

The Florida Senate

2017 Florida Statutes

<u>Title XIV</u> TAXATION AND FINANCE	<u>Chapter 212</u> TAX ON SALES, USE, AND OTHER TRANSACTIONS <u>Entire Chapter</u>	SECTION 054 Discretionary sales surtax; limitations, administration, and collection.
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212.054 Discretionary sales surtax; limitations, administration, and collection. —

(1) No general excise tax on sales shall be levied by the governing body of any county unless specifically authorized in s. [212.055](#). Any general excise tax on sales authorized pursuant to said section shall be administered and collected exclusively as provided in this section.

(2)(a) The tax imposed by the governing body of any county authorized to so levy pursuant to s. [212.055](#) shall be a discretionary surtax on all transactions occurring in the county which transactions are subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions by this chapter and communications services as defined for purposes of chapter 202. The surtax, if levied, shall be computed as the applicable rate or rates authorized pursuant to s. [212.055](#) times the amount of taxable sales and taxable purchases representing such transactions. If the surtax is levied on the sale of an item of tangible personal property or on the sale of a service, the surtax shall be computed by multiplying the rate imposed by the county within which the sale occurs by the amount of the taxable sale. The sale of an item of tangible personal property or the sale of a service is not subject to the surtax if the property, the service, or the tangible personal property representing the service is delivered within a county that does not impose a discretionary sales surtax.

(b) However:

1. The sales amount above \$5,000 on any item of tangible personal property shall not be subject to the surtax. However, charges for prepaid calling arrangements, as defined in s. [212.05](#)(1)(e)1.a., shall 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.

2. In the case of utility services billed on or after the effective date of any such surtax, the entire amount of the charge for utility services shall be subject to the surtax. In the case of utility services billed after the last day the surtax is in effect, the entire amount of the charge on said items shall not be subject to the surtax. "Utility service," as used in this section, does not include any communications services as defined in chapter 202.

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.

(3) For the purpose of this section, a transaction shall be deemed to have occurred in a county imposing the surtax when:

(a)1. The sale includes an item of tangible personal property, a service, or tangible personal property representing a service, and the item of tangible personal property, the service, or the tangible personal property representing the service is delivered within the county. If there is no reasonable evidence of delivery of a service, the sale of a service is deemed to occur in the county in which the purchaser accepts the bill of sale.

2. The sale of any motor vehicle or mobile home of a class or type which is required to be registered in this state or in any other state shall be deemed to have occurred only in the county identified as the residence address of the purchaser on the registration or title document for such property.

(b) The event for which an admission is charged is located in the county.

(c) The consumer of utility services is located in the county.

(d)1. The user of any aircraft or boat of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government imported into the county for use, consumption, distribution, or storage to be used or consumed in the county is located in the county.

2. However, it shall be presumed that such items used outside the county for 6 months or longer before being imported into the county were not purchased for use in the county, except as provided in s. [212.06](#)(8)(b).

3. This paragraph does not apply to the use or consumption of items upon which a like tax of equal or greater amount has been lawfully imposed and paid outside the county.

(e) The purchaser of any motor vehicle or mobile home of a class or type which is required to be registered in this state is a resident of the taxing county as determined by the address appearing on or to be reflected on the registration document for such property.

(f)1. Any motor vehicle or mobile home of a class or type which is required to be registered in this state is imported from another state into the taxing county by a user residing therein for the purpose of use, consumption, distribution, or storage in the taxing county.

2. However, it shall be presumed that such items used outside the taxing county for 6 months or longer before being imported into the county were not purchased for use in the county.

(g) The real property which is leased or rented is located in the county.

(h) The transient rental transaction occurs in the county.

(i) The delivery of any aircraft or boat of a class or type which is required to be registered, licensed, titled, or documented in this state or by the United States Government is to a location in the county. However, this paragraph does not apply to the use or consumption of items upon which a like tax of equal or greater amount has been lawfully imposed and paid outside the county.

(j) The dealer owing a use tax on purchases or leases is located in the county.

(k) The delivery of tangible personal property other than that described in paragraph (d), paragraph (e), or paragraph (f) is made to a location outside the county, but the property is brought into the county within 6 months after delivery, in which event, the owner must pay the surtax as a use tax.

(l) The coin-operated amusement or vending machine is located in the county.

(m) The florist taking the original order to sell tangible personal property is located in the county, notwithstanding any other provision of this section.

(4)(a) The department shall administer, collect, and enforce the tax authorized under s. [212.055](#) pursuant to the same procedures used in the administration, collection, and enforcement of the general state sales tax imposed under the provisions of this chapter, except as provided in this section. The provisions of this chapter regarding interest and penalties on delinquent taxes shall apply to the surtax. Discretionary sales surtaxes shall not be included in the computation of estimated taxes pursuant to s. [212.11](#). Notwithstanding any other provision of law, a dealer need not

separately state the amount of the surtax on the charge ticket, sales slip, invoice, or other tangible evidence of sale. For the purposes of this section and s. [212.055](#), the “proceeds” of any surtax means all funds collected and received by the department pursuant to a specific authorization and levy under s. [212.055](#), including any interest and penalties on delinquent surtaxes.

(b) The proceeds of a discretionary sales surtax collected by the selling dealer located in a county imposing the surtax shall be returned, less the cost of administration, to the county where the selling dealer is located. The proceeds shall be transferred to the Discretionary Sales Surtax Clearing Trust Fund. A separate account shall be established in the trust fund for each county imposing a discretionary surtax. The amount deducted for the costs of administration may not exceed 3 percent of the total revenue generated for all counties levying a surtax authorized in s. [212.055](#). The amount deducted for the costs of administration may be used only for costs that are solely and directly attributable to the surtax. The total cost of administration shall be prorated among those counties levying the surtax on the basis of the amount collected for a particular county to the total amount collected for all counties. The department shall distribute the moneys in the trust fund to the appropriate counties each month, unless otherwise provided in s. [212.055](#).

(c)1. Any dealer located in a county that does not impose a discretionary sales surtax but who collects the surtax due to sales of tangible personal property or services delivered outside the county shall remit monthly the proceeds of the surtax to the department to be deposited into an account in the Discretionary Sales Surtax Clearing Trust Fund which is separate from the county surtax collection accounts. The department shall distribute funds in this account using a distribution factor determined for each county that levies a surtax and multiplied by the amount of funds in the account and available for distribution. The distribution factor for each county equals the product of:

- a. The county’s latest official population determined pursuant to s. [186.901](#);
- b. The county’s rate of surtax; and
- c. The number of months the county has levied a surtax during the most recent distribution period;

divided by the sum of all such products of the counties levying the surtax during the most recent distribution period.

2. The department shall compute distribution factors for eligible counties once each quarter and make appropriate quarterly distributions.

3. A county that fails to timely provide the information required by this section to the department authorizes the department, by such action, to use the best information available to it in distributing surtax revenues to the county. If this information is unavailable to the department, the department may partially or entirely disqualify the county from receiving surtax revenues under this paragraph. A county that fails to provide timely information waives its right to challenge the department’s determination of the county’s share, if any, of revenues provided under this paragraph.

(5) No discretionary sales surtax or increase or decrease in the rate of any discretionary sales surtax shall take effect on a date other than January 1. No discretionary sales surtax shall terminate on a day other than December 31.

(6) The governing body of any county levying a discretionary sales surtax shall enact an ordinance levying the surtax in accordance with the procedures described in s. [125.66](#)(2).

(7)(a) The governing body of any county levying a discretionary sales surtax or the school board of any county levying the school capital outlay surtax authorized by s. [212.055](#)(6) shall notify the department within 10 days after final adoption by ordinance or referendum of an imposition, termination, or rate change of the surtax, but no later than November 16 prior to the effective date. The notice must specify the time period during which the surtax will be in effect and the rate and must include a copy of the ordinance and such other information as the department requires by rule. Failure to timely provide such notification to the department shall result in the delay of the effective date for a period of 1 year.

(b) In addition to the notification required by paragraph (a), the governing body of any county proposing to levy a discretionary sales surtax or the school board of any county proposing to levy the school capital outlay surtax authorized by s. [212.055](#)(6) shall notify the department by October 1 if the referendum or consideration of the ordinance that would result in imposition, termination, or rate change of the surtax is scheduled to occur on or after

October 1 of that year. Failure to timely provide such notification to the department shall result in the delay of the effective date for a period of 1 year.

(8) With respect to any motor vehicle or mobile home of a class or type which is required to be registered in this state, the tax due on a transaction occurring in the taxing county as herein provided shall be collected from the purchaser or user incident to the titling and registration of such property, irrespective of whether such titling or registration occurs in the taxing county.

History.—s. 69, ch. 85-342; s. 68, ch. 86-152; ss. 11, 84, ch. 87-6; ss. 10, 11, ch. 87-548; ss. 19, 37, ch. 88-119; s. 38, ch. 89-356; ss. 19, 31, ch. 90-132; s. 3, ch. 90-203; s. 1, ch. 91-81; ss. 28, 129, ch. 91-112; s. 2, ch. 93-222; s. 1, ch. 96-325; s. 24, ch. 96-397; s. 22, ch. 97-99; s. 3, ch. 98-141; s. 8, ch. 98-342; s. 39, ch. 2000-151; ss. 47, 49, 58, ch. 2000-260; ss. 28, 38, ch. 2001-140; s. 50, ch. 2010-102.

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