

HB 1157

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

13  
 14 Be It Enacted by the Legislature of the State of Florida:

15  
 16           Section 1. Subsection (6) of section 212.08, Florida  
 17           Statutes, is amended, and subsection (18) is added to said  
 18           section, to read:

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

25           (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.--There are also  
 26           exempt from the tax imposed by this chapter sales made to the  
 27           United States Government, a state, or any county, municipality,  
 28           or political subdivision of a state when payment is made  
 29           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(14), 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 OR CHARTER K-12 SCHOOL  
 80 CONSTRUCTION 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 or charter K-12  
 85 school construction are exempt if the following conditions are  
 86 met:

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

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

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

102 4. The governmental entity or political subdivision,  
103 general contractor, or a subcontractor presents to the seller  
104 before or at the time of a purchase:

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

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

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115 c. A signed and dated statement of the purchasing  
116 contractor certifying that all purchases made by that contractor  
117 and identified at the time of purchase to the public or charter  
118 K-12 school project specified in the statement of the  
119 governmental entity or political subdivision will be for  
120 incorporation into that public or charter K-12 school project.

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

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

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

140 b. Electronic or other records of the seller which  
141 establish that the purchased tangible personal property,  
142 identified by description and quantity, was charged by a  
143 contractor who has provided a statement as described in

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144 subparagraph 4. to an account to which only purchases for the  
 145 public or charter K-12 school project specified in that  
 146 statement are charged.

147 6. The statements of the governmental entity or political  
 148 subdivision and of the purchasing contractor described in this  
 149 paragraph must be dated and must contain the following printed  
 150 or typed declaration at the end of the statement and immediately  
 151 above the signature of the public officer, employee, or  
 152 contractor: "Under penalties of perjury as provided in s.  
 153 92.525, Florida Statutes, I declare that I have read the  
 154 foregoing statement and that the facts stated in it are true."

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

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

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173 before or on the date of the sale for which exemption was  
174 claimed, and a purchasing contractor's statement as described in  
175 sub-subparagraph (a)4.c. from a contractor that could have  
176 issued such statement at the time of the sale shall be accepted  
177 by the department when submitted during the protest period but  
178 may not be accepted in any proceeding under chapter 120 or any  
179 circuit court action instituted under chapter 72. A purchase  
180 does not qualify for exemption under this subsection if a  
181 contractor made the purchase before the date on which a  
182 governmental entity or political subdivision issued a signed and  
183 dated statement authorizing that contractor to make exempt  
184 purchases for a specified public or charter K-12 school project.

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

196 3. Any person who fraudulently, for the purpose of evading  
197 tax, issues a written statement for use in claiming an exemption  
198 under this subsection for materials that do not satisfy the  
199 requirements for the exemption is, in addition to being liable  
200 for the payment of the tax due on the materials, subject to the  
201 penalties provided in s. 212.085.

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