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Section IV
Emergency Rules

DEPARTMENT OF REVENUE

Sales and Use Tax

RULE NO.: RULE TITLE:

12AER22-10 Fuels

SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY OR WELFARE: Section 53 of Chapter 2022-97, Laws of Florida, authorizes the Department of Revenue to promulgate emergency rules to implement the exemption from tax for hydrogen used in the manufacturing, processing, compounding, or production of tangible personal property for sale. The promulgation of this emergency rule ensures that the public is notified in the most expedient and appropriate manner regarding the exemption for hydrogen and the suggested exemption certificate to be used to document the exemption.

REASON FOR CONCLUDING THAT THE PROCEDURE IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules to implement the provisions of Section 23 of Chapter 2022-97, Laws of Florida. Additionally, this emergency rule is the most expedient and appropriate means of notifying taxpayers of these provisions.

SUMMARY: Emergency Rule 12AER22-10 amends Rule 12A-1.059, F.A.C., to incorporate the exemption from tax for hydrogen used in the manufacturing, processing, compounding, or production of tangible personal property for sale.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULE IS: Brinton Hevey, Technical Assistance and Dispute Resolution, telephone (850)717-7754, email RuleComments@floridarevenue.com.

THE FULL TEXT OF THE EMERGENCY RULE IS:

12AER22-10 12A-1.059 Fuels

(1) No change

(2)(a) "Boiler" fuels. When purchased as a combustible fuel, purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material as defined in Section 403.703(35)(13), F.S., coal, sulfur, hydrogen, wood, wood residues, or wood bark

used in an industrial manufacturing, processing, compounding, or production process at a fixed location in this state is exempt. For the purpose of this exemption, the term "residual oil" means ASTM Grades No. 5 and No. 6, heavy diesel, and bunker C. This exemption does not apply to any type of liquefied petroleum gases, naphtha, kerosene, or distillate fuel oil, such as diesel fuels, No. 1 and No. 2 heating oils, and No. 4 fuel oil. The term "fixed location" means being permanently affixed to one location or plant site, or any portable plant which may be set up for a period of not less than six months in a stationary manner so as to perform the same industrial manufacturing, processing, compounding, or production process that could be performed at a permanent location or plant site. To be entitled to this exemption at the time of purchase, the purchaser must issue the seller a certificate stating that the combustible fuel is used in an industrial manufacturing, processing, compounding, or production process. The following is a suggested format of a certificate to be used for this purpose:

SUGGESTED PURCHASER'S EXEMPTION CERTIFICATE

BOILER FUELS USED TO PRODUCE TANGIBLE PERSONAL PROPERTY FOR SALE

I, the undersigned individual, hereby certify that I am the purchaser or the purchaser's agent or representative authorized to act for \_\_\_\_\_, (PURCHASER) in the purchase of boiler fuels. The ~~incorporated in the State of \_\_\_\_\_, its undersigned officer who is duly authorized, hereby certifies to \_\_\_\_\_~~ that purchases of natural gas, residual oil, recycled oil, waste oil, solid waste material as defined in section 403.703(35)(13), Florida Statutes F.S., coal, sulfur, hydrogen, wood, wood residues, or wood bark from \_\_\_\_\_ (SELLER) under account number \_\_\_\_\_ will be exclusively used as a combustible fuel in the manufacturing, processing, compounding, or production of tangible personal property for sale. This industrial process is located at \_\_\_\_\_ (ADDRESS) in \_\_\_\_\_, Florida, County of \_\_\_\_\_.

I further certify ~~Further, it is certified~~ that \_\_\_\_\_ (PURCHASER) is not subject to regulation by the Division of Hotels and Restaurants, of the Department of Business and Professional Regulation, and the ~~The purchase of the combustible fuel as identified in pursuant to this certificate certification~~ is exempt from sales and use tax as provided in, pursuant to Section 212.08(7)(b), Florida Statutes F.S.

I understand that if I fraudulently issue this certificate to evade

the payment of sales and use tax, I will be liable for payment of the tax plus a penalty of 200% of the tax and may be subject to conviction of a third-degree felony.

Under penalties of perjury, I declare that I have read the foregoing certificate and that the facts stated in it are true.

\_\_\_\_\_  
Signature of Purchaser or Purchaser's Agent or Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

Dated at \_\_\_\_\_, Florida, this \_\_\_\_\_ day of \_\_\_\_\_.

AUTHORIZED OFFICER OF COMPANY

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

(b) No change

(3) through (6) No change

Rulemaking Authority 212.18(2), 213.06(1) FS. Law Implemented 206.86(4), 212.05, 212.06(3), 212.08(4), (7)(b), (j), (8) FS., section 23, Ch. 2022-97 LOF. History—New 10-7-68, Amended 6-16-72, 7-19-72, 12-11-74, 10-18-78, 7-3-79, 6-3-80, 12-23-80, 8-26-81, 12-31-81, 7-20-82, 10-13-83, Formerly 12A-1.59, Amended 12-13-88, 5-19-93, 9-14-93, 3-20-96, 10-2-01, 4-17-03, 6-12-03, 5-9-13, 1-20-14, 7-1-22.

THIS RULE TAKES EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE IS SPECIFIED IN THE RULE.

EFFECTIVE DATE: July 1, 2022

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