

Committee Substitute for Senate Bill No. 2028

An act relating to the tax on sales, use, and other transactions; amending s. 212.02, F.S.; providing that a sale for resale includes the sale of certain tangible personal property used or consumed by a government contractor in the performance of a contract with the United States Department of Defense or the National Aeronautics and Space Administration under certain conditions; providing legislative intent; amending s. 212.08, F.S.; providing an exemption for sales to or use by a government contractor of overhead materials used or consumed in the performance of such a contract under certain conditions; providing definitions; providing a schedule for implementing the exemption; providing legislative intent; providing an effective date.

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

Section 1. Paragraph (a) of subsection (14) and subsection (20) of section 212.02, Florida Statutes, 1998 Supplement, are amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(14)(a) “Retail sale” or a “sale at retail” means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and includes all such transactions that may be made in lieu of retail sales or sales at retail. A sale for resale includes a sale of qualifying property. As used in this paragraph, the term “qualifying property” means tangible personal property, other than electricity, which is used or consumed by a government contractor in the performance of a qualifying contract as defined in s. 212.06(17)(c), to the extent that the cost of the property is allocated or charged as a direct item of cost to such contract, title to which property vests in or passes to the government under the contract. The term “government contractor” includes prime contractors and subcontractors. As used in this paragraph, a cost is a “direct item of cost” if it is a “direct cost” as defined in 48 C.F.R. s. 9904.418-30(a)(2), or similar successor provisions, including costs identified specifically with a particular contract.

(20) “Use” means and includes the exercise of any right or power over tangible personal property incident to the ownership thereof, or interest therein, except that it does not include the sale at retail of that property in the regular course of business. The term “use” does not include the loan of an automobile by a motor vehicle dealer to a high school for use in its driver education and safety program. The term “use” does not include a contractor’s use of “qualifying property” as defined by paragraph (14)(a).

Section 2. It is the intent of the Legislature that the amendments to sections 212.02(14)(a) and (20), Florida Statutes, 1998 Supplement, made by

this act clarify and confirm existing law with respect to the tax imposed by chapter 212, Florida Statutes.

Section 3. Subsection (17) is added to section 212.08, Florida Statutes, 1998 Supplement, 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.

(17) EXEMPTIONS; CERTAIN GOVERNMENT CONTRACTORS.—

(a) Subject to paragraph (d), the tax imposed by this chapter does not apply to the sale to or use by a government contractor of overhead materials. The term “government contractor” includes prime contractors and subcontractors.

(b) As used in this subsection, the term “overhead materials” means all tangible personal property, other than qualifying property as defined in s. 212.02(14)(a) and electricity, which is used or consumed in the performance of a qualifying contract, title to which property vests in or passes to the government under the contract.

(c) As used in this subsection and in s. 212.02(14)(a), the term “qualifying contract” means a contract with the United States Department of Defense or the National Aeronautics and Space Administration, or a subcontract thereunder, but does not include a contract or subcontract for the repair, alteration, improvement, or construction of real property, except to the extent that purchases under such a contract would otherwise be exempt from the tax imposed by this chapter.

(d) The exemption provided in this subsection applies as follows:

1. Beginning July 1, 1999, the tax imposed by this chapter shall be applicable to 80 percent of the sales price or cost price of such overhead materials.

2. Beginning July 1, 2000, the tax imposed by this chapter shall be applicable to 60 percent of the sales price or cost price of such overhead materials.

3. Beginning July 1, 2001, the tax imposed by this chapter shall be applicable to 40 percent of the sales price or cost price of such overhead materials.

4. Beginning July 1, 2002, the tax imposed by this chapter shall be applicable to 20 percent of the sales price or cost price of such overhead materials.

5. Beginning July 1, 2003, the entire sales price or cost price of such overhead materials is exempt from the tax imposed by this chapter.

The exemption provided in this subsection does not apply to any part of the cost of overhead materials allocated to a contract that is not a qualifying contract.

(e) Possession by a seller of a resale certificate or direct-pay permit relieves the seller from the responsibility of collecting the tax, and the department shall look solely to the contractor for recovery of such tax if it determines that the contractor was not entitled to the exemption. The contractor shall self-accrue and remit any applicable sales or use tax due with respect to overhead materials and with respect to costs allocable to contracts that are not qualifying contracts. The department may amend its rules to reflect the use of resale certificates and direct-pay permits with respect to the exemption provided for in this subsection.

(f) This subsection is not an expression of legislative intent as to the applicability of any tax to any sale or use of overhead materials prior to July 1, 1999. In addition, this subsection does not imply that transactions or costs that are not described in this subsection are taxable.

Section 4. This act shall take effect July 1, 1999.

Approved by the Governor June 8, 1999.

Filed in Office Secretary of State June 8, 1999.