

1 A bill to be entitled
2 An act relating to sales tax exemptions for hydrogen
3 products; amending s. 212.08, F.S.; exempting from
4 sales taxes the purchase of certain machinery and
5 equipment that produce electric or steam energy from
6 burning hydrogen; requiring a proration of the
7 exemption under specified conditions; exempting from
8 sales taxes the purchase of hydrogen used in specified
9 industrial settings; defining the terms "green
10 hydrogen" and "primarily used"; exempting from sales
11 taxes the purchase of certain machinery and equipment
12 involving green hydrogen, certain types of ammonia,
13 and certain electrochemical reactions of green
14 hydrogen and oxygen; authorizing the Department of
15 Revenue to adopt rules to implement the exemptions;
16 providing guidelines for purchasers to use in
17 obtaining an exemption; providing penalties; providing
18 an effective date.

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

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22 Section 1. Paragraph (c) of subsection (5) and paragraph
23 (b) of subsection (7) of section 212.08, Florida Statutes, are
24 amended, and paragraph (ppp) is added to subsection (7) of that
25 section, to read:

HB 1163

2022

26 212.08 Sales, rental, use, consumption, distribution, and
27 storage tax; specified exemptions.—The sale at retail, the
28 rental, the use, the consumption, the distribution, and the
29 storage to be used or consumed in this state of the following
30 are hereby specifically exempt from the tax imposed by this
31 chapter.

32 (5) EXEMPTIONS; ACCOUNT OF USE.—

33 (c) Machinery and equipment used in production of
34 electrical or steam energy.—

35 1. The purchase of machinery and equipment for use at a
36 fixed location which machinery and equipment are necessary in
37 the production of electrical or steam energy resulting from the
38 burning of hydrogen or boiler fuels other than residual oil, is
39 exempt from the tax imposed by this chapter. Such electrical or
40 steam energy must be primarily for use in manufacturing,
41 processing, compounding, or producing for sale items of tangible
42 personal property in this state. Use of a de minimis amount of
43 residual fuel to facilitate the burning of nonresidual fuel
44 shall not reduce the exemption otherwise available under this
45 paragraph.

46 2. In facilities where machinery and equipment are
47 necessary to burn hydrogen, or ~~both~~ residual and nonresidual
48 fuels, the exemption shall be prorated. Such proration shall be
49 based upon the production of electrical or steam energy from
50 nonresidual fuels and hydrogen as a percentage of electrical or

51 steam energy from all fuels. If it is determined that 15 percent
52 or less of all electrical or steam energy generated was produced
53 by burning residual fuel, the full exemption shall apply.
54 Purchasers claiming a partial exemption shall obtain such
55 exemption by refund of taxes paid, or as otherwise provided in
56 the department's rules.

57 3. The department may adopt rules that provide for
58 implementation of this exemption. Purchasers of machinery and
59 equipment qualifying for the exemption provided in this
60 paragraph shall furnish the vendor with an affidavit stating
61 that the item or items to be exempted are for the use designated
62 herein. Any person furnishing a false affidavit to the vendor
63 for the purpose of evading payment of any tax imposed under this
64 chapter shall be subject to the penalty set forth in s. 212.085
65 and as otherwise provided by law. Purchasers with self-accrual
66 authority shall maintain all documentation necessary to prove
67 the exempt status of purchases.

68 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
69 entity by this chapter do not inure to any transaction that is
70 otherwise taxable under this chapter when payment is made by a
71 representative or employee of the entity by any means,
72 including, but not limited to, cash, check, or credit card, even
73 when that representative or employee is subsequently reimbursed
74 by the entity. In addition, exemptions provided to any entity by
75 this subsection do not inure to any transaction that is

76 otherwise taxable under this chapter unless the entity has
77 obtained a sales tax exemption certificate from the department
78 or the entity obtains or provides other documentation as
79 required by the department. Eligible purchases or leases made
80 with such a certificate must be in strict compliance with this
81 subsection and departmental rules, and any person who makes an
82 exempt purchase with a certificate that is not in strict
83 compliance with this subsection and the rules is liable for and
84 shall pay the tax. The department may adopt rules to administer
85 this subsection.

86 (b) Boiler fuels.—When purchased for use as a combustible
87 fuel, purchases of natural gas, residual oil, recycled oil,
88 waste oil, solid waste material, coal, sulfur, hydrogen, wood,
89 wood residues or wood bark used in an industrial manufacturing,
90 processing, compounding, or production process at a fixed
91 location in this state are exempt from the taxes imposed by this
92 chapter; however, such exemption shall not be allowed unless the
93 purchaser signs a certificate stating that the fuel to be
94 exempted is for the exclusive use designated herein. This
95 exemption does not apply to the use of boiler fuels that are not
96 used in manufacturing, processing, compounding, or producing
97 items of tangible personal property for sale, or to the use of
98 boiler fuels used by any firm subject to regulation by the
99 Division of Hotels and Restaurants of the Department of Business
100 and Professional Regulation.

101 (ppp) Green hydrogen.-

102 1. As used this paragraph, the term:

103 a. "Green hydrogen" means hydrogen created using an

104 electrolytic process powered from renewable energy sources,

105 including solar energy, wind energy, and geothermal energy. The

106 term also includes hydrogen created using the pyrolytic

107 decomposition of methane gas.

108 b. "Primarily used" means a use of at least 50 percent.

109 2. The following are exempt from the tax imposed by this

110 chapter:

111 a. The purchase of machinery and equipment primarily used

112 in the production, storage, transportation, compression, or

113 blending of green hydrogen. The machinery and equipment must be

114 used at a fix location

115 b. The purchase of machinery and equipment primarily used

116 in the production, storage, transportation, compression, or

117 blending of ammonia derived from green hydrogen, if the ammonia

118 will be converted back to green hydrogen before its use or sale.

119 The machinery and equipment must be used at a fix location.

120 c. The purchase of machinery and equipment that are

121 necessary to produce electrical energy resulting from the

122 electrochemical reaction of green hydrogen and oxygen in a fuel

123 cell. The electrical energy must be primarily used in

124 manufacturing, processing, compounding, or producing for sale

125 items of tangible personal property in this state. The machinery

126 and equipment must be used at a fix location.

127 3. Purchasers of machinery and equipment qualifying for
128 the exemption provided in this paragraph shall furnish the
129 vendor with an affidavit stating that the item or items to be
130 exempted are for the use designated herein. Purchasers with
131 self-accrual authority pursuant to s. 212.183 are not required
132 to provide this affidavit but shall maintain all documentation
133 necessary to prove the exempt status of purchases.

134 4. A person furnishing a false affidavit to the vendor for
135 the purpose of evading payment of any tax imposed under this
136 chapter shall be subject to the penalty set forth in s. 212.085
137 and as otherwise provided by law. Purchasers with self-accrual
138 authority pursuant to s. 212.183 are not required to provide an
139 affidavit but shall maintain all documentation necessary to
140 prove the exempt status of purchases.

141 5. The department may adopt rules to implement the
142 exemptions in this paragraph.

143 Section 2. This act shall take effect July 1, 2022.