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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.

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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:

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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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