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

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

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

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

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



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30 exemption shall not inure to any transaction otherwise taxable
31 under this chapter when payment is made by a government employee
32 by any means, including, but not limited to, cash, check, or
33 credit card when that employee is subsequently reimbursed by the
34 governmental entity. Unless the conditions specified in
35 subsection (18) are met, this exemption does not include sales
36 of tangible personal property made to contractors employed
37 either directly or as agents of any such government or political
38 subdivision thereof when such tangible personal property goes
39 into or becomes a part of public works owned by such government
40 or political subdivision. A determination whether a particular
41 transaction is properly characterized as an exempt sale to a
42 government entity or a taxable sale to a contractor shall be
43 based on the substance of the transaction rather than the form
44 in which the transaction is cast. The department shall adopt
45 rules that give special consideration to factors that govern the
46 status of the tangible personal property before its affixation
47 to real property. In developing these rules, assumption of the
48 risk of damage or loss is of paramount consideration in the
49 determination. This exemption does not include sales, rental,
50 use, consumption, or storage for use in any political
51 subdivision or municipality in this state of machines and
52 equipment and parts and accessories therefor used in the
53 generation, transmission, or distribution of electrical energy
54 by systems owned and operated by a political subdivision in this
55 state for transmission or distribution expansion. Likewise
56 exempt are charges for services rendered by radio and television
57 stations, including line charges, talent fees, or license fees
58 and charges for films, videotapes, and transcriptions used in



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59 producing radio or television broadcasts. The exemption provided
 60 in this subsection does not include sales, rental, use,
 61 consumption, or storage for use in any political subdivision or
 62 municipality in this state of machines and equipment and parts
 63 and accessories therefor used in providing two-way
 64 telecommunications services to the public for hire by the use of
 65 a telecommunications facility, as defined in s. 364.02(13), and
 66 for which a certificate is required under chapter 364, which
 67 facility is owned and operated by any county, municipality, or
 68 other political subdivision of the state. Any immunity of any
 69 political subdivision of the state or other entity of local
 70 government from taxation of the property used to provide
 71 telecommunication services that is taxed as a result of this
 72 section is hereby waived. However, the exemption provided in
 73 this subsection includes transactions taxable under this chapter
 74 which are for use by the operator of a public-use airport, as
 75 defined in s. 332.004, in providing such telecommunications
 76 services for the airport or its tenants, concessionaires, or
 77 licensees, or which are for use by a public hospital for the
 78 provision of such telecommunications services.

79 (18) EXEMPTIONS; PUBLIC K-12 SCHOOL CONSTRUCTION
 80 CONTRACTOR PURCHASES.--

81 (a) Sales of tangible personal property made to
 82 contractors employed directly by or as agents of the United
 83 States Government, a state, a county, a municipality, or a
 84 political subdivision of a state for public K-12 school
 85 construction are exempt if the following conditions are met:



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86 1. At the time of such sale, the governmental entity or
87 political subdivision holds a current consumer's certificate of
88 exemption from the department.

89 2. The tangible personal property purchased by the
90 contractor will go into or become part of a public K-12 school
91 owned by the governmental entity or political subdivision.
92 Tangible personal property purchased and used by a contractor in
93 the course of performing a contract that does not become part of
94 the public K-12 school is not exempt under this subsection.

95 3. The governmental entity or political subdivision bears
96 the economic burden of the cost of the tangible personal
97 property, either through direct reimbursement of the cost to the
98 contractor under the contract or inclusion of the cost in the
99 contractor's price for performance of the contract.

100 4. The governmental entity or political subdivision,
101 general contractor, or a subcontractor presents to the seller
102 prior to or at the time of a purchase:

103 a. A copy of a current, valid Florida consumer's
104 certificate of exemption held by the governmental entity or
105 political subdivision.

106 b. A signed and dated statement of an officer or
107 authorized employee of the governmental entity or political
108 subdivision that identifies a specific public K-12 school
109 project and names the contractor or contractors engaged to
110 perform work on the identified project who have been authorized
111 to make exempt purchases of materials for the project.

112 c. A signed and dated statement of the purchasing
113 contractor certifying that all purchases made by that contractor
114 and identified at the time of purchase to the public K-12 school



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115 project specified in the statement of the governmental entity or
116 political subdivision will be for incorporation into that public
117 K-12 school project.

118
119 A seller may rely on a single copy of the governmental entity's
120 or political subdivision's consumer's certificate of exemption
121 and a single signed and dated statement from the governmental
122 entity or political subdivision to make sales to any contractor
123 named on that statement so long as the other certification and
124 recordkeeping requirements of this subsection are also
125 satisfied. A seller may rely on a single signed statement of a
126 purchasing contractor to make sales to that contractor for the
127 public K-12 school project specified in that statement so long
128 as the other certification and recordkeeping requirements of
129 this subsection are also satisfied.

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

132 a. A purchase order from the contractor specifically
133 identifying, by description and quantity, the tangible personal
134 property being purchased for incorporation by the contractor
135 into a specifically named public K-12 school project; or

136 b. Electronic or other records of the seller that
137 establish that the purchased tangible personal property,
138 identified by description and quantity, was charged by a
139 contractor who has provided a statement as described in
140 subparagraph 4. to an account to which only purchases for the
141 public K-12 school project specified in that statement are
142 charged.



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143 6. The statements of the governmental entity or political
144 subdivision and of the purchasing contractor described in this
145 paragraph must be dated and contain the following printed or
146 typed declaration at the end of the statement and immediately
147 above the signature of the public officer, employee, or
148 contractor: "Under penalties of perjury as provided in s.
149 92.525, Florida Statutes, I declare that I have read the
150 foregoing statement and that the facts stated in it are true."

151 7. The seller verifies that a purchasing contractor is
152 named in the statement from the governmental entity or political
153 subdivision and that the project identified in the statement of
154 the contractor is the same project as that identified in the
155 statement of the governmental entity or political subdivision
156 before the exemption is granted as to any purchase.

157 (b)1. The seller shall maintain in its records the
158 certificate, statements, and other records described in
159 paragraph (a) to document the exempt status of any sale for the
160 period of time during which the department may conduct an audit
161 of the seller's books and records. A dealer may, through the
162 informal protest provided for in s. 213.21 and the rules of the
163 department, provide the department with evidence of the exempt
164 status of a sale. A consumer's certificate of exemption executed
165 by a governmental entity or political subdivision that was
166 registered with the department at the time of sale, a statement
167 of the governmental entity or political subdivision as described
168 in sub-subparagraph (a)4.b. that had been issued and signed
169 prior to or on the date of the sale for which exemption was
170 claimed, and a purchasing contractor's statement as described in
171 sub-subparagraph (a)4.c. from a contractor that could have



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172 issued such statement at the time of the sale shall be accepted
173 by the department when submitted during the protest period, but
174 may not be accepted in any proceeding under chapter 120 or any
175 circuit court action instituted under chapter 72. No exemption
176 shall be recognized for any purchase by a contractor prior to
177 the date on which a governmental entity or political subdivision
178 has issued a signed and dated statement authorizing that
179 contractor to make exempt purchases for a specified public K-12
180 school project.

181 2. A contractor that claims exemption under this
182 subsection shall maintain records to establish that the
183 materials purchased were actually incorporated into the public
184 K-12 school project described in the contractor's statement. The
185 contractor must accrue and remit use tax on any items purchased
186 exempt under this subsection that are not incorporated into the
187 public K-12 school project, unless such items are transferred to
188 the governmental entity or political subdivision or returned to
189 the seller for a credit to the contractor's account. The
190 contractor shall maintain records to document any such transfers
191 or returns.

192 3. Any person who fraudulently, for the purpose of evading
193 tax, issues a written statement for use in claiming an exemption
194 under this subsection for materials that do not satisfy the
195 requirements for such exemption shall, in addition to being
196 liable for the payment of the tax due on such materials, be
197 subject to the penalties provided in s. 212.085.

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