

By Senator Benacquisto

27-01652B-11

20111810__

1 A bill to be entitled
2 An act relating to energy; amending s. 212.08, F.S.;
3 providing additional definitions for purposes of the
4 exemption for sales or use of equipment, machinery,
5 and other materials for renewable energy technologies;
6 including under the exemption materials used in
7 distributing renewable diesel fuel and renewable fuel
8 oil; delaying expiration of the exemption; amending s.
9 220.192, F.S.; providing additional definitions for
10 purposes of the tax credit for investment in renewable
11 energy technologies; amending s. 220.193, F.S.;
12 extending the dates for which certain renewable energy
13 production tax credits are available; deleting an
14 expired provision; amending s. 570.074, F.S.; renaming
15 the Office of Water Coordination as the "Office of
16 Energy and Water"; adding certain energy policy to the
17 jurisdiction of the office; repealing s. 570.954,
18 F.S., relating to a requirement that the Department
19 Agriculture and Consumer Services coordinate with and
20 solicit expertise of the state energy office within
21 the Department of Environmental Protection when
22 developing and implementing the farm-to-fuel
23 initiative; providing an effective date.

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

26
27 Section 1. Paragraph (ccc) of subsection (7) of section
28 212.08, Florida Statutes, is amended to read:
29 212.08 Sales, rental, use, consumption, distribution, and

27-01652B-11

20111810__

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 (7) MISCELLANEOUS EXEMPTIONS.—Exemptions provided to any
36 entity by this chapter do not inure to any transaction that is
37 otherwise taxable under this chapter when payment is made by a
38 representative or employee of the entity by any means,
39 including, but not limited to, cash, check, or credit card, even
40 when that representative or employee is subsequently reimbursed
41 by the entity. In addition, exemptions provided to any entity by
42 this subsection do not inure to any transaction that is
43 otherwise taxable under this chapter unless the entity has
44 obtained a sales tax exemption certificate from the department
45 or the entity obtains or provides other documentation as
46 required by the department. Eligible purchases or leases made
47 with such a certificate must be in strict compliance with this
48 subsection and departmental rules, and any person who makes an
49 exempt purchase with a certificate that is not in strict
50 compliance with this subsection and the rules is liable for and
51 shall pay the tax. The department may adopt rules to administer
52 this subsection.

53 (ccc) *Equipment, machinery, and other materials for*
54 *renewable energy technologies.*—

55 1. As used in this paragraph, the term:

56 a. "Biodiesel" means the mono-alkyl esters of long-chain
57 fatty acids derived from plant or animal matter for use as a
58 source of energy and meeting the specifications for biodiesel

27-01652B-11

20111810

59 and biodiesel blends with petroleum products as adopted by the
60 Department of Agriculture and Consumer Services. Biodiesel may
61 refer to biodiesel blends designated BXX, where XX represents
62 the volume percentage of biodiesel fuel in the blend.

63 b. "Ethanol" means an anhydrous denatured alcohol produced
64 by the conversion of carbohydrates meeting the specifications
65 for fuel ethanol and fuel ethanol blends with petroleum products
66 as adopted by the Department of Agriculture and Consumer
67 Services. Ethanol may refer to fuel ethanol blends designated
68 EXX, where XX represents the volume percentage of fuel ethanol
69 in the blend.

70 c. "Hydrogen fuel cells" means equipment using hydrogen or
71 a hydrogen-rich fuel in an electrochemical process to generate
72 energy, electricity, or the transfer of heat.

73 d. "Renewable diesel fuel" means liquid fuel for use in
74 diesel-powered engines which is derived from biomass that meets:

75 (I) The registration requirements for fuel and fuel
76 additives established by the Environmental Protection Agency;
77 and

78 (II) The specifications and requirements as adopted by the
79 Department of Agriculture and Consumer Services.

80 e. "Renewable fuel oil" means liquid fuel for use in fuel
81 oil applications which is derived from biomass that meets:

82 (I) The registration requirements for fuel and fuel
83 additives established by the Environmental Protection Agency;
84 and

85 (II) The specifications and requirements as adopted by the
86 Department of Agriculture and Consumer Services.

87 2. The sale or use of the following in the state is exempt

27-01652B-11

20111810__

88 from the tax imposed by this chapter:

89 a. Hydrogen-powered vehicles, materials incorporated into
90 hydrogen-powered vehicles, and hydrogen-fueling stations, up to
91 a limit of \$2 million in tax each state fiscal year for all
92 taxpayers.

93 b. Commercial stationary hydrogen fuel cells, up to a limit
94 of \$1 million in tax each state fiscal year for all taxpayers.

95 c. Materials used in the distribution of biodiesel (B10-
96 B100), ~~and~~ ethanol (E10-E100), renewable diesel fuel, and
97 renewable fuel oil, including fueling infrastructure,
98 transportation, and storage, up to a limit of \$1 million in tax
99 each state fiscal year for all taxpayers. Gasoline fueling
100 station pump retrofits for ethanol (E10-E100) distribution
101 qualify for the exemption provided in this sub-subparagraph.

102 3. The Florida Energy and Climate Commission shall provide
103 to the department a list of items eligible for the exemption
104 provided in this paragraph.

105 4.a. The exemption provided in this paragraph shall be
106 available to a purchaser only through a refund of previously
107 paid taxes. An eligible item is subject to refund one time. A
108 person who has received a refund on an eligible item shall
109 notify the next purchaser of the item that such item is no
110 longer eligible for a refund of paid taxes. This notification
111 shall be provided to each subsequent purchaser on the sales
112 invoice or other proof of purchase.

113 b. To be eligible to receive the exemption provided in this
114 paragraph, a purchaser shall file an application with the
115 Florida Energy and Climate Commission. The application shall be
116 developed by the Florida Energy and Climate Commission, in

27-01652B-11

20111810__

117 consultation with the department, and shall require:

118 (I) The name and address of the person claiming the refund.

119 (II) A specific description of the purchase for which a
120 refund is sought, including, when applicable, a serial number or
121 other permanent identification number.

122 (III) The sales invoice or other proof of purchase showing
123 the amount of sales tax paid, the date of purchase, and the name
124 and address of the sales tax dealer from whom the property was
125 purchased.

126 (IV) A sworn statement that the information provided is
127 accurate and that the requirements of this paragraph have been
128 met.

129 c. Within 30 days after receipt of an application, the
130 Florida Energy and Climate Commission shall review the
131 application and shall notify the applicant of any deficiencies.
132 Upon receipt of a completed application, the Florida Energy and
133 Climate Commission shall evaluate the application for exemption
134 and issue a written certification that the applicant is eligible
135 for a refund or issue a written denial of such certification
136 within 60 days after receipt of the application. The Florida
137 Energy and Climate Commission shall provide the department with
138 a copy of each certification issued upon approval of an
139 application.

140 d. Each certified applicant shall be responsible for
141 forwarding a certified copy of the application and copies of all
142 required documentation to the department within 6 months after
143 certification by the Florida Energy and Climate Commission.

144 e. A refund approved pursuant to this paragraph shall be
145 made within 30 days after formal approval by the department.

27-01652B-11

20111810__

146 f. The Florida Energy and Climate Commission may adopt the
147 form for the application for a certificate, requirements for the
148 content and format of information submitted to the Florida
149 Energy and Climate Commission in support of the application,
150 other procedural requirements, and criteria by which the
151 application will be determined by rule. The department may adopt
152 all other rules pursuant to ss. 120.536(1) and 120.54 to
153 administer this paragraph, including rules establishing
154 additional forms and procedures for claiming this exemption.

155 g. The Florida Energy and Climate Commission shall be
156 responsible for ensuring that the total amounts of the
157 exemptions authorized do not exceed the limits as specified in
158 subparagraph 2.

159 5. The Florida Energy and Climate Commission shall
160 determine and publish on a regular basis the amount of sales tax
161 funds remaining in each fiscal year.

162 6. This paragraph expires July 1, 2015 ~~2010~~.

163 Section 2. Subsection (1) of section 220.192, Florida
164 Statutes, is amended to read:

165 220.192 Renewable energy technologies investment tax
166 credit.—

167 (1) DEFINITIONS.—For purposes of this section, the term:

168 (a) "Biodiesel" means biodiesel as defined in s.
169 212.08(7)(ccc).

170 (b) "Corporation" includes a general partnership, limited
171 partnership, limited liability company, unincorporated business,
172 or other business entity, including entities taxed as
173 partnerships for federal income tax purposes.

174 (c) "Eligible costs" means:

27-01652B-11

20111810__

175 1. Seventy-five percent of all capital costs, operation and
176 maintenance costs, and research and development costs incurred
177 between July 1, 2006, and June 30, 2015 ~~2010~~, up to a limit of
178 \$3 million per state fiscal year for all taxpayers, in
179 connection with an investment in hydrogen-powered vehicles and
180 hydrogen vehicle fueling stations in the state, including, but
181 not limited to, the costs of constructing, installing, and
182 equipping such technologies in the state.

183 2. Seventy-five percent of all capital costs, operation and
184 maintenance costs, and research and development costs incurred
185 between July 1, 2006, and June 30, 2015 ~~2010~~, up to a limit of
186 \$1.5 million per state fiscal year for all taxpayers, and
187 limited to a maximum of \$12,000 per fuel cell, in connection
188 with an investment in commercial stationary hydrogen fuel cells
189 in the state, including, but not limited to, the costs of
190 constructing, installing, and equipping such technologies in the
191 state.

192 3. Seventy-five percent of all capital costs, operation and
193 maintenance costs, and research and development costs incurred
194 between July 1, 2006, and June 30, 2015 ~~2010~~, up to a limit of
195 \$6.5 million per state fiscal year for all taxpayers, in
196 connection with an investment in the production, storage, and
197 distribution of biodiesel (B10-B100), ~~and~~ ethanol (E10-E100),
198 renewable diesel fuel, and renewable fuel oil in the state,
199 including the costs of constructing, installing, and equipping
200 such technologies in the state. Gasoline fueling station pump
201 retrofits for ethanol (E10-E100) distribution qualify as an
202 eligible cost under this subparagraph.

203 (d) "Ethanol" means ethanol as defined in s.

27-01652B-11

20111810__

204 212.08(7)(ccc).

205 (e) "Hydrogen fuel cell" means hydrogen fuel cell as
206 defined in s. 212.08(7)(ccc).

207 (f) "Renewable diesel fuel" means renewable diesel fuel as
208 defined in s. 212.08(7)(ccc).

209 (g) "Renewable fuel oil" means renewable fuel oil as
210 defined in s. 212.08(7)(ccc).

211 (h)~~(f)~~ "Taxpayer" includes a corporation as defined in
212 paragraph (b) or s. 220.03.

213 Section 3. Paragraphs (c) and (e) of subsection (2) and
214 subsections (3) and (5) of section 220.193, Florida Statutes,
215 are amended to read:

216 220.193 Florida renewable energy production credit.—

217 (2) As used in this section, the term:

218 (c) "Expanded facility" shall mean a Florida renewable
219 energy facility that increases its electrical production and
220 sale by more than 5 percent above the facility's electrical
221 production and sale during the 2010 ~~2005~~ calendar year.

222 (e) "New facility" shall mean a Florida renewable energy
223 facility that is operationally placed in service after May 1,
224 2011 ~~2006~~.

225 (3) An annual credit against the tax imposed by this
226 section shall be allowed to a taxpayer, based on the taxpayer's
227 production and sale of electricity from a new or expanded
228 Florida renewable energy facility. For a new facility, the
229 credit shall be based on the taxpayer's sale of the facility's
230 entire electrical production. For an expanded facility, the
231 credit shall be based on the increases in the facility's
232 electrical production which ~~that~~ are achieved after May 1, 2011

27-01652B-11

20111810__

233 2006.

234 (a) The credit shall be \$0.01 for each kilowatt-hour of
235 electricity produced and sold by the taxpayer to an unrelated
236 party during a given tax year.

237 (b) The credit may be claimed for electricity produced and
238 sold on or after January 1, 2012 ~~2007~~. Beginning in 2012 ~~2008~~
239 and continuing until 2016 ~~2011~~, each taxpayer claiming a credit
240 under this section must first apply to the department by
241 February 1 of each year for an allocation of available credit.
242 The department, in consultation with the commission, shall
243 develop an application form. The application form shall, at a
244 minimum, require a sworn affidavit from each taxpayer certifying
245 the increase in production and sales that form the basis of the
246 application and certifying that all information contained in the
247 application is true and correct.

248 (c) If the amount of credits applied for each year exceeds
249 \$5 million, the department shall award to each applicant a
250 prorated amount based on each applicant's increased production
251 and sales and the increased production and sales of all
252 applicants.

253 (d) If the credit granted pursuant to this section is not
254 fully used in one year because of insufficient tax liability on
255 the part of the taxpayer, the unused amount may be carried
256 forward for a period not to exceed 5 years. The carryover credit
257 may be used in a subsequent year when the tax imposed by this
258 chapter for such year exceeds the credit for such year, after
259 applying the other credits and unused credit carryovers in the
260 order provided in s. 220.02(8).

261 (e) A taxpayer that files a consolidated return in this

27-01652B-11

20111810__

262 state as a member of an affiliated group under s. 220.131(1) may
263 be allowed the credit on a consolidated return basis up to the
264 amount of tax imposed upon the consolidated group.

265 (f)1. Tax credits that may be available under this section
266 to an entity eligible under this section may be transferred
267 after a merger or acquisition to the surviving or acquiring
268 entity and used in the same manner with the same limitations.

269 2. The entity or its surviving or acquiring entity as
270 described in subparagraph 1. may transfer any unused credit in
271 whole or in units of no less than 25 percent of the remaining
272 credit. The entity acquiring such credit may use it in the same
273 manner and with the same limitations under this section. Such
274 transferred credits may not be transferred again although they
275 may succeed to a surviving or acquiring entity subject to the
276 same conditions and limitations as described in this section.

277 3. In the event the credit provided for under this section
278 is reduced as a result of an examination or audit by the
279 department, such tax deficiency shall be recovered from the
280 first entity or the surviving or acquiring entity to have
281 claimed such credit up to the amount of credit taken. Any
282 subsequent deficiencies shall be assessed against any entity
283 acquiring and claiming such credit, or in the case of multiple
284 succeeding entities in the order of credit succession.

285 (g) Notwithstanding any other provision of this section,
286 credits for the production and sale of electricity from a new or
287 expanded Florida renewable energy facility may be earned between
288 January 1, 2012 ~~2007~~, and June 30, 2015 ~~2010~~. The combined total
289 amount of tax credits which may be granted for all taxpayers
290 under this section is limited to \$5 million per state fiscal

27-01652B-11

20111810__

291 year.

292 (h) A taxpayer claiming a credit under this section shall
293 be required to add back to net income that portion of its
294 business deductions claimed on its federal return paid or
295 incurred for the taxable year which is equal to the amount of
296 the credit allowable for the taxable year under this section.

297 (i) A taxpayer claiming credit under this section may not
298 claim a credit under s. 220.192. A taxpayer claiming credit
299 under s. 220.192 may not claim a credit under this section.

300 (j) When an entity treated as a partnership or a
301 disregarded entity under this chapter produces and sells
302 electricity from a new or expanded renewable energy facility,
303 the credit earned by such entity shall pass through in the same
304 manner as items of income and expense pass through for federal
305 income tax purposes. When an entity applies for the credit and
306 the entity has received the credit by a pass-through, the
307 application must identify the taxpayer that passed the credit
308 through, all taxpayers that received the credit, and the
309 percentage of the credit that passes through to each recipient
310 and must provide other information that the department requires.

311 (k) A taxpayer's use of the credit granted pursuant to this
312 section does not reduce the amount of any credit available to
313 such taxpayer under s. 220.186.

314 ~~(5) This section shall take effect upon becoming law and~~
315 ~~shall apply to tax years beginning on and after January 1, 2007.~~

316 Section 4. Section 570.074, Florida Statutes, is amended to
317 read:

318 570.074 Department of Agriculture and Consumer Services;
319 energy and water policy coordination.—The commissioner may

27-01652B-11

20111810__

320 create an Office of Energy and Water Coordination under the
321 supervision of a senior manager exempt under s. 110.205 in the
322 Senior Management Service. The commissioner may designate the
323 bureaus and positions in the various organizational divisions of
324 the department which ~~that~~ report to this office relating to any
325 matter over which the department has jurisdiction in matters
326 relating to energy and water policy affecting agriculture,
327 application of such policies, and coordination of such matters
328 with state and federal agencies.

329 Section 5. Subsection (3) of section 570.954, Florida
330 Statutes, is repealed.

331 Section 6. This act shall take effect July 1, 2011.