

1 A bill to be entitled

2 An act relating to exemptions from the tax on sales, use,
3 and other transactions; amending s. 212.08, F.S.; deleting
4 an annual limitation on an exemption from the sales tax
5 for certain machinery and equipment used to increase
6 productive output; deleting an exemption for machinery and
7 equipment used to expand certain printing manufacturing
8 facilities or plant units; deleting a limitation on
9 application of the exemption for machinery and equipment
10 purchased for use in phosphate or other solid minerals
11 severance, mining, or processing operations by way of a
12 prospective credit; deleting an annual limitation on an
13 exemption from the sales tax for certain machinery and
14 equipment purchased under a federal procurement contract;
15 repealing s. 212.0805, F.S., relating to qualifications
16 for the exemption and credit for machinery and equipment
17 purchased by an expanding business for use in phosphate or
18 other solid minerals severance, mining, or processing
19 operations; providing an appropriation; providing an
20 effective date.

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

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24 Section 1. Paragraphs (b) and (d) of subsection (5) of
25 section 212.08, Florida Statutes, are amended to read:

26 212.08 Sales, rental, use, consumption, distribution, and
27 storage tax; specified exemptions.--The sale at retail, the
28 rental, the use, the consumption, the distribution, and the

29 storage to be used or consumed in this state of the following
 30 are hereby specifically exempt from the tax imposed by this
 31 chapter.

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

33 (b) Machinery and equipment used to increase productive
 34 output.--

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

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

57 ~~b. Notwithstanding any other provision of this section,~~
58 ~~industrial machinery and equipment purchased for use in~~
59 ~~expanding printing manufacturing facilities or plant units that~~
60 ~~manufacture, process, compound, or produce for sale items of~~
61 ~~tangible personal property at fixed locations in this state are~~
62 ~~exempt from any amount of tax imposed by this chapter upon an~~
63 ~~affirmative showing by the taxpayer to the satisfaction of the~~
64 ~~department that such items are used to increase the productive~~
65 ~~output of such an expanded business by not less than 10 percent.~~

66 3.a. To receive an exemption provided by subparagraph 1.
67 or subparagraph 2., a qualifying business entity shall apply to
68 the department for a temporary tax exemption permit. The
69 application shall state that a new business exemption or
70 expanded business exemption is being sought. Upon a tentative
71 affirmative determination by the department pursuant to
72 subparagraph 1. or subparagraph 2., the department shall issue
73 such permit.

74 b. The applicant shall be required to maintain all
75 necessary books and records to support the exemption. Upon
76 completion of purchases of qualified machinery and equipment
77 pursuant to subparagraph 1. or subparagraph 2., the temporary
78 tax permit shall be delivered to the department or returned to
79 the department by certified or registered mail.

80 c. If, in a subsequent audit conducted by the department,
81 it is determined that the machinery and equipment purchased as
82 exempt under subparagraph 1. or subparagraph 2. did not meet the
83 criteria mandated by this paragraph or if commencement of
84 production did not occur, the amount of taxes exempted at the

85 | time of purchase shall immediately be due and payable to the
86 | department by the business entity, together with the appropriate
87 | interest and penalty, computed from the date of purchase, in the
88 | manner prescribed by this chapter.

89 | d. In the event a qualifying business entity fails to
90 | apply for a temporary exemption permit or if the tentative
91 | determination by the department required to obtain a temporary
92 | exemption permit is negative, a qualifying business entity shall
93 | receive the exemption provided in subparagraph 1. or
94 | subparagraph 2. through a refund of previously paid taxes. No
95 | refund may be made for such taxes unless the criteria mandated
96 | by subparagraph 1. or subparagraph 2. have been met and
97 | commencement of production has occurred.

98 | 4. The department shall adopt rules governing applications
99 | for, issuance of, and the form of temporary tax exemption
100 | permits; provisions for recapture of taxes; and the manner and
101 | form of refund applications and may establish guidelines as to
102 | the requisites for an affirmative showing of increased
103 | productive output, commencement of production, and qualification
104 | for exemption.

105 | 5. The exemptions provided in subparagraphs 1. and 2. do
106 | not apply to machinery or equipment purchased or used by
107 | electric utility companies, communications companies, oil or gas
108 | exploration or production operations, publishing firms that do
109 | not export at least 50 percent of their finished product out of
110 | the state, any firm subject to regulation by the Division of
111 | Hotels and Restaurants of the Department of Business and
112 | Professional Regulation, or any firm which does not manufacture,

113 process, compound, or produce for sale items of tangible
114 personal property or which does not use such machinery and
115 equipment in spaceport activities as required by this paragraph.
116 The exemptions provided in subparagraphs 1. and 2. shall apply
117 to machinery and equipment purchased for use in phosphate or
118 other solid minerals severance, mining, or processing operations
119 ~~only by way of a prospective credit against taxes due under~~
120 ~~chapter 211 for taxes paid under this chapter on such machinery~~
121 ~~and equipment.~~

122 6. For the purposes of the exemptions provided in
123 subparagraphs 1. and 2., these terms have the following
124 meanings:

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

141 includes parts and accessories only to the extent that the
142 exemption thereof is consistent with the provisions of this
143 paragraph.

144 b. "Productive output" means the number of units actually
145 produced by a single plant or operation in a single continuous
146 12-month period, irrespective of sales. Increases in productive
147 output shall be measured by the output for 12 continuous months
148 immediately following the completion of installation of such
149 machinery or equipment over the output for the 12 continuous
150 months immediately preceding such installation. However, if a
151 different 12-month continuous period of time would more
152 accurately reflect the increase in productive output of
153 machinery and equipment purchased to facilitate an expansion,
154 the increase in productive output may be measured during that
155 12-month continuous period of time if such time period is
156 mutually agreed upon by the Department of Revenue and the
157 expanding business prior to the commencement of production;
158 provided, however, in no case may such time period begin later
159 than 2 years following the completion of installation of the new
160 machinery and equipment. The units used to measure productive
161 output shall be physically comparable between the two periods,
162 irrespective of sales.

163 (d) Machinery and equipment used under federal procurement
164 contract.--

165 1. Industrial machinery and equipment purchased by an
166 expanding business which manufactures tangible personal property
167 pursuant to federal procurement regulations at fixed locations
168 in this state are ~~partially~~ exempt from the tax imposed in this

169 ~~chapter on that portion of the tax which is in excess of~~
170 ~~\$100,000 per calendar year~~ upon an affirmative showing by the
171 taxpayer to the satisfaction of the department that such items
172 are used to increase the implicit productive output of the
173 expanded business by not less than 10 percent. The percentage of
174 increase is measured as deflated implicit productive output for
175 the calendar year during which the installation of the machinery
176 or equipment is completed or during which commencement of
177 production utilizing such items is begun divided by the implicit
178 productive output for the preceding calendar year. In no case
179 may the commencement of production begin later than 2 years
180 following completion of installation of the machinery or
181 equipment.

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

189 3. The exemption provided by this paragraph shall inure to
190 the taxpayer only through refund of previously paid taxes. Such
191 refund shall be made within 30 days of formal approval by the
192 department of the taxpayer's application, which application may
193 be made on an annual basis following installation of the
194 machinery or equipment.

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

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

198 b. "Deflated implicit productive output" means the product
199 of implicit productive output times the quotient of the national
200 defense implicit price deflator for the preceding calendar year
201 divided by the deflator for the year of completion or
202 commencement.

203 c. "Eligible costs" means the total direct and indirect
204 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
205 general and administrative costs, selling expenses, and profit,
206 defined by the uniform cost-accounting standards adopted by the
207 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
208 2168.

209 d. "Implicit productive output" means the annual eligible
210 costs attributable to all contracts or subcontracts subject to
211 federal procurement regulations of the single plant or operation
212 at which the machinery or equipment is used.

213 e. "Industrial machinery and equipment" means tangible
214 personal property or other property that has a depreciable life
215 of 3 years or more, that qualifies as an eligible cost under
216 federal procurement regulations, and that is used as an integral
217 part of the process of production of tangible personal property.
218 A building and its structural components are not industrial
219 machinery and equipment unless the building or structural
220 component is so closely related to the industrial machinery and
221 equipment that it houses or supports that the building or
222 structural component can be expected to be replaced when the
223 machinery and equipment are replaced. Heating and air-

224 conditioning systems are not industrial machinery and equipment
225 unless the sole justification for their installation is to meet
226 the requirements of the production process, even though the
227 system may provide incidental comfort to employees or serve, to
228 an insubstantial degree, nonproduction activities. The term
229 includes parts and accessories only to the extent that the
230 exemption of such parts and accessories is consistent with the
231 provisions of this paragraph.

232 f. "National defense implicit price deflator" means the
233 national defense implicit price deflator for the gross national
234 product as determined by the Bureau of Economic Analysis of the
235 United States Department of Commerce.

236 5. The exclusions provided in subparagraph (b)5. apply to
237 this exemption. This exemption applies only to machinery or
238 equipment purchased pursuant to production contracts with the
239 United States Department of Defense and Armed Forces, the
240 National Aeronautics and Space Administration, and other federal
241 agencies for which the contracts are classified for national
242 security reasons. In no event shall the provisions of this
243 paragraph apply to any expanding business the increase in
244 productive output of which could be measured under the
245 provisions of sub-subparagraph (b)6.b. as physically comparable
246 between the two periods.

247 Section 2. Section 212.0805, Florida Statutes, is
248 repealed.

249 Section 3. For the 2005-2006 fiscal year, the sum of
250 \$210,069 is appropriated from the General Revenue Fund and four
251 positions are authorized to the Department of Revenue for the

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252 purpose of implementing the provisions of this act. Of the funds
253 provided, \$191,825 are recurring and \$18,244 are nonrecurring
254 funds.

255 Section 4. This act shall take effect July 1, 2005.