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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2010	.	
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The Policy and Steering Committee on Ways and Means (Gaetz) recommended the following:

Senate Amendment

Delete lines 668 - 994
and insert:

3. Beginning July 1, 2010, and ending June 30, 2011, and beginning July 1, 2011, and ending June 30, 2012, that portion of the total amount of a taxpayer's purchases of industrial machinery and equipment for the exclusive use by a facility that is engaged in spaceport activities, or for use in manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state, which exceeds the total amount incurred



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13 for all industrial machinery and equipment purchased and placed
14 into service by the taxpayer in its tax year that began in 2008
15 is exempt from the tax imposed by this chapter to the extent
16 that the taxpayer demonstrates to the satisfaction of the
17 department the actual costs incurred to purchase the items and
18 that the items have been located and placed into service in this
19 state. The taxpayer's 2008 tax year shall be the baseline year
20 for future computations of the tax exemption as long as the
21 exemption exists.

22 4.3.a. To receive an exemption provided by this paragraph
23 ~~subparagraph 1. or subparagraph 2.~~, a qualifying business entity
24 shall apply to the department for a temporary tax exemption
25 permit. The application shall state that a ~~new~~ business
26 exemption ~~or expanded business exemption~~ is being sought. Upon a
27 tentative affirmative determination by the department pursuant
28 to subparagraph 1., ~~or~~ subparagraph 2., or subparagraph 3., the
29 department shall issue such permit.

30 b. The applicant shall ~~be required to~~ maintain all
31 necessary books and records to support the exemption. Upon
32 completion of purchases of qualified machinery and equipment
33 pursuant to subparagraph 1., ~~or~~ subparagraph 2., or subparagraph
34 3., the temporary tax permit shall be delivered to the
35 department or returned to the department by certified or
36 registered mail.

37 c. If, in a subsequent audit conducted by the department,
38 it is determined that the machinery and equipment purchased as
39 exempt under subparagraph 1., ~~or~~ subparagraph 2., or
40 subparagraph 3. did not meet the criteria mandated by this
41 paragraph or if commencement of production did not occur, the



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42 amount of taxes exempted at the time of purchase shall
43 immediately be due and payable to the department by the business
44 entity, together with the appropriate interest and penalty,
45 computed from the date of purchase, in the manner prescribed by
46 this chapter.

47 d. ~~If In the event~~ a qualifying business entity fails to
48 apply for a temporary exemption permit or if the tentative
49 determination by the department required to obtain a temporary
50 exemption permit is negative, a qualifying business entity shall
51 receive an the exemption provided in this paragraph ~~subparagraph~~
52 ~~1. or subparagraph 2.~~ through a refund of previously paid taxes.
53 No refund may be made for such taxes unless the criteria
54 mandated by subparagraph 1., ~~or~~ subparagraph 2., or subparagraph
55 3. have been met and commencement of production has occurred.

56 e. The exemption provided by subparagraph 3. applies to the
57 taxpayer only through a refund of previously paid taxes. The
58 taxpayer must submit a refund application to the Department of
59 Revenue within 12 months after the last day of the 12-month
60 period during which the machinery and equipment qualifies for
61 the exemption under this subparagraph. The refund shall be paid
62 to the taxpayer from the General Revenue Fund.

63 ~~5.4.~~ The department shall adopt rules governing
64 applications for, issuance of, and the form of temporary tax
65 exemption permits; provisions for recapture of taxes; and the
66 manner and form of refund applications, and may establish
67 guidelines as to the requisites for an affirmative showing of
68 increased productive output, commencement of production, and
69 qualification for exemption.

70 ~~6.5.~~ The exemptions provided in this paragraph



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71 ~~subparagraphs 1. and 2.~~ do not apply to machinery or equipment
72 purchased or used by electric utility companies, communications
73 companies, oil or gas exploration or production operations,
74 publishing firms that do not export at least 50 percent of their
75 finished product out of the state, any firm subject to
76 regulation by the Division of Hotels and Restaurants of the
77 Department of Business and Professional Regulation, or any firm
78 that ~~which~~ does not manufacture, process, compound, or produce
79 for sale items of tangible personal property or that ~~which~~ does
80 not use such machinery and equipment in spaceport activities as
81 required by this paragraph. The exemptions provided in this
82 paragraph ~~subparagraphs 1. and 2.~~ shall apply to machinery and
83 equipment purchased for use in phosphate or other solid minerals
84 severance, mining, or processing operations.

85 7.6. For the purposes of the exemptions provided in this
86 paragraph, the term ~~subparagraphs 1. and 2., these terms have the~~
87 ~~following meanings:~~

88 a. "Industrial machinery and equipment" means tangible
89 personal property or other property that has a depreciable life
90 of 3 years or more and that is used as an integral part in the
91 manufacturing, processing, compounding, or production of
92 tangible personal property for sale or is exclusively used in
93 spaceport activities. A building and its structural components
94 are not industrial machinery and equipment unless the building
95 or structural component is so closely related to the industrial
96 machinery and equipment that it houses or supports that the
97 building or structural component can be expected to be replaced
98 when the machinery and equipment are replaced. Heating and air-
99 conditioning systems are not industrial machinery and equipment



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100 unless the sole justification for their installation is to meet
101 the requirements of the production process, even though the
102 system may provide incidental comfort to employees or serve, to
103 an insubstantial degree, nonproduction activities. The term
104 includes parts and accessories only to the extent that the
105 exemption thereof is consistent with the provisions of this
106 paragraph.

107 b. "Productive output" means the number of units actually
108 produced by a single plant or operation in a single continuous
109 12-month period, irrespective of sales. Increases in productive
110 output shall be measured by the output for 12 continuous months
111 immediately following the completion of installation of such
112 machinery or equipment over the output for the 12 continuous
113 months immediately preceding such installation. However, if a
114 different 12-month continuous period of time would more
115 accurately reflect the increase in productive output of
116 machinery and equipment purchased to facilitate an expansion,
117 the increase in productive output may be measured during that
118 12-month continuous period of time if such time period is
119 mutually agreed upon by the Department of Revenue and the
120 expanding business prior to the commencement of production;
121 provided, however, in no case may such time period begin later
122 than 2 years following the completion of installation of the new
123 machinery and equipment. The units used to measure productive
124 output shall be physically comparable between the two periods,
125 irrespective of sales.

126 (g) *Building materials used in the rehabilitation of real*
127 *property located in an enterprise zone.*—

128 1. Building materials used in the rehabilitation of real



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129 property located in an enterprise zone are ~~shall be~~ exempt from
130 the tax imposed by this chapter upon an affirmative showing to
131 the satisfaction of the department that the items have been used
132 for the rehabilitation of real property located in an enterprise
133 zone. Except as provided in subparagraph 2., this exemption
134 inures to the owner, lessee, or lessor of the rehabilitated real
135 property located in an enterprise zone only through a refund of
136 previously paid taxes. To receive a refund pursuant to this
137 paragraph, the owner, lessee, or lessor of the rehabilitated
138 real property located in an enterprise zone must file an
139 application under oath with the governing body or enterprise
140 zone development agency having jurisdiction over the enterprise
141 zone where the business is located, as applicable, which
142 includes:

- 143 a. The name and address of the person claiming the refund.
- 144 b. An address and assessment roll parcel number of the
145 rehabilitated real property in an enterprise zone for which a
146 refund of previously paid taxes is being sought.
- 147 c. A description of the improvements made to accomplish the
148 rehabilitation of the real property.
- 149 d. A copy of the building permit issued for the
150 rehabilitation of the real property.
- 151 e. A sworn statement, under the penalty of perjury, from
152 the general contractor licensed in this state with whom the
153 applicant contracted to make the improvements necessary to
154 accomplish the rehabilitation of the real property, which
155 statement lists the building materials used in the
156 rehabilitation of the real property, the actual cost of the
157 building materials, and the amount of sales tax paid in this



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158 state on the building materials. ~~If In the event that~~ a general
159 contractor has not been used, the applicant shall provide this
160 information in a sworn statement, under the penalty of perjury.
161 Copies of the invoices that ~~which~~ evidence the purchase of the
162 building materials used in such rehabilitation and the payment
163 of sales tax on the building materials shall be attached to the
164 sworn statement provided by the general contractor or by the
165 applicant. Unless the actual cost of building materials used in
166 the rehabilitation of real property and the payment of sales
167 taxes due thereon is documented by a general contractor or by
168 the applicant in this manner, the cost of such building
169 materials shall be an amount equal to 40 percent of the increase
170 in assessed value for ad valorem tax purposes.

171 f. The identifying number assigned pursuant to s. 290.0065
172 to the enterprise zone in which the rehabilitated real property
173 is located.

174 g. A certification by the local building code inspector
175 that the improvements necessary to accomplish the rehabilitation
176 of the real property are substantially completed.

177 h. Whether the business is a small business as defined by
178 s. 288.703(1).

179 i. If applicable, the name and address of each permanent
180 employee of the business, including, for each employee who is a
181 resident of an enterprise zone, the identifying number assigned
182 pursuant to s. 290.0065 to the enterprise zone in which the
183 employee resides.

184 2. This exemption inures to a municipality ~~city~~, county,
185 other governmental agency, or nonprofit community-based
186 organization through a refund of previously paid taxes if the



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187 building materials used in the rehabilitation of real property
188 located in an enterprise zone are paid for from the funds of a
189 community development block grant, State Housing Initiatives
190 Partnership Program, or similar grant or loan program. To
191 receive a refund pursuant to this paragraph, a municipality
192 ~~city~~, county, other governmental agency, or nonprofit community-
193 based organization must file an application that ~~which~~ includes
194 the same information required to be provided in subparagraph 1.
195 by an owner, lessee, or lessor of rehabilitated real property.
196 In addition, the application must include a sworn statement
197 signed by the chief executive officer of the municipality ~~city~~,
198 county, other governmental agency, or nonprofit community-based
199 organization seeking a refund which states that the building
200 materials for which a refund is sought were paid for from the
201 funds of a community development block grant, State Housing
202 Initiatives Partnership Program, or similar grant or loan
203 program.

204 3. Within 10 working days after receipt of an application,
205 the governing body or enterprise zone development agency shall
206 review the application to determine if it contains all the
207 information required pursuant to subparagraph 1. or subparagraph
208 2. and meets the criteria set out in this paragraph. The
209 governing body or agency shall certify all applications that
210 contain the information required pursuant to subparagraph 1. or
211 subparagraph 2. and that meet the criteria set out in this
212 paragraph as eligible to receive a refund. If applicable, the
213 governing body or agency shall also certify if 20 percent of the
214 employees of the business are residents of an enterprise zone,
215 excluding temporary and part-time employees. The certification



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216 shall be in writing, and a copy of the certification shall be
217 transmitted to the executive director of the department ~~of~~
218 Revenue. The applicant is ~~shall be~~ responsible for forwarding a
219 certified application to the department within the time
220 specified in subparagraph 4.

221 4. An application for a refund pursuant to this paragraph
222 must be submitted to the department within 6 months after the
223 rehabilitation of the property is deemed to be substantially
224 completed by the local building code inspector or by September 1
225 after the rehabilitated property is first subject to assessment.

226 5. Not more than one exemption through a refund of
227 previously paid taxes for the rehabilitation of real property
228 shall be permitted for any single parcel of property unless
229 there is a change in ownership, a new lessor, or a new lessee of
230 the real property. No refund shall be granted pursuant to this
231 paragraph unless the amount to be refunded exceeds \$500. No
232 refund granted pursuant to this paragraph shall exceed the
233 lesser of 97 percent of the Florida sales or use tax paid on the
234 cost of the building materials used in the rehabilitation of the
235 real property as determined pursuant to sub-subparagraph 1.e. or
236 \$5,000, or, if no less than 20 percent of the employees of the
237 business are residents of an enterprise zone, excluding
238 temporary and part-time employees, the amount of refund granted
239 pursuant to this paragraph may ~~shall~~ not exceed the lesser of 97
240 percent of the sales tax paid on the cost of such building
241 materials or \$10,000. A refund approved pursuant to this
242 paragraph shall be made within 30 days after ~~of~~ formal approval
243 by the department of the application for the refund. This
244 subparagraph applies ~~shall apply~~ retroactively to July 1, 2005.



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245 6. The department shall adopt rules governing the manner
246 and form of refund applications and may establish guidelines as
247 to the requisites for an affirmative showing of qualification
248 for exemption under this paragraph.

249 7. The department shall deduct an amount equal to 10
250 percent of each refund granted under ~~the provisions of~~ this
251 paragraph from the amount transferred into the Local Government
252 Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20
253 for the county area in which the rehabilitated real property is
254 located and shall transfer that amount to the General Revenue
255 Fund.

256 8. For the purposes of the exemption provided in this
257 paragraph, the term:

258 a. "Building materials" means tangible personal property
259 that ~~which~~ becomes a component part of improvements to real
260 property.

261 b. "Real property" has the same meaning as provided in s.
262 192.001(12), except that the term does not include a condominium
263 parcel or condominium property as defined in s. 718.103.

264 c. "Rehabilitation of real property" means the
265 reconstruction, renovation, restoration, rehabilitation,
266 construction, or expansion of improvements to real property.

267 d. "Substantially completed" has the same meaning as
268 provided in s. 192.042(1).

269 9. This paragraph expires on the date specified in s.
270 290.016 for the expiration of the Florida Enterprise Zone Act.

271 (q) Entertainment industry tax credit; authorization;
272 eligibility for credits.—The credit against sales tax authorized
273 pursuant to s. 288.1254 is available to the transferee only



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274 through a refund of previously paid taxes. To receive a refund,
275 the transferee must submit an application for refund to the
276 Department of Revenue within 12 months after receipt of the
277 transferred credit. Such refund shall be paid to the transferee
278 from the General Revenue Fund. If the credit for the qualified
279 expenditures is larger than the amount owed on the sales and use
280 tax return on which the credit may be claimed, the unused amount
281 of the credit may be carried forward to a succeeding reporting
282 period as provided in s. 288.1254(4)(e).

283 Section 6. Effective July 1, 2012, paragraph (b) of
284 subsection (5) of section 212.08, Florida Statutes, as amended
285 by this act, is amended to read:

286 212.08 Sales, rental, use, consumption, distribution, and
287 storage tax; specified exemptions.—The sale at retail, the
288 rental, the use, the consumption, the distribution, and the
289 storage to be used or consumed in this state of the following
290 are hereby specifically exempt from the tax imposed by this
291 chapter.

292 (5) EXEMPTIONS; ACCOUNT OF USE.—

293 (b) *Machinery and equipment used to increase productive*
294 *output.*—

295 1. Industrial machinery and equipment purchased for
296 exclusive use by a new business in spaceport activities as
297 defined by s. 212.02 or for use in new businesses that
298 manufacture, process, compound, or produce for sale items of
299 tangible personal property at fixed locations are exempt from
300 the tax imposed by this chapter upon an affirmative showing by
301 the taxpayer to the satisfaction of the department that such
302 items are used in a new business in this state. Such purchases



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303 must be made prior to the date the business first begins its
304 productive operations, and delivery of the purchased item must
305 be made within 12 months after that date.

306 2. Industrial machinery and equipment purchased for
307 exclusive use by an expanding facility that is engaged in
308 spaceport activities as defined by s. 212.02 or for use in
309 expanding manufacturing facilities or plant units that
310 manufacture, process, compound, or produce for sale items of
311 tangible personal property at fixed locations in this state are
312 exempt from any amount of tax imposed by this chapter upon an
313 affirmative showing by the taxpayer to the satisfaction of the
314 department that such items are used to increase the productive
315 output of such expanded facility or business by at least 10
316 percent.

317 ~~3. Beginning July 1, 2010, and ending June 30, 2011, and~~
318 ~~beginning July 1, 2011, and ending June 30, 2012, that portion~~
319 ~~of the total amount of a taxpayer's purchases of industrial~~
320 ~~machinery and equipment for the exclusive use by a facility that~~
321 ~~is engaged in spaceport activities, or for use in manufacturing~~
322 ~~facilities or plant units that manufacture, process, compound,~~
323 ~~or produce for sale items of tangible personal property at fixed~~
324 ~~locations in this state, which exceeds the total amount incurred~~
325 ~~for all industrial machinery and equipment purchased and placed~~
326 ~~into service by the taxpayer in its tax year that began in 2008~~
327 ~~is exempt from the tax imposed by this chapter to the extent~~
328 ~~that the taxpayer demonstrates to the satisfaction of the~~
329 ~~department the actual costs incurred to purchase the items and~~
330 ~~that the items have been located and placed into service in this~~
331 ~~state. The taxpayer's 2008 tax year shall be the baseline year~~



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332 ~~for future computations of the tax exemption as long as the~~
333 ~~exemption exists.~~