

House Bill No. 415

An act relating to the tax on sales, use, and other transactions; amending s. 212.052, F.S.; deleting an exception to an exemption from the tax for research or development costs; amending s. 212.08, F.S.; deleting provisions providing an exemption on account of use for machinery and equipment used for research and development; revising provisions for application for the exemption; specifying the term of validity of an exemption certification; providing for biennial renewal of certifications; providing criteria; deleting a limitation on number of exemption applications by a business in a year; exempting machinery and equipment used predominantly for research and development activities; providing definitions; authorizing the Department of Revenue to adopt rules administering and implementing the exemption; providing requirements and procedures for claiming the exemption; requiring an affidavit to be given by a taxpayer claiming entitlement to the exemption; providing penalties for fraudulently claiming the exemption; providing recordkeeping requirements; providing an effective date.

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

Section 1. Subsection (2) of section 212.052, Florida Statutes, is amended to read:

212.052 Research or development costs; exemption.—

(2) Notwithstanding any provision of this chapter to the contrary, any person, including an affiliated group as defined in s. 1504 of the Internal Revenue Code of 1954, as amended, who manufactures, produces, compounds, processes, or fabricates in any manner tangible personal property for such taxpayer's own use directly and solely in research or development shall not be subject to the tax imposed by this chapter upon the cost of the product so manufactured, produced, compounded, processed, or fabricated. ~~However, the tax imposed by this chapter shall be due on the purchase, rental, or repair of real property or tangible personal property employed in research or development which is subject to the tax imposed by this chapter at the time of purchase or rental.~~

Section 2. Paragraph (j) of subsection (5) of section 212.08, Florida Statutes, is amended, and subsection (18) is added to that section, 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.—

(j) Machinery and equipment used in semiconductor, defense, or space technology production ~~and research and development.~~—

1.a. Industrial machinery and equipment used in semiconductor technology facilities certified under subparagraph ~~5.~~ 6. to manufacture, process, compound, or produce semiconductor technology products for sale or for use by these facilities are exempt from the tax imposed by this chapter. For purposes of this paragraph, industrial machinery and equipment includes molds, dies, machine tooling, other appurtenances or accessories to machinery and equipment, testing equipment, test beds, computers, and software, whether purchased or self-fabricated, and, if self-fabricated, includes materials and labor for design, fabrication, and assembly.

b. Industrial machinery and equipment used in defense or space technology facilities certified under subparagraph ~~5.~~ 6. to design, manufacture, assemble, process, compound, or produce defense technology products or space technology products for sale or for use by these facilities are exempt from ~~25 percent of the tax imposed by this chapter.~~

~~2.a. Machinery and equipment are exempt from the tax imposed by this chapter if used predominately in semiconductor wafer research and development activities in a semiconductor technology research and development facility certified under subparagraph 6. For purposes of this paragraph, machinery and equipment includes molds, dies, machine tooling, other appurtenances or accessories to machinery and equipment, testing equipment, test beds, computers, and software, whether purchased or self-fabricated, and, if self-fabricated, includes materials and labor for design, fabrication, and assembly.~~

~~b. Machinery and equipment are exempt from 25 percent of the tax imposed by this chapter if used predominately in defense or space research and development activities in a defense or space technology research and development facility certified under subparagraph 6.~~

2.3. Building materials purchased for use in manufacturing or expanding clean rooms in semiconductor-manufacturing facilities are exempt from the tax imposed by this chapter.

3.4. In addition to meeting the criteria mandated by subparagraph 1. ~~or~~, subparagraph 2., ~~or subparagraph 3.~~, a business must be certified by the Office of Tourism, Trade, and Economic Development as authorized in this paragraph in order to qualify for exemption under this paragraph.

4.5. For items purchased tax exempt pursuant to this paragraph, possession of a written certification from the purchaser, certifying the purchaser's entitlement to exemption pursuant to this paragraph, relieves the seller of the responsibility of collecting the tax on the sale of such items, and the department shall look solely to the purchaser for recovery of tax if it determines that the purchaser was not entitled to the exemption.

5.6.a. To be eligible to receive the exemption provided by subparagraph 1. ~~or~~, subparagraph 2., ~~or subparagraph 3.~~, a qualifying business entity shall apply initially to Enterprise Florida, Inc. The original certification shall be

valid for a period of 2 years. In lieu of submitting a new application, the original certification may be renewed biennially by submitting to the Office of Tourism, Trade, and Economic Development a statement, certified under oath, that there has been no material change in the conditions or circumstances entitling the business entity to the original certification. The initial application and the certification renewal statement shall be developed by the Office of Tourism, Trade, and Economic Development in consultation with Enterprise Florida, Inc.

b. Enterprise Florida, Inc., shall review each submitted initial application and information and determine whether or not the application is complete within 5 working days. Once an application is complete, Enterprise Florida, Inc., shall, within 10 working days, evaluate the application and recommend approval or disapproval of the application to the Office of Tourism, Trade, and Economic Development.

c. Upon receipt of the initial application and recommendation from Enterprise Florida, Inc., or upon receipt of a certification renewal statement, the Office of Tourism, Trade, and Economic Development shall certify within 5 working days those applicants who are found to meet the requirements of this section and notify the applicant, Enterprise Florida, Inc., and the department of the original certification or certification renewal. If the Office of Tourism, Trade, and Economic Development finds that the applicant does not meet the requirements of this section, it shall notify the applicant and Enterprise Florida, Inc., within 10 working days that the application for certification has been denied and the reasons for denial. The Office of Tourism, Trade, and Economic Development has final approval authority for certification under this section.

~~7.a. A business may apply once each year for the exemption.~~

~~d.b.~~ The initial application and certification renewal statement must indicate, for program evaluation purposes only, the average number of full-time equivalent employees at the facility over the preceding calendar year, the average wage and benefits paid to those employees over the preceding calendar year, the total investment made in real and tangible personal property over the preceding calendar year, and the total value of tax-exempt purchases and taxes exempted during the previous year. The department shall assist the Office of Tourism, Trade, and Economic Development in evaluating and verifying information provided in the application for exemption.

~~e.e.~~ The Office of Tourism, Trade, and Economic Development may use the information reported on the initial application and certification renewal statement for evaluation purposes only and shall prepare an annual report on the exemption program and its cost and impact. The annual report for the preceding fiscal year shall be submitted to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 30 of each fiscal year.

6.8. A business certified to receive this exemption may elect to designate one or more state universities or community colleges as recipients of up to 100 percent of the amount of the exemption for which they may qualify. To

receive these funds, the institution must agree to match the funds so earned with equivalent cash, programs, services, or other in-kind support on a one-to-one basis in the pursuit of research and development projects as requested by the certified business. The rights to any patents, royalties, or real or intellectual property must be vested in the business unless otherwise agreed to by the business and the university or community college.

7.9. As used in this paragraph, the term:

~~a. “Predominately” means at least 50 percent of the time in qualifying research and development.~~

~~b. “Research and development” means basic and applied research in the science or engineering, as well as the design, development, and testing of prototypes or processes of new or improved products. Research and development does not include market research, routine consumer product testing, sales research, research in the social sciences or psychology, nontechnological activities, or technical services.~~

~~a.e. “Semiconductor technology products” means raw semiconductor wafers or semiconductor thin films that are transformed into semiconductor memory or logic wafers, including wafers containing mixed memory and logic circuits; related assembly and test operations; active-matrix flat panel displays; semiconductor chips; semiconductor lasers; optoelectronic elements; and related semiconductor technology products as determined by the Office of Tourism, Trade, and Economic Development.~~

~~b.d. “Clean rooms” means manufacturing facilities enclosed in a manner that meets the clean manufacturing requirements necessary for high-technology semiconductor-manufacturing environments.~~

~~c.e. “Defense technology products” means products that have a military application, including, but not limited to, weapons, weapons systems, guidance systems, surveillance systems, communications or information systems, munitions, aircraft, vessels, or boats, or components thereof, which are intended for military use and manufactured in performance of a contract with the United States Department of Defense or the military branch of a recognized foreign government or a subcontract thereunder which relates to matters of national defense.~~

~~d.f. “Space technology products” means products that are specifically designed or manufactured for application in space activities, including, but not limited to, space launch vehicles, space flight vehicles, missiles, satellites or research payloads, avionics, and associated control systems and processing systems and components of any of the foregoing. The term does not include products that are designed or manufactured for general commercial aviation or other uses even though those products may also serve an incidental use in space applications.~~

(18) MACHINERY AND EQUIPMENT USED PREDOMINANTLY FOR RESEARCH AND DEVELOPMENT.—

(a) Machinery and equipment used predominantly for research and development as defined in this subsection are exempt from the tax imposed by this chapter.

(b) For purposes of this subsection:

1. "Machinery and equipment" includes, but is not limited to, molds, dies, machine tooling, other appurtenances or accessories to machinery and equipment, testing and measuring equipment, test beds, computers, and software, whether purchased or self-fabricated, and, if self-fabricated, includes materials and labor for design, fabrication, and assembly.

2. "Predominantly" means at least 50 percent of the time.

3. "Research and development" means research that has one of the following as its ultimate goal:

a. Basic research in a scientific field of endeavor;

b. Advancing knowledge or technology in a scientific or technical field of endeavor;

c. The development of a new product, whether or not the new product is offered for sale;

d. The improvement of an existing product, whether or not the improved product is offered for sale;

e. The development of new uses of an existing product, whether or not a new use is offered as a rationale to purchase the product; or

f. The design and development of prototypes, whether or not a resulting product is offered for sale.

The term "research and development" does not include ordinary testing or inspection of materials or products used for quality control, market research, efficiency surveys, consumer surveys, advertising and promotions, management studies, or research in connection with literary, historical, social science, psychological, or other similar nontechnical activities.

(c) The department may adopt rules pursuant to ss. 120.536(1) and 120.54 that provide for administering and implementing this exemption.

(d) A person who claims the exemption provided in this subsection shall furnish the vendor of the machinery or equipment, including the vendor of materials and labor used in self-fabrication of the machinery or equipment, an affidavit stating that the item or items for which an exemption is claimed are machinery and equipment that will be used predominantly for research and development as required by this subsection. A purchaser who claims the exemption by refund shall include the affidavit with the refund application. The affidavit must contain the purchaser's name, address, sales and use tax registration number, and, if applicable, federal employer's identification number. Any person fraudulently furnishing an affidavit to the vendor for

the purpose of evading payment of any tax imposed under this chapter shall be subject to the penalty set forth in s. 212.085 and as otherwise provided by law.

(e) In lieu of furnishing an affidavit, a purchaser claiming the exemption provided in this subsection who has a direct-pay permit may furnish the vendor with a copy of the direct-pay permit and shall maintain all documentation necessary to prove the exempt status of the purchases and fabrication activity.

(f) Purchasers shall maintain all documentation necessary to prove the exempt status of purchases and fabrication activity and make such documentation available for inspection pursuant to the requirements of s. 212.13(2).

Section 3. This act shall take effect July 1, 2006.

Approved by the Governor May 30, 2006.

Filed in Office Secretary of State May 30, 2006.