

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.

²(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 when payment is made directly to the dealer by the governmental entity. 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 subsequently reimbursed by the governmental entity. This exemption does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion. Likewise exempt are charges for services rendered by radio and television stations, including line charges, talent fees, or license fees and charges for films, videotapes, and transcriptions used in producing radio or television broadcasts. The exemption provided in this subsection does not include sales, rental, use, consumption, or storage for use in any political subdivision or municipality in this state of machines and equipment and parts and accessories therefor used in providing two-way telecommunications services to the public for hire by the use of a telecommunications facility, as defined in s. 364.02(14), and for which a certificate is required under chapter 364, which facility is owned and operated by any county, municipality, or other political subdivision of the state. Any immunity of any political subdivision of the state or other entity of local government from taxation of the property used to provide telecommunication services that is taxed as a result of this section is hereby waived. However, the exemption provided in this subsection includes transactions taxable under this chapter which are for use by the operator of a public-use airport, as defined in s. 332.004, in providing such telecommunications services for the airport or its tenants, concessionaires, or licensees, or which are for use by a public hospital for the provision of such telecommunications services.

(b) The exemption provided under this subsection does not include sales of tangible personal property made to contractors employed directly to or as agents of any such government or political subdivision when such tangible personal property goes into or becomes a part of public works owned by such government or political subdivision. A determination of whether a particular transaction is properly characterized as an exempt sale to a government entity or a taxable sale to a contractor shall be based upon the substance of the transaction rather than the form in which the transaction is cast. However, for sales of tangible personal property that go into or become a part of public works owned

by a governmental entity, other than the Federal Government, a governmental entity claiming the exemption provided under this subsection shall certify to the dealer and the contractor the entity's claim to the exemption by providing the dealer and the contractor a certificate of entitlement to the exemption for such sales. If the department later determines that such sales, in which the governmental entity provided the dealer and the contractor with a certificate of entitlement to the exemption, were not exempt sales to the governmental entity, the governmental entity shall be liable for any tax, penalty, and interest determined to be owed on such transactions. Possession by a dealer or contractor of a certificate of entitlement to the exemption from the governmental entity relieves the dealer from the responsibility of collecting tax on the sale and the contractor for any liability for tax, penalty, or interest related to the sale, and the department shall look solely to the governmental entity for recovery of tax, penalty, and interest if the department determines that the transaction was not an exempt sale to the governmental entity. The governmental entity may not transfer liability for such tax, penalty, and interest to another party by contract or agreement.

(c) The department shall adopt rules for determining whether a particular transaction is properly characterized as an exempt sale to a governmental entity or a taxable sale to a contractor which give special consideration to factors that govern the status of the tangible personal property before being affixed to real property. In developing such rules, assumption of the risk of damage or loss is of paramount consideration in the determination. The department shall also adopt, by rule, a certificate of entitlement to exemption for use as provided in paragraph (b). The certificate shall require the governmental entity to affirm that it will comply with the requirements of this subsection and the rules adopted under paragraph (b) in order to qualify for the exemption and that it acknowledges its liability for any tax, penalty, or interest later determined by the department to be owed on such transactions.

⁷Note.—Section 8(2), ch. 2010-138, provides that “[t]he Department of Revenue may, and all conditions are deemed met to, adopt emergency rules under ss. 120.536(1) and 120.54(4), Florida Statutes, to implement the amendment to s. 212.08(6), Florida Statutes, made by this section. The emergency rules shall remain in effect for 6 months after adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.”