

NOTICE OF RULE DEVELOPMENT

DEPARTMENT OF REVENUE

TAX ON MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS, AVIATION FUELS,
AND POLLUTANTS

RULE NO: RULE TITLE:

12B-5.030 Importers

12B-5.040 Carriers

12B-5.050 Terminal Suppliers

12B-5.060 Wholesalers

12B-5.070 Terminal Operators

12B-5.080 Exporters

12B-5.090 Local Government Users

12B-5.100 Mass Transit Systems

12B-5.110 Blenders

12B-5.121 Temporary Licenses Issued Under a Declared Emergency

12B-5.130 Refunds

12B-5.150 Public Use Forms

12B-5.200 Retailers of Alternative Fuel

12B-5.400 Producers and Importers of Pollutants

PURPOSE AND EFFECT: Section 206.02(2)(c), F.S., requires terminal suppliers, importers, exporters, blenders, biodiesel manufacturers, and wholesalers to pay a \$30 license tax to obtain an annual fuel license or to renew an annual fuel license. Similar provisions are provided for carriers and terminal operators to obtain an annual fuel license in sections 206.021(3) and

206.022(2), F.S. Section 206.89(4), F.S., provides that a \$5 filing fee is required to obtain a license as a retailer of alternative fuel.

Sections 206.05(1), 206.051, and 206.89(2), F.S., provide that terminal suppliers, importers, exporters, wholesalers, and retailers of alternative fuel are required to post a bond to obtain a Florida fuel license. Section 206.9931(1), F.S., provides bond requirements for applicants applying for a license as an importer or producer of pollutants.

To obtain a Florida fuel license, the licensee is required to maintain a bond sufficient to ensure payment to the state of the amount of the tax, plus any penalties and interest for which the person may become liable. A wholesaler who has no import or export activity that sells only undyed diesel fuel and that is not authorized by the Department to remit fuel tax to its supplier would have no liability to the state and would not be required to post a bond. Any applicant for a pollutants tax license for the sole purpose of applying for refunds of tax-paid pollutants would not be required to post a bond.

The purpose of the proposed amendments to Rule Chapter 12B-5, F.A.C., Tax on Motor Fuels, Diesel Fuels, Alternative Fuels, Aviation Fuels, and Pollutants), is to: (1) correct the use of the term “license fee” to “license tax” and to correct the use of the term “registration fee” to “filing fee,” consistent with Sections 206.02(2)(c), 206.021(3), 206.022(2), and 206.89(4), F.S., as requested by the Joint Administrative Procedures Committee; (2) update provisions regarding bonding requirements consistent with Sections 206.05(1), 206.051, 206.89(2), 206.9931(1), F.S.; and (3) adopt, by reference, changes to the fuel and pollutant returns to include the annual updates to the state fuel sales tax rate and the local option tax rates effective January 2012.

Section 206.8745(1), F.S., provides that any purchaser who purchases tax-paid diesel fuel and has paid the fuel taxes to the seller may claim a refund of the fuel taxes paid as provided in

Section 215.26, F.S., if the fuel is used for an exempt purpose as provided in section 206.874(3), F.S. The purpose of the proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), is to: (1) remove provisions regarding the availability of a refund of tax paid on diesel fuel used in the operations of boats, vessels, or equipment for fishing that are not consistent with the provisions of section 206.8745(1), F.S.; (2) provide the procedures on how to obtain a refund of the fuel taxes paid on diesel fuel used for commercial fishing purposes or by a vessel engaged in the commercial transportation of persons or property consistent with the provisions of section 206.8745(1), F.S.; and (3) clarify that diesel fuel used for such commercial purposes is subject to sales tax, plus any applicable discretionary sales surtax.

SUBJECT AREA TO BE ADDRESSED: The subject area of the workshop is the proposed changes to Rule Chapter 12B-5, F.A.C., to use the statutory terms “license tax” and “filing fee” for purposes of obtaining an annual Florida fuel tax license, to update provisions regarding bonding requirements, to adopt updates to the fuel and pollutant returns to include state sales tax rate and the local tax rates effective January 2012, and the procedures to claim a refund of tax paid on diesel fuel used in a commercial fishing vessel.

RULEMAKING AUTHORITY: 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS.

LAW IMPLEMENTED: 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.095, 206.11, 206.404, 206.41, 206.43, 206.44, 206.485, 206.64, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.97, 206.9835, 206.9865, 206.9931, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS.

IF REQUESTED IN WRITING AND NOT DEEMED UNNECESSARY BY THE AGENCY HEAD, A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME,

AND PLACE SHOWN BELOW.

DATE AND TIME: August 16, 2011, 1:30 p.m.

PLACE: 2450 Shumard Oak Boulevard, Building One, Room 1220, Tallahassee, Florida

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any rulemaking proceeding before Technical Assistance and Dispute Resolution is asked to advise the Department at least 48 hours before such proceeding by contacting Tammy Miller at (850)617-8346. Persons with hearing or speech impairments may contact the Department by using the Florida Relay Service, which can be reached at (800)955-8770 (Voice) and (800)955-8771 (TDD).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE

DEVELOPMENT IS: Ronald Gay, Tax Law Specialist, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6745.

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS: Published on the Department's Internet site at myflorida.com/dor/rules.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12B-5, FLORIDA ADMINISTRATIVE CODE

TAX ON MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS,

AVIATION FUELS, AND POLLUTANTS

AMENDING RULES 12B-5.030, 12B-5.040, 12B-5.050, 12B-5.060,

12B-5.070, 12B-5.080, 12B-5.090, 12B-5.100, 12B-5.110,

12B-5.121, 12B-5.130, 12B-5.150, 12B-5.200, AND 12B-5.400

PART I TAX ON MOTOR AND DIESEL FUEL

12B-5.030 Importers.

(1) No change.

(2) LICENSING AND BONDING.

(a)1. through 5. No change.

6. Each initial and renewal application must be accompanied by a \$30 license tax fee.

(b) No change.

(3) through (5) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8)

FS. Law Implemented 206.01(3), 206.02, 206.026, 206.027, 206.028, 206.03, 206.05, 206.051,

206.054, 206.43, 206.48(2), 206.485, 206.9835, 213.755 FS. History—New 7-1-96, Amended 11-

21-96, 10-27-98, 5-1-06, 6-1-09, ____.

12B-5.040 Carriers.

(1) LICENSING.

(a) through (c) No change.

(d) Each initial or renewal application must be accompanied by a \$30 license tax ~~fee~~.

(2) through (3) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 206.9915, 213.06(1),
213.755(8) FS. Law Implemented 206.021, 206.09, 206.199, 206.20, 206.204, 206.205, 206.485,
213.755 FS. History—New 7-1-96, Amended 11-21-96, 5-1-06, 6-1-09,_____.

12B-5.050 Terminal Suppliers.

(1) No change.

(2) LICENSING AND BONDING.

(a)1. through 6. No change.

7. Each initial or renewal application must be accompanied by a \$30 license tax ~~fee~~.

8. through 9. No change.

(b) No change.

(3) through (5) No change.

(6) REFUNDS AND CREDITS.

(a) No change.

(b) Motor and Diesel Fuel Used for Agricultural Purposes.

1. Sales by terminal suppliers of taxable motor ~~diesel~~ fuel to persons for agricultural uses
as provided in Rule 12B-5.020, F.A.C., are exempt from the local option fuel tax, the state

comprehensive transportation system tax, and the fuel sales tax imposed by Section 206.41(1)(e), (f), and (g), F.S.

2. No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.01, 206.02, 206.05, 206.41, 206.413, 206.414, 206.43, 206.48, 206.485, 206.62, 206.86, 206.87, 206.872, 206.873, 206.874, 206.8745, 206.90, 206.91, 206.97, 206.9815, 206.9941, 206.9942, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09, ____.

12B-5.060 Wholesalers.

(1) No change.

(2) LICENSING AND BONDING.

(a)1. through 5. No change.

6. Each initial and renewal application must be accompanied by a \$30 license tax fee.

(b) No change.

(c)1. Each wholesaler that ~~which~~ is licensed pursuant to Section 206.02, F.S., will be required to furnish a bond to the Department in a sum of not more than \$100,000, for each product type (motor fuel, diesel fuel, and aviation fuel).

~~2. A bond will not be required if the sum of three times the average monthly fuel tax is less than \$50.~~

3. through 7. Renumbered 2. through 6. No change.

7. A wholesaler who has no import or export activity, who sells only undyed diesel fuel, and who is not authorized by the Department to remit fuel tax to its supplier is not required to

post a bond.

8. through 9. No change.

(d) No change.

(e) To conduct business as a retailer wholesaler of alternative fuel, a bond must be posted and calculated pursuant to Section 206.90, F.S., not to exceed \$100,000. If the bond of a wholesaler of diesel fuel who sells alternative fuel is less than \$100,000, an additional bond for the retailer wholesaler of alternative fuel will be calculated and added to the bond of the wholesaler of diesel fuel. The combined bond will not exceed \$100,000.

(3) through (6) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 213.06(1), 213.755(8) FS. Law Implemented 206.01(6), 206.02, 206.05, 206.404, 206.43, 206.48, 206.485, 206.86, 206.89, 206.90, 206.91, 206.9825, 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09,_____.

12B-5.070 Terminal Operators.

(1) LICENSING.

(a) through (c) No change.

(d) Each initial or renewal application must be accompanied by a \$30 license tax fee for each terminal location operated.

(2) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.97, 213.06(1), 213.755(8) FS. Law Implemented 206.01(19), 206.022, 206.095, 206.485, 206.872, 213.755 FS. History— New 7-1-96, Amended 11-21-96, 5-1-06, 6-1-09,_____.

12B-5.080 Exporters.

(1) No change.

(2) LICENSING AND BONDING.

(a) No change.

(b) 1. through 5. No change.

6. Each initial or renewal application must be accompanied by a \$30 license tax fee.

(c) No change.

(3) through (6) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8)

FS. Law Implemented 206.01(21), 206.02, 206.03, 206.04, 206.05, 206.051, 206.052, 206.41,

206.416, 206.43, 206.48, 206.485, 206.62, 206.87, 206.90, 206.91, 206.97, 206.9915, 213.755

FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09,_____.

12B-5.090 Local Government Users.

(1) No change.

(2) LICENSING AND BONDING.

(a) 1. through 2. No change.

3. There is no ~~application fee or license fee~~ or license tax for a local government user to obtain a license.

(b) No change.

(3) No change.

(4) REFUNDS AND CREDITS.

(a) No change.

(b)1. Any county, municipality, or school district, which is not licensed as a local government user, that uses tax-paid diesel fuel, gasoline, or gasohol in vehicles operated on the highways, may seek a refund each calendar quarter for the fuel ~~taxes~~ ~~sales tax~~ imposed under Section 206.41(1)(b) and (g), F.S., for gasoline and gasohol, ~~and~~ 1 cent of the tax imposed under Section 206.87(1)(a), F.S., and all of the tax imposed under Section 206.87(1)(e)(~~b~~), F.S., on diesel fuel.

2. through 4. No change.

Rulemaking Authority 206.14(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.41(4), 206.86(11), 206.874(4), 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09,_____.

12B-5.100 Mass Transit Systems.

(1) No change.

(2) LICENSING AND BONDING.

(a)1. through 2. No change.

3. There is no ~~application fee or license fee~~ or license tax for a mass transit system to obtain a license.

(b) No change.

(3) through (4) No change.

Rulemaking Authority 206.14(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8) FS. Law Implemented 206.41(4), 206.86(12), 206.874(5)(a), 213.755 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09,_____.

12B-5.110 Blenders.

(1) No change.

(2) LICENSING.

(a) 1. through 4. No change.

5. Each initial or renewal application must be accompanied by a \$30 license tax ~~fee~~.

(b) No change.

(3) No change.

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 206.87(1)(e)2., 213.06(1), 213.755(8)

FS. Law Implemented 206.02(3), 206.48(1), 206.485, 206.86(7), 206.87(2)(e), 213.755 FS.

History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 6-1-09,_____.

12B-5.121 Temporary Licenses Issued Under a Declared Emergency.

(1) No change.

(2) LICENSING.

(a) through (b) No change.

(c) No licensing tax ~~fee~~ is required to obtain a temporary fuel license. No criminal background investigation of an applicant will be conducted.

(d) through (e) No change.

(3) through (7) No change.

Rulemaking Authority 206.14(1), 206.59(1) FS. Law Implemented 206.02(8), 206.021(5),

206.051(4), 206.052, 206.41(1), 206.43(1), 206.62, 206.87(1), 206.8745, 206.91, 206.9825(1)(a),

213.255(2), (3), 215.26(2) FS. History—New 6-1-09,_____.

12B-5.130 Refunds.

(1) FUEL USED FOR AGRICULTURAL, AQUACULTURAL, COMMERCIAL FISHING, AND COMMERCIAL AVIATION PURPOSES.

(a)1. No change.

2. Persons using motor fuel ~~or diesel fuel~~ in the operation of boats, vessels, or equipment used exclusively for the taking of fish, crayfish, oysters, shrimp, and sponges from the salt or fresh waters of Florida for sales are entitled to a refund of municipal fuel tax and local option, state comprehensive enhanced transportation system, ~~municipal fuel tax~~, and fuel sales taxes paid under Section 206.41(1)(c), (e), (f), and (g), F.S., ~~and Sections 206.87(1)(c), (d), (e), F.S.~~

3. No change.

(b) through (c) No change.

(2) through (3) No change.

(4) DIESEL FUEL SOLD FOR USE IN VESSELS.

(a) through (b) No change.

(c) Undyed diesel fuel sold to a purchaser for use in a commercial fishing vessel or a vessel engaged in the business of commercial transportation of persons or property is subject to the fuel taxes imposed under Section 206.87(1), F.S. The purchaser may obtain a refund of diesel fuel tax paid as follows:

1. The purchaser must file an Application for Refund of Tax Paid on Undyed Diesel Used for Off-Road or Other Exempt Purposes (Form DR-309639) with the Department within three years after the right to refund has accrued.

2. The purchaser is required to submit original invoices or copies of invoices showing the amount of fuel taxes paid with the application. Form DR-309639 must meet the requirements of

Sections 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

3. The purchaser is required to pay the sales tax, plus any applicable discretionary sales surtax. The Department will reduce the amount of refund due on tax-paid diesel fuel used for commercial fishing purposes or for use by a vessel engaged in the business of commercial transportation of persons or property by the amount of sales tax and discretionary sales surtax due.

(5) No change.

Rulemaking Authority 206.14(1), 206.59(1), 213.06(1) FS. Law Implemented 206.41(4), (5), 206.43(5), (6), 206.64, 206.8745, 206.97, 213.255(2), (3), 215.26 FS. History—New 7-1-96, Amended 11-21-96, 10-27-98, 5-1-06, 1-27-09, 6-1-09,_____.

Cross Reference – Rules 12A-1.059 and 12A-1.0641, F.A.C.

12B-5.150 Public Use Forms.

(1)(a) The following public use forms and instructions are utilized by the Department and are hereby incorporated by reference in this rule.

(b) No change.

Form Number	Title	Effective Date
(2) DR-138	Application for Fuel Tax Refund – Agriculture, Aquacultural, Commercial Fishing or Commercial Aviation Purposes (R. <u>01/12</u> 01/11)	<u>01/11</u>

(3) through (9) No change.

(10) DR-160	Application for Fuel Tax Refund – Mass Transit System Users (R. <u>01/12</u> 01/11)	<u>01/11</u>
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(11) through (13) No change.

(14) DR-182 Florida Air Carrier Fuel Tax Return
(R. 01/12 ~~01/11~~) _____ ~~01/11~~

(15) No change.

(16) DR-189 Application for Fuel Tax Refund – Municipalities,
Counties and School Districts (R. 01/12 ~~01/11~~) _____ ~~01/11~~

(17) DR-190 Application for Fuel Tax Refund – Non-Public
Schools (R. 01/12 ~~01/11~~) _____ ~~01/11~~

(18) DR-191 Application for Aviation Fuel Refund – Air
Carriers (R. 01/12 ~~07/06~~) _____ ~~04/07~~

(19) DR-248 2012 ~~2011~~ Alternative Fuel Use Permit Application,
Renewal, and Decal Order Form (R. 11/11 ~~11/10~~) _____ ~~01/11~~

(20) DR-904 Pollutants Tax Return (R. 01/12 ~~01/11~~) _____ ~~01/11~~

(21) DR-309631 Terminal Supplier Fuel Tax Return
(R. 01/12 ~~01/11~~) _____ ~~01/11~~

(22) DR-309631N Instructions for Filing Terminal Supplier Fuel
Tax Return (R. 01/12 ~~01/11~~) _____ ~~01/11~~

(23) DR-309632 Wholesaler/Importer Fuel Tax Return
(R. (R. 01/12 ~~01/11~~)) _____ ~~01/11~~

(24) DR-309632N Instructions for Filing Wholesaler/Importer Fuel
Tax Return (R. 01/12 ~~01/11~~) _____ ~~01/11~~

(25) DR-309633 Mass Transit System Provider Fuel Tax Return
(R. 01/12 ~~01/11~~) _____ ~~01/11~~

(26) DR-309633N	Instructions for Filing Mass Transit System Provider Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(27) DR-309634	Local Government User of Diesel Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(28) DR-309634N	Instructions for Filing Local Government User of Diesel Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(29) DR-309635	Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(30) DR-309635N	Instructions for Filing Blender/Retailer of Alternative Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(31) DR-309636	Terminal Operator Information Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(32) DR-309636N	Instructions for Filing Terminal Operator Information Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(33) DR-309637	Petroleum Carrier Information Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(34) DR-309637N	Instructions for Filing Petroleum Carrier Information Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(35) DR-309638	Exporter Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(36) DR-309638N	Instructions for Filing Exporter Fuel Tax Return (R. <u>01/12</u> 01/11)	<u> </u> 01/11
(37) DR-309639	Application for Refund of Tax Paid on Undyed Diesel Used for Off-Road or Other Exempt	

	Purposes (with instructions) (R. <u>01/12</u> 07/11)	___ 07/11
(38) DR-309640	Application for Refund of Tax Paid on Undyed Diesel Consumed by Motor Coaches During Idle Time in Florida (R. <u>01/12</u> 01/11)	___ 01/11
(39) DR-309645	<u>2012</u> 2011 Refundable Portion of Local Option and State Comprehensive Enhanced Transportation System (SCETS) Tax (R. <u>01/12</u> 01/11)	___ 01/11
(40) DR-309660	Application for <u>Pollutants</u> Pollutant Tax Refund (R. <u>01/12</u> 01/11)	___ 01/11
(41)	No change.	

Rulemaking Authority 206.14(1), 206.485(1), 206.59(1), 213.06(1), 213.755(8), 526.206 FS. Law Implemented 119.071(5), 206.02, 206.021, 206.022, 206.025, 206.026, 206.027, 206.028, 206.05, 206.055, 206.06, 206.095, 206.11, 206.404, 206.41, 206.43, 206.44, 206.485, 206.86, 206.874, 206.8745, 206.877, 206.90, 206.91, 206.92, 206.9835, 206.9865, 206.9931, 206.9942, 206.9943, 212.0501, 213.255, 213.755, 526.203 FS. History-New 11-21-96, Amended 10-27-98, 5-1-06, 4-16-07, 1-1-08, 1-27-09, 4-14-09, 6-1-09, 6-1-09(5), 1-11-10, 7-28-10, 1-12-11, 7-20-11, ____.

PART II TAX ON ALTERNATIVE FUEL

12B-5.200 Retailers of Alternative Fuel.

(1) No change.

(2) LICENSING AND BONDING.

(a)1. No change.

2. Each initial or renewal application must be accompanied by a \$5 filing ~~registration~~ fee.

(b) through (c) No change.

(3) through (5) No change.

Rulemaking Authority 206.14(1), 206.59(1), 206.877, 213.06(1) FS. Law Implemented 206.485, 206.877, 206.89 FS. History–New 11-21-96, Amended 10-27-98, 5-1-06,_____.

PART IV TAX ON POLLUTANTS

12B-5.400 Producers and Importers of Pollutants.

(1) through (2) No change.

(3) LICENSING AND BONDING.

(a) through (d) No change.

(e) No bond ~~is will be~~ required to obtain a pollutant tax license for the sole purpose of applying for refunds of tax paid on pollutants, as provided in Section 206.9942, F.S. if three times the average monthly pollutants tax paid or due is less than \$50.

(4) through (7) No change.

Rulemaking Authority 206.14(1), 206.59(1), 213.06(1), 213.755(8) FS. Law Implemented 206.9915, 206.9925, 206.9931, 206.9935, 206.9941, 206.9942, 206.9943, 213.755 FS. History- New 11-21-96, Amended 10-27-98, 5-1-06, 6-1-09,_____.