

CHAMBER ACTION

1 The Finance & Tax Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to the tax on sales, use, and other
7 transactions; amending s. 212.052, F.S.; deleting an
8 exception to an exemption from the tax for research or
9 development costs; amending s. 212.08, F.S.; exempting
10 machinery and equipment used predominantly for research
11 and development activities; authorizing the Department of
12 Revenue to adopt rules implementing the exemption;
13 providing requirements and procedures for claiming the
14 exemption; requiring an affidavit to be given by a
15 taxpayer claiming entitlement to the exemption; providing
16 penalties for fraudulently claiming the exemption;
17 requiring the Legislature to review the exemption;
18 providing for a study of the exemption by the Office of
19 Program Policy Analysis and Government Accountability and
20 Enterprise Florida, Inc.; providing study requirements;
21 requiring a report to the Governor and Legislature;
22 revising criteria, requirements, and procedures for
23 exemptions for semiconductor, defense, or space technology

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24 production; revising the definition of the term "research
25 and development"; defining the term "machinery and
26 equipment"; providing an effective date.

27
28 Be It Enacted by the Legislature of the State of Florida:

29
30 Section 1. Subsection (2) of section 212.052, Florida
31 Statutes, is amended to read:

32 212.052 Research or development costs; exemption.--

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

46 Section 2. Paragraph (j) of subsection (5) of section
47 212.08, Florida Statutes, is amended to read:

48 212.08 Sales, rental, use, consumption, distribution, and
49 storage tax; specified exemptions.--The sale at retail, the
50 rental, the use, the consumption, the distribution, and the
51 storage to be used or consumed in this state of the following

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52 are hereby specifically exempt from the tax imposed by this
53 chapter.

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

55 (j) Machinery and equipment used in research and
56 development and semiconductor, defense, or space technology
57 ~~production and research and development~~.--

58 1.a. Machinery and equipment used predominantly for
59 research and development are exempt from the tax imposed by this
60 chapter.

61 b. The department may adopt rules that provide for
62 administering this exemption and for assumption of self-accrual
63 authority that is authorized by this subparagraph. Persons
64 claiming the exemption provided in this subparagraph shall
65 furnish the vendor of the machinery or equipment, including the
66 vendor of materials and labor used in self-fabrication of the
67 machinery or equipment, an affidavit stating that the item or
68 items for which an exemption is claimed are machinery and
69 equipment that will be used predominantly for research and
70 development as required by this subparagraph. The affidavit must
71 contain the purchaser's name, address, sales and use tax
72 registration number, and, if applicable, federal employer's
73 identification number. A purchaser who claims the exemption by
74 refund shall include the affidavit with the refund application.
75 Any person fraudulently furnishing an affidavit to the vendor
76 for the purpose of evading payment of any tax imposed under this
77 chapter shall be subject to the penalty set forth in s. 212.085
78 and as otherwise provided by law. Purchasers shall maintain all
79 documentation necessary to prove the exempt status of purchases

80 and fabrication activity and make such documentation available
 81 for inspection pursuant to the requirements of s. 212.13(2). In
 82 lieu of furnishing an affidavit, a purchaser claiming the
 83 exemption provided in this subparagraph who has a direct pay
 84 permit may furnish the vendor with a copy of the direct pay
 85 permit and shall maintain all documentation necessary to prove
 86 the exempt status of the purchases and fabrication activity and
 87 make such documentation available for inspection pursuant to the
 88 requirements of s. 212.13(2).

89 c. The Office of Program Policy Analysis and Government
 90 Accountability and Enterprise Florida, Inc., shall study the
 91 exemption provided for in this subparagraph to determine the
 92 impact of the exemption on the promotion of research and
 93 development activities in this state. Enterprise Florida, Inc.,
 94 may contract with an independent research organization to
 95 perform the assessment. The study must include the estimated
 96 annual cost of the exemption and an estimate of the economic
 97 impact of increased research and development activities, if any.
 98 By January 1, 2015, the office and Enterprise Florida, Inc.,
 99 shall submit to the Governor, the President of the Senate, and
 100 the Speaker of the House of Representatives reports that provide
 101 the findings and recommendations as to whether the exemption
 102 should be retained by the Legislature. The Legislature shall
 103 review the exemption no later than July 1, 2015.

104 2.1-a. Industrial machinery and equipment used in
 105 semiconductor technology facilities certified under subparagraph
 106 5.6- to manufacture, process, compound, or produce semiconductor
 107 technology products for sale or for use by these facilities are

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108 | exempt from the tax imposed by this chapter. ~~For purposes of~~
 109 | ~~this paragraph, industrial machinery and equipment includes~~
 110 | ~~molds, dies, machine tooling, other appurtenances or accessories~~
 111 | ~~to machinery and equipment, testing equipment, test beds,~~
 112 | ~~computers, and software, whether purchased or self-fabricated,~~
 113 | ~~and, if self-fabricated, includes materials and labor for~~
 114 | ~~design, fabrication, and assembly.~~

115 | b. Industrial machinery and equipment used in defense or
 116 | space technology facilities certified under subparagraph 5.6. to
 117 | manufacture, process, compound, or produce defense technology
 118 | products or space technology products for sale or for use by
 119 | these facilities are exempt from 25 percent of the tax imposed
 120 | by this chapter.

121 | ~~2.a. Machinery and equipment are exempt from the tax~~
 122 | ~~imposed by this chapter if used predominately in semiconductor~~
 123 | ~~wafer research and development activities in a semiconductor~~
 124 | ~~technology research and development facility certified under~~
 125 | ~~subparagraph 6. For purposes of this paragraph, machinery and~~
 126 | ~~equipment includes molds, dies, machine tooling, other~~
 127 | ~~appurtenances or accessories to machinery and equipment, testing~~
 128 | ~~equipment, test beds, computers, and software, whether purchased~~
 129 | ~~or self-fabricated, and, if self-fabricated, includes materials~~
 130 | ~~and labor for design, fabrication, and assembly.~~

131 | ~~b. Machinery and equipment are exempt from 25 percent of~~
 132 | ~~the tax imposed by this chapter if used predominately in defense~~
 133 | ~~or space research and development activities in a defense or~~
 134 | ~~space technology research and development facility certified~~
 135 | ~~under subparagraph 6.~~

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136 ~~c.3.~~ Building materials purchased for use in manufacturing
137 or expanding clean rooms in semiconductor-manufacturing
138 facilities are exempt from the tax imposed by this chapter.

139 3.4. In addition to meeting the criteria mandated by
140 ~~subparagraph 1.,~~ subparagraph 2., ~~or subparagraph 3.,~~ a business
141 must be certified by the Office of Tourism, Trade, and Economic
142 Development as authorized in this paragraph in order to qualify
143 for exemption under subparagraph 2 ~~this paragraph~~.

144 4.5. For items purchased tax exempt pursuant to
145 subparagraph 2. ~~this paragraph~~, possession of a written
146 certification from the purchaser, certifying the purchaser's
147 entitlement to exemption pursuant to subparagraph 2. ~~this~~
148 ~~paragraph~~, relieves the seller of the responsibility of
149 collecting the tax on the sale of such items, and the department
150 shall look solely to the purchaser for recovery of tax if it
151 determines that the purchaser was not entitled to the exemption.

152 5.6-a. To be eligible to receive the exemption provided by
153 ~~subparagraph 1.,~~ subparagraph 2., ~~or subparagraph 3.,~~ a
154 qualifying business entity shall apply to Enterprise Florida,
155 Inc. The application shall be developed by the Office of
156 Tourism, Trade, and Economic Development in consultation with
157 Enterprise Florida, Inc.

158 b. Enterprise Florida, Inc., shall review each submitted
159 application and information and determine whether or not the
160 application is complete within 5 working days. Once an
161 application is complete, Enterprise Florida, Inc., shall, within
162 10 working days, evaluate the application and recommend approval

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163 or disapproval of the application to the Office of Tourism,
164 Trade, and Economic Development.

165 c. Upon receipt of the application and recommendation from
166 Enterprise Florida, Inc., the Office of Tourism, Trade, and
167 Economic Development shall certify within 5 working days those
168 applicants who are found to meet the requirements of this
169 section and notify the applicant, Enterprise Florida, Inc., and
170 the department of the certification. If the Office of Tourism,
171 Trade, and Economic Development finds that the applicant does
172 not meet the requirements of this section, it shall notify the
173 applicant and Enterprise Florida, Inc., within 10 working days
174 that the application for certification has been denied and the
175 reasons for denial. The Office of Tourism, Trade, and Economic
176 Development has final approval authority for certification under
177 this section.

178 ~~6.7~~.a. A business may apply once each year for the
179 exemption provided by subparagraph 2.

180 b. The application must indicate, for program evaluation
181 purposes only, the average number of full-time equivalent
182 employees at the facility over the preceding calendar year, the
183 average wage and benefits paid to those employees over the
184 preceding calendar year, the total investment made in real and
185 tangible personal property over the preceding calendar year, and
186 the total value of tax-exempt purchases and taxes exempted
187 during the previous year. The department shall assist the Office
188 of Tourism, Trade, and Economic Development in evaluating and
189 verifying information provided in the application for exemption.

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190 c. The Office of Tourism, Trade, and Economic Development
 191 may use the information reported on the application for
 192 evaluation purposes only and shall prepare an annual report on
 193 the exemption program and its cost and impact. The annual report
 194 for the preceding fiscal year shall be submitted to the
 195 Governor, the President of the Senate, and the Speaker of the
 196 House of Representatives by September 30 of each fiscal year.

197 ~~7.8.~~ A business receiving the certified to receive this
 198 exemption provided by subparagraph 1. or subparagraph 2. may
 199 elect to designate one or more state universities or community
 200 colleges as recipients to receive from the business an amount of
 201 up to 100 percent of the amount of the exemption for which the
 202 business qualifies ~~they may qualify~~. To receive these funds, the
 203 institution must agree to match the funds so earned with
 204 equivalent cash, programs, services, or other in-kind support on
 205 a one-to-one basis in the pursuit of research and development
 206 projects as requested by the certified business. The rights to
 207 any patents, royalties, or real or intellectual property must be
 208 vested in the business unless otherwise agreed to by the
 209 business and the university or community college.

210 ~~8.9.~~ As used in this paragraph, the term:

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

213 b. "Research and development" means research that has one
 214 of the following as its ultimate goal:

215 (I) Basic research in a scientific field of endeavor;

216 (II) Advancing knowledge or technology in a scientific or
 217 technical field of endeavor;

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218 (III) The development of a new product, whether or not the
219 new product is offered for sale;

220 (IV) The improvement of an existing product, whether or
221 not the improved product is offered for sale;

222 (V) The development of new uses of an existing product,
223 whether or not a new use is offered as a rationale to purchase
224 the product; or

225 (VI) The design and development of prototypes, whether or
226 not a resulting product is offered for sale.

227
228 The term "research and development" does not include ordinary
229 testing or inspection of materials or products used for quality
230 control, market research, efficiency surveys, consumer surveys,
231 advertising and promotions, management studies, or research in
232 connection with literary, historical, social science,
233 psychological, or other similar nontechnical activities ~~basic~~
234 ~~and applied research in the science or engineering, as well as~~
235 ~~the design, development, and testing of prototypes or processes~~
236 ~~of new or improved products. Research and development does not~~
237 ~~include market research, routine consumer product testing, sales~~
238 ~~research, research in the social sciences or psychology,~~
239 ~~nontechnological activities, or technical services.~~

240 c. "Semiconductor technology products" means raw
241 semiconductor wafers or semiconductor thin films that are
242 transformed into semiconductor memory or logic wafers, including
243 wafers containing mixed memory and logic circuits; related
244 assembly and test operations; active-matrix flat panel displays;
245 semiconductor chips; semiconductor lasers; optoelectronic

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246 elements; and related semiconductor technology products as
 247 determined by the Office of Tourism, Trade, and Economic
 248 Development.

249 d. "Clean rooms" means manufacturing facilities enclosed
 250 in a manner that meets the clean manufacturing requirements
 251 necessary for high-technology semiconductor-manufacturing
 252 environments.

253 e. "Defense technology products" means products that have
 254 a military application, including, but not limited to, weapons,
 255 weapons systems, guidance systems, surveillance systems,
 256 communications or information systems, munitions, aircraft,
 257 vessels, or boats, or components thereof, which are intended for
 258 military use and manufactured in performance of a contract with
 259 the United States Department of Defense or the military branch
 260 of a recognized foreign government or a subcontract thereunder
 261 which relates to matters of national defense.

262 f. "Space technology products" means products that are
 263 specifically designed or manufactured for application in space
 264 activities, including, but not limited to, space launch
 265 vehicles, missiles, satellites or research payloads, avionics,
 266 and associated control systems and processing systems. The term
 267 does not include products that are designed or manufactured for
 268 general commercial aviation or other uses even though those
 269 products may also serve an incidental use in space applications.

270 g. "Machinery and equipment" includes, but is not limited
 271 to, molds, dies, machine tooling, other appurtenances or
 272 accessories to machinery and equipment, testing and measuring
 273 equipment, test beds, computers, and software, whether purchased

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274 | or self-fabricated, and, if self-fabricated, includes materials
275 | and labor for design, fabrication, and assembly.

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