

By Senator McKay

26-787-98

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

A bill to be entitled
An act relating to the tax on sales, use, and
other transactions; amending s. 212.08, F.S.;
providing that an exemption from the tax
applies to machinery and equipment purchased
for use in phosphate severance, mining, or
processing operations under specified
conditions; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) 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.

(5) EXEMPTIONS; ACCOUNT OF USE.--

(b) Machinery and equipment used to increase
productive output.--

1. Industrial machinery and equipment purchased for
use in new businesses which manufacture, process, compound, or
produce for sale, or for exclusive use in spaceport activities
as defined in s. 212.02, items of tangible personal property
at fixed locations are exempt from the tax imposed by this
chapter upon an affirmative showing by the taxpayer to the
satisfaction of the department that such items are used in a
new business in this state. Such purchases must be made prior
to the date the business first begins its productive

1 operations, and delivery of the purchased item must be made
2 within 12 months of that date.

3 2. Industrial machinery and equipment purchased for
4 use in expanding manufacturing facilities or plant units which
5 manufacture, process, compound, or produce for sale, or for
6 exclusive use in spaceport activities as defined in s. 212.02,
7 items of tangible personal property at fixed locations in this
8 state are exempt from any amount of tax imposed by this
9 chapter in excess of \$50,000 per calendar year upon an
10 affirmative showing by the taxpayer to the satisfaction of the
11 department that such items are used to increase the productive
12 output of such expanded business by not less than 10 percent.

13 3.a. To receive an exemption provided by subparagraph
14 1. or subparagraph 2., a qualifying business entity shall
15 apply to the department for a temporary tax exemption permit.
16 The application shall state that a new business exemption or
17 expanded business exemption is being sought. Upon a tentative
18 affirmative determination by the department pursuant to
19 subparagraph 1. or subparagraph 2., the department shall issue
20 such permit.

21 b. The applicant shall be required to maintain all
22 necessary books and records to support the exemption. Upon
23 completion of purchases of qualified machinery and equipment
24 pursuant to subparagraph 1. or subparagraph 2., the temporary
25 tax permit shall be delivered to the department or returned to
26 the department by certified or registered mail.

27 c. If, in a subsequent audit conducted by the
28 department, it is determined that the machinery and equipment
29 purchased as exempt under subparagraph 1. or subparagraph 2.
30 did not meet the criteria mandated by this paragraph or if
31 commencement of production did not occur, the amount of taxes

1 exempted at the time of purchase shall immediately be due and
2 payable to the department by the business entity, together
3 with the appropriate interest and penalty, computed from the
4 date of purchase, in the manner prescribed by this chapter.

5 d. In the event a qualifying business entity fails to
6 apply for a temporary exemption permit or if the tentative
7 determination by the department required to obtain a temporary
8 exemption permit is negative, a qualifying business entity
9 shall receive the exemption provided in subparagraph 1. or
10 subparagraph 2. through a refund of previously paid taxes. No
11 refund may be made for such taxes unless the criteria mandated
12 by subparagraph 1. or subparagraph 2. have been met and
13 commencement of production has occurred.

14 4. The department shall promulgate rules governing
15 applications for, issuance of, and the form of temporary tax
16 exemption permits; provisions for recapture of taxes; and the
17 manner and form of refund applications and may establish
18 guidelines as to the requisites for an affirmative showing of
19 increased productive output, commencement of production, and
20 qualification for exemption.

21 5. The exemptions provided in subparagraphs 1. and 2.
22 do not apply to machinery or equipment purchased or used by
23 electric utility companies, communications companies,
24 ~~phosphate or other~~ solid minerals(not including phosphate)
25 severance, mining, or processing operations, oil or gas
26 exploration or production operations, publishing firms that do
27 not export at least 50 percent of their finished product out
28 of the state, any firm subject to regulation by the Division
29 of Hotels and Restaurants of the Department of Business and
30 Professional Regulation, or any firm which does not
31 manufacture, process, compound, or produce for sale, or for

1 exclusive use in spaceport activities as defined in s. 212.02,
2 items of tangible personal property. The exemptions provided
3 in subparagraphs 1. and 2. apply to machinery and equipment
4 purchased for use in phosphate severance, mining, or
5 processing operations only by way of a prospective credit
6 against taxes due under chapter 211 for taxes paid under this
7 chapter on such machinery and equipment.

8 6. For the purposes of the exemptions provided in
9 subparagraphs 1. and 2., these terms have the following
10 meanings:

11 a. "Industrial machinery and equipment" means "section
12 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the
13 Internal Revenue Code, provided "industrial machinery and
14 equipment" shall be construed by regulations adopted by the
15 Department of Revenue to mean tangible property used as an
16 integral part of the manufacturing, processing, compounding,
17 or producing for sale, or for exclusive use in spaceport
18 activities as defined in s. 212.02, of items of tangible
19 personal property. Such term includes parts and accessories
20 only to the extent that the exemption thereof is consistent
21 with the provisions of this paragraph.

22 b. "Productive output" means the number of units
23 actually produced by a single plant or operation in a single
24 continuous 12-month period, irrespective of sales. Increases
25 in productive output shall be measured by the output for 12
26 continuous months immediately following the completion of
27 installation of such machinery or equipment over the output
28 for the 12 continuous months immediately preceding such
29 installation. However, if a different 12-month continuous
30 period of time would more accurately reflect the increase in
31 productive output of machinery and equipment purchased to

1 facilitate an expansion, the increase in productive output may
2 be measured during that 12-month continuous period of time if
3 such time period is mutually agreed upon by the Department of
4 Revenue and the expanding business prior to the commencement
5 of production; provided, however, in no case may such time
6 period begin later than 2 years following the completion of
7 installation of the new machinery and equipment. The units
8 used to measure productive output shall be physically
9 comparable between the two periods, irrespective of sales.

10 7. Notwithstanding any other provision in this
11 paragraph to the contrary, in order to receive the exemption
12 provided in this paragraph a taxpayer must register with the
13 WAGES Program Business Registry established by the local WAGES
14 coalition for the area in which the taxpayer is located. Such
15 registration establishes a commitment on the part of the
16 taxpayer to hire WAGES program participants to the maximum
17 extent possible consistent with the nature of their business.

18 Section 2. This act shall take effect July 1, 1998.

19
20 *****

21 SENATE SUMMARY

22 Provides that exemption from the tax on sales, use, and
23 other transactions applies to machinery and equipment
24 purchased for use in phosphate severance, mining, or
25 processing operations in the form of a credit against
26 taxes due under ch. 211, F.S., for taxes paid under ch.
27 212, F.S.