

## Notice of Proposed Rule

### DEPARTMENT OF REVENUE

#### Sales and Use Tax

RULE NO.: RULE TITLE:

12A-1.097 Public Use Forms

12A-1.108 Exemption for Data Center Property

PURPOSE AND EFFECT: The purpose of the proposed amendments to Rule 12A-1.097, F.A.C. (Public Use Forms), is to adopt, by reference, 2 forms used by data center owners to apply for Data Center Property exemption certificates.

The purpose of the creation of the proposed Rule 12A-1.108, F.A.C., is to: (1) provide guidance to regarding the exemption for purchases of data center property in Section 212.08(5)(s), F.S., which became effective July 1, 2017, provided by Section 26, Chapter 2017-36, Laws of Florida; and (2) provide exemption requirements, definitions, and application procedures for data center owners, data center tenants, data center contractors, and retailers.

SUMMARY: The adoption of forms in Rule 12A-1.097, F.A.C., and creation of Rule 12A-1.108, F.A.C., provides the application and approval process for Exemption for Data Center Property applicants and provides guidelines and procedures necessary to claim the exemption.

#### SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: 1) no requirement for the Statement of Economic Regulatory Costs (SERC) was triggered under Section 120.541(1), F.S.; and 2) based on past experiences regarding rules of this nature, the adverse impact or regulatory cost, if any, do not exceed nor would exceed any one of the economic analysis criteria in a SERC, as set forth in Section 120.541(2)(a), F.S.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

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.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: February 7, 2018, 9:00 a. m.

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

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 48 hours before the workshop/meeting by contacting: Becky Avrett at (850)617-6799. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, 1(800)955-8771 (TDD) or 1(800)955-8770 (Voice).

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Tammy Miller, Technical Assistance and Dispute Resolution, Department of Revenue, P.O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)717-6309.

THE FULL TEXT OF THE PROPOSED RULE IS:

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
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(2) through (20) No change.

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

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

(22) DR-5DCP	Application for Data Center Property	01/18
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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, 212.06(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, 113-09, 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,\_\_\_\_\_.

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 and;

(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, except certain electricity charges provided in subsection (4)(b) below. See Rule 12A-1.070(4), F.A.C.

(b) The following charges for electricity are exempt as charges for “data center property”:

1. Charges billed by the utility provider directly to a data center tenant.

2. Charges billed by the utility provider directly to a data center owner.

3. Charges billed to a data center tenant by a data center owner that are separately stated on the owner’s invoice at the same or lower price as that billed by the utility provider to the owner.

(c) To document the tax-exempt purchase of electricity as provided in subsection (4)(b) above, the purchaser shall comply with the documentation requirements set out in subsection (3) above.

(d) Data center property includes areas, infrastructure, fixtures and furnishings to be used exclusively at the data center by persons employed at the data center provided that the employees using the areas, infrastructure, furniture and fixtures are directly responsible for the operation, monitoring, security or support of data center property.

(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 such purchaser is 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; any person who made tax exempt purchases under that certificate 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 \_\_\_\_\_.

NAME OF PERSON ORIGINATING PROPOSED RULE: Tammy Miller

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Governor and Cabinet

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: December 13, 2017

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: November 2, 2017