

By Senator Latvala

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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
29 spaceport activities or used by manufacturers ~~to increase~~

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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. or~~
56 ~~subparagraph 2., a qualifying business entity shall apply to the~~
57 ~~department for a temporary tax exemption permit. The application~~
58 ~~shall state that a new business exemption or expanded business~~

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59 ~~exemption is being sought. Upon a tentative affirmative~~
60 ~~determination by the department pursuant to subparagraph 1. or~~
61 ~~subparagraph 2., the department shall issue such permit.~~

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

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

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

86 ~~4. The department shall adopt rules governing applications~~
87 ~~for, issuance of, and the form of temporary tax exemption~~

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88 ~~permits; provisions for recapture of taxes; and the manner and~~
89 ~~form of refund applications, and may establish guidelines as to~~
90 ~~the requisites for an affirmative showing of increased~~
91 ~~productive output, commencement of production, and qualification~~
92 ~~for exemption.~~

93 2.5. The exemptions provided in subparagraph ~~subparagraphs~~
94 ~~1. and 2.~~ do not apply to machinery or equipment purchased or
95 used by electric utility companies, communications companies,
96 oil or gas exploration or production operations, publishing
97 firms that do not export at least 50 percent of their finished
98 product out of the state, any firm subject to regulation by the
99 Division of Hotels and Restaurants of the Department of Business
100 and Professional Regulation, or any firm that does not
101 manufacture, process, compound, or produce for sale items of
102 tangible personal property or that does not use such machinery
103 and equipment in spaceport activities as required by this
104 paragraph. The exemptions provided in subparagraph ~~subparagraphs~~
105 ~~1. and 2.~~ shall apply to machinery and equipment purchased for
106 use in phosphate or other solid minerals severance, mining, or
107 processing operations.

108 3.6. For the purposes of the exemptions provided in
109 subparagraph 1., the term ~~subparagraphs 1. and 2.,~~ these terms
110 ~~have the following meanings:~~

111 a. "industrial machinery and equipment" means tangible
112 personal property or other property that has a depreciable life
113 of 3 years or more and that is used as an integral part in the
114 manufacturing, processing, compounding, or production of
115 tangible personal property for sale or is exclusively used in
116 spaceport activities as described in subparagraph 1. A building

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117 and its structural components are not industrial machinery and
118 equipment unless the building or structural component is so
119 closely related to the industrial machinery and equipment that
120 it houses or supports that the building or structural component
121 can be expected to be replaced when the machinery and equipment
122 are replaced. Heating and air-conditioning systems are not
123 industrial machinery and equipment unless the sole justification
124 for their installation is to meet the requirements of the
125 production process, even though the system may provide
126 incidental comfort to employees or serve, to an insubstantial
127 degree, nonproduction activities. The term includes parts and
128 accessories only to the extent that the exemption thereof is
129 consistent with the provisions of this paragraph.

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

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

144 1. Industrial machinery and equipment purchased by a ~~an~~
145 ~~expanding~~ business which manufactures tangible personal property

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

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

165 ~~3. The exemption provided by this paragraph shall inure to~~
166 ~~the taxpayer only through refund of previously paid taxes. Such~~
167 ~~refund shall be made within 30 days of formal approval by the~~
168 ~~department of the taxpayer's application, which application may~~
169 ~~be made on an annual basis following installation of the~~
170 ~~machinery or equipment.~~

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

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

174 ~~b. "Deflated implicit productive output" means the product~~

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

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

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

189 ~~e. As used in this paragraph, the term, "industrial~~
190 ~~machinery and equipment" means tangible personal property or~~
191 ~~other property that has a depreciable life of 3 years or more,~~
192 ~~that qualifies as an eligible cost under federal procurement~~
193 ~~regulations, and that is used as an integral part of the process~~
194 ~~of production of tangible personal property. A building and its~~
195 ~~structural components are not industrial machinery and equipment~~
196 ~~unless the building or structural component is so closely~~
197 ~~related to the industrial machinery and equipment that it houses~~
198 ~~or supports that the building or structural component can be~~
199 ~~expected to be replaced when the machinery and equipment are~~
200 ~~replaced. Heating and air-conditioning systems are not~~
201 ~~industrial machinery and equipment unless the sole justification~~
202 ~~for their installation is to meet the requirements of the~~
203 ~~production process, even though the system may provide~~

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204 incidental comfort to employees or serve, to an insubstantial
205 degree, nonproduction activities. The term includes parts and
206 accessories only to the extent that the exemption of such parts
207 and accessories is consistent with the provisions of this
208 paragraph.

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

213 2.5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
214 apply to this exemption. This exemption applies only to
215 machinery or equipment purchased pursuant to production
216 contracts with the United States Department of Defense and Armed
217 Forces, the National Aeronautics and Space Administration, and
218 other federal agencies for which the contracts are classified
219 for national security reasons. ~~In no event shall the provisions~~
220 ~~of this paragraph apply to any expanding business the increase~~
221 ~~in productive output of which could be measured under the~~
222 ~~provisions of sub-subparagraph (b)6.b. as physically comparable~~
223 ~~between the two periods.~~

224 (h) *Business property used in an enterprise zone.*—

225 1. Business property purchased for use by businesses
226 located in an enterprise zone which is subsequently used in an
227 enterprise zone shall be exempt from the tax imposed by this
228 chapter. This exemption inures to the business only through a
229 refund of previously paid taxes. A refund shall be authorized
230 upon an affirmative showing by the taxpayer to the satisfaction
231 of the department that the requirements of this paragraph have
232 been met.

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233 2. To receive a refund, the business must file under oath
234 with the governing body or enterprise zone development agency
235 having jurisdiction over the enterprise zone where the business
236 is located, as applicable, an application which includes:

237 a. The name and address of the business claiming the
238 refund.

239 b. The identifying number assigned pursuant to s. 290.0065
240 to the enterprise zone in which the business is located.

241 c. A specific description of the property for which a
242 refund is sought, including its serial number or other permanent
243 identification number.

244 d. The location of the property.

245 e. The sales invoice or other proof of purchase of the
246 property, showing the amount of sales tax paid, the date of
247 purchase, and the name and address of the sales tax dealer from
248 whom the property was purchased.

249 f. Whether the business is a small business as defined by
250 s. 288.703.

251 g. If applicable, the name and address of each permanent
252 employee of the business, including, for each employee who is a
253 resident of an enterprise zone, the identifying number assigned
254 pursuant to s. 290.0065 to the enterprise zone in which the
255 employee resides.

256 3. Within 10 working days after receipt of an application,
257 the governing body or enterprise zone development agency shall
258 review the application to determine if it contains all the
259 information required pursuant to subparagraph 2. and meets the
260 criteria set out in this paragraph. The governing body or agency
261 shall certify all applications that contain the information

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262 required pursuant to subparagraph 2. and meet the criteria set
263 out in this paragraph as eligible to receive a refund. If
264 applicable, the governing body or agency shall also certify if
265 20 percent of the employees of the business are residents of an
266 enterprise zone, excluding temporary and part-time employees.
267 The certification shall be in writing, and a copy of the
268 certification shall be transmitted to the executive director of
269 the Department of Revenue. The business shall be responsible for
270 forwarding a certified application to the department within the
271 time specified in subparagraph 4.

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

275 5. The amount refunded on purchases of business property
276 under this paragraph shall be the lesser of 97 percent of the
277 sales tax paid on such business property or \$5,000, or, if no
278 less than 20 percent of the employees of the business are
279 residents of an enterprise zone, excluding temporary and part-
280 time employees, the amount refunded on purchases of business
281 property under this paragraph shall be the lesser of 97 percent
282 of the sales tax paid on such business property or \$10,000. A
283 refund approved pursuant to this paragraph shall be made within
284 30 days after formal approval by the department of the
285 application for the refund. A refund may not be granted under
286 this paragraph unless the amount to be refunded exceeds \$100 in
287 sales tax paid on purchases made within a 60-day time period.

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

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291 for exemption under this paragraph.

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

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

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

305 that leave and return to a fixed location within an area
306 designated under s. 379.2353, Florida Statutes 2010, are
307 eligible for the exemption provided under this paragraph if all
308 requirements of this paragraph are met. Such vessels and boats
309 must be owned by a business that is eligible to receive the
310 exemption provided under this paragraph. This exemption does not
311 apply to the purchase of a vessel or boat.

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

318 9. For the purposes of this exemption, "business property"
319 means new or used property defined as "recovery property" in s.

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320 168(c) of the Internal Revenue Code of 1954, as amended, except:

321 a. Property classified as 3-year property under s.

322 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;

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

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

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

330 10. This paragraph expires on the date specified in s.

331 290.016 for the expiration of the Florida Enterprise Zone Act.

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