

Bill No. SB 962

Barcode 090164

CHAMBER ACTION

Senate

House

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The Committee on Government Efficiency Appropriations (Posey)
recommended the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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~~

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1 ~~property employed in research or development which is subject~~
2 ~~to the tax imposed by this chapter at the time of purchase or~~
3 ~~rental.~~

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

7 212.08 Sales, rental, use, consumption, distribution,
8 and storage tax; specified exemptions.--The sale at retail,
9 the rental, the use, the consumption, the distribution, and
10 the storage to be used or consumed in this state of the
11 following are hereby specifically exempt from the tax imposed
12 by this chapter.

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

14 (j) Machinery and equipment used in semiconductor,
15 defense, or space technology production ~~and research and~~
16 ~~development.~~--

17 1.a. Industrial machinery and equipment used in
18 semiconductor technology facilities certified under
19 subparagraph 5. ~~6.~~ to manufacture, process, compound, or
20 produce semiconductor technology products for sale or for use
21 by these facilities are exempt from the tax imposed by this
22 chapter. For purposes of this paragraph, industrial machinery
23 and equipment includes molds, dies, machine tooling, other
24 appurtenances or accessories to machinery and equipment,
25 testing equipment, test beds, computers, and software, whether
26 purchased or self-fabricated, and, if self-fabricated,
27 includes materials and labor for design, fabrication, and
28 assembly.

29 b. Industrial machinery and equipment used in defense
30 or space technology facilities certified under subparagraph 5.
31 ~~6.~~ to design, manufacture, assemble, process, compound, or

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1 produce defense technology products or space technology
2 products for sale or for use by these facilities are exempt
3 from ~~25 percent of the tax imposed by this chapter.~~

4 ~~2.a. Machinery and equipment are exempt from the tax
5 imposed by this chapter if used predominately in semiconductor
6 wafer research and development activities in a semiconductor
7 technology research and development facility certified under
8 subparagraph 6. For purposes of this paragraph, machinery and
9 equipment includes molds, dies, machine tooling, other
10 appurtenances or accessories to machinery and equipment,
11 testing equipment, test beds, computers, and software, whether
12 purchased or self-fabricated, and, if self-fabricated,
13 includes materials and labor for design, fabrication, and
14 assembly.~~

15 ~~b. Machinery and equipment are exempt from 25 percent
16 of the tax imposed by this chapter if used predominately in
17 defense or space research and development activities in a
18 defense or space technology research and development facility
19 certified under subparagraph 6.~~

20 ~~2.3. Building materials purchased for use in
21 manufacturing or expanding clean rooms in
22 semiconductor-manufacturing facilities are exempt from the tax
23 imposed by this chapter.~~

24 ~~3.4. In addition to meeting the criteria mandated by
25 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3.,~~ a
26 business must be certified by the Office of Tourism, Trade,
27 and Economic Development as authorized in this paragraph in
28 order to qualify for exemption under this paragraph.~~

29 ~~4.5. For items purchased tax exempt pursuant to this
30 paragraph, possession of a written certification from the
31 purchaser, certifying the purchaser's entitlement to exemption~~

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1 pursuant to this paragraph, relieves the seller of the
2 responsibility of collecting the tax on the sale of such
3 items, and the department shall look solely to the purchaser
4 for recovery of tax if it determines that the purchaser was
5 not entitled to the exemption.

6 5.6.a. To be eligible to receive the exemption
7 provided by subparagraph 1. or, subparagraph 2., ~~or~~
8 ~~subparagraph 3.~~, a qualifying business entity shall apply to
9 Enterprise Florida, Inc. The application shall be developed by
10 the Office of Tourism, Trade, and Economic Development in
11 consultation with Enterprise Florida, Inc.

12 b. Enterprise Florida, Inc., shall review each
13 submitted application and information and determine whether or
14 not the application is complete within 5 working days. Once an
15 application is complete, Enterprise Florida, Inc., shall,
16 within 10 working days, evaluate the application and recommend
17 approval or disapproval of the application to the Office of
18 Tourism, Trade, and Economic Development.

19 c. Upon receipt of the application and recommendation
20 from Enterprise Florida, Inc., the Office of Tourism, Trade,
21 and Economic Development shall certify within 5 working days
22 those applicants who are found to meet the requirements of
23 this section and notify the applicant, Enterprise Florida,
24 Inc., and the department of the certification. If the Office
25 of Tourism, Trade, and Economic Development finds that the
26 applicant does not meet the requirements of this section, it
27 shall notify the applicant and Enterprise Florida, Inc.,
28 within 10 working days that the application for certification
29 has been denied and the reasons for denial. The Office of
30 Tourism, Trade, and Economic Development has final approval
31 authority for certification under this section.

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1 ~~6.7~~.a. A business may apply once each year for the
2 exemption.

3 b. The application must indicate, for program
4 evaluation purposes only, the average number of full-time
5 equivalent employees at the facility over the preceding
6 calendar year, the average wage and benefits paid to those
7 employees over the preceding calendar year, the total
8 investment made in real and tangible personal property over
9 the preceding calendar year, and the total value of tax-exempt
10 purchases and taxes exempted during the previous year. The
11 department shall assist the Office of Tourism, Trade, and
12 Economic Development in evaluating and verifying information
13 provided in the application for exemption.

14 c. The Office of Tourism, Trade, and Economic
15 Development may use the information reported on the
16 application for evaluation purposes only and shall prepare an
17 annual report on the exemption program and its cost and
18 impact. The annual report for the preceding fiscal year shall
19 be submitted to the Governor, the President of the Senate, and
20 the Speaker of the House of Representatives by September 30 of
21 each fiscal year.

22 ~~7.8~~. A business certified to receive this exemption
23 may elect to designate one or more state universities or
24 community colleges as recipients of up to 100 percent of the
25 amount of the exemption for which they may qualify. To receive
26 these funds, the institution must agree to match the funds so
27 earned with equivalent cash, programs, services, or other
28 in-kind support on a one-to-one basis in the pursuit of
29 research and development projects as requested by the
30 certified business. The rights to any patents, royalties, or
31 real or intellectual property must be vested in the business

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1 unless otherwise agreed to by the business and the university
2 or community college.

3 ~~8.9.~~ As used in this paragraph, the term:

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

6 ~~b. "Research and development" means basic and applied~~
7 ~~research in the science or engineering, as well as the design,~~
8 ~~development, and testing of prototypes or processes of new or~~
9 ~~improved products. Research and development does not include~~
10 ~~market research, routine consumer product testing, sales~~
11 ~~research, research in the social sciences or psychology,~~
12 ~~nontechnological activities, or technical services.~~

13 ~~a.c.~~ "Semiconductor technology products" means raw
14 semiconductor wafers or semiconductor thin films that are
15 transformed into semiconductor memory or logic wafers,
16 including wafers containing mixed memory and logic circuits;
17 related assembly and test operations; active-matrix flat panel
18 displays; semiconductor chips; semiconductor lasers;
19 optoelectronic elements; and related semiconductor technology
20 products as determined by the Office of Tourism, Trade, and
21 Economic Development.

22 ~~b.d.~~ "Clean rooms" means manufacturing facilities
23 enclosed in a manner that meets the clean manufacturing
24 requirements necessary for high-technology
25 semiconductor-manufacturing environments.

26 ~~c.e.~~ "Defense technology products" means products that
27 have a military application, including, but not limited to,
28 weapons, weapons systems, guidance systems, surveillance
29 systems, communications or information systems, munitions,
30 aircraft, vessels, or boats, or components thereof, which are
31 intended for military use and manufactured in performance of a

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1 contract with the United States Department of Defense or the
2 military branch of a recognized foreign government or a
3 subcontract thereunder which relates to matters of national
4 defense.

5 d.f. "Space technology products" means products that
6 are specifically designed or manufactured for application in
7 space activities, including, but not limited to, space launch
8 vehicles, space flight vehicles, missiles, satellites or
9 research payloads, avionics, and associated control systems
10 and processing systems and components of any of the foregoing.
11 The term does not include products that are designed or
12 manufactured for general commercial aviation or other uses
13 even though those products may also serve an incidental use in
14 space applications.

15 (18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR
16 RESEARCH AND DEVELOPMENT.--

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

20 (b) For purposes of this subsection:

21 1. "Machinery and equipment" includes, but is not
22 limited to, molds, dies, machine tooling, other appurtenances
23 or accessories to machinery and equipment, testing and
24 measuring equipment, test beds, computers, and software,
25 whether purchased or self-fabricated, and, if self-fabricated,
26 includes materials and labor for design, fabrication, and
27 assembly.

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

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

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

2 b. Advancing knowledge or technology in a scientific
3 or technical field of endeavor;

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

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

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

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

13
14 The term "research and development" does not include ordinary
15 testing or inspection of materials or products used for
16 quality control, market research, efficiency surveys, consumer
17 surveys, advertising and promotions, management studies, or
18 research in connection with literary, historical, social
19 science, psychological, or other similar nontechnical
20 activities.

21 (c) The department may adopt rules pursuant to ss.
22 120.536(1) and 120.54 that provide for administering and
23 implementing this exemption.

24 (d) A person who claims the exemption provided in this
25 subsection shall furnish the vendor of the machinery or
26 equipment, including the vendor of materials and labor used in
27 self-fabrication of the machinery or equipment, an affidavit
28 stating that the item or items for which an exemption is
29 claimed are machinery and equipment that will be used
30 predominantly for research and development as required by this
31 subsection. A purchaser who claims the exemption by refund

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1 shall include the affidavit with the refund application. The
 2 affidavit must contain the purchaser's name, address, sales
 3 and use tax registration number, and, if applicable, federal
 4 employer's identification number. Any person fraudulently
 5 furnishing an affidavit to the vendor for the purpose of
 6 evading payment of any tax imposed under this chapter shall be
 7 subject to the penalty set forth in s. 212.085 and as
 8 otherwise provided by law.

9 (e) In lieu of furnishing an affidavit, a purchaser
 10 claiming the exemption provided in this subsection who has a
 11 direct-pay permit may furnish the vendor with a copy of the
 12 direct-pay permit and shall maintain all documentation
 13 necessary to prove the exempt status of the purchases and
 14 fabrication activity.

15 (f) Purchasers shall maintain all documentation
 16 necessary to prove the exempt status of purchases and
 17 fabrication activity and make such documentation available for
 18 inspection pursuant to the requirements of s. 212.13(2).

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

22 ===== T I T L E A M E N D M E N T =====

23 And the title is amended as follows:

24 Delete everything before the enacting clause

26 and insert:

27 A bill to be entitled

28 An act relating to the tax on sales, use, and
 29 other transactions; amending s. 212.052, F.S.;
 30 deleting an exception to an exemption from the
 31 tax for research or development costs; amending

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1 s. 212.08, F.S.; deleting provisions providing
2 an exemption on account of use for machinery
3 and equipment used for research and
4 development; exempting machinery and equipment
5 used predominantly for research and development
6 activities; providing definitions; authorizing
7 the Department of Revenue to adopt rules
8 administering and implementing the exemption;
9 providing requirements and procedures for
10 claiming the exemption; requiring an affidavit
11 to be given by a taxpayer claiming entitlement
12 to the exemption; providing penalties for
13 fraudulently claiming the exemption; providing
14 recordkeeping requirements; providing an
15 effective date.

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