



444784

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/07/2013	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

Senate Amendment (with title amendment)

Between lines 300 and 301
insert:

Section 3. Paragraphs (b), (d), and (h) of subsection (5)
of section 212.08, Florida Statutes, are amended to read:

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



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13 (5) EXEMPTIONS; ACCOUNT OF USE.-

14 (b) Industrial machinery and equipment used by
15 manufacturers or used exclusively in spaceport activities ~~to~~
16 ~~increase productive output.-~~

17 1. Industrial machinery and equipment purchased for
18 ~~exclusive use in businesses that manufacture, process, compound,~~
19 ~~or produce for sale items of tangible personal property at fixed~~
20 ~~locations or for exclusive use by a new business in spaceport~~
21 ~~activities as defined by s. 212.02 or for use in new businesses~~
22 ~~that manufacture, process, compound, or produce for sale items~~
23 ~~of tangible personal property at fixed locations are exempt from~~
24 ~~the tax imposed by this chapter if, at the time of purchase, the~~
25 ~~purchaser furnishes the seller with a signed certificate stating~~
26 ~~that the items to be exempted are for exclusive use as provided~~
27 ~~in this paragraph. The certificate relieves the seller of the~~
28 ~~responsibility of collecting the tax on the sale of such items~~
29 ~~and the department shall look solely to the purchaser for~~
30 ~~recovery of the tax if it determines that the purchaser was not~~
31 ~~entitled to the exemption upon an affirmative showing by the~~
32 ~~taxpayer to the satisfaction of the department that such items~~
33 ~~are used in a new business in this state. Such purchases must be~~
34 ~~made before the date the business first begins its productive~~
35 ~~operations, and delivery of the purchased item must be made~~
36 ~~within 12 months after that date.~~

37 ~~2. Industrial machinery and equipment purchased for~~
38 ~~exclusive use by an expanding facility which is engaged in~~
39 ~~spaceport activities as defined by s. 212.02 or for use in~~
40 ~~expanding manufacturing facilities or plant units which~~
41 ~~manufacture, process, compound, or produce for sale items of~~



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42 ~~tangible personal property at fixed locations in this state are~~
43 ~~exempt from any amount of tax imposed by this chapter upon an~~
44 ~~affirmative showing by the taxpayer to the satisfaction of the~~
45 ~~department that such items are used to increase the productive~~
46 ~~output of such expanded facility or business by not less than 5~~
47 ~~percent.~~

48 ~~3.a. To receive an exemption provided by subparagraph 1. or~~
49 ~~subparagraph 2., a qualifying business entity shall apply to the~~
50 ~~department for a temporary tax exemption permit. The application~~
51 ~~shall state that a new business exemption or expanded business~~
52 ~~exemption is being sought. Upon a tentative affirmative~~
53 ~~determination by the department pursuant to subparagraph 1. or~~
54 ~~subparagraph 2., the department shall issue such permit.~~

55 ~~b. The applicant shall maintain all necessary books and~~
56 ~~records to support the exemption. Upon completion of purchases~~
57 ~~of qualified machinery and equipment pursuant to subparagraph 1.~~
58 ~~or subparagraph 2., the temporary tax permit shall be delivered~~
59 ~~to the department or returned to the department by certified or~~
60 ~~registered mail.~~

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

70 ~~d. If a qualifying business entity fails to apply for a~~



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71 ~~temporary exemption permit or if the tentative determination by~~
72 ~~the department required to obtain a temporary exemption permit~~
73 ~~is negative, a qualifying business entity shall receive the~~
74 ~~exemption provided in subparagraph 1. or subparagraph 2. through~~
75 ~~a refund of previously paid taxes. No refund may be made for~~
76 ~~such taxes unless the criteria mandated by subparagraph 1. or~~
77 ~~subparagraph 2. have been met and commencement of production has~~
78 ~~occurred.~~

79 ~~4. The department shall adopt rules governing applications~~
80 ~~for, issuance of, and the form of temporary tax exemption~~
81 ~~permits; provisions for recapture of taxes; and the manner and~~
82 ~~form of refund applications, and may establish guidelines as to~~
83 ~~the requisites for an affirmative showing of increased~~
84 ~~productive output, commencement of production, and qualification~~
85 ~~for exemption.~~

86 ~~2.5. The exemption does exemptions provided in~~
87 ~~subparagraphs 1. and 2. do not apply to machinery or equipment~~
88 ~~purchased or used by electric utility companies, communications~~
89 ~~companies, oil or gas exploration or production operations,~~
90 ~~publishing firms that do not export at least 50 percent of their~~
91 ~~finished product out of the state, any firm subject to~~
92 ~~regulation by the Division of Hotels and Restaurants of the~~
93 ~~Department of Business and Professional Regulation, or any firm~~
94 ~~that does not manufacture, process, compound, or produce for~~
95 ~~sale items of tangible personal property or that does not use~~
96 ~~such machinery and equipment in spaceport activities as required~~
97 ~~by this paragraph. The exemption does apply exemptions provided~~
98 ~~in subparagraphs 1. and 2. shall apply to machinery and~~
99 ~~equipment purchased for use in phosphate or other solid minerals~~



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100 severance, mining, or processing operations.

101 ~~3.6. For the purposes of the exemption, the term exemptions~~
102 ~~provided in subparagraphs 1. and 2., these terms have the~~
103 ~~following meanings:~~

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

123 b. ~~"Productive output" means the number of units actually~~
124 ~~produced by a single plant, operation, or product line in a~~
125 ~~single continuous 12-month period, irrespective of sales.~~
126 ~~Increases in productive output shall be measured by the output~~
127 ~~for 12 continuous months selected by the expanding business~~
128 ~~after completion of the installation of such machinery or~~



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129 ~~equipment over the output for the 12 continuous months~~
130 ~~immediately preceding such installation. However, in no case may~~
131 ~~such time period begin later than 2 years after completion of~~
132 ~~the installation of the new machinery and equipment. The units~~
133 ~~used to measure productive output shall be physically comparable~~
134 ~~between the two periods, irrespective of sales.~~

135 (d) *Machinery and equipment used under federal procurement*
136 *contract.*—

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

153 2. The amount of the exemption allowed must ~~shall~~ equal the
154 taxes otherwise imposed by this chapter on qualifying industrial
155 machinery or equipment reduced by the percentage of gross
156 receipts from cost-reimbursement type contracts attributable to
157 the plant or operation to total gross receipts so attributable,



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158 accrued for the year of completion or commencement.

159 3. The exemption provided by this paragraph shall inure to
160 the taxpayer only through a refund of previously paid taxes.
161 Such refund shall be made within 30 days after ~~of~~ formal
162 approval by the department of the taxpayer's application, which
163 application may be made on an annual basis following
164 installation of the machinery or equipment.

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

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

168 b. "Deflated implicit productive output" means the product
169 of implicit productive output times the quotient of the national
170 defense implicit price deflator for the preceding calendar year
171 divided by the deflator for the year of completion or
172 commencement.

173 c. "Eligible costs" means the total direct and indirect
174 costs, as defined in 32 C.F.R. ss. 15-202 and 15-203, excluding
175 general and administrative costs, selling expenses, and profit,
176 defined by the uniform cost-accounting standards adopted by the
177 Cost-Accounting Standards Board created pursuant to 50 U.S.C. s.
178 2168.

179 d. "Implicit productive output" means the annual eligible
180 costs attributable to all contracts or subcontracts subject to
181 federal procurement regulations of the single plant or operation
182 at which the machinery or equipment is used.

183 e. "Industrial machinery and equipment" means tangible
184 personal property or other property that has a depreciable life
185 of 3 years or more, that qualifies as an eligible cost under
186 federal procurement regulations, and that is used as an integral



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187 part of the process of production of tangible personal property.
188 A building and its structural components are not industrial
189 machinery and equipment unless the building or structural
190 component is so closely related to the industrial machinery and
191 equipment that it houses or supports that the building or
192 structural component can be expected to be replaced when the
193 machinery and equipment are replaced. Heating and air-
194 conditioning systems are not industrial machinery and equipment
195 unless the sole justification for their installation is to meet
196 the requirements of the production process, even though the
197 system may provide incidental comfort to employees or serve, to
198 an insubstantial degree, nonproduction activities. The term
199 includes parts and accessories only to the extent that the
200 exemption of such parts and accessories is consistent with the
201 provisions of this paragraph.

202 f. "National defense implicit price deflator" means the
203 national defense implicit price deflator for the gross national
204 product as determined by the Bureau of Economic Analysis of the
205 United States Department of Commerce.

206 5. The exclusions provided in subparagraph (b)2. ~~(b)5.~~
207 apply to this exemption. This exemption applies only to
208 machinery or equipment purchased pursuant to production
209 contracts with the United States Department of Defense and Armed
210 Forces, the National Aeronautics and Space Administration, and
211 other federal agencies for which the contracts are classified
212 for national security reasons. ~~In no event shall~~ The provisions
213 of this paragraph do not apply to an ~~any~~ expanding business
214 whose ~~the~~ increase in productive output is measurable ~~of which~~
215 ~~could be measured under the provisions of sub-subparagraph~~



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216 ~~(b)6.b. as physically comparable between the two periods. As~~
217 used in this subparagraph, the term "productive output" means
218 the number of units actually produced by a single plant,
219 operation, or product line in a single continuous 12-month
220 period, irrespective of sales. Increases in productive output
221 shall be measured by dividing the output for 12 continuous
222 months selected by the expanding business after completing the
223 installation of machinery or equipment by the output for the 12
224 continuous months immediately preceding such installation.
225 However, such time period may not commence 2 years after
226 completing the installation. The units used to measure
227 productive output must be physically comparable between the two
228 periods, irrespective of sales.

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

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

238 2. To receive a refund, the business must file ~~under oath~~
239 with the governing body or enterprise zone development agency
240 having jurisdiction over the enterprise zone where the business
241 is located, as applicable, an application, under oath, which
242 includes:

243 a. The name and address of the business claiming the
244 refund.



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

247 c. A specific description of the property for which a
248 refund is sought, including its serial number or other permanent
249 identification number.

250 d. The location of the property.

251 e. The sales invoice or other proof of purchase of the
252 property, showing the amount of sales tax paid, the date of
253 purchase, and the name and address of the sales tax dealer from
254 whom the property was purchased.

255 f. Whether the business is a small business as defined in
256 ~~by~~ s. 288.703.

257 g. If applicable, the name and address of each permanent
258 employee of the business, including, for each employee who is a
259 resident of an enterprise zone, the identifying number assigned
260 pursuant to s. 290.0065 to the enterprise zone in which the
261 employee resides.

262 3. Within 10 working days after receipt of an application,
263 the governing body or enterprise zone development agency shall
264 review the application to determine if it contains all the
265 information required pursuant to subparagraph 2. and meets the
266 criteria set out in this paragraph. The governing body or agency
267 shall certify all applications that contain the information
268 required pursuant to subparagraph 2. and meet the criteria set
269 out in this paragraph as eligible to receive a refund. If
270 applicable, the governing body or agency shall also certify if
271 20 percent of the employees of the business are residents of an
272 enterprise zone, excluding temporary and part-time employees.
273 The certification must ~~shall~~ be in writing, and a copy of the



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274 certification ~~shall be~~ transmitted to the executive director of
275 the Department of Revenue. The business is ~~shall be~~ responsible
276 for forwarding a certified application to the department within
277 the time specified in subparagraph 4.

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

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

294 6. The department shall adopt rules governing the manner
295 and form of refund applications and may establish guidelines as
296 to the requisites for an affirmative showing of qualification
297 for exemption under this paragraph.

298 7. If the department determines that the business property
299 is used outside an enterprise zone within 3 years after ~~from~~ the
300 date of purchase, the amount of taxes refunded to the business
301 purchasing such business property is ~~shall~~ immediately ~~be~~ due
302 and payable to the department by the business, together with the



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303 appropriate interest and penalty, computed from the date of
304 purchase, in the manner provided by this chapter.

305 Notwithstanding this subparagraph, business property used
306 exclusively in:

- 307 a. Licensed commercial fishing vessels,
- 308 b. Fishing guide boats, or
- 309 c. Ecotourism guide boats

310

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

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

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

328 a. Property classified as 3-year property under s.
329 168(c) (2) (A) of the Internal Revenue Code of 1954, as amended;

330 b. Industrial machinery and equipment as defined in
331 subparagraph (b) 3. ~~sub-subparagraph (b) 6.a.~~ and eligible for



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332 exemption under paragraph (b);

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

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

337 10. This paragraph expires on the date specified in s.
338 290.016 for the expiration of the Florida Enterprise Zone Act.

339 Section 4. (1) The Department of Revenue shall develop a
340 tracking system, in consultation with the Revenue Estimating
341 Conference, to determine the amount of sales taxes remitted by
342 out-of-state dealers who would otherwise not be required to
343 collect and remit sales taxes in the absence of the amendments
344 made to s. 212.0596, Florida Statutes, in section 1 of this act.
345 By February 1 of each year, the Department of Revenue shall
346 submit a report to the Governor, the President of the Senate,
347 and the Speaker of the House of Representatives which sets forth
348 the amount of sales taxes collected and remitted by such dealers
349 in the previous calendar year and the methodology used to
350 determine the amount.

351 (2) By March 1 of each year, the Revenue Estimating
352 Conference shall use the information provided by the Department
353 of Revenue pursuant to subsection (1) to determine the amount of
354 sales taxes remitted in the previous calendar year by such out-
355 of-state dealers who would otherwise not be required to collect
356 and remit sales taxes and estimate the amount that may be
357 expected in the following fiscal year.

358 (3) The Legislature shall use the information provided by
359 the Department of Revenue and the Revenue Estimating Conference
360 to develop legislation designed to return the amount of those



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361 sales taxes collected to the taxpayers of this state. The
362 Legislature shall reduce taxes in an amount not less than the
363 amount determined by the Revenue Estimating Conference. If the
364 amount collected is determined to be of a recurring nature and
365 sufficient to lower tax rates, the Legislature must first reduce
366 the tax rate imposed on communications services under chapter
367 202 or the tax rate imposed on commercial rentals under s.
368 212.031, or may provide other permanent tax relief as it deems
369 appropriate.

370
371 ===== T I T L E A M E N D M E N T =====

372 And the title is amended as follows:

373 Delete line 22

374 and insert:

375 "dealer"; amending s. 212.08, F.S.; revising the sales
376 tax exemption from the sales tax for certain business
377 purchases of industrial machinery and equipment and
378 spaceport activities; deleting certain limitations on,
379 and procedural requirements relating to, the
380 exemption; conforming cross-references; requiring that
381 the Department of Revenue develop a tracking system,
382 in consultation with the Revenue Estimating
383 Conference, to determine the amount of sales tax
384 remitted by out-of-state dealers who would otherwise
385 not be required to collect and remit sales taxes but
386 for the amendments made by the act; requiring that the
387 department submit a report to the Governor and
388 Legislature by a specified date each year; requiring
389 that the report contain certain information; requiring



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390 that the Revenue Estimating Conference use such
391 information to determine the amount of sales taxes
392 remitted in the previous calendar year by such out-of-
393 state dealers and estimate the amount that may be
394 expected in the following fiscal year; requiring that
395 the Legislature use the information to reduce tax
396 rates for communications services under chapter 202,
397 commercial services under s. 212.031, or other taxes
398 as deemed appropriate; providing an effective date.
399
400