

# CHAPTER 99-238

## House Bill No. 561

An act relating to tax on sales, use, and other transactions; amending s. 212.031, F.S.; providing an exemption for the rental, lease, sublease, or license to use certain skyboxes or other box seats during specified activities under certain conditions; providing that no tax imposed on transactions so exempt and not actually paid or collected prior to the effective date of such exemption shall be due; amending s. 212.0602, F.S., which exempts the purchase or lease of materials, equipment, and other items by specified educational entities, institutions, or organizations under certain limited circumstances; expanding the exemption to include the license in or lease of real property by, and supporting operations of, such educational institutions; amending s. 212.08, F.S.; removing a restriction on the application of the exemption for veterans' organizations and their auxiliaries; revising the definition of "veterans' organizations"; including nonprofit corporations that provide consumer credit counseling in the definition of "charitable institutions" for purposes of the exemption granted to such institutions; providing an exemption for works of art purchased or imported for the purpose of donation to an educational institution; providing requirements with respect thereto; providing an exemption for sales or leases to certain organizations that are primarily funded by local governments and that encourage the use of certain locations as venues for sporting events; providing an exemption for sales or leases to nonprofit organizations the sole or primary function of which is to raise funds for or make grants to organizations currently holding a consumer's certificate of exemption issued by the Department of Revenue; providing for retroactive application; providing an exemption for sales or leases to nonprofit corporations the sole or primary function of which is to construct, maintain, or operate a water system; providing an exemption for sales or leases to library cooperatives certified under s. 257.41, F.S.; providing for retroactive application; amending s. 257.41, F.S.; requiring the Division of Library and Information Services of the Department of State to issue certificates to library cooperatives that are eligible to receive state moneys; providing effective dates.

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

Section 1. (1) Effective upon this act becoming a law, subsection (9) is added to section 212.031, Florida Statutes, 1998 Supplement, to read:

212.031 Lease or rental of or license in real property.—

(9) The rental, lease, sublease, or license for the use of a skybox, luxury box, or other box seats for use during a high school or college football game is exempt from the tax imposed by this section when the charge for such rental, lease, sublease, or license is imposed by a nonprofit sponsoring orga-

nization which is qualified as nonprofit pursuant to s. 501(c)(3) of the Internal Revenue Code.

(2) No tax imposed by chapter 212, Florida Statutes, on the transactions made exempt by the amendment to s. 212.031, Florida Statutes, 1998 Supplement, by this section, and not actually paid or collected by a nonprofit sponsoring organization prior to the effective date of this section, shall be due from that nonprofit sponsoring organization.

Section 2. Section 212.0602, Florida Statutes, is amended to read.

212.0602 Education; limited exemption.—To facilitate investment in education and job training, there is also exempt from the taxes levied under this chapter, subject to the provisions of this section, the purchase or lease of materials, equipment, and other items or the license in or lease of real property by any entity, institution, or organization that is primarily engaged in teaching students to perform any of the activities or services described in s. 212.031(1)(a)9., that conducts classes at a fixed location located in this state, that is licensed under chapter 246, and that has at least 500 enrolled students. Any entity, institution, or organization meeting the requirements of this section shall be deemed to qualify for the exemptions in ss. 212.031(1)(a)9. and 212.08(5)(f) and (12), and to qualify for an exemption for its purchase or lease of materials, equipment, and other items used for education or demonstration of the school's curriculum, including supporting operations. Nothing in this section shall preclude an entity described in this section from qualifying for any other exemption provided for in this chapter.

Section 3. Paragraphs (o), (dd), and (gg) of subsection (7) of section 212.08, Florida Statutes, 1998 Supplement, are amended, and paragraphs (zz), (aaa), and (bbb) are added to said subsection, 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.

(7) MISCELLANEOUS EXEMPTIONS.—

(o) Religious, charitable, scientific, educational, and veterans' institutions and organizations.—

1. There are exempt from the tax imposed by this chapter transactions involving:

a. Sales or leases directly to churches or sales or leases of tangible personal property by churches;

b. Sales or leases to nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational institutions when used in carrying on their customary nonprofit religious, nonprofit charitable, nonprofit scientific, or nonprofit educational activities, including church cemeteries; and

~~c. Sales or leases to the state headquarters of qualified veterans' organizations and the state headquarters of their auxiliaries when used in carrying on their customary veterans' organization activities. If a qualified veterans' organization or its auxiliary does not maintain a permanent state headquarters, then transactions involving sales or leases to such organization and used to maintain the office of the highest ranking state official are exempt from the tax imposed by this chapter.~~

2. The provisions of this section authorizing exemptions from tax shall be strictly defined, limited, and applied in each category as follows:

a. "Religious institutions" means churches, synagogues, and established physical places for worship at which nonprofit religious services and activities are regularly conducted and carried on. The term "religious institutions" includes nonprofit corporations the sole purpose of which is to provide free transportation services to church members, their families, and other church attendees. The term "religious institutions" also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of religious organizations or members. The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which owns and operates a Florida television station, at least 90 percent of the programming of which station consists of programs of a religious nature, and the financial support for which, exclusive of receipts for broadcasting from other nonprofit organizations, is predominantly from contributions from the general public. The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which provides regular religious services to Florida state prisoners and which from its own established physical place of worship, operates a ministry providing worship and services of a charitable nature to the community on a weekly basis. The term "religious institutions" also includes any nonprofit corporation which is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, the primary activity of which is making and distributing audio recordings of religious scriptures and teachings to blind or visually impaired persons at no charge. The term "religious institutions" also includes any nonprofit corporation that is qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, the sole or primary function of which is to provide, upon invitation, nonprofit religious services, evangelistic services, religious education, administration assistance, or missionary assistance for a church, synagogue, or established physical place of worship at which nonprofit religious services and activities are regularly conducted.

b. "Charitable institutions" means only nonprofit corporations qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1954, as amended, and other nonprofit entities, the sole or primary function of which is to provide, or to raise funds for organizations which provide, one or more of the following services if a reasonable percentage of such service is provided free of charge, or at a substantially reduced cost, to persons, animals, or organizations that are unable to pay for such service:

- (I) Medical aid for the relief of disease, injury, or disability;
- (II) Regular provision of physical necessities such as food, clothing, or shelter;
- (III) Services for the prevention of or rehabilitation of persons from alcoholism or drug abuse; the prevention of suicide; or the alleviation of mental, physical, or sensory health problems;
- (IV) Social welfare services including adoption placement, child care, community care for the elderly, consumer credit counseling, and other social welfare services which clearly and substantially benefit a client population which is disadvantaged or suffers a hardship;
- (V) Medical research for the relief of disease, injury, or disability;
- (VI) Legal services; or
- (VII) Food, shelter, or medical care for animals or adoption services, cruelty investigations, or education programs concerning animals;

and the term includes groups providing volunteer staff to organizations designated as charitable institutions under this sub-subparagraph; nonprofit organizations the sole or primary purpose of which is to coordinate, network, or link other institutions designated as charitable institutions under this sub-subparagraph with those persons, animals, or organizations in need of their services; and nonprofit national, state, district, or other governing, coordinating, or administrative organizations the sole or primary purpose of which is to represent or regulate the customary activities of other institutions designated as charitable institutions under this sub-subparagraph. Notwithstanding any other requirement of this section, any blood bank that relies solely upon volunteer donations of blood and tissue, that is licensed under chapter 483, and that qualifies as tax exempt under s. 501(c)(3) of the Internal Revenue Code constitutes a charitable institution and is exempt from the tax imposed by this chapter. Sales to a health system foundation, qualified as nonprofit pursuant to s. 501(c)(3), Internal Revenue Code of 1986, as amended, which filed an application for exemption with the department prior to November 15, 1997, and which application is subsequently approved, shall be exempt as to any unpaid taxes on purchases made from November 14, 1990, to December 31, 1997.

c. "Scientific organizations" means scientific organizations which hold current exemptions from federal income tax under s. 501(c)(3) of the Internal Revenue Code and also means organizations the purpose of which is to protect air and water quality or the purpose of which is to protect wildlife and which hold current exemptions from the federal income tax under s. 501(c)(3) of the Internal Revenue Code.

d. "Educational institutions" means state tax-supported or parochial, church and nonprofit private schools, colleges, or universities which conduct regular classes and courses of study required for accreditation by, or membership in, the Southern Association of Colleges and Schools, the Department of Education, the Florida Council of Independent Schools, or the Flor-

ida Association of Christian Colleges and Schools, Inc., or nonprofit private schools which conduct regular classes and courses of study accepted for continuing education credit by a board of the Division of Medical Quality Assurance of the Department of Health or which conduct regular classes and courses of study accepted for continuing education credit by the American Medical Association. Nonprofit libraries, art galleries, performing arts centers that provide educational programs to school children, which programs involve performances or other educational activities at the performing arts center and serve a minimum of 50,000 school children a year, and museums open to the public are defined as educational institutions and are eligible for exemption. The term “educational institutions” includes private nonprofit organizations the purpose of which is to raise funds for schools teaching grades kindergarten through high school, colleges, and universities. The term “educational institutions” includes any nonprofit newspaper of free or paid circulation primarily on university or college campuses which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code, and any educational television or radio network or system established pursuant to s. 229.805 or s. 229.8051 and any nonprofit television or radio station which is a part of such network or system and which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code. The term “educational institutions” also includes state, district, or other governing or administrative offices the function of which is to assist or regulate the customary activities of educational organizations or members. The term “educational institutions” also includes a nonprofit educational cable consortium which holds a current exemption from federal income tax under s. 501(c)(3) of the Internal Revenue Code of 1986, as amended, whose primary purpose is the delivery of educational and instructional cable television programming and whose members are composed exclusively of educational organizations which hold a valid consumer certificate of exemption and which are either an educational institution as defined in this sub-subparagraph, or qualified as a nonprofit organization pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended.

e. “Veterans’ organizations” means nationally chartered or recognized veterans’ organizations, including, but not limited to, Florida chapters of the Paralyzed Veterans of America, Catholic War Veterans of the U.S.A., Jewish War Veterans of the U.S.A., and the Disabled American Veterans, Department of Florida, Inc., which hold current exemptions from federal income tax under s. 501(c)(3), (4), or (19) of the Internal Revenue Code.

(dd) Works of art.—

1. Also exempt are works of art sold to or used by an educational institution, as defined in sub-subparagraph (o)2.d.

2. This exemption also applies to the sale to or use in this state of any work of art by any person if it was purchased or imported exclusively for the purpose of being donated to any educational institution, or loaned to and made available for display by any educational institution, provided that the term of the loan agreement is for at least 10 years.

3. The exemption provided by this paragraph for donations is allowed only if the person who purchased the work of art transfers title to the

donated work of art to an educational institution. Such transfer of title shall be evidenced by an affidavit meeting requirements established by rule to document entitlement to the exemption. Nothing in this paragraph shall preclude a work of art donated to an educational institution from remaining in the possession of the donor or purchaser, as long as title to the work of art lies with the educational institution.

4.3- A work of art is presumed to have been purchased in or imported into this state exclusively for loan as provided in subparagraph 2., if it is so loaned or placed in storage in preparation for such a loan within 90 days after purchase or importation, whichever is later; but a work of art is not deemed to be placed in storage in preparation for loan for purposes of this exemption if it is displayed at any place other than an educational institution.

5.4- The exemptions provided by this paragraph are allowed only if the person who purchased the work of art gives to the vendor an affidavit meeting the requirements, established by rule, to document entitlement to the exemption. The person who purchased the work of art shall forward a copy of such affidavit to the Department of Revenue at the time it is issued to the vendor.

6.5- The exemption for loans provided by subparagraph 2. applies only for the period during which a work of art is in the possession of the educational institution or is in storage before transfer of possession to that institution; and when it ceases to be so possessed or held, tax based upon the sales price paid by the owner is payable, and the statute of limitations provided in s. 95.091 shall begin to run at that time. However, tax shall not become due if the work of art is donated to an educational institution after the loan ceases.

7. Any educational institution to which a work of art has been donated pursuant to this paragraph shall make available to the department the title to the work of art and any other relevant information. Any educational institution which has received a work of art on loan pursuant to this paragraph shall make available to the department information relating to the work of art. Any educational institution that transfers from its possession a work of art as defined by this paragraph which has been loaned to it must notify the Department of Revenue within 60 days after the transfer.

8.6- For purposes of the exemptions provided by this paragraph, the term "work of art" includes pictorial representations, sculpture, jewelry, antiques, stamp collections and coin collections, and other tangible personal property, the value of which is attributable predominantly to its artistic, historical, political, cultural, or social importance.

~~7. This paragraph is a remedial clarification of legislative intent and applies to all taxes that remain open to assessment or contest on July 1, 1992.~~

(gg) Athletic event sponsors.—There shall be exempt from the tax imposed by this chapter sales or leases to ~~those organizations that~~ which:

1.a. Are incorporated pursuant to chapter 617; ~~and~~

~~2.b.~~ Hold a current exemption from federal corporate income tax liability pursuant to s. 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

~~3.a.2.~~ Sponsor golf tournaments sanctioned by the PGA Tour, PGA of America, or the LPGA; or-

b. Are funded primarily by county or municipal governments and have as their primary purpose the encouragement and facilitation of the use of certain locations within this state as venues for sporting events.

(zz) Nonprofit organizations raising funds for or making grants to organizations holding consumer's certificate of exemption.—Sales or leases to an organization which holds current exemption from federal income tax pursuant to s. 501(c)(3) of the Internal Revenue Code, as amended, the sole or primary function of which is to raise funds for or make grants to another organization or organizations currently holding a consumer's certificate of exemption issued by the department are exempt from the tax imposed by this chapter.

(aaa) Nonprofit water systems.—Sales or leases to a not-for-profit corporation which holds a current exemption from federal income tax under s. 501(c)(12) of the Internal Revenue Code, as amended, are exempt from the tax imposed by this chapter if the sole or primary function of the corporation is to construct, maintain, or operate a water system in this state.

(bbb) Library cooperatives.—Sales or leases to library cooperatives certified under s. 257.41(2) are exempt from the tax imposed by this chapter.

Exemptions provided to any entity by this subsection shall not inure to any transaction otherwise taxable under this chapter when payment is made by a representative or employee of such entity by any means, including, but not limited to, cash, check, or credit card even when that representative or employee is subsequently reimbursed by such entity.

Section 4. (1) The exemption provided by paragraph (zz) of s. 212.08(7), Florida Statutes, 1998 Supplement, as created by this act, applies retroactively, except that all taxes that have been collected must be remitted, and taxes that have been remitted before July 1, 1999, on transactions that are subject to exemption under that paragraph are not subject to refund.

(2) The exemption provided by paragraph (bbb) of s. 212.08(7), Florida Statutes, 1998 Supplement, as created by this act, applies retroactively to July 1, 1997.

Section 5. Subsection (2) of section 257.41, Florida Statutes, is amended to read:

257.41 Library cooperatives; organization; receipt of state moneys.—

(2) The Division of Library and Information Services of the Department of State shall establish operating standards and rules under which a library

cooperative is eligible to receive state moneys. The division shall issue a certificate to each library cooperative that meets the standards and rules established under this subsection.

Section 6. Except as otherwise provided herein, this act shall take effect July 1, 1999.

Approved by the Governor June 4, 1999.

Filed in Office Secretary of State June 4, 1999.