

Amendment No.

CHAMBER ACTION

Senate

House

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Representative Bogdanoff offered the following:

**Amendment (with title amendment)**

Between lines 688 and 689, insert:

Section 8. (1) Effective January 2, 2011, subsection (6) of section 212.08, Florida Statutes, is amended 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.—

(a) 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

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

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

66 (b) The exemption provided under this subsection does not  
67 include sales of tangible personal property made to contractors  
68 employed directly to or as agents of any such government or  
69 political subdivision when such tangible personal property goes  
70 into or becomes a part of public works owned by such government  
71 or political subdivision. A determination of whether a  
72 particular transaction is properly characterized as an exempt

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73 sale to a government entity or a taxable sale to a contractor  
74 shall be based upon the substance of the transaction rather than  
75 the form in which the transaction is cast. However, for sales of  
76 tangible personal property that go into or become a part of  
77 public works owned by a governmental entity, other than the  
78 Federal Government, a governmental entity claiming the exemption  
79 provided under this subsection shall certify to the dealer and  
80 the contractor the entity's claim to the exemption by providing  
81 the dealer and the contractor a certificate of entitlement to  
82 the exemption for such sales. If the department later determines  
83 that such sales, in which the governmental entity provided the  
84 dealer and the contractor with a certificate of entitlement to  
85 the exemption, were not exempt sales to the governmental entity,  
86 the governmental entity shall be liable for any tax, penalty,  
87 and interest determined to be owed on such transactions.

88 Possession by a dealer or contractor of a certificate of  
89 entitlement to the exemption from the governmental entity  
90 relieves the dealer from the responsibility of collecting tax on  
91 the sale and the contractor for any liability for tax, penalty,  
92 or interest related to the sale, and the department shall look  
93 solely to the governmental entity for recovery of tax, penalty,  
94 and interest if the department determines that the transaction  
95 was not an exempt sale to the governmental entity. The  
96 governmental entity may not transfer liability for such tax,  
97 penalty, and interest to another party by contract or agreement.

98 (c) The department shall adopt rules for determining  
99 whether a particular transaction is properly characterized as an  
100 exempt sale to a governmental entity or a taxable sale to a

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101 contractor which give special consideration to factors that  
 102 govern the status of the tangible personal property before being  
 103 affixed to real property. In developing such rules, assumption  
 104 of the risk of damage or loss is of paramount consideration in  
 105 the determination. The department shall also adopt, by rule, a  
 106 certificate of entitlement to exemption for use as provided in  
 107 paragraph (b). The certificate shall require the governmental  
 108 entity to affirm that it will comply with the requirements of  
 109 this subsection and the rules adopted under paragraph (b) in  
 110 order to qualify for the exemption and that it acknowledges its  
 111 liability for any tax, penalty, or interest later determined by  
 112 the department to be owed on such transactions.

113 (2) The Department of Revenue may, and all conditions are  
 114 deemed met to, adopt emergency rules under ss. 120.536(1) and  
 115 120.54(4), Florida Statutes, to implement the amendment to s.  
 116 212.08(6), Florida Statutes, made by this section. The emergency  
 117 rules shall remain in effect for 6 months after adoption and may  
 118 be renewed during the pendency of procedures to adopt rules  
 119 addressing the subject of the emergency rules.

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123 **T I T L E A M E N D M E N T**

124 Between lines 34 and 35, insert:  
 125 amending s. 212.08, F.S.; revising provisions excluding certain  
 126 sales of tangible personal property to contractors from  
 127 application of an exemption for sales made to governmental  
 128 entities under certain circumstances; specifying additional  
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129 requirements, procedures, and limitations; requiring the  
130 Department of Revenue to adopt rules for purposes of determining  
131 eligibility for the exemption and providing for a certificate of  
132 entitlement to the exemption; specifying certification  
133 requirements; authorizing the department to adopt emergency  
134 rules; providing for time of effect of emergency rules;