangible personal property and on long-distance telephone service shall not be subject to the surtax. For purposes of administering the $5,000 limitation on an item of tangible personal property, if two or more taxable items of tangible personal property are sold to the same purchaser at the same time and, under generally accepted business practice or industry standards or usage, are normally sold in bulk or are items that, when assembled, comprise a working unit or part of a working unit, such items must be considered a single item for purposes of the $5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental. The limitation provided in this subparagraph does not apply to the sale of any other service.

2. In the case of utility, telecommunication, or television system program services billed on or after the effective date of any such surtax, the entire amount of the tax for utility, telecommunication, or television system program services shall be subject to the surtax. In the case of utility, telecommunication, or television system program services billed after the last day the surtax is in effect, the entire amount of the tax on said items shall not be subject to the surtax.

3. In the case of written contracts which are signed prior to the effective date of any such surtax for the construction of improvements to real property or for remodeling of existing structures, the surtax shall be paid by the contractor responsible for the performance of the contract. However, the contractor may apply for one refund of any such surtax paid on materials necessary for the completion of the contract. Any application for refund shall be made no later than 15 months following initial imposition of the surtax in that county. The application for refund shall be in the manner prescribed by the department by rule. A complete application shall include proof of the written contract and of payment of the surtax. The application shall contain a sworn statement, signed by the applicant or its representative, attesting to the validity of the application. The department shall, within 30 days after

approval of a complete application, certify to the county information necessary for issuance of a refund to the applicant. Counties are hereby authorized to issue refunds for this purpose and shall set aside from the proceeds of the surtax a sum sufficient to pay any refund lawfully due. Any person who fraudulently obtains or attempts to obtain a refund pursuant to this subparagraph, in addition to being liable for repayment of any refund fraudulently obtained plus a mandatory penalty of 100 percent of the refund, is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. In the case of any vessel, railroad, or motor vehicle common carrier entitled to partial exemption from tax imposed under this chapter pursuant to s. 212.08(4), (8), or (9), the basis for imposition of surtax shall be the same as provided in s. 212.08 and the ratio shall be applied each month to total purchases in this state of property qualified for proration which is delivered or sold in the taxing county to establish the portion used and consumed in intracounty movement and subject to surtax.

Section 4. Subsection (2) of section 212.0598, Florida Statutes, is amended to read:

212.0598 Special provisions; air carriers.—

(2) The basis of the tax shall be the ratio of Florida mileage to total mileage as determined pursuant to chapter 220 and this section. The ratio shall be determined at the close of the carrier's preceding fiscal year. However, during the fiscal year in which the air carrier begins initial operations in this state, the carrier may determine its mileage apportionment factor based on an estimated ratio of anticipated revenue miles in this state to anticipated total revenue miles. In such cases, the air carrier shall pay additional tax or apply for a refund based on the actual ratio for that year. The applicable ratio shall be applied each month to the carrier's total systemwide gross purchases of tangible personal property and services otherwise taxable in Florida. Additionally, the ratio shall be applied each month to the carrier's total systemwide payments for the lease or rental of, or license in, real property used by the carrier substantially for aircraft maintenance if that carrier employed, on average, during the previous calendar quarter in excess of 3,000 full-time equivalent maintenance or repair employees at one maintenance base that it leases, rents, or has a license in, in this state. In all other instances, the tax on real property leased, rented, or licensed by the carrier shall be as provided in s. 212.031.

Section 5. Present paragraph (d) of subsection (1) of section 212.06, Florida Statutes, is redesignated as paragraph (e) and a new paragraph (d) is added to that subsection, subsections (7) and (10) of that section are amended, and subsections (13), (14), and (15) are added to that section, to read:

212.06 Sales, storage, use tax; collectible from dealers; "dealer" defined; dealers to collect from purchasers; legislative intent as to scope of tax.—

(1)

(d) For purposes of paragraph (b), the department may establish a cost price amount for industry groups that manufacture, produce, compound, process, or fabricate tangible personal property for their own use in the performance of contracts for improvements to real property. Such cost price amount must be established as a percentage, rounded to the nearest whole number, of the total contract price charged for the improvement. The cost price percentages established must be adopted by rule pursuant to the procedures provided in s. 120.54, upon petition of a majority of the members of an industry group or by a statewide association that represents such industry group, and must be based on a reasonable estimate of average costs incurred by members of the petitioning industry group. The department is required to adopt a cost price percentage only if sufficient information is available to determine such percentage. The information considered by the department to establish the cost price percentage must be that set forth in the petition or that which is otherwise made available to the department. Any cost price percentage so established must be available only by election of a member of the industry group for which the percentage was established and may apply only to such periods or contracts for which the election is made. The election must be made by the taxpayer by timely accruing and remitting tax on the contract using the established percentage figure. If the taxpayer does not timely accrue and remit the use tax due for a contract using the percentage figure, the taxpayer may not later use this method of calculating the use tax due for that contract. Taxpayers must maintain adequate records showing the accrual of tax using the percentage figure on total contract price. Any cost price so established must remain available for use for a period of at least 5 years from the date of its adoption and must be reviewed and be subject to adjustment by the department no more frequently than at 5-year intervals. The provisions of this paragraph are not available to persons subject to paragraph (c).

(7) The provisions of this chapter do not apply in respect to the use or consumption of tangible personal property or services, or distribution or storage of tangible personal property for use or consumption in this state, upon which a like tax equal to or greater than the amount imposed by this chapter has been lawfully imposed and paid in another state, territory of the United States, or the District of Columbia. The proof of payment of such tax shall be made according to rules and regulations of the department. If the amount of tax paid in another state, territory of the United States, or the District of Columbia is not equal to or greater than the amount of tax imposed by this chapter, then the dealer shall pay to the department an amount sufficient to make the tax paid in the other state, territory of the United States, or the District of Columbia and in this state equal to the amount imposed by this chapter.

(10) No title certificate may be issued on any boat, mobile home, motor vehicle, or other vehicle, or, if no title is required by law, no license or registration may be issued for any boat, mobile home, motor vehicle, or other vehicle, unless there is filed with such application for title certificate or license or registration certificate a receipt, issued by an authorized dealer or a designated agent of the Department of Revenue, evidencing the payment of the tax imposed by this chapter where the same is payable. A presumption of sales and use tax applicability is created if the motor vehicle

is registered in this state. For the purpose of enforcing this provision, all county tax collectors and all persons or firms authorized to sell or issue boat, mobile home, and motor vehicle licenses are hereby designated agents of the department and are required to perform such duty in the same manner and under the same conditions prescribed for their other duties by the constitution or any statute of this state. All transfers of title to boats, mobile homes, motor vehicles, and other vehicles are taxable transactions, unless expressly exempt under this chapter.

(13) Registered aircraft dealers who purchase aircraft exclusively for resale and do not pay sales tax on the purchase price at the time of purchase shall pay a use tax computed on 1 percent of the value of the aircraft each calendar month that the aircraft is used by the dealer. Payment of such tax shall commence in the month during which the aircraft is first used for any purpose for which income is received by the dealer. A dealer may pay the sales tax on the purchase of the aircraft in lieu of the monthly use tax. The value of the aircraft shall include its acquisition cost and the cost of reconditioning that enhances the value of the aircraft and shall generally be the value shown on the books of the dealer in accordance with generally accepted accounting principles. Notwithstanding the payment by the dealer of tax computed on 1 percent of the value of any aircraft, if the aircraft is leased or rented, the dealer shall collect from the customer and remit the tax that is due on the lease or rental of the aircraft; such payments do not diminish or offset any use tax due from the dealer.

(14) For the purpose of determining whether a person is improving real property, the term:

(a) "Real property" means the land and improvements thereto and fixtures and is synonymous with the terms "realty" and "real estate."

(b) "Fixtures" means items that are an accessory to a building, other structure, or land and that do not lose their identity as accessories when installed but that do become permanently attached to realty. However, the term does not include the following items, whether or not such items are attached to real property in a permanent manner: trade fixtures; property of a type that is required to be registered, licensed, titled, or documented by this state or by the United States Government, including, but not limited to, mobile homes, except mobile homes assessed as real property; or machinery or equipment. For an item to be considered a fixture, it is not necessary that the owner of the item also own the real property to which it is attached.

(c) "Improvements to real property" includes the activities of building, erecting, constructing, altering, improving, repairing, or maintaining real property.

(15)(a) When a contractor secures rock, shell, fill dirt, or similar materials from a location that he or she owns or leases and uses such materials to fulfill a real property contract on the property of another person, the contractor is the ultimate consumer of such materials and is liable for use tax thereon. This paragraph does not apply to a person who secures such materials from a location that he or she owns for use on his or her own property. The basis upon which the contractor shall remit the tax is the fair retail

market value determined by establishing either the price he or she would have to pay for it on the open market or the price he or she would regularly charge if he or she sold it to other contractors or users.

(b) When a contractor does not own or lease the land but has entered into an agreement to purchase fill dirt, rock, shell, or similar materials for his or her own use and wherein the contractor will excavate and remove the material, the taxable basis shall include the cost of the material plus all costs of clearing, excavating, and removing, including labor and all other costs incurred by the contractor.

(c) In lieu of the method described in paragraph (a) for determining the taxable basis on rock, shell, fill dirt, and similar materials a contractor uses in performing a contract for the improvement of real property, the taxable basis may be calculated as the land cost plus all costs of clearing, excavating, and loading, including labor, power, blasting, and similar costs.

(d) No tax is applicable when the Department of Transportation furnishes without charge the borrow materials or the pits where materials are to be extracted for use on a road contract.

Section 6. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.