

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1800

SPONSOR: Senator Brown-Waite

SUBJECT: Sales Tax/Spaceport and Manufacturing Activities

DATE: March 26, 2001 REVISED: 03/28/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Birnholz</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

This bill increases the sales tax exemption for industrial machinery and equipment purchased for exclusive use in spaceport or manufacturing activities. This bill reduces the \$50,000 annual tax threshold to \$40,000, and eliminates the requirement that a spaceport or manufacturing business demonstrate that expansion will increase productive output by at least 10 percent.

This bill substantially amends section 212.08, Florida Statutes.

II. Present Situation:

Current Law

Chapter 212, F.S., provides for a 6 percent tax on sales, use, and other transactions. Section 212.05, F.S., provides that every person who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under ch. 212, F.S., or who stores for use or consumption any item or article of tangible personal property and who leases or rents such property is exercising a taxable privilege. Section 212.05(1)(a)1.a., F.S., provides for a 6 percent tax rate on the retail price of each item or article of tangible personal property when sold at retail in Florida. Section 212.05(1)(b), F.S., provides for a 6 percent tax on the cost price of any item of tangible personal property that is not sold but used in Florida. Additionally, local government local option sales taxes are levied on the same tax base as the state tax.

Section 212.08(5), F.S., provides exemptions from the tax imposed by ch. 212, F.S., based on use. Specifically, s. 212.08(5)(b)1., F.S., provides that industrial machinery and equipment purchased for exclusive use by a new business in spaceport activities or for use in new

businesses which manufacture, process, compound, or produce items of tangible personal property for sale at fixed locations are exempt from the tax on sales, use, and other transactions imposed by this chapter.¹

Section 212.08(5)(b)2.a., F.S., provides a partial sales tax exemption on industrial machinery and equipment purchased for exclusive use by an expanding facility engaged in spaceport activities or for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property for sale at fixed locations in the state. The exemption applies after the first \$50,000 in sales tax has been paid in a calendar year and after the business has demonstrated that the industrial machinery and equipment purchased are used to increase productive output by at least 10 percent. “Productive output” means the number of units actually produced by a single plant or operation in a single, continuous 12-month period, irrespective of sales. [s. 212.08(5)(b)6.b., F.S.]

Section 212.08(5)(b)2.b., F.S., provides that, notwithstanding any other provision of this section, industrial machinery and equipment purchased for use in expanding printing manufacturing facilities or plant units that manufacture, process, compound, or produce for sale items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter if the taxpayer can show the Department of Revenue (department) that such items are used to increase the productive output of the taxpayer’s business by not less than 10 percent.

To receive an exemption, a business must apply to the department for a temporary tax exemption permit. Upon completion of the purchasing of machinery and equipment, the business must return the temporary tax exemption permit to the department. If the department determines that the machinery and equipment did not meet the criteria, the amount of taxes exempted at the time of purchase, as well as any accrued interest, will be due. A refund through previously paid taxes will be made to those businesses that fail to apply for a temporary exemption permit.

Section 212.08(5)(b)5., F.S., grants the exemptions available under the aforementioned scenarios to industrial machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations only by way of a prospective credit against taxes due under ch. 211, F.S., Tax on Severance and Production of Minerals. To qualify for the exemption and credit contained in s. 212.08(5)(b)5., an expanding phosphate or other minerals business must demonstrate:

- the creation of new Florida jobs in an amount equal to at least 5 percent of its Florida employees, if the business has 2,500 or fewer employees; or
- the creation of new Florida jobs in an amount equal to at least 3 percent of its Florida employees if the business has more than 2,500 employees.²

¹ Section 212.02(22), F.S., defines “spaceport activities” as activities directed or sponsored by the Spaceport Florida Authority on spaceport territory pursuant to its powers and responsibilities under the Spaceport Florida Authority Act. The Spaceport Florida Authority was created as a state government space agency in 1989. Its mission is to retain, expand, and diversify the state’s space-related industry. (See “Profile No. 6130,” *Florida Government Accountability Report*, Florida Legislature’s Office of Program Policy Analysis and Government Accountability, <http://www.oppaga.state.fl.us/profiles/6130/>, January 19, 2001.)

² Section 212.0805, F.S.

To qualify for the exemption and credit contained in s. 212.08(5)(b)5., F.S., a new phosphate or other minerals business must demonstrate the creation of at least 100 new Florida jobs.³ Section 212.0805(3), F.S., defines a “new Florida job” as “a new position created and filled within 24 months after completion of construction of the new or expanded facility and includes a transfer of a position from an existing Florida operation so long as the transfer is the result of the closure or reduction of the other Florida operation.”

Manufacturing Taxation in Other States

According to Enterprise Florida, Inc. (the state’s principal economic development organization as created by s. 288.901, F.S.), “Florida’s sales tax treatment of machinery and R&D equipment constitutes a distinct competitive disadvantage for manufacturers and other target industries in Florida.” Most states fully exempt manufacturing equipment from sales tax, including Georgia, Texas, Virginia, North Carolina, and South Carolina.⁴

III. Effect of Proposed Changes:

This bill increases the sales tax exemption for industrial machinery and equipment purchased for exclusive use in spaceport or manufacturing activities. This bill reduces the \$50,000 annual tax threshold to \$40,000, and eliminates the requirement that a spaceport or manufacturing business demonstrate that expansion will increase productive output by at least 10 percent.

Specifically, this bill amends s. 212.08(5)(b)2.a., F.S., by:

- striking the word “expanding”;
- lowering the \$50,000 per calendar year tax threshold requirement to \$40,000; and
- striking the requirement that productive output must increase by not less than 10 percent.

As a result of these changes, existing spaceport, non-printing manufacturing, and, possibly, non-expanding printing and mining-type businesses would, effectively, pay a maximum of \$40,000 in tax for a calendar year on purchases of machinery and equipment while not having to show that productive output has increased.

This bill also amends ss. 212.08(5)(b)3.a.-d., F.S., by replacing the designation “subparagraph 2.” with the designation “subparagraph 2.b.”⁵ Effectively, this change means that only new businesses and expanding printing businesses:

- must apply for a temporary tax exemption permit;
- must return the temporary tax exemption permit to the Department of Revenue upon completion of purchases of machinery and equipment;
- are subject to an assessment for tax, penalty, and interest if the business failed to meet the criteria for exemption; and

³ *Id.*

⁴ In Alabama, the tax rate on manufacturing equipment is 1.5 percent. Source: Enterprise Florida, Inc.

⁵ The reference should actually be to “sub-subparagraph 2.b.” *See* the “Technical Deficiencies” section of this analysis.

- may seek a refund of previously paid tax if the business did not previously apply for the exemption.

Thus, these changes eliminate the permit process for all existing businesses except expanding printers. As a result, this bill does not provide any way for existing businesses to document or provide proof to vendors of machinery and equipment that purchases of such items are exempt.

Furthermore, this bill creates an exemption dichotomy for printing businesses by deleting the word “expanding” and removing the productive output requirement from s. 212.08(5)(b)2.a., F.S., while leaving the word “expanding” and the productive output requirement in s. 212.08(5)(b)2.a., F.S. If an existing printing business purchases additional machinery and equipment for the express purpose of increasing its productive output, then s. 212.08(5)(b)2.b., F.S., is applicable, and the business must apply for a temporary tax exemption permit and prove that productive output has increased by not less than 10 percent. If an existing printing business purchases additional machinery and equipment for replacement or upgrade purposes only, then s. 212.08(5)(b)2.a., F.S., is applicable, and the business is not required to apply for a temporary tax exemption permit and is not required to prove that productive output has increased, but is subject to the \$40,000 tax threshold. For example, assume that the printer’s printing press breaks down and cannot be repaired. A new printing press must be purchased, or the printer cannot continue in business. The printer has no intention of increasing productive output. However, the replacement printing press can print material twice as fast as the prior press and could result in increased productive output for the business. In this scenario, it is unclear whether s. 212.08(5)(b)2.a., F.S., or s. 212.08(5)(b)2.b., F.S., is applicable.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has not reviewed this bill. However, the Department of Revenue has done a preliminary analysis of the fiscal impact of this type of bill. Based on this analysis, the department estimates a FY 2001-02 General Revenue loss of \$1.8 million with an annualized first year loss of \$2 million.

B. Private Sector Impact:

Existing spaceport, non-printing manufacturing, and, possibly, non-expanding printing and mining-type businesses would pay a maximum of \$40,000 in tax for a calendar year on purchases of machinery and equipment while not having to show that productive output has increased.

C. Government Sector Impact:

According to the Department of Revenue, this bill will require a “substantial and immediate rewrite of Rule 12A-1.096, F.A.C., the administrative rule covering purchases of machinery and equipment by new and expanding businesses.”

VI. Technical Deficiencies:

The new references to “subparagraph 2.b.” that have been created in ss. 212.08(5)(b)3.a.-d., F.S., actually refer to sub-subparagraphs. The references should be changed to read “sub-subparagraph 2.b.”

VII. Related Issues:

Section 212.08(5)(b)6.a., F.S., provides the following definition of “industrial machinery and equipment”:

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

According to the Department of Revenue, the reference to “‘section 38 property’ as defined in s. 48(a)(1)(A) and (B)(i) of the Internal Revenue Code” should be replaced with a more descriptive definition since the Federal section 38 property provisions are now obsolete.⁶

The use of the phrase “shall be construed by regulations adopted by the Department of Revenue” in this section may provide a roadmap to the more descriptive definition desired by the department. Currently, Rule 12A-1.096, F.A.C., defines “industrial machinery and equipment” as:

tangible personal property or other property with a depreciable life of 3 years or more that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. Buildings and their

⁶ See Pub. L. 101-508, Sec. 11813(a).

structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment itself is replaced. Heating and air conditioning systems are not considered industrial machinery and equipment, unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees, or serves, to an insubstantial degree, non-production activities...

This is essentially the same language that the department is using in its tax administration package (SB 1978) to correct the definition of “industrial machinery and equipment” throughout s. 212.08(5), F.S.

VIII. Amendments:

#1 by Commerce & Economic Opportunities:

Strikes all of the provisions of this bill except for the provision that amends s. 212.08(5)(b)2.a., F.S., to reduce the \$50,000 annual tax threshold to \$40,000, thus increasing the sales tax exemption for industrial machinery and equipment purchased for exclusive use by an expanding facility engaged in spaceport activities or for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce items of tangible personal property for sale at fixed locations in the state. As a result of this amendment, expanding spaceport and eligible manufacturing facilities claiming an exemption under s. 212.08(5)(b)2.a., F.S., will still have to demonstrate that the industrial machinery and equipment purchased are used to increase productive output by at least 10 percent. This amendment also restores existing ways for these facilities to document or provide proof to vendors of machinery and equipment that purchases of such items are exempt. (WITH TITLE AMENDMENT)