

**Florida Department of Revenue  
Tax Information Publication**

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**Local Governments Are Not Entitled to Refunds of  
Sales Taxes Paid by Public Works Contractors**

**Governmental Entity Exemption**

The Department has recently received a large number of refund applications from local governments seeking refunds of sales taxes paid by contractors that worked on public projects. Under Section 212.08(6), Florida Statutes (F.S.), governmental entities are exempt from sales tax only on **direct** purchases of tangible personal property by the governmental entity. For example, if a state or local government employee purchases office supplies and is reimbursed by the governmental employer, the employee must pay sales taxes even though the government will ultimately bear the cost of those taxes. The sales taxes cannot be refunded to the employee or the government.

The statute specifically provides that the exemption does **not** apply when a public works contractor purchases materials that the contractor incorporates into a public project. The contractor is not exempt and must pay tax on those purchases. The fact that the contractor will recoup the cost of the materials from the governmental entity, including any taxes paid, makes no difference. Furthermore, there is no provision in the Florida Statutes that authorizes a local government to obtain a refund of taxes paid by contractors on public projects from the State.

Governmental entities may structure contracts to avoid sales tax on public works project materials by purchasing those materials directly from the supplier rather than having the contractor make those purchases. At this time, a direct purchase program is the only way to avoid the sales tax on materials incorporated into a public project. Section 212.08(6), F.S., contains basic

requirements to qualify for the direct purchase exemption:

- \* The government must issue its own purchase order directly to the supplier;
- \* The government must provide the supplier with a copy of the government's exemption certificate;
- \* The supplier's invoice must be addressed to the governmental entity, not the contractor;
- \* Payment must be made by the government directly to the supplier;
- \* The government must take title directly from the supplier upon delivery rather than from the contractor after the job is completed; and
- \* The government rather than the contractor must bear the risk of loss of the materials, which is generally established through the contract provisions concerning casualty insurance.

Use of such a program does not include claiming a refund of taxes that were paid by the contractor.

### **Department of Revenue v. Florida Municipal Power Agency**

The recent decision in Department of Revenue v. Florida Municipal Power Agency, 789 So.2d 320 (Fla. 2001), may have caused some confusion about the extent of the governmental exemption. That case dealt with the limited issue of how to interpret a provision in Section 212.08(6), F.S., which provides that the usual exemption of direct purchases of tangible personal property by municipalities does not apply to "machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion." The Florida Supreme Court agreed with the Florida Municipal Power Agency that the limitation applied only to machinery, equipment, and parts for expansion of transmission or distribution systems, not to repairs or replacements of existing facilities. The Court held that the exemption applied to "materials purchased by municipally owned utilities for use in the repair, replacement, or refurbishment of their existing electric energy transmission

or distribution systems." The decision has no relevance to purchases of materials for any public facilities other than electricity transmission and distribution systems. In addition, even in the case of those systems, the Court held only that purchases **made by** the public utility would qualify. The decision does not hold that the exemption would apply to purchases of materials made by public works contractors.

### **Qualified Rehabilitation and Redevelopment Projects**

Although their status as governments does not entitle cities or counties to apply for refunds of taxes paid by public works contractors, there are special economic development incentive programs that may apply if a government project is located in a designated economic development target area and satisfies other statutory requirements.

- \* The owner, lessee, or lessor of rehabilitated real property located in an enterprise zone may be entitled to a refund of the contractor's sales taxes if an application is timely filed with the appropriate enterprise zone authority. The refund may be made to a city, county, or other governmental agency if the building materials were paid for from the funds of a community development block grant, State Housing Initiatives Partnership Program, or similar grant or loan program. Section 212.08(5)(g), F.S., discusses this refund program.
  
- \* The owner/developer of certain redevelopment projects is entitled to a refund of sales taxes paid by contractors on building materials if the application requirements are met. The project must be the conversion of an existing manufacturing or industrial building to a housing project or a mixed-use project. At least 20 percent of the project must be set aside for low and moderate income housing and the project must be located in an urban high-crime area, enterprise zone, empowerment zone, Front Porch Community, designated brownfield area, or urban in-fill area. Section 212.08(5)(o), F.S., discusses this refund program.

## **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 forms and other information, visit our Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor). Or call Tax Information Services, 8:00 a.m., to 7:00 p.m., ET, Monday through Friday, excluding holidays, at 800-352-3671 (Florida only), or 850-488-6800.

Hearing- or speech-impaired persons should call our TDD at 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 32304-2716.

To receive a fax copy of a form, call 850-922-3676 from your fax machine telephone.