

ENROLLED
HB 69, Engrossed 1

2006 Legislature

1 A bill to be entitled

2 An act relating to exemptions from the tax on sales, use,
3 and other transactions; providing a short title; providing
4 legislative findings and purpose; amending s. 212.08,
5 F.S.; deleting an annual limitation on an exemption from
6 the sales tax for certain machinery and equipment used to
7 increase productive output; deleting an exemption for
8 machinery and equipment used to expand certain printing
9 manufacturing facilities or plant units; deleting a
10 limitation on application of the exemption for machinery
11 and equipment purchased for use in phosphate or other
12 solid minerals severance, mining, or processing operations
13 by way of a prospective credit; deleting an annual
14 limitation on an exemption from the sales tax for certain
15 machinery and equipment purchased under a federal
16 procurement contract; repealing s. 212.0805, F.S.,
17 relating to qualifications for the exemption and credit
18 for machinery and equipment purchased by an expanding
19 business for use in phosphate or other solid minerals
20 severance, mining, or processing operations; providing an
21 appropriation; providing an effective date.

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

24
25 Section 1. Short title.--This act may be cited as the
26 "Florida Manufacturing Global Competitiveness Act."

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27 Section 2. Legislative findings and purpose.--The
 28 Legislature finds that a competitive manufacturing business
 29 climate is important given that the manufacturing sector
 30 contributes significantly to the economy of this state, helping
 31 the state to weather natural and manmade disasters; that the
 32 development of free trade agreements with the Americas will
 33 allow the state to be the gateway to increased international
 34 trade that will expand the opportunities for manufacturing
 35 exports, potentially add thousands of well-paying jobs in the
 36 state, and secure this state's place in emerging markets in the
 37 world marketplace; and that with the potential for increasing
 38 exports, an investment in manufacturing today will mean
 39 significant long-term positive economic benefits to the state
 40 tomorrow.

41 Section 3. Paragraphs (b) and (d) of subsection (5) of
 42 section 212.08, Florida Statutes, are amended to read:

43 212.08 Sales, rental, use, consumption, distribution, and
 44 storage tax; specified exemptions.--The sale at retail, the
 45 rental, the use, the consumption, the distribution, and the
 46 storage to be used or consumed in this state of the following
 47 are hereby specifically exempt from the tax imposed by this
 48 chapter.

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

50 (b) Machinery and equipment used to increase productive
 51 output.--

52 1. Industrial machinery and equipment purchased for
 53 exclusive use by a new business in spaceport activities as

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54 defined by s. 212.02 or for use in new businesses which
55 manufacture, process, compound, or produce for sale items of
56 tangible personal property at fixed locations are exempt from
57 the tax imposed by this chapter upon an affirmative showing by
58 the taxpayer to the satisfaction of the department that such
59 items are used in a new business in this state. Such purchases
60 must be made prior to the date the business first begins its
61 productive operations, and delivery of the purchased item must
62 be made within 12 months of that date.

63 ~~2.a.~~ Industrial machinery and equipment purchased for
64 exclusive use by an expanding facility which is engaged in
65 spaceport activities as defined by s. 212.02 or for use in
66 expanding manufacturing facilities or plant units which
67 manufacture, process, compound, or produce for sale items of
68 tangible personal property at fixed locations in this state are
69 exempt from any amount of tax imposed by this chapter ~~in excess~~
70 ~~of \$50,000 per calendar year~~ upon an affirmative showing by the
71 taxpayer to the satisfaction of the department that such items
72 are used to increase the productive output of such expanded
73 facility or business by not less than 10 percent.

74 ~~b.~~ ~~Notwithstanding any other provision of this section,~~
75 ~~industrial machinery and equipment purchased for use in~~
76 ~~expanding printing manufacturing facilities or plant units that~~
77 ~~manufacture, process, compound, or produce for sale items of~~
78 ~~tangible personal property at fixed locations in this state are~~
79 ~~exempt from any amount of tax imposed by this chapter upon an~~
80 ~~affirmative showing by the taxpayer to the satisfaction of the~~

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81 ~~department that such items are used to increase the productive~~
82 ~~output of such an expanded business by not less than 10 percent.~~

83 3.a. To receive an exemption provided by subparagraph 1.
84 or subparagraph 2., a qualifying business entity shall apply to
85 the department for a temporary tax exemption permit. The
86 application shall state that a new business exemption or
87 expanded business exemption is being sought. Upon a tentative
88 affirmative determination by the department pursuant to
89 subparagraph 1. or subparagraph 2., the department shall issue
90 such permit.

91 b. The applicant shall be required to maintain all
92 necessary books and records to support the exemption. Upon
93 completion of purchases of qualified machinery and equipment
94 pursuant to subparagraph 1. or subparagraph 2., the temporary
95 tax permit shall be delivered to the department or returned to
96 the department by certified or registered mail.

97 c. If, in a subsequent audit conducted by the department,
98 it is determined that the machinery and equipment purchased as
99 exempt under subparagraph 1. or subparagraph 2. did not meet the
100 criteria mandated by this paragraph or if commencement of
101 production did not occur, the amount of taxes exempted at the
102 time of purchase shall immediately be due and payable to the
103 department by the business entity, together with the appropriate
104 interest and penalty, computed from the date of purchase, in the
105 manner prescribed by this chapter.

106 d. In the event a qualifying business entity fails to
107 apply for a temporary exemption permit or if the tentative

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108 | determination by the department required to obtain a temporary
109 | exemption permit is negative, a qualifying business entity shall
110 | receive the exemption provided in subparagraph 1. or
111 | subparagraph 2. through a refund of previously paid taxes. No
112 | refund may be made for such taxes unless the criteria mandated
113 | by subparagraph 1. or subparagraph 2. have been met and
114 | commencement of production has occurred.

115 | 4. The department shall adopt rules governing applications
116 | for, issuance of, and the form of temporary tax exemption
117 | permits; provisions for recapture of taxes; and the manner and
118 | form of refund applications and may establish guidelines as to
119 | the requisites for an affirmative showing of increased
120 | productive output, commencement of production, and qualification
121 | for exemption.

122 | 5. The exemptions provided in subparagraphs 1. and 2. do
123 | not apply to machinery or equipment purchased or used by
124 | electric utility companies, communications companies, oil or gas
125 | exploration or production operations, publishing firms that do
126 | not export at least 50 percent of their finished product out of
127 | the state, any firm subject to regulation by the Division of
128 | Hotels and Restaurants of the Department of Business and
129 | Professional Regulation, or any firm which does not manufacture,
130 | process, compound, or produce for sale items of tangible
131 | personal property or which does not use such machinery and
132 | equipment in spaceport activities as required by this paragraph.
133 | The exemptions provided in subparagraphs 1. and 2. shall apply
134 | to machinery and equipment purchased for use in phosphate or

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135 | other solid minerals severance, mining, or processing operations
136 | ~~only by way of a prospective credit against taxes due under~~
137 | ~~chapter 211 for taxes paid under this chapter on such machinery~~
138 | ~~and equipment.~~

139 | 6. For the purposes of the exemptions provided in
140 | subparagraphs 1. and 2., these terms have the following
141 | meanings:

142 | a. "Industrial machinery and equipment" means tangible
143 | personal property or other property that has a depreciable life
144 | of 3 years or more and that is used as an integral part in the
145 | manufacturing, processing, compounding, or production of
146 | tangible personal property for sale or is exclusively used in
147 | spaceport activities. A building and its structural components
148 | are not industrial machinery and equipment unless the building
149 | or structural component is so closely related to the industrial
150 | machinery and equipment that it houses or supports that the
151 | building or structural component can be expected to be replaced
152 | when the machinery and equipment are replaced. Heating and air-
153 | conditioning systems are not industrial machinery and equipment
154 | unless the sole justification for their installation is to meet
155 | the requirements of the production process, even though the
156 | system may provide incidental comfort to employees or serve, to
157 | an insubstantial degree, nonproduction activities. The term
158 | includes parts and accessories only to the extent that the
159 | exemption thereof is consistent with the provisions of this
160 | paragraph.

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161 b. "Productive output" means the number of units actually
162 produced by a single plant or operation in a single continuous
163 12-month period, irrespective of sales. Increases in productive
164 output shall be measured by the output for 12 continuous months
165 immediately following the completion of installation of such
166 machinery or equipment over the output for the 12 continuous
167 months immediately preceding such installation. However, if a
168 different 12-month continuous period of time would more
169 accurately reflect the increase in productive output of
170 machinery and equipment purchased to facilitate an expansion,
171 the increase in productive output may be measured during that
172 12-month continuous period of time if such time period is
173 mutually agreed upon by the Department of Revenue and the
174 expanding business prior to the commencement of production;
175 provided, however, in no case may such time period begin later
176 than 2 years following the completion of installation of the new
177 machinery and equipment. The units used to measure productive
178 output shall be physically comparable between the two periods,
179 irrespective of sales.

180 (d) Machinery and equipment used under federal procurement
181 contract.--

182 1. Industrial machinery and equipment purchased by an
183 expanding business which manufactures tangible personal property
184 pursuant to federal procurement regulations at fixed locations
185 in this state are ~~partially~~ exempt from the tax imposed in this
186 chapter ~~on that portion of the tax which is in excess of~~
187 ~~\$100,000 per calendar year~~ upon an affirmative showing by the

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188 taxpayer to the satisfaction of the department that such items
189 are used to increase the implicit productive output of the
190 expanded business by not less than 10 percent. The percentage of
191 increase is measured as deflated implicit productive output for
192 the calendar year during which the installation of the machinery
193 or equipment is completed or during which commencement of
194 production utilizing such items is begun divided by the implicit
195 productive output for the preceding calendar year. In no case
196 may the commencement of production begin later than 2 years
197 following completion of installation of the machinery or
198 equipment.

199 2. The amount of the exemption allowed shall equal the
200 taxes otherwise imposed by this chapter ~~in excess of \$100,000~~
201 ~~per calendar year~~ on qualifying industrial machinery or
202 equipment reduced by the percentage of gross receipts from cost-
203 reimbursement type contracts attributable to the plant or
204 operation to total gross receipts so attributable, accrued for
205 the year of completion or commencement.

206 3. The exemption provided by this paragraph shall inure to
207 the taxpayer only through refund of previously paid taxes. Such
208 refund shall be made within 30 days of formal approval by the
209 department of the taxpayer's application, which application may
210 be made on an annual basis following installation of the
211 machinery or equipment.

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

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

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215 b. "Deflated implicit productive output" means the product
 216 of implicit productive output times the quotient of the national
 217 defense implicit price deflator for the preceding calendar year
 218 divided by the deflator for the year of completion or
 219 commencement.

220 c. "Eligible costs" means the total direct and indirect
 221 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
 222 general and administrative costs, selling expenses, and profit,
 223 defined by the uniform cost-accounting standards adopted by the
 224 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
 225 2168.

226 d. "Implicit productive output" means the annual eligible
 227 costs attributable to all contracts or subcontracts subject to
 228 federal procurement regulations of the single plant or operation
 229 at which the machinery or equipment is used.

230 e. "Industrial machinery and equipment" means tangible
 231 personal property or other property that has a depreciable life
 232 of 3 years or more, that qualifies as an eligible cost under
 233 federal procurement regulations, and that is used as an integral
 234 part of the process of production of tangible personal property.
 235 A building and its structural components are not industrial
 236 machinery and equipment unless the building or structural
 237 component is so closely related to the industrial machinery and
 238 equipment that it houses or supports that the building or
 239 structural component can be expected to be replaced when the
 240 machinery and equipment are replaced. Heating and air-
 241 conditioning systems are not industrial machinery and equipment

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242 unless the sole justification for their installation is to meet
243 the requirements of the production process, even though the
244 system may provide incidental comfort to employees or serve, to
245 an insubstantial degree, nonproduction activities. The term
246 includes parts and accessories only to the extent that the
247 exemption of such parts and accessories is consistent with the
248 provisions of this paragraph.

249 f. "National defense implicit price deflator" means the
250 national defense implicit price deflator for the gross national
251 product as determined by the Bureau of Economic Analysis of the
252 United States Department of Commerce.

253 5. The exclusions provided in subparagraph (b)5. apply to
254 this exemption. This exemption applies only to machinery or
255 equipment purchased pursuant to production contracts with the
256 United States Department of Defense and Armed Forces, the
257 National Aeronautics and Space Administration, and other federal
258 agencies for which the contracts are classified for national
259 security reasons. In no event shall the provisions of this
260 paragraph apply to any expanding business the increase in
261 productive output of which could be measured under the
262 provisions of sub-subparagraph (b)6.b. as physically comparable
263 between the two periods.

264 Section 4. Section 212.0805, Florida Statutes, is
265 repealed.

266 Section 5. For the 2006-2007 fiscal year, the sum of
267 \$203,574 in recurring funds and the sum of \$19,372 in
268 nonrecurring funds are appropriated from the General Revenue

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269 | Fund to the Department of Revenue and four full-time equivalent
270 | positions and associated salary rate of 137,955 are authorized
271 | for the purpose of implementing this act.

272 | Section 6. This act shall take effect July 1, 2006.