

By Senator Hooper

16-01093-22

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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 for determining the propriety of exempt sales to  
11      eligible nonprofit entities; requiring the department  
12      to adopt rules prohibiting certain entities that  
13      receive a sales tax exemption from assigning  
14      responsibility related to tangible personal property  
15      to other entities; requiring the department to  
16      establish by rule a process to suspend a public  
17      entity's ability to use a tax exemption if certain  
18      conditions are met; amending s. 212.15, F.S.;  
19      providing an exception for when certain taxes are  
20      considered state funds; providing an effective date.

21  
22 Be It Enacted by the Legislature of the State of Florida:

23  
24       Section 1. Present paragraph (d) of subsection (6) of  
25       section 212.08, Florida Statutes, is redesignated as paragraph  
26       (e), a new paragraph (d) is added to that subsection, and  
27       paragraphs (b) and (c) of that subsection are amended, to read:  
28       212.08 Sales, rental, use, consumption, distribution, and  
29       storage tax; specified exemptions.—The sale at retail, the

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30 rental, the use, the consumption, the distribution, and the  
31 storage to be used or consumed in this state of the following  
32 are hereby specifically exempt from the tax imposed by this  
33 chapter.

34 (6) EXEMPTIONS; POLITICAL SUBDIVISIONS; ELIGIBLE NONPROFIT  
35 ENTITIES.—

36 (b) The exemption provided under this subsection does not  
37 include sales of tangible personal property made to contractors  
38 employed directly to or as agents of any such government or  
39 political subdivision if the contractor is responsible for  
40 purchasing, maintaining, or paying for the tangible personal  
41 property and the ~~when such~~ tangible personal property goes into  
42 or becomes a part of public works owned by such government or  
43 political subdivision. A determination of whether a particular  
44 transaction is properly characterized as an exempt sale to a  
45 government entity or a taxable sale to a contractor shall be  
46 based upon the substance of the transaction rather than the form  
47 in which the transaction is cast. However, for sales of tangible  
48 personal property that go into or become a part of public works  
49 owned by a governmental entity, other than the Federal  
50 Government, a governmental entity claiming the exemption  
51 provided under this subsection shall certify to the dealer and  
52 the contractor the entity's claim to the exemption by providing  
53 the dealer and the contractor a certificate of entitlement to  
54 the exemption for such sales. If the department later determines  
55 that such sales, in which the governmental entity provided the  
56 dealer and the contractor with a certificate of entitlement to  
57 the exemption, were not exempt sales to the governmental entity,  
58 the governmental entity shall be liable for any tax, penalty,

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59 and interest determined to be owed on such transactions.  
60 Possession by a dealer or contractor of a certificate of  
61 entitlement to the exemption from the governmental entity  
62 relieves the dealer from the responsibility of collecting tax on  
63 the sale and the contractor for any liability for tax, penalty,  
64 or interest related to the sale, and the department shall look  
65 solely to the governmental entity for recovery of tax, penalty,  
66 and interest if the department determines that the transaction  
67 was not an exempt sale to the governmental entity. The  
68 governmental entity or other eligible nonprofit entity using a  
69 sales tax exemption for any construction-related activities  
70 covered in this chapter may not transfer liability for such tax,  
71 penalty, and interest to another party by contract or agreement.

72 (c) The department shall adopt rules for determining  
73 whether a particular transaction is properly characterized as an  
74 exempt sale to a governmental entity or other eligible nonprofit  
75 entity or a taxable sale to a contractor which give special  
76 consideration to factors that govern the status of the tangible  
77 personal property before being affixed to real property. In  
78 developing such rules, assumption of the risk of damage or loss  
79 is of paramount consideration in the determination. The  
80 department shall clarify that a government, political  
81 subdivision, religious institution, veterans' organization,  
82 school, college, university, or other eligible nonprofit entity  
83 claiming the exemption may not assign any responsibility through  
84 an agreement, oral or written, for the ordering, purchasing,  
85 payment, or maintenance of the tangible personal property,  
86 material, or supplies on behalf of that nonprofit entity. The  
87 department shall also adopt, by rule, a certificate of

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88 entitlement to exemption for use as provided in paragraph (b).  
89 The certificate shall require the governmental entity to affirm  
90 that it will comply with the requirements of this subsection and  
91 the rules adopted under paragraph (b) in order to qualify for  
92 the exemption and that it acknowledges its liability for any  
93 tax, penalty, or interest later determined by the department to  
94 be owed on such transactions.

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

99 Section 2. Subsection (1) of section 212.15, Florida  
100 Statutes, is amended to read:

101 212.15 Taxes declared state funds; penalties for failure to  
102 remit taxes; due and delinquent dates; judicial review.—

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

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