

1 A bill to be entitled

2 An act relating to the tax on sales, use, and other  
3 transactions; amending s. 212.052, F.S.; deleting an  
4 exception to an exemption from the tax for research or  
5 development costs; amending s. 212.08, F.S.; deleting  
6 provisions providing an exemption on account of use for  
7 machinery and equipment used for research and development;  
8 revising provisions for application for the exemption;  
9 specifying the term of validity of an exemption  
10 certification; providing for biennial renewal of  
11 certifications; providing criteria; deleting a limitation  
12 on number of exemption applications by a business in a  
13 year; exempting machinery and equipment used predominantly  
14 for research and development activities; providing  
15 definitions; authorizing the Department of Revenue to  
16 adopt rules administering and implementing the exemption;  
17 providing requirements and procedures for claiming the  
18 exemption; requiring an affidavit to be given by a  
19 taxpayer claiming entitlement to the exemption; providing  
20 penalties for fraudulently claiming the exemption;  
21 providing recordkeeping requirements; providing an  
22 effective date.

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

25  
26 Section 1. Subsection (2) of section 212.052, Florida  
27 Statutes, is amended to read:

28           212.052 Research or development costs; exemption.--  
 29           (2) Notwithstanding any provision of this chapter to the  
 30 contrary, any person, including an affiliated group as defined  
 31 in s. 1504 of the Internal Revenue Code of 1954, as amended, who  
 32 manufactures, produces, compounds, processes, or fabricates in  
 33 any manner tangible personal property for such taxpayer's own  
 34 use directly and solely in research or development shall not be  
 35 subject to the tax imposed by this chapter upon the cost of the  
 36 product so manufactured, produced, compounded, processed, or  
 37 fabricated. ~~However, the tax imposed by this chapter shall be~~  
 38 ~~due on the purchase, rental, or repair of real property or~~  
 39 ~~tangible personal property employed in research or development~~  
 40 ~~which is subject to the tax imposed by this chapter at the time~~  
 41 ~~of purchase or rental.~~

42           Section 2. Paragraph (j) of subsection (5) of section  
 43 212.08, Florida Statutes, is amended, and subsection (18) is  
 44 added to that section, to read:

45           212.08 Sales, rental, use, consumption, distribution, and  
 46 storage tax; specified exemptions.--The sale at retail, the  
 47 rental, the use, the consumption, the distribution, and the  
 48 storage to be used or consumed in this state of the following  
 49 are hereby specifically exempt from the tax imposed by this  
 50 chapter.

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

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

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

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

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

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

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

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

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

103           ~~5.6.~~a. To be eligible to receive the exemption provided by  
104 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3.~~, a  
105 qualifying business entity shall apply initially to Enterprise  
106 Florida, Inc. The original certification shall be valid for a  
107 period of 2 years. In lieu of submitting a new application, the  
108 original certification may be renewed biennially by submitting

109 | to the Office of Tourism, Trade, and Economic Development a  
110 | statement, certified under oath, that there has been no material  
111 | change in the conditions or circumstances entitling the business  
112 | entity to the original certification. The initial application  
113 | and the certification renewal statement shall be developed by  
114 | the Office of Tourism, Trade, and Economic Development in  
115 | consultation with Enterprise Florida, Inc.

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

123 |       c. Upon receipt of the initial application and  
124 | recommendation from Enterprise Florida, Inc., or upon receipt of  
125 | a certification renewal statement, the Office of Tourism, Trade,  
126 | and Economic Development shall certify within 5 working days  
127 | those applicants who are found to meet the requirements of this  
128 | section and notify the applicant, Enterprise Florida, Inc., and  
129 | the department of the original certification or certification  
130 | renewal. If the Office of Tourism, Trade, and Economic  
131 | Development finds that the applicant does not meet the  
132 | requirements of this section, it shall notify the applicant and  
133 | Enterprise Florida, Inc., within 10 working days that the  
134 | application for certification has been denied and the reasons  
135 | for denial. The Office of Tourism, Trade, and Economic

136 Development has final approval authority for certification under  
137 this section.

138 ~~7.a. A business may apply once each year for the~~  
139 ~~exemption.~~

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

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

159 ~~6.8.~~ A business certified to receive this exemption may  
160 elect to designate one or more state universities or community  
161 colleges as recipients of up to 100 percent of the amount of the  
162 exemption for which they may qualify. To receive these funds,

163 the institution must agree to match the funds so earned with  
164 equivalent cash, programs, services, or other in-kind support on  
165 a one-to-one basis in the pursuit of research and development  
166 projects as requested by the certified business. The rights to  
167 any patents, royalties, or real or intellectual property must be  
168 vested in the business unless otherwise agreed to by the  
169 business and the university or community college.

170 7.9. As used in this paragraph, the term:

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

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

180 a.e. "Semiconductor technology products" means raw  
181 semiconductor wafers or semiconductor thin films that are  
182 transformed into semiconductor memory or logic wafers, including  
183 wafers containing mixed memory and logic circuits; related  
184 assembly and test operations; active-matrix flat panel displays;  
185 semiconductor chips; semiconductor lasers; optoelectronic  
186 elements; and related semiconductor technology products as  
187 determined by the Office of Tourism, Trade, and Economic  
188 Development.

189        ~~b.d.~~ "Clean rooms" means manufacturing facilities enclosed  
190 in a manner that meets the clean manufacturing requirements  
191 necessary for high-technology semiconductor-manufacturing  
192 environments.

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

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

212        (18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR  
213 RESEARCH AND DEVELOPMENT.--



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

217        (b) For purposes of this subsection:

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

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

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

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

228        b. Advancing knowledge or technology in a scientific or  
229 technical field of endeavor;

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

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

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

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

239

240 The term "research and development" does not include ordinary  
241 testing or inspection of materials or products used for quality  
242 control, market research, efficiency surveys, consumer surveys,  
243 advertising and promotions, management studies, or research in  
244 connection with literary, historical, social science,  
245 psychological, or other similar nontechnical activities.

246 (c) The department may adopt rules pursuant to ss.  
247 120.536(1) and 120.54 that provide for administering and  
248 implementing this exemption.

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

265 (e) In lieu of furnishing an affidavit, a purchaser  
266 claiming the exemption provided in this subsection who has a

267 direct-pay permit may furnish the vendor with a copy of the  
268 direct-pay permit and shall maintain all documentation necessary  
269 to prove the exempt status of the purchases and fabrication  
270 activity.

271 (f) Purchasers shall maintain all documentation necessary  
272 to prove the exempt status of purchases and fabrication activity  
273 and make such documentation available for inspection pursuant to  
274 the requirements of s. 212.13(2).

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