

CHAMBER ACTION

1 The Committee on Commerce recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the sales tax exemption for machinery
7 and equipment used to increase productive output; amending
8 s. 212.08, F.S.; deleting a limitation on an exemption
9 from the sales tax for such machinery and equipment each
10 year; deleting an exemption for such machinery and
11 equipment used to expand certain printing manufacturing
12 facilities or plant units; providing an effective date.

13
14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Paragraph (b) of subsection (5) of section
17 212.08, Florida Statutes, is amended to read:

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

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

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

27 1. Industrial machinery and equipment purchased for
28 exclusive use by a new business in spaceport activities as
29 defined by s. 212.02 or for use in new businesses which
30 manufacture, process, compound, or produce for sale items of
31 tangible personal property at fixed locations are exempt from
32 the tax imposed by this chapter upon an affirmative showing by
33 the taxpayer to the satisfaction of the department that such
34 items are used in a new business in this state. Such purchases
35 must be made prior to the date the business first begins its
36 productive operations, and delivery of the purchased item must
37 be made within 12 months of that date.

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

49 ~~b. Notwithstanding any other provision of this section,~~
50 ~~industrial machinery and equipment purchased for use in~~
51 ~~expanding printing manufacturing facilities or plant units that~~

52 ~~manufacture, process, compound, or produce for sale items of~~
 53 ~~tangible personal property at fixed locations in this state are~~
 54 ~~exempt from any amount of tax imposed by this chapter upon an~~
 55 ~~affirmative showing by the taxpayer to the satisfaction of the~~
 56 ~~department that such items are used to increase the productive~~
 57 ~~output of such an expanded business by not less than 10 percent.~~

58 3.a. To receive an exemption provided by subparagraph 1.
 59 or subparagraph 2., a qualifying business entity shall apply to
 60 the department for a temporary tax exemption permit. The
 61 application shall state that a new business exemption or
 62 expanded business exemption is being sought. Upon a tentative
 63 affirmative determination by the department pursuant to
 64 subparagraph 1. or subparagraph 2., the department shall issue
 65 such permit.

66 b. The applicant shall be required to maintain all
 67 necessary books and records to support the exemption. Upon
 68 completion of purchases of qualified machinery and equipment
 69 pursuant to subparagraph 1. or subparagraph 2., the temporary
 70 tax permit shall be delivered to the department or returned to
 71 the department by certified or registered mail.

72 c. If, in a subsequent audit conducted by the department,
 73 it is determined that the machinery and equipment purchased as
 74 exempt under subparagraph 1. or subparagraph 2. did not meet the
 75 criteria mandated by this paragraph or if commencement of
 76 production did not occur, the amount of taxes exempted at the
 77 time of purchase shall immediately be due and payable to the
 78 department by the business entity, together with the appropriate

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79 interest and penalty, computed from the date of purchase, in the
80 manner prescribed by this chapter.

81 d. In the event a qualifying business entity fails to
82 apply for a temporary exemption permit or if the tentative
83 determination by the department required to obtain a temporary
84 exemption permit is negative, a qualifying business entity shall
85 receive the exemption provided in subparagraph 1. or
86 subparagraph 2. through a refund of previously paid taxes. No
87 refund may be made for such taxes unless the criteria mandated
88 by subparagraph 1. or subparagraph 2. have been met and
89 commencement of production has occurred.

90 4. The department shall adopt rules governing applications
91 for, issuance of, and the form of temporary tax exemption
92 permits; provisions for recapture of taxes; and the manner and
93 form of refund applications and may establish guidelines as to
94 the requisites for an affirmative showing of increased
95 productive output, commencement of production, and qualification
96 for exemption.

97 5. The exemptions provided in subparagraphs 1. and 2. do
98 not apply to machinery or equipment purchased or used by
99 electric utility companies, communications companies, oil or gas
100 exploration or production operations, publishing firms that do
101 not export at least 50 percent of their finished product out of
102 the state, any firm subject to regulation by the Division of
103 Hotels and Restaurants of the Department of Business and
104 Professional Regulation, or any firm which does not manufacture,
105 process, compound, or produce for sale items of tangible
106 personal property or which does not use such machinery and

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107 equipment in spaceport activities as required by this paragraph.
108 The exemptions provided in subparagraphs 1. and 2. shall apply
109 to machinery and equipment purchased for use in phosphate or
110 other solid minerals severance, mining, or processing operations
111 only by way of a prospective credit against taxes due under
112 chapter 211 for taxes paid under this chapter on such machinery
113 and equipment.

114 6. For the purposes of the exemptions provided in
115 subparagraphs 1. and 2., these terms have the following
116 meanings:

117 a. "Industrial machinery and equipment" means tangible
118 personal property or other property that has a depreciable life
119 of 3 years or more and that is used as an integral part in the
120 manufacturing, processing, compounding, or production of
121 tangible personal property for sale or is exclusively used in
122 spaceport activities. A building and its structural components
123 are not industrial machinery and equipment unless the building
124 or structural component is so closely related to the industrial
125 machinery and equipment that it houses or supports that the
126 building or structural component can be expected to be replaced
127 when the machinery and equipment are replaced. Heating and air-
128 conditioning systems are not industrial machinery and equipment
129 unless the sole justification for their installation is to meet
130 the requirements of the production process, even though the
131 system may provide incidental comfort to employees or serve, to
132 an insubstantial degree, nonproduction activities. The term
133 includes parts and accessories only to the extent that the

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134 exemption thereof is consistent with the provisions of this
135 paragraph.

136 b. "Productive output" means the number of units actually
137 produced by a single plant or operation in a single continuous
138 12-month period, irrespective of sales. Increases in productive
139 output shall be measured by the output for 12 continuous months
140 immediately following the completion of installation of such
141 machinery or equipment over the output for the 12 continuous
142 months immediately preceding such installation. However, if a
143 different 12-month continuous period of time would more
144 accurately reflect the increase in productive output of
145 machinery and equipment purchased to facilitate an expansion,
146 the increase in productive output may be measured during that
147 12-month continuous period of time if such time period is
148 mutually agreed upon by the Department of Revenue and the
149 expanding business prior to the commencement of production;
150 provided, however, in no case may such time period begin later
151 than 2 years following the completion of installation of the new
152 machinery and equipment. The units used to measure productive
153 output shall be physically comparable between the two periods,
154 irrespective of sales.

155 Section 2. This act shall take effect July 1, 2004.