

CHAPTER 99-171

House Bill No. 105

An act relating to tax on sales, use, and other transactions; amending s. 212.08, F.S.; providing that the exemptions for machinery and equipment used to increase productive output shall apply to machinery and equipment used in phosphate or other solid mineral severance, mining, or processing as a credit against taxes due under ch. 211, F.S., relating to tax on the severance and production of minerals; providing requirements for new and expanding businesses to qualify for such exemption and credit; providing an effective date.

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

Section 1. Paragraph (b) of subsection (5) of section 212.08, Florida Statutes, 1998 Supplement, 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.

(5) EXEMPTIONS; ACCOUNT OF USE.—

(b) Machinery and equipment used to increase productive output.—

1. Industrial machinery and equipment purchased for use in new businesses which manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property at fixed locations are exempt from the tax imposed by this chapter upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used in a new business in this state. Such purchases must be made prior to the date the business first begins its productive operations, and delivery of the purchased item must be made within 12 months of that date.

2.a. Industrial machinery and equipment purchased for use in expanding manufacturing facilities or plant units which manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property at fixed locations in this state are exempt from any amount of tax imposed by this chapter in excess of \$50,000 per calendar year upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such expanded business by not less than 10 percent.

b. 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 upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the productive output of such an expanded business by not less than 10 percent.

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

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

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

d. In the event a qualifying business entity fails to apply for a temporary exemption permit or if the tentative determination by the department required to obtain a temporary exemption permit is negative, a qualifying business entity shall receive the exemption provided in subparagraph 1. or subparagraph 2. through a refund of previously paid taxes. No refund may be made for such taxes unless the criteria mandated by subparagraph 1. or subparagraph 2. have been met and commencement of production has occurred.

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

5. The exemptions provided in subparagraphs 1. and 2. do not apply to machinery or equipment purchased or used by electric utility companies, communications companies, ~~phosphate or other solid minerals severance, mining, or processing operations,~~ 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, any firm subject to regulation by the Division of Hotels and Restaurants of the Department of Business and Professional Regulation, or any firm which does not manufacture, process, compound, or produce for sale, or for exclusive use in spaceport activities as defined in s. 212.02, items of tangible personal property. The exemptions provided in

subparagraphs 1. and 2. shall apply to 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 chapter 211 for taxes paid under this chapter on such machinery and equipment.

6. For the purposes of the exemptions provided in subparagraphs 1. and 2., these terms have the following meanings:

a. "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 the manufacturing, processing, compounding, or producing for sale, or for exclusive use in spaceport activities as defined in s. 212.02, 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.

b. "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. Increases in productive output shall be measured by the output for 12 continuous months immediately following the completion of installation of such machinery or equipment over the output for the 12 continuous months immediately preceding such installation. However, if a different 12-month continuous period of time would more accurately reflect the increase in productive output of machinery and equipment purchased to facilitate an expansion, the increase in productive output may be measured during that 12-month continuous period of time if such time period is mutually agreed upon by the Department of Revenue and the expanding business prior to the commencement of production; provided, however, in no case may such time period begin later than 2 years following the completion of installation of the new machinery and equipment. The units used to measure productive output shall be physically comparable between the two periods, irrespective of sales.

7. Notwithstanding any other provision in this paragraph to the contrary, in order to receive the exemption provided in this paragraph a taxpayer must 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.

Section 2. (1) In order to qualify for the exemption and credit provided in s. 212.08(5)(b)5., Florida Statutes, for machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations, an expanding business must demonstrate the following:

(a) For a business that has 2,500 or fewer Florida employees, the creation of new Florida jobs in an amount equal to at least 5 percent of its Florida employees; or

(b) For a business that has more than 2,500 Florida employees, the creation of new Florida jobs in an amount equal to at least 3 percent of its Florida employees.

(2) In order to qualify for the exemption and credit provided in s. 212.08(5)(b)5., Florida Statutes, for machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations, a new business must demonstrate the creation of at least 100 new Florida jobs.

(3) For purposes of this section, "new Florida job" means 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. For an expanding business, the number of existing Florida employees shall be determined as of the date on which the business commences construction of the expansion. The Office of Tourism, Trade, and Economic Development shall:

(a) For an expanding business, document the number of persons employed in Florida by such business as of the date of commencement of construction of the expansion and the number of new Florida jobs created by such business within 24 months following the completion of construction of the expansion;

(b) For a new business, document the number of new Florida jobs created by such business within 24 months of completion of construction of the new business; and

(c) Certify such to the Department of Revenue.

Section 3. This act shall take effect July 1, 1999.

Approved by the Governor May 14, 1999.

Filed in Office Secretary of State May 14, 1999.