

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 423 Tax On Sales, Use, & Other Transactions

**SPONSOR(S):** Adkins

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 960

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Natural Resources Subcommittee	12 Y, 0 N, As CS	Kaiser	Blalock
2) Finance & Tax Subcommittee			
3) State Affairs Committee			

### SUMMARY ANALYSIS

Under current law, a tax of six percent is levied on the sales price of each gallon of diesel fuel purchased for use in a vessel. Current law also provides that the sale of diesel fuel to the owner, operator, or the owner's agent or representative of vessels operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes is subject to a reduced tax. The tax rate is based on the ratio of intrastate mileage to interstate or foreign mileage traveled by a carrier's vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the carrier's previous fiscal year. This ratio is determined at the close of the carrier's fiscal year.

Dyed diesel fuel is generally used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is typically dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. The dyed fuel is less expensive because it is not subject to the state sales tax described above.

The bill provides an exemption from the above tax for dyed diesel fuel that is used for commercial fishing and aquacultural purposes.

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative fiscal impact of \$1.7 million to state government<sup>1</sup> in FY 2013-2014.

<sup>1</sup> This represents a reduction in the State Transportation Trust Fund.

## **FULL ANALYSIS**

### **I. SUBSTANTIVE ANALYSIS**

#### **A. EFFECT OF PROPOSED CHANGES:**

##### **Present Situation**

Section 212.05(1)(k), F.S., provides for a tax of six percent to be levied on each gallon of diesel fuel that is purchased for use in a vessel. However, s. 212.08(4)(a)2., F.S., provides that motor fuels and diesel fuels used by railroad locomotives or vessels to transport persons or property in interstate or foreign commerce are afforded a partial exemption based on the ratio of intrastate mileage to interstate or foreign mileage traveled by a carrier's locomotives or vessels that were used in interstate or foreign commerce and that had at least some Florida mileage during the carrier's previous fiscal year. This ratio, known as the mileage apportionment factor, is determined at the close of the carrier's fiscal year.

During the fiscal year in which the carrier begins its initial operations in the state, the carrier's mileage apportionment factor may be determined using an estimated ratio of anticipated miles to be traveled in Florida to anticipated total miles for that year. Subsequently, additional tax on the motor fuel and diesel fuels may be required, or a refund may be applied for, based on the actual ratio of the carrier's vessels' miles in Florida to its total miles for that year. This ratio is applied each month to the total motor and diesel fuel purchases made in Florida to determine what portion of the total was used or consumed in intrastate movement and subject to tax under chapter 212, F.S. Fuels used exclusively in intrastate commerce do not qualify for the proration of tax.

Section 212.0501(4), F.S., provides that except as otherwise provided above, a licensed sales tax dealer may elect to collect such tax pursuant to chapter 212, F.S., on all sales to each person who purchases diesel fuel for consumption, use, or storage by a trade or business. If the licensed sales tax dealer elects not to collect such tax on all sales, the purchaser or ultimate consumer is liable for the payment of the tax directly to the state.

Dyed diesel fuel is generally used in equipment for construction and agriculture that are not intended for use on roads and highways. The fuel is typically dyed red so the U.S. Department of Transportation can easily tell the difference to ensure that vehicles on the highway are not using the dyed fuel. The dyed fuel is less expensive because it is not subject to the sales and use taxes provided in chapter 212, F.S.

Rule 12A-1.0641(6)(a), F.A.C., provides that the sale of dyed diesel fuel to the owner, operator, or the owner's agent or representative of vessels operated to transport persons or property for hire in interstate or foreign commerce or for commercial fishing purposes is subject to the partial exemption provided in s. 212.08(4)(a)2., F.S. The tax imposed is based on the vessel owner's mileage apportionment factor described above.

Section 212.41(4)(c)3, F.S., provides that "commercial fishing and aquacultural purposes" means motor fuel used in the operation of 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 for resale to the public, and no part of which fuel is used in any vehicle or equipment driven or operated upon the highways of this state; however, the term may in no way be construed to include fuel used for sport or pleasure fishing.

##### **Effect of Proposed Changes**

The bill amends ss. 212.05, 212.0501, and 212.08, F.S., to provide a full tax exemption for dyed diesel fuel used for commercial fishing and aquacultural purposes as defined in s. 206.41(4)(c)3., F.S.

#### **B. SECTION DIRECTORY:**

**Section 1:** Amends s. 212.05, F.S.; providing an exemption from sales, storage and use tax for dyed diesel fuel used in vessels used for commercial fishing and aquacultural purposes.

**Section 2:** Amends s. 212.0501, F.S., providing an exemption from tax on diesel fuel for dyed diesel fuel used for commercial fishing and aquacultural purposes.

**Section 3:** Amends s. 212.08, F.S.; providing an exemption for dyed fuel used for commercial fishing and aquacultural purposes.

**Section 4:** Provides an effective date of July 1, 2013.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

See Fiscal Comment section.

#### **2. Expenditures:**

None

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

None

#### **2. Expenditures:**

None

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Commercial fishermen and aquaculturists will benefit from the reduced tax assessment on dyed diesel fuel used to operate their commercial fishing vessels.

### **D. FISCAL COMMENTS:**

The Revenue Estimating Conference estimates that the provisions of this legislation will result in a negative fiscal impact of \$1.5 million to state government<sup>2</sup> in FY 2013-2014.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

#### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to affect county or municipal governments.

#### **2. Other:**

None

### **B. RULE-MAKING AUTHORITY:**

None

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<sup>2</sup> This represents a reduction in the State Transportation Trust Fund.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On February 20, 2013, the Agriculture and Natural Resources Subcommittee adopted a strike-all amendment to HB 423. The strike-all amendment extends the sales tax exemption for dyed diesel fuel to vessels used for commercial fishing and aquacultural purposes as well as vessels used for the taking of shrimp.