

Bill No. CS for SB 2362

Barcode 604084

CHAMBER ACTION

Senate

House

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The Committee on Education (King) recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

Section 1. Subsection (2) of section 212.052, Florida Statutes, is amended to read:

212.052 Research or development costs; exemption.--

(2) Notwithstanding any provision of this chapter to the contrary, any person, including an affiliated group as defined in s. 1504 of the Internal Revenue Code of 1954, as amended, who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for such taxpayer's own use directly and solely in research or development shall not be subject to the tax imposed by this chapter upon the cost of the product so manufactured, produced, compounded, processed, or fabricated. ~~However, the tax imposed by this chapter shall be due on the purchase, rental, or repair of real property or tangible personal~~

Bill No. CS for SB 2362

Barcode 604084

1 ~~property employed in research or development which is subject~~
2 ~~to the tax imposed by this chapter at the time of purchase or~~
3 ~~rental.~~

4 Section 2. Paragraph (j) of subsection (5) of section
5 212.08, Florida Statutes, is amended to read:

6 212.08 Sales, rental, use, consumption, distribution,
7 and storage tax; specified exemptions.--The sale at retail,
8 the rental, the use, the consumption, the distribution, and
9 the storage to be used or consumed in this state of the
10 following are hereby specifically exempt from the tax imposed
11 by this chapter.

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

13 (j) Machinery and equipment used in semiconductor,
14 defense, or space technology production and research and
15 development.--

16 1.a. Industrial machinery and equipment used in
17 semiconductor technology facilities certified by the Office of
18 Tourism, Trade, and Economic Development ~~under subparagraph 6.~~
19 to manufacture, process, compound, or produce semiconductor
20 technology products for sale or for use by these facilities
21 are exempt from the tax imposed by this chapter. ~~For purposes~~
22 ~~of this paragraph, industrial machinery and equipment includes~~
23 ~~molds, dies, machine tooling, other appurtenances or~~
24 ~~accessories to machinery and equipment, testing equipment,~~
25 ~~test beds, computers, and software, whether purchased or~~
26 ~~self-fabricated, and, if self-fabricated, includes materials~~
27 ~~and labor for design, fabrication, and assembly.~~

28 b. Building materials purchased for use in
29 manufacturing or expanding clean rooms in
30 semiconductor-manufacturing facilities are exempt from the tax
31 imposed by this chapter.

Bill No. CS for SB 2362

Barcode 604084

1 ~~c.b.~~ Industrial machinery and equipment used in
2 defense or space technology facilities certified by the Office
3 of Tourism, Trade, and Economic Development ~~under subparagraph~~
4 ~~6.~~ to manufacture, process, compound, or produce defense
5 technology products or space technology products for sale or
6 for use by these facilities are exempt from 25 percent of the
7 tax imposed by this chapter.

8 d. Machinery and equipment used predominantly for
9 research and development as defined in s. 212.052 are exempt
10 from the tax imposed by this chapter.

11 ~~2.a. Machinery and equipment are exempt from the tax~~
12 ~~imposed by this chapter if used predominately in semiconductor~~
13 ~~wafer research and development activities in a semiconductor~~
14 ~~technology research and development facility certified under~~
15 ~~subparagraph 6. For purposes of this paragraph, machinery and~~
16 ~~equipment includes molds, dies, machine tooling, other~~
17 ~~appurtenances or accessories to machinery and equipment,~~
18 ~~testing equipment, test beds, computers, and software, whether~~
19 ~~purchased or self-fabricated, and, if self-fabricated,~~
20 ~~includes materials and labor for design, fabrication, and~~
21 ~~assembly.~~

22 ~~b. Machinery and equipment are exempt from 25 percent~~
23 ~~of the tax imposed by this chapter if used predominately in~~
24 ~~defense or space research and development activities in a~~
25 ~~defense or space technology research and development facility~~
26 ~~certified under subparagraph 6.~~

27 ~~3. Building materials purchased for use in~~
28 ~~manufacturing or expanding clean rooms in~~
29 ~~semiconductor manufacturing facilities are exempt from the tax~~
30 ~~imposed by this chapter.~~

31 ~~4. In addition to meeting the criteria mandated by~~

Bill No. CS for SB 2362

Barcode 604084

1 ~~subparagraph 1., subparagraph 2., or subparagraph 3., a~~
 2 ~~business must be certified by the Office of Tourism, Trade,~~
 3 ~~and Economic Development as authorized in this paragraph in~~
 4 ~~order to qualify for exemption under this paragraph.~~

5 ~~5. For items purchased tax exempt pursuant to this~~
 6 ~~paragraph, possession of a written certification from the~~
 7 ~~purchaser, certifying the purchaser's entitlement to exemption~~
 8 ~~pursuant to this paragraph, relieves the seller of the~~
 9 ~~responsibility of collecting the tax on the sale of such~~
 10 ~~items, and the department shall look solely to the purchaser~~
 11 ~~for recovery of tax if it determines that the purchaser was~~
 12 ~~not entitled to the exemption.~~

13 ~~6.a. To be eligible to receive the exemption provided~~
 14 ~~by subparagraph 1., subparagraph 2., or subparagraph 3., a~~
 15 ~~qualifying business entity shall apply to Enterprise Florida,~~
 16 ~~Inc. The application shall be developed by the Office of~~
 17 ~~Tourism, Trade, and Economic Development in consultation with~~
 18 ~~Enterprise Florida, Inc.~~

19 ~~b. Enterprise Florida, Inc., shall review each~~
 20 ~~submitted application and information and determine whether or~~
 21 ~~not the application is complete within 5 working days. Once an~~
 22 ~~application is complete, Enterprise Florida, Inc., shall,~~
 23 ~~within 10 working days, evaluate the application and recommend~~
 24 ~~approval or disapproval of the application to the Office of~~
 25 ~~Tourism, Trade, and Economic Development.~~

26 ~~c. Upon receipt of the application and recommendation~~
 27 ~~from Enterprise Florida, Inc., the Office of Tourism, Trade,~~
 28 ~~and Economic Development shall certify within 5 working days~~
 29 ~~those applicants who are found to meet the requirements of~~
 30 ~~this section and notify the applicant, Enterprise Florida,~~
 31 ~~Inc., and the department of the certification. If the Office~~

Bill No. CS for SB 2362

Barcode 604084

1 ~~of Tourism, Trade, and Economic Development finds that the~~
2 ~~applicant does not meet the requirements of this section, it~~
3 ~~shall notify the applicant and Enterprise Florida, Inc.,~~
4 ~~within 10 working days that the application for certification~~
5 ~~has been denied and the reasons for denial. The Office of~~
6 ~~Tourism, Trade, and Economic Development has final approval~~
7 ~~authority for certification under this section.~~

8 ~~7.a. A business may apply once each year for the~~
9 ~~exemption.~~

10 ~~b. The application must indicate, for program~~
11 ~~evaluation purposes only, the average number of full-time~~
12 ~~equivalent employees at the facility over the preceding~~
13 ~~calendar year, the average wage and benefits paid to those~~
14 ~~employees over the preceding calendar year, the total~~
15 ~~investment made in real and tangible personal property over~~
16 ~~the preceding calendar year, and the total value of tax exempt~~
17 ~~purchases and taxes exempted during the previous year. The~~
18 ~~department shall assist the Office of Tourism, Trade, and~~
19 ~~Economic Development in evaluating and verifying information~~
20 ~~provided in the application for exemption.~~

21 ~~c. The Office of Tourism, Trade, and Economic~~
22 ~~Development may use the information reported on the~~
23 ~~application for evaluation purposes only and shall prepare an~~
24 ~~annual report on the exemption program and its cost and~~
25 ~~impact. The annual report for the preceding fiscal year shall~~
26 ~~be submitted to the Governor, the President of the Senate, and~~
27 ~~the Speaker of the House of Representatives by September 30 of~~
28 ~~each fiscal year.~~

29 ~~2.8. A business receiving an certified to receive this~~
30 ~~exemption under this paragraph may elect to designate one or~~
31 ~~more state universities or community colleges as recipients of~~

Bill No. CS for SB 2362

Barcode 604084

1 up to 100 percent of the amount of the exemption for which
 2 they may qualify. To receive these funds, the institution must
 3 agree to match the funds so earned with equivalent cash,
 4 programs, services, or other in-kind support on a one-to-one
 5 basis in the pursuit of research and development projects as
 6 requested by the certified business. The rights to any
 7 patents, royalties, or real or intellectual property must be
 8 vested in the business unless otherwise agreed to by the
 9 business and the university or community college.

10 3. The department may adopt rules to implement this
 11 exemption and for assumption of self-accrual authority that is
 12 authorized by this paragraph. Persons or entities claiming
 13 such exemptions shall furnish the vendor of the machinery and
 14 equipment, including the vendor of the materials and labor
 15 used in self-fabrication of the machinery and equipment, an
 16 affidavit stating that the items for which an exemption is
 17 claimed are machinery and equipment that will be used for the
 18 purposes required by this paragraph. A purchaser who claims
 19 the exemption by refund shall include the affidavit with the
 20 refund application. The affidavit must contain the purchaser's
 21 name, address, sales and use tax registration number, and, if
 22 applicable, federal employer identification number. Any person
 23 fraudulently furnishing an affidavit to the vendor for the
 24 purpose of evading payment of any tax imposed under this
 25 chapter shall be subject to the penalty in s. 212.085 and as
 26 otherwise provided by law. Purchasers shall maintain all
 27 documentation necessary to prove the exempt status of
 28 purchases and fabrication activity and make such documentation
 29 available for inspection pursuant to s. 212.13(2). In lieu of
 30 furnishing an affidavit, a purchaser claiming the exemption in
 31 this paragraph who has a direct pay permit may give the vendor

1 a copy of the direct pay permit and shall maintain all
 2 documentation necessary to prove the exempt status of the
 3 purchases and fabrication activity and make such documentation
 4 available for inspection pursuant to s. 212.13(2).

5 4.9. As used in this paragraph, the term:

6 a. "Predominately" means at least 50 percent of the
 7 time in qualifying research and development.

8 ~~b. "Research and development" means basic and applied~~
 9 ~~research in the science or engineering, as well as the design,~~
 10 ~~development, and testing of prototypes or processes of new or~~
 11 ~~improved products. Research and development does not include~~
 12 ~~market research, routine consumer product testing, sales~~
 13 ~~research, research in the social sciences or psychology,~~
 14 ~~nontechnological activities, or technical services.~~

15 b.e. "Semiconductor technology products" means raw
 16 semiconductor wafers or semiconductor thin films that are
 17 transformed into semiconductor memory or logic wafers,
 18 including wafers containing mixed memory and logic circuits;
 19 related assembly and test operations; active-matrix flat panel
 20 displays; semiconductor chips; semiconductor lasers;
 21 optoelectronic elements; and related semiconductor technology
 22 products as determined by the Office of Tourism, Trade, and
 23 Economic Development.

24 c.d. "Clean rooms" means manufacturing facilities
 25 enclosed in a manner that meets the clean manufacturing
 26 requirements necessary for high-technology
 27 semiconductor-manufacturing environments.

28 d.e. "Defense technology products" means products that
 29 have a military application, including, but not limited to,
 30 weapons, weapons systems, guidance systems, surveillance
 31 systems, communications or information systems, munitions,

Bill No. CS for SB 2362

Barcode 604084

1 aircraft, vessels, or boats, or components thereof, which are
 2 intended for military use and manufactured in performance of a
 3 contract with the United States Department of Defense or the
 4 military branch of a recognized foreign government or a
 5 subcontract thereunder which relates to matters of national
 6 defense.

7 e.f. "Space technology products" means products that
 8 are specifically designed or manufactured for application in
 9 space activities, including, but not limited to, space launch
 10 vehicles, missiles, satellites or research payloads, avionics,
 11 and associated control systems and processing systems. The
 12 term does not include products that are designed or
 13 manufactured for general commercial aviation or other uses
 14 even though those products may also serve an incidental use in
 15 space applications.

16 f. "Industrial machinery and equipment" includes
 17 molds, dies, machine tooling, other appurtenances or
 18 accessories to machinery and equipment, testing equipment,
 19 test beds, computers, and software, whether purchased or
 20 self-fabricated, and, if self-fabricated, includes materials
 21 and labor for design, fabrication, and assembly.

22 5. The exemption in this paragraph is subject to
 23 review by the Legislature no later than July 1, 2015. The
 24 Office of Program Policy Analysis and Government
 25 Accountability and Enterprise Florida, Inc., shall study this
 26 exemption to determine the impact of the exemption on the
 27 promotion of research and development activities in this
 28 state. Enterprise Florida, Inc., may contract with an
 29 independent research organization to perform the assessment.
 30 The study shall include the estimated annual cost of the
 31 exemption and an estimate of any economic impact of increased

Bill No. CS for SB 2362

Barcode 604084

1 research and development activities. By January 1, 2015, the
 2 Office of Program Policy Analysis and Enterprise Florida,
 3 Inc., shall submit reports to the Governor, the President of
 4 the Senate, and the Speaker of the House of Representatives
 5 which provide findings and recommendations as to whether the
 6 exemption should be re-enacted by the Legislature.

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

10 ===== T I T L E A M E N D M E N T =====

11 And the title is amended as follows:

12 Delete everything before the enacting clause

14 and insert:

15 A bill to be entitled

16 An act relating to the tax on sales, use, and
 17 other transactions; amending s. 212.052, F.S.;
 18 deleting an exception to an exemption from the
 19 tax for research or development costs; amending
 20 s. 212.08, F.S.; providing an exemption for
 21 machinery and equipment used in semiconductor,
 22 defense, or space technology research and
 23 development activities; providing definitions;
 24 providing for the adoption of rules pertaining
 25 to procedures to claim exemptions and revising
 26 guidelines relating to such procedures;
 27 providing for a review of the exemption by the
 28 Office of Program Policy Analysis and
 29 Government Accountability and Enterprise
 30 Florida, Inc.; requiring a report; providing an
 31 effective date.