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1 A bill to be entitled
 2 An act relating to exemptions from the tax on sales,
 3 use, and other transactions; amending s. 212.08, F.S.;
 4 revising limitations, conditions, criteria, and
 5 definitions relating to exempting certain business
 6 purchases of industrial machinery and equipment from
 7 the sales tax; exempting from the sales tax industrial
 8 machinery and equipment purchased for exclusive use in
 9 certain spaceport activities or use in businesses that
 10 manufacture, process, compound, or produce for sale
 11 items of tangible personal property at fixed
 12 locations; deleting limitations and restrictions
 13 relating to an exemption for machinery and equipment
 14 used under a federal procurement contract; conforming
 15 cross-references; providing an effective date.

16
 17 Be It Enacted by the Legislature of the State of Florida:

18
 19 Section 1. Paragraphs (b), (d), and (h) of subsection (5)
 20 of section 212.08, Florida Statutes, are amended to read:

21 212.08 Sales, rental, use, consumption, distribution, and
 22 storage tax; specified exemptions.—The sale at retail, the
 23 rental, the use, the consumption, the distribution, and the
 24 storage to be used or consumed in this state of the following
 25 are hereby specifically exempt from the tax imposed by this
 26 chapter.

27 (5) EXEMPTIONS; ACCOUNT OF USE.—

28 (b) Industrial machinery and equipment used exclusively in

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29 spaceport activities or used by manufacturers to increase
30 productive output.—

31 1. Industrial machinery and equipment purchased for
32 exclusive use ~~by a new business~~ in spaceport activities directed
33 or sponsored by Space Florida on spaceport territory pursuant to
34 its powers and responsibilities under the Space Florida Act as
35 defined by s. 212.02 or for use in ~~new~~ businesses that
36 manufacture, process, compound, or produce for sale items of
37 tangible personal property at fixed locations are exempt from
38 the tax imposed by this chapter ~~upon an affirmative showing by~~
39 ~~the taxpayer to the satisfaction of the department that such~~
40 ~~items are used in a new business in this state. Such purchases~~
41 ~~must be made prior to the date the business first begins its~~
42 ~~productive operations, and delivery of the purchased item must~~
43 ~~be made within 12 months after that date.~~

44 2. ~~Industrial machinery and equipment purchased for~~
45 ~~exclusive use by an expanding facility which is engaged in~~
46 ~~spaceport activities as defined by s. 212.02 or for use in~~
47 ~~expanding manufacturing facilities or plant units which~~
48 ~~manufacture, process, compound, or produce for sale items of~~
49 ~~tangible personal property at fixed locations in this state are~~
50 ~~exempt from any amount of tax imposed by this chapter upon an~~
51 ~~affirmative showing by the taxpayer to the satisfaction of the~~
52 ~~department that such items are used to increase the productive~~
53 ~~output of such expanded facility or business by not less than 10~~
54 ~~percent.~~

55 3.a. ~~To receive an exemption provided by subparagraph 1.~~
56 ~~or subparagraph 2., a qualifying business entity shall apply to~~

57 ~~the department for a temporary tax exemption permit. The~~
58 ~~application shall state that a new business exemption or~~
59 ~~expanded business exemption is being sought. Upon a tentative~~
60 ~~affirmative determination by the department pursuant to~~
61 ~~subparagraph 1. or subparagraph 2., the department shall issue~~
62 ~~such permit.~~

63 ~~b. The applicant shall maintain all necessary books and~~
64 ~~records to support the exemption. Upon completion of purchases~~
65 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
66 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
67 ~~to the department or returned to the department by certified or~~
68 ~~registered mail.~~

69 ~~e. If, in a subsequent audit conducted by the department,~~
70 ~~it is determined that the machinery and equipment purchased as~~
71 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~
72 ~~criteria mandated by this paragraph or if commencement of~~
73 ~~production did not occur, the amount of taxes exempted at the~~
74 ~~time of purchase shall immediately be due and payable to the~~
75 ~~department by the business entity, together with the appropriate~~
76 ~~interest and penalty, computed from the date of purchase, in the~~
77 ~~manner prescribed by this chapter.~~

78 ~~d. If a qualifying business entity fails to apply for a~~
79 ~~temporary exemption permit or if the tentative determination by~~
80 ~~the department required to obtain a temporary exemption permit~~
81 ~~is negative, a qualifying business entity shall receive the~~
82 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
83 ~~a refund of previously paid taxes. No refund may be made for~~
84 ~~such taxes unless the criteria mandated by subparagraph 1. or~~

85 ~~subparagraph 2. have been met and commencement of production has~~
 86 ~~occurred.~~

87 ~~4. The department shall adopt rules governing applications~~
 88 ~~for, issuance of, and the form of temporary tax exemption~~
 89 ~~permits; provisions for recapture of taxes; and the manner and~~
 90 ~~form of refund applications, and may establish guidelines as to~~
 91 ~~the requisites for an affirmative showing of increased~~
 92 ~~productive output, commencement of production, and qualification~~
 93 ~~for exemption.~~

94 2.5. The exemptions provided in subparagraph ~~subparagraphs~~
 95 ~~1. and 2.~~ do not apply to machinery or equipment purchased or
 96 used by electric utility companies, communications companies,
 97 oil or gas exploration or production operations, publishing
 98 firms that do not export at least 50 percent of their finished
 99 product out of the state, any firm subject to regulation by the
 100 Division of Hotels and Restaurants of the Department of Business
 101 and Professional Regulation, or any firm that does not
 102 manufacture, process, compound, or produce for sale items of
 103 tangible personal property or that does not use such machinery
 104 and equipment in spaceport activities as required by this
 105 paragraph. The exemptions provided in subparagraph ~~subparagraphs~~
 106 ~~1. and 2.~~ shall apply to machinery and equipment purchased for
 107 use in phosphate or other solid minerals severance, mining, or
 108 processing operations.

109 3.6. For the purposes of the exemptions provided in
 110 subparagraph 1., ~~the term subparagraphs 1. and 2., these terms~~
 111 ~~have the following meanings:~~

112 a. "industrial machinery and equipment" means tangible

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113 personal property or other property that has a depreciable life
114 of 3 years or more and that is used as an integral part in the
115 manufacturing, processing, compounding, or production of
116 tangible personal property for sale or is exclusively used in
117 spaceport activities as described in subparagraph 1. A building
118 and its structural components are not industrial machinery and
119 equipment unless the building or structural component is so
120 closely related to the industrial machinery and equipment that
121 it houses or supports that the building or structural component
122 can be expected to be replaced when the machinery and equipment
123 are replaced. Heating and air-conditioning systems are not
124 industrial machinery and equipment unless the sole justification
125 for their installation is to meet the requirements of the
126 production process, even though the system may provide
127 incidental comfort to employees or serve, to an insubstantial
128 degree, nonproduction activities. The term includes parts and
129 accessories only to the extent that the exemption thereof is
130 consistent with the provisions of this paragraph.

131 ~~b. "Productive output" means the number of units actually~~
132 ~~produced by a single plant, operation, or product line in a~~
133 ~~single continuous 12-month period, irrespective of sales.~~
134 ~~Increases in productive output shall be measured by the output~~
135 ~~for 12 continuous months selected by the expanding business~~
136 ~~following the completion of installation of such machinery or~~
137 ~~equipment over the output for the 12 continuous months~~
138 ~~immediately preceding such installation. However, in no case may~~
139 ~~such time period begin later than 2 years following the~~
140 ~~completion of installation of the new machinery and equipment.~~

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141 ~~The units used to measure productive output shall be physically~~
142 ~~comparable between the two periods, irrespective of sales.~~

143 (d) Machinery and equipment used under federal procurement
144 contract.—

145 1. Industrial machinery and equipment purchased by a ~~an~~
146 ~~expanding~~ business which manufactures tangible personal property
147 pursuant to federal procurement regulations at fixed locations
148 in this state are exempt from the tax imposed in this chapter
149 upon ~~an affirmative showing by the taxpayer to the satisfaction~~
150 ~~of the department that such items are used to increase the~~
151 ~~implicit productive output of the expanded business by not less~~
152 ~~than 10 percent. The percentage of increase is measured as~~
153 ~~deflated implicit productive output for the calendar year during~~
154 ~~which the installation of the machinery or equipment is~~
155 ~~completed or during which commencement of production utilizing~~
156 ~~such items is begun divided by the implicit productive output~~
157 ~~for the preceding calendar year. In no case may the commencement~~
158 ~~of production begin later than 2 years following completion of~~
159 ~~installation of the machinery or equipment.~~

160 2. ~~The amount of the exemption allowed shall equal the~~
161 ~~taxes otherwise imposed by this chapter on qualifying industrial~~
162 ~~machinery or equipment reduced by the percentage of gross~~
163 ~~receipts from cost-reimbursement type contracts attributable to~~
164 ~~the plant or operation to total gross receipts so attributable,~~
165 ~~accrued for the year of completion or commencement.~~

166 3. ~~The exemption provided by this paragraph shall inure to~~
167 ~~the taxpayer only through refund of previously paid taxes. Such~~
168 ~~refund shall be made within 30 days of formal approval by the~~

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169 ~~department of the taxpayer's application, which application may~~
170 ~~be made on an annual basis following installation of the~~
171 ~~machinery or equipment.~~

172 ~~4. For the purposes of this paragraph, the term:~~

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

175 ~~b. "Deflated implicit productive output" means the product~~
176 ~~of implicit productive output times the quotient of the national~~
177 ~~defense implicit price deflator for the preceding calendar year~~
178 ~~divided by the deflator for the year of completion or~~
179 ~~commencement.~~

180 ~~e. "Eligible costs" means the total direct and indirect~~
181 ~~costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding~~
182 ~~general and administrative costs, selling expenses, and profit,~~
183 ~~defined by the uniform cost-accounting standards adopted by the~~
184 ~~Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.~~
185 ~~2168.~~

186 ~~d. "Implicit productive output" means the annual eligible~~
187 ~~costs attributable to all contracts or subcontracts subject to~~
188 ~~federal procurement regulations of the single plant or operation~~
189 ~~at which the machinery or equipment is used.~~

190 ~~e. As used in this paragraph, the term, "industrial~~
191 ~~machinery and equipment" means tangible personal property or~~
192 ~~other property that has a depreciable life of 3 years or more,~~
193 ~~that qualifies as an eligible cost under federal procurement~~
194 ~~regulations, and that is used as an integral part of the process~~
195 ~~of production of tangible personal property. A building and its~~
196 ~~structural components are not industrial machinery and equipment~~

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197 unless the building or structural component is so closely
198 related to the industrial machinery and equipment that it houses
199 or supports that the building or structural component can be
200 expected to be replaced when the machinery and equipment are
201 replaced. Heating and air-conditioning systems are not
202 industrial machinery and equipment unless the sole justification
203 for their installation is to meet the requirements of the
204 production process, even though the system may provide
205 incidental comfort to employees or serve, to an insubstantial
206 degree, nonproduction activities. The term includes parts and
207 accessories only to the extent that the exemption of such parts
208 and accessories is consistent with the provisions of this
209 paragraph.

210 ~~f. "National defense implicit price deflator" means the~~
211 ~~national defense implicit price deflator for the gross national~~
212 ~~product as determined by the Bureau of Economic Analysis of the~~
213 ~~United States Department of Commerce.~~

214 2.5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
215 apply to this exemption. This exemption applies only to
216 machinery or equipment purchased pursuant to production
217 contracts with the United States Department of Defense and Armed
218 Forces, the National Aeronautics and Space Administration, and
219 other federal agencies for which the contracts are classified
220 for national security reasons. ~~In no event shall the provisions~~
221 ~~of this paragraph apply to any expanding business the increase~~
222 ~~in productive output of which could be measured under the~~
223 ~~provisions of sub-subparagraph (b)6.b. as physically comparable~~
224 ~~between the two periods.~~

225 (h) Business property used in an enterprise zone.—
 226 1. Business property purchased for use by businesses
 227 located in an enterprise zone which is subsequently used in an
 228 enterprise zone shall be exempt from the tax imposed by this
 229 chapter. This exemption inures to the business only through a
 230 refund of previously paid taxes. A refund shall be authorized
 231 upon an affirmative showing by the taxpayer to the satisfaction
 232 of the department that the requirements of this paragraph have
 233 been met.
 234 2. To receive a refund, the business must file under oath
 235 with the governing body or enterprise zone development agency
 236 having jurisdiction over the enterprise zone where the business
 237 is located, as applicable, an application which includes:
 238 a. The name and address of the business claiming the
 239 refund.
 240 b. The identifying number assigned pursuant to s. 290.0065
 241 to the enterprise zone in which the business is located.
 242 c. A specific description of the property for which a
 243 refund is sought, including its serial number or other permanent
 244 identification number.
 245 d. The location of the property.
 246 e. The sales invoice or other proof of purchase of the
 247 property, showing the amount of sales tax paid, the date of
 248 purchase, and the name and address of the sales tax dealer from
 249 whom the property was purchased.
 250 f. Whether the business is a small business as defined by
 251 s. 288.703.
 252 g. If applicable, the name and address of each permanent

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253 employee of the business, including, for each employee who is a
254 resident of an enterprise zone, the identifying number assigned
255 pursuant to s. 290.0065 to the enterprise zone in which the
256 employee resides.

257 3. Within 10 working days after receipt of an application,
258 the governing body or enterprise zone development agency shall
259 review the application to determine if it contains all the
260 information required pursuant to subparagraph 2. and meets the
261 criteria set out in this paragraph. The governing body or agency
262 shall certify all applications that contain the information
263 required pursuant to subparagraph 2. and meet the criteria set
264 out in this paragraph as eligible to receive a refund. If
265 applicable, the governing body or agency shall also certify if
266 20 percent of the employees of the business are residents of an
267 enterprise zone, excluding temporary and part-time employees.
268 The certification shall be in writing, and a copy of the
269 certification shall be transmitted to the executive director of
270 the Department of Revenue. The business shall be responsible for
271 forwarding a certified application to the department within the
272 time specified in subparagraph 4.

273 4. An application for a refund pursuant to this paragraph
274 must be submitted to the department within 6 months after the
275 tax is due on the business property that is purchased.

276 5. The amount refunded on purchases of business property
277 under this paragraph shall be the lesser of 97 percent of the
278 sales tax paid on such business property or \$5,000, or, if no
279 less than 20 percent of the employees of the business are
280 residents of an enterprise zone, excluding temporary and part-

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281 time employees, the amount refunded on purchases of business
282 property under this paragraph shall be the lesser of 97 percent
283 of the sales tax paid on such business property or \$10,000. A
284 refund approved pursuant to this paragraph shall be made within
285 30 days after formal approval by the department of the
286 application for the refund. A refund may not be granted under
287 this paragraph unless the amount to be refunded exceeds \$100 in
288 sales tax paid on purchases made within a 60-day time period.

289 6. The department shall adopt rules governing the manner
290 and form of refund applications and may establish guidelines as
291 to the requisites for an affirmative showing of qualification
292 for exemption under this paragraph.

293 7. If the department determines that the business property
294 is used outside an enterprise zone within 3 years from the date
295 of purchase, the amount of taxes refunded to the business
296 purchasing such business property shall immediately be due and
297 payable to the department by the business, together with the
298 appropriate interest and penalty, computed from the date of
299 purchase, in the manner provided by this chapter.

300 Notwithstanding this subparagraph, business property used
301 exclusively in:

- 302 a. Licensed commercial fishing vessels,
 - 303 b. Fishing guide boats, or
 - 304 c. Ecotourism guide boats
- 305

306 that leave and return to a fixed location within an area
307 designated under s. 379.2353, Florida Statutes 2010, are
308 eligible for the exemption provided under this paragraph if all

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309 requirements of this paragraph are met. Such vessels and boats
310 must be owned by a business that is eligible to receive the
311 exemption provided under this paragraph. This exemption does not
312 apply to the purchase of a vessel or boat.

313 8. The department shall deduct an amount equal to 10
314 percent of each refund granted under this paragraph from the
315 amount transferred into the Local Government Half-cent Sales Tax
316 Clearing Trust Fund pursuant to s. 212.20 for the county area in
317 which the business property is located and shall transfer that
318 amount to the General Revenue Fund.

319 9. For the purposes of this exemption, "business property"
320 means new or used property defined as "recovery property" in s.
321 168(c) of the Internal Revenue Code of 1954, as amended, except:

322 a. Property classified as 3-year property under s.
323 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;

324 b. Industrial machinery and equipment as defined in
325 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for
326 exemption under paragraph (b);

327 c. Building materials as defined in sub-subparagraph
328 (g)8.a.; and

329 d. Business property having a sales price of under \$5,000
330 per unit.

331 10. This paragraph expires on the date specified in s.
332 290.016 for the expiration of the Florida Enterprise Zone Act.

333 Section 2. This act shall take effect upon becoming a law.