

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; ELEMENTARY 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 prekindergarten or
28 | elementary school construction are exempt from the tax imposed
29 | by this chapter if all of the following conditions are met:

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

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

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

17 4. The governmental entity or political subdivision,
18 general contractor, or a subcontractor presents to the seller
19 before or at the time of a purchase:

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

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

30 c. A signed and dated statement of the purchasing
31 contractor certifying that all purchases made by that

1 contractor and identified at the time of purchase to the
2 public prekindergarten or elementary school project specified
3 in the statement of the governmental entity or political
4 subdivision will be for incorporation into that public
5 prekindergarten or elementary school.

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

19 5. The records of the seller contain documentation for
20 each exempted purchase as follows:

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

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

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

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

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

1 exemption was claimed, and a purchasing contractor's statement
2 as described in sub-subparagraph (a)4.c. from a contractor
3 that could have issued such statement at the time of the sale
4 shall be accepted by the department when submitted during the
5 protest period, but may not be accepted in any proceeding
6 under chapter 120 or any circuit court action instituted under
7 chapter 72. An exemption may not be recognized for any
8 purchase by a contractor before the date on which a
9 governmental entity or political subdivision has issued a
10 signed and dated statement authorizing that contractor to make
11 exempt purchases for a specified public prekindergarten or
12 elementary school project.

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

25 3. Any person who fraudulently, for the purpose of
26 evading taxes, issues a written statement for use in claiming
27 an exemption under this subsection for materials that do not
28 satisfy the requirements for such exemption shall, in addition
29 to being liable for the payment of the tax due on such
30 materials, be subject to the penalties provided in s. 212.085.
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1 Section 2. This act shall take effect upon becoming a
2 law.

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5 SENATE SUMMARY

6 Provides an exemption for tangible personal property sold
7 to a contractor employed by or as an agent of the
8 federal, state, or local government when such property
9 becomes part of a prekindergarten or elementary school
10 owned by the governmental entity if specified conditions
11 are satisfied. Provides duties of governmental entities,
12 contractors, and sellers relating to documentation and
13 recordkeeping. Provides for application of penalties.
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