

By Senator Young

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1 A bill to be entitled
2 An act relating to the sales tax exemption for
3 political subdivisions; amending s. 212.08, F.S.;
4 conforming a provision to changes made by the act;
5 providing that for sales of tangible personal property
6 that will go into or become a part of public works
7 owned by certain governmental entities, the
8 governmental entity may authorize contractors or
9 subcontractors to utilize the governmental entity's
10 certificate of entitlement to the exemption for the
11 direct purchase of the tangible personal property;
12 requiring such governmental entities to issue a letter
13 of authorization to the contractor or subcontractor;
14 specifying requirements for such letters; providing
15 construction relating to a certain risk of damage or
16 loss; providing an effective date.

17
18 Be It Enacted by the Legislature of the State of Florida:

19
20 Section 1. Paragraphs (b) and (c) of subsection (6) of
21 section 212.08, Florida Statutes, are amended, and paragraph (a)
22 of that subsection is republished, to read:

23 212.08 Sales, rental, use, consumption, distribution, and
24 storage tax; specified exemptions.—The sale at retail, the
25 rental, the use, the consumption, the distribution, and the
26 storage to be used or consumed in this state of the following
27 are hereby specifically exempt from the tax imposed by this
28 chapter.

29 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—

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30 (a) There are also exempt from the tax imposed by this
31 chapter sales made to the United States Government, a state, or
32 any county, municipality, or political subdivision of a state
33 when payment is made directly to the dealer by the governmental
34 entity. This exemption shall not inure to any transaction
35 otherwise taxable under this chapter when payment is made by a
36 government employee by any means, including, but not limited to,
37 cash, check, or credit card when that employee is subsequently
38 reimbursed by the governmental entity. This exemption does not
39 include sales, rental, use, consumption, or storage for use in
40 any political subdivision or municipality in this state of
41 machines and equipment and parts and accessories therefor used
42 in the generation, transmission, or distribution of electrical
43 energy by systems owned and operated by a political subdivision
44 in this state for transmission or distribution expansion.
45 Likewise exempt are charges for services rendered by radio and
46 television stations, including line charges, talent fees, or
47 license fees and charges for films, videotapes, and
48 transcriptions used in producing radio or television broadcasts.
49 The exemption provided in this subsection does not include
50 sales, rental, use, consumption, or storage for use in any
51 political subdivision or municipality in this state of machines
52 and equipment and parts and accessories therefor used in
53 providing two-way telecommunications services to the public for
54 hire by the use of a telecommunications facility, as defined in
55 s. 364.02(14), and for which a certificate is required under
56 chapter 364, which facility is owned and operated by any county,
57 municipality, or other political subdivision of the state. Any
58 immunity of any political subdivision of the state or other

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59 entity of local government from taxation of the property used to
60 provide telecommunication services that is taxed as a result of
61 this section is hereby waived. However, the exemption provided
62 in this subsection includes transactions taxable under this
63 chapter which are for use by the operator of a public-use
64 airport, as defined in s. 332.004, in providing such
65 telecommunications services for the airport or its tenants,
66 concessionaires, or licensees, or which are for use by a public
67 hospital for the provision of such telecommunications services.

68 (b) Except as provided in this paragraph, the exemption
69 provided under this subsection does not include sales of
70 tangible personal property made to contractors employed directly
71 to or as agents of any such government or political subdivision
72 when such tangible personal property goes into or becomes a part
73 of public works owned by such government or political
74 subdivision. A determination of whether a particular transaction
75 is properly characterized as an exempt sale to a government
76 entity or a taxable sale to a contractor must ~~shall~~ be based
77 upon the substance of the transaction rather than the form in
78 which the transaction is cast. However, for sales of tangible
79 personal property that goes ~~go~~ into or becomes ~~become~~ a part of
80 public works owned by a governmental entity, other than the
81 Federal Government, a governmental entity claiming the exemption
82 provided under this subsection shall certify to the dealer and
83 the contractor the entity's claim to the exemption by providing
84 the dealer and the contractor a certificate of entitlement to
85 the exemption for such sales. A governmental entity may
86 authorize the contractor or subcontractor to utilize the
87 governmental entity's certificate of entitlement for the direct

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88 purchase of tangible personal property that will go into or
89 become a part of the public works owned by the governmental
90 entity. A governmental entity electing to use such option must
91 issue a letter of authorization to the contractor or
92 subcontractor specifying the circumstances under which the
93 contractor or subcontractor may utilize the governmental
94 entity's certificate of entitlement for purchasing. The
95 authorization letter must include all of the following
96 information:

97 1. The project title.

98 2. The name of the contractor or subcontractor authorized
99 to utilize the certificate of entitlement.

100 3. The name of the governmental entity issuing the
101 authorization letter.

102 4. A list of the materials, equipment, furnishings, and
103 fixtures approved for purchase.

104
105 If the department later determines that such sales, in which the
106 governmental entity provided the dealer and the contractor with
107 a certificate of entitlement to the exemption, were not exempt
108 sales to the governmental entity, the governmental entity shall
109 be liable for any tax, penalty, and interest determined to be
110 owed on such transactions. Possession by a dealer or contractor
111 of a certificate of entitlement to the exemption from the
112 governmental entity relieves the dealer from the responsibility
113 of collecting tax on the sale and the contractor for any
114 liability for tax, penalty, or interest related to the sale, and
115 the department shall look solely to the governmental entity for
116 recovery of tax, penalty, and interest if the department

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117 determines that the transaction was not an exempt sale to the
118 governmental entity. The governmental entity may not transfer
119 liability for such tax, penalty, and interest to another party
120 by contract or agreement.

121 (c) The department shall adopt rules for determining
122 whether a particular transaction is properly characterized as an
123 exempt sale to a governmental entity or a taxable sale to a
124 contractor, which give special consideration to factors that
125 govern the status of the tangible personal property before being
126 affixed to real property. In developing such rules, assumption
127 of the risk of damage or loss is of paramount consideration in
128 the determination. In instances where the governmental entity
129 has authorized the contractor or subcontractor to utilize the
130 governmental entity's certificate of exemption for direct
131 purchase of tangible personal property that will go into or
132 become a part of the public works owned by the governmental
133 entity, the risk of damage or loss is dictated by the terms of
134 the contract. The department shall also adopt, by rule, a
135 certificate of entitlement to exemption for use as provided in
136 paragraph (b). The certificate shall require the governmental
137 entity to affirm that it will comply with the requirements of
138 this subsection and the rules adopted under paragraph (b) in
139 order to qualify for the exemption and that it acknowledges its
140 liability for any tax, penalty, or interest later determined by
141 the department to be owed on such transactions.

142 Section 2. This act shall take effect July 1, 2018.