

TIP 99A01-21
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**Specific Tangible Personal Property Is Exempt
from Sales and Use Tax if
Purchased for NASA or Department of Defense Contracts**

The 1999 Legislature enacted several statutory provisions excluding or exempting certain items purchased for use in "qualifying contracts" from sales and use tax. "Qualifying contracts" are contracts or subcontracts performed for NASA or the Department of Defense. The term generally does not include contracts for the repair, alteration, improvement or construction of real property.

Qualifying Property

One statutory change clarified that under existing law the sale of "qualifying property" is considered a sale for resale and is therefore not taxable. Another stated that a contractor's consumption of "qualifying property" is not considered a taxable "use." To be "qualifying property," an item must be:

- 1) tangible personal property, excluding electricity;
- 2) used or consumed by a government contractor, including prime contractors and subcontractors, to perform a qualifying contract;
- 3) allocated or charged in whole or in part as a direct item of cost to such qualifying contract; and,
- 4) transferred (i.e., title, but not necessarily possession, must pass) to the government under the contract.

The cost of qualifying property is treated as a sale for resale or excluded from the definition of use only to the extent it is a direct item of cost of a qualifying contract. A direct item of cost is a cost that is specifically identified with and allocated to a single qualifying contract under the cost

accounting standards in section 9904.418-30(a)(2) of Title 48 of the Code of Federal Regulations.

Phased-In Exemption For Overhead Materials

Effective July 1, 1999, the sale to, or use by, government contractors (prime contractors and subcontractors) of certain "overhead materials" is exempt from sales and use taxes to the extent outlined below. The term "overhead materials" is defined as tangible personal property, other than "qualifying property" or electricity, used or consumed by the contractor in performing certain contracts.

To be eligible for this exemption the tangible personal property purchased or used must:

- 1) be used or consumed at least in part in the performance of a qualifying contract;
- 2) be charged or allocated in whole or in part as an indirect item of cost to the qualifying contract; and,
- 3) become the property of the federal government (i.e., title, but not necessarily possession, must pass) under the contract.

Only the portion of the cost of the property that meets these requirements is exempt. For example, any portion of the cost allocated to a nonqualifying contract remains taxable.

This tax exemption is phased in over the next five years as follows:

- 1) Effective July 1, 1999, sales and use tax will only be imposed on 80 percent of the qualifying costs of overhead materials;
- 2) Effective July 1, 2000, sales and use tax will only be imposed on 60 percent of the qualifying costs of overhead materials;
- 3) Effective July 1, 2001, sales and use tax will only be imposed on 40 percent of the qualifying costs of overhead materials;
- 4) Effective July 1, 2002, sales and use tax will only be

- imposed on 20 percent of the qualifying costs of overhead materials; and,
- 5) Effective July 1, 2003, and thereafter, the qualifying costs of overhead materials will be completely exempt.

Procedures

Taxpayers who purchase qualifying property or overhead materials may use their direct-pay authority to claim the exemption. Qualifying taxpayers who are registered dealers and do not currently have direct-pay authority may request it by sending a written request to:

Florida Department of Revenue
Central Registration
P.O. Box 2096
Tallahassee, Florida 32316-2096

The request should state the dealer is qualified to self-accrue the tax under s. 212.08(17), F.S. Taxpayers with questions concerning direct-pay authority should call Central Registration at 850-488-9750.

Qualifying taxpayers who are registered dealers may also use the current resale certificate procedure when purchasing qualifying property or overhead materials. Contractors who are not authorized to issue either direct-pay permits or resale certificates may provide their suppliers with a Purchaser's Certificate of Exemption (a suggested form is attached.)

Taxpayers must self-accrue and remit tax on the portion of the cost of qualifying property or overhead materials that does not qualify for exemption.

FOR MORE INFORMATION

This document is intended to alert you to the requirements contained in Florida laws and administrative rules. It does not by its own effect create rights or require

compliance.

For more information call Tax Information Services, Monday - Friday, 8:00 a.m. to 5:00 p.m., ET, at 850-488-6800.

Hearing or speech impaired persons should call our TDD at 1-800-367-8331 or 850-922-1115.

For a detailed written response to your questions, write the Florida Department of Revenue, Tax Information Services, 1379 Blountstown Highway, Tallahassee, FL 32304.

For forms and other information, visit our Web site at <http://sun6.dms.state.fl.us/dor/>.

Get tax forms quickly by FAX ON DEMAND. Call 850-922-3676, twenty-four hours a day, seven days a week, using your fax machine handset and follow the instructions.

References:

Ch. 99-273,L.O.F.

ss. 212.02(14), (20), 212.08(17), F.S.

**SUGGESTED PURCHASER'S EXEMPTION CERTIFICATE
"QUALIFYING PROPERTY" AND/OR "OVERHEAD MATERIALS"
SOLD TO OR PURCHASED BY GOVERNMENT CONTRACTORS**

FOR USE ON OR AFTER JULY 1, 1999

_____ (Purchaser's Name) certifies that the "qualifying property" purchased on _____ (date) will be used in the performance of a contract for NASA or the Department of Defense, will be allocated or charged as a direct item of cost to such contract, and that title to the "qualifying property" will pass to the government pursuant to the contract's terms. Furthermore, the purchaser certifies that the "qualifying property" is not being used in the performance of a real property contract that is not a "qualifying contract" as defined

in s. 212.08(17), F.S.

AND/OR

_____ (Purchaser's Name) certifies that the "overhead materials" purchased on _____ (date) will be used in the performance of a contract for NASA or the Department of Defense, will be charged as an indirect item of cost to the contract, and that title to the "overhead materials" will pass to government pursuant to the contract's terms. Furthermore, the purchaser certifies that the "overhead materials" are not being used in the performance of a real property contract that is not a "qualifying contract" as defined in s. 212.08(17), F.S.

The undersigned understands and agrees that tax must be self-accrued and paid on the portion of the cost of any "qualifying property" or "overhead materials" that is not allocated to a qualifying contract. The undersigned understands that if the purchase or use of such "qualifying property" and/or "overhead materials" does not qualify for exemption, the undersigned will be subject to sales or use tax, interest, and penalties. The undersigned further understands that when any person fraudulently, for the purpose of evading tax, issues to a vendor or to any agent of the state a certificate or statement in writing in which he or she claims exemption from the sales tax, such person, in addition to being liable for payment of the tax plus a mandatory penalty of 200% of the tax, shall be liable for fine and punishment provided by law for conviction of a felony of the third degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Purchaser's Name (Print or Type) Purchaser's Address

Signature and Title Purchaser's Telephone Number

Date Federal Employer's Identification Number or

Social Security Number

(Form to be retained in vendor's records)