

STORAGE NAME: h0899s1a.ft

DATE: April 26, 2000

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS**

BILL #: CS/HB 899

RELATING TO: Sales Tax/Silicon Technology

SPONSOR(S): Committee on Business Development & International Trade,
Representatives Johnson, Morroni, and others

TIED BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) BUSINESS DEVELOPMENT & INTERNATIONAL TRADE (EDC) YEAS 7 NAYS 1
 - (2) FINANCE AND TAXATION (FRC) YEAS 12 NAYS 0
 - (3) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (4)
 - (5)
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I. SUMMARY:

The bill revises the application of the sales tax exemption provided for machinery and equipment used in silicon technology production and silicon technology research and development. Additionally, it expands the exemption to include machinery and equipment used by defense or space technology facilities to produce defense or space technology products, and machinery and equipment used in defense or space research and development in a defense or space technology research and development facility.

The bill provides definitions for "defense technology products," "space technology products," and for "machinery and equipment."

Rulemaking authority is not addressed. The expanded exemption will probably be handled in the existing program for silicon technology production.

The estimated fiscal impact upon General Revenue is (\$6.5) million for FY 00-01 and (\$7.2) million for FY 01-02. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$1.0) million for FY 00-01 and (\$1.2) million for FY 01-02. The total estimated fiscal impact for this bill is (\$7.5) million for FY 00-01 and (\$8.4) million for FY 01-02.

The bill will take effect on January 1, 2001.

On April 26, 2000, the Committee on Finance and Taxation adopted an amendment striking everything after the enacting clause. See Amendments or Committee Substitute Changes for the details.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Chapter 212, F. S., provides for a 6 percent tax on sales, use, and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under Chapter 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a., F.S., provides for a six percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in Florida. Section 212.05(1)(b), F.S., provides for a six percent tax on the cost price of any item of tangible personal property that is not sold, but used in Florida. Additionally, local governments are authorized to levy one or more of six types of Local Discretionary Sales Surtaxes, ranging 0.5 percent to 1.0 percent each.

Section 212.08(5), F.S., provides exemptions from the tax imposed by this chapter based on use. Section 212.08(5)(j), F.S., provides an exemption from the sales and use tax for machinery and equipment purchased for use in silicon technology facilities to manufacture, produce, compound, or process silicon technology products. Additionally, machinery and equipment purchased for use predominately in silicon wafer research and development activities in a certified silicon technology research and development facility are also exempt.

To receive the exemption, an eligible business must apply to Enterprise Florida, Inc. (EFI), who is responsible for reviewing the applications and making the recommendation of approval or disapproval to the Governor's Office of Tourism, Trade, and Economic Development (OTTED) within a specified time period. OTTED must either approve the application within 5 working days or notify the applicant of its denial and reasons why within 10 working days. Businesses must apply annually to OTTED for the exemption and provide to OTTED documents on the sales and use taxes otherwise payable, the average number of full-time equivalent employees at the facility, the average wage and benefits paid to those employees over the preceding calendar year, and the total investment made in real and tangible personal property over the preceding calendar year since the date of certification. OTTED is responsible for using this information to prepare an annual report on the exemption program and its cost and impact.

The exemption program allows certified businesses to designate one or more state universities or community colleges as recipients of up to 100 percent of the amount of the exemption for which they may qualify. To receive these funds, the institution agrees to match the funds with equivalent cash, programs, services, or other in-kind support on a one-to-one basis in the pursuit of research and development projects as requested by the certified business. Rights to patents, royalties, or real or intellectual property must be vested in the business unless otherwise agreed to by the business and the university or community college.

Staff from OTTED explained that the exemption program provided in section 212.08(5)(j), F.S., was originally planned as a refund based program. However, the program currently operates by OTTED notifying the Department of Revenue (DOR) of the certification of a business, and, in lieu of a refund, the business does not pay the tax at the point of purchase. The certified business reports the "claim" to OTTED at the end of the year stating the amount of taxes it would have otherwise paid.

Language in the section providing the exemption for machinery and equipment used "predominately" in silicon wafer research and development defines "predominately" to mean such use of the equipment is at least 50 percent of the time. "Research and development" is defined as basic and applied research in the science, engineering, design, development, and testing of prototypes or processes for new products or improvement of products. It does not include market or sales research, routine consumer product testing, research in the social sciences or psychology, non technological activities, or technical services.

C. EFFECT OF PROPOSED CHANGES:

The bill would expand the exemption for silicon technology production and research and development to include space and defense technology activities. The exemption would be applied to machinery and equipment "used" in these technology facilities instead of "purchased for use."

The bill adds three definitions to the statutes:

1. "Defense technology products" is defined as "products that have a military application." Weapons, weapons systems, guidance systems, surveillance systems, communications or information systems, munitions, aircraft, vessels, boats, or "other implements or components intended for military use and manufactured in performance of a contract with the United States Department of Defense or the military branch of a recognized foreign government or a subcontract thereunder which relates to matters of national defense."
2. "Space technology products" are products that have a space application. Space launch vehicles, missiles, satellites or research payloads, avionics, associated control systems and processing systems are specifically included. The term does not include products produced for general commercial purposes or other uses that may have only an incidental use in space applications.
3. "Machinery and equipment" and "industrial machinery and equipment" includes testing equipment, test beds, computers, and software, whether purchased or self-fabricated, and, if self-fabricated, includes design and fabrication assembly.

The bill provides an effective date of January 1, 2001.

D. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

	<u>FY 00-01</u>	<u>FY 01-02</u>
General Revenue	(\$6.5M)	(\$7.2M)
Trust Fund	(*)	(*)
Local	(\$1.0)	(\$1.2)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See III.A.1.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Space and defense related businesses certified for the tax exemption would not pay the sales and use tax on machinery and equipment used in their technology facilities that manufacture, process, compound, or produce defense or space technology products.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

Although the bill will reduce the authority of municipalities and counties to raise revenues, the impact is expected to be insignificant and the bill is therefore exempt from the provisions of Article VII, Section 18(b), Florida Constitution.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

While the bill will reduce the amount of the Local Government Half Cent Sales Tax shared with municipalities and counties, it does not reduce the percentage of a state tax shared with municipalities and counties. Therefore, Article VII, Section 18(b), Florida Constitution does not apply.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

By the Committee on Business Development and International Trade:

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The DOR analysis raises concerns about the broad application of the definitions. The definition for "machinery and equipment" includes "other tangible personal property" thereby allowing anything purchased or fabricated by a silicon, defense, or space technology business to be tax exempt. Additionally, the DOR analysis points out that certain products may have space and defense application as well as consumer products application.

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The issues raised in DOR's analysis of HB 899 appear to be addressed in the strike-everything amendment adopted by the committee on Business Development and International Trade at its March 14, meeting. Please refer to the comments in section VI., below.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

By the Committee on Business Development and International Trade:

On March 14, 2000, the committee on Business Development and International Trade passed HB 899 with one strike-everything amendment. In addition to conforming HB 899 to SB 1604, the amendment narrowed the exemption provided in the bill by changing the definitions for "defense technology products," "space technology products," and "machinery and equipment."

Although the revenue estimating conference has not readdressed the exemption since the strike-everything amendment was adopted, it is logical to assume that the more narrowly drawn definitions will reduce the fiscal impact originally reported.

The strike-everything amendment also changes the effective date of the bill. The bill would now become law on January 1, 2001. This change should affect the fiscal impact by lowering the estimate.

This analysis reflects CS/HB 899.

By the Committee on Finance and Taxation:

On April 26, 2000, the Committee on Finance and Taxation adopted an amendment striking everything after the enacting clause. The amendment limits to 25 percent of the tax the exemption for industrial machinery and equipment used by defense or space technology facilities to produce defense or space technology products and industrial machinery and equipment used in defense or space research and development in a defense or space technology research and development facility. The amendment defines "industrial machinery and equipment." The amendment also replaces the exemption for "silicon technology production" with an exemption for "semiconductor technology production". The new exemption encompasses the former exemption. The amendment creates an exemption for building materials used in manufacturing or expanding clean rooms in semiconductor manufacturing facilities.

The estimated fiscal impact of the amendment upon General Revenue is (\$1.7) million for FY 00-01 and (\$1.9) million for FY 01-02. There will be a negative, but insignificant impact on the Solid Waste Management Trust Fund. The estimated fiscal impact upon local governments is (\$0.3) million for FY 00-01 and (\$0.3) million for FY 01-02. The total estimated fiscal impact for this bill is (\$2.0) million for FY 00-01 and (\$1.2) million for FY 01-02.

VII. SIGNATURES:

COMMITTEE ON BUSINESS DEVELOPMENT & INTERNATIONAL TRADE:

Prepared by:

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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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