

By Senator Brown-Waite

10-670A-01

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions; amending s. 212.08, F.S.;
4 revising the exemption for industrial machinery
5 and equipment; broadening the application of
6 the exemption; reducing the maximum amount of
7 the tax which is imposed on such machinery and
8 equipment; providing an effective date.

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

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12 Section 1. Paragraph (b) of subsection (5) of section
13 212.08, Florida Statutes, is amended to read:

14 212.08 Sales, rental, use, consumption, distribution,
15 and storage tax; specified exemptions.--The sale at retail,
16 the rental, the use, the consumption, the distribution, and
17 the storage to be used or consumed in this state of the
18 following are hereby specifically exempt from the tax imposed
19 by this chapter.

20 (5) EXEMPTIONS; ACCOUNT OF USE.--

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

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

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

3 2.a. Industrial machinery and equipment purchased for
4 exclusive use by a ~~an expanding~~ facility that ~~which~~ is engaged
5 in spaceport activities as defined by s. 212.02 or for use in
6 ~~expanding~~ manufacturing facilities or plant units which
7 manufacture, process, compound, or produce for sale items of
8 tangible personal property at fixed locations in this state
9 are exempt from the ~~any amount of~~ tax imposed by this chapter
10 in excess of \$40,000 ~~\$50,000~~ per calendar year ~~upon an~~
11 ~~affirmative showing by the taxpayer to the satisfaction of the~~
12 ~~department that such items are used to increase the productive~~
13 ~~output of such expanded facility or business by not less than~~
14 ~~10 percent.~~

15 b. Notwithstanding any other provision of this
16 section, industrial machinery and equipment purchased for use
17 in expanding printing manufacturing facilities or plant units
18 that manufacture, process, compound, or produce for sale items
19 of tangible personal property at fixed locations in this state
20 are exempt from any amount of tax imposed by this chapter upon
21 an affirmative showing by the taxpayer to the satisfaction of
22 the department that such items are used to increase the
23 productive output of such an expanded business by not less
24 than 10 percent.

25 3.a. To receive an exemption provided by subparagraph
26 1. or subparagraph 2.b.2-, a qualifying business entity shall
27 apply to the department for a temporary tax exemption permit.
28 The application shall state that a new business exemption or
29 expanded business exemption is being sought. Upon a tentative
30 affirmative determination by the department pursuant to

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1 subparagraph 1. or subparagraph 2.b.2-, the department shall
2 issue such permit.

3 b. The applicant shall be required to maintain all
4 necessary books and records to support the exemption. Upon
5 completion of purchases of qualified machinery and equipment
6 pursuant to subparagraph 1. or subparagraph 2.b.2-, the
7 temporary tax permit shall be delivered to the department or
8 returned to the department by certified or registered mail.

9 c. If, in a subsequent audit conducted by the
10 department, it is determined that the machinery and equipment
11 purchased as exempt under subparagraph 1. or subparagraph 2.b.
12 ~~2-~~ did not meet the criteria mandated by this paragraph or if
13 commencement of production did not occur, the amount of taxes
14 exempted at the time of purchase shall immediately be due and
15 payable to the department by the business entity, together
16 with the appropriate interest and penalty, computed from the
17 date of purchase, in the manner prescribed by this chapter.

18 d. In the event a qualifying business entity fails to
19 apply for a temporary exemption permit or if the tentative
20 determination by the department required to obtain a temporary
21 exemption permit is negative, a qualifying business entity
22 shall receive the exemption provided in subparagraph 1. or
23 subparagraph 2.b.2- through a refund of previously paid
24 taxes. No refund may be made for such taxes unless the
25 criteria mandated by subparagraph 1. or subparagraph 2.b.2-
26 have been met and commencement of production has occurred.

27 4. The department shall promulgate rules governing
28 applications for, issuance of, and the form of temporary tax
29 exemption permits; provisions for recapture of taxes; and the
30 manner and form of refund applications and may establish
31 guidelines as to the requisites for an affirmative showing of

1 increased productive output, commencement of production, and
2 qualification for exemption.

3 5. The exemptions provided in subparagraphs 1. and 2.
4 do not apply to machinery or equipment purchased or used by
5 electric utility companies, communications companies, oil or
6 gas exploration or production operations, publishing firms
7 that do not export at least 50 percent of their finished
8 product out of the state, any firm subject to regulation by
9 the Division of Hotels and Restaurants of the Department of
10 Business and Professional Regulation, or any firm which does
11 not manufacture, process, compound, or produce for sale items
12 of tangible personal property or which does not use such
13 machinery and equipment in spaceport activities as required by
14 this paragraph. The exemptions provided in subparagraphs 1.
15 and 2. shall apply to machinery and equipment purchased for
16 use in phosphate or other solid minerals severance, mining, or
17 processing operations only by way of a prospective credit
18 against taxes due under chapter 211 for taxes paid under this
19 chapter on such machinery and equipment.

20 6. For the purposes of the exemptions provided in
21 subparagraphs 1. and 2., these terms have the following
22 meanings:

23 a. "Industrial machinery and equipment" means "section
24 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the
25 Internal Revenue Code, provided "industrial machinery and
26 equipment" shall be construed by regulations adopted by the
27 Department of Revenue to mean tangible property used as an
28 integral part of spaceport activities or of the manufacturing,
29 processing, compounding, or producing for sale of items of
30 tangible personal property. Such term includes parts and
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1 accessories only to the extent that the exemption thereof is
2 consistent with the provisions of this paragraph.

3 b. "Productive output" means the number of units
4 actually produced by a single plant or operation in a single
5 continuous 12-month period, irrespective of sales. Increases
6 in productive output shall be measured by the output for 12
7 continuous months immediately following the completion of
8 installation of such machinery or equipment over the output
9 for the 12 continuous months immediately preceding such
10 installation. However, if a different 12-month continuous
11 period of time would more accurately reflect the increase in
12 productive output of machinery and equipment purchased to
13 facilitate an expansion, the increase in productive output may
14 be measured during that 12-month continuous period of time if
15 such time period is mutually agreed upon by the Department of
16 Revenue and the expanding business prior to the commencement
17 of production; provided, however, in no case may such time
18 period begin later than 2 years following the completion of
19 installation of the new machinery and equipment. The units
20 used to measure productive output shall be physically
21 comparable between the two periods, irrespective of sales.

22 Section 2. This act shall take effect upon becoming a
23 law.

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26 SENATE SUMMARY

27 Amends the exemption from the tax on sales, use, and
28 other transactions which currently applies to industrial
29 machinery and equipment purchased for exclusive use by an
30 expanding facility that is engaged in spaceport
31 activities or in producing tangible personal property, by
applying the exemption to any facility that is engaged in
such activities. Reduces from \$50,000 to \$40,000 the
maximum amount of such tax which may be imposed on such
industrial machinery and equipment.