

By Senator Fasano

11-906-05

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions; amending s. 212.052, F.S.;
4 deleting an exception to an exemption from the
5 tax for research or development costs;
6 providing an exemption for machinery and
7 equipment used predominantly for research and
8 development activities; defining the term
9 "machinery and equipment"; authorizing a
10 business certified to receive the exemption to
11 designate one or more state universities or
12 community colleges as recipients of part or all
13 of the amount of the exemption under specified
14 conditions; providing that the business retains
15 the rights to patents, royalties, or real or
16 intellectual property unless an agreement
17 specifies otherwise; amending s. 212.08, F.S.;
18 deleting an annual limitation on an exemption
19 from the tax for certain machinery and
20 equipment; deleting an exemption for machinery
21 and equipment used to expand certain printing
22 manufacturing facilities or plant units;
23 revising special provisions for phosphate and
24 solid mineral severance or processing; deleting
25 an annual limitation on an exemption from the
26 tax for certain machinery and equipment
27 purchased under a federal procurement contract;
28 repealing s. 212.0805, F.S., relating to
29 conditions for the qualification of machinery
30 and equipment used in phosphate and solid
31 mineral severance or processing for the

1 exemption for new or expanding businesses;
2 providing an effective date.

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

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6 Section 1. Subsection (2) of section 212.052, Florida
7 Statutes, is amended, present subsections (3), (4), and (5) of
8 that section are redesignated as subsections (4), (5), and
9 (6), respectively, and a new subsection (3) is added to that
10 section, to read:

11 212.052 Research or development costs; exemption.--

12 (2) Notwithstanding any provision of this chapter to
13 the contrary, any person, including an affiliated group as
14 defined in s. 1504 of the Internal Revenue Code of 1954, as
15 amended, who manufactures, produces, compounds, processes, or
16 fabricates in any manner tangible personal property for such
17 taxpayer's own use directly and solely in research or
18 development shall not be subject to the tax imposed by this
19 chapter upon the cost of the product so manufactured,
20 produced, compounded, processed, or fabricated. ~~However, the~~
21 ~~tax imposed by this chapter shall be due on the purchase,~~
22 ~~rental, or repair of real property or tangible personal~~
23 ~~property employed in research or development which is subject~~
24 ~~to the tax imposed by this chapter at the time of purchase or~~
25 ~~rental.~~

26 (3)(a) Machinery and equipment are exempt from the tax
27 imposed by this chapter if used predominantly for research and
28 development activities. As used in this subsection, the term
29 "machinery and equipment" includes molds, dies, machine
30 tooling, other appurtenances or accessories to machinery and
31 equipment, testing equipment, test beds, computers, and

1 software, whether purchased or self-fabricated, and, if
2 self-fabricated, includes materials and labor for design,
3 fabrication, and assembly.

4 (b) A business certified to receive this exemption may
5 designate one or more state universities or community colleges
6 as recipients of up to 100 percent of the amount of the
7 exemption for which the business qualifies. To receive these
8 funds, the state university or community college must agree to
9 match the funds so earned with equivalent cash, programs,
10 services, or other in-kind support on a one-to-one basis in
11 the pursuit of research and development projects as requested
12 by the certified business. The rights to any patents,
13 royalties, or real or intellectual property must be vested in
14 the business unless the business and the state university or
15 community college agree otherwise.

16 Section 2. Paragraphs (b) and (d) of subsection (5) of
17 section 212.08, Florida Statutes, are amended to read:

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

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

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

1 | the tax imposed by this chapter upon an affirmative showing by
2 | the taxpayer to the satisfaction of the department that such
3 | items are used in a new business in this state. Such purchases
4 | must be made prior to the date the business first begins its
5 | productive operations, and delivery of the purchased item must
6 | be made within 12 months of that date.

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

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

29 | 3.a. To receive an exemption provided by subparagraph
30 | 1. or subparagraph 2., a qualifying business entity shall
31 | apply to the department for a temporary tax exemption permit.

1 The application shall state that a new business exemption or
2 expanded business exemption is being sought. Upon a tentative
3 affirmative determination by the department pursuant to
4 subparagraph 1. or subparagraph 2., the department shall issue
5 such permit.

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

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

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

30 4. The department shall adopt rules governing
31 applications for, issuance of, and the form of temporary tax

1 exemption permits; provisions for recapture of taxes; and the
2 manner and form of refund applications and may establish
3 guidelines as to the requisites for an affirmative showing of
4 increased productive output, commencement of production, and
5 qualification for exemption.

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

23 6. For the purposes of the exemptions provided in
24 subparagraphs 1. and 2., these terms have the following
25 meanings:

26 a. "Industrial machinery and equipment" means tangible
27 personal property or other property that has a depreciable
28 life of 3 years or more and that is used as an integral part
29 in the manufacturing, processing, compounding, or production
30 of tangible personal property for sale or is exclusively used
31 in spaceport activities. A building and its structural

1 components are not industrial machinery and equipment unless
2 the building or structural component is so closely related to
3 the industrial machinery and equipment that it houses or
4 supports that the building or structural component can be
5 expected to be replaced when the machinery and equipment are
6 replaced. Heating and air-conditioning systems are not
7 industrial machinery and equipment unless the sole
8 justification for their installation is to meet the
9 requirements of the production process, even though the system
10 may provide incidental comfort to employees or serve, to an
11 insubstantial degree, nonproduction activities. The term
12 includes parts and accessories only to the extent that the
13 exemption thereof is consistent with the provisions of this
14 paragraph.

15 b. "Productive output" means the number of units
16 actually produced by a single plant or operation in a single
17 continuous 12-month period, irrespective of sales. Increases
18 in productive output shall be measured by the output for 12
19 continuous months immediately following the completion of
20 installation of such machinery or equipment over the output
21 for the 12 continuous months immediately preceding such
22 installation. However, if a different 12-month continuous
23 period of time would more accurately reflect the increase in
24 productive output of machinery and equipment purchased to
25 facilitate an expansion, the increase in productive output may
26 be measured during that 12-month continuous period of time if
27 such time period is mutually agreed upon by the Department of
28 Revenue and the expanding business prior to the commencement
29 of production; provided, however, in no case may such time
30 period begin later than 2 years following the completion of
31 installation of the new machinery and equipment. The units

1 used to measure productive output shall be physically
2 comparable between the two periods, irrespective of sales.

3 (d) Machinery and equipment used under federal
4 procurement contract.--

5 1. Industrial machinery and equipment purchased by an
6 expanding business which manufactures tangible personal
7 property pursuant to federal procurement regulations at fixed
8 locations in this state are ~~partially~~ exempt from the tax
9 imposed in this chapter ~~on that portion of the tax which is in~~
10 ~~excess of \$100,000 per calendar year~~ upon an affirmative
11 showing by the taxpayer to the satisfaction of the department
12 that such items are used to increase the implicit productive
13 output of the expanded business by not less than 10 percent.
14 The percentage of increase is measured as deflated implicit
15 productive output for the calendar year during which the
16 installation of the machinery or equipment is completed or
17 during which commencement of production utilizing such items
18 is begun divided by the implicit productive output for the
19 preceding calendar year. In no case may the commencement of
20 production begin later than 2 years following completion of
21 installation of the machinery or equipment.

22 2. The amount of the exemption allowed shall equal the
23 taxes otherwise imposed by this chapter ~~in excess of \$100,000~~
24 ~~per calendar year~~ on qualifying industrial machinery or
25 equipment reduced by the percentage of gross receipts from
26 cost-reimbursement type contracts attributable to the plant or
27 operation to total gross receipts so attributable, accrued for
28 the year of completion or commencement.

29 3. The exemption provided by this paragraph shall
30 inure to the taxpayer only through refund of previously paid
31 taxes. Such refund shall be made within 30 days of formal

1 approval by the department of the taxpayer's application,
2 which application may be made on an annual basis following
3 installation of the machinery or equipment.

4 4. For the purposes of this paragraph, the term:

5 a. "Cost-reimbursement type contracts" has the same
6 meaning as in 32 C.F.R. s. 3-405.

7 b. "Deflated implicit productive output" means the
8 product of implicit productive output times the quotient of
9 the national defense implicit price deflator for the preceding
10 calendar year divided by the deflator for the year of
11 completion or commencement.

12 c. "Eligible costs" means the total direct and
13 indirect costs, as defined in 32 C.F.R. ss. 15-202 and 15-203,
14 excluding general and administrative costs, selling expenses,
15 and profit, defined by the uniform cost-accounting standards
16 adopted by the Cost-Accounting Standards Board created
17 pursuant to 50 U.S.C. s. 2168.

18 d. "Implicit productive output" means the annual
19 eligible costs attributable to all contracts or subcontracts
20 subject to federal procurement regulations of the single plant
21 or operation at which the machinery or equipment is used.

22 e. "Industrial machinery and equipment" means tangible
23 personal property or other property that has a depreciable
24 life of 3 years or more, that qualifies as an eligible cost
25 under federal procurement regulations, and that is used as an
26 integral part of the process of production of tangible
27 personal property. A building and its structural components
28 are not industrial machinery and equipment unless the building
29 or structural component is so closely related to the
30 industrial machinery and equipment that it houses or supports
31 that the building or structural component can be expected to

1 | be replaced when the machinery and equipment are replaced.
2 | Heating and air-conditioning systems are not industrial
3 | machinery and equipment unless the sole justification for
4 | their installation is to meet the requirements of the
5 | production process, even though the system may provide
6 | incidental comfort to employees or serve, to an insubstantial
7 | degree, nonproduction activities. The term includes parts and
8 | accessories only to the extent that the exemption of such
9 | parts and accessories is consistent with the provisions of
10 | this paragraph.

11 | f. "National defense implicit price deflator" means
12 | the national defense implicit price deflator for the gross
13 | national product as determined by the Bureau of Economic
14 | Analysis of the United States Department of Commerce.

15 | 5. The exclusions provided in subparagraph (b)5. apply
16 | to this exemption. This exemption applies only to machinery
17 | or equipment purchased pursuant to production contracts with
18 | the United States Department of Defense and Armed Forces, the
19 | National Aeronautics and Space Administration, and other
20 | federal agencies for which the contracts are classified for
21 | national security reasons. In no event shall the provisions
22 | of this paragraph apply to any expanding business the increase
23 | in productive output of which could be measured under the
24 | provisions of sub-subparagraph (b)6.b. as physically
25 | comparable between the two periods.

26 | Section 3. Section 212.0805, Florida Statutes, is
27 | repealed.

28 | Section 4. This act shall take effect July 1, 2005.
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SENATE SUMMARY

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3 Amends provisions relating to the tax on sales, use, and
4 other transactions. Deletes an exception to an exemption
5 for research or development costs. Provides an exemption
6 for machinery and equipment used predominantly for
7 research and development. Defines the term "machinery and
8 equipment." Authorizes a business certified to receive
9 the exemption to designate state universities or
10 community colleges, under specified conditions, as
11 recipients of the funds received from the exemption.
12 Deletes an exemption for machinery and equipment used to
13 expand certain printing manufacturing facilities or plant
14 units. Amends provisions for phosphate and solid mineral
15 severance. Deletes an annual limitation on an exemption
16 for certain machinery and equipment purchased under a
17 federal procurement contract. Repeals s. 212.0805, F.S.,
18 relating to qualifications for exemption and credit
19 provided in s. 212.08(5)(b)5., F.S.
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