



5050 West Tennessee Street, Tallahassee, FL 32399

floridarevenue.com

**QUESTION:** Whether the production and processing of renewable natural gas is subject to Florida's severance tax.

**ANSWER:** The production and processing of renewable natural gas is not subject to Florida's severance tax.

January 10, 2024

[REDACTED]

Re: Technical Assistance Advise ment – TAA #: 24A-005  
[REDACTED]. (" [REDACTED] ") – ("Taxpayer")  
Severance Tax – Renewable Natural Gas  
Sections 211.01, 211.025 - Florida Statutes ("F.S.")  
BP #: [REDACTED]

Dear [REDACTED],

This is in response to your letter dated [REDACTED], requesting this Department's issuance of a Technical Assistance Advise ment ("TAA") pursuant to Section(s.) 213.22, F.S., and Rule Chapter 12-11 F.A.C, Florida Administrative Code, regarding the matter discussed below. Your request has been carefully examined, and the Department finds it to be in compliance with the requisite criteria set forth in Chapter 12-11, F.A.C. This response to your request constitutes a TAA and is issued to you under the authority of s. 213.22, F.S.

**REQUESTED ADVISEMENT**

Whether the production and processing of renewable natural gas is subject to Florida's severance tax.

**FACTS**

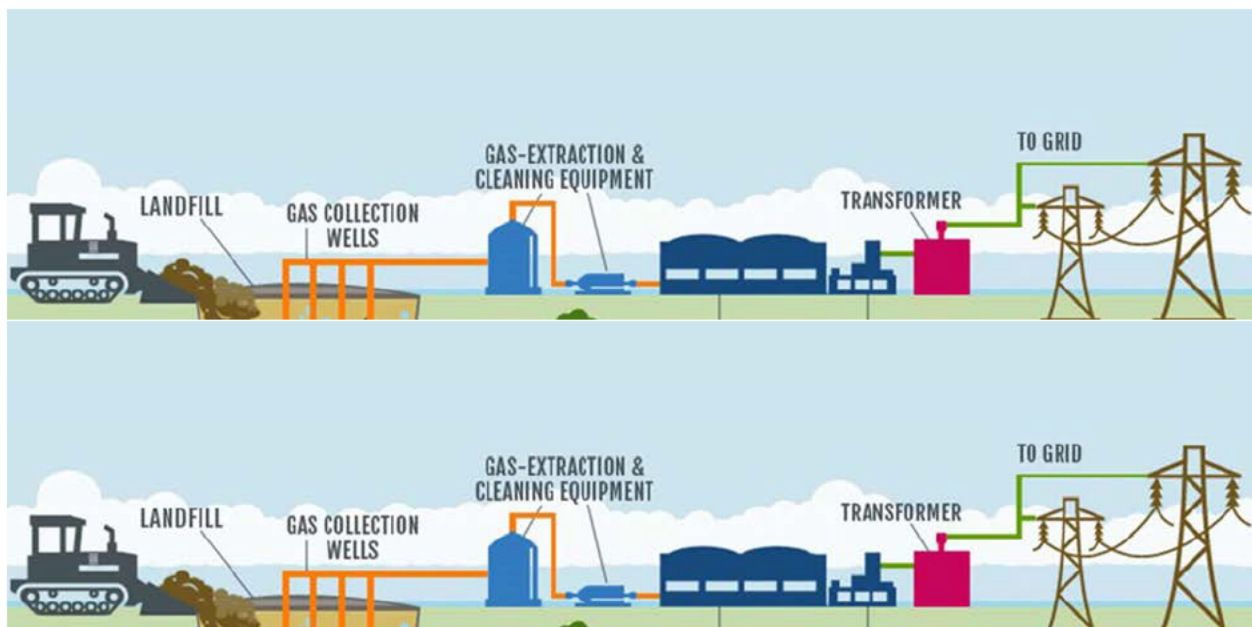
<sup>1</sup> On [REDACTED], Taxpayer submitted the revised TAA request via email.

Taxpayer, a taxpayer association as defined in rule 12-11.002, F.A.C., was established in [REDACTED] in order to promote, protect and encourage the growth of the natural gas industry in the State of Florida. During the [REDACTED] [REDACTED] to create a specific sales tax exemption for renewable natural gas (“RNG”) machinery and equipment. See Section 24, Chapter 2023-157, Laws of Florida. This exemption applies to the purchase of machinery and equipment primarily used in the production, storage, transportation, compression or blending of RNG refined to a methane content of ninety percent or greater.

RNG is a pipeline-quality gas that is fully interchangeable with conventional natural gas and thus can be used in natural gas vehicles. RNG is essentially biogas (the gaseous product of the decomposition of organic matter) that has been processed to purity standards. Like conventional natural gas, RNG can be used as a transportation fuel in the form of compressed natural gas or liquefied natural gas. RNG can also be used to generate electricity and heat and is used as a replacement for traditional natural gas to generate combined electricity and heating for power plants. Currently, biogas is produced from three traditional sources:

### Biogas from Landfills

Landfills are designated locations for disposal of waste collected from residential, industrial, and commercial entities. Landfills are the third-largest source of human-related methane emissions in the United States, according to the U.S. Environmental Protection Agency. In a landfill, the digestion process takes place in the ground rather than in an anaerobic digester. As of August 2022, there were 538 operational LFG projects in the United States, according to the EPA.



### Biogas from Livestock Operations

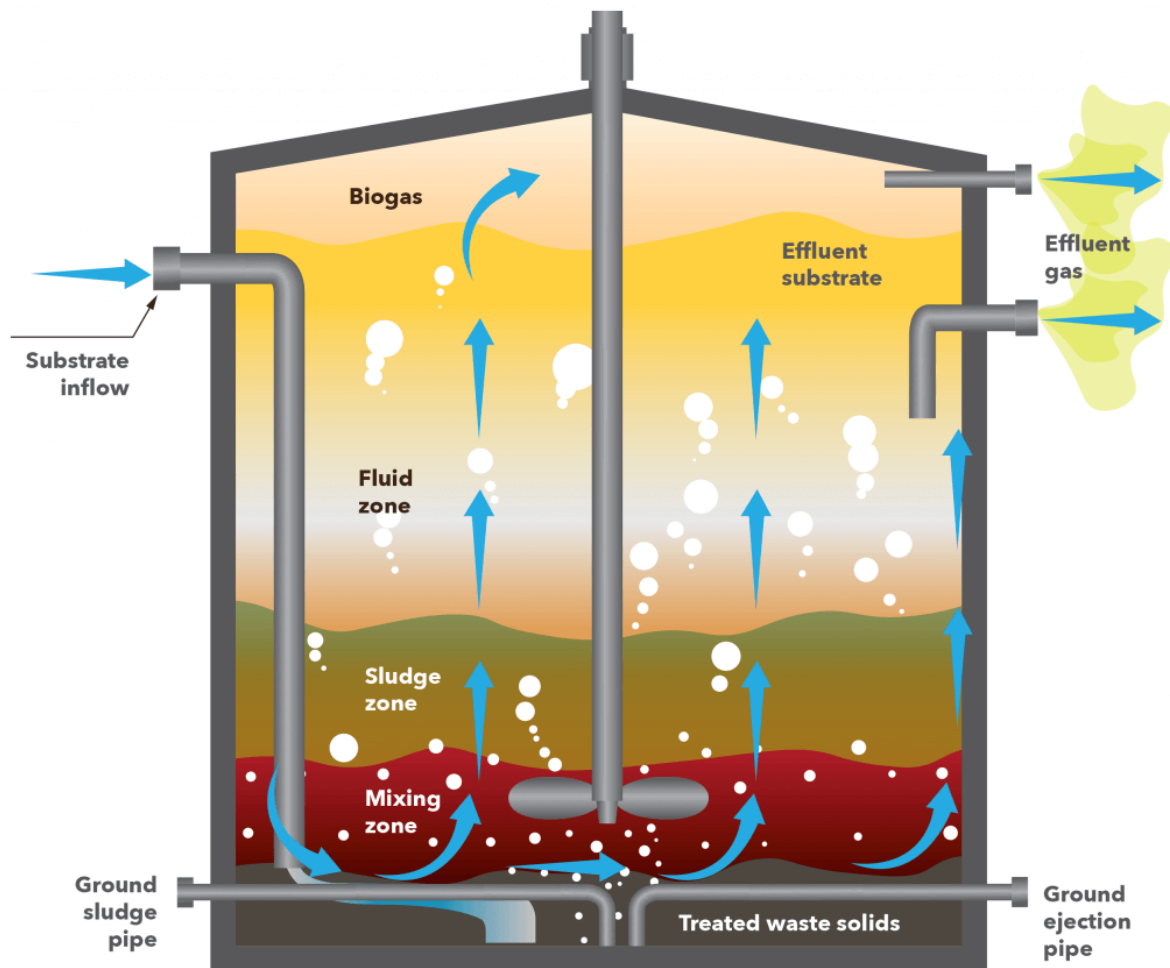
Biogas recovery systems at livestock operations can be used to produce RNG. Animal manure is

collected and delivered to an anaerobic digester to stabilize and optimize methane production. The resulting biogas can be processed into RNG and used to fuel natural gas vehicles or produce electricity.

As of May 2022, there were about 330 anaerobic digester systems operating at commercial livestock farms in the United States. Most of these facilities use biogas for electricity generation.

An anaerobic digester breaks down organic matter in the absence of oxygen. Anaerobic digestion for biogas production takes place in a sealed vessel called a reactor, which is designed and constructed in various shapes and sizes specific to the site and feedstock conditions. These reactors contain complex microbial communities that break down (or digest) the waste and produce resultant biogas and digestate (the solid and liquid material end-products of the AD process) which is discharged from the digester. The reactor also contains a fluid zone as shown in the following diagram.

## Anaerobic Digestion Process



### **Biogas from Wastewater Treatment**

Biogas can be produced by digesting the solids removed in the wastewater treatment process. According to EPA estimates, this biogas potential is about 1 cubic foot of digester gas per 100 gallons of wastewater. Energy generated at U.S. wastewater treatment plants could potentially meet 12% of the national electricity demand, according to a study released by the National Association of Clean Water Agencies, the Water Environment Research Foundation, and the Water Environment Federation.

There are more than 16,000 WWTPs in the United States, but only about 1,200 have anaerobic digesters and of those, 860 have the equipment to use their biogas on site.

### **LAW AND DISCUSSION**

Section 211.025, F.S., provides in part:

An excise tax is hereby levied upon every person who severs gas in the state for sale, transport, profit, or commercial use. Except as otherwise provided in this part, the tax shall be levied on the basis of the entire production of gas in this state, including any royalty interest. Such tax shall accrue at the time the gas is severed and shall be a lien on production regardless of the place of sale, to whom sold, or by whom used and regardless of the fact that delivery of the gas may be made outside the state.

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“Gas” means all natural gas, including casinghead gas, and all hydrocarbons not defined as oil, but excludes any hydrogen sulfide gas or sulfur contained, produced, or recovered from such hydrogen sulfide gas. “Sever” means to extract or withdraw any taxable oil, gas, or sulfur product from below the surface of the soil or water of this state by natural or mechanically enforced flow; to produce or recover sulfur from hydrogen sulfide gas; to withdraw from any natural or artificial surface reservoir or water surface, by any means whatsoever, any taxable product upon which tax imposed under this part has not been paid; or to recover any escaped taxable product upon which tax imposed under this part has not been paid. See s. 211.01(7) and (19), F.S.

The natural gas the severance or production of which the Legislature sought to tax is that brought to the surface in the usual sense, that is, from a geological formation wherein gas is entrapped beneath the surface of the earth. The excise tax on gas is levied upon those engaged in the business of severing or producing natural gas from such formations.

Florida law doesn’t impose an excise tax on products merely because they are composed of the same chemical structure and elements as those naturally occurring. Section 211, Part 1, F.S.,

imposes the tax on producers<sup>2</sup> of natural gas who sever the gas from geological formations, and does not impose the tax on persons who essentially manufacture the product using technology to take advantage of the natural decomposition of refuse placed in man-made containment cells.

Based on the above, the renewable natural gas produced by the process described in your request is not deemed to be severed or produced within the meaning of s. 211, Part 1, F.S., and the producer would not be subject to the severance tax levied under s. 211.025. F.S.

### **CONCLUSION**

The production and processing of renewable natural gas is not subject to Florida's severance tax.

This response constitutes a TAA under s. 213.22, F.S., which is binding on the Department only under the facts and circumstances described in the request for this advice, as specified in s. 213.22, F.S. Our response is predicated on those facts and the specific situation summarized above. You are advised that subsequent statutory or administrative rule changes, or judicial interpretations of the statutes or rules, upon which this advice is based, may subject similar future transactions to a different treatment than expressed in this response.

You are further advised that this response, your request and related backup documents are public records under Chapter 119, F.S., and are subject to disclosure to the public under the conditions of s. 213.22, F.S. Confidential information must be deleted before public disclosure. In an effort to protect confidentiality, we request you provide the undersigned with an edited copy of your request for TAA, the backup material and this response, deleting names, addresses and any other details which might lead to identification of the Taxpayer. Your response should be received by the Department within ten (10) days of the date of this letter.

If you have any further questions with regard to this matter and wish to discuss them, you may contact me directly at (850)717-6839.

Sincerely,

*Xiaoxi Miao*

Xiaoxi Miao  
Tax Law Specialist  
Technical Assistance & Dispute Resolution  
(850)717-6839

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<sup>2</sup> "Producer" means any person who owns, controls, manages, or leases any oil or gas property or oil or gas well or any person who produces in any manner any taxable product, including any person owning any royalty or other interest in any taxable product or its value, whether the taxable product is produced by, or on behalf of, such person under a lease contract or otherwise. See s. 211.01(16) F.S.

CC [REDACTED]

Record ID: 7001069104

### TADR Satisfaction Survey

The Florida Department of Revenue invites you to complete the online TADR Satisfaction Survey to help us identify ways to improve our service to taxpayers. The survey is an opportunity to provide feedback on your recent experience with the Department's office of Technical Assistance and Dispute Resolution (TADR). To access the survey, place the following address in your browser's address bar:

<https://tadr.questionpro.com>

When you open the survey, you'll be asked to enter the following information. This information will enable you to complete and submit the survey.

Notification number: 7001069104

Respondent code: 44

Tax type: Severance Tax - Gas & Sulfur

Correspondence type: Technical Assistance

If you need technical assistance accessing the survey, please email Douglas Charity at [douglas.charity@floridarevenue.com](mailto:douglas.charity@floridarevenue.com).

Thank you.