

Bill No. SB 2-A

Barcode 860706

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Aronberg)
recommended the following amendment:

Senate Amendment (with title amendment)

On page 92, between lines 13 and 14,

insert:

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

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1 Unless the conditions specified in subsection (18) are met,
2 this exemption shall not inure to any transaction otherwise
3 taxable under this chapter when payment is made by a
4 government employee by any means, including, but not limited
5 to, cash, check, or credit card when that employee is
6 subsequently reimbursed by the governmental entity. 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

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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 such telecommunications
 21 services.

22 (18) EXEMPTIONS; ELEMENTARY SCHOOL CONSTRUCTION
 23 CONTRACTOR PURCHASES.--

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 for public
 28 prekindergarten or elementary school construction are exempt
 29 if all of the following conditions are met:

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

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1 certificate of exemption from the department.

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

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

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

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

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

28 c. A signed and dated statement of the purchasing
29 contractor certifying that all purchases made by that
30 contractor and identified at the time of purchase to the
31 public prekindergarten or elementary school project specified

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1 in the statement of the governmental entity or political
2 subdivision will be for incorporation into that public
3 prekindergarten or elementary school.

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

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

19 a. A purchase order from the contractor specifically
20 identifying, by description and quantity, the tangible
21 personal property being purchased for incorporation by the
22 contractor into a specifically named public prekindergarten or
23 elementary school project; or

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

31 6. The statements of the governmental entity or

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1 political subdivision and of the purchasing contractor
2 described in this paragraph must be dated and contain the
3 following printed or typed declaration at the end of the
4 statement and immediately above the signature of the public
5 officer, employee, or contractor: "Under penalties of perjury
6 as provided in section 92.525, Florida Statutes, I declare
7 that I have read the foregoing statement and that the facts
8 stated in it are true."

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

16 (b)1. The seller must maintain in its records the
17 certificate, statements, and other records described in
18 paragraph (a) to document the exempt status of any sale for
19 the period of time during which the department may conduct an
20 audit of the seller's books and records. A dealer may, through
21 the informal protest provided for in s. 213.21 and the rules
22 of the department, provide the department with evidence of the
23 exempt status of a sale. A consumer's certificate of exemption
24 executed by a governmental entity or political subdivision
25 that was registered with the department at the time of sale, a
26 statement of the governmental entity or political subdivision
27 as described in sub-subparagraph (a)4.b. which has been issued
28 and signed prior to or on the date of the sale for which
29 exemption was claimed, and a purchasing contractor's statement
30 as described in sub-subparagraph (a)4.c. from a contractor
31 that could have issued such statement at the time of the sale

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1 shall be accepted by the department when submitted during the
 2 protest period, but may not be accepted in any proceeding
 3 under chapter 120 or any circuit court action instituted under
 4 chapter 72. An exemption may not be recognized for any
 5 purchase by a contractor prior to the date on which a
 6 governmental entity or political subdivision has issued a
 7 signed and dated statement authorizing that contractor to make
 8 exempt purchases for a specified public prekindergarten or
 9 elementary school project.

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

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

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29 (Redesignate subsequent sections.)

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1 ===== T I T L E A M E N D M E N T =====

2 And the title is amended as follows:

3 On page 8, line 2, following the semicolon

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5 insert:

6 amending s. 212.08, F.S.; providing an
7 exemption from the tax on sales, use, and other
8 transactions for tangible personal property
9 sold to a contractor employed directly by or as
10 an agent of the United States Government, the
11 state, or a local government when such property
12 will become part of a prekindergarten or
13 elementary school owned by the governmental
14 entity, if specified conditions are met;
15 providing duties of such governmental entities,
16 contractors, and sellers with respect to
17 documentation and recordkeeping; providing
18 penalties;

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