

STATE OF FLORIDA
DEPARTMENT OF REVENUE
CHAPTER 12A-1, FLORIDA ADMINISTRATIVE CODE
SALES AND USE TAX
CREATING RULE 12A-1.108
AMENDING RULE 12A-1.097

Rule 12A-1.108 Exemption for Data Center Property

(1) The sale of “data center property,” as defined in section 212.08(5)(s)1.d., F.S., is exempt from sales tax when the following requirements will be met:

- (a) The facility meets the definition of “data center,” as provided in s. 212.08(5)(s)1.c., F.S.;
- (b) the Data Center’s owners and tenants have made a cumulative, minimum capital investment, after July 1, 2017, of \$150 million for the data center, excluding any expenses incurred in the acquisition of property operating as a data center in the six months prior to the acquisition;
- (c) the data center must have a critical IT load of 15 megawatts or higher; and,
- (d) each individual owner or tenant within the data center must have a dedicated critical IT load of 1 megawatt or higher.
- (e) Each of the above requirements must be met within 5 years after the commencement of the construction of the data center.

(2) Application Process.

(a) To qualify for the exemption for data center property, the data center owner must complete an Application for Data Center Property Temporary Tax Exemption Certificate (form DR-1214DCP, incorporated by reference in Rule 12A-1.097, F.A.C.). The application must state

that a qualifying data center designation is being sought and must be accompanied by information that indicates the exemption requirements of subsection (1), will be met.

(b) The Department will issue a Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) upon a tentative determination by the Department that the exemption requirements provided in subsection (1) will be met.

(c) The data center owner must complete an Application for Data Center Property Certificate of Exemption (form DR-5DCP, incorporated by reference in Rule 12A-1.097, F.A.C.) once the exemption requirements have been met. The applicant must deliver to the Department its Data Center Property Temporary Tax Exemption Certificate, along with the following documentation sufficient to support that the exemption requirements have been satisfied:

1. Certification from a professional engineer, licensed pursuant to chapter 471, F.S., whose services are contracted solely to certify that the data center has met the critical IT load requirement;
2. Certification from a Florida certified public accountant, as defined in s. 473.302, F.S., whose services are contracted solely to certify that the data center owners and tenants have made the required cumulative capital investment.

(d) The Department will issue a Data Center Property Certificate of Exemption (DR-14DCP) to the data center owner once it has determined that the documentation provided certifies that the exemption requirements have been met.

(3) Documenting the Exemption

(a) Data center owners making tax-exempt purchases of data center property are required to present the Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) or the

Data Center Property Certificate of Exemption (DR-14DCP), once issued by the Department, to the selling dealer.

(b) Tenants and contractors making tax exempt purchases of data center property are required to present a copy of the Data Center Property Temporary Tax Exemption Certificate (DR-14TDCP) or the Data Center Property Certificate of Exemption (DR-14DCP), issued to the data center owner by the Department, along with a Certificate of Entitlement to each vendor to affirm that the purchaser qualifies for the exemption. The vendor must maintain copies of the certificates until tax imposed by Chapter 212, F.S., may no longer be determined and assessed pursuant to Section 212.08(5)(s)3.c., F.S. Possession by a vendor of the certificates from the purchaser relieves the vendor from the responsibility of collecting tax on the sale, and the Department shall look solely to the purchaser for recovery of tax if it determines that the purchaser was not entitled to the exemption.

(c) The following is the format of the Certificate of Entitlement to be issued by the data center tenant or data center contractor when making exempt purchases of data center property:

CERTIFICATE OF ENTITLEMENT

The undersigned _____ (the Purchaser) affirms that it is a tenant or contractor of _____ (the Data Center), located at _____ (Data Center Address), and is eligible to extend the Data Center Property Temporary Tax Exemption Certificate / Data Center Property Certificate of Exemption to lease or purchase data center property exempt from sales tax.

The Purchaser affirms that the items purchased or rented from _____ (Vendor) will be used exclusively at the Data Center to construct, outfit, operate, support, power, cool, dehumidify, secure, or protect a data center and any contiguous dedicated substations.

The Purchaser acknowledges that if the subject purchased or leased data center property does not qualify for the exemption provided in section 212.08(5)(s), F.S., and Rule 12A-1.108, F.A.C., the Purchaser will be subject to the tax, interest, and penalties due on the purchased or leased property.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax, I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction for a third-degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement, and the facts stated in it are true.

Signature of Purchaser _____ Title _____

Purchaser's Name (Print or Type) _____ Date _____

Purchaser's Federal Employer Identification Number: _____

Data Center Owner Certificate Number: _____

Telephone Number: _____

Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the tenant's or contractor's books and records.

(4)(a) The exemption for purchases and leases of data center property does not include rental consideration made for the lease or license to use real property subject to tax under s. 212.031, F.S. Rental consideration includes all considerations due and payable by the tenant to

its landlord for the privilege of use, occupancy, or the right to use or occupy any real property for any purpose, including pass-through charges for common area maintenance and utilities. See Rule 12A-1.070(4), F.A.C.

(b)1. Payments for the use of electricity by a tenant to a data center owner, lessor, or utility provider that are not required to be paid for the privilege of use, occupancy, or the right to use or occupy the data center are not subject to sales tax. Such payments are considered to be for the use of “data center property.”

2. To document the exempt purchase of electricity from a utility provider, the tenant shall present a copy of the Data Center Property Temporary Tax Exemption Certificate or Data Center Property Certificate of Exemption, as provided in subsection (3) of this rule, along with an executed Certificate of Entitlement, as provided in subsection (4) of this rule, to the utility provider.

(5) The Department will conduct a review of registered data centers every 5 years to ensure that the data center exemption requirements provided in s. 212.08(5)(s), F.S., continue to be met. The first 5 year period will begin with the date the Data Center Property Certificate of Exemption (DR-14DCP) is issued to the data center. Within 3 months before the end of any 5-year period, data center owners are required to submit a written declaration, under penalties of perjury, that the required critical IT load requirements of paragraph (1)(a) are met and that the data center continues to operate in compliance with s. 212.08(5)(s)1., F.S. The declaration should be sent to Technical Assistance and Dispute Resolution, Florida Department of Revenue, P.O. Box 7443, Tallahassee, FL 32314-7443.

(6)(a) If the Department determines that the data center or any owners, tenants, contractors, or other purchasers have not met the requirements found in s. 212.08(5)(s), F.S.,

with respect to any purchase, then the applicable parties are liable to pay the tax that was avoided at the time of purchase, as well as penalty and interest from the date of purchase.

(b) If the Department determines that the data center is no longer in compliance with the provisions of s. 212.08(5)(s), F.S., then the Data Center Property Certificate of Exemption (DR-14DCP) will be revoked; the applicable parties will liable to pay any tax that was avoided since the date the data center fell out of compliance with statutory requirements, as well as penalty and interest from the date of such purchases; and no further purchases will be exempt.

(6) Except as provided in (5)(b), the exemption provided for data center property is a permanent exemption for qualifying data centers that apply for and receive a Data Center Property Temporary Tax Exemption Certificate during the period from July 1, 2017, through June 30, 2022, and then meet all requirements for the Data Center Property Certificate of Exemption within five years. The Department will not process applications for Data Center Property Temporary Tax Exemption Certificate after June 30, 2022.

Rulemaking Authority 212.17(6), 212.18(2), 213.06(1) FS. Law Implemented 212.08(5)(s), FS.

History- New_____.

12A-1.097 Public Use Forms.

(1) The following public use forms and instructions are employed by the Department in its dealings with the public related to the administration of Chapter 212, F.S. These forms are hereby incorporated by reference in this rule.

(a) through (b) No change.

Form Number

Title

Effective Date

(2) through (19) No change.

(21) DR-1214DCP Application for Data Center Property Temporary 01/18

Tax Exemption Certificate

(<http://www.flrules.org/Gateway/reference.asp?No=Ref->)

(22) DR-5DCP Application for Data Center Property 01/18

Certificate of Exemption

(<http://www.flrules.org/Gateway/reference.asp?No=Ref->)

Rulemaking Authority 201.11, 202.17(3)(a), 202.22(6), 202.26(3), 212.0515(7), 212.07(1)(b), 212.08(5)(b)4., (n)4., (o)4., (7), 212.11(5)(b), 212.12(1)(a)2., 212.17(6), 212.18(2), (3), 212.183, 213.06(1), 288.1258(4)(c), 376.70(6)(b), 376.75(9)(b), 403.718(3)(b), 403.7185(3)(b), 443.171(2), (7) FS. Law Implemented 92.525(1)(b), (3), 95.091, 119.071(5), 125.0104, 125.0108, 201.01, 201.08(1)(a), 201.133, 202.11(2), (3), (6), (16), (24), 202.17, 202.22(3)-(6), 202.28(1), 203.01, 212.02, 212.03, 212.0305, 212.031, 212.04, 212.05, 212.0501, 212.0515, 212.054, 212.055, 212.06, 212.0606, 212.07(1), (8), (9), 212.08, 212.084(3), 212.085, 212.09, 212.096, 212.11(1), (4), (5), 212.12(1), (2), (9), (13), 212.13, 212.14(2), (4), (5), 212.17, 212.18(2), (3), 212.183, 213.235, 213.29, 213.37, 213.755, 215.26(2), 219.07, 288.1258, 290.00677, 376.70, 376.75, 403.717, 403.718, 403.7185, 443.036, 443.121(1), (3), 443.131, 443.1315, 443.1316, 443.171(2), (7) FS. History-New 4-12-84, Formerly 12A-1.97, Amended 8-10-92, 11-30-97, 7-1-99, 4-2-00, 6-28-00, 6-19-01, 10-2-01, 10-21-01, 8-1-02, 4-17-03, 5-4-03, 6-12-03, 10-1-03, 9-28-04, 6-28-05, 5-1-06, 4-5-07, 1-1-08, 4-1-08, 6-4-08, 1-27-09, 9-1-09, 11-3-09, 1-11-10, 4-26-10, 6-28-10, 7-12-10, 1-12-11, 1-25-12, 1-17-13, 5-9-13, 1-20-14, 1-19-15, 1-11-16, 4-5-16, 1-10-17, 2-9-17, _____.