

By Senator Hukill

8-00747-13

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1                   A bill to be entitled  
2           An act relating to economic business incentives;  
3           amending s. 212.08, F.S.; revising the sales tax  
4           exemption from the sales tax for certain business  
5           purchases of industrial machinery and equipment and  
6           spaceport activities; deleting certain limitations on,  
7           and procedural requirements relating to, the  
8           exemption; conforming cross-references; amending s.  
9           288.1045, F.S.; deleting the limitation on the maximum  
10          amount of tax refunds a business may receive under the  
11          qualified defense contractor and space flight business  
12          tax refund program; amending s. 288.106, F.S.;  
13          deleting the limitation on the maximum amount of tax  
14          refunds a business may receive under the tax refund  
15          program for qualified target industry businesses;  
16          amending s. 288.1089, F.S.; revising requirements  
17          relating to the review, approval, and award of funds  
18          under the Innovation Incentive Program; providing an  
19          effective date.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23           Section 1. Paragraphs (b), (d), and (h) of subsection (5)  
24           of section 212.08, Florida Statutes, are amended to read:

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

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30 chapter.

31 (5) EXEMPTIONS; ACCOUNT OF USE.—

32 (b) Industrial machinery and equipment used by  
33 manufacturers or used exclusively in spaceport activities ~~to~~  
34 ~~increase productive output.~~

35 1. Industrial machinery and equipment purchased for  
36 ~~exclusive use~~ in businesses that manufacture, process, compound,  
37 or produce for sale items of tangible personal property at fixed  
38 locations or for exclusive use ~~by a new business~~ in spaceport  
39 activities as defined by s. 212.02 ~~or for use in new businesses~~  
40 ~~that manufacture, process, compound, or produce for sale items~~  
41 ~~of tangible personal property at fixed locations~~ are exempt from  
42 the tax imposed by this chapter if, at the time of purchase, the  
43 purchaser furnishes the seller with a signed certificate stating  
44 that the items to be exempted are for exclusive use as provided  
45 in this paragraph. The certificate relieves the seller of the  
46 responsibility of collecting the tax on the sale of such items  
47 and the department shall look solely to the purchaser for  
48 recovery of the tax if it determines that the purchaser was not  
49 entitled to the exemption ~~upon an affirmative showing by the~~  
50 ~~taxpayer to the satisfaction of the department that such items~~  
51 ~~are used in a new business in this state. Such purchases must be~~  
52 ~~made before the date the business first begins its productive~~  
53 ~~operations, and delivery of the purchased item must be made~~  
54 ~~within 12 months after that date.~~

55 ~~2. Industrial machinery and equipment purchased for~~  
56 ~~exclusive use by an expanding facility which is engaged in~~  
57 ~~spaceport activities as defined by s. 212.02 or for use in~~  
58 ~~expanding manufacturing facilities or plant units which~~

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59 ~~manufacture, process, compound, or produce for sale items of~~  
60 ~~tangible personal property at fixed locations in this state are~~  
61 ~~exempt from any amount of tax imposed by this chapter upon an~~  
62 ~~affirmative showing by the taxpayer to the satisfaction of the~~  
63 ~~department that such items are used to increase the productive~~  
64 ~~output of such expanded facility or business by not less than 5~~  
65 ~~percent.~~

66 ~~3.a. To receive an exemption provided by subparagraph 1. or~~  
67 ~~subparagraph 2., a qualifying business entity shall apply to the~~  
68 ~~department for a temporary tax exemption permit. The application~~  
69 ~~shall state that a new business exemption or expanded business~~  
70 ~~exemption is being sought. Upon a tentative affirmative~~  
71 ~~determination by the department pursuant to subparagraph 1. or~~  
72 ~~subparagraph 2., the department shall issue such permit.~~

73 ~~b. The applicant shall maintain all necessary books and~~  
74 ~~records to support the exemption. Upon completion of purchases~~  
75 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~  
76 ~~or subparagraph 2., the temporary tax permit shall be delivered~~  
77 ~~to the department or returned to the department by certified or~~  
78 ~~registered mail.~~

79 ~~e. If, in a subsequent audit conducted by the department,~~  
80 ~~it is determined that the machinery and equipment purchased as~~  
81 ~~exempt under subparagraph 1. or subparagraph 2. did not meet the~~  
82 ~~criteria mandated by this paragraph or if commencement of~~  
83 ~~production did not occur, the amount of taxes exempted at the~~  
84 ~~time of purchase shall immediately be due and payable to the~~  
85 ~~department by the business entity, together with the appropriate~~  
86 ~~interest and penalty, computed from the date of purchase, in the~~  
87 ~~manner prescribed by this chapter.~~

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88 ~~d. If a qualifying business entity fails to apply for a~~  
89 ~~temporary exemption permit or if the tentative determination by~~  
90 ~~the department required to obtain a temporary exemption permit~~  
91 ~~is negative, a qualifying business entity shall receive the~~  
92 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~  
93 ~~a refund of previously paid taxes. No refund may be made for~~  
94 ~~such taxes unless the criteria mandated by subparagraph 1. or~~  
95 ~~subparagraph 2. have been met and commencement of production has~~  
96 ~~occurred.~~

97 ~~4. The department shall adopt rules governing applications~~  
98 ~~for, issuance of, and the form of temporary tax exemption~~  
99 ~~permits; provisions for recapture of taxes; and the manner and~~  
100 ~~form of refund applications, and may establish guidelines as to~~  
101 ~~the requisites for an affirmative showing of increased~~  
102 ~~productive output, commencement of production, and qualification~~  
103 ~~for exemption.~~

104 2.5. ~~The exemption does~~ exemptions provided in  
105 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~  
106 ~~purchased or used by electric utility companies, communications~~  
107 ~~companies, oil or gas exploration or production operations,~~  
108 ~~publishing firms that do not export at least 50 percent of their~~  
109 ~~finished product out of the state, any firm subject to~~  
110 ~~regulation by the Division of Hotels and Restaurants of the~~  
111 ~~Department of Business and Professional Regulation, or any firm~~  
112 ~~that does not manufacture, process, compound, or produce for~~  
113 ~~sale items of tangible personal property or that does not use~~  
114 ~~such machinery and equipment in spaceport activities as required~~  
115 ~~by this paragraph. The exemption does apply~~ exemptions provided  
116 ~~in subparagraphs 1. and 2. shall apply to machinery and~~

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117 equipment purchased for use in phosphate or other solid minerals  
118 severance, mining, or processing operations.

119 ~~3.6.~~ For the purposes of the exemption, the term ~~exemptions~~  
120 ~~provided in subparagraphs 1. and 2., these terms have the~~  
121 ~~following meanings:~~

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

141 b. ~~"Productive output" means the number of units actually~~  
142 ~~produced by a single plant, operation, or product line in a~~  
143 ~~single continuous 12-month period, irrespective of sales.~~  
144 ~~Increases in productive output shall be measured by the output~~  
145 ~~for 12 continuous months selected by the expanding business~~

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146 ~~after completion of the installation of such machinery or~~  
147 ~~equipment over the output for the 12 continuous months~~  
148 ~~immediately preceding such installation. However, in no case may~~  
149 ~~such time period begin later than 2 years after completion of~~  
150 ~~the installation of the new machinery and equipment. The units~~  
151 ~~used to measure productive output shall be physically comparable~~  
152 ~~between the two periods, irrespective of sales.~~

153 (d) *Machinery and equipment used under federal procurement*  
154 *contract.*—

155 1. Industrial machinery and equipment purchased by an  
156 expanding business that ~~which~~ manufactures tangible personal  
157 property pursuant to federal procurement regulations at fixed  
158 locations in this state are exempt from the tax imposed in this  
159 chapter upon an affirmative showing by the taxpayer to the  
160 satisfaction of the department that such items are used to  
161 increase the implicit productive output of the expanded business  
162 by not less than 10 percent. The percentage of increase is  
163 measured as deflated implicit productive output for the calendar  
164 year during which the installation of the machinery or equipment  
165 is completed or during which commencement of production  
166 utilizing such items is begun divided by the implicit productive  
167 output for the preceding calendar year. ~~In no case may~~ The  
168 commencement of production may not begin later than 2 years  
169 after completing ~~following completion of~~ installation of the  
170 machinery or equipment.

171 2. The amount of the exemption allowed must ~~shall~~ equal the  
172 taxes otherwise imposed by this chapter on qualifying industrial  
173 machinery or equipment reduced by the percentage of gross  
174 receipts from cost-reimbursement type contracts attributable to

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175 the plant or operation to total gross receipts so attributable,  
176 accrued for the year of completion or commencement.

177 3. The exemption provided by this paragraph shall inure to  
178 the taxpayer only through a refund of previously paid taxes.  
179 Such refund shall be made within 30 days after ~~of~~ formal  
180 approval by the department of the taxpayer's application, which  
181 application may be made on an annual basis following  
182 installation of the machinery or equipment.

183 4. For the purposes of this paragraph, the term:

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

186 b. "Deflated implicit productive output" means the product  
187 of implicit productive output times the quotient of the national  
188 defense implicit price deflator for the preceding calendar year  
189 divided by the deflator for the year of completion or  
190 commencement.

191 c. "Eligible costs" means the total direct and indirect  
192 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding  
193 general and administrative costs, selling expenses, and profit,  
194 defined by the uniform cost-accounting standards adopted by the  
195 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.  
196 2168.

197 d. "Implicit productive output" means the annual eligible  
198 costs attributable to all contracts or subcontracts subject to  
199 federal procurement regulations of the single plant or operation  
200 at which the machinery or equipment is used.

201 e. "Industrial machinery and equipment" means tangible  
202 personal property or other property that has a depreciable life  
203 of 3 years or more, that qualifies as an eligible cost under

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204 federal procurement regulations, and that is used as an integral  
205 part of the process of production of tangible personal property.  
206 A building and its structural components are not industrial  
207 machinery and equipment unless the building or structural  
208 component is so closely related to the industrial machinery and  
209 equipment that it houses or supports that the building or  
210 structural component can be expected to be replaced when the  
211 machinery and equipment are replaced. Heating and air-  
212 conditioning systems are not industrial machinery and equipment  
213 unless the sole justification for their installation is to meet  
214 the requirements of the production process, even though the  
215 system may provide incidental comfort to employees or serve, to  
216 an insubstantial degree, nonproduction activities. The term  
217 includes parts and accessories only to the extent that the  
218 exemption of such parts and accessories is consistent with the  
219 provisions of this paragraph.

220 f. "National defense implicit price deflator" means the  
221 national defense implicit price deflator for the gross national  
222 product as determined by the Bureau of Economic Analysis of the  
223 United States Department of Commerce.

224 5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~  
225 apply to this exemption. This exemption applies only to  
226 machinery or equipment purchased pursuant to production  
227 contracts with the United States Department of Defense and Armed  
228 Forces, the National Aeronautics and Space Administration, and  
229 other federal agencies for which the contracts are classified  
230 for national security reasons. ~~In no event shall~~ The provisions  
231 of this paragraph do not apply to an ~~any~~ expanding business  
232 whose ~~the~~ increase in productive output is measurable ~~of which~~



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233 ~~could be measured under the provisions of sub-subparagraph~~  
234 ~~(b)6.b. as physically comparable between the two periods. As~~  
235 used in this subparagraph, the term "productive output" means  
236 the number of units actually produced by a single plant,  
237 operation, or product line in a single continuous 12-month  
238 period, irrespective of sales. Increases in productive output  
239 shall be measured by dividing the output for 12 continuous  
240 months selected by the expanding business after completing the  
241 installation of machinery or equipment by the output for the 12  
242 continuous months immediately preceding such installation.  
243 However, such time period may not commence 2 years after  
244 completing the installation. The units used to measure  
245 productive output must be physically comparable between the two  
246 periods, irrespective of sales.

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

248 1. Business property purchased for use by businesses  
249 located in an enterprise zone which is subsequently used in an  
250 enterprise zone is ~~shall be~~ exempt from the tax imposed by this  
251 chapter. This exemption inures to the business only through a  
252 refund of previously paid taxes. A refund shall be authorized  
253 upon an affirmative showing by the taxpayer, to the satisfaction  
254 of the department, that the requirements of this paragraph have  
255 been met.

256 2. To receive a refund, the business must file ~~under oath~~  
257 with the governing body or enterprise zone development agency  
258 having jurisdiction over the enterprise zone where the business  
259 is located, as applicable, an application, under oath, which  
260 includes:

261 a. The name and address of the business claiming the

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262 refund.

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

265 c. A specific description of the property for which a  
266 refund is sought, including its serial number or other permanent  
267 identification number.

268 d. The location of the property.

269 e. The sales invoice or other proof of purchase of the  
270 property, showing the amount of sales tax paid, the date of  
271 purchase, and the name and address of the sales tax dealer from  
272 whom the property was purchased.

273 f. Whether the business is a small business as defined in  
274 ~~by~~ s. 288.703.

275 g. If applicable, the name and address of each permanent  
276 employee of the business, including, for each employee who is a  
277 resident of an enterprise zone, the identifying number assigned  
278 pursuant to s. 290.0065 to the enterprise zone in which the  
279 employee resides.

280 3. Within 10 working days after receipt of an application,  
281 the governing body or enterprise zone development agency shall  
282 review the application to determine if it contains all the  
283 information required pursuant to subparagraph 2. and meets the  
284 criteria set out in this paragraph. The governing body or agency  
285 shall certify all applications that contain the information  
286 required pursuant to subparagraph 2. and meet the criteria set  
287 out in this paragraph as eligible to receive a refund. If  
288 applicable, the governing body or agency shall also certify if  
289 20 percent of the employees of the business are residents of an  
290 enterprise zone, excluding temporary and part-time employees.

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291 The certification must ~~shall~~ be in writing, and a copy of the  
292 certification ~~shall be~~ transmitted to the executive director of  
293 the Department of Revenue. The business is ~~shall be~~ responsible  
294 for forwarding a certified application to the department within  
295 the time specified in subparagraph 4.

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

299 5. The amount refunded on purchases of business property  
300 under this paragraph shall be the lesser of 97 percent of the  
301 sales tax paid on such business property or \$5,000, or, if up to  
302 ~~no less than~~ 20 percent of the employees of the business are  
303 residents of an enterprise zone, excluding temporary and part-  
304 time employees, the amount ~~refunded on purchases of business~~  
305 ~~property under this paragraph~~ shall be the lesser of 97 percent  
306 of the sales tax paid on such business property or \$10,000. A  
307 refund must ~~approved pursuant to this paragraph shall~~ be made  
308 within 30 days after formal approval by the department of the  
309 application for the refund. A refund may not be granted ~~under~~  
310 ~~this paragraph~~ unless the amount to be refunded exceeds \$100 in  
311 sales tax paid on purchases made within a 60-day time period.

312 6. The department shall adopt rules governing the manner  
313 and form of refund applications and may establish guidelines as  
314 to the requisites for an affirmative showing of qualification  
315 for exemption under this paragraph.

316 7. If the department determines that the business property  
317 is used outside an enterprise zone within 3 years after ~~from~~ the  
318 date of purchase, the amount of taxes refunded to the business  
319 purchasing such business property is ~~shall~~ immediately ~~be~~ due

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320 and payable to the department by the business, together with the  
321 appropriate interest and penalty, computed from the date of  
322 purchase, in the manner provided by this chapter.

323 Notwithstanding this subparagraph, business property used  
324 exclusively in:

- 325 a. Licensed commercial fishing vessels,
- 326 b. Fishing guide boats, or
- 327 c. Ecotourism guide boats

328

329 that leave and return to a fixed location within an area  
330 designated under s. 379.2353, Florida Statutes 2010, are  
331 eligible for the exemption ~~provided under this paragraph~~ if all  
332 requirements of this paragraph are met. Such vessels and boats  
333 must be owned by a business that is eligible to receive the  
334 exemption ~~provided under this paragraph~~. This exemption does not  
335 apply to the purchase of a vessel or boat.

336 8. The department shall deduct an amount equal to 10  
337 percent of each refund granted under this paragraph from the  
338 amount transferred into the Local Government Half-cent Sales Tax  
339 Clearing Trust Fund pursuant to s. 212.20 for the county area in  
340 which the business property is located and ~~shall~~ transfer that  
341 amount to the General Revenue Fund.

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

- 346 a. Property classified as 3-year property under s.  
347 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;
- 348 b. Industrial machinery and equipment as defined in

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349 subparagraph (b)3. ~~sub-subparagraph (b)6.a.~~ and eligible for  
350 exemption under paragraph (b);

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

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

355 10. This paragraph expires on the date specified in s.  
356 290.016 for the expiration of the Florida Enterprise Zone Act.

357 Section 2. Effective July 1, 2013, paragraph (c) of  
358 subsection (2) of section 288.1045, Florida Statutes, is  
359 amended, and present paragraphs (d) through (h) of that  
360 subsection are redesignated as paragraphs (c) through (g),  
361 respectively, to read:

362 288.1045 Qualified defense contractor and space flight  
363 business tax refund program.—

364 (2) GRANTING OF A TAX REFUND; ELIGIBLE AMOUNTS.—

365 ~~(c) A qualified applicant may not receive more than \$7~~  
366 ~~million in tax refunds pursuant to this section in all fiscal~~  
367 ~~years.~~

368 Section 3. Effective July 1, 2013, paragraph (c) of  
369 subsection (3) of section 288.106, Florida Statutes, is amended  
370 to read:

371 288.106 Tax refund program for qualified target industry  
372 businesses.—

373 (3) TAX REFUND; ELIGIBLE AMOUNTS.—

374 (c) A qualified target industry business may not receive  
375 refund payments of more than 25 percent of the total tax refunds  
376 specified in the tax refund agreement under subparagraph  
377 (5)(a)1. in any fiscal year. Further, a qualified target

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378 industry business may not receive more than \$1.5 million in  
379 refunds under this section in any single fiscal year, or more  
380 than \$2.5 million in any single fiscal year if the project is  
381 located in an enterprise zone. ~~A qualified target industry~~  
382 ~~business may not receive more than \$7 million in refund payments~~  
383 ~~under this section in all fiscal years, or more than \$7.5~~  
384 ~~million if the project is located in an enterprise zone.~~

385 Section 4. Effective July 1, 2013, paragraph (d) of  
386 subsection (2) and subsection (7) of section 288.1089, Florida  
387 Statutes, are amended to read:

388 288.1089 Innovation Incentive Program.—

389 (2) As used in this section, the term:

390 (d) "Cumulative investment" means cumulative capital  
391 investment and all eligible capital costs, ~~7~~ as defined in s.  
392 220.191.

393 (7) Upon receipt of the evaluation and recommendation from  
394 the department, the Governor shall approve or deny an award. In  
395 recommending approval of an award, the department shall include  
396 proposed performance conditions that the applicant must meet in  
397 order to obtain incentive funds and any other conditions that  
398 must be met before the receipt of any incentive funds. However,  
399 if the award:

400 (a) Exceeds \$5 million, the department may not release the  
401 funds until the award is reviewed and approved by the  
402 Legislative Budget Commission. ~~The Governor shall consult with~~  
403 ~~the President of the Senate and the Speaker of the House of~~  
404 ~~Representatives before giving approval for an award.~~ Upon review  
405 and approval of the ~~an~~ award by the Legislative Budget  
406 commission, the department ~~Executive Office of the Governor~~

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407 shall release the funds.

408 (b) Exceeds \$2 million but does not exceed \$5 million, at  
409 least 10 days before the funds are released, the Governor shall  
410 submit a written description and evaluation of the award to the  
411 chair and vice chair of the Legislative Budget Commission. If  
412 the chair or vice chair of the Legislative Budget Commission,  
413 the President of the Senate, or the Speaker of the House of  
414 Representatives timely advises the Executive Office of the  
415 Governor in writing that such action or proposed action exceeds  
416 the delegated authority of the Executive office of the Governor  
417 or is contrary to legislative policy or intent, the Executive  
418 Office of the Governor shall void the release of funds and  
419 instruct the department to immediately change such action or  
420 proposed action until the commission or the Legislature  
421 addresses the issue.

422 (c) Does not exceed \$2 million, the Governor may approve  
423 the award and the department may release the funds without  
424 legislative notice or review.

425 Section 5. Except as otherwise expressly provided in this  
426 act, and except for this section which shall take effect upon  
427 becoming law, this act shall take effect July 1, 2014.