

By the Committee on Government Efficiency Appropriations; and
Senators Fasano and King

593-2146-06

1 A bill to be entitled
2 An act relating to the tax on sales, use, and
3 other transactions; amending s. 212.052, F.S.;
4 deleting an exception to an exemption from the
5 tax for research or development costs; amending
6 s. 212.08, F.S.; deleting provisions providing
7 an exemption on account of use for machinery
8 and equipment used for research and
9 development; exempting machinery and equipment
10 used predominantly for research and development
11 activities; providing definitions; authorizing
12 the Department of Revenue to adopt rules
13 administering and implementing the exemption;
14 providing requirements and procedures for
15 claiming the exemption; requiring an affidavit
16 to be given by a taxpayer claiming entitlement
17 to the exemption; providing penalties for
18 fraudulently claiming the exemption; providing
19 recordkeeping requirements; providing an
20 effective date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsection (2) of section 212.052, Florida
25 Statutes, is amended to read:

26 212.052 Research or development costs; exemption.--
27 (2) Notwithstanding any provision of this chapter to
28 the contrary, any person, including an affiliated group as
29 defined in s. 1504 of the Internal Revenue Code of 1954, as
30 amended, who manufactures, produces, compounds, processes, or
31 fabricates in any manner tangible personal property for such

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 taxpayer's own use directly and solely in research or
2 development shall not be subject to the tax imposed by this
3 chapter upon the cost of the product so manufactured,
4 produced, compounded, processed, or fabricated. ~~However, the~~
5 ~~tax imposed by this chapter shall be due on the purchase,~~
6 ~~rental, or repair of real property or tangible personal~~
7 ~~property employed in research or development which is subject~~
8 ~~to the tax imposed by this chapter at the time of purchase or~~
9 ~~rental.~~

10 Section 2. Paragraph (j) of subsection (5) of section
11 212.08, Florida Statutes, is amended, and subsection (18) is
12 added to that section, to read:

13 212.08 Sales, rental, use, consumption, distribution,
14 and storage tax; specified exemptions.--The sale at retail,
15 the rental, the use, the consumption, the distribution, and
16 the storage to be used or consumed in this state of the
17 following are hereby specifically exempt from the tax imposed
18 by this chapter.

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

20 (j) Machinery and equipment used in semiconductor,
21 defense, or space technology production ~~and research and~~
22 ~~development.~~--

23 1.a. Industrial machinery and equipment used in
24 semiconductor technology facilities certified under
25 subparagraph 5. ~~6.~~ to manufacture, process, compound, or
26 produce semiconductor technology products for sale or for use
27 by these facilities are exempt from the tax imposed by this
28 chapter. For purposes of this paragraph, industrial machinery
29 and equipment includes molds, dies, machine tooling, other
30 appurtenances or accessories to machinery and equipment,
31 testing equipment, test beds, computers, and software, whether

1 purchased or self-fabricated, and, if self-fabricated,
2 includes materials and labor for design, fabrication, and
3 assembly.

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

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

21 ~~b. Machinery and equipment are exempt from 25 percent~~
22 ~~of the tax imposed by this chapter if used predominately in~~
23 ~~defense or space research and development activities in a~~
24 ~~defense or space technology research and development facility~~
25 ~~certified under subparagraph 6.~~

26 ~~2.3.~~ Building materials purchased for use in
27 manufacturing or expanding clean rooms in
28 semiconductor-manufacturing facilities are exempt from the tax
29 imposed by this chapter.

30 ~~3.4.~~ In addition to meeting the criteria mandated by
31 subparagraph 1. or, subparagraph 2., ~~or subparagraph 3., a~~

1 business must be certified by the Office of Tourism, Trade,
2 and Economic Development as authorized in this paragraph in
3 order to qualify for exemption under this paragraph.

4 ~~4.5.~~ For items purchased tax exempt pursuant to this
5 paragraph, possession of a written certification from the
6 purchaser, certifying the purchaser's entitlement to exemption
7 pursuant to this paragraph, relieves the seller of the
8 responsibility of collecting the tax on the sale of such
9 items, and the department shall look solely to the purchaser
10 for recovery of tax if it determines that the purchaser was
11 not entitled to the exemption.

12 ~~5.6-a.~~ To be eligible to receive the exemption
13 provided by subparagraph 1. ~~or~~ subparagraph 2., ~~or~~
14 ~~subparagraph 3.~~ a qualifying business entity shall apply
15 initially to Enterprise Florida, Inc. The original
16 certification is valid for 2 years. In lieu of submitting a
17 new application, the original certification may be renewed
18 biennially by submitting to the Office of Tourism, Trade, and
19 Economic Development a statement, certified under oath, that
20 there has been no material change in the conditions or
21 circumstances entitling the business entity to the original
22 certification. The initial application and the certification
23 renewal statement shall be developed by the Office of Tourism,
24 Trade, and Economic Development in consultation with
25 Enterprise Florida, Inc.

26 b. Enterprise Florida, Inc., shall review each
27 submitted initial application and information and determine
28 whether or not the application is complete within 5 working
29 days. Once an application is complete, Enterprise Florida,
30 Inc., shall, within 10 working days, evaluate the application
31

1 and recommend approval or disapproval of the application to
2 the Office of Tourism, Trade, and Economic Development.

3 c. Upon receipt of the initial application and
4 recommendation from Enterprise Florida, Inc., or upon receipt
5 of a certified renewal statement, the Office of Tourism,
6 Trade, and Economic Development shall certify within 5 working
7 days those applicants who are found to meet the requirements
8 of this section and notify the applicant, Enterprise Florida,
9 Inc., and the department of the original certification or
10 renewal. If the Office of Tourism, Trade, and Economic
11 Development finds that the applicant does not meet the
12 requirements of this section, it shall notify the applicant
13 and Enterprise Florida, Inc., within 10 working days that the
14 application for certification has been denied and the reasons
15 for denial. The Office of Tourism, Trade, and Economic
16 Development has final approval authority for certification
17 under this section.

18 ~~7.a. A business may apply once each year for the~~
19 ~~exemption.~~

20 ~~d.b.~~ The initial application and certification renewal
21 statement must indicate, for program evaluation purposes only,
22 the average number of full-time equivalent employees at the
23 facility over the preceding calendar year, the average wage
24 and benefits paid to those employees over the preceding
25 calendar year, the total investment made in real and tangible
26 personal property over the preceding calendar year, and the
27 total value of tax-exempt purchases and taxes exempted during
28 the previous year. The department shall assist the Office of
29 Tourism, Trade, and Economic Development in evaluating and
30 verifying information provided in the application for
31 exemption.

1 ~~e.e.~~ The Office of Tourism, Trade, and Economic
2 Development may use the information reported on the
3 application for evaluation purposes only and shall prepare an
4 annual report on the exemption program and its cost and
5 impact. The annual report for the preceding fiscal year shall
6 be submitted to the Governor, the President of the Senate, and
7 the Speaker of the House of Representatives by September 30 of
8 each fiscal year.

9 ~~6.8.~~ A business certified to receive this exemption
10 may elect to designate one or more state universities or
11 community colleges as recipients of up to 100 percent of the
12 amount of the exemption for which they may qualify. To receive
13 these funds, the institution must agree to match the funds so
14 earned with equivalent cash, programs, services, or other
15 in-kind support on a one-to-one basis in the pursuit of
16 research and development projects as requested by the
17 certified business. The rights to any patents, royalties, or
18 real or intellectual property must be vested in the business
19 unless otherwise agreed to by the business and the university
20 or community college.

21 ~~7.9.~~ As used in this paragraph, the term:

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

24 ~~b. "Research and development" means basic and applied~~
25 ~~research in the science or engineering, as well as the design,~~
26 ~~development, and testing of prototypes or processes of new or~~
27 ~~improved products. Research and development does not include~~
28 ~~market research, routine consumer product testing, sales~~
29 ~~research, research in the social sciences or psychology,~~
30 ~~nontechnological activities, or technical services.~~

1 ~~a.e.~~ "Semiconductor technology products" means raw
2 semiconductor wafers or semiconductor thin films that are
3 transformed into semiconductor memory or logic wafers,
4 including wafers containing mixed memory and logic circuits;
5 related assembly and test operations; active-matrix flat panel
6 displays; semiconductor chips; semiconductor lasers;
7 optoelectronic elements; and related semiconductor technology
8 products as determined by the Office of Tourism, Trade, and
9 Economic Development.

10 ~~b.d.~~ "Clean rooms" means manufacturing facilities
11 enclosed in a manner that meets the clean manufacturing
12 requirements necessary for high-technology
13 semiconductor-manufacturing environments.

14 ~~c.e.~~ "Defense technology products" means products that
15 have a military application, including, but not limited to,
16 weapons, weapons systems, guidance systems, surveillance
17 systems, communications or information systems, munitions,
18 aircraft, vessels, or boats, or components thereof, which are
19 intended for military use and manufactured in performance of a
20 contract with the United States Department of Defense or the
21 military branch of a recognized foreign government or a
22 subcontract thereunder which relates to matters of national
23 defense.

24 ~~d.f.~~ "Space technology products" means products that
25 are specifically designed or manufactured for application in
26 space activities, including, but not limited to, space launch
27 vehicles, space flight vehicles, missiles, satellites or
28 research payloads, avionics, and associated control systems
29 and processing systems and components of any of the foregoing.
30 The term does not include products that are designed or
31 manufactured for general commercial aviation or other uses

1 even though those products may also serve an incidental use in
2 space applications.

3 (18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR
4 RESEARCH AND DEVELOPMENT.--

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

8 (b) For purposes of this subsection:

9 1. "Machinery and equipment" includes, but is not
10 limited to, molds, dies, machine tooling, other appurtenances
11 or accessories to machinery and equipment, testing and
12 measuring equipment, test beds, computers, and software,
13 whether purchased or self-fabricated, and, if self-fabricated,
14 includes materials and labor for design, fabrication, and
15 assembly.

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

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

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

21 b. Advancing knowledge or technology in a scientific
22 or technical field of endeavor;

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

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

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

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

1
2 The term "research and development" does not include ordinary
3 testing or inspection of materials or products used for
4 quality control, market research, efficiency surveys, consumer
5 surveys, advertising and promotions, management studies, or
6 research in connection with literary, historical, social
7 science, psychological, or other similar nontechnical
8 activities.

9 (c) The department may adopt rules pursuant to ss.
10 120.536(1) and 120.54 that provide for administering and
11 implementing this exemption.

12 (d) A person who claims the exemption provided in this
13 subsection shall furnish the vendor of the machinery or
14 equipment, including the vendor of materials and labor used in
15 self-fabrication of the machinery or equipment, an affidavit
16 stating that the item or items for which an exemption is
17 claimed are machinery and equipment that will be used
18 predominantly for research and development as required by this
19 subsection. A purchaser who claims the exemption by refund
20 shall include the affidavit with the refund application. The
21 affidavit must contain the purchaser's name, address, sales
22 and use tax registration number, and, if applicable, federal
23 employer's identification number. Any person fraudulently
24 furnishing an affidavit to the vendor for the purpose of
25 evading payment of any tax imposed under this chapter shall be
26 subject to the penalty set forth in s. 212.085 and as
27 otherwise provided by law.

28 (e) In lieu of furnishing an affidavit, a purchaser
29 claiming the exemption provided in this subsection who has a
30 direct-pay permit may furnish the vendor with a copy of the
31 direct-pay permit and shall maintain all documentation

1 necessary to prove the exempt status of the purchases and
2 fabrication activity.

3 (f) Purchasers shall maintain all documentation
4 necessary to prove the exempt status of purchases and
5 fabrication activity and make such documentation available for
6 inspection pursuant to the requirements of s. 212.13(2).

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

8
9 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
10 COMMITTEE SUBSTITUTE FOR
11 SB 962

12 The Committee Substitute makes the following changes to SB
13 962:

- 14 1) Expands the production exemption to include the design
and assembly of space or defense technology products;
- 15 2) Amends the definition of "space technology products" by
16 adding space flight vehicles and components of any of the
exempt items; and
- 17 3) Authorizes that the original certificate issued by
18 Enterprise Florida, Inc. is valid for 2 years and
provides for biennial renewals.