

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; providing guidelines for  
15          purchasers to use in obtaining an exemption; providing  
16          penalties; authorizing the Department of Revenue to  
17          adopt rules to implement the exemptions; providing an  
18          effective date.

19  
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:

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 fixed 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 fixed 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 fixed 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.