

By Senator Bullard

39-645-05

See HB 27

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A bill to be entitled

An act relating to the sales tax exemption for machinery and equipment used to increase productive output; amending s. 212.08, F.S.; deleting a limitation on an exemption from the sales tax for such machinery and equipment each year; deleting an exemption for such machinery and equipment used to expand certain printing manufacturing facilities or plant units; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 212.08, Florida Statutes, is amended to read:

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

(5) EXEMPTIONS; ACCOUNT OF USE.--

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

1. Industrial machinery and equipment purchased for exclusive use by a new business in spaceport activities as defined by s. 212.02 or for use in new businesses which manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such

1 items are used in a new business in this state. Such purchases  
2 must be made prior to the date the business first begins its  
3 productive operations, and delivery of the purchased item must  
4 be made within 12 months of that date.

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

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

27 3.a. To receive an exemption provided by subparagraph  
28 1. or subparagraph 2., a qualifying business entity shall  
29 apply to the department for a temporary tax exemption permit.  
30 The application shall state that a new business exemption or  
31 expanded business exemption is being sought. Upon a tentative

1 affirmative determination by the department pursuant to  
2 subparagraph 1. or subparagraph 2., the department shall issue  
3 such permit.

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

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

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

28         4. The department shall adopt rules governing  
29 applications for, issuance of, and the form of temporary tax  
30 exemption permits; provisions for recapture of taxes; and the  
31 manner and form of refund applications and may establish

1 | guidelines as to the requisites for an affirmative showing of  
2 | increased productive output, commencement of production, and  
3 | qualification for exemption.

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

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

24 |         a. "Industrial machinery and equipment" means tangible  
25 | personal property or other property that has a depreciable  
26 | life of 3 years or more and that is used as an integral part  
27 | in the manufacturing, processing, compounding, or production  
28 | of tangible personal property for sale or is exclusively used  
29 | in spaceport activities. A building and its structural  
30 | components are not industrial machinery and equipment unless  
31 | the building or structural component is so closely related to

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

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

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Section 2. This act shall take effect July 1, 2005.