

By the Committee on Fiscal Resource and Senator King

314-2203-00

1                                   A bill to be entitled  
2           An act relating to tax on sales, use, and other  
3           transactions; providing legislative intent;  
4           amending s. 212.08, F.S.; revising the amount  
5           of the exemption for industrial machinery and  
6           equipment used in an expanding business;  
7           providing for application of the exemption for  
8           repair and labor charges for industrial  
9           machinery and equipment to machinery and  
10          equipment used to prepare tangible personal  
11          property for shipment; providing for such  
12          exemption to apply to additional industries;  
13          providing for a refund of certain taxes paid;  
14          providing an effective date.

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

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18           Section 1. It is the intent of the Legislature that  
19 the manufacturing sector of Florida's economy be viable and  
20 competitive in the world marketplace. Furthermore, it is  
21 equally important to construct tax policy that both retains  
22 manufacturers and recruits them. In that regard, it is the  
23 intent of the Legislature to address manufacturing tax issues  
24 systematically each year until such equity and parity are  
25 accomplished.

26           Section 2. Paragraph (b) of subsection (5) and  
27 paragraph (eee) of subsection (7) of section 212.08, Florida  
28 Statutes, are amended to read:

29           212.08 Sales, rental, use, consumption, distribution,  
30 and storage tax; specified exemptions.--The sale at retail,  
31 the rental, the use, the consumption, the distribution, and

1 the storage to be used or consumed in this state of the  
2 following are hereby specifically exempt from the tax imposed  
3 by this chapter.

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

5 (b) Machinery and equipment used to increase  
6 productive output.--

7 1. Industrial machinery and equipment purchased for  
8 exclusive use by a new business in spaceport activities as  
9 defined by s. 212.02 or for use in new businesses which  
10 manufacture, process, compound, or produce for sale items of  
11 tangible personal property at fixed locations are exempt from  
12 the tax imposed by this chapter upon an affirmative showing by  
13 the taxpayer to the satisfaction of the department that such  
14 items are used in a new business in this state. Such purchases  
15 must be made prior to the date the business first begins its  
16 productive operations, and delivery of the purchased item must  
17 be made within 12 months of that date.

18 2.a. Industrial machinery and equipment purchased for  
19 exclusive use by an expanding facility which is engaged in  
20 spaceport activities as defined by s. 212.02 or for use in  
21 expanding manufacturing facilities or plant units which  
22 manufacture, process, compound, or produce for sale items of  
23 tangible personal property at fixed locations in this state  
24 are exempt from any amount of tax imposed by this chapter in  
25 excess of \$15,000~~\$50,000~~ per calendar year upon an  
26 affirmative showing by the taxpayer to the satisfaction of the  
27 department that such items are used to increase the productive  
28 output of such expanded facility or business by not less than  
29 10 percent.

30 b. Notwithstanding any other provision of this  
31 section, industrial machinery and equipment purchased for use

1 in expanding printing manufacturing facilities or plant units  
2 that manufacture, process, compound, or produce for sale items  
3 of tangible personal property at fixed locations in this state  
4 are exempt from any amount of tax imposed by this chapter upon  
5 an affirmative showing by the taxpayer to the satisfaction of  
6 the department that such items are used to increase the  
7 productive output of such an expanded business by not less  
8 than 10 percent.

9           3.a. To receive an exemption provided by subparagraph  
10 1. or subparagraph 2., a qualifying business entity shall  
11 apply to the department for a temporary tax exemption permit.  
12 The application shall state that a new business exemption or  
13 expanded business exemption is being sought. Upon a tentative  
14 affirmative determination by the department pursuant to  
15 subparagraph 1. or subparagraph 2., the department shall issue  
16 such permit.

17           b. The applicant shall be required to maintain all  
18 necessary books and records to support the exemption. Upon  
19 completion of purchases of qualified machinery and equipment  
20 pursuant to subparagraph 1. or subparagraph 2., the temporary  
21 tax permit shall be delivered to the department or returned to  
22 the department by certified or registered mail.

23           c. If, in a subsequent audit conducted by the  
24 department, it is determined that the machinery and equipment  
25 purchased as exempt under subparagraph 1. or subparagraph 2.  
26 did not meet the criteria mandated by this paragraph or if  
27 commencement of production did not occur, the amount of taxes  
28 exempted at the time of purchase shall immediately be due and  
29 payable to the department by the business entity, together  
30 with the appropriate interest and penalty, computed from the  
31 date of purchase, in the manner prescribed by this chapter.

1           d. In the event a qualifying business entity fails to  
2 apply for a temporary exemption permit or if the tentative  
3 determination by the department required to obtain a temporary  
4 exemption permit is negative, a qualifying business entity  
5 shall receive the exemption provided in subparagraph 1. or  
6 subparagraph 2. through a refund of previously paid taxes. No  
7 refund may be made for such taxes unless the criteria mandated  
8 by subparagraph 1. or subparagraph 2. have been met and  
9 commencement of production has occurred.

10           4. The department shall promulgate rules governing  
11 applications for, issuance of, and the form of temporary tax  
12 exemption permits; provisions for recapture of taxes; and the  
13 manner and form of refund applications and may establish  
14 guidelines as to the requisites for an affirmative showing of  
15 increased productive output, commencement of production, and  
16 qualification for exemption.

17           5. The exemptions provided in subparagraphs 1. and 2.  
18 do not apply to machinery or equipment purchased or used by  
19 electric utility companies, communications companies, oil or  
20 gas exploration or production operations, publishing firms  
21 that do not export at least 50 percent of their finished  
22 product out of the state, any firm subject to regulation by  
23 the Division of Hotels and Restaurants of the Department of  
24 Business and Professional Regulation, or any firm which does  
25 not manufacture, process, compound, or produce for sale items  
26 of tangible personal property or which does not use such  
27 machinery and equipment in spaceport activities as required by  
28 this paragraph. The exemptions provided in subparagraphs 1.  
29 and 2. shall apply to machinery and equipment purchased for  
30 use in phosphate or other solid minerals severance, mining, or  
31 processing operations only by way of a prospective credit

1 against taxes due under chapter 211 for taxes paid under this  
2 chapter on such machinery and equipment.

3           6. For the purposes of the exemptions provided in  
4 subparagraphs 1. and 2., these terms have the following  
5 meanings:

6           a. "Industrial machinery and equipment" means "section  
7 38 property" as defined in s. 48(a)(1)(A) and (B)(i) of the  
8 Internal Revenue Code, provided "industrial machinery and  
9 equipment" shall be construed by regulations adopted by the  
10 Department of Revenue to mean tangible property used as an  
11 integral part of spaceport activities or of the manufacturing,  
12 processing, compounding, or producing for sale of items of  
13 tangible personal property. Such term includes parts and  
14 accessories only to the extent that the exemption thereof is  
15 consistent with the provisions of this paragraph.

16           b. "Productive output" means the number of units  
17 actually produced by a single plant or operation in a single  
18 continuous 12-month period, irrespective of sales. Increases  
19 in productive output shall be measured by the output for 12  
20 continuous months immediately following the completion of  
21 installation of such machinery or equipment over the output  
22 for the 12 continuous months immediately preceding such  
23 installation. However, if a different 12-month continuous  
24 period of time would more accurately reflect the increase in  
25 productive output of machinery and equipment purchased to  
26 facilitate an expansion, the increase in productive output may  
27 be measured during that 12-month continuous period of time if  
28 such time period is mutually agreed upon by the Department of  
29 Revenue and the expanding business prior to the commencement  
30 of production; provided, however, in no case may such time  
31 period begin later than 2 years following the completion of

1 installation of the new machinery and equipment. The units  
2 used to measure productive output shall be physically  
3 comparable between the two periods, irrespective of sales.

4           7. Notwithstanding any other provision in this  
5 paragraph to the contrary, in order to receive the exemption  
6 provided in this paragraph a taxpayer must register with the  
7 WAGES Program Business Registry established by the local WAGES  
8 coalition for the area in which the taxpayer is located. Such  
9 registration establishes a commitment on the part of the  
10 taxpayer to hire WAGES program participants to the maximum  
11 extent possible consistent with the nature of their business.

12           (7) MISCELLANEOUS EXEMPTIONS.--

13           (eee) Certain repair and labor charges.--

14           1. Subject to the provisions of subparagraphs 2. and  
15 3., there is exempt from the tax imposed by this chapter all  
16 labor charges for the repair of, and parts and materials used  
17 in the repair of and incorporated into, industrial machinery  
18 and equipment which is used for the manufacture, processing,  
19 compounding, ~~or production,~~ or preparation for shipment of  
20 items of tangible personal property at a fixed location within  
21 this state.

22           2. This exemption applies only to industries  
23 classified under SIC Industry Major Group Numbers 10, 12, 13,  
24 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34,  
25 35,36, 37, 38, and 39 and Industry Group Number 212. As used  
26 in this subparagraph, "SIC" means those classifications  
27 contained in the Standard Industrial Classification Manual,  
28 1987, as published by the Office of Management and Budget,  
29 Executive Office of the President.

30           3. This exemption shall be applied as follows:  
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1           a. Beginning July 1, 1999, 25 percent of such charges  
2 for repair parts and labor shall be exempt.

3           b. Beginning July 1, 2000, 50 percent of such charges  
4 for repair parts and labor shall be exempt.

5           c. Beginning July 1, 2001, 75 percent of such charges  
6 for repair parts and labor shall be exempt.

7           d. Beginning July 1, 2002, 100 percent of such charges  
8 for repair parts and labor shall be exempt.

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10 Exemptions provided to any entity by this subsection shall not  
11 inure to any transaction otherwise taxable under this chapter  
12 when payment is made by a representative or employee of such  
13 entity by any means, including, but not limited to, cash,  
14 check, or credit card even when that representative or  
15 employee is subsequently reimbursed by such entity.

16           Section 3. For the period July 1, 1998, through June  
17 30, 1999, every business classified under Industry Group  
18 Number 212, which has collected and paid tax imposed by  
19 chapter 212 on charges for steam or electrical energy used in  
20 the manner provided by section 212.08(7)(ii), Florida  
21 Statutes, shall qualify for a refund of said taxes pursuant to  
22 sections 213.255 and 215.26, Florida Statutes, or shall be  
23 relieved of the requirement to pay such taxes if those taxes  
24 have not been collected and paid. It is the intent of the  
25 Legislature that this provision shall be applied as if  
26 Industry Group Number 212 had never been excluded from this  
27 exemption. As used in this paragraph "SIC" means those  
28 classifications contained in the Standard Industrial  
29 Classification Manual, 1987, as published by the Office of  
30 Management and Budget, Executive Office of the President.

31           Section 4. This act shall take effect July 1, 2000.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 1458

- 1) Lowers the \$50,000 threshold for expanding businesses to \$15,000
- 2) Includes in the sales tax exemption for repair and labor charges, M&E used for the preparation for shipment of items of TPP.
- 3) Includes SIC code 35 in the exemption, which is clarifying language
- 4) Provides a refund of taxes paid for the period of July 1, 1998, through June 30, 1999, on charges for steam or electrical energy used by Industry Group Number 212, or if taxes were not collected, such business does not have to pay such taxes. The 1998 Legislature inadvertently left out Industry Group 212, cigar manufacturers, from the exemption for steam or electricity used in manufacturing.