

By Senator Wise

5-827-06

See HB 69

1                                   A bill to be entitled

2           An act relating to exemptions from the tax on

3           sales, use, and other transactions; amending s.

4           212.08, F.S.; deleting an annual limitation on

5           an exemption from the sales tax for certain

6           machinery and equipment used to increase

7           productive output; deleting an exemption for

8           machinery and equipment used to expand certain

9           printing manufacturing facilities or plant

10          units; deleting a limitation on application of

11          the exemption for machinery and equipment

12          purchased for use in phosphate or other solid

13          minerals severance, mining, or processing

14          operations by way of a prospective credit;

15          deleting an annual limitation on an exemption

16          from the sales tax for certain machinery and

17          equipment purchased under a federal procurement

18          contract; repealing s. 212.0805, F.S., relating

19          to qualifications for the exemption and credit

20          for machinery and equipment purchased by an

21          expanding business for use in phosphate or

22          other solid minerals severance, mining, or

23          processing operations; providing an

24          appropriation; providing an effective date.

25

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

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28           Section 1. Paragraphs (b) and (d) of subsection (5) of

29 section 212.08, Florida Statutes, are amended to read:

30           212.08 Sales, rental, use, consumption, distribution,

31 and storage tax; specified exemptions.--The sale at retail,

1 | the rental, the use, the consumption, the distribution, and  
2 | the storage to be used or consumed in this state of the  
3 | following are hereby specifically exempt from the tax imposed  
4 | by this chapter.

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

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

8 |           1. Industrial machinery and equipment purchased for  
9 | exclusive use by a new business in spaceport activities as  
10 | defined by s. 212.02 or for use in new businesses which  
11 | manufacture, process, compound, or produce for sale items of  
12 | tangible personal property at fixed locations are exempt from  
13 | the tax imposed by this chapter upon an affirmative showing by  
14 | the taxpayer to the satisfaction of the department that such  
15 | items are used in a new business in this state. Such purchases  
16 | must be made prior to the date the business first begins its  
17 | productive operations, and delivery of the purchased item must  
18 | be made within 12 months of that date.

19 |           2. ~~a~~ Industrial machinery and equipment purchased for  
20 | exclusive use by an expanding facility which is engaged in  
21 | spaceport activities as defined by s. 212.02 or for use in  
22 | expanding manufacturing facilities or plant units which  
23 | manufacture, process, compound, or produce for sale items of  
24 | tangible personal property at fixed locations in this state  
25 | are exempt from any amount of tax imposed by this chapter ~~in~~  
26 | ~~excess of \$50,000 per calendar year~~ upon an affirmative  
27 | showing by the taxpayer to the satisfaction of the department  
28 | that such items are used to increase the productive output of  
29 | such expanded facility or business by not less than 10  
30 | percent.  
31 |

1           ~~b. Notwithstanding any other provision of this~~  
2 ~~section, industrial machinery and equipment purchased for use~~  
3 ~~in expanding printing manufacturing facilities or plant units~~  
4 ~~that manufacture, process, compound, or produce for sale items~~  
5 ~~of tangible personal property at fixed locations in this state~~  
6 ~~are exempt from any amount of tax imposed by this chapter upon~~  
7 ~~an affirmative showing by the taxpayer to the satisfaction of~~  
8 ~~the department that such items are used to increase the~~  
9 ~~productive output of such an expanded business by not less~~  
10 ~~than 10 percent.~~

11           3.a. To receive an exemption provided by subparagraph  
12 1. or subparagraph 2., a qualifying business entity shall  
13 apply to the department for a temporary tax exemption permit.  
14 The application shall state that a new business exemption or  
15 expanded business exemption is being sought. Upon a tentative  
16 affirmative determination by the department pursuant to  
17 subparagraph 1. or subparagraph 2., the department shall issue  
18 such permit.

19           b. The applicant shall be required to maintain all  
20 necessary books and records to support the exemption. Upon  
21 completion of purchases of qualified machinery and equipment  
22 pursuant to subparagraph 1. or subparagraph 2., the temporary  
23 tax permit shall be delivered to the department or returned to  
24 the department by certified or registered mail.

25           c. If, in a subsequent audit conducted by the  
26 department, it is determined that the machinery and equipment  
27 purchased as exempt under subparagraph 1. or subparagraph 2.  
28 did not meet the criteria mandated by this paragraph or if  
29 commencement of production did not occur, the amount of taxes  
30 exempted at the time of purchase shall immediately be due and  
31 payable to the department by the business entity, together

1 with the appropriate interest and penalty, computed from the  
2 date of purchase, in the manner prescribed by this chapter.

3 d. In the event a qualifying business entity fails to  
4 apply for a temporary exemption permit or if the tentative  
5 determination by the department required to obtain a temporary  
6 exemption permit is negative, a qualifying business entity  
7 shall receive the exemption provided in subparagraph 1. or  
8 subparagraph 2. through a refund of previously paid taxes. No  
9 refund may be made for such taxes unless the criteria mandated  
10 by subparagraph 1. or subparagraph 2. have been met and  
11 commencement of production has occurred.

12 4. The department shall adopt rules governing  
13 applications for, issuance of, and the form of temporary tax  
14 exemption permits; provisions for recapture of taxes; and the  
15 manner and form of refund applications and may establish  
16 guidelines as to the requisites for an affirmative showing of  
17 increased productive output, commencement of production, and  
18 qualification for exemption.

19 5. The exemptions provided in subparagraphs 1. and 2.  
20 do not apply to machinery or equipment purchased or used by  
21 electric utility companies, communications companies, oil or  
22 gas exploration or production operations, publishing firms  
23 that do not export at least 50 percent of their finished  
24 product out of the state, any firm subject to regulation by  
25 the Division of Hotels and Restaurants of the Department of  
26 Business and Professional Regulation, or any firm which does  
27 not manufacture, process, compound, or produce for sale items  
28 of tangible personal property or which does not use such  
29 machinery and equipment in spaceport activities as required by  
30 this paragraph. The exemptions provided in subparagraphs 1.  
31 and 2. shall apply to machinery and equipment purchased for

1 use in phosphate or other solid minerals severance, mining, or  
2 processing operations ~~only by way of a prospective credit~~  
3 ~~against taxes due under chapter 211 for taxes paid under this~~  
4 ~~chapter on such machinery and equipment.~~

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

8           a. "Industrial machinery and equipment" means tangible  
9 personal property or other property that has a depreciable  
10 life of 3 years or more and that is used as an integral part  
11 in the manufacturing, processing, compounding, or production  
12 of tangible personal property for sale or is exclusively used  
13 in spaceport activities. A building and its structural  
14 components are not industrial machinery and equipment unless  
15 the building or structural component is so closely related to  
16 the industrial machinery and equipment that it houses or  
17 supports that the building or structural component can be  
18 expected to be replaced when the machinery and equipment are  
19 replaced. Heating and air-conditioning systems are not  
20 industrial machinery and equipment unless the sole  
21 justification for their installation is to meet the  
22 requirements of the production process, even though the system  
23 may provide incidental comfort to employees or serve, to an  
24 insubstantial degree, nonproduction activities. The term  
25 includes parts and accessories only to the extent that the  
26 exemption thereof is consistent with the provisions of this  
27 paragraph.

28           b. "Productive output" means the number of units  
29 actually produced by a single plant or operation in a single  
30 continuous 12-month period, irrespective of sales. Increases  
31 in productive output shall be measured by the output for 12

1 | continuous months immediately following the completion of  
2 | installation of such machinery or equipment over the output  
3 | for the 12 continuous months immediately preceding such  
4 | installation. However, if a different 12-month continuous  
5 | period of time would more accurately reflect the increase in  
6 | productive output of machinery and equipment purchased to  
7 | facilitate an expansion, the increase in productive output may  
8 | be measured during that 12-month continuous period of time if  
9 | such time period is mutually agreed upon by the Department of  
10 | Revenue and the expanding business prior to the commencement  
11 | of production; provided, however, in no case may such time  
12 | period begin later than 2 years following the completion of  
13 | installation of the new machinery and equipment. The units  
14 | used to measure productive output shall be physically  
15 | comparable between the two periods, irrespective of sales.

16 |           (d) Machinery and equipment used under federal  
17 | procurement contract.--

18 |           1. Industrial machinery and equipment purchased by an  
19 | expanding business that ~~which~~ manufactures tangible personal  
20 | property pursuant to federal procurement regulations at fixed  
21 | locations in this state are ~~partially~~ exempt from the tax  
22 | imposed in this chapter ~~on that portion of the tax which is in~~  
23 | ~~excess of \$100,000 per calendar year~~ upon an affirmative  
24 | showing by the taxpayer to the satisfaction of the department  
25 | that such items are used to increase the implicit productive  
26 | output of the expanded business by not less than 10 percent.  
27 | The percentage of increase is measured as deflated implicit  
28 | productive output for the calendar year during which the  
29 | installation of the machinery or equipment is completed or  
30 | during which commencement of production utilizing such items  
31 | is begun divided by the implicit productive output for the

1 preceding calendar year. In no case may the commencement of  
2 production begin later than 2 years following completion of  
3 installation of the machinery or equipment.

4         2. The amount of the exemption allowed shall equal the  
5 taxes otherwise imposed by this chapter ~~in excess of \$100,000~~  
6 ~~per calendar year~~ on qualifying industrial machinery or  
7 equipment reduced by the percentage of gross receipts from  
8 cost-reimbursement type contracts attributable to the plant or  
9 operation to total gross receipts so attributable, accrued for  
10 the year of completion or commencement.

11         3. The exemption provided by this paragraph shall  
12 inure to the taxpayer only through refund of previously paid  
13 taxes. Such refund shall be made within 30 days of formal  
14 approval by the department of the taxpayer's application,  
15 which application may be made on an annual basis following  
16 installation of the machinery or equipment.

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

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

20             b. "Deflated implicit productive output" means the  
21 product of implicit productive output times the quotient of  
22 the national defense implicit price deflator for the preceding  
23 calendar year divided by the deflator for the year of  
24 completion or commencement.

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

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1           d. "Implicit productive output" means the annual  
2 eligible costs attributable to all contracts or subcontracts  
3 subject to federal procurement regulations of the single plant  
4 or operation at which the machinery or equipment is used.

5           e. "Industrial machinery and equipment" means tangible  
6 personal property or other property that has a depreciable  
7 life of 3 years or more, that qualifies as an eligible cost  
8 under federal procurement regulations, and that is used as an  
9 integral part of the process of production of tangible  
10 personal property. A building and its structural components  
11 are not industrial machinery and equipment unless the building  
12 or structural component is so closely related to the  
13 industrial machinery and equipment that it houses or supports  
14 that the building or structural component can be expected to  
15 be replaced when the machinery and equipment are replaced.  
16 Heating and air-conditioning systems are not industrial  
17 machinery and equipment unless the sole justification for  
18 their installation is to meet the requirements of the  
19 production process, even though the system may provide  
20 incidental comfort to employees or serve, to an insubstantial  
21 degree, nonproduction activities. The term includes parts and  
22 accessories only to the extent that the exemption of such  
23 parts and accessories is consistent with the provisions of  
24 this paragraph.

25           f. "National defense implicit price deflator" means  
26 the national defense implicit price deflator for the gross  
27 national product as determined by the Bureau of Economic  
28 Analysis of the United States Department of Commerce.

29           5. The exclusions provided in subparagraph (b)5. apply  
30 to this exemption. This exemption applies only to machinery or  
31 equipment purchased pursuant to production contracts with the



1 United States Department of Defense and Armed Forces, the  
2 National Aeronautics and Space Administration, and other  
3 federal agencies for which the contracts are classified for  
4 national security reasons. In no event shall the provisions of  
5 this paragraph apply to any expanding business the increase in  
6 productive output of which could be measured under the  
7 provisions of sub-subparagraph (b)6.b. as physically  
8 comparable between the two periods.

9 Section 2. Section 212.0805, Florida Statutes, is  
10 repealed.

11 Section 3. For the 2006-2007 fiscal year, the sum of  
12 \$210,069 is appropriated from the General Revenue Fund and  
13 four positions are authorized to the Department of Revenue for  
14 the purpose of implementing the provisions of this act. Of the  
15 funds provided, \$191,825 are recurring and \$18,244 are  
16 nonrecurring funds.

17 Section 4. This act shall take effect July 1, 2006.  
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