

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 directly employed by or as an agent of the
 6 United States Government or state or local government when
 7 such property becomes part of a prekindergarten or
 8 elementary school owned by the governmental entity under
 9 specified conditions; providing duties of governmental
 10 entities, contractors, and sellers relating to
 11 documentation and recordkeeping; providing for application
 12 of penalties; providing an effective date.

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

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 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. Unless the
30 | conditions specified in subsection (18) are met, this exemption
31 | shall not inure to any transaction otherwise taxable under this
32 | chapter when payment is made by a government employee by any
33 | means, including, but not limited to, cash, check, or credit
34 | card when that employee is subsequently reimbursed by the
35 | governmental entity. This exemption does not include sales of
36 | tangible personal property made to contractors employed either
37 | 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
 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 PREKINDERGARTEN AND ELEMENTARY
 80 SCHOOL 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 prekindergarten or

85 elementary school construction are exempt if all of the
 86 following conditions are met:

87 1. At the time of such 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
 92 prekindergarten or elementary school owned by the governmental
 93 entity or political subdivision. Tangible personal property
 94 purchased and used by a contractor in the course of performing a
 95 contract which does not become part of the public
 96 prekindergarten or elementary school is not exempt under this
 97 subsection.

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

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

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

109 b. A signed and dated statement of an officer or
 110 authorized employee of the governmental entity or political
 111 subdivision that identifies a specific public prekindergarten or
 112 elementary school project and names the contractor or

113 contractors engaged to perform work on the identified project
 114 who have been authorized to make exempt purchases of materials
 115 for the project.

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

123
 124 A seller may rely on a single copy of the governmental entity's
 125 or political subdivision's consumer's certificate of exemption
 126 and a single signed and dated statement from the governmental
 127 entity or political subdivision to make sales to any contractor
 128 named on that statement so long as the other certification and
 129 recordkeeping requirements of this subsection are also
 130 satisfied. A seller may rely on a single signed statement of a
 131 purchasing contractor to make sales to that contractor for the
 132 public prekindergarten or elementary school project specified in
 133 that statement so long as the other certification and
 134 recordkeeping requirements of this subsection are also
 135 satisfied.

136 5. The records of the seller contain documentation for
 137 each exempt purchase, as follows:

138 a. A purchase order from the contractor specifically
 139 identifying, by description and quantity, the tangible personal
 140 property being purchased for incorporation by the contractor

141 into a specifically named public prekindergarten or elementary
 142 school project; or

143 b. Electronic or other records of the seller that
 144 establish that the purchased tangible personal property,
 145 identified by description and quantity, was charged by a
 146 contractor who has provided a statement as described in
 147 subparagraph 4. to an account to which only purchases for the
 148 public prekindergarten or elementary school project specified in
 149 that statement are charged.

150 6. The statements of the governmental entity or political
 151 subdivision and of the purchasing contractor described in this
 152 paragraph are dated and contain the following printed or typed
 153 declaration at the end of the statement and immediately above
 154 the signature of the public officer, employee, or contractor:

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 156 "Under penalties of perjury as provided in s. 92.525,
 157 Florida Statutes, I declare that I have read the
 158 foregoing statement and that the facts stated in it
 159 are true."

160
 161 7. The seller verifies that a purchasing contractor is
 162 named in the statement from the governmental entity or political
 163 subdivision and that the project identified in the statement of
 164 the contractor is the same project as that identified in the
 165 statement of the governmental entity or political subdivision
 166 before the exemption is granted as to any purchase.

167 (b)1. The seller must maintain in its records the
 168 certificate, statements, and other records described in

169 paragraph (a) to document the exempt status of any sale for the
170 period of time during which the department may conduct an audit
171 of the seller's books and records. A dealer may, through the
172 informal protest provided for in s. 213.21 and the rules of the
173 department, provide the department with evidence of the exempt
174 status of a sale. A consumer's certificate of exemption executed
175 by a governmental entity or political subdivision that was
176 registered with the department at the time of sale, a statement
177 of the governmental entity or political subdivision as described
178 in sub-subparagraph (a)4.b. that had been issued and signed
179 prior to or on the date of the sale for which exemption was
180 claimed, and a purchasing contractor's statement as described in
181 sub-subparagraph (a)4.c. from a contractor that could have
182 issued such statement at the time of the sale shall be accepted
183 by the department when submitted during the protest period but
184 may not be accepted in any proceeding under chapter 120 or any
185 circuit court action instituted under chapter 72. An exemption
186 may not be recognized for any purchase by a contractor before
187 the date on which a governmental entity or political subdivision
188 has issued a signed and dated statement authorizing that
189 contractor to make exempt purchases for a specified public
190 prekindergarten or elementary school project.

191 2. A contractor that claims an exemption under this
192 subsection shall maintain records to establish that the
193 materials purchased were actually incorporated into the public
194 prekindergarten or elementary school project described in the
195 contractor's statement. The contractor shall accrue and remit
196 use tax on any items that are purchased exempt under this

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197 subsection that are not incorporated into the public
198 prekindergarten or elementary school project, unless such items
199 are transferred to the governmental entity or political
200 subdivision or returned to the seller for a credit to the
201 contractor's account. The contractor shall maintain records to
202 document any such transfers or returns.

203 3. Any person who fraudulently, for the purpose of evading
204 tax, issues a written statement for use in claiming an exemption
205 under this subsection for materials that do not satisfy the
206 requirements for such exemption, in addition to being liable for
207 the payment of the tax due on such materials, shall be subject
208 to the penalties provided in s. 212.085.

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