

CHAPTER 98-318

Committee Substitute for Committee Substitute for House Bill Nos. 3249 and 3305

An act relating to the tax on sales, use, and other transactions; amending s. 212.08, F.S.; revising the activities that constitute a manufacturing function for purposes of the sales tax exemption on certain uses of electricity; exempting the sale of steam energy used in manufacturing; providing a threshold for electricity use; providing a presumption with respect to the proportion of nonexempt use for electricity use that falls below the threshold; deleting a requirement that the electricity be separately metered; revising the applicability of the exemption; providing an effective date.

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

Section 1. Paragraph (ii) of subsection (7) of section 212.08, Florida Statutes, is 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.

(7) MISCELLANEOUS EXEMPTIONS.—

(ii) Certain electricity or steam uses.—

1. Charges for electricity or steam used to operate machinery and equipment directly and exclusively at a fixed location in this state when such to operate machinery and equipment that is used to manufacture, process, compound, or produce, or prepare for shipment items of tangible personal property for sale, or to operate pollution control equipment, recycling equipment, maintenance equipment, or monitoring or control equipment used in such operations are exempt to the extent provided in this paragraph from the tax imposed by this chapter as provided in subparagraph 2. In order to qualify for this exemption, 75 percent or more of the electricity used at the fixed location must be used to operate qualifying machinery or equipment. If less than 75 percent but 50 percent or more of the electricity is used at a fixed location to operate qualifying machinery or equipment, then it is presumed that 50 percent of the charge for electricity is for nonexempt purposes. The exemption provided for herein is applicable if the electricity that is used for the exempt purposes is separately metered, or if it is not separately metered, it is irrevocably presumed that 50 percent of the charge for electricity is for nonexempt purposes.

2. This exemption only applies only to industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39. As used in this paragraph,

"SIC" means those classifications contained in the Standard Industrial Classification Manual, 1987, as published by the Office of Management and Budget, Executive Office of the President.

3. Possession by a seller of a written certification by the purchaser, certifying the purchaser's entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption.

4. Such exemption shall be applied as follows:

a.1. Beginning July 1, 1996, 20 percent of the charges for such electricity shall be exempt.

b.2. Beginning July 1, 1997, 40 percent of the charges for such electricity shall be exempt.

c.3. Beginning July 1, 1998, 60 percent of the charges for such electricity or steam shall be exempt.

d.4. Beginning July 1, 1999, 80 percent of the charges for such electricity or steam shall be exempt.

e.5. Beginning July 1, 2000, 100 percent of the charges for such electricity or steam shall be exempt.

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

6.a. In order to determine whether the exemption provided in this paragraph from the tax on charges for electricity or steam has an effect on retaining or attracting companies to this state, the Office of Program Policy Analysis and Governmental Accountability shall periodically monitor and report on the industries receiving the exemption.

b. The first report shall be submitted no later than January 1, 1997, and must be conducted in such a manner as to specifically determine the number of companies within each SIC Industry Major Group receiving the exemption as of September 1, 1996, and the number of individuals employed by companies within each SIC Industry Major Group receiving the exemption as of September 1, 1996.

c. The second report shall be submitted no later than January 1, 2001, and must be comprehensive in scope, but, at a minimum, must be conducted in such a manner as to specifically determine the number of companies within each SIC Industry Major Group receiving the exemption as of September 1, 2000, the number of individuals employed by companies within

each SIC Industry Major Group receiving the exemption as of September 1, 2000, whether the change, if any, in such number of companies or employees is attributable to the exemption provided in this paragraph, whether it would be sound public policy to continue or discontinue the exemption, and the consequences of doing so.

d. Both reports shall be submitted to the President of the Senate, the Speaker of the House of Representatives, the Senate Minority Leader, and the House Minority Leader.

Section 2. This act shall take effect July 1 of the year in which enacted.

Became a law without the Governor's approval May 30, 1998.

Filed in Office Secretary of State May 29, 1998.