

By the Committee on Fiscal Resource and Senators Webster, Bronson, Kurth and Sullivan

314-2148-99

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions; amending s. 212.02, F.S.;
4 providing that a sale for resale includes the
5 sale of certain tangible personal property used
6 or consumed by a government contractor in the
7 performance of a contract with the United
8 States Department of Defense or the National
9 Aeronautics and Space Administration under
10 certain conditions; providing legislative
11 intent; amending s. 212.08, F.S.; providing an
12 exemption for sales to or use by a government
13 contractor of overhead materials used or
14 consumed in the performance of such a contract
15 under certain conditions; providing
16 definitions; providing a schedule for
17 implementing the exemption; providing
18 legislative intent; providing an effective
19 date.

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

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23 Section 1. Paragraph (a) of subsection (14) and
24 subsection (20) of section 212.02, Florida Statutes, 1998
25 Supplement, are amended to read:

26 212.02 Definitions.--The following terms and phrases
27 when used in this chapter have the meanings ascribed to them
28 in this section, except where the context clearly indicates a
29 different meaning:

30 (14)(a) "Retail sale" or a "sale at retail" means a
31 sale to a consumer or to any person for any purpose other than

1 for resale in the form of tangible personal property or
2 services taxable under this chapter, and includes all such
3 transactions that may be made in lieu of retail sales or sales
4 at retail. A sale for resale includes a sale of qualifying
5 property. As used in this paragraph, the term "qualifying
6 property" means tangible personal property, other than
7 electricity, which is used or consumed by a government
8 contractor in the performance of a qualifying contract as
9 defined in s. 212.06(17)(c), to the extent that the cost of
10 the property is allocated or charged as a direct item of cost
11 to such contract, title to which property vests in or passes
12 to the government under the contract. The term "government
13 contractor" includes prime contractors and subcontractors. As
14 used in this paragraph, a cost is a "direct item of cost" if
15 it is a "direct cost" as defined in 48 C.F.R. s.
16 9904.418-30(a)(2), or similar successor provisions, including
17 costs identified specifically with a particular contract.

18 (20) "Use" means and includes the exercise of any
19 right or power over tangible personal property incident to the
20 ownership thereof, or interest therein, except that it does
21 not include the sale at retail of that property in the regular
22 course of business. The term "use" does not include the loan
23 of an automobile by a motor vehicle dealer to a high school
24 for use in its driver education and safety program. The term
25 "use" does not include a contractor's use of "qualifying
26 property" as defined by paragraph (14)(a).

27 Section 2. It is the intent of the Legislature that
28 the amendments to sections 212.02(14)(a) and (20), Florida
29 Statutes, 1998 Supplement, made by this act clarify and
30 confirm existing law with respect to the tax imposed by
31 chapter 212, Florida Statutes.

1 Section 3. Subsection (17) is added to section 212.08,
2 Florida Statutes, 1998 Supplement, to read:

3 212.08 Sales, rental, use, consumption, distribution,
4 and storage tax; specified exemptions.--The sale at retail,
5 the rental, the use, the consumption, the distribution, and
6 the storage to be used or consumed in this state of the
7 following are hereby specifically exempt from the tax imposed
8 by this chapter.

9 (17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.--

10 (a) Subject to paragraph (d), the tax imposed by this
11 chapter does not apply to the sale to or use by a government
12 contractor of overhead materials. The term "government
13 contractor" includes prime contractors and subcontractors.

14 (b) As used in this subsection, the term "overhead
15 materials" means all tangible personal property, other than
16 qualifying property as defined in s. 212.02(14)(a) and
17 electricity, which is used or consumed in the performance of a
18 qualifying contract, title to which property vests in or
19 passes to the government under the contract.

20 (c) As used in this subsection and in s. 212.02(14)(a),
21 the term "qualifying contract" means a contract with the
22 United States Department of Defense or the National
23 Aeronautics and Space Administration, or a subcontract
24 thereunder, but does not include a contract or subcontract for
25 the repair, alteration, improvement, or construction of real
26 property, except to the extent that purchases under such a
27 contract would otherwise be exempt from the tax imposed by
28 this chapter.

29 (d) The exemption provided in this subsection applies
30 as follows:

1 1. Beginning July 1, 1999, the tax imposed by this
2 chapter shall be applicable to 80 percent of the sales price
3 or cost price of such overhead materials.

4 2. Beginning July 1, 2000, the tax imposed by this
5 chapter shall be applicable to 60 percent of the sales price
6 or cost price of such overhead materials.

7 3. Beginning July 1, 2001, the tax imposed by this
8 chapter shall be applicable to 40 percent of the sales price
9 or cost price of such overhead materials.

10 4. Beginning July 1, 2002, the tax imposed by this
11 chapter shall be applicable to 20 percent of the sales price
12 or cost price of such overhead materials.

13 5. Beginning July 1, 2003, the entire sales price or
14 cost price of such overhead materials is exempt from the tax
15 imposed by this chapter.

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17 The exemption provided in this subsection does not apply to
18 any part of the cost of overhead materials allocated to a
19 contract that is not a qualifying contract.

20 (e) Possession by a seller of a resale certificate or
21 direct-pay permit relieves the seller from the responsibility
22 of collecting the tax, and the department shall look solely to
23 the contractor for recovery of such tax if it determines that
24 the contractor was not entitled to the exemption. The
25 contractor shall self-accrue and remit any applicable sales or
26 use tax due with respect to overhead materials and with
27 respect to costs allocable to contracts that are not
28 qualifying contracts. The department may amend its rules to
29 reflect the use of resale certificates and direct-pay permits
30 with respect to the exemption provided for in this subsection.

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1 (f) This subsection is not an expression of
2 legislative intent as to the applicability of any tax to any
3 sale or use of overhead materials prior to July 1, 1999. In
4 addition, this subsection does not imply that transactions or
5 costs that are not described in this subsection are taxable.

6 Section 4. This act shall take effect July 1, 1999.

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8 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
9 COMMITTEE SUBSTITUTE FOR
10 SB 2028

11 The committee substitute did not change the content of the
12 bill, but tightened up the sales tax exemption language.

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