

By Senator Smith

14-1170A-05

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 amending provisions relating to the exemption

5 for machinery and equipment used to increase

6 productive output; eliminating a limitation on

7 the exemption for spaceport activities and

8 manufacturing facilities and an exemption for

9 machinery and equipment used in printing

10 facilities; providing an exemption from the

11 entire amount of the tax for machinery and

12 equipment used under federal procurement

13 contracts; repealing s. 212.0805, F.S.,

14 relating to qualifying for the exemption and

15 credit for machinery and equipment purchased

16 for use in phosphate or other solid-minerals

17 severance, mining, or processing operations;

18 providing an effective date.

19

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

21

22 Section 1. Paragraphs (b) and (d) of subsection (5) of

23 section 212.08, Florida Statutes, are amended to read:

24 212.08 Sales, rental, use, consumption, distribution,

25 and storage tax; specified exemptions.--The sale at retail,

26 the rental, the use, the consumption, the distribution, and

27 the storage to be used or consumed in this state of the

28 following are hereby specifically exempt from the tax imposed

29 by this chapter.

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

31

1 (b) Machinery and equipment used to increase
2 productive output.--

3 1. Industrial machinery and equipment purchased for
4 exclusive use by a new business in spaceport activities as
5 defined by s. 212.02 or for use in new businesses which
6 manufacture, process, compound, or produce for sale items of
7 tangible personal property at fixed locations are exempt from
8 the tax imposed by this chapter upon an affirmative showing by
9 the taxpayer to the satisfaction of the department that such
10 items are used in a new business in this state. Such purchases
11 must be made prior to the date the business first begins its
12 productive operations, and delivery of the purchased item must
13 be made within 12 months of that date.

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

26 ~~b. Notwithstanding any other provision of this~~
27 ~~section, industrial machinery and equipment purchased for use~~
28 ~~in expanding printing manufacturing facilities or plant units~~
29 ~~that manufacture, process, compound, or produce for sale items~~
30 ~~of tangible personal property at fixed locations in this state~~
31 ~~are exempt from any amount of tax imposed by this chapter upon~~

1 ~~an affirmative showing by the taxpayer to the satisfaction of~~
2 ~~the department that such items are used to increase the~~
3 ~~productive output of such an expanded business by not less~~
4 ~~than 10 percent.~~

5 3.a. To receive an exemption provided by subparagraph
6 1. or subparagraph 2., a qualifying business entity shall
7 apply to the department for a temporary tax exemption permit.
8 The application shall state that a new business exemption or
9 expanded business exemption is being sought. Upon a tentative
10 affirmative determination by the department pursuant to
11 subparagraph 1. or subparagraph 2., the department shall issue
12 such permit.

13 b. The applicant shall be required to maintain all
14 necessary books and records to support the exemption. Upon
15 completion of purchases of qualified machinery and equipment
16 pursuant to subparagraph 1. or subparagraph 2., the temporary
17 tax permit shall be delivered to the department or returned to
18 the department by certified or registered mail.

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

28 d. ~~If in the event~~ a qualifying business entity fails
29 to apply for a temporary exemption permit or if the tentative
30 determination by the department required to obtain a temporary
31 exemption permit is negative, a qualifying business entity

1 shall receive the exemption provided in subparagraph 1. or
2 subparagraph 2. through a refund of previously paid taxes. A
3 ~~No~~ refund may not be made for such taxes unless the criteria
4 mandated by subparagraph 1. or subparagraph 2. have been met
5 and commencement of production has occurred.

6 4. The department shall adopt rules governing
7 applications for, issuance of, and the form of temporary tax
8 exemption permits; provisions for recapture of taxes; and the
9 manner and form of refund applications and may establish
10 guidelines as to the requisites for an affirmative showing of
11 increased productive output, commencement of production, and
12 qualification for exemption.

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

1 6. For the purposes of the exemptions provided in
2 subparagraphs 1. and 2., the term ~~these terms have the~~
3 ~~following meanings:~~

4 a. "Industrial machinery and equipment" means tangible
5 personal property or other property that has a depreciable
6 life of 3 years or more and that is used as an integral part
7 in the manufacturing, processing, compounding, or production
8 of tangible personal property for sale or is exclusively used
9 in spaceport activities. A building and its structural
10 components are not industrial machinery and equipment unless
11 the building or structural component is so closely related to
12 the industrial machinery and equipment that it houses or
13 supports that the building or structural component can be
14 expected to be replaced when the machinery and equipment are
15 replaced. Heating and air-conditioning systems are not
16 industrial machinery and equipment unless the sole
17 justification for their installation is to meet the
18 requirements of the production process, even though the system
19 may provide incidental comfort to employees or serve, to an
20 insubstantial degree, nonproduction activities. The term
21 includes parts and accessories only to the extent that the
22 exemption thereof is consistent with the provisions of this
23 paragraph.

24 b. "Productive output" means the number of units
25 actually produced by a single plant or operation in a single
26 continuous 12-month period, irrespective of sales. Increases
27 in productive output shall be measured by the output for 12
28 continuous months immediately following the completion of
29 installation of such machinery or equipment over the output
30 for the 12 continuous months immediately preceding such
31 installation. However, if a different 12-month continuous

1 | period of time would more accurately reflect the increase in
2 | productive output of machinery and equipment purchased to
3 | facilitate an expansion, the increase in productive output may
4 | be measured during that 12-month continuous period of time if
5 | such time period is mutually agreed upon by the Department of
6 | Revenue and the expanding business prior to the commencement
7 | of production; provided, however, in no case may such time
8 | period begin later than 2 years following the completion of
9 | installation of the new machinery and equipment. The units
10 | used to measure productive output shall be physically
11 | comparable between the two periods, irrespective of sales.

12 | (d) Machinery and equipment used under federal
13 | procurement contract.--

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

31 |

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

8 3. The exemption provided by this paragraph shall
9 inure to the taxpayer only through refund of previously paid
10 taxes. Such refund shall be made within 30 days of formal
11 approval by the department of the taxpayer's application,
12 which application may be made on an annual basis following
13 installation of the machinery or equipment.

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

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

17 b. "Deflated implicit productive output" means the
18 product of implicit productive output times the quotient of
19 the national defense implicit price deflator for the preceding
20 calendar year divided by the deflator for the year of
21 completion or commencement.

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

28 d. "Implicit productive output" means the annual
29 eligible costs attributable to all contracts or subcontracts
30 subject to federal procurement regulations of the single plant
31 or operation at which the machinery or equipment is used.

1 e. "Industrial machinery and equipment" means tangible
2 personal property or other property that has a depreciable
3 life of 3 years or more, that qualifies as an eligible cost
4 under federal procurement regulations, and that is used as an
5 integral part of the process of production of tangible
6 personal property. A building and its structural components
7 are not industrial machinery and equipment unless the building
8 or structural component is so closely related to the
9 industrial machinery and equipment that it houses or supports
10 that the building or structural component can be expected to
11 be replaced when the machinery and equipment are replaced.
12 Heating and air-conditioning systems are not industrial
13 machinery and equipment unless the sole justification for
14 their installation is to meet the requirements of the
15 production process, even though the system may provide
16 incidental comfort to employees or serve, to an insubstantial
17 degree, nonproduction activities. The term includes parts and
18 accessories only to the extent that the exemption of such
19 parts and accessories is consistent with the provisions of
20 this paragraph.

21 f. "National defense implicit price deflator" means
22 the national defense implicit price deflator for the gross
23 national product as determined by the Bureau of Economic
24 Analysis of the United States Department of Commerce.

25 5. The exclusions provided in subparagraph (b)5. apply
26 to this exemption. This exemption applies only to machinery
27 or equipment purchased pursuant to production contracts with
28 the United States Department of Defense and Armed Forces, the
29 National Aeronautics and Space Administration, and other
30 federal agencies for which the contracts are classified for
31 national security reasons. In no event shall the provisions

1 of this paragraph apply to any expanding business the increase
2 in productive output of which could be measured under the
3 provisions of sub-subparagraph (b)6.b. as physically
4 comparable between the two periods.

5 Section 2. Section 212.0805, Florida Statutes, is
6 repealed.

7 Section 3. This act shall take effect July 1, 2005.

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SENATE SUMMARY

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