

By Senators Posey, Sanderson and Peaden

15-954-01

See HB

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions; amending s. 212.08, F.S.;
4 providing an exemption, in specified
5 circumstances, for sales of tangible personal
6 property made to contractors employed either
7 directly by or as agents of certain governments
8 or political subdivisions thereof when the
9 tangible personal property becomes part of
10 public works owned by the government or
11 political subdivision; providing an effective
12 date.

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

16 Section 1. Subsection (6) of section 212.08, Florida
17 Statutes, is amended, and subsection (18) is added to that
18 section, to read:

19 212.08 Sales, rental, use, consumption, distribution,
20 and storage tax; specified exemptions.--The sale at retail,
21 the rental, the use, the consumption, the distribution, and
22 the storage to be used or consumed in this state of the
23 following are hereby specifically exempt from the tax imposed
24 by this chapter.

25 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
26 also exempt from the tax imposed by this chapter sales made to
27 the United States Government, a state, or any county,
28 municipality, or political subdivision of a state when payment
29 is made directly to the dealer by the governmental entity.
30 This exemption shall not inure to any transaction otherwise
31 taxable under this chapter when payment is made by a

1 government employee by any means, including, but not limited
2 to, cash, check, or credit card when that employee is
3 subsequently reimbursed by the governmental entity. Unless the
4 conditions set forth in subsection (18) have been met,this
5 exemption does not include sales of tangible personal property
6 made to contractors employed either directly or as agents of
7 any such government or political subdivision thereof when such
8 tangible personal property goes into or becomes a part of
9 public works owned by such government or political
10 subdivision. A determination whether a particular transaction
11 is properly characterized as an exempt sale to a government
12 entity or a taxable sale to a contractor shall be based on the
13 substance of the transaction rather than the form in which the
14 transaction is cast. The department shall adopt rules that
15 give special consideration to factors that govern the status
16 of the tangible personal property before its affixation to
17 real property. In developing these rules, assumption of the
18 risk of damage or loss is of paramount consideration in the
19 determination. This exemption does not include sales, rental,
20 use, consumption, or storage for use in any political
21 subdivision or municipality in this state of machines and
22 equipment and parts and accessories therefor used in the
23 generation, transmission, or distribution of electrical energy
24 by systems owned and operated by a political subdivision in
25 this state for transmission or distribution expansion.
26 Likewise exempt are charges for services rendered by radio and
27 television stations, including line charges, talent fees, or
28 license fees and charges for films, videotapes, and
29 transcriptions used in producing radio or television
30 broadcasts. The exemption provided in this subsection does not
31 include sales, rental, use, consumption, or storage for use in

1 any political subdivision or municipality in this state of
2 machines and equipment and parts and accessories therefor used
3 in providing two-way telecommunications services to the public
4 for hire by the use of a telecommunications facility, as
5 defined in s. 364.02(13), and for which a certificate is
6 required under chapter 364, which facility is owned and
7 operated by any county, municipality, or other political
8 subdivision of the state. Any immunity of any political
9 subdivision of the state or other entity of local government
10 from taxation of the property used to provide
11 telecommunication services that is taxed as a result of this
12 section is hereby waived. However, the exemption provided in
13 this subsection includes transactions taxable under this
14 chapter which are for use by the operator of a public-use
15 airport, as defined in s. 332.004, in providing such
16 telecommunications services for the airport or its tenants,
17 concessionaires, or licensees, or which are for use by a
18 public hospital for the provision of such telecommunications
19 services.

20 (18) SALES TO CONTRACTORS ON BEHALF OF GOVERNMENTS.--

21 (a) Sales of tangible personal property which are made
22 to contractors employed either directly by or as agents of the
23 United States Government, a state, a county, a municipality,
24 or a political subdivision of a state are exempt if all of the
25 following conditions are met:

26 1. At the time of the sale, the governmental entity or
27 political subdivision holds a current consumer's certificate
28 of exemption from the department.

29 2. The tangible personal property purchased by the
30 contractor will go into or become part of a public facility
31 owned by the governmental entity or political subdivision.

1 Tangible personal property purchased and used by a contractor
2 in the course of performing a contract that does not become
3 part of the public facility is not exempt under this
4 subsection.

5 3. The governmental entity or political subdivision
6 bears the economic burden of the cost of the tangible personal
7 property either through direct reimbursement of the cost to
8 the contractor under the contract or inclusion of the cost in
9 the contractor's price for performance of the contract.

10 4. The governmental entity or political subdivision,
11 general contractor, or a subcontractor presents to the seller
12 before or at the time of a purchase:

13 a. A copy of a current, valid Florida consumer's
14 certificate of exemption held by the governmental entity or
15 political subdivision;

16 b. A signed, dated statement of an officer or
17 authorized employee of the governmental entity or political
18 subdivision which identifies a specific public works project
19 and names the contractor or contractors who have been engaged
20 to perform work on the identified project and have been
21 authorized to make exempt purchases of materials for the
22 project; and

23 c. A signed, dated statement of the purchasing
24 contractor which certifies that all purchases made by that
25 contractor and identified at the time of purchase as
26 pertaining to the public works project specified in the
27 statement of the governmental entity or political subdivision
28 will be for incorporation into that public works project.

29
30 A seller may rely on a single copy of the governmental
31 entity's or political subdivision's consumer's certificate of

1 exemption and a single signed, dated statement from the
2 governmental entity or political subdivision in making sales
3 to any contractor named on that statement, as long as the
4 other certification and recordkeeping requirements of this
5 section are also satisfied. A seller may rely on a single
6 signed statement of a purchasing contractor in making sales to
7 that contractor for the public works project specified in that
8 statement, as long as the other certification and
9 recordkeeping requirements of this section are also satisfied.

10 5. The records of the seller contain documentation for
11 each exempt purchase which includes:

12 a. A purchase order from the contractor which
13 specifically identifies, by description and quantity, the
14 tangible personal property that is being purchased for
15 incorporation by the contractor into a specifically named
16 public works project; or

17 b. Electronic or other records of the seller which
18 establish that the purchased tangible personal property,
19 identified by description and quantity, was charged by a
20 contractor who has provided a statement as described in
21 subparagraph 4. to an account to which only purchases for the
22 public works project specified in that statement are charged.

23 6. The statements of the governmental entity or
24 political subdivision and of the purchasing contractor which
25 are described in this paragraph must be dated and must contain
26 the following printed or typed declaration at the end of the
27 statement and immediately above the signature of the public
28 officer or employee or contractor "Under penalty of perjury, I
29 declare that I have read the foregoing statement and that the
30 facts stated in it are true."

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1 7. The seller verifies, before the exemption is
2 granted as to any purchase, that a purchasing contractor is
3 named in the statement from the governmental entity or
4 political subdivision and that the project identified in the
5 statement of the contractor is the same project as that
6 identified in the statement of the governmental entity or
7 political subdivision.

8 (b)1. The seller must maintain in its records the
9 certificate, statements, and other records described in
10 paragraph (a) to document the exempt status of any sale for
11 the period of time during which the department may conduct an
12 audit of the seller's books and records. A dealer may, through
13 the informal protest provided for in s. 213.21 and the rules
14 of the department, provide the department with evidence of the
15 exempt status of a sale. A consumer's certificate of exemption
16 executed by a governmental entity or political subdivision
17 that was registered with the department at the time of the
18 sale, a statement of the governmental entity as described in
19 sub-subparagraph (a)4.b. which had been issued and signed
20 before or on the date of the sale for which the exemption was
21 claimed, and a purchasing contractor's statement as described
22 in sub-subparagraph (a)4.c. from a contractor that could have
23 issued the statement at the time of the sale shall be accepted
24 by the department when submitted during the protest period,
25 but may not be accepted in any proceeding under chapter 120 or
26 any circuit court action instituted under chapter 72. No
27 exemption will be recognized for any purchase made by a
28 contractor before the date on which a governmental entity or
29 political subdivision has issued a signed and dated statement
30 authorizing that contractor to make exempt purchases for a
31 specified public works project.

1 2. A contractor that claims exemption under this
2 subsection must maintain records to establish that the
3 materials purchased were actually incorporated into the public
4 works project described in the contractor's statement. The
5 contractor must accrue and remit use tax on any items
6 purchased as exempt under this section which are not
7 incorporated into the public works project, unless the items
8 are transferred to the governmental entity or political
9 subdivision or returned to the seller for a credit to the
10 contractor's account. The contractor must maintain records to
11 document any such transfers or returns.

12 3. Any person who fraudulently, for the purpose of
13 evading taxes, issues a written statement for use in claiming
14 an exemption under this subsection for materials that do not
15 satisfy the requirements for the exemption, in addition to
16 being liable for the payment of the tax due on the materials,
17 is subject to the penalties provided in s. 212.085.

18 Section 2. This act shall take effect January 1, 2002.

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SENATE SUMMARY

Provides an exemption from the tax on sales, use, and other transactions, in specified circumstances, for sales of tangible personal property made to contractors employed either directly by or as agents of certain governments or political subdivisions thereof when the tangible personal property becomes part of public works owned by the government or political subdivision.