

By Senator Posey

15-872-02

1 A bill to be entitled
2 An act relating to tax on sales, use, and other
3 transactions; amending s. 212.08, F.S.;
4 providing an exemption for tangible personal
5 property sold to a contractor employed directly
6 by or as an agent of the United States
7 Government or state or local government when
8 such property will become part of a public
9 facility owned by the governmental entity, if
10 specified conditions are met; providing duties
11 of such governmental entities, contractors, and
12 sellers with respect to documentation and
13 recordkeeping; providing for application of
14 penalties; providing an effective date.

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

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

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

27 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are
28 also exempt from the tax imposed by this chapter sales made to
29 the United States Government, a state, or any county,
30 municipality, or political subdivision of a state when payment
31 is made directly to the dealer by the governmental entity.

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

1 broadcasts. The exemption provided in this subsection does not
2 include sales, rental, use, consumption, or storage for use in
3 any political subdivision or municipality in this state of
4 machines and equipment and parts and accessories therefor used
5 in providing two-way telecommunications services to the public
6 for hire by the use of a telecommunications facility, as
7 defined in s. 364.02(13), and for which a certificate is
8 required under chapter 364, which facility is owned and
9 operated by any county, municipality, or other political
10 subdivision of the state. Any immunity of any political
11 subdivision of the state or other entity of local government
12 from taxation of the property used to provide
13 telecommunication services that is taxed as a result of this
14 section is hereby waived. However, the exemption provided in
15 this subsection includes transactions taxable under this
16 chapter which are for use by the operator of a public-use
17 airport, as defined in s. 332.004, in providing such
18 telecommunications services for the airport or its tenants,
19 concessionaires, or licensees, or which are for use by a
20 public hospital for the provision of such telecommunications
21 services.

22 (18) EXEMPTIONS; CERTAIN CONTRACTORS EMPLOYED BY
23 FEDERAL, STATE, OR LOCAL GOVERNMENTS.--

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

- 29 1. At the time of such sale, the governmental entity
30 or political subdivision holds a current consumer's
31 certificate of exemption from the department.

1 2. The tangible personal property purchased by the
2 contractor will go into or become part of a public facility
3 owned by the governmental entity or political subdivision.
4 Tangible personal property purchased and used by a contractor
5 in the course of performing a contract that does not become
6 part of the public facility is not exempt under this
7 subsection.

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

13 4. The governmental entity or political subdivision,
14 general contractor, or a subcontractor presents to the seller
15 prior to or at the time of a purchase:

16 a. A copy of a current, valid Florida consumer's
17 certificate of exemption held by the governmental entity or
18 political subdivision.

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

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

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

12 5. The records of the seller contain documentation for
13 each exempt purchase as follows:

14 a. A purchase order from the contractor specifically
15 identifying, by description and quantity, the tangible
16 personal property being purchased for incorporation by the
17 contractor into a specifically named public works project; or

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

24 6. The statements of the governmental entity or
25 political subdivision and of the purchasing contractor
26 described in this paragraph are dated and contain the
27 following printed or typed declaration at the end of the
28 statement and immediately above the signature of the public
29 officer, employee, or contractor: "Under penalties of perjury
30 as provided in s. 92.525, Florida Statutes, I declare that I
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1 have read the foregoing statement and that the facts stated in
2 it are true."

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

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

1 signed and dated statement authorizing that contractor to make
2 exempt purchases for a specified public works project.

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

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

20 Section 2. This act shall take effect January 1, 2003.

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23 LEGISLATIVE SUMMARY

24 Provides a sales tax exemption for tangible personal
25 property sold to a contractor employed directly by or as
26 an agent of the United States Government or state or
27 local government when such property will become part of a
28 public facility owned by the governmental entity, if
29 specified conditions are met. Such conditions include
30 duties of such governmental entities, contractors, and
31 sellers with respect to documentation and recordkeeping.
Provides for application of penalties.