

By Senator Bennett

21-608-04

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(14), 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 the sale, the governmental entity or  
30 political subdivision holds a current consumer's certificate  
31 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 which 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 by inclusion of the cost  
12 in 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 before 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 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 if the other  
7 certification and recordkeeping requirements of this  
8 subsection have also been satisfied. A seller may rely on a  
9 single signed statement of a purchasing contractor to make  
10 sales to that contractor for the public K-12 school project  
11 specified in that statement if the other certification and  
12 recordkeeping requirements of this subsection have also been  
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 which  
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 must 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 before 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. A purchase does not qualify for  
2 exemption under this subsection if a contractor made the  
3 purchase before the date on which a governmental entity or  
4 political subdivision issued a signed and dated statement  
5 authorizing that contractor to make exempt purchases for a  
6 specified public K-12 school project.

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

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

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

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SENATE SUMMARY

Provides an exemption from the tax on sales, use, and other transactions 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 the property will become part of a public K-12 school owned by the governmental entity, if specified conditions are met. Provides duties of the governmental entities, contractors, and sellers pertaining to documentation and recordkeeping. Provides for penalties.