

House Bill No. 743

An act relating to entertainment industry incentives; creating s. 288.1258, F.S.; authorizing entertainment industry production companies to apply to the Department of Revenue for approval by the Office of the Film Commissioner as a qualified production company for the purpose of receiving sales tax exemptions; directing the office to develop application procedures; providing for denial and revocation of a certificate of exemption; providing a penalty for falsification of an application or unauthorized use of a certificate of exemption; providing categories of qualification for a certificate of exemption; providing duties of the Department of Revenue with respect to issuance of a certificate of exemption for qualified production companies; requiring the Office of the Film Commissioner to keep specified records; requiring an annual report to the Legislature; amending s. 212.031, F.S., relating to the tax on the lease or rental of or license in real property; providing that the exemption for property used as an integral part of the performance of qualified production services inures to the taxpayer upon presentation of a certificate of exemption issued under s. 288.1258, F.S.; amending s. 212.06, F.S.; providing that the exemption for fabrication labor used in the production of a qualified motion picture inures to the taxpayer upon presentation of a certificate of exemption issued under s. 288.1258, F.S.; amending s. 212.08, F.S.; providing that the exemption for certain motion picture or video equipment and sound recording equipment shall be a point of sale exemption rather than by refund; providing that the exemption inures to the taxpayer upon presentation of a certificate of exemption issued under s. 288.1258, F.S.; providing that the partial exemption for master tapes, records, films, or video tapes inures to the taxpayer upon presentation of a certificate of exemption issued under s. 288.1258, F.S.; amending s. 213.053, F.S.; authorizing the Department of Revenue to share certain information with the Office of the Film Commissioner; providing effective dates.

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

Section 1. Effective July 1, 2000, section 288.1258, Florida Statutes, is created to read:

288.1258 Entertainment industry qualified production companies; application procedure; categories; duties of the Department of Revenue; records and reports.—

(1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.—

(a) Any production company engaged in this state in the production of motion pictures, made-for-TV motion pictures, television series, commercial advertising, music videos, or sound recordings may submit an application to the Department of Revenue to be approved by the Office of the Film Commissioner as a qualified production company for the purpose of receiv-

ing a sales and use tax certificate of exemption from the Department of Revenue.

(b) For the purposes of this section, “qualified production company” means any production company that has submitted a properly completed application to the Department of Revenue and that is subsequently qualified by the Office of the Film Commissioner.

(2) APPLICATION PROCEDURE.—

(a) The Department of Revenue will review all submitted applications for the required information. Within 10 working days after the receipt of a properly completed application the Department of Revenue will forward the completed application to the Office of the Film Commissioner for approval.

(b)1. The Office of the Film Commissioner shall establish a process by which an entertainment industry production company may be approved by the office as a qualified production company and may receive a certificate of exemption from the Department of Revenue for the sales and use tax exemptions under ss. 212.031, 212.06, and 212.08.

2. Upon determination by the Office of the Film Commissioner that a production company meets the established approval criteria and qualifies for exemption, the Office of the Film Commissioner shall return the approved application or application renewal or extension to the Department of Revenue, which shall issue a certificate of exemption.

3. The Office of the Film Commissioner shall deny an application or application for renewal or extension from a production company if it determines that the production company does not meet the established approval criteria.

(c) The Office of the Film Commissioner shall develop, with the cooperation of the Department of Revenue and local government entertainment industry promotion agencies, a standardized application form for use in approving qualified production companies.

1. The application form shall include, but not be limited to, production-related information on employment, proposed budgets, planned purchases of items exempted from sales and use taxes under ss. 212.031, 212.06, and 212.08, a signed affirmation from the applicant that any items purchased for which the applicant is seeking a tax exemption are intended for use exclusively as an integral part of entertainment industry preproduction, production, or postproduction activities engaged in primarily in this state, and a signed affirmation from the Office of the Film Commissioner that the information on the application form has been verified and is correct. In lieu of information on projected employment, proposed budgets, or planned purchases of exempted items, a production company seeking a 1-year certificate of exemption may submit summary historical data on employment, production budgets, and purchases of exempted items related to production activities in this state. Any information gathered from production companies for the purposes of this section shall be considered confidential taxpayer information and shall be disclosed only as provided in s. 213.053.

2. The application form may be distributed to applicants by the Office of the Film Commissioner or local film commissions.

(d) All applications, renewals, and extensions for designation as a qualified production company shall be processed by the Office of the Film Commissioner.

(e) In the event that the Department of Revenue determines that a production company no longer qualifies for a certificate of exemption, or has used a certificate of exemption for purposes other than those authorized by this section and chapter 212, the Department of Revenue shall revoke the certificate of exemption of that production company, and any sales or use taxes exempted on items purchased or leased by the production company during the time such company did not qualify for a certificate of exemption or improperly used a certificate of exemption shall become immediately due to the Department of Revenue, along with interest and penalty as provided by s. 212.12. In addition to the other penalties imposed by law, any person who knowingly and willfully falsifies an application, or uses a certificate of exemption for purposes other than those authorized by this section and chapter 212, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, and s. 775.084.

(3) CATEGORIES.—

(a)1. A production company may be qualified for designation as a qualified production company for a period of 1 year if the company has operated a business in Florida at a permanent address for a period of 12 consecutive months. Such a qualified production company shall receive a single 1-year certificate of exemption from the Department of Revenue for the sales and use tax exemptions under ss. 212.031, 212.06, and 212.08, which certificate shall expire 1 year after issuance or upon the cessation of business operations in the state, at which time the certificate shall be surrendered to the Department of Revenue.

2. The Office of the Film Commissioner shall develop a method by which a qualified production company may annually renew a 1-year certificate of exemption for a period of up to 5 years without requiring the production company to resubmit a new application during that 5-year period.

3. Any qualified production company may submit a new application for a 1-year certificate of exemption upon the expiration of that company's certificate of exemption.

(b)1. A production company may be qualified for designation as a qualified production company for a period of 90 days. Such production company shall receive a single 90-day certificate of exemption from the Department of Revenue for the sales and use tax exemptions under ss. 212.031, 212.06, and 212.08, which certificate shall expire 90 days after issuance, with extensions contingent upon approval of the Office of the Film Commissioner. The certificate shall be surrendered to the Department of Revenue upon its expiration.

2. Any production company may submit a new application for a 90-day certificate of exemption upon the expiration of that company's certificate of exemption.

(4) DUTIES OF THE DEPARTMENT OF REVENUE.—

(a) The Department of Revenue shall review the initial application and notify the applicant of any omissions and request additional information if needed. An application shall be complete upon receipt of all requested information. The Department of Revenue shall forward all complete applications to the Office of the Film Commissioner within 10 working days.

(b) The Department of Revenue shall issue a numbered certificate of exemption to a qualified production company within 5 working days of the receipt of an approved application, application renewal, or application extension from the Office of the Film Commissioner.

(c) The Department of Revenue may promulgate such rules and shall prescribe and publish such forms as may be necessary to effectuate the purposes of this section or any of the sales tax exemptions which are reasonably related to the provisions of this section.

(d) The Department of Revenue is authorized to establish audit procedures in accordance with the provisions of ss. 212.12, 212.13, and 213.34 which relate to the sales tax exemption provisions of this section.

(5) RELATIONSHIP OF TAX EXEMPTIONS TO INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The Office of the Film Commissioner shall keep annual records from the information provided on taxpayer applications for tax exemption certificates beginning January 1, 2001. These records shall reflect a percentage comparison of the annual amount of funds exempted to the estimated amount of funds expended in relation to entertainment industry products. In addition, the office shall maintain data showing annual growth in Florida-based entertainment industry companies and entertainment industry employment and wages. The Office of the Film Commissioner shall report this information to the Legislature by no later than December 1 of each year.

Section 2. Paragraph (a) of subsection (1) of section 212.031, Florida Statutes, is amended to read:

212.031 Lease or rental of or license in real property.—

(1)(a) It is declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property unless such property is:

1. Assessed as agricultural property under s. 193.461.
2. Used exclusively as dwelling units.
3. Property subject to tax on parking, docking, or storage spaces under s. 212.03(6).

4. Recreational property or the common elements of a condominium when subject to a lease between the developer or owner thereof and the condominium association in its own right or as agent for the owners of individual condominium units or the owners of individual condominium units. However, only the lease payments on such property shall be exempt from the tax imposed by this chapter, and any other use made by the owner or the condominium association shall be fully taxable under this chapter.

5. A public or private street or right-of-way and poles, conduits, fixtures, and similar improvements located on such streets or rights-of-way, occupied or used by a utility or franchised cable television company for utility or communications or television purposes. For purposes of this subparagraph, the term "utility" means any person providing utility services as defined in s. 203.012. This exception also applies to property, excluding buildings, wherever located, on which antennas, cables, adjacent accessory structures, or adjacent accessory equipment used in the provision of cellular, enhanced specialized mobile radio, or personal communications services are placed.

6. A public street or road which is used for transportation purposes.

7. Property used at an airport exclusively for the purpose of aircraft landing or aircraft taxiing or property used by an airline for the purpose of loading or unloading passengers or property onto or from aircraft or for fueling aircraft.

8.a. Property used at a port authority, as defined in s. 315.02(2), exclusively for the purpose of oceangoing vessels or tugs docking, or such vessels mooring on property used by a port authority for the purpose of loading or unloading passengers or cargo onto or from such a vessel, or property used at a port authority for fueling such vessels, or to the extent that the amount paid for the use of any property at the port is based on the charge for the amount of tonnage actually imported or exported through the port by a tenant.

b. The amount charged for the use of any property at the port in excess of the amount charged for tonnage actually imported or exported shall remain subject to tax except as provided in sub-subparagraph a.

9. Property used as an integral part of the performance of qualified production services. As used in this subparagraph, the term "qualified production services" means any activity or service performed directly in connection with the production of a qualified motion picture, as defined in s. 212.06(1)(b), and includes:

a. Photography, sound and recording, casting, location managing and scouting, shooting, creation of special and optical effects, animation, adaptation (language, media, electronic, or otherwise), technological modifications, computer graphics, set and stage support (such as electricians, lighting designers and operators, greensmen, prop managers and assistants, and grips), wardrobe (design, preparation, and management), hair and makeup (design, production, and application), performing (such as acting, dancing, and playing), designing and executing stunts, coaching, consulting, writing,

scoring, composing, choreographing, script supervising, directing, producing, transmitting dailies, dubbing, mixing, editing, cutting, looping, printing, processing, duplicating, storing, and distributing;

b. The design, planning, engineering, construction, alteration, repair, and maintenance of real or personal property including stages, sets, props, models, paintings, and facilities principally required for the performance of those services listed in sub-subparagraph a.; and

c. Property management services directly related to property used in connection with the services described in sub-subparagraphs a. and b.

This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

10. Leased, subleased, licensed, or rented to a person providing food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theater, arena, civic center, performing arts center, recreational facility, or any business operated under a permit issued pursuant to chapter 550. A person providing retail concessionaire services involving the sale of food and drink or other tangible personal property within the premises of an airport shall be subject to tax on the rental of real property used for that purpose, but shall not be subject to the tax on any license to use the property. For purposes of this subparagraph, the term "sale" shall not include the leasing of tangible personal property.

11. Property occupied pursuant to an instrument calling for payments which the department has declared, in a Technical Assistance Advisement issued on or before March 15, 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c), Florida Administrative Code; provided that this subparagraph shall only apply to property occupied by the same person before and after the execution of the subject instrument and only to those payments made pursuant to such instrument, exclusive of renewals and extensions thereof occurring after March 15, 1993.

Section 3. Paragraph (b) of subsection (1) of section 212.06, Florida Statutes, is amended 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)

(b) Except as otherwise provided, any person who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for his or her own use shall pay a tax upon the cost of the product manufactured, produced, compounded, processed, or fabricated without any deduction therefrom on account of the cost of material used, labor or service costs, or transportation charges, notwithstanding the provisions of s. 212.02 defining "cost price." However, the tax levied under this paragraph shall not be imposed upon any person who manufactures or produces electrical power or energy, steam energy, or other energy at a single location, when such power or energy is used directly and exclusively at such location, or at other

locations if the energy is transferred through facilities of the owner in the operation of machinery or equipment that is used to manufacture, process, compound, produce, fabricate, or prepare for shipment tangible personal property for sale or to operate pollution control equipment, maintenance equipment, or monitoring or control equipment used in such operations. The manufacture or production of electrical power or energy that is used for space heating, lighting, office equipment, or air-conditioning or any other nonmanufacturing, nonprocessing, noncompounding, nonproducing, nonfabricating, or nonshipping activity is taxable. Electrical power or energy consumed or dissipated in the transmission or distribution of electrical power or energy for resale is also not taxable. Fabrication labor shall not be taxable when a person is using his or her own equipment and personnel, for his or her own account, as a producer, subproducer, or coproducer of a qualified motion picture. For purposes of this chapter, the term "qualified motion picture" means all or any part of a series of related images, either on film, tape, or other embodiment, including, but not limited to, all items comprising part of the original work and film-related products derived therefrom as well as duplicates and prints thereof and all sound recordings created to accompany a motion picture, which is produced, adapted, or altered for exploitation in, on, or through any medium or device and at any location, primarily for entertainment, commercial, industrial, or educational purposes. This exemption for fabrication labor associated with production of a qualified motion picture will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258. A person who manufactures factory-built buildings for his or her own use in the performance of contracts for the construction or improvement of real property shall pay a tax only upon the person's cost price of items used in the manufacture of such buildings.

Section 4. Paragraph (f) of subsection (5) and subsection (12) of section 212.08, Florida Statutes, are amended to read:

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

(5) EXEMPTIONS; ACCOUNT OF USE.—

(f) Motion picture or video equipment used in motion picture or television production activities and sound recording equipment used in the production of master tapes and master records.—

1. Motion picture or video equipment and sound recording equipment purchased or leased for use in this state in production activities is exempt from the tax imposed by this chapter ~~upon an affirmative showing by the purchaser or lessee to the satisfaction of the department that the equipment will be used for production activities.~~ The exemption provided by this paragraph shall inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258. ~~only through a refund of previously paid taxes.~~ Notwithstanding the provisions

~~of s. 212.095, such refund shall be made within 30 days of formal application, which application may be made after the completion of production activities or on a quarterly basis. Notwithstanding the provisions of chapter 213, the department shall provide the Department of Commerce with a copy of each refund application and the amount of such refund, if any.~~

2. For the purpose of the exemption provided in subparagraph 1.:

a. "Motion picture or video equipment" and "sound recording equipment" includes only equipment meeting the definition of "section 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code that is used by the lessee or purchaser exclusively as an integral part of production activities; however, motion picture or video equipment and sound recording equipment does not include supplies, tape, records, film, or video tape used in productions or other similar items; vehicles or vessels; or general office equipment not specifically suited to production activities. In addition, the term does not include equipment purchased or leased by television or radio broadcasting or cable companies licensed by the Federal Communications Commission.

b. "Production activities" means activities directed toward the preparation of a:

(I) Master tape or master record embodying sound; or

(II) Motion picture or television production which is produced for theatrical, commercial, advertising, or educational purposes and utilizes live or animated actions or a combination of live and animated actions. The motion picture or television production shall be commercially produced for sale or for showing on screens or broadcasting on television and may be on film or video tape.

(12) PARTIAL EXEMPTION; MASTER TAPES, RECORDS, FILMS, OR VIDEO TAPES.—

(a) There are exempt from the taxes imposed by this chapter the gross receipts from the sale or lease of, and the storage, use, or other consumption in this state of, master tapes or master records embodying sound, or master films or master video tapes; except that amounts paid to recording studios or motion picture or television studios for the tangible elements of such master tapes, records, films, or video tapes are taxable as otherwise provided in this chapter. This exemption will inure to the taxpayer upon presentation of the certificate of exemption issued to the taxpayer under the provisions of s. 288.1258.

(b) For the purposes of this subsection, the term:

1. "Amounts paid for the tangible elements" does not include any amounts paid for the copyrightable, artistic, or other intangible elements of such master tapes, records, films, or video tapes, whether designated as royalties or otherwise, including, but not limited to, services rendered in producing, fabricating, processing, or imprinting tangible personal property or any other services or production expenses in connection therewith which may otherwise be construed as constituting a "sale" under s. 212.02.

2. "Master films or master video tapes" means films or video tapes utilized by the motion picture and television production industries in making visual images for reproduction.

3. "Master tapes or master records embodying sound" means tapes, records, and other devices utilized by the recording industry in making recordings embodying sound.

4. "Motion picture or television studio" means a facility in which film or video tape productions or parts of productions are made and which contains the necessary equipment and personnel for this purpose and includes a mobile unit or vehicle that is equipped in much the same manner as a stationary studio and used in the making of film or video tape productions.

5. "Recording studio" means a place where, by means of mechanical or electronic devices, voices, music, or other sounds are transmitted to tapes, records, or other devices capable of reproducing sound.

6. "Recording industry" means any person engaged in an occupation or business of making recordings embodying sound for a livelihood or for a profit.

7. "Motion picture or television production industry" means any person engaged in an occupation or business for a livelihood or for profit of making visual motion picture or television visual images for showing on screen or television for theatrical, commercial, advertising, or educational purposes.

Section 5. Effective July 1, 2000, paragraph (r) is added to subsection (7) of section 213.053, Florida Statutes, to read:

213.053 Confidentiality and information sharing.—

(7) Notwithstanding any other provision of this section, the department may provide:

(r) Information relative to the tax exemptions under ss. 212.031, 212.06, and 212.08 for those persons qualified under s. 288.1258 to the Office of the Film Commissioner. The Department of Revenue shall provide the Office of the Film Commissioner with information in the aggregate.

Disclosure of information under this subsection shall be pursuant to a written agreement between the executive director and the agency. Such agencies, governmental or nongovernmental, shall be bound by the same requirements of confidentiality as the Department of Revenue. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided by s. 775.082 or s. 775.083.

Section 6. Except as otherwise provided herein, this act shall take effect January 1, 2001.

Approved by the Governor June 2, 2000.

Filed in Office Secretary of State June 2, 2000.