

highways, such as, on a farm for farm processing, in school buses, and in commercial fishing vessels.³ Because it is exempt from the taxes in ch. 206, F.S., dyed diesel is less expensive than non-dyed diesel fuel. Consequently, dyed diesel allows the Department of Revenue (DOR) to ensure vehicles and equipment are using the dyed diesel fuel only for exempt purposes.

Although dyed diesel fuel is exempt from the taxes in ch. 206, F.S., it is generally not exempt from the sales tax in ch. 212, F.S.⁴ Under s. 212.05, F.S., a 6 percent sales tax is levied on the sale price of each gallon of diesel fuel not taxed under ch. 206, F.S., used in a vessel.⁵ Because dyed diesel fuel used in commercial fishing vessels is exempt from taxes under ch. 206, F.S., it is subject to the 6 percent sales tax in s. 212.05, F.S.

Section 212.08, F.S., provides a partial exemption from the 6 percent sales tax for dyed diesel fuel used by vessels to transport persons or property in interstate or foreign commerce, including commercial fishing vessels.⁶ This partial exemption is calculated based on the ratio of intrastate mileage to interstate or foreign mileage traveled by vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the previous fiscal year.⁷ This ratio, known as the mileage apportionment factor, is generally determined at the close of the carrier's fiscal year.⁸

Dyed diesel fuel used exclusively in intrastate commerce does not qualify for the prorated exemption.⁹ Consequently, dyed diesel fuel used for inshore commercial fishing or fishing that occurs within the territorial waters of Florida is not exempt from the 6 percent sales tax.¹⁰

III. Effect of Proposed Changes:

Sections 1, 2, and 3 amend ss. 212.05, 212.0501, and 212.08, F.S., to provide a sales tax exemption for dyed diesel fuel that is placed in the storage tanks of vessels used exclusively for commercial fishing and aquaculture purposes. "Commercial fishing and aquacultural purposes" is defined as "fuel used by boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, or sponges from salt or fresh waters under the jurisdiction of the state

³ Section 206.874(3), F.S. Similarly, motor fuel used for aquacultural and commercial fishing purposes are exempt from the local option tax, state comprehensive enhanced transportation system tax, municipal fuel tax, and fuel sales taxes paid under s. 206.41, F.S. Section 206.41(4)(c), F.S.

⁴ Section 212.0501(3), F.S., exempts diesel fuel used "on account of residential purposes; or in any tractor, vehicle, or other equipment used exclusively on a farm or for processing farm products on the farm, no part of which diesel fuel is used in any licensed motor vehicle on the public highways of this state; or the purchase or storage of diesel fuel held for resale."

⁵ Section 212.05(1)(k), F.S.

⁶ See Rule 12A-1.0641, F.A.C. "Commercial fishing vessels" are defined by DOR as "vessels designed, constructed, and used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt and fresh waters for sale. Vessels used for sports or pleasure fishing, such as pleasure fishing boats, charter boats, or party boats, are not commercial fishing vessels."

⁷ Section 212.08(4)(a)2., F.S.; Rule 12A-1.0641, F.A.C.

⁸ *Supra* note 7. The calculation for the first year's ratio is based on an estimated ratio of anticipated miles in the state to the anticipated total miles for that year, and either an additional tax will be paid or a refund may be applied for based on the actual ratio of miles in the state to total miles for the year. Section 212.08(4)(a)2., F.S.

⁹ *Supra* note 7.

¹⁰ See Rule 12A-1.0641, F.A.C.

for resale to the public.” The definition specifically excludes fuel used for sport or pleasure fishing.¹¹

Any fuel not used exclusively for commercial fishing or aquaculture purposes is subject to the 6 percent sales tax levied under s. 212.05(1)(k), F.S.

Section 4 provides that the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference determined that this bill will decrease revenue deposited in the State Transportation Trust Fund by \$0.3 million in Fiscal Year 13-14, with a negative \$0.4 million recurring impact to the trust fund.

B. Private Sector Impact:

Commercial fishermen and aquaculture producers who operate in state waters may benefit from the reduced tax assessment on dyed diesel fuel used to operate their commercial vessels.

C. Government Sector Impact:

According to DOR, the bill will have an insignificant operational impact on the agency.¹²

VI. Technical Deficiencies:

None.

¹¹ Section 206.41(4)(c)3., F.S.

¹² Department of Revenue, *Agency Bill Analysis: CS/HB 423* (March 6, 2013) (on file with the Senate Commerce and Tourism Committee).

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Commerce and Tourism on March 18, 2013:

The committee substitute:

- Extends the sales tax exemption on dyed diesel fuel to vessels used for commercial fishing and aquaculture purposes, which includes commercial shrimping.
- Removes the requirement that the purchaser provide the seller with a written statement, signed by the purchaser, verifying that the fuel is to be used by the vessel exclusively for the taking of shrimp from salt and fresh waters for sale.

- B. **Amendments:**

None.