

CHAPTER 97-54

Committee Substitute for Committee Substitute for House Bill No. 81

An act relating to taxation of fuels; amending s. 206.01, F.S.; revising the definition of “reseller”; amending s. 206.026, F.S.; including blenders, carriers, and terminal operators in provisions which prohibit certain persons from holding a license; amending s. 206.27, F.S.; authorizing the Department of Revenue to make certain audit information available to the Department of Highway Safety and Motor Vehicles and providing for application of confidentiality and penalty provisions; amending s. 206.41, F.S.; revising the information required on the sales invoice executed in connection with a sale of motor or diesel fuel for which the purchaser claims a refund; authorizing submission of a schedule of transactions in lieu of invoices with a refund application; revising the department’s authority to refuse to grant a refund; revising the persons authorized to execute an invoice; including blenders in provisions relating to records and inspection; providing liability of terminal suppliers, importers, blenders, exporters, and wholesalers with respect to false or fraudulent refunds; creating s. 206.413, F.S.; specifying the persons liable for payment of the taxes imposed by s. 206.41, F.S.; specifying conditions under which Florida law applies when motor fuel is withdrawn from a terminal outside the state or transfer of ownership of motor fuel occurs outside the state; providing penalties for willfully evading or attempting to evade or defeat payment of tax when specified circumstances apply and providing liability for penalties; amending s. 206.414, F.S.; revising provisions which specify when certain taxes shall be collected and remitted by wholesalers and terminal suppliers; amending s. 206.43, F.S.; revising provisions relating to conditions under which a terminal supplier’s or importer’s allowance is deductible; amending s. 206.44, F.S.; revising applicability of penalties for failure to report or pay taxes due; amending s. 206.874, F.S.; providing that dyed diesel fuel may be purchased for use by a noncommercial vessel; amending s. 206.8745, F.S.; providing restrictions on claims for refund of the excise tax paid on undyed diesel fuel used by a noncommercial vessel; amending s. 206.91, F.S.; revising provisions relating to conditions under which a diesel fuel registrant’s allowance is deductible; amending s. 212.05, F.S.; providing for imposition of sales tax on diesel fuel used in a vessel and not taxed under chapter 206, F.S.; amending s. 212.0501, F.S.; revising the definition of “consumption, use, or storage by a trade or business” for purposes of the use tax on diesel fuel purchased for such purposes; revising provisions relating to collection of such tax by licensed sales tax dealers; amending s. 212.08, F.S.; providing that the partial sales tax exemption for motor vehicles engaged in interstate commerce applies to common carriers; including diesel fuel placed in certain separate tanks in the exemption; amending ss. 336.021 and 336.025, F.S.; revising provisions

relating to application of the formula for determining administrative costs of the ninth-cent fuel tax and the local option fuel taxes; providing effective dates for reimposition of certain taxes under such sections; providing that the proceeds of the ninth-cent tax on fuel shall be used for transportation expenditures as defined by s. 336.025(7), F.S.; revising provisions relating to the distribution of local option taxes on diesel fuel; providing for deduction of service and administrative charges and dealer allowances; providing for an additional distribution to counties with a qualified new retail station and providing requirements with respect thereto; providing for distribution of any additional available taxes based on each county's vehicular diesel fuel storage capacities and providing requirements with respect thereto; revising provisions which require that the local option tax of up to 5 cents on motor fuel be used for transportation expenditures necessary to meet requirements of the capital improvements element of an adopted comprehensive plan; providing effective dates.

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

Section 1. Subsection (29) of section 206.01, Florida Statutes, 1996 Supplement, is amended to read:

206.01 Definitions.—As used in this chapter:

(29) “Reseller” means any person who purchases in the state tax-paid fuel from a terminal supplier or wholesaler and who is authorized by the terminal supplier or wholesaler to resell such fuel to retail dealers or end users only.

Section 2. Subsection (1) of section 206.026, Florida Statutes, as amended by chapter 95-417, Laws of Florida, is amended to read:

206.026 Certain persons prohibited from holding a terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler license; suspension and revocation.—

(1) No corporation, except a publicly held corporation regularly traded on a national securities exchange and not over the counter, general or limited partnership, sole proprietorship, business trust, joint venture or unincorporated association, or other business entity shall hold a terminal supplier, importer, exporter, blender, carrier, terminal operator, or wholesaler license in this state if any one of the persons or entities specified in paragraph (a) has been determined by the department not to be of good moral character or has been convicted of any offense specified in paragraph (b):

- (a)1. The licenseholder.
2. The sole proprietor of the licenseholder.
3. A corporate officer or director of the licenseholder.
4. A general or limited partner of the licenseholder.

5. A trustee of the licenseholder.
6. A member of an unincorporated association licenseholder.
7. A joint venturer of the licenseholder.
8. The owner of any equity interest in the licenseholder, whether as a common shareholder, general or limited partner, voting trustee, or trust beneficiary.
9. An owner of any interest in the license or licenseholder, including any immediate family member of the owner, or holder of any debt, mortgage, contract, or concession from the licenseholder, who by virtue thereof is able to control the business of the licenseholder.

(b)1. A felony in this state.

2. Any felony in any other state which would be a felony if committed in this state under the laws of Florida.

3. Any felony under the laws of the United States.

Section 3. Subsection (2) of section 206.27, Florida Statutes, 1996 Supplement, is amended to read:

206.27 Records and files as public records.—

(2) Nothing herein shall be construed as requiring the department to provide as a public record any information concerning audits in progress or those records and files of the department described in this section which are currently the subject of pending investigation by the Department of Revenue or the Florida Department of Law Enforcement. It is specifically provided that the foregoing information shall be exempt from the provisions of s. 119.07(1) and shall be considered confidential pursuant to s. 213.053; however, the department may make available to the executive director of the Department of Highway Safety and Motor Vehicles or his or her designee, exclusively for official purposes in administering chapter 207, any information concerning any audit in progress, and the provisions of s. 213.053(7) requiring a written agreement and maintenance of confidentiality by the recipient, and the penalty for breach of confidentiality, shall apply if the department makes such information available. Any officer, employee, or former officer or employee of the department who divulges any such information in any manner except for such official purposes or under s. 213.053 is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 4. Paragraphs (b), (e), and (f) of subsection (5) of section 206.41, Florida Statutes, 1996 Supplement, are amended to read:

206.41 State taxes imposed on motor fuel.—

(5)

(b)1. When motor fuel or diesel fuel is sold to a person who claims to be entitled to a refund under subsection (4), the seller of such motor fuel or diesel fuel shall make out a sales invoice, which shall contain the following information:

- a. The name, post office address, and residence address of the purchaser.
- b. The number of gallons purchased.
- c. The date on which the purchase was made.
- d. The price paid for the motor fuel or diesel fuel.
- e. The name and place of business of the seller of the motor fuel or diesel fuel.
- f. The license number, or other identification number, of the motor vehicle or boat of the purchaser.
- g. The Department of Environmental Protection storage tank facility identification number for the seller's location, if the location is required to be registered in accordance with s. 376.303.

2. ~~The sales invoice shall be retained by the purchaser until the department's power to issue an assessment with respect to such tax has terminated pursuant to s. 95.091(3) for attachment to his or her application for a refund, as a part thereof. In lieu of original sales invoices, a purchaser may submit a detailed schedule of individual transactions which includes the information required by subparagraph 1. along with the refund application. No refund will be allowed unless the seller has executed such an invoice and unless proof of payment of the taxes for which the refund is claimed can be provided to the department upon request is attached. The department may refuse to grant a refund in whole or in part if the schedule or an invoice is incomplete and fails to contain the full information required in this paragraph.~~

3. ~~No person may execute a sales invoice, as described in subparagraph 1., except a terminal supplier, importer, exporter, or wholesaler, reseller, or retail dealer or a duly authorized agent thereof. No refund invoice may be executed for a purchase from a retail service station.~~

4. ~~When motor fuel or diesel fuel is sold by a retail dealer to a person who claims to be entitled to a refund under subsection (4), a detailed schedule of individual purchase transactions including names, addresses, Department of Environmental Protection storage tank facility identification number of the station, date of purchase, invoice number, and number of gallons purchased may be provided the department by the permitted refund applicant in lieu of the original invoices. Notwithstanding provisions of this paragraph to the contrary, the department has authority to designate certain retail service stations as agents of terminal suppliers, importers, exporters, or wholesalers when no terminal suppliers, importers, exporters, or wholesalers are available.~~

5. Notwithstanding provisions of this paragraph to the contrary, refunds to a school district for fuel consumed by school buses operated for the district by private contractors shall be based on an estimate of taxes paid. The estimate shall be determined quarterly by dividing the total miles traveled by such vehicles for school purposes by their average miles per gallon, as

determined by the department, and multiplying the result by the applicable tax rate per gallon. It is the responsibility of the school district to provide information relevant to this determination.

(e)1. Each terminal supplier, importer, blender, exporter, or wholesaler shall, in accordance with the requirements of the department, keep at his or her principal place of business in this state or at the bulk plant where the sale is made a complete record of or duplicate sales tickets for all motor fuel or diesel fuel sold by him or her for which a refund provided in this section may be claimed, which records must give the date of each such sale, the number of gallons sold, the name of the person to whom sold, and the sale price. A terminal supplier, importer, blender, exporter, or wholesaler, or his or her agent or employee, may not acknowledge or assist in the preparation of any false or fraudulent claim for tax refund. Any terminal supplier, importer, blender, exporter, or wholesaler, or his or her agent or employee, that has knowledge or should have had knowledge that a refund is false or fraudulent shall in addition to other penalties be jointly liable with the refund recipient to the state for the tax improperly refunded.

2. Every person to whom a refund permit has been issued under this subsection shall, in accordance with the requirements of the department, keep at his or her residence or principal place of business in this state a record of each purchase of motor fuel or diesel fuel from a terminal supplier, importer, blender, exporter, or wholesaler, or his or her authorized agent; the number of gallons purchased; the name of the seller; the date of the purchase; and the sale price.

3. The records required to be kept under this paragraph are subject, at all reasonable hours, to audit or inspection by the department or by any person duly authorized by the department. Such records shall be preserved and may not be destroyed until the period specified in s. 215.26(2) has elapsed.

4. The department shall keep a permanent record of the amount of refund claimed and paid to each claimant. Such records are open to public inspection.

(f) Agents of the department are authorized to go upon the premises of any permitholder or terminal supplier, importer, blender, exporter, or wholesaler, or duly authorized agent thereof, to make inspection to ascertain any matter connected with the operation of this subsection or the enforcement hereof. However, no agent may enter the dwelling of any person without the consent of the occupant or authority from a court of competent jurisdiction.

Section 5. Section 206.413, Florida Statutes, is created to read:

206.413 Liability for tax; interstate agreement; penalties.—

(1) The person liable for payment of the taxes imposed by s. 206.41 shall be as follows:

(a) Every position holder shall pay taxes on the removal of motor fuel from a terminal as described by s. 206.41. In an exchange agreement be-

tween two licensed terminal suppliers, the receiving party shall be liable as the position holder if the receiving party is identified to the terminal operator by the delivering party.

(b) Every terminal supplier shall pay taxes on the removal of motor fuel from a refinery as specified by s. 206.41.

(c) Every importer shall pay taxes on the entry into this state as specified by s. 206.41.

(d) Any person that produces blended motor fuel outside the bulk transfer or terminal system shall pay taxes as provided for by s. 206.41.

(e) Any person using motor fuel upon which the tax required by s. 206.41 has not been paid and which is not exempted by this part is liable for the backup tax imposed by s. 206.873.

(f) The seller of motor fuel is jointly and severally liable for the backup tax imposed by s. 206.873 if the seller knows or has reason to know that the motor fuel will be used in any nonexempt use.

(g) The terminal operator is jointly and severally liable for the taxes imposed by s. 206.41 if:

1. The position holder with respect to the motor fuel is a person other than the terminal operator and is not a terminal supplier; or

2. The terminal operator has not met the conditions specified under paragraph (h).

(h) A terminal operator is not liable for taxes imposed by s. 206.41 if at the time of the removal all the following apply:

1. The terminal operator is a terminal supplier.

2. The terminal operator has an unexpired notification certificate from the position holder as required by the Internal Revenue Service.

3. The terminal operator has no reason to believe that any information in the certificate is false.

(2) A licensed terminal supplier who is a position holder in a terminal located outside of this state or a seller transferring ownership of motor fuel outside of this state destined for this state agrees to be subject to the laws of this state and comply with the provisions of this chapter in the same manner as if the motor fuel were withdrawn from a terminal in this state or the transfer of ownership occurred in this state.

(3)(a) Any person who willfully evades or attempts to evade or defeat the payment of the fuel taxes imposed by this part shall be penalized in the amount of \$10 for every gallon of motor fuel involved or \$1,000, whichever is greater, for the first offense. The penalty shall increase with subsequent violations by multiplying the penalty amount by the number of prior violations. The penalty applies in any of the following circumstances:

1. If any motor fuel is sold or held for sale by any person for any use that is taxable and such person knows or has reason to know that the taxes due under this part have not been paid to the state, and that person fails to pay the taxes due directly to the state.

2. If any motor fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that the taxes due under this part have not been paid to the state, and that person fails to pay the taxes due directly to the state.

3. If any person willfully, with intent to evade tax, alters sales or shipping documents or collects and fails to remit any taxes due under this part.

(b) Any business entity and each officer, employee, or agent of the entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with the entity for the penalty.

Section 6. Subsection (1) of section 206.414, Florida Statutes, is amended to read:

206.414 Collection of certain taxes; prohibited credits and refunds.—

(1) The taxes imposed by s. 206.41(1)(d), (e), and (f) shall be collected and remitted by licensed wholesalers and terminal suppliers upon each sale, delivery, or consignment to retail dealers, resellers, and end users.

Section 7. Paragraph (a) of subsection (1) of section 206.43, Florida Statutes, 1996 Supplement, is amended to read:

206.43 Terminal supplier, importer, exporter, blender, and wholesaler to report to department monthly; deduction.—The taxes levied and assessed as provided in this part shall be paid to the department monthly in the following manner:

(1)(a) Taxes are due on the first day of the succeeding month and shall be paid on or before the 20th day of each month. The terminal supplier, importer, exporter, blender, or wholesaler shall mail to the department verified reports on forms prescribed by the department and shall at the same time pay to the department the amount of tax computed to be due. However, if the 20th day falls on a Saturday, a Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. The terminal supplier or importer shall deduct from the amount of tax shown by the report to be payable an amount equivalent to .2 percent of the tax on motor fuels imposed by s. 206.41(1)(a), (b), (c), and (g), which deduction is hereby allowed to the terminal supplier or importer on account of services and expenses in complying with the provisions of the law. The allowance on taxable gallons of motor fuel sold to persons licensed under this chapter shall not be deductible unless the terminal supplier or importer has allowed 50 percent of the allowance provided by this section to a the licensed purchaser with a valid wholesaler or terminal supplier license. However, this allowance shall not be deductible unless payment of the tax is made on or before the 20th day of the month as herein required. The United States post office date stamped on the envelope in which the report is submitted

shall be considered as the date the report is received by the department. Nothing in this subsection shall be construed to authorize a deduction from the constitutional fuel tax or fuel sales tax.

Section 8. Subsection (1) of section 206.44, Florida Statutes, as amended by chapter 95-417, Laws of Florida, is amended to read:

206.44 Penalty and interest for failure to report on time; penalty and interest on tax deficiencies.—

(1) If any ~~person terminal supplier, importer, exporter, or wholesaler~~ fails to make a report or pay the taxes due as required by this chapter, the department shall add a penalty in the amount of 10 percent of any unpaid tax if the failure is for not more than 1 month, with an additional 10 percent of any unpaid tax for each additional month or fraction thereof during which the failure continues. However, such penalty may not exceed 50 percent in the aggregate of any unpaid tax. Furthermore, in no event may the penalty assessed be less than \$10. The department shall collect the tax, together with the penalty and costs, in the same manner as other delinquent taxes are collected.

Section 9. Paragraph (m) is added to subsection (3) of section 206.874, Florida Statutes, 1996 Supplement, to read:

206.874 Exemptions.—

(3) Dyed diesel fuel may be purchased and used only for the following purposes:

(m) Use by a noncommercial vessel.

Section 10. Subsection (1) of section 206.8745, Florida Statutes, 1996 Supplement, is amended, and subsection (7) is added to said section, to read:

206.8745 Credits and refund claims.—

(1) Except as provided in subsections ~~subsection~~ (2) and (7), any person who purchases undyed, tax-paid diesel fuel who has paid the tax imposed by this part to the seller may file a claim for refund of such taxes paid as provided in s. 215.26 if the fuel is used for an exempt purpose identified in s. 206.874(3).

(7) Any person who purchases undyed diesel fuel for use by a noncommercial vessel who has paid the tax imposed by this part to the seller may claim a refund of such taxes paid subject to the following restrictions:

(a) The purchaser may make one claim for refund per calendar year.

(b) The annual refund claim shall be submitted prior to April 1 of the year subsequent to the year in which the tax was paid.

(c) No refund shall be allowed on purchases of less than 2,500 gallons per calendar year.

(d) The purchaser shall submit, with the refund request, original purchase invoices showing the taxes paid.

(e) The purchaser shall remit as an offset to the refund the sales tax due under chapter 212 based on the purchase price of the fuel net of the state tax refunded.

Section 11. Subsection (1) of section 206.91, Florida Statutes, as amended by chapter 95-417, Laws of Florida, is amended to read:

206.91 Tax reports; computation and payment of tax.—

(1) For the purpose of determining the amount of taxes imposed by s. 206.87, each diesel fuel registrant shall, not later than the 20th day of each calendar month, mail to the department, on forms prescribed by the department, monthly reports which shall show such information on inventories, purchases, nontaxable disposals, and taxable sales in gallons of diesel fuel and alternative fuel, for the preceding calendar month as may be required by the department. However, if the 20th day falls on a Saturday, a Sunday, or a federal or state legal holiday, returns shall be accepted if postmarked on the next succeeding workday. The reports shall contain or be verified by a written declaration that such report is made under the penalties of perjury. The diesel fuel registrant shall deduct from the amount of taxes shown by the report to be payable an amount equivalent to .67 percent of the taxes on diesel fuel imposed by s. 206.87(1)(a) and (e), which deduction is hereby allowed to the diesel fuel registrant on account of services and expenses in complying with the provisions of this part. The allowance on taxable gallons of diesel fuel sold to persons licensed under this chapter shall not be deductible unless the diesel fuel registrant has allowed 50 percent of the allowance provided by this section to a the licensed purchaser with a valid wholesaler or terminal supplier license. This allowance shall not be deductible unless payment of the taxes is made on or before the 20th day of the month as herein required. Nothing in this subsection shall be construed to authorize a deduction from the constitutional fuel tax or fuel sales tax.

Section 12. Paragraph (m) is added to subsection (1) of section 212.05, Florida Statutes, 1996 Supplement, to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(m) At the rate of 6 percent of the sales price of each gallon of diesel fuel not taxed under chapter 206 purchased for use in a vessel.

Section 13. Section 212.0501, Florida Statutes, is amended to read:

212.0501 Tax on diesel fuel for business purposes; purchase, storage, and use.—

(1) It is declared to be the legislative intent that every person is exercising a taxable privilege who purchases any diesel fuel as defined in chapter 206 for use by that person in a trade or business.

(2) Each person who purchases diesel fuel for consumption, use, or storage by a trade or business shall register as a dealer and remit a use tax, at the rate of 6 percent, on the total cost price of diesel fuel consumed.

(3) For purposes of this section, “consumption, use, or storage by a trade or business” does not include those uses of diesel fuel specifically exempt on account of residential purposes, or on account of agricultural purposes as defined in s. 212.08(5), or the purchase or storage of diesel fuel held for resale.

(4) Except as otherwise provided in s. 212.05(1)(m), a No licensed sales tax dealer may elect shall be required to collect such tax pursuant to this chapter on all sales to each any person who purchases diesel fuel for consumption, use, or storage by a trade or business. When the licensed sales tax dealer has not elected to collect such tax on all such sales, the purchaser or ultimate consumer shall be liable for the payment of tax directly to the state.

(5) Diesel fuel upon which the fuel taxes pursuant to chapter 206 have been paid is exempt from the tax imposed by this chapter. Liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised is exempt from the tax imposed by this chapter; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the fuel to be exempted is for the exclusive use designated herein.

(6) All taxes required to be paid on fuel used in self-propelled off-road equipment shall be deposited in the Fuel Tax Collection Trust Fund, to be distributed, after deduction of the general revenue service charge pursuant to s. 215.20, to the State Transportation Trust Fund. The department shall, each month, make a transfer, from general revenue collections, equal to such use tax reported on dealers’ sales and use tax returns.

Section 14. Paragraph (b) of subsection (9) of section 212.08, Florida Statutes, 1996 Supplement, is amended to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.—The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this part.

(9) PARTIAL EXEMPTIONS; RAILROADS AND MOTOR VEHICLES ENGAGED IN INTERSTATE OR FOREIGN COMMERCE.—

(b) Motor vehicles which are engaged in interstate commerce as common carriers, and parts thereof, used to transport persons or property in interstate or foreign commerce are subject to tax imposed in this chapter only to

the extent provided herein. The basis of the tax shall be the ratio of intrastate mileage to interstate or foreign mileage traveled by the carrier's motor vehicles which were used in interstate or foreign commerce and which had at least some Florida mileage during the previous fiscal year of the carrier. Such ratio is to be determined at the close of the carrier's fiscal year. This ratio shall be applied each month to the total purchases of such motor vehicles and parts thereof which are used in this state to establish that portion of the total used and consumed in intrastate movement and subject to tax under this part. Motor vehicles which are engaged in interstate commerce, and parts thereof, used to transport persons or property in interstate and foreign commerce are hereby determined to be susceptible to a distinct and separate classification for taxation under the provisions of this part. Motor vehicles and parts thereof used exclusively in intrastate commerce do not qualify for the proration of tax. For purposes of this paragraph, parts of a motor vehicle engaged in interstate commerce include a separate tank not connected to the fuel supply system of the motor vehicle into which diesel fuel is placed to operate a refrigeration unit or other equipment.

Section 15. Subsections (1) and (5) of section 336.021, Florida Statutes, 1996 Supplement, are amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(1)(a) Any county in the state, by extraordinary vote of the membership of its governing body or subject to a referendum, may levy the tax imposed by ss. 206.41(1)(d) and 206.87(1)(b) ~~for the purpose of paying the costs and expenses of establishing, operating, and maintaining a transportation system and related facilities and the cost of acquisition, construction, reconstruction, and maintenance of roads and streets. County and municipal governments may use the moneys received under this paragraph only for transportation expenditures as defined in s. 336.025(7).~~

(b) The governing body of the county may, by joint agreement with one or more of the municipalities located therein, provide for the transportation purposes authorized under paragraph (a) and the distribution of the proceeds of this tax within both the unincorporated and incorporated areas of the county. The provisions for refund provided in ss. 206.625 and 206.64 shall not be applicable to such tax levied by any county.

(c) Local option taxes collected on sales or use of diesel fuel in this state shall be distributed in the following manner:

1. The fiscal year of July 1, 1995, through June 30, 1996, shall be the base year for all distributions.

2. Each year the tax collected, less the service and administrative charges enumerated in s. 215.20 and the allowances allowed under s. 206.91, on the number of gallons reported, up to the total number of gallons reported in the base year, shall be distributed to each county using the distribution percentage calculated for the base year.

3. After the distribution of taxes pursuant to subparagraph 2., additional taxes available for distribution shall first be distributed pursuant to this subparagraph. A distribution shall be made to each county in which a qualified new retail station is located. A qualified new retail station is a retail station that began operation after June 30, 1996, and that has sales of diesel fuel exceeding 50 percent of the sales of diesel fuel reported in the county in which it is located during the 1995-1996 state fiscal year. The determination of whether a new retail station is qualified shall be based on the total gallons of diesel fuel sold at the station during each full month of operation during the 12-month period ending March 31, divided by the number of full months of operation during those 12 months, and the result multiplied by 12. The amount distributed pursuant to this subparagraph to each county in which a qualified new retail station is located shall equal the local option taxes due on the gallons of diesel fuel sold by the new retail station during the year ending March 31, less the service charges enumerated in s. 215.20 and the dealer allowance provided for by s. 206.91. Gallons of diesel fuel sold at the qualified new retail station shall be certified to the department by the county requesting the additional distribution by June 15, 1997, and by May 1 in each subsequent year. The certification shall include the beginning inventory, fuel purchases and sales, and the ending inventory for the new retail station for each month of operation during the year, the original purchase invoices for the period, and any other information the department deems reasonable and necessary to establish the certified gallons. The department may review and audit the retail dealer's records provided to a county to establish the gallons sold by the new retail station. Notwithstanding the provisions of this subparagraph, when more than one county qualifies for a distribution pursuant to this subparagraph and the requested distributions exceed the total taxes available for distribution, each county shall receive a prorated share of the moneys available for distribution. Additional gallons reported shall be distributed using a formula, the numerator of which shall be the number of truck stops located in the county, and the denominator of which shall be the number of truck stops located within the state. For the purposes of this section, a "truck stop" is any retail dealer registered pursuant to chapter 212, excluding marinas, that has declared its primary fuel business to be the sale of diesel fuel.

4. After the distribution of taxes pursuant to subparagraph 3., all additional taxes available for distribution shall be distributed based on vehicular diesel fuel storage capacities in each county pursuant to this subparagraph. The total vehicular diesel fuel storage capacity shall be established for each fiscal year based on the registration of facilities with the Department of Environmental Protection as required by s. 376.303 for the following facility types: retail stations, fuel user/nonretail, state government, local government, and county government. Each county shall receive a share of the total taxes available for distribution pursuant to this subparagraph equal to a fraction, the numerator of which is the storage capacity located within the county for vehicular diesel fuel in the facility types listed in this subparagraph and the denominator of which is the total statewide storage capacity for vehicular diesel fuel in those facility types. The vehicular diesel fuel storage capacity for each county and facility type shall be that established by the Department of Environmental Protection by June 1, 1997, for the 1996-1997 fiscal year, and by January 31 for each succeeding fiscal year. The

storage capacities so established shall be final. The storage capacity for any new retail station for which a county receives a distribution pursuant to subparagraph 3. shall not be included in the calculations pursuant to this subparagraph.

(d) The tax on motor fuel shall be distributed monthly by the department to the county reported by the terminal suppliers and importers for retail sale or use. The tax on diesel fuel shall be distributed monthly by the department to each county as provided in paragraph (c).

(5) The tax shall be imposed before November 1, 1993, to be effective January 1, 1994, and before July 1 of each year thereafter to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31 of any year may be reimposed effective September 1 of the year of expiration. No decision to rescind the tax shall take effect until at least 60 days after the county notifies the department of such decision.

Section 16. Effective July 1, 1999, paragraph (a) of subsection (2) of section 336.021, Florida Statutes, 1996 Supplement, as amended by section 17 of chapter 96-397, Laws of Florida, is amended to read:

336.021 County transportation system; levy of ninth-cent fuel tax on motor fuel and diesel fuel.—

(2)(a) The tax collected by the department pursuant to subsection (1) shall be transferred to the Ninth-cent Fuel Tax Trust Fund, which fund is created for distribution to the counties pursuant to paragraph (1)(d). The department shall deduct the administrative costs incurred by it in collecting, administering, enforcing, and distributing back to the counties the tax, which administrative costs may not exceed 2 percent of collections authorized by this section. The total administrative cost shall be prorated among those counties levying the tax according to the following formula, which shall be revised on July 1 of each year: Two-thirds of the amount deducted shall be based on the county's proportional share of the number of dealers taxpayers who are registered for purposes of chapter 212 ~~and required to file tax returns~~ on June 30th of the preceding state fiscal year, and one-third of the amount deducted shall be based on the county's share of the total amount of the tax collected during the preceding state fiscal year. The department has the authority to prescribe and publish all forms upon which reports shall be made to it and other forms and records deemed to be necessary for proper administration and collection of the tax levied by any county and shall adopt rules necessary to enforce this section, which rules shall have the full force and effect of law. The provisions of ss. 206.026, 206.027, 206.028, 206.051, 206.052, 206.054, 206.055, 206.06, 206.07, 206.075, 206.08, 206.09, 206.095, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.24, 206.27, 206.28, 206.41, 206.416, 206.44, 206.45, 206.48, 206.49, 206.56, 206.59, 206.626, 206.87, 206.872, 206.873, 206.8735, 206.874, 206.8741, 206.8745, 206.94, and 206.945 shall, as far as practicable, be applicable to the levy and collection of the tax imposed pursuant to this section as if fully set out in this section.

Section 17. Paragraphs (a) and (b) of subsection (1) of section 336.025, Florida Statutes, 1996 Supplement, are amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(1)(a) In addition to other taxes allowed by law, there may be levied as provided in ss. 206.41(1)(e) and 206.87(1)(c) a 1-cent, 2-cent, 3-cent, 4-cent, 5-cent, or 6-cent local option fuel tax upon every gallon of motor fuel and diesel fuel sold in a county and taxed under the provisions of part I or part II of chapter 206.

1. The tax shall be levied before July 1 to be effective January 1 of the following year for a period not to exceed 30 years, and the applicable method of distribution shall be established pursuant to subsection (3) or subsection (4). However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31 of any year may be reimposed effective September 1 of the year of expiration. Upon expiration, the tax may be relieved provided that a redetermination of the method of distribution is made as provided in this section.

2. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures.

3. Any tax levied pursuant to this paragraph may be extended on a majority vote of the governing body of the county. A redetermination of the method of distribution shall be established pursuant to subsection (3) or subsection (4), if, after July 1, 1986, the tax is extended or the tax rate changed, for the period of extension or for the additional tax.

(b) In addition to other taxes allowed by law, there may be levied as provided in s. 206.41(1)(e) a 1-cent, 2-cent, 3-cent, 4-cent, or 5-cent local option fuel tax upon every gallon of motor fuel sold in a county and taxed under the provisions of part I of chapter 206. The tax shall be levied by an ordinance adopted by a majority plus one vote of the membership of the governing body of the county or by referendum.

1. The tax shall be levied before July 1, to be effective January 1 of the following year. However, levies of the tax which were in effect on July 1, 1996, and which expire on August 31 of any year may be reimposed effective September 1 of the year of expiration.

2. The county may, prior to levy of the tax, establish by interlocal agreement with one or more municipalities located therein, representing a majority of the population of the incorporated area within the county, a distribution formula for dividing the entire proceeds of the tax among county government and all eligible municipalities within the county. If no interlocal agreement is adopted before the effective date of the tax, tax revenues shall be distributed pursuant to the provisions of subsection (4). If no interlocal agreement exists, a new interlocal agreement may be established prior to June 1 of any year pursuant to this subparagraph. However, any interlocal agreement agreed to under this subparagraph after the initial levy of the tax

or change in the tax rate authorized in this section shall under no circumstances materially or adversely affect the rights of holders of outstanding bonds which are backed by taxes authorized by this paragraph, and the amounts distributed to the county government and each municipality shall not be reduced below the amount necessary for the payment of principal and interest and reserves for principal and interest as required under the covenants of any bond resolution outstanding on the date of establishment of the new interlocal agreement.

3. County and municipal governments shall utilize moneys received pursuant to this paragraph only for transportation expenditures needed to meet the requirements of the capital improvements element of an adopted comprehensive plan. For purposes of this paragraph, expenditures for the construction of new roads, or the reconstruction or resurfacing of existing paved roads, shall be deemed to increase capacity and such projects shall be included in the capital improvements element of an adopted comprehensive plan. Expenditures for purposes of this paragraph shall not include routine maintenance of roads.

Section 18. Effective July 1, 1999, paragraph (a) of subsection (2) of section 336.025, Florida Statutes, 1996 Supplement, as amended by section 19 of chapter 96-397, Laws of Florida, is amended to read:

336.025 County transportation system; levy of local option fuel tax on motor fuel and diesel fuel.—

(2)(a) The tax levied pursuant to paragraph (1)(a) shall be collected and remitted in the same manner provided by ss. 206.41(1)(e) and 206.87(1)(c). The tax levied pursuant to paragraph (1)(b) shall be collected and remitted in the same manner provided by s. 206.41(1)(e). The taxes remitted pursuant to this section shall be transferred to the Local Option Fuel Tax Trust Fund, which fund is created for distribution to the county and eligible municipal governments within the county in which the tax was collected and which fund is subject to the service charge imposed in chapter 215. The tax shall be distributed monthly by the department in the same manner provided by s. 336.021(1)(c) and (d). The department shall deduct the administrative costs incurred by it in collecting, administering, enforcing, and distributing back to the counties the tax, which administrative costs may not exceed 2 percent of collections authorized by this section. The total administrative costs shall be prorated among those counties levying the tax according to the following formula, which shall be revised on July 1 of each year: Two-thirds of the amount deducted shall be based on the county's proportional share of the number of dealers taxpayers who are registered for purposes of chapter 212 and required to file tax returns on June 30 of the preceding state fiscal year, and one-third of the amount deducted shall be based on the county's share of the total amount of the tax collected during the preceding state fiscal year. The department has the authority to prescribe and publish all forms upon which reports shall be made to it and other forms and records deemed to be necessary for proper administration and collection of the taxes levied by any county and shall promulgate such rules as may be necessary for the enforcement of this section, which rules shall have the full force and effect of law. The provisions of ss. 206.026, 206.027, 206.028, 206.051,

206.052, 206.054, 206.055, 206.06, 206.07, 206.075, 206.08, 206.09, 206.095, 206.10, 206.11, 206.12, 206.13, 206.14, 206.15, 206.16, 206.17, 206.175, 206.18, 206.199, 206.20, 206.204, 206.205, 206.21, 206.215, 206.22, 206.24, 206.27, 206.28, 206.41, 206.416, 206.44, 206.45, 206.48, 206.49, 206.56, 206.59, 206.626, 206.87, 206.872, 206.873, 206.8735, 206.874, 206.8741, 206.94, and 206.945 shall, as far as practicable, be applicable to the levy and collection of taxes imposed pursuant to this section as if fully set out in this section.

Section 19. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor May 9, 1997.

Filed in Office Secretary of State May 9, 1997.