

House Bill No. 69

An act relating to exemptions from the tax on sales, use, and other transactions; providing a short title; providing legislative findings and purpose; amending s. 212.08, F.S.; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment used to increase productive output; deleting an exemption for machinery and equipment used to expand certain printing manufacturing facilities or plant units; deleting a limitation on application of the exemption for machinery and equipment purchased for use in phosphate or other solid minerals severance, mining, or processing operations by way of a prospective credit; deleting an annual limitation on an exemption from the sales tax for certain machinery and equipment purchased under a federal procurement contract; repealing s. 212.0805, F.S., relating to qualifications for the exemption and credit for machinery and equipment purchased by an expanding business for use in phosphate or other solid minerals severance, mining, or processing operations; providing an appropriation; providing an effective date.

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

Section 1. Short title.—This act may be cited as the “Florida Manufacturing Global Competitiveness Act.”

Section 2. Legislative findings and purpose.—The Legislature finds that a competitive manufacturing business climate is important given that the manufacturing sector contributes significantly to the economy of this state, helping the state to weather natural and manmade disasters; that the development of free trade agreements with the Americas will allow the state to be the gateway to increased international trade that will expand the opportunities for manufacturing exports, potentially add thousands of well-paying jobs in the state, and secure this state’s place in emerging markets in the world marketplace; and that with the potential for increasing exports, an investment in manufacturing today will mean significant long-term positive economic benefits to the state tomorrow.

Section 3. Paragraphs (b) and (d) 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.

(5) EXEMPTIONS; ACCOUNT OF USE.—

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

1. Industrial machinery and equipment purchased for exclusive use by a new business in spaceport activities as defined by s. 212.02 or for use in new businesses which manufacture, process, compound, or produce for sale 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 exclusive use by an expanding facility which is engaged in spaceport activities as defined by s. 212.02 or for use in expanding manufacturing facilities or plant units which 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 ~~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 facility or 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 re-

quired 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 adopt 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, 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 items of tangible personal property or which does not use such machinery and equipment in spaceport activities as required by this paragraph. 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 tangible personal property or other property that has a depreciable life of 3 years or more and that is used as an integral part in the manufacturing, processing, compounding, or production of tangible personal property for sale or is exclusively used in spaceport activities. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The 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.

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

1. Industrial machinery and equipment purchased by an expanding business which manufactures tangible personal property pursuant to federal procurement regulations at fixed locations in this state are ~~partially exempt from the tax imposed in this chapter on that portion of the tax which is in excess of \$100,000 per calendar year~~ upon an affirmative showing by the taxpayer to the satisfaction of the department that such items are used to increase the implicit productive output of the expanded business by not less than 10 percent. The percentage of increase is measured as deflated implicit productive output for the calendar year during which the installation of the machinery or equipment is completed or during which commencement of production utilizing such items is begun divided by the implicit productive output for the preceding calendar year. In no case may the commencement of production begin later than 2 years following completion of installation of the machinery or equipment.

2. The amount of the exemption allowed shall equal the taxes otherwise imposed by this chapter ~~in excess of \$100,000 per calendar year~~ on qualifying industrial machinery or equipment reduced by the percentage of gross receipts from cost-reimbursement type contracts attributable to the plant or operation to total gross receipts so attributable, accrued for the year of completion or commencement.

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

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

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

b. "Deflated implicit productive output" means the product of implicit productive output times the quotient of the national defense implicit price

deflator for the preceding calendar year divided by the deflator for the year of completion or commencement.

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

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

e. "Industrial machinery and equipment" means tangible personal property or other property that has a depreciable life of 3 years or more, that qualifies as an eligible cost under federal procurement regulations, and that is used as an integral part of the process of production of tangible personal property. A building and its structural components are not industrial machinery and equipment unless the building or structural component is so closely related to the industrial machinery and equipment that it houses or supports that the building or structural component can be expected to be replaced when the machinery and equipment are replaced. Heating and air-conditioning systems are not industrial machinery and equipment unless the sole justification for their installation is to meet the requirements of the production process, even though the system may provide incidental comfort to employees or serve, to an insubstantial degree, nonproduction activities. The term includes parts and accessories only to the extent that the exemption of such parts and accessories is consistent with the provisions of this paragraph.

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

5. The exclusions provided in subparagraph (b)5. apply to this exemption. This exemption applies only to machinery or equipment purchased pursuant to production contracts with the United States Department of Defense and Armed Forces, the National Aeronautics and Space Administration, and other federal agencies for which the contracts are classified for national security reasons. In no event shall the provisions of this paragraph apply to any expanding business the increase in productive output of which could be measured under the provisions of sub-subparagraph (b)6.b. as physically comparable between the two periods.

Section 4. Section 212.0805, Florida Statutes, is repealed.

Section 5. For the 2006-2007 fiscal year, the sum of \$203,574 in recurring funds and the sum of \$19,372 in nonrecurring funds are appropriated from the General Revenue Fund to the Department of Revenue and four full-time equivalent positions and associated salary rate of 137,955 are authorized for the purpose of implementing this act.

Section 6. This act shall take effect July 1, 2006.

Approved by the Governor May 30, 2006.

Filed in Office Secretary of State May 30, 2006.