HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 873 w/CS Sales Tax/Machinery and Equipment
SPONSOR(S): Meadows
TIED BILLS: **IDEN./SIM. BILLS:** SB 2450

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Workforce and Economic Development (Sub)	6 Y, 0 N	Winker	Billmeier
2) Commerce	18 Y, 0 N w/CS	Winker	Billmeier
3) Finance and Tax			
4) Commerce and Local Affairs Apps. (Sub)			
5) Appropriations			

SUMMARY ANALYSIS

The bill amends s. 212.08(5)(b)2.a, F.S., by deleting the phrase “in excess of $50,000 per calendar year” to provide a full, rather than a partial, sales tax exemption for industrial machinery and equipment purchased for the exclusive use in expanding spaceport activities or use in expanding manufacturing activities where the business can demonstrate that the purchased machinery or equipment will be used to increase productive output by at least 10 percent. The bill removes the current $50,000 threshold for businesses to claim the exemption.

This bill has been presented to the Revenue Estimating Conference for their analysis on the bill’s fiscal impact. According to Enterprise Florida Inc., a 1999 estimated fiscal impact of the elimination of the $50,000 sales and use tax payment threshold for expanding businesses was $6 million.

The bill takes effect on July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[X]
2. Lower taxes?	Yes[X]	No[]	N/A[]
3. Expand individual freedom?	Yes[]	No[]	N/A[X]
4. Increase personal responsibility?	Yes[]	No[]	N/A[X]
5. Empower families?	Yes[]	No[]	N/A[X]

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

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 212.08(5)(b)2.a, F.S., by deleting the phrase "in excess of $50,000 per calendar year" to provide a full, rather than a partial, sales tax exemption for industrial machinery and equipment purchased for the exclusive use in expanding spaceport activities or use in expanding manufacturing activities where the business can demonstrate that the purchased machinery or equipment will be used to increase productive output by at least 10 percent. The bill removes the current $50,000 threshold for businesses to claim the exemption.

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Current Situation

Chapter 212, F.S., is the state's statutory provisions for the levying and collection of taxes on sales, use, and other transactions. This chapter also contains provisions for the exemptions and credits of taxes for certain items and under certain circumstances. For example, s. 212.08, F.S., provides for the exemptions for taxation of numerous products. Section 212.08(5)(b), F.S., provides for a tax exemption for machinery and equipment used to increase productive output by at least 10 percent.

The machinery and equipment purchased by a business for the expansion of the business is exempt from any tax imposed by ch. 212 in excess of $50,000 per calendar year.[1] The exemption will be granted by the Department of Revenue (DOR) only if the taxpaying business can affirmatively show to the satisfaction of the department that the machinery or equipment was used to increase the productive output for the expanded facility or business by not less than 10 percent.

Industrial machinery and equipment purchased for the exclusive use by a new business in spaceport activities as defined in s. 212.02 or for the use in new businesses which manufacture, process, compound, or produce for sale, items of tangible property at fixed locations are exempt from the tax imposed by ch. 212. An exemption under this section can only be taken when the business can provide documentation to the DOR that such items are used in the state. A business must purchase

[1] Prior to 1996, the tax threshold for qualification for the machinery and equipment sales tax exemption for expanding businesses was $100,000. See 2003 Florida Tax Handbook, page 107.

the machinery or equipment prior to the date the business first begins its productive operations, and the delivery of the purchased item must be made within 12 months of that date.

To receive an exemption, a qualifying business must apply to DOR for a temporary tax exemption permit.[2] A business must maintain all books and records to support the exemption and DOR, upon an audit which determined that the business did not meet the criteria for the exemption, shall immediately collect from the business, the amount of taxes exempted plus interest and any penalty.[3]

Section 212.08(5)(b)6.a., F.S., defines industrial machinery and equipment as tangible personal property or other property that has a depreciable life of 3 years or more and is used in the manufacturing, processing, compounding, or production of tangible personal property for sale or use in spaceport activities. Section 212.08(5)(b)6.b., F.S., defines productive output as the number of units actually produced by a single plant or operation in a single continuous 12-month period. Increases in productive output are measured by the output for 12 continuous months immediately following the completion of installation of the machinery or equipment over the output for the 12 continuous months immediately preceding the installation of the machinery or equipment.

According to Enterprise Florida, Inc., (EFI) having the $50,000 tax threshold on the purchase of machinery and equipment by businesses before a business is exempt from such taxes, creates a competitive disadvantage for manufacturers in Florida compared with other states.[4] EFI recommends that the $50,000 be eliminated and that there be an exemption of sales and use tax on manufacturing machinery and equipment. According to EFI, this tax exemption is consistent with its policy regarding the taxation of inputs to production. EFI's Board of Directors adopted a policy statement on August 15, 2002 which contained the following excerpt:

> "Economists believe it is critical to employ a tax system that both encourages maximum economic growth and generates revenue from economic growth. In other words, Florida's tax structure should encourage productivity -- not tax it -- while generating revenue from consumption. EFI has enthusiastically supported modifications to (Florida's) tax law(s) that reduce or eliminate taxes on inputs to production; specifically, exemptions that encourage manufacturing, research and development activity that, in turn, create wealth and high-wage jobs for our communities. These exemptions also allow Florida to keep pace with our competitor states that offer similar exemptions."

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08(5)(b)2.a., F.S., related to sales and use tax exemptions; deleting the current $50,000 tax payment threshold before a business can claim an exemption on the purchase of manufacturing machinery or equipment.

Section 2: The bill takes effect July 1, 2004.

II. FISCAL ANALYSIS & REVENUE ESTIMATING STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

[2] See s. 212.08(5)(b)3.a, F.S.
[3] See s. 212.08(5)(b)3a.-c., F.S.
[4] Enterprise Florida, Inc., 2004 Legislative Recommendations for Consideration by the Legislature, November 2003.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   If businesses take advantage of the tax exemptions and expand their operations, there could be an indeterminate positive fiscal impact upon the economy of a local government.

2. Expenditures:

   None.

C. DIRECT REVENUE ESTIMATING ON PRIVATE SECTOR:

Businesses purchasing manufacturing machinery and equipment for the purpose of expanding operations and increasing production outputs could have a significant, but indeterminate, positive fiscal impact.

D. FISCAL COMMENTS:

This bill has been presented to the Revenue Estimating Conference for their analysis on the bill's fiscal impact to the state. According to Enterprise Florida Inc., a 1999 estimated fiscal impact of the elimination of the $50,000 sales and use tax payment threshold for expanding businesses was $6 million.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

According to the Department of Revenue, the bill represents a major change to the current sales and use tax exemption. An immediate rewrite of Rule 12A-1.096, F.A.C., the administrative rule covering the purchases of machinery and equipment by new and expanded businesses, would be necessary.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Revenue suggests that when the $50,000 tax threshold is removed from statute, sub-subparagraph 2.b. of s. 212.08(5)(b), F.S., becomes redundant and unnecessary. The Workforce and Economic Development Subcommittee recommended the adoption of an amendment to address this issue.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 8, 2004, the Workforce and Economic Development Subcommittee reported HB 873 favorably with one amendment. The amendment deletes s. 212.08(5)(b)2.b. since 2.a. removes the $50,000 tax threshold before the tax exemption is eligible making 2.b. redundant and unnecessary statutory language.