



405190

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2013	.	
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	.	
	.	

The Committee on Commerce and Tourism (Detert) recommended the following:

1 **Senate Substitute for Amendment (444784) (with title**
2 **amendment)**

3
4 Delete line 301
5 and insert:

6 Section 3. Effective January 1, 2014, paragraphs (a) and
7 (b) of subsection (1) of section 202.12, Florida Statutes, are
8 amended to read:

9 202.12 Sales of communications services.—The Legislature
10 finds that every person who engages in the business of selling
11 communications services at retail in this state is exercising a
12 taxable privilege. It is the intent of the Legislature that the



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13 tax imposed by chapter 203 be administered as provided in this
14 chapter.

15 (1) For the exercise of such privilege, a tax is levied on
16 each taxable transaction, and the tax is due and payable as
17 follows:

18 (a) Except as otherwise provided in this subsection, at a
19 rate of 5.65 percent ~~6.65 percent~~ applied to the sales price of
20 the communications service which:

- 21 1. Originates and terminates in this state, or
- 22 2. Originates or terminates in this state and is charged to
23 a service address in this state,

24
25 when sold at retail, computed on each taxable sale for the
26 purpose of remitting the tax due. The gross receipts tax imposed
27 by chapter 203 shall be collected on the same taxable
28 transactions and remitted with the tax imposed by this
29 paragraph. If no tax is imposed by this paragraph by reason of
30 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
31 be collected and remitted in the manner and at the time
32 prescribed for tax collections and remittances under this
33 chapter.

34 (b) At the rate of 9.8 percent ~~10.8 percent~~ on the retail
35 sales price of any direct-to-home satellite service received in
36 this state. The proceeds of the tax imposed under this paragraph
37 shall be accounted for and distributed in accordance with s.
38 202.18(2). The gross receipts tax imposed by chapter 203 shall
39 be collected on the same taxable transactions and remitted with
40 the tax imposed by this paragraph.

41 Section 4. Effective January 1, 2014, section 202.12001,



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42 Florida Statutes, is amended to read:

43 202.12001 Combined rate for tax collected pursuant to ss.
44 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
45 2010-149, Laws of Florida, the dealer of communication services
46 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
47 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
48 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
49 provider properly reflects the tax collected with respect to the
50 two provisions as required in the return to the Department of
51 Revenue.

52 Section 5. Effective January 1, 2014, section 203.001,
53 Florida Statutes, is amended to read:

54 203.001 Combined rate for tax collected pursuant to ss.
55 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.
56 2010-149, Laws of Florida, the dealer of communication services
57 may collect a combined rate of 5.8 percent ~~6.8 percent~~ comprised
58 of 5.65 percent ~~6.65 percent~~ and 0.15 percent required by ss.
59 202.12(1)(a) and 203.01(1)(b)3., respectively, as long as the
60 provider properly reflects the tax collected with respect to the
61 two provisions as required in the return to the Department of
62 Revenue.

63 Section 6. Paragraphs (b), (d), and (h) of subsection (5)
64 of section 212.08, Florida Statutes, are amended to read:

65 212.08 Sales, rental, use, consumption, distribution, and
66 storage tax; specified exemptions.—The sale at retail, the
67 rental, the use, the consumption, the distribution, and the
68 storage to be used or consumed in this state of the following
69 are hereby specifically exempt from the tax imposed by this
70 chapter.



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71 (5) EXEMPTIONS; ACCOUNT OF USE.-

72 (b) Industrial machinery and equipment used by
73 manufacturers or used exclusively in spaceport activities ~~to~~
74 ~~increase productive output.-~~

75 1. Industrial machinery and equipment purchased for
76 ~~exclusive use in businesses that manufacture, process, compound,~~
77 ~~or produce for sale items of tangible personal property at fixed~~
78 ~~locations or for exclusive use by a new business in spaceport~~
79 ~~activities as defined by s. 212.02 or for use in new businesses~~
80 ~~that manufacture, process, compound, or produce for sale items~~
81 ~~of tangible personal property at fixed locations are exempt from~~
82 ~~the tax imposed by this chapter if, at the time of purchase, the~~
83 ~~purchaser furnishes the seller with a signed certificate stating~~
84 ~~that the items to be exempted are for exclusive use as provided~~
85 ~~in this paragraph. The certificate relieves the seller of the~~
86 ~~responsibility of collecting the tax on the sale of such items~~
87 ~~and the department shall look solely to the purchaser for~~
88 ~~recovery of the tax if it determines that the purchaser was not~~
89 ~~entitled to the exemption upon an affirmative showing by the~~
90 ~~taxpayer to the satisfaction of the department that such items~~
91 ~~are used in a new business in this state. Such purchases must be~~
92 ~~made before the date the business first begins its productive~~
93 ~~operations, and delivery of the purchased item must be made~~
94 ~~within 12 months after that date.~~

95 ~~2. Industrial machinery and equipment purchased for~~
96 ~~exclusive use by an expanding facility which is engaged in~~
97 ~~spaceport activities as defined by s. 212.02 or for use in~~
98 ~~expanding manufacturing facilities or plant units which~~
99 ~~manufacture, process, compound, or produce for sale items of~~



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100 ~~tangible personal property at fixed locations in this state are~~
101 ~~exempt from any amount of tax imposed by this chapter upon an~~
102 ~~affirmative showing by the taxpayer to the satisfaction of the~~
103 ~~department that such items are used to increase the productive~~
104 ~~output of such expanded facility or business by not less than 5~~
105 ~~percent.~~

106 ~~3.a. To receive an exemption provided by subparagraph 1. or~~
107 ~~subparagraph 2., a qualifying business entity shall apply to the~~
108 ~~department for a temporary tax exemption permit. The application~~
109 ~~shall state that a new business exemption or expanded business~~
110 ~~exemption is being sought. Upon a tentative affirmative~~
111 ~~determination by the department pursuant to subparagraph 1. or~~
112 ~~subparagraph 2., the department shall issue such permit.~~

113 ~~b. The applicant shall maintain all necessary books and~~
114 ~~records to support the exemption. Upon completion of purchases~~
115 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
116 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
117 ~~to the department or returned to the department by certified or~~
118 ~~registered mail.~~

119 ~~e. If, in a subsequent audit conducted by the department,~~
120 ~~it is determined that the machinery and equipment purchased as~~
121 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
122 ~~criteria mandated by this paragraph or if commencement of~~
123 ~~production did not occur, the amount of taxes exempted at the~~
124 ~~time of purchase shall immediately be due and payable to the~~
125 ~~department by the business entity, together with the appropriate~~
126 ~~interest and penalty, computed from the date of purchase, in the~~
127 ~~manner prescribed by this chapter.~~

128 ~~d. If a qualifying business entity fails to apply for a~~



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129 ~~temporary exemption permit or if the tentative determination by~~
130 ~~the department required to obtain a temporary exemption permit~~
131 ~~is negative, a qualifying business entity shall receive the~~
132 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
133 ~~a refund of previously paid taxes. No refund may be made for~~
134 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
135 ~~subparagraph 2. have been met and commencement of production has~~
136 ~~occurred.~~

137 ~~4. The department shall adopt rules governing applications~~
138 ~~for, issuance of, and the form of temporary tax exemption~~
139 ~~permits; provisions for recapture of taxes; and the manner and~~
140 ~~form of refund applications, and may establish guidelines as to~~
141 ~~the requisites for an affirmative showing of increased~~
142 ~~productive output, commencement of production, and qualification~~
143 ~~for exemption.~~

144 ~~2.5. The exemption does exemptions provided in~~
145 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~
146 ~~purchased or used by electric utility companies, communications~~
147 ~~companies, oil or gas exploration or production operations,~~
148 ~~publishing firms that do not export at least 50 percent of their~~
149 ~~finished product out of the state, any firm subject to~~
150 ~~regulation by the Division of Hotels and Restaurants of the~~
151 ~~Department of Business and Professional Regulation, or any firm~~
152 ~~that does not manufacture, process, compound, or produce for~~
153 ~~sale items of tangible personal property or that does not use~~
154 ~~such machinery and equipment in spaceport activities as required~~
155 ~~by this paragraph. The exemption does apply exemptions provided~~
156 ~~in subparagraphs 1. and 2. shall apply to machinery and~~
157 ~~equipment purchased for use in phosphate or other solid minerals~~



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158 severance, mining, or processing operations.

159 ~~3.6. For the purposes of the exemption, the term exemptions~~
160 ~~provided in subparagraphs 1. and 2., these terms have the~~
161 ~~following meanings:~~

162 a. "industrial machinery and equipment" means tangible
163 personal property or other property that has a depreciable life
164 of 3 years or more and ~~that~~ is used as an integral part in the
165 manufacturing, processing, compounding, or production of
166 tangible personal property for sale or is exclusively used in
167 spaceport activities. A building and its structural components
168 are not industrial machinery and equipment unless the building
169 or structural component is so closely related to the industrial
170 machinery and equipment that it houses or supports that the
171 building or structural component can be expected to be replaced
172 when the machinery and equipment are replaced. Heating and air-
173 conditioning systems are not industrial machinery and equipment
174 unless the sole justification for their installation is to meet
175 the requirements of the production process, even though the
176 system may provide incidental comfort to employees or serve, to
177 an insubstantial degree, nonproduction activities. The term
178 includes parts and accessories for industrial machinery and
179 equipment only to the extent that the exemption thereof is
180 ~~consistent with the provisions of this paragraph.~~

181 b. ~~"Productive output" means the number of units actually~~
182 ~~produced by a single plant, operation, or product line in a~~
183 ~~single continuous 12-month period, irrespective of sales.~~
184 ~~Increases in productive output shall be measured by the output~~
185 ~~for 12 continuous months selected by the expanding business~~
186 ~~after completion of the installation of such machinery or~~



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187 ~~equipment over the output for the 12 continuous months~~
188 ~~immediately preceding such installation. However, in no case may~~
189 ~~such time period begin later than 2 years after completion of~~
190 ~~the installation of the new machinery and equipment. The units~~
191 ~~used to measure productive output shall be physically comparable~~
192 ~~between the two periods, irrespective of sales.~~

193 (d) *Machinery and equipment used under federal procurement*
194 *contract.*—

195 1. Industrial machinery and equipment purchased by an
196 expanding business that ~~which~~ manufactures tangible personal
197 property pursuant to federal procurement regulations at fixed
198 locations in this state are exempt from the tax imposed in this
199 chapter upon an affirmative showing by the taxpayer to the
200 satisfaction of the department that such items are used to
201 increase the implicit productive output of the expanded business
202 by not less than 10 percent. The percentage of increase is
203 measured as deflated implicit productive output for the calendar
204 year during which the installation of the machinery or equipment
205 is completed or during which commencement of production
206 utilizing such items is begun divided by the implicit productive
207 output for the preceding calendar year. ~~In no case may~~ The
208 commencement of production may not begin later than 2 years
209 after completing ~~following completion of~~ installation of the
210 machinery or equipment.

211 2. The amount of the exemption allowed must ~~shall~~ equal the
212 taxes otherwise imposed by this chapter on qualifying industrial
213 machinery or equipment reduced by the percentage of gross
214 receipts from cost-reimbursement type contracts attributable to
215 the plant or operation to total gross receipts so attributable,



216 accrued for the year of completion or commencement.

217 3. The exemption provided by this paragraph shall inure to
218 the taxpayer only through a refund of previously paid taxes.
219 Such refund shall be made within 30 days after ~~of~~ formal
220 approval by the department of the taxpayer's application, which
221 application may be made on an annual basis following
222 installation of the machinery or equipment.

223 4. For the purposes of this paragraph, the term:

224 a. "Cost-reimbursement type contracts" has the same meaning
225 as in 32 C.F.R. s. 3-405.

226 b. "Deflated implicit productive output" means the product
227 of implicit productive output times the quotient of the national
228 defense implicit price deflator for the preceding calendar year
229 divided by the deflator for the year of completion or
230 commencement.

231 c. "Eligible costs" means the total direct and indirect
232 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
233 general and administrative costs, selling expenses, and profit,
234 defined by the uniform cost-accounting standards adopted by the
235 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
236 2168.

237 d. "Implicit productive output" means the annual eligible
238 costs attributable to all contracts or subcontracts subject to
239 federal procurement regulations of the single plant or operation
240 at which the machinery or equipment is used.

241 e. "Industrial machinery and equipment" means tangible
242 personal property or other property that has a depreciable life
243 of 3 years or more, that qualifies as an eligible cost under
244 federal procurement regulations, and that is used as an integral



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245 part of the process of production of tangible personal property.
246 A building and its structural components are not industrial
247 machinery and equipment unless the building or structural
248 component is so closely related to the industrial machinery and
249 equipment that it houses or supports that the building or
250 structural component can be expected to be replaced when the
251 machinery and equipment are replaced. Heating and air-
252 conditioning systems are not industrial machinery and equipment
253 unless the sole justification for their installation is to meet
254 the requirements of the production process, even though the
255 system may provide incidental comfort to employees or serve, to
256 an insubstantial degree, nonproduction activities. The term
257 includes parts and accessories only to the extent that the
258 exemption of such parts and accessories is consistent with the
259 provisions of this paragraph.

260 f. "National defense implicit price deflator" means the
261 national defense implicit price deflator for the gross national
262 product as determined by the Bureau of Economic Analysis of the
263 United States Department of Commerce.

264 5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
265 apply to this exemption. This exemption applies only to
266 machinery or equipment purchased pursuant to production
267 contracts with the United States Department of Defense and Armed
268 Forces, the National Aeronautics and Space Administration, and
269 other federal agencies for which the contracts are classified
270 for national security reasons. ~~In no event shall~~ The provisions
271 of this paragraph do not apply to an ~~any~~ expanding business
272 whose ~~the~~ increase in productive output is measurable ~~of which~~
273 ~~could be measured under the provisions of sub-subparagraph~~



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274 ~~(b)6.b. as physically comparable between the two periods. As~~
275 used in this subparagraph, the term "productive output" means
276 the number of units actually produced by a single plant,
277 operation, or product line in a single continuous 12-month
278 period, irrespective of sales. Increases in productive output
279 shall be measured by dividing the output for 12 continuous
280 months selected by the expanding business after completing the
281 installation of machinery or equipment by the output for the 12
282 continuous months immediately preceding such installation.
283 However, such time period may not commence 2 years after
284 completing the installation. The units used to measure
285 productive output must be physically comparable between the two
286 periods, irrespective of sales.

287 (h) *Business property used in an enterprise zone.—*

288 1. Business property purchased for use by businesses
289 located in an enterprise zone which is subsequently used in an
290 enterprise zone is shall be exempt from the tax imposed by this
291 chapter. This exemption inures to the business only through a
292 refund of previously paid taxes. A refund shall be authorized
293 upon an affirmative showing by the taxpayer, to the satisfaction
294 of the department, that the requirements of this paragraph have
295 been met.

296 2. To receive a refund, the business must file ~~under oath~~
297 with the governing body or enterprise zone development agency
298 having jurisdiction over the enterprise zone where the business
299 is located, as applicable, an application, under oath, which
300 includes:

301 a. The name and address of the business claiming the
302 refund.



303 b. The identifying number assigned pursuant to s. 290.0065
304 to the enterprise zone in which the business is located.

305 c. A specific description of the property for which a
306 refund is sought, including its serial number or other permanent
307 identification number.

308 d. The location of the property.

309 e. The sales invoice or other proof of purchase of the
310 property, showing the amount of sales tax paid, the date of
311 purchase, and the name and address of the sales tax dealer from
312 whom the property was purchased.

313 f. Whether the business is a small business as defined in
314 ~~by~~ s. 288.703.

315 g. If applicable, the name and address of each permanent
316 employee of the business, including, for each employee who is a
317 resident of an enterprise zone, the identifying number assigned
318 pursuant to s. 290.0065 to the enterprise zone in which the
319 employee resides.

320 3. Within 10 working days after receipt of an application,
321 the governing body or enterprise zone development agency shall
322 review the application to determine if it contains all the
323 information required pursuant to subparagraph 2. and meets the
324 criteria set out in this paragraph. The governing body or agency
325 shall certify all applications that contain the information
326 required pursuant to subparagraph 2. and meet the criteria set
327 out in this paragraph as eligible to receive a refund. If
328 applicable, the governing body or agency shall also certify if
329 20 percent of the employees of the business are residents of an
330 enterprise zone, excluding temporary and part-time employees.
331 The certification must ~~shall~~ be in writing, and a copy of the



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332 certification ~~shall be~~ transmitted to the executive director of
333 the Department of Revenue. The business is ~~shall be~~ responsible
334 for forwarding a certified application to the department within
335 the time specified in subparagraph 4.

336 4. An application for a refund pursuant to this paragraph
337 must be submitted to the department within 6 months after the
338 tax is due on the business property that is purchased.

339 5. The amount refunded on purchases of business property
340 under this paragraph shall be the lesser of 97 percent of the
341 sales tax paid on such business property or \$5,000, or, if up to
342 ~~no less than~~ 20 percent of the employees of the business are
343 residents of an enterprise zone, excluding temporary and part-
344 time employees, the amount ~~refunded on purchases of business~~
345 ~~property under this paragraph~~ shall be the lesser of 97 percent
346 of the sales tax paid on such business property or \$10,000. A
347 refund must ~~approved pursuant to this paragraph shall~~ be made
348 within 30 days after formal approval by the department of the
349 application for the refund. A refund may not be granted ~~under~~
350 ~~this paragraph~~ unless the amount to be refunded exceeds \$100 in
351 sales tax paid on purchases made within a 60-day time period.

352 6. The department shall adopt rules governing the manner
353 and form of refund applications and may establish guidelines as
354 to the requisites for an affirmative showing of qualification
355 for exemption under this paragraph.

356 7. If the department determines that the business property
357 is used outside an enterprise zone within 3 years after ~~from~~ the
358 date of purchase, the amount of taxes refunded to the business
359 purchasing such business property is ~~shall~~ immediately ~~be~~ due
360 and payable to the department by the business, together with the



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361 appropriate interest and penalty, computed from the date of
362 purchase, in the manner provided by this chapter.

363 Notwithstanding this subparagraph, business property used
364 exclusively in:

- 365 a. Licensed commercial fishing vessels,
- 366 b. Fishing guide boats, or
- 367 c. Ecotourism guide boats

368

369 that leave and return to a fixed location within an area
370 designated under s. 379.2353, Florida Statutes 2010, are
371 eligible for the exemption ~~provided under this paragraph~~ if all
372 requirements of this paragraph are met. Such vessels and boats
373 must be owned by a business that is eligible to receive the
374 exemption ~~provided under this paragraph~~. This exemption does not
375 apply to the purchase of a vessel or boat.

376 8. The department shall deduct an amount equal to 10
377 percent of each refund granted under this paragraph from the
378 amount transferred into the Local Government Half-cent Sales Tax
379 Clearing Trust Fund pursuant to s. 212.20 for the county area in
380 which the business property is located and ~~shall~~ transfer that
381 amount to the General Revenue Fund.

382 9. For the purposes of this exemption, the term "business
383 property" means new or used property defined as "recovery
384 property" in s. 168(c) of the Internal Revenue Code of 1954, as
385 amended, except:

386 a. Property classified as 3-year property under s.
387 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;

388 b. Industrial machinery and equipment as defined in
389 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for



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390 exemption under paragraph (b);

391 c. Building materials as defined in sub-subparagraph
392 (g)8.a.; and

393 d. Business property having a sales price of under \$5,000
394 per unit.

395 10. This paragraph expires on the date specified in s.
396 290.016 for the expiration of the Florida Enterprise Zone Act.

397 Section 7. (1) The Department of Revenue shall develop a
398 tracking system, in consultation with the Revenue Estimating
399 Conference, to determine the amount of sales taxes remitted by
400 out-of-state dealers who would otherwise not be required to
401 collect and remit sales taxes in the absence of the amendments
402 made to s. 212.0596, Florida Statutes, in section 1 of this act.
403 By February 1 of each year, the Department of Revenue shall
404 submit a report to the Governor, the President of the Senate,
405 and the Speaker of the House of Representatives which sets forth
406 the amount of sales taxes collected and remitted by such dealers
407 in the previous calendar year and the methodology used to
408 determine the amount.

409 (2) By March 1 of each year, the Revenue Estimating
410 Conference shall use the information provided by the Department
411 of Revenue pursuant to subsection (1) to determine the amount of
412 sales taxes remitted in the previous calendar year by such out-
413 of-state dealers who would otherwise not be required to collect
414 and remit sales taxes and estimate the amount that may be
415 expected in the following fiscal year.

416 (3) The Legislature shall use the information provided by
417 the Department of Revenue and the Revenue Estimating Conference
418 to develop legislation designed to return the amount of those



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419 sales taxes collected to the taxpayers of this state. The
420 Legislature shall reduce taxes in an amount not less than the
421 amount determined by the Revenue Estimating Conference. Such
422 reduction shall take into account reductions already provided in
423 this act in sections 3, 4, 5, and 6 of this act. If the amount
424 collected is determined to be of a recurring nature and
425 sufficient to lower tax rates, the Legislature may provide other
426 permanent tax relief as it deems appropriate.

427 Section 8. Except as otherwise expressly provided in this
428 act and except for this section, which shall take effect upon
429 this act becoming a law, this act shall take effect July 1,
430 2013.

431
432 ===== T I T L E A M E N D M E N T =====

433 And the title is amended as follows:

434 Delete line 22
435 and insert:

436 "dealer"; amending s. 202.12, F.S.; reducing the tax
437 rate applied to the sale of communications services;
438 reducing the tax rate applied to retail sales of
439 direct-to-home satellite services; amending s.
440 202.12001, F.S.; conforming rates to the reduction of
441 the communications services tax; amending s. 203.001,
442 F.S.; conforming rates to the reduction of the
443 communications services tax; amending s. 212.08, F.S.;
444 revising the sales tax exemption from the sales tax
445 for certain business purchases of industrial machinery
446 and equipment and spaceport activities; deleting
447 certain limitations on, and procedural requirements



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448 relating to, the exemption; conforming cross-
449 references; requiring that the Department of Revenue
450 develop a tracking system, in consultation with the
451 Revenue Estimating Conference, to determine the amount
452 of sales tax remitted by out-of-state dealers who
453 would otherwise not be required to collect and remit
454 sales taxes but for the amendments made by the act;
455 requiring that the department submit a report to the
456 Governor and Legislature by a specified date each
457 year; requiring that the Revenue Estimating Conference
458 use such report to determine the amount of sales taxes
459 remitted in the previous calendar year by such out-of-
460 state dealers and estimate the amount that may be
461 expected in the following fiscal year; requiring that
462 the Legislature use the information to reduce tax
463 rates for other taxes as deemed appropriate; providing
464 an effective date.
465