

By Senator Bennett

21-676-07

See HB 89

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A bill to be entitled

An act relating to public school construction sales tax relief; amending s. 212.08, F.S.; exempting tangible personal property sold to certain contractors for inclusion in prekindergarten through grade 12 school construction; providing documentation and recordkeeping requirements; providing 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 (19) 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. Unless the conditions specified in subsection (19) are met, this exemption shall not inure to any transaction otherwise taxable under this chapter when payment is made by a government employee by any means, including, but not limited to, cash, check, or credit card when that employee is

1 | subsequently reimbursed by the governmental entity. This  
2 | exemption does not include sales of tangible personal property  
3 | made to contractors employed either directly or as agents of  
4 | any such government or political subdivision thereof when such  
5 | tangible personal property goes into or becomes a part of  
6 | public works owned by such government or political  
7 | subdivision. A determination whether a particular transaction  
8 | is properly characterized as an exempt sale to a government  
9 | entity or a taxable sale to a contractor shall be based on the  
10 | substance of the transaction rather than the form in which the  
11 | transaction is cast. The department shall adopt rules that  
12 | give special consideration to factors that govern the status  
13 | of the tangible personal property before its affixation to  
14 | real property. In developing these rules, assumption of the  
15 | risk of damage or loss is of paramount consideration in the  
16 | determination. This exemption does not include sales, rental,  
17 | use, consumption, or storage for use in any political  
18 | subdivision or municipality in this state of machines and  
19 | equipment and parts and accessories therefor used in the  
20 | generation, transmission, or distribution of electrical energy  
21 | by systems owned and operated by a political subdivision in  
22 | this state for transmission or distribution expansion.  
23 | Likewise exempt are charges for services rendered by radio and  
24 | television stations, including line charges, talent fees, or  
25 | license fees and charges for films, videotapes, and  
26 | transcriptions used in producing radio or television  
27 | broadcasts. The exemption provided in this subsection does not  
28 | include sales, rental, use, consumption, or storage for use in  
29 | any political subdivision or municipality in this state of  
30 | machines and equipment and parts and accessories therefor used  
31 | in providing two-way telecommunications services to the public

1 for hire by the use of a telecommunications facility, as  
2 defined in s. 364.02(15), and for which a certificate is  
3 required under chapter 364, which facility is owned and  
4 operated by any county, municipality, or other political  
5 subdivision of the state. Any immunity of any political  
6 subdivision of the state or other entity of local government  
7 from taxation of the property used to provide  
8 telecommunication services that is taxed as a result of this  
9 section is hereby waived. However, the exemption provided in  
10 this subsection includes transactions taxable under this  
11 chapter which are for use by the operator of a public-use  
12 airport, as defined in s. 332.004, in providing such  
13 telecommunications services for the airport or its tenants,  
14 concessionaires, or licensees, or which are for use by a  
15 public hospital for the provision of such telecommunications  
16 services.

17 (19) EXEMPTIONS; PUBLIC PREKINDERGARTEN THROUGH GRADE  
18 12 SCHOOL CONSTRUCTION CONTRACTOR PURCHASES.--

19 (a) Sales of tangible personal property made to  
20 contractors employed directly by or as agents of the United  
21 States Government, a state, a county, a municipality, or a  
22 political subdivision of a state for public prekindergarten  
23 through grade 12 school construction are exempt if all of the  
24 following conditions are met:

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

28 2. The tangible personal property purchased by the  
29 contractor will go into or become part of a public  
30 prekindergarten through grade 12 school owned by the  
31 governmental entity or political subdivision. Tangible

1 personal property purchased and used by a contractor in the  
2 course of performing a contract which does not become part of  
3 the public prekindergarten through grade 12 school is not  
4 exempt under this subsection.

5 3. The governmental entity or political subdivision  
6 bears the economic burden of the cost of the tangible personal  
7 property, through direct reimbursement of the cost to the  
8 contractor under the contract or inclusion of the cost in the  
9 contractor's price for performance of the contract.

10 4. The governmental entity or political subdivision,  
11 general contractor, or a subcontractor presents to the seller  
12 before or at the time of a purchase:

13 a. A copy of a current, valid Florida consumer's  
14 certificate of exemption held by the governmental entity or  
15 political subdivision.

16 b. A signed and dated statement of an officer or  
17 authorized employee of the governmental entity or political  
18 subdivision that identifies a specific public prekindergarten  
19 through grade 12 school project and names the contractor or  
20 contractors engaged to perform work on the identified project  
21 who have been authorized to make exempt purchases of materials  
22 for the project.

23 c. A signed and dated statement of the purchasing  
24 contractor certifying that all purchases made by that  
25 contractor and identified at the time of purchase as property  
26 that will go into or become a part of the public  
27 prekindergarten through grade 12 school project specified in  
28 the statement of the governmental entity or political  
29 subdivision will be for incorporation into that public  
30 prekindergarten through grade 12 school.

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1 A seller may rely on a single copy of the governmental  
2 entity's or political subdivision's consumer's certificate of  
3 exemption and a single signed and dated statement from the  
4 governmental entity or political subdivision to make sales to  
5 any contractor named on that statement if the other  
6 certification and recordkeeping requirements of this  
7 subsection have also been satisfied. A seller may rely on a  
8 single signed statement of a purchasing contractor to make  
9 sales to that contractor for the public prekindergarten  
10 through grade 12 school project specified in that statement if  
11 the other certification and recordkeeping requirements of this  
12 subsection have also been satisfied.

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

15 a. A purchase order from the contractor specifically  
16 identifying, by description and quantity, the tangible  
17 personal property being purchased for incorporation by the  
18 contractor into a specifically named public prekindergarten  
19 through grade 12 school project; or

20 b. Electronic or other records of the seller that  
21 establish that the purchased tangible personal property,  
22 identified by description and quantity, was charged by a  
23 contractor who has provided a statement as described in  
24 subparagraph 4. to an account to which only purchases for the  
25 public prekindergarten through grade 12 school project  
26 specified in that statement are charged.

27 6. The statements of the governmental entity or  
28 political subdivision and of the purchasing contractor  
29 described in this paragraph must be dated and contain the  
30 following printed or typed declaration at the end of the  
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1 statement and immediately above the signature of the public  
2 officer, employee, or contractor:

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4 "Under penalties of perjury as provided in s.  
5 92.525, Florida Statutes, I declare that I have  
6 read the foregoing statement and that the facts  
7 stated in it are true."

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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 shall 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. that had been issued  
28 and signed before 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

1 shall be accepted by the department when submitted during the  
2 protest period but may not be accepted in any proceeding under  
3 chapter 120 or any circuit court action instituted under  
4 chapter 72. A purchase does not qualify for exemption under  
5 this subsection if a contractor made the purchase before the  
6 date on which a governmental entity or political subdivision  
7 has issued a signed and dated statement authorizing that  
8 contractor to make exempt purchases for a specified public  
9 prekindergarten through grade 12 school project.

10 2. A contractor that claims an exemption under this  
11 subsection shall maintain records to establish that the  
12 materials purchased were actually incorporated into the public  
13 prekindergarten through grade 12 school project described in  
14 the contractor's statement. The contractor shall accrue and  
15 remit use tax on any items purchased as exempt under this  
16 subsection that are not incorporated into the public  
17 prekindergarten through grade 12 school project, unless such  
18 items are transferred to the governmental entity or political  
19 subdivision or returned to the seller for a credit to the  
20 contractor's account. The contractor shall maintain records to  
21 document any 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, in addition to  
26 being liable for the payment of the tax due on such materials,  
27 is subject to the penalties provided in s. 212.085.

28 Section 2. This act shall take effect January 1, 2008.  
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