

HB 589

2022

1 A bill to be entitled
2 An act relating to sales tax exemptions for public
3 works; amending s. 212.08, F.S.; providing instances
4 when sales of certain tangible personal property to
5 contractors are not exempt from sales and use tax;
6 prohibiting certain nonprofit entities that used a
7 sales tax exemption illegally from transferring
8 liability for the tax, penalty, or interest to another
9 party; requiring the Department of Revenue to adopt
10 rules prohibiting certain parties that receive a sales
11 tax exemption from assigning responsibility related to
12 tangible personal property to other parties; requiring
13 the department to establish by rule a process to
14 suspend a public entity's ability to use a tax
15 exemption if certain conditions are met; amending s.
16 212.15, F.S.; providing an exception for when certain
17 taxes are considered state funds; providing an
18 effective date.

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20 Be It Enacted by the Legislature of the State of Florida:
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22 Section 1. Paragraph (d) of subsection (6) of section
23 212.08, Florida Statutes, is redesignated as paragraph (e),
24 paragraphs (b) and (c) are amended, and a new paragraph (d) is
25 added to that subsection, to read:

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

32 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS; ELIGIBLE NONPROFIT
33 ENTITIES.—

34 (b) The exemption provided under this subsection does not
35 include sales of tangible personal property made to contractors
36 employed directly to or as agents of any such government or
37 political subdivision if the contractor is responsible for
38 purchasing, maintaining, or paying for the tangible personal
39 property and the ~~when such~~ tangible personal property goes into
40 or becomes a part of public works owned by such government or
41 political subdivision. A determination of 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 upon the substance of the transaction rather than the form
45 in which the transaction is cast. However, for sales of tangible
46 personal property that go into or become a part of public works
47 owned by a governmental entity, other than the Federal
48 Government, a governmental entity claiming the exemption
49 provided under this subsection shall certify to the dealer and
50 the contractor the entity's claim to the exemption by providing

51 the dealer and the contractor a certificate of entitlement to
52 the exemption for such sales. If the department later determines
53 that such sales, in which the governmental entity provided the
54 dealer and the contractor with a certificate of entitlement to
55 the exemption, were not exempt sales to the governmental entity,
56 the governmental entity shall be liable for any tax, penalty,
57 and interest determined to be owed on such transactions.
58 Possession by a dealer or contractor of a certificate of
59 entitlement to the exemption from the governmental entity
60 relieves the dealer from the responsibility of collecting tax on
61 the sale and the contractor for any liability for tax, penalty,
62 or interest related to the sale, and the department shall look
63 solely to the governmental entity for recovery of tax, penalty,
64 and interest if the department determines that the transaction
65 was not an exempt sale to the governmental entity. The
66 governmental entity or other eligible nonprofit entity using a
67 sales tax exemption for any construction-related activities
68 covered in this chapter may not transfer liability for such tax,
69 penalty, and interest to another party by contract or agreement.
70 (c) The department shall adopt rules for determining
71 whether a particular transaction is properly characterized as an
72 exempt sale to a governmental entity or other eligible nonprofit
73 entity or a taxable sale to a contractor which give special
74 consideration to factors that govern the status of the tangible
75 personal property before being affixed to real property. In

76 | developing such rules, assumption of the risk of damage or loss
77 | is of paramount consideration in the determination. The
78 | department shall clarify that a government, political
79 | subdivision, religious institution, veterans' organization,
80 | school, college, university, or other eligible nonprofit entity
81 | claiming the exemption may not assign any responsibility,
82 | through an agreement, oral or written, for the ordering,
83 | purchasing, payment, or maintenance of the tangible personal
84 | property, material, or supplies on behalf of that nonprofit
85 | entity. The department shall also adopt, by rule, a certificate
86 | of entitlement to exemption for use as provided in paragraph
87 | (b). The certificate shall require the governmental entity to
88 | affirm that it will comply with the requirements of this
89 | subsection and the rules adopted under paragraph (b) in order to
90 | qualify for the exemption and that it acknowledges its liability
91 | for any tax, penalty, or interest later determined by the
92 | department to be owed on such transactions.

93 | (d) The department shall establish by rule a process by
94 | which the department may suspend a public entity's ability to
95 | use the tax exemption if the entity violates provisions of this
96 | section or rules adopted thereunder.

97 | Section 2. Subsection (1) of section 212.15, Florida
98 | Statutes, is amended to read:

99 | 212.15 Taxes declared state funds; penalties for failure
100 | to remit taxes; due and delinquent dates; judicial review.—

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101 (1) The taxes imposed by this chapter shall be considered
102 state funds at the moment of collection, except as provided in
103 s. 212.06(5)(a)2.e., or unless an exemption is claimed under s.
104 212.08(6), ~~become state funds at the moment of collection~~ and
105 shall for each month be due to the department on the first day
106 of the succeeding month and be delinquent on the 21st day of
107 such month. All returns postmarked after the 20th day of such
108 month are delinquent.

109 Section 3. This act shall take effect July 1, 2022.