

By Senator Smith

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1 A bill to be entitled
2 An act relating to businesses located in enterprise
3 zones; amending s. 212.08, F.S.; clarifying that the
4 tax exemption for business property purchased for use
5 by businesses located in an enterprise zone applies to
6 the use tax and not just the sales tax; specifying
7 that the monetary caps applicable to the sales and use
8 tax exemption for such business property are
9 calculated on a per item basis; deleting a provision
10 limiting sales and use tax refunds for such business
11 property to amounts in excess of \$100 on purchases
12 made within a specified time period; amending s.
13 212.096, F.S.; revising the definitions of the terms
14 "eligible business," "job," and "new job has been
15 created" for purposes relating to application of the
16 enterprise zone jobs credit against the sales tax;
17 revising requirements applicable to the making of
18 sworn statements and the filing of applications
19 claiming the enterprise zone jobs credit against the
20 sales tax; authorizing an eligible business that files
21 a consolidated tax return to take the enterprise zone
22 jobs credit against such business's consolidated tax
23 liability; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:

26
27 Section 1. Paragraph (h) of subsection (5) of section
28 212.08, Florida Statutes, is amended to read:

29 212.08 Sales, rental, use, consumption, distribution, and

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30 storage tax; specified exemptions.—The sale at retail, the
31 rental, the use, the consumption, the distribution, and the
32 storage to be used or consumed in this state of the following
33 are hereby specifically exempt from the tax imposed by this
34 chapter.

35 (5) EXEMPTIONS; ACCOUNT OF USE.—

36 (h) *Business property used in an enterprise zone.*—

37 1. Business property purchased for use by businesses
38 located in an enterprise zone which is subsequently used in an
39 enterprise zone is ~~shall be~~ exempt from the tax imposed by this
40 chapter. This exemption inures to the business only through a
41 refund of previously paid taxes. A refund shall be authorized
42 upon an affirmative showing by the taxpayer to the satisfaction
43 of the department that the requirements of this paragraph have
44 been met.

45 2. To receive a refund, the business must file under oath
46 with the governing body or enterprise zone development agency
47 having jurisdiction over the enterprise zone where the business
48 is located, as applicable, an application which includes:

49 a. The name and address of the business claiming the
50 refund.

51 b. The identifying number assigned pursuant to s. 290.0065
52 to the enterprise zone in which the business is located.

53 c. A specific description of the property for which a
54 refund is sought, including its serial number or other permanent
55 identification number.

56 d. The location of the property.

57 e. The sales invoice or other proof of purchase of the
58 property, showing the amount of sales or use tax paid, the date

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59 of purchase, and the name and address of the ~~sales-tax~~ dealer
60 from whom the property was purchased.

61 f. Whether the business is a small business as defined by
62 s. 288.703.

63 g. If applicable, the name and address of each permanent
64 employee of the business, including, for each employee who is a
65 resident of an enterprise zone, the identifying number assigned
66 pursuant to s. 290.0065 to the enterprise zone in which the
67 employee resides.

68 3. Within 10 working days after receipt of an application,
69 the governing body or enterprise zone development agency shall
70 review the application to determine if it contains all the
71 information required pursuant to subparagraph 2. and meets the
72 criteria set out in this paragraph. The governing body or agency
73 shall certify all applications that contain the information
74 required pursuant to subparagraph 2. and meet the criteria set
75 out in this paragraph as eligible to receive a refund. If
76 applicable, the governing body or agency shall also certify if
77 20 percent of the employees of the business are residents of an
78 enterprise zone, excluding temporary and part-time employees.
79 The certification shall be in writing, and a copy of the
80 certification shall be transmitted to the executive director of
81 the Department of Revenue. The business is ~~shall be~~ responsible
82 for forwarding a certified application to the department within
83 the time specified in subparagraph 4.

84 4. An application for a refund pursuant to this paragraph
85 must be submitted to the department within 6 months after the
86 tax is due on the business property that is purchased.

87 5. The amount refunded on purchases of business property

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88 under this paragraph shall be the lesser of 97 percent of the
89 sales or use tax paid on such business property or \$5,000 per
90 item of business property purchased, or, if no less than 20
91 percent of the employees of the business are residents of an
92 enterprise zone, excluding temporary and part-time employees,
93 the amount refunded on purchases of business property under this
94 paragraph shall be the lesser of 97 percent of the sales tax
95 paid on such business property or \$10,000 per item of business
96 property purchased. A refund approved pursuant to this paragraph
97 shall be made within 30 days after formal approval by the
98 department of the application for the refund. ~~A refund may not~~
99 ~~be granted under this paragraph unless the amount to be refunded~~
100 ~~exceeds \$100 in sales tax paid on purchases made within a 60-day~~
101 ~~time period.~~

102 6. The department shall adopt rules governing the manner
103 and form of refund applications and may establish guidelines as
104 to the requisites for an affirmative showing of qualification
105 for exemption under this paragraph.

106 7. If the department determines that the business property
107 is used outside an enterprise zone within 3 years from the date
108 of purchase, the amount of taxes refunded to the business
109 purchasing such business property shall immediately be due and
110 payable to the department by the business, together with the
111 appropriate interest and penalty, computed from the date of
112 purchase, in the manner provided by this chapter.

113 Notwithstanding this subparagraph, business property used
114 exclusively in:

- 115 a. Licensed commercial fishing vessels,
- 116 b. Fishing guide boats, or

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117 c. Ecotourism guide boats

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119 that leave and return to a fixed location within an area
120 designated under s. 379.2353, Florida Statutes 2010, are
121 eligible for the exemption provided under this paragraph if all
122 requirements of this paragraph are met. Such vessels and boats
123 must be owned by a business that is eligible to receive the
124 exemption provided under this paragraph. This exemption does not
125 apply to the purchase of a vessel or boat.

126 8. The department shall deduct an amount equal to 10
127 percent of each refund granted under this paragraph from the
128 amount transferred into the Local Government Half-cent Sales Tax
129 Clearing Trust Fund pursuant to s. 212.20 for the county area in
130 which the business property is located and shall transfer that
131 amount to the General Revenue Fund.

132 9. For the purposes of this exemption, "business property"
133 means new or used property defined as "recovery property" in s.
134 168(c) of the Internal Revenue Code of 1954, as amended, except:

135 a. Property classified as 3-year property under s.
136 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

137 b. Industrial machinery and equipment as defined in sub-
138 subparagraph (b)6.a. and eligible for exemption under paragraph
139 (b);

140 c. Building materials as defined in sub-subparagraph
141 (g)8.a.; and

142 d. Business property having a sales price of under \$5,000
143 per purchase ~~unit~~.

144 10. This paragraph expires on the date specified in s.
145 290.016 for the expiration of the Florida Enterprise Zone Act.

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146 Section 2. Section 212.096, Florida Statutes, is amended to
147 read:

148 212.096 Sales, rental, storage, use tax; enterprise zone
149 jobs credit against sales tax.—

150 (1) For the purposes of the credit provided in this
151 section:

152 (a) "Eligible business" means a location of any sole
153 proprietorship, firm, partnership, corporation, bank, savings
154 association, estate, trust, business trust, receiver, syndicate,
155 or other group or combination, or successor business, located in
156 an enterprise zone. The eligible business must demonstrate to
157 the department that, on the date of application, the total
158 number of full-time jobs defined under paragraph (d) is greater
159 at the location stated in the application than the total was 12
160 months prior to that date. An eligible business does not include
161 any business that ~~which~~ has claimed the credit permitted under
162 s. 220.181 for any new business employee first beginning
163 employment with the business after July 1, 1995.

164 (b) "Month" means either a calendar month or the time
165 period from any day of any month to the corresponding day of the
166 next succeeding month or, if there is no corresponding day in
167 the next succeeding month, the last day of the succeeding month.

168 (c) "New employee" means a person residing in an enterprise
169 zone or a participant in the welfare transition program who
170 begins employment with an eligible business after July 1, 1995,
171 and who has not been previously employed full time within the
172 preceding 12 months by the eligible business, or a successor
173 eligible business, claiming the credit allowed by this section.

174 (d) "Job" means a full-time position, as consistent with

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175 terms used by the Agency for Workforce Innovation and the United
176 States Department of Labor for purposes of unemployment
177 compensation tax administration and employment estimation
178 resulting directly from a business operation in this state. This
179 term may not include a temporary construction job involved with
180 the construction of facilities or any job that has previously
181 been included in any application for tax credits under s.
182 220.181(1). The term also includes employment of an employee:

183 1. Leased from an employee leasing company licensed under
184 chapter 468 if such employee has been continuously leased to the
185 employer for an average of at least 36 hours per week for more
186 than 6 months.

187 2. Paid through a subsidiary or affiliate management
188 company if the payroll expense is ultimately borne by the
189 eligible business.

190 (e) "New job has been created" means that, on the date of
191 application, the total number of full-time jobs is greater at
192 the location stated in the application than the total was 12
193 months prior to that date, as demonstrated to the department by
194 a business located in the enterprise zone.

195
196 A person shall be deemed to be employed if the person performs
197 duties in connection with the operations of the eligible
198 business on a regular, full-time basis, provided the person is
199 performing such duties for an average of at least 36 hours per
200 week each month. The person must be performing such duties at an
201 eligible ~~a~~ business site located in the enterprise zone.

202 (2) (a) Upon an affirmative showing by an eligible business
203 to the satisfaction of the department that the requirements of

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204 this section have been met, the eligible business shall be
205 allowed a credit against the tax remitted under this chapter.

206 (b) The credit shall be computed as 20 percent of the
207 actual monthly wages paid in this state to each new employee
208 hired when a new job has been created, unless the eligible
209 business is located within a rural enterprise zone pursuant to
210 s. 290.004, in which case the credit shall be 30 percent of the
211 actual monthly wages paid. If no less than 20 percent of the
212 employees of the eligible business are residents of an
213 enterprise zone, excluding temporary and part-time employees,
214 the credit shall be computed as 30 percent of the actual monthly
215 wages paid in this state to each new employee hired when a new
216 job has been created, unless the eligible business is located
217 within a rural enterprise zone, in which case the credit shall
218 be 45 percent of the actual monthly wages paid. If the new
219 employee hired when a new job is created is a participant in the
220 welfare transition program, the following credit shall be a
221 percent of the actual monthly wages paid: 40 percent for \$4
222 above the hourly federal minimum wage rate; 41 percent for \$5
223 above the hourly federal minimum wage rate; 42 percent for \$6
224 above the hourly federal minimum wage rate; 43 percent for \$7
225 above the hourly federal minimum wage rate; and 44 percent for
226 \$8 above the hourly federal minimum wage rate. For purposes of
227 this paragraph, monthly wages shall be computed as one-twelfth
228 of the expected annual wages paid to such employee. The amount
229 paid as wages to a new employee is the compensation paid to such
230 employee that is subject to unemployment tax. The credit shall
231 be allowed for up to 24 consecutive months, beginning with the
232 first tax return due pursuant to s. 212.11 after approval by the

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233 department.

234 (3) In order to claim this credit, an eligible business
235 must file under oath with the governing body or enterprise zone
236 development agency having jurisdiction over the enterprise zone
237 where the eligible business is located, as applicable, a
238 statement that ~~which~~ includes:

239 (a) For each new employee for whom this credit is claimed,
240 the employee's name and place of residence, including the
241 identifying number assigned pursuant to s. 290.0065 to the
242 enterprise zone in which the employee resides if the new
243 employee is a person residing in an enterprise zone, and, if
244 applicable, documentation that the employee is a welfare
245 transition program participant.

246 (b) If applicable, the name and address of each permanent
247 employee of the business, including, for each employee who is a
248 resident of an enterprise zone, the identifying number assigned
249 pursuant to s. 290.0065 to the enterprise zone in which the
250 employee resides.

251 (c) The name and address of the eligible business.

252 (d) The starting salary or hourly wages paid to the new
253 employee.

254 (e) Demonstration to the department that, on the date of
255 application, the total number of full-time jobs defined under
256 paragraph (1)(d) is greater at the location stated in the
257 application than the total was 12 months prior to that date.

258 (f) The identifying number assigned pursuant to s. 290.0065
259 to the enterprise zone in which the eligible business is
260 located.

261 (g) Whether the eligible business is a small business as

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262 defined by s. 288.703(1).

263 (4)~~(h)~~ Within 10 working days after receipt of an
264 application, the governing body or enterprise zone development
265 agency shall review the application to determine if it contains
266 all the information required pursuant to ~~this~~ subsection (3) and
267 meets the criteria set out in this section. The governing body
268 or agency shall certify all applications that contain the
269 information required pursuant to ~~this~~ subsection (3) and meet
270 the criteria set out in this section as eligible to receive a
271 credit. If applicable, the governing body or agency shall also
272 certify if 20 percent of the employees of the eligible business
273 are residents of an enterprise zone, excluding temporary and
274 part-time employees. The certification shall be in writing, and
275 a copy of the certification shall be transmitted to the
276 executive director of the Department of Revenue. The eligible
277 business is ~~shall be~~ responsible for forwarding a certified
278 application to the department within the time specified in
279 subsection (5) paragraph (i).

280 (5)~~(i)~~ All applications for a credit pursuant to this
281 section must be submitted to the department within 6 months
282 after the new employee begins employment at the eligible
283 business is hired, except applications for credit for leased
284 employees. Applications for credit for leased employees must be
285 submitted to the department within 7 months after the employee
286 is leased and begins employment at the eligible business.

287 (6)~~(4)~~ Within 10 working days after receipt of a completed
288 application for a credit authorized in this section, the
289 department shall inform the eligible business that the
290 application has been approved. The credit may be taken on the

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291 first return due after receipt of approval from the department.

292 ~~(7)-(5) If In the event~~ the application is incomplete or
293 insufficient to support the credit authorized in this section,
294 the department shall deny the credit and notify the eligible
295 business of that fact. The eligible business may reapply for
296 this credit.

297 ~~(8)-(6)~~ The credit provided in this section does not apply:

298 (a) For any new employee who is an owner, partner, or
299 majority stockholder of an eligible business.

300 (b) For any new employee who is employed for any period
301 less than 3 months.

302 ~~(9)-(7)~~ The credit provided in this section is ~~shall~~ not be
303 allowed for any month in which the tax due for such period or
304 the tax return required pursuant to s. 212.11 for such period is
305 delinquent.

306 ~~(10)-(8) If In the event~~ an eligible business has a credit
307 larger than the amount owed the state on the tax return for the
308 time period in which the credit is claimed, the amount of the
309 credit for that time period shall be the amount owed the state
310 on that tax return. If an eligible business files consolidated
311 tax returns, the credit may be taken against its consolidated
312 tax liability.

313 ~~(11)-(9)~~ Any eligible business that ~~which~~ has claimed this
314 credit is ~~shall~~ not be allowed any credit under ~~the provisions~~
315 of s. 220.181 for any new employee beginning employment after
316 July 1, 1995.

317 ~~(12)-(10)~~ It is ~~shall~~ be the responsibility of each eligible
318 business to affirmatively demonstrate to the satisfaction of the
319 department that it meets the requirements of this section.

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320 (13)~~(11)~~ Any person who fraudulently claims this credit is
321 liable for repayment of the credit, plus a mandatory penalty of
322 100 percent of the credit plus interest at the rate provided in
323 this chapter, and commits ~~such person is guilty of~~ a misdemeanor
324 of the second degree, punishable as provided in s. 775.082 or s.
325 775.083.

326 (14)~~(12)~~ This section, except for subsection (13) ~~(11)~~,
327 expires on the date specified in s. 290.016 for the expiration
328 of the Florida Enterprise Zone Act.

329 Section 3. This act shall take effect July 1, 2012.