

A bill to be entitled

An act relating to public school construction sales tax relief; amending s. 212.08, F.S.; providing an exemption from the tax on sales, use, and other transactions for tangible personal property sold to a contractor directly employed by or as an agent of the United States Government or state or local government when such property becomes part of a prekindergarten or elementary school owned by the governmental entity under specified conditions; providing duties of governmental entities, contractors, and sellers relating to documentation and recordkeeping; providing for application of penalties; providing an effective date.

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

Section 1. 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,

29 or political subdivision of a state when payment is made
30 directly to the dealer by the governmental entity. Unless the
31 conditions specified in subsection (18) are met, this exemption
32 shall not inure to any transaction otherwise taxable under this
33 chapter when payment is made by a government employee by any
34 means, including, but not limited to, cash, check, or credit
35 card when that employee is subsequently reimbursed by the
36 governmental entity. This exemption does not include sales of
37 tangible personal property made to contractors employed either
38 directly or as agents of any such government or political
39 subdivision thereof when such tangible personal property goes
40 into or becomes a part of public works owned by such government
41 or political subdivision. A determination whether a particular
42 transaction is properly characterized as an exempt sale to a
43 government entity or a taxable sale to a contractor shall be
44 based on the substance of the transaction rather than the form
45 in which the transaction is cast. The department shall adopt
46 rules that give special consideration to factors that govern the
47 status of the tangible personal property before its affixation
48 to real property. In developing these rules, assumption of the
49 risk of damage or loss is of paramount consideration in the
50 determination. This exemption does not include sales, rental,
51 use, consumption, or storage for use in any political
52 subdivision or municipality in this state of machines and
53 equipment and parts and accessories therefor used in the
54 generation, transmission, or distribution of electrical energy
55 by systems owned and operated by a political subdivision in this
56 state for transmission or distribution expansion. Likewise

57 exempt are charges for services rendered by radio and television
 58 stations, including line charges, talent fees, or license fees
 59 and charges for films, videotapes, and transcriptions used in
 60 producing radio or television broadcasts. The exemption provided
 61 in this subsection does not include sales, rental, use,
 62 consumption, or storage for use in any political subdivision or
 63 municipality in this state of machines and equipment and parts
 64 and accessories therefor used in providing two-way
 65 telecommunications services to the public for hire by the use of
 66 a telecommunications facility, as defined in s. 364.02(15), and
 67 for which a certificate is required under chapter 364, which
 68 facility is owned and operated by any county, municipality, or
 69 other political subdivision of the state. Any immunity of any
 70 political subdivision of the state or other entity of local
 71 government from taxation of the property used to provide
 72 telecommunication services that is taxed as a result of this
 73 section is hereby waived. However, the exemption provided in
 74 this subsection includes transactions taxable under this chapter
 75 which are for use by the operator of a public-use airport, as
 76 defined in s. 332.004, in providing such telecommunications
 77 services for the airport or its tenants, concessionaires, or
 78 licensees, or which are for use by a public hospital for the
 79 provision of such telecommunications services.

80 (18) EXEMPTIONS; PUBLIC PREKINDERGARTEN AND ELEMENTARY
 81 SCHOOL CONSTRUCTION CONTRACTOR PURCHASES.--

82 (a) Sales of tangible personal property made to
 83 contractors employed directly by or as agents of the United
 84 States Government, a state, a county, a municipality, or a

85 political subdivision of a state for public prekindergarten or
86 elementary school construction are exempt if all of the
87 following conditions are met:

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

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

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

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

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

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

HB 689

2006

113 elementary school project and names the contractor or
114 contractors engaged to perform work on the identified project
115 who have been authorized to make exempt purchases of materials
116 for the project.

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

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

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

139 a. A purchase order from the contractor specifically
140 identifying, by description and quantity, the tangible personal

HB 689

2006

141 property being purchased for incorporation by the contractor
142 into a specifically named public prekindergarten or elementary
143 school project; or

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

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

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

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

HB 689

2006

169 (b)1. The seller shall maintain in its records the
170 certificate, statements, and other records described in
171 paragraph (a) to document the exempt status of any sale for the
172 period of time during which the department may conduct an audit
173 of the seller's books and records. A dealer may, through the
174 informal protest provided for in s. 213.21 and the rules of the
175 department, provide the department with evidence of the exempt
176 status of a sale. A consumer's certificate of exemption executed
177 by a governmental entity or political subdivision that was
178 registered with the department at the time of sale, a statement
179 of the governmental entity or political subdivision as described
180 in sub-subparagraph (a)4.b. that had been issued and signed
181 before or on the date of the sale for which exemption was
182 claimed, and a purchasing contractor's statement as described in
183 sub-subparagraph (a)4.c. from a contractor that could have
184 issued such statement at the time of the sale shall be accepted
185 by the department when submitted during the protest period but
186 may not be accepted in any proceeding under chapter 120 or any
187 circuit court action instituted under chapter 72. A purchase
188 does not qualify for exemption under this subsection if a
189 contractor made the purchase before the date on which a
190 governmental entity or political subdivision has issued a signed
191 and dated statement authorizing that contractor to make exempt
192 purchases for a specified public prekindergarten or elementary
193 school project.

194 2. A contractor that claims an exemption under this
195 subsection shall maintain records to establish that the
196 materials purchased were actually incorporated into the public

HB 689

2006

197 prekindergarten or elementary school project described in the
198 contractor's statement. The contractor shall accrue and remit
199 use tax on any items purchased as exempt under this subsection
200 that are not incorporated into the public prekindergarten or
201 elementary school project, unless such items are transferred to
202 the governmental entity or political subdivision or returned to
203 the seller for a credit to the contractor's account. The
204 contractor shall maintain records to document any such transfers
205 or returns.

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

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