

By Senator Atwater

25-664A-03

See HB 409

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 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 K-12
9 school 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; PUBLIC K-12 SCHOOL CONSTRUCTION
23 CONTRACTOR PURCHASES.--

24 (a) Sales of tangible personal property made to
25 contractors employed directly by or as agents of the United
26 States Government, a state, a county, a municipality, or a
27 political subdivision of a state for public K-12 school
28 construction are exempt if the 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 K-12 school
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 K-12 school 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 that identifies a specific public K-12 school
22 project and names the contractor or contractors engaged to
23 perform work on the identified project who have been
24 authorized to make exempt purchases of materials for the
25 project.

26 c. A signed and dated statement of the purchasing
27 contractor certifying that all purchases made by that
28 contractor and identified at the time of purchase to the
29 public K-12 school project specified in the statement of the
30 governmental entity or political subdivision will be for
31 incorporation into that public K-12 school project.

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2 A seller may rely on a single copy of the governmental
3 entity's or political subdivision's consumer's certificate of
4 exemption and a single signed and dated statement from the
5 governmental entity or political subdivision to make sales to
6 any contractor named on that statement so long as the other
7 certification and recordkeeping requirements of this
8 subsection are also satisfied. A seller may rely on a single
9 signed statement of a purchasing contractor to make sales to
10 that contractor for the public K-12 school project specified
11 in that statement so long as the other certification and
12 recordkeeping requirements of this subsection are also
13 satisfied.

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

16 a. A purchase order from the contractor specifically
17 identifying, by description and quantity, the tangible
18 personal property being purchased for incorporation by the
19 contractor into a specifically named public K-12 school
20 project; or

21 b. Electronic or other records of the seller that
22 establish that the purchased tangible personal property,
23 identified by description and quantity, was charged by a
24 contractor who has provided a statement as described in
25 subparagraph 4. to an account to which only purchases for the
26 public K-12 school project specified in that statement are
27 charged.

28 6. The statements of the governmental entity or
29 political subdivision and of the purchasing contractor
30 described in this paragraph must be dated and contain the
31 following printed or typed declaration at the end of the

1 statement and immediately above the signature of the public
2 officer, employee, or contractor: "Under penalties of perjury
3 as provided in s. 92.525, Florida Statutes, I declare that I
4 have read the foregoing statement and that the facts stated in
5 it are true."

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

13 (b)1. The seller shall maintain in its records the
14 certificate, statements, and other records described in
15 paragraph (a) to document the exempt status of any sale for
16 the period of time during which the department may conduct an
17 audit of the seller's books and records. A dealer may, through
18 the informal protest provided for in s. 213.21 and the rules
19 of the department, provide the department with evidence of the
20 exempt status of a sale. A consumer's certificate of exemption
21 executed by a governmental entity or political subdivision
22 which was registered with the department at the time of sale,
23 a statement of the governmental entity or political
24 subdivision as described in sub-subparagraph (a)4.b. which had
25 been issued and signed prior to or on the date of the sale for
26 which exemption was claimed, and a purchasing contractor's
27 statement as described in sub-subparagraph (a)4.c. from a
28 contractor that could have issued such statement at the time
29 of the sale shall be accepted by the department when submitted
30 during the protest period, but may not be accepted in any
31 proceeding under chapter 120 or any circuit court action

1 instituted under chapter 72. No exemption shall be recognized
2 for any purchase by a contractor prior to the date on which a
3 governmental entity or political subdivision has issued a
4 signed and dated statement authorizing that contractor to make
5 exempt purchases for a specified public K-12 school project.

6 2. A contractor that claims exemption under this
7 subsection shall maintain records to establish that the
8 materials purchased were actually incorporated into the public
9 K-12 school project described in the contractor's statement.

10 The contractor must accrue and remit use tax on any items
11 purchased exempt under this subsection that are not
12 incorporated into the public K-12 school project, unless such
13 items are transferred to the governmental entity or political
14 subdivision or returned to the seller for a credit to the
15 contractor' s account. The contractor shall maintain records
16 to document any such transfers or returns.

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

23 Section 2. This act shall take effect upon becoming a
24 law.

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