

By the Committee on Commerce and Consumer Services; and
Senators Smith, Fasano and Crist

577-1841-05

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; amending
6 s. 212.08, F.S.; providing an exemption for
7 machinery and equipment used predominantly for
8 research and development activities; defining
9 the terms "predominantly" and "machinery and
10 equipment"; authorizing the Department of
11 Revenue to adopt rules to administer the
12 exemption; providing for an affidavit to be
13 given by a taxpayer claiming entitlement to the
14 exemption; authorizing a business to designate
15 one or more state universities or community
16 colleges as recipients of part or all of the
17 amount of the exemption under specified
18 conditions; providing that the business retains
19 the rights to patents, royalties, or real or
20 intellectual property unless an agreement
21 specifies otherwise; providing for a review of
22 the exemption by the Office of Program Policy
23 Analysis and Government Accountability;
24 amending s. 1011.94, F.S.; adding
25 cross-references and deleting the reference to
26 a requirement for certification of the exempt
27 business; providing an effective date.
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29 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Subsection (2) of section 212.052, Florida
2 Statutes, is amended to read:

3 212.052 Research or development costs; exemption.--

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

18 Section 2. Subsection (18) is added to section 212.08,
19 Florida Statutes, to read:

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

26 (18)(a) Machinery and equipment used predominantly for
27 research and development, as defined in s. 212.052, are exempt
28 from the tax imposed by this chapter. For the purposes of
29 this subsection, the term "predominantly" means at least 50
30 percent of the time. The term "machinery and equipment"
31 includes, but is not limited to, molds, dies, machine tooling,

1 other appurtenances or accessories to machinery and equipment,
2 testing and measuring equipment, test beds, computers, and
3 software, whether purchased or self-fabricated, and, if
4 self-fabricated, includes materials and labor for design,
5 fabrication, and assembly.

6 (b) The department may adopt rules that provide for
7 administering this exemption. Persons claiming the exemption
8 provided in this subsection shall furnish the vendor of the
9 machinery or equipment, including the vendor of materials and
10 labor used in self-fabrication of the machinery or equipment,
11 an affidavit stating that the item or items for which an
12 exemption is claimed are machinery and equipment that will be
13 used predominantly for research and development as required by
14 this subsection. A purchaser who claims the exemption by
15 refund shall include the affidavit with the refund
16 application. The affidavit must contain the purchaser's name,
17 address, sales and use tax registration number, and, if
18 applicable, federal employer identification number. Any
19 person fraudulently furnishing an affidavit to the vendor for
20 the purpose of evading payment of any tax imposed under this
21 chapter shall be subject to the penalty set forth in s.
22 212.085 and as otherwise provided by law. Purchasers shall
23 maintain all documentation necessary to prove the exempt
24 status of purchases and fabrication activity and make such
25 documentation available for inspection pursuant to the
26 requirements of s. 212.13(2).

27 (c) A business may designate one or more state
28 universities or community colleges as recipients to receive
29 from the business an amount of up to 100 percent of the
30 exemption for which the business qualifies. To receive these
31 funds, the state university or community college must agree to

1 match the funds so earned with equivalent cash, programs,
2 services, or other in-kind support on a one-to-one basis in
3 the pursuit of research and development projects as requested
4 by the business. The rights to any patents, royalties, or
5 real or intellectual property must be vested in the business
6 unless otherwise agreed to by the business and the state
7 university or community college.

8 (d) The exemption provided for in this subsection
9 shall be reviewed by the Legislature no later than July 1,
10 2015. The Office of Program Policy Analysis and Government
11 Accountability and Enterprise Florida, Inc., shall study this
12 exemption to determine the impact of the exemption on the
13 promotion of research and development activities in this
14 state. Enterprise Florida, Inc., may contract with an
15 independent research organization to perform the assessment.
16 The study must include the estimated annual cost of the
17 exemption and an estimate of the economic impact of increased
18 research and development activities, if any. By January 1,
19 2015, the Office of Program Policy Analysis and Government
20 Accountability and Enterprise Florida, Inc., shall submit to
21 the Governor, the President of the Senate, and the Speaker of
22 the House of Representatives reports that provide the findings
23 and recommendations as to whether the exemption should be
24 reenacted by the Legislature.

25 Section 3. Subsection (1) of section 1011.94, Florida
26 Statutes, is amended to read:

27 1011.94 Trust Fund for University Major Gifts.--

28 (1) There is established a Trust Fund for University
29 Major Gifts. The purpose of the trust fund is to enable each
30 university and New College to provide donors with an incentive
31 in the form of matching grants for donations for the

1 establishment of permanent endowments and sales tax exemption
2 matching funds received pursuant to s. 212.08(5)(j) or s.
3 212.08(18), which must be invested, with the proceeds of the
4 investment used to support libraries and instruction and
5 research programs, as defined by the State Board of Education.
6 All funds appropriated for the challenge grants, new donors,
7 major gifts, sales tax exemption matching funds pursuant to s.
8 212.08(5)(j) or s. 212.08(18), or eminent scholars program
9 must be deposited into the trust fund and invested pursuant to
10 s. 17.61 until the State Board of Education allocates the
11 funds to universities to match private donations.
12 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
13 undisbursed balance remaining in the trust fund and interest
14 income accruing to the portion of the trust fund which is not
15 matched and distributed to universities must remain in the
16 trust fund and be used to increase the total funds available
17 for challenge grants. Funds deposited in the trust fund for
18 the sales tax exemption matching program authorized in s.
19 212.08(5)(j) or s. 212.08(18), and interest earnings thereon,
20 shall be maintained in a separate account within the Trust
21 Fund for University Major Gifts, and may be used only to match
22 qualified sales tax exemptions that a ~~certified~~ business
23 designates for use by state universities and community
24 colleges to support research and development projects
25 requested by the ~~certified~~ business. The State Board of
26 Education may authorize any university to encumber the state
27 matching portion of a challenge grant from funds available
28 under s. 1011.45.

29 Section 4. This act shall take effect July 1, 2005.
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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 Senate Bill 2362

4 The committee substitute differs from the bill in the
5 following ways:

- 6 -- Transfers the proposed exemption from s. 212.052, F.S.,
7 to s. 212.08, F.S.;
- 8 -- Defines the term "predominately" to mean at least 50
9 percent of the time;
- 10 -- Allows the Department of Revenue (DOR) to adopt rules for
11 implementation of this exemption;
- 12 -- Provides requirements for documentation of the tax
13 exemption, requiring purchasers claiming the exemption to
14 submit an affidavit to the vendor and purchasers claiming
15 by refund to submit an affidavit with the application to
16 DOR;
- 17 -- Provides for a penalty pursuant to s. 212.085, F.S., for
18 fraudulent claims of this exemption;
- 19 -- Requires the exemption be reviewed by the Legislature by
20 July 1, 2015;
- 21 -- Requires OPPAGA and EFI to evaluate the impact of the
22 exemption, and to recommend whether the exemption should
23 be re-enacted by the Legislature; and
- 24 -- Provides that funds from the Trust Fund for University
25 Major Gifts may be used as matching funds for donations
26 of exemption proceeds to state universities and community
27 colleges.