

By the Committees on Education; Commerce and Consumer Services; and Senators Smith, Fasano and Crist

581-2166-05

1                                       A bill to be entitled  
 2                                       An act relating to the tax on sales, use, and  
 3                                       other transactions; amending s. 212.052, F.S.;  
 4                                       deleting an exception to an exemption from the  
 5                                       tax for research or development costs; amending  
 6                                       s. 212.08, F.S.; providing an exemption for  
 7                                       machinery and equipment used in semiconductor,  
 8                                       defense, or space technology research and  
 9                                       development activities; providing definitions;  
 10                                      providing for the adoption of rules pertaining  
 11                                      to procedures to claim exemptions and revising  
 12                                      guidelines relating to such procedures;  
 13                                      providing for a review of the exemption by the  
 14                                      Office of Program Policy Analysis and  
 15                                      Government Accountability and Enterprise  
 16                                      Florida, Inc.; requiring a report; providing an  
 17                                      effective date.

18  
 19 Be It Enacted by the Legislature of the State of Florida:

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

23                                      212.052 Research or development costs; exemption.--

24                                      (2) Notwithstanding any provision of this chapter to  
 25 the contrary, any person, including an affiliated group as  
 26 defined in s. 1504 of the Internal Revenue Code of 1954, as  
 27 amended, who manufactures, produces, compounds, processes, or  
 28 fabricates in any manner tangible personal property for such  
 29 taxpayer's own use directly and solely in research or  
 30 development shall not be subject to the tax imposed by this  
 31 chapter upon the cost of the product so manufactured,

1 produced, compounded, processed, or fabricated. ~~However, the~~  
2 ~~tax imposed by this chapter shall be due on the purchase,~~  
3 ~~rental, or repair of real property or tangible personal~~  
4 ~~property employed in research or development which is subject~~  
5 ~~to the tax imposed by this chapter at the time of purchase or~~  
6 ~~rental.~~

7 Section 2. Paragraph (j) of subsection (5) of section  
8 212.08, Florida Statutes, is amended to read:

9 212.08 Sales, rental, use, consumption, distribution,  
10 and storage tax; specified exemptions.--The sale at retail,  
11 the rental, the use, the consumption, the distribution, and  
12 the storage to be used or consumed in this state of the  
13 following are hereby specifically exempt from the tax imposed  
14 by this chapter.

15 (5) EXEMPTIONS; ACCOUNT OF USE.--

16 (j) Machinery and equipment used in semiconductor,  
17 defense, or space technology production and research and  
18 development.--

19 1.a. Industrial machinery and equipment used in  
20 semiconductor technology facilities certified by the Office of  
21 Tourism, Trade, and Economic Development ~~under subparagraph 6.~~  
22 to manufacture, process, compound, or produce semiconductor  
23 technology products for sale or for use by these facilities  
24 are exempt from the tax imposed by this chapter. ~~For purposes~~  
25 ~~of this paragraph, industrial machinery and equipment includes~~  
26 ~~molds, dies, machine tooling, other appurtenances or~~  
27 ~~accessories to machinery and equipment, testing equipment,~~  
28 ~~test beds, computers, and software, whether purchased or~~  
29 ~~self fabricated, and, if self fabricated, includes materials~~  
30 ~~and labor for design, fabrication, and assembly.~~

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

5           ~~c.b.~~ Industrial machinery and equipment used in  
6 defense or space technology facilities certified by the Office  
7 of Tourism, Trade, and Economic Development ~~under subparagraph~~  
8 ~~6.~~ to manufacture, process, compound, or produce defense  
9 technology products or space technology products for sale or  
10 for use by these facilities are exempt from 25 percent of the  
11 tax imposed by this chapter.

12           d. Machinery and equipment used predominantly for  
13 research and development as defined in s. 212.052 are exempt  
14 from the tax imposed by this chapter.

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

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

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1           ~~3. Building materials purchased for use in~~  
2 ~~manufacturing or expanding clean rooms in~~  
3 ~~semiconductor manufacturing facilities are exempt from the tax~~  
4 ~~imposed by this chapter.~~

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

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

18           ~~6.a. To be eligible to receive the exemption provided~~  
19 ~~by subparagraph 1., subparagraph 2., or subparagraph 3., a~~  
20 ~~qualifying business entity shall apply to Enterprise Florida,~~  
21 ~~Inc. The application shall be developed by the Office of~~  
22 ~~Tourism, Trade, and Economic Development in consultation with~~  
23 ~~Enterprise Florida, Inc.~~

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

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1           ~~c. Upon receipt of the application and recommendation~~  
2 ~~from Enterprise Florida, Inc., the Office of Tourism, Trade,~~  
3 ~~and Economic Development shall certify within 5 working days~~  
4 ~~those applicants who are found to meet the requirements of~~  
5 ~~this section and notify the applicant, Enterprise Florida,~~  
6 ~~Inc., and the department of the certification. If the Office~~  
7 ~~of Tourism, Trade, and Economic Development finds that the~~  
8 ~~applicant does not meet the requirements of this section, it~~  
9 ~~shall notify the applicant and Enterprise Florida, Inc.,~~  
10 ~~within 10 working days that the application for certification~~  
11 ~~has been denied and the reasons for denial. The Office of~~  
12 ~~Tourism, Trade, and Economic Development has final approval~~  
13 ~~authority for certification under this section.~~

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

16           ~~b. The application must indicate, for program~~  
17 ~~evaluation purposes only, the average number of full time~~  
18 ~~equivalent employees at the facility over the preceding~~  
19 ~~calendar year, the average wage and benefits paid to those~~  
20 ~~employees over the preceding calendar year, the total~~  
21 ~~investment made in real and tangible personal property over~~  
22 ~~the preceding calendar year, and the total value of tax exempt~~  
23 ~~purchases and taxes exempted during the previous year. The~~  
24 ~~department shall assist the Office of Tourism, Trade, and~~  
25 ~~Economic Development in evaluating and verifying information~~  
26 ~~provided in the application for exemption.~~

27           ~~c. The Office of Tourism, Trade, and Economic~~  
28 ~~Development may use the information reported on the~~  
29 ~~application for evaluation purposes only and shall prepare an~~  
30 ~~annual report on the exemption program and its cost and~~  
31 ~~impact. The annual report for the preceding fiscal year shall~~

1 ~~be submitted to the Governor, the President of the Senate, and~~  
2 ~~the Speaker of the House of Representatives by September 30 of~~  
3 ~~each fiscal year.~~

4 2.8. A business receiving an ~~certified to receive this~~  
5 exemption under this paragraph may elect to designate one or  
6 more state universities or community colleges as recipients of  
7 up to 100 percent of the amount of the exemption for which  
8 they may qualify. To receive these funds, the institution must  
9 agree to match the funds so earned with equivalent cash,  
10 programs, services, or other in-kind support on a one-to-one  
11 basis in the pursuit of research and development projects as  
12 requested by the certified business. The rights to any  
13 patents, royalties, or real or intellectual property must be  
14 vested in the business unless otherwise agreed to by the  
15 business and the university or community college.

16 3. The department may adopt rules to implement this  
17 exemption and for assumption of self-accrual authority that is  
18 authorized by this paragraph. Persons or entities claiming  
19 such exemptions shall furnish the vendor of the machinery and  
20 equipment, including the vendor of the materials and labor  
21 used in self-fabrication of the machinery and equipment, an  
22 affidavit stating that the items for which an exemption is  
23 claimed are machinery and equipment that will be used for the  
24 purposes required by this paragraph. A purchaser who claims  
25 the exemption by refund shall include the affidavit with the  
26 refund application. The affidavit must contain the purchaser's  
27 name, address, sales and use tax registration number, and, if  
28 applicable, federal employer identification number. Any person  
29 fraudulently furnishing an affidavit to the vendor for the  
30 purpose of evading payment of any tax imposed under this  
31 chapter shall be subject to the penalty in s. 212.085 and as

1 otherwise provided by law. Purchasers shall maintain all  
2 documentation necessary to prove the exempt status of  
3 purchases and fabrication activity and make such documentation  
4 available for inspection pursuant to s. 212.13(2). In lieu of  
5 furnishing an affidavit, a purchaser claiming the exemption in  
6 this paragraph who has a direct pay permit may give the vendor  
7 a copy of the direct pay permit and shall maintain all  
8 documentation necessary to prove the exempt status of the  
9 purchases and fabrication activity and make such documentation  
10 available for inspection pursuant to s. 212.13(2).

11 ~~4.9.~~ As used in this paragraph, the term:

12 a. "Predominately" means at least 50 percent of the  
13 time in qualifying research and development.

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

21 ~~b.e.~~ "Semiconductor technology products" means raw  
22 semiconductor wafers or semiconductor thin films that are  
23 transformed into semiconductor memory or logic wafers,  
24 including wafers containing mixed memory and logic circuits;  
25 related assembly and test operations; active-matrix flat panel  
26 displays; semiconductor chips; semiconductor lasers;  
27 optoelectronic elements; and related semiconductor technology  
28 products as determined by the Office of Tourism, Trade, and  
29 Economic Development.

30 ~~c.d.~~ "Clean rooms" means manufacturing facilities  
31 enclosed in a manner that meets the clean manufacturing

1 requirements necessary for high-technology  
2 semiconductor-manufacturing environments.

3 ~~d.e.~~ "Defense technology products" means products that  
4 have a military application, including, but not limited to,  
5 weapons, weapons systems, guidance systems, surveillance  
6 systems, communications or information systems, munitions,  
7 aircraft, vessels, or boats, or components thereof, which are  
8 intended for military use and manufactured in performance of a  
9 contract with the United States Department of Defense or the  
10 military branch of a recognized foreign government or a  
11 subcontract thereunder which relates to matters of national  
12 defense.

13 ~~e.f.~~ "Space technology products" means products that  
14 are specifically designed or manufactured for application in  
15 space activities, including, but not limited to, space launch  
16 vehicles, missiles, satellites or research payloads, avionics,  
17 and associated control systems and processing systems. The  
18 term does not include products that are designed or  
19 manufactured for general commercial aviation or other uses  
20 even though those products may also serve an incidental use in  
21 space applications.

22 f. "Industrial machinery and equipment" includes  
23 molds, dies, machine tooling, other appurtenances or  
24 accessories to machinery and equipment, testing equipment,  
25 test beds, computers, and software, whether purchased or  
26 self-fabricated, and, if self-fabricated, includes materials  
27 and labor for design, fabrication, and assembly.

28 5. The exemption in this paragraph is subject to  
29 review by the Legislature no later than July 1, 2015. The  
30 Office of Program Policy Analysis and Government  
31 Accountability and Enterprise Florida, Inc., shall study this



1 exemption to determine the impact of the exemption on the  
2 promotion of research and development activities in this  
3 state. Enterprise Florida, Inc., may contract with an  
4 independent research organization to perform the assessment.  
5 The study shall include the estimated annual cost of the  
6 exemption and an estimate of any economic impact of increased  
7 research and development activities. By January 1, 2015, the  
8 Office of Program Policy Analysis and Enterprise Florida,  
9 Inc., shall submit reports to the Governor, the President of  
10 the Senate, and the Speaker of the House of Representatives  
11 which provide findings and recommendations as to whether the  
12 exemption should be re-enacted by the Legislature.

13           Section 3. This act shall take effect July 1, 2005.

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15                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
16                   COMMITTEE SUBSTITUTE FOR  
17                   CS for Senate Bill 2362

18 The committee substitute revises the sales and use tax  
19 exemption to include certain research and development costs  
20 and authorizes a state match for eligible gifts or pledges  
21 from the semiconductor account located in the Trust Fund for  
22 University Major Gifts.  
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