

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.; exempting
6 machinery and equipment used predominantly for research
7 and development activities; authorizing the Department of
8 Revenue to adopt rules implementing the exemption;
9 providing requirements and procedures for claiming the
10 exemption; requiring an affidavit to be given by a
11 taxpayer claiming entitlement to the exemption; providing
12 penalties for fraudulently claiming the exemption;
13 requiring the Legislature to review the exemption;
14 providing for a study of the exemption by the Office of
15 Program Policy Analysis and Government Accountability and
16 Enterprise Florida, Inc.; providing study requirements;
17 requiring a report to the Governor and Legislature;
18 revising criteria, requirements, and procedures for
19 exemptions for semiconductor, defense, or space technology
20 production; clarifying authorization for qualified
21 businesses to donate the amount of the exemption to state
22 universities and community colleges; revising the
23 definition of the term "research and development";
24 defining the term "machinery and equipment"; reenacting s.
25 213.053(7)(k), F.S., relating to confidentiality and
26 information sharing, and s. 1011.94(1), F.S., relating to
27 the Trust Fund for University Major Gifts, for purposes of

28 | incorporating the amendment to s. 212.08, F.S., in
 29 | references thereto; providing an effective date.

31 | Be It Enacted by the Legislature of the State of Florida:

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

35 | 212.052 Research or development costs; exemption.--

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

49 | Section 2. Paragraph (j) of subsection (5) of section
 50 | 212.08, Florida Statutes, is amended to read:

51 | 212.08 Sales, rental, use, consumption, distribution, and
 52 | storage tax; specified exemptions.--The sale at retail, the
 53 | rental, the use, the consumption, the distribution, and the
 54 | storage to be used or consumed in this state of the following
 55 | are hereby specifically exempt from the tax imposed by this

56 chapter.

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

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

61 1.a. Machinery and equipment used predominantly for
62 research and development are exempt from the tax imposed by this
63 chapter.

64 b. The department may adopt rules that provide for
65 administering this exemption and for assumption of self-accrual
66 authority that is authorized by this subparagraph. Persons
67 claiming the exemption provided in this subparagraph shall
68 furnish the vendor of the machinery or equipment, including the
69 vendor of materials and labor used in self-fabrication of the
70 machinery or equipment, an affidavit stating that the item or
71 items for which an exemption is claimed are machinery and
72 equipment that will be used predominantly for research and
73 development as required by this subparagraph. The affidavit must
74 contain the purchaser's name, address, sales and use tax
75 registration number, and, if applicable, federal employer's
76 identification number. A purchaser who claims the exemption by
77 refund shall include the affidavit with the refund application.
78 Any person fraudulently furnishing an affidavit to the vendor
79 for the purpose of evading payment of any tax imposed under this
80 chapter shall be subject to the penalty set forth in s. 212.085
81 and as otherwise provided by law. Purchasers shall maintain all
82 documentation necessary to prove the exempt status of purchases
83 and fabrication activity and make such documentation available

84 for inspection pursuant to the requirements of s. 212.13(2). In
 85 lieu of furnishing an affidavit, a purchaser claiming the
 86 exemption provided in this subparagraph who has a direct pay
 87 permit may furnish the vendor with a copy of the direct pay
 88 permit and shall maintain all documentation necessary to prove
 89 the exempt status of the purchases and fabrication activity and
 90 make such documentation available for inspection pursuant to the
 91 requirements of s. 212.13(2).

92 c. The Office of Program Policy Analysis and Government
 93 Accountability and Enterprise Florida, Inc., shall study the
 94 exemption provided for in this subparagraph to determine the
 95 impact of the exemption on the promotion of research and
 96 development activities in this state. Enterprise Florida, Inc.,
 97 may contract with an independent research organization to
 98 perform the assessment. The study must include the estimated
 99 annual cost of the exemption and an estimate of the economic
 100 impact of increased research and development activities, if any.
 101 By January 1, 2016, the office and Enterprise Florida, Inc.,
 102 shall submit to the Governor, the President of the Senate, and
 103 the Speaker of the House of Representatives reports that provide
 104 the findings and recommendations as to whether the exemption
 105 should be retained by the Legislature. The Legislature shall
 106 review the exemption no later than July 1, 2016.

107 2.4-a. Industrial machinery and equipment used in
 108 semiconductor technology facilities certified under subparagraph
 109 5.6- to manufacture, process, compound, or produce semiconductor
 110 technology products for sale or for use by these facilities are
 111 exempt from the tax imposed by this chapter. ~~For purposes of~~

112 ~~this paragraph, industrial machinery and equipment includes~~
 113 ~~molds, dies, machine tooling, other appurtenances or accessories~~
 114 ~~to machinery and equipment, testing equipment, test beds,~~
 115 ~~computers, and software, whether purchased or self-fabricated,~~
 116 ~~and, if self-fabricated, includes materials and labor for~~
 117 ~~design, fabrication, and assembly.~~

118 b. Industrial machinery and equipment used in defense or
 119 space technology facilities certified under subparagraph 5.6 to
 120 manufacture, process, compound, or produce defense technology
 121 products or space technology products for sale or for use by
 122 these facilities are exempt from 25 percent of the tax imposed
 123 by this chapter.

124 ~~2.a. Machinery and equipment are exempt from the tax~~
 125 ~~imposed by this chapter if used predominately in semiconductor~~
 126 ~~wafer research and development activities in a semiconductor~~
 127 ~~technology research and development facility certified under~~
 128 ~~subparagraph 6. For purposes of this paragraph, machinery and~~
 129 ~~equipment includes molds, dies, machine tooling, other~~
 130 ~~appurtenances or accessories to machinery and equipment, testing~~
 131 ~~equipment, test beds, computers, and software, whether purchased~~
 132 ~~or self-fabricated, and, if self-fabricated, includes materials~~
 133 ~~and labor for design, fabrication, and assembly.~~

134 ~~b. Machinery and equipment are exempt from 25 percent of~~
 135 ~~the tax imposed by this chapter if used predominately in defense~~
 136 ~~or space research and development activities in a defense or~~
 137 ~~space technology research and development facility certified~~
 138 ~~under subparagraph 6.~~

139 c.3. Building materials purchased for use in manufacturing

140 or expanding clean rooms in semiconductor-manufacturing
 141 facilities are exempt from the tax imposed by this chapter.

142 3.4. In addition to meeting the criteria mandated by
 143 ~~subparagraph 1.,~~ subparagraph 2., ~~or subparagraph 3.,~~ a business
 144 must be certified by the Office of Tourism, Trade, and Economic
 145 Development as authorized in this paragraph in order to qualify
 146 for exemption under subparagraph 2 ~~this paragraph.~~

147 4.5. For items purchased tax exempt pursuant to
 148 subparagraph 2. ~~this paragraph,~~ possession of a written
 149 certification from the purchaser, certifying the purchaser's
 150 entitlement to exemption pursuant to subparagraph 2. ~~this~~
 151 ~~paragraph,~~ relieves the seller of the responsibility of
 152 collecting the tax on the sale of such items, and the department
 153 shall look solely to the purchaser for recovery of tax if it
 154 determines that the purchaser was not entitled to the exemption.

155 5.6-a. To be eligible to receive the exemption provided by
 156 ~~subparagraph 1.,~~ subparagraph 2., ~~or subparagraph 3.,~~ a
 157 qualifying business entity shall apply to Enterprise Florida,
 158 Inc. The application shall be developed by the Office of
 159 Tourism, Trade, and Economic Development in consultation with
 160 Enterprise Florida, Inc.

161 b. Enterprise Florida, Inc., shall review each submitted
 162 application and information and determine whether or not the
 163 application is complete within 5 working days. Once an
 164 application is complete, Enterprise Florida, Inc., shall, within
 165 10 working days, evaluate the application and recommend approval
 166 or disapproval of the application to the Office of Tourism,
 167 Trade, and Economic Development.

168 c. Upon receipt of the application and recommendation from
 169 Enterprise Florida, Inc., the Office of Tourism, Trade, and
 170 Economic Development shall certify within 5 working days those
 171 applicants who are found to meet the applicable requirements of
 172 this paragraph ~~section~~ and notify the applicant, Enterprise
 173 Florida, Inc., and the department of the certification. If the
 174 Office of Tourism, Trade, and Economic Development finds that
 175 the applicant does not meet the applicable requirements of this
 176 paragraph ~~section~~, it shall notify the applicant and Enterprise
 177 Florida, Inc., within 10 working days that the application for
 178 certification has been denied and the reasons for denial. The
 179 Office of Tourism, Trade, and Economic Development has final
 180 approval authority for certification under this paragraph
 181 ~~section~~.

182 6.7.a. A business may apply once each year for the
 183 exemption provided by subparagraph 2.

184 b. The application must indicate, for program evaluation
 185 purposes only, the average number of full-time equivalent
 186 employees at the facility over the preceding calendar year, the
 187 average wage and benefits paid to those employees over the
 188 preceding calendar year, the total investment made in real and
 189 tangible personal property over the preceding calendar year, and
 190 the total value of tax-exempt purchases and taxes exempted
 191 during the previous year. The department shall assist the Office
 192 of Tourism, Trade, and Economic Development in evaluating and
 193 verifying information provided in the application for exemption.

194 c. The Office of Tourism, Trade, and Economic Development
 195 may use the information reported on the application for

196 evaluation purposes only and shall prepare an annual report on
 197 the exemption program and its cost and impact. The annual report
 198 for the preceding fiscal year shall be submitted to the
 199 Governor, the President of the Senate, and the Speaker of the
 200 House of Representatives by September 30 of each fiscal year.

201 ~~7.8.~~ A business receiving the certified to receive this
 202 exemption provided by subparagraph 1. or subparagraph 2. may
 203 elect to designate one or more state universities or community
 204 colleges as recipients to receive from the business an amount of
 205 up to 100 percent of the amount of the exemption for which the
 206 business qualifies ~~they may qualify~~. To receive these funds, the
 207 institution must agree to match the funds so earned with
 208 equivalent cash, programs, services, or other in-kind support on
 209 a one-to-one basis in the pursuit of research and development
 210 projects as requested by the certified business. The rights to
 211 any patents, royalties, or real or intellectual property must be
 212 vested in the business unless otherwise agreed to by the
 213 business and the university or community college.

214 ~~8.9.~~ As used in this paragraph, the term:

215 a. "Predominately" means at least 50 percent of the time
 216 in qualifying research and development.

217 b. "Research and development" means research that has one
 218 of the following as its ultimate goal:

219 (I) Basic research in a scientific field of endeavor;

220 (II) Advancing knowledge or technology in a scientific or
 221 technical field of endeavor;

222 (III) The development of a new product, whether or not the
 223 new product is offered for sale;

224 (IV) The improvement of an existing product, whether or
 225 not the improved product is offered for sale;

226 (V) The development of new uses of an existing product,
 227 whether or not a new use is offered as a rationale to purchase
 228 the product; or

229 (VI) The design and development of prototypes, whether or
 230 not a resulting product is offered for sale.

231

232 The term "research and development" does not include ordinary
 233 testing or inspection of materials or products used for quality
 234 control, market research, efficiency surveys, consumer surveys,
 235 advertising and promotions, management studies, or research in
 236 connection with literary, historical, social science,
 237 psychological, or other similar nontechnical activities ~~basic~~
 238 ~~and applied research in the science or engineering, as well as~~
 239 ~~the design, development, and testing of prototypes or processes~~
 240 ~~of new or improved products. Research and development does not~~
 241 ~~include market research, routine consumer product testing, sales~~
 242 ~~research, research in the social sciences or psychology,~~
 243 ~~nontechnological activities, or technical services.~~

244 c. "Semiconductor technology products" means raw
 245 semiconductor wafers or semiconductor thin films that are
 246 transformed into semiconductor memory or logic wafers, including
 247 wafers containing mixed memory and logic circuits; related
 248 assembly and test operations; active-matrix flat panel displays;
 249 semiconductor chips; semiconductor lasers; optoelectronic
 250 elements; and related semiconductor technology products as
 251 determined by the Office of Tourism, Trade, and Economic

252 Development.

253 d. "Clean rooms" means manufacturing facilities enclosed
 254 in a manner that meets the clean manufacturing requirements
 255 necessary for high-technology semiconductor-manufacturing
 256 environments.

257 e. "Defense technology products" means products that have
 258 a military application, including, but not limited to, weapons,
 259 weapons systems, guidance systems, surveillance systems,
 260 communications or information systems, munitions, aircraft,
 261 vessels, or boats, or components thereof, which are intended for
 262 military use and manufactured in performance of a contract with
 263 the United States Department of Defense or the military branch
 264 of a recognized foreign government or a subcontract thereunder
 265 which relates to matters of national defense.

266 f. "Space technology products" means products that are
 267 specifically designed or manufactured for application in space
 268 activities, including, but not limited to, space launch
 269 vehicles, missiles, satellites or research payloads, avionics,
 270 and associated control systems and processing systems. The term
 271 does not include products that are designed or manufactured for
 272 general commercial aviation or other uses even though those
 273 products may also serve an incidental use in space applications.

274 g. "Machinery and equipment" includes, but is not limited
 275 to, molds, dies, machine tooling, other appurtenances or
 276 accessories to machinery and equipment, testing and measuring
 277 equipment, test beds, computers, and software, whether purchased
 278 or self-fabricated, and, if self-fabricated, includes materials
 279 and labor for design, fabrication, and assembly.

280 Section 3. For the purpose of incorporating the amendment
 281 made by this act to section 212.08, Florida Statutes, in
 282 references thereto, paragraph (k) of subsection (7) of section
 283 213.053, Florida Statutes, is reenacted to read:

284 213.053 Confidentiality and information sharing.--

285 (7) Notwithstanding any other provision of this section,
 286 the department may provide:

287 (k)1. Payment information relative to chapters 199, 201,
 288 212, 220, 221, and 624 to the Office of Tourism, Trade, and
 289 Economic Development, or its employees or agents that are
 290 identified in writing by the office to the department, in the
 291 administration of the tax refund program for qualified defense
 292 contractors authorized by s. 288.1045 and the tax refund program
 293 for qualified target industry businesses authorized by s.
 294 288.106.

295 2. Information relative to tax credits taken by a business
 296 under s. 220.191 and exemptions or tax refunds received by a
 297 business under s. 212.08(5)(j) to the Office of Tourism, Trade,
 298 and Economic Development, or its employees or agents that are
 299 identified in writing by the office to the department, in the
 300 administration and evaluation of the capital investment tax
 301 credit program authorized in s. 220.191 and the semiconductor,
 302 defense, and space tax exemption program authorized in s.
 303 212.08(5)(j).

304
 305 Disclosure of information under this subsection shall be
 306 pursuant to a written agreement between the executive director
 307 and the agency. Such agencies, governmental or nongovernmental,

308 shall be bound by the same requirements of confidentiality as
 309 the Department of Revenue. Breach of confidentiality is a
 310 misdemeanor of the first degree, punishable as provided by s.
 311 775.082 or s. 775.083.

312 Section 4. For the purpose of incorporating the amendment
 313 made by this act to section 212.08, Florida Statutes, in
 314 references thereto, subsection (1) of section 1011.94, Florida
 315 Statutes, is reenacted to read:

316 1011.94 Trust Fund for University Major Gifts.--

317 (1) There is established a Trust Fund for University Major
 318 Gifts. The purpose of the trust fund is to enable each
 319 university and New College to provide donors with an incentive
 320 in the form of matching grants for donations for the
 321 establishment of permanent endowments and sales tax exemption
 322 matching funds received pursuant to s. 212.08(5)(j), which must
 323 be invested, with the proceeds of the investment used to support
 324 libraries and instruction and research programs, as defined by
 325 the State Board of Education. All funds appropriated for the
 326 challenge grants, new donors, major gifts, sales tax exemption
 327 matching funds pursuant to s. 212.08(5)(j), or eminent scholars
 328 program may be deposited into the trust fund and invested
 329 pursuant to s. 17.61 until the State Board of Education
 330 allocates the funds to universities to match private donations.
 331 Notwithstanding s. 216.301 and pursuant to s. 216.351, any
 332 undisbursed balance remaining in the trust fund and interest
 333 income accruing to the portion of the trust fund which is not
 334 matched and distributed to universities must remain in the trust
 335 fund and be used to increase the total funds available for

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336 challenge grants. Funds deposited in the trust fund for the
337 sales tax exemption matching program authorized in s.
338 212.08(5)(j), and interest earnings thereon, shall be maintained
339 in a separate account within the Trust Fund for University Major
340 Gifts, and may be used only to match qualified sales tax
341 exemptions that a certified business designates for use by state
342 universities and community colleges to support research and
343 development projects requested by the certified business. The
344 State Board of Education may authorize any university to
345 encumber the state matching portion of a challenge grant from
346 funds available under s. 1011.45.

347 Section 5. This act shall take effect July 1, 2006.