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LEGISLATIVE ACTION

Senate

House

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Floor: 2/AD/2R

04/29/2010 09:43 AM

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Senator Altman moved the following:

**Senate Amendment (with title amendment)**

Between lines 729 and 730

insert:

Section 8. Effective January 2, 2011, subsection (6) of section 212.08, Florida Statutes, is amended 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.

(6) EXEMPTIONS; POLITICAL SUBDIVISIONS.—



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14           (a) There are also exempt from the tax imposed by this  
15 chapter sales made to the United States Government, a state, or  
16 any county, municipality, or political subdivision of a state  
17 when payment is made directly to the dealer by the governmental  
18 entity. This exemption shall not inure to any transaction  
19 otherwise taxable under this chapter when payment is made by a  
20 government employee by any means, including, but not limited to,  
21 cash, check, or credit card when that employee is subsequently  
22 reimbursed by the governmental entity. ~~This exemption does not  
23 include sales of tangible personal property made to contractors  
24 employed either directly or as agents of any such government or  
25 political subdivision thereof when such tangible personal  
26 property goes into or becomes a part of public works owned by  
27 such government or political subdivision. A determination  
28 whether a particular transaction is properly characterized as an  
29 exempt sale to a government entity or a taxable sale to a  
30 contractor shall be based on the substance of the transaction  
31 rather than the form in which the transaction is cast. The  
32 department shall adopt rules that give special consideration to  
33 factors that govern the status of the tangible personal property  
34 before its affixation to real property. In developing these  
35 rules, assumption of the risk of damage or loss is of paramount  
36 consideration in the determination.~~ This exemption does not  
37 include sales, rental, use, consumption, or storage for use in  
38 any political subdivision or municipality in this state of  
39 machines and equipment and parts and accessories therefor used  
40 in the generation, transmission, or distribution of electrical  
41 energy by systems owned and operated by a political subdivision  
42 in this state for transmission or distribution expansion.



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43 Likewise exempt are charges for services rendered by radio and  
44 television stations, including line charges, talent fees, or  
45 license fees and charges for films, videotapes, and  
46 transcriptions used in producing radio or television broadcasts.  
47 The exemption provided in this subsection does not include  
48 sales, rental, use, consumption, or storage for use in any  
49 political subdivision or municipality in this state of machines  
50 and equipment and parts and accessories therefor used in  
51 providing two-way telecommunications services to the public for  
52 hire by the use of a telecommunications facility, as defined in  
53 s. 364.02(15), and for which a certificate is required under  
54 chapter 364, which facility is owned and operated by any county,  
55 municipality, or other political subdivision of the state. Any  
56 immunity of any political subdivision of the state or other  
57 entity of local government from taxation of the property used to  
58 provide telecommunication services that is taxed as a result of  
59 this section is hereby waived. However, the exemption provided  
60 in this subsection includes transactions taxable under this  
61 chapter which are for use by the operator of a public-use  
62 airport, as defined in s. 332.004, in providing such  
63 telecommunications services for the airport or its tenants,  
64 concessionaires, or licensees, or which are for use by a public  
65 hospital for the provision of such telecommunications services.

66 (b) The exemption provided under this subsection does not  
67 include sales of tangible personal property made to contractors  
68 employed directly to or as agents of any such government or  
69 political subdivision when such tangible personal property goes  
70 into or becomes a part of public works owned by such government  
71 or political subdivision. A determination of whether a



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72 particular transaction is properly characterized as an exempt  
73 sale to a government entity or a taxable sale to a contractor  
74 shall be based upon the substance of the transaction rather than  
75 the form in which the transaction is cast. However, for sales of  
76 tangible personal property that go into or become a part of  
77 public works owned by a governmental entity, other than the  
78 Federal Government, a governmental entity claiming the exemption  
79 provided under this subsection shall certify to the dealer and  
80 the contractor the entity's claim to the exemption by providing  
81 the dealer and the contractor a certificate of entitlement to  
82 the exemption for such sales. If the department later determines  
83 that such sales, in which the governmental entity provided the  
84 dealer and the contractor with a certificate of entitlement to  
85 the exemption, were not exempt sales to the governmental entity,  
86 the governmental entity shall be liable for any tax, penalty,  
87 and interest determined to be owed on such transactions.  
88 Possession by a dealer or contractor of a certificate of  
89 entitlement to the exemption from the governmental entity  
90 relieves the dealer from the responsibility of collecting tax on  
91 the sale and the contractor for any liability for tax, penalty,  
92 or interest related to the sale, and the department shall look  
93 solely to the governmental entity for recovery of tax, penalty,  
94 and interest if the department determines that the transaction  
95 was not an exempt sale to the governmental entity. The  
96 governmental entity may not transfer liability for such tax,  
97 penalty, and interest to another party by contract or agreement.

98 (c) The department shall adopt rules for determining  
99 whether a particular transaction is properly characterized as an  
100 exempt sale to a governmental entity or a taxable sale to a



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101 contractor which give special consideration to factors that  
102 govern the status of the tangible personal property before being  
103 affixed to real property. In developing such rules, assumption  
104 of the risk of damage or loss is of paramount consideration in  
105 the determination. The department shall also adopt, by rule, a  
106 certificate of entitlement to exemption for use as provided in  
107 paragraph (b). The certificate shall require the governmental  
108 entity to affirm that it will comply with the requirements of  
109 this subsection and the rules adopted under paragraph (b) in  
110 order to qualify for the exemption and that it acknowledges its  
111 liability for any tax, penalty, or interest later determined by  
112 the department to be owed on such transactions.

113 Section 9. The Department of Revenue may, and all  
114 conditions are deemed met to, adopt emergency rules under ss.  
115 120.536(1) and 120.54(4), Florida Statutes, to implement the  
116 amendment to s. 212.08(6), Florida Statutes, made by section 8  
117 of this act. The emergency rules shall remain in effect for 6  
118 months after adoption and may be renewed during the pendency of  
119 procedures to adopt rules addressing the subject of the  
120 emergency rules.

121  
122 ===== T I T L E A M E N D M E N T =====

123 And the title is amended as follows:

124 Delete lines 2 - 39

125 and insert:

126 An act relating to taxation; amending s. 55.204, F.S.;

127 specifying the duration of liens securing the payment

128 of unemployment compensation tax obligations; amending

129 s. 95.091, F.S.; creating an exception to a limit on



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130 the duration of tax liens for certain tax liens  
131 relating to unemployment compensation taxes; amending  
132 s. 201.02, F.S.; providing that the tax on deeds and  
133 other instruments relating to real property does not  
134 apply to property sold pursuant to a short sale;  
135 defining the term "short sale"; authorizing the  
136 department to adopt rules; amending s. 202.125, F.S.;  
137 providing that an exemption from the communications  
138 services tax does not apply to transient public  
139 lodging establishments; amending s. 212.05, F.S.;  
140 specifying that the tax on sales, use, and other  
141 transactions applies to charges for nonresidential  
142 building cleaning and nonresidential building pest  
143 control; amending s. 212.0515, F.S.; revising the  
144 contents of the notice that must be posted on vending  
145 machines; amending s. 212.08, F.S.; providing criteria  
146 to determine whether the tax on sales, use, and other  
147 transactions applies to a package containing exempt  
148 food products and taxable nonfood products; providing  
149 that the tax exemption for building materials used in  
150 the rehabilitation of real property in an enterprise  
151 zone applies only while the property is being  
152 rehabilitated; providing that a single application for  
153 a tax refund of taxes paid on building materials used  
154 in the rehabilitation of real property may be used for  
155 certain contiguous parcels; revising the information  
156 that must be included in an application for a tax  
157 refund; providing that the tax exemption for building  
158 materials used in an enterprise zone may inure to a



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159 unit of government; revising the date by which an  
160 application for a tax refund for taxes paid on  
161 building materials used in an enterprise zone must be  
162 submitted to the department; amending s. 212.08, F.S.;  
163 revising provisions excluding certain sales of  
164 tangible personal property to contractors from  
165 application of an exemption for sales made to  
166 governmental entities under certain circumstances;  
167 specifying additional requirements, procedures, and  
168 limitations; requiring the Department of Revenue to  
169 adopt rules for purposes of determining eligibility  
170 for the exemption and providing for a certificate of  
171 entitlement to the exemption; specifying certification  
172 requirements; authorizing the department to adopt  
173 emergency rules; providing for the duration for which  
174 such emergency rules shall remain in effect; amending  
175 s. 213.053,