AGENDA
FLORIDA DEPARTMENT OF REVENUE

Meeting Material Available on the web at:
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MEMBERS

Governor Rick Scott
Attorney General Pam Bondi
Chief Financial Officer Jeff Atwater
Commissioner Adam H. Putnam

June 16, 2011

Contacts: **Lisa Vickers, Executive Director**
French Brown, Deputy Director, Technical Assistance & Dispute Resolution
(850-717-6309)
MaryAnn Murphy, Executive Asst. II
(850-717-7138)

9:00 A.M.
LL-03, The Capitol
Tallahassee, Florida

ITEM	SUBJECT	RECOMMENDATION

1. Respectfully request approval of the minutes of April 19, 2011 and May 3, 2011.

(ATTACHMENT 1) **RECOMMEND APPROVAL**

2. Respectfully request approval and authority to publish Notice of Proposed Rule in the Florida Administrative Weekly for the following rule:

Undistributable Collections: propose amendment to child support enforcement rule relating to monies that cannot be distributed due to death of or inability to locate recipient. *[Rule 12E-1.0051, Florida Administrative Code (F.A.C.)]*

(ATTACHMENT 2) **RECOMMEND APPROVAL**

3. Respectfully request final adoption and approval to file and certify with the Secretary of State under Chapter 120, F.S., the following proposed rules:

Refunds of Tax Paid on Fuel Used for Pumping Off Cargo: propose amendment to rule and form relating to motor vehicle fuel tax refunds. *[Rule 12B-5.130, F.A.C. and proposed Form DR-309639, incorporated by reference in Rule 12B-5.150, F.A.C.]*

Trade-Ins: propose amendment to rules relating to reduction of taxable sales price due to trade-ins. *[Rule 12A-1.018, F.A.C. and Rule 12A-1.074, F.A.C.]*

Obsolete Example: propose amendment to corporate income tax rule to remove an obsolete example. *[Rule 12C-1.013, F.A.C.]*

(ATTACHMENT 3) **RECOMMEND APPROVAL**

4. Respectfully request final adoption and approval to file and certify with the Secretary of State under Chapter 120, F.S., the following proposed rule:

Timeshares: propose amendment to sales tax transient accommodations rule relating to timeshare exchanges. *[Rule 12A-1.061, F.A.C.]*

(ATTACHMENT 4) **RECOMMEND APPROVAL**

THE CABINET

STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION

DEPARTMENT OF REVENUE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND

April 19, 2011 Cabinet Meeting

Reported by:
FLOIE LYNN SEXTON
Court Reporter
Notary Public

PROFESSIONAL COURT REPORTING SERVICE, INC.
337 MAGNOLIA AVENUE
PANAMA CITY, FLORIDA 32401
(850) 763-8948

Attachment #1

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

* * *

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GOVERNOR SCOTT: The next agenda is the Department of Revenue presented by Lisa Vickers. Good afternoon, how are you doing?

MS. VICKERS: Good afternoon.

GOVERNOR SCOTT: Lisa had no problem, we were in a race, we did a springtime festival race, and there was, she didn't care that I was the Governor, she passed me like a mile and a half into it, sort of laughs, speed up. Didn't you say something like that?

MS. VICKERS: He reminds me of that so I will never do it again. I said, go team, EOG.

GOVERNOR SCOTT: All right, thank you.

MS. VICKERS: Thank you. Governor and Members of the Cabinet, the Department of Revenue respectfully requests approval of the minutes from the February 22nd meeting.

GOVERNOR SCOTT: Is there a motion on the minutes?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Is there a second? Is there a second?

CFO ATWATER: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 1 approved without objection.

MS. VICKERS: Thank you. Item 2, the Department requests approval and authority to publish Notice of Proposed Rule Making for Timeshare Exchange Programs. These

rules will provide guidance to taxpayers on how to handle the taxation of timeshare exchanges and products known as regulated short-term products. When people stay at timeshare exchange, they have a timeshare occupancy with, it's coupled with the purchase of a timeshare program. We recommend approval of this item.

GOVERNOR SCOTT: Is there a motion on Item 2?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Second?

COMMISSIONER PUTNAM: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 2 approved without objection.

MS. VICKERS: Item 3 requests approval to adopt and certify to the Secretary of State rules amending sections related to Hotel Reward Points Programs. These programs are used by hotels in exchange for stays of guests. We do have one speaker on this rule, Mr. Jim Ervin, representing Marriott International, would like to speak briefly.

GOVERNOR SCOTT: Good afternoon.

MR. ERVIN: Good afternoon. Governor and Members of the Cabinet, my name is Jim Ervin with the Holland and Knight Law Firm, we represent Marriott International. I'm also authorized to speak on behalf of the Hyatt Hilton Intercontinental Hotels. We particularly want to thank the

Department for working with industry to resolve this issue so that it can be addressed in the future, and there will be no further difficulties. I know that sometimes rules have a bad name, but I think, particularly, in the area of taxes, it's often very helpful for businesses to know ahead of time what's taxable, what's not, so that they can comply rather than being surprised later in an audit. So, again, we appreciate the Department's efforts to reach our industry and work out a resolution for this problem. Thank you.

MS. VICKERS: Thank you. These rules should be guidance to hotels to how, for how to handle Reward Point Programs, we recommend approval of this rule.

GOVERNOR SCOTT: Is there a motion on Item 3?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Is there a second?

CFO ATWATER: Second.

GOVERNOR SCOTT: Move and seconded. Show Item 3 approved without objection.

MS. VICKERS: Finally, Item 4, request approval to adopt and certify to the Secretary of State, amendments to our rules to incorporate 2010 changes to Section 213.053, which authorizes the Department to post lists of warrants and liens of taxpayers who have outstanding obligations. We request approval of this rule.

GOVERNOR SCOTT: Is there a motion on Item 4?

COMMISSIONER PUTNAM: So moved.

GOVERNOR SCOTT: Is there a second?

CFO ATWATER: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 4 approved without objection.

MS. VICKERS: Thank you.

GOVERNOR SCOTT: Thanks.

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF BAY

I, Floie Lynn Sexton, a Court Reporter and Notary Public in and for the State of Florida at Large:

DO HEREBY CERTIFY that the foregoing meeting was taken before me at the time and place therein designated; that the meeting was taken stenographically and digitally recorded, and thereafter reduced to typewriting; and the foregoing pages numbered four (4) through thirty-two (32) are true and correct to the best of my ability.

I FURTHER CERTIFY that I am not a relative, employee, attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, nor financially interested in the foregoing action.

WITNESS my hand and official seal this 4th day of May, 2011.

Floie Lynn Sexton
Notary Public - State of Florida
My Commission No. DD810919
Expires: September 6, 2012

THE CABINET

STATE OF FLORIDA

Representing:

STATE BOARD OF ADMINISTRATION

DEPARTMENT OF REVENUE

FLORIDA LAND & WATER ADJUDICATORY COMMISSION

The above agencies came to be heard before THE FLORIDA CABINET, Honorable Governor Scott presiding, in the Cabinet Meeting Room, LL-03, The Capitol, Tallahassee, Florida, on Tuesday, May 3, 2011, commencing at 9:00 a.m.

Reported by:
JO LANGSTON
Registered Professional Reporter
Notary Public

ACCURATE STENOTYPE REPORTERS, INC.
2894 REMINGTON GREEN LANE
TALLAHASSEE, FLORIDA 32308
(850) 878-2221

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

ADAM H. PUTNAM
Commissioner of Agriculture

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

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STATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

DEPARTMENT OF REVENUE
(Presented by LISA VICKERS)

FLORIDA LAND & WATER ADJUDICATORY COMMISSION
(Presented by PHILLIP MILLER)

GOVERNOR SCOTT: All right. The next agenda is the Department of Revenue, presented by Lisa Vickers.

MS. VICKERS: Governor, members of the Cabinet, good morning.

GOVERNOR SCOTT: Good morning.

MS. VICKERS: The Department of Revenue has four items for your consideration this morning. Item 1 is a request for permission to publish notice of proposed rule-making for general tax rules related to refunds of tax paid on fuel used for off-road use, specifically for pumping off cargo, the treatment of trade-ins for transactions subject to sales tax and the removal of obsolete language related to adjustments of federal income tax for corporate income tax purposes.

These rule amendments are being proposed to reflect recent court decisions and law changes, and we recommend approval.

GOVERNOR SCOTT: Is there a motion on Item 1?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Second? Is there a second?

COMMISSIONER PUTNAM: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 1 approved without objection.

MS. VICKERS: Thank you. Item 2 is a request for approval to begin rule-making to amend Rule 12D-9.019, related to the ability of a petitioner to request to be heard immediately in a value adjustment board hearing and to have his or her petition rescheduled if a scheduled hearing is not being held within a reasonable time.

Section 194.032(2) provides the maximum amount of time a petitioner may be required to wait before the petitioner may request to be heard immediately. This provision was related to an earlier requirement that taxpayers exhaust their administrative remedies prior to filing in circuit court.

In 1974 that requirement was invalidated by a court case. But the Joint Administrative Committee comprised of six Senators and six members of the House of Representatives unanimously voted in favor of an objection to department's rule.

Based on a recommendation of the committee staff, they agreed that despite the decision overturning the requirement to exhaust administrative remedies, the language limiting a taxpayer's wait time to no more than four hours could be read independent of that requirement to provide an outside limit of what is reasonable under

certain circumstances to require a taxpayer to wait.

As a side note, the Department has recommended for two legislative sessions changes to the statutes to remove those provisions from law. And in the current session the sponsor of that legislation again rejected removing the four-hour requirement from the law.

If the agency chooses to address the committee's objection, it has only 45 days to initiate the rule amendments, which is why we brought this issue forward to you today. In the alternative, the agency can reject the objection, in which case the committee will file a notice of objection with the Department of State, may submit a recommendation to the Legislature to address the issue and may request the Department temporarily suspend the rule.

Because the proposed amendment provides some additional protection to taxpayers, meaning that our rule that requires that they wait no more than a reasonable time be limited in any case to no more than four hours, we recommend going forward with this rule revision as recommended by that legislative committee.

I think you have received some correspondence

from a constituent who disagrees with the Department making these changes to the rule. I don't believe they have appeared today. There was some question as to whether they would want to testify.

I think the concern is that the four-hour requirement was tied in the past to a requirement that a petitioner exhaust their administrative remedies, which is no longer a requirement. But I think that the Joint Administrative Procedures Committee is looking at it as at least some additional protection so that a clerk could never say that it's reasonable to make somebody wait six hours or seven hours for their hearing. At least you have that outside limit of four hours.

It doesn't change the fact that it has to be a reasonable amount of time. So in some cases, if someone is there, they have to get back to work and they can't wait any longer and it's only been an hour, it would be reasonable to find good cause to reschedule their hearing under those circumstances.

GOVERNOR SCOTT: Thank you very much. Is there a motion on Item 2?

CFO ATWATER: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 2 approved without objection.

MS. VICKERS: Thank you. Item 3, we request authority to adopt and approve to file and certify proposed rules in the following areas: Implementing law changes, expanding the tax credits available to taxpayers who make contributions to nonprofit scholarship funding organizations and an update of those rules, implementing instructions and guidance for taxpayers seeking refunds under the Manufacturing and Spaceport Investment Incentive Program, and reinstatement of language related to exempt status of germicides used to treat sewage that was inadvertently omitted from provisions of the rules when we amended those provisions earlier. We recommend adoption.

GOVERNOR SCOTT: Is there a motion on Item 3?

ATTORNEY GENERAL BONDI: Move to approve.

GOVERNOR SCOTT: Is there a second?

COMMISSIONER PUTNAM: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 3 approved without objection.

MS. VICKERS: Our final rule, we request authority to adopt and file with the Secretary of State amendments to rules related to the remittance

requirement for local governments related to red light camera penalties and the electronic remittance of fees and charges collected by the clerks of court.

As you know, there's legislation pending for the repeal of the red light camera penalties. It takes about 180 days to begin a rule-making process. We started this rule-making process in order to provide guidance on how the state portion of those fees are remitted to the State and distributed into the various trust funds.

We recommend we go forward with approval. This rule does some other things in terms of guidance on how clerks' fees are remitted through the Department of Revenue. If that legislation becomes law, of course, we'll come back and amend this rule.

GOVERNOR SCOTT: Great. Thank you. Is there a motion on Item 4?

COMMISSIONER PUTNAM: So moved.

GOVERNOR SCOTT: Is there a second?

ATTORNEY GENERAL BONDI: Second.

GOVERNOR SCOTT: Moved and seconded. Show Item 4 approved without objection.

MS. VICKERS: Thank you.

GOVERNOR SCOTT: Thanks a lot. Have a good

day.

MS. VICKERS: You too.

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

June 16, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke McKnight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Approval to Hold Public Hearing on Proposed Rule - Undistributable Collections

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Statement of Sections 120.54(3)(b) and 120.541, F.S., Impact: No impact.

The Department has reviewed these proposed rules for compliance with HB 1565 (2010). The proposed rules will not have an adverse impact on small business, small counties, or small cities, and each rule is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rules are each not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years.

What is the Department Requesting? Section 120.54(3)(a), F.S., requires the Department to obtain Cabinet approval to hold public hearings for the development of proposed rules. The Department therefore requests approval to publish Notices of Proposed Rule in the Florida Administrative Weekly for proposed rule 12E-1.0051, F.A.C. (*Undistributable Collections)*.

ATTACHMENT #2

Undistributable Child Support Collections

Why is the proposed rule necessary?: Section 409.2558(3), F.S., requires the Department to establish a method to determine when a child support collection or refund cannot be distributed to the intended recipient due to the death of or the inability to locate the recipient.

What does this proposed rule do?: The proposed rule provides the method that the Department will use to attempt to locate an intended child support recipient for the purpose of distributing a child support collection or refund to that person. If the Department is unable to locate the recipient using the sources set out in the proposed rule, then the monies will be processed according to statute. The proposed rule also provides the method to be used by the intended recipient to reclaim any amounts determined to be undistributable.

Were comments received from external parties?: A rule development workshop was scheduled for November 22, 2010, on request. No request was received to hold the scheduled workshop.

Attached are copies of:

- Summary of the proposed rule, which includes:
  - Statement of facts and circumstances justifying the rule;
  - Federal comparison statement; and
  - Summary of rule workshop
- Notices of Proposed Rule
- Rule text

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12E-1, FLORIDA ADMINISTRATIVE CODE

CHILD SUPPORT ENFORCEMENT PROGRAM

CREATING RULE 12E-1.0051

SUMMARY OF PROPOSED RULE

The proposed creation of Rule Chapter 12E-1.0051, Florida Administrative Code, provides guidance to the public about the Department's procedures for locating individuals to whom collections or refunds are owed, processing undistributable collections, allowing individuals to reclaim an undistributable collection, and processing refund requests. The proposed rule also tells the public that if the Department disburses a payment of less than $1.00 by paper check and the check is not cashed after 180 days, or if less than $1 is owed on a closed Title IV-D case, the Department will process the payment as program income, which is split between the state (General Revenue Fund) and federal government.

FACTS AND CIRCUMSTANCES JUSTIFYING THE PROPOSED RULE

Section 409.2558(3) F.S., requires the Department to establish by rule a method to determine a collection or refund to be undistributable to the final intended recipient. The law also authorizes the Department to process, as program income, payments the Department disburses that are less than $1.00 by paper check and the check is not cashed after 180 days, or any payment less than $1.00 owed on a closed Title IV-D case.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT

A Notice of Proposed Rule Development was published in the *Florida Administrative Weekly* on November 5, 2010 (Vol. 36, No. 44, pp. 5318-5319), to advise the public of the creation of Rule 12E-1.0051, F.A.C., (Undistributable Collections), and to provide that, if requested in writing, a rule development workshop would be held on November 22, 2010. No request was received by the Department.

NOTICE OF PROPOSED RULE

DEPARTMENT OF REVENUE

CHILD SUPPORT ENFORCEMENT PROGRAM

RULE NO.:	RULE TITLE:
12E-1.0051	Undistributable Collections

PURPOSE AND EFFECT: Section 409.2558(3), F.S., requires the Department to establish by rule a method to determine a collection or refund to be undistributable to the final intended recipient. The law provides that before determining a collection or refund undistributable, the Department must make reasonable efforts to locate individuals to whom collections or refunds are owed. The law also directs the Department to process, as program income, payments the Department disburses that are less than $1.00 by paper check and the check is not cashed after 180 days, or any amount less than $1.00 owed on a closed Title IV-D case. The purpose of creating proposed Rule 12E-1.0051, F.A.C., is to provide guidance to the public about the Department's procedures for locating individuals to whom collections or refunds are owed, processing undistributable collections, how an individual can reclaim an undistributable collection, and processing payments that are less than $1.00 as program income. The effect is to provide the public with information on how the Department will: (1) try to locate individuals to whom collections or refunds are owed; (2) determine a collection or refund to be undistributable; (3) process undistributable collections; (4) allow an individual to reclaim a collection applied as program income; and (5) process payments that are less than $1.00 as program income.

SUMMARY: The proposed creation of Rule Chapter 12E-1.0051, F.A.C., provides guidance to the public about the Department's procedures for locating individuals to whom collections or refunds are owed, processing undistributable collections, allowing individuals to reclaim an

undistributable collection and processing refund requests. The proposed rule also tells the public that if the Department disburses a payment of less than $1.00 by paper check and the check is not cashed after 180 days, or if less than $1 is owed on a closed Title IV-D case, the Department will process the payment as program income, which is split between the state (General Revenue Fund) and federal governments.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS: The agency has determined that this rule will not have an adverse impact on small business. Any person who wishes to provide information regarding regulatory costs, or to provide a proposal for a lower cost regulatory alternative, must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: 409.2557(3)(j), 409.2558(3), 409.2558(9), FS.

LAW IMPLEMENTED: 409.2558(3), 409.2558(5), FS.

A HEARING WILL BE HELD AT THE DATE, TIME, AND PLACE SHOWN BELOW:

DATE AND TIME: [To be determined upon approval.]

PLACE: [To be determined upon approval.]

NOTICE UNDER THE AMERICANS WITH DISABILITIES ACT: Any person requiring special accommodations to participate in any proceeding before the Child Support Enforcement Program is asked to advise the Department at least 48 hours before the hearing by contacting Tammy Miller at (850)617-8346. If you are hearing or speech impaired, please 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 IS: Phil Scruggs, Government Analyst II, Child Support Enforcement Program, Department of Revenue,

P.O. Box 8030, Tallahassee, Florida 32314-8030, telephone (850)617-8035, e-mail address scruggsp@dor.state.fl.us.

THE FULL TEXT OF THE PROPOSED RULE IS:

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12E-1, FLORIDA ADMINISTRATIVE CODE

CHILD SUPPORT ENFORCEMENT PROGRAM

CREATING RULE 12E-1.0051

12E-1.0051 Undistributable Collections.

(1) Introduction. The Department is responsible for distribution of child support payments under Section 409.2558, F.S. When the Department is unable to disburse the payment to the final intended recipient, the provisions of this rule shall be applied.

(2) Definitions. For purposes of this rule:

(a) "Final intended recipient" means a custodial parent, noncustodial parent, a parent's estate, or a state, country, or Federal agency providing Title IV-D services, including those agencies administering programs under Title IV-A (Temporary Assistance for Needy Families), IV-E (Foster Care), and XIX (Medicaid) of the Social Security Act.

(b) "Obligee" means the person to whom support payments are made pursuant to an alimony or child support order.

(c) "Obligor" means a person who is responsible for making support payments pursuant to an alimony or child support order.

(d) "Undistributable collection" is defined by the social and economic assistance provisions in Section 409.2554(14), F.S., to mean a support payment received by the Department which the Department determines cannot be distributed to the final intended recipient.

(3) Undistributable Collection Processing.

(a) The Department will consider a collection undistributable when:

1. The final intended recipient is deceased and the Department cannot locate the final intended recipient's estate or the estate does not claim the funds.

2. The final intended recipient cannot be found after making reasonable efforts to locate the individual.

(b) The Department will use the following sources to try to find the final intended recipient. If the final intended recipient is deceased, location searches under subparagraphs 1 through 6 are not required. Reasonable efforts to locate a final intended recipient are considered exhausted when, at a minimum, searches of the following sources have taken place and the Department has not found the final intended recipient.

1. Department's automated case management computer system, to include electronic searches with multiple sources and responses from the Federal Parent Locator Service, as required in 45 CFR 303.70. This search includes the obligor, obligee, and children.

2. Florida Department of Highway Safety and Motor Vehicles.

3. Florida Agency for Workforce Innovation. This search includes employment, wage, unemployment, and Workers' Compensation records.

4. Florida Department of Corrections.

5. Location sources available from an out-sourced location vendor, subject to a contractual agreement between the Department and vendor.

6. Secure Internet locate sites, as determined on a case-by-case basis.

(c) If the searches under subparagraphs (b)1. through 6. find the final intended recipient, the Department disburses the payment.

(d) If the searches under subparagraphs (b)1. through 6. do not find the final intended recipient, the collection is considered undistributable. The Department shall process the

collection in priority order as provided in Section 409.2558(3), F.S.

(e) When the obligor has more than one support order with a past-due balance being enforced by the Department, the Department shall notify the obligor by certified mail, restricted delivery, return receipt requested, of its intent to apply the collection to the obligor's other cases, according to Section 409.2558(3)(b)6, F.S. If the address of the obligor is unknown, the Department will try to find the obligor using sources referenced in paragraph (b) of this subsection.

(f) If the obligor disagrees with the Department's plan to apply the collection to the obligor's other cases and a petition is filed in circuit court and served on the Department within 30 calendar days of the mailing date of notice, the Department will not apply the collection to the obligor's other cases unless the court enters an order for the Department to apply the collection to the obligor's other cases.

(g) When the Department has processed the collections as required in Section 409.2558(3)(b)6, F.S., and there are collections remaining, the Department will refund the remaining collections to the obligor if the address of the obligor is known. If the address of the obligor is unknown, the Department will try to find the obligor using sources referenced in paragraph (b) of this subsection.

(4) Undistributed Collections for Ninety-Nine Cents or Less.

(a) If the Department has sent one or more paper checks totaling ninety-nine cents or less to a final intended recipient, the final intended recipient has not cashed the check(s) within 180 days of the issue date on the check(s), the collection(s) is the only remaining payment due to the final intended recipient, and the final intended recipient does not have an established method of electronic disbursement, the Department shall process the collection as program income.

(b) If the Department identifies undistributed collections totaling ninety-nine cents or less on a closed case and the collection is the only remaining collection due to the final intended recipient, the Department shall process the collection as program income without attempting to locate the final intended recipient.

(5) Reclamation of Undistributable Collections.

(a) The final intended recipient may reclaim undistributable collections retained as program income. The final intended recipient may not reclaim an undistributable collection if the collection was applied to bad check charges because the obligor's payment is returned to the Child Support Enforcement Program for insufficient funds, overpayments, state-assigned arrears, administrative costs, other cases in which the obligor owes past-due support, or the collection was returned to the obligor. The final intended recipient may contact the local child support office or contact the Child Support Enforcement Program Office and ask for the Payment Processing Unit, and request a reclamation form.

(b) To reclaim a collection, the final intended recipient must complete and send to the Department, Form CS-FM125, Request for Refund, dated July 2010, incorporated by reference in this rule. The final intended recipient must prove they are the collection owner by giving his or her name, mailing address, and if known, the child support or case number, date of payment(s), and amount claimed.

(c) The Department will review the information submitted by the final intended recipient and respond in writing to approve or deny the request.

1. If approved, the Department will mail the collection to the final intended recipient.

2. If denied, the Department will mail Form CS-FM127, Request for Refund Denied, dated July 2010, incorporated by reference in this rule, to the final intended recipient. Form CS-FM127

states the request is denied, reason for the denial, and the final intended recipient may contest the decision by seeking an administrative hearing under Chapter 120, FS. The form includes a Notice of Rights.

3. A final intended recipient may seek an administrative hearing to contest the Department's decision to deny a request to reclaim a collection considered undistributable by the Department. A petition for an administrative hearing must be received by the Department of Revenue, Child Support Enforcement Program, Deputy Agency Clerk within 20 calendar days from the mailing date of Form CS-FM127. Administrative hearings shall be conducted pursuant to Chapter 120, F.S.

(6) Forms.

Members of the public may get a copy of the forms used in this rule chapter, incorporated by reference, without cost, by writing to the Department of Revenue, Child Support Enforcement Program, Attn.: Forms Coordinator, P.O. Box 8030, Tallahassee, Florida 32314-8030.

Rulemaking Authority 409.2557(3)(j), 409.2558(3), 409.2558(9), FS. Law Implemented 409.2558(3), 409.2558(5), FS. History-New _____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Phil Scruggs, Government Analyst II, Child Support Enforcement Program, Department of Revenue, P.O. Box 8030, Tallahassee, Florida 32314-8030, telephone (850)617-8035, e-mail address scruggsp@dor.state.fl.us.

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: [To be inserted upon approval.]

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: [To be inserted upon approval.]

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAW: A Notice of Proposed Rule Development was published in the *Florida Administrative Weekly* on November 5, 2010 (Vol. 36, No. 44, pp. 5318-5319). No request to hold a workshop was received by the Department.

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

June 16, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke McKnight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rules:

- Refunds of Tax Paid on Fuel Used for Pumping Off Cargo
- Trade-Ins
- Obsolete Example

Statement of Sections 120.54(3)(b) and 120.541, F.S., Impact: No impact.

The Department has reviewed these proposed rules for compliance with HB 1565 (2010). The proposed rules will not have an adverse impact on small business, small counties, or small cities, and each rule is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rules are each not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years.

What is the Department Requesting? The Department requests final adoption and approval to file and certify with the Secretary of State under Chapter 120, F.S., the following proposed rules:

ATTACHMENT #3

- Refunds of Tax Paid on Fuel Used for Pumping Off Cargo: Rule 12B-5.130, F.A.C. (*Refunds*) and proposed Form DR-309639 (*Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes*), incorporated by reference in Rule 12B-5.150, F.A.C. (*Public Use Forms*).

- Trade-Ins: Rule 12A-1.018, F.A.C. (*Trade and Cash Discounts*) and Rule 12A-1.074, F.A.C. (*Trade-Ins*).

- Obsolete Example: Rule 12C-1.013, F.A.C. (*Adjusted Federal Income Defined*).

Refunds of Tax Paid on Fuel Used for Pumping Off Cargo

Why are the proposed rules necessary?: Section 206.8745 F.S. provides for a refund of tax paid on diesel fuel used in qualified vehicles to unload bulk cargo. This rule makes that process easier by removing burdensome taxpayer reporting requirements by providing set percentages for taxpayers to use when seeking a refund of the tax paid on diesel fuel.

What do these proposed rules do?: The proposed amendments to the current rule provide specific percentages to be used by businesses claiming a refund of tax paid on diesel fuel used in qualifying vehicles for unloading bulk cargo. These percentages will relieve businesses of the burden of maintaining and providing extensive documentation of diesel fuel usage for each vehicle.

The Department repealed its prior rules as a result of Pritchett Trucking, Inc. v. Department of Revenue (Case No. 04-3093 CA, 2nd Circuit, July 3, 2008). Due to that repeal, Taxpayers seeking a refund of tax paid on diesel fuel are currently required to submit documentation establishing the actual amount of fuel used in each vehicle for the purpose of pumping off bulk cargo. The proposed rule and refund application amendments will relieve businesses from this documentation requirement and allow businesses to use set percentages when seeking a refund of tax paid on diesel fuel used for unloading bulk cargo from qualified vehicles.

Were comments received from external parties?: A rule development workshop was held on February 9, 2009, to receive public comment and to gather information on vehicles that unload bulk cargo by pumping. The Department reviewed the information provided by the industry, including the percentages of fuel used for pumping off bulk cargo for various types of qualified equipment that are used by other states for tax refund purposes. Using this information the Department computed a percentage of fuel used for pumping off bulk cargo for each type of qualified vehicle. These proposed percentages were presented at a rule development workshop held on April 4, 2011. An industry representative attended the workshop to support the proposed rule and proposed refund application. A rule hearing was held on June 1, 2011. No one attended to provide comment and no written comments were received by the Department.

Trade-Ins

Why are the proposed rules necessary?: Amendments to the current rules are necessary to remove provisions from the Department's rules that have been held invalid by a rule challenge proceeding.

What do these proposed rules do?: The proposed amendments make the rules consistent with the holding in Department of Revenue v. Gamestop, Inc., DOAH Case No. 09-005759RX (May 4, 2010), per curiam affirmed, 48 So.3d 839 (Fla. App. 1 Dist., 2010), which held the inclusion of the phrase "at the time of sale" to be an invalid exercise of delegated legislative authority.

Section 212.09, F.S., provides that sales tax is due on the sales price of an article, reduced by the credit given for a used article taken in trade, when the used article is accepted by the seller, intended for resale, and taken in a trade or a series of trades. Section 212.02(16), F.S., provides that "sales price" does not include trade-ins or discounts taken at the time of sale. The current rules require that a used article taken in trade must be taken "at the time of sale." The Court held in the Gamestop case that the phrase "at the time of sale" effectively negates the allowance of taking a used article in a series of trades, as provided for by Section 212.09, F.S. The result is that a customer can accumulate trade-in credits over time and use them without paying tax.

Were comments received from external parties?: A rule workshop was held on April 4, 2011. No one attended to provide comment. No written comments have been received by the Department. A rule hearing was held on June 1, 2011. . No one attended to provide comment and no written comments were received by the Department.

Obsolete Example

Why is the proposed rule necessary?: An amendment to the current rule is needed to remove an obsolete example.

What does the proposed rule do?: The proposed amendment removes the obsolete reference to the Michigan single business tax from the current rule. Florida corporate income tax is calculated on a taxpayer's federal taxable income and certain adjustments provided in Section 220.13, F.S. One of the adjustments requires the taxpayer to add any tax paid to another state based on the taxpayer's income to the taxpayer's federal taxable income. The current rule provides that "value added taxes, such as the Michigan single business tax," are not taxes based on income. On January 1, 2008, Michigan replaced its single business tax with a business tax based on income.

Were comments received from external parties?: A rule workshop was held on April 4, 2011. No one attended to provide comment. No written comments have been received by the Department. A rule hearing was held on June 1, 2011. . No one attended to provide comment and no written comments were received by the Department.

Attached are copies of:

- Summaries of the proposed rules, which include:
  - Statements of facts and circumstances justifying the rule;
  - Federal comparison statement; and
  - Summaries of rule workshops and hearings
- Rule text

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-5.130 AND 12B-5.150

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), provide: (1) the types of vehicles that qualify for the refund of tax paid on diesel fuel pursuant to subsection 206.8745(6), F.S.; (2) the information that will be required for each qualified vehicle when submitting Form DR-309639 to the Department; (3) the qualified vehicle's percentage of fuel consumed for purposes of unloading bulk cargo by pumping; (4) how to determine the gallons of undyed diesel fuel that are eligible for refund; and (5) how to determine the amount of tax refund due.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Section 206.8745(6), F.S., grants a refund, as provided by rule, for undyed tax-paid diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. This rulemaking is necessary to provide the standards for

granting refunds of the tax paid on undyed diesel fuel that is consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping using a hydraulic, pneumatic, or any other kind of pump. The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, incorporated by reference in Rule 12B-5.150, F.A.C. (Public Use Forms), provide how a refund of tax paid on diesel fuel used by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo will be granted by the Department.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON FEBRUARY 5, 2009

The development of proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and to Rule 12B-5.150, F.A.C. (Public Use Forms), was noticed in the Florida Administrative Weekly on December 12, 2008 (Vol. 34, No. 52, p. 6416). A rule development workshop was held on February 5, 2009, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, FL, to solicit public information to adopt a new standard that can be used by taxpayers that use any type of pumping to off-load bulk cargo for purposes of the refund authorized in Section 206.8745(6), F.S.

PARTIES ATTENDING

For the Department of Revenue	LARRY GREEN, Workshop Moderator MARK ZYCH, Director, Technical Assistance and Dispute Resolution RICK McCLURE, Assistant General Counsel LEE GONZALEZ, Revenue Program Administrator GARY GRAY, Revenue Program Administrator RONALD GAY, Tax Law Specialist LYNWOOD TAYLOR, Tax Law Specialist
From the Public	MICHAEL BRADFIELD, NECS
WRITTEN COMMENTS	MICHAEL BRADFIELD, NECS

Mr. Ron Gay, Department of Review, presented an overview of the provisions of section 206.8745(6), F.S., which allows a refund of tax paid on undyed tax-paid diesel fuel consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo by pumping when the power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank. In Pritchett Trucking, Inc. v. Department of Revenue (Case No. 04-3093 CA, 2nd Circuit, July 3, 2008), the court held that Section 206.8745, F.S., grants refunds for any type of pumping used to unload bulk cargo, regardless whether the means of pumping is by pneumatics, hydraulics, or any other method.

Mr. Michael Bradfield, NECS, representing different companies that do a lot of spraying in Florida, as well as concrete pumpers, stated that he would like to run some studies at the job site on different boom heights to find out how much fuel is being used per yard of concrete pumped to develop a standard. There are three major manufacturers in the concrete pumping industry, each with different boom heights, engine capacity, and engine rating. Each of these would have a noticeable difference in fuel usage. The difference could be based on the meter size of the truck. There is documentation available from the different manufacturers of concrete

pumpers.

Mr. Bradfield continued that one of the other companies that he represents uses trucks to spray lawns. They have three different size tanks that are built into one large tank that is on a truck from which the spray is pumped. He feels that these trucks are currently getting a minute portion of what their off-road pump-off portion truly is. Studies could be run for those companies that have these types of trucks.

Mr. Bradfield advised that some of the newer trucks have an electronic control module that will measure the amount of pumping hours and the amount of fuel used. Some states have said that the information is not sufficiently accurate. The problem with the trucks is that they have to be hooked up to a computer to download this information. One of the solutions is to use laptops to download the information for purposes of tracking the information better. Pump Magic is a program that is used to measure the amount of concrete product pumped off a truck, so that the information may be used to bill the customer for the amount of the concrete. This program provides good detail information.

Mr. Mark Zych, Department of Revenue, confirmed that the information that would be provided would be based on the surveys conducted. Mr. Bradfield stated that many states have set percentages for fuel tax refund purposes; however, if you can provide data that the percentage of fuel for your particular use is above the stated percentage, the refund would be allowed.

Mr. Bradfield continued that about 25 years ago, the Perdue Engineering School conducted a PTO study on about 28 different types of equipment, including concrete pumpers. The equipment has changed since that study with the advancement of technology. He stated that he could put together information from other states that would include the set PTO percentages.

Mr. Ron Gay, Department of Revenue, stated that he is looking for a list of purchases to

identify how much fuel is actually purchased in Florida, a difference between what was used on-road and what was used to either spray or to pump, and how you arrived at the difference. Mr. Bradfield continued that, to be fair, a study should be conducted on each different metered height. The refund should be based on the size of the truck, not just because the truck pumps concrete. Many states have found that basis to be more favorable than a set percentage for a specific type of pump.

Mr. Lynwood Taylor, Department of Revenue, asked whether returns were filed with Highway Safety, such as under the International Fuel Tax Agreement or the International Registration Plan. Mr. Bradfield responded that most of the vehicles never leave Florida, so they are not going to be under these agreements.

Mr. Bradfield stated that each of the companies that he deals with has very good fuel purchase records that are associated with each individual truck. They use a fleet fueling card to gather this information. Mileage is tracked daily. There is plenty of information that could be provided to the Department.

On March 19, 2009, Mr. Bradfield submitted a document entitled "Power Take Off Published Percentages by State." This document contains, by state, information regarding the type of fuel used in specified equipment and the percentage of fuel that would be consumed for purposes of unloading bulk cargo.

SUMMARY OF DEVELOPMENT OF PROPOSED RULE TEXT:

After verifying the information submitted to the Department, an average percentage of fuel consumed for purposes of unloading bulk cargo, by each type of vehicle, was computed for each type of qualified vehicle, based on the average of the percentages used by all states that grant refunds on fuel consumed for unloading bulk cargo. The proposed percentages for each

type of vehicle are included in the proposed revisions to Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes. The proposed form provides information regarding the type of vehicle and requires the applicant to include information regarding the vehicle, the purchases of undyed diesel fuel consumed in the vehicle, and the amount of tax refund due using the proposed percentage of the fuel consumed for a specific type of vehicle.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, p. 662), regarding the proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and to Rule 12B-5.150, F.A.C. (Public Use Forms). A rule development workshop was held on April 4, 2011, in Room 2503, Building One, 2450 Shumard Oak Boulevard, Tallahassee, FL, to allow members of the public to ask questions and make comments regarding the proposed standards to be used for purposes of the refund authorized in Section 206.8745(6), F.S.

PARTIES ATTENDING

For the Department of Revenue	TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution
For the Public	MICHAEL BRADFIELD, NECS

Mr. Michael Bradfield, NECS, provided comment in support of proposed Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, containing the information that will be required to obtain a refund of tax paid on undyed diesel fuel consumed by a power take-off unit or engine exhaust for the purpose of unloading bulk cargo.

SUMMARY OF PUBLIC HEARING

HELD ON MAY 3, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on May 3, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12B-5.130, F.A.C. (Refunds), and to Rule 12B-5.150, F.A.C. (Public Use Forms). A notice for the public hearing was published in the Florida Administrative Weekly on April 22, 2011 (Vol. 37, No. 16, p. 1066).

SUMMARY OF RULE HEARING

HELD ON JUNE 1, 2011

The proposed amendments to Rule 12B-5.130, F.A.C. (Refunds), and to Rule 12B-5.150, F.A.C. (Public Use Forms), were noticed for a rule hearing in the Florida Administrative Weekly on May 6, 2011 (Vol. 37, No. 18, pp. 1169 - 1170). A rule hearing was held on June 1, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received.

Technical changes were made to change the revision date on Form DR-309639 (Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt

Purposes) to “R. 07/11” and to include the new revision date in subsection (37) of Rule 12B-5.150, F.A.C. No substantive changes were made to the form. These technical changes were included in the record of the public hearing held on June 1, 2011.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12B-5, FLORIDA ADMINISTRATIVE CODE

MOTOR FUELS, DIESEL FUELS, ALTERNATIVE FUELS,

AVIATION FUELS AND POLLUTANTS

AMENDING RULES 12B-5.130 AND 12B-5.150

PART I

TAX ON MOTOR AND DIESEL FUEL

12B-5.130 Refunds.

(1) No change.

(2) UNDYED DIESEL FUEL USED FOR OFF-ROAD PURPOSES OR OTHER EXEMPT PURPOSES.

(a) When undyed diesel fuel is consumed by a power take-off unit or engine exhaust for the purpose of turning a concrete mixer drum, for compacting solid waste, or for unloading bulk cargo by pumping, and such power take-off unit or engine exhaust is mounted on a motor vehicle that has no separate fuel tank, tax paid on the diesel fuel will be subject to a refund.

1. A refund of tax paid on undyed diesel fuel will be granted on thirty-five percent of the gallons consumed by vehicles that use fuel to turn a concrete mixer drum or for compacting solid waste. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted

to the qualified applicant.

2. A refund of tax paid on undyed diesel fuel will be granted based on a percentage of the total gallons consumed by vehicles that use undyed diesel fuel for unloading bulk cargo by pumping. Sales tax imposed under Section 212.0501, F.S., plus any applicable discretionary sales surtax, is due on the average cost per gallon, as computed in Schedule 1B, Form DR-309639, Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes, that is eligible for a refund of fuel tax paid. The Department will reduce the amount of refund due on the fuel tax paid by the amount of sales tax, plus any applicable discretionary sales surtax, due. The net amount of the refund will be granted to the qualified applicant.

(b) through (c) No change.

(d)1. Persons seeking a refund of tax paid on undyed diesel for off-road or other exempt purposes must file an ~~Form DR-309639,~~ Application for Refund of Tax Paid on Undyed Diesel Used for Off-road or Other Exempt Purposes (Form DR-309639, incorporated by reference in Rule 12B-5.150, F.A.C.) with the Department.

2. No change.

(e) No change.

(3) through (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 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) through (36) No change.

(37) DR-309639	Application for Refund of Tax Paid on Undyed Diesel Used for Off-Road or Other Exempt Purposes (with Instructions) (R. 07/11 ~~01/11~~)	____~~01/11~~

(38) through (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,_____.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULES 12A-1.018 AND 12A-1.074

SUMMARY OF PROPOSED RULES

The proposed amendments to Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), remove the unnecessary reference to "trade-ins" from the rule.

The proposed amendments to Rule 12A-1.074, F.A.C. (Trade-Ins), remove provisions which require that for a trade-in credit to be allowed against the sales price of an item, the item taken in trade must be taken "at the time of sale."

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULES

Rule 12A-1.074, F.A.C. (Trade-Ins), provides that, for a trade-in credit to be allowed against the sales price of an item, any used article to be taken in trade must be taken "at the time of sale." In Department of Revenue v. Gamestop, Inc. (Case No. 1D10-2899, November 18, 2010), the appellate court affirmed that the phrase "at the time of sale" effectively negates section 212.09, F.S., and is an invalid exercise of delegated legislative authority. The purpose of the proposed amendments to this rule is to remove the phrase "at the time of sale."

The subject of the provisions of Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), is discounts, not trade-ins. The purpose of the proposed amendments to this rule is to remove reference to the term "trade-ins," consistent with the court's ruling in Department of Revenue v.

Gamestop, Inc.

FEDERAL COMPARISON STATEMENT

The provisions contained in these rules do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 661-662), regarding the proposed amendments to Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), and Rule 12A-1.074, F.A.C. (Trade-Ins). A rule development workshop was held on April 4, 2011, in Room 2503, Building One, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments. The participant for the public did not provide comment regarding these proposed rules. No written comments have been received by the Department.

PARTIES ATTENDING

For the Department of Revenue	TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution
For the Public	MICHAEL BRADFIELD, NECS

SUMMARY OF PUBLIC HEARING

HELD ON MAY 3, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on May 3, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), and Rule 12A-1.074, F.A.C. (Trade-Ins). A notice for the public hearing was published in the Florida Administrative Weekly on April 22, 2011 (Vol. 37, No. 16, p. 1066).

SUMMARY OF RULE HEARING

HELD ON JUNE 1, 2011

The proposed amendments to Rule 12A-1.018, F.A.C. (Trade and Cash Discounts), and Rule 12A-1.074, F.A.C. (Trade-Ins), were noticed for a rule hearing in the Florida Administrative Weekly on May 6, 2011 (Vol. 37, No. 18, pp. 1166 - 1167). A rule hearing was held on June 1, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULES 12A-1.018 AND 12A-1.074

12A-1.018 Trade and Cash Discounts.

(1) No change.

(2) Discounts ~~Trade-ins or discounts~~ allowed and taken at the time of sale are deducted from the selling price, and the tax is due on the net amount paid at the time of sale. Discounts granted for payment within a specified period or upon a specified later date are not deemed discounts at the time of sale, and may not be deducted from the selling price for purposes of computing the tax.

(3) through (4) No change.

Rulemaking ~~Specific~~ Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(16), 212.07(2), 212.12(9) FS. History–Revised 10-7-68, 6-16-72, Amended 6-3-80, Formerly 12A-1.18, Amended 6-19-01, _____.

12A-1.074 Trade-Ins.

(1) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale,~~ as a credit or part payment on the sale of new articles of tangible personal property, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the new article of tangible personal property, less credit for the used article of

tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(2) Where used articles of tangible personal property, accepted and intended for resale, are taken in trade, or a series of trades, ~~at the time of sale,~~ as a credit or part payment on the sale of used articles, the tax levied by Chapter 212, F.S., shall be paid on the sales price of the used article of tangible personal property, less credit for the used articles of tangible personal property taken in trade. A separate or independent sale of tangible personal property is not a trade-in, even if the proceeds from the sale are immediately applied by the seller to a purchase of new articles of tangible personal property.

(3) No change.

Rulemaking ~~Specific~~ Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.02(15), (16), 212.07(2), (3), 212.09 FS. History–Revised 10-7-68, 6-16-72, Amended 12-11-74, Formerly 12A-1.74, Amended 1-2-89, _____.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE

CORPORATE INCOME TAX

AMENDING RULE 12C-1.013

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12C-1.013, F.A.C., remove the obsolete Michigan single business tax that is currently included as an example of a value-added tax that is not considered a tax upon or measured by income for purposes of section 220.13(1)(a)1., F.S.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), currently reflects the provisions of section 220.13(1)(a)1., F.S., which requires an addition to federal taxable income equal to the amount of any tax upon or measured by income for Florida corporate income tax purposes. Subsection (5) of the rule provides that value-added taxes are not required to be added back to federal income for purposes of computing the Florida corporate income tax. The Michigan single business tax is included as an example of a value-added tax. On January 1, 2008, Michigan replaced its single business tax with a business tax based on income. The proposed amendments to Rule 12C-1.013, F.S., are necessary to remove provisions regarding the now obsolete Michigan single business tax.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON APRIL 4, 2011

A Notice of Proposed Rule Development Workshop was published in the Florida Administrative Weekly on March 18, 2011 (Vol. 37, No. 11, pp. 662 - 663), regarding the proposed amendments to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined). A rule development workshop was held on April 4, 2011, in Room 2503, Building One, 2450 Shumard Oak Boulevard, Tallahassee, Florida, to allow members of the public to ask questions and make comments. The participant for the public did not provide comment regarding this proposed rule. No written comments have been received by the Department.

PARTIES ATTENDING

For the Department of Revenue	TERRY BRANCH, Tax Law Specialist, Technical Assistance and Dispute Resolution, Workshop Moderator FRENCH BROWN, Deputy Director, Technical Assistance and Dispute Resolution DEBRA GIFFORD, Tax Law Specialist, Technical Assistance and Dispute Resolution RONALD GAY, Tax Law Specialist, Technical Assistance and Dispute Resolution
For the Public	MICHAEL BRADFIELD, NECS

SUMMARY OF PUBLIC HEARING

HELD ON MAY 3, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on May 3, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined). A notice for the public hearing was published in the Florida Administrative Weekly on April 22, 2011 (Vol. 37, No. 16, p. 1066).

SUMMARY OF RULE HEARING

HELD ON JUNE 1, 2011

The proposed amendments to Rule 12C-1.013, F.A.C. (Adjusted Federal Income Defined), were noticed for a rule hearing in the Florida Administrative Weekly on May 6, 2011 (Vol. 37, No. 18, pp. 1170 - 1171). A rule hearing was held on June 1, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12C-1, FLORIDA ADMINISTRATIVE CODE

CORPORATE INCOME TAX

AMENDING RULE 12C-1.013

12C-1.013 Adjusted Federal Income Defined.

(1) through (4) No change.

(5)(a) An addition is required by Section 220.13(1)(a)1., F.S., to federal taxable income equal to the amount of any tax upon or measured by income, paid or accrued as a liability to any state of the United States or to the District of Columbia, which is deductible from gross income in the computation of taxable income for the taxable year. There is no addition required for tax paid to a political subdivision of a state (for example, a city or county) or to the Commonwealth of Puerto Rico, or any territory or possession of the United States, or any foreign country.

(b) The intent of the Legislature when this provision was enacted was to prevent an erosion of the Florida tax base by the amount of the federal tax benefit obtained by paying state income taxes. Therefore, the taxpayer will only be required to add back the amount actually deducted, not an amount that could have been deducted. For example, a taxpayer pays corporate income taxes in 20 states. In computing the deduction allowable for federal purposes, the taxpayer forgets the income tax paid to Georgia. In computing the Florida corporate income tax, the taxpayer only adds back the tax deducted for the 19 states. There is no addback for the Georgia income tax that was not deducted for federal purposes, but was deductible under the

Internal Revenue Code. If this error is later discovered, the Department will not require an addback of the amount of the Georgia tax.

(c) For purposes of this subsection, value added taxes~~, such as the Michigan single business tax,~~ will not be construed to be a tax upon or measured by income.

(6) through (21) No change.

Rulemaking Authority 213.06(1), 220.51 FS., s. 4, Ch. 2009-18, s. 3, Ch. 2009-192, L.O.F. Law Implemented 220.02(3), 220.03(5), 220.13, 220.131(1), 220.43(1), (3) FS. History–New 10-20-72, Amended 1-19-73, 10-20-73, 10-8-74, 4-21-75, 5-10-78, 11-13-78, 12-18-83, Formerly 12C-1.13, Amended 12-21-88, 12-7-92, 5-17-94, 10-19-94, 3-18-96, 10-2-01, 4-14-09, 6-28-10, _____.

FLORIDA
DEPARTMENT OF REVENUE

Executive Director
Lisa Vickers

June 16, 2011

MEMORANDUM

TO: The Honorable Rick Scott, Governor
Attention: Doug Darling, Chief of Staff/Cabinet Affairs Director
Rachel Goodson, Cabinet Aide

The Honorable Jeff Atwater, Chief Financial Officer
Attention: Robert Tornillo, Chief Cabinet Aide

The Honorable Pam Bondi, Attorney General
Attention: Kent Perez, Associate Deputy Attorney General
Rob Johnson, Cabinet Affairs

The Honorable Adam Putnam, Commissioner of Agriculture and Consumer Services
Attention: Jim Boxold, Chief Cabinet Aide
Brooke McKnight, Cabinet Aide

FROM: French Brown, Deputy Director, Technical Assistance and Dispute Resolution

SUBJECT: Requesting Adoption and Approval to File and Certify Proposed Rule – Timeshares

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Statement of HB 1565 (Chapter 2010-279, L.O.F.) Impact: No impact.

The Department has reviewed this proposed rule for compliance with HB 1565 (2010). The proposed rule likely will not have an adverse impact on small business, small counties, or small cities, and it is not likely to have an increased regulatory cost in excess of $200,000 within 1 year. Additionally, the proposed rule is not likely to have an adverse impact or increased regulatory costs in excess of $1,000,000 within 5 years.

What is the Department Requesting? The Department requests final adoption of proposed Rule 12A-1.061, F.A.C. (*Timeshares*), and approval to file and certify it with the Secretary of State under Chapter 120, F.S.

ATTACHMENT #4

Timeshare Exchange Programs

Why is this proposed rule necessary?: The proposed rule amendment is necessary to provide guidance on the sales tax exemption for timeshare exchanges provided by Chapter 2009-133, L.O.F.

What does this proposed rule do?: Section 212.03, F.S., was amended by Chapter 2009-133, L.O.F., to provide that a payment made under a timeshare exchange program is a service charge and is not subject to tax. The proposed rule provides clarification that the various fees paid under a timeshare program, including an exchange program membership fee, an exchange fee, and an upgrade fee, are not subject to tax.

The statutory amendment also provides that a payment made for occupancy in a timeshare property in conjunction with a potential purchase of a timeshare interest (referred to as a "regulated short-term product") is subject to tax, unless such payment is applied to the purchase of a timeshare estate. The proposed rule provides that any tax due on such occupancy is due on the last day of occupancy.

Were comments received from external parties?: Rule workshops were held on June 24, 2010 and October 11, 2010. Comments in support of the rule were received from industry representatives. Written comments were also received from Pinellas County opposing the rule, arguing that timeshare exchanges are taxable. A rule hearing was held on June 1, 2011. . No one attended to provide comment and no written comments were received by the Department.

Attached are copies of:

- Summary of the proposed rule, which includes:
  - Statements of facts and circumstances justifying the rule;
  - Federal comparison statement; and
  - Summaries of rule workshops and hearings
- Rule text

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULE 12A-1.061

SUMMARY OF PROPOSED RULE

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), pursuant to Section 212.03(1), F.S., as amended by Section 3, Chapter 2009-133, L.O.F., provide: (1) when consideration paid for the purchase of a timeshare, for the rental or occupancy of a timeshare, and for regulated short-term products is subject to tax; and (2) that consideration paid pursuant to an exchange program by a timeshare owner for the use or occupancy of an accommodation is not subject to tax.

FACTS AND CIRCUMSTANCES JUSTIFYING PROPOSED RULE

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), are necessary to include the provisions regarding timeshares provided in Chapter 2009-133, L.O.F. This law provides that timeshare exchanges and fees charged by a third party to facilitate a timeshare exchange are not subject to tax. The law also provides when fees charged to occupy and inspect a regulated short-term timeshare product are subject to tax. When in effect, this rule will provide for the taxability of the purchase of a timeshare interest, the rental of a timeshare accommodation, the occupancy pursuant to the

purchase of a regulated short-term product, and the fees charged by timeshare exchange programs.

FEDERAL COMPARISON STATEMENT

The provisions contained in this rule do not conflict with comparable federal laws, policies, or standards.

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON JUNE 24, 2010

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), were noticed for a rule development workshop in the Florida Administrative Weekly on May 28, 2010 (Vol. 36, No. 21, p. 2421). A rule development workshop was held on June 24, 2010, in Room 118, Carlton Building, 501 S. Calhoun Street, Tallahassee, Florida, commencing at 10:00 a.m. and concluding at 11:59 a.m., to allow members of the public to ask questions and make comments regarding the proposed changes.

PARTIES ATTENDING

For the Department of Revenue	MARSHALL STRANBURG, General Counsel MARK ZYCH, Director, Technical Assistance and Dispute Resolution TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution
For the Public	TOM BELL, Interval International PAUL BOGDANSKI, Grant Thornton JIM ERVIN, Holland & Knight CHARLES JOHNSON, Marriott SARAH RICHARDSON, Pinellas County Attorney's Office JOYCE SUNDAY, Walton County Clerk's Office

VICKI WEBER, Hopping, Green and Sams
PATSY WILLBANKS, Okaloosa Clerk of the Circuit Court

WRITTEN COMMENTS

JASON GAMEL, American Resort Development Association
SARAH RICHARDSON, Pinellas County Attorney's Office
CLAUDIA L. RILEA, C.P.A., C.I.A., Orange County Comptroller's Office
ERIN SULLIVAN, C.F.C.A., C.P.M., Pinellas County Tax Collector's Office Courthouse

Proposed paragraphs (7)(c) and (d) of Rule 12A-1.061, F.A.C., Regulated Short-Term Products and Timeshare Exchange Programs

Mr. Jason Gamel, American Resort Development Association, submitted written comments, dated July 7, 2010, stating that he believed the proposed rule accurately reflects both the language and intent of HB 61 (2009). Mr. Gamel stated that his employer was actively involved in drafting and securing enactment of the bill and is therefore very familiar with both the language and intent of the bill. He stated that the plain language of the bill makes clear that a timeshare exchange is not subject to tax, unless monetary consideration is paid to the owner or to a third-party for the benefit of the owner.

Mr. Gamel proposed two minor changes to the proposed rule. First, Mr. Gamel suggested that the language in the proposed rule referring to the "occupancy of a regulated short-term product" be changed to "occupancy pursuant to a regulated short-term product," so as to be consistent with the statutes. Second, Mr. Gamel recommended including a statutory reference to Section 721.18, F.S., in connection with the term "timeshare exchange program," so as to limit the term in the proposed rule only to those programs that are regulated pursuant to Section 721.18, F.S.

Ms. Sarah Richardson, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated July 8, 2010, stating her opinion that proposed paragraph (7)(d) of the proposed rule creates a wholesale exemption for all portions of a timeshare exchange that is inconsistent with the statutes. Ms. Richardson stated her opinion that the statutory language would cause at least some timeshare exchanges to be taxable events.

Specifically, Ms. Richardson stated that an upgrade fee paid by a person requesting a timeshare exchange is taxable. Ms. Richardson provided suggested language that could replace the current proposed rule language. Ms. Richardson also stated that an upgrade fee that went to an exchange program and not to the owner of the other property would not be taxable. Finally, Ms. Richardson stated her opinion that the Legislature did not intend for HB 61 (2009) to exclude upgrade fees from taxation. Ms. Richardson provided that the House of Representatives staff analysis of the bill stated that "[t]ransactions that are not taxable under the bill's provisions include timeshare exchanges, fees charged by a third party to facilitate a timeshare exchange, and inspection packages." Ms. Richardson stated that an upgrade fee charged in addition to the normal fee to facilitate a timeshare exchange is not exempt from taxation based on the staff analysis. Ms. Richardson also stated that the staff analysis included a description of taxable transactions and that the analysis included "short-term occupancy of a timeshare unit in a manner similar to that of a hotel, motel, resort, or other public lodging facility stay" within those descriptions.

Ms. Claudia Rilea, Orange County Comptroller's Office, submitted written comments dated July 30, 2010, stating that her initial interpretation is that the "boot" is included in the total consideration required to be paid for the right to occupy the unit. The reward points rule requires

tax to be paid on any additional amounts paid by the guest. It is important to consider the unintended consequences of the interpretation of this issue.

Erin Sullivan, C.F.C.A., C.P.M., Pinellas County Tax Collector's Office Courthouse, provided written comment, dated June 24, 2010, regarding the use of "points" for the timeshare industry. These points obviously have a value. When earned "points" are used to make a purchase, the use of the points should not result in receiving a tax exemption. The taxes should be collected and remitted, unless specifically exempt under the statutes.

Change to Proposed Paragraph (7)(c)
Proposed paragraph (7)(c) will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will not be changed to reference s. 721.18, F.S. Section 212.03(1), F.S., provides an exemption for timeshare exchange programs specifically, referencing the definition of an "exchange program" as found in s. 721.05, F.S. Therefore, any attempt to define the term in the rule by reference to s. 721.18, F.S., would be both unnecessary and in derogation of the statutes.

Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee or "boot" paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax is due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee or "boot" as part of a timeshare exchange.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.061, F.A.C.:

Proposed Paragraph (7)(c) of Rule 12A-1.061, F.A.C., Regulated Short-term Products

Ms. Vicki Weber, Hopping, Green and Sams, recommended a small change to paragraph (7)(c) of the proposed rule. As presented at the workshop, the proposed rule stated "occupancy of a regulated short-term product." Ms. Weber suggested this phrase be changed to "occupancy

pursuant to a regulated short-term product," because an individual does not occupy a regulated short-term product.

Change to Proposed Paragraph (7)(c)
Proposed paragraph (7)(c) will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

Proposed Paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Program

Mr. Tom Bell, Interval International, addressed the phrase in the proposed rule stating that an owner requesting a timeshare exchange "will not request the use of a specific timeshare unit." Mr. Bell recommended changing this phrase to "will generally not request. . . ."

Mr. Bell also addressed the term "exchange program." Mr. Bell stated that Section 721.05, F.S., contains a definition of "exchange program," but he recommended that the term be defined as "a program filed with the Department of Business and Professional Regulation pursuant to Section 721.18, F.S." Mr. Bell stated that, while Section 721.18, F.S., clearly implied approval by the Department of Business and Professional Regulation, it did not clearly say a program must be approved; he therefore recommended the use of the term "filed" instead of "approved," as stated in his written comments submitted prior to the workshop. Mr. Bell stated that he believed it was simpler to define the term "exchange program" in this manner, instead of using a cross-reference to the definition contained in Section 721.05, F.S.

Ms. Richardson stated her opinion that the new law did not provide an exemption for an upgrade fee paid as part of a timeshare exchange and that the proposed rule departed from the plain language of the statute. Ms. Richardson stated that additional consideration paid for an improved unit ("boot") should be taxed.

Ms. Weber stated that "boot" would only be taxed if it went to the benefit of the owner, and she referred to the specific language of the statute that addressed this issue. Ms. Richardson and Ms. Weber then discussed what the statute stated. Ms. Richardson stated that she read the statute to mean that a guest who does not pay to use the timeshare would not be subject to tax. She stated that the starting point was the statute, and the taxable point is consideration paid by the guest. Ms. Weber reiterated her opinion that the intent of the statute was to find no taxable privilege when an owner or owner's guest occupies a timeshare, unless the guest pays consideration to the owner or to a third party for the benefit of the owner.

Ms. Richardson asked if the consideration that went to the timeshare exchange program and not to the owner was simply profit to the exchange program. Ms. Weber stated that she believed the statute to read that any occupancy of a timeshare by a timeshare owner through a timeshare exchange was not a privilege subject to tax. Ms. Richardson gave her opinion that an upgrade fee is consideration for the occupancy of a unit and should be taxed. Ms. Weber stated that the proper beginning point was not what was the consideration, but whether there was a taxable occupancy that was a privilege subject to tax, and that the statute provided that the use of a timeshare by a timeshare owner under a timeshare exchange was not a taxable privilege.

Mr. Marshall Stranburg asked Ms. Weber for clarification of whether an upgrade fee that went to the timeshare owner would be taxable consideration. Ms. Weber stated that the statute contained two different situations: a timeshare owner occupying the property and a timeshare owner's guest occupying the property. She believes the statute provides that a timeshare owner's occupancy of the property is not a taxable privilege, but that the occupancy of the property by a timeshare owner's guest is a taxable privilege if the guest pays consideration to the owner or to a third party for the benefit of the owner.

Ms. Tammy Miller, Department of Revenue, and Mr. Stranburg asked Ms. Weber to clarify that a person requesting a timeshare exchange must be timeshare owner, so that a timeshare owner's guest would never occupy a timeshare unit under an exchange program. Ms. Weber agreed with the clarification. Ms. Richardson stated that, under a timeshare exchange, you have two owners, one of which is requesting an exchange and one of which owns the property being requested. Ms. Richardson asked if the owner requesting the exchange could be considered to be the other owner's guest, because that person is not the owner of the unit he or she will occupy. She stated that if the owner requesting the exchange paid an upgrade fee, then that fee should be taxable as consideration. Ms. Weber responded that the statutory language did not include a provision stating that a timeshare owner must occupy his or her own unit.

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will not be changed to reference s. 721.18, F.S. Section 212.03(1), F.S., provides an exemption for timeshare exchange programs specifically, referencing the definition of an "exchange program" as found in s. 721.05, F.S. Therefore, any attempt to define the term in the rule by reference to s. 721.18, F.S., would be both unnecessary and in derogation of the statutes.

Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax would be due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee as part of a timeshare exchange.

SUMMARY OF PROPOSED CHANGES TO RULE 12A-1.061, F.A.C.

Proposed paragraph (7)(c) of proposed Rule 12A-1.061, F.A.C., will be changed from "consideration paid for the occupancy of a regulated short-term product" to "consideration paid for occupancy pursuant to a regulated short-term product."

SUMMARY OF RULE DEVELOPMENT WORKSHOP

HELD ON OCTOBER 11, 2010

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), were noticed for a rule development workshop in the Florida Administrative Weekly on September 24, 2010 (Vol. 36, No. 38, p. 4559-4560). A rule development workshop was held on October 11, 2010, in Room 1220, Building Two, 2450 Shumard Oak Boulevard, Tallahassee, Florida, commencing at 2:30 p.m. and concluding at 3 p.m., to allow members of the public to ask questions and make comments regarding the proposed changes.

PARTIES ATTENDING

For the Department of Revenue	TAMMY MILLER, Senior Attorney, Technical Assistance and Dispute Resolution SARAH WACHMAN, Senior Management Analyst, General Counsel
For the Public	TOM BELL, Interval International SAMANTHA REHTORIK, Liberty Partners of Tallahassee, LLC CHRIS STEWART, American Resort Development Association VICKI WEBER, Hopping, Green and Sams
WRITTEN COMMENTS	SARAH RICHARDSON, Pinellas County Attorney's Office

Proposed paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Programs

Ms. Sarah Richardson, Pinellas County Attorney's Office, submitted written comments on behalf of the Pinellas County Tax Collector, dated October 8, 2010, reiterating her opinion that a timeshare exchange is a taxable event, particularly when the exchange involves the payment of an upgrade fee. Ms. Richardson stated that the payment of an upgrade fee for a more

valuable property constitutes additional consideration, even if a one-for-one exchange between two timeshare owners was assumed not to be an actual payment of consideration.

No change to Proposed Paragraph (7)(d)
Proposed paragraph (7)(d) will also not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax is due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee or "boot" as part of a timeshare exchange. Comments regarding the payment of an exchange fee to a timeshare owner outside an exchange program are not a part of the scope of this rulemaking. This rulemaking is limited to including the amendments made to s. 212.03, F.S., by Section 3, Chapter 2009-133, L.O.F.

NATURE OF COMMENTS RECEIVED ON PROPOSED RULE 12A-1.061, F.A.C.:

Proposed Paragraph (7)(d) of Rule 12A-1.061, F.A.C., Timeshare Exchange Program

Ms. Victoria Weber, Hopping, Green and Sams, stated that the statute was clear that an occupancy pursuant to an exchange program is not taxable. Ms. Weber agreed with what she believed had been Ms. Richardson's statement in her written comments of July 8, 2010, that an upgrade fee paid to an exchange program and not to a timeshare owner is also not taxable. Ms. Weber stated that an exchange fee paid to a timeshare owner would be taxable. Ms. Weber suggested that the proposed rule be amended to clarify that an upgrade fee is not taxable if paid to an exchange program and not to a timeshare owner.

Mr. Tom Bell, Interval International, stated his opinion that no program existed in which a timeshare owner requesting an exchange would pay any money to the owner of the unit to be received in the exchange. Mr. Bell also stated his opinion that no program existed in which any money paid by a timeshare owner requesting an exchange was paid for the benefit of the other timeshare owner. Mr. Chris Stewart, American Resort Development Association, concurred with Mr. Bell's statements.

Change to Proposed Paragraph (7)(d)
Proposed sub-subparagraph (7)(d)2.a. has been changed to clarify that consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to an exchange program is not subject to tax. The example contained in proposed sub-subparagraph (7)(d)2.b. will be changed to clarify that the upgrade fee is paid to the exchange program.

Proposed paragraph (7)(d) will not be changed to require tax to be remitted on any upgrade fee paid for a timeshare exchange. Section 212.03(1), F.S., provides that tax would be due when a timeshare owner's guest pays monetary consideration to the timeshare owner or to a third party for the benefit of the owner. Under a timeshare exchange program, both parties must be timeshare owners, and neither party is considered the "guest" of the other; therefore, neither party would ever fall under the statutory provision when it pays an upgrade fee as part of a timeshare exchange. Comments regarding the payment of an exchange fee to a timeshare owner outside an exchange program are not a part of the scope of this rulemaking. This rulemaking is limited to including the amendments made to s. 212.03, F.S., by Section 3, Chapter 2009-133, L.O.F.

SUMMARY OF PROPOSED CHANGES TO RULE 12A-1.061, F.A.C.

Proposed subparagraph (7)(d)2. of proposed Rule 12A-1.061, F.A.C., has been changed to clarify that consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to the exchange program is not subject to tax.

SUMMARY OF PUBLIC HEARING

HELD ON APRIL 19, 2011

The Governor and Cabinet, sitting as head of the Department of Revenue, met on April 19, 2011, and approved the publication of the Notice of Proposed Rule for changes to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations). A notice for the public hearing was published in the Florida Administrative Weekly on March 25, 2011 (Vol. 37, No. 12, p. 772).

SUMMARY OF RULE HEARING

HELD ON JUNE 1, 2011

The proposed amendments to Rule 12A-1.061, F.A.C. (Rentals, Leases, and Licenses to Use Transient Accommodations), were noticed for a rule hearing in the Florida Administrative Weekly on May 6, 2011 (Vol. 37, No. 18, pp. 1167 - 1169). A rule hearing was held on June 1, 2011, in Room 2503, Building One, 2450 Shumard Oak Blvd., Tallahassee, Florida. No one from the public attended and no comments were received.

STATE OF FLORIDA

DEPARTMENT OF REVENUE

CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE

SALES AND USE TAX

AMENDING RULE 12A-1.061

12A-1.061 Rentals, Leases, and Licenses to Use Transient Accommodations.

(1) through (3) No change.

(a) through (g) No change.

(h) The following is a non-inclusive list of charges separately itemized on a guest's or tenant's bill, invoice, or other tangible evidence of sale that are NOT rental charges or room rates for transient accommodations:

1. through 13. No change.

~~14. Consideration paid by a timeshare owner for purchase of a timeshare estate, as defined in Section 721.05, F.S. Consideration paid under a timeshare license, as defined in Section 721.05, F.S., is rental charges or room rates and is subject to tax.~~

14.~~15~~. No change.

(4) through (6) No change.

(7) TIMESHARES.

(a) Purchase of a timeshare interest.

1. Consideration paid for the purchase of a timeshare estate, as defined in Section 721.05, F.S., is not rent and is not subject to tax.

2. Consideration paid for the purchase of a timeshare license, as defined in Section

721.05, F.S., is rent and is subject to tax.

(b) Rental of a timeshare accommodation. Consideration paid for the use or occupancy of an accommodation in a timeshare property is rent and is subject to tax. Consideration paid for a regulated short-term product or a timeshare exchange is addressed below.

(c) Regulated short-term products. Consideration paid for occupancy pursuant to a regulated short-term product, as defined in Section 721.05, F.S., is rent and is subject to tax, unless the consideration paid is applied to the purchase of a timeshare estate. Tax is due on the last day of occupancy pursuant to the regulated short-term product.

(d) Timeshare exchange programs.

1. A typical timeshare exchange program allows timeshare owners the right to deposit their timeshares into the exchange program pool. After depositing his or her timeshare into the exchange program pool, an owner may request the use of a different timeshare. An owner making a request will specify the type of unit desired (*e.g.*, one-bedroom, oceanfront) and the location at which he or she would like to stay (*e.g.*, Honolulu, Cancun, Miami), but will generally not request the use of a specific timeshare unit. A timeshare owner who joins an exchange program pays a membership fee to be a part of the exchange program. An owner also pays an exchange fee to request an exchange of a timeshare under the program. The requesting owner may also pay an upgrade fee if the exchange program determines that the requesting owner's timeshare is of a lesser value than the timeshare being requested.

2.a. Consideration paid for the use or occupancy of an accommodation in a timeshare property by a timeshare owner to an exchange program is not subject to tax.

b. Example: Mr. Smith purchases a two-bedroom timeshare in Orlando and becomes a member of an exchange program. Mr. Smith pays an annual membership fee of $500 to be a

member of the exchange program, which must be paid whether or not Mr. Smith requests the use of another timeshare from the exchange program pool. Mr. Smith decides to vacation in Miami, and he submits an exchange request to the exchange program. As part of his exchange request, Mr. Smith specifically requests a four-bedroom timeshare unit. Mr. Smith pays a $99 exchange fee and a $250 upgrade fee to the exchange program for the four-bedroom unit. No tax is due on the membership fee, the exchange fee, or the upgrade fee paid by Mr. Smith.

(7) through (19) Renumbered (8) through (20) No change.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 92.525(1)(b), 119.071(5), 212.02(2), (10)(a)-(g), (16), 212.03(1), (2), (3), (4), (5), (7), 212.031, 212.04(4), 212.08(6), (7)(i), (m), 212.11(1), (2), 212.12(7), (9), (12), 212.13(2), 212.18(2), (3), 213.37, 213.756 FS. History–Revised 10-7-68, 1-7-70, Amended 1-17-71, Revised 6-16-72, Amended 7-19-72, 4-19-74, 12-11-74, 5-27-75, 10-18-78, 4-11-80, 7-20-82, 1-29-83, 6-11-85, Formerly 12A-1.61, Amended 10-16-89, 3-17-94, 1-2-95, 3-20-96, 11-30-97, 7-1-99, 3-4-01(4), 3-4-01(2), (5), (14), 10-2-01, 8-1-02, 9-1-09, 6-28-10, _____.