

CHAMBER ACTION

1 The State Infrastructure Council 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 revising provisions for application for the exemption;
13 specifying the term of validity of an exemption
14 certification; providing for biennial renewal of
15 certifications; providing criteria; deleting a limitation
16 on number of exemption applications by a business in a
17 year; exempting machinery and equipment used predominantly
18 for research and development activities; providing
19 definitions; authorizing the Department of Revenue to
20 adopt rules administering and implementing the exemption;
21 providing requirements and procedures for claiming the
22 exemption; requiring an affidavit to be given by a
23 taxpayer claiming entitlement to the exemption; providing

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24 penalties for fraudulently claiming the exemption;
25 providing recordkeeping requirements; providing an
26 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, and subsection (18) is
48 added to that section, to read:

49 212.08 Sales, rental, use, consumption, distribution, and
50 storage tax; specified exemptions.--The sale at retail, the
51 rental, the use, the consumption, the distribution, and the

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52 storage to be used or consumed in this state of the following
53 are hereby specifically exempt from the tax imposed by this
54 chapter.

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

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

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

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

76 ~~2.a. Machinery and equipment are exempt from the tax~~
77 ~~imposed by this chapter if used predominately in semiconductor~~
78 ~~wafer research and development activities in a semiconductor~~
79 ~~technology research and development facility certified under~~

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80 ~~subparagraph 6. For purposes of this paragraph, machinery and~~
81 ~~equipment includes molds, dies, machine tooling, other~~
82 ~~appurtenances or accessories to machinery and equipment, testing~~
83 ~~equipment, test beds, computers, and software, whether purchased~~
84 ~~or self fabricated, and, if self fabricated, includes materials~~
85 ~~and labor for design, fabrication, and assembly.~~

86 ~~b. Machinery and equipment are exempt from 25 percent of~~
87 ~~the tax imposed by this chapter if used predominately in defense~~
88 ~~or space research and development activities in a defense or~~
89 ~~space technology research and development facility certified~~
90 ~~under subparagraph 6.~~

91 ~~2.3.~~ Building materials purchased for use in manufacturing
92 or expanding clean rooms in semiconductor-manufacturing
93 facilities are exempt from the tax imposed by this chapter.

94 ~~3.4.~~ In addition to meeting the criteria mandated by
95 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3.~~, a
96 business must be certified by the Office of Tourism, Trade, and
97 Economic Development as authorized in this paragraph in order to
98 qualify for exemption under this paragraph.

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

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107 ~~5.6-a.~~ To be eligible to receive the exemption provided by
108 subparagraph 1. ~~or~~, subparagraph 2., ~~or subparagraph 3.~~, a
109 qualifying business entity shall apply initially to Enterprise
110 Florida, Inc. The original certification shall be valid for a
111 period of 2 years. In lieu of submitting a new application, the
112 original certification may be renewed biennially by submitting
113 to the Office of Tourism, Trade, and Economic Development a
114 statement, certified under oath, that there has been no material
115 change in the conditions or circumstances entitling the business
116 entity to the original certification. The initial application
117 and the certification renewal statement shall be developed by
118 the Office of Tourism, Trade, and Economic Development in
119 consultation with Enterprise Florida, Inc.

120 b. Enterprise Florida, Inc., shall review each submitted
121 initial application and information and determine whether or not
122 the application is complete within 5 working days. Once an
123 application is complete, Enterprise Florida, Inc., shall, within
124 10 working days, evaluate the application and recommend approval
125 or disapproval of the application to the Office of Tourism,
126 Trade, and Economic Development.

127 c. Upon receipt of the initial application and
128 recommendation from Enterprise Florida, Inc., or upon receipt of
129 a certification renewal statement, the Office of Tourism, Trade,
130 and Economic Development shall certify within 5 working days
131 those applicants who are found to meet the requirements of this
132 section and notify the applicant, Enterprise Florida, Inc., and
133 the department of the original certification or certification
134 renewal. If the Office of Tourism, Trade, and Economic

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135 Development finds that the applicant does not meet the
136 requirements of this section, it shall notify the applicant and
137 Enterprise Florida, Inc., within 10 working days that the
138 application for certification has been denied and the reasons
139 for denial. The Office of Tourism, Trade, and Economic
140 Development has final approval authority for certification under
141 this section.

142 ~~7.a. A business may apply once each year for the~~
143 ~~exemption.~~

144 ~~d.b.~~ The initial application and certification renewal
145 statement must indicate, for program evaluation purposes only,
146 the average number of full-time equivalent employees at the
147 facility over the preceding calendar year, the average wage and
148 benefits paid to those employees over the preceding calendar
149 year, the total investment made in real and tangible personal
150 property over the preceding calendar year, and the total value
151 of tax-exempt purchases and taxes exempted during the previous
152 year. The department shall assist the Office of Tourism, Trade,
153 and Economic Development in evaluating and verifying information
154 provided in the application for exemption.

155 ~~e.e.~~ The Office of Tourism, Trade, and Economic
156 Development may use the information reported on the initial
157 application and certification renewal statement for evaluation
158 purposes only and shall prepare an annual report on the
159 exemption program and its cost and impact. The annual report for
160 the preceding fiscal year shall be submitted to the Governor,
161 the President of the Senate, and the Speaker of the House of
162 Representatives by September 30 of each fiscal year.

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163 6.8. A business certified to receive this exemption may
164 elect to designate one or more state universities or community
165 colleges as recipients of up to 100 percent of the amount of the
166 exemption for which they may qualify. To receive these funds,
167 the institution must agree to match the funds so earned with
168 equivalent cash, programs, services, or other in-kind support on
169 a one-to-one basis in the pursuit of research and development
170 projects as requested by the certified business. The rights to
171 any patents, royalties, or real or intellectual property must be
172 vested in the business unless otherwise agreed to by the
173 business and the university or community college.

174 7.9. As used in this paragraph, the term:

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

177 b. ~~"Research and development" means basic and applied~~
178 ~~research in the science or engineering, as well as the design,~~
179 ~~development, and testing of prototypes or processes of new or~~
180 ~~improved products. Research and development does not include~~
181 ~~market research, routine consumer product testing, sales~~
182 ~~research, research in the social sciences or psychology,~~
183 ~~nontechnological activities, or technical services.~~

184 a.e. "Semiconductor technology products" means raw
185 semiconductor wafers or semiconductor thin films that are
186 transformed into semiconductor memory or logic wafers, including
187 wafers containing mixed memory and logic circuits; related
188 assembly and test operations; active-matrix flat panel displays;
189 semiconductor chips; semiconductor lasers; optoelectronic
190 elements; and related semiconductor technology products as

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191 determined by the Office of Tourism, Trade, and Economic
192 Development.

193 ~~b.d.~~ "Clean rooms" means manufacturing facilities enclosed
194 in a manner that meets the clean manufacturing requirements
195 necessary for high-technology semiconductor-manufacturing
196 environments.

197 ~~c.e.~~ "Defense technology products" means products that
198 have a military application, including, but not limited to,
199 weapons, weapons systems, guidance systems, surveillance
200 systems, communications or information systems, munitions,
201 aircraft, vessels, or boats, or components thereof, which are
202 intended for military use and manufactured in performance of a
203 contract with the United States Department of Defense or the
204 military branch of a recognized foreign government or a
205 subcontract thereunder which relates to matters of national
206 defense.

207 ~~d.f.~~ "Space technology products" means products that are
208 specifically designed or manufactured for application in space
209 activities, including, but not limited to, space launch
210 vehicles, space flight vehicles, missiles, satellites or
211 research payloads, avionics, and associated control systems and
212 processing systems and components of any of the foregoing. The
213 term does not include products that are designed or manufactured
214 for general commercial aviation or other uses even though those
215 products may also serve an incidental use in space applications.

216 (18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR
217 RESEARCH AND DEVELOPMENT.--

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

221 (b) For purposes of this subsection:

222 1. "Machinery and equipment" includes, but is not limited
223 to, molds, dies, machine tooling, other appurtenances or
224 accessories to machinery and equipment, testing and measuring
225 equipment, test beds, computers, and software, whether purchased
226 or self-fabricated, and, if self-fabricated, includes materials
227 and labor for design, fabrication, and assembly.

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

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

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

232 b. Advancing knowledge or technology in a scientific or
233 technical field of endeavor;

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

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

238 e. The development of new uses of an existing product,
239 whether or not a new use is offered as a rationale to purchase
240 the product; or

241 f. The design and development of prototypes, whether or
242 not a resulting product is offered for sale.

243

244 The term "research and development" does not include ordinary
245 testing or inspection of materials or products used for quality

246 control, market research, efficiency surveys, consumer surveys,
247 advertising and promotions, management studies, or research in
248 connection with literary, historical, social science,
249 psychological, or other similar nontechnical activities.

250 (c) The department may adopt rules pursuant to ss.
251 120.536(1) and 120.54 that provide for administering and
252 implementing this exemption.

253 (d) A person who claims the exemption provided in this
254 subsection shall furnish the vendor of the machinery or
255 equipment, including the vendor of materials and labor used in
256 self-fabrication of the machinery or equipment, an affidavit
257 stating that the item or items for which an exemption is claimed
258 are machinery and equipment that will be used predominantly for
259 research and development as required by this subsection. A
260 purchaser who claims the exemption by refund shall include the
261 affidavit with the refund application. The affidavit must
262 contain the purchaser's name, address, sales and use tax
263 registration number, and, if applicable, federal employer's
264 identification number. Any person fraudulently furnishing an
265 affidavit to the vendor for the purpose of evading payment of
266 any tax imposed under this chapter shall be subject to the
267 penalty set forth in s. 212.085 and as otherwise provided by
268 law.

269 (e) In lieu of furnishing an affidavit, a purchaser
270 claiming the exemption provided in this subsection who has a
271 direct-pay permit may furnish the vendor with a copy of the
272 direct-pay permit and shall maintain all documentation necessary

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273 | to prove the exempt status of the purchases and fabrication
 274 | activity.

275 | (f) Purchasers shall maintain all documentation necessary
 276 | to prove the exempt status of purchases and fabrication activity
 277 | and make such documentation available for inspection pursuant to
 278 | the requirements of s. 212.13(2).

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