

**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.)

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

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BILL: CS/SB 1642

INTRODUCER: Senator Gruters

SUBJECT: Tax Exemptions

DATE: February 4, 2020

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Reeve	McKay	CM	<b>Fav/CS</b>
2.			FT	
3.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1642 makes changes to Florida's tax statutes. The bill:

- Exempts from sales tax the purchase of aircraft equipment used for advanced training purposes as part of a contract with the U.S. Department of Defense (DOD) or a military branch of a recognized foreign government;
- Exempts from use tax aircraft owned by a nonresident if the aircraft enters or remains in the state to be used in service of a contract with the DOD or with a military branch of a recognized foreign government;
- Exempts from sales tax the purchase of parts and accessories for industrial machinery and equipment;
- Increases a property tax discount from 50 percent to 100 percent for certain multifamily projects that provide affordable housing to low-income families; and
- Allows projects that create intellectual property to qualify for the Capital Investment Tax Credit.

Except as otherwise provided, the bill takes effect upon becoming law.

## II. Present Situation:

### Sales and Use Tax

Florida levies a 6 percent sales and use tax on the sale or rental of most tangible personal property,<sup>1</sup> admissions,<sup>2</sup> transient rentals,<sup>3</sup> and a limited number of services. Chapter 212, F.S., contains provisions authorizing the levy and collection of Florida's sales and use tax, as well as the exemptions and credits applicable to certain items or uses under specified circumstances. Sales tax is added to the price of the taxable good or service and collected from the purchaser at the time of sale.<sup>4</sup> Sales tax receipts accounted for approximately 77 percent of the state's General Revenue in Fiscal Year 2018-2019.<sup>5</sup>

### Sales and Use Tax Exemptions

#### *Aircraft Purchases*

Section 212.05, F.S., provides exemptions from the sales and use tax on the purchase of an aircraft by a nonresident of the state if the purchaser removes the aircraft from the state within 10 days after the date of purchase or, when the aircraft is repaired or altered, within 20 days after the completion of the repairs or alterations. Within 10 days of an aircraft's removal from the state, a purchaser must provide to the Department of Revenue (DOR) proof of the removal in the form of receipts for fuel, tie-down, or hangaring from outside of Florida. A purchaser must also provide the DOR, within 30 days of departure, with written proof that the purchaser licensed or registered the aircraft outside the state. If a purchaser fails to remove an aircraft within the specified period; returns to Florida within 6 months after the purchase, except as provided in s. 212.08(7)(fff), F.S.; or does not provide the DOR with the required information the purchaser must pay the use tax on the cost of the aircraft and a penalty equal to the tax payable.

As provided for in s. 212.08(7)(fff), F.S., aircrafts owned by a nonresident are exempt from use tax if the aircraft enters and remains in Florida for less than a total of 21 days during the 6-month period after the date of purchase, or if the aircraft enters or remains in Florida exclusively for the purposes of flight training, repairs, alterations, refitting, or modification. These conditions must be proven with invoices or written documentation.

#### *Imports and Exports of Aircraft*

Use tax applies to and is due on tangible personal property, *e.g.* aircraft, imported or caused to be imported into the state for use, consumption, distribution, or storage to be used or consumed in this state. It is presumed that the tangible personal property used in another state, territory, or the District of Columbia for 6 months or longer before being imported into this state was not purchased for use in this state.<sup>6</sup>

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<sup>1</sup> Section 212.05, F.S.

<sup>2</sup> Section 212.04, F.S.

<sup>3</sup> Section 212.03, F.S.

<sup>4</sup> Florida Department of Revenue, *Florida Sales and Use Tax*, available at [https://floridarevenue.com/taxes/taxesfees/pages/sales\\_tax.aspx](https://floridarevenue.com/taxes/taxesfees/pages/sales_tax.aspx) (last visited Feb. 4, 2020).

<sup>5</sup> Office of Economic and Demographic Research, *Florida Tax Handbook*, 16 (2019), available at <http://edr.state.fl.us/Content/revenues/reports/tax-handbook/taxhandbook2019.pdf> (last visited Feb. 4, 2020).

<sup>6</sup> Section 212.06(8)(a), F.S.

Aircraft exported under their own power outside the continental United States are tax exempt when a validated U.S. customs declaration and the canceled U.S. registry of the aircraft are submitted to the DOR.<sup>7</sup>

### ***Aircraft Manufacturers***

Section 212.08(11), F.S., provides that the sales tax imposed on an aircraft sold by a manufacturer is equal to the amount of sales tax that would be imposed by the state where the aircraft will be domiciled, up to the 6 percent imposed by Florida.<sup>8</sup> This partial exemption only applies if the purchaser is a resident of another state who will not use the aircraft in Florida; if the purchaser is a resident of another state and uses the aircraft in interstate or foreign commerce; or if the purchaser is a resident of a foreign country. The purchaser must provide a sworn affidavit stating they are not a resident of the state and where the aircraft will be domiciled. If the aircraft is used in the state within 6 months of purchase,<sup>9</sup> the purchaser must pay the full use tax on the aircraft and a penalty of 10 percent of the tax pursuant to s. 212.12(2), F.S.

### ***Industrial Machinery and Equipment***

Section 212.08(7)(jjj), F.S., exempts the purchase of industrial machinery and equipment from sales and use tax if the equipment is purchased by an eligible manufacturing business and used at a fixed location in the state for the manufacture, processing, compounding, or production of items of tangible personal property for sale.

“Eligible manufacturing business” means any business whose primary business activity<sup>10</sup> where the industrial machinery and equipment are located is within the industries classified under the North American Industry Classification System (NAICS) codes 31-33, 112511, and 423930, pertaining to manufacturing, finfish farming and fish hatcheries, and recyclable material merchant wholesalers, respectively.<sup>11</sup>

“Industrial machinery and equipment” means 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. The term includes parts and accessories for industrial machinery and equipment only if the parts and accessories are purchased before the date the machinery and equipment are placed in service.

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<sup>7</sup> Section 212.06(5)(a)1., F.S.

<sup>8</sup> Tax may not be imposed if the state where the aircraft will be domiciled exempts aircraft from sales and use tax. Section 212.08(11)(c), F.S.

<sup>9</sup> Section 212.08(11)(d), F.S. specifies that the purchaser must pay the full tax and the penalty if the aircraft is used in the state within 6 months of the purchase *in violation of the intent of [subsection 11 of s. 212.08, F.S.]*.

<sup>10</sup> Section 212.08(7)(jjj)2.d., F.S., defines “primary business activity” as activity representing more than 50 percent of the activities conducted at the location where the industrial machinery and equipment are located.

<sup>11</sup> North American Industry Classification Systems Association, *NAICS Code List*, available at <https://www.naics.com/search/#naics> (last visited Feb. 4, 2020). The manufacturing sector represented by NAICS codes 31, 32, and 33 comprises establishments engaged in the mechanical, physical, or chemical transformation of raw materials into new products. See North American Industry Classification Systems Association, *NAICS Code Description: 31-33 – Manufacturing*, available at <https://www.naics.com/naics-code-description/?code=31-33> (last visited Feb. 4, 2020).

The purchaser must provide the seller with a signed certificate certifying the purchaser's entitlement to the tax exemption; this certificate relieves the seller of any potential tax liability on nonqualified purchases.

### **Property Taxation**

The ad valorem tax or "property tax" is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.<sup>12</sup>

The property appraiser annually determines the "just value"<sup>13</sup> of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property's "taxable value."<sup>14</sup> Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes<sup>15</sup> and limits the Legislature's authority to provide for property valuations at less than just value, unless expressly authorized.<sup>16</sup> The just valuation standard generally requires the property appraiser to consider the highest and best use of property.<sup>17</sup>

### **Affordable Housing**

The Florida Constitution provides that portions of property used predominately for educational, literary, scientific, religious, or charitable purposes may be exempted by general law from taxation.<sup>18</sup>

Section 198.1978, F.S., authorizes property tax exemption for property owned by certain exempt entities which provide affordable housing under the charitable purposes exemption. The property must be owned entirely by a not-for-profit corporation used to provide affordable housing through any state housing program under ch. 420, F.S., and serving low-income and very-low-income persons.<sup>19</sup> In order to qualify for the exemption, the property must comply with s.

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<sup>12</sup> Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

<sup>13</sup> Property must be valued at "just value" for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm's-length transaction. See *Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

<sup>14</sup> See s. 192.001(2) and (16), F.S.

<sup>15</sup> FLA. CONST. art. VII, s. 1(a).

<sup>16</sup> See FLA. CONST. art. VII, s. 4.

<sup>17</sup> Section 193.011(2), F.S.

<sup>18</sup> FLA. CONST. art. VII, s. 3.

<sup>19</sup> The not for profit corporation must qualify as charitable under s. 501(c)(3) of the Internal Revenue Code and other federal regulations. See 26 U.S.C. § 501(c)(3) ("charitable purposes" include relief of the poor, the distressed or the underprivileged, the advancement of religion, and lessening the burdens of government).

196.195, F.S., for determining non-profit status of the property owner and s. 196.196, F.S., for determining exempt status of the use of the property.

In 2017, the Legislature provided that property used as affordable housing will be considered a charitable purpose and qualify for a 50 percent property tax discount if the property:

- Provides affordable housing to natural persons or families meeting the extremely-low, very-low, or low-income limits specified in s. 420.0004, F.S.;
- Contains more than 70 units used to provide affordable housing to the above group; and
- Is subject to an agreement with the Florida Housing Finance Corporation to provide affordable housing to the above group, recorded in the official records of the county in which the property is located.<sup>20</sup>

The property tax discount begins on January 1 of the year following the 15th year of the term of the agreement on those portions of the affordable housing property that provide the housing as described above. The discount terminates when the property is no longer serving extremely-low, very-low, or low-income persons pursuant to the recorded agreement. The discount is applied to taxable value prior to tax rolls being reported to taxing authorities.<sup>21</sup>

### **Capital Investment Tax Credit**

The Capital Investment Tax Credit (CITC) grants a tax credit to qualifying businesses of up to 5 percent of the eligible capital costs generated by a qualifying project.<sup>22</sup> The credit may be applied against corporate income tax or insurance premium tax liabilities generated by or arising out of a qualifying project.

Section 220.191, F.S., defines the projects that are eligible for the program. They include:

- A new or expanded facility in a designated high-impact sector<sup>23</sup> that creates at least 100 new jobs;
- A new or expanded facility in a target industry<sup>24</sup> that creates or retains at least 1,000 jobs, provided that at least 100 of those jobs are new, pay an annual average wage of at least 130 percent of the average private sector wage in the area, and result in a cumulative capital investment of at least \$100 million; and
- A new or expanded headquarters facility located in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least \$250 million.

<sup>20</sup> Chapter 2017-36, s. 6, Laws of Fla.

<sup>21</sup> Section 196.1978(c), F.S.

<sup>22</sup> Section 220.191(2)(a), F.S. Eligible capital costs include all expenses incurred in the acquisition, construction, installation, and equipping of a project from the beginning of construction to the commencement of operations.

<sup>23</sup> The sectors currently designated as high impact are transportation equipment (including aviation and aerospace), information technology, life sciences, financial services, corporate headquarters, and clean energy. See Office of Program Policy Analysis and Government Accountability, *Florida Economic Development Program Evaluations – Year 7, 17 (2019)*, available at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1916rpt.pdf> (last visited Feb. 4, 2020).

<sup>24</sup> The current targeted industries are aviation and aerospace; life sciences; manufacturing; defense and homeland security; information technology; financial and professional services; logistics and distribution; research and development; cleantech; and corporate headquarters. See Enterprise Florida, Inc., *Qualified Targeted Industries for Incentives*, available at [https://www.enterpriseflorida.com/wp-content/uploads/SI\\_Targeted\\_Industries.pdf](https://www.enterpriseflorida.com/wp-content/uploads/SI_Targeted_Industries.pdf) (last visited Feb. 4, 2020).

The annual tax credit may not exceed the following percentages of the annual corporate income tax liability or the insurance premium tax liability generated by or arising out of a qualifying project:

- 100 percent for a qualifying project which results in a cumulative capital investment of at least \$100 million;
- 75 percent for a qualifying project which results in a cumulative capital investment of at least \$50 million but less than \$100 million; or
- 50 percent for a qualifying project which results in a cumulative capital investment of at least \$25 million but less than \$50 million.<sup>25</sup>

A qualifying business that establishes a qualifying project in an enterprise zone and brownfield area that creates at least 1,500 jobs which on average pay at least 200 percent of the statewide average annual private sector wage and makes a cumulative capital investment in this state of at least \$250 million is eligible for a tax credit in an amount equal to the lesser of \$15 million or 5 percent of the eligible capital costs made in connection with the project. This tax credit may be granted annually for a period of up to 20 years beginning with the commencement of operations of the project. The total tax credit provided to such a qualifying business may not exceed 100 percent of the eligible capital costs of the project.<sup>26</sup>

The Department of Economic Opportunity, upon a recommendation by Enterprise Florida, Inc., must first certify a business as eligible to receive tax credits under the CITC prior to the commencement of operations of a qualifying project and transfer such certification to the DOR. The DOR will then enter into a written agreement with the qualifying business specifying the method by which income generated by a qualifying project will be determined.<sup>27</sup> Prior to receiving tax credits under the CITC, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations at a qualifying project.<sup>28</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 196.1978, F.S., to increase the ad valorem tax discount from 50 percent to 100 percent on multifamily projects that provide housing to extremely-low-income, very-low-income, or low-income families. The bill also provides that such a multifamily project will receive the ad valorem tax discount beginning in the 16th year of the term of agreement on the affordable housing property; current law provides that the discount will begin on January 1 of the year following the 15<sup>th</sup> year of such an agreement.

Section 1 takes effect January 1, 2021.

**Section 2** amends s. 212.08(5), F.S., exempting aircraft equipment used in government contracts from sales and use tax. Under the bill, equipment used to service, test, operate, upgrade, or configure aircraft for advanced training purposes as part of any contract with the DOD or with a military branch of a recognized foreign government is exempt from sales and use tax.

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<sup>25</sup> Section 220.191(2)(a), F.S.

<sup>26</sup> Section 220.191(3)(a), F.S.

<sup>27</sup> Section 220.191(5), F.S.

<sup>28</sup> Section 220.191(4), F.S.

“Equipment” includes electric and hydraulic ground power units, jet starter units, oxygen servicing and test equipment, engine trim boxes, and communications and avionics test sets.

Section 2 also amends s. 212.08(7)(fff), F.S., to provide that an aircraft owned by a nonresident is exempt from use tax if the aircraft enters or remains in the state exclusively to be used in service of a contract with the DOD or with a military branch of a recognized foreign government.

Section 2 takes effect July 1, 2020.

**Section 3** amends s. 212.08(7)(jjj), F.S., relating to tax exemptions for the purchase of industrial machinery and equipment by an eligible manufacturing business. Under current law, parts and accessories for industrial machinery and equipment are only included in the definition of “industrial machinery and equipment” and exempt from sales and use tax if the parts and accessories are purchased before the date the machinery and equipment are placed into service. The bill expands “industrial machinery and equipment” to include parts and accessories “necessary for the continued operation of the industrial machinery or equipment.”

Section 3 takes effect October 1, 2020.

**Section 4** amends s. 220.191, F.S., to include the creation of intellectual property as a project eligible for a tax credit under the CITC. Intellectual property includes copyrightable projects for the development of computer software, internal development platforms, and cloud-based services. At least 75 of the forecasted revenues for an intellectual property project must be from outside this state.

Eligible capital costs for intellectual property projects include wages, salaries, or other compensation paid to legal residents of Florida, as well as the cost of newly purchased software and hardware that are located in and exclusively used in Florida. For intellectual property projects, the qualifying project can be made up of one or more projects with different start and completion dates. The annual average wage of intellectual property project jobs must be at least 150 percent of the average private sector wage in the area.

A qualifying business may receive a tax credit equal to 20 percent of an intellectual property project’s eligible capital costs if the cumulative capital investment of one or more projects is in aggregate of at least \$50 million per year for 3 years and the capital investment of each individual project is at least \$3.75 million.

Taxpayers that are unable to use tax credits within 1 year due to insufficient tax liability may use any unused amount beginning in the year of the completion date of the project through the 9th year after completion of the project. The taxpayer may elect to transfer unused credits in any year; receiving businesses must use the credit in the year received.

Section 4 also requires that the Department of Economic Opportunity must first certify a business as eligible to receive tax credits under the CITC prior to the commencement of operations *or the completion date* of a qualifying project. Prior to receiving tax credits under the

CITC, a qualifying business must achieve and maintain the minimum employment goals beginning with the commencement of operations *or the completion date* or a qualifying project.

**Section 5** updates a cross-reference in s. 288.1089, F.S., referring to the definition of “cumulative investment” in s. 220.191, F.S.

**Section 6** provides that, except as expressly provided for in the bill, the bill takes effect upon becoming law.

#### 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, limit the ability of counties and municipalities to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

Subsection (b) of s. 18, Art. VII of the Florida Constitution provides that except upon approval of each house of the Legislature by two-thirds vote of the membership, the legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1, 1989. The mandate requirements do not apply to laws having an insignificant fiscal impact,<sup>29, 30</sup> which is \$2.1 million or less for Fiscal Year 2019-2020.<sup>31</sup>

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

None.

##### C. Trust Funds Restrictions:

None.

##### D. State Tax or Fee Increases:

None.

##### E. Other Constitutional Issues:

None.

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<sup>29</sup> FLA. CONST. art. VII, s. 18(d).

<sup>30</sup> An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year multiplied by \$0.10. 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 Feb. 4, 2020).

<sup>31</sup> Based on the Demographic Estimating Conference’s population adopted on July 8, 2019, available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 4, 2020).



**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet met regarding the bill.

**B. Private Sector Impact:**

Owners of multifamily projects that provide housing to extremely-low-income, very-low-income, or low-income families will realize additional savings on ad valorem taxes.

Purchasers of aircraft equipment used as part of a contract with the DOD or a military branch of a recognized foreign government, nonresident owners of aircraft that enter or remain in Florida to be used as part of a contract with the DOD or a military branch of a recognized foreign government, and eligible manufacturing businesses purchasing parts and accessories necessary for the continued operation of industrial machinery or equipment will realize savings.

Qualified businesses that establish qualified intellectual property projects will realize savings on corporate income tax and insurance premium tax liabilities.

**C. Government Sector Impact:**

The DOR has indicated that the bill would have no impact on its expenditures.

**VI. Technical Deficiencies:**

The bill's title is "An act relating to tax exemptions," but the CITC is a credit for taxes paid, not an exemption from taxation.

**VII. Related Issues:**

The bill exempts parts and accessories for industrial machinery and equipment purchased by an eligible manufacturing business from sales tax if the parts and accessories are "*necessary* for the continued operation of the industrial machinery or equipment." The bill does not provide specific criteria that parts and accessories must meet in order to be considered "*necessary*." Without any such criteria, there could be differing interpretations as to whether particular parts or accessories are eligible for the exemption.

**VIII. Statutes Affected:**

The bill substantially amends the following sections of the Florida Statutes: 196.1978, 212.08, 220.191, and 288.1089.

**IX. Additional Information:****A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Commerce and Tourism on February 4, 2020:**

- Increases the discount on ad valorem taxes owed on property in a multifamily project from 50 percent to 100 percent of the property's value;
- Changes the discount's start date from the 15th year of the project's agreement to the 16th year of the project's agreement;
- Allows projects that create intellectual property to qualify for the Capital Investment Tax Credit; and
- Creates a tax credit equal to 20 percent of a qualified business's capital costs when a business establishes an intellectual property project with a cumulative capital investment of at least \$50 million per year for 3 years.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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