

House Bill No. 21

An act relating to taxation; amending s. 199.185, F.S.; increasing exemptions for taxpayers who are natural persons; creating exemptions for taxpayers who are not natural persons; repealing s. 213.27(9), F.S., which authorizes the Department of Revenue to contract with certain vendors to develop and implement a voluntary system for sales and use tax collection and administration; creating s. 213.256, F.S., the Simplified Sales and Use Tax Administration Act; defining terms; authorizing the department's participation in the Streamlined Sales and Use Tax Agreement; providing that each state that is a party to the agreement must abide by certain requirements in order for the department to enter into the agreement; ensuring that when this state complies with the agreement, the agreement cannot be used to challenge existing state laws and statutes; providing for the collection and remittance of the sales and use tax under the agreement; providing for maintenance of confidentiality of certain information; providing a penalty; requiring the department to make annual recommendations to the Legislature concerning provisions that need to be adopted in order to bring this state's system into compliance with the Streamlined Sales and Use Tax Agreement; abrogating the expiration of s. 215.20(3), F.S.; relating to service charges against certain trust funds; creating s. 220.187, F.S.; providing purpose; defining terms; providing a credit against the tax for contributions to a nonprofit scholarship-funding organization; providing limitations; providing for use of such contributions by such organizations for scholarships for certain students and providing requirements and limitations with respect thereto; providing for payment; providing requirements for deposit of eligible contributions; providing duties of the Department of Revenue and Department of Education; establishing criteria for nonpublic school eligibility; providing for duties of the Department of Revenue and the Department of Education; providing for rules; amending s. 220.02, F.S.; providing order of credits against the tax; amending s. 220.13, F.S.; providing for the inclusion of amounts taken as credit under s. 220.187, F.S., in determining a taxpayer's adjusted federal income; amending s. 213.053, F.S.; authorizing information-sharing with the Department of Education; amending s. 212.08, F.S.; revising the application of the sales tax exemption for the sale of drinking water in bottles or other containers; providing effective dates.

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

Section 1. Effective January 1, 2002, subsection (2) of section 199.185, Florida Statutes, is amended to read:

199.185 Property exempted from annual and nonrecurring taxes.—

(2) Every natural person is entitled each year to an exemption of the first \$250,000 ~~\$20,000~~ of the value of property otherwise subject to the annual

tax. A husband and wife filing jointly shall have an exemption of \$500,000 ~~\$40,000~~. Every taxpayer that is not a natural person is entitled each year to an exemption of the first \$250,000 of the value of property otherwise subject to the tax. Agents and fiduciaries, other than guardians and custodians under a gifts-to-minors act, filing as such may not claim this exemption on behalf of their principals or beneficiaries; however, if the principal or beneficiary returns the property held by the agent or fiduciary and is a natural person, the principal or beneficiary may claim the exemption. No taxpayer shall be entitled to more than one exemption under this subsection. This exemption shall not apply to that intangible personal property described in s. 199.023(1)(d).

Section 2. Subsection (9) of section 213.27, Florida Statutes, is repealed.

Section 3. Section 213.256, Florida Statutes, is created to read:

213.256 Simplified Sales and Use Tax Administration Act.—

(1) As used in this section, the term:

(a) “Department” means the Department of Revenue.

(b) “Agreement” means the Streamlined Sales and Use Tax Agreement as amended and adopted on January 27, 2001, by the Executive Committee of the National Conference of State Legislatures.

(c) “Certified automated system” means software certified jointly by the states that are signatories to the agreement to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate state, and maintain a record of the transaction.

(d) “Certified service provider” means an agent certified jointly by the states that are signatories to the agreement to perform all of the seller’s sales tax functions.

(e) “Person” means an individual, trust, estate, fiduciary, partnership, limited liability company, limited liability partnership, corporation, or any other legal entity.

(f) “Sales tax” means the tax levied under chapter 212.

(g) “Seller” means any person making sales, leases, or rentals of personal property or services.

(h) “State” means any state of the United States and the District of Columbia.

(i) “Use tax” means the tax levied under chapter 212.

(2)(a) The executive director of the department shall enter into the Streamlined Sales and Use Tax Agreement with one or more states to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance for all sellers and for all types of commerce. In furtherance of the agreement, the executive director of the

department or his or her designee shall act jointly with other states that are members of the agreement to establish standards for certification of a certified service provider and certified automated system and establish performance standards for multistate sellers.

(b) The executive director of the department or his or her designee shall take other actions reasonably required to administer this section. Other actions authorized by this section include, but are not limited to, the adoption of rules and the joint procurement, with other member states, of goods and services in furtherance of the cooperative agreement.

(c) The executive director of the department or his or her designee may represent this state before the other states that are signatories to the agreement.

(3) The executive director of the department may not enter into the Streamlined Sales and Use Tax Agreement unless the agreement requires each state to abide by the following requirements:

(a) The agreement must set restrictions to limit, over time, the number of state tax rates.

(b) The agreement must establish uniform standards for:

1. The sourcing of transactions to taxing jurisdictions.
2. The administration of exempt sales.
3. Sales and use tax returns and remittances.

(c) The agreement must provide a central electronic registration system that allows a seller to register to collect and remit sales and use taxes for all signatory states.

(d) The agreement must provide that registration with the central registration system and the collection of sales and use taxes in the signatory state will not be used as a factor in determining whether the seller has nexus with a state for any tax.

(e) The agreement must provide for reduction of the burdens of complying with local sales and use taxes through:

1. Restricting variances between the state and local tax bases.
2. Requiring states to administer any sales and use taxes levied by local jurisdictions within the state so that sellers who collect and remit these taxes will not have to register or file returns with, remit funds to, or be subject to independent audits from local taxing jurisdictions.
3. Restricting the frequency of changes in the local sales and use tax rates and setting effective dates for the application of local jurisdictional boundary changes to local sales and use taxes.
4. Providing notice of changes in local sales and use tax rates and of local changes in the boundaries of local taxing jurisdictions.

(f) The agreement must outline any monetary allowances that are to be provided by the states to sellers or certified service providers. The agreement must allow for a joint study by the public and private sectors, which must be completed by July 1, 2002, of the compliance cost to sellers and certified service providers of collecting sales and use taxes for state and local governments under various levels of complexity.

(g) The agreement must require each state to certify compliance with the terms of the agreement before joining and to maintain compliance, under the laws of the member state, with all provisions of the agreement while a member.

(h) The agreement must require each state to adopt a uniform policy for certified service providers which protects the privacy of consumers and maintains the confidentiality of tax information.

(i) The agreement must provide for the appointment of an advisory council of private-sector representatives and an advisory council of nonmember state representatives to consult within the administration of the agreement.

(4) For the purposes of reviewing or amending the agreement to embody the simplification requirements as set forth in subsection (3), this state shall enter into multistate discussions. For purposes of such discussions, this state shall be represented by three delegates, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and the executive director of the department or his or her designee.

(5) No provision of the agreement authorized by this section in whole or in part invalidates or amends any provision of the laws of this state. Adoption of the agreement by this state does not amend or modify any law of the state. Implementation of any condition of the agreement in this state, whether adopted before, at, or after membership of this state in the agreement, must be by the action of the state.

(6) The agreement authorized by this section is an accord among individual cooperating sovereigns in furtherance of their governmental functions. The agreement provides a mechanism among the member states to establish and maintain a cooperative, simplified system for the application and administration of sales and use taxes under the duly adopted law of each member state.

(7)(a) The agreement authorized by this act binds and inures only to the benefit of this state and the other member states. No person, other than a member state, is an intended beneficiary of the agreement. Any benefit to a person other than a state is established by the laws of this state and of other member states and not by the terms of the agreement.

(b) Consistent with paragraph (a), no person has any cause of action or defense under the agreement or by virtue of this state's approval of the agreement. No person may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of this state, or of any political subdivision of this state, on the ground that the action or inaction is inconsistent with the agreement.

(c) No law of this state, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the agreement.

(8)(a) A certified service provider is the agent of a seller with whom the certified service provider has contracted for the collection and remittance of sales and use taxes. As the seller's agent, the certified service provider is liable for sales and use tax due each member state on all sales transactions it processes for the seller except as set out in this subsection.

(b) A seller that contracts with a certified service provider is not liable to the state for sales or use tax due on transactions processed by the certified service provider unless the seller has misrepresented the type of items it sells or has committed fraud. In the absence of probable cause to believe that the seller has committed fraud or made a material misrepresentation, the seller is not subject to audit on the transactions processed by the certified service provider. A seller is subject to audit for transactions that have not been processed by the certified service provider. The member states acting jointly may perform a system check of the seller and review the seller's procedures to determine if the certified service provider's system is functioning properly and to determine the extent to which the seller's transactions are being processed by the certified service provider.

(c) A person that provides a certified automated system is responsible for the proper functioning of that system and is liable to the state for underpayments of tax attributable to errors in the functioning of the certified automated system. A seller that uses a certified automated system remains responsible and is liable to the state for reporting and remitting tax.

(d) A seller that has a proprietary system for determining the amount of tax due on transactions and has signed an agreement establishing a performance standards for that system is liable for the failure of the system to meet the performance standard.

(9) Disclosure of information necessary under this section must be pursuant to a written agreement between the executive director of the department or his or her designee and the certified service provider. The certified service provider is bound by the same requirements of confidentiality as the department. Breach of confidentiality is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(10) On or before January 1 annually, the department shall provide recommendations to the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives for provisions to be adopted for inclusion within the system which are necessary to bring it into compliance with the Streamlined Sales and Use Tax Agreement.

Section 4. Effective July 1, 2001, notwithstanding section 10 of chapter 90-110, Laws of Florida, subsection (3) of section 215.20, Florida Statutes, shall not expire on October 1, 2001, as scheduled by that law, but subsection (3) of section 215.20, Florida Statutes, is revived and readopted.

Section 5. Effective January 1, 2002, and applying to tax years beginning on or after that date, section 220.187, Florida Statutes, is created to read:

220.187 Credits for contributions to nonprofit scholarship-funding organizations.—

(1) PURPOSE.—The purpose of this section is to:

(a) Encourage private, voluntary contributions to nonprofit scholarship-funding organizations.

(b) Expand educational opportunities for children of families that have limited financial resources.

(c) Enable children in this state to achieve a greater level of excellence in their education.

(2) DEFINITIONS.—As used in this section, the term:

(a) “Department” means the Department of Revenue.

(b) “Eligible contribution” means a monetary contribution from a taxpayer, subject to the restrictions provided in this section, to an eligible nonprofit scholarship-funding organization. The taxpayer making the contribution may not designate a specific child as the beneficiary of the contribution. The taxpayer may not contribute more than \$5 million to any single eligible nonprofit scholarship-funding organization.

(c) “Eligible nonpublic school” means a nonpublic school located in Florida that offers an education to students in any grades K-12 and that meets the requirements in subsection (5).

(d) “Eligible nonprofit scholarship-funding organization” means a charitable organization that is exempt from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code and that complies with the provisions of subsection (4).

(e) “Qualified student” means a student who qualifies for free or reduced-price school lunches under the National School Lunch Act and who:

1. Was counted as a full-time-equivalent student during the previous state fiscal year for purposes of state per-student funding; or

2. Received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.

(3) AUTHORIZATION TO GRANT SCHOLARSHIP FUNDING TAX CREDITS; LIMITATIONS ON INDIVIDUAL AND TOTAL CREDITS.—

(a) There is allowed a credit of 100 percent of an eligible contribution against any tax due for a taxable year under this chapter. However, such a credit may not exceed 75 percent of the tax due under this chapter for the taxable year, after the application of any other allowable credits by the taxpayer. However, at least 5 percent of the total statewide amount authorized for the tax credit shall be reserved for taxpayers who meet the definition

of a small business provided in s. 288.703(1) at the time of application. The credit granted by this section shall be reduced by the difference between the amount of federal corporate income tax taking into account the credit granted by this section and the amount of federal corporate income tax without application of the credit granted by this section.

(b) The total amount of tax credit which may be granted each state fiscal year under this section is \$50 million.

(c) A taxpayer who files a Florida consolidated return as a member of an affiliated group pursuant to s. 220.131(1) may be allowed the credit on a consolidated return basis; however, the total credit taken by the affiliated group is subject to the limitation established under paragraph (a).

(4) OBLIGATIONS OF ELIGIBLE NONPROFIT SCHOLARSHIP-FUNDING ORGANIZATIONS.—

(a) An eligible nonprofit scholarship-funding organization shall provide scholarships, from eligible contributions, to qualified students for:

1. Tuition or textbook expenses for, or transportation to, an eligible nonpublic school. At least 75 percent of the scholarship funding must be used to pay tuition expenses; or

2. Transportation expenses to a Florida public school that is located outside the district in which the student resides.

(b) An eligible nonprofit scholarship-funding organization shall give priority to qualified students who received a scholarship from an eligible nonprofit scholarship-funding organization during the previous school year.

(c) The amount of a scholarship provided to any child for any single school year by all eligible nonprofit scholarship-funding organizations from eligible contributions shall not exceed the following annual limits:

1. \$3,500 for a scholarship awarded to a student enrolled in an eligible nonpublic school.

2. \$500 for a scholarship awarded to a student enrolled in a Florida public school that is located outside the district in which the student resides.

(d) The amount of an eligible contribution which may be accepted by an eligible nonprofit scholarship-funding organization is limited to the amount needed to provide scholarships for qualified students which the organization has identified and for which vacancies in eligible nonpublic schools have been identified.

(e) An eligible nonprofit scholarship-funding organization that receives an eligible contribution must spend 100 percent of the eligible contribution to provide scholarships in the same state fiscal year in which the contribution was received. No portion of eligible contributions may be used for administrative expenses. All interest accrued from contributions must be used for scholarships.

(f) An eligible nonprofit scholarship-funding organization that receives eligible contributions must provide to the Auditor General an annual financial and compliance audit of its accounts and records conducted by an independent certified public accountant and in accordance with rules adopted by the Auditor General.

(g) Payment of the scholarship by the eligible nonprofit scholarship-funding organization shall be by individual warrant or check made payable to the student's parent. If the parent chooses for his or her child to attend an eligible nonpublic school, the warrant or check must be mailed by the eligible nonprofit scholarship-funding organization to the nonpublic school of the parent's choice, and the parent shall restrictively endorse the warrant or check to the nonpublic school. An eligible nonprofit scholarship-funding organization shall ensure that, upon receipt of a scholarship warrant or check, the parent to whom the warrant or check is made restrictively endorses the warrant or check to the nonpublic school of the parent's choice for deposit into the account of the nonpublic school.

(5) ELIGIBLE NONPUBLIC SCHOOL OBLIGATIONS.—An eligible nonpublic school must:

(a) Demonstrate fiscal soundness by being in operation for one school year or provide the Department of Education with a statement by a certified public accountant confirming that the nonpublic school desiring to participate is insured and the owner or owners have sufficient capital or credit to operate the school for the upcoming year serving the number of students anticipated with expected revenues from tuition and other sources that may be reasonably expected. In lieu of such a statement, a surety bond or letter of credit for the amount equal to the scholarship funds for any quarter may be filed with the department.

(b) Comply with the antidiscrimination provisions of 42 U.S.C. s. 2000d.

(c) Meet state and local health and safety laws and codes.

(d) Comply with all state laws relating to general regulation of nonpublic schools.

(6) ADMINISTRATION; RULES.—

(a) If the credit granted pursuant to this section is not fully used in any one year, the unused amount may not be carried forward. A taxpayer may not convey, assign, or transfer the credit authorized by this section to another entity unless all of the assets of the taxpayer are conveyed, assigned, or transferred in the same transaction.

(b) An application for a tax credit pursuant to this section shall be submitted to the department on forms established by rule of the department.

(c) The department and the Department of Education shall develop a cooperative agreement to assist in the administration of this section. The Department of Education shall be responsible for annually submitting, by March 15, to the department a list of eligible nonprofit scholarship-funding

organizations that meet the requirements of paragraph (2)(d) and for monitoring eligibility of nonprofit scholarship-funding organizations that meet the requirements of paragraph (2)(d), eligibility of nonpublic schools that meet the requirements of paragraph (2)(c), and eligibility of expenditures under this section as provided in subsection (4).

(d) The department shall adopt rules necessary to administer this section, including rules establishing application forms and procedures and governing the allocation of tax credits under this section on a first-come, first-served basis.

(e) The Department of Education shall adopt rules necessary to determine eligibility of nonprofit scholarship-funding organizations as defined in paragraph (2)(d) and according to the provisions of subsection (4) and identify qualified students as defined in paragraph (2)(e).

(7) DEPOSITS OF ELIGIBLE CONTRIBUTIONS.—All eligible contributions received by an eligible nonprofit scholarship-funding organization shall be deposited in a manner consistent with s. 18.10(2).

Section 6. Effective January 1, 2002, and applying to tax years beginning on or after that date, subsection (8) of section 220.02, Florida Statutes, is amended to read:

220.02 Legislative intent.—

(8) It is the intent of the Legislature that credits against either the corporate income tax or the franchise tax be applied in the following order: those enumerated in s. 631.828, those enumerated in s. 220.191, those enumerated in s. 220.181, those enumerated in s. 220.183, those enumerated in s. 220.182, those enumerated in s. 220.1895, those enumerated in s. 221.02, those enumerated in s. 220.184, those enumerated in s. 220.186, those enumerated in s. 220.1845, those enumerated in s. 220.19, ~~and~~ those enumerated in s. 220.185, and those enumerated in s. 220.187.

Section 7. Effective January 1, 2002, and applying to tax years beginning on or after that date, paragraph (a) of subsection (1) of section 220.13, Florida Statutes, is amended to read:

220.13 “Adjusted federal income” defined.—

(1) The term “adjusted federal income” means an amount equal to the taxpayer’s taxable income as defined in subsection (2), or such taxable income of more than one taxpayer as provided in s. 220.131, for the taxable year, adjusted as follows:

(a) Additions.—There shall be added to such taxable income:

1. The amount of any tax upon or measured by income, excluding taxes based on gross receipts or revenues, paid or accrued as a liability to the District of Columbia or any state of the United States which is deductible from gross income in the computation of taxable income for the taxable year.

2. The amount of interest which is excluded from taxable income under s. 103(a) of the Internal Revenue Code or any other federal law, less the associated expenses disallowed in the computation of taxable income under s. 265 of the Internal Revenue Code or any other law, excluding 60 percent of any amounts included in alternative minimum taxable income, as defined in s. 55(b)(2) of the Internal Revenue Code, if the taxpayer pays tax under s. 220.11(3).

3. In the case of a regulated investment company or real estate investment trust, an amount equal to the excess of the net long-term capital gain for the taxable year over the amount of the capital gain dividends attributable to the taxable year.

4. That portion of the wages or salaries paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.181. The provisions of this subparagraph shall expire and be void on June 30, 2005.

5. That portion of the ad valorem school taxes paid or incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year under s. 220.182. The provisions of this subparagraph shall expire and be void on June 30, 2005.

6. The amount of emergency excise tax paid or accrued as a liability to this state under chapter 221 which tax is deductible from gross income in the computation of taxable income for the taxable year.

7. That portion of assessments to fund a guaranty association incurred for the taxable year which is equal to the amount of the credit allowable for the taxable year.

8. In the case of a nonprofit corporation which holds a pari-mutuel permit and which is exempt from federal income tax as a farmers' cooperative, an amount equal to the excess of the gross income attributable to the pari-mutuel operations over the attributable expenses for the taxable year.

9. The amount taken as a credit for the taxable year under s. 220.1895.

10. Up to nine percent of the eligible basis of any designated project which is equal to the credit allowable for the taxable year under s. 220.185.

11. The amount taken as a credit for the taxable year under s. 220.187.

Section 8. Effective January 1, 2002, and applying to tax years beginning on or after that date, paragraph (u) 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:

(u) Information relative to s. 220.187 to the Department of Education in the conduct of its official business.

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 9. (1) The first two payments of estimated tax pursuant to section 200.33, Florida Statutes, shall not be affected by any contribution made pursuant to this act.

(2) This section shall take effect January 1, 2002, and apply to tax years beginning on or after that date.

Section 10. Effective July 1, 2001, paragraph (a) of subsection (4) of section 212.08, Florida Statutes, is 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.

(4) EXEMPTIONS; ITEMS BEARING OTHER EXCISE TAXES, ETC.—

(a) Also exempt are:

1. Water delivered to the purchaser through pipes or conduits or delivered for irrigation purposes. The sale of drinking water in bottles, cans, or other containers, including water that contains minerals or carbonation in its natural state or water to which minerals have been added at a water treatment facility regulated by the Department of Environmental Protection or the Department of Health, is exempt. This exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation, ~~minerals~~, or flavorings, except those added at a water treatment facility, have been added. Water that has been enhanced by the addition of minerals and that does not contain any added carbonation or flavorings is also exempt.

2. All fuels used by a public or private utility, including any municipal corporation or rural electric cooperative association, in the generation of electric power or energy for sale. Fuel other than motor fuel and diesel fuel is taxable as provided in this chapter with the exception of fuel expressly exempt herein. Motor fuels and diesel fuels are taxable as provided in chapter 206, with the exception of those motor fuels and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce, which are taxable under this chapter only to the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's railroad locomotives or vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year of the carrier, such ratio to be determined at the close of the fiscal year of the carrier. This ratio shall be applied each month to the total Florida purchases made in this

state of motor and diesel fuels to establish that portion of the total used and consumed in intrastate movement and subject to tax under this chapter. The basis for imposition of any discretionary surtax shall be set forth in s. 212.054. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

3. The transmission or wheeling of electricity.

Section 11. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.