

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

**BILL:** CS/SB 518

**INTRODUCER:** Commerce and Tourism Committee and Senator Hukill

**SUBJECT:** Economic Business Incentives

**DATE:** April 2, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Smith	Hrdlicka	CM	<b>Fav/CS</b>
2.			AFT	
3.			AP	
4.				
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 518 expands the sales tax exemption for machinery and equipment for new or expanding businesses to all businesses by eliminating the 5 percent productivity requirement for expanding businesses to qualify for the tax exemption.

The bill removes the limitation on the maximum amount of tax refunds an individual participant of either the Qualified Defense Contractor and Spaceflight Business Tax Refund program or the Qualified Target Industry Tax Refund program may receive in all fiscal years.

The bill substantially amends ss. 212.08, 288.1045, 288.106, 212.0602, 220.183, 290.0056, 290.007, 624.5105, and 1011.94, F.S..

## II. Present Situation:

### Sales Tax Exemption for Machinery and Equipment

Florida is one of 13 states plus the District of Columbia that levy some form of tax on the purchase of machinery and equipment used for manufacturing.<sup>1</sup> However, Florida does provide a sales tax exemption on such purchases<sup>2</sup> when the machinery and equipment is purchased for certain uses by new and expanding manufacturing businesses.<sup>3</sup>

For new businesses, the purchase must be made for:

- Exclusive use by a new business in spaceport activities;<sup>4</sup> and
- Use by a new business that manufacturers, processes, compounds, or produces for sale items of tangible personal property at fixed locations.

The new business must prove to the Department of Revenue (DOR) that the items are going to be used in a new business. The purchases have to be made before the date the business begins productive operations and delivery of the tax-exempt items must be made within 12 months of that date.

For expanding businesses, the purchase must be made for:

- Exclusive use by an expanding facility engaged in spaceport activities; or
- Use in an expanding manufacturing facility or plant unit which manufacturers, processes, compounds, or produces for sale items of tangible personal property at fixed locations in Florida.

The expanding business must prove to DOR that the items will be used to increase the productive output of the expanded facility or business by 5 percent or more. Productive output is measured for a 12-month period selected by the business after installing the machinery or equipment (within 2 years of the installation) that is compared to the output level for the 12-months immediately preceding the installation of the items.<sup>5</sup>

Businesses must apply to DOR for a temporary tax permit, which must be returned to DOR after all the machinery and equipment is purchased. If a qualifying business fails to apply for the permit or if DOR incorrectly determines that the business was not qualified for the permit, a business can still receive the exemption through a tax refund. DOR may conduct an audit to ensure that the purchases were made pursuant to the requirements for the exemption. If DOR finds that the purchases did not meet the requirements for the exemption, the amount of taxes exempted at the time of purchase become immediately due, plus penalties and interest.

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<sup>1</sup> The 13 others are: AL, AR, CA, DC, HI, KY, MN, MS, NV, NM, NC, ND, and SD. Source: National Conference of State Legislatures, *Multistate Quick Answer Charts: Sales and Use Taxes*, (on file with the Senate Commerce and Tourism Committee).

<sup>2</sup> Exempt purchases are limited to tangible personal property that has a depreciable life of 3 or more years. See s. 212.08(5)(b)6.a., F.S.

<sup>3</sup> Section 212.08(5)(b), F.S. This exemption does apply to phosphate or other solid minerals severance, mining, or processing operations.

<sup>4</sup> The term "spaceport activities" is defined in s. 212.02(22), F.S.

<sup>5</sup> Section 212.08(5)(b)6.b., F.S.

In addition to the exemption for new and expanding manufacturing businesses, industrial machinery and equipment purchased by an expanding business that manufactures tangible personal property pursuant to federal procurement regulations at fixed locations is also exempt, provided the items are used to increase productive output by 10 percent or more. Production must begin no later than 2 years following the installation of the industrial machinery and equipment.<sup>6</sup> This exemption operates as a refund of previously paid taxes.

The exemptions do not apply to machinery or equipment purchased or used by electric utility companies, communications companies, oil or gas exploration or production operations, publishing firms that do not export at least 50 percent of their finished product out of the state, or any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation.

Further, business property purchased for use by a business located in an enterprise zone is exempt from sales and use tax. The exemption inures to the business in the form of a refund of taxes previously paid.<sup>7</sup>

### **Qualified Defense and Space Contractor Tax Refund Program**

The Qualified Defense Contractor and Space Flight Business Tax Refund (QDSC) program concept was created in 1993 by Executive Order No. 93-118, signed by Governor Chiles on August 13, 1993. The order was intended to be a response to the state's concerns that reductions in federal defense spending could result in losses to high-wage, high-technology jobs in Florida. The Legislature codified the QDSC program in law in 1996,<sup>8</sup> originally designating the program as the Qualified Defense Contractor Tax Refund program. The program has been amended several times in the intervening years. In 2008, the program was amended to include space flight businesses as eligible participants in the program and the program was renamed to reflect the inclusion of space flight businesses. The program is set to expire on June 30, 2014.<sup>9, 10</sup>

The QDSC program targets the following types of projects:

- New or consolidated Department of Defense (DOD) contracts;
- Conversion of DOD production jobs to non-defense production jobs;
- Projects involving the reuse of defense-related facilities for specific activities; or
- Contracts for the manufacturing, processing, and assembly of space flight products; and other activities related to space flight.

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<sup>6</sup> Section 212.08(5)(d), F.S. This exemption is limited to federal contracts with the U.S. Department of Defense, the Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons.

<sup>7</sup> Section 212.08(5)(h), F.S. "Business property" does not include industrial machinery and equipment eligible for the exemption for new and expanding businesses.

<sup>8</sup> Ch. 96-348, L.O.F.

<sup>9</sup> Ch. 2008-89, L.O.F.

<sup>10</sup> Section 288.1045, F.S.

Depending on the type of projects, applicants must show that the project increases or creates jobs, the jobs pay a certain average annual wage, and other related information. Applicants must also receive a 20 percent match from the local government for any award unless exempt.

The QDSC program's incentive is a tax refund of \$3,000 per job created or retained, or \$6,000 per job if the business's project is located within a rural county or an enterprise zone. An additional \$1,000 refund payment for each job created or retained is allowed if the business pays an average wage of 150 percent of the average private sector wage in the area, or an additional \$2,000 per-job bonus if the business pays an average wage equal to at least 200 percent of the average private sector wage in the area.

If a business does not meet its job creation objectives, it may still receive a prorated share of the refund minus a 5 percent penalty if it creates at least 80 percent of the jobs, pays at least 90 percent of the wages, and meets all other requirements of its performance agreement.

A business may not receive refunds of more than 25 percent of the total tax refunds provided in the tax refund agreement in any fiscal year, and no more than \$2.5 million in tax refunds in any fiscal year. Additionally, a business may not receive more than \$7 million in tax refunds under the program. If a business reaches the cap, it does not qualify for additional projects or refund payments under the program.

A qualified defense contract or spaceflight business may claim refunds from one or more of the following taxes paid:

- Corporate income taxes;
- Sales and use taxes;
- Intangible personal property taxes;
- Excise taxes paid on documents;
- Ad valorem taxes;
- Corporate income taxes; and
- Certain state communication services taxes.

Since the QDSC program's inception, 33 QDSC applications have been approved, 15 contracts have been executed, and 5 projects have been completed, meaning that the business has met the terms of its contract and received all eligible incentive payments. Of those 15 executed contracts, 6 remain active, meaning they are eligible to receive tax refunds through the QDSC program. These 6 projects have committed to create 418 cumulative jobs. The 5 completed projects cumulatively created 1,521 new jobs, exceeding their initial commitment to create 795 new jobs.<sup>11</sup> In FY 2011-2012, \$2,180,000 in QDSC incentives were awarded, of which \$1,744,000 was awarded by the state.<sup>12</sup>

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<sup>11</sup> An active incentive project means a business is currently performing and in good standing.

The status of each incentive falls within one of six categories: active, inactive, terminated, vacated, withdrawn, or complete.

<sup>12</sup> Information in this paragraph obtained from Enterprise Florida, Inc.'s, 2012 Annual Incentives Report. Available at: [http://www.eflorida.com/IntelligenceCenter/download/ER/BRR\\_Incentives\\_Report.pdf](http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf), (last visited March 11, 2013).

### **Qualified Target Industry Tax Refund Program**

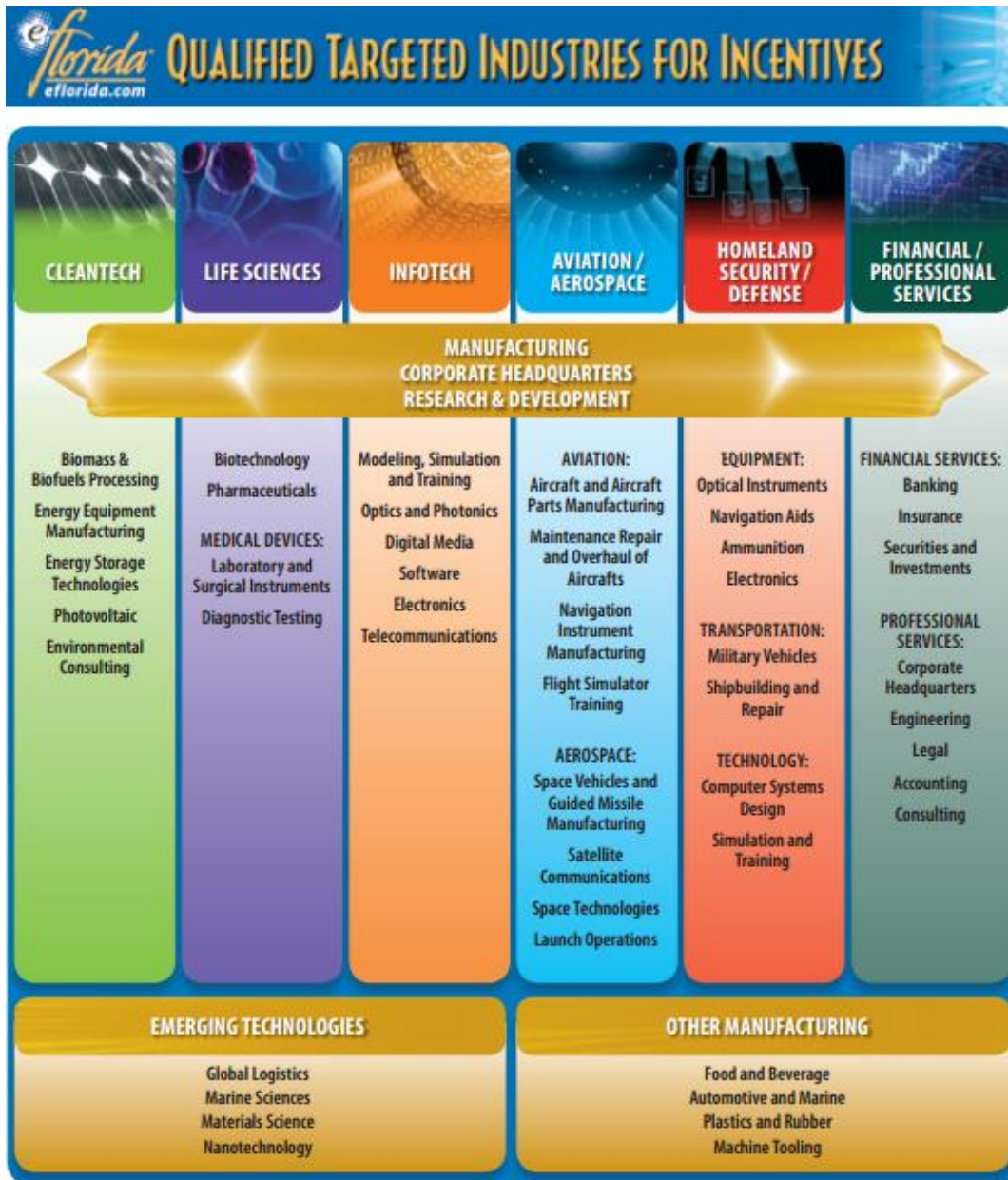
The Qualified Target Industry Tax Refund (QTI) program was created by the Legislature in 1994<sup>13</sup> to encourage the recruitment or creation of higher-paying, higher-skilled jobs in the state by awarding eligible businesses tax refunds in exchange for creating jobs in certain target industries. The refund award level is based on wages paid, number of jobs created, and the location in the state that the business chooses to locate or expand. The QTI program is set to expire on June 30, 2020.

In order to qualify for the program, an applicant business must fall into one of Florida's target industry categories, which are developed by the Department of Economic Opportunity (DEO) and Enterprise Florida, Inc. (EFI). A diagram of targeted industries is below:<sup>14</sup>

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<sup>13</sup> Ch. 94-136, L.O.F., codified as s. 288.601, F.S.

<sup>14</sup> The diagram is from the 2011 DEO State Job Creation Plan. Available at: [http://www.eflorida.com/download/state\\_of\\_Florida\\_job\\_creation\\_plan.pdf](http://www.eflorida.com/download/state_of_Florida_job_creation_plan.pdf), (last visited on March 11, 2013).



Applicants must show that the project increases or creates jobs, the jobs pay a certain average annual wage, and other related information. Applicants must also receive a 20 percent match from the local government for any award unless exempt.

The QTI program offers a tax refund of \$3,000 per created job. The per-job tax refund increases to \$6,000 if the business is located within a rural county or an enterprise zone. The program allows for tax refunds in addition to the standard awards:

- \$1,000 per job if the business pays an average annual wage of at least 150 percent of the average private sector wage in the area the project is located;
- \$2,000 per job if the business pays an average annual wage of at least 200 percent of the average private sector wage in the area the project is located;
- \$1,000 per job if the local financial support is equal to that of the state’s incentive award; and

- \$2,000 per job if the business falls within one of the high-impact sectors designated under s. 288.108, F.S., or increases exports of its goods through a seaport or airport in the state by at least 10 percent in value or tonnage in each of the years that the business receives a tax refund.

A qualified target industry business may not receive more than \$1.5 million in refunds in a single fiscal year, or more than \$2.5 million if the project is located in an enterprise zone. Additionally, a qualified target industry business may not receive more than \$7 million in refund payments in all fiscal years, or more than \$7.5 million if the project is located in an enterprise zone.

A qualified target industry business may claim refunds from one or more of the following taxes paid:

- Sales and use taxes;
- Documentary stamp taxes;
- Ad valorem taxes;
- Corporate income taxes;
- Insurance premium taxes;
- Intangible personal property taxes; and
- Certain state communication taxes under ch. 202, F.S.

Since the inception of the QTI program, 1,134 QTI applications have been approved, 967 contracts have been executed, and 97 agreements have been completed. Of those 967 projects, 335 remain active, meaning they are eligible to receive tax refunds through the QTI program. These 335 projects have committed to create 45,157 jobs cumulatively. The 97 completed agreements cumulatively created 19,694 new jobs, above the initial commitment to create 19,094 new jobs. In FY 2011-2012, \$58,063,500 in QTI incentives were awarded, of which \$46,450,800 was awarded by the state.<sup>15</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 212.08(5), F.S., to expand the availability of the sales tax exemption for machinery and equipment from new or expanding businesses to all businesses. Under the bill, industrial machinery and equipment is exempt from sales tax when it is purchased for use in Florida by a business that manufactures, processes, compounds, or produces for sale tangible personal property at a fixed location.

At the time of purchase, in order to use the exemption, the purchaser has to present a signed certificate that states that the exempt items are for exclusive use as provided above. The certificate relieves the seller of any liability to collect the tax, and if DOR later determines that tax was due, it must pursue payment from the purchaser. The exemption is available for use at any time; under current law, qualified businesses receive a temporary exemption permit.

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<sup>15</sup> Information in this paragraph obtained from Enterprise Florida, Inc.'s, 2012 Annual Incentives Report. Available at: [http://www.eflorida.com/IntelligenceCenter/download/ER/BRR\\_Incentives\\_Report.pdf](http://www.eflorida.com/IntelligenceCenter/download/ER/BRR_Incentives_Report.pdf), (last visited March 11, 2013).

Such expansion eliminates the 5 percent productivity requirement for expanding businesses to use the sales tax exemption. The bill deletes the exemption for businesses participating in spaceport activities that increase productivity by at least 5 percent. The bill deletes the exemption for machinery and equipment used under federal procurement contracts. The specific exemptions are no longer needed as a result of the expansion of the sales tax exemption for machinery and equipment to all businesses.

The bill eliminates the provisions to apply to DOR for a tax exemption permit. The bill also eliminates audit authority for DOR to review exempt purchases for adherence to the law. The bill eliminates rulemaking authority for DOR.

The bill makes conforming changes to the sales tax exemptions for business property used in an enterprise zone and for electrical energy used in an enterprise zone.

**Section 2** amends s. 288.1045, F.S., to remove the limitation which restricts a qualified applicant from receiving more than \$7 million in tax refunds in all fiscal years it participates in the Qualified Defense Contractor and Spaceflight Business Tax Refund program. This section takes effect July 1, 2013.

**Section 3** amends s. 288.106, F.S., to remove the limitation which restricts a qualified target industry business from receiving more than \$7 million in refund payments in all fiscal years it participates in the Qualified Target Industry Tax Refund program, or more than \$7.5 million if the project is located in an enterprise zone. This section takes effect July 1, 2013.

**Sections 4, 5, 6, 7, 8, and 9** amend ss. 212.0602, 220.183, 290.0056, 290.007, 624.5105, and 1011.94, F.S., to correct cross-references.

**Section 10** provides an effective date of January 1, 2014, except as otherwise provided in the bill.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

Article VII, s. 18 of the Florida Constitution, governs laws that require counties and municipalities to spend funds or limit their ability to raise revenue or receive state tax revenue.

Subsection (b) of the provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce county or municipal aggregate revenue generating authority as it existed on February 1, 1989. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (c) of this provision prohibits the Legislature from “enacting, amending, or repealing any general law if the anticipated effect” is to reduce the percentage of a state



tax shared with counties and municipalities. The exception to this prohibition is if the Legislature passes such a law by 2/3 of the membership of each chamber.

Subsection (d) provides an exemption from these provisions. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (which is \$1.9 million for FY 2012-2013<sup>16</sup>), are exempt.<sup>17</sup>

The Revenue Estimating Conference has not evaluated the effects of this bill. As such, the bill’s effect may have a significant impact on the ability of counties and municipalities to generate and share tax revenues, as DEO projects that the bill will reduce local revenues by \$13 million in FY 2013-2014, and create a recurring negative impact of \$26 million annually. Therefore, this bill requires passage by 2/3 of the membership of each chamber.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

This bill has not been evaluated by the Revenue Estimating Conference.

DEO projects that the bill will reduce state revenues by \$57.7 million in FY 2013-2014, and \$115.3 million each year thereafter. DEO projects the bill will reduce local revenues by \$13 million in FY 2013-2014, and \$26 million each year thereafter.<sup>18</sup>

The bill removes the lifetime cap for the amount of tax refund payments a single qualified business may receive in the QDSC and QTI tax refund programs. However, a qualified business would still be limited to the maximum annual tax refund amount of \$1.5 million or \$2.5 million depending on the program and the circumstances. In addition, the annual statutory funding cap of \$35 million for all economic development

<sup>16</sup> Based on the Demographic Estimating Conference’s population adopted on February 7, 2013. The post-conference packet can be found at: <http://edr.state.fl.us/Content/conferences/population/FDEC-Post-Conference%20Packet-201302.pdf>, (last visited on March 11, 2013).

<sup>17</sup> See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf>, (last visited on March 11, 2013).

<sup>18</sup> Department of Economic Opportunity, *Agency Bill Analysis: SB 518*, (February 4, 2013), (on file with the Senate Commerce and Tourism Committee).

tax refund programs would still apply.<sup>19</sup> Both programs will continue to be subject to annual legislative appropriations.

**B. Private Sector Impact:**

Businesses and consumers would likely benefit from the expansion of the machinery and equipment sales tax exemption.

A business may receive an unlimited amount of QDSC or QTI tax refunds over its lifetime. However, awards for QDSC and QTI are still limited to annual award limitations and appropriations.

**C. Government Sector Impact:**

The expanded machinery equipment sales tax exemption expected to have minimal operational impact on the Department of Revenue and the Department of Economic Opportunity.

The removal of QDSC and QTI lifetime caps is not expected to increase the resource demands of DEO.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Related to the sales tax exemption for machinery and equipment, the bill does not provide any requirements for the “signed certificate” to be used to receive the exemption. It is unclear how a certificate is obtained and who signs it. The bill also eliminates audit authority for DOR to review exempt purchases for adherence to the law. Additionally, by eliminating specified rulemaking authority for DOR, the department does not have specific authority to adopt rules to implement these provisions of the bill.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on April 1, 2013:**

The CS makes the following changes:

- Clarifies the exemption for machinery and equipment is for use in this state only.
- Repeals the exemptions for industrial machinery and equipment purchased for use by businesses participating in spaceport activities that use the materials to increase productivity by at least 5 percent.

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<sup>19</sup> Section 288.095(3)(a), F.S.

- Repeals the exemption for machinery and equipment purchased for use under federal procurement contracts.
- Clarifies the threshold for businesses located in an enterprise zone to receive an increased refund on business property is for businesses that employ at least 20 percent or more of its workers from residents of an enterprise zone.
- Removes requirements related to release of Innovation Incentive Program funds.
- Corrects several cross-references.
- Changes the effective date from July 1, 2014, to January 1, 2014, unless otherwise specified.

B. Amendments:

None.