

1                                   A bill to be entitled  
 2           An act relating to the direct purchase of tangible  
 3           personal property by contractors; amending s. 212.08,  
 4           F.S.; authorizing each governmental entity to allow  
 5           specified entities to use its certificate of  
 6           entitlement of exemption for certain tangible personal  
 7           property; providing procedures for allowing such use;  
 8           requiring the letter of authorization to specify  
 9           issues regarding risk of damage or loss of property;  
 10          providing an effective date.

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

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 14           Section 1. Paragraphs (b) and (c) of subsection (6) of  
 15           section 212.08, Florida Statutes, are amended to read:

16           212.08 Sales, rental, use, consumption, distribution, and  
 17           storage tax; specified exemptions.—The sale at retail, the  
 18           rental, the use, the consumption, the distribution, and the  
 19           storage to be used or consumed in this state of the following  
 20           are hereby specifically exempt from the tax imposed by this  
 21           chapter.

22           (6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—

23           (b) The exemption provided under this subsection does not  
 24           include sales of tangible personal property made to contractors  
 25           employed directly to or as agents of any such government or

26 | political subdivision when such tangible personal property goes  
27 | into or becomes a part of public works owned by such government  
28 | or political subdivision. A determination of whether a  
29 | particular transaction is properly characterized as an exempt  
30 | sale to a government entity or a taxable sale to a contractor  
31 | shall be based upon the substance of the transaction rather than  
32 | the form in which the transaction is cast. However, for sales of  
33 | tangible personal property that go into or become a part of  
34 | public works owned by a governmental entity, other than the  
35 | Federal Government, a governmental entity claiming the exemption  
36 | provided under this subsection shall certify to the dealer and  
37 | the contractor the entity's claim to the exemption by providing  
38 | the dealer and the contractor a certificate of entitlement to  
39 | the exemption for such sales. A governmental entity may  
40 | authorize the contractor or subcontractor to use the  
41 | governmental entity's certificate of entitlement for the direct  
42 | purchase of tangible personal property that will go into or  
43 | become a part of the public works owned by the governmental  
44 | entity. A governmental entity that uses this option must issue a  
45 | letter of authorization to the contractor or subcontractor  
46 | specifying the instances in which the contractor or  
47 | subcontractor may use the governmental entity's certificate of  
48 | entitlement to the exemption. If the department later determines  
49 | that such sales, in which the governmental entity provided the  
50 | dealer and the contractor with a certificate of entitlement to

51 the exemption, were not exempt sales to the governmental entity,  
52 the governmental entity shall be liable for any tax, penalty,  
53 and interest determined to be owed on such transactions.

54 Possession by a dealer or contractor of a certificate of  
55 entitlement to the exemption from the governmental entity  
56 relieves the dealer from the responsibility of collecting tax on  
57 the sale and the contractor for any liability for tax, penalty,  
58 or interest related to the sale, and the department shall look  
59 solely to the governmental entity for recovery of tax, penalty,  
60 and interest if the department determines that the transaction  
61 was not an exempt sale to the governmental entity. The  
62 governmental entity may not transfer liability for such tax,  
63 penalty, and interest to another party by contract or agreement.

64 (c) The department shall adopt rules for determining  
65 whether a particular transaction is properly characterized as an  
66 exempt sale to a governmental entity or a taxable sale to a  
67 contractor which give special consideration to factors that  
68 govern the status of the tangible personal property before being  
69 affixed to real property. In developing such rules, assumption  
70 of the risk of damage or loss is of paramount consideration in  
71 the determination. If the governmental entity has authorized a  
72 contractor or subcontractor to use the governmental entity's  
73 certificate of entitlement to the exemption as set forth in  
74 paragraph (b), the letter of authorization shall specify the  
75 entity that assumes the risk of damage or loss to such property.

HB 715

2018

76 | The department shall also adopt, by rule, a certificate of  
77 | entitlement to exemption for use as provided in paragraph (b).  
78 | The certificate shall require the governmental entity to affirm  
79 | that it will comply with the requirements of this subsection and  
80 | the rules adopted under paragraph (b) in order to qualify for  
81 | the exemption and that it acknowledges its liability for any  
82 | tax, penalty, or interest later determined by the department to  
83 | be owed on such transactions.

84 |       Section 2. This act shall take effect July 1, 2018.