

HB 1109

2012

1 A bill to be entitled
2 An act relating to businesses located in enterprise
3 zones; amending s. 212.08, F.S.; clarifying that the
4 tax exemption for business property purchased for use
5 by businesses located in an enterprise zone applies to
6 the use tax and not just the sales tax; specifying
7 that the monetary caps applicable to the sales and use
8 tax exemption for such business property are
9 calculated on a per item basis; deleting a provision
10 limiting sales and use tax refunds for such business
11 property to amounts in excess of \$100 on purchases
12 made within a specified time period; amending s.
13 212.096, F.S.; revising the definitions of the terms
14 "eligible business," "job," and "new job has been
15 created" for purposes relating to application of the
16 enterprise zone jobs credit against the sales tax;
17 revising requirements applicable to the making of
18 sworn statements and the filing of applications
19 claiming the enterprise zone jobs credit against the
20 sales tax; authorizing an eligible business that files
21 a consolidated tax return to take the enterprise zone
22 jobs credit against such business's consolidated tax
23 liability; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26

27 Section 1. Paragraph (h) of subsection (5) of section
28 212.08, Florida Statutes, is amended to read:

29 212.08 Sales, rental, use, consumption, distribution, and
 30 storage tax; specified exemptions.—The sale at retail, the
 31 rental, the use, the consumption, the distribution, and the
 32 storage to be used or consumed in this state of the following
 33 are hereby specifically exempt from the tax imposed by this
 34 chapter.

35 (5) EXEMPTIONS; ACCOUNT OF USE.—

36 (h) Business property used in an enterprise zone.—

37 1. Business property purchased for use by businesses
 38 located in an enterprise zone which is subsequently used in an
 39 enterprise zone is ~~shall be~~ exempt from the tax imposed by this
 40 chapter. This exemption inures to the business only through a
 41 refund of previously paid taxes. A refund shall be authorized
 42 upon an affirmative showing by the taxpayer to the satisfaction
 43 of the department that the requirements of this paragraph have
 44 been met.

45 2. To receive a refund, the business must file under oath
 46 with the governing body or enterprise zone development agency
 47 having jurisdiction over the enterprise zone where the business
 48 is located, as applicable, an application which includes:

49 a. The name and address of the business claiming the
 50 refund.

51 b. The identifying number assigned pursuant to s. 290.0065
 52 to the enterprise zone in which the business is located.

53 c. A specific description of the property for which a
 54 refund is sought, including its serial number or other permanent
 55 identification number.

56 d. The location of the property.

HB 1109

2012

57 e. The sales invoice or other proof of purchase of the
58 property, showing the amount of sales or use tax paid, the date
59 of purchase, and the name and address of the ~~sales tax~~ dealer
60 from whom the property was purchased.

61 f. Whether the business is a small business as defined by
62 s. 288.703.

63 g. If applicable, the name and address of each permanent
64 employee of the business, including, for each employee who is a
65 resident of an enterprise zone, the identifying number assigned
66 pursuant to s. 290.0065 to the enterprise zone in which the
67 employee resides.

68 3. Within 10 working days after receipt of an application,
69 the governing body or enterprise zone development agency shall
70 review the application to determine if it contains all the
71 information required pursuant to subparagraph 2. and meets the
72 criteria set out in this paragraph. The governing body or agency
73 shall certify all applications that contain the information
74 required pursuant to subparagraph 2. and meet the criteria set
75 out in this paragraph as eligible to receive a refund. If
76 applicable, the governing body or agency shall also certify if
77 20 percent of the employees of the business are residents of an
78 enterprise zone, excluding temporary and part-time employees.
79 The certification shall be in writing, and a copy of the
80 certification shall be transmitted to the executive director of
81 the Department of Revenue. The business is ~~shall be~~ responsible
82 for forwarding a certified application to the department within
83 the time specified in subparagraph 4.

84 4. An application for a refund pursuant to this paragraph

HB 1109

2012

85 must be submitted to the department within 6 months after the
86 tax is due on the business property that is purchased.

87 5. The amount refunded on purchases of business property
88 under this paragraph shall be the lesser of 97 percent of the
89 sales or use tax paid on such business property or \$5,000 per
90 item of business property purchased, or, if no less than 20
91 percent of the employees of the business are residents of an
92 enterprise zone, excluding temporary and part-time employees,
93 the amount refunded on purchases of business property under this
94 paragraph shall be the lesser of 97 percent of the sales tax
95 paid on such business property or \$10,000 per item of business
96 property purchased. A refund approved pursuant to this paragraph
97 shall be made within 30 days after formal approval by the
98 department of the application for the refund. ~~A refund may not~~
99 ~~be granted under this paragraph unless the amount to be refunded~~
100 ~~exceeds \$100 in sales tax paid on purchases made within a 60-day~~
101 ~~time period.~~

102 6. The department shall adopt rules governing the manner
103 and form of refund applications and may establish guidelines as
104 to the requisites for an affirmative showing of qualification
105 for exemption under this paragraph.

106 7. If the department determines that the business property
107 is used outside an enterprise zone within 3 years from the date
108 of purchase, the amount of taxes refunded to the business
109 purchasing such business property shall immediately be due and
110 payable to the department by the business, together with the
111 appropriate interest and penalty, computed from the date of
112 purchase, in the manner provided by this chapter.

113 Notwithstanding this subparagraph, business property used
 114 exclusively in:

- 115 a. Licensed commercial fishing vessels,
- 116 b. Fishing guide boats, or
- 117 c. Ecotourism guide boats

118
 119 that leave and return to a fixed location within an area
 120 designated under s. 379.2353, Florida Statutes 2010, are
 121 eligible for the exemption provided under this paragraph if all
 122 requirements of this paragraph are met. Such vessels and boats
 123 must be owned by a business that is eligible to receive the
 124 exemption provided under this paragraph. This exemption does not
 125 apply to the purchase of a vessel or boat.

126 8. The department shall deduct an amount equal to 10
 127 percent of each refund granted under this paragraph from the
 128 amount transferred into the Local Government Half-cent Sales Tax
 129 Clearing Trust Fund pursuant to s. 212.20 for the county area in
 130 which the business property is located and shall transfer that
 131 amount to the General Revenue Fund.

132 9. For the purposes of this exemption, "business property"
 133 means new or used property defined as "recovery property" in s.
 134 168(c) of the Internal Revenue Code of 1954, as amended, except:

- 135 a. Property classified as 3-year property under s.
 136 168(c)(2)(A) of the Internal Revenue Code of 1954, as amended;
- 137 b. Industrial machinery and equipment as defined in sub-
 138 subparagraph (b)6.a. and eligible for exemption under paragraph
 139 (b);
- 140 c. Building materials as defined in sub-subparagraph

HB 1109

2012

141 (g) 8.a.; and

142 d. Business property having a sales price of under \$5,000
 143 per purchase unit.

144 10. This paragraph expires on the date specified in s.
 145 290.016 for the expiration of the Florida Enterprise Zone Act.

146 Section 2. Section 212.096, Florida Statutes, is amended
 147 to read:

148 212.096 Sales, rental, storage, use tax; enterprise zone
 149 jobs credit against sales tax.—

150 (1) For the purposes of the credit provided in this
 151 section:

152 (a) "Eligible business" means a location of any sole
 153 proprietorship, firm, partnership, corporation, bank, savings
 154 association, estate, trust, business trust, receiver, syndicate,
 155 or other group or combination, or successor business, located in
 156 an enterprise zone. The eligible business must demonstrate to
 157 the department that, on the date of application, the total
 158 number of full-time jobs defined under paragraph (d) is greater
 159 at the location stated in the application than the total was 12
 160 months prior to that date. An eligible business does not include
 161 any business that ~~which~~ has claimed the credit permitted under
 162 s. 220.181 for any new business employee first beginning
 163 employment with the business after July 1, 1995.

164 (b) "Month" means either a calendar month or the time
 165 period from any day of any month to the corresponding day of the
 166 next succeeding month or, if there is no corresponding day in
 167 the next succeeding month, the last day of the succeeding month.

168 (c) "New employee" means a person residing in an

HB 1109

2012

169 enterprise zone or a participant in the welfare transition
170 program who begins employment with an eligible business after
171 July 1, 1995, and who has not been previously employed full time
172 within the preceding 12 months by the eligible business, or a
173 successor eligible business, claiming the credit allowed by this
174 section.

175 (d) "Job" means a full-time position, as consistent with
176 terms used by the Agency for Workforce Innovation and the United
177 States Department of Labor for purposes of unemployment
178 compensation tax administration and employment estimation
179 resulting directly from a business operation in this state. This
180 term may not include a temporary construction job involved with
181 the construction of facilities or any job that has previously
182 been included in any application for tax credits under s.
183 220.181(1). The term also includes employment of an employee:

184 1. Leased from an employee leasing company licensed under
185 chapter 468 if such employee has been continuously leased to the
186 employer for an average of at least 36 hours per week for more
187 than 6 months.

188 2. Paid through a subsidiary or affiliate management
189 company if the payroll expense is ultimately borne by the
190 eligible business.

191 (e) "New job has been created" means that, on the date of
192 application, the total number of full-time jobs is greater at
193 the location stated in the application than the total was 12
194 months prior to that date, as demonstrated to the department by
195 a business located in the enterprise zone.

196

197 A person shall be deemed to be employed if the person performs
 198 duties in connection with the operations of the eligible
 199 business on a regular, full-time basis, provided the person is
 200 performing such duties for an average of at least 36 hours per
 201 week each month. The person must be performing such duties at an
 202 eligible ~~a~~ business site located in the enterprise zone.

203 (2) (a) Upon an affirmative showing by an eligible business
 204 to the satisfaction of the department that the requirements of
 205 this section have been met, the eligible business shall be
 206 allowed a credit against the tax remitted under this chapter.

207 (b) The credit shall be computed as 20 percent of the
 208 actual monthly wages paid in this state to each new employee
 209 hired when a new job has been created, unless the eligible
 210 business is located within a rural enterprise zone pursuant to
 211 s. 290.004, in which case the credit shall be 30 percent of the
 212 actual monthly wages paid. If no less than 20 percent of the
 213 employees of the eligible business are residents of an
 214 enterprise zone, excluding temporary and part-time employees,
 215 the credit shall be computed as 30 percent of the actual monthly
 216 wages paid in this state to each new employee hired when a new
 217 job has been created, unless the eligible business is located
 218 within a rural enterprise zone, in which case the credit shall
 219 be 45 percent of the actual monthly wages paid. If the new
 220 employee hired when a new job is created is a participant in the
 221 welfare transition program, the following credit shall be a
 222 percent of the actual monthly wages paid: 40 percent for \$4
 223 above the hourly federal minimum wage rate; 41 percent for \$5
 224 above the hourly federal minimum wage rate; 42 percent for \$6

225 | above the hourly federal minimum wage rate; 43 percent for \$7
 226 | above the hourly federal minimum wage rate; and 44 percent for
 227 | \$8 above the hourly federal minimum wage rate. For purposes of
 228 | this paragraph, monthly wages shall be computed as one-twelfth
 229 | of the expected annual wages paid to such employee. The amount
 230 | paid as wages to a new employee is the compensation paid to such
 231 | employee that is subject to unemployment tax. The credit shall
 232 | be allowed for up to 24 consecutive months, beginning with the
 233 | first tax return due pursuant to s. 212.11 after approval by the
 234 | department.

235 | (3) In order to claim this credit, an eligible business
 236 | must file under oath with the governing body or enterprise zone
 237 | development agency having jurisdiction over the enterprise zone
 238 | where the eligible business is located, as applicable, a
 239 | statement that ~~which~~ includes:

240 | (a) For each new employee for whom this credit is claimed,
 241 | the employee's name and place of residence, including the
 242 | identifying number assigned pursuant to s. 290.0065 to the
 243 | enterprise zone in which the employee resides if the new
 244 | employee is a person residing in an enterprise zone, and, if
 245 | applicable, documentation that the employee is a welfare
 246 | transition program participant.

247 | (b) If applicable, the name and address of each permanent
 248 | employee of the business, including, for each employee who is a
 249 | resident of an enterprise zone, the identifying number assigned
 250 | pursuant to s. 290.0065 to the enterprise zone in which the
 251 | employee resides.

252 | (c) The name and address of the eligible business.

253 (d) The starting salary or hourly wages paid to the new
 254 employee.

255 (e) Demonstration to the department that, on the date of
 256 application, the total number of full-time jobs defined under
 257 paragraph (1)(d) is greater at the location stated in the
 258 application than the total was 12 months prior to that date.

259 (f) The identifying number assigned pursuant to s.
 260 290.0065 to the enterprise zone in which the eligible business
 261 is located.

262 (g) Whether the eligible business is a small business as
 263 defined by s. 288.703(1).

264 (4)(h) Within 10 working days after receipt of an
 265 application, the governing body or enterprise zone development
 266 agency shall review the application to determine if it contains
 267 all the information required pursuant to ~~this~~ subsection (3) and
 268 meets the criteria set out in this section. The governing body
 269 or agency shall certify all applications that contain the
 270 information required pursuant to ~~this~~ subsection (3) and meet
 271 the criteria set out in this section as eligible to receive a
 272 credit. If applicable, the governing body or agency shall also
 273 certify if 20 percent of the employees of the eligible business
 274 are residents of an enterprise zone, excluding temporary and
 275 part-time employees. The certification shall be in writing, and
 276 a copy of the certification shall be transmitted to the
 277 executive director of the Department of Revenue. The eligible
 278 business ~~is shall be~~ responsible for forwarding a certified
 279 application to the department within the time specified in
 280 subsection (5) paragraph (i).

281 (5)~~(i)~~ All applications for a credit pursuant to this
 282 section must be submitted to the department within 6 months
 283 after the new employee begins employment at the eligible
 284 business ~~is hired~~, except applications for credit for leased
 285 employees. Applications for credit for leased employees must be
 286 submitted to the department within 7 months after the employee
 287 is leased and begins employment at the eligible business.

288 (6)~~(4)~~ Within 10 working days after receipt of a completed
 289 application for a credit authorized in this section, the
 290 department shall inform the eligible business that the
 291 application has been approved. The credit may be taken on the
 292 first return due after receipt of approval from the department.

293 (7)~~(5)~~ If ~~In the event~~ the application is incomplete or
 294 insufficient to support the credit authorized in this section,
 295 the department shall deny the credit and notify the eligible
 296 business of that fact. The eligible business may reapply for
 297 this credit.

298 (8)~~(6)~~ The credit provided in this section does not apply:

299 (a) For any new employee who is an owner, partner, or
 300 majority stockholder of an eligible business.

301 (b) For any new employee who is employed for any period
 302 less than 3 months.

303 (9)~~(7)~~ The credit provided in this section is ~~shall~~ not be
 304 allowed for any month in which the tax due for such period or
 305 the tax return required pursuant to s. 212.11 for such period is
 306 delinquent.

307 (10)~~(8)~~ If ~~In the event~~ an eligible business has a credit
 308 larger than the amount owed the state on the tax return for the

HB 1109

2012

309 time period in which the credit is claimed, the amount of the
310 credit for that time period shall be the amount owed the state
311 on that tax return. If an eligible business files consolidated
312 tax returns, the credit may be taken against its consolidated
313 tax liability.

314 ~~(11)-(9)~~ Any eligible business that ~~which~~ has claimed this
315 credit is ~~shall not be~~ allowed any credit under ~~the provisions~~
316 ~~of~~ s. 220.181 for any new employee beginning employment after
317 July 1, 1995.

318 ~~(12)-(10)~~ It is ~~shall be~~ the responsibility of each
319 eligible business to affirmatively demonstrate to the
320 satisfaction of the department that it meets the requirements of
321 this section.

322 ~~(13)-(11)~~ Any person who fraudulently claims this credit is
323 liable for repayment of the credit, plus a mandatory penalty of
324 100 percent of the credit plus interest at the rate provided in
325 this chapter, and commits ~~such person is guilty of~~ a misdemeanor
326 of the second degree, punishable as provided in s. 775.082 or s.
327 775.083.

328 ~~(14)-(12)~~ This section, except for subsection (11), expires
329 on the date specified in s. 290.016 for the expiration of the
330 Florida Enterprise Zone Act.

331 Section 3. This act shall take effect July 1, 2012.