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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.; deleting
10 provisions providing an exemption on account of use for
11 machinery and equipment used for research and development;
12 exempting machinery and equipment used predominantly for
13 research and development activities; providing
14 definitions; authorizing the Department of Revenue to
15 adopt rules administering and implementing the exemption;
16 providing requirements and procedures for claiming the
17 exemption; requiring an affidavit to be given by a
18 taxpayer claiming entitlement to the exemption; providing
19 penalties for fraudulently claiming the exemption;
20 providing recordkeeping requirements; providing an
21 effective date.

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

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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

212.052 Research or development costs; exemption.--

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

Section 2. Paragraph (j) of subsection (5) of section 212.08, Florida Statutes, is amended, and subsection (18) is added to that section, 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.--

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51 (j) Machinery and equipment used in semiconductor,
52 defense, or space technology production and ~~research and~~
53 ~~development~~.--

54 1.a. Industrial machinery and equipment used in
55 semiconductor technology facilities certified under subparagraph
56 5. ~~6.~~ to manufacture, process, compound, or produce
57 semiconductor technology products for sale or for use by these
58 facilities are exempt from the tax imposed by this chapter. For
59 purposes of this paragraph, industrial machinery and equipment
60 includes molds, dies, machine tooling, other appurtenances or
61 accessories to machinery and equipment, testing equipment, test
62 beds, computers, and software, whether purchased or self-
63 fabricated, and, if self-fabricated, includes materials and
64 labor for design, fabrication, and assembly.

65 b. Industrial machinery and equipment used in defense or
66 space technology facilities certified under subparagraph 5. ~~6.~~
67 to design, manufacture, assemble, process, compound, or produce
68 defense technology products or space technology products for
69 sale or for use by these facilities are exempt from ~~25 percent~~
70 ~~of~~ the tax imposed by this chapter.

71 ~~2.a. Machinery and equipment are exempt from the tax~~
72 ~~imposed by this chapter if used predominately in semiconductor~~
73 ~~wafer research and development activities in a semiconductor~~
74 ~~technology research and development facility certified under~~
75 ~~subparagraph 6. For purposes of this paragraph, machinery and~~
76 ~~equipment includes molds, dies, machine tooling, other~~
77 ~~appurtenances or accessories to machinery and equipment, testing~~
78 ~~equipment, test beds, computers, and software, whether purchased~~

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79 ~~or self-fabricated, and, if self-fabricated, includes materials~~
80 ~~and labor for design, fabrication, and assembly.~~

81 ~~b. Machinery and equipment are exempt from 25 percent of~~
82 ~~the tax imposed by this chapter if used predominately in defense~~
83 ~~or space research and development activities in a defense or~~
84 ~~space technology research and development facility certified~~
85 ~~under subparagraph 6.~~

86 2.3. Building materials purchased for use in manufacturing
87 or expanding clean rooms in semiconductor-manufacturing
88 facilities are exempt from the tax imposed by this chapter.

89 3.4. In addition to meeting the criteria mandated by
90 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3.~~, a
91 business must be certified by the Office of Tourism, Trade, and
92 Economic Development as authorized in this paragraph in order to
93 qualify for exemption under this paragraph.

94 4.5. For items purchased tax exempt pursuant to this
95 paragraph, possession of a written certification from the
96 purchaser, certifying the purchaser's entitlement to exemption
97 pursuant to this paragraph, relieves the seller of the
98 responsibility of collecting the tax on the sale of such items,
99 and the department shall look solely to the purchaser for
100 recovery of tax if it determines that the purchaser was not
101 entitled to the exemption.

102 5.6-a. To be eligible to receive the exemption provided by
103 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3.~~, a
104 qualifying business entity shall apply to Enterprise Florida,
105 Inc. The application shall be developed by the Office of

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106 | Tourism, Trade, and Economic Development in consultation with
107 | Enterprise Florida, Inc.

108 | b. Enterprise Florida, Inc., shall review each submitted
109 | application and information and determine whether or not the
110 | application is complete within 5 working days. Once an
111 | application is complete, Enterprise Florida, Inc., shall, within
112 | 10 working days, evaluate the application and recommend approval
113 | or disapproval of the application to the Office of Tourism,
114 | Trade, and Economic Development.

115 | c. Upon receipt of the application and recommendation from
116 | Enterprise Florida, Inc., the Office of Tourism, Trade, and
117 | Economic Development shall certify within 5 working days those
118 | applicants who are found to meet the requirements of this
119 | section and notify the applicant, Enterprise Florida, Inc., and
120 | the department of the certification. If the Office of Tourism,
121 | Trade, and Economic Development finds that the applicant does
122 | not meet the requirements of this section, it shall notify the
123 | applicant and Enterprise Florida, Inc., within 10 working days
124 | that the application for certification has been denied and the
125 | reasons for denial. The Office of Tourism, Trade, and Economic
126 | Development has final approval authority for certification under
127 | this section.

128 | ~~6.7~~.a. A business may apply once each year for the
129 | exemption.

130 | b. The application must indicate, for program evaluation
131 | purposes only, the average number of full-time equivalent
132 | employees at the facility over the preceding calendar year, the
133 | average wage and benefits paid to those employees over the

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134 preceding calendar year, the total investment made in real and
135 tangible personal property over the preceding calendar year, and
136 the total value of tax-exempt purchases and taxes exempted
137 during the previous year. The department shall assist the Office
138 of Tourism, Trade, and Economic Development in evaluating and
139 verifying information provided in the application for exemption.

140 c. The Office of Tourism, Trade, and Economic Development
141 may use the information reported on the application for
142 evaluation purposes only and shall prepare an annual report on
143 the exemption program and its cost and impact. The annual report
144 for the preceding fiscal year shall be submitted to the
145 Governor, the President of the Senate, and the Speaker of the
146 House of Representatives by September 30 of each fiscal year.

147 ~~7.8-~~ A business certified to receive this exemption may
148 elect to designate one or more state universities or community
149 colleges as recipients of up to 100 percent of the amount of the
150 exemption for which they may qualify. To receive these funds,
151 the institution must agree to match the funds so earned with
152 equivalent cash, programs, services, or other in-kind support on
153 a one-to-one basis in the pursuit of research and development
154 projects as requested by the certified business. The rights to
155 any patents, royalties, or real or intellectual property must be
156 vested in the business unless otherwise agreed to by the
157 business and the university or community college.

158 ~~8.9-~~ As used in this paragraph, the term:

159 a. ~~"Predominately" means at least 50 percent of the time~~
160 ~~in qualifying research and development.~~

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161 ~~b.~~ "Research and development" means basic and applied
162 research in the science or engineering, as well as the design,
163 development, and testing of prototypes or processes of new or
164 improved products. Research and development does not include
165 market research, routine consumer product testing, sales
166 research, research in the social sciences or psychology,
167 nontechnological activities, or technical services.

168 a.e. "Semiconductor technology products" means raw
169 semiconductor wafers or semiconductor thin films that are
170 transformed into semiconductor memory or logic wafers, including
171 wafers containing mixed memory and logic circuits; related
172 assembly and test operations; active-matrix flat panel displays;
173 semiconductor chips; semiconductor lasers; optoelectronic
174 elements; and related semiconductor technology products as
175 determined by the Office of Tourism, Trade, and Economic
176 Development.

177 b.d. "Clean rooms" means manufacturing facilities enclosed
178 in a manner that meets the clean manufacturing requirements
179 necessary for high-technology semiconductor-manufacturing
180 environments.

181 c.e. "Defense technology products" means products that
182 have a military application, including, but not limited to,
183 weapons, weapons systems, guidance systems, surveillance
184 systems, communications or information systems, munitions,
185 aircraft, vessels, or boats, or components thereof, which are
186 intended for military use and manufactured in performance of a
187 contract with the United States Department of Defense or the
188 military branch of a recognized foreign government or a

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189 subcontract thereunder which relates to matters of national
190 defense.

191 ~~d.f.~~ "Space technology products" means products that are
192 specifically designed or manufactured for application in space
193 activities, including, but not limited to, space launch
194 vehicles, space flight vehicles, missiles, satellites or
195 research payloads, avionics, and associated control systems and
196 processing systems and components of any of the foregoing. The
197 term does not include products that are designed or manufactured
198 for general commercial aviation or other uses even though those
199 products may also serve an incidental use in space applications.

200 (18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR
201 RESEARCH AND DEVELOPMENT.--

202 (a) Machinery and equipment used predominantly for
203 research and development as defined in this subsection are
204 exempt from the tax imposed by this chapter.

205 (b) For purposes of this subsection:

206 1. "Machinery and equipment" includes, but is not limited
207 to, molds, dies, machine tooling, other appurtenances or
208 accessories to machinery and equipment, testing and measuring
209 equipment, test beds, computers, and software, whether purchased
210 or self-fabricated, and, if self-fabricated, includes materials
211 and labor for design, fabrication, and assembly.

212 2. "Predominantly" means at least 50 percent of the time.

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

215 a. Basic research in a scientific field of endeavor;

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216 b. Advancing knowledge or technology in a scientific or
217 technical field of endeavor;

218 c. The development of a new product, whether or not the
219 new product is offered for sale;

220 d. The improvement of an existing product, whether or not
221 the improved product is offered for sale;

222 e. 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 f. 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.

234 (c) The department may adopt rules pursuant to ss.
235 120.536(1) and 120.54 that provide for administering and
236 implementing this exemption.

237 (d) A person who claims the exemption provided in this
238 subsection shall furnish the vendor of the machinery or
239 equipment, including the vendor of materials and labor used in
240 self-fabrication of the machinery or equipment, an affidavit
241 stating that the item or items for which an exemption is claimed
242 are machinery and equipment that will be used predominantly for
243 research and development as required by this subsection. A

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244 purchaser who claims the exemption by refund shall include the
245 affidavit with the refund application. The affidavit must
246 contain the purchaser's name, address, sales and use tax
247 registration number, and, if applicable, federal employer's
248 identification number. Any person fraudulently furnishing an
249 affidavit to the vendor for the purpose of evading payment of
250 any tax imposed under this chapter shall be subject to the
251 penalty set forth in s. 212.085 and as otherwise provided by
252 law.

253 (e) In lieu of furnishing an affidavit, a purchaser
254 claiming the exemption provided in this subsection who has a
255 direct-pay permit may furnish the vendor with a copy of the
256 direct-pay permit and shall maintain all documentation necessary
257 to prove the exempt status of the purchases and fabrication
258 activity.

259 (f) Purchasers shall maintain all documentation necessary
260 to prove the exempt status of purchases and fabrication activity
261 and make such documentation available for inspection pursuant to
262 the requirements of s. 212.13(2).

263 Section 3. This act shall take effect July 1, 2006.